

Joyce

UNITED STATES GOVERNMENT

memorandum

Mid-Atlantic Regional Office, Annapolis Junction, MD 20701

DATE: April 5, 1995
 REPLY TO: *Unit 6* Bill Burlington, Regional Counsel
 ATTENTION: Mid-Atlantic Region
 SUBJECT: March 1995 Monthly Report
 TO: Wallace H. Cheney, General Counsel
 FROM: Nancy Redding, Executive Assistant

ADMINISTRATIVE REMEDIES	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Received	106	91	92									
Answered	106	85	112									

TORT CLAIMS	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	161	178	200									
# Received	72	73	64									
# Answered	54	47	59									
# Pending	178	200	201									
# Over Six Month	4	1	3									

FOI/PRIVACY	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	63	60	72									
# Received	36	53	51									
# Answered	40	44	66									
# Pending	60	72	53									
# Over 30 Days	36	34	28									

LITIGATION	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Cases Pending	293	291	282									
New Cases Received	8	12	13									
Habeas Corpus	1	3	5									
Bivens	4	8	3									
FTCA	1	1	4									
Other	2	0	1									
Cases Closed	12	28	28									
Cases Pending	291	282	264									
Lit Reports Completed	14	15	15									
Settlements/Hearing or Trials	3	1	0									
Settlements/Awards	0	1	1									
\$ Settlements/Awards (\$ in Thousands)	\$0	\$55	\$155									

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

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To: *Nancy Redding* From: *Kathy Harris*
 Dept: *Legal* Phone: *301/317-3122*
File Asst

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ITEMS OF INTEREST, PERSONAL LEAVE, BUSINESS TRIPS, MOVES, ETC.

Bill Burlington, Regional Counsel, April 3 thru 6, 1995 I will travel to Washington, D.C. for the Regional/Associate General Counsel's Meeting. On April 10-12 I will travel to Lompoc to depose inmate Dunbar in a possible Bivens jury trial case. On April 21 I will be on annual leave. I am pleased to mention that my wife and I celebrated our 25th Wedding Anniversary this month.

Joseph Tang, Attorney, FMC Lexington, will be on annual leave April 17-21. Kathy Harris, Paralegal Specialist, MARO, will be at the FMC Lexington April 17-20 to assist during Joe's absence.

Teresa Marvel, Paralegal Specialist, USP Terre Haute, will be on annual leave April 24-28, 1995.

Randy Everett, Legal Tech, USP Terre Haute will be on annual leave April 10-18, 1995.

SITUATION OF INTEREST, CONTACT WITH FEDERAL BENCH, HAZARDOUS WASTE SITES, ETC.:

Criminal Prosecution - FCI Butner - U.S. v. Oschele, E.D. N.C. On April 10, 1994, inmate Oschele will undergo criminal prosecution for an assault in 1994 on inmate Martin. Inmate Oschele stabbed Martin 31 times. Inmate Martin was severely injured, but survived the assault. Inmate Oschele will apparently argue that he was defending himself from homosexual pressure by inmate Martin. We expect the trial will last several days, with approximately five Butner staff testifying for the prosecution.

Criminal Prosecution - FCI Memphis - U.S. v. Castenada and Perez, W.D. Tenn. - If the court accepts the defendants' plea in this case, sentencing will occur on Friday, April 7, 1995.

Grand Jury - FCI Memphis, W.D. Tenn. - A Grand Jury will convene on April 17, 1995, to consider BOP cases: three drug introduction cases, one case against an HIV positive inmate who bit a staff member and possibly one drug possession case. Tom Read will be assisting the prosecuting AUSA.

Thomas Read, Attorney, FCI Memphis, met with the Clerk of the Court, Clerk's Chief Deputy and Clerk's Systems Analyst to discuss ways to improve getting inmate's docket information.

SUBSTANTIVE PLEADINGS (COMPLAINT, MOTION FOR SUMMARY JUDGMENT, ETC.): None

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SETTLEMENTS:

Brenda Liz Bermudez-Quinones v. U.S., 91-0017, N.D. W.Va., FCI Morgantown.

In an unexpected and unfortunate development, AUSA Helen Campbell Altmeyer settled this wrongful death case for \$130,000 without first receiving permission to settle from the Bureau of Prisons. This case involved the alleged failure of staff at FCI Morgantown to prevent an inmate suicide in 1988.

