

U.S. Department of Justice

Federal Bureau of Prisons

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Dublin, California 94568

WRO

February 10, 1997

MEMORANDUM TO WALLACE H. CHENEY,  
ASSISTANT DIRECTOR/GENERAL COUNSEL

FROM: Harlan W. Penn  
Regional Counsel

SUBJECT: Monthly Report for January 1997

»» CASES OF INTEREST ««

NINTH CIRCUIT MATTERS:

Gordon Alcorn v. Jeryl Kochera (NEL) Ninth Circuit upheld District Court's grant of summary judgment for defendant, holding that DHO's decision not to call inmate's witnesses and to rely on their written statements was not a violation of due process.

DISTRICT COURT MATTERS:

3621(e) Litigation

CA Cases

Woolverton v. Purdy (LOF), two-point enhancement case. Adverse decision entered January 16, 1997. BOP directed to reconsider petitioner's eligibility. OGC notified February 4, 1997.

AZ Cases

Villela-Curiel v. Floyd (PHX) ineligibility due to detainer and as yet has not completed DAP program.

OR Cases

Cabrera v. Crabtree (SHE), conviction for 18 USC 2113(a) makes

inmate ineligible for sentence reduction under 3621.

Rasor v. Crabtree, conviction for 26 USC 5845(a)(d)-possession of firearm- renders inmate ineligible for sentence reduction. Geiger v. Crabtree, 924<sup>©</sup> conviction is basis for inmate's ineligibility for sentence reduction. Stipulated Order entered 1/10/97 -AUSA will file NOA.

Contreras-Palomares v. Crabtree, inmate ineligible for sentence reduction based on detainer from INS.

Kilgore v. Crabtree, inmate ineligible for sentence reduction based on conviction for 922(g).

#### Other Litigation

Hooper v. Reno

Palmer v. Reno

Ralph v. Reno (SDC), three Bivens/FTCA actions concerning fire at Miramar (INS) Federal Detention Center. BOP defendants are Director Hawk and Warden Stratman. U.S. Attorneys Office will seek to consolidate all actions.

Lucas, Mercadel, and Douthit v. White (DUB), three former female inmates allege they were sexually assaulted and harassed by male inmates and staff while housed in the FDC at Dublin. Second mediation session February 3, 1997.

Nicolaysen and Parker v. United States (LOS), FTCA action in which the attorney plaintiff was assaulted with ballpoint pen by inmate client at MDC Los Angeles. General Counsel preparing memo for DOJ explaining our opposition to proposed settlement.

Wright v. Crabtree (SHE), HC and TRO alleged that FCI was violating inmate's 6th Amendment right to counsel. Telephone conference with Judge Jones on 2/6/97, denied TRO and limited inmate to one call per week to designated counsel, unless "emergency" arises.

Scott v. Crabtree and Conley v. Crabtree, (SHE) each case challenges DHO action resulting from 10/25/95 disturbances at FCI Memphis.

#### TRIALS/HEARINGS:

U.S. v. Larry Dean Mugrage, murder of LOM inmate in which staff member died of a heart attack responding. Convicted at

trial January 6, 1997.

Farmer's Insurance v. USA (BRN), FTCA case where civilian alleges inmate town driver caused collision. Trial February 27, 1997 in Los Angeles.

Friedman v. VanBrusselen (LOM), Bivens action re violation of access to the courts, violation of Privacy Act, and retaliation for litigation and filing grievances. Summary Judgment granted on most claims January 17, 1997; trial on remaining claims of retaliation, harassment, detention, and transfer to be scheduled.

Ramirez-Pacheco v. Reno (LOM), EEO case filed by former physician who claims he was harassed at FPC Lompoc because of his nationality. Trial January 21, 1997. Government found not liable.

U.S. v. Greene, sentencing hearing February 18, 1997. Inmate seeks downward departure due to likelihood of victimization in prison. Psychology Administrator and Assistant Regional Counsel will attend the hearing.

