



U.S. Department of Justice

Federal Bureau of Prisons

South Central Regional Office

Dallas, Texas 75219

November 8, 1999

MEMORANDUM FOR CHRISTOPHER ERLEWINE
ASSISTANT DIRECTOR/GENERAL COUNSEL

FROM: Michael D. Hood, Regional Counsel

SUBJECT: Monthly Report - October 1999

ADMINISTRATIVE REMEDIES												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	184	226	225	202	199	245	187	211	175	185		
ANSWERED	117	95	165	161	135	152	164	140	162	134		

TORT CLAIMS												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
PENDING	211	201	192	183	192	198	208	206	217	219		
RECEIVED	48	59	51	57	66	70	54	89	70	66		
ANSWERED	62	67	57	54	51	63	56	68	68	73		
PENDING	197	193	186	186	207	205	206	227	219	212		
OVER SIX MO	1	1	1	1	1	0	0	0	0	0		

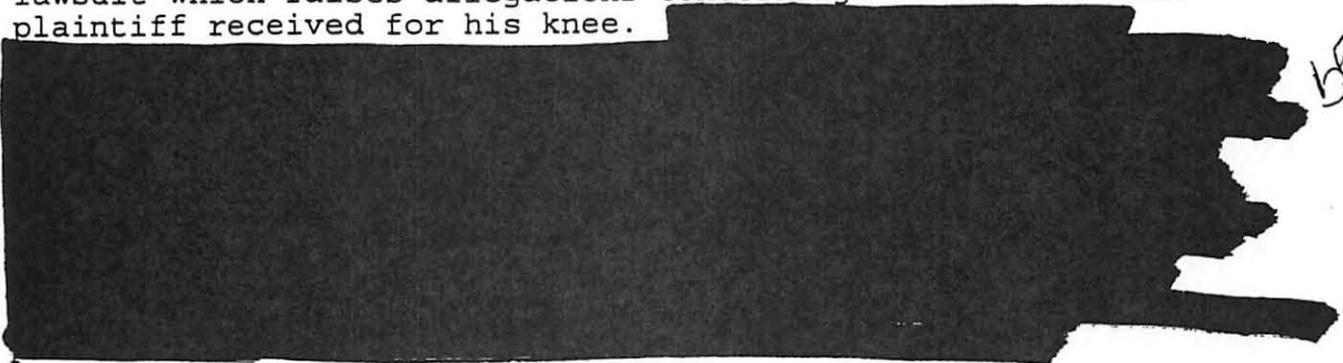
FOI/PRIVACY												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
PENDING	11	18	13	15	12	15	21	21	21	24		
RECEIVED	49	39	60	45	38	39	55	47	45	54		
ANSWERED	42	44	58	48	35	33	55	47	42	51		
PENDING	18	13	15	12	15	21	21	21	24	27		
OVER 20 DAYS	4	2	1	2	1	3	4	0	0	0		

LITIGATION												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
CASES RECD	14	9	14	17	12	19	6	24	6	7		
CASES CLOSED	9	8	7	6	6	14	7	12	7	8		
HABEAS CORPUS	13	6	11	12	8	12	4	19	5	2		
BIVENS	0	3	2	4	2	2	1	4	1	4		
FTCA	0	0	1	1	2	2	0	1	0	1		
OTHER	1	0	0	0	0	3	1	0	0	0		
LIT REPORTS	8	12	7	8	13	20	10	11	16	8		
HEARINGS/ TRIALS	1	2	2	4	1	6	3	1	2	1		
SETTLEMENTS/ AWARDS	1	0	0	1	0	0	0	0	0	0		

CASES WITH HEARINGS OR TRIALS

FMC FORT WORTH

Fuller v. U.S.A., (FTCA/N.D.Tex.). A settlement conference was held on October 27, 1999. The plaintiff's attorneys, AUSA Wayne Hughes, Deputy Civil Division Chief Mattie Compton, and Al Munguia were in attendance. This is a medical malpractice lawsuit which raises allegations concerning medical care the plaintiff received for his knee.