The case had a complicated procedural history and we had already received one court order where Judge Keeley had determined that prior to the suicide the deceased was depressed and received no mental health treatment. A psychological autopsy suggested several things the institution and Bureau could have done which may have helped prevent the suicide. These recommendations became the basis for plaintiff's theory of why we were negligent.

As we interviewed staff, we discovered two employees who would testify that they felt the suicide was predictable and should have been anticipated.

Due to the recent illness and eventual death of her father, AUSA Altmeyer did not seriously discuss with Wanda Hunt and me until Friday, March 24th, the need to have settlement authority from the Bureau in advance of a mandatory settlement conference on March 28, 1995. Despite being told we would not have Bureau approval for settlement in the amount of \$100,000 to \$150,000 by March 26, 1995, Ms. Altmeyer spoke with the U.S. Attorney and Chief of Civil, and felt their office had to try and settle the case at the settlement conference, or again be chastised by Judge Keeley. During this conference, plaintiff's counsel informed the AUSA that the brother-in-law, who was also incarcerated at FCI Morgantown at the time, reported to the unit officer that Batista was considering suicide. We had no record or documentation of such a report, and therefore, could not confirm or deny the accusation at that time.

While I feel advance approval from the Bureau should have been obtained, even if it meant Ms. Altmeyer had to tell the court due to her father's illness she was not prepared for the settlement conference, I believe settlement at \$130,000 is a good risk management decision in this case. This U.S. Attorney's Office has been very supportive of the Bureau, so I do not want to allow this incident to damage our relationship. I plan to write the U.S. Attorney to express my hope that this incident will not be repeated in the future.

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ADVERSE DECISIONS OR SIGNIFICANT DECISIONS:

Perry DuWayne Caudle v. U.S., 93-210, S.D. Ind., USP Terre Haute

In an excellent decision, Judge McKinney ruled that the discretionary function exemption to the FTCA precludes inmates from challenging the decision to classify and place an inmate in a high security unit at USP Terre Haute. Inmate Caudle was stabbed while in a high security unit and subsequently sued the Government for failure to protect. Relying on Bailor v. Salvation Army, 854 F.Supp. 1341 (N.D. Ind. 1994), the court held, "the discretionary function exception to the FTCA bars recovery predicated on the classification of inmates."

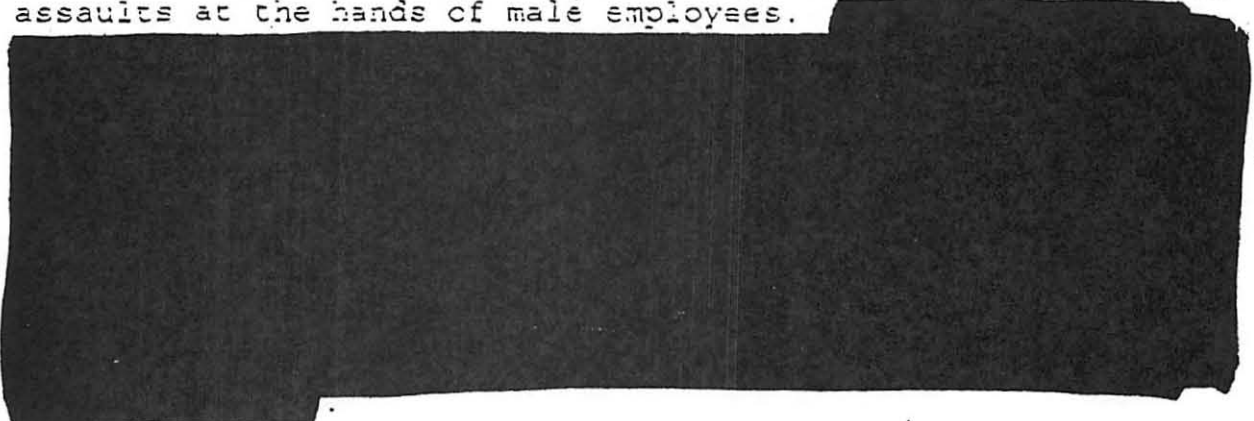
Allen D. Parr v. U.S., TH 94-9-C, S.D. Ind., USP Terre Haute

In this FTCA case, the Magistrate found in favor of plaintiff for nominal damages, \$10, based on missing property during mass shakedown. Despite the fact that there was no confiscation form, the Magistrate found that USP Terre Haute staff converted the property based on the fact the same property had been confiscated on other occasions.

