



U.S. Department of Justice

Federal Bureau of Prisons

South Central Regional Office

Dallas, Texas 75219

February 10, 2000

MEMORANDUM FOR CHRISTOPHER ERLEWINE
ASSISTANT DIRECTOR/GENERAL COUNSEL

FROM: Michael D. Hood, Regional Counsel

SUBJECT: Monthly Report - January 2000

ADMINISTRATIVE REMEDIES												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	227											
ANSWERED	105											

TORT CLAIMS												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
PENDING	257											
RECEIVED	61											
ANSWERED	62											
PENDING	256											
OVER SIX MO	0											

FOI/PRIVACY												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
PENDING	5											
RECEIVED	48											
ANSWERED	40											
PENDING	13											
OVER 20 DAYS	0											

LITIGATION												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
CASES RECD	12											
CASES CLOSED	12											
HABEAS CORPUS	7											
BIVENS	3											
FTCA	2											
OTHER	0											
LIT REPORTS	12											
HEARINGS/ TRIALS	1											
SETTLEMENTS/ AWARDS	0											

CASES WITH HEARINGS OR TRIALS

FMC FORT WORTH

John Doe v. Maria Habeeb. On January 18 and 19, 2000, a trial was held before U.S. District Judge Eldon B. Mahon. As previously reported, the plaintiff alleges staff violated his constitutional rights by disclosing confidential information and placing his life in danger. The plaintiff also alleged BOP employee Maria Habeeb engaged in sexual acts with him. Arguments were heard from both the plaintiff's attorney and the AUSA. Four witnesses testified at trial. The plaintiff was the only witness in his case. Testimony was provided in our case by two staff members and a former inmate. The AUSA has moved to dismiss the United States as a party because the plaintiff did not exhaust his administrative remedies. No ruling has been made; however, we are anticipating an opinion from the court. The AUSA will prepare a brief in the unlikely event of an adverse ruling and will argue procedural default under the FTCA.

Also, see **CRIMINAL MATTERS AND PROSECUTIONS** heading.

CASES WITH SETTLEMENTS OR AWARDS

a. Adverse judgments

None

b. Tort Claim settlements

None

c. Other settlements

None

SIGNIFICANT CASES

FMC CARSWELL

U.S.A. v. Karen Nordell. This 18 U.S.C. 4246(a) mental health commitment case has been appealed to the U.S. Court of Appeals for the Fifth Circuit. As previously reported, inmate Karen Nordell was committed by the U.S. District Court for the Northern District of Texas in December of 1999. A hearing before the appellate court has not yet been scheduled.

FCI EL RENO and FTC OKLAHOMA CITY

The recent opinion by the U.S. Court of Appeals for the Tenth Circuit in Ward v. Booker, which invalidated the firearms enhancement provisions of Program Statement 5162.04, has greatly impacted pending 3621(e) cases. FCI El Reno has several cases which are pending in the appellate court; further, that institution and FTC Oklahoma City have several cases at various stages of review before the U.S. District Court for the Western District of Oklahoma. We are hopeful the proposed operations memorandum implementing Ward will settle many of the issues in the 3621(e) area.

SIGNIFICANT TORT CLAIMS

Parkerson. FCI Texarkana inmate Parkerson alleges (i) he injured himself when a defectively welded chair, in which he was sitting, broke; (ii) he slipped on a wet floor at a CCC because there were no warning signs; (iii) his diagnosis of Hepatitis C was delayed; (iv) he did not receive proper medical treatment; and (v) staff made him lift cartons contrary to his medical

restriction, injuring himself. He requests \$2,000,000.00 in damages. (T-BOP-99-255)

SIGNIFICANT ADMINISTRATIVE REMEDIES

None

UPCOMING TRIALS OR HEARINGS

FCI BIG SPRING

On February 25, 2000, a Spears (evidentiary) hearing will be held in Williams v. Shroff. This Bivens suit raises allegations that medical staff at FCI Big Spring did not provide the plaintiff with proper medical care. Specifically, the plaintiff alleges that his right leg was negligently injured during a cardiovascular operation at an outside hospital. We are planning to have legal staff accompany our witnesses to the hearing.

