

LITIGATION

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
New Cases Recd	32											
Cases Closed	3											
Habeas Corpus	25											
Bivens	4											
FTCA	3											
Other	0											
Lit Reports	23											
Cases With Hearing or Trials	2											
Cases With Settlements or Awards	0											
Tort Claim Settlements	0											

SIGNIFICANT CASESL. J. and Maylene Carter, LR-C-95-407 (ED/AR)

In this FTCA action, the plaintiffs sought reimbursement for subsistence fees charged while they were housed in a halfway house. Their theory was based on the fact that the Judgment and Commitment Order, which did impose fines and restitution, contained the form language that "The fine includes any costs of incarceration and/or supervision." On January 21, 1997, the court ruled that we acted within our authority in collecting the subsistence fees, and that our actions were not in violation of the J & C. The court also noted that plaintiffs did have a choice in the matter - if they did not want to pay subsistence, they could have been housed in a correctional institution, where no subsistence or costs of incarceration would have been assessed.

Daniel Schmaus v. N. L. Conner, 6:96CV1023 (ED/TX)

In this Habeas action, the inmate alleges his third revoked term of Special Parole had expired and the U.S. Parole Commission had determined his "sentence had expired". He alleges the Bureau of Prisons refuses to release him.

Eddie Wayne Roberson v. Warden, 5:96CV216 (ED/TX)

In this Habeas action, the inmate alleges the Warden refuses to give jail time credit for time he spent in state custody under federal detainer.

CRIMINAL MATTERS/PROSECUTION

FPC BRYAN

[REDACTED] case continues to be active. The letter proposing termination has been withdrawn, and it is expected that [REDACTED] will return to work on Monday, January 27th. [REDACTED] will be assigned to answer telephones and will work in the Control Center with another officer present at all times. This restriction in his work status is being imposed because additional information has come to light and OIG has "reactivated" their investigation into [REDACTED] activities. One of the inmate witnesses, who is currently in the Lubbock area, will be reinterviewed. Further action regarding the case will be based upon the witnesses statement. b7c

The investigation into allegations of sexual impropriety by [REDACTED] Physician Assistant, continues. OIG agents and an Assistant U.S. Attorney from Main Justice (Civil Rights) will be in the institution at a yet undetermined date in the future to interview the subject and others.

The investigation into allegations of sexual impropriety raised against [REDACTED] Correctional Officer, continues. [REDACTED] was served with a Search Warrant to provide blood sample. He complied with the Warrant, and the blood sample has been sent to the FBI Laboratory in Quantico, Virginia, for analysis. Further activity in this case is contingent upon the results of the blood analysis.

FCI EL RENO

Harwood, Escape, pending.

Harris, Introduction of Drugs, FBI declines due to small amount (previously reported). The Warden concurs with reservations, but has decided not to pursue.

Hiliard, Possession of Marijuana, pending (previously reported). The Warden is advocating for the Assistant U.S. Attorney to pursue.

Jones, Introduction of Marijuana, sentence next week.

Lamar, Introduction of Narcotics, pending.

Luevano, Attempted Murder, pled guilty, awaiting sentencing.

Martinez, Introduction of Narcotics, pending.

Robitaille, Escape, pending.

Wilson, Assaulted staff, Introduction of Narcotics, sentenced 27 months.

FTC OKLAHOMA

The Warden concurs with all nonsubmittals.

A credit card fraud involving Sears was detected during telephone monitoring. The matter was referred to the FBI who then referred it to Secret Service. Secret Service accepted the case.

On December 20, 1996, staff noticed a section of a wall in one of the SHU cell had been dug away. Staff also found pieces of metal and plastic electrical box used in the shower control hidden in the mattresses along with one metal bracket that had been fashioned into a weapon. This matter of attempted escape was referred to the FBI, and it was determined this matter did not qualify for referral to the U.S. Attorney's Office. The Warden concurred because of insufficient facts to support the charge.

On December 23, 1996, an inmate threw an unknown liquid substance out of his SHU cell food slot, hitting the officer in the chest and stomach area. This matter of staff assault was referred to the FBI but was not submitted to the U.S. Attorney's Office.

On December 30, 1996, an inmate in SHU struck his food tray and knocked it off the food slot, striking the officer in the abdomen area. This staff assault was referred to the FBI but was a non-submittal to the U.S. Attorney's Office.

On January 8, 1997, two inmates were fighting in Food Service. They were separated, seen by medical staff, and placed on administrative detention. The FBI deemed this a non-submittal and did not refer the matter to the U.S. Attorney's Office.

On January 14, 1997, the unit officer saw inmate Olowodola running after inmate Williams while yelling and swinging a fire extinguisher. This matter of inmate assault was referred to the FBI but was not referred to the U.S. Attorney's Office.

On January 18, 1997, an inmate in SHU threw an empty urine specimen bottle through the food slot and struck the officer in the upper chest area. This matter was deemed by the FBI as a non-submittal to the U.S. Attorney's Office.

FCI TEXARKANA

Inmates Cordova-Rodriguez and Morris Haughton became involved in a heated verbal argument in the Dining Hall at FCI Texarkana. Haughton then assaulted Cordova-Rodriguez by cutting him across the forehead with a single edge razor blade. Cordova-Rodriguez received 32 sutures to close the wound. The razor blade was discovered on the floor near the area of the incident.

The U. S. Attorney has accepted prosecution against Morris Haughton. The case was set for trial on January 28, 1997, and will be continued through next month in Texarkana. Five (5) staff members have been subpoenaed as witnesses already.

FCI THREE RIVERS

The U.S. Attorney's office has declined prosecution in the Garcia-Chavez homicide case (incident occurred in May 1996) for the following reasons: forensic evidence was insufficient to support prosecution and the only witness was not credible. The Warden has been advised, and has not pursued the matter further.

On January 5, 1997, Jorge Ramon, Jr. and Clemente Valdez, Jr. were involved in a fight/assault in an inmate's living unit, which resulted in inmate Ramon receiving several stab wounds. Investigation revealed both inmates had agreed to fight. Both inmates were placed in Special Housing. The Assistant U.S. Attorney's Office has not advised whether they will seek prosecution.

SIGNIFICANT TORT CLAIM

Inmate Marsha BUCHANON, Register Number 19548-001 - Former inmate at FMC Carswell has submitted an administrative claim (T-SCR-97-20), alleging that while she was being x-rayed on January 17, 1995, the x-ray machine malfunctioned and she sustained burns to both of her eyes. She claims that the examination revealed she had sustained flash burns and had photophobia/photo sensitivity. She is seeking three hundred thousand dollars (\$300,000.00) in damages.

A review of the medical documents she attached to her claim indicates that on January 17, 1995, a physician at FMC Carswell noted in her medical chart that she had photophobia secondary to flash in her eyes.

CASES WITH HEARING OR TRIALHoot v. Gibson, A-96-CA-390 (WD/TX)

On January 28, 1997, Judge Sparks held a hearing to consider the petitioner's request for DAP credit for seven weeks spent in non-DAP bed as the result of mutual error of staff and petitioner. The Central Office's position that the petitioner had not met the statutory requirement of 180 days in a DAP bed was articulated by Dr. J. Jones, DAP Administrator, SCRO. The Court ruled that the equities of the case were in the petitioner's favor, and entered judgment orally in favor of the Petitioner.

Gerald Esposito v. George E. Killinger, et al., 4:96-CV-927-Y ND/TX

A hearing was held on January 31, 1997, on a pending TRO on ESPOSITO, Gerald, who claims we have denied him adequate medical care. At the hearing, the Court denied the TRO due to the requested medical procedure being scheduled. The Judge suggested that Inmate Esposito drop the case to avoid it being dismissed as frivolous.

UPCOMING TRIAL OR HEARINGSRandy Dwayne Wells v. W. F. Woods, et al., C-96-149 (SD/TX)

Evidentiary hearing is scheduled for February 24, 1997, before a U.S. Magistrate Judge. Plaintiff is alleging deliberate indifference to medical injury and needs. Plaintiff is alleging he suffered a head injury at FCI Three Rivers, on March 13, 1994, and now suffers from loss of smell and taste.

Spanjol v. USA, 4:94-CV-237 (ND/TX)

A hearing is scheduled for March 10 and 11, 1997.

We received word that Judge McBryde has scheduled a trial on Wali Muhammed v. USA during the week of April 28, 1997. There are concerns that the Judge may find liability on the issue of negligence in the placement of plaintiff in a non-handicapped accessible facility. The matter is being reviewed further by the legal staff.

SITUATIONS OF INTEREST**FCC BEAUMONT**

January 10, 1997, Paul Layer attended the FCC Beaumont's Community Relations Board Meeting and made a presentation introducing the Board Members to the FCC Beaumont Legal Department's function.

January 17, 1997, Karen Summers, Larry Weston (DHO), and Paul Layer hosted a tour of the FCC Beaumont for U.S. District Court Magistrate Judge Wendell Radford and his staff of fifteen. At one point during the tour, the group attended Paul Layer's A&O lecture to new inmates at the FCI (LOW) re: Legal Department role, FTCA procedures, FOIA/PA, and Administrative Remedy Program.

The off-site medical care procedures (contract modifications) were approved by the Central Office and presented to UTMB for consideration.

FMC CARSWELL**U.S. v. Mansour, Rasha**

Contacted the Assistant U.S. Attorney to begin commitment process under 18 USC 4245.

FTC OKLAHOMA

On January 29, 1997, Congressman J.C. Watts and his staff along with staff members from Congressman Lucas, Watkins, and Istook's offices took a tour. Staff members from Senators Nickles and Inhofe's offices will also be in attendance, along with Payne County D.A. and the 4th District Crime Task Force members. They will also visit FCI El Reno.

SOUTH CENTRAL REGION

On January 16, 1994, Patrick Gardener from Congressman J.C. Watts Office, Oklahoma City, Oklahoma, visited with Acting Regional Director Michael Hood.

SIGNIFICANT ADMINISTRATIVE REMEDIES

Inmate Wayne Matra, at FCI Texarkana, filed a Request for Administrative Remedy, Case Number 124992-F1, the inmate alleges discrimination in religious practices. He alleges the institution is not utilizing the proper "prayer oil". The institution's response was that the oil was not a religious item in itself; however, it was used to facilitate a religious practice. We agreed to return to using the requested oil.

MEDICAL MALPRACTICE**TORT**

CANIPE, Terry, Register Number 60647-080 (T-BOP-96-159)- Inmate alleges that during the morning hours of July 30, 1994, while he was incarcerated at FCI Bastrop, he was attacked by other inmates during an institution lockdown. He claims that he sustained a broken finger and "other injuries." Mr. Canipe contends that he did not seek immediate medical attention because he had been warned by other inmates not to give any information about how he sustained the injuries.

At approximately 6:00 p.m., Mr. Canipe reported to institution staff that he had slipped on some stairs and had fallen down. Medical staff examined Mr. Canipe and requested x-rays of his hand and face. On August 2, 1994, the x-ray revealed that he had suffered a broken finger, and approximately ten days later, he was examined by a contract orthopedic physician who noted a partial ligament rupture on the splinted finger. The inmate was instructed to initiate range of motion exercises. On August 11, 1994, an x-ray revealed a dislocation involving the joint of the right ring finger. Surgery was later performed by a contract surgeon, and Mr. Canipe was referred to Springfield. Mr. Canipe is seeking one million dollars in damages.

LITIGATION

None

PERSONAL MATTERS

Michael Hood	- February 4-5	- FCI Three Rivers Staff Assistance Visit
Paul Layer	- January 21-22	- Attended training seminar on Employment Regulations in Texas

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Bivens	4	8										
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Cases With Settlements or Awards	0	0										
Tort Claim Settlements	0	0										

SIGNIFICANT CASES

Rolf W. Starke v. John M. Tombone, et al., 396-CV3454-G (ND/TX)

This is a Section 1983 case. Plaintiff alleges that the defendants have conspired under the color of state law to violate his First, Fifth, Sixth, Eighth, and Fourteenth amendment rights. Specifically, plaintiff states that his health has suffered as a result of inhaling secondary smoke from cigarettes, cigars, and pipe tobacco products. He only asks for judgment against the defendants. He does not request any monetary damages.

Kenneth Lee Stewart v. John Tombone, Warden, 397-CV0129-R and Talford H. Royal v. John Tombone, Warden, 397-CV0182-H (ND/TX)

Basically, this is a 3621(e) appeal. There's a little bit of a different twist in these cases versus the normal 3621(e) cases. Petitioners are not challenging the fact that the Bureau of Prisons has classified their crime as a "crime of violence". Rather, they contend that the Bureau of Prisons entered into a "contractual" agreement with them which stated that if they

completed the 500 hour DAPS Program, they would receive a year off their sentence. They state that they were granted the one year off, but when the new program statement concerning crimes of violence was issued, staff at FCI Seagoville found them ineligible for early release. They contend that the Bureau's denial of the year off creates a state created liberty interest.

Wilson Harrell v. Kathleen Hawks, 97-0048-A (WD/OK)

The Bivens case recently filed by inmate Harrell is based on the Ensign Amendment. Harrell is alleging his counselors, the unit manager, the ISM, Warden, Mr. Cooksey, and the Director of the BOP, conspired to deprive him of his 1st, 4th, 5th, 9th, and 14th amendment rights. Harrell is seeking \$1,000,500.00 in damages, an injunction, and attorney fees. A Martinez report is due in March. Harrell has not exhausted his administrative remedies.

CRIMINAL MATTERS/PROSECUTION

FCI BASTROP

The names of Edward Johnson and Bruce Brown were submitted to the FBI in Austin for possible prosecution in relation to a fight between them in Houston Unit on January 25, 1997. The Warden is particularly interested in the prosecution of Brown, since he attacked Johnson with a razor blade.

FPC BRYAN

The Vincent Rosas case seems to be over. The witness who was to be re-interviewed (now a former inmate) has declined to cooperate. Accordingly, efforts to revive this case have ceased, and the matter has been dropped. Officer Rosas has been returned to duty. The Warden is not seeking intervention at this time.

The investigation into allegations of sexual impropriety by Estuardo Mota, Physician Assistant, continues. All evidence has been collected and the case is ripe for prosecution. However, despite DOJ Civil Division's desire to proceed with prosecution of the case, the AUSA involved is not willing to proceed, asserting, that "it is not worth it for only a possible six-month sentence". The Warden wants to hold off on

intervention at this time.

The investigation into allegations of sexual impropriety raised against Arnulfo Garcia, Correctional Officer, continues. The FBI Laboratory conducted DNA testing of the semen sample provided by the inmate and the blood sample provided by the officer. The results of the testing were conclusive that the semen was Officer Garcia's. Officer Garcia was placed on home duty status on Monday, January 24th. The AUSA is in contact with Officer Garcia's attorney regarding possible prosecutorial options. Administrative action in this case is on hold pending the response of Officer Garcia's attorney to the AUSA.

FCI EL RENO

Baker, Assault (Inmate), pending.

FMC FORT WORTH

On February 4, 1997, Inmate Kevin McGraw, a USMS prisoner, was admitted to the Jail Unit. During a strip search, staff discovered 6 rocks of cocaine and 2 bags of unknown substance in his rectum. The charge for which he was arrested was Possession with Intent to Distribute Cocaine Within 1000 Feet of School. The AUSA has accepted this case for prosecution. Lieutenant Peick believes they will work out a plea bargain on our case in order to get him to plea to the PWITD Cocaine charge.

FCI SEAGOVILLE

United States of America v. Moses Ramirez, et al. This is a case against an inmate for Introduction of Drugs into the institution. A trial was held on February 25, 1997, he was convicted February 28, and he is currently awaiting sentencing.

FCI TEXARKANA

Trial proceedings against Morris Haughton has been deferred until April. The inmate has indicated he will plea. This incident was initially reported in November. Haughton assaulted another inmate by cutting him across the forehead with a single edge razor blade.

FCI THREE RIVERS

The Assistant U.S. Attorney's Office has declined prosecution for Jorge Ramon, Jr., and Clemente Valdez, Jr. Warden concurs with decision not to prosecute.

Charles Glover assaulted Juan Sanchez-Rios in an inmate living unit with a sock containing batteries. Minor injuries were received by Sanchez. Glover has been referred to U.S. Attorney's Office for assault.

Brady Johnson has been referred to the U.S. Attorney's Office for assaulting a staff member, threatening staff, and destruction of government property. The inmate was in Special Housing and refused to comply to staff orders for him to be placed in handcuffs. When the inmate eventually complied and staff were locking the handcuffs on inmate, the inmate pulled the handcuff toward him, which pulled the staff member into the food slot door and caused the handcuff key to break off. Staff received minor injuries.

Jose Ochoa-Eribes assaulted Gabriel Rodriguez-Arroyo with a closed fist in an inmate living unit. Rodriguez suffered a bloody nose. The case has been referred to U.S. Attorney's Office for assault.

Gregory Thomas assaulted Shawn Parent in an inmate living unit which resulted in no injuries. The case has been referred to U.S. Attorney's Office for assault.

SIGNIFICANT TORT CLAIMS

MEDICAL

GADSON, Floyd, Register Number 09390-058 - Mr. Gadson contends on June 13, 1996, he requested medication for his diabetes. He states that he was refused treatment and was issued an incident report. He contends that as a result of the denied medical

care, he developed a diabetic ulcer on his foot, which burst open and has caused him a significant amount of pain. Mr. Gadson requests \$4,500,000.00 for emotional distress and permanent physical injury. (T-SCR-97-44)

CARTER, Norma J., Register Number 21603-034 - Harry T. Winmann, 3850 N. Causeway Boulevard, Number 590, Metairie, Louisiana,

has filed a claim (T-SCR-97-28) on behalf of Norma J. Carter. Ms. Carter alleges that medical staff at FPC Bryan denied timely surgical care for a pilonidal abscess and that she ultimately had to undergo a colostomy. Ms. Carter is a diabetic and contends that she is susceptible to wound infection. She is seeking \$500,000.00 in damages.

