

BUREAU OF PRISONS - SOUTH CENTRAL REGION UNITED STATES GOVERNMENT

SR P.L. Statute

memorandum

DATE:

February 5, 1993

REPLY TO  
ATTN OF:

Michael D. Hood, Regional Counsel

SUBJECT:

Monthly Report - January 1, 1993 - January 31, 1993

TO:

Wallace H. Cheney, Assistant Director/General Counsel  
Central Office

ADMINISTRATIVE REMEDIES

|                   | DEC | JAN |
|-------------------|-----|-----|
| Received In Month | 107 | 104 |
| Answered In Month | 99  | 90  |

TORT CLAIMS

|                     | DEC | JAN |
|---------------------|-----|-----|
| Number Pending      | 245 | 228 |
| Number Received     | 46  | 70  |
| Number Answered     | 63  | 55  |
| Number Pending      | 228 | 243 |
| Number Over Six Mon | 0   | 0   |

FOI/PRIVACY

|                     | DEC | JAN |
|---------------------|-----|-----|
| Number Pending      | 19  | 15  |
| Number Received     | 28  | 24  |
| Number Answered     | 32  | 23  |
| Number Pending      | 15  | 16  |
| Number Over 30 Days | 0   | 2   |

LITIGATION

|                                     | DEC | JAN |
|-------------------------------------|-----|-----|
| New Cases Recd                      | 18  | 10  |
| Cases Closed                        | 28  | 1   |
| Habeas Corpus                       | 10  | 6   |
| Bivens                              | 5   | 3   |
| FTCA                                | 2   | 1   |
| Other                               | 1   | 0   |
| Lit Reports                         | 17  | 9   |
| Cases With Hearings<br>or Trials    | 1   | 2   |
| Cases With Settlements<br>or Awards | 0   | 2   |

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|                       |                       |
|-----------------------|-----------------------|
| To: Wallace Cheney    | From: Michael Hood    |
| Co. POP               | Cd. SCRO              |
| Post: General Counsel | Phone #: 214-767-5020 |
| Fax #                 | Fax #                 |

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**SIGNIFICANT TORT CLAIM:**

This office is currently processing three (3) tort claims related to the medical care furnished to Juan Maldonado Ramirez, Reg. No. 53236-079. Mr. Ramirez's left leg was amputated just below the knee due to gangrene infection. His claim seeking \$1,000,000.00 was denied on July 15, 1992 (tort claim #92-110). On January 13, 1993, an attorney representing Mr. Ramirez requested a reconsideration of the denial of this tort claim. On this same date, a tort claim (#T-SCR-93-28) was presented on behalf of Mirna Pena Ramirez, the wife of Juan Maldonado Ramirez, requesting \$2,500,000.00 for loss of consortium damages. An additional claim (#T-SCR-93-27) was presented on behalf of Mr. Ramirez on January 13, 1993, seeking \$8,000,000.00 for negligence associated with the amputation of his right leg.

It should be noted that the attorney representing Mr. and Mrs. Ramirez is the same attorney that represented Esteban Rivera in his recent settlement with the Bureau of Prisons.

**SIGNIFICANT CASES:**

Goggin v. U.S., 91-2735(W.D. TN) - An FTCA action involving an inmate at Memphis who has alleged he did not receive proper medical treatment for an ankle injury. Goggin alleges he injured his ankle on the recreation yard, and one week later he was admitted to a community hospital suffering from fever, pain, and infection which resulted in the skin splitting. This case is set for trial on March 31, 1993.

McCollum v. Clark, 91-3024(W.D. TN) - A habeas action filed by an inmate at Memphis who claimed his constitutional rights are being violated. This association began at USP Leavenworth, when Jane Stock was a contract English Teacher and McCollum was serving a 20 year sentence. Approximately one (1) week after Ms. Stock quit teaching at Leavenworth, the two began corresponding telephonically and in writing. After McCollum transferred to Memphis he requested Ms. Stock be added to his visiting list. His request was denied because the two did not have a relationship prior to his incarceration and for security reasons. McCollum however, alleges because he has no other visitors an exception to policy should be made and his request should be granted. An evidentiary hearing was set for January 14, 1993. The Bureau of Prisons received a favorable ruling.

Turner v. U.S., EP-92-70-B (W.D. TX) - A hearing to Compel Plaintiff was held on December 28, 1992, whereby the court ordered plaintiff's attorney to comply with

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our discovery request. This case is an FTCA action wherein the inmate alleges he was not provided adequate medical treatment for a work related injury. The inmate fell while working in Food Service. He alleges he was not medically fit to work and FCI La Tuna staff were deliberately indifferent to his disabilities.

Plaintiff's attorney's are not actively pursuing this claim, and it is anticipated this action will be dismissed.

} add  
to quarterly  
report

Wright v. United States, 91-2583-G/A (W.D. TN) - Earl Wright filed suit alleging the Bureau of Prisons destroyed a photo album and photos. He claimed he was entitled to \$8,004.95 for 80 photos and one (1) photo album. He was offered \$100.95 during the tort claim stage. The court determined the inmate was entitled to \$264.95. It should be noted the inmate failed to indicate on the property form, completed prior to his transfer, that he had property valued at over \$100.00 was presented to the court. This fact has resulted in favorable ruling in the past, but was not effective in this case.

Shaw v. Thornburg, et al., CIV-92-265-A, WD/OK - Received Magistrate's Report and Recommendation in our favor. Briefly, inmate filed a Bivens claim alleging an El Reno staff member concealed a razor blade in his hand and shook hands with the inmate, cutting the inmate's hand. Court dismissed defendants Beeler, Quinlan and Thornburgh for lack of personal involvement. Inmate asked that correctional officer be dismissed at a defendant. Note that court found service was proper in accordance with Oklahoma law although defendants argued improper service because no Notice and Acknowledgment forms were included in service packet. Court refused to construe action under FTCA because of improper service on U.S.

#### Upcoming Trials:

Armour v. Mims - 91-2502-GB (W.D. TN.) - Donald Armour filed a Bivens action alleging staff at FCI Memphis arbitrarily and capriciously and with deliberate indifference when he was denied a Kosher diet for 21 days. A jury trial is scheduled for 02-22-1993. A pre-trial conference is scheduled for 02-12-1993. Mr. Neal Adler, Associate Warden at FCI Memphis is expected to be an expert witness on the Jewish Kosher diet program. Mr. Adler is Jewish. Mr. Armour simply did not follow the proper procedures to be placed on the Kosher Diet Program. When he submitted the proper authorization, he was allowed to participate in the program.

Hanif v. Quinlan - 91-2726-GBRE (W.D. TN.) - Talib Hanif filed a Bivens action alleging staff at FCI

-4-

Memphis denied him the right to participate in a kosher diet program. Initially, Mr. Hanif was denied the opportunity to participate in the kosher diet program because he did not fall within the guidelines of Bureau of Prisons policy. However, he was subsequently allowed to participate.

**TRAVEL AND ANNUAL LEAVE SCHEDULES****Mike Hood -**

Annual Leave - February 16, 1993

Travel - February 18-19, 1993 - FCI, Three Rivers -  
Ethics Training**Matt Carney -**Travel - February 12, 1993 - FCI, Fort Worth -  
Ethics TrainingFebruary 16 - March 5, 1993 - Training at  
Glynco**Lori Cunningham -**Travel - February 5, 1993 - FCI, Big Spring -  
Ethics TrainingFebruary 12, 1993 - FCI, El Reno -  
Ethics Training

# memorandum

DATE: March 15, 1993  
*Mr. Cunningham jr*  
 Michael D. Hood, Regional Counsel

REPLY TO  
 ATTN OF:

SUBJECT: Monthly Report - February 1, 1993 - February 28, 1993

TO: Wallace H. Cheney, Assistant Director/General Counsel  
 Central Office

**ADMINISTRATIVE REMEDIES**

|          | DEC | JAN | FEB |
|----------|-----|-----|-----|
| Received | 107 | 104 | 90  |
| Answered | 99  | 90  | 97  |

**TORT CLAIMS**

|                     | DEC | JAN | FEB |
|---------------------|-----|-----|-----|
| Number Pending      | 245 | 228 | 243 |
| Number Received     | 46  | 70  | 90  |
| Number Answered     | 63  | 55  | 50  |
| Number Pending      | 228 | 243 | 283 |
| Number Over Six Mon | 0   | 0   | 1   |

**FOI/PRIVACY**

|                     | DEC | JAN | FEB |
|---------------------|-----|-----|-----|
| Number Pending      | 19  | 15  | 16  |
| Number Received     | 28  | 24  | 39  |
| Number Answered     | 32  | 23  | 17  |
| Number Pending      | 15  | 16  | 38  |
| Number Over 30 Days | 0   | 2   | 7   |

**LITIGATION**

|                                     | DEC | JAN | FEB |
|-------------------------------------|-----|-----|-----|
| New Cases Recd                      | 18  | 10  | 12  |
| Cases Closed                        | 28  | 1   | 11  |
| Habeas Corpus                       | 10  | 6   | 6   |
| Bivens                              | 5   | 3   | 5   |
| FTCA                                | 2   | 1   | 1   |
| Other                               | 1   | 0   | 0   |
| Lit Reports                         | 17  | 9   | 9   |
| Cases With Hearings<br>or Trials    | 1   | 2   | 3   |
| Cases With Settlements<br>or Awards | 0   | 2   | 2   |

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|                           |                            |
|---------------------------|----------------------------|
| To: <i>Boye Zoldek</i>    | From: <i>Michael Hood</i>  |
| CC: <i>BOP</i>            | Co: <i>SCRD</i>            |
| Dist: <i>Gen. Counsel</i> | Phone: <i>314-767-5030</i> |
| Fax #                     | Fax # <i>317-2995</i>      |

OPTIONAL FORM NO. 10  
 (REV. 1-80)  
 GSA FPMR (41 CFR) 101-11.6  
 5010-114

## SIGNIFICANT CASES:

Manual v. Thornburgh, SA-91-CA-0163 (W.D. TX.) - On February 10, 1993, Ms. Manual was awarded \$12,610.27, as back pay, \$22,290.50 as attorney's fees, plus expenses, costs of court, and postjudgment interest in the amount of 3.45% per annum. In addition, Ms. Manual was granted reinstatement effective December 17, 1992. The court found that Ms. Manual had been subjected to sex discrimination by male lieutenants at FCI Bastrop during 1984 and 1985. This action will not be appealed.

Bob E. Bailes v. United States, 3:92-CV-1963-Boyle (N.D. TX) - A trial was held on March 1, 1993, to litigate an FTCA action filed by inmate Bob E. Bailes, who is currently housed at Fort Worth. Mr. Bailes claimed 22 boxes of personal and legal property were lost by Bureau of Prisons staff at FCI Big Spring, Texas in October 1990. Bailes submitted altered documents to the court to support his claim. During trial, Bureau of Prisons staff testified as to the authenticity of the official R&D file copies of the property forms Bailes had altered, and the court found that Bailes was using the courts for "recreational" purposes. Bailes was sanctioned the cost of the filing fees as well as the government's cost of litigating the case. In addition, Bailes is prohibited from filing future actions without leave of the court until he pays the sanctions.

FCI Bastrop Warden, Bill Hedrick, was subpoenaed to testify as an expert witness in a State of Texas civil action against the Sheriff of Bexar County, Texas. The case was filed by an inmate housed at the county jail because the sheriff refused to allow pornographic material in the Bexar County Jail. The government moved to quash the subpoena on ground of failure to satisfy technical requirements of 28 C.F.R. 16.22, sovereign immunity, and doubtful relevance. The court ruled that while the desired testimony was relevant, the government's refusal to waive sovereign immunity provided the court with no means of denying the motion to quash.

