



U.S. Department of Justice

Federal Bureau of Prisons

South Central Regional Office

Dallas, Texas 75219

February 9, 1999

MEMORANDUM FOR CHRISTOPHER ERLEWINE
 ASSISTANT DIRECTOR/GENERAL COUNSEL

FROM: Michael D. Hood, Regional Counsel

SUBJECT: Monthly Report - January 1999

ADMINISTRATIVE REMEDIES												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	184											
ANSWERED	117											

TORT CLAIMS												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
PENDING	211											
RECEIVED	48											
ANSWERED	62											
PENDING	197											
OVER SIX MO	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	11											
RECEIVED	49											
ANSWERED	42											
PENDING	18											
OVER 20 DAYS	4											

LITIGATION												
	JA	FE	MA	AP	MA	JU	JU	AU	SE	OC	NO	DE
	N	B	R	R	Y	N	L	G	P	T	V	C
CASES RECD	14											
CASES CLOSED	9											
HABEAS CORPUS	13											
BIVENS	0											
FTCA	0											
OTHER	1											
LIT REPORTS	8											
HEARINGS/ TRIALS	1											
SETTLEMENTS/ AWARDS	1											

CASES WITH HEARINGS OR TRIALS

U.S. v. Ruth Muhammad, 98-10960; U.S. v. Susan Klat, 4-97-CV-678-A and U.S. v. Jacqueline Dennis, 4-97-CV-0729-A (ND/TX FTW), U.S. Court of Appeals for the 5th circuit. This involves three mental health commitment inmates from FMC Carswell. The AUSA made oral arguments before the 5th Circuit Court of Appeals. The court has decided in our favor in regard to Muhammad. The court ruled that an attorney can consent to a hearing before a Magistrate and that a 4245 hearing is considered a civil action. No Determination has been made at this time in regard to Klat and Dennis.

CASES WITH SETTLEMENTS OR AWARDS

a. Adverse judgments

None

b. Tort Claim settlements

Thomas Thompson v. USA. This FMC Fort Worth and U.S Marshals case settled on 1-8-99 for \$15,000. The plaintiff alleged staff failed to provide for his medical needs as a paraplegic, specifically diapers and catheters.

c. Other settlements

None

SIGNIFICANT CASES

In John Steven Wilkins v. Bob Guzik, an FMC Fort Worth inmate alleges the BOP has failed to provide adequate surgical repair of hypospadias, a condition which has severely shortened the length of his penis. He is seeking surgical repair. This case is before the Honorable John McBryde, who refused the government's request for an extension of time, requiring a response turnaround of two weeks.

Denver Reed v. Bidelspach, et al., CIV-96-874-C, an old FTC Oklahoma City case involving allegations of staff assault and excessive use of force. Magistrate's R&R was adopted but plaintiff appealed and 10th Circuit ordered an Appellee brief addressing several issues, including distinguishing Heck v. Humphrey, Edwards v. Balisok, and Garrett v. Hawk.

The FCI Texarkana cases of Kenner v. Conner, Civil No. 5:98cv386, Tolliver v. Conner, Civil No. 5:98cv384, and Perales v. Conner, Civil No. 5:98cv372, address early release eligibility issues.

SIGNIFICANT TORT CLAIMS

[REDACTED] an inmate housed at FCI Beaumont (Low) alleges that on December 1, 1998, he stood up in the dining hall at FCI Beaumont (Low) and "the table threw" him and he landed on his left leg. He states that his knee and back hurt and medical staff are not providing any treatment. [REDACTED] seeks ten thousand dollars in damages. (T-SCR-99-023) b7C

[REDACTED], an USP Beaumont inmate, has filed a personal injury claim seeking \$500,000. He claims that USP Beaumont staff failed to protect him because he suffered severe burns as a result of an inmate assault. He believes staff also failed to control toxic chemicals and failed to provide appropriate medical care. Samspon's attorney has offered to settle the case for \$200,000. We denied the claim: [REDACTED] b5

[REDACTED] an inmate housed at FCI Big Spring, alleges that a doctor at a community hospital in the Big Spring area performed cardiovascular surgery on May 15, 1998, and damaged the main nerve in his right leg. He also states that since then he has contracted a "deadly and incurable virus, Hepatitis-B" because of FCI Big Spring's negligence. [REDACTED] b7C

[REDACTED]. But, we will address [REDACTED] allegation that he contracted the hepatitis virus at FCI Big Spring. [REDACTED] seeks five million dollars in damages. (T-SCR-99-013) b5

Inmate [REDACTED] an inmate housed at FCI Texarkana, [REDACTED] b7C

a request for 1.5 million alleging he was improperly removed from his UNICOR work assignment when he was given a ten pound weight lifting restriction. He asserts violations of the EEO, ADA and UNICOR policy. (T-SCR-98-608)

SIGNIFICANT ADMINISTRATIVE REMEDIES

FMC Carswell has received a voluminous amount of copouts and administrative remedies regarding the convictions and sentences of 25 inmates. All of these inmates have filed 11 copouts each. Five have already filed BP-9's and we expect all of them to do so. So far, four have filed habeas lawsuits. These issues are significant because we have information that inmates are being offered commissary and other benefits by other inmates, (Freeman Group), to inundate us with these claims when they are aware there is no remedy available through the administrative remedy procedure.

UPCOMING TRIALS OR HEARINGS

Kevin Ford v. Guzik, an FTC Oklahoma City case, status conference held on 2/3/99. Judge ordered a settlement conference to be held February 11, 1999. A settlement memo is being sent to OGC for a response as soon as possible due to the short time frame the Judge has given.

MEDICAL MALPRACTICE

LITIGATION

See Significant Cases Section.

TORT CLAIMS

See Significant Tort Claims Section.

ENSIGN AMENDMENT

None

LITIGATION

None

TORT CLAIMS

None

RELIGIOUS FREEDOM RESTORATION ACT

LITIGATION

Johnnie Louis McAlpine v. Ron Thompson, was argued orally before the Sixth Circuit Court of Appeals on January 21, 1999, by Assistant U. S. Attorney Kay Sewell. This case is significant that it was the first case in the SCRO (and arguably in the . . . to challenge provisions to inmates under the R.F.R.A. Former inmate McAlpine challenged the Bureau's denial of his use of peyote while he was in custody at FCI El Reno. The district court entered judgment in favor of the BOP. The principal issue on appeal was not the constitutionality of the R.F.R.A., but the government's mootness argument. Now that inmate McAlpine has been released from federal custody, his contentions against the conditions of his confinement are moot and should not be given credence. The Sixth Circuit will determine whether the imposition of supervised release (which subjects an inmate to random and/or routine drug testing as a term of that release) unlawfully and unconstitutionally inhibits his right to use peyote in religious ceremonies.

TORT CLAIMS

None

PRISON LITIGATION REFORM ACT ORDERS

None

SITUATIONS OF INTEREST

FMC Fort Worth was involved extensively in depositions on the Omar Tusshani v. USA personal injury civil action.

On January 4, 1999, Karen Summers resumed her Paralegal duties at USP Beaumont. She had been the Acting Executive Assistant at the CAB from July through December 1998.

CRIMINAL MATTERS AND PROSECUTIONS

FCI BEAUMONT (LOW)

The U.S. Attorney's Office accepted for prosecution a marijuana possession case involving inmates Juan Cantu and Juan Ramirez, who were found with approximately 32 grams of marijuana. A February indictment is anticipated.

Prosecution of inmate [REDACTED] was declined. The inmate was found to be in possession of several small envelopes of marijuana. Warden agrees with determination. b7C

USP BEAUMONT

On January 5, 1999, inmate Ellis Mosher was indicted for the September 1998 murder of inmate Stanley Mosely.

Inmate on inmate assault. On January 7, 1999, staff observed inmate [REDACTED] in his cell with injuries to his facial area. Inmate [REDACTED] was observed attempting to flee the area. Incident was referred to the FBI for prosecution. Determination pending. b7c

On January 20, UTMB staff member Michael Dovalina (assigned to the USP) was arrested by the Jefferson County Drug Task Force (working with the Office of Inspector General) for Possession with Intent to Distribute Crack Cocaine and Conspiracy to Introduce a Controlled Substance into a Penal Institution.

FCI BIG SPRING

On January 27, 1999, Former Food Service Foreman, Keith Conner, entered a guilty plea to one count of violation of Title 18 U.S.C. 201 (b) (2) (a) and (c), Bribery. Sentencing is set for March 12, 1999. The sentencing range for this case is a maximum of 15 years. A downward departure is expected at sentencing; thus, we expect a maximum in the two year range.

FPC EL PASO

A staff member at FPC, El Paso, who is facing charges involving an alleged sexual assault of a female employee, pled not guilty in front of a Magistrate. A trial date has been set for early March 1999.

FCI FORREST CITY

On Sunday, December 27, 1998, the Food Service Supervisor observed inmate [REDACTED] kicking and striking inmate [REDACTED] with a closed fist on his facial area. Both inmates were separated, examined by medical staff and placed in Administrative Detention. Inmate [REDACTED] sustained a superficial "V" shape laceration to the left eye. No injuries were sustained by inmate [REDACTED]. The FBI was notified, prosecution was declined, and the Warden agrees. b7c

On Monday, December 28, 1998, a unit officer discovered inmate [REDACTED] with an injury to his right eye and what appeared to be blood on his clothing. The unit officer notified the Operations Lieutenant, and all inmates assigned to the unit were visually inspected with negative results. As a result of inmate [REDACTED] b7c

injuries, he was escorted to a local outside hospital for additional evaluation. A medical assessment revealed inmate [REDACTED] received multiple bruises to his head area, hematoma and superficial lacerations to his right eye. Upon returning to the institution the inmate was placed in the SHU. Mass interviews were taken; the investigation continues.

On January 20, 1999, staff received information that inmate [REDACTED] had assaulted inmate [REDACTED] in the hallway outside the Counselor's office in a housing unit. Unit staff entered the hallway and separated the inmates. Both were escorted to the Lieutenants Office where they were interviewed by the Operations Lieutenant. Both inmates were examined by medical staff, and inmate [REDACTED] was escorted to the SHU without incident. The FBI was notified, prosecution was declined, and the Warden agrees.

FMC FORT WORTH

On January 7, 1999, inmate [REDACTED] was assaulted by inmate [REDACTED]. Inmate [REDACTED] threw boiling water in Housman's face, causing second degree burns. [REDACTED] was transported to Parkland Burn Center. [REDACTED] was placed in the Special Housing Unit pending further investigation. The case was referred to the AUSA for possible prosecution. It appears hopeful the case will be accepted for prosecution. It should be noted that inmate [REDACTED] has since developed further complications from the attack, i.e., heart/lung problems.

FCI SEAGOVILLE

On January 6, 1999, inmates [REDACTED] were placed in the Special Housing Unit pending investigation for possible drug introduction.

FCI Seagoville inmate [REDACTED] was placed in the Special Housing Unit on January 6, 1999, pending further investigation into possible introduction of drugs.

On the evening of January 16, 1999, numerous FCI Seagoville inmates were placed in the Special Housing Unit following two assaults and a stabbing. The following inmates were victims:

[REDACTED]
[REDACTED] The remaining inmates are under investigation for the assault: [REDACTED]

The FBI was contacted on January 26, 1999, concerning an attempted sexual assault at FCI Seagoville. Inmates [REDACTED] were placed in the Special Housing Unit.



U.S. Department of Justice

Federal Bureau of Prisons

South Central Regional Office

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10, 1999

MEMORANDUM FOR CHRIS' ASSIS'

1 Kelly Case (Bivens)

COUNSEL

FROM: Michael

Counsel

SUBJECT: Monthly Report - February 1999

ADMINISTRATIVE REMEDIES												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	184	226										
ANSWERED	117	95										

TORT CLAIMS												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
PENDING	211	201										
RECEIVED	48	59										
ANSWERED	62	67										
PENDING	197	193										
OVER SIX MO	1	1										

FOI/PRIVACY												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
	N	B	R	R	Y	N	L	G	P	T	V	C
PENDING	11	18										
RECEIVED	49	39										
ANSWERED	42	44										
PENDING	18	13										
OVER 20 DAYS	4	2										

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	14	9										
CASES CLOSED	9	8										
HABEAS CORPUS	13	6										
BIVENS	0	3										
FTCA	0	0										
OTHER	1	0										
LIT REPORTS	8	12										
HEARINGS/ TRIALS	1	2										
SETTLEMENTS/ AWARDS	1	0										

CASES WITH HEARINGS OR TRIALS

U.S. v. Susan Klat, 4-97-CV-678-A (ND/TX FTW), U.S. Court of Appeals for the 5th circuit. This involves a mental health commitment inmate from FMC Carswell. The AUSA is going to make oral arguments before the 5th Circuit Court of Appeals next week regarding a Magistrate's ability to commit patients under Title 18 U.S.C. 4245.

Kevin Ford v. Guzik, et al. During a settlement conference held on 2/10/99, the Judge ordered settlement in the amount of \$10,000 contingent on conversion of this Bivens FTC Oklahoma City case to an FTCA case. The Civil Chief has denied converting the case and is seeking information whether we should now deny DOJ representation to one or more defendants.

CASES WITH SETTLEMENTS OR AWARDS

a. Adverse judgments

None

b. Tort Claim settlements

None

c. Other settlements

None

SIGNIFICANT CASES

On February 26, 1999, Donna Webb, AUSA, deposed [REDACTED] ...

BTk

anticipation of trial in this FMC Fort Worth slip and fall case, which will be scheduled upon completion of discovery.

