

**UNITED STATES GOVERNMENT
MEMORANDUM**

FEDERAL BUREAU OF PRISONS

WESTERN REGIONAL OFFICE

DUBLIN, CALIFORNIA 94568

DATE: November 4, 1994

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

of pages ▶ 3

REPLY TO

ATTN OF:

Harlan W. Penn
HARLAN W. PENN
 Regional Counsel

To <i>Nancy Redding</i>	From <i>Harlan Penn</i>
Dept./Agency	Phone
Fax #	Fax #
NSN 7540-01-317-7388 5099-101 GENERAL SERVICES ADMINISTRATION	

SUBJECT: Monthly Report for October 1994

TO: WALLACE H. CHENEY, Assistant Director/General Counsel
 O. IVAN WHITE, JR., Regional Director
 Wardens of the Western Region

▶▶ **STATISTICS** ◀◀

<u>Tort Claims:</u>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Received	37	40	76	42	58	54	60	52	51	54		
Closed	91	100	68	47	30	81	32	107	45	28		
Pending	172	116	125	120	148	121	149	94	100	126		
Over 6 mo	0	0	0	1*	0	3	0	1**	2***	2***		

* Received from USMS overdue

** Awaiting Internal Affairs investigation

*** One claim awaiting Internal Affairs investigation

Tort Claim Investigation Status: (As of 10/31/94)

	BRN	LOM	LOF	LOS	NEL	PHX	DUB	SAF	SDC	SHE	TRM	TCN
Pending												
Over 60 days	1	0	1	0	0	20	1	0	0	1	1	0

<u>FOIPA:</u>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Received	23	27	25	31	21	48	25	33	37	37		
Closed	14	43	43	22	11	45	20	39	28	25		
Pending	109	93	75	84	94	97	102	96	105	117		
Over 60 days	23	21	33	41	46	36	31	28	24	30		

<u>Admin. Rem:</u>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Received	106	76	132	152	134	99	121	104	105	110		

<u>Litigation:</u>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Open Cases:	685	677	685	685	698	426*	426	439	449	461		
New Cases:	19	16	20	4	16	26	13	21	18	16		
HC	8	8	8	1	7	17	4	10	7	7		
FTCA	2	1	4	2	2	1	2	3	3	0		
Bivens	7	7	5	3	6	10	6	7	3	8		
Other	2	0	0	0	1	0	1	1	1	1		
Closed	12	8	13	1	3	19	13	12	8	4		

* Legal staff contacted courts to verify number open. Category of INS/Solers deleted.

►► CASES OF INTEREST ◀◀***NINTH CIRCUIT MATTERS:***

Campos v. INS, et al No 94-15361

This matter was originally assigned to a 3 judge panel in the circuit for decision on the briefs. By an Order dated 10/13, the panel has appointed counsel and requested additional briefing specifically on "whether INS has adopted a policy of delaying deportation hearings until one year before incarcerated aliens will have served their sentences, and, if so, whether that policy complies with 8 U.S.C. 1252(i). AUSA Patricia Duggan is briefing the case, with BOP assistance from Valerie Stewart.

DISTRICT COURT MATTERS:

Katherjn Graham v. USA N.D.Cal. Inmate filed a tort claim because she was hit by a roll of roofing material which fell through the ceiling at FCI Dublin. She was represented by counsel in the administrative claim process. We inadvertently mailed claim denial letter directly to claimant rather than her attorney. She threw it away. Attorney files FTCA action well after statutory period. When we showed evidence of mailing of denial letter, attorney filed motion for sanctions and equitable tolling of statute, claiming deliberate interference with attorney-client relationship. Judge held the mailing of denial to claimant was sufficient under regulations and that equitable tolling was improper.

U.S. v. Reggie Brown D. Oregon

This is the first prosecution of an inmate resulting from the September 2, 1993 disturbance at FCI, Sheridan. Brown is charged with assault on a federal officer and destruction of federal property. The trial date has been vacated due to an interlocutory appeal on double jeopardy claim based on institution discipline process. Given the recent 9th Cir. cases on double jeopardy (U.S. v. \$405,000.) this decision could impact the Bureau of Prisons.