UPDATE ON CASES, TRIALS OR HEARINGS, ETC. NOTED IN PRIOR REPORTS:

Amv Poirier v. U.S., 94-443; Katherine D. West-Wegner v. U.S., 94-440; and V.D.M. v. U.S., 94-431, E.D. Ky., FMC Lexington

These are the first in a series of FTCA suits prepared by the Yale Legal Assistance Program, in which female inmates claim officials at FMC Lexington failed to protect them from sexual assaults at the hands of male employees.



Isaiah Evans v. Woods, TH 89-40-C, S.D. Ind., USP Terre Haute

This Bivens case is scheduled for trial on May 15, 1995. The inmate alleges the officer used excessive force during an escort in the special housing unit.

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Burkhart v. Hahn, et al., 91-30264A, W.D. Tenn., FCI Memphis

This is a Bivens case that alleges failure to provide medical treatment and harassment by staff. The BOP defaulted on this case due to the fact that neither the Attorney General nor the BOP were ever served, thus no response was made to the complaint. Both motions for reconsideration filed by the Government were denied. ~~Amount of damages~~ has been set ~~to \$1 million~~, requiring the seven named defendants to be in court.

Wilson v. Bristol, et al., 93-3003-TU/BRO, W.D. Tenn, FCI Memphis

This is a Bivens case wherein the plaintiff alleges improper medical care including a cast being put on by another inmate, as opposed to medical staff. The Sixth Circuit dismissed the plaintiff's interlocutory appeal on the protective order against discovery in this case. ~~Amount of damages~~ has been set for ~~\$1 million~~.

Goggin v. U.S., 91-2735-MI/A, W.D. Tenn, FCI Memphis

We reported this FTCA medical malpractice award of \$55,000 in last month's report. Since then the Plaintiff has filed a motion to alter or amend the judgment with the District Court. Before the District Court ruled on the motion, the Plaintiff filed an appeal to the Sixth Circuit for an increased judgment. Plaintiff's complaint was for \$1 million.

Wood v. Hahn, et al., 3:95-CV-133, E.D. Va., FCI Petersburg

This Bivens action challenges restrictions of telephone privileges for unauthorized use of the telephone. Plaintiff asserts the sanction violated his right to protect property and curtailed access to his attorney. A motion to dismiss defendants in their individual capacity has been filed on behalf of the defendants due to improper service. We were advised by the AUSA on April 3, 1995, that Judge Spenser has issued an order dismissing, without prejudice, all defendants in their individual capacity.

REPRESENTATION NOT RECOMMENDED FOR STAFF: None

SIGNIFICANT FTCA CLAIMS:

T-MXR-94-587 Claude Adams, Reg. No. 02942-028, formerly an inmate at FCI Ashland, lost the eyesight in one eye as a result of glaucoma. Inmate alleges prescribed medications were delayed which caused infection. Inmate also alleges he was not seen for follow-up appointments as required. The claim seeks \$1 million in damages.

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T-SER-94-1159 Altheda Jenkins filed this claim regarding the alleged wrongful death of inmate Willie Braswell. The claim seeks \$3 million. The inmate was killed when he dropped a weight bar on his neck, crushing his windpipe.

SIGNIFICANT ADMINISTRATIVE REMEDIES: None.

New Litigation Cases by Institution and Type
Received During the Month of March 1995

	ALD	ASH	BUT	CUM	LEX	MAN	MRG	MIL	MEM	MLL	PET	SEY	THA	MXR	TOT
BIV	0	0	0	0	0	1	0	2	0	0	0	0	0	0	3
FTCA	0	0	0	0	0	0	1	2	1	0	0	0	0	0	4
HC	0	0	0	0	1	0	0	2	0	0	0	0	2	0	5
OTH	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1
TOT	1	0	0	0	1	1	1	6	1	0	0	0	2	0	13

New Litigation Cases by Institution and Type
Received Calendar Year to Date

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	ALD	ASH	BUT	CUM	LEX	MAN	MRG	MIL	MEM	MLL	PET	SEY	THA	MXR	TOT
BIV	0	0	0	0	1	4	1	7	0	0	2	0	0	0	15
FTCA	0	0	0	0	1	0	1	2	2	0	0	0	0	0	6
HC	0	2	0	0	1	0	1	3	0	0	0	0	2	0	9
OTH	1	0	0	0	0	0	1	1	0	0	0	0	0	0	3
TOT	1	2	0	0	3	4	4	13	2	0	2	0	2	0	33