COLLINS, Clyde, Register Number 16940-009 - (T-SCR-97-64) The family of deceased inmate has filed a claim for the death of Mr. Collins. Al Weisenberger, an attorney in El Paso, has submitted the claim, but there is no authorization from Mrs. Collins or any of Mr. Collins' six children authorizing Mr. Weisenberger to represent them in a wrongful death claim against the government.

Mr. Collins died from a heart attack while playing softball at FPC El Paso on July 17, 1996. The Collins family contends that the Bureau of Prisons did not provide adequate treatment for Mr. Collins abnormal EKG in March 1995, nor was the annual physical conduct in March 1996. The family also states that staff failed to perform CPR within a reasonable time, prohibited another inmate "who was trained in CPR" to perform CPR, and did not timely summons an ambulance. The claimants seek \$15,000,000.00 in damages (\$5,000,000 for personal injury and \$10,000,000.00 for wrongful death).

OTHER SIGNIFICANT TORT CLAIMS

AGERTON, Dr. William D. (Civilian) - (T-SCR-96-472) Dr. Agerton alleges that he was employed by EMCare to provide medical services to health care providers, such as the Federal Medical Center in Fort Worth, Texas, and on May 16, 1996, Dr. John Barry (Clinical Director) refused to allow him to provide medical care at FMC Fort Worth. Dr. Agerton alleges that he has sustained loss of pay and restriction of hospital privileges.

The South Central Regional Health Services Administrator has indicated that the contract was with EMCare and not with any individual. It is not clear at this time why Dr. Agerton was denied access to FMC Fort Worth; however, the claim is currently being investigated by staff at Fort Worth. Dr. Agerton is seeking \$100,000.00 in damages.

BOSTIC, Billye E., Register Number 62285-080 has filed an administrative claim (T-SCR-97-53) because the Bureau of

Prisons imposed a cost of incarceration fee. He alleges that

after he refused to pay \$21,352.00 per year, he was placed on refusal status until he paroled on June 3, 1996. He contends that he lost early parole consideration, halfway house placement, pay for six months, social security pay for three months, three months of earnings, work privileges, dormitory privileges, and purchase privileges.

Mr. Bostic has attached a Memorandum and Opinion (Billye E. Bostic v. Joe Aguirre, Warden, EP-96-CA-139-DB) by United States District Judge David Briones, in which Mr. Bostic's Habeas was granted. Judge Briones stated that the "Bureau of Prisons shall not collect cost of incarceration fees" because Mr. Bostic's sentence did not meet all three prongs of 28 C.F.R. § 505.1. In addition, there is documentation attached to Mr. Bostic's claim that indicates that the Bureau of Prisons continued to hold him accountable for the cost after Judge Briones issued the order on April 30, 1996.

CASES WITH HEARING OR TRIAL

None

UPCOMING TRIAL OR HEARINGS

The Spanjol trial is scheduled for March 12 and 13, 1997, in Sherman, Texas.

As noted last month, Muhammed is scheduled for trial on April 28, 1997. A Motion to Dismiss is still pending in Judge McBryde's court on this case.

Noel Edward Plunkett v. Joe Gunja, et al., C-96-548 (SD/TX)

An evidentiary hearing is scheduled for March 7, 1997, before a U.S. Magistrate Judge. This inmate alleges staff members were deliberately indifferent to his safety, welfare, and conditions of confinement as a direct result of their retaliatory treatment. Inmate alleges he was illegally confined in segregation, forced to live in unclean conditions, lost his work wages, and was denied numerous rights. Inmate further alleges that while he was in Special Housing, staff members concocted false charges against him, confiscated administrative

remedies, and attempted to force him into general population knowing his life was in jeopardy. Inmate is seeking punitive damages, costs of litigation, attorney's fees, and any other relief deemed appropriate.

SITUATIONS OF INTEREST

FCC BEAUMONT

United States v. Ballis, 1:92-CR-41-2 (ED/TX)

Paul Layer responded to a Motion for Legal Furlough submitted by criminal defendant/inmate at FCI Bastrop after the local federal court Judge Cobb personally called him and requested information on BOP furlough law and policy.

Paul Layer attended the Jefferson County Commissioners' meeting on redistricting fire protection to include the FCC Beaumont. The municipality originally providing first response fire protection withdrew that commitment, and the County Commissioners are reviewing options in order to insure coverage for the several correctional facilities in the county (state and federal).

On February 20-21, Paul Layer attended a two day training session in Huntsville, Texas, on Prisoner Litigation. The training was sponsored and attended by the U.S. District Court Magistrate Judges, and their Staff Attorneys, from all the Texas federal judicial districts.

FMC CARSWELL

Barbara Wilson dealt with two mental health study cases with hunger strike issues.

FTC OKLAHOMA

On February 18, 1997, at approximately 6:40 p.m., inmate Ernest Vera, was found hanging in his cell. Inmate Vera had a pulse and was breathing with assistance when he was transported to Hillcrest Health Center and admitted to ICU, where he was placed on a ventilator. Inmate Vera was removed from life-support on February 24, 1997. On February 27, 1997, he died of respiratory failure.

FCI SEAGOVILLE

Jimmy Dixon is confined at the jail unit. He entered the VA Hospital in Dallas with a shotgun demanding his medication. He then kidnapped a male and female ambulance driver. Once he was outside, he shot at the male driver and missed. He took the female to his home and raped her. The female was able to lead police to Dixon's home, and he was arrested. He claims he was not responsible because he could not get his medication. We have received phone calls about this man and a subpoena for copies of psychological records.

FCI THREE RIVERS

Inmate Fox has begun making monthly payments to the Court of Appeals under PLRA provisions.

SIGNIFICANT ADMINISTRATIVE REMEDIES

Inmate Baxendale filed Administrative Remedy 125535-F1, alleging that the BOP misinterpreted the Ensign Amendment. He specifically requested to continue receipt of "Playboy".

MEDICAL MALPRACTICE**LITIGATION**

James Watson Ramsey v. USA, et al., 3:96-CV-3358-G (ND/TX)

This FMC Fort Worth case involves 12 named defendants. The

inmate claims he was subjected to cruel and unusual punishment through denial and delay of medical care of his burns. Based on a preliminary assessment, there does not appear to be any liability on the part of staff. Mr. Ramsey's complaint appears to be frivolous pursuant to the PLRA.

Carter v. FMC Medical Review Board, et al., 4:96-CV-690-A
(ND/TX)

The inmate had a previous case filed which raised identical issues regarding the lack of medical care she received at FMC Carswell. The case was dismissed as frivolous pursuant to the Prison Litigation Reform Act of 1995 on December 1, 1996.

PERSONAL MATTERS

Michael Hood	- March 5-7	- White Collar Crime Seminar New Orleans, LA
	- March 10-13	- Regional Counsel Meeting
	- March 24-28	- Annual Leave
Lisa Sunderman	- March 17-18	- Annual Leave
Marsha Foulks	- March 23-27	- Sentencing for Attorneys Aurora, CO
	- March 28-31	- Annual Leave
Carl Selogy	- March 17-21	- Annual Leave
Lisa James Young	- March 10-11	- Annual Leave
Liz Samford	- March 19-21	- Annual Leave
Barbara Wilson	- March 24-April 2	- Annual Leave

Patsy Davis

- March 31-April 7 - Annual Leave

Cases With Hearing
or Trials 2 0 4
Cases With Settlements
or Awards 0 0 1
Tort Claim
Settlements 0 0 0

SIGNIFICANT CASES

Fort Worth has received 8 additional HC petitions requesting deportation pursuant to the new INS procedure.

Donald Holmes v. S. W. Phelps, et al., 5:96CV225 (ED/TX)

The plaintiff alleges harassment, discrimination, and verbal and physical abuse by FCI Texarkana staff.

Wells v. Garbow, EP-97-CA-029-DB (WD/TX)

An inmate at FCI La Tuna was removed from the ICC program at Lewisburg for having a two point enhancement for firearms. However, after his removal, the inmate had his sentence clarified to state he did not use firearms. Moreover, a Post-Sentence Investigation was prepared that did not give him a two point enhancement for firearms. However, the inmate was never returned to the ICC. The inmate agreed to dismiss the action in return for accelerated CCC placement within policy and home confinement when eligible.

CASE WITH SETTLEMENT OR AWARD

María Ramos v. U.S.A., Civil Action No. EP-94-CA-342-MC (ND/TX)

Adverse judgment rendered by magistrate. Action brought by the mother and daughter of a former inmate at FPC La Tuna. The daughter has cerebral palsy and cannot walk, talk, or breathe without assistance. In October 1993, when the family went to visit inmate Juan Ramos, there was no handicapped ramp to access the visiting area. The Warden allowed Mrs. Ramos, because she was a frequent visitor, to use the loading ramp around the side of the building. Because a government vehicle was blocking the ramp, Mrs. Ramos wheeled her daughter along the roadway. The roadway contained concrete splatter and was bumpy. Ramos' chair hit one of the concrete bumps, and Ramos became dislodged from her wheelchair. She sustained almost no physical injuries. The Court awarded \$30.00 in actual damages,

and \$5,970.00 in pain and suffering (Total judgment \$6,000.00). BOP and U.S. Attorney's Office have agreed to not appeal this case.

CASES WITH HEARINGS OR TRIAL

Noel Edward Plunkett v. Joe Gunja, et al., C-96-548 (SD/TX)

Bivens case. Reported in February. Evidentiary hearing held on March 7, 1990. No ruling as of this time.

Dennis O'Neal McAnnich v. Frank Woods, et al.

Bivens case. Spears hearing held on March 25, 1997.

United States v. Rasha Mansour, 4:97-CV-079-Y (ND/TX)

A commitment hearing for hospitalization was held at FMC Carswell on March 12, 1997, pursuant to 18 USC 4245. Ms. Mansour was committed to our inpatient unit.

Spaniol v. USA

A trial was held in Sherman, Texas on March 12-13, 1997. The judge ordered both parties to submit their closing briefs within 10 days. Ruth Yeager, Deputy Civil Chiefs, feels very optimistic of our chances of prevailing.

SIGNIFICANT TORT CLAIMS

MEDICAL/ADA CLAIM

PETERSEN, Justin, Register Number 98535-012 - Mr. Petersen contends that during transfer between MDC Los Angeles and FCI Bastrop his prosthetic socks were lost, that because staff did not replace the socks he has suffered a breakdown of the skin on his amputated stump, that FCI Bastrop is not adequately equipped to house disabled inmates, that while he was housed there he slipped and hit his head on his locker, and that the shower bar broke and he fell causing a bruise to his hand. Mr. Petersen complains that he was transferred to USFMCP Springfield for treatment, but because he only had 5 months remaining to be served, staff would not consider making any significant repairs to his prosthetic device. He seeks \$900 for temporary repair of his prosthesis, \$18,000 for replacement of his prosthesis and \$15,000 for personal injury. (T-NCR-97-150). Investigation pending.

REYNOSO-OLASCAGO, Jose, Register Number 64714-079 - Mr. Reynoso-Olascago alleges that while he was walking on the track at FCI Big Spring, he was hit in the face by a bat that had slipped out of a softball player's hands. He was transported to a local community hospital for treatment, he

later underwent surgery to repair his fractured jaw. He claims that BOP staff negligently allowed him to walk around the track while a game was in progress. He seeks \$10,000,000.00 in damages. (T-SCR-96-430). No liability concerns.

FANTROY, Richard, Register Number 27764-077, alleges during June 1996 at FMC Fort Worth, he was given incorrect medication for his medical condition. The claim is in the amount of \$500,000. (T-SCR-97-47). Investigation pending.

TELFAIR, Milton, Register Number 59903-080, has filed a claim concerning his medical treatment at FCI Oakdale. He is confined to a wheelchair and suffers from recurrent anal fissures. He underwent a hemorrhoidectomy and anal fissurectomy, but feels additional treatment should have been provided. He is currently incarcerated at FMC Fort Worth. (T-SCR-97-25). Investigation pending.

SIGNIFICANT CLAIM

ROBERTSON, Vernon Ray, Register Number 17017-057 has filed an administrative tort claim alleging that on December 16, 1996, he was violently assaulted by a State of Oklahoma inmate while they were housed at FTC Oklahoma City. Mr. Robertson contends that he was beaten and stabbed with a broom handle. He also states that the inmate had a history of violence and that BOP staff failed to provide adequate protection. He seeks \$300,000.00 in damages. (T-BOP-97-015)

SIGNIFICANT ADMINISTRATIVE REMEDIES

Fort Worth received and responded to Administrative Remedy #128997-F1, in which Wali Muhammed, Reg. No. 19148-009, alleged Nation of Islam were denied access to an additional meeting time and their yearly ceremonial meal. There was no validity to the allegations.

Administrative Remedy 130071-F1, Inmate Freeman, requests to display a "dream catcher". He alleges this is an American Indian religious belief. Information received indicates the BOP does not recognize this as a religious item although some institutions allow it. Texarkana denied the inmate's request. Our office has not received a regional appeal regarding this issue, the inmate has until April 17, 1997 to file an appeal.

UPCOMING TRIALS OR HEARINGS

Muhammed v. USA is scheduled for trial on April 28, 1997. Two settlement conferences have been held. We are currently in discovery, and the AUSA is tentatively scheduled to depose Muhammed during the first week of April.

MEDICAL MALPRACTICE:

LITIGATION

Caesar Morales-Morales v. Norris Knight, et al., 597CV0023
(ND/TX)

In this action, the plaintiff names a contract physician, contract clinic, contract hospital, retired BOP physician and current physician. The plaintiff asserts he fell on his arm, surgery was performed, and that despite the surgery he still has problems. He asserts improper and inadequate treatment due to deliberate indifference. There is no show cause order in this matter; thus, research for a litigation report has not yet occurred.

TORTS (FTCA)

Inmate Norma Carter, asserts government negligence regarding timely provision of surgical care for a pilonidal abscess at outside hospital by staff at FPC Bryan, resulting in extensive parasacral infection. Preliminary investigation reveals no evidence of delay or inappropriate treatment by FPC Bryan staff.

ENSIGN AMENDMENT:

FCI OAKDALE

Several inmates were threatening action when the regulations went into effect; however, no litigation has emerged.

LITIGATION

FCI El Reno. Harrell v. Hawkins. Inmate asserts that return of publication pursuant to Ensign Amendment violates his constitutional rights.

TORTS

Adam Winchester has submitted a tort claim seeking \$128.80 because he is not receiving his monthly subscription of Penthouse magazine.

RELIGIOUS FREEDOM RESTORATION ACT:

ADMINISTRATIVE REMEDY

See Significant Administrative Remedy heading.

LITIGATION

None

TORT

None

SITUATIONS OF INTEREST

FCI BASTROP

Bastrop has several computer hackers who routinely receive sophisticated material through the mail.

FCI OAKDALE

Director Hawk toured FCI Oakdale last week. An institution Character Profile was conducted.

FCI THREE RIVERS

United States v. Steve Williams. Under PLRA requirements, inmate satisfied a \$105.00 filing fee pursuant to a court order.

Edward Fox, Jr. v. Lieutenant Small, et al. Reported in February. Under PLRA requirement, inmate has been assessed a \$105.00 filing fee pursuant to a court order. He continues to make monthly payments.

CRIMINAL MATTERS AND PROSECUTIONS

FCI BIG SPRING

A criminal case USA v. Jose Valenzuela-Hernandez has been set for April 7, 1997, in the Northern District of Texas, Abilene, Division. The case involves Jose Valenzuela-Hernandez' assault on Lt. Travis Gilbreath on December 22, 1996, during the institution disturbance. Twelve staff have been subpoenaed to testify in Lubbock.

FPC BRYAN

The [REDACTED] case has been closed with no action being taken against the employee, due to lack of credible witnesses/victims. The Warden and Regional Director are aware of and concur with this action.

The [REDACTED] case remains active, with communication taking place between the AUSA in Houston and the Civil Rights attorney in Main Justice. They will determine whether a prosecutable case exists and advise us of their decision. We have emphasized the importance of prosecuting sexual activity cases to the U.S. Attorney's Office which is very supportive in appropriate cases.

In the [REDACTED] case, negotiations continue between the AUSA in Houston and Officer [REDACTED] attorney regarding a possible plea agreement.

FCI EI RENO

Hilliard, Rocky, Possession of Marijuana, prosecution declined (small amount) Warden concurs.

Luevano, Juan, Attempted Murder, sentenced to 5 years after guilty plea.

Mumiz/Ramos, Possession of a Weapon, prosecution declined, Warden concurs.

Baker, Cherry, Darr, Davilla, Lindsey, and Roach, Introduction of Narcotics, 2 lbs. of marijuana was found in 4 cans of roofing tar as it was being brought into the institution through a delivery of construction materials. Prosecution pending only on Roach. The others were declined (Lack of evidence according to FBI).

Schaffer, Prescott, Tory, Possession of Narcotics, pending.

FCI LA TUNA

Inmate Cazarez, Javiar, was assaulted on February 26, 1997. He was beaten about the body and struck in the head by a paddle lock inside a stocking. The injuries were serious, and the inmate was sent to an Emergency Room at an outside medical facility. SIS subsequently investigated the matter, and determined three inmates may have committed the assault. They are: Trevino-Gonzales, David; Vallenzuela, Adolfo, and Lopez-Jimenez, Francisco. These three were referred to the FBI for prosecution. The Assistant U.S. Attorney assigned to the case

b7C

has decided to prosecute and informed the institution of that decision on March 31, 1997.

FTC OKLAHOMA CITY

On March 3, 1997, R&D staff observed inmate Donald Guess assault inmate Sidney Davis, by hitting him in the facial area with a closed fist. Inmate Davis received minor first aid treatment for swelling to the left cheek area. The FBI was notified and determined this matter does not warrant referral to the U.S. Attorney's Office.

On March 18, 1997, R&D staff observed inmate Darryl Jones grab inmate Ernest Robertson from behind. There was no apparent injuries. The FBI was notified and determined not to refer this matter to the U.S. Attorney's Office.