The other multi-defendant trial, U.S. v. Boyd, et al, has also been continued until resolution of the double jeopardy issue, these defendants face charges of destruction of government property.

U.S. v. Cannady D. Arizona

Trial concluded on November 2 in inmate assault on correctional officer. Jury found inmate guilty and sentencing is set for 1/23/95. Jane Haschemeyer assisted AUSA throughout trial.

Ransom v. Morton D. Nevada

District Judge overturned the Magistrate's Finding & Recommendation against inmate's habeas petition for dual credit on federal sentence for time credited to state sentence when on federal writ. The Regional Counsel has requested the U.S. Attorney to appeal and A memo for General Counsel is being prepared by Valerie Stewart.

MEDICAL MALPRACTICE TORT CLAIMS and LITIGATION REFERENCING GAO REPORT ON AGENCY MEDICAL CARE:

None

FOI/PA LITIGATION:

Bruscino v. Bureau of Prisons D.D.C. Inmate at USP Marion seeking a variety of information, mostly statistical data, concerning inmates at USP Lompoc in 1993 and transfers to USP Marion. Request responded to 11/3, releasing some documents and seeking prepayment for research cost estimates (100 hours of managerial time). Answer filed 11/4.

SETTLEMENTS:**MISCELLANEOUS MATTERS:**

Moore v. Bowlen, E.D.Cal. Chief Magistrate issued Order to Show Cause why USP Lompoc Warden should not be held in contempt for failing to produce a federal inmate on a writ ad testificandum for a civil rights trial brought by a state inmate in his court. Due to administrative error, the writ was not received by ISM until after appearance date, although it was received at institution in sufficient time. Writ was verified and staff contacted the USMS in Eastern California to move the inmate. The USMS in that district refused to move the inmate, citing Pennsylvania v. USMS, 474 U.S. 34 (1985) to convince the court that there was no authority to order them to do so. The Central California USMS moved the inmate for the institution, and he appeared to testify at the trial. After the conclusion of the trial, the Magistrate issue the OSC. Responses were filed explaining why the Warden was not in contempt and the practice and the division of responsibility between the BOP and the USMS. The Magistrate finally dismissed the order 11/2. Identified need to educate the USMS in districts without federal institutions of division of responsibility and contents of MOU.

Marshall v. Robinson, et al., Small Claims Court, Alameda County CA
One staff member suing three others seeking monetary damages for allegedly making false statements during an official investigation. Defendant employees sought representation. Recommended and, upon approval, matter will be removed to federal court.

▶▶ REGIONAL MATTERS OF INTEREST ◀◀

Harlan Penn: RC/AGC meet 11/14 to 11/18

Valerie Stewart:

Jenifer Grundy:

Janet Augustine:

Tami Jenkins: New Attorney Training 11/14 to 11/18

Lisa James: : Same

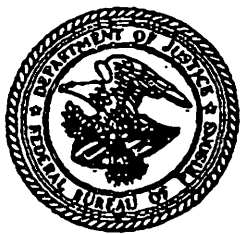
Dennis Wong: Same

Duran Sheets:

Lida Paetzke:

3227

Juanita Jiggetts:



James Zoldak

**UNITED STATES GOVERNMENT
MEMORANDUM**

DEC 12 94 FEDERAL BUREAU OF PRISONS

WESTERN REGIONAL OFFICE

DUBLIN, CALIFORNIA 94568

OFFICE OF GENERAL COUNSEL
FEDERAL BUREAU OF PRISONS
OPTIONAL FORM 99 (7-90)

DATE: December 7, 1994

FAX TRANSMITTAL

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REPLY TO *Harlan W. Penn*
ATTN OF **HARLAN W. PENN**
Regional Counsel