RELIGION:

Low v. Clarke-Cain (BRN), Religious Freedom Restoration Act case in which inmate sought injunctive relief for practice of Satmar sect of Hasidic Judaism. Trial February 25, 1997.

Gainey v. Reno (TCN), Title VII case by staff at TCN alleging discrimination based on religious practice and ethnic heritage as a Native American, and retaliation for filing EEO complaint. Case has gone to mediation. Hearing set for March 7, 1997.

MEDICAL MALPRACTICE TORT CLAIMS and LITIGATION REFERENCING GAO REPORT ON AGENCY MEDICAL CARE: None

SETTLEMENTS:

Jimmy Joe Fields v. BOP, District of New Mexico. Estate of deceased inmate agreed to settle for \$40k. Inmate, released from FCI Safford, alleged inadequate medical diagnosis and care for throat cancer.

MISCELLANEOUS MATTERS:

Health Services and Legal Staff met on February 3, 1997 with local attorney for staff members who claim exposure to TB from administration of PPD test at DUB. Administrative claims pending.

ENVIRONMENTAL MATTERS:

FCI Phoenix -Reported 1/27/97 sewage overflow to ADEQ.

CRIMINAL CASE TRACKING

1. TOTAL CRIMINAL CASES REFERRED THIS MONTH: 6

2. CRIMINAL CASES ACCEPTED FOR PROSECUTION AWAITING TRIAL/  
DISPOSITION:

ASSAULT:

GOMEZ-DIAZ, Jose, Reg. No. 36436-048, 10-16-96 assault on staff with serious injury.

ESCAPE: None

FRAUD/FORGERY: None

HOMICIDE:

U.S. v. Larry Dean Murgage, murder of LOM inmate in which staff member died of a heart attack responding. Convicted at trial January 6, 1997.

INTRODUCTION/POSSESSION OF CONTRABAND:

VENEGAS-GARCIA, Luis, Reg. No. 45264-198 (PHX)

PROPERTY: None

WEAPONS: None

3. CRIMINAL MATTERS REFERRED (MATTERS DECLINED ARE NOTED)

ASSAULT:

BENNETT, John, Reg. No. 48157-198 (SDC) referred to FBI 1/29/97.

WORKMAN, Randy, Reg. No. 48276-198 (SDC) referred to FBI 1/29/97.

GUIDRY, David, Reg. No. 85957-011 (SHE) -attempted rape

ESCAPE: None

FRAUD/FORGERY: None

**HOMICIDE:**

CASTRO, Daniel, Reg. No 60992-065 (SHE) referred to FBI

**INTRODUCTION/POSSESSION OF CONTRABAND:**

CHAVEZ, Jose, Reg. No. 95505-012 (SHE)

ARNOLD, Jeremy, Reg. No.08537-085 (PHX)

PROPERTY: None

**WEAPONS: None**

▶▶ STATISTICS ◀◀

Tort Claims: JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV  
 DEC  
 Received 44  
 Closed 55  
 Reconsidered 0  
 Pending 141

Over 6 Mo. 0

Investigations Pending Over 60 Days:

BRN DUB LOM LOF LOS NEL PHX SAF SDC SHE TRM TCN TOTAL  
 0 5 14 0 1 0 13 0 1 0 2 2 38

FOI/PA: JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV  
 DEC  
 Received 27  
 Closed 44  
 Pending 19  
 30 days 6  
 Over  
 6 Months 0

FOI/PA Pending More than 30 Days:

BRN DUB LOM LOF LOS NEL PHX SAF SDC SHE TRM TCN TOTAL  
 00 1 3 0 1 0 0 1 0 0 0 0 6

\*Does not include inmates transferred out of Region or CCMs.