Former FCI La Tuna inmate [REDACTED] will return to Bureau of Prisons custody on March 15, 1999, by self-surrender to Oakdale. Inmate [REDACTED] was released from Bureau custody in April 1998, following his successful district court challenge to the Bureau's use of his two-point firearms enhancement to deny him early release for having determined he committed a Crime of Violence. Relying upon Vengas v. Henman, a case decided just after the government filed its Notice of Appeal to challenge the district ruling, the Fifth Circuit reversed and remanded. The district court subsequently entered Judgment in the government's favor.

b7C

SIGNIFICANT TORT CLAIMS

In this USP Beaumont personal injury tort, a counter-offer of \$3,000 was made in the [REDACTED] claim. Inmate [REDACTED] was doused by another inmate with liquid heated in a microwave oven. (T-SCR-98-344)

[REDACTED], former FMC Fort Worth inmate, is alleging negligence and malpractice by BOP staff for failure to provide timely medical attention for his spinal cord injury. He underwent surgery which allegedly failed, resulting in his confinement to a wheelchair. He claims government liability in the amount of \$15,000,000. (T-SCR-99-061)

Regalado - This Community Corrections wrongful death claim was denied based on the statute of limitations. However, the claimant seeks reconsideration, and the halfway house (City of Faith) has expressed the need to subrogate against the BOP for any damages lost in state court. The Community Corrections Administrator and Lisa Sunderman will meet with the Director of City of Faith and their attorney this month to discuss the defense of this case. (T-SCR-98-519)

[REDACTED] contends that he is suffering shoulder pain due to a separation, because UTMB staff have failed to diagnose the condition and refuse to send him to a specialist. [REDACTED] adds that a bone is now protruding from his shoulder and he is in pain. He seeks \$10,000.00. (T-SCR-99-036)

Zambrano - In this previously reported FDC Oakdale medical malpractice claim, the attorney has made a counter-offer of \$2,000 to our offer of \$550. Consideration is being made on counter-offer. (T-SCR-99-148)

SIGNIFICANT ADMINISTRATIVE REMEDIES

FMC Fort Worth has had a myriad of administrative remedies...

complaining about the Department Head Chaplain's interactions and oversight of the Nation of Islam community.

UPCOMING TRIALS OR HEARINGS

Erasmio Fernandez v. Sam L. Pratt, CA No. 3:98-CV-0865-D. This FCI Seagoville inmate filed a suit challenging a disciplinary decision finding the inmate guilty of the use or possession of drug paraphernalia. After the government filed its motion to dismiss the suit, the inmate's attorney filed a response along with a motion to withdraw as counsel. The attorney's motion was denied as the magistrate found it unlikely that the suit would require any further action on the attorney's part. Subsequently, the magistrate filed his findings and recommendations. The inmate filed pro se objections concerning his attorney and also contended that he could not adequately respond to the magistrate's proposed ruling because the inmate lacked documents which had been filed by his attorney. The district court referred this matter to the magistrate to determine whether the attorney should be permitted to withdraw and whether the inmate should be granted an extension of time in which to obtain and review documents relating to his case so as to file objections to the magistrate's proposed order. A hearing is scheduled for March 11, 1999.

Michael A. Limon v. Eric Holder et al. Inmate is bringing a Rivens action alleging deliberate indifference to his medical needs. The inmate claims that while he was incarcerated at FCI Three Rivers, he became injured in the recreation area. He alleges that the defendants delayed medical treatment causing him to suffer permanent neurological damage. The inmate is asking for one hundred and fifty thousand dollars (\$150,000.00) in compensatory damages and five million (\$5,000,000.00) in punitive damages from each defendant. A telephonic Spears hearing is set for March 25, 1999, at 1:30 p.m. Because the inmate is presently incarcerated at Beaumont, the hearing will be conducted from there.

Inmate [REDACTED] has brought a suit seeking to have medical staff at FMC Fort Worth perform surgery on him. The inmate suffers from hypospadias, a penile defect that he was born with, which causes difficulty in urinating due to the downward placement of the urethra. The surgery that the inmate seeks is prohibited by the Bureau's Health Services manual as it is not medically necessary. A settlement conference has been ordered by Judge McBride on March 16, 1999 at FMC Fort Worth.

b7C

MEDICAL MALPRACTICE

LITIGATION

See Significant Cases Section.

TORT CLAIMS

See Significant Tort Claims Section.

ENSIGN AMENDMENT

None

LITIGATION

None

TORT CLAIMS

None

RELIGIOUS FREEDOM RESTORATION ACT

LITIGATION

None

TORT CLAIMS

None

PRISON LITIGATION REFORM ACT ORDERS

None

SITUATIONS OF INTEREST

FCI Beaumont (Low) hosted an organizational meeting for community leaders participating in "Leadership Southeast Texas." Michael Bradford, United States Attorney for the Eastern District of Texas, made a presentation during the day-long gathering which focused on the presence of drugs in the local area.

On February 1, 1999, Congressman Nick Lampson toured FCI Beaumont (Low).

United States of America v. Kirby Keith Kehoe, CR-97-243(4)
Judge Eisele ordered medical staff into court to inform him what type of medical treatment inmate Kehoe was receiving.

Inmate Alvin Jones (aka Alexander Hamilton) has violated supervised release and has been picked up the U. S. Marshals in Arkansas.

Inmate Kevin Horn, was released 2/24/99, 279 days past his release date. This FTC Oklahoma City inmate had multiple federal convictions and state convictions, his first federal sentence running consecutively with his state. He appealed to the 9th Circuit, which held the federal sentence should have run concurrently, resulting in him serving more time than ordered, and he was immediately released with 334 days (approximately 11 months) of inoperative time, time served and not yet applied toward any sentence. He violated supervised release, and the court converted his 5 year term of supervised release to a 10-month sentence. However, the 334 days were not credited, and inmate Horn served time from June 1998 until his release on 2/24/99, resulting in 279 days over-served time.

TRENTADUE: The FBI recently released their custody of the cell. Oklahoma District Attorney's Office and DOJ have completed their investigation and have no concerns. OIG remains the only agency with an investigation pending, although they do not object to the BOP having custody of the cell as long as it remains sealed and secured for the time being. They anticipate closure of their investigation in a few weeks. The Government's expert witnesses visited the institution the week of February 22-26, as well as defense counsels.

CRIMINAL MATTERS AND PROSECUTIONS

FCI BEAUMONT (LOW)

On February 5, former FCI Beaumont (Low) inmate Luis Carmona received a 12-month concurrent sentence and was ordered to pay restitution in the amount of \$2013.40 and a \$25.00 Special Assessment for assaulting a Federal Correctional Officer. The Court considered issues regarding inmate Carmona's mental health when deciding to impose a concurrent term. This sentence is consistent with plea negotiations, which also took Carmona's mental health into consideration.

On February 12, FCI Beaumont (Low) inmates [REDACTED] were involved in a fight in the UNICOR tool room. Case was referred to the FBI and prosecution was declined. The Warden agrees with this determination.

USP BEAUMONT

On February 4, USP inmate [REDACTED] was being escorted back to his cell by his Correctional Counselor. During a search,

inmate [REDACTED] attempted to kick the staff member in the groin area. Inmate [REDACTED] was placed on the ground in order to gain control of him. Responding staff escorted inmate [REDACTED] to the Health Services Unit. He was examined and treated for superficial abrasions to his right forearm and the back portion of his neck. Inmate [REDACTED] was placed in the Special Housing Unit without further incident. Case was referred to the FBI, and a determination is pending.

On February 9, USP inmate [REDACTED] threw a liquid substance on a Special Housing Unit Officer while he was picking up meal trays. Inmate [REDACTED] became argumentative, belligerent and demanding toward staff. Inmate [REDACTED] was directed to remain seated. He then stood up and, utilizing his right shoulder, attempted to push the Lieutenant out of his way in order to leave the Lieutenant's Office. Staff immediately responded by placing inmate [REDACTED] on the floor in order to regain control of him. Inmate [REDACTED] was escorted to the Observation Cell where he was placed in four point soft restraints without further incident. Inmate and staff were examined, with no injuries noted. Case was referred to the FBI, and a determination is pending. b7C

On February 12, USP inmate [REDACTED] was refusing to submit to a pat search, so he was placed on the ground in order to apply restraints. He was then escorted to the Lieutenant's Office where a visual search was conducted. During the visual search, inmate [REDACTED] threw a small white packet in the toilet and flushed it. Staff again immediately placed inmate [REDACTED] on the ground, in order to prevent him from flushing the toilet, but to no avail. He was immediately taken to the Special Housing Unit and placed in four point restraints, without further incident. Staff were examined by Health Services staff with one staff member sustaining bruises to the right side of his head and left shin area. Inmate [REDACTED] was also examined and had no injuries noted. Case was referred to the FBI, and a determination is pending.

On February 13, USP inmate [REDACTED] became disruptive in the Unit. Staff were attempting to escort him out of the unit in order to counsel him. He stopped at the exit door and refused to leave the unit. Staff attempted to gain voluntary compliance which met with negative results. As staff attempted to place hand restraints on inmate [REDACTED], he struck a staff member twice in the facial area with closed fists. Case was referred to the FBI, and a determination is pending.

FPC BRYAN

Trial preparation continues regarding the prosecution of Supervisory Supervisor Charles Alexander. Inquiry continues into the actions of three additional FPC Bryan employees, one of whom remains on home duty status, and the others have resigned their Bureau employment.

FCI FORREST CITY

On January 28, 1999, inmate [REDACTED] reported to an officer that he had just been struck by another inmate walking away from the phone area. The unit officer observed redness about inmate [REDACTED] face and identified the other inmate as inmate Willis. Both inmates were removed from the housing unit, examined by medical staff, interviewed by the Operations Lieutenant and placed in Administrative Detention pending investigation. The FBI was notified, prosecution was declined, and the Warden agrees.

FTC OKLAHOMA CITY

On February 4, 1999, inmate [REDACTED] kicked a SHU officer in the stomach during recreation movement. There was no staff injury and inmate [REDACTED] refused medical examination. The FBI was notified and the investigation continues.

In last month's report five matters were reported but were still pending with the FBI and thus decline/accept status was not reported [REDACTED]. Since then we've received notification from the FBI that the matters did not meet prosecutorial guidelines.

FCI SEAGOVILLE

On January 26, 1999, [REDACTED] was accused of sexually assaulting inmate [REDACTED]. The case was referred to the FBI; however, they declined to take the case for lack of evidence. The Warden concurs.

Inmate [REDACTED] was accused of assaulting inmate [REDACTED] on January 30, 1999. The case was referred to the FBI, who have deferred referral, pending further investigation.

On February 13, 1999, inmate [REDACTED] assaulted inmate [REDACTED]. [REDACTED] was going to testify against Inmate [REDACTED] who ordered the assault. This case was referred to the FBI. We are awaiting acceptance/declination.

FCI TEXARKANA

On January 4, 1999, inmate David Massey was accepted by the FBI for prosecution for the introduction of 38 balloons of marijuana. Massey has pled guilty. Sentencing is to be at a later date.

On January 17, 1999, inmate Bruno Alejandro was accepted by FBI for prosecution for the introduction of brown-tar heroin. On February 23, 1999, Alejandro was pre-arraigned. We have not received any information regarding hearing.



U.S. Department of Justice

Federal Bureau of Prisons

South Central Regional Office

Dallas, Texas 75219

April 8, 1999

MEMORANDUM FOR CHRISTOPHER ERLEWINE
ASSISTANT DIRECTOR/GENERAL COUNSEL

FROM: Michael D. Hood, Regional Counsel

SUBJECT: Monthly Report - March 1999

ADMINISTRATIVE REMEDIES												
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ANSWERED	117	95	165									

TORT CLAIMS												
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PENDING	211	201	192									
RECEIVED	48	59	51									
ANSWERED	62	67	57									
PENDING	197	193	186									
OVER SIX MO	1	1	1									

FOI/PRIVACY												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
PENDING	11	18	13									
RECEIVED	49	39	60									
ANSWERED	42	44	58									
PENDING	18	13	15									
OVER 20 DAYS	4	2	1									

LITIGATION												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
CASES RECD	14	9	14									
CASES CLOSED	9	8	7									

HABEAS CORPUS	13	6	11										
BIVENS	0	3	2										
FTCA	0	0	1										
OTHER	1	0	0										
LIT REPORTS	8	12	7										
HEARINGS/ TRIALS	1	2	2										
SETTLEMENTS/ AWARDS	1	0	0										

CASES WITH HEARINGS OR TRIALS

U.S.A. v. Susan Klat, 4-97-CV-678-A (ND/TX FTW), U.S. Court of Appeals for the 5th Circuit. This case involves a mental health commitment inmate from FMC Carswell. The AUSA made oral arguments before the 5th Circuit Court of Appeals on March 2, 1999. We are awaiting a ruling from the Court of Appeals.

Kennedy v. U.S.A., CV-96-0835 (WD/LA). An evidentiary hearing was scheduled in this FTCA (failure to protect) case on March 29, 1999. The hearing has been continued.

CASES WITH SETTLEMENTS OR AWARDS

a. Adverse judgments

None

b. Tort Claim settlements

None

c. Other settlements

None

SIGNIFICANT CASES

In Mitchell v. Miles, an FCI Bastrop inmate seeks a finding by the court that he is eligible for early release pursuant to 18 U.S.C. Section 3621(e). The BOP considers him ineligible by virtue of a thirty-year-old misdemeanor conviction for aggravated assault.

In Warren v. Miles, an FCI Bastrop inmate seeks a finding by the court that he is eligible for early release pursuant to 18 U.S.C. Section 3621(e). The BOP considers him ineligible by virtue of a two-point enhancement for possession of a firearm. The inmate believes the program statement cannot be applied retroactively.