CASES WITH SETTLEMENTS OR AWARDS

a. Adverse judgments

See Significant Cases heading.

b. Tort Claim settlements

None

c. Other settlements

None

SIGNIFICANT CASES

FCI El Reno and FTC Oklahoma City

3621(e) Cases. The U.S. District Court for the Western District of Oklahoma has held in Lawton v. Guzik (FTC Oklahoma City), Clark v. Fleming (FCI El Reno), and Schardein v. Fleming (FCI El Reno) that the two-point firearm sentence enhancement provisions of P.S. 5162.04 are contrary to the 10th Circuit Court of Appeals' holding in Fristoe, and the inmates in these cases must be given reconsideration for early release.

We will reconsider each inmate's eligibility for a 3621(e) release and report back to the court. We plan on pursuing appeals in Clark and Schardein. Lawton will not be appealed because this inmate has a January 2000 mandatory release date (without the benefit of a 3621(e) early release). By the time Lawton reaches the court of appeals, inmate Lawton will have been mandatorily released, and there will not be a justiciable issue.

We objected to a Magistrate's Report and Recommendation issued in Baker v. Fleming (FCI El Reno). Here, the Magistrate found that P.S. 5162.04 was an impermissible construction of 3621(e) and contrary to Fristoe. The objections focused upon the nature of the Director's discretion while distinguishing the case from Fristoe. The objections also requested that the case be stayed pending a ruling from the 10th Circuit Court of Appeals in a consolidated group of USP Leavenworth cases pending before the appellate court which raise the same issues. Due to the strength of the objections filed in the case, the District Court found the issue to be "an extremely close one" and stayed the case pending a ruling from the appellate court in the USP Leavenworth cases.

SIGNIFICANT TORT CLAIMS

Smith. Inmate [REDACTED], a mental health patient at FMC Carswell, alleges personal injury. She claims that she was given psychotropic medication which caused her to become ill and be placed in a contract hospital. She is claiming damages in the amount of \$3,500.00. (T-SCR-99-477)

b7C

Monroe. [REDACTED], an inmate at FMC Carswell, alleges that a delay in providing a treatment plan regarding a kidney transplant and a delay in reevaluating her classification so that she could receive a medical furlough resulted in irreparable damage to her health. She is claiming damages in the amount of \$140,000.00. (T-BOP-99-140)

Furnish. FMC Carswell inmate [REDACTED] filed a tort claim with the NERO through an attorney alleging medical malpractice and deficiency due to a Stage IV Carcinoma of the Larynx. Inmate [REDACTED] was originally at FCI Danbury when she told staff that she had a sore throat. Subsequently, she was sent to FCI Dublin, where she had a sore throat and a growing mass on the right side of her neck. A biopsy was performed at FCI Dublin and it was determined that she should be treated at FMC Carswell. She had surgery in October 1998, and remains at FMC Carswell. FMC Carswell will investigate and formulate a response for the NERO. The inmate is claiming \$5,000,000.00 in damages. (T-NER-99-492) b7C

Jackson. FCI El Reno inmate [REDACTED] has filed a tort claim alleging a personal injury was caused when a roof fell on him on May 3, 1999. That day, a tornado hit FCI El Reno and caused significant damage to a housing unit. The claimant is not represented by counsel in this \$250,000 claim. The claimant also alleges inadequate medical care. (T-SCR-99-467)

Cline. A conditional settlement offer of \$12,750 was made by the government and accepted by claimant [REDACTED]. As previously reported, this tort claim involves a car accident with an FCI El Reno staff member. OGC approval of the settlement is pending. (T-SCR-98-357)

USAA. USAA Casualty Insurance Company submitted a tort claim on behalf of their client for the sum of \$1,656.06 due to the negligence of a staff member from FCI Three Rivers. An investigation of the tort claim revealed that a staff member was negligent when they backed into a civilian vehicle in traffic. A \$1,656.06 payment has been mailed to the insurance company. (T-SCR-99-314)

SIGNIFICANT ADMINISTRATIVE REMEDIES

Kuban. FCI Three Rivers inmate [REDACTED] filed a request for administrative remedy contesting the ban on sexually explicit materials. Inmate [REDACTED] alleges his First Amendment rights were violated by the BOP and Congress with the enactment of Public Law 105-227. Inmate [REDACTED] stated that the purpose of his BP-9 was to exhaust his administrative remedies; he did not request relief.