Administrative Remedies:

JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC  
 99

Litigation: JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV  
 DEC  
 Open Cases: 342  
 New Cases: 27  
 HC 15  
 FTCA 2  
 Bivens 7  
 Other 3  
 Closed 29  
 Lit Reports 10



U.S. Department of Justice

Federal Bureau of Prisons

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Dublin, California 94568

March 19, 1997

MEMORANDUM TO WALLACE H. CHENEY,  
ASSISTANT DIRECTOR/GENERAL COUNSEL

FROM: Harlan W. Penn  
Regional Counsel

SUBJECT: Monthly Report for February 1997

»» CASES OF INTEREST ««

NINTH CIRCUIT MATTERS: None

DISTRICT COURT MATTERS:

TRIALS/HEARINGS:

Farmer's Insurance v. USA (BRN), FTCA case where civilian alleges inmate town driver caused collision. Trial February 27, 1997 in Los Angeles. Judge took under advisement and will issue decision by mail.

Low v. Clarke-Cain (BRN), Religious Freedom Restoration Act case in which inmate sought injunctive relief for practice of Satmar sect of Hasidic Judaism. Trial March 18, 1997.

U.S. v. Greene, sentencing hearing February 24, 1997. Defendant sought downward departure due to likelihood of victimization in prison, received seven-level departure, resulting in 37-month sentence for bank robbery. Judge indicated that Bureau could properly house inmate.

Jerry Michael Hildum v. United States, (SHE), trial February 12-13, 1997. Inmate alleged sexual assault by correctional officer. Court found plaintiff failed to prove case by preponderance of evidence and dismissed, entering judgment for defendants. AUSA Ken Bauman and SHE Attorney Toni Brown represented the defendant.

Ben Kalka v. Warden Floyd, et al, (PHX), Bivens action concerning multiple conditions. Judgment entered for defendants, Court dismissed with prejudice for failure to prosecute.

**3621(e) LITIGATION:**

**CA Cases**

Brown v. Benov (TRM), two-point firearms enhancement. Judge remanded to BOP, finding that the Downey decision requires only reconsideration by the agency to determine if inmate is eligible for sentence reduction in all other respects.

**AZ Cases**

Villela-Curiel v. Floyd (PHX), ineligibility due to detainer and as yet has not completed DAP program.

**OR Cases**

Neverdal v. Crabtree, (SHE), inmate's conviction for 924(c)(4) renders him ineligible for sentence reduction pursuant to BOP policy. Parties entered into Stipulated Order February 12, 1997 Court ordered sentence reduction of one year. Notice of Appeal from Order filed February 24, 1997.

**RELIGION:**

Low v. Clarke-Cain (BRN), see above.

Gainey v. Reno (TCN), Title VII case by staff at TCN alleging discrimination based on religious practice and ethnic heritage as a Native American and retaliation for filing EEO complaint. Case has gone to mediation. Mediation hearing set for March 7, 1997.

**MEDICAL MALPRACTICE TORT CLAIMS and LITIGATION REFERENCING GAO REPORT ON AGENCY MEDICAL CARE: None**

**CASES INVOLVING THE ENSIGN AMENDMENT: None**



**ENVIRONMENTAL MATTERS:**

Office of General Counsel received notice of a CERCLA superfund proposed settlement at a site at which TRM may have contributed non-hazardous waste. DOJ Environmental and Natural Resources Division has been asked by Commercial Law Branch for more information in order to determine whether we concur with their recommendation of settlement and wish to participate.

PHX received Notice from Arizona Department of Environmental Quality of a failure to perform certain periodic monitoring of its water system. Testing deficiencies will be corrected. Information regarding specific deficiencies is still being explored prior to complying with required Public Notice procedures.

**MISCELLANEOUS MATTERS:**

Gelis v. Sullivan (LOM), Bivens action re hip replacement/repair surgery refusal at USMCFP and LOM. Ten defendants granted summary judgement October 21, 1996; the remaining four are two physicians at USMCFP, one physician at LOM, and one physician retired from LOM. Memo re appeal being prepared for OGC.

Graham v. USA (DUB), FTCA action in which 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. Ninth Circuit found that denial letter should have been mailed to counsel rather than inmate claimant directly. AUSA has rejected proposed settlement offer of \$25,000.00 and will proceed with discovery. Companion case is Ramey v. U.S.