Dane Garrison v. J. J. Clark, et. al., 92-5683  
(6th Cir.) - On February 24, 1993, the Sixth Circuit Court vacated a summary judgment which was affirmed by the U.S. District Court, Western District of Tennessee. The circuit court concluded that the evidence was such that a summary judgment was not warranted with respect to Ernie Bristol. Mr. Bristol is the Health Service Administrator at FCI Memphis. This Bivens type suit was filed by inmate Dane Garrison. Mr. Garrison alleges that he was subjected to cruel and unusual punishment by medical staff at FCI Memphis, and that his right to due process under the Fourteenth Amendment was violated. These allegations result from an injury Mr. Garrison sustained to his right leg at FCI Memphis. Mr. Garrison's right leg was injured when a piece of metal was thrown from a lawn mower.

Earl Wright v. Bureau of Prisons, 91-2583-G/A  
(W.D. TN) - Earl Wright filed suit alleging the Bureau of Prisons destroyed a photo album and photos. He claimed he was entitled to \$8,004.95 for 80 photos and one (1) photo album. He was offered \$100.95 during the tort claim stage. The court determined the inmate was entitled to \$264.95. It should be noted the inmate failed to indicate on the property form, completed prior to his transfer, that he had property valued at over \$100.00 was presented to the court. This fact has resulted in favorable ruling in the past, but was not effective in this case. Mr. Wright has appealed the courts judgment.

Rufus Young, Jr. v. Edwin Meese, CA-3-88-005-T  
(Northern District of Texas, Dallas Division) is scheduled for trial on April 6, 1993. A former staff member is challenging his termination for sexual harassment. Trial is expected to last for three days.

Upcoming Trials:

Goggin v. U.S., 91-2735(W.D. TN) - An FTCA action involving an inmate at Memphis who has alleged he did not receive proper medical treatment for an ankle injury. Goggin alleges he injured his ankle on the recreation yard, and one week later he was admitted to a community hospital suffering from fever, pain, and infection which resulted in the skin splitting. This case is set for trial on March 31, 1993.

Turner v. U.S., EP-92-70-B (W.D. TX) - This case is an FTCA action wherein the inmate alleges he was not provided adequate medical treatment for a work related injury. The inmate fell while working in Food Service. He alleges he was not medically fit to work and FCI La Tuna staff were deliberately indifferent to his disabilities. This case is set for trial on March 16, 1993.

Armour v. Mims - 91-2502-GB (W.D. TN.) - Donald Armour filed a Bivens action alleging staff at FCI Memphis arbitrarily and capriciously and with deliberate indifference when he was denied a Kosher diet for 21 days. Mr. Neal Adler, Associate Warden at FCI Memphis is expected to be an expert witness on the Jewish Kosher diet program. Mr. Adler is Jewish. Mr. Armour simply did not follow the proper procedures to be placed on the Kosher Diet Program. When he submitted the proper authorization, he was allowed to participate in the program. A jury trial is set for March 29, 1993.

Hanif v. Quinlan - 91-2726-GBRE (W.D. TN.) - Talib Hanif filed a Bivens action alleging staff at FCI Memphis denied him the right to participate in a kosher diet program. Initially, Mr. Hanif was denied the opportunity to participate in the kosher diet program because he did not fall within the guidelines of Bureau of Prisons policy. However, he was subsequently allowed to participate. The trial set for February 17, 1993, has been reset for May 19, 1993.

#### TRAVEL AND ANNUAL LEAVE SCHEDULES

Mike Hood -  
Military Leave - March 15-26, 1993



## BUREAU OF PRISONS - SOUTH CENTRAL REGION UNITED STATES GOVERNMENT

## memorandum

DATE: April 14, 1993

REPLY TO  
ATTN OF:

Michael D. Hood, Regional Counsel

SUBJECT:

Monthly Report - March 1, 1993 - March 31, 1993

TO:

Wallace H. Cheney, Assistant Director/General Counsel  
Central Office

## ADMINISTRATIVE REMEDIES

|          | DEC | JAN | FEB | MAR |
|----------|-----|-----|-----|-----|
| Received | 107 | 104 | 90  | 103 |
| Answered | 99  | 90  | 97  | 112 |

## TORT CLAIMS

|                     | DEC | JAN | FEB | MAR |
|---------------------|-----|-----|-----|-----|
| Number Pending      | 245 | 228 | 243 | 283 |
| Number Received     | 46  | 70  | 90  | 63  |
| Number Answered     | 63  | 55  | 50  | 75  |
| Number Pending      | 228 | 243 | 283 | 271 |
| Number Over Six Mon | 0   | 0   | 1   | 0   |

## FOI/PRIVACY

|                     | DEC | JAN | FEB | MAR |
|---------------------|-----|-----|-----|-----|
| Number Pending      | 19  | 15  | 16  | 38  |
| Number Received     | 28  | 24  | 39  | 68  |
| Number Answered     | 32  | 23  | 17  | 45  |
| Number Pending      | 15  | 16  | 38  | 61  |
| Number Over 30 Days | 0   | 2   | 7   | 15  |

## LITIGATION

|                                     | DEC | JAN | FEB | MAR |
|-------------------------------------|-----|-----|-----|-----|
| New Cases Recd                      | 18  | 10  | 12  | 23  |
| Cases Closed                        | 28  | 1   | 11  | 9   |
| Habeas Corpus                       | 10  | 6   | 6   | 7   |
| Bivens                              | 5   | 3   | 5   | 12  |
| FTCA                                | 2   | 1   | 1   | 3   |
| Other                               | 1   | 0   | 0   | 1   |
| Lit Reports                         | 17  | 9   | 9   | 14  |
| Cases With Hearings<br>or Trials    | 1   | 2   | 3   | 4   |
| Cases With Settlements<br>or Awards | 0   | 2   | 2   | 1   |

|  |                  |                |
|--|------------------|----------------|
| Post-It™ brand fax transmittal memo 7671 |                  | # of pages > 5 |
| To                                       | Wallace Cheney   | From           |
| cc                                       | Gen Counsel Ofc. | cc             |
| Dept.                                    |                  | Phone #        |
| Fax #                                    |                  | Fax #          |

Michael Hood  
SCLO  
214-767-5020

**SIGNIFICANT CASES:**

Dawson v. USA, 4:92-CV-144-A (N.D. TX) - This case involved an inmate running into a telephone pole at FCI, Fort Worth. The case was dismissed by court. However, contempt charges against two AUSA's handling the case are still pending. The Judge believes the AUSA's bargained in bad faith during a settlement conference.

Young v. Meese, 3-88-CV-5-T (N.D. TX) - This case involves a former employee's challenge to his firing for inappropriate conduct toward another staff member. The former employee is charging his dismissal was based on racial reasons. The trial which began on April 6, has been completed. However, a decision has not yet been rendered.

Fleming v. USA, 4:92-CV-0094-Y (N.D. TX) - A civilian and her passenger are seeking 455K in damages resulting from a traffic accident with a BOP vehicle operated by an employee from FCI, Seagoville.

Smith v. Spears, C-92-2691 (S.D. TX) - Inmate is challenging how his two one-year sentences were carried out. Magistrate has recommended the BOP's exhaustion and 2251 arguments be denied and would require the BOP to respond to the merits of the petition.

**UPCOMING TRIALS:**

Frederick Keller v. Michael Fitzpatrick, No. 91-CV-102-C (N.D. TX) - Bivens action originally against Warden, M.D. and P.A. for damages inmate alleged occurred when he fell down a flight of stairs. Inmate claimed fall was caused because PA had refused to give him medication because he was late for pill line. PA states inmate had previously been warned about being late for pill line and she (PA) received word from M.D. that medication was not necessary. Specifically, inmate wanted valium, and medical staff had previously determined that inmate had become addicted to valium and the drug no longer had therapeutic value in his case.

Warden and M.D. have been dismissed. P.A. is only defendant remaining. Trial set for September 7, 1993. AUSA handling case is hopeful we will win summary judgment on behalf of PA and trial will be avoided.

*AG Report*

Black Culture Workshop v. United States, A-89-CA-602 (W.D. TX.) - On April 19, 1993, the jury selection and trial will begin. Initially, this case was dismissed by the U.S. District Court, Western District of Texas on June 29, 1990. The inmates appealed, and on September 26, 1991, the Fifth Circuit Court of Appeals remanded the case to the District Court. The Fifth Circuit affirmed the District Court's dismissal of the individual (Bivens) defendants, but remanded the case for further consideration on: 1) the legal basis, if any, for injunctive relief against the United States; 2) the exhaustion of remedies by appellants; 3) the proper party or parties defendant; and, 4) if necessary, the merits of the suit. In addition, plaintiff Larry Varner was transfer from FCI Bastrop, and the Fifth Circuit stated the District Court should consider whether Varner transferred for retaliatory reasons.

Goggin v. U.S., 91-2735(W.D. TN) - An FTCA action involving an inmate at Memphis who has alleged he did not receive proper medical treatment for an ankle injury. Goggin alleges he injured his ankle on the recreation yard, and one week later he was admitted to a community hospital suffering from fever, pain, and infection which resulted in the skin splitting. It has recently been discovered that some of Goggin's medical records may have been altered. This matter is being investigated. Due to the court's heavy docket, this case is being continued until June 2, 1993.

Turner v. U.S., EP-92-70-B (W.D. TX) - This case is an FTCA action wherein the inmate alleges he was not provided adequate medical treatment for a work related injury. The inmate fell while working in Food Service. He alleges he was not medically fit to work and FCI La Tuna staff were deliberately indifferent to his disabilities. This case is set for trial on June 28, 1993.

Armour v. Mims - 91-2502-GB (W.D. TN.) - Donald Armour filed a Bivens action alleging staff at FCI Memphis acted arbitrarily and capriciously and with deliberate indifference when he was denied a Kosher diet for 20 days. Mr. Neal Adler, Associate Warden at FCI Memphis is expected to be an expert witness on the Jewish Kosher diet program. Mr. Adler is Jewish and familiar with the Jewish beliefs. Armour alleges to be an African Hebrew. Upon his arrival at FCI Memphis in December 1990, he requested to participate in the Kosher Diet

Program, and Chaplain Mims refused the request because he was not familiar with the African Hebrew religion. He (Mims) linked the African sect to the Yahweh Ben Yahweh sect and denied Armour's request. Four (4) days later Chaplain Lonegran approved the request without the knowledge of Mims. Armour participated in the Kosher program for the first time at Memphis on 12-17-90. However, the next day Mims became aware of Lonegran approving the request and he (Mims) instructed Food Service staff to inform Armour that he would no longer be allowed to participate in the Kosher program. Armour filed a BP-9, and on 1-7-91, Warden J. J. Clark granted his request. On 1-15-91 Al Worthly, Regional Religious Services Administrator, spoke with Armour to explain that the reason it took so long for him to be approved was that he had been confused with the Yahweh Ben Yahweh sect and the African Hebrew religious beliefs had to be confirmed by Mims. Armour has been transferred out of Memphis because he expressed his thoughts that if remained at Memphis that he would injure a female staff member. Armour now alleges that the transfer was done in retaliation for his pursuing the Kosher Diet lawsuit. He subsequently added more defendants to the suit. The court has continued this case, but a trial date has not been set. However, a Motion for Summary Judgment was filed on 3-16-93.

Hanif v. Quinlan - 91-2726-GBRE (W.D. TN.) - Inmates Talib Hanif and Jasper Young filed this Bivens action alleging staff at FCI Memphis denied them the right to participate in a Kosher diet program. Both inmates profess to be Muslim Fundamentalist. They contend that FCI Memphis staff have discriminated against them by not allowing them to participate in the Kosher Diet. The inmates were denied the opportunity to participate in the Kosher Diet program because they are not Jewish, and Muslims do not fall within the guidelines of Bureau of Prisons policy to participate in the Kosher Diet program. Both plaintiffs are requesting that Memphis comply with Bureau of Prisons policy and participate in the Common Fare Diet program. The trial set for February 17, 1993, has been reset for May 19, 1993.

Jackson v. United States, A-90-CA-108 (W.D. TX) - Inmate Jackson filed this FTCA action alleging staff at FCI Bastrop handcuffed him and forced him to use one crutch to walk to the shower in the Special Housing Unit. Jackson had a leg injury which required that he use the crutches to ambulate. Upon exiting the shower, he slipped and

fell. Jackson was treated at a local hospital and upon his return to the institution, he alleges that four (4) staff members assaulted him while he was in restraints. He alleges that the assault resulted in the loss of use of his lower extremities. Jackson was transferred to Springfield. However, medical staff were unable to conclusively determine that Jackson was a paraplegic. Jackson was released on parole, and has since been arrested for sexual battery on a child. Information has been obtained by the FBI which is vital to the government in this action, and additional witness statements have been introduced to the court in camera. Trial has been set for May 3, 1993.