In Ernesto Olvera-Garcia v. USA, an FMC Fort Worth inmate alleges

Bureau of Prisons personnel were negligent when they failed to appropriately immobilize his left ankle after he slipped, fell, and sustained a non-displaced fracture. He subsequently re-injured his ankle. This resulted in a displaced fracture which required an open reduction internal fixation of his left ankle. Following surgery, a splint was cast to support and immobilize his extremity. He further alleges staff prematurely removed his cast and, in the process, inflicted a four-inch laceration, which became infected. A second surgery became necessary, which resulted in an amputation of his left foot. Mr. Olvera-Garcia filed this action after negotiations for settlement failed. He is seeking \$5,000,000.

On March 18, 1999, a settlement conference was held on the John Stevens Wilkins v. Bob Guzik (II) (FMC Fort Worth) case. Mr. Wilkins' attorneys, BOP staff, and officials from the USAO were present. The settlement conference was continued due to the lack of settlement authority on the part of the BOP. This is a Habeas case where the petitioner is seeking an operation (hypospadias repair). The Honorable John McBryde, the judge hearing the case, appears to be sympathetic to the inmate's request and has appointed counsel for him. [REDACTED] b5

In John Stevens Wilkins v. Bob Guzik, Warden (I), the above mentioned FMC Fort Worth inmate alleges the Bureau of Prisons has failed to properly consider his request for a nunc pro tunc designation to the Commonwealth of Virginia. This case is before the Honorable Terry Means, and is slated for a hearing on April 20, 1999.

Omar Tusshani v. USA is a case filed in the District of Wyoming, and is presently in discovery. This case involves allegations of FMC Fort Worth's failure to adequately provide physical therapy for Tusshani. He was injured in a county facility while a pre-trial detainee. The case is currently under review regarding the release of JCAHO information and whether such is protected by the quality assurance or self critical analysis privilege.

In Richard Albert Brown v. N. L. Conner a former FCI Texarkana inmate, Richard Albert Brown, raises issues regarding early release eligibility. He claims a disciplinary transfer will interfere with his participation in the RDAP program. He is presently at FCI Seagoville.

SIGNIFICANT TORT CLAIMS

As previously reported, USP Beaumont inmate [REDACTED] alleges that due to the negligent actions of BOP staff, he suffered severe burns to 50% of his body when another inmate threw heated chemicals on Sampson. Sampson is claiming \$500,000 in damages. The BOP has offered to settle this claim for \$3,000. Through his b7C

attorney, Sampson has rejected the settlement offer.
(T-SCR-98-344)

[REDACTED], a USP Beaumont inmate, claims that staff received an anonymous death threat against him, he was not allowed to enter SHU as a Protective Custody case, and he was subsequently stabbed by another inmate. He claims he has suffered paralysis as a result. An investigation is pending.
(T-SCR-98-573)

b7C

[REDACTED], an FMC Fort Worth inmate, alleges Bureau of Prisons' staff have been deliberately indifferent to his medical needs. Specifically, he alleges Fort Worth staff have failed to treat his diabetes, diabetic nephropathy, diabetic retinopathy, hypertension, coronary heart disease, hypercholesterolemia, and back injuries. He claims government negligence in the amount of \$2,000,000, for personal injury. (T-SCR-99-066)

b7C

[REDACTED], an FMC Fort Worth inmate, filed an administrative claim alleging Fort Worth staff have failed to provide due care for his insulin-dependent diabetic condition. Specifically, he alleges staff have failed to provide more than two insulin injections on a daily basis, failed to provide medical staff in housing units to monitor and treat hypoglycemia, failed to provide patient education, failed to provide accucheck units in the housing units, and failed to provide an appropriate diabetic diet. He claims government liability in the amount of \$750,000, for personal injury. (T-SCR-99-098)

b7C

A preliminary offer of settlement in the [REDACTED] Fort Worth medical malpractice administrative claim was made for \$200. He has made a counter-offer of \$200,000. [REDACTED]

b7C
b5

(T-SCR-98-356)

SIGNIFICANT ADMINISTRATIVE REMEDIES

None

UPCOMING TRIALS OR HEARINGS

U.S. v. Mosher was scheduled for a suppression hearing and trial on March 31, 1999. As previously reported, USP Beaumont inmate [REDACTED] was indicted for the murder of former inmate Stanley Mosley on September 10, 1998.

b7C

We have an upcoming trial on May 24, 1999, in the Honorable Eldon Mahon's court on John Doe v. Maria Habeeb. This case involves allegations that Ms. Habeeb, an FMC Fort Worth staff member, compromised John Doe's WITSEC status. Additionally, John Doe, in an amended complaint filed two years later, raises allegations of a sexual relationship between him and Ms. Habeeb. It will be a non-jury trial.

Anez Robinson v. United States of America, C.A. No. C-97-051, SD/TX, FTCA (FCI Three Rivers). A motion for summary judgment with respect to the medical negligence prong of case was granted. The inmate's personal injury claim is scheduled for a bench trial on April 5, 1999, before Magistrate Judge Cooper-Hill. While riding an exercise bike, the inmate alleges the seat came loose, causing him to fall, and injure his back. He claims the BOP did not exercise ordinary care in its maintenance of the bike.

MEDICAL MALPRACTICE

LITIGATION

See Significant Cases Section.

TORT CLAIMS

See Significant Tort Claims Section.

[REDACTED], a former FDC Oakdale inmate, accepted our counter-offer of \$800. This claim involved allegations that FDC medical staff failed to appropriately diagnose and treat a displaced fracture. (T-SCR-98-148)

b7C

ENSIGN AMENDMENT

None

LITIGATION

None

TORT CLAIMS

None

RELIGIOUS FREEDOM RESTORATION ACT

LITIGATION

None

TORT CLAIMS

None

PRISON LITIGATION REFORM ACT ORDERS

None

SITUATIONS OF INTEREST

FCI Big Spring inmate [REDACTED] has filed a claim against

b7C

the M&M/Mars Company for allegedly breaking a tooth while eating one of the company's products. A representative from CNA Insurance, who represents M&M/Mars, will interview inmate [REDACTED] on April 25, 1999. Inmate [REDACTED] allowed our Chief Dentist the opportunity to examine the alleged broken tooth. The dental matter examined by the Chief Dentist was not part of a broken tooth. It was calculus (tartar) which had broken off behind the tooth. b7C

On March 2, 1999, at FTC Oklahoma City, a SHU officer found U.S. Marshals Service inmate [REDACTED], hanging from the upper bed post by a noose fashioned from a sheet. Inmate [REDACTED] had no pulse and was not breathing. Staff immediately started CPR, and inmate [REDACTED] was transported to the local medical facility. He is currently in a comatose state. Inmate [REDACTED] has involuntary body movement. Because he is sporadically breathing on his own, he remains on a ventilator. The U.S. Marshals Service is seeking alternative long-term care for inmate [REDACTED]. b7C

FTC Oklahoma City hosted this month's Special Agent in Charge luncheon/meeting on March 24, 1999. In attendance were representatives from the FBI, ATF, USPS, U.S. Customs, DEA, INS, USM, Secret Service, and Tinker Air Force Base, Office of Special Investigations. Several agents went on a tour of the institution, including First Assistant U.S. Attorney Joe Heaton.

On March 3, 1999, eight law enforcement personnel from Austria toured FCI Texarkana. This tour was sponsored through the local FBI agent.

As previously reported, [REDACTED] (formerly an FCI La Tuna inmate) was released as a result of an adverse U. S. District Court ruling relating to the 18 U.S.C. 3621(e) early release provisions. The BOP was successful on appeal to the 5th Circuit, and the U. S. District Court reversed the order which released [REDACTED]. [REDACTED] failed to appear on his March 15, 1999, surrender date. After numerous communications between the BOP, USPO, USMS, and the Criminal AUSA, [REDACTED] remains unincarcerated. [REDACTED] has hired two law firms to fight his return to custody. The USMS will only arrest [REDACTED] with a warrant. The Criminal AUSA has filed a motion for an order directing the defendant to surrender to the U. S. Marshals Service for execution of the balance of his federal sentence. If this motion is granted, the court will issue a warrant. We are awaiting a possible response from [REDACTED] attorneys and a court ruling on this matter. b7C

CRIMINAL MATTERS AND PROSECUTIONS

USP BEAUMONT

On March 8, 1999, inmate [REDACTED] approached the North Corridor Officer and said that he had been assaulted by several [REDACTED]. b7C

unknown inmates on the compound. Inmate [REDACTED] was escorted to the Lieutenant's Office and interviewed further. Inmate [REDACTED] said that he had been on the compound next to the basketball courts when he was surrounded by several unknown inmates and told to "check in" (request protective custody). Inmate [REDACTED] told them he wasn't going to "check in", and was struck by three unknown inmates. [REDACTED] was examined by medical staff and treated for mild swelling to his left jaw. Inmate [REDACTED] was placed in Administrative Detention pending further investigation. The case was referred to the FBI, and a determination on the referral is pending. b7C

On March 9, 1999, the Special Housing Unit officer reported that when opening inmate [REDACTED] food slot, inmate [REDACTED] sprayed him with a brown liquid substance (feces) from a shampoo bottle. Based on inmate [REDACTED] previous assaultive behavior, he was removed from his cell and placed in four-point hard restraints. Both the inmate and staff members were examined by the Health Services Department. No injuries were noted. An investigation is pending. The case was referred to the FBI, and a determination is pending. b7C

On March 10, 1999, inmates [REDACTED] were placed in restraints and removed from their assigned Special Housing Unit cell so that a cell search could be conducted. Inmates [REDACTED] voiced their disagreement with staff for removing contraband. Inmate [REDACTED] made a threatening statement as both inmates were being placed back into their assigned cell. Inmate [REDACTED] implied his agreement with inmate [REDACTED] statement. Inmate [REDACTED] intentionally pulled away from the Officer as he inserted a cuff key into the restraints. This action caused the Officer's arm to be pulled inside the cell, through the food tray slot. The tip of the cuff key broke off due to the strain of being caught in the restraints. Inmates [REDACTED] were placed in Ambulatory Restraints without further incident. Staff retrieved the tip of the cuff key from inside the cell. Medical staff examined both inmates. [REDACTED] sustained a minor scratch on his right wrist. Inmate [REDACTED] sustained no injuries. The Officer was treated for a minor abrasion to his right wrist. An investigation is pending. The case was referred to the FBI, and a determination is pending. b7C

On March 12, 1999, Special Housing Unit staff were conducting daily recreation when inmate [REDACTED] attacked inmate [REDACTED] with a 10 inch long, 3/4 inch thick, homemade knife-like weapon constructed from melted food tray lids. Inmate [REDACTED] attempted to assist inmate [REDACTED]. However, [REDACTED] was physically assaulted by inmates [REDACTED] who struck and kicked [REDACTED]. After the initial attack, inmate [REDACTED] dropped the weapon at the direction of staff, and inmates [REDACTED] discontinued their assault on inmate [REDACTED]. Inmate [REDACTED] received superficial cuts to his left shoulder, clavicle, and elbow, along with several superficial cuts to his back. Inmate b7C

[REDACTED] received a superficial cut to his right forehead and five superficial cuts to his back. Both inmates were examined by medical staff and received minor first aid. The investigation continues, and the case was referred to the FBI. A determination on the referral is pending. b7C

On March 12, 1999, [REDACTED] pled guilty to Possession of Contraband (18 USC 1791(a)(2)) in the U.S. District Court for the Eastern District of Texas, before Judge Fisher. On October 30, 1998, USP Beaumont staff found two packets of marijuana in the waistband of inmate Garcia's pants. A subsequent search of the inmate's cell revealed he had an additional 15 packets of marijuana in a box of Tide laundry detergent. b7C

FCI BIG SPRING

Former Food Service Foreman, Keith Conners, was sentenced on April 1, 1999. See previously reported U.S.A. v. Keith D. Conner, 1:98-CR-072. In this case, Judge Cummings imposed 16 months incarceration and a \$3,000 fine. As previously reported, Conner pled guilty to one count of bribery of a public official in violation of 18 U.S.C. 201(b)(2)(A) and (c).

FPC BRYAN

The trial of Cook Supervisor [REDACTED] on nine counts of Sexual Abuse of a Ward is scheduled to begin on Monday, April 26, 1999. Two FPC Bryan staff members were served subpoenas by the Federal Public Defender to appear as witnesses at trial. Inquiry continues into the actions of three additional FPC Bryan employees, one of whom remains on "home duty" status. The others have resigned their Bureau employment. Grand Jury testimony is scheduled to begin on Monday, March 29, 1999, regarding the allegations against Correctional Officer [REDACTED] and former Correctional Officer [REDACTED]. The case is set for trial on April 19-23, 1999. b7C

FPC EL PASO

U.S. v. Plathe, WD/TX. As previously reported, [REDACTED] is accused of sexually assaulting two female staff members. [REDACTED] and his attorney are due to meet with the U. S. Attorney's Office by April 16, 1999, to discuss a possible plea bargain. The U. S. Attorney's Office has taken this matter to the grand jury twice. "No true bill" came back each time. Accordingly, the U. S. Attorney's Office is attempting arrange a plea bargain in which [REDACTED] pleads guilty to misdemeanor charges. b7C
b6

FCI EL RENO

As stated in the previous report regarding USA v. Glen Brummett, Mr. Brummett (a unit counselor at FCI El Reno) was arrested at the institution on August 23, 1998, for possession of 126 grams of pseudoedrine. In a plea agreement, Brummett pled guilty to Possession With Intent to Manufacture Methamphetamine. The judge has ordered a pre-sentence investigation report. Sentencing should occur sometime in April, 1999.