On March 23, 1997, the FTC contacted the FBI regarding an alleged rape involving a male correctional and a female inmate. The FBI referred the matter to the Oklahoma City Police

Department who conducted the investigation. Magistrate Judge Bana Roberts issued a Warrant for Arrest of Joe Anthony McManus on March 25, 1997, and Mr. McManus was arraigned later that day. This matter is currently pending under criminal complaint number M-97-53-RO, for violation of 18 U.S.C. Section 2243(b).

FCI SEAGOVILLE

George Salemo, the inmate who escaped and was captured within 14 hours, was prosecuted, pled guilty, and is awaiting sentencing.

FCI TEXARKANA

In the matter of Morris Haughton where he was charged with possession of a weapon (razor blade) in prison in lieu of assault, he received fourteen months consecutive to his current sentence.

FCI THREE RIVERS

Sergio Montes-Ortiz, assaulted officer in Special Housing Unit by spitting on him. Referred to AUSA for Minor Assault on Staff. Pending prosecution.

Charles Glover, reported last month. Prosecution declined. Warden concurs. Pending institution disciplinary action.

Brady Johnson, reported last month. Prosecution was declined because there was no serious injury to staff. The staff member received a bump on his head. Pending institution disciplinary action.

Jose Ochoa-Eribes, reported last month. Prosecution declined. Warden concurs. Pending institution disciplinary action.

Gregory Thomas, reported last month. Prosecution declined. Warden concurs. Pending institution disciplinary action.

PERSONAL ISSUES

Message From Liz Samford

I've thoroughly enjoyed my position as a Paralegal and appreciate having been able to work with so many talented and gifted legal people.

FCC BEAUMONT

March 18, 1997 - FCC Beaumont Staff Appreciation Day recognized with visit from Director Hawk and Regional Director White.

Michael Hood - April 8-11 - Annual Leave
 - April 21-24 - FCI Oakdale

Linda Nutt - April 17-21 - Annual Leave

Henry Castro - April 7-11 - Annual Leave

Julie Gerardi - April 14-18 - Annual Leave

Linda DuBose - April 4-11 - Annual Leave

J.D. Crook - April 10-14 - Annual Leave

Cases With Hearing
or Trials 2 0 4 3
Cases With Settlements
or Awards 0 0 1 0
Tort Claim
Settlements 0 0 0 0

SIGNIFICANT CASES

Guadalupe Martinez v. Janet Reno, et al., 3:97-CV-0813
(ND/TX)

An employee from FCI Seagoville has brought an EEO action against the Bureau of Prisons and the Department of Justice and alleges that the BOP has discriminated against him based on his ethnic origin. He claims that his performance appraisals were unjust and inaccurate and that he was subjected to conditions (such as a photo lineup) that other employees were not subjected to solely because of his race.

Ronald Faldyn v. Lester Fleming, A-96-CA-0526-SS (WD/TX)

A final order was entered for the BOP defendants. Case is significant because the issue was crime of violence determination under 3621(e). The district affirmed the Bureau's discretion in defining crimes of violence.

Terise Ahr v. Reno

This FPC Bryan case revolves around an assertion that the Bureau did not meet the provisions of a settlement agreement in an EEO case. In fact, we did not provide back pay within the 30 days specified, but did within about 45 days in 1994. Plaintiff raises numerous other complaints, which the AUSA argues are independent issues which have not been exhausted administratively.

CASES WITH SETTLEMENT OR AWARD

None

CASES WITH HEARINGS OR TRIAL

Dennis O'Neal McAnnich v. Frank Woods, et al., C-96-132 (SD/TX)

A hearing was held on April 15, 1997, regarding defendant's motion to dismiss. Defendants argued service by mail did not give court jurisdiction over defendants in their individual

capacities. Defendants requested personal service pursuant to Rule 4(e). Defendants claimed person who signed the return receipt cards was unauthorized to receive their mail. Court disagreed and cited Texas law which provides for service by mail. Court found service to be proper and denied motion to dismiss. The court ordered U.S. Attorney's Office and Attorney General of the U.S. to receive service.

Banks v. USA, A-95-CA-292-JN (WD/TX)

A hearing was held on April 13 in Austin regarding the plaintiff's motion for disbursement of funds from the court to pay for expert witnesses. The magistrate recommended that all parties agree to a bifurcated trial since both expert witnesses' testimonies pertain to damages, not liability. The court will then hold in abeyance the motion until after the liability phase of the trial. If the U.S. is not liable, the proceedings will go no further, and the issue will be mooted. Both sides readily assented.

Demarey v. Franco, EP-96-CA-238H (WD/TX)

An evidentiary hearing was held to determine whether due process was given prior to the inmate's Administrative Detention.

SIGNIFICANT TORT CLAIMS

A claim has been filed on behalf of a minor named Riberto Ebelio Lopez, who is the son of Richardo Lopez. Riberto Lopez was killed by a BOP escapee, Albert Young, who was incarcerated at a facility under the Community Corrections Office in New Orleans, Louisiana. The minor's mother filed a tort claim seeking damages for the wrongful death of his father and the loss of support and companionship. The claim mirrors an earlier filed claim by the daughter of deceased Lopez. She is seeking \$500,000.00. (T-NER-97-82)

Update from our February report pertaining to a claim filed by Norma Carter (T-SCR-97-28). The Clinical Director reveals some concern regarding the number of days which elapsed between the time when Claimant presented to the medical staff with symptoms indicative of a perirectal abscess and the time when appropriate treatment was provided. The Clinical Director at FPC Bryan feels that we may have been inordinately slow in responding to and recognizing what the record seems to clearly indicate to have been a serious medical condition complicated by diabetes. We may ask that a higher level inquiry be conducted in this case (perhaps by an MD from the Central Office or a BOP Medical Center other than Carswell since they provided treatment to this inmate as well).

An administrative claim has been submitted by a company named Leaseall, Inc. The claim is signed by Sandy Carr, Manager for

Leaseall, Inc., and she states that their truck was damaged when a vendor was driving the truck out of Gate 1 at FCC Beaumont and the gate was closed on the truck. There is nothing with the claim to indicate that the incident occurred, or Ms. Carr's authority to make the claim. (T-SCR-97-134)

SIGNIFICANT ADMINISTRATIVE REMEDIES

An FCI Big Spring inmate, Edgar Fuller, filed an administrative remedy citing violations of the RFRA. He alleges the Chaplain denied him access to the chapel; did not allow him to pray, teach or testify; and denied him the right to offer communion. The Chaplain documented each meeting with inmate Fuller with copious notes. Representatives from the Pentecostal church visit the institution monthly and offer communion. Communion is also offered ten times each month, and the Chaplains offered to give him communion in their offices whenever he felt communion was necessary. The Chaplains also offered to attempt to have representatives from the Pentecostal church come more often. Inmate Fuller insisted this was not sufficient to meet his needs. Fuller believes his needs will only be met once he is permitted to conduct his own services and he is allowed to offer communion to his inmate group. Inmate Fuller has advised the Chaplain that he was a member of the clergy prior to coming to prison. The administrative remedy was denied at the institutional level. Inmate Fuller has promised lively litigation on this issue. On April 12, 1997, Chaplain Wright wrote an incident report against Fuller for Refusing to Obey an Order, by conducting church services without permission. This incident report was informally resolved by the Chaplain.

UPCOMING TRIALS OR HEARINGS

Muhammed v. USA, 4:96-CV-711-A, (ND/TX)

A trial was held on April 28, 1997, before the Honorable John McBryde. Briefs will be submitted by both parties.

MEDICAL MALPRACTICE:

LITIGATION

Jose Ramirez v. Joe Aguirre, et al., EP-97-CA-002H (WD/TX)

In this Bivens action, an inmate with a coronary condition from FPC El Paso alleges that staff displayed deliberate indifference to his serious medical needs.

TORTS

See Significant Tort Claim heading.

ENSIGN AMENDMENT:

LITIGATION

None

TORTS

None

RELIGIOUS FREEDOM RESTORATION ACT:

ADMINISTRATIVE REMEDY

See Significant Administrative Remedy heading.

LITIGATION

None

TORT

None

OTHER

A home-confinement inmate, David Bishop, alleged constitutional violations when the BOP would not allow him to leave home frequently to conduct field witnessing. The inmate claimed that field witnessing was an essential tenet of his belief as a Jehovah's Witness. SCRO did not have to respond to this issue because the inmate subsequently made threats of assault on a staff member and was returned to full custody.

SITUATIONS OF INTEREST

FCC BEAUMONT

On April 30, 1997, a tour of the FCI was provided to Judge McNicholas, City of Beaumont. Judge McNicholas is formerly a judge for Texas' Ninth Judicial District Court of Appeals.

FCI FORREST CITY

The institution received its first 39 inmates April 22, 1997.

FMC FORT WORTH

The Honorable A. Joe Fish, U.S. District Judge for the Northern District of Texas, and six of his staff members toured FMC Fort Worth on April 23, 1997.

FCI THREE RIVERS

Edward Fox, Jr. v. Lieutenant Small, et al. Under PLRA requirements, inmate has been assessed a \$105.00 filing fee pursuant to a court order. He continues to make monthly payments.

Wilbert Vallier v. Dr. Rubin Harris, et al., A-93-CA-041-AA (WD/TX)

Pursuant to PLRA, inmate has been ordered to pay initial partial filing fee in the amount of \$12.57 by May 10, 1997.

CRIMINAL MATTERS AND PROSECUTIONS

FCC BEAUMONT

Inmates Ezequiel Montes-Fierro and Louis Enriques-Hernandez, were referred to the FBI for criminal prosecution in reference to their possession of a gun (non-operational) formed out of clay. The case was authorized for prosecution by the U.S. Attorney's Office on April 23, 1997.

Inmates Juan Chapa and Fagundo Yanez were referred to the FBI for criminal investigation stemming from a fight between the two inmates. The case was declined for criminal prosecution with the approval of the Warden. Bureau disciplinary action is pending.

FCI BIG SPRING

USA v. Jose Valenzuela-Hernandez and Jamie Estrada-Fernandez

A hearing was heard on April 15, 1997. Eight staff members traveled to Lubbock, Texas, to testify against these two inmates for the assault on Lt. Travis Gilbreath. Both inmates were found guilty of the assault. Both inmates face a possible ten year prison sentence, as career criminals, for their actions. It is of interest to note that inmate Jamie Estrada-Fernandez originally accepted a plea bargain deal for six month sentence for his part in this assault. However, on April 1, 1997, he withdrew his plea and has opted for a jury trial.

FPC BRYAN

A decision has been made not to pursue prosecution of Physician Assistant [REDACTED] due to lack of credible witnesses. The Warden is aware of and concurs with this decision. The U.S. Attorney's Office have a lot of credibility with BOP and have been supportive of our past prosecution efforts. b7c

A plea agreement has been reached in the Arnulfo Garcia case. Officer Garcia will plead guilty to the single count of Sexual Abuse of a Minor or Ward (18 USC 2243(b)); resign from his BOP

employment (already tendered); waive any administrative remedies; and not seek law enforcement or prison employment during his term of incarceration, probation, supervision, etc.

FMC CARSWELL

The ex-Chaplain has been indicted on one count under 18 USC 2243(b), Sexual Abuse of a Minor or Ward.

There are at least two potential staff prosecutions pending at this time for sexual relations with inmates. These cases are still under investigation.

FTC OKLAHOMA CITY

On March 26, 1997, the SHU officer notified the Lieutenant that inmate Hippolito Tamayo-Macia had possibly been sexually assaulted by inmate Rene Cruz-Garcia. Inmate Tamayo-Macia stated inmate Cruz pressured him for sex, and when he refused, inmate Cruz shoved him in the chest and his head hit the wall. Inmate Tamayo had a contusion on the back of his head. The FBI was notified and determined this matter does not warrant referral to the U.S. Attorney's Office. The Warden concurs with this decision.

On March 29, 1997, an officer observed inmates Eduarado Muniz, and Enrique Guerra-Ramirez kicking inmate Jesus Hernandez-Martinez in the facial and chest area. Inmate Hernandez was lying in the doorway of the unit TV room bleeding profusely from the facial area. Inmate Hernandez had a broken nose, ruptured left eardrum, laceration on the right eyebrow, and assorted abrasions, and was transported to a local hospital for treatment. Inmate Guerra had a laceration on his right hand, and inmate Muniz had no injury. The FBI was notified and determined this matter does not warrant referral to the U.S. Attorney's Office. The Warden concurs with this decision.

On April 7, 1997, inmate Anthony Irving refused to be placed in restraints to be moved from the SHU recreation area back to his cell. Confrontation avoidance procedures were initiated, and inmate Irving agreed to cuff-up. While being escorted back to his cell, inmate Irving passed the SHU officer and spat in his face, became verbally abusive, and began resisting escorting staff. Inmate Irving had to be restrained. The FBI was notified and determined this matter does not warrant referral to the U.S. Attorney's Office. The Warden concurs with this decision.

On April 16, 1997, inmate Mario Rodriguez-Rangel was ordered several times to face the wall and remove his clothes so that he could be strip searched for admission into SHU. The inmate became argumentative and attempted to strike one of the officers with his right fist. Inmate Rodriguez was restrained. Inmate Rodriguez received abrasions to his back, elbows, and forehead, and the acting Lieutenant received a small abrasion

under his left eye and a one-inch scratch on the top of his head. The FBI was notified and determined this matter does not warrant referral to the U.S. Attorney's Office. The Warden concurs with this decision.

This is an update regarding a staff person, Mr. McManus. Mark Yancey, AUSA, confirmed that the case was referred back from the state and that the case has been referred to Civil Rights Division. However, the AUSA also indicated that it is not out of the hands of the U.S. Attorney's Office. The U.S. Attorney's Office and the Civil Rights Division are working the case together. The employee resigned.

FCI TEXARKANA

On April 10, 1997, the Central Office reported receipt of a letter purportedly from the U.S. Attorney's Office in Dallas, threatening to kill an Assistant U.S. Attorney and Judge if inmate Jerry Wilkins' sentence was not overturned. This letter was written by inmate Raymond Espinoza. Initial information indicates that Wilkins had made these statements to Espinoza and Espinoza was relaying these threats. This incident was referred to the FBI on April 14, 1997.

FCI THREE RIVERS

Sergio Montes-Ortiz spit on three staff members while in Special Housing. Incident has been referred to AUSA for Minor Assault on Staff. According to SIS, the AUSA is interested in prosecuting. Pending staff/inmate interviews by FBI.

PERSONAL ISSUES

Michael Hood - May 5-7 - Staff Assistance
Visit, FCI Forrest
City
- May 19-23 - Navy Reserve
Training
- May 27-June 2 - Annual Leave

Linda Nutt - May 27 - Annual Leave

Henry Castro - May 23 - Annual Leave

Patsy Davis - May 30-June 6 - Annual Leave

Marsha Foulks - May 5, 1997 - Annual Leave

Bill Shively - May 12-16, 1997 - Annual Leave

Dan Severson - May 5-9, 1997 - Annual Leave

Mike Flagor - Will be taking intermittent annual
leave for the next 90 days.

U.S. Department of Justice

Federal Bureau of Prisons

South Central Regional Office

Dallas, Texas 75219

May 30, 1997

MEMORANDUM FOR WALLACE H. CHENEY
ASSISTANT DIRECTOR/GENERAL COUNSEL
CENTRAL OFFICE

FROM: Michael D. Hood, Regional Counsel

SUBJECT: Monthly Report - May, 1997

ADMINISTRATIVE REMEDIES

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Received	144	111	139	145	118							
# Answered	52	61	69	98	85							

TORT CLAIMS

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	151	153	159	164	175							
# Received	51	40	40	49	91							
# Answered	50	33	40	41	59							
# Pending	152	160	159	172	207							
# Over Six Mon	0	0	0	0	0							

FOI/PRIVACY

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	80	108	125	91	89							
# Received	47	34	27	41	41							
# Answered	19	17	61	43	18							
# Pending	108	125	91	89	112							
# Over 30 Days	72	91	64	48	71							

LITIGATION

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
New Cases Recd	32	36	31	23	15							
Cases Closed	3	9	10	6	9							
Habeas Corpus	25	23	25	17	9							
Bivens	4	8	6	4	4							
FTCA	3	2	0	1	2							
Other	0	3	0	1	0							
Lit Reports	23	19	33	23	17							

Cases With Hearing
or Trials 2 0 4 3 3
Cases With Settlements
or Awards 0 0 1 0 0
FTCA Administrative
Claims (Prop.) 0 0 0 0 9

SIGNIFICANT CASES

Gerald Paul Esposito v. George E. Killinger, et al.,
4:97-CV-288-Y (ND/TX)

Multi-defendant civil action filed by FMC Fort Worth inmate claiming deliberate indifference to his serious medical needs. He also names three contract physicians and the administrator of North Texas Health Sciences Center. He raises issues concerning exposure to secondhand smoke, failure to provide medical diet, and failure to provide adequate care for his medical needs.

Kevin Thomas Ford v. Robert Guzik, et al.
CIV-97-0233-R (WD/OK)

An FTC Oklahoma City inmate claims staff entered his cell and struck inmate's head, arms, and hands with Folger-Adams keys and knocked inmate into the shower. Inmate seeks \$750,000.00 in compensatory damages and \$750,000.00 in punitive damages

ESTATE OF KENNETH MICHAEL TRENTADUE, ET AL.
V. UNITED STATES, ET AL.
CIV-97-849L (WD/OK)

Action involves death of an inmate at FTC Oklahoma City in August 1995. Bureau of Prisons believes inmate committed suicide. Inmate's family believes staff murdered the inmate and that Bureau of Prisons' officials are now covering up the incident. Plaintiff asserts both Bivens and FTCA theories.

CASES WITH SETTLEMENT OR AWARD

None

CASES WITH HEARINGS OR TRIAL

On May 6, 1997, inmate Ronnie D. Boyd was given a detention hearing for the misdemeanor assault of Acting Captain Marcus Fernandez, which occurred during the December disturbance.