To: <i>W. H. Cheney</i>	From: <i>Harlan Penn</i>
Dept./Agency: <i>OGC</i>	Phone #: <i>508 03 4723</i>
Fax #:	Fax #:

SUBJECT: Monthly Report for November 1994

NSN 7540-01-317-7388 5098-101 GENERAL SERVICES ADMINISTRATION

TO: WALLACE H. CHENEY, Assistant Director/General Counsel
O. IVAN WHITE, JR., Regional Director
Wardens of the Western Region

▶▶ **STATISTICS** ◀◀

<u>Tort Claims:</u>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Received	37	40	76	42	58	54	60	52	51	54	46	
Closed	91	100	68	47	30	81	32	107	45	28	60	
Pending	172	116	125	120	148	121	149	94	100	126	112	
Over 6 mo	0	0	0	1*	0	3	0	1** 2***		2***	1**	

- * Received from USMS overdue
- ** Awaiting Internal Affairs investigation
- *** One claim awaiting Internal Affairs investigation

Tort Claim Investigation Status: (As of 11/30/94)

	BRN	DUB	LOM	LOF	LOS	NEL	PHX	SAF	SDC	SHE	TRM	TCN
Pending												
Over 60 days	1	0	0	2	4	0	20	0	0	0	10	0

<u>FOI/PA:</u>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Received	23	27	25	31	21	48	25	33	37	37	20	
Closed	14	43	43	22	11	45	20	39	28	25	37	
Pending	109	93	75	84	94	97 102		96 105 117		07	90	
Over 60 days	23	21	33	41	46	36	31	28	24	30	49	

<u>Admin. Rem:</u>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Received	106	76	132	152	134	99	121	104	105	110	73	

<u>Litigation:</u>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Open Cases:	685	677	685	685	698	426*	426	439	449	461	456	
New Cases:	19	16	20	4	16	26	13	21	18	16	10	
HC	8	8	8	1	7	17	4	10	7	2	3	
FTCA	2	1	4	2	2	1	2	3	3	0	1	
Bivens	7	7	5	3	6	10	6	7	3	8	5	
Other	2	0	0	0	1	0	1	1	1	2		
Closed	12	8	13	1	3	19	13	12	8	4	3	

* Legal staff contacted courts to verify number open ²¹⁸⁸ Category of INS/Solers deleted.

►► **CASES OF INTEREST** ◀◀

NINTH CIRCUIT MATTERS:

Campos v. INS, et al No 94-15361

The Ninth Circuit has denied the inmate's MTN TO PREVENT TRANSFER to Oakdale. This matter was originally assigned to a 3 judge panel in the circuit for decision on the briefs. By an Order dated 10/13, the panel has appointed counsel and requested additional briefing specifically on "whether INS has adopted a policy of delaying deportation hearings until one year before incarcerated aliens will have served their sentences, and, if so, whether that policy complies with 8 U.S.C. 1252(i). AUSA Patricia Duggan is briefing the case, with BOP assistance from Valerie Stewart.

DISTRICT COURT MATTERS:

U.S. v. Archer, et al D. Nevada

Criminal prosecution by Nevada US Atty of USP Lompoc escapees. Following escape, the inmates fled to Nevada and robbed a bank. Both inmates entered guilty pleas on November 14, the first day of trial in Las Vegas. Sentencing is set for January, 1995. AUSA Will Mattley prosecuted the case.

Ardelle Schreckengost v. USA, C. D. California

Seventy-year old volunteer at FPC Boron fell off landing and broke her hip while attending orientation classes. Suing for unspecified damages.

Herbert Blitzstein v. USA, et al. CV-S-94-0581 D. Nevada

Former inmate claims inadequate medical care. Names PA from Boron and former CCOS from Salt Lake City individually. This inmate had heart attack while at Nellis on work detail. Once surgery was done and he was stable, he was transferred to Rochester. Released to CCC, however, community physician felt he needed an angiogram. CCOS transferred inmate to Rochester for angiogram, which was not clinically indicated according to BOP medical staff. Inmate returned to CCC where he violated conditions of release. Returned to Boron to complete term. This inmate testified before Congressional Committee investigating health care in the Bureau of Prisons in July 1991. FTCA claim untimely. Jenifer Grundy handling.