FCI FORREST CITY

On March 1, 1999, the Helena Lower Unit Officer notified the Operations Lieutenant that several Black and Hispanic inmates were grouping within the unit. The Unit Officer further observed the inmates arguing and requested assistance. As responding staff arrived, they observed inmate [REDACTED] striking several Hispanic inmates with a plastic chair. Staff ordered inmate [REDACTED] to stop, but he refused and continued to swing the chair at the Hispanic inmates. The Operations Lieutenant instructed staff to subdue inmate [REDACTED] in order to stop his aggressive actions. Inmate [REDACTED] was placed on the floor and restrained. A preliminary investigation revealed several Hispanic and Black inmates were involved. A total of ten inmates have been identified as having injuries. Forty-two inmates were placed in the Special Housing Unit. The investigation continues, and the case was referred to the FBI. A determination on the referral is pending. b7C

FCI LA TUNA

United States v. Juan Mauricio, EP-98-CR-1088-H. In the above referenced case, the defendant pled guilty on January 22, 1999, to an indictment charging him with a violation of Title 18 U.S.C. 111(a), Assault of a Federal Officer. On January 22, 1999, the defendant was sentenced to 60 months imprisonment. Specifically, defendant Mauricio pled guilty (on Count 1) to assaulting Senior Officer Specialist Marcos Marquez, and (on Count 2) to assaulting Lieutenant Rodney Pierce.

FTC OKLAHOMA CITY

On February 22, 1999, inmate [REDACTED] threw an unknown liquid through the food slot striking the SHU officer in the chest and shoulders. There was no staff or inmate injury. The FBI did not refer the matter for prosecution. The Warden concurs with the FBI's decision. b7C

On March 2, 1999, inmate [REDACTED] reported to the unit officer injuries consistent with involvement in an assault. Inmate [REDACTED] injuries were treated. Subsequent interviews and searches identified the involvement of inmates [REDACTED]. The matter was not referred for prosecution. The Warden concurs with this decision. b7C

On March 18, 1999, inmate [REDACTED] reported to the officer that inmate [REDACTED] had choked him. Inmate [REDACTED] admitted to grabbing inmate [REDACTED] by the shoulder. There were no injuries and both inmates were placed in SHU. On March 19, 1999, inmate [REDACTED] was observed standing on the sink in his cell in SHU, with a noose fashioned from a bed sheet around his neck. Inmate [REDACTED] complied with the orders of staff members to remove the sheet and step down from the sink. Inmate [REDACTED] sustained no injury, and was placed on suicide watch in the institution hospital. An investigation continues and the case was referred to the FBI. A determination on the referral is pending.

b7C

FCI TEXARKANA

The sentencings in U.S.A. v. David Massey and U.S.A. v. Gay Plumadore were held in March 22, 1999. As previously reputed, inmate David Massey and visitor Gay Plumadore were found to have introduced contraband at FCI Texarkana. David Massey was

sentenced to a three-month consecutive sentence and a fine of \$100. Gay Plumadore was sentenced to 18 months probation and a fine of \$100.

Trial for inmate [REDACTED] for introduction of brown-tar heroin is pending. Inmate [REDACTED] was found to have introduced brown-tar heroin.

b7C

PERSONAL ISSUES

On March 2, 1999, Jason Sickler, FCI Beaumont (Low), was notified of his selection as the Attorney Advisor for FDC Houston.

March 23, 1999, was Darrel Waugh's last day at FCC Beaumont prior to transferring to FMC Devens.

Jim Schluter, FPC Bryan, will be on travel status the week of May 3-7, 1999. He will be at FCI Big Spring interviewing staff in conjunction with an EEO Investigation.

J. D. Crook's last day at El Reno was March 12, 1999. Correctional Officer Blair Summers has been temporarily reassigned to FCI El Reno's Legal Department. He will remain in this assignment until a permanent legal staff member is assigned to the institution.

Scheduled Annual/Sick Leave:

[REDACTED] [REDACTED] [REDACTED]

b6



U.S. Department of Justice

Federal Bureau of Prisons

South Central Regional Office

Dallas, Texas 75219

May 10, 1999

MEMORANDUM FOR CHRISTOPHER ERLEWINE
ASSISTANT DIRECTOR/GENERAL COUNSEL

FROM: Michael D. Hood, Regional Counsel

SUBJECT: Monthly Report - April 1999

ADMINISTRATIVE REMEDIES												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	184	226	225	202								
ANSWERED	117	95	165	161								

TORT CLAIMS												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
PENDING	211	201	192	183								
RECEIVED	48	59	51	57								
ANSWERED	62	67	57	54								
PENDING	197	193	186	186								
OVER SIX MO	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	11	18	13	15								
RECEIVED	49	39	60	45								
ANSWERED	42	44	58	48								
PENDING	18	13	15	12								
OVER 20 DAYS	4	2	1	2								

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	14	9	14	17								
CASES CLOSED	9	8	7	6								
HABEAS CORPUS	13	6	11	12								
BIVENS	0	3	2	4								
FTCA	0	0	1	1								
OTHER	1	0	0	0								
LIT REPORTS	8	12	7	8								
HEARINGS/ TRIALS	1	2	2	4								
SETTLEMENTS/ AWARDS	1	0	0	1								

CASES WITH HEARINGS OR TRIALS

U.S. v. Muhammad, 98-10960; (ND/TX FTW), U.S. Court of Appeals for the 5th Circuit. This case involves a mental health commitment inmate from FMC Carswell. The AUSA continued argument before the 5th Circuit Court of Appeals. The Federal Public Defender will apply for a Writ of Certiorari.

U.S. v. Susan Klat, 97-11282; (ND/TX FTW). In this FMC Carswell mental health case, the U.S. Court of Appeals for the 5th Circuit recently issued a favorable ruling upholding the magistrate judge's decisions to deny the inmate's request to withdraw counsel, and to transfer the case to a district judge.

Melvin White v. Bob Guzik. On April 20, 1999, FMC Fort Worth staff appeared before the Honorable John McBryde, U.S. District Judge for the Northern District of Texas. After hearing testimony, Judge McBryde ruled in favor of the government, stating that inmate White had not convinced the court that any constitutional violations concerning his pro se mail had occurred.

Anez Robinson v. United States of America, C.A. No. C-97-051, SD/TX, FTCA. A bench trial was held on April 5, 1999, before Judge Cooper-Hill on this FCI Three Rivers personal injury claim. On April 9, 1999, judgment was issued in the government's favor.

CASES WITH SETTLEMENTS OR AWARDS

a. Adverse judgments

None

b. Tort Claim settlements

In this FCI Oakdale medical claim, [REDACTED] accepted our \$800 counter-offer. The U. S. Attorney's Office in the SD/TX has filed a motion with the sentencing court seeking an order that the BOP issue the check to the clerk's office for purposes of payment toward the inmate's fine. b7c

c. Other settlements

None

SIGNIFICANT CASES

In Gunwall v. George Snyder, an FCI Forrest City case, an amended complaint was filed. The suit was originally served on July 7, 1998. The amended complaint includes 22 current and former BOP employees and an Administrator from the Tulsa Correctional Center in Tulsa, Oklahoma. The plaintiff alleges that BOP staff members caused him to be exposed to second hand smoke while at FCI Forrest City. He alleges that the defendants who are not employed at FCI Forrest City are in some way responsible for him being sent there.

On April 27, 1999, a second settlement conference on the John Wilkins v. Eob Guzik case was held, as ordered by the Honorable John McBryde. Mr. Wilkins' attorney, BOP staff members, and officials from the U. S. Attorney's Office were present. As previously reported, this is an FMC Fort Worth Habeas case where the petitioner is seeking surgery for a penile defect. Judge McBryde appears to be sympathetic to the inmate's request and has appointed counsel for him. Dr. John Barry, Clinical Director, was delegated settlement authority by the Medical Director. We provided information to Judge McBryde regarding the cost to repair inmate Wilkins' hypospadias and/or to provide him a penile implant.

Tracy Dziadura v. USA & Reno, is an FTC Oklahoma case wherein the plaintiff claims she was raped by a former correctional officer.

She has listed a myriad of grounds for relief, including negligent hiring, negligent training, deprivation of liberty, unlawful restraint, the tort of outrage, assault and battery. [REDACTED] b5

Ford v. Guzik. in this FTC Oklahoma City case, the AUSA has requested separate counsel or decertification of DOJ

representation for two of the FTC defendants.

[REDACTED]

SIGNIFICANT TORT CLAIMS

An FCI Seagoville inmate, [REDACTED], has filed an administrative claim, T-SCR-99-151, seeking \$500,000 for alleged exposure to extreme amounts of secondhand smoke while being housed in the BOP since December 1990.

SIGNIFICANT ADMINISTRATIVE REMEDIES

None

UPCOMING TRIALS OR HEARINGS

FMC Fort Worth has an upcoming trial on May 24, 1999, in the Honorable Eldon Mahon's court on John Doe v. Maria Habeeb. This case involves allegations of Ms. Habeeb compromising John Doe's WITSEC status. Additionally, the plaintiff raises allegations of a sexual relationship between him and Ms. Habeeb, which were found to be without merit by OIA. It will be a non-jury trial.

Shipley v. Janet Reno, et al., C.A. No. C-98-592, SD/TX, Bivens. A telephonic evidentiary hearing was held on May 3, 1999, in this FCI Three Rivers case. The court added the Clinical Director as a defendant, ordered service, ordered the institution's paralegal's attendance at the next hearing, appointed counsel to assist the plaintiff in reviewing his medical record, and ordered the production of all of the plaintiff's medical records.

Michael A. Limon v. Eric Holder, et al., C.A. No. C-99-016, SD/TX, Bivens. A telephonic Spears hearing was held on April 29, 1999, in this FCI Three Rivers case. The court inquired as to the basis of this suit and found the plaintiff's attorney to be completely unprepared. The court has not ruled as to how (or whether) the suit will proceed. The BOP has not yet been served. Kevin Cox v. FCI Three Rivers. A non-jury trial was held on May 5, 1999. This matter includes allegations that an FCI Three Rivers correctional officer refused to provide assistance to the plaintiff, a paraplegic inmate, and caused another inmate to carry the plaintiff up a flight of stairs. It is alleged that the plaintiff was dropped by the other inmate, and serious injuries resulted. We are awaiting an opinion by the court.

MEDICAL MALPRACTICE

LITIGATION

b2
b5

b7c

See Significant Cases Section.

TORT CLAIMS

See Significant Tort Claims Section.

ENSIGN AMENDMENT

None

LITIGATION

None

TORT CLAIMS

None

RELIGIOUS FREEDOM RESTORATION ACT

LITIGATION

None

TORT CLAIMS

None

PRISON LITIGATION REFORM ACT ORDERS

None

SITUATIONS OF INTEREST

On May 4, 1999, Mr. Mario Mariles of the Mexican Consulate in Austin, Texas, visited FCI Bastrop to speak to all (377) of the Mexican nationals who are currently incarcerated at that institution.

On April 11, 1999, Karen Summers, Paralegal Specialist, participated in training provided by Ernest V. Chandler, Warden (USP Beaumont), for staff members of the United States Attorney's Office. This training was conducted in response to the release of discovery material which resulted in the recent lock down of USP Beaumont. Those in attendance included U.S. Attorney Michael Bradford, Assistant United States Attorneys, and support staff members for the Criminal and Civil Divisions. The classification system and the profile of high security inmates were discussed. Specifically, Warden Chandler discussed the importance of

recognizing the potential dangers that exist in a Penitentiary environment and the potential for harm to staff members and other inmates when an inmate's cooperation with government officials becomes known to the general population. The presentation was well received. Mr. Bradford reiterated the need to be cognizant of releasing confidential information through discovery and stressed the necessity of informing the institution when doing so. Warden Chandler identified the Legal Department as the Bureau contact for assisting in threat assessments.

On March 30, 1999, Judge Jim Hendren, United States District Court, Western District of Arkansas toured FCI Texarkana.

CRIMINAL MATTERS AND PROSECUTIONS

USP BEAUMONT

U.S. v. Ellis Mosher - FCC Beaumont reports the previously scheduled appearances have been canceled pending DOJ consideration of the AUSA's request for authorization to pursue the death penalty. As previously reported, this matter arises out of a September 1998, inmate murder. The above-mentioned release of discovery material, which resulted in a lock down, occurred in this case.