SAN ANTONIO CCM

On February 25, 2000, a Spears (evidentiary) hearing will be held in Taliti v. Schaffner, et al. This Bivens suit alleges that the plaintiff's dental condition (he is missing several teeth) is not being adequately addressed by staff at the Big Spring Correctional Center (BSCC), a private institution which holds federal inmates under the aegis of the San Antonio CCM. BSCC will be sending their staff to this hearing

FCI THREE RIVERS

A telephonic evidentiary hearing is scheduled for February 2, 2000, in Freddie Castillo v. United States. The complaint has not yet been served. This is an FTCA suit wherein the inmate is requesting monetary compensation for "inventing" a chair press in UNICOR. This office denied the plaintiff's tort claim on May 24, 1999. (T-SCR-98-518)

Also, see CRIMINAL MATTERS AND PROSECUTIONS heading.

MEDICAL MALPRACTICE

LITIGATION

See UPCOMING TRIALS OR HEARINGS heading.

TORT CLAIMS

See SIGNIFICANT TORT CLAIMS heading.

ENSIGN AMENDMENT

None

LITIGATION

None

TORT CLAIMS

None

RELIGIOUS FREEDOM RESTORATION ACT

LITIGATION

None

TORT CLAIMS

None

PRISON LITIGATION REFORM ACT ORDERS

None

SITUATIONS OF INTEREST

FMC CARSWELL

The Female Offender's Workgroup for the Federal Bureau of Prisons conducted training and toured FMC Carswell on January 25-27, 2000.

U.S. District Judge Barbara Lynn, her staff and some of U.S. District Judge Buchmeyer's staff are scheduled to tour FMC Carswell in February of 2000.

FTC OKLAHOMA CITY

On January 14, 2000, Oklahoma State Judge Susie Pritchett conducted a Consent to Adoption Hearing in the visiting room. During the hearing, the inmate voluntarily relinquished his

parental rights and gave consent for his ex-wife's husband to adopt their young child. Present were the Judge, the inmate, a court reporter, and counsel for the ex-wife.

CRIMINAL MATTERS AND PROSECUTIONS

FCI BEAUMONT (Medium)

The trial of inmates Jose Gamez-Reyes, Radney Montgomery-Castillo, and Jose Jaramillo-Hernandez is currently scheduled to begin on February 15, 2000. The defendants assaulted inmates Ismael Arellano-Gutierrez and Alfredo Martinez-Macias on the recreation yard on September 9, 1999. They repeatedly struck inmate Arellano-Gutierrez and Martinez-Macias with baseball bats, inflicting serious injuries.

On October 5, 1999, inmate Andrew Jackson filed a motion to withdraw his guilty plea in his pending prosecution for assaulting teacher Gerardo Monroy on June 12, 1999. On October 18, 1999, the United States filed a response to Jackson's motion. On February 2, 2000, the Court permitted inmate Jackson to withdraw his plea. The Court has set a trial date of February 22, 2000.

FCI BEAUMONT (Low)

The trial of inmate Alfredo Loera-Rosales was conducted on January 18 and 19, 2000. Inmate Loera-Rosales was charged with assaulting his Case Manager on June 12, 1999. At trial, his defense was that he was experiencing a grand mal seizure when the assault occurred, and therefore, he could not be held responsible for his conduct. All BOP witnesses who appeared as prosecution witnesses presented extraordinarily professional demeanors and were very credible and convincing witnesses. The jury did not accept inmate Loera-Rosales' version of events, and returned a conviction on January 19, 2000, after only five minutes of deliberation. At our request, the U.S. Attorney issued a press release concerning this verdict and the speed with which it was rendered. The local print media and at least one local television station ran stories concerning the conviction, thus ensuring awareness among the inmate population.

FCI BIG SPRING

In United States v. Garcia-Lopez, et al. (the previously reported May 1999 disturbance case), all five defendants plead guilty to one count of Rioting and were sentenced on January 20, 2000. All defendants were sentenced in the top range of their sentence

guidelines, as agreed upon in their plea agreements. Defendant Pablo Armando Medina-Ruiz was sentenced as a Career Criminal.

The twelve inmates that were involved in the June 1999 disturbance have been referred to the USAO in Lubbock, Texas, for prosecution on Assault and Rioting charges. The AUSA indicates that an indictment will be presented to the grand jury in February or March of 2000.

FPC BRYAN

The Cook Supervisor who was acquitted on criminal charges of Sexual Abuse of a Ward has transferred to FDC Houston. The matter regarding his failed criminal prosecution and administrative action is closed.