Lucas, Mercadel, and Douthit v. White (DUB), three former female inmates allege they were sexually assaulted and harassed by male inmates and staff while housed in SHU at FDC Dublin. Second mediation session February 10, 1997.

Donny Couch/Estate of Kenneth Couch v. United States, (SHE) FTCA action for medical negligence resulting in death of former inmate. Plaintiff seeking \$6,000,000 in damages for wrongful death.

**SETTLEMENTS:**

Craven v. Evans (SDC), Bivens action and FTCA claims against both BOP and USMS re allegations of deliberate indifference to ankle injury of pretrial inmate at MCC San Diego. Our Summary Judgment motion was denied for the one remaining BOP defendant, Dr. Douglas. We recommended appeal and referred our administrative claim to USMS; meanwhile, USMS settled all cases through FTCA with the DOJ Judgment Fund for \$99,000.00.

**CRIMINAL CASE TRACKING**

1. TOTAL CRIMINAL CASES REFERRED THIS MONTH: 3 (CA only)
2. CRIMINAL CASES ACCEPTED FOR PROSECUTION AWAITING TRIAL/  
DISPOSITION:

**ASSAULT:**

Murder of Inmate ALFREY, at SHE  
Attempted Murder of Inmate STRADER, Michael,  
Reg. No. 06058-081, at LOF:  
LOTICCOLO, Salvatore, Reg. No. 57203-097  
DAVIDSON, Thomas, Reg. No. 23152-037  
FLEMING, Daniel, Reg. No. 18418-050

**ESCAPE:** None

**FRAUD/FORGERY:** None

**HOMICIDE:** None

**INTRODUCTION/POSSESSION OF CONTRABAND:**

U.S. v. Vandroff, prosecution of former TRM staff member for

agreeing to accept money from inmate for drug introduction.  
Sentencing April 14, 1997.

PROPERTY: None

WEAPONS: None

3. CRIMINAL MATTERS REFERRED (MATTERS DECLINED ARE NOTED)

ASSAULT: LOF inmate attempted murder (see above)  
SHE inmate murder (see above)

ESCAPE: None

FRAUD/FORGERY: None

HOMICIDE: None

INTRODUCTION/POSSESSION OF CONTRABAND: None

PROPERTY: None

WEAPONS: None

» STATISTICS «

<u>Tort Claims:</u>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Received	44	34										
Closed	55	30										
Reconsidered	0	0										
Pending	130	134										

Over 6 Mo.            0        5

Investigations Pending Over 60 Days:

BRN	DUB	LOM	LOF	LOS	NEL	PHX	SAF	SDC	SHE	TRM	TCN	TOTAL
0	0	2	1	0	0	7	0	2	0	1	0	13

<u>FOI/PA:</u>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Received	27	28										
Closed	44	16										
Pending	19	31										

30 days	6	8
Over		
6 Months	0	0

FOI/PA Pending More than 30 Days:

BRN	DUB	LOM	LOF	LOS	NEL	PHX	SAF	SDC	SHE	TRM	TCN	TOTAL
0	1	3	0	0	0	0	0	0	0	1	0	5

\*Does not include inmates transferred out of Region or CCMs.

Administrative Remedies:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
99	71										

<u>Litigation:</u>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Open Cases:	342	326										
New Cases:	27	14										
HC	15	8										
FTCA	2	2										
Bivens	7	4										
Other	3	0										
Closed	29	30										
Lit Reports	10	10										



U.S. Department of Justice

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Dublin, California 94568

April 8, 1997

MEMORANDUM TO WALLACE H. CHENEY  
ASSISTANT DIRECTOR/GENERAL COUNSEL

FROM: Harlan W. Peltz, WFO  
Regional Counsel

SUBJECT: Monthly Report for March 1997

»» CASES OF INTEREST ««

**NINTH CIRCUIT MATTERS:**

Albert Davis v. Joseph H. Crabtree, CA9 96-35516, D. OR CV 95-1739 AH 3621(e) eligibility case, in which the Ninth Circuit held that conviction for felon in possession of a firearm under 18 U.S.C., Section 924(c) is not a *crime of violence*, and may not be grounds for exclusion from sentence reduction eligibility. Court held that BOP program statements are not subject to the rigors of the APA and entitled only to some deference.