Daniel Sims v. J. J. Clark, 90-2036-TU/B, (W.D. TN.) - Inmate filed this Bivens style action alleging he received an incident report and was found guilty of possession of narcotics as a result of a conspiracy designed to victimize him. The government filed a Motion for Summary Judgment, and the court allowed Sims an opportunity to respond. Sims filed a brief with the court stating he had been unable to respond because Bureau of Prisons staff at FCI Phoenix were not allowing him access to his legal materials. The court then ordered the government to provide a detailed response addressing Sims' allegations. The AUSA has provided the court with a response and supporting declarations from Bureau of Prisons staff which dispute Sims' allegations. Basically, Sims has refused to enter general population and he is being housed in the Special Housing Unit. Therefore, the amount of legal material he is allowed to keep in his cell is limited. Procedures are in place for him to access his property (submit a copout to Unit staff), but Armour refuses to comply. A Motion for Summary Judgment has been filed. Trial has been set for July 27, 1993.

#### TRAVEL AND ANNUAL LEAVE SCHEDULES

Mike Hood -  
Management Assessment Meeting - April 19-23, 1993

Lori Cunningham -  
Ethics Training - FCI Memphis - April 13, 1993  
FPC Millington - April 14, 1993

memorandum

300

DATE:

May 12, 1993

REPLY TO  
ATTN OF:

*[Signature]*  
Michael D. Hood, Regional Counsel

SUBJECT:

TO:

Monthly Report - April 1, 1993 - April 30, 1993

Wallace H. Cheney, Assistant Director/General Counsel  
Central Office

ADMINISTRATIVE REMEDIES

|          | JAN | FEB | MAR | APR |
|----------|-----|-----|-----|-----|
| Received | 104 | 90  | 103 | 96  |
| Answered | 90  | 97  | 112 | 88  |

TORT CLAIMS

|                     | JAN | FEB | MAR | APR |
|---------------------|-----|-----|-----|-----|
| Number Pending      | 228 | 243 | 283 | 271 |
| Number Received     | 70  | 90  | 63  | 72  |
| Number Answered     | 55  | 50  | 75  | 51  |
| Number Pending      | 243 | 283 | 271 | 292 |
| Number Over Six Mon | 0   | 1   | 0   | 0   |

FOI/PRIVACY

|                 | JAN | FEB | MAR | APR |
|-----------------|-----|-----|-----|-----|
| Number Pending  | 15  | 16  | 38  | 61  |
| Number Received | 24  | 39  | 68  | 61  |
| Number Answered | 23  | 17  | 45  | 59  |
| Number Pending  | 16  | 38  | 61  | 63  |

LITIGATION

|                                     | JAN | FEB | MAR | APR |
|-------------------------------------|-----|-----|-----|-----|
| New Cases Recd                      | 10  | 12  | 23  | 22  |
| Cases Closed                        | 1   | 11  | 9   | 21  |
| Habeas Corpus                       | 6   | 6   | 7   | 8   |
| Bivens                              | 3   | 5   | 12  | 13  |
| FTCA                                | 1   | 1   | 3   | 0   |
| Other                               | 0   | 0   | 1   | 0   |
| Lit Reports                         | 9   | 9   | 14  | 18  |
| Cases With Hearings<br>or Trials    | 2   | 3   | 4   | 4   |
| Cases With Settlements<br>or Awards | 2   | 2   | 1   | 0   |

SIGNIFICANT CASES:

Lawrence Caldwell v. U.S. - No. 92-6183 (WD/OK)  
D.C. No. CIV-91-1588-C - Tenth Circuit reversed and

remanded issue of "custodial negligence" to District Court, stating that government's motion to dismiss for failure to state a claim under 12(b)(6) should have been denied, while conceding that plaintiff's allegations, which included being placed in a cell that was too small without access to fresh air, having roommates who were inmate informers, and being fed from the common fare diet program, did not rise to the level of outrageous conduct, given that plaintiff was housed at El Reno for only ten days.

Turner v. U.S., EP-92-70-B (W.D. TX) - This case is an FTCA action wherein the inmate alleges he was not provided adequate medical treatment for a work related injury. The inmate fell while working in Food Service. He alleges he was not medically fit to work and FCI La Tuna staff were deliberately indifferent to his disabilities. Judge Bunton signed the Judgement dismissing this action with prejudice on April 14, 1993. The court found that Turner did not establish the essential elements to support a claim of negligence due to the fact that he did not present expert medical evidence to substantiate his claim that La Tuna had breached the standard of care. The costs of this action were assessed against Turner.

#### UPCOMING TRIALS:

Robert Graven v. Dale Brown, et al. - Civil Action No. 92-921-A (MD/LA) - Inmate at Carville filed Bivens alleging his medication was not properly refilled and he is forced to sleep on a wool blanket even though he is allergic to wool. Inmate filed Motion for Discovery, AUSA filed Protective Order to Stay Discovery and Motion to Dismiss/Summary Judgment. Magistrate fixated on Protective Order not in accordance with local rules and didn't address issues of immunity, exhaustion, etc. Scheduled hearing on Discovery issues for June 4, 1993. AUSA feels we will succeed on Motion for Reconsideration before discovery hearing.

Young v. Meese - Civil Action No. 3:88-CV-5-T (ND/TX) This case involves a former employee's challenge to his firing for inappropriate conduct toward another staff member. The former employee claimed that his dismissal was racially motivated. The bench trial concluded in mid-April and a decision is pending.

Black Culture Workshop v. United States, A-89-CA-602 (W.D. TX.) - On June 28, 1993, the jury selection and trial will begin. Initially, this case was dismissed

by the U.S. District Court, Western District of Texas on June 29, 1990. The inmates appealed, and on September 26, 1991, the Fifth Circuit Court of Appeals remanded the case to the District Court. The Fifth Circuit affirmed the District Court's dismissal of the individual (Bivens) defendants, but remanded the case for further consideration on: 1) the legal basis, if any, for injunctive relief against the United States; 2) the exhaustion of remedies by appellants; 3) the proper party or parties defendant; and, 4) if necessary, the merits of the suit. In addition, plaintiff Larry Varner was transfer from FCI Bastrop, and the Fifth Circuit stated the District Court should consider whether Varner transferred for retaliatory reasons.

Goggin v. U.S., 91-2735(W.D. TN) - An FTCA action involving an inmate at Memphis who has alleged he did not receive proper medical treatment for an ankle injury. Goggin alleges he injured his ankle on the recreation yard, and one week later he was admitted to a community hospital suffering from fever, pain, and infection which resulted in the skin splitting. This case is continued until June 2, 1993.

Armour v. Mims - 91-2502-GB (W.D. TN.) - Donald Armour filed a Bivens action alleging staff at FCI Memphis arbitrarily and capriciously and with deliberate indifference when he was denied a Kosher diet for 21 days. Mr. Neal Adler, Associate Warden at FCI Memphis is expected to be an expert witness on the Jewish Kosher diet program. Mr. Adler is Jewish. Mr. Armour simply did not follow the proper procedures to be placed on the Kosher Diet Program. When he submitted the proper authorization, he was allowed to participate in the program. On April 27, 1993, Judge Gibbons denied the government's Motion for Summary Judgment and qualified immunity for Chaplain Ray Mims. She based her decision on the fact that a genuine issue of material fact remains regarding whether Memphis' Religious Diet supplement which mandates certain procedural requirements before an inmate may be served a kosher diet is reasonably related to a penological objective. The Assistant U.S. Attorney is preparing a Motion for Reconsideration in which the institution supplement will be directly related to a penological objective. A trial date has not been set.

Hanif v. Quinlan - 91-2726-GBRE (W.D. TN.) - Talib Hanif filed a Bivens action alleging staff at FCI Memphis denied him the right to participate in a kosher diet program. Initially, Mr. Hanif was denied the opportunity to participate in the kosher diet program



because he did not fail within the guidelines of Bureau of Prisons policy. However, he was subsequently allowed to participate. The trial set for February 17, 1993, has been reset for May 19, 1993.

Jackson v. United States, A-90-CA-108 (W.D. TX) - Inmate Jackson filed this FTCA action alleging staff at FCI Bastrop handcuffed him and forced him to use one crutch to walk to the shower in the Special Housing Unit. Jackson had a leg injury which required that he use the crutches to ambulate. Upon exiting the shower, he slipped and fell. Jackson was treated at a local hospital and upon his return to the institution, he alleges that four (4) staff members assaulted him while he was in restraints. He alleges that the assault resulted in the loss of use of his lower extremities. Jackson was transferred to Springfield. However, medical staff were unable to conclusively determine that Jackson was a paraplegic. Jackson was released on parole, and has since been arrested for sexual battery on a child. Information has been obtained by the FBI which is vital to the government in this action, and additional witness statements have been introduced to the court in camera. Trial has been set for May 3, 1993.

Daniel Sims v. J. J. Clark, 90-2036-TU/B, (W.D. TN.) - Inmate filed this Bivens style action alleging he received an incident report and was found guilty of possession of narcotics as a result of a conspiracy designed to victimize him. Trial has been set for July 27, 1993.

# memorandum

DATE:

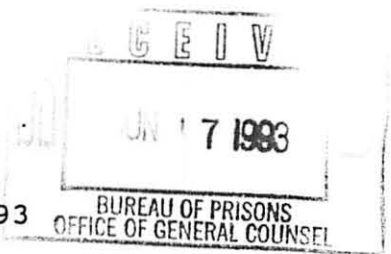
June 11, 1993

REPLY TO  
ATTN OF:

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

SUBJECT:

TO: Monthly Report - May 1, 1993 - May 31, 1993



Wallace H. Cheney, Assistant Director/General Counsel  
Central Office

### ADMINISTRATIVE REMEDIES

|          | JAN | FEB | MAR | APR | MAY |
|----------|-----|-----|-----|-----|-----|
| Received | 104 | 90  | 103 | 96  | 52  |
| Answered | 90  | 97  | 112 | 88  | 35  |

### TORT CLAIMS

|                     | JAN | FEB | MAR | APR | MAY |
|---------------------|-----|-----|-----|-----|-----|
| Number Pending      | 228 | 243 | 283 | 271 | 292 |
| Number Received     | 70  | 90  | 63  | 72  | 53  |
| Number Answered     | 55  | 50  | 75  | 51  | 36  |
| Number Pending      | 243 | 283 | 271 | 292 | 309 |
| Number Over Six Mon | 0   | 1   | 0   | 0   | 0   |

### FOI/PRIVACY

|                 | JAN | FEB | MAR | APR | MAY |
|-----------------|-----|-----|-----|-----|-----|
| Number Pending  | 15  | 16  | 38  | 61  | 63  |
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### LITIGATION

|                                     | JAN | FEB | MAR | APR | MAY |
|-------------------------------------|-----|-----|-----|-----|-----|
| New Cases Recd                      | 10  | 12  | 23  | 22  | 31  |
| Cases Closed                        | 1   | 11  | 9   | 21  | 6   |
| Habeas Corpus                       | 6   | 6   | 7   | 8   | 16  |
| Bivens                              | 3   | 5   | 12  | 13  | 8   |
| FTCA                                | 1   | 1   | 3   | 0   | 2   |
| Other                               | 0   | 0   | 1   | 0   | 2   |
| Lit Reports                         | 9   | 9   | 14  | 18  | 18  |
| Cases With Hearings<br>or Trials    | 2   | 3   | 4   | 4   | 3   |
| Cases With Settlements<br>or Awards | 2   | 2   | 1   | 0   | 1   |

**SIGNIFICANT CASES:**

Okoye v. Burkhart, 4:93-CV-0008-Y (ND TX) - This was a habeas case where petitioner claimed he was receiving inadequate treatment for his liver problems (swollen liver) and his hepatitis. Petitioner then died from hepatic failure, primary hepatic carcinoma, and hepatitis B, which he had for 10 years. The case was then dismissed as moot. His only relatives are in Nigeria, and it currently appears that no wrongful death suit will be filed.