Inquiry continues into the possible sexually abusive actions of three additional FPC Bryan employees. As previously reported, one was placed on home duty status, and the others resigned their BOP employment. No prosecution of these individuals is foreseen, and administrative action is under consideration.

FTC OKLAHOMA CITY

The trial in U.S. v. McBride, in which former Correctional Counselor Breavess McBride is accused of sexually abusing inmates, has been postponed until March 13, 2000. The Judge granted the defense motion for a continuance for additional trial preparation.

FCI THREE RIVERS

On January 31, 2000, inmate Deibi Parra-Lopez pled guilty to Assault on a Federal Officer. As previously reported, this inmate assaulted a staff member in the Education Department. Sentencing scheduled for April 2000.

On January 31, 2000, inmate Jesus Oceguera-Calderon, pled guilty to Simple Assault. Sentencing is scheduled for April 14, 2000. As previously reported, this inmate spit on the DHO during a hearing.



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Dallas, Texas 75219

March 10, 2000

MEMORANDUM FOR CHRISTOPHER ERLEWINE
ASSISTANT DIRECTOR/GENERAL COUNSEL

FROM: Michael D. Hood, Regional Counsel

SUBJECT: Monthly Report - February 2000

ADMINISTRATIVE REMEDIES												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	227	220										
ANSWERED	105	132										

TORT CLAIMS												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
PENDING	257	256										
RECEIVED	61	76										
ANSWERED	62	62										
PENDING	256	270										
OVER SIX MO	0	0										

FOI/PRIVACY												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
PENDING	5	13										
RECEIVED	48	58										
ANSWERED	40	61										
PENDING	13	10										
OVER 20 DAYS	0	0										

LITIGATION												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
CASES RECD	12	11										
CASES CLOSED	12	5										
HABEAS CORPUS	7	7										
BIVENS	3	2										
FTCA	2	2										
OTHER	0	0										
LIT REPORTS	12	11										
HEARINGS/ TRIALS	1	4										
SETTLEMENTS/ AWARDS	0	0										

CASES WITH HEARINGS OR TRIALS

FCI BIG SPRING

Williams v. Shroff, et al. On February 25, 2000, Magistrate Nancy Koenig held a Spears (evidentiary) hearing. This Bivens suit alleges medical staff at FCI Big Spring and an outside doctor did not provide the plaintiff with proper medical care and caused his right leg to be injured during a cardiovascular procedure. The plaintiff also alleges he contracted hepatitis due to the negligence of staff at the Montgomery County Jail. Craig Simmons, Paula Cole, FMC Fort Worth's Clinical Director, FCI Big Spring's AW(O) and HSA, counsel for the outside doctor, an Assistant District Attorney and a nurse from Montgomery County attended the hearing. The Magistrate heard evidence regarding the allegations, and we are awaiting her decision as to whether the matter will be allowed to proceed.

SAN ANTONIO CCM

Taliti v. Schaffner, et al. On February 25, 2000, Magistrate Nancy Koenig held a Spears hearing in this Bivens suit. The plaintiff alleges that his dental condition (he is missing most of his teeth) is not being adequately addressed by staff at the Big Spring Correctional Center (BSCC), a private institution operated by Cornell Corrections Corp. which holds federal inmates under the supervision of the San Antonio CCM. The SCR's

Assistant Regional Counsel, the Health Services Director from BSCC, and an administrator from BSCC attended the hearing. The Magistrate heard evidence regarding the allegations, and we are awaiting her decision as to whether the matter will be allowed to proceed.

FCI THREE RIVERS

Freddie Castillo v. USA. A telephonic Spears hearing was conducted on February 2, 2000, before Judge Ellington. Pursuant to the hearing, one staff member has been served. The court has approved the inmate's request to add additional staff members to the complaint; however, these individuals have not yet been served. This inmate alleges he invented a machine which has improved production in UNICOR, and as a result, he is entitled to compensation.

Also, see CRIMINAL MATTERS AND PROSECUTIONS heading.

CASES WITH SETTLEMENTS OR AWARDS

a. Adverse judgments

None

b. Tort Claim settlements

None

c. Other settlements

None

SIGNIFICANT CASES

FCI BIG SPRING

Last month, we were informed that on November 19, 1999, the court dismissed Reed v. BOP, et al. due to the inmate's failure to pay the filing fee or to authorize payment from his inmate account. On January 27, 2000, the court granted the application for leave to proceed in forma pauperis on appeal.