Kimbrough. FMC Fort Worth inmate [REDACTED] filed an administrative remedy request appealing the denial of a

publication based on our recent policy change regarding the implementation of the Ensign Amendment

UPCOMING TRIALS OR HEARINGS

FMC CARSWELL

We have submitted a request for a Motion for Commitment Hearing pursuant to 18 U.S.C. Section 4245 concerning inmate [REDACTED]. We have asked for an expedited hearing because she has a December 1999 release date. b7C

FCI EL RENO

United States v. Lonnie Troy. A telephone conference call is scheduled for November 9, 1999, at 4:00 p.m., with United States District Judge Philip Pro (District of Nevada). Judge Pro had ordered that an inmate receive jail credit toward the service of his federal sentence for time credited toward his California state sentence. A copy of the inmate's California sentence computation will be provided to Judge Pro to substantiate that the inmate is not entitled to "double credit", in accordance with § 3585(b).

FTC Oklahoma City

Trial in Trentadue v. United States was set to commence on November 8, 1999. However, it has been indefinitely postponed pending interlocutory appeal to the 10th Circuit Court of Appeals by the three remaining individual defendants.

MEDICAL MALPRACTICE

LITIGATION

See Cases with Hearings heading.

TORT CLAIMS

See Significant Tort Claims heading.

ENSIGN AMENDMENT

See Administrative Remedies heading.

LITIGATION

None

TORT CLAIMS

None

RELIGIOUS FREEDOM RESTORATION ACT

LITIGATION

None

TORT CLAIMS

None

PRISON LITIGATION REFORM ACT ORDERS

None

SITUATIONS OF INTEREST

FMC CARSWELL

FMC Carswell achieved accreditation by the Joint Commission on the Accreditation of Healthcare Organizations with a score of 90.

FCI FORREST CITY

Inmate [REDACTED] has filed a complaint with the Architectural and Transportation Barriers Compliance Board alleging FCI Forrest City's physical plant has (i) a ramp into the food service area without handrails, (ii) no elevator in the recreation building, and (iii) the ramps (inclines) that are too steep. As previously reported, inmate [REDACTED] has filed a lawsuit which raises similar allegations. Action has been taken to correct the ramp in the food service area. b7c

FDC HOUSTON

On October 15, 1999, FDC Houston was dedicated. Among the dignitaries was Chief Judge George Kazen of the United States District Court for the Southern District of Texas. Following the ceremony, legal staff gave Chief Judge Kazen a well-received tour of the institution.

On October 19, 1999, 11 staff members of the local Federal Public Defender's Office toured FDC Houston. The tour group consisted of attorneys, investigators, and several members of the support staff. Several FDC Houston procedures were discussed and no

significant concerns were raised.

On October 25, 1999, FDC Houston received its first inmate, a self-surrender for the work cadre. The incarceration of pretrial inmates is anticipated to begin within approximately 30 days.

THREE RIVERS

AUSA Kurt Didier, AUSA Larry Ludka, and Civil Division Chief Keith Wyatt toured the institution on October 27, 1999.

CRIMINAL MATTERS AND PROSECUTIONS

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. Inmate Esparza-Lopez has been indicted in the United States District Court for the Eastern District of Arkansas for violating 18 U.S.C. §§ 111, 3013, 3571 and 1114.

FTC OKLAHOMA CITY

On November 3, 1999, a federal grand jury returned an 11-count indictment against a former FTC Correctional Counselor, Breavess McBride, for violating 18 U.S.C. §§ 2241(1), 2244(a)(2) and 2243(b). Previously, the defendant was offered a plea bargain, and he accepted a plea of 3 years incarceration for his acts. Due to the plea, the grand jury proceedings were halted. However, at a subsequent hearing, the defendant disputed the facts of the case and Judge Robin Cauthron rejected the plea agreement. Therefore, the grand jury proceedings resumed, resulting in the indictment.

PERSONAL ISSUES

[REDACTED]

[REDACTED]

ble



U.S. Department of Justice

Federal Bureau of Prisons

South Central Regional Office

Dallas, Texas 75219

December 8, 1999

11/99

Med Mal

MEMORANDUM FOR CHRISTOPHER ERLEWINE
ASSISTANT DIRECTOR/GENERAL COUNSEL

FROM: Michael D. Hood, Regional Counsel

O R F R A

SUBJECT: Monthly Report - November 1999

ADMINISTRATIVE REMEDIES												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	184	226	225	202	199	245	187	211	175	185	219	
ANSWERED	117	95	165	161	135	152	164	140	162	134	119	