Benoit v. U.S., 93-704 (WD/LA) - BOP officer from Oakdale was conducting training in riot techniques for group of LA state correctional officers. While BOP staff demonstrated use of several different types of tear gas dispersal systems, a state officer was struck in the groin by one of the gas projectiles that randomly ricocheted from its intended course. State officer seeks \$250,000 in damages under FTCA.

**ADVERSE JUDGMENTS:**

Henthorn v. Hester, 92-2630 (W.D. TN.) - Donald Henthorn filed this Bivens action alleging he was homosexually fondled by FPC Millington Correctional Officer Michael Hester. A Motion for Summary Judgment/Motion to Dismiss was denied by Judge Julia Gibbons. She agreed that the defendant may have been acting in accordance with normal and permissible procedures and that such procedures may include touching of genitalia while conducting a search. However, Judge Gibbons stated in her order dated 4-26-93, that she would reconsider the motion for summary judgment if the defendant submitted an affidavit explaining what procedures he used while patting down plaintiff during the search(s) complained of. On 5-18-93, the AUSA Harriet Halmon submitted a Renewed Motion to Dismiss, or in the Alternative, Motion for Summary Judgment. Attached to the Motion was supporting documentation from the following FLETC staff: Attorney Advisor, J. Stuart Bauch and Correctional Programs Specialist, George Damrill; and Terry Graham, Correctional Program Specialist. It is anticipated that this case will be dismissed in light of Judge Gibbons 4-26-93 order.

Burkhart v. Woodall, Hibbitts, & Hahn, 91-3026-4A (W.D. TX) - Inmate filed this Bivens action against staff at FPC Millington. He alleged that he suffers from permanent damage to his ankle because staff failed to properly assign him to a work detail where he could

NO monetary amt  
entered,  
retired

elevate his ankle. Personal service was effected on Paul Woodall, Correctional Officer, Tom Hibbitts, Correctional Officer, and John Hahn, Superintendent. However, the Assistant United States Attorney was not served with a copy of the complaint and a responsive pleading was not filed with the court. The decision to not file an answer was based on a memorandum issued by Chief Judge Robert McRae, dated April 10, 1985, regarding service of process. Essentially, Judge McRae stated if the United States Attorney's Office must be served. On 4-22-92, a default judgment was entered against the above-named BOP staff members. On 05-5-92, the United States filed a motion to set aside the entry of default. On 5-6-93, the court denied the motion. On 5-20-93, a Motion for Reconsideration of Order Denying Motion to Set Aside Entry of Default and Entering Default Judgment was filed with the court. A ruling has not been made to date. However, the AUSA Harriet Halmon has since made contact with DOJ Appellate Division and a decision has been made that a responsive pleading will be filed anytime an employee is served properly pursuant to Rule 4(d)(1).

Lavado v. Keohane, et. al., 88-2891-GB (W.D. TN) - This action was filed in 1988, and was monitored by the SERO. We are currently attempting to locate all documents relating to this case. On 4-22-93, the Sixth Circuit affirmed the district court's judgment in part and reversed the judgment in part, the case has been remanded for further proceedings. Henry Lavado, Jr., has since been released. It appears this action involved the alleged opening of "Special Mail." As soon as more information is obtained, I will notify your office.

#### UPCOMING TRIALS:

Black Culture Workshop v. United States, A-89-CA-602 (W.D. TX.) - On June 28, 1993, the jury selection and trial will begin. Initially, this case was dismissed by the U.S. District Court, Western District of Texas on June 29, 1990. The inmates appealed, and on September 26, 1991, the Fifth Circuit Court of Appeals remanded the case to the District Court. The Fifth Circuit affirmed the District Court's dismissal of the individual (Bivens) defendants, but remanded the case for further consideration on: 1) the legal basis, if any, for injunctive relief against the United States; 2) the exhaustion of remedies by appellants; 3) the proper party or parties defendant; and, 4) if necessary, the merits of the suit. In addition,

7/6  
Cont'd + might be dismissed

following 1985 memo  
of Judge

pending

remand regarded

plaintiff Larry Varner was transfer from FCI Bastrop, and the Fifth Circuit stated the District Court should consider whether Varner transferred for retaliatory reasons.

Goggin v. U.S., 91-2735(W.D. TN) - An FTCA action involving an inmate at Memphis who has alleged he did not receive proper medical treatment for an ankle injury. Goggin alleges he injured his ankle on the recreation yard, and one week later he was admitted to a community hospital suffering from fever, pain, and infection which resulted in the skin splitting. This case was continued; however, the trial date has not been set.

Armour v. Mims - 91-2502-GB (W.D. TN.) - Donald Armour filed a Bivens action alleging staff at FCI Memphis arbitrarily and capriciously and with deliberate indifference when he was denied a Kosher diet for 21 days. Mr. Neal Adler, Associate Warden at FCI Memphis is expected to be an expert witness on the Jewish Kosher diet program. Mr. Adler is Jewish. Mr. Armour simply did not follow the proper procedures to be placed on the Kosher Diet Program. When he submitted the proper authorization, he was allowed to participate in the program. On April 27, 1993, Judge Gibbons denied the government's Motion for Summary Judgment and qualified immunity for Chaplain Ray Mims. She based her decision on the fact that a genuine issue of material fact remains regarding whether Memphis' Religious Diet supplement which mandates certain procedural requirements before an inmate may be served a kosher diet is reasonably related to a penological objective. The Assistant U.S. Attorney has filed a Motion for Reconsideration in which the institution supplement will be directly related to a penological objective. A trial date has been set for 8-23-93.

Hanif v. Quinlan - 91-2726-GBRE (W.D. TN.) - Talib Hanif filed a Bivens action alleging staff at FCI Memphis denied him the right to participate in a kosher diet program. Initially, Mr. Hanif was denied the opportunity to participate in the kosher diet program because he did not fail within the guidelines of Bureau of Prisons policy. However, he was subsequently allowed to participate. The trial set for February 17, 1993, has been reset for September 10, 1993. FCI Memphis is scheduled to begin a common fare program on July 12, 1993. It is anticipated that this case will be moot at that time.

Daniel Sims v. J. J. Clark, 90-2036-TU/B, (W.D.TN.) - Inmate filed this Bivens style action alleging he received an incident report and was found guilty of possession of narcotics as a result of a conspiracy

designed to victimize him. Trial has been set for July 27, 1993.

*went to trial  
judge found  
BOP admitted liability  
\$385,*

Taylor v. U.S.A., 4:92-CV-300-A (ND TX) - This is an FTCA case where plaintiff sought damages for personal property damaged at Terre Haute. The BOP concedes negligence but challenges the damage claim. Plaintiff sought \$10,800 at the administrative level, and now seeks \$114,000. He has refused settlement offers of \$700.00 and \$1,300.00. The Court denied his motion for appointment of counsel on June 4, after hearing arguments from both sides. Trial is set for June 11, 1993.

U.S v. Kenneth Kirk, 92-110 (SD/IN) - Inmate at Carville originally filed Rule 35 motion alleging that he is not receiving appropriate medical treatment for chronic back problem, and that judge was misled at sentencing that BOP could provide care. Hearing set for June 18 in Indianapolis, focusing on capacity of BOP nationally to deal with inmate medical care.

#### OTHER INFORMATION:

Garcia v. Hurst, 91-2896-G/A - Inmate filed suit alleging he was entitled to time served in a state institution to be credited to his federal sentence. On 9-30-92, Judge Julia Gibbons remanded this case back to the Bureau of Prisons for reconsideration of the issue of sentencing credit. She specifically requested that the BOP consider whether to make a retroactive designation of the Rhode Island prison as the place of service of Garcia's federal sentence. She further stated that if the BOP made such a designation, then it should award Garcia with 675 days of credit. On 2-10-93, Charles Turnbo, SCR Regional Director, reported via

a letter to Judge Gibbons that her order had been complied with and a Nunc Pro Tunc designation of Garcia's sentence had been entered and Garcia's sentence was recalculated to reflect the 675 days of credit.

Jackson v. United States, A-90-CA-108 (W.D. TX) - Inmate Jackson filed this FTCA action alleging staff at FCI Bastrop handcuffed him and forced him to use one crutch to walk to the shower in the Special Housing Unit. Jackson had a leg injury which required that he use the crutches to ambulate. Upon exiting the shower, he slipped and fell. Jackson was treated at a local hospital and upon his return to the institution, he alleges that four (4) staff members assaulted him while he was in restraints. He alleges that the assault resulted in the loss of use of his lower extremities.

Jackson was transferred to Springfield. However, medical staff were unable to conclusively determine that Jackson was a paraplegic. Jackson was released on parole, and has since been arrested for sexual battery on a child. Information has been obtained by the FBI which is vital to the government in this action, and additional witness statements have been introduced to the court in camera. A trial was held May 3-5, at which time the jury returned a verdict in favor of the defendants in the Bivens action. The judge also ruled in favor of the United States in the FTCA action.

Coupar v. Samford, EP-92-CA-244-B - Coupar filed a Bivens action against Liz Samford, Paralegal, FCI La Tuna alleging she retaliated against him for exercising his constitutional right of access to courts. The incident report was written after Coupar provided a false statement on a tort claim. Specifically, Coupar was attempting to seek reimbursement for items he allegedly purchased in the Commissary because staff denied him access to a medical diet. During the tort claim investigation, it was determined Coupar did not purchase the items he was seeking to be compensated for. The court granted the Motion to Dismiss/Summary Judgment and the case was dismissed with prejudice. Costs were taxed against Coupar.

Robert Graven v. Dale Brown, et al, 92-921-A (MD/LA) Inmate at Carville filed Bivens alleging his medication was not properly refilled and he is forced to sleep on a wool blanket even though he is allergic to wool. At June 4th hearing, magistrate allowed inmate 30 days to amend his complaint, dropping non-monetary damages in order for inmate to circumvent remedy exhaustion requirement.

Ricky Joe Shugart v. Esam Hussein, et al., 93-005-B (MD/LA) - Inmate at Carville filed Bivens alleging PA improperly revoked his wheelchair privileges and approved him for a work assignment. Hearing on June 4th, magistrate counseled inmate that his complaint failed to state a claim under Bivens, and that he should amend and pursue under FTCA.

## BUREAU OF PRISONS - SOUTH CENTRAL REGION UNITED STATES GOVERNMENT

## memorandum

DATE:

July 8, 1993

REPLY TO  
ATTN OP:

SUBJECT:

Michael D. Hood, Regional Counsel

TO: Monthly Report - June 1, 1993 - June 30, 1993

Wallace H. Cheney, Assistant Director/General Counsel  
Central Office

## ADMINISTRATIVE REMEDIES

|          | JAN | FEB | MAR | APR | MAY | JUN |
|----------|-----|-----|-----|-----|-----|-----|
| Received | 104 | 90  | 103 | 96  | 52  | 72  |
| Answered | 90  | 97  | 112 | 88  | 35  | 71  |

## TORT CLAIMS

|                     | JAN | FEB | MAR | APR | MAY | JUN |
|---------------------|-----|-----|-----|-----|-----|-----|
| Number Pending      | 228 | 243 | 283 | 271 | 292 | 309 |
| Number Received     | 70  | 90  | 63  | 72  | 53  | 67  |
| Number Answered     | 55  | 50  | 75  | 51  | 36  | 98  |
| Number Pending      | 243 | 283 | 271 | 292 | 309 | 278 |
| Number Over Six Mon | 0   | 1   | 0   | 0   | 0   | 0   |

## FOI/PRIVACY

|                 | JAN | FEB | MAR | APR | MAY | JUN |
|-----------------|-----|-----|-----|-----|-----|-----|
| Number Pending  | 15  | 16  | 38  | 61  | 63  | 81  |
| Number Received | 24  | 39  | 68  | 61  | 69  | 87  |
| Number Answered | 23  | 17  | 45  | 59  | 51  | 82  |
| Number Pending  | 16  | 38  | 61  | 63  | 81  | 86  |

## LITIGATION

|                                     | JAN | FEB | MAR | APR | MAY | JUN |
|-------------------------------------|-----|-----|-----|-----|-----|-----|
| New Cases Recd                      | 10  | 12  | 23  | 22  | 31  | 16  |
| Cases Closed                        | 1   | 11  | 9   | 21  | 6   | 3   |
| Habeas Corpus                       | 6   | 6   | 7   | 8   | 16  | 7   |
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| FTCA                                | 1   | 1   | 3   | 0   | 2   | 2   |
| Other                               | 0   | 0   | 1   | 0   | 2   | 0   |
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**SIGNIFICANT CASES:**

Taylor v. U.S.A., 4:92-CV-300-A (ND TX) - This is an FTCA case where plaintiff sought damages for personal property damaged at Terra Haute. The BOP conceded negligence but challenged the damage claim. Plaintiff sought \$10,800 at the administrative level, and \$114,000 at trial. The court awarded plaintiff \$313.51. BOP will not recommend appeal.