In a separate incident, on April 4, 1999, SHU inmate [REDACTED] grabbed an officer's right forearm and jerked it as the officer attempted to secure [REDACTED] food slot. After staff members regained control and secured the food slot, inmate [REDACTED] made verbal threats toward them. He was given a direct order to submit to the application of hand restraints and he complied. Inmate [REDACTED] was restrained and removed from his cell without any further incident. The assaulted officer was examined and treated for a large hematoma that extended from the wrist area to the middle of the lower arm. He also had several abrasions on the lower arm and right finger. The matter was referred to the FBI. b7C

On April 5, 1999, inmate [REDACTED] was ordered to submit to a pat search as he was departing the dining hall. He became verbally abusive and refused the orders of staff members. Staff members followed inmate [REDACTED] to the yard where he was stopped and ordered to the Lieutenants' Office. Outside the Lieutenants' Office, staff members ordered inmate [REDACTED] to place his hands on the wall for a pat search. Inmate [REDACTED] forcibly pulled away and quickly turned in an aggressive manner toward an officer. Inmate [REDACTED] was placed on the ground in order to regain control over him. He was then escorted to SHU without further incident. The matter was referred to the FBI. b7C

On April 9, 1999, staff members observed that inmates [REDACTED] [REDACTED] appeared to be under the influence b7C

of intoxicants. When the unit officer ordered both inmates to submit to hand restraints, inmate [REDACTED] grabbed a six-foot wooden mop handle and began swinging it in a threatening manner. Staff members used minimal force to take the mop handle from the inmate and to place him in restraints. Inmate [REDACTED] was also placed in restraints. While en route to SHU, both inmates resisted the instructions of staff members, demonstrated combative behavior, and verbally threatened staff members. Once in SHU, both inmates refused instructions to submit to a breathalyser test and remove their clothing. Further, they attempted to assault staff members a second time. The matter was referred to the FBI. b7C

On April 10, 1999, inmate [REDACTED] reached through the food slot of his SHU cell and grabbed the food cart. A struggle ensued, and an officer had coffee spilled on his left arm. Then [REDACTED] complied with an order to submit to the application of restraints. Once inmate [REDACTED] was removed from his cell, he became loud and physically aggressive toward staff members. The matter was referred to the FBI. b7C

On April 11, 1999, SHU inmate [REDACTED] threw an unknown substance on a staff member who was conducting linen exchange. The matter was referred to the FBI. b7C

On April 19, 1999, inmate [REDACTED] tied his food slot open with a sheet during the evening meal. While a staff member was attempting to remove the sheet, inmate [REDACTED] pulled on it and quickly let go, causing the staff member to fall to the floor. Inmate [REDACTED] submitted to hand restraints and was taken to an observation cell. Once in the observation cell, inmate [REDACTED] continued to be disruptive. The matter was referred to the FBI. b7C

FBI BIG SPRING

Sentencing for former Food Service Foreman, Keith Conners, was held on April 1, 1999. Mr. Conners was sentenced to 16 months confinement and a \$3,000.00, fine. He is expected to be incarcerated at FMC Fort Worth.

FPC BRYAN

The trial of Cook Supervisor [REDACTED] on nine counts of Sexual Abuse of a Ward (6 - Sexual Act and 3 - Sexual Contact) has been delayed and is now scheduled to begin Monday, June 14, 1999. Two FPC Bryan staff members were served Subpoenas by the Federal Public Defender to appear as witnesses at trial. Inquiry continues into the actions of three additional FPC Bryan employees, one of whom remains on home duty status. The others have resigned their Bureau employment. On March 29, 1999, Grand b7C

Jury testimony was presented regarding the allegations against Correctional Officer [REDACTED] and former Correctional Officer [REDACTED]. We await word from the U. S. Attorney's Office regarding the Grand Jury's decision. b7C

FMC CARSWELL

On April 5, 1999, FMC Carswell inmate [REDACTED] began banging her head on the wall of the Mental Health Unit. She hit a staff member on the right hand. Investigation is pending. A referral has been made to the FBI. b7C

On April 6, 1999, FMC Carswell inmate [REDACTED] reported to the Lieutenants' Office that she had been assaulted in the unit. She stated that inmate [REDACTED] grabbed her by the neck and threw her on the floor. Inmate [REDACTED] sustained scratches to the left cheek and neck area. A referral has been made to the FBI. b7C

A staff counselor at FMC Carswell resigned as a result of an investigation wherein he was accused of "Sexual Abuse of a Ward".

FCI FORREST CITY

On April 6, 1999, the Recreation Supervisor reported a fight in progress involving a large group of inmates (approximately 40-50) with weapons. Responding staff members immediately dispersed into the recreation yard. Staff members were able to initially identify 17 inmates who were involved. These inmates were restrained and escorted to the Health Services Unit, where they were interviewed and examined by medical staff. All of the participants were admitted into Administrative Detention pending further investigation by SIS.

FCI LA TUNA

Inmate [REDACTED] assaulted inmate [REDACTED] at FCI La Tuna's satellite camp on March 29, 1999. An SIS investigation was completed on April 12, 1999. Inmate [REDACTED] admitted to the assault in a sworn affidavit. SIS staff subsequently contacted the FBI on April 13, 1999, to refer the case for possible criminal prosecution. The FBI declined the referral. Therefore, a staff member at FCI La Tuna prepared an incident report. b7C

FCI TEXARKANA

Trial for inmate [REDACTED] for introduction of brown-tar heroin is pending. b7C

PERSONAL ISSUES



U.S. Department of Justice

Federal Bureau of Prisons

South Central Regional Office

Dallas, Texas 75219

June 10, 1999

MEMORANDUM FOR CHRISTOPHER ERLEWINE
 ASSISTANT DIRECTOR/GENERAL COUNSEL

FROM: Michael D. Hood, Regional Counsel

SUBJECT: Monthly Report - May 1999

ADMINISTRATIVE REMEDIES												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	184	226	225	202	199							
ANSWERED	117	95	165	161	135							

TORT CLAIMS												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
PENDING	211	201	192	183	192							
RECEIVED	48	59	51	57	66							
ANSWERED	62	67	57	54	51							
PENDING OVER SIX MO	197	193	186	186	207							
	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	11	18	13	15	12							
RECEIVED	49	39	60	45	38							
ANSWERED	42	44	58	48	35							
PENDING OVER 20 DAYS	18	13	15	12	15							
	4	2	1	2	1							

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	14	9	14	17	12							
CASES CLOSED	9	8	7	6	6							
HABEAS CORPUS	13	6	11	12	8							
BIVENS	0	3	2	4	2							
FTCA	0	0	1	1	2							
OTHER	1	0	0	0	0							
LIT REPORTS	8	12	7	8	13							
HEARINGS/ TRIALS	1	2	2	4	1							
SETTLEMENTS/ AWARDS	1	0	0	1	0							

CASES WITH HEARINGS OR TRIALS

On May 26, 1999, FMC Fort Worth had a court ordered settlement conference in the John Stevens Wilkins v. Bob Guzik case. As previously reported, this is a Habeas matter where the petitioner is seeking an operation for hypospadias repair. The court appears to be sympathetic to the inmate's request and has appointed counsel. Dr. John Barry, FMC Fort Worth's Clinical Director, was delegated settlement authority by the BOP's Medical Director.

See Upcoming Trials or Hearings heading under Rodriguez.

CASES WITH SETTLEMENTS OR AWARDS

a. Adverse judgments

See Significant Cases heading under McCoy.

b. Tort Claim settlements

None

c. Other settlements

Vincent Martinez v. U.S.A., Case No. 3:97CV7368 (N.D. Ohio). This FCI El Reno FTCA case was filed by a former inmate who alleged that he suffered an eye injury in 1994 due to a defective bed. On January 29, 1999, the government's summary judgment motion was denied, and the case was set for trial.

[REDACTED]

b2
b5

SIGNIFICANT CASES

Treviño v. Miles, A-99-CA-183-SS (USDC/WDTX). An FCI Bastrop inmate brought this habeas corpus suit requesting the expungement of an incident report which resulted in the loss of 3621(e) early release, halfway-house placement and good conduct time credits.

Hargitai v. U.S.A.. A former FCI Big Spring inmate, Zoli Hargitai, has brought an FTCA suit alleging he suffered a personal injury due to exposure to second hand cigarette smoke. He is seeking \$47,867,000.00 in damages.

An adverse order was issued in the Eastern District of Arkansas in U.S. v. McCoy. Despite the government's objection, the court ordered the BOP to take custody of an inmate even though the State of Arkansas had primary jurisdiction. The court viewed a letter by the State of Arkansas "relinquishing jurisdiction" as legally sufficient. We are urging the U.S. Attorney's Office to appeal or file a Motion for Reconsideration in the case on the grounds that a legitimate relinquishment did not occur due to pending state charges. We are working with the same AUSA on two similar E.D.Ark. cases, including an appeal in U.S. v. McCrary and a Motion for Reconsideration in U.S. v. Dowdle. The U.S. Attorney's Office has taken action to prevent the Federal Public Defender's Office from seeking inappropriate state "relinquishment."

Espinosa-Munoz v. U.S.A., et al. An FMC Fort Worth inmate filed this FTCA action alleging negligence on the part of BOP staff. Espinosa injured his knee with a pneumatic nail gun on his work assignment in July of 1995. He alleges he injured his back during the same incident, requiring two surgeries approximately two years later. However, the BOP discontinued his disability compensation based on his pre-existing back condition. He further alleges he had to work in unsafe conditions with unsafe equipment. He is seeking \$6,000,000, in damages and post-judgment interest.

Timothy Gidley v. E.W. Morris, Warden. An FTC Oklahoma City inmate brought this habeas corpus action to challenge the BOP's denial of his early release pursuant to 18 U.S.C. 3621(e). His sentence was enhanced by two points, and as a result, he was denied 3621(e) early release pursuant to P.S. 5162.04.

Richard Atkins v. U.S.A.. Mediation before U.S. Magistrate Charles Bleil (N.D. Texas, Fort Worth Division) is scheduled for July 14, 1999 at 9:00 a.m. In this FMC Fort Worth medical malpractice suit, Atkins alleges that the BOP negligently treated facial and dental injuries he sustained during a beating by Garland, Texas, police officers. After the dismissal of claims against Warden Killinger and Lt. Roberts, the United States remains the sole defendant.

[REDACTED]

55

Last month, FMC Fort Worth reported a May 24, 1999, trial setting in John Doe v. Maria Habeeb. However, the plaintiff's attorney moved for a 180-day continuance. The U.S. Attorney's office does not oppose the motion. As previously reported, this case involves allegations that Ms. Habeeb compromised John Doe's WITSEC status and engaged in a sexual relationship with him. We anticipate a non-jury trial to be scheduled during the month of November, 1999.

SIGNIFICANT TORT CLAIMS

Tyler. FMC Carswell inmate [REDACTED] alleges personal injury due to the alleged denial of access to programs and services in federal prisons due to her disability, in violation of the A.D.A. Her claim is in the amount of \$5,000,000. (T-SCR-99-204)

Zambrano. Former FDC Oakdale inmate [REDACTED] medical malpractice tort claim was settled for \$800.00. The sentencing court recently ordered the BOP to pay the settlement to the Clerk of the Court, who will apply the sum to the fines imposed in Zambrano's criminal case. (T-SCR-98-148)

SIGNIFICANT ADMINISTRATIVE REMEDIES

[REDACTED], an inmate at FCI Texarkana, seeks the removal of records that the D.C. Circuit Court has ruled were inaccurate. Further, the court fined the BOP. [REDACTED]

UPCOMING TRIALS OR HEARINGS

George Rodriguez v. Mr. Woods, et al., C.A. No. B-94-202, SD/TX, Bivens. This FCI Three Rivers case was originally filed in 1994. The inmate alleges in this Bivens action that he was unconstitutionally denied knee surgery. Summary Judgment was granted in August, 1997. The inmate won on appeal to the Fifth Circuit. A jury trial is scheduled for June 28, 1999. We do not anticipate any problems with the case, other than having to coordinate five defendants' appearances.

MEDICAL MALPRACTICE

LITIGATION

See Significant Cases Section.

TORT CLAIMS

See Significant Tort Claims Section.

ENSIGN AMENDMENT

None

LITIGATION

None

TORT CLAIMS

None

RELIGIOUS FREEDOM RESTORATION ACT

LITIGATION

None

TORT CLAIMS

None

PRISON LITIGATION REFORM ACT ORDERS

None

SITUATIONS OF INTEREST

The BOP was ordered by the District Court to release FMC Carswell inmate [REDACTED] to the custody of the Office of Independent Counsel (OIC). OIC is exercising custody to facilitate [REDACTED] testimony in the [REDACTED] case. Various novel issues were raised in regard to this court order. Since [REDACTED] placement in OIC custody, the media has reported that the trial has been continued. However, the institution has not received any notification that [REDACTED] will be returned to BOP custody.

b7C

CRIMINAL MATTERS AND PROSECUTIONS

FCI BASTROP

Randolph Gulley, a correctional officer, has been indicted in U.S. District Court in Austin, Texas, for Conspiracy to Distribute Cocaine. The indictment resulted from an investigation by the BOP and the FBI into allegations that Gulley introduced contraband into the institution.

U.S.A. v. Ramirez. This criminal case is being brought against an FCI Bastrop inmate who threw urine and feces on a staff member on January 12, 1998. It is scheduled for trial in U.S. District Court in Austin, Texas, on June 28, 1999. Martin Sweaney plans to be involved in all phases of the prosecution.

FCI BEAUMONT (Low)

On May 5, 1999, indictments were handed down in the marijuana possession case involving inmates Juan Cantu and Juan Ramires. This matter was accepted for prosecution in January of 1999. No trial date has been set.

On May 27, 1999, the Jefferson County District Attorney's Office sought a grand jury indictment against a former correctional officer. It is alleged that on June 25, 1997, the former officer struck the chest of a handcuffed inmate with his elbow. The Jefferson County District Attorney's Office accepted this case at the request of the Office of Inspector General, after it was declined by the United States Attorney's Office. The former officer was indicted on June 3, 1999, by a Jefferson County, Texas, grand jury for Official Oppression. According to an article in the local newspaper, this is a misdemeanor, punishable by up to one year in the county jail. On June 5, 1999, the former officer was arrested and subsequently released on bond.