TORT CLAIMS												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
PENDING	211	201	192	183	192	198	208	206	217	219	212	
RECEIVED	48	59	51	57	66	70	54	89	70	66	77	
ANSWERED	62	67	57	54	51	63	56	68	68	73	59	
PENDING	197	193	186	186	207	205	206	227	219	212	230	
OVER SIX MO	1	1	1	1	1	0	0	0	0	0	0	

FOI/PRIVACY												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
PENDING	11	18	13	15	12	15	21	21	21	24	27	
RECEIVED	49	39	60	45	38	39	55	47	45	54	30	
ANSWERED	42	44	58	48	35	33	55	47	42	51	43	
PENDING	18	13	15	12	15	21	21	21	24	27	14	
OVER 20 DAYS	4	2	1	2	1	3	4	0	0	0	0	

LITIGATION												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
CASES RECD	14	9	14	17	12	19	6	24	6	7	10	
CASES CLOSED	9	8	7	6	6	14	7	12	7	8	13	
HABEAS CORPUS	13	6	11	12	8	12	4	19	5	2	5	
BIVENS	0	3	2	4	2	2	1	4	1	4	3	
FTCA	0	0	1	1	2	2	0	1	0	1	2	
OTHER	1	0	0	0	0	3	1	0	0	0	0	
LIT REPORTS	8	12	7	8	13	20	10	11	16	8	13	
HEARINGS/ TRIALS	1	2	2	4	1	6	3	1	2	1	2	
SETTLEMENTS/ AWARDS	1	0	0	1	0	0	0	0	0	0	0	

CASES WITH HEARINGS OR TRIALS

FMC CARSWELL

U.S.A. v. Sonia Williams. There was a mental health commitment hearing pursuant to 18 U.S.C. 4245(d) regarding inmate Sonia Williams on November 10, 1999. After consideration, a 4245 commitment was ordered by the court.

FCI Forrest City

King v. Snyder. A hearing was held on November 24, 1999, in this FCI Forrest City case. Inmate King asserts that he was improperly denied early release pursuant to 18 U.S.C. 3621(e) due to his Felon in Possession of a Firearm conviction. At the hearing, we argued that the petitioner's early release ineligibility is consistent with 18 U.S.C. 3621(e). A ruling was not issued at the hearing, and we await further word from the court.

CASES WITH SETTLEMENTS OR AWARDS

a. Adverse judgments

None

b. Tort Claim settlements

None

c. Other settlements

None

SIGNIFICANT CASES

FCI Bastrop

Martinez v. F.C.I. Bastrop Medical Department. In this case, the plaintiff suffers from herniation of a spinal disc and seeks an order from the court directing that the BOP give him further medical evaluation. The contract orthopedist recommended surgery as a possible option. However, the BOP decided against surgery as it was not medically necessary. Originally, the case was filed as a habeas petition that was subsequently dismissed sua sponte because it sought relief outside the scope of the petition. The plaintiff has now pled a Bivens complaint, or at least the court has chosen to treat it as such. However, the plaintiff still has not requested monetary relief. The U.S. Attorney's Office plans to convert the case to an FTCA action and seek summary judgment on the grounds that there is no triable issue of negligence and the inmate has not exhausted administrative remedies.

Schrader v. Sandoval. We received a favorable opinion from the 5th Circuit Court of Appeals in this case. When this Bivens suit was originally filed, the U.S. Attorney's Office moved to substitute the U.S.A. as the defendant on the ground that immunity attached so long as the defendant was in the scope of his employment and involved in rendering medical services. The district court denied the motion on the ground that 42 U.S.C. 233 only applies to simple negligence cases under FTCA, not Bivens actions. We appealed the case.

On appeal, the district court was reversed. The appellate court found that a P.H.S. officer accused of assault and battery in violation of the Eighth Amendment, due to the manner in which he conducted a rectal examination, is immune from suit under 42 U.S.C. 233. This appeal has been pending for over a year. The plaintiff has never filed an administrative tort claim, and the statute of limitations has run. Thus, we are now able to move for a dismissal for lack of subject-matter jurisdiction.