SIGNIFICANT TORT CLAIMS

Rhoton. [REDACTED] a contract teacher at FCI Big Spring, states that she slipped and fell on a freshly waxed floor. She

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alleges that she suffered a broken knee that required surgery. She is requesting compensation in the amount of \$7,145.90. (T-SCR-00-012)

Lanausse. [REDACTED] and her three children have submitted a claim for the wrongful death of FCI Three Rivers inmate Rafael Lanausse who died of a pulmonary embolism on November 28, 1997. The survivors list 12 allegations which they believe were the cause of death. They seek \$500,000.00 in compensation. The family's attorney has also filed state and federal lawsuits claiming individual liability on the part of various staff members. The state lawsuit has been removed to federal court. Service in connection with the other lawsuit has not occurred. (T-SCR-99-533) b6

SIGNIFICANT ADMINISTRATIVE REMEDIES

FCI Beaumont (Low) inmate [REDACTED] seeks recognition of the Asatru religion, chapel time and space, construction of an outdoor worship area, and the purchase of accouterments required to perform Asatru religious rites. A response is being formulated.

Also, see the SITUATIONS OF INTEREST heading.

UPCOMING TRIALS OR HEARINGS

FCI EL RENO

Gregory Cook v. R. G. Thompson. A trial has been scheduled for April 10, 2000, in this case which was initially filed as a hybrid Bivens/FTCA suit arising from events at FCI El Reno during the October 1995 disturbance. The Bivens portion of the complaint has been dismissed. The remaining aspect of the case is an FTCA claim which alleges the plaintiff's personal property was damaged and/or destroyed when the unit was gassed and inmate property was confiscated. AUSA Steve Mullins and Tim Roberts will be involved in the bench trial.

FMC FORT WORTH

Fuller v. United States. A settlement and pretrial conference is set for March 10, 2000, in this FMC Fort Worth case. Inmate Fuller, currently incarcerated at FCI Beaumont, filed suit pursuant to the FTCA. Inmate Fuller alleges medical malpractice by several staff members at various institutions. He claims his hip, back, and knee were not treated in a timely manner. Settlement is not anticipated in the case; however, a point of

contact with settlement authority should be available by telephone.

FDC OAKDALE

Kennedy v. United States. A trial is scheduled for April 17, 2000, in the Western District of Louisiana. This matter arises out of a 1995 fight inmate Kennedy had with another inmate at FDC Oakdale. In this FTCA case, the plaintiff alleges staff members negligently failed to protect him from an assault and failed to properly treat his resulting injuries. The plaintiff has not subpoenaed any witnesses and he has not conducted discovery. Further, it appears that he will not appear at trial. If he does appear, we are prepared to proceed. The plaintiff has been released from incarceration and resides in Maryland. It appears that he does not have the financial resources to litigate his case in Louisiana, and therefore, he recently re-filed the same case in the District of Maryland. Legal staff from SCR and MAR have been working together to handle the two cases.

Also, see CRIMINAL MATTERS AND PROSECUTIONS heading.

MEDICAL MALPRACTICE

LITIGATION

See CASES WITH HEARINGS OR TRIALS and UPCOMING TRIALS OR HEARINGS headings.

TORT CLAIMS

See SIGNIFICANT TORT CLAIMS heading.

ENSIGN AMENDMENT

None

LITIGATION

None

TORT CLAIMS

None

RELIGIOUS FREEDOM RESTORATION ACT

See SIGNIFICANT ADMINISTRATIVE REMEDIES heading.

LITIGATION

None

TORT CLAIMS

None

PRISON LITIGATION REFORM ACT ORDERS

FCI EL RENO

A PLRA order was received from the United States Court of Appeals for the Seventh Circuit directing that FCI El Reno inmate Joseph Burgos pay an appellate fee of \$105. The inmate refused to voluntarily pay this amount by executing a BP-199. Since the law of the Seventh Circuit directs payment of the fee from the trust fund account notwithstanding BOP policy, the Warden directed that 20% of this inmate's deposits from the last month be withdrawn and forwarded to the Clerk of the Court.