FCI BEAUMONT (Medium)

On May 19, 1999, a staff member was struck in the left eye by inmate [REDACTED] when the staff member attempted to separate him from inmate [REDACTED]. The inmates were in the Education Department restroom and inmate [REDACTED] had his arm around the neck of inmate [REDACTED], who was turning pale. When responding staff arrived, inmate [REDACTED] was biting the chin and cheek area of inmate [REDACTED]. After the inmates were successfully separated, inmate [REDACTED] spit a piece of flesh from inmate [REDACTED] chin onto the floor. The matter was referred to the FBI. b7C

FPC BRYAN

The trial of Cook Supervisor [REDACTED] on nine counts of Sexual Abuse of a Ward (6 - Sexual Act and 3 - Sexual Contact) has been delayed and is now scheduled to begin on June 14, 1999. b7C

Two FPC Bryan staff members were served subpoenas by the Federal Public Defender to appear as witnesses at trial. Inquiry continues into the actions of three additional FPC Bryan employees, one of whom remains on home duty status, and the others have resigned their Bureau employment. Grand Jury testimony was presented on March 29, 1999, regarding the allegations against Correctional Officer [REDACTED] and former Correctional Officer [REDACTED]. The Grand Jury's determination is pending. b7C

FCI FORREST CITY

On May 3, 1999, at 7:15 a.m., when FCI Forrest City's UNICOR work call was announced, no inmates reported to work. At 7:35 a.m., institutional recall was announced and a count conducted. Inmates were confined to their units with restricted movement. Throughout the morning, inmate interviews were conducted. At 1:00 p.m., a general work call was announced. All inmates reported back to their work details with the exception of ten inmates. FCI Forrest City has resumed normal operations, and the institution is investigating to determine the identities of all inmates involved. Further, the FBI has been contacted regarding this matter.

FCI SEAGOVILLE

In this previously reported FCI Seagoville assault case (which was referred for prosecution in February of 1999), inmates [REDACTED] pled guilty to their original case. This guilty plea has resulted in the dismissal of the witness tampering charges. b7C

On May 5, 1999, FCI Seagoville staff discovered a substance in inmate [REDACTED] locker. The substance was suspected to be steroids. He was placed in Administrative Detention pending further investigation. The case was referred for prosecution and is awaiting acceptance by the AUSA, pending laboratory results. b7C

FCI TEXARKANA

No trial date has been set in the previously reported U.S. v. Bruno Alejandro case (introduction of brown-tar heroin).

PERSONAL ISSUES

On June 20, 1998, Darrin Scott, Supervisory Attorney, will report to FCC Beaumont.



O 222A

U.S. Department of Justice

Federal Bureau of Prisons

South Central Regional Office

Dallas, Texas 75219

July 8, 1999

MEMORANDUM FOR CHRISTOPHER ERLEWINE
ASSISTANT DIRECTOR/GENERAL COUNSEL

FROM: Michael D. Hood, Regional Counsel

SUBJECT: Monthly Report - June 1999

ADMINISTRATIVE REMEDIES												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	184	226	225	202	199	245						
ANSWERED	117	95	165	161	135	152						

TORT CLAIMS												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
PENDING	211	201	192	183	192	198						
RECEIVED	48	59	51	57	66	70						
ANSWERED	62	67	57	54	51	63						
PENDING	197	193	186	186	207	205						
OVER SIX MO	1	1	1	1	1	0						

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	11	18	13	15	12	15						
RECEIVED	49	39	60	45	38	39						
ANSWERED	42	44	58	48	35	33						
PENDING	18	13	15	12	15	21						
OVER 20 DAYS	4	2	1	2	1	3						

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	14	9	14	17	12	19						
CASES CLOSED	9	8	7	6	6	14						
HABEAS CORPUS	13	6	11	12	8	12						
BIVENS	0	3	2	4	2	2						
FTCA	0	0	1	1	2	2						
OTHER	1	0	0	0	0	3						
LIT REPORTS	8	12	7	8	13	20						
HEARINGS/ TRIALS	1	2	2	4	1	6						
SETTLEMENTS/ AWARDS	1	0	0	1	0	0						

CASES WITH HEARINGS OR TRIALS

Felemon Gutierrez Alcala v. UNICOR Industries, et al., C-99-137 (SD/TX). A telephonic evidentiary hearing was conducted on June 18, 1999, in this FCI Three Rivers case. In this Bivens suit, the inmate alleges UNICOR refused to put him on the hiring list due to his alien status. The presiding Judge verbally ordered that the inmate did not have to exhaust his administrative remedies, and ordered service of process on a staff member. It appears the inmate is seeking monetary relief. However, the amount of damages is unknown as the complaint has not yet been served.

A verdict was entered on June 7, 1999, in Kevin Cox v. U.S.A., et al., C-97-666 (SD/TX). This FCI Three Rivers case was originally filed as a Bivens case, and later converted to an FTCA case. The court expressed sympathy for the inmate's physical condition; he is confined to a wheel chair. However, the court determined that the inmate was over 50% responsible for the actions that led to his fall. Judgment was entered in the B.O.P.'s favor.

George Rodriguez v. Mr. Woods, et al, B-94-202 (SD/TX). This Bivens suit was originally filed in 1994, and involves allegations of improper medical treatment at FCI Three Rivers. Summary Judgment was granted in August 1997. The inmate subsequently won a reversal on appeal, and the case was remanded for a retrial, which was held on June 28-29, 1999. Several former and current staff members were present to testify. At trial, a verdict was entered in favor of the defendants, all Bivens claims were dismissed, and the plaintiff was sanctioned for bringing a frivolous suit.

CASES WITH SETTLEMENTS OR AWARDS

a. Adverse judgments

U.S.A. v. Steven Gray, No. 98-6043 (10th Circuit Court of Appeals). In April of 1997, FCI El Reno inmate Steven Gray filed a 2255 Habeas petition with the U.S. District Court in Oklahoma City, Oklahoma. The petition was filed six days after the statutory deadline. In response, the U.S.A.O. asserted that the petition should be dismissed as untimely. In part, the District Court dismissed the petition on that basis, citing the "mailbox rule." On appeal, the 10th Circuit stated that the "mailbox rule" did not apply to this case because it was impossible to determine when the inmate gave his petition to staff members at FCI El Reno since the institution does not log in all legal mail. Although the Appellate Court upheld the petition's dismissal on other grounds, it stated that the legal mail system at FCI El Reno was inadequate. In this matter, FCI El Reno followed all applicable B.O.P. policies. Moreover, it appears that the Appellate Court overlooked the fact that the inmate chose to use the regular mail system to mail his petition, rather than following the B.O.P.'s special mail procedures for inmates. We will be filing a motion for reconsideration with the 10th Circuit shortly.

b. Tort Claim settlements

None

c. Other settlements

None

SIGNIFICANT CASES

In Atkins v. United States of America, U.S. Magistrate Judge Charles Bell has scheduled a mediation hearing on July 14, 1999, at 9:00 a.m. As previously reported, the plaintiff alleges that staff members at FMC Fort Worth negligently treated multiple facial injuries he sustained during a 1994 arrest.

In Jonnie Yarborough v. U.S.A., et al., the family of a former FMC Fort Worth inmate filed this FTCA action alleging medical negligence on the part of B.O.P. staff members. The plaintiffs allege staff members failed to timely diagnose and treat inmate Julian B. Yarborough's squamous cell cancer, resulting in his

untimely death. They seek \$2,800,000 in compensatory and punitive damages, prejudgment and post judgment interest, attorneys' fees and expenses, and all costs of this action.

In Goldsby v. U.S.A., Frederic Goldsby alleges that his rotator cuff was injured while in Administrative Detention at FMC Fort Worth in November of 1996. In this FTCA suit, the plaintiff alleges his injury is due to Administrative Detention not being accessible to disabled persons. He further alleges his injury went untreated for approximately 10 months. He is seeking \$3,500,000 in damages.

As an update, Judge John McBryde dismissed the John Stevens Wilkins v. Bob Guzik case. As previously reported, this was a Habeas case where the petitioner sought a hypospadias repair.

Denny Hunnicutt v. Kathleen Hawk, CIV-98-1717-A (WD/OK). In his habeas petition, FTC Oklahoma City inmate Denny Hunnicutt challenged his 3621(e) early release ineligibility. The initial ineligibility determination was based on the sentence enhancement provisions of P.S. 5162.04. However, inmate Hunnicutt has an 18 U.S.C. § 371 conviction which was not referenced until the government responded to the habeas petition. A Report and Recommendation issued by the Magistrate Judge stated "because the plain meaning of the statute has not changed, the BOP's authority to administer the statute is unchanged as well. The BOP cannot merely draft a new regulation that ignores the construction given the statute by the circuit courts, including the Tenth Circuit Court of Appeals' decision in Fristoe." The R&R states that the B.O.P. cannot exclude inmates from 3621(e) early release eligibility due to a sentence enhancement. The R&R commented that the BOP could have relied on the above-mentioned conviction as a "sound basis" for exclusion, instead of choosing to rely solely on the sentence enhancement. The R&R recommended that the BOP be directed to reconsider the petitioner's eligibility for early release. DAP staff members are in the process of re-evaluating Hunnicutt's eligibility, and denying it based on

the 18 U.S.C. 371 conviction. Therefore, Hunnicutt should not receive a 3621(e) early release.

However, FTC Oklahoma City currently has two other habeas petitions pending in which inmates were denied eligibility under P.S. 5162.04 (Gidley and Lawton) solely because of sentence enhancements. Due to the recent holding in the Hunnicutt case, it appears that the B.O.P. will not prevail in these cases.

SIGNIFICANT TORT CLAIMS

House. Claimant George House contends that another inmate stabbed him on December 9, 1998, at USP Beaumont, because staff members failed to protect him. He alleges that staff members knew a threat had been made against his life 16 hours before the attack. This pro se claimant seeks \$2,000. (T-SCR-99-217).

Palmer. This claim arises out of an automobile collision in which an FCI El Reno inmate, who was driving an institution vehicle, collided with a vehicle belonging to an employee of a B.O.P. contractor. [REDACTED] b5

McDougal. This wrongful death claim, filed on behalf of James McDougal's estate, was received on June 28, 1999. The claim alleges that McDougal (a defendant in the Whitewater case) died as a result of the negligence of staff members at FMC Fort Worth. (T-SCR-99-064)

Arocha. The Department of Justice made a \$35,000 settlement offer in this FPC Bryan wrongful death case. If accepted, this settlement will settle any claims relating to the death of inmate Flores-Cabrera. (T-SCR-97-376).

SIGNIFICANT ADMINISTRATIVE REMEDIES

None

UPCOMING TRIALS OR HEARINGS

Kevin Ford v. Robert Guzik, et al., CIV-97-233-R (WD/OK). This Bivens suit alleges staff members assaulted inmate Ford while he was housed in FTC Oklahoma City's SHU. The defendants were only named in their individual capacity. All defendants, with the exception of two correctional officers, have been dismissed from the suit. Settlement attempts have been unsuccessful. During a court-ordered settlement conference in February 1999, the Judge imposed settlement in the amount of ten thousand dollars. There is no jurisdiction for an imposed settlement as the defendants have not agreed to settle, and the government was not named as a defendant. The case is currently scheduled for trial on the July 1999 docket.

MEDICAL MALPRACTICE

LITIGATION

Johnson v. Sandoval, et al., A-99-CA-222-JN (USDC/WDTX). While this FCI Bastrop suit is styled as a Bivens complaint, it reads as a simple medical malpractice suit involving three physician assistants. The plaintiff claims that the defendants failed to diagnose and treat him properly for a separation of the acromioclavicular joint. The suit seeks \$15,000.00 in damages.

Also, please see the headings above.

TORT CLAIMS

Please see the Significant Tort Claims heading.

ENSIGN AMENDMENT

LITIGATION

None

TORT CLAIMS

None

RELIGIOUS FREEDOM RESTORATION ACT

LITIGATION

None

TORT CLAIMS

None

PRISON LITIGATION REFORM ACT ORDERS

None

SITUATIONS OF INTEREST

Two FMC Carswell psychiatric inmates, [REDACTED] b7C
[REDACTED], were hospitalized for respiratory failure. However, both inmates have recovered and were released to the institution. This situation is of interest because [REDACTED] filed a tort claim asserting that she should not have to take psychotropic

medications, and [REDACTED] is in the process of being committed under 18 U.S.C. §4246 in U. S. v. Nordell, Case No. 4:99-CV-0391-4 (ND/TX FTW). Because of [REDACTED] illness, her doctor will update her psychiatric evaluation, which will be submitted to the AUSA. b7C

Assistant U. S. Attorneys from the Southern District of Texas toured FCI Three Rivers on June 16, 1999, to prepare for the George Rodriguez v. Mr. Woods, et al, trial.

CRIMINAL MATTERS AND PROSECUTIONS

FCI BASTROP

Correctional Officer Randolph Gulley pled guilty on June 4, 1999, to one count of Conspiracy to Distribute Cocaine. The indictment resulted from B.O.P. and F.B.I. investigations into allegations that Gulley brought contraband into the institution.

U.S.A. v. Ramirez. In this criminal case, an FCI Bastrop inmate was found guilty of throwing urine and feces on a staff member on January 12, 1998. The defendant should be sentenced in September 1999. The maximum possible sentence is 36 months.

USP BEAUMONT

On June 9, 1999, inmate [REDACTED] placed his right hand on the left breast of an x-ray technician who was preparing him for x-rays in the Health Services Unit. The x-ray technician immediately notified other staff members in the area, and inmate [REDACTED] was escorted back to SHU. After returning to SHU, inmate [REDACTED] became very agitated and argumentative. There were no injuries to staff members or inmates noted during the incident. The matter is pending an FBI referral. b7C

FCI BEAUMONT (Medium)

On June 16, 1999, inmate Andrew Jackson was indicted for Assault of a Federal Officer. As previously reported, inmate Jackson struck a staff member in the head while the staff member was attempting to stop inmate Jackson's assault on another inmate.