Mr. Fernandez was assaulted when inmate Boyd threw urine and feces on him. The detention hearing was necessary as Boyd was released on May 5, 1997, via GCT release. The Court ordered Boyd held without bond due to the danger he posed to the community.

Jean May Chessor had a commitment hearing at FMC Carswell under 18 U.S.C. 4246. The Judge committed the inmate for hospitalization.

On May 29, 1997, a hearing was held in a Dallas circuit court regarding issues about a Seagoville staff member's appearance in a capital murder case in Kansas City, Missouri. The state Judge held that the appearance was not required because a video deposition could be taken in lieu of his appearance. We raised objections under the Touhy regulations. A video deposition was taken on the same date.

SIGNIFICANT TORT CLAIMS

On May 6, 1997, staff vehicles parked in the parking lot at FTC Oklahoma City were damaged when Facilities staff and inmates were spraying paint on the baseball backstop fence. To date, we have received seven claims ranging from \$174.00 to \$1,500.00. As reported by Warden Guzik, there is some indication that approximately 180 vehicles sustained some type of damage.

Inmate Vernon Ray Robertson at FTC Oklahoma City alleges staff were negligent in failing to protect him from a state prisoner whom the BOP knew was violent. Inmate claimed he was assaulted and sustained numerous injuries, including a broken hand and a crooked finger because it was not set properly. Inmate Robertson seeks \$300,000.00 in comparison.

The SCRO offered settlement to David Nolte, a Texarkana employee, in the amount of \$1,938.19 for damage sustained to Mr. Nolte's pickup, which was struck by an unsecured barrier gate. The sum certain is in the amount of \$1,942.49. (T-SCR-97-172)

Abdul Mohammed Haliq of FMC Fort Worth, alleges he slipped and fell on a wet floor. Allegedly there were no signs posted warning of the wet floor. As a result of his fall, he alleges he broke his back. Claims personal injury in the amount of \$1,500,000. Investigation pending. (T-SCR-97-112)

SIGNIFICANT ADMINISTRATIVE REMEDIES

None

UPCOMING TRIALS OR HEARINGS

None

MEDICAL MALPRACTICE:

LITIGATION

See Significant Cases heading.

TORTS

RODRIGUEZ-GONZALEZ, Juan - Mr. Rodriguez-Gonzalez alleges that during February 1996, medical staff at FCI Texarkana misdiagnosed and performed negligent treatment to his eyes. He contends that laser photocoagulation on his eyes was not performed properly and as a result he has sustained permanent damage to his eyes. He seeks \$150,000.00 in damages. Mr. Rodriguez-Gonzales was released on May 6, 1997, to INS custody in Dallas, Texas. (T-SCR-97-155)

ESTUPINAN-VASQUEZ, Emery - alleges negligent medical attention by La Tuna staff in treating an inmate's injury allegedly sustained while playing soccer. After investigating the claim, the Health Services Administrator determined there was a significant delay in providing treatment to the inmate. Specifically, the inmate complained of his injury in May and June of 1994, but wasn't seen by the Orthopedic Specialist until November 20, 1994. The two year limitation has passed. Nevertheless, the claim was accepted for investigation by the agency. (T-SCR-97-086)

WOODS, CAROLYN - Ms. Woods is presenting a claim on behalf of Audrey M. Woods, Nathaniel Woods, and herself. Ms. Woods, an inmate at FMC Carswell, alleges that staff at FMC Carswell failed to provide her mother, inmate Elizabeth Scallion, emergency medical care when she suffered a cardiac arrest on November 8, 1996. Ms. Woods further claims that staff prevented a "licensed inmate paramedic" from providing life saving techniques. The claim is being rejected because Ms. Woods did not meet the requirements of Title 28 CFR 14.3 for a wrongful death claim. (T-SCR-97-178)

JAMIESON, Alisa - alleges she has a history of bladder and kidney troubles and is allergic to sulfa/sulfer. However, the staff at FTC Oklahoma City prescribed Bactrium, which is a sulfa-based medication. Inmate claims her condition has worsened and she is in pain and discomfort. Inmate seeks \$50,000 in compensation. (T-SCR-97-189)

FTC Oklahoma City inmate, John Rohrbach, claims that while he was cleaning the stainless steel in Food Service, chemicals got

in his eye and that medical care was delayed. Inmate seeks \$15,000 in compensation. (T-SCR-97-176)

FANTROY, Richard - alleges at FMC Fort Worth he was given the wrong medication, which has resulted in emotional distress and inability to digest food properly. He claims personal injury in the amount of \$500,000. Investigation pending. (T-SCR-97-74)

ENSIGN AMENDMENT:

LITIGATION

None

TORTS

None

RELIGIOUS FREEDOM RESTORATION ACT:

ADMINISTRATIVE REMEDY

LITIGATION

James v. Brush, 96-2707 (WD/LA)

The inmate, a Native American, alleges the Warden took a blue colored headband and a red colored headband from him. The inmate alleges the colored headbands were sacred, and he needed them for religious purposes. No defendants have been served in this case.

TORT

None

OTHER

None

PRISON LITIGATION REFORM ACT ORDERS

None

SITUATIONS OF INTEREST

FPC BRYAN

Judge Hoyt (SD/TX) and staff will tour FPC Bryan on May 23rd.

FCC BEAUMONT

On April 30, 1997, Judge McNicholas and two associates of a local law firm with, which he is now affiliated, were provided a tour. Judge McNicholas is formerly a judge for Texas' Ninth Judicial District Court of Appeal and is currently a City of Beaumont Judge.

On May 20, 1997, the U.S. Attorney's Office, Eastern District of Texas, local FBI, and U.S. Secret Service were given a tour.

On May 21, 1997, Agents from the Immigration and Naturalization Service conducted a citizenship survey at the construction site for the medium security correctional institution. Several FCC Executive Staff members met with one of the INS agents the day before the action to prepare the Complex for any negative repercussions. The action took place without incident. Less than five construction workers were taken into custody for purposes of determining citizenship status.

The LSCI rejected incoming publication entitled "How to Win Disciplinary Hearings" authored by Alan Parmalee (former federal prisoner). Publication was specifically rejected due to its coaching of inmates on how to lie effectively.

FMC CARSWELL

An FBI agent, working on behalf of Independent Counsel, interviewed staff on May 28-29 regarding allegations Susan McDougal made in her Motion to Vacate Civil Contempt relating to her confinement at FMC Carswell.

FCI FORREST CITY

On May 6, 1997, United States Attorney Paula Casey and several of her staff members visited the institution. The Regional Counsel also attended this meeting.

FTC OKLAHOMA CITY

Warden Bob Guzik and Regional Counsel Michael Hood attended a meeting with FBI and U.S. Attorney's Office.

Concurrent jurisdiction has been finalized.

CRIMINAL MATTERS AND PROSECUTIONS

FCI BASTROP

The January 25, 1997 altercation between inmates Edward Johnson and Bruce Brown was referred to the FBI. Prosecution was declined on the ground that neither party had sustained sufficient bodily injury. The Warden concurs with this decision.

FCC BEAUMONT

Ezequiel Montes-Fierro, Possession of Homemade Gun, and Louis Enriques-Hernandez, Possession of a Gun (non-operational) formed out of clay. The case was presented to the grand jury on May 28, 1997, ED/TX Beaumont.

FPC BRYAN

Arnulfo Garcia, a former correctional officer, was charged with one count Criminal Information for engaging in a sexual act with a female inmate. He faces a maximum sentence of 1 year imprisonment and \$100,000 fine.

FCI EL RENO

Mark Tory, Possession of Narcotics. The U.S. Attorney's Office declined prosecution due to lack of evidence linking Tory directly to the narcotics. Warden accepts decision.

Smallwood, Elaine, civilian (visitor), False ID. The U.S. Attorney's Office declined prosecution. Reason for declination not disclosed at this time. b2

[REDACTED]

Danforth, James, Possession of Marijuana. The inmate was found in the wrong unit and strip-searched. During the search, a plastic bag was found on the inmate. Bag was tested and found to contain marijuana. Referred to FBI. U.S. Attorney's Office declined to prosecute because of small amount. Warden does not concur. Additional contact will be made with the U.S. Attorney's Office.

Anderton, George, Possession of Marijuana. During a cell shakedown, staff found a small amount of marijuana in a shirt identified as belonging to Anderton. Referred to FBI. Assistant U.S. Attorney declined due to small amount. Warden accepts decision.

Hoffman, Aaron, Assault on Staff. Inmate grabbed staff member's arm when staff member attempted to close food-slot on the cell door. Referred to FBI. Assistant U.S. Attorney declined prosecution due to no serious injury. Warden accepts decision.

McQueen and Bryant, Possession of Weapon. During a cell shakedown in SHU, staff found a four and one-half inch shank in a mattress. Both inmates were assigned to the cell. Referred to FBI.

Barajas-Arredo, Cain, Possession of Marijuana. Staff found three corners of marijuana during a strip-search of the inmate. Referred to FBI.

FMC FORT WORTH

On May 12, 1997, at 7:55 p.m., Visiting Room officers observed a visitor passing something to Sammy Longoria, which he placed in his shoe. During a search, officers discovered two bags, each filled with approximately 1/2 ounce of marijuana. He was placed in Administrative Detention pending investigation. The Assistant U.S. Attorney has agreed to prosecute.

FCI OAKDALE

Prosecution of Soeung Chhunn. In November 1996, Mr. Chhunn stabbed inmate Locks. Mr. Chhunn was released to INS custody; however, the U.S. Marshals Service has taken him into their custody and returned him back to Louisiana. The U.S. Attorney's Office has accepted this case for prosecution.

FTC OKLAHOMA CITY

On April 25, 1997, inmate Robert Casel struck Inmate Samuel Deblasio in the mouth with a closed fist. Inmate Casel had no noted injury. Inmate Deblasio had slight redness around the chin area. The FBI was notified and determined this matter does not warrant referral to the U.S. Attorney's Office. The Warden concurs with this decision.

On April 30, 1997, inmate Francisco Cancino-Rodriguez assaulted inmate Ronnie Galante in the face with his head. Inmate Rodriguez had no injuries, but inmate Galante sustained a deep laceration to his right eyebrow which required four sutures. The FBI was notified and determined this matter does not warrant referral to the U.S. Attorney's Office. The Warden concurs with this decision.

On May 16, 1997, inmate Ruben Herrera reported to staff that the previous evening inmate Diego Martinez-Casanova forced him to engage in sexual activities. Both inmates were examined by medical staff and no injuries were noted. The FBI was notified and the matter was referred to the Oklahoma City Police Department. This matter is still pending.

On May 18, 1997, Unit Officer in 5E discovered inmate Jimmy Potts hanging from a sheet tied around his neck and to the air vents in his cell. Inmate Potts was taken to a local hospital and placed on life-support. The FBI was notified, and the matter was referred to the Oklahoma City Police Department for an investigation which remains pending.

On May 21, 1997, SHU inmate Michael Hollins refused to surrender his food tray and proceeded to throw food from his food tray attempting to hit the officer. Inmate Hollins eventually surrender the food tray to the Operations Lieutenant without further incident. The FBI was notified and determined that this matter did not warrant referral to the U.S. Attorney's Office. The Warden concurs with this decision.

FCI TEXARKANA

On May 15, U.S. District Court, Eastern District of Texas, sentenced Inmate Morris Haughton to an additional 30 months for possession of contraband in a prison. Inmate Haughton had utilized a razor blade when assaulting another inmate.

FCI THREE RIVERS

Sergio Montes-Ortiz, inmate spit on three staff members while in Special Housing. The inmate has been indicted by the grand jury for Assault on Staff. Prosecution pending.

Patrick Colby requested protective custody after he was assaulted in the living unit. He was hit in the mouth, which resulted in minor bruising. The following inmates have been referred to the U.S. Attorney's Office for assault: Shawn Bulow, Richard Williams, Jerry Glass, Tony Owen, and Gerald Lewis.

PERSONAL ISSUES

- Michael Hood - May 29 - Met with U.S. Attorney's Office and FBI in Oklahoma City.
- Lisa Sunderman - June 1-5 - Sentencing Training for Attorneys Aurora, CO
- Jason Sicker - June 5-6 - Leave
- June 11-13 - Leave
- Paul Layer - June 19-20 - Annual Leave
June 23
- Barbara Wilson - June 1-5 - Sentencing Training for Attorneys Aurora, CO
- June 28- July 5 - Annual Leave
- Linda DuBose - June 9-13 - Annual Leave
- Mike Flagor - Continues to take sick and annual leave
- An Tran - June 1-5 - Sentencing Training for Attorneys Aurora, CO

Jeanne Whitecotton - June 19- - Sick Leave
July 4

Julie Gerardi - June 16-20 - Annual Leave

U.S. Department of Justice

Federal Bureau of Prisons

South Central Regional Office

Dallas, Texas 75219

July 2, 1997

MEMORANDUM FOR WALLACE H. CHENEY
ASSISTANT DIRECTOR/GENERAL COUNSEL
CENTRAL OFFICE

FROM: Michael D. Hood, Regional Counsel

SUBJECT: Monthly Report - June, 1997

ADMINISTRATIVE REMEDIES

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Received	144	111	139	145	118	145						
# Answered	52	61	69	98	85	98						

TORT CLAIMS

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	151	153	159	164	175	210						
# Received	51	40	40	49	91	57						
# Answered	50	33	40	41	59	46						
# Pending	152	160	159	172	207	221						
# Over Six Mon	0	0	0	0	0	0						

FOI/PRIVACY

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	80	108	125	91	89	112						
# Received	47	34	27	41	41	45						
# Answered	19	17	61	43	18	108						
# Pending	108	125	91	89	112	49						
# Over 30 Days	72	91	64	48	71	4						

LITIGATION

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
New Cases Recd	32	36	31	23	15	28						
Cases Closed	3	9	10	6	9	25						
Habeas Corpus	25	23	25	17	9	14						
Bivens	4	8	6	4	4	9						
FTCA	3	2	0	1	2	3						
Other	0	3	0	1	0	2						
Lit Reports	23	19	33	23	17	20						

Cases With Hearing
or Trials 2 0 4 3 3 4
Cases With Settlements
or Awards 0 0 1 0 0 0

SIGNIFICANT CASES

Lemoine v. Falstead, 5:97-CV-109 (ED/TX)

In this Bivens action, the inmate alleges FCI Texarkana staff sexually harassed him to include touching. The allegations were previously investigated by the Office of Internal Affairs and our SIS. Both failed to substantiate the charges.

Henry v. Brady, et al., 97-334 (WD/LA)

The suit concerns an FCI Oakdale staff member's alleged use of force on an inmate during a routine pat search. The inmate attempted to hamper the pat search. The inmate was placed in restraints and escorted to the Special Housing Unit. The inmate alleges the staff member used excessive force placing him in restraints and during the escort to SHU.

Lee v. Fleming, A-96-CA-548-SS (WD/TX)

The Court ruled on May 30, 1997, that 18 U.S.C. Section 922(g), Possession of a Firearm by a Convicted Felon, is not in itself a crime of violence within the meaning of 18 U.S.C. Section 924(c)(3); therefore, the Bureau could not consider the petitioner a violent offender for the purposes of sentence reduction pursuant to 18 U.S.C. Section 3621(e)(2)(B). The AUSA filed a motion for reconsideration; should the court deny it, the Bureau plans to seek permission to appeal.

CASES WITH SETTLEMENT OR AWARD

a. Adverse judgments

None

b. Other settlements

None

CASES WITH HEARINGS OR TRIAL

Ahr v. Reno, et al. - 43-932-272 (SD/TX)

FPC Bryan reports that a Scheduling Conference was held in this EEO civil action. The case was continued for 200 days in order to provide Petitioner an opportunity to exhaust administrative remedies regarding her assertion she was retaliated against by staff at FMC Fort Worth. She states she went for an interview for a teaching position and was allegedly queried about her experiences at FPC Bryan and whether she planned to have another baby (the subject of her initial EEO complaint). We were ordered to provide Petitioner "blank forms" to file her retaliation complaint, and there has been some confusion regarding what forms are necessary to initiate an EEO complaint. We were also ordered to provide Petitioner with a "table of organization" of the EEO office in the Bureau of Prisons, as Petitioner asserts a "bureaucratic runaround" in her efforts to seek compliance with the August 1994 settlement agreement. Both the court and the AUSA do not seem pleased with the way Petitioner's EEO issues were passed from person to person between 1994 and 1996.

On June 19, 1997, a TRO hearing was held by Judge McBryde on the matter of Jimmy Lee Rebman v. USA, et al. Mr. Rebman is an inmate at FMC Fort Worth seeking mandamus/injunctive relief relevant to an cornea transplant. Judge McBryde ordered the government to meet with plaintiff's attorney the following day with a plan of action or schedule for the cornea transplant. A cornea transplant was scheduled to take place within two weeks, with a follow-up cataract surgery once the transplant surgery site heals.

State of Missouri v. Dennis W. Clark, CR-49586F. SCRO Attorney attended a hearing where the Missouri Public Defender sought to compel the testimony of an employee at FCI Seagoville in a state court trial. The state court's subpoena was filed with a Dallas County Court. We contested the motion under 28 C.F.R. § 16.22 et seq. The Public Defender's motion was denied. However, a deposition was allowed.

On June 27, 1997, FCC Beaumont legal staff attended a Treaty Transfer Consent Hearing before Magistrate Judge Radford, E.D.Tex., for inmate GUTIERREZ-LARA, Jorge. The U.S. Attorney's Office requested the Legal Department's assistance insofar as the inmate will be produced for the hearing and the format is unknown to the AUSA.