The only reported case law interpreting 18 U.S.C. 233 is a district court decision from Michigan. Although the appellate

damages. It appears his negatives were confiscated and misplaced. Hawkins has already filed a Bivens action alleging conspiracy and neglect. (T-SCR-99-527)

Barnes. FCI Texarkana inmate [REDACTED] filed a \$5,000,000 claim alleging he was placed in SHU after surgery, denied medical treatment, and suffered an infection as a result. The inmate returned from surgery at a local hospital, and he was placed in SHU pending investigation of possible inappropriate conduct during his stay at the hospital. SHU was filled to capacity and mattresses were brought in to assist in the overflow. The inmate was assigned to a mattress on the floor where he remained for one night. Upon his release to the general population the following day, he did not report to sick call; therefore, he was not monitored. By the time the inmate reported to sick call, he had wrapped toilet tissue around his incision and an infection had set in. He has been treated and the infection has healed. An investigation regarding this claim continues. (T-BOP-99-211) DTC

Kennard. FMC Carswell inmate [REDACTED] alleges that she has been denied adequate medical care for her right leg, which was injured in a 1997 car wreck. She further alleges that since her incarceration, she has attempted to get medical treatment for her leg, and proper medical care has not been given. She states that she experiences numbness from her knee to her hip. The claimant is alleging \$10,000 in damages. (T-SCR-99-478)

SIGNIFICANT ADMINISTRATIVE REMEDIES

Flores. FCI Bastrop inmate [REDACTED] who has been in SHU for five weeks, has filed a BP-9 complaining that triple-celling in SHU violates his Eighth Amendment rights. FCI Bastrop has had a number of BP-8s on that issue, but this is the first BP-9 filed recently. The SHU at FCI Bastrop has been overcrowded since early August 1999, when disruptive behavior between rival gangs resulted in the SHU placement of a large number of inmates. Many of the cells are triple-celled. This situation will continue for the foreseeable future.

Ruddock. USP Beaumont inmate [REDACTED] filed a BP-9 challenging the BOP's policy which reinstated the Ensign Amendment and resulted in the rejection of sexually explicit material addressed to him.

Gadson. FMC Fort Worth inmate [REDACTED] filed a BP-9 complaining of religious discrimination against the Nation of Islam.

UPCOMING TRIALS OR HEARINGS

FMC CARSWELL

U.S.A. v. Nordell. A mental health commitment hearing pursuant to 18 U.S.C. 4246 regarding inmate [REDACTED] will be held on December 9, 1999.

MEDICAL MALPRACTICE

LITIGATION

See Significant Cases heading.

TORT CLAIMS

See Significant Tort Claims heading.

ENSIGN AMENDMENT

See Significant Administrative Remedies heading.

LITIGATION

None

TORT CLAIMS

None

RELIGIOUS FREEDOM RESTORATION ACT

LITIGATION

None

TORT CLAIMS

None

PRISON LITIGATION REFORM ACT ORDERS

None

SITUATIONS OF INTEREST

FDC HOUSTON

U.S. Magistrate Marcia Crone (SD/TX) and four members of her staff toured FDC Houston on November 10, 1999. They were very interested in all parts of the institution and asked several

b7c

questions. Magistrate Crone subsequently stated that she believes that many types of prison confinement complaints she typically receives will be alleviated by the activation of FDC Houston.

FDC Houston began to receive pretrial inmates on November 16, 1999, and is expected to have one pretrial unit, holding 124 inmates, filled by the end of the month. The activation of a pretrial unit occurred earlier than originally planned. This early activation was caused by a defendant receiving a reduced sentence due to the conditions in a U.S. Marshals Service contract facility. Currently FDC Houston's work cadre consists of 17 inmates.

On November 16, 1999, four staff members from the local Federal Public Defender's office toured FDC Houston. This tour was provided for those staff members who were unable to participate in a previous tour.

U.S. Marshal Hiram A. Contreras (SD/TX) and AUSA Fred Dailey visited FDC Houston on November 23, 1999. The purpose of their visit was to discuss implementation of the Texas Exile Program, whereby local law enforcement agencies are encouraged to present firearms violations for federal prosecution. Primary discussion concerned the ability of FDC Houston to receive newly arrested persons directly from local law enforcement agencies after their consultations with the ATF.

CRIMINAL MATTERS AND PROSECUTIONS

FCI BEAUMONT (LOW)

The trial of inmate Alfredo Loera-Rosales is currently set to begin on December 13, 1999. He is being prosecuted for assaulting his Case Manager on June 12, 1999. It is anticipated that inmate Loera-Rosales will claim that he was experiencing a seizure when the assault occurred and that he cannot be held responsible for his conduct.