MEDICAL MALPRACTICE TORT CLAIMS and LITIGATION REFERENCING GAO REPORT ON AGENCY MEDICAL CARE:

None

FOI/PA LITIGATION:

None

SETTLEMENTS:

Sherilyn Wohl v. USA N.D. California

Plaintiff sought \$750,000 for the loss of a child, claiming that FCI Dublin provided unsafe picnic tables for inmate use. Plaintiff claims that the table fell on her when others sitting with her stood up. She claims this causes her to lose the baby she was carrying. The Government prevailed at non-binding arbitration, however, plaintiff elected to appeal to District Court. ³¹⁸⁹ First preparation would involve at least two depositions in Hawaii, as well as use of a \$500/hour expert. Offered to settle for \$5000. Plaintiff accepted.

MISCELLANEOUS MATTERS:

James Marshall, II v. Rhonda Robinson, et al., Small Claims Ct,
Alameda County, California

One employee suing three others in Small Claims Court over statements made during OIA investigation. Representation for defendants granted by DOJ. Plaintiff voluntarily dismissed suit prior to removal to federal court.

PHX Paralegal Jane Haschemeyer (Acting Exec.) was at WRO for Strategic Planning Training, Nov. 29-30. TCN Paralegal Tom Byron in Dallas, Nov. 20-22 for EEO hearing. Mary Sullivan in San Diego 12/6 to testify for U.S. Atty re: escape of SHE inmate.

▶▶ REGIONAL MATTERS OF INTEREST ◀◀

Harlan Penn: Staff Assist & Meeting with the U.S. Attorney
Safford, Tucson & Phoenix 12/5-12/9

Valerie Stewart: A/L 12/27 - 12/30

Jenifer Grundy: A/L 12/19 - 12/27 (Singing at White House)

Janet Augustine:

Tami Jenkins: Glynco 11/28 - 12/16, reports to SDC 12/19

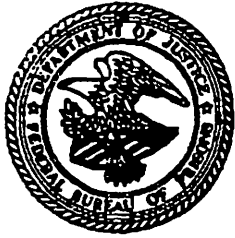
Lisa James: Glynco 11/28 - 12/16, reports to LOS 12/19

Dennis Wong: Glynco 11/28 - 12/16

Duran Sheets: A/L 12/19 - 12/23

Lida Paetzke: A/L 12/23 - 12/27

Juanita Jiggetts:



Joseph K.

**UNITED STATES GOVERNMENT
MEMORANDUM
FEDERAL BUREAU OF PRISONS
WESTERN REGIONAL OFFICE
DUBLIN, CALIFORNIA 94568**

DATE: January 6, 1995

OPTIONAL FORM 99 (7-90)

REPLY TO *Harlan W. Penn*
ATTN OF: HARLAN W. PENN
Regional Counsel

FAX TRANSMITTAL

of pages **3**

To <i>Wallace H. Cheney</i>	From <i>Harlan Penn</i>
Dept./Agency <i>General Counsel</i>	Prison # <i>Regional Counsel</i>
Fax #	Fax #

NSN 7540-01-317-7368 5099-101 GENERAL SERVICES ADMINISTRATION

SUBJECT: Monthly Report for December 1994

TO: WALLACE H. CHENEY, Assistant Director/General Counsel
O. IVAN WHITE, JR., Regional Director

►► CASES OF INTEREST ◄◄

DISTRICT COURT MATTERS:

United States v. Patrick Sayers, 94CR726 (CDCA), trial scheduled for January 17, 1995 in prosecution of inmate for possession of weapon at U.S.P. Lompoc.

United States v. Archer and Diulio, sentencing of inmates from U.S.P. Lompoc for escape and bank robbery is set for January 21, 1995.