FCI BEAUMONT (Low)

On June 12, 1999, inmate [REDACTED] rushed a case b7C

manager during the 10:00 a.m. count. The inmate began hitting the staff member in the face with a closed fist. The matter is pending an FBI referral.

FPC BRYAN

The trial of Cook Supervisor [REDACTED] on nine counts of Sexual Abuse of a Ward (6 - Sexual Act and 3 - Sexual Contact) began on June 14, 1999, and ended on June 18, 1999, when the jury acquitted [REDACTED] on all counts. The institution administration is considering whether to proceed with administrative action against [REDACTED]. b6

Inquiry continues into the actions of three other FPC Bryan employees, one of whom remains on home duty status, and the others have resigned their Bureau employment. As previously reported, Grand Jury testimony was presented regarding the allegations against a Correctional Officer and a former Correctional Officer. We are awaiting possible Grand Jury indictments.

FPC EL PASO

In the U.S.A. v. Plathe case, the defendant signed a diversionary agreement on June 15, 1999. As part of the agreement, the defendant agreed to resign within 60 days.

FCI FORREST CITY

Inmate Darius King was indicted on May 11, 1999, in the U.S.A. v. Darius King case. As previously reported, inmate King assaulted a staff member on March 1, 1999.

FCI SEAGOVILLE

On June 18, 1999, inmate Scott Burgess struck his Federal Public Defender in the face two times with his right fist. Staff members immediately restrained the inmate. The Federal Public Defender sustained a laceration to the bridge of his nose and a possible broken nose. Inmate Burgess had a laceration on the middle knuckle of his right hand. He was placed in Administrative Detention pending investigation. The U.S.A.O. has agreed to prosecute the inmate. Prior to this incident, inmate Burgess assaulted two U.S. Marshals during court appearances.

FTC OKLAHOMA CITY

Previously, Correctional Counselor [REDACTED], charged with multiple counts of sexual abuse of inmates, signed a plea agreement, and agreed to three years incarceration. However, at a hearing last week, [REDACTED] disputed the facts of the case, b6

many of which were contained in his signed statement to O.I.G. This was a surprise to everyone present at the hearing, including his attorney, officers from O.I.G., and a prosecutor from Main Justice. Therefore, the court withdrew the guilty plea, and the matter was referred to the Grand Jury for an appropriate disposition.

FCI Texarkana

The trial date in U.S.A. v. Bruno Alejandro has been continued. As previously reported, inmate Alejandro was charged with introducing brown-tar heroin at FCI Texarkana.

PERSONAL ISSUES

[REDACTED]

b6

Scheduled Annual/Sick Leave:

[REDACTED]	-	[REDACTED]
[REDACTED]	-	[REDACTED]
[REDACTED]	-	[REDACTED]
[REDACTED]	-	[REDACTED]

Other Scheduled Absences:

[REDACTED]	-	[REDACTED]
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U.S. Department of Justice

Federal Bureau of Prisons

South Central Regional Office

Dallas, Texas 75219

August 9, 1999

MEMORANDUM FOR CHRISTOPHER ERLEWINE
ASSISTANT DIRECTOR/GENERAL COUNSEL

FROM: Michael D. Hood, Regional Counsel

SUBJECT: Monthly Report - July 1999

Table with 13 columns (JAN-DEC) and 3 rows (RECEIVED, ANSWERED) under the heading ADMINISTRATIVE REMEDIES.

Table with 13 columns (JAN-DEC) and 6 rows (PENDING, RECEIVED, ANSWERED, PENDING, OVER SIX MO) under the heading TORT CLAIMS.

Table with 13 columns (JAN-DEC) and 5 rows (PENDING, RECEIVED, ANSWERED, PENDING, OVER 20 DAYS) under the heading FOI/PRIVACY.

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	14	9	14	17	12	19	6					
CASES CLOSED	9	8	7	6	6	14	7					
HABEAS CORPUS	13	6	11	12	8	12	4					
BIVENS	0	3	2	4	2	2	1					
FTCA	0	0	1	1	2	2	0					
OTHER	1	0	0	0	0	3	1					
LIT REPORTS	8	12	7	8	13	20	10					
HEARINGS/ TRIALS	1	2	2	4	1	6	3					
SETTLEMENTS/ AWARDS	1	0	0	1	0	0	0					

CASES WITH HEARINGS OR TRIALS

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CASES WITH SETTLEMENTS OR AWARDS

a. Adverse judgments

None

b. Tort Claim settlements

None

c. Other settlements

None

SIGNIFICANT CASES

On July 15, 1999, a settlement conference was held in FMC Fort Worth's ^{b7C} case. This is a personal injury/slip and fall case. Currently, there are no plans to make a settlement offer. b7C

In FCI Seagoville's _____ case, inmate alleges the defendants conspired and retaliated against him in violation of his constitutional rights. He alleges he was improperly fired from his work assignment while on vacation. He filed a Request for Administrative Remedy and was denied relief. Further, he alleges he was subjected to harassing searches by two correctional officers. Moreover, it is alleged staff members attempted to frame him with a falsified urine test. Staff members allegedly retaliated against his litigiousness by denying him copies and forcing him to sign a financial contract. Finally, he alleges staff retaliated against him by raising his security level. The suit seeks \$44,000,000 in compensatory and punitive damages. b7C

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Thigpen. USP Beaumont inmate ^{b7C} asserts that he was seriously assaulted on April 11, 1999, by another inmate while housed in SHU. Specifically, he alleges that staff members negligently placed him in danger by placing him in a SHU cell with an assaultive inmate. He states that while he was sleeping, his cellmate attacked him with a weapon made from razor blades melted into a plastic toothbrush handle. It is further alleged that it took staff members an unreasonable amount of time to respond to the attack. The pro se claimant seeks \$2,500 in compensation. (T-SCR-99-304) b7C

SIGNIFICANT ADMINISTRATIVE REMEDIES

None

UPCOMING TRIALS OR HEARINGS

None

MEDICAL MALPRACTICE

None

LITIGATION

None

TORT CLAIMS

None

ENSIGN AMENDMENT

LITIGATION

None

TORT CLAIMS

None

RELIGIOUS FREEDOM RESTORATION ACT

LITIGATION

None

TORT CLAIMS

None

PRISON LITIGATION REFORM ACT ORDERS

None

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As it appears that the tread separation was caused by a design or manufacturing defect, the Goodyear Corporation has agreed to inspect all tires of a similar type mounted on FCC Beaumont vehicles. The company also agreed to pay for damage to the van should an investigation establish that a tire defect was the cause of the accident. As the left side of the van was substantially damaged, and the van engine seized as a result of the accident, it is likely that the van will be declared a total loss. It is anticipated that at least one FTCA claim will result from the accident.

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FMC Carswell inmate [REDACTED] drew public attention after she was held past her release date pursuant to 18 U.S.C. Section 3624(e) because she would not sign an Installment Agreement to pay her fine. Inmate Rumpf was serving a sentence for defacing government property at the School of the Americas. Actor [REDACTED] and other supporters paid her fine, and she was released on July 21, 1999. [REDACTED] visited and greeted [REDACTED] when she was released. b7c

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PERSONAL ISSUES

[REDACTED] ble
[REDACTED]

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Other Scheduled Absences:

- [REDACTED] - August 18-20 Administrative Leave
- [REDACTED] - August 23-27 Peer Review Training
Kansas City



U.S. Department of Justice

Federal Bureau of Prisons

South Central Regional Office

Dallas, Texas 75219

August 9, 1999

MEMORANDUM FOR CHRISTOPHER ERLEWINE
ASSISTANT DIRECTOR/GENERAL COUNSEL

FROM: Michael D. Hood, Regional Counsel

SUBJECT: Monthly Report - July 1999

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OVER SIX MO	1	1	1	1	1	0	0					

FOI/PRIVACY												
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ANSWERED	42	44	58	48	35	33	55					
PENDING	18	13	15	12	15	21	21					
OVER 20 DAYS	4	2	1	2	1	3	4					

LITIGATION

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CASES RECD	14	9	14	17	12	19	6					
CASES CLOSED	9	8	7	6	6	14	7					
HABEAS CORPUS	13	6	11	12	8	12	4					
BIVENS	0	3	2	4	2	2	1					
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OTHER	1	0	0	0	0	3	1					
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HEARINGS/ TRIALS	1	2	2	4	1	6	3					
SETTLEMENTS/ AWARDS	1	0	0	1	0	0	0					

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SIGNIFICANT ADMINISTRATIVE REMEDIES

None

UPCOMING TRIALS OR HEARINGS

None

MEDICAL MALPRACTICE

None

LITIGATION

None

TORT CLAIMS

None

ENSIGN AMENDMENT

LITIGATION

None

TORT CLAIMS

None

RELIGIOUS FREEDOM RESTORATION ACT

LITIGATION

None

TORT CLAIMS

None

PRISON LITIGATION REFORM ACT ORDERS

None

SITUATIONS OF INTEREST

FCC Beaumont

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CRIMINAL MATTERS AND PROSECUTIONS

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Previously, Brummett pled guilty to Possession of a Controlled Chemical with the Intent to Manufacture Methamphetamine, and Aiding and Abetting.

PERSONAL ISSUES

[REDACTED]

[REDACTED]

b6

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- [REDACTED] - August 31 Annual Leave
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Other Scheduled Absences:

- [REDACTED] - August 18-20 Administrative Leave
- [REDACTED] - August 23-27 Peer Review Training
Kansas City

Over 60 days 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0 0
0

2

D. FOI/Privacy Act Requests - 1999

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st	14	16	18	7	32	22	27					
Rec'd in month	24	29	31	55	24	49	43					
Ans'd in month	22	27	42	30	34	44	36					
Pending at End	16	18	7	32	22	27	34					
Over 20 days	5	2	2	2	2	1	1					

E. FOIA Requests for records: As of July 31, 1999

	ALF	ALM	ALP	ALW	BRO	DAN	DEV	FAI	FTD	LEW	LOR	MCK	NYM	OTV	RBK	SCH
NER																
Pending	6	0	2	0	0	4	1	2	1	6	2	1	1	0	0	1
0																
>20 days	0	0	0	0	0	0	0	0	0	1*	0	0	0	0	0	0
0																

* Archived records

II. LITIGATION ACTIVITY - 1999 NORTHEAST REGION

A. SUMMARY REPORT

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Open on 1st	633	636	642	642	651	660	498					
New Cases	11	16	23	22	20	12	10					
Habeas Corpus	7	7	6	12	10	7	6					
FTCA	1	3	7	4	4	2	1					
Bivens	3	5	6	4	3	3	2					
Other	0	1	2	1	3	0	1					
Bivens/FTCA	0	0	2	0	0	0	0					
Lit Reports	4	2	5	8	18	15	7					
Cases Closed	8	8	23	13	11	174	9					

B. SETTLEMENTS/AWARDS/ADVERSE and FAVORABLE OPINIONS:

1. Crooker v. United States, et.al. Civ. No. 97-402E (WDPA) b7C
 Inmate [REDACTED] currently at USP Lompoc, filed this FTCA case alleging that staff at FCI McKean negligently restrained him in four point restraints for an extended period of time (specifically, in restraints for 89 hours (70 of which were in four points)) in April 1997. His administrative tort claim requesting \$500,000 was denied. Case settled for \$1000.00 because of potential liability and poor documentation.



U.S. Department of Justice

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August 9, 1999

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ASSISTANT DIRECTOR/GENERAL COUNSEL

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ENSIGN AMENDMENT

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PERSONAL ISSUES

b6

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Tim Roberts, Attorney, will be reporting to FCI El Reno on August 9, 1999.

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Kansas City



U.S. Department of Justice

Federal Bureau of Prisons

South Central Regional Office

Dallas, Texas 75219

September 10, 1999

MEMORANDUM FOR CHRISTOPHER ERLEWINE
ASSISTANT DIRECTOR/GENERAL COUNSEL

FROM: Michael D. Hood, Regional Counsel

SUBJECT: Monthly Report - August 1999

ADMINISTRATIVE REMEDIES												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	184	226	225	202	199	245	187	211				
ANSWERED	117	95	165	161	135	152	164	140				

TORT CLAIMS												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
PENDING	211	201	192	183	192	198	208	206				
RECEIVED	48	59	51	57	66	70	54	89				
ANSWERED	62	67	57	54	51	63	56	68				
PENDING	197	193	186	186	207	205	206	227				
OVER SIX MO	1	1	1	1	1	0	0	0				

FOI/PRIVACY												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
	N	B	R	R	Y	N	L	G	P	T	V	C
PENDING	11	18	13	15	12	15	21	21				
RECEIVED	49	39	60	45	38	39	55	47				
ANSWERED	42	44	58	48	35	33	55	47				
PENDING	18	13	15	12	15	21	21	21				
OVER 20 DAYS	4	2	1	2	1	3	4	0				

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	14	9	14	17	12	19	6	24				
CASES CLOSED	9	8	7	6	6	14	7	12				
HABEAS CORPUS	13	6	11	12	8	12	4	19				
BIVENS	0	3	2	4	2	2	1	4				
FTCA	0	0	1	1	2	2	0	1				
OTHER	1	0	0	0	0	3	1	0				
LIT REPORTS	8	12	7	8	13	20	10	11				
HEARINGS/ TRIALS	1	2	2	4	1	6	3	1				
SETTLEMENTS/ AWARDS	1	0	0	1	0	0	0	0				

CASES WITH HEARINGS OR TRIALS

None

CASES WITH SETTLEMENTS OR AWARDS

a. Adverse judgments

FCI El Reno

Jones v. Flowers. On July 30, 1999, the U.S. District Court in Oklahoma City, Oklahoma, ruled that the "Director's Discretion" provisions of P.S. 5162.04 are contrary to the 10th Circuit Court of Appeals' holding in Fristoe, and the BOP must not deny an inmate a 3621(e) early release because they received a two-point sentencing enhancement for possession of a firearm. We are currently considering our next course of action.

b. Tort Claim settlements

None

c. Other settlements

None

SIGNIFICANT CASES

FCC BEAUMONT

Magluta v. Chandler, et al. In a combined Bivens and 2241 habeas

suit, USP Beaumont (currently on writ at FDC Miami) inmate Salvador Magluta asserts that he has been placed in Administrative Detention (AD) and had his attorney visits restricted in violation of his constitutional rights. Magluta seeks injunctive relief in the form of a release from AD and removal of the attorney visitation restrictions. Magluta is a reputed wealthy drug kingpin who has retained a large legal team to represent him.