U.S.A. v. James Kay Cogex, Criminal No. 92-30009-01 (USDC, WD/AR) - Inmate petitioned sentencing court for habeas relief under 28 U.S.C. §2241 or §2255. In the alternative, petitioner sought a 72 hour medical furlough to visit his personal physician for an examination. Court gave the government 10 days to respond. Inmate had suffered a myocardial infarction and underwent surgery for a coronary bypass less than one month after coming into BOP custody at FCI Texarkana. Less than seven days after inmate returned to FCI Texarkana, inmate suffered a ruptured appendix and was returned to a local hospital where his appendix was removed and 14 inches of colon. A litigation report has been supplied to the AUSA arguing that the sentencing court has no authority to order a medical furlough absent some evidence of a constitutional violation.

James Williams v. United States, 93-2332-GBRE (W.D. TN) - This inmate, seventy-one year old James Perry Williams filed this FTCA case alleging negligence on the part of the medical staff at FCI Memphis. The specific incident inmate Perry complains of stems from an incident when he was being transported to the Health Services Unit from the Recreation Yard in a golf cart type ambulance, being driven by a Physician's Assistant. The PA failed to strap inmate Perry down, and when he (the PA) turned the corner the cart hit a flower bed and inmate Perry was thrown from the cart. Perry does not appear to have any permanent injuries; however, compensation for pain and suffering may be appropriate. Perry is represented by counsel.

**ADVERSE JUDGMENTS:**

Henthorn v. Hester, 92-2630 (W.D. TN.) - Donald Henthorn filed this Bivens action alleging he was homosexually fondled by FPC Millington Correctional Officer Michael Hester. A Motion for Summary Judgment/Motion to Dismiss was denied by Judge Julia Gibbons. She agreed that the defendant may have been

acting in accordance with normal and permissible procedures and that such procedures may include touching of genitalia while conducting a search. However, Judge Gibbons stated in her order dated 4-26-93, that she would reconsider the motion for summary judgment if the defendant submitted an affidavit explaining what procedures he used while patting down plaintiff during the search(s) complained of. On 5-18-93, the AUSA Harriet Halmon submitted a Renewed Motion to Dismiss, or in the Alternative, Motion for Summary Judgment. Attached to the Motion was supporting documentation from the following FLETC staff: Attorney Advisor, J. Stuart Bauch and Correctional Programs Specialist, George Damrill; and Terry Graham, Correctional Program Specialist. It is anticipated that this case will be dismissed in light of Judge Gibbons 4-26-93 order.

Burkhart v. Woodall, Hibbitts, & Hahn, 91-3026-4A  
(W.D. TX) - Inmate filed this Bivens action against staff at FPC Millington. He alleged that he suffers from permanent damage to his ankle because staff failed to properly assign him to a work detail where he could elevate his ankle. (Personal service was effected on Paul Woodall, Correctional Officer, Tom Hibbitts, Correctional Officer, and John Hahn, Superintendent. However, the Assistant United States Attorney was not served with a copy of the complaint and a responsive pleading was not filed with the court. The decision to not file an answer was based on a memorandum issued by Chief Judge Robert McRae, dated April 10, 1985, regarding service of process. Essentially, Judge McRae stated if the United States Attorney's Office must be served. On 4-22-92, a default judgment was entered against the above-named BOP staff members. On 05-5-92, the United States filed a motion to set aside the entry of default. On 5-6-93, the court denied the motion. On 5-20-93, a Motion for Reconsideration of Order Denying Motion to Set Aside Entry of Default and Entering Default Judgment was filed with the court. A ruling has not been made to date. However, the AUSA Harriet Halmon has since made contact with DOJ Appellate Division and a decision has been made that a responsive pleading will be filed anytime an employee is served properly pursuant to Rule 4(d)(1). No decision has been made by the court.

#### SIGNIFICANT CASES:

A response to inmate Tony Bruce's tort claim is currently being drafted. Inmate Bruce was injured when a probationary staff member failed to adequately secure a vegetable prep area at FCI Memphis, and an inmate who

was issued a "french knife" to cut vegetables, ran from the kitchen into the Dining Room swinging the knife at inmate Bruce. Investigation revealed the two inmates had been involved in a confrontation the previous evening, but neither inmate reported the confrontation to staff. Currently, comparative negligence is being evaluated. Bruce is currently incarcerated at FCI Phoenix, and is represented by counsel. His requested damages are \$10,000.00. He does not appear to have any permanent damages from the four cuts, two of which required sutures, which Bruce alleges he had to remove himself while locked in the Special Housing Unit at Memphis.

Upcoming Trials:

Black Culture Workshop v. United States, A-89-CA-602 (W.D. TX.) - On June 28, 1993, the jury selection and trial will begin. Initially, this case was dismissed by the U.S. District Court, Western District of Texas on June 29, 1990. The inmates appealed, and on September 26, 1991, the Fifth Circuit Court of Appeals remanded the case to the District Court. The Fifth Circuit affirmed the District Court's dismissal of the individual (Bivens) defendants, but remanded the case for further consideration on: 1) the legal basis, if any, for injunctive relief against the United States; 2) the exhaustion of remedies by appellants; 3) the proper party or parties defendant; and, 4) if necessary, the merits of the suit. In addition, plaintiff Larry Varner was transfer from FCI Bastrop, and the Fifth Circuit stated the District Court should consider whether Varner transferred for retaliatory reasons. Trial has been scheduled for September 20, 1993.

Goggin v. U.S., 91-2735(W.D. TN) - An FTCA action involving an inmate at Memphis who has alleged he did not receive proper medical treatment for an ankle injury. Goggin alleges he injured his ankle on the recreation yard, and one week later he was admitted to a community hospital suffering from fever, pain, and infection which resulted in the skin splitting. This case has been reset for August 25, 1993.

Armour v. Mims - 91-2502-GB (W.D. TN.) - Donald Armour filed a Bivens action alleging staff at FCI Memphis arbitrarily and capriciously and with deliberate indifference when he was denied a Kosher diet for 21 days. Mr. Neal Adler, Associate Warden at FCI Memphis is expected to be an expert witness on the Jewish Kosher diet program. Mr. Adler is Jewish. Mr. Armour

simply did not follow the proper procedures to be placed on the Kosher Diet Program. When he submitted the proper authorization, he was allowed to participate in the program. On April 27, 1993, Judge Gibbons denied the government's Motion for Summary Judgment and qualified immunity for Chaplain Ray Mims. She based her decision on the fact that a genuine issue of material fact remains regarding whether Memphis' Religious Diet supplement which mandates certain procedural requirements before an inmate may be served a kosher diet is reasonably related to a penological objective. The Assistant U.S. Attorney has filed a Motion for Reconsideration in which the institution supplement will be directly related to a penological objective. A trial date has been set for 8-23-93.

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**OTHER INFORMATION:**

Daniel Sims v. J. J. Clark, 90-2036-TU/B, (W.D. TN.) - Inmate filed this Bivens style action alleging he received an incident report and was found guilty of possession of narcotics as a result of a conspiracy designed to victimize him. Trial has been set for July 27, 1993. The court granted the government's Motion for Summary Judgment on May 27, 1993, and the case was dismissed.

Lavado v. Keohane, et. al., 88-2891-GB (W.D. TN) - This action was filed in 1988, and was monitored by the SERO. This Bivens styled case was filed on 11-18-88, by inmate Henry Lavado, Jr. Lavado alleged that multiple staff members at FCI Memphis had opened his "Special Mail" from his attorney on ten different occasions over a period of several months. He requested \$35,000.00 compensatory damages, and \$70,000.00 punitive damages. on 11-15-89, the U.S. District Court, Western District of Tennessee, Western Division, granted Summary Judgment on 11-15-89. However, on 4-22-93, the Sixth Circuit affirmed the district court's judgment in part and reversed the

judgment in part. The Sixth Circuit remanded the case with instructions to the District Court to determine if, on two (2) separate occasions, Al Langa, who was the Paralegal, opened and read inmate Lavado's "special mail" and whether the acts were arbitrary or capricious. A status conference has been set for 1:30 P.M. on Wednesday June 30, 1993. The conference will be conducted via telephone.

## BUREAU OF PRISONS - SOUTH CENTRAL REGION, UNITED STATES GOVERNMENT

## memorandum

DATE:

August 5, 1993

REPLY TO  
ATTN OF:

SUBJECT:

Michael D. Hood, Regional Counsel

TO:

Monthly Report - July 1, 1993 - July 31, 1993

Wallace H. Cheney, Assistant Director/General Counsel  
Central Office

## ADMINISTRATIVE REMEDIES

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## TORT CLAIMS

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| Number Received     | 70  | 90  | 63  | 72  | 53  | 67  | 69  |
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| Number Pending      | 243 | 283 | 271 | 292 | 309 | 278 | 253 |
| Number Over Six Mon | 0   | 1   | 0   | 0   | 0   | 0   | 0   |

## FOI/PRIVACY

|                 | JAN | FEB | MAR | APR | MAY | JUN | JUL |
|-----------------|-----|-----|-----|-----|-----|-----|-----|
| Number Pending  | 15  | 16  | 38  | 61  | 63  | 81  | 86  |
| Number Received | 24  | 39  | 68  | 61  | 69  | 87  | 75  |
| Number Answered | 23  | 17  | 45  | 59  | 51  | 82  | 81  |
| Number Pending  | 16  | 38  | 61  | 63  | 81  | 86  | 80  |

## LITIGATION

|                                     | JAN | FEB | MAR | APR | MAY | JUN | JUL |
|-------------------------------------|-----|-----|-----|-----|-----|-----|-----|
| New Cases Recd                      | 10  | 12  | 23  | 22  | 31  | 16  | 14  |
| Cases Closed                        | 1   | 11  | 9   | 21  | 6   | 3   | 13  |
| Habeas Corpus                       | 6   | 6   | 7   | 8   | 16  | 7   | 10  |
| Bivens                              | 3   | 5   | 12  | 13  | 11  | 7   | 4   |
| FTCA                                | 1   | 1   | 3   | 0   | 2   | 2   | 0   |
| Other                               | 0   | 0   | 1   | 1   | 2   | 0   | 0   |
| Lit Reports                         | 9   | 9   | 14  | 18  | 18  | 14  | 12  |
| Cases With Hearings<br>or Trials    | 2   | 3   | 4   | 4   | 3   | 1   | 1   |
| Cases With Settlements<br>or Awards | 2   | 2   | 1   | 0   | 1   | 1   | 0   |
| Tort Claim Settlement               |     |     |     |     |     |     | 1   |

## PRIOR ADVERSE INFORMATION - STILL PENDING:

Henthorn v. Hester, 92-2630 (W.D. TN.) - Donald Henthorn filed this Bivens action alleging he was homosexually fondled by FPC Millington Correctional Officer Michael Hester. A Motion for Summary Judgment/Motion to Dismiss was denied by Judge Julia Gibbons. She agreed that the defendant may have been acting in accordance with normal and permissible procedures and that such procedures may include touching of genitalia while conducting a search. However, Judge Gibbons stated in her order dated 4-26-93, that she would reconsider the motion for summary judgment if the defendant submitted an affidavit explaining what procedures he used while patting down plaintiff during the search(s) complained of. On 5-18-93, the AUSA Harriet Halmon submitted a Renewed Motion to Dismiss, or in the Alternative, Motion for Summary Judgment. Attached to the Motion was supporting documentation from the following FLETC staff: Attorney Advisor, J. Stuart Bauch and Correctional Programs Specialist, George Damrill; and Terry Graham, Correctional Program Specialist. It is anticipated that this case will be dismissed in light of Judge Gibbons 4-26-93 order.