United States v. Linbert Johnson, trial set for January 24, 1995, on weapon and cell fire charges against this U.S.P. Lompoc inmate.

Kalka v. Megathlin, (NDCal) hearing on TRO set for January 11 in San Francisco. Inmate Ben Kalka is challenging a planned move to FCI, Sheridan and also contends his legal mail was read by staff.

Kaiserman v. United States, (CDCal) discovery responses are due next week. We have discussed issues related to the related Bivens case against Richard Elmer several times with Mr. Elmer, Central Office and DOJ personnel. Mr. Elmer is now represented by his own counsel.

Gainey v. Reno, (DARiz) is an EEO case in which Mr. Gainey alleges discrimination on the basis of his Native American status and religion. A motion for partial summary judgment has been filed and we are reviewing the discovery record. The U.S. Attorneys office recommends settlement if a reasonable offer is received.

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**MEDICAL MALPRACTICE TORT CLAIMS and LITIGATION REFERENCING GAO REPORT
ON AGENCY MEDICAL CARE:**

None

FOI/PA LITIGATION:

None

SETTLEMENTS:

None

MISCELLANEOUS MATTERS:

A law firm is attempting to resurrect the Cooney case which was dismissed several years ago after FCI, Pleasanton agreed to continue at that time the practice of inmates having keys to their rooms. The institution is considering changes in that practice. The U.S. Attorneys Office agrees that the Cooney case is not the proper vehicle for a challenge today but they are concerned that a broad challenge to conditions at the now crowded FCI, Dublin may be filed by this firm.

Asbestos abatement is beginning at U.S.P. Lompoc and several tort claims alleging asbestos exposure have been received from inmates there.

We are working with the Regional Executive Staff and Central Office in advising FPC, Boron on the Religious Freedom Restoration Act and accommodation of an Hasidic Rabbi inmate.

An end of the year inventory of FOIA, Torts and litigation resulted in revised counts. Changes are being implemented to improve the accuracy of our statistics during 1995.

▶▶ REGIONAL MATTERS OF INTEREST ◀◀

Harlan Penn:	Annual Leave 1/23 to 2/3
Valerie Stewart:	A/L none scheduled
Jenifer Grundy:	A/L none scheduled
Janet Augustine:	A/L 1/5 and 6
Dennis Wong:	A/L none scheduled
Duran Sheets:	A/L none scheduled
Lida Paetzke:	A/L none scheduled
Juanita Jiggetts:	A/L none scheduled

» STATISTICS «

<u>Tort Claims:</u>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
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Pending	172	116	125	120	148	121	149	94	100	126	112	179*
Over 6 mo	0	0	0	1	0	3	0	1	2	2	1	2*

*PHYSICAL COUNT

Tort Claim Investigation Status: (As of 12/31/94)

	BRN	DUB	LOM	LOF	LOS	NEL	PHX	SAF	SDC	SHE	TRM	TCN
Pending												
Over 60 days	0	0	0	0	0	0	18	0	0	0	1	0

<u>FOI/PA:</u>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Received	23	27	25	31	21	48	25	33	37	37	20	22
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Pending	109	93	75	84	94	97	102	96	105	117	100	91*
Over 60 days	23	21	33	41	46	36	31	28	24	30	49	62*

*PHYSICAL COUNT

<u>Admin. Rem:</u>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
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FTCA	2	1	4	2	2	1	2	3	3	0	1	3
Bivens	7	7	5	3	6	10	6	7	3	8	5	2
Other	2	0	0	0	1	0	1	1	1	2	1	2
Closed	12	8	13	1	3	19	13	12	8	4	3	83

*PHYSICAL COUNT

Janet Augustine: A/L 1/5 and 6
Dennis Wong: A/L none scheduled
Duran Sheets: A/L none scheduled
Lida Paetzke: A/L none scheduled
Juanita Jiggetts: A/L none scheduled