On August 19, 1999, Judge Joe Fisher held a hearing on Magluta's averments. Judge Fisher ruled in the BOP's favor, finding that Magluta's placement in AD was pursuant to a valid investigation and not pretextual, as alleged by Magluta.

On August 19, 1999, Magluta was indicted in Miami, Florida, on several counts of Conspiracy to Commit Murder, Money Laundering, Witness Tampering and Jury Tampering. A significant security implication is that a co-defendant is a former MCC Miami Correctional Officer who is suspected of attempting to smuggle a cellular telephone to inmate Magluta while he was housed at that institution.

Sampson v. United States, et al. In a Bivens/FTCA action, former USP Beaumont (currently USP Lompoc) inmate Eric Sampson claims he was assaulted by another inmate on February 26, 1998. He claims the assailant threw a hot liquid on him as he slept. Sampson's counsel asserts that the liquid was "some type of heated chemicals," and Sampson suffered second and third degree burns on approximately 50% of his body. Sampson is suing the United States under the FTCA. A Correctional Officer is also being sued under Bivens for an alleged "failure to protect." Further, Sampson is suing the inmate who assaulted him and the University of Texas Medical Branch (UTMB), the contract provider of medical care at FCC Beaumont, for negligent burn treatment. Sampson seeks \$700,000 in damages.

FCI EL RENO

McAlpine v. Thompson. The 10th Circuit Court of Appeals ruled in our favor in this FCI EL Reno case. This suit was brought by inmate McAlpine, a Native American, who alleged the BOP violated his religious rights by not letting him smoke peyote. The BOP won at the trial court level, and the inmate appealed the case to the appellate court. The appellate court ruled in our favor because the inmate has been released from BOP custody.

FMC FORT WORTH

Henrikson v. Guzik. Inmate Richard Henrikson asserts that he should not be subject to the BOP policy that directs that local authorities be notified upon the release of an inmate whose criminal history involves a crime of violence. He was convicted

of Arson of a Dwelling House on October 4, 1977.

FTC OKLAHOMA CITY

Hunnicut v. Kathleen Hawk. In his habeas petition, FTC Oklahoma City inmate Denny Hunnicutt challenged his 3621(e) early release ineligibility. The initial ineligibility determination was based on the sentence enhancement provisions of P.S. 5162.04. However, inmate Hunnicutt has a conviction for conspiracy to commit 18 U.S.C. 922(o) that was not referenced until the government responded to the habeas petition. A Report and Recommendation issued by the Magistrate Judge stated "because the plain meaning of the statute has not changed, the BOP's authority to administer the statute is unchanged as well. The BOP cannot merely draft a new regulation that ignores the construction given the statute by the circuit courts, including the Tenth Circuit Court of Appeals' decision in Fristoe." The R&R states that the BOP cannot exclude inmates from 3621(e) early release eligibility due to a sentence enhancement. The R&R commented that the BOP could have relied on the above-mentioned conspiracy conviction as a "sound basis" for exclusion, instead of choosing to rely solely on the sentence enhancement. The R&R recommended that the BOP be directed to reconsider the petitioner's eligibility for early release.

The Government objected to the R&R, and on August 18, 1999, the District Judge issued an order declining to accept the Report and Recommendation and entering judgment in the BOP's favor in light of the conspiracy conviction.

Dziadura v. U.S.A., et al. (District of Kansas). Former FTC Oklahoma City inmate Tracy Dziadura filed this FTCA/Bivens suit alleging she was raped by a staff member while housed at the institution. She identified numerous grounds for relief. These include negligent hiring, negligent retention and mental anguish. After the case was briefed, judgment was entered against the plaintiff on August 18, 1999, on the ground that the suit was filed eight days after the statute of limitations had run. We anticipate an appeal in this case.

FCI TEXARKANA

Whitley v. Hunt, et al. This case was remanded from the Fifth Circuit Court of Appeals to address the issue of exposure to secondhand smoke. In his complaint, inmate Whitley alleges he was forced to live in a smoke filled environment for 13 weeks after it was discovered he had medical problems. He also asserts he was subjected to retaliation when his custody level was changed due to inaccurate information in his PSI.

SIGNIFICANT TORT CLAIMS

Cline. A conditional offer of \$9,000 was made to settle the personal injury portion of [REDACTED] (civilian) tort claim. A government vehicle struck her vehicle, and she incurred medical expenses totaling \$4,789.15. Subsequent to the offer, additional medical expenses of \$1,664.80 were submitted. [REDACTED] (T-SCR-98-357).

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SIGNIFICANT ADMINISTRATIVE REMEDIES

None

UPCOMING TRIALS OR HEARINGS

FCI THREE RIVERS

John Rees v. M. Campbell, et al. A telephonic Spears hearing is scheduled for September 15, 1999. In this case, the court gave notice of the hearing without informing the BOP of the nature of the suit. We should know more about the case after the hearing. Noel Plunkett v. Joe Gunja, et al. Jury selection and a trial before Judge Hayden Head are set for December 13, 1999, in this Bivens suit. Inmate Plunkett has brought this suit alleging his constitutional rights were infringed due, in part, to an illegal lockdown, racial discrimination and interference with his religious beliefs.

MEDICAL MALPRACTICE

None

LITIGATION

None

TORT CLAIMS

None

ENSIGN AMENDMENT

LITIGATION

None

TORT CLAIMS

None

RELIGIOUS FREEDOM RESTORATION ACT

LITIGATION

None

TORT CLAIMS

None

PRISON LITIGATION REFORM ACT ORDERS

None

SITUATIONS OF INTEREST

FMC FORT WORTH

On August 4, 1999, Al Munguia participated in a deposition held at FMC Fort Worth in the Jon Edelman v. Tiziana M. Scaccia case. Former inmate Edelman is suing his wife and her attorney for informing FMC Fort Worth staff that he allegedly made threatening telephone calls to his wife and family, which prompted the BOP to delay his halfway house placement. The BOP is not a party to the suit. The parties obtained permission from the U.S. Attorney's Office to have BOP staff testify concerning their knowledge about the communication concerning the alleged threats, their communication with Edelman's wife and the wife's attorney, and their general knowledge of the events that prompted the delay in Edelman's halfway house placement.

On August 20, 1999, Al Munguia participated in another deposition in the Edelman case during which the El Paso CCM was deposed regarding her knowledge of the circumstances surrounding the delay of placing Edelman in a halfway house.

FDC HOUSTON

On July 30, 1999, BOP staff members met with the Federal Public Defender and other staff from that office. [REDACTED]

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On August 13, 1999, BOP staff members met with attorneys from the U. S. Attorney's office and staff from the Office of Inspector General. The group from the U. S. Attorney's Office included the Criminal Division Chief, the head of the Special Prosecutions Section, and the entire Civil Rights Unit. [REDACTED]

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On August 19, 1999, staff met with the Chief of the Major Crimes

Section of the U. S. Attorney's Office and a Supervisory Special Agent from the FBI. They expressed a sincere interest in prosecuting criminal matters arising from the FDC and demonstrated a great desire to meet our needs in this regard.

On August 19, 1999, the Honorable Lynn H. Hughes, U. S. District Court Judge for the Southern District of Texas, visited FDC Houston. Judge Hughes was accompanied by Michael Milby, the Clerk of the Court, and a court assistant responsible for audio recordings of court proceedings. The purpose of this visit was to determine what type of equipment and furniture would be needed in FDC Houston's Magistrate's Complex and Courtroom. Occasional use of these areas is anticipated. FDC Houston will continue working with the court to equip and furnish the Magistrate's Courtroom and adjoining office area. Judge Hughes and his staff also saw an inmate housing area and the visiting room. The visit went well and Judge Hughes indicated he will participate in a full tour on September 14, 1999.

FCI OAKDALE

The deposition of inmate Graham Craddock, a Branch Davidian, has been postponed. Craddock is considered an important witness in the Branch Davidian/Waco civil case. Marie Hagen, an attorney with D.O.J.'s Torts Branch, will notify the BOP when a new date has been approved.

FTC OKLAHOMA CITY

Trentadue. An October 12, 1999, trial date has been set in this previously reported, high profile case. However, we do not expect the trial to start on that date. The Office of General Counsel is handling this Western District of Oklahoma case.

CRIMINAL MATTERS AND PROSECUTIONS

USP BEAUMONT

On July 31, 1999, inmate [REDACTED] ingested a balloon containing drugs which he obtained from a female visitor. A search of the inmate uncovered two additional balloons concealed in his shoe. The contents of the balloons tested positive for Heroin. [REDACTED] was placed in a Dry Cell. The female visitor again visited with [REDACTED] on August 9, 1999, and was observed passing drugs to him. The visitor was detained for questioning, and she was arrested by the FBI. After the arrest, she was discovered to be in possession of Heroin. The visitor was indicted on Wednesday, August 18, 1999. [REDACTED] was referred to the FBI for investigation and potential prosecution. The referral is pending.

On August 7, 1999, staff members in the Visiting Room became

suspicious of a female visitor and inmate [REDACTED]. The SIS was notified and he contacted the FBI. The visit was terminated and inmate [REDACTED] was placed in a Dry Cell. The visitor was detained for questioning by the FBI. The FBI questioned the visitor and obtained her consent to search her vehicle. The search revealed that marijuana was concealed in the car. The female visitor was indicted on Wednesday, August 18, 1999, for introducing contraband and providing false statements to the Federal Bureau of Prisons. [REDACTED] was referred to the FBI for investigation and potential prosecution. The referral is pending.

b7C

On August 15, 1999, a visiting room staff member observed inmate [REDACTED] retrieving items from his visitor's lap and swallowing them. The SIS and FBI were notified. [REDACTED] was immediately placed on Dry Cell status. [REDACTED] female visitor was questioned by the FBI. The visitor was indicted on Wednesday, August 18, 1999, for Introducing Marijuana and Possession With Intent to Distribute Marijuana. [REDACTED] was referred by the FBI for investigation and potential prosecution. The referral is pending.

b7C

Last month, an investigation revealed that an assault by inmate [REDACTED] may have occurred because inmate [REDACTED] may have directed [REDACTED] to threaten [REDACTED] life. See Maqluta in the Significant Cases section. [REDACTED] is believed to have potentially damaging information relevant to [REDACTED] recent indictment in Miami, Florida. Based on this information, [REDACTED] was placed in Administrative Detention pending investigation for Threatening Another. On August 14, 1999, [REDACTED] was discovered to be in possession of several items of contraband during an attorney visit. It is suspected that [REDACTED] obtained these items of contraband through a previous attorney visit. An investigation commenced. As a result, [REDACTED] was restricted to non-contact visitation for both social and legal visits. As discussed in the Significant Cases section, these issues were the subject of an August 19, 1999, hearing.

b7C

FPC BRYAN

Cook Supervisor [REDACTED] has been placed on home duty status pending possible administrative action following his acquittal on criminal charges.

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b7C

Inquiry continues into the actions of three additional FPC Bryan employees, one of whom remains on home duty status and two who resigned their Bureau employment. Grand Jury testimony was presented regarding the allegations against Correctional Officer [REDACTED] and former Correctional Officer [REDACTED]. We await word from the Grand Jury regarding its decision in this matter.

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b7C

FMC CARSWELL

On September 1, 1999, Food Service Supervisor Larry Alex was sentenced to 3 years probation by U.S. District Judge Means. Previously, he was convicted of Sexual Abuse of a Ward.

FCI FORREST CITY

On August 8, 1999, inmate Esparza-Lopez assaulted a Correctional Officer by striking him in the face and kicking him in the rib cage. Staff members escorted the Correctional Officer to the medical clinic where he received treatment for abrasions on his right eye and bruises on his rib cage. The inmate was restrained and escorted to medical services, where he received treatment for minor abrasions and lacerations. This case has been accepted for prosecution.

FTC OKLAHOMA CITY

During the noon meal on August 26, 1999, at approximately 10:30 a.m., inmate Luis Hernandez-Hernandez, struck a Correctional Officer on the right side of his head with a food tray, and then kicked and punched the officer. The Facilities General Foreman, who was standing mainline in the unit, observed the assault and responded. Hernandez-Hernandez head butted the General Foreman and continued kicking the Correctional Officer as the staff members took the inmate to the ground and restrained him. Hernandez-Hernandez was treated for minor injuries. The staff members were examined and medically cleared to return to work. We were recently notified that the case has been accepted for prosecution by the U.S. Attorney. The case is currently assigned to AUSA Mark Yancey.

PERSONAL ISSUES

Scheduled Annual/Sick Leave:



- September 13-17 Annual Leave

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