Burkhart v. Woodall, Hibbitts, & Hahn, 91-3026-4A (W.D. TX) - Inmate filed this Bivens action against staff at FPC Millington. He alleged that he suffers from permanent damage to his ankle because staff failed to properly assign him to a work detail where he could elevate his ankle. Personal service was effected on Paul Woodall, Correctional Officer, Tom Hibbitts, Correctional Officer, and John Hahn, Superintendent. However, the Assistant United States Attorney was not served with a copy of the complaint and a responsive pleading was not filed with the court. The decision to not file an answer was based on a memorandum issued by Chief Judge Robert McRae, dated April 10, 1985, regarding service of process. Essentially, Judge McRae stated if the United States Attorney's Office must be served. On 4-22-92, a default judgment was entered against the above-named BOP staff members. On 05-5-92, the United States filed a motion to set aside the entry of default. On 5-6-93, the court denied the motion. On 5-20-93, a Motion for Reconsideration of Order Denying Motion to Set Aside Entry of Default and Entering Default Judgment was filed with the court. A ruling has not been made to date. However, the AUSA Harriet Halmon has since made contact with DOJ Appellate Division and

a decision has been made that a responsive pleading will be filed anytime an employee is served properly pursuant to Rule 4(d)(1). No decision has been made by the court.

**Significant Cases:**

James Williams v. United States, 93-2332-GBRE  
(W.D. TN) - This inmate, seventy-one year old James Perry Williams filed this FTCA case alleging negligence on the part of the medical staff at FCI Memphis. The specific incident inmate Perry complains of stems from an incident when he was being transported to the Health Services Unit from the Recreation Yard in a golf cart type ambulance, being driven by a Physician's Assistant. The PA failed to strap inmate Perry down, and when he (the PA) turned the corner the cart hit a flower bed and inmate Perry was thrown from the cart. Perry does not appear to have any permanent injuries; however, compensation for pain and suffering may be appropriate. Perry is represented by counsel. The Assistant U.S. Attorney is preparing to propose a settlement of \$7,500.00

Rochelle McGuire v. Charles Turnbo, et al., Case  
Number 4:91-CV-831-Y, USDC, ND/TX (Fort Worth Division). This is a Bivens action by the representative of a deceased inmate. The complaint stems from the inmate's death after a visit. The inmate swallowed a large amount of cocaine in bags, and the bags burst while she was in a dry cell. She alleges that the Bureau of Prisons knew that she had ingested the cocaine and should have taken her immediately to the hospital. She also alleges that the Bureau of Prisons should have prevented the transfer of drugs in the visiting room because the Bureau knew that the inmate might try to smuggle drugs into the institution.

On June 23, 1993, the plaintiff filed his complaint for the third time with the court. The first complaint, filed in 1989, was dismissed for failure to exhaust administrative remedies and for failure to timely serve the defendants. The complaint was refiled in 1991 after plaintiff's FTCA administrative claim was denied by the Bureau of Prisons. The complaint was dismissed for a second time for failure to timely serve the defendants.

On June 8, 1993, the Court granted plaintiff's motion for relief from its earlier order dismissing the case

\$ 5000 settled  
8/24/93



without prejudice. The court ordered plaintiff to file proof of service by June 24, 1993, and stated that defendants may still attack the method of service.

Currently, the plaintiff has still failed to adequately serve the defendants. The plaintiff's motion for an enlargement of time to file summonses is pending before the court.

Seife v. USA, SA-93-CA-0396, WD/TX. Plaintiff, a former physician-administrator and director of the Generic Drug branch of the FDA, was convicted of perjury. He came into Bureau Custody in 1993 at 67 years of age and in poor physical condition. One month later, his lower extremities became seriously infected and was transported to a local hospital, where his left leg was amputated below-the-knee. His middle toe on his right foot was amputated three weeks later.

He brought an FTCA claim seeking \$2.5 million dollars. The administrative claim was denied and plaintiff filed suit in federal court. He claims that the BOP did not designate him to an adequate facility. He also claims that he was not adequately treated when his condition worsened. Plaintiff is represented by counsel. The AUSA handling the case specializes in medical malpractice law. SCRO has submitted a lengthy litigation report, and an answer is pending. There does not appear to be any avenue for a dispositive motion. The case is likely to go to trial on the merits.

The case has been reviewed by an MD/JD from the Navy who concluded that there was no causal link between the BOP's alleged negligence in designation and Dr. Seife's infection. Moreover, it appears that Dr. Seife was comparatively negligent in failing to notify staff of his deteriorating condition immediately prior to his transfer to the local hospital. Additionally, it appears that the cause of the illness is unknown.

Gibson v. U.S.A, 4:92-CV-0679-A, ND/TX. Plaintiff, an alleged paraplegic, claimed that FCI Fort Worth was in violation of the Architectural Barriers Act and various sections of the Constitution. Plaintiff complained that conditions at FCI Fort Worth were unsanitary and that inmates with wheelchairs could not access showers, closets, hallways and rooms. His

original complaint sought relief under the FTCA, and also appeared to seek relief under the Architectural Barriers Act. The court ultimately construed the complaint as seeking money damages only under the FTCA, and dismissed it for failure to exhaust administrative remedies.

Ighodaro v. Reeves County, P-93-CA-015, WD/TX. Plaintiff brought a Rivens suit alleging he was transferred to FMC Rochester for a mental health evaluation and treatment without notice or a hearing. Answer is due August 6. SCRO obtained affidavits from staff at FMC Rochester showing that plaintiff received a mental health evaluation, but not treatment, at FMC Rochester. The SCRO litigation report referred to U.S. v. Jones, 811 F.2d 444 (8th Cir. 1987), which holds that inmates have no statutory or constitutional right to notice or a pretransfer hearing prior to a transfer for mental health evaluation.

#### Significant Tort Claims

A settlement of \$2,000.00 was accepted by inmate Bruce's attorney, Elizabeth Unger Carlyle. Ms. Carlyle has since provided the BOP with a letter, in which she states inmate Bruce is willing to accept the settlement. Inmate Bruce was injured when a probationary staff member failed to adequately secure a vegetable prep area at FCI Memphis, and an inmate who was issued a "french knife" to cut vegetables, ran from the kitchen into the Dining Room swinging the knife at inmate Bruce. Investigation revealed the two inmates had been involved in a confrontation the previous evening, but neither inmate reported the confrontation to staff. Currently, comparative negligence is being evaluated. Bruce is currently incarcerated at FCI Phoenix, and is represented by counsel. His requested damages are \$10,000.00. He does not appear to have any permanent damages from the four cuts, two of which required sutures, which Bruce alleges he had to remove himself while locked in the Special Housing Unit at Memphis.

#### Upcoming Trials:

Black Culture Workshop v. United States, A-89-CA-602 (W.D. TX.) - Initially, this case was dismissed by the U.S. District Court, Western District of Texas on June 29, 1990. The inmates appealed, and on September 26, 1991, the Fifth Circuit Court of

Appeals remanded the case to the District Court. The Fifth Circuit affirmed the District Court's dismissal of the individual (Bivens) defendants, but remanded the case for further consideration on: 1) the legal basis, if any, for injunctive relief against the United States; 2) the exhaustion of remedies by appellants; 3) the proper party or parties defendant; and, 4) if necessary, the merits of the suit. In addition, plaintiff Larry Varner was transfer from FCI Bastrop, and the Fifth Circuit stated the District Court should consider whether Varner transferred for retaliatory reasons. Trial has been scheduled for September 20, 1993.

Goggin v. U.S., 91-2735(W.D. TN) - An FTCA action involving an inmate at Memphis who has alleged he did not receive proper medical treatment for an ankle injury. Goggin alleges he injured his ankle on the recreation yard, and one week later he was admitted to a community hospital suffering from fever, pain, and infection which resulted in the skin splitting. This case has been reset for October 20, 1993.

Armour v. Mims - 91-2502-GB (W.D. TN.) - Donald Armour filed a Bivens action alleging staff at FCI Memphis arbitrarily and capriciously and with deliberate indifference when he was denied a Kosher diet for 21 days. Mr. Neal Adler, Associate Warden at FCI Memphis is expected to be an expert witness on the Jewish Kosher diet program. Mr. Adler is Jewish. Mr. Armour simply did not follow the proper procedures to be placed on the Kosher Diet Program. When he submitted the proper authorization, he was allowed to participate in the program. On April 27, 1993, Judge Gibbons denied the government's Motion for Summary Judgment and qualified immunity for Chaplain Ray Mims. She based her decision on the fact that a genuine issue of material fact remains regarding whether Memphis' Religious Diet supplement which mandates certain procedural requirements before an inmate may be served a kosher diet is reasonably related to a penological objective. The Assistant U.S. Attorney has filed a Motion for Reconsideration in which the institution supplement will be directly related to a penological objective. A trial date has been set for 8-23-93. It is anticipated that this trial will be reset.

Hanif v. Quinlan - 91-2726-GBRE (W.D. TN.) - Talib Hanif filed a Bivens action alleging staff at FCI Memphis denied him the right to participate in a

kosher diet program. Initially, Mr. Hanif was denied the opportunity to participate in the kosher diet program because he did not fall within the guidelines of Bureau of Prisons policy. However, he was subsequently allowed to participate. The trial set for February 17, 1993, has been reset for September 10, 1993. FCI Memphis is scheduled to begin a common fare program on July 12, 1993. It is anticipated that this case will be moot at that time.

OTHER INFORMATION:

Lavado v. Keohane, et. al., 88-2891-GB (W.D. TN) -  
This action was filed in 1988, and was monitored by the SERO. This Bivens styled case was filed on 11-18-88, by inmate Henry Lavado, Jr. Lavado alleged that multiple staff members at FCI Memphis had opened his "Special Mail" from his attorney on ten different occasions over a period of several months. He requested \$35,000.00 compensatory damages, and \$70,000.00 punitive damages. on 11-15-89, the U.S. District Court, Western District of Tennessee, Western Division, granted Summary Judgment on 11-15-89. However, on 4-22-93, the Sixth Circuit affirmed the district court's judgment in part and reversed the judgment in part. The Sixth Circuit remanded the case with instructions to the District Court to determine if, on two (2) separate occasions, Al Langa, who was the Paralegal, opened and read inmate Lavado's "special mail" and whether the acts were arbitrary or capricious. The Assistant U.S. Attorney has scheduled to depose Lavado in her office on August 25, 1993.