SIGNIFICANT TORT CLAIMS

FPC Bryan reports that the tort claim of Norma Carter has been referred to the Office of Quality Management for additional

review. The response from OQM is anticipated by July 18, 1997. (T-SCR-97-28)

Inmate John Rohrbach claims he was cleaning stainless steel when the chemicals got in his eyes and that he couldn't wash his eyes because the only eyewash station had "boiling" hot water. This is a work-related injury and falls under Demko, except the inmate also alleges delay in receiving medical treatment. Inmate seeks \$15,000.00 in compensation (T-SCR-97-176)

Inmate Vernon Ray Robertson alleges staff were negligent in failing to protect him from a state prisoner whom the BOP allegedly knew was violent. Inmate claimed he was assaulted and sustained numerous injuries, including a broken hand and a crooked finger because it was not set properly. Inmate Robertson seeks \$300,000.00 in compensation. (T-BOP-97-15)

Wali Muhammed, an inmate housed at FMC Fort Worth, alleges that he is being deprived of functional electrical stimulation therapy and other medical treatments for his paralysis. He contends that he has completed the Bureau of Prisons 500 hour drug program, but has been denied the one year release because of a firearms conviction. Thus, he claims the denial of medical care. Mr. Muhammed contends that the stimulation therapy will allow him to regain his ability to walk. Mr. Muhammed seeks \$5,000,000.00 for neglect, mental anguish, and emotional distress. (T-SCR-97-216)

SIGNIFICANT ADMINISTRATIVE REMEDIES

None

UPCOMING TRIALS OR HEARINGS

Banks v. USA, A-95-CA-292-SC (WD/TX)

This is an FCI Bastrop FTCA slip and fall case, allegedly arising in Austin Unit as the result of inmate-set sprinkler floods during the disturbance of July, 1994. As previously reported, the case is scheduled for trial of Phase I, which will address only the issue of U.S. liability, on August 4, 1997.

Robert L. Horey v Warden Frank Woods, C.A. No. C-97-292 (SD/TX)

A Spears hearing is scheduled for July 14, 1997. Plaintiff alleges he suffered some liver damage as a direct result of

contact with toxic waste when his cell was flooded on April 6, 1996 at FCI Three Rivers. Inmate alleges he was not provided with cleaning supplies nor allowed to wash his hands before the morning and evening meals, and no portable toilets were provided. Plaintiff alleges staff were deliberately indifferent by failing to provide for his safety from exposure to raw sewage. Plaintiff also alleges he suffered mental, emotional, and physical damage by the loss of his UNICOR job as a result of contact with raw sewage.

MEDICAL MALPRACTICE:

LITIGATION

None

TORTS

John Henry Topsy filed tort claim T-SCR-96-445 seeking \$750,000.00. Topsy claimed that the Bureau was negligent in treating his dizziness after falls he said occurred in 1995 while at FCI Bastrop and an unnamed transfer facility. The claim was denied.

Eric Michael Lawrence filed tort claim T-SCR-470 seeking \$60,000. Lawrence claimed that the Bureau was negligent in treating his diabetes because he received his insulin as long as two hours later in the day on weekends than on weekdays, and because blood sugar levels were not consistently tested on weekends at FMC Fort Worth. The claim was denied.

FCI Texarkana inmate Juan Carlos Rodriguez-Gonzalez requests \$150,000.00 for personal injury. He alleges that medical staff at FCI Texarkana misdiagnosed and mistreated his eyes. He asserts further malpractice by their referral to doctors in the community. Specifically, he states laser photocoagulation of his eyes was not performed properly resulting in eye injury. (T-SCR-97-155)

Inmate Charles McMeans contends that the medical staff at FMC Fort Worth have denied him hip replacement surgery. Mr. McMeans states that he needs hip replacement surgery due to a fall he suffered at FCI Bastrop on the basketball court, and most recently in the dining hall at FMC Fort Worth. Both Mr. McMeans and his wife, Veronica McMeans, previously filed separate administrative tort claims for damages they alleged were caused when Mr. McMeans fell on the basketball court at FCI Bastrop. Both claims were denied. He currently seeks \$1,500,000.00 in damages. (T-SCR-97-217)

ENSIGN AMENDMENT:

LITIGATION

Milford Topsy v. Michael Purdy, et. al., CA-C-97-229, SD/TX

Inmate at FCI Three Rivers alleges his various rights have been violated/denied due to BOP's implementation of the Ensign Amendment because staff rejected three magazines. Plaintiff challenges the Ensign Amendment as overly broad in defining terms, unconstitutionally vague, and against his First and Fourteenth Amendment rights.

TORTS

Inmate Kenneth Linn, FCI Seagoville, contends that as a result of the Ensign Amendment he was no longer allowed to have sexually explicit materials; therefore, his publications were not forwarded to his requested location during the authorized time frame. He claims damages of \$13.90 due to BOP negligence.

RELIGIOUS FREEDOM RESTORATION ACT:

ADMINISTRATIVE REMEDY

None

LITIGATION

None

TORTS

None

OTHER

Inmate William Mills received an incident report for refusing to obey an order as he refused to be housed with an African American inmate. During the investigation and UDC, the inmate failed to raise any religious issues. The inmate has filed a BP-9 citing his religious beliefs are of a white separatist nature and he can not go against his beliefs. He requests the incident report be expunged. Sentry indicates religious preference as Native American. Inmate claims his religious preference as Brotherhood of the Will, which is not a BOP recognized religion.

PRISON LITIGATION REFORM ACT ORDERS

None

SITUATIONS OF INTEREST

FCC BEAUMONT

On June 3, 1997, Paul Layer, Karen Summers, and Executive Staff from the FCC Beaumont met with staff from the Executive Office for Immigration Review regarding the Bureau's Institution Hearing Program's implementation at the FCC Beaumont.

On June 17, 1997, as part of an initiative to explore video-conferencing capabilities between the FCC Beaumont and U.S. District Court, a Spears hearing was conducted at the U.S. District Court, E.D.Tex., Beaumont, Texas, via video-teleconferencing with an inmate in the Texas state prison system. The various options and technologies were discussed with Magistrate Judge Earl Hines and the U.S. Marshal for possible implementation at the FCC Beaumont. The U.S. Marshal expressed an interest in providing financial support insofar as the system would reduce the need for Marshal transportation of prisoners to and from court.

On June 20, 1997, 11 staff from the U.S. District Court, E.D.Tex., including a Staff Attorney, toured FCC Beaumont.

CRIMINAL MATTERS AND PROSECUTIONS

FPC BRYAN

On June 9, 1997, former Correctional Officer Arnulfo Garcia pled guilty to one count of Sexual Abuse of a Ward. Sentencing is scheduled for September 2, 1997.

FCC BEAUMONT

(Follow-up) A grand jury in E.D. Tex, Beaumont, Texas, indicted inmates Ezequiel Montes-Fierro, and Louis Enriques-Hernandez for possession of a weapon (clay, non-operational) in violation of 18 U.S.C. § 1791(a)(2).

Referral to FBI regarding inmates involved in a fight. Inmates Raymond Rideaux, Clarence Gillory, Octavio Armento-Ayala, and Julio Valenzuela-Carillo. On June 2, 1997, the FBI/AUSA declined prosecution, and Warden is not seeking reconsideration.

FCI EI Reno

On June 1, 1997, at approximately 2:50 p.m., inmate Kenneth Lawrence assaulted a staff member by throwing a cup of urine on the staff member. The staff member was attempting to talk to inmate Lawrence about the inmate's refusal to allow staff to secure the food slot door. The incident has been referred to the FBI.

On June 15, 1997, at approximately 9:40 a.m., as staff were conducting a cell search of Unit 2, staff found five small "corners" of marijuana in an inmate's locker. Staff subsequently found another "corner" of marijuana during a pat search of inmate Jaime Flores who was assigned to the cell and locker where the other "corners" of marijuana were found. The case was referred to the FBI.

FTC OKLAHOMA CITY

Sexual allegations involving a correctional counselor have been raised and are being investigated by the Office of Internal Affairs and Office of the Inspector General. The staff member is on home duty status pending the investigation.

Update: On March 23, 1997, a correctional officer was charged with Sexual Abuse of a Ward. Contact with the Assistant U.S. Attorney revealed that this matter is pending further investigation to determine whether a more severe charge is appropriate.

FCI THREE RIVERS

Inmate Patrick Colby requested protective custody after he was assaulted in the living unit. He was hit in the mouth, which resulted in minor bruising. Prosecution was declined. Warden concurs with this decision.

PERSONAL ISSUES

- Mike Hood
- June 23-27 - Legal Service Management Review, Springfield, MO
 - July 21-25 - Annual Leave
 - July 29-August 1 - Staff Assistance Visit, FCI EI Reno

Lisa Sunderman - July 3 - Annual Leave

- July 14-18 - Annual Leave

Marsha Foulks - July 28-August 1 - Annual Leave

Linda Nutt - July 1-3 - Annual Leave

Georgeanne Osborn - July 14-18 - Annual Leave

Jeanne Whitecotton - June 19-July 4 - Sick Leave

Barbara Wilson - June 28-July 6 - Annual Leave

Martin Sweaney - One week/July - Annual Leave

U.S. Department of Justice

Federal Bureau of Prisons

South Central Regional Office

Dallas, Texas 75219

July 5, 1997

MEMORANDUM FOR WALLACE H. CHENEY
ASSISTANT DIRECTOR/GENERAL COUNSEL
CENTRAL OFFICE

FROM: Michael D. Hood, Regional Counsel

SUBJECT: Monthly Report - July, 1997

ADMINISTRATIVE REMEDIES

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT
NOV DEC										
# Received	144	111	139	145	118	145	146			
# Answered	52	61	69	98	85	98	74			

TORT CLAIMS

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT
NOV DEC										
# Pending	151	153	159	164	175	210	219			
# Received	51	40	40	49	91	57	57			
# Answered	50	33	40	41	59	46	88			
# Pending	152	160	159	172	207	221	188			
# Over Six Mon	0	0	0	0	0	0	0			

FOI/PRIVACY

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT
NOV DEC										
# Pending	80	108	125	91	89	112	49			
# Received	47	34	27	41	41	45	34			
# Answered	19	17	61	43	18	108	36			
# Pending	108	125	91	89	112	49	47			
# Over 30 Days	72	91	64	48	71	4	13			

LITIGATION

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT
NOV DEC										
New Cases Recd	32	36	31	23	15	28	24			
Cases Closed	3	9	10	6	9	25	13			
Habeas Corpus	25	23	25	17	9	14	20			
Bivens	4	8	6	4	4	9	1			

FTCA	3	2	0	1	2	3	2
Other	0	3	0	1	0	2	1
Lit Reports	23	19	33	23	17	20	13
Cases With Hearing							
or Trials	2	0	4	3	3	4	1
Cases With Settlements							
or Awards	0	0	1	0	0	0	1

SIGNIFICANT CASES

Fowler v. USA, 97-2006 (ED/LA).

Coleatha Fowler and Adrian Perry brought a Federal Tort Claims action in the Eastern District of Louisiana. Fowler and Perry are the administrators of the estates of Richardo E. Lopez' two minor children. Lopez was murdered by Albert Young while Young was participating in the Bureau of Prisons' home confinement program. Plaintiffs allege that the Bureau failed to properly monitor Young's home confinement.

McAlpine v. Thompson, 94-1406-L (WD/OK).

This case has reached the 10th Circuit Court of Appeals. The case involved our denying the inmate his use of peyote during religious ceremonies. However, because the inmate was released from BOP custody in November 1996, the AUSA will argue that the petitioner's request for relief is moot.

CASES WITH SETTLEMENT OR AWARD

a. **Adverse judgments**

In Martinez v. Fleming, A-97-CA-010-SS (WD/TX), an FCI Bastrop habeas petition, Judge Sparks ruled that an inmate convicted of 21 U.S.C. Section 841(a) (1) with a two-point enhancement for possession of a weapon in connection with a drug offense is not a violent offender for the purposes of early release under 18 U.S.C. Section 3621(e).

In Donald Pettigrew v. Fleming, A-97-CA-088-SS (WD/TX), another FCI Bastrop habeas petition, Judge Sparks ruled that inmate convicted of 21 U.S.C. Section 846 with a two-point enhancement for possession of a firearm during the course of the conspiracy is not a violent offender for the purposes of early release under 18 U.S.C. Section 3621(e). This order was entirely unexpected. The court never issued a show-cause order; therefore, neither institution staff nor the U.S. Attorney's Office were aware of the petition. Judge Spark's wrote that "(t)he Magistrate Judge concluded that the petition presented an issue of law and did not require the respondent to answer the petition."

b. **Other settlements**

Wright v. Miller. The final settlement of \$2,500.00 was accepted by the plaintiff, with no admission of liability. The case involved alleged excessive use of restraints during a bus trip. The plaintiff agreed to convert this Bivens action into an FTCA action.

CASES WITH HEARINGS OR TRIAL

Robert Horey v. Warden Woods, et al., C.A. No. C-97-292 (SD/TX). A Spears hearing was conducted on July 14, 1997. The Magistrate Judge is to submit her recommendation within 20 days from the hearing date.

SIGNIFICANT TORT CLAIMS

Wholesale Petroleum, a convenience store, has filed a claim for damages received when a BOP semi truck, driven by FCI El Reno staff, struck a canopy covering the fuel pumps. Claimants are seeking approximately \$20,000.00 in damages. (T-SCR-97-281)

Brian Fuller has filed a tort claim requesting damages in the amount of \$3,241,000.00. This claim replaces a lawsuit the inmate voluntarily dismissed. Inmate filed his lawsuit pro se, but has now hired an attorney for his tort claim. Allegations in the tort claim originated at FCI Seagoville, but also involve FCI Three Rivers and FCI Bastrop. Inmate is requesting compensation for delay in surgeries (two); retaliation; allergic reaction to medication; loss of future earning capacity; disfigurement; future medical expenses; and future pain and suffering. Throughout the proceedings for the lawsuit, the AUSA and Clinical Director were confident there was no BOP negligence.

SIGNIFICANT ADMINISTRATIVE REMEDIES

None

UPCOMING TRIALS OR HEARINGS

Phase One of Banks v. USA, A-95-CA-292, is going to trial on August 11 for the purposes of determining whether the U.S. is liable for a supposed slip and fall in 1994 at FCI Bastrop.

Should the U.S. prevail, Phase Two will be tried at a later date regarding the calculation of damages.

Caldwell v. United States, 92-1588 (WD/OK).
This 1989 FTCA case is tentatively scheduled for trial in
September. Depositions and discovery pending.

MEDICAL MALPRACTICE:

LITIGATION

None

TORTS

GUERRIERI, Mario - Mr. Guerrieri, an inmate housed at FMC Fort Worth, alleges that he contracted a staph infection after he underwent surgery at the contract hospital (Texas Osteopathic Hospital) in Fort Worth, Texas. He contends that after the surgery he was returned to the institution and on the third day he was told that he had a staph infection from either the "doctor's tools or from the operating room." Mr. Guerrieri also contends that medical staff at FMC Fort Worth have failed to treat him for a nerve condition which resulted after he had two strokes in a county jail. Mr. Guerrieri seeks \$750,000.00 for past and future pain and suffering. (T-SCR-97-276)

JAMIESON, Alisa - Ms. Jamieson alleges that while she was housed at FTC Oklahoma City, BOP medical staff administered a sulfa drug. Further, she states that the PA acknowledged that the drug she had been prescribed was sulfa, immediately confiscated the medication, and ordered new medication. Ms. Jamieson states that she did not receive any of the medications and as a result of her high fever she became dehydrated and was taken to a local hospital for treatment. She seeks \$50,000.00 in damages (T-SCR-97-189)

RODRIQUEZ, Jesus - Mr. Rodriguez, an inmate housed at FMC Fort Worth, alleges that he fell while he was housed at the El Paso County Jail, prior to being sentenced, and sustained a hernia. The sentencing judge recommended that he be housed at a medical facility in order to have the hernia surgically repaired. Mr. Rodriguez contends that medical staff at FMC Fort Worth have refused to provide the surgical repair because his sentence is too short. Mr. Rodriguez seeks \$1,500,000.00 for past and future pain and suffering. (T-SCR-97-298)

ENSIGN AMENDMENT:

LITIGATION

Received favorable Report and Recommendation from the Magistrate Judge in the Harrell case. We expect that a favorable final order is forthcoming.

Milford Topsy v. Michael Purdy, et al., CA-C-97-229 (SD/TX).
Dismissed under PLRA requirements because inmate failed to satisfy filing fees.

TORTS

ROBERTS, Tim - Mr. Roberts has filed a claim in the amount of \$49.71 as compensation for four High Society; three Hustler; and one Gorgeous Fat Ladies magazines. Mr. Roberts alleges that the magazines were confiscated when he was placed in the Special Housing Unit at FCI Big Spring, and staff failed to inventory the magazines due to the new Ensign law.

RELIGIOUS FREEDOM RESTORATION ACT:

ADMINISTRATIVE REMEDY

None

LITIGATION

See Significant Cases heading.

TORTS

OTHER

PRISON LITIGATION REFORM ACT ORDERS

Pedro De La Torre, 4:97-CV-056Y, Appellate dismissal.

See Topsy under Ensign Amendment.

SITUATIONS OF INTEREST

FMC CARSWELL

We are encountering many staff claims for various types of damage to their automobiles and property caused by construction debris. Negotiations with the contractor are in progress.

FCI OAKDALE

Inmate Melvin Deutsch has been transferred to FCI Oakdale for a possible deportation hearing. Inmate Deutsch has requested in the past week approximately 50 tort claim forms. Inmate Deutsch will probably continue to seek additional tort claims and administrative remedies for perceived wrongs.

FCI TEXARKANA

The Texarkana Division of the Eastern District of Texas has been given preliminary approval for a full-time magistrate. One consideration for this approval is the heavy inmate lawsuit docket from inmates at the Texas Department of Corrections. Currently, FCI Texarkana's litigation is assigned to a magistrate from the Tyler Division.

CRIMINAL MATTERS AND PROSECUTIONS

FCC BEAUMONT

A criminal trial is scheduled for August 25, 1997, in the ED/TX, Beaumont, Texas, for federal inmates Montes-Fierro, Ezequiel and Enriques-Hernandez, Louis, for possession of a weapon (clay, non-operational) in violation of Title 18 U.S.C. Section 1791(a)(2).