FCI BEAUMONT (MEDIUM)

On October 5, 1999, inmate Andrew Jackson filed a motion to withdraw his guilty plea in his pending prosecution for assaulting teacher Gerardo Monroy on June 12, 1999. The motion was pending as of November 23, 1999.

FCI BIG SPRING

In United States v. Garcia-Lopez, et al., all five defendants pleaded guilty to one count of rioting. This prosecution arises out of the May 1999 riot. Their sentencings are pending.

According to the AUSA, the defendants will have a sentencing guideline range of 31 to 41 months, and a recommendation will be made to have the sentences run consecutively to any current term of confinement.

The 12 inmates that were involved in the June 1999 disturbance have been referred to the USAO in Lubbock, Texas, for prosecution on assault and rioting charges. The USAO indicates that indictments will be sought from the grand jury next month.

FMC FORT WORTH

On November 17, 1999, a correctional officer was arrested by the Office of Inspector General and charged with Sexual Abuse of a Ward. The alleged misconduct occurred approximately 2 ½ years ago during the officer's tenure at FMC Carswell. The officer is on home duty status and wears a monitoring device. No trial date has been set.

FTC OKLAHOMA CITY

The prosecution of a former correctional officer is scheduled for trial on January 10, 2000. The former officer and his court-appointed attorney examined selected areas of the institution in preparation of their defense. AUSA Teresa Black and OIG agent Ron Holland were also present. As previously reported, the former officer has been indicted for committing aggravated and abusive sexual abuse, and violating 18 U.S.C. §§ 2241(1), 2244(a)(2) and 2243(b).

FCI SEAGOVILLE

Inmate Scott Burgess' trial began on December 1, 1999. He is being prosecuted for assaulting federal officers (BOP and U.S. Marshals Service) and engaging in disruptive behavior. As previously reported, inmate Scott Burgess also assaulted his Public Defender several months ago. Several staff members have been subpoenaed to appear at the trial, which is proceeding as of this date.

FCI THREE RIVERS

Inmate Jesus Ocerguera-Calderon will be referred to the grand jury this month for assaulting the DHO in November of 1999.

Inmate Deibi Parra-Lopez will be referred to the grand jury this month for assaulting a correctional officer in October of 1999.

PERSONAL ISSUES

[REDACTED]

ble



U.S. Department of Justice

Federal Bureau of Prisons

South Central Regional Office

Dallas, Texas 75219

January 10, 2000

MEMORANDUM FOR CHRISTOPHER ERLEWINE
ASSISTANT DIRECTOR/GENERAL COUNSEL

FROM: Michael D. Hood, Regional Counsel

SUBJECT: Monthly Report - December 1999

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

Table with 13 columns (JAN-DEC) and 5 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												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
CASES RECD	14	9	14	17	12	19	6	24	6	7	10	18
CASES CLOSED	9	8	7	6	6	14	7	12	7	8	13	16
HABEAS CORPUS	13	6	11	12	8	12	4	19	5	2	5	13
BIVENS	0	3	2	4	2	2	1	4	1	4	3	3
FTCA	0	0	1	1	2	2	0	1	0	1	2	1
OTHER	1	0	0	0	0	3	1	0	0	0	0	1
LIT REPORTS	8	12	7	8	13	20	10	11	16	8	13	9
HEARINGS/ TRIALS	1	2	2	4	1	6	3	1	2	1	2	1
SETTLEMENTS/ AWARDS	1	0	0	1	0	0	0	0	0	0	0	1

CASES WITH HEARINGS OR TRIALS

FMC CARSWELL

U.S.A. v. Karen Nordell. A Mental Health Commitment Hearing regarding inmate Karen Nordell was held before U.S. Magistrate Bleil pursuant to 18 U.S.C. 4246. After consideration, an order committing inmate Nordell was signed.

Also see Medical Malpractice heading.