Twenty-six other 3621(e) eligibility cases from FCI Sheridan are now pending before the Ninth Circuit.

**DISTRICT COURT MATTERS:**

**TRIALS/HEARINGS:**

Farmer's Insurance v. USA (BRN), FTCA case where civilian alleges inmate town driver caused collision. Trial February 27, 1997 in Los Angeles. Judge took under advisement and will issue decision

by mail.

Low v. Clarke-Cain (BRN), Religious Freedom Restoration Act case in which inmate sought injunctive relief for practice of Satmar sect of Hasidic Judaism. Motion for Passover furlough pending. Trial June 25, 1997.

U.S. v. Carlos Miranda and Chris Anderson (LOM), trial for 1993 murder of LOM Inmate James Jackson scheduled for June 3, 1997 in Los Angeles.

**3621(e) LITIGATION:**

Davis v. Crabtree (SHE), see above.

**RELIGION:**

Low v. Clarke-Cain (BRN), see above.

**MEDICAL MALPRACTICE TORT CLAIMS and LITIGATION REFERENCING GAO REPORT ON AGENCY MEDICAL CARE: None**

**CASES INVOLVING THE ENSIGN AMENDMENT: None**

**ENVIRONMENTAL MATTERS:**

USP Lompoc had been advised by Commercial Law Branch to decline settlement of a violation with Santa Barbara County Air Pollution Control District for \$50.00. S.B. County is now threatening legal action; further advice has been requested from OGC.

**MISCELLANEOUS MATTERS:**

Lucas, Mercadel, and Douthit v. White (DUB), three former female inmates allege they were sexually assaulted and harassed by male inmates and staff while housed in SHU at FDC Dublin. Third mediation session April 28, 1997.

Kurtz v. U.S., (SHE), FTCA for \$10,000,000 from guardians of inmate for failure to properly supervise and provide proper medical care. Inmate having attempted suicide by cutting himself was placed in solitary confinement, then attempted to hang himself and suffered irreversible brain damage.

SETTLEMENTS:

Gainey v. Reno (TCN), EEO case filed by staff member at FCI TCN alleging that he suffered discrimination on the basis of status as a Native American and was victim of retaliation for filing EEO complaints. Mediation Hearing on March 7 resulted in settlement.

Pending settlement in Graham v. USA (DUB), FTCA action in which inmate filed a tort claim because she was hit by a roll of roofing material which fell through the ceiling at FCI Dublin. AUSA has agreed to settlement offer of \$3500.00.

CRIMINAL CASE TRACKING

1. TOTAL CRIMINAL CASES REFERRED THIS MONTH: 15

2. CRIMINAL CASES ACCEPTED FOR PROSECUTION AWAITING TRIAL/  
DISPOSITION:

ASSAULT:

WEHMOFFER, Scott Reg. No. 22947-077 (LOM)

ESCAPE: None

FRAUD/FORGERY: None

HOMICIDE: None

INTRODUCTION/POSSESSION OF CONTRABAND:

U.S. v. Vandroff, prosecution of former TRM staff member for agreeing to accept money from inmate for drug introduction. Sentencing April 14, 1997.

U.S. v. Washington, prosecution of former TRM staff member for introduction of tennis shoes. Sentenced to three years probation, 25 hours of community service, and a special assessment on February 24, 1997.

CHAVIRA, Reg. No. 06994-040 strip searched following

observation of suspicious activity, staff found 4 wrapped packages, 3 with cocaine, 1 with heroin. Three additional packages of cocaine resulted from dry cell placement.