FCI El Reno

On June 15, 1997, during a routine search of inmate Jaime Flores's cell, staff found several small folded pieces of paper. Upon unfolding the papers, officers discovered they contained marijuana. The matter was referred to FBI and was declined due to quantity. Warden accepts decision.

On July 10, 1997, during inmate Larry McKnight's release from SHU, he pushed staff when they attempted to prevent the inmate from maintaining possession of items of contraband. The matter was referred to the FBI and declined due to the minor injury. The Warden accepts the decision.

On June 8, 1997, officers found a small amount of morphine in inmate Roy Gardener's trash can during a cell search. While escorting the inmate to SHU, staff observed a syringe fall from the inmate's clothing. Referred to FBI; declined due to small amount. Warden accepts decision.

FCI OAKDALE

The institution has referred a case to the FBI and the U.S. Attorney's Office for prosecution. The case has been accepted for prosecution. The case involved two inmates, Richard Atkins and Larry Peterson. Through the inmate telephone system and family members, the inmates were controlling the sale of heroin outside of the institution.

FTC OKLAHOMA CITY

Institution Phone Threat: Front Lobby Officer received a phone call on July 2, 1997, from an unknown male who stated "the people who killed Trentadue better get off the property now, I have seven trucks coming that way," and hung up when the

officer asked for his name and from where he was calling. The FBI and Oklahoma City Police Department were notified, and an investigation continues. The FBI opted not to refer this matter to the U.S. Attorney's Office. The Warden concurs.

Inmate Assault: At approximately 7:15 p.m. on July 11, 1997, R&D staff noticed inmate Miguel Gomez bleeding from the facial area. Inmate Gomez had a 3 cm laceration about the right eyebrow, which was treated, and he was placed in SHU. Three inmates were identified as being involved. The investigation is pending.

Inmate Assault: At approximately 9:40 p.m. on July 21, 1997, inmate Chrispus Taylor requested to see the Lieutenant for protective custody reasons and stated he had been assaulted by unknown inmate(s) at approximately 7 p.m. Inmate Taylor received minor first aid for a contusion on the right side of his forehead and was placed in the institution hospital for observation. The search for the assailant was conducted but to no avail. The FBI was notified. The investigation is pending.

Inmate Assault: R&D staff responded to a yell for help at approximately 7:15 p.m. on July 23, 1997, and inmate Troy Foehlich stated that inmates in the holding cell were beating him up. The inmates were separated, and staff learned inmate Ronald Burchett had assaulted inmate Foehlich by hitting him in the facial and upper torso areas. The FBI was notified. The investigation is pending.

FCI TEXARKANA

On June 28, 1997, at FCI Texarkana, staff observed inmate Octavio Armenteros, strike inmate Ramon Lara-Lores with a walking cane while on the Recreation Yard. Subsequent investigation revealed that both inmates were involved in a physical altercation. During the altercation, inmate Lara-Lores bit off a large portion of inmate Armenteros's ear. The incident was referred to the FBI on June 30, 1997, who declined to investigate the matter. The Warden concurred.

FCI THREE RIVERS

On June 10, 1997, Christopher Martinez and Bruno Diaz-Cruz were attacked and stabbed with ice pick type weapons in a gang related assault. Both inmates survived the attack and were transferred to another institution. The following inmates have been referred to the U.S. Attorney's Office for assault: Julio Villanueva, Antonio Gonzalez, Raul Garza, Jacob Baca, Jose Cadena-Diaz, Antonio Rios, and Santos Garcia.

The Enriquez Diaz-Enriquez case has been referred to the U.S. Attorney's Office for simple assault. While in SHU, inmate threw his food tray and drink through the food slot door, striking staff in the left hand. No injuries were sustained.

PERSONAL ISSUES

Paul Layer - July 28-August 13 - Annual Leave

Darrel Waugh - August 25-29 - Annual Leave

Julie Gerardi - August 4-8 - Annual Leave

Carl Selogy - Carl has been selected as Firearms Instructor at Glynco. During the week of August 11th, he will be taking a house hunting trip.

U.S. Department of Justice

Federal Bureau of Prisons

South Central Regional Office

Dallas, Texas 75219

September 4, 1997

MEMORANDUM FOR WALLACE H. CHENEY
ASSISTANT DIRECTOR/GENERAL COUNSEL
CENTRAL OFFICE.

FROM: Michael D. Hood, Regional Counsel (SCRO)
SUBJECT: Monthly Report - August, 1997

ADMINISTRATIVE REMEDIES

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Received	144	111	139	145	118	145	146	167				
# Answered	52	61	69	98	85	98	74	100				

TORT CLAIMS

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	151	153	159	164	175	210	219	193				
# Received	51	40	40	49	91	57	57	59				
# Answered	50	33	40	41	59	46	88	63				
# Pending	152	160	159	172	207	221	188	189				
# Over Six Mon	0	0	0	0	0	0	0	1				

FOI/PRIVACY

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	80	108	125	91	89	112	49	47				
# Received	47	34	27	41	41	45	34	45				
# Answered	19	17	61	43	18	108	36	35				
# Pending	108	125	91	89	112	49	47	57				
# Over 30 Days	72	91	64	48	71	4	13	24				

LITIGATION

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
New Cases Recd	32	36	31	23	15	28	24	15				
Cases Closed	3	9	10	6	9	25	13	14				
Habeas Corpus	25	23	25	17	9	14	20	11				
Bivens	4	8	6	4	4	9	1	1				
FTCA	3	2	0	1	2	3	2	1				
Other	0	3	0	1	0	2	1	2				
Lit Reports	23	19	33	23	17	20	13	9				
Cases With Hearing or Trials	2	0	4	3	3	4	1	1				
Cases With Settlements or Awards	0	0	1	0	0	0	1	3				

SIGNIFICANT CASES

Anez S. Robinson v. United States of America, C.A. No. 97-051, (SD/TX). Plaintiff alleges that he broke two metal rods in his back when he fell from an exercise bicycle. A broken seat on the bicycle caused the fall. Plaintiff alleged BOP employees were the proximate cause of his injury by not insuring the seat on the exercise bicycle was tight before allowing inmates to use it. Plaintiff alleges nothing has been done to repair the broken rods and he is totally disabled and unable to work. Plaintiff claims undue physical/emotional pain and suffering and is seeking \$3,000,000.00, and any other relief deemed appropriate by the court.

Rocha v. Reno, A-97-CA-549-SS (WD/TX), was filed pursuant to Title VII of the Civil Rights Act of 1964. Plaintiff alleges discrimination based upon national origin and age when another person was offered the position the plaintiff sought at FCI Bastrop.

Lee, Martinez, and Pettigrew. These three FCI Bastrop 3621(e) adverse decisions by Judge Sam Sparks have been recommended for appeal by the Bureau to the Department of Justice. We are waiting for a formal decision by the Department of Justice; however, a provisional Notice of Appeal has been filed on the Lee case.

CASES WITH SETTLEMENT OR AWARD

a. Adverse judgments

The Daas v. Henman case from FDC Oakdale was settled for \$2,500 and converted from a Bivens to an FTCA case. The case involved allegations of improper placement

of the inmate in Administrative Detention when inmate threatened to file lawsuits and sent threatening correspondence to the Warden.

Caldwell v. United States (WD/OK). This 1989 FTCA case from FCI El Reno was settled for \$1,000.00.

Sinks v. Slade, EP-97-CA-116-F. The FCI La Tuna petitioner challenged the BOP's determination that he was ineligible for early release because his crime was considered a crime of violence. The District Court ruled that the inmate's two point enhancement cannot make him ineligible for early release because it is not a conviction. The Bureau plans to recommend an appeal; however, placement is currently being sought for October 1997.

b. Other settlements

CASES WITH HEARINGS OR TRIAL

Banks v. USA, A-95-CA-292 (WD/TX), was tried in Austin on August 11. Phase I only addressed the issue of whether the United States was liable for the plaintiff's alleged slip and fall in an FCI Bastrop housing unit in 1994. The Magistrate Judge, citing a need to research the issue of the admissibility of some of the evidence, has not yet ruled on the question of liability.

SIGNIFICANT TORT CLAIMS

See Medical Malpractice Tort heading.

SIGNIFICANT ADMINISTRATIVE REMEDIES

FCI Texarkana reports that in Administrative Remedy 140091-F1, the inmate is requesting to have his religion recognized as satanism. FCI Texarkana is initially denying the request.

UPCOMING TRIALS OR HEARINGS

Anez S. Robinson v. United States of America, C.A. No. 97-051 (SD/TX). Spears hearing is scheduled for October 1, 1997. See Significant Cases heading.

FPC Bryan reports that Ahr v. Reno, an EEO related civil action, is scheduled for a hearing in late October. Plaintiff's counsel will more than likely again assert the Government has been non-responsive to her requests; however, she has yet to file the EEO Complaint that the Court gave her leave to file in April.

MEDICAL MALPRACTICE:

LITIGATION

None

TORTS

See Significant Tort Claim heading.

PETERSEN, Justin - Claimant asserts FCI Bastrop staff failed to provide a proper prosthesis and prosthetic socks for the amputated stump of his left leg. He also states that due to the negligence in the maintenance of a hazardous situation in the shower and in his cell, claimant suffered a fall in each of those places. (T-NCR-97-150).

CARTER, Norma - A Memorandum of Law will be sent to DOJ via the Central Office. It is anticipated that a settlement offer of \$150,000 will be made. A denial letter was sent to Claimant's counsel, [REDACTED]

[REDACTED] (T-SCR-97-28).

MAY, Charles - Mr. May is currently housed at FCI Oakdale; however, he alleges that he fell from a top bunk at FCI Bastrop on August 5, 1996. Mr. May contends that he has not received proper medical attention for the injuries to his back since the fall. Mr. May further states that the Bureau of Prisons medical staff failed to provide proper medical treatment for a knee problem, which resulted in his falling from the top bunk at FCI Bastrop. Mr. May seeks \$500,000.00 for past and future pain and suffering. (T-SCR-97-239).

JOHNSON, Timothy - Timothy Johnson filed a claim seeking \$50,000.00 for a knee injury he sustained at FCI Oakdale. Mr. Johnson alleges that he fell while playing basketball on December 29, 1996, and that he received physical therapy, which was indicated as necessary by an Orthopedic Surgeon. He contends

the therapy was stopped on May 9, 1997, by the therapist because he was not responding. He further states that the physical therapist indicated that further medical evaluation was needed. Mr. Johnson states that he suffers from numbness, swelling, popping, and burning sensations due to the instability of his left knee.

Mr. Johnson has submitted an amended claim and indicates that he has received surgery, but continues to have problems with the knee. He also states that he was slapped by a staff member and has submitted a copy of an Administrative Detention Order, which indicates that he was placed in SHU under protective custody on July 14, 1997. He also has submitted a copy of a BP-10 which notes that he was removed from protective custody but continues to be housed in Administrative Detention. The matter has been brought to the attention of Internal Affairs. (T-SCR-97-238).

ENSIGN AMENDMENT:

LITIGATION

None

TORTS

None

RELIGIOUS FREEDOM RESTORATION ACT:

ADMINISTRATIVE REMEDY

None

LITIGATION

None

TORTS

None

OTHER

None

PRISON LITIGATION REFORM ACT ORDERS

Cook v. BOP, CIV-96-2133-A, dismissed for failure to pay filing fees.

SITUATIONS OF INTEREST

FCI BIG SPRING

On August 14, 1997, five court officers from the Kingdom of the Netherlands visited FCI Big Spring to conduct a Grand Jury type hearing. The defendant, inmate Reny R. Boetius, is a citizen of the Netherlands. Assistant United States Attorney, Tanya Pierce, acted as Special Magistrate.

FTC OKLAHOMA

On August 12, 1997, a Federal Grand Jury, which convened to investigate the death of Kenneth Michael Trentadue, visited the FTC to examine deceased inmate Trentadue's cell in general population and in special housing.

Crime Stoppers held their quarterly meeting at the FTC on August 13, 1997, as part of the Community Outreach Program. Those who attended consisted of law enforcement personnel and community leaders who gather quarterly to discuss the awarding of funds/rewards to those who contributed to the capture of wanted criminals.

On August 21, 1997, the second anniversary of former inmate Kenneth Michael Trentadue's death, his family along with supporters and community human rights activists staged a demonstration in front of the institution entrance. There were approximately 30-40 demonstrators present, along with television affiliates and two radio stations.

CRIMINAL MATTERS AND PROSECUTIONS

FCI BIG SPRING

A staff member from FCI Big Spring was charged with violation of 18 U.S.C. Section 2241(a) for the sexual assault of an inmate. The Correctional Officer was released on his own recognizance on August 22, 1997. The U.S. Attorney's Office advised Big Spring that the Civil Rights Division of the Department of Justice authorized the U.S. Attorney's Office to handle the case. Employee is scheduled to appear before the Grand Jury on September 22, 1997.

United States v. Boyd. Boyd recently entered a guilty plea for the December 1996 assault of Acting Captain Marcus Fernandez. Boyd threw urine and feces on the Captain during the December disturbance at FCI Big Spring. Inmate Boyd was sentenced on August 24, 1997, to eight months imprisonment with over three months jail time credit.

FPC BRYAN

Former correctional officer pleaded guilty to one count of Sexual Abuse of a Ward [18 U.S.C. §2243(b)], and was sentenced to five years probation, three months home confinement, and a \$2,500 fine. The former staff member waived his criminal and administrative appeal rights as part of the plea agreement and cannot seek a law enforcement position during the period of his probation.

FMC CARSWELL

Former staff member at FMC Carswell was sentenced to six month prison time, one year supervised release, and a \$5,000 fine.

FCI El Reno

On July 28, 1997, during a routine pat search of inmate Valdez-Lopez in Food Service, staff found a latex glove filled with a green leafy substance, which was later determined to be marijuana. The matter has been referred to the FBI.

On August 8, 1997, unit officer walked into a cell and observed inmate Samuel Williams holding a bag containing a green leafy substance. The inmate pushed the officer and attempted to flush the substance down the toilet. The matter has been referred to FBI.

FCI FORREST CITY

On July 27, 1997, officers found marijuana during a shakedown. Inmates Jason Johnson, Kevin West, and Ramon Weeks were escorted to SHU. The case has been accepted and assigned to Assistant U.S. Attorney Michael Johnson, Eastern District of Arkansas.

On August 4, 1997, inmate Marcus McKinney was found threatening an Act of Violence (a letter he wrote was found to contain the threat). The case has been accepted and assigned to Assistant U. S. Attorney Michael Johnson, Eastern District of Arkansas.

On July 27, 1997, officers found marijuana during a shakedown. Inmates Anthony Moore, Michael Caldwell, Adrian McCray, Stefan Antone, and Kevin Victor were escorted to the SHU. We will be notified later as to the cases being accepted or rejected.

FMC FORT WORTH

A staff member was questioned by FBI agents concerning possible introduction of narcotics. He requested an attorney and questioning was stopped. He is currently on home duty. The matter remains under investigation.

FTC OKLAHOMA CITY

On August 4th, inmate Edilberto Morales was involved in a fight with inmate Dion Anagal, and was later assaulted by inmate Denison Yazzie in the Unit 3C TV room. Inmate Morales had minor injuries, from either the fight or the assault, and inmates Anagal and Yazzie had no injuries. The FBI was notified regarding the assault and the investigation continues.

On August 17, 1997, the unit officer learned inmate Brandon Glover had been assaulted and sustained several large swollen abrasions on his forehead requiring immediate medical attention. Inmate Glover was transported to an outside medical facility and remained overnight. Staff learned from other inmates that 15-19 black inmates went into inmate Glover's cell and banged his head against the floor and beat him until inmate Glover was unconscious. Mass interviews of inmates on the unit were conducted, and the unit was locked-down until later that afternoon. The FBI and Marshals were notified and the investigation continues.

FCI THREE RIVERS

On June 10, 1997, Christopher Martinez and Bruno Diaz-Cruz were attacked and stabbed with ice-pick-type weapons in a gang related assault. Both inmates survived the attack and were transferred to another institution. The following inmates have been referred to the U.S. Attorney's Office for prosecution for their involvement in the assaults: Julio Villanueva, Antonio Gonzalez, Raul Garza, Jacob Baca, Jose Cadena-Diaz, Antonio Rios, and Santos Garcia. Pending notification from U.S. Attorney Office whether case will be prosecuted.

On August 25, 1997, during a strip search in preparation for a bus trip, a string was noticed in the rectum of Javier Luera. After several orders to produce the item, the inmate removed the

item from his rectum and attempted to run away from staff. An immediate use of force was initiated to gain control of the inmate. A balloon type item recovered from the inmate contained 1.133 grams of brown tar heroin. The FBI has been contacted for further investigation.

PERSONAL ISSUES

Lisa Sunderman	-	September 22-26	-	Leadership Forum Alexandria, VA
An Tran	-	September 22-26	-	Leadership Forum Alexandria, VA
Linda DuBose	-	September 22-26	-	Leadership Forum Alexandria, VA
Jason Sickler	-	September 2-8	-	Institution Familiarization Training, FCC Beaumont

Carl Selogy's last day will be September 26, 1997. A farewell party is scheduled for September 17 at the Spaghetti Warehouse in Arlington.