CASES WITH SETTLEMENTS OR AWARDS

a. Adverse judgments

None

b. Tort Claim settlements

Cline. The previously reported FCI El Reno Cline administrative claim was settled for \$12,750.00. (T-SCR-98-357)

c. Other settlements

None

SIGNIFICANT CASES

FMC CARSWELL

Lillie Schmidt v. United States. On December 10, 1999, inmate Schmidt wrote a letter to U.S. District Judge McBryde complaining about her medical treatment at FMC Carswell. She complains that she injured her hip and has been given inadequate medical care. On December 17, 1999, Judge McBryde ordered that the correspondence be treated as a habeas petition and the United States respond within ten days. A response has been filed and is currently pending.

FCI Forrest City

King v. Morrison. On December 21, 1999, U.S. Magistrate Henry L. Jones entered an adverse Report and Recommendation in this RDAP case. As previously reported, the petitioner asserts that he has been improperly denied early release under P.S. 5162.02 due to his 18 U.S.C. 922(g) conviction. The Magistrate found that Martin v. Gerlinski controls in this case, and he recommended that habeas relief be granted. We intend on objecting on the grounds that Martin is inapplicable and 18 U.S.C. 922(g) is not a nonviolent offense.

See Medical Malpractice heading.

SIGNIFICANT TORT CLAIMS

Haghighat. FMC Fort Worth inmate [REDACTED] filed an administrative claim which alleges negligent and wrongful hernia surgery was performed on him. He claims the surgery caused serious, chronic and substantial pain. He asserts that he has suffered permanent disabilities, including erectile dysfunction. He claims government liability in the amount of \$250,000 for personal injury. (T-SCR-99-597)

b7c

SIGNIFICANT ADMINISTRATIVE REMEDIES

None

UPCOMING TRIALS OR HEARINGS

FMC FORT WORTH

Doe v. Habib. A settlement conference is slated for January 13, 2000, and the trial is scheduled to begin the week of January 17, 2000. As previously reported, this Bivens case involves claims that a WITSEC inmate's identity was improperly disclosed by a staff member.

MEDICAL MALPRACTICE

LITIGATION

FCI EL RENO

Armando Jose Torres v. Bureau of Prisons, et al. There was a non-jury trial before U.S. Magistrate Bana Roberts in this FTCA case. In his suit, the plaintiff claimed he received inadequate and/or negligent medical care during his air transportation by the U. S. Marshals and while housed at FCI El Reno. Previously, the plaintiff reached a settlement with a local, private physician, Dr. Clinton Strong. However, the claims against the government remained.

It was determined that proper medical treatment was provided by Bureau staff. The plaintiff was examined on several occasions after he was delivered to FCI El Reno by the U.S. Marshals. After undergoing several diagnostic tests at outside hospitals, it was determined that the plaintiff suffered permanent injury to his bladder, bowel and sexual function.

At trial, the plaintiff called several medical experts who testified that the plaintiff received negligent medical care at FCI El Reno. Magistrate Roberts ruled that the FTCA explicitly excludes the federal government from liability for the actions of any contractor and this exception is a limitation upon the FTCA's waiver of sovereign immunity. In conclusion, Magistrate Roberts opined that credible evidence reflected that the plaintiff's medical history was accurately recorded and he was provided proper medical care. The medical care and treatment was consistent with the national standard of care for a physician assistant.

Also See Significant Cases heading.

TORT CLAIMS

See Significant Tort Claims heading.

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

FDC HOUSTON

Texas Attorney General John Cornyn held a press conference on December 7, 1999, regarding the Texas Exile initiative. This program intends to encourage local law enforcement to present specified firearms violations for federal prosecution. Mervyn Mosbacker, United States Attorney for the Southern District of Texas, was also in attendance and spoke in support of the program. Efforts continue to be made to explore possible ways in which FDC Houston would be able to receive direct commitment of prisoners charged with such offenses in the manner requested by the U.S. Marshal and U.S. Attorney.

FCI Three Rivers

On December 17, 1999, Julie Gerardi, Paralegal Specialist, was honored by the U.S. Attorney's Office for her efforts which led to a successful result in George Rodriguez v. United States. Ms. Gerardi was only one of three individuals recognized for work in

civil cases.

CRIMINAL MATTERS AND PROSECUTIONS

USP BEAUMONT

On December 16, 1999, inmates [REDACTED] were observed walking quickly out of cell 125. The inmates were ordered to the floor. As staff members restrained [REDACTED] was observed walking out of cell 125, bleeding from the face and chest, and holding a homemade weapon. Staff members ordered inmate [REDACTED] to drop the weapon. Inmate [REDACTED] took several steps and collapsed. Inmate Brown was restrained and carried, via stretcher, to Health Services. Inmate [REDACTED] was then transported to an outside hospital via ambulance. At 7:06 p.m., inmate [REDACTED] was pronounced dead. Inmates [REDACTED]

b7C

[REDACTED] were placed in Administrative Detention. An indictment is pending.

