



**U.S. Department of Justice**

*Federal Bureau of Prisons*

*South Central Regional Office*

*Dallas, Texas 75219*

January 10, 2002

**MEMORANDUM FOR CHRISTOPHER ERLEWINE  
ASSISTANT DIRECTOR/GENERAL COUNSEL**

**FROM:** Michael D. Hood, Regional Counsel

**SUBJECT:** Monthly Report - December 2001

**ADMINISTRATIVE REMEDIES**

	JA N	FE B	MA R	AP R	MA Y	JU N	JU L	AU G	SE P	OC T	NO V	DE C
<b>RECEIVED</b>	198	175	218	208	238	265	233	240	250	342	259	225
<b>ANSWERED</b>	122	121	135	150	148	167	206	150	165	185	202	167

**TORT CLAIMS**

	JA N	FE B	MA R	AP R	MA Y	JU N	JU L	AU G	SE P	OC T	NO V	DE C
<b>PENDING</b>	225	227	231	239	260	252	264	255	272	256	281	272
<b>RECEIVED</b>	72	49	86	72	69	53	82	81	60	95	57	61
<b>ANSWERED</b>	80	48	69	61	68	48	82	60	69	63	61	76
<b>PENDING OVER SIX MO</b>	217	228	248	250	261	257	264	276	263	269	277	257
	0	0	0	0	0	0	0	0	0	0	2	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
<b>PENDING</b>	43	57	45	57	33	35	26	46	65	84	43	42
<b>RECEIVED</b>	102	56	89	71	80	72	77	71	88	29	32	61
<b>ANSWERED</b>	95	68	77	95	78	81	57	52	69	70	33	37
<b>PENDING OVER 20 DAYS</b>	57	45	57	33	35	26	46	65	84	43	42	66
	3	3	5	1	2	0	1	5	5	15	11	14

## 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	17	11	21	19	10	10	10	14	17	14	16	8
CASES CLOSED	5	5	12	17	12	9	7	14	15	11	9	8
HABEAS CORPUS	11	4	13	8	3	5	6	6	6	8	9	5
BIVENS	4	5	4	9	4	1	1	5	8	2	5	3
FTCA	1	1	3	1	3	3	1	2	1	2	2	0
OTHER	1	1	1	1	0	1	2	1	2	2	0	0
LIT REPORTS	12	15	16	19	16	10	9	14	8	6	13	12
HEARINGS/ TRIALS	1	0	1	2	0	0	1	1	0	1	2	1
SETTLEMENTS/ AWARDS	0	0	0	0	0	2	0	1	0	0	0	0

CASES WITH HEARINGS OR TRIALS**FMC CARSWELL**

On December 8, 2001, an 18 U.S.C. § 4246 commitment hearing was held regarding inmate Frances DeGideo, a pretrial inmate currently committed to FMC Carswell under 18 U.S.C. § 4241(d). The court found that inmate DeGideo was suffering from a mental disease or defect which would create a substantial risk of injury or property damage if she were to be released. Therefore, the court ordered her committed to the custody of the Attorney General for further treatment.

**SCRO**

On December 13, 2001, oral arguments were heard in the Garza wrongful death case before the 10<sup>th</sup> Circuit. The key issue involved whether the case is time barred because the claimants did not name the BOP in a timely manner.

CASES WITH SETTLEMENTS OR AWARDS**a. Adverse judgments**

In the Nasario Ortiz v. Marvin Morrison, 2:01CV00013 (ED/AR) case, an adverse Magistrate's Proposed Findings and Recommended Disposition was received. Inmate Ortiz filed a Bivens's action alleging inadequate medical care in violation of the Eighth Amendment. Plaintiff claims that the Clinical Director failed to approve his request for surgery, that the Warden, the Regional Director, and the National Inmate Appeals Administrator failed to grant his administrative remedies for surgery, and that the HSA failed to correct the Clinical Director's "negligent" behavior and approve his surgery. The Court found that genuine issues of material facts exist regarding whether the Clinical Director's actions were objectively reasonable, and whether she is entitled to qualified immunity. [REDACTED]

Albert Muick v. Edward Johnson, 4:00 CV0036HDV (ED/AR). The Magistrate Judge denied our Motion to Dismiss. The government argued that since the inmate's Bivens

complaint involves work-related injuries, the exclusive remedy is under the Inmate Accident Compensation Act. The court states that because the inmate alleged a "continuing course of unconstitutional conduct by the individual defendants" rather than the government, the Motion should be denied. An Objection is being filed.

**b. Tort Claim settlements**

None

**c. Other settlements**

None

**SIGNIFICANT CASES**

**FCI LA TUNA**

White v. Williamson, et al., No. EP-00-CV-218 (W.D. Tex.), No. 01-50404 (5<sup>th</sup> Cir.). On appeal from summary judgment in favor of the defendants, the 5th Cir. affirmed in part and vacated and remanded in part on December 5, 2001. In this Bivens action, the plaintiff alleged he was denied access to the courts when the defendants did not deliver his legal materials to him in a timely manner incident to his transfer from the La Tuna Satellite Camp to the main institution so that he could participate in RDAP. Plaintiff also alleged the defendants retaliated against him for litigating another Bivens complaint by forcing him to choose between completing RDAP or timely filing an appeal brief in yet another civil action. The district court granted summary judgment on behalf of the defendants on both claims.

On appeal by the plaintiff, the 5th Cir. affirmed the district court's judgment on the access to the courts claim, but vacated the judgment on the retaliation claim, remanding it to W.D. Tex. for further proceedings. Dallas CLC staff and the assigned AUSA are currently evaluating the potential viability of a renewed Motion for Summary Judgment.