South Central Regional Office

Dallas, Texas 75219

October 3, 1997

MEMORANDUM FOR WALLACE H. CHENEY
 ASSISTANT DIRECTOR/GENERAL COUNSEL
 CENTRAL OFFICE

FROM: Michael D. Hood, Regional Counsel

SUBJECT: ~~Monthly Report - September, 1997~~

ADMINISTRATIVE REMEDIES

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Received	144	111	139	145	118	145	146	167	172			
# Answered	52	61	69	98	85	98	74	100	106			

TORT CLAIMS

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	151	153	159	164	175	210	219	193	185			
# Received	51	40	40	49	91	57	57	59	54			
# Answered	50	33	40	41	59	46	88	63	49			
# Pending	152	160	159	172	207	221	188	189	190			
# Six Mon	0	0	0	0	0	0	0	1	0			

FOI/PRIVACY

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	80	108	125	91	89	112	49	47	57			
# Received	47	34	27	41	41	45	34	45	50			
# Answered	19	17	61	43	18	108	36	35	59			
# Pending	108	125	91	89	112	49	47	57	48			
# Over 30 Days	72	91	64	48	71	4	13	24	7			

LITIGATION

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
New Cases Recd	32	36	31	23	15	28	24	15	28			
Cases Closed	3	9	10	6	9	25	13	14	9			
Habeas Corpus	25	23	25	17	9	14	20	11	14			
Bivens	4	8	6	4	4	9	1	1	10			
FTCA	3	2	0	1	2	3	2	1	3			
Other	0	3	0	1	0	2	1	2	1			
Lit Reports	23	19	33	23	17	20	13	9	17			

Cases With Hearing or Trials	2	0	4	3	3	4	1	1	4
Cases With Settlements or Awards	0	0	1	0	0	0	1	3	1

SIGNIFICANT CASES

Spanjol v. USA, 4:94-CV-237 (ED/TX). Wrongful death case involving treatment at several institutions. The Court ruled in our favor, stating that although there may have been some negligence, it was not the proximate cause of his injury.

FCI La Tuna reports receipt of Jacquez v. United States, et al., EP-97-CA-311-H. This is one of three cases involving the same issue - that inmates were allowed to take and successfully complete certain college classes, but were never issued transcripts for the completion of those classes. SCRO will handle two of these cases.

CASES WITH SETTLEMENT OR AWARD

a. Adverse judgments

Bobby James Cammock v. Bureau of Prisons et al., C.A.C-96-196, SD/TX. Court dismissed habeas petition. Court concluded that possession of a firearm by an illegal alien (922g) is not a "crime of violence" pursuant to 18 U.S.C. § 3621(e)(B). The Court further stated "this legal conclusion does not mean that petitioner is entitled to a one-year reduction in his sentence. Section 3621 makes clear that the one-year reduction is discretionary with the BOP." A reconsideration motion has been filed.

b. Tort Claim settlements

Vernon Robertson had filed a tort claim alleging staff failed to protect him from a violent state inmate who assaulted inmate Robertson causing him limited permanent injury of his hand. Inmate Robertson was offered a settlement of \$1500, which he accepted. Attempts are being made to contact the prosecuting AUSA to have the money applied toward restitution instead of to claimant's inmate account.

c. Other settlements

None

CASES WITH HEARINGS OR TRIAL

Four Mental Health Commitment Hearings, under provisions of 18 U.S.C. 4245 were held at FMC Carwell.

SIGNIFICANT TORT CLAIMS

Horace Jackson, T-SCR-97-381, \$1,500,000. FMC Fort Worth alleging negligent infliction of mental anguish and emotional distress for failure of BOP to surgically remove a G.K. nail from his hip, causing pain and difficulty in walking.

Christopher Martinez, (T-SCR-97-338) and Bruno Diaz, (T-SCR-97-357) were victims of an assault which occurred at FCI Three Rivers during June 1997 (reported last month). Martinez is requesting compensation of \$60,000.00 for his injuries. Diaz is requesting compensation of \$30,000.00 for his injuries. An initial review of the SIS reports does not indicate the institution was aware these inmates were in any type of danger.

FPC Bryan reports that a tort claim has been filed for wrongful death regarding inmate Hortencia Flores-Cabrera. The inmate suffered liver failure and died as the result of INH-induced Hepatitis. Health Services staff were disciplined regarding the medical treatment afforded this inmate. There are concerns regarding government liability. FPC Bryan is preparing a memorandum of law to aid DOJ staff when considering whether to offer a settlement in this case and how much the offer will be.

SIGNIFICANT ADMINISTRATIVE REMEDIES

None

UPCOMING TRIALS OR HEARINGS

McPhail v. United States. This FCI Big Spring case is tentatively scheduled for hearing on October 29, 1997.

MEDICAL MALPRACTICE:

LITIGATION

Cancio v. John Stone, A-97-CA-544-SS (WD/TX). Bivens action against HSA at FCI Bastrop alleging deliberate indifference in treatment provided for an injured finger.

Martinez v. U.S.A.. Significant medical malpractice case, alleging negligence by Bureau staff at FCI Bastrop, first by the medical staff in failing to treat his ankylosing spondylosis appropriately, and second by unit officers in failing to secure medical attention while he suffered paralysis and excruciating pain for several days.

TORTS

See significant tort claim heading.

ENSIGN AMENDMENT:

LITIGATION

None

TORTS

Kenneth Herbert Linn T-SCR-97-109 and T-SCR-97-111. Inmate complained that the Bureau of Prisons did not give inmates sufficient notice of the new provisions of the Ensign Amendment in time for inmates to contact and notify publishers to have subscriptions routed to different mailing addresses.

RELIGIOUS FREEDOM RESTORATION ACT:

ADMINISTRATIVE REMEDY

Inmate Sheri Cohen at FMC Carswell alleges religious discrimination by staff. Response is pending. The case number is 139831-R3.

LITIGATION

None

TORTS

None

OTHER

None

PRISON LITIGATION REFORM ACT ORDERS

None

SITUATIONS OF INTEREST

FPC BRYAN

George Pruden II visited FPC Bryan on September 4, 1997, and made a presentation at a staff recall regarding pertinent ethics-related issues.

Mike Hood visited FPC Bryan on September 16th and 17th in order to review the legal services department and contrast our practices with those set forth in the new peer review guidelines.

FTC OKLAHOMA

Congressman Tom Coburn's Chief of Staff, Carl Ahlgren, visited and toured the FTC on September 23, 1997. Also, Mr. Ahlgren has called several times in connection with a \$20,000 tort claim from Wholesale Petroleum for damages to a gasoline service station.

The FTC obtained its JCAHO accreditation on September 24, 1997.

CRIMINAL MATTERS AND PROSECUTIONS

FCI BIG SPRING

As a follow up to the reported criminal allegations against and subsequent arrest of a staff member for sexual assault against an inmate:

On September 24, 1997, a Federal Grand Jury in Lubbock, Texas, True Billed a former correctional officer. He has been charged with a violation of 18 U.S.C. 2241 (b) (2), Aggravated Sexual Abuse. Tentative trial dates are November 3, 1997 or during the weeks of December 1-14, 1997.

FCI El Reno

Inmate Lindsay Saintill was observed assaulting another inmate with a razor blade in front of the old Texas Housing Unit. The matter has been referred to the FBI for investigation and is pending.

FCI FORREST CITY

On September 2, 1997, inmate Ramon Weeks assaulted a staff member by throwing water. The case has been declined. The Warden concurs.

On September 9, 1997, inmate Jason Johnson assaulted a staff member by throwing water. The case has been declined. The Warden concurs.

FMC FORT WORTH

On Saturday, September 27, 1997, the wife of Bradley Bazemore, introduced 14 balloons of marijuana. The inmate was placed in Administrative Detention pending investigation and a referral was made to the FBI for possible prosecution.

FTC OKLAHOMA CITY

Inmate on inmate assault in R&D holding cell on September 5, 1997. The victim was treated for a laceration on his left eyebrow. The FBI was notified and an investigation continues.

FCI SEAGOVILLE

The Assistant U.S. Attorney recently advised staff that the following case has been accepted for prosecution. On February 13, 1997, Inmates Valentino Gonzalez and Omer Whayne assaulted Inmate Marc Jordan, because they had been informed he was testifying against a friend of Inmate Gonzalez's. According to the FBI, Inmates Gonzalez and Whayne will be charged with witness tampering.

FCI TEXARKANA

On September 14, 1997, an off-duty staff member observed two individuals running in a field near the Federal Prison Camp at Texarkana. An emergency count was conducted and inmates Lloyd Pinson and Alford Cason were placed on escape status. The two inmates were observed approximately two hours later returning to the camp. On September 22, 1997, the U. S. Attorney's Office declined to prosecute as there was insufficient evidence of an escape. The Warden accepts the decision. On October 2, 1997, both inmates appeared before the DHO and each were found guilty of committing a 200 level escape offense.

PERSONAL ISSUES

Mike Hood - October 20-24 - General Counsel Meeting and New Attorney Training Washington, D.C.

Lisa Sunderman - October 10 - Annual Leave

Jason Sickler - October 20-24 - New Attorney Training Washington, D.C.

Bill Shively - September 30- October 7 Annual Leave

- October 12-25 Annual Leave
Covering for him during his absence will be Mike Morris, Camp Administrator.

Mike Flagor will be out of the office alternating Monday mornings.

****NOTE****

With mixed emotions our office wishes Henry Castro, Secretary, the best of luck in his new assignment as Accounting Technician, SCRO. His last day in our office is Friday, October 3, 1997. He will be missed immensely.

U.S. Department of Justice

Federal Bureau of Prisons

Central Regional Office

Dallas, Texas 75219

November 5, 1997

MEMORANDUM FOR WALLACE H. CHENEY
 ASSISTANT DIRECTOR/GENERAL COUNSEL
 CENTRAL OFFICE

FROM: Michael D. Hood, Regional Counsel

SUBJECT: 'Monthly Report - October, 1997'

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FOI/PRIVACY

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LITIGATION

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Habeas Corpus	25	23	25	17	9	14	20	11	14	17		
Bivens	4	8	6	4	4	9	1	1	10	7		
FTCA	3	2	0	1	2	3	2	1	3	0		
Other	0	3	0	1	0	2	1	2	1	1		
Lit Reports	23	19	33	23	17	20	13	9	17	27		

Cases With Hearing or Trials	2	0	4	3	3	4	1	1	4	3
Cases With Settlements or Awards	0	0	1	0	0	0	1	3	1	1

SIGNIFICANT CASES

Hagenson v. Fleming, A-97-CA-0601, (WD/TX), Garcia v. Fleming, A-97-CA-0646, (WD/TX), Sepeda v. Fleming, A-97-CA-0602, (WD/TX), and Ceasar v. Fleming, A-97-CA-0635, are all 3621(e)(2)(b) early release habeas corpus petitions from FCI Bastrop. The OGC, believing that two-point enhancement cases in which the inmate had commenced or completed the unit-based portion of RDAP prior to promulgation of the new rule changes would no longer be categorized as violent, agreed to having the DAP Coordinator declare that the petitioner in each case would not be considered a violent offender for early release purposes; thus, the government moved for the petitions to be mooted and for the requested relief to be granted.

Noel Edward Plunkett v. Joe Gunja, et. a., C.A. No. C-96-548, SD/TX. Bivens. Plaintiff alleges named staff members from FCI Bastrop conspired with staff members at FCI Beckley, West Virginia, to effect his transfer. He further asserts racial discrimination and retaliation as additional reasons for his transfer. Plaintiff alleges while he was illegally confined in Special Housing; he was deprived of his right to participate in religious services; deprived of the benefit of an adequate law library; deprived of exercise; and deprived of inmate wages. Plaintiff states he was subjected to mental suffering and anguish as a result of the defendants deliberate indifference to his safety. He requests punitive and compensatory damages no less than \$250,000.00; that defendants be restrained from harassment and retaliation; costs of litigation; and any other relief deemed appropriate.

David Robert Reyes v. M. A. Purdy, C.A. No. C-97-488, SD/TX. Plaintiff asserts he relied upon the Government's representation that if he participated in the comprehensive drug program at FCI Three Rivers, he would receive credit toward the reduction of his sentence. He further asserts he was not aware a prior aggravated offense conviction would have an impact on his qualifying for such credit.

Randall Lovelace v. Warden Conner, Civil Action NO. 5:97CV266, ED/TX. This inmate alleges his early release eligibility was improperly denied because of a "crime of violence". He asserts the crime of Felon in Possession of Firearm is not violent.

Steven Sherrod v. Bob Guzik, CIV-97-1530-L, WD/OK. Plaintiff disputes his ineligibility for early release due to two-point for possession of firearm.

FPC Bryan reports receipt of Debra Smith v. John Pendleton, a Section 3621(e) habeas action in which the inmate challenges her ineligibility for early release based upon classification of her offense as a crime of violence. This two-point enhancement case is pending in the Southern District of Texas.

CASES WITH SETTLEMENT OR AWARD

- a. Adverse judgments
- b. Other settlements

Smith v. Fleming, A-97-CV-698, (WD/TX). Petitioner sought removal of public safety factor as sex offender based upon conduct prior to offenses for which he is currently incarcerated. The charge of sexual assault was dismissed because the victim was too traumatized to testify. Thus, policy did not support application of that PSF. Additionally, the petitioner had several other PSF's, so he will never be approved for a halfway house. The petitioner agreed to dismiss the case voluntarily in return for removal of the sex offender PSF.

CASES WITH HEARINGS OR TRIAL

Robinson v. U.S.A., C-97-051 (SD/TX). A Spears hearing was conducted on October 1, 1997.

Two telephonic hearings with Judge, AUSA, etc., in McAnnich case, Case No. C-96-132, Bivens case filed in Southern District of Texas, Corpus Christi Division. The first call involved Interrogatories, and the second was related to the Motion for Enlargement of Time for the Expert Report.

The Loren Green trial was held November 3 in Judge Mahon's court. This case is an FTCA case, from FMC Fort Worth where Green, a paraplegic, burned himself in a bathtub of hot water. He alleges negligence on the part of the government in their failure to properly regulate the water to Dallas Unit.

SIGNIFICANT ADMINISTRATIVE REMEDIES

None

UPCOMING TRIALS OR HEARINGS

Olascoago-Reynosa v. United States, et al., 1-97-CV-146-C (ND/TX). A Spears hearing is set for November 19, 1997.

Klat - 4245 Mental Health Commitment scheduled for November 6, 1997 at Federal Courthouse, Fort Worth, Texas

MEDICAL MALPRACTICE:

LITIGATION

Tommy Tompkins v. John Doe, et al., H-97-1894 (SD/TX). This Bivens-type lawsuit involves the medical care the inmate received at several SCR and NCR institutions relating to cancer in his mouth. Much of the treatment was provided by consultants. He seeks a minimum of \$75,000 for physical pain and mental anguish from delays in providing care and surgery. An answer was filed. We are preparing Schultea Motions for Defendants White and Kanon and waiting for responses from other defendants regarding the allegations against them.

Domingo Abrego v. Bill Gurth, et. al., C.A. No. 97-452, SD/TX. Plaintiff alleges deliberate indifference to his medical needs at FCI Three Rivers. Plaintiff asserts he has a pinched nerve or dislocated disc in his back because he was forced to work in various jobs which aggravated a previous back injury. He further asserts defendants refused to follow recommendations of several specialists and as a result, he is confined to a wheel chair. He is requesting jury trial; compensatory and punitive damages of \$2,000,000.00 from each defendant; proper medical treatment; and attorney fees.

Keith Blayne v. Bob Guzik, et al., CIV-97-0968-M (WD/OK). Alleges FTC Oklahoma City staff delayed treating a keyloid on his ear, which constantly itches and hurts. He requests \$10,000 in silver for each day of "the conspiracy" and staff to be incarcerated. Staff claim they have taken care of his ear.

TORTS

None

KNSIGN AMENDMENT:

LITIGATION

Topsy v. Purdy, CA-C-97-229 (SD/TX). The case was dismissed for inmate's failure to pay court filing fees.

TORTS

None

RELIGIOUS FREEDOM RESTORATION ACT:

ADMINISTRATIVE REMEDY

None

LITIGATION

None

TORTS

None

OTHER

None

PRISON LITIGATION REFORM ACT ORDERS

Topsy v. Purdy, CA-C-97-229 (SD/TX). The case was dismissed for inmate's failure to pay court filing fees.

SITUATIONS OF INTEREST

FCI OAKDALE

Inmate Melvin Deutsch is fighting his deportation. At this time he is seeking 826 witness to appear at his INS hearing. He is being housed in SHU because of possession of unauthorized item (institution count slip). He is upset that he will not allowed to keep approximately 10 boxes of legal materials in his SHU cell. For safety, security, sanitation, and fire reasons, he is allowed one box of materials and can exchange the materials on an as needed basis.

CRIMINAL MATTERS AND PROSECUTIONS

FCC BEAUMONT

A criminal trial for federal inmates Montes-Fierro and Enriques-Hernandez began on October 28, 1997. The inmates were charged with possessing a weapon (clay, non-operational) in violation of

Title 18 U.S.C. Section 1791(a)(2). After the government's case in chief, the Court directed that a judgment of acquittal be entered for inmate Enriques-Hernandez. The jury subsequently acquitted inmate Montes-Fierro.

Inmate assault on staff - Inmate Stanley Mosely was referred for criminal prosecution for assaulting a staff member while intoxicated. No serious injuries, but the FBI accepted for prosecution.

FCI EL RENO

Carl Singleton grabbed a staff member's wrist through the food slot during the feeding of the lunch meal on 9-24-97. The matter has been referred to FBI and is currently pending.

Armando Verega - during a cell search of the inmate's locker, a green leafy substance (later tested positive as marijuana) was found in a folded piece of paper. Prosecution is still pending.

FMC FORT WORTH

The FBI has unofficially notified us that they are going to prosecute the Longoria case (reported in May).

On October 20, 1997, at 10:30 p.m., a staff member found a brown bag outside the secure perimeter of FMC Fort Worth. They opened the bag and found a grass substance, which subsequently tested positive for marijuana. It was reported to the Lieutenant. The contents were replaced, and the bag was returned to the location where it was found. The following morning, staff observed and videotaped inmate Merimon, Joe, who was assigned to the outside landscape crew, pick up the bag and place it on the lawn mower. Staff retrieved the bag and the inmate was placed in Administrative Detention pending investigation. The case for introduction of contraband has been referred to the FBI. We are unaware, at this time, whether or not they will prosecute.