FCI Beaumont (Low)

Inmate Alfredo Loera-Rosales is due to be prosecuted on January 18, 2000, for the June 1999 assault on his case manager.

FCI BIG SPRING

United States v. Garcia-Lopez, et al. In this prosecution arising out of the May 1999 disturbance, all five defendants pleaded guilty to one count of Rioting. Sentencings are pending. According to the AUSA, the defendants will have a guideline range of thirty-one (31) to forty-one (41) months and a recommendation will be made to have the sentences run consecutively to any current term of confinement.

The twelve inmates that were involved in the June 1999 disturbance have been referred to the U.S. Attorney's Office for prosecution on assault and rioting charges. The AUSA indicates that indictments will be sought from the grand jury this month.

FPC BRYAN

The Cook Supervisor who was acquitted on criminal charges of Sexual Abuse of a Ward has returned to duty at FPC Bryan. A determination has been made that administrative action is not supportable. He will work in the mail room, where he has minimal inmate contact, until he transfers to FDC Houston this month.

Inquiry continues into possible sexual abuse committed by three other individuals. One correctional officer is on home duty status, and two others have resigned their Bureau employment. Grand Jury testimony has been presented regarding allegations against the officer on home duty and one of the former officers. We await word from the Grand Jury regarding possible indictments. There has been no word as to what, if any, action will be taken with respect to the allegations against the other former officer.

FCI EL RENO

Inmates James Penick and Darrell Hudec were indicted for attempted escape in the U.S. District Court for the Western District of Oklahoma.

We have received word that several other cases will be prosecuted by the U.S. Attorney's Office. Inmates Sosipather Leonnelli and Arnalfo Gonzales-Garcia will be prosecuted for assault on staff; inmates Ricardo Enriquez and Anthony Salome will be prosecuted for possession of narcotics; and inmate Larry Davis will be prosecuted for escape from the satellite camp.

FTC OKLAHOMA CITY

On November 12, 1999, inmate Hernandez pleaded guilty to assault on a federal officer and is now awaiting sentencing. The prosecution arises out of an assault the inmate committed on August 26, 1999, when he hit a unit officer with a food service tray.

A March 2000 trial date has been set in former correctional counselor Breavess McBride's prosecution for sexually abusing inmates. As previously reported, the former counselor has been indicted for violating 18 U.S.C. §§ 2241(1), 2244(a)(2) and 2243(b).

FCI SEAGOVILLE

After a trial last month, inmate Scott Burgess was found guilty of several charges, including assaulting a U.S. Marshal. His sentencing will probably occur soon.

FCI THREE RIVERS

On December 13, 1999, six inmates were indicted in four separate cases. Inmates Javier Lujan-Perez and Porfirio Saldana-Ventura were indicted by the grand jury for assault. These inmates were observed assaulting another inmate with a lock tied to a belt.

In a separate incident, inmates Karlos Garza and Rolando Montoya were indicted for assault. These inmates were observed assaulting another inmate with their fists and a lock attached to a belt. Inmate Jesus Ocegüera-Caldero was indicted by the grand jury for assaulting a staff member. This inmate spit on the DHO during a hearing. Inmate Deibi Parra-Lopez was also indicted for assaulting a staff member. This inmate became upset and assaulted a teacher because he did not want to attend class.

PERSONAL ISSUES

[REDACTED]

[REDACTED]

[REDACTED]

Scheduled Annual/Sick Leave:

b6

[REDACTED]	-	January 13	Annual Leave
[REDACTED]	-	January 18-19	Annual Leave
[REDACTED]	-	February 9 & 14-18	Annual Leave

Other Scheduled Absences:

[REDACTED]	-	January 8-12	ACA Winter Conference
[REDACTED]	-	January 8-12	ACA Winter Conference
[REDACTED]	-	January 10-13	Civil/Criminal Litigation & Torts LawPak Training
[REDACTED]	-	January 10-14	Annual Refresher Training
[REDACTED]	-	January 31-	Annual Refresher