**FTC OKLAHOMA CITY**

Roger Eugene Gresham v. U.S. Bureau of Prisons, et al., CIV-00-1932-L (W.D. Okla.). Plaintiff's action filed under the Federal Tort Claims Act and Bivens was dismissed for failure to state a claim. The Court granted the defendant's Motion to Dismiss and directed the Clerk of Court to note in docketing that this dismissal counts as one strike against plaintiff pursuant to 28 U.S.C. § 1915(g).

Leemon Lewis v. Marvin Morrison, et al., 2:00CV00028 (E.D. Ark.). Plaintiff, an inmate who was at FCI Forrest City from July 15, 1998, through August 28, 2000, alleges he has

been unlawfully classified as a sex offender despite never having been convicted of a sex offense. The plaintiff alleges BOP staff used information regarding a rape charge to which he pled to the lesser offense of Assault under the Alabama Youthful Offender Act, an adjudication that was under seal and should never have been released, and that the BOP's use of the information was in violation of the Privacy Act and his constitutional rights. Plaintiff further alleges that as a result of the erroneous classification, he has suffered emotional distress, is ineligible to receive a year off his sentence upon completion of the RDAP, and is ineligible for minimum security level institution housing or half-way house confinement. The District Court found a liberty interest in being labeled a sex offender and ruled that due process was required allowing a Bivens action to continue. In response to the Motion for Reconsideration, the Court dismissed the Bivens claim based on qualified immunity, stating there had been no 8<sup>th</sup> Circuit decision clearly establishing the law putting BOP officials on notice that their actions were unconstitutional.

**FCI SEAGOVILLE**

Michael Eugene Tasby v. Sam L. Pratt, No. 4:01-CV-0959-A (N.D. Tex.). Petitioner claims he has been improperly denied eligibility for sentence reduction under 18 U.S.C. § 3621(e)(2)(B) after an 18 U.S.C. § 924(c) count was vacated from his sentence.

**SIGNIFICANT TORT CLAIMS**

**FPC BRYAN**

Castillo and Newman. Two tort claims have been filed by counsel for former inmate [REDACTED] [REDACTED]. The claims revolve around the "sexual assault" of inmate [REDACTED] by an FPC Bryan staff member on December 23, 2000. The staff member, former Correctional Officer Stephen Gormly, entered a plea of guilty to one count of Sexual Abuse of a Ward, in violation of 18 U.S.C. 2243(b) in March 2001, and is currently awaiting sentencing. Each claim seeks \$850,000 in damages for a total of \$1.7 million. (TRT-SCR-2002-07627/Castillo & TRT-SCR-2002-07628/Newman)

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b7c

**SIGNIFICANT ADMINISTRATIVE REMEDIES**

None

**UPCOMING TRIALS OR HEARINGS**

None

**MEDICAL MALPRACTICE**

**LITIGATION**

**FMC CARSWELL**

Marietta Taylor v. Lucy Mallisham, No. 4:01-CV-1012-A (N.D. Tex.). Petitioner claims she has been denied proper psychiatric and medical care, causing her to attempt suicide on two occasions. She also claims she has been improperly placed in psychiatric seclusion. She seeks an order barring her pending transfer to a non-medical facility.

**TORT CLAIMS**

None

**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****CLC HOUSTON**

The construction of the CLC offices is complete and most of the office furniture has already been moved. Phone lines are being installed, and they are awaiting the

installation of the lines necessary for computer access. Installation of the office equipment will occur in the first part of January.

## CRIMINAL MATTERS AND PROSECUTIONS

### USP BEAUMONT

Inmate Daniel Lee Mellinger pled guilty to the charge of Possession of Illegal Contraband in the Eastern District of Texas. The conviction stems from inmate Mellinger being found with a homemade knife in the Food Service Department of the USP.

### USP POLLOCK

On December 14, 2001, inmate [REDACTED] informed SHU staff that USP Pollock had their first homicide. Inmate [REDACTED] was removed from the cell and staff found inmate John MacLeod on the floor, face up, with a blanket over him. Medical staff immediately began CPR, and the inmate was transported via ambulance to the local contract hospital. Inmate MacLeod was pronounced dead at 7:05 a.m. Autopsy results found that inmate MacLeod died as a result of asphyxiation due to ligature around the neck, with severe facial trauma. The FBI is investigating. b7c

Pamela Copeland, the defendant (visitor) who was arrested and charged under Title 18 USC 1791(a)1, Traffic in Contraband Articles, after she was found with 12 balloons of marijuana pled guilty as charged in the Western District of Louisiana on December 19, 2001. Sentencing is currently scheduled for March 21, 2002.

### FCI SEAGOVILLE

It is anticipated that SEA Correctional Officer Paula Young will be indicted in N.D. Tex. during the month of January. Miss Young has been on extended leave without pay since her arrest on July 3, 2001, for having forged signatures on the checks of at least one elderly person.

### FCI TEXARKANA

Inmate Martinez-Ortega entered a plea agreement for Possession of a Weapon in a Correctional Facility. He was indicted on July 10, 2001 and received an 18 month sentence.


Inmates Garcia-Quinones and Zepeda entered plea agreements for their role in a gang-related assault on various inmates on January 19, 2001. Inmate Garcia received a 48 month sentence. Zepeda has been released from federal custody. His indictment is

now being handled through the U. S. Attorney's Office in Laredo, Texas.

**PERSONAL ISSUES**


None

**Scheduled Annual/Sick Leave:**

 - January 10 & 11 - Annual Leave

**Other Scheduled Absences:**

 - January 8-11 - USP Pollock

 - January 14-18 - Regional Counsels Meeting

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