**TRAVEL**

Mike Hood -

Assisting Central Office staff with Administrative Remedy  
Training - FCI Bastrop - August 25-26  
Sentencing Institute - Raleigh-Durham, NC - September 7-10

Linda Nutt -

Assisting Central Office staff with Administrative Remedy  
Training - FCI Memphis - August 23-24

## memorandum

DATE:

September 24, 1993

REPLY TO  
ATTN OF:

SUBJECT:

Michael D. Hood, Regional Counsel

TO:

Monthly Report - August 1, 1993 - August 31, 1993

Wallace H. Cheney, Assistant Director/General Counsel  
Central Office

## ADMINISTRATIVE REMEDIES

|          | JAN | FEB | MAR | APR | MAY | JUN | JUL | AUG |
|----------|-----|-----|-----|-----|-----|-----|-----|-----|
| Received | 104 | 90  | 103 | 96  | 52  | 72  | 84  | 113 |
| Answered | 90  | 97  | 112 | 88  | 35  | 71  | 62  | 107 |

## TORT CLAIMS

|                     | JAN | FEB | MAR | APR | MAY | JUN | JUL | AUG |
|---------------------|-----|-----|-----|-----|-----|-----|-----|-----|
| Number Pending      | 228 | 243 | 283 | 271 | 292 | 309 | 278 | 253 |
| Number Received     | 70  | 90  | 63  | 72  | 53  | 67  | 69  | 80  |
| Number Answered     | 55  | 50  | 75  | 51  | 36  | 98  | 94  | 56  |
| Number Pending      | 243 | 283 | 271 | 292 | 309 | 278 | 253 | 277 |
| Number Over Six Mon | 0   | 1   | 0   | 0   | 0   | 0   | 0   | 0   |

## FOI/PRIVACY

|                 | JAN | FEB | MAR | APR | MAY | JUN | JUL | AUG |
|-----------------|-----|-----|-----|-----|-----|-----|-----|-----|
| Number Pending  | 15  | 16  | 38  | 61  | 63  | 81  | 86  | 80  |
| Number Received | 24  | 39  | 68  | 61  | 69  | 87  | 75  | 58  |
| Number Answered | 23  | 17  | 45  | 59  | 51  | 82  | 81  | 31  |
| Number Pending  | 16  | 38  | 61  | 63  | 81  | 86  | 80  | 107 |

## LITIGATION

|                                     | JAN | FEB | MAR | APR | MAY | JUN | JUL | AUG |
|-------------------------------------|-----|-----|-----|-----|-----|-----|-----|-----|
| New Cases Recd                      | 10  | 12  | 23  | 22  | 31  | 16  | 14  | 20  |
| Cases Closed                        | 1   | 11  | 9   | 21  | 6   | 3   | 13  | 7   |
| Habeas Corpus                       | 6   | 6   | 7   | 8   | 16  | 7   | 10  | 9   |
| Bivens                              | 3   | 5   | 12  | 13  | 11  | 7   | 4   | 9   |
| FTCA                                | 1   | 1   | 3   | 0   | 2   | 2   | 0   | 2   |
| Other                               | 0   | 0   | 1   | 1   | 2   | 0   | 0   | 0   |
| Lit Reports                         | 9   | 9   | 14  | 18  | 18  | 14  | 12  | 16  |
| Cases With Hearings<br>or Trials    | 2   | 3   | 4   | 4   | 3   | 1   | 1   | 1   |
| Cases With Settlements<br>or Awards | 2   | 2   | 1   | 0   | 1   | 1   | 0   | 1   |
| Tort Claim Settlement               | 0   | 0   | 0   | 0   | 0   | 0   | 1   | 0   |

James Williams v. United States, 93-2332-GBRE (W.D. TN) - This inmate, seventy-one year old James Perry Williams filed this FTCA case alleging negligence on the part of the medical staff at FCI Memphis. The specific incident inmate Perry complains of stems from an incident when he was being transported to the Health Services Unit from the Recreation Yard in a golf cart type ambulance, being driven by a Physician's Assistant. The PA failed to strap inmate Perry down, and when he (the PA) turned the corner the cart hit a flower bed and inmate Perry was thrown from the cart. Perry does not appear to have any permanent injuries; however, compensation for pain and suffering may be appropriate. Perry is represented by counsel. The Assistant U.S. Attorney is preparing to propose a settlement of \$7,500.00. Plaintiff agreed to a settlement of \$5,000.00. A Stipulation for Comprise Settlement has been forwarded to plaintiff's attorney.

**ADVERSE JUDGMENTS:**

Burkhart v. Woodall, Hibbitts, & Hahn, 91-3026-4A (W.D. TX) - Inmate filed this Bivens action against staff at FPC Millington. He alleged that he suffers from permanent damage to his ankle because staff failed to properly assign him to a work detail where he could elevate his ankle. Personal service was effected on Paul Woodall, Correctional Officer, Tom Hibbitts, Correctional Officer, and John Hahn, Superintendent. However, the Assistant United States Attorney was not served with a copy of the complaint and a responsive pleading was not filed with the court. The decision to not file an answer was based on a memorandum issued by Chief Judge Robert McRae, dated April 10, 1985, regarding service of process. Essentially, Judge McRae stated if the United States Attorney's Office must be served. On 4-22-92, a default judgment was entered against the above-named BOP staff members. On 05-5-92, the United States filed a motion to set aside the entry of default. On 5-6-93, the court denied the motion. On 5-20-93, a Motion for Reconsideration of Order Denying Motion to Set Aside Entry of Default and Entering Default Judgment was filed with the court. The motion was denied by Judge McRae. AUSA Halmon has contacted DOJ Appellate Division regarding an interlocutory appeal.

**PRIOR ADVERSE INFORMATION - STILL PENDING:**

Henthorn v. Hester, 92-2630 (W.D. TN.) - Donald Henthorn filed this Bivens action alleging he was

homosexually fondled by FPC Millington Correctional Officer Michael Hester. A Motion for Summary Judgment/Motion to Dismiss was denied by Judge Julia Gibbons. She agreed that the defendant may have been acting in accordance with normal and permissible procedures and that such procedures may include touching of genitalia while conducting a search. However, Judge Gibbons stated in her order dated 4-26-93, that she would reconsider the motion for summary judgment if the defendant submitted an affidavit explaining what procedures he used while patting down plaintiff during the search(s) complained of. On 5-18-93, the AUSA Harriet Halmon submitted a Renewed Motion to Dismiss, or in the Alternative, Motion for Summary Judgment. Attached to the Motion was supporting documentation from the following FLETC staff: Attorney Advisor, J. Stuart Bauch and Correctional Programs Specialist, George Damrill; and Terry Graham, Correctional Program Specialist. It is anticipated that this case will be dismissed in light of Judge Gibbons 4-26-93 order.

SIGNIFICANT CASES:

Black Culture Workshop v. United States, A-89-CA-602 (W.D. TX.) - Initially, this case was dismissed by the U.S. District Court, Western District of Texas on June 29, 1990. The inmates appealed, and on September 26, 1991, the Fifth Circuit Court of Appeals remanded the case to the District Court. The Fifth Circuit affirmed the District Court's dismissal of the individual (Bivens) defendants, but remanded the case for further consideration on: 1) the legal basis, if any, for injunctive relief against the United States; 2) the exhaustion of remedies by appellants; 3) the proper party or parties defendant; and, 4) if necessary, the merits of the suit. In addition, plaintiff Larry Varner was transfer from FCI Bastrop, and the Fifth Circuit stated the District Court should consider whether Varner transferred for retaliatory reasons. On August 31, 1993, AUSA Atkinson notified Martin Sweaney that summary judgment had been granted in favor of the United States and the individually named defendants.

Rochelle McGuire v. Charles Turnbo, et al., 4:91-CV-831-Y, USDC, ND/TX (Fort Worth Division) - The Court ordered that plaintiff be granted an extension to serve defendants and file proof of service with

court as required by the local rules. As discussed last month, this case has been dismissed twice because plaintiff failed to properly serve the defendants.

#### Significant Tort Claims

A tort claim for personal injury has been filed by the American Civil Liberties Union, Los Angeles Branch, on behalf of Dr. Humberto Alvarez-Machain. Dr. Alvarez-Machain alleges Drug Enforcement Administration Agents

kidnapped him from Mexico, and beat and tortured him. He further states he was incarcerated by the Bureau of Prisons at the Federal Correctional Institution, La Tuna from April 6, 1990 until April 10, 1990.

The allegation relating to the Bureau of Prisons relates to inadequate medical care at FCI La Tuna, as well as MDC Los Angeles. Dr. Alvarez-Machain contends that the medical staff at FCI La Tuna did not speak Spanish, and he was unable to communicate his medical condition to them.

On April 10, 1990, he was transferred to the Metropolitan Detention Center, Los Angeles, where he remained until he was released to the custody of the Immigration and Naturalization Service on December 14, 1992.

Dr. Alvarez-Machain does not mention the reason he was brought to the United States. However, the DEA reportedly had evidence that Dr. Alvarez-Machain was a key player in the death of DEA Agent Nicky Camarino, whom we now honor during the drug-free workplace week each October.

#### Upcoming Trials:

Goggin v. U.S., 91-2735(W.D. TN) - An FTCA action involving an inmate at Memphis who has alleged he did not receive proper medical treatment for an ankle injury. Goggin alleges he injured his ankle on the recreation yard, and one week later he was admitted to a community hospital suffering from fever, pain, and infection which resulted in the skin splitting. This case has been reset for October 20, 1993.

Armour v. Mims - 91-2502-GB (W.D. TN.) - Donald Armour filed a Bivens action alleging staff at FCI



Memphis arbitrarily and capriciously and with deliberate indifference when he was denied a Kosher diet for 21 days. Mr. Neal Adler, Associate Warden at FCI Memphis is expected to be an expert witness on the Jewish Kosher diet program. Mr. Adler is Jewish. Mr. Armour simply did not follow the proper procedures to be placed on the Kosher Diet Program. When he submitted the proper authorization, he was allowed to participate in the program. On April 27, 1993, Judge Gibbons denied the government's Motion for Summary Judgment and qualified immunity for Chaplain Ray Mims. She based her decision on the fact that a genuine issue of material fact remains regarding whether Memphis' Religious Diet supplement which mandates certain procedural requirements before an inmate may be served a kosher diet is reasonably related to a penological objective. The Assistant U.S. Attorney has filed a Motion for Reconsideration in which the institution supplement will be directly related to a penological objective. A trial date has been set for 8-23-93. It is anticipated that this trial will be reset.

Hanif v. Quinlan - 91-2726-GBRE (W.D. TN.) - Talib Hanif filed a Bivens action alleging staff at FCI Memphis denied him the right to participate in a kosher diet program. Initially, Mr. Hanif was denied the opportunity to participate in the kosher diet program because he did not fall within the guidelines of Bureau of Prisons policy. However, he was subsequently allowed to participate. The trial set for February 17, 1993, has been reset for September 10, 1993. FCI Memphis is scheduled to begin a common fare program on July 12, 1993. A pretrial conference has been set for September 13, 1993, at 1:30 p.m. It is anticipated that the court will consider whether or not Hanif's First Amendment right was violated during the period of time FCI Memphis staff denied him the right to partake in the kosher diet.

OTHER INFORMATION:

Lavado v. Keohane, et. al., 88-2891-GB (W.D. TN) - This action was filed in 1988, and was monitored by the SERO. This Bivens styled case was filed on 11-18-88, by inmate Henry Lavado, Jr. Lavado alleged that multiple staff members at FCI Memphis had opened his "Special Mail" from his attorney on ten different occasions over a period of several months. He requested \$35,000.00 compensatory damages, and \$70,000.00 punitive damages. on 11-15-89, the U.S.

District Court, Western District of Tennessee, Western Division, granted Summary Judgment on 11-15-89. However, on 4-22-93, the Sixth Circuit affirmed the district court's judgment in part and reversed the judgment in part. The Sixth Circuit remanded the case with instructions to the District Court to determine if, on two (2) separate occasions, Al Langa, who was the Paralegal, opened and read inmate Lavado's "special mail" and whether the acts were arbitrary or capricious. The scheduled deposition of Lavado was postponed due to his request for an enlargement of time and a Motion for a Protective Order. Lavado contends that he does not have adequate funds to communicate between Florida (residence) and Memphis. AUSA Halmon filed a response to the motions, and the matter is still pending.