FCI FORREST CITY

On September 24, 1997, inmates Preston Webster and Michael Johnson were involved in a fight in the housing unit. Both inmates sustained minor injuries. Prosecution was declined, and the Warden agrees with the decision.

On October 8, 1997, inmates Tyrone Denson and Walter Monk were involved in a fight in the housing unit. Both inmates sustained minor injuries. Prosecution was declined, and the Warden agrees with the decision.

On October 11, 1997, inmates Danny Lynch, and Dennis Dill were involved in a fight in the housing unit. Both inmates sustained minor injuries. Prosecution was declined, and the Warden agrees with the decision.

On October 9, 1997, inmate James Easter, and Kelvin Norman were involved in a fight in the housing unit. Both inmates sustained minor injuries. Prosecution was declined, and the Warden agrees with the decision.

On October 19, 1997, inmate Cecil Rice was caught with marijuana in a vitamin bottle on his desk. Prosecution was declined because the marijuana was found in a general area. The inmate's DHO hearing was held on October 30, 1997. The Warden agrees with the decision.

On October 22, 1997, inmate Richard Speed was assaulted by three inmates, James Cofer, Damon Medcafe, and Roy Perkins. The investigation has not been completed.

FTC OKLAHOMA CITY

Inmate Assault on Inmate: On October 6, 1997, R&D staff observed inmate Juan Falcon-Hernandez striking inmate Michael Salinas in the head and back area with a martin chain. Inmate Falcon-Hernandez had slipped out of the martin chain while in the R&D holding cell. The FBI was notified and declined referring the matter for prosecution. The Warden concurs.

Inmate Assault on Inmate: On October 27, 1997, inmate Jennifer Nelson assaulted inmate Hope Farrer by pulling inmate Farrer's hair, causing minor abrasions to her scalp. The FBI was notified and declined referring the matter for prosecution. The Warden concurs.

Inmate Assault on Inmate: On October 27, 1997, the Unit Officer observed inmate Marla Seals strike inmate Eve St. Germain in the facial area, causing swelling and redness to the left eye. The FBI was notified and declined referring the matter for prosecution. The Warden concurs.

OIG is expected to arrive in the near future to investigate a charge of staff sexual misconduct.

FCI TEXARKANA

At approximately 1:40 a.m., October 23, 1997, an emergency count was conducted at the Federal Prison Camp at Texarkana. It was discovered two inmates were missing. These inmates were identified as Ray Mack and Rodrick Robinson. During a search of the surrounding area, staff observed a vehicle stop and two

individuals exit and begin running to the North side of the camp facility. The individuals were apprehended and identified as the two missing inmates. The incident was referred to the United States Attorney's Office for prosecution of escape. Acceptance for prosecution is pending.

FCI THREE RIVERS

Assault:

Christopher Martinez and Bruno Diaz-Cruz were assaulted by Julio Villanueva, Antonio Gonzalez, Raul Garza, Jacob Baca, Jose Cadena-Diaz, Antonio Rios and Santos Garcia. Reported last month. The case will be presented to the Grand Jury next month for indictment on assault charges.

Possession of Narcotics:

Javier Luera. The U.S. Attorney's Office will seek prosecution.

Minor Assault on Staff:

Randall Colon threw his drink toward a staff member while in Special Housing, hitting the staff member on his left leg and upper body. No injuries were received. Prosecution declined. Warden concurs.

Attempted Assault on Staff:

While being escorted to Special Housing, Peters Kandu refused to cuff up. He became argumentative and attempted to assault escorting staff. Pending prosecution notification.

COMMUNITY CORRECTIONS OFFICE - DALLAS

Inmate Cynthia Baty was apprehended by the U.S. Marshal for the escape from a halfway house. The AUSA Office will not prosecute for the escape because of it being a walk away and she surrendered. The BOP has taken disciplinary action, and she was redesignated to Carswell. The CCM concurs.

PERSONAL ISSUES

Mike Hood	-	November 24 - December 1	-	Annual Leave
Lisa Sunderman	-	November 28 and December 1	-	Annual Leave
Marsha Foulks	-	November 7, 10 and 12	-	Annual Leave

Jason Sickler	-	November 7 and 10	-	Annual Leave
Linda Nutt	-	November 3-6	-	FOIA/PA Training New Orleans, LA
Georganne Osborn	-	November 28	-	Annual Leave
Patsy Davis	-	November 28	-	Annual Leave
Mike Flagor	-	November 6	-	Annual/Sick Leave
		November 10	-	Annual/Sick Leave
		November 28	-	Annual Leave
Paul Layer	-	November 24-26	-	Annual Leave
Darrel Waugh	-	November 28	-	Annual Leave
Karen Summers	-	November 28	-	Annual Leave

U.S. Department of Justice

Federal Bureau of Prisons

~~Central Regional Office~~

Dallas, Texas 75219

December 5, 1997

MEMORANDUM FOR WALLACE H. CHENEY
 ASSISTANT DIRECTOR/GENERAL COUNSEL
 CENTRAL OFFICE

FROM: Michael D. Hood, Regional Counsel

SUBJECT: ~~Monthly Report - November, 1997~~

ADMINISTRATIVE REMEDIES

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Received	144	111	139	145	118	145	146	167	172	176	129	
# Answered	52	61	69	98	85	98	74	100	106	109	116	

TORT CLAIMS

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	151	153	159	164	175	210	219	193	185	196	184	
# Received	51	40	40	49	91	57	57	59	54	56	37	
# Answered	50	33	40	41	59	46	88	63	49	47	50	
# Pending	152	160	159	172	207	221	188	189	190	193	171	
# Over Six Mon	0	0	0	0	0	0	0	1	0	0	0	

FOI/PRIVACY

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	80	108	125	91	89	112	49	47	57	48	49	
# Received	47	34	27	41	41	45	34	45	50	39	18	
# Answered	19	17	61	43	18	108	36	35	59	38	24	
# Pending	108	125	91	89	112	49	47	57	48	49	43	
# Over 30 Days	72	91	64	48	71	4	13	24	7	10	13	

LITIGATION

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
New Cases Recd	32	36	31	23	15	28	24	15	28	25	16	
Cases Closed	3	9	10	6	9	25	13	14	9	16	8	
Habeas Corpus	25	23	25	17	9	14	20	11	14	17	13	
Bivens	4	8	6	4	4	9	1	1	10	7	3	
FTCA	3	2	0	1	2	3	2	1	3	0	1	
Other	0	3	0	1	0	2	1	2	1	1	0	
Lit Reports	23	19	33	23	17	20	13	9	17	27	24	

Cases With Hearing											
or Trials	2	0	4	3	3	4	1	1	4	3	2
Cases With Settlements											
or Awards	0	0	1	0	0	0	1	3	1	1	1

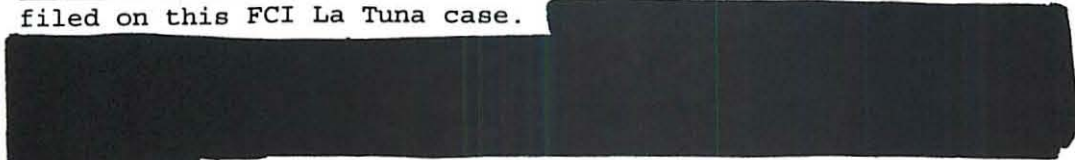
SIGNIFICANT CASES

Ahr v. Reno - This FPC Bryan EEO related civil case continues to be active. Plaintiff's counsel was granted permission to file an EEO Complaint in late April regarding only her assertions of retaliation. She was provided the forms by Central Office in late June, yet did not file her complaint until November 18th, 38 days after the end of the 6-month continuance Judge Atlas provided her. Judge Atlas also stated her court would lack subject matter jurisdiction if the claim (essentially a contract dispute) exceeded \$10,000 (inclusive of both damages and attorney's fees). However, a demand letter was recently sent to the AUSA seeking \$25,000 and plaintiff's response to interrogatories included claims for legal expenses which alone totaled more than \$10,000. The AUSA and paralegal will discuss advising the Court that the EEO Complaint has just been filed, and that plaintiff continues to seek monies well above the Court's authority to adjudicate. We expect the case will be dismissed, and Ms. Ahr and her counsel will be referred to the U.S. Court of Claims. Depositions of Ms. Ahr and Dr. Hill will occur on December 8, 1997 in Houston, Texas, unless the case is disposed of prior to that date.

Lee and Martinez. A decision was made that in light of the final court order, these inmates will be left in their CCC placements, thereby giving them early release of only four and six weeks respectively.

Pettigrew v. Fleming, A-97-CA-088-SS (WD/TX). This Bastrop inmate has violated his supervised release and is in transit to return back to FCI Bastrop. He is no longer eligible for early release.

Sinks v. Slade, E-97-CA-116F (WD/TX). A Notice of Appeal was filed on this FCI La Tuna case.



b5

. We are waiting for direction from the Office of General Counsel.

Martinez v. U.S., EP-97-CA-224-F (WD/TX). An offer of settlement in the amount of \$25,000 in this FCI La Tuna medical malpractice case has been approved.

SIGNIFICANT TORT CLAIMS

Norma Carter is an inmate at FPC Bryan - T-SCR-97-28, \$500,000. Claimant's counsel has submitted voluminous medical documentation in support of a request for reconsideration of the claim. If claimant's medical condition proves to be as expected, a settlement offer of between \$150,000 and \$228,000 is anticipated.

Flores-Cabrera, T-SCR-97-376. This FPC Bryan wrongful death tort has been referred to the Office of General Counsel for their approval of a settlement offer in the amount of \$35,000-\$50,000.

Omar Tusshani, T-BOP-97-151, \$15,000,000. Alleges he slipped and fell while in custody of the USMS, resulting in paraplegia and that when he transferred to FMC Fort Worth, he received inadequate medical care, further exacerbating his condition.

Raymond Chavez, T-SCR-97-468, \$1,500,000. Alleging he injured himself entering the dining facility at FMC Fort Worth, resulting in a broken wrist. He further alleges BOP failed to timely diagnose his injury and provide appropriate medical care.

CASES WITH SETTLEMENT OR AWARD

a. Adverse judgments

FCI La Tuna reports adverse decisions in Embrey v. Slade, EP-97-CA-040-H, and Lewis v. Slade, EP-97-CA-52-H. Inmates filed petitions for writ of habeas corpus wherein they challenged the BOP's decision not to grant their request to have one year off their sentences pursuant to 18 U.S.C. Section 3621(e). The District Court for the Western District of Texas ruled that the BOP has misinterpreted the statute and the BOP's own policy, as it pertains to crimes of violence, when the BOP disallowed both requests due to the inmates' two point enhancements at sentencing. These decisions were handed down on November 21, 1997, and November 25, 1997, respectively, after the Fifth Circuit upheld the BOP policy on this issue. Reconsideration of these cases is currently being sought in light of Venegas.

Loren Green v. USA, 4:96-CV-412-E (ND/TX). Court used theories of 18 U.S.C. 4042 to establish a duty and res ipsa loquitur to find the U.S. 50% responsible for inmate's burn. Judgment against U.S. for \$7,500. We are evaluating whether or not to recommend an appeal.

b. Tort Claim settlements

On November 7, 1997, the Department of Justice has requested Treasury to issue a check for \$16,800 for tort claim

T-SCR-97-281, filed by Wholesale Petroleum. The claim concerned damage to an overhead fuel station canopy which was struck by a semi-truck driven by a FCI El Reno SORT member. The institution and region recommended to offer settlement in the amount of \$14,845.

c. Other settlements

CASES WITH HEARINGS OR TRIAL

Loren Green v. USA. Trial was held on November 3, 1997.

SIGNIFICANT ADMINISTRATIVE REMEDIES

None

UPCOMING TRIALS OR HEARINGS

None

MEDICAL MALPRACTICE:

LITIGATION

None

TORTS

See significant tort claim heading.

ENSIGN AMENDMENT:

LITIGATION

None

TORTS

None

RELIGIOUS FREEDOM RESTORATION ACT:

ADMINISTRATIVE REMEDY

None

LITIGATION

None

TORTS

None

OTHER

None

PRISON LITIGATION REFORM ACT ORDERS

None

SITUATIONS OF INTEREST

FCI BIG SPRING

On November 3, 1997, former correctional officer Darren Humphries reached a plea bargain arrangement with the United States Attorney's office for the lesser charge, a violation of 18 U.S.C. 2243(b), Sexual Abuse of a Ward. We expect him to be sentenced to 18 months confinement. Currently the United States Probation Office is preparing the PSI. Sentencing is not expected until very late December 1997.

FMC CARSWELL

In December, 17 new Federal Judges will tour FMC Carswell as part of their orientation training held at the Worthington in Fort Worth.

Jutzi v. Johnson - Telephone deposition with John Banks, our employee; AUSA from Chicago; and Plaintiff's attorney regarding family suing BOP regarding inmate suicide at MCC Chicago.

FCI OAKDALE

Inmate Melvin Deutsch, is fighting his deportation. At this time, he is seeking 947 witnesses to appear at his INS hearing, which includes approximately 100 Bureau of Prisons staff members.

FTC OKLAHOMA

DOJ and BOP-OGC attorneys visited the FTC November 17-20, 1997, and toured the facility to examine records to prepare responses for the Trentadue suit.

Senator Don Nickles and his staff toured the FTC and commented to the media afterwards that he will be pursuing a county grand jury and other investigative review of the death of Kenneth Michael Trentadue because he had some concerns regarding inmate Trentadue's death.

CRIMINAL MATTERS AND PROSECUTIONS

FCC BEAUMONT

A criminal trial was held October 28, 29, and 30, 1997, in the E.D.Tex., Beaumont, Texas, for federal inmates MONTES-FIERRO, Ezequiel and ENRIQUES-HERNANDEZ, Louis for possession of a weapon (clay, non-operational) in violation of title 18 U.S.C. § 1791(a)(2). Inmate Enriques was acquitted by the Judge on a motion for directed verdict at the end of the government's case. Inmate Montes was found not guilty by the jury.

Inmate assault on staff - Inmate MOSELY, Stanley, was referred for criminal prosecution for assaulting a staff member while intoxicated; no serious injuries; determination still pending (last month this incident was incorrectly reported as accepted for prosecution).

FCI EL RENO

On November 9, 1997, Charles Cooper, was discovered with a possible drug overdose. Investigation continues. FBI referral made.

FCI FORREST CITY

On November 3, 1997, inmates Jeffery Stewart and Hector Chavira were involved in a fight in the housing unit. Inmate Chavira received minor injuries and inmate Stewart did not receive any injuries. The case was declined, and the Warden agrees with the decision.

On November 8, 1997, in the multi-purpose TV room, inmates Alvin Jamison and Ivan Archuleta were involved in a fight. Inmate Archuleta received minor injuries and inmate Jamison did not receive any injuries. The case was declined, and the Warden agrees with the decision.

On November 9, 1997, inmates Angel Hernandez and Carlos Valles-Amaya were involved in a fight in a Spanish TV room. Both inmates received minor injuries. The case was declined, and the Warden agrees with the decision.

On November 9, 1997, inmates Carmen Garrison and Andre Jackson were involved in a fight in the housing unit. Inmate Garrison received minor injuries. Inmate Jackson did not receive any injuries. The case was declined, and the Warden agrees with the decision.

On November 15, 1997, inmate Melvin Brown pushed a staff member. The staff member was not injured. The case was declined, and the Warden agrees with the decision.

On November 20, 1997, inmates Ahmad Bayaa and Adrain Camacho-Tena were involved in a fight in the housing unit. Both inmates received minor injuries. The case was declined, and the Warden agrees with the decision.

FTC OKLAHOMA CITY

A SHU inmate struck staff with food tray on November 20, 1997, and was placed in ambulatory restraints because he had retained several pieces of hard plastic broken from the tray and threatened to harm himself. The FBI was notified and an investigation continues.

On November 22, 1997, inmate Gunther was found lying on the floor outside the shower stall and indicated he had been assaulted by an unknown inmate as he was about to enter the shower. Inmate Gunther was treated for a laceration to the upper lip and placed in administrative detention. The FBI was notified and an investigation continues.

Unit Officer observed inmate McKinney strike inmate Rodriguez in the mouth with his fist on November 23, 1997, causing redness on the right side of inmate Rodriguez's neck. The FBI was notified, and an investigation continues.

FCI THREE RIVERS

Arnulfo Gonzalez-Garcia and Ernesto Gutierrez-Gomez assaulted Alfredo Diaz-Luna in an inmate housing unit. Investigation determined the assault occurred over a disagreement concerning

meat. The case has been referred to the FBI for further investigation.

Wendell Williams has been referred to the FBI for minor assault on staff. Investigation determined the inmate pushed an officer out of the way when the officer was reaching to get a magazine from another inmate. No injuries were received.

Inmate Seneca Bowman refused to cuff up when requested to do so by a Lieutenant. Several staff members received minor scrapes when the inmate was taken to the ground to gain control. The inmate was not injured. The case has been referred for prosecution.

James Brooks has been referred to the FBI for allegations of sexual assault. According to the SIS Lieutenant, inmate has changed his story several times. He initially reported the assault had occurred at FCI Three Rivers, then later indicated the assault occurred at another institution. It now appears the assault never occurred. The FBI is continuing their investigation.

PERSONAL ISSUES

Mike Hood	-	December 29- January 2	-	Annual Leave
Lisa Sunderman	-	December 22-24	-	Annual Leave
Linda Nutt	-	December 29- January 2	-	Annual Leave
Josie Wilches	-	December 22-24	-	Annual Leave
Patsy Davis	-	December 29- January 2	-	Annual Leave
James Schluter	-	December 22-24 January 2	-	Annual Leave Annual Leave
Mike Flagor	-	December 22-24	-	Annual Leave
Paul Layer	-	December 22-31 January 2	-	Annual Leave
Darrel Waugh	-	December 1-2	-	Annual Leave

Karen Summers

-

December 1

-

Annual Leave

December 29-31
January 2