SITUATIONS OF INTEREST

FCI FORREST CITY

Jeff King v. Marvin Morrison. As previously reported, FCI Forrest City inmate King filed this suit asserting that he was improperly denied an RDAP early release under P.S. 5162.02 due to his 18 U.S.C. 922(g) conviction. After a hearing, Magistrate Jones ruled against the BOP and found the agency exceeded its statutory authority by defining an 18 U.S.C. 922(g) conviction as a crime of violence. We strongly objected to the Magistrate's findings, and on February 4, 2000, U.S. District Judge Wright overruled the Magistrate. Judge Wright held it was permissible to deny early release to inmates whose offense involved the use or possession of firearms.

FCI EL RENO and FTC OKLAHOMA CITY

The Ward v. Booker decision has greatly impacted pending 3621(e) cases. FCI El Reno and FTC Oklahoma City have several cases at various stages of review before the U.S. District Court and the

Tenth Circuit Court of Appeals. Moreover, inmates have begun to file administrative remedy requests asking that Ward be applied to them. We are hopeful the new Operations Memorandum implementing Ward will settle many of the issues in the 3621(e) area.

CRIMINAL MATTERS AND PROSECUTIONS

USP BEAUMONT

The trial of inmate Christopher Mitchell was conducted on February 22 and 23, 2000. Inmate Mitchell was charged with assaulting inmate George House on December 9, 1998, and then, brandishing a weapon (a 7" sharpened metal instrument) at several staff members who tried to restrain him. On February 23, 2000, after deliberating for approximately 50 minutes, the jury returned a conviction for using a deadly and dangerous weapon to assault, resist, or impede officers in the performance of their duties in violation of 18 U.S.C. § 111(a)(1).

FCI BEAUMONT (MEDIUM)

The trial of inmate Andrew Jackson was conducted on February 22-24, 2000. Inmate Jackson was charged with assaulting inmate Danny Fant and Education Specialist Gerardo Monroy at FCI Beaumont (Medium) on May 19, 1999. Inmate Jackson punched Mr. Monroy in the face to get to inmate Fant, and then, he bit a chunk of flesh from inmate Fant's face before responding staff could separate them. After deliberation, the jury returned a conviction for assault resulting in serious bodily injury in violation of 18 U.S.C. § 113(a)(6).

This trial and above-referenced trial of inmate Mitchell occurred simultaneously in two different courtrooms. The preparation and conduct of both trials simultaneously required the maximum effort on the part of Darrin Scott and Tina Hauck as there were more than 15 staff and contractor witnesses to prepare and coordinate, hundreds of pages of inmate records to review and summarize before and during trial, and an inexperienced AUSA.

The trial of inmates Jose Gamez-Reyes and Jose Jaramillo-Hernandez was conducted on February 15-17, 2000. Inmates Jaramillo Hernandez and Gamez-Reyes were charged with assault with dangerous weapons and assault resulting in serious bodily injury after assaulting inmate Ismael Arellano-Gutierrez by striking him repeatedly with baseball bats on the FCI Beaumont (Medium) recreation yard on September 9, 1999. On February 14, 2000, the day before trial commenced, a third

assailant, inmate Radney Montgomery-Castillo, pleaded guilty to assault. Inmate Montgomery-Castillo then appeared in court on behalf of inmates Jaramillo-Hernandez and Gamez-Reyes at trial, attempting to deflect blame from them by claiming that he was the sole assailant. Due to the excellent testimony provided by staff witnesses, the jury did not accept inmate Montgomery-Castillo's version of events. After deliberating for approximately 45 minutes, the jury convicted inmates Jaramillo-Hernandez and Gamez-Reyes on all counts.

FCI BIG SPRING

On February 15, 2000, the grand jury indicted inmate Mario Munoz-Martinez for Rioting. He was one of twelve inmates involved in the June 1999 disturbance. At next month's grand jury, the AUSA intends to either supersede the indictment or present a separate indictment joining all twelve inmates.

FPC BRYAN

Inquiry continues into the possibly sexually abusive actions of three FPC Bryan employees. One employee is on home duty status, and the other two have resigned. No prosecution of these individuals is foreseen, and administrative action is under consideration.

FCI THREE RIVERS

We were recently informed that inmate Porfirio Saldana-Ventura pleaded guilty to assault on January 26, 2000. Sentencing is scheduled for April 10, 2000. Inmate Janier Lujan-Perez pleaded guilty to assault on January 27, 2000. His sentencing is also scheduled for April 10, 2000. These inmates assaulted another inmate in their housing unit with a lock tied to a belt.