BUREAU OF PRISONS - SOUTH CENTRAL REGION UNITED STATES GOVERNMENT

October 12, 1993

memorandum

DATE:

REPLY TO  
ATTN OF:

*M.D. Hood*  
Michael D. Hood, Regional Counsel

SUBJECT:

Monthly Report - September 1, 1993 - September 30, 1993

TO:

Wallace H. Cheney, Assistant Director/General Counsel  
Central Office

*JOZ*

ADMINISTRATIVE REMEDIES

|          | JAN | FEB | MAR | APR | MAY | JUN | JUL | AUG | SEP |
|----------|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| Received | 104 | 90  | 103 | 96  | 52  | 72  | 84  | 113 | 94  |
| Answered | 90  | 97  | 112 | 88  | 35  | 71  | 62  | 107 | 66  |

TORT CLAIMS

|                     | JAN | FEB | MAR | APR | MAY | JUN | JUL | AUG | SEP |
|---------------------|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| Number Pending      | 228 | 243 | 283 | 271 | 292 | 309 | 278 | 253 | 277 |
| Number Received     | 70  | 90  | 63  | 72  | 53  | 67  | 69  | 80  | 74  |
| Number Answered     | 55  | 50  | 75  | 51  | 36  | 98  | 94  | 56  | 59  |
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| Number Over Six Mon | 0   | 1   | 0   | 0   | 0   | 0   | 0   | 0   | 0   |

FOI/PRIVACY

|                 | JAN | FEB | MAR | APR | MAY | JUN | JUL | AUG | SEP |
|-----------------|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| Number Pending  | 15  | 16  | 38  | 61  | 63  | 81  | 86  | 80  | 107 |
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| Number Answered | 23  | 17  | 45  | 59  | 51  | 82  | 81  | 31  | 33  |
| Number Pending  | 16  | 38  | 61  | 63  | 81  | 86  | 80  | 107 | 94  |

LITIGATION

|                                     | JAN | FEB | MAR | APR | MAY | JUN | JUL | AUG | SEP |
|-------------------------------------|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| New Cases Recd                      | 10  | 12  | 23  | 22  | 31  | 16  | 14  | 20  | 17  |
| Cases Closed                        | 1   | 11  | 9   | 21  | 6   | 3   | 13  | 7   | 36  |
| Habeas Corpus                       | 6   | 6   | 7   | 8   | 16  | 7   | 10  | 9   | 4   |
| Bivens                              | 3   | 5   | 12  | 13  | 11  | 7   | 4   | 9   | 8   |
| FTCA                                | 1   | 1   | 3   | 0   | 2   | 2   | 0   | 2   | 3   |
| Other                               | 0   | 0   | 1   | 1   | 2   | 0   | 0   | 0   | 2   |
| Lit Reports                         | 9   | 9   | 14  | 18  | 18  | 14  | 12  | 16  | 10  |
| Cases With Hearings<br>or Trials    | 2   | 3   | 4   | 4   | 3   | 1   | 1   | 1   | 2   |
| Cases With Settlements<br>or Awards | 2   | 2   | 1   | 0   | 1   | 1   | 0   | 1   | 0   |
| Tort Claim<br>Settlements           | 0   | 0   | 0   | 0   | 0   | 0   | 1   | 0   | 0   |

**PENDING SETTLEMENTS**

James Williams v. United States, 93-2332-GBRE (W.D. TN) - This inmate, seventy-one year old James Perry Williams filed this FTCA case alleging negligence on the part of the medical staff at FCI Memphis. The specific incident inmate Perry complains of stems from an incident when he was being transported to the Health Services Unit from the Recreation Yard in a golf cart type ambulance, being driven by a Physician's Assistant. The PA failed to strap inmate Perry down, and when he (the PA) turned the corner the cart hit a flower bed and inmate Perry was thrown from the cart. Perry does not appear to have any permanent injuries; however, compensation for pain and suffering may be appropriate. Perry is represented by counsel. The Assistant U.S. Attorney is preparing to propose a settlement of \$7,500.00. Plaintiff agreed to a settlement of \$5,000.00. A Stipulation for Comprise Settlement has been forwarded to plaintiff's attorney.

a. Adverse judgments

Shugart v. Hussein, Walker, et.al., 93-005-B-1 (M.D. LA) - Inmate at Carville filed this Bivens action against Hansen's Disease Center Public Health Service Physician's Assistant, Esam A. Hussein, Bureau of Prisons Medical Technician Judith Walker, and an Unknown John Doe at FMC Carville. Shugart alleged that Hussein removed him from "medically unassigned" and forced him to perform on a work detail, and denied him medical care. While Shugart was in the custody of the U.S. Marshal Service, he suffered a fall. A cat-scan performed in a community hospital in Wisconsin indicated that Shugart was in need of surgery to correct a herniated disc with nerve root encroachment. However, when Shurgart arrived at FCI Texarkana, the cat-scan result was not in his medical file. Subsequent x-rays indicated that Shugart had a normal lumbar spine. Dr. Stringfellow at FCI Texarkana recommended that Shugart be designated to FMC Carville for further medical evaluation. Shugart alleges that he was transferred to Carville in order to receive physical therapy for the back condition.

Shugart also suffered from a detached retina, for which he received correctional surgery in January 1993. Shugart claims that the retina became detached due to a fall he sustained in December 1992. He claims that when he fell, he was under the influence of a medication prescribed and administered by P.A. Hussein. Shugart further claims that he requested a wheelchair in order to go to the dining hall for diner, but Judith Walker denied the request, and when he attempted to walk to the dining hall he hit his head.

ADVERSE OPINION OF MAGISTRATE JUDGE: Absolute Immunity was plead for P.A. Hussein, but Magistrate Stephen C.

Ridlinger's has provided a Report and Recommendation that states absolute immunity is not appropriate for a Bivens claim. The Assistant U.S. Attorney James Thompson, Baton Rouge Louisiana made contact with Roger Einerson, Torts Branch, Department of Justice, regarding the opinion of Department of Justice relating to the pleading of absolute immunity for Public Health Service Commissioned Officers. Mr. Einerson stated the Solicitor General had provided a brief in the case of U.S. v. Smith, 111 S.Ct. 1180 (1991), which opposes the granting of absolute immunity for Public Health Service staff sued in Bivens actions. Mr. Einerson further advised Mr. Thompson and South Central Regional staff that the Bureau of Prisons will not be supported should an appeal reach the Solicitor General's level on cases pleading absolute immunity for Public Health Service Commissioned Officers sued in a Bivens action.

A telephonic conference was held on Wednesday, October 6, 1993, between Roger Einerson and Mike Hood regarding this matter. Also, Mike forwarded a brief prepared by the Appellate Section of the Civil Division to Mr. Einerson which supported the BOP's position regarding PHS immunity. On October 12, 1993, Mr. Einerson advised that the brief, which was supplied by Hank Sadowski, persuaded the Torts Branch that the BOP has an arguable position and, thus, will allow us to present the argument

PRIOR ADVERSE INFORMATION - STILL PENDING:

Henthorn v. Hester, 92-2630 (W.D. TN.) - Donald Henthorn filed this Bivens action alleging he was homosexually fondled by FPC Millington Correctional Officer Michael Hester. A Motion for Summary Judgment/Motion to Dismiss was denied by Judge Julia Gibbons. She agreed that the defendant may have been acting in accordance with normal and permissible procedures and that such procedures may include touching of genitalia while conducting a search. However, Judge Gibbons stated in her order dated 4-26-93, that she would reconsider the motion for summary judgment if the defendant submitted an affidavit explaining what procedures he used while patting down plaintiff during the search(s) complained of. On 5-18-93, the AUSA Harriet Halmon submitted a Renewed Motion to Dismiss, or in the Alternative, Motion for Summary Judgment. Attached to the Motion was supporting documentation from the following FLETC staff: Attorney Advisor, J. Stuart Bauch and Correctional Programs Specialist, George Damrill; and Terry Graham, Correctional Program Specialist. It is anticipated that this case will be dismissed in light of Judge Gibbons 4-26-93 order.

## SIGNIFICANT CASES

Dearing v. UNICOR, et. al., A-93-CA-515-JN (W.D. TX) Plaintiff Charles Dearing, filed a Bivens action that he was discriminated on the basis of physical handicap by staff at FCI Bastrop. transferred to from FCI Bastrop to FCI Three Rivers.

## UPCOMING TRIALS

Garrison v. Bristol, 92-5683 (6th Cir.) - On February 24, 1993, the Sixth Circuit Court vacated a summary judgment which was affirmed by the U.S. District Court, Western District of Tennessee. The circuit court concluded that the evidence was such that a summary judgment was not warranted with respect to Ernie Bristol. Mr. Bristol is the Health Service Administrator at FCI Memphis. This Bivens type suit was filed by inmate Dane Garrison. Mr. Garrison alleges that he was subjected to cruel and unusual punishment by medical staff at FCI Memphis, and that his right to due process under the Fourteenth Amendment was violated. These allegations result from an injury Mr. Garrison sustained to his right leg at FCI Memphis. Mr. Garrison's right leg was injured when a piece of metal was thrown from a lawn mower.

The Sixth Circuit panel ruled that the evidence is such that summary judgement was not warranted with respect to Ernie Bristol. The panel ruled that a genuine issue of material fact remains with respect to whether or not Mr. Bristol violated Garrison's Eight Amendment Right when he ordered Garrison out of the institution hospital without providing treatment. This claim was substantiated by an inmate affidavit. The incident allegedly occurred when Garrison was telling another inmate that he (Garrison) intended to contact his attorney if he did not receive adequate treatment. Allegedly, Mr. Bristol overheard the statement and "threw" Garrison out of the institution hospital.

Goggin v. U.S., 91-2735(W.D. TN) - An FTCA action involving an inmate at Memphis who has alleged he did not receive proper medical treatment for an ankle injury. Goggin alleges he injured his ankle on the recreation yard, and one week later he was admitted to a community hospital suffering from fever, pain, and infection which resulted in the skin splitting. This case has been reset for December 1993 or January 1994.

Armour v. Mims - 91-2502-GB (W.D. TN.) - Donald Armour filed a Bivens action alleging staff at FCI Memphis arbitrarily and capriciously and with deliberate indifference when he was denied a Kosher diet for 21 days. Mr. Neal Adler, Associate Warden at FCI Memphis is expected to be an expert witness on the Jewish Kosher diet program. Mr. Adler is Jewish. Mr. Armour simply did not follow the proper procedures to be placed on the Kosher Diet Program. When he submitted the proper authorization, he was allowed to participate in the program. On April 27, 1993, Judge Gibbons denied the government's Motion for Summary Judgment and qualified immunity for Chaplain Ray Mims. She based her decision on the fact that a genuine issue of material fact remains regarding whether Memphis' Religious Diet supplement which mandates certain procedural requirements before an inmate may be served a kosher diet is reasonably related to a penological objective. The Assistant U.S. Attorney has filed a Motion for Reconsideration in which the institution supplement will be directly related to a penological objective. A trial date has been set for 8-23-93. It is anticipated that this trial will be reset.

Privette v. United States, 1:93-0090-C (N.D. TX) - Inmate alleged he fell into a fence-post hole during construction project at FCI Big Spring, because institution did not take precautions to secure worksite. We have ample evidence that inmate was in clearly marked unauthorized area at the time of fall. Case is tentatively scheduled for trial within the next 12 mos.

OTHER INFORMATION:

Hanif v. Quinlan - 91-2726-GBRE (W.D. TN.) - Talib Hanif filed a Bivens action alleging staff at FCI Memphis denied him the right to participate in a kosher diet program. Initially, Mr. Hanif was denied the opportunity to participate in the kosher diet program because he did not fail within the guidelines of Bureau of Prisons policy. However, he was subsequently allowed to participate. The trial set for February 17, 1993, has been reset for September 10, 1993. FCI Memphis is scheduled to begin a common fare program on July 12, 1993. This case was dismissed by the court.

Lavado v. Keohane, et. al., 88-2891-GB (W.D. TN) - This action was filed in 1988, and was monitored by the SERO. This Bivens styled case was filed on 11-18-88, by inmate Henry Lavado, Jr. Lavado alleged

that multiple staff members at FCI Memphis had opened his "Special Mail" from his attorney on ten different occasions over a period of several months. He requested \$35,000.00 compensatory damages, and \$70,000.00 punitive damages. on 11-15-89, the U.S. District Court, Western District of Tennessee, Western Division, granted Summary Judgment on 11-15-89. However, on 4-22-93, the Sixth Circuit affirmed the district court's judgment in part and reversed the judgment in part. The Sixth Circuit remanded the case with instructions to the District Court to determine if, on two (2) separate occasions, Al Langa, who was the Paralegal, opened and read inmate Lavado's "special mail" and whether the acts were arbitrary or capricious. This case was dismissed at Lavado's request.