PERSONAL ISSUES

Scheduled Annual/Sick Leave:

██████████	- March 13-17	- Annual Leave
██████████████████	- March 14	- Jury Duty
██████████████████	- March 27-31	- Annual Leave

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April 7, 2000

MEMORANDUM FOR CHRISTOPHER ERLEWINE
ASSISTANT DIRECTOR/GENERAL COUNSEL

FROM: Michael D. Hood, Regional Counsel

SUBJECT: Monthly Report - March 2000

ADMINISTRATIVE REMEDIES												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	227	220	304									
ANSWERED	105	132	162									

TORT CLAIMS												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
PENDING	257	256	280									
RECEIVED	61	76	53									
ANSWERED	62	62	82									
PENDING	256	270	251									
OVER SIX MO	0	0	0									

FOI/PRIVACY												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
PENDING	5	13	10									
RECEIVED	48	58	98									
ANSWERED	40	61	73									
PENDING	13	10	35									
OVER 20 DAYS	0	0	0									

LITIGATION												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
CASES RECD	12	11	7									
CASES CLOSED	12	5	11									
HABEAS CORPUS	7	7	2									
BIVENS	3	2	2									
FTCA	2	2	0									
OTHER	0	0	3									
LIT REPORTS	12	11	7									
HEARINGS/ TRIALS	1	4	2									
SETTLEMENTS/ AWARDS	0	0	1									

CASES WITH HEARINGS OR TRIALS

FCI THREE RIVERS

Freddie Castillo v. USA, (SD/TX, C.A. No. C0990495).

A telephonic Spears (evidentiary) hearing was conducted on March 9, 2000, before Judge Ellington. The inmate is seeking good time credit and monetary compensation for a chair press he alleges he "invented" while he was employed by UNICOR. The Judge gave the inmate another opportunity to withdraw his complaint. However, the inmate advised the Judge he wants to pursue his suit.

FCI EL RENO

Gregory Cook v. U.S.A. This FTCA case, which was brought by an FCI El Reno inmate who claimed staff negligence during the 1995 disturbance caused his property loss, has been settled for \$500.00, at a pre-trial hearing. The "offer" was made after the judge pressured the government into settlement.

Also, see CRIMINAL MATTERS AND PROSECUTIONS heading.

CASES WITH SETTLEMENTS OR AWARDS

a. Adverse judgments

None

b. Tort Claim settlements

None

c. Other settlements

Also, see CASES WITH HEARINGS OR TRIALS heading.

SIGNIFICANT CASES

FCI BASTROP

Schrader v. USA (originally styled Schrader v. Sandoval), (WD/TX, A-97-CA-896-SS). This case was originally a civil rights complaint filed against a USPHS officer assigned to Bastrop as a physician assistant. The plaintiff alleged that the defendant conducted a rectal examination in a brutal manner, thus inflicting cruel and unusual punishment upon him. The United States moved to substitute the U.S. as defendant on the ground that 42 USC Section 233(a) precluded the filing of a civil rights complaint against a PHS officer. The District Court denied the motion to substitute, reasoning that Section 233(a) only applies to common-law torts, not civil rights violations. The United States appealed, and the Fifth Circuit reversed (See Schrader v. USA, Case No. 98-51036, November 23, 1999), agreeing that Section 233(a) applied to both common-law torts and civil rights violations. The United States moved to be substituted as the defendant and for the case to proceed under the FTCA. The District Court granted the motion, the United States moved to dismiss for lack of subject-matter jurisdiction insofar as the two-year limitations period for filing an administrative tort claim had run, and the District Court granted the motion. The Circuit Court opinion, although unpublished, is useful in its explanation that Section 233(a) immunizes PHS officers from civil rights suits.

FMC FORT WORTH

Jose Espinosa v. United States of America, et al., 4:99-CV-390-Y. An inmate brought suit under the FTCA and Bivens to recover damages for an injury sustained while the inmate was working at a federal prison. In addition to claims regarding his work-related injury, the inmate alleged the BOP was indifferent to his medical needs arising from the work-related injury. The district court

upheld and supported the BOP's assertion that the exclusive remedy for a federal inmate's work-related injury is under the Inmate Compensation Act, 18 U.S.C. 4126 (for FTCA but not Bivens). However, the only named defendants in the case were the United States and BOP. Both styled actions were dismissed with prejudice.

Johnnie Yarborough v. United States, et al., (ND/TX, Case No.3:99-CV-363BN). In this FTCA wrongful death case, legal staff provided assistance to the AUSA by scheduling teleconferences with several medical staff who were involved in the care of Julian Yarborough (deceased). The teleconferences were held on March 28, 2000, at FCI La Tuna and March 29, 2000, at FMC Fort Worth. A mediation conference is scheduled for April 13, 2000.

SIGNIFICANT TORT CLAIMS

FCI Big Spring

Perez. In this administrative tort claim, [REDACTED] b7C a civilian, claims that she stepped in a hole located in the play area and fractured her right ankle while visiting her inmate father. She is requesting compensation in the amount of \$78,857.00. (T-SCR-00-010)

SIGNIFICANT ADMINISTRATIVE REMEDIES

An FMC Carswell inmate has filed an Administrative Remedy requesting an exemption from cross gender pat searches. She based her request on self-reported psychological distress. She also stated her religious convictions as a Muslim should preclude her from cross gender pat searches. The request was denied as the inmate's situation did not rise to the level necessary for such an exemption.

UPCOMING TRIALS OR HEARINGS

FMC CARSWELL

U.S. v. Kennard. A Motion for Commitment Hearing has been filed pursuant to 18 U.S.C. § 4245 in the Northern District of Texas. The hearing date is pending.

FCI OAKDALE

Kennedy v. USA. (WD/LA, Case No. 96-0835). As reported in last month's report, a trial is set for April 17, 2000. This FTCA

None

TORT CLAIMS

None

RELIGIOUS FREEDOM RESTORATION ACT

See **SIGNIFICANT ADMINISTRATIVE REMEDIES** heading.

LITIGATION

None

TORT CLAIMS

None

PRISON LITIGATION REFORM ACT ORDERS

None

SITUATIONS OF INTEREST

FCC BEAUMONT

On March 14-17, 2000, the Securities and Exchange Commission (SEC) conducted a securities license revocation and asset disgorgement hearing on inmate [REDACTED] currently housed at the USP Beaumont satellite camp. Attending the hearing were an SEC administrative law judge, an SEC Trial Attorney, an SEC Paralegal, an SEC intern, a court reporter, and inmate Turner. The hearing took place in the camp visiting room during non-visiting hours. FCC Beaumont's Legal Department staff assisted the SEC by coordinating all aspects of the hearing, providing some security coverage for the hearing in conjunction with the inmate's unit staff, and coordinating the inmate's access to various voluminous documents presented as evidence at the hearing. Both the SEC staff and the administrative law judge were extremely complimentary of the hearing procedures, the professionalism of FCC Beaumont staff, and the environment in which the hearing took place.

b7C

FCI FORREST CITY

On March 3, 2000, at approximately 10:13 p.m., staff reported inmate [REDACTED] missing during the 10:00 p.m. camp count. Internal

b7C

and external searches were conducted with negative results. The FBI and U.S. Marshals have been notified.

FMC FORT WORTH

On March 29, 2000, Al Munguia and Karen Summers assisted the Warden of FCI Seagoville by providing a tour of the institution for Judge A. Joe Fish of the United States District Court for Northern District of Texas and six members of his staff.

James Matlock v. United States. (CD/CA, Case No. 98-758). Legal staff provided substantial assistance in preparing for and participating in the deposition which was held on March 30, 2000. This is an FTCA action regarding dental care.

FDC HOUSTON

On March 14, 2000, FDC Houston declined to accept two U.S. Marshals' inmates because of the inmates' inability to physically perform basic daily functions for themselves. One of the inmates was [REDACTED] a pretrial inmate returning from a court ordered study at FMC Rochester. On March 15, 2000, FDC Houston staff first learned of a court order signed by Judge Ewing Werlein on January 20, 2000, which directed that when [REDACTED] was incarcerated in Houston, he was to be housed solely at FDC Houston. That same day, after learning more about [REDACTED] functioning deficiencies and the resulting care he requires, FDC Houston staff met with Judge Werlein, defense counsel, and prosecuting officials. After being apprized of the absence of a medical housing unit and 24-hour medical staffing, Judge Werlein granted an agreed emergency motion for the U.S. Marshals' to transport [REDACTED] to an appropriate Federal Medical Center. Pursuant to that order, [REDACTED] was redesignated to FMC Rochester where defense counsel will travel to orchestrate a plea, thereby limiting [REDACTED] future stay in one of the Marshals' contract facilities, which in the past has only been able to retain [REDACTED] restored competency for brief periods of time. b7C

FCI TEXARKANA

Inmate [REDACTED] was scheduled to be released via GCT on February 14, 2000; however, he refused to sign the Agreement to Adhere to an Installment Schedule for his committed fine. He remains in custody pending his payment of the fine in full or until he signs the form. This inmate claims to be a citizen of the Republic of Texas and claims that the laws of the United States do not apply.

FCI THREE RIVERS

On March 16, 2000, approximately 35 Criminal Justice students from the Corpus Christi Campus of Texas A & M University toured the institution.

CRIMINAL MATTERS AND PROSECUTIONS

FCI BEAUMONT (LOW)

On March 18, 2000, inmate [REDACTED] assaulted a Cook Foreman by striking the Cook Foreman on top of the head with a cardboard box while the Cook Foreman was searching inmates who were exiting the Food Service Department. Neither the Cook Foreman nor inmate [REDACTED] sustained any injuries. b7c

FCI BIG SPRING

On March 7, 2000, a grand jury in Lubbock, Texas, returned a 12 count indictment against the 11 inmates involved in the June 1999 disturbance. All 11 inmates were charged with Rioting, nine had an additional charge of Assault Resulting in Serious Bodily Injury, and two had an additional charge of Possessing Contraband in Prison.

FMC FORT WORTH

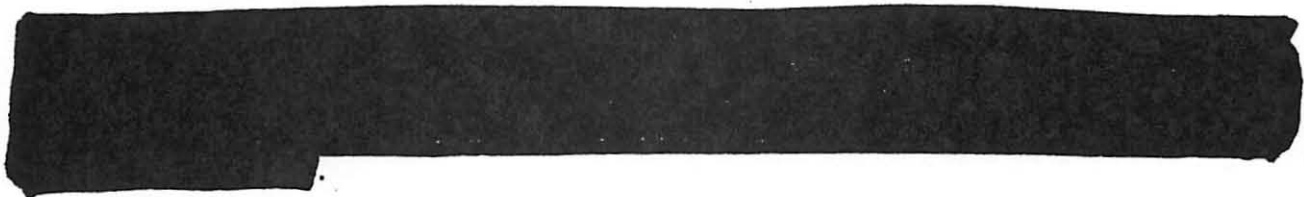
Randy Gene Yost, an FMC Fort Worth inmate, was sentenced on March 3, 2000, pursuant to Title 18 USC 1111, Second Degree Murder, to 210-months. The inmate had thrown hot water on another inmate allegedly over a gambling debt. The victim died over medical complications. The sentence imposed shall run consecutive to any remaining undischarged term of imprisonment he is currently serving.

FTC OKLAHOMA CITY

Former Correctional Counselor Breavess McBride was found guilty on all 11 counts of sexual misconduct on March 23, 2000. There were five 20-year counts under 18 U.S.C. § 2242(1), Caused to Engage in Sex Act by Threat and Fear; five 3-year counts under 18 U.S.C. § 2244(a)(2), Intentional Touching of Genitalia by Threats and Fear; and one 1-year count under 18 U.S.C. § 2243(b), Sex Act With a Inmate in Official Detention and Under Custody of Defendant. Mr. McBride is facing a maximum sentence of 116 years and \$2.75 million in fines. A sentencing date has not been set. On a side note, Mr. McBride was previously offered and accepted a






plea agreement which provided for 3 years incarceration; however, during the hearing before Judge Robin Cauthron, Mr. McBride contested the factual allegations and the plea agreement was set aside. Therefore, the case was tried.

PERSONAL ISSUES





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Scheduled Annual/Sick Leave:

- | | | |
|---|---------------|----------------|
|  | - April 7 | - Annual Leave |
|  | - April 7 | - Annual Leave |
|  | - April 12&13 | - Annual Leave |
|  | - April 14 | - Annual Leave |
|  | - April 14-21 | - Annual Leave |
|  | - April 17-21 | - Annual Leave |
|  | - April 27-28 | - Annual Leave |

Other Scheduled Absences:

- | | | |
|---|-------------|---------------|
|  | - April 3-7 | - Oakdale ICP |
|  | - April 11 | - Jury Duty |