PROPERTY: None

WEAPONS: None

3. CRIMINAL MATTERS REFERRED (MATTERS DECLINED ARE NOTED)

ASSAULT:

Attempted Murder of STRADER, Michael, Reg. No. 06058-081 (LOF):  
LOTICCOLO, Salvatore, Reg. No. 57203-097  
DAVIDSON, Thomas, Reg. No. 23152-037  
FLEMING, Daniel, Reg. No. 18418-050

Armed assault of SCIPIO, Randolph, Reg. No. 97558-131 (TRM):  
DeBOSE, Terry, Reg. No. 03718-112  
DARRIN, Hale, Reg. No. 07033-112  
LACOUNT, Lawrence, Reg. No. 30829-048  
SANDERS, Rayke, Reg. No. 02267-112  
GEOT, Steve, Reg. No. 19599-086  
PIKE, Reg. No. 04192-081 (PHX)  
LESLIE, Reg. No. 26214-077 (PHX)

ESCAPE:

MARTINEZ-TREVINO, Daniel, Reg. No. 71086-198 (SDC)  
MONTEERRUBIO, Jesus, Reg. No. 71114-198 (SDC)

FRAUD/FORGERY: None

HOMICIDE: None

INTRODUCTION/POSSESSION OF CONTRABAND:  
RICH, Larry, Reg. No. 59178-065 (SHE)

PROPERTY: None

WEAPONS:

LOM weapons possession cases declined:  
MITCHELL, Bernard, Reg. No. 04830-112  
MAYBECK, Thomas, Reg. No. 07828-058  
RIDDLE, Thomas, Reg. No. 09069-017



CAHILL, Francis, Reg. No. 03429-082  
McPHADEN, James, Reg. No. 25454-086  
CAMPBELL, Paul, Reg. No. 23125-044  
CATO, Eric, Reg. No. 06007-097

TRM weapons possession cases referred:

HOWZE, Denell, Reg. NO. 06366-112      PARKER, Roy, Reg. No.  
08443-112





U.S. Department of Justice

Federal Bureau of Prisons

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Dublin, California 94568

May 9, 1997

MEMORANDUM TO WALLACE H. CHENEY,  
ASSISTANT DIRECTOR/GENERAL COUNSEL

FROM: Harlan W. Penn (WRD)  
Regional Counsel

SUBJECT: Monthly Report for April 1997

»» CASES OF INTEREST ««

**NINTH CIRCUIT MATTERS:**

Cort, et al. v. Crabtree, CA9 96-36226, 96-36228, 96-36231  
(consolidated) order issued April 11, 1997 (opinion to follow)  
stating that inmates with 2113(a) convictions for unarmed bank  
robbery were not convicted of "crimes of violence" and thus  
were eligible for sentence reduction. Order directed BOP to  
exercise discretion in awarding sentence reduction.

**DISTRICT COURT MATTERS:**

**TRIALS/HEARINGS:**

Asberry v. Bureau of Prisons (LOS), EEO case involving former

Lieutenant demoted for conducting an unauthorized investigation. Trial scheduled May 13, 1997 in Los Angeles.

Farmer's Insurance v. USA (BRN), FTCA case where civilian alleges inmate town driver caused collision. Trial February 27, 1997 in Los Angeles. Awaiting dismissal order.

Low v. Clarke-Cain (BRN), Religious Freedom Restoration Act case in which inmate sought injunctive relief for practice of Satmar sect of Hasidic Judaism. Trial June 25, 1997 in Los Angeles.

U.S. v. Carlos Miranda and Chris Anderson (LOM), trial for 1993 murder of LOM Inmate James Jackson scheduled for June 3, 1997 in Los Angeles.

Navarro v. U.S. (NEL), E.D. CA ruling by Judge Karlton on inmate's 2255 habeas petition. Court held that indictment by Special AUSA was invalid due to impropriety in appointment procedure of the SAUSA. Decision has called into question jurisdiction of hundreds of prosecutions by named SAUSA (County District Attorney operated as SAUSA for Sacramento U.S. Attorney Office for 6 years). Court granted Stay of Order, so inmate has not been released from custody, while USAO appeals the Order.

#### 3621(e) LITIGATION:

Hoyt Farmer v. Floyd (PHX), 924(c) conviction case, stayed pending Davis decision, will be administratively resolved.

Adams v. Crabtree (SHE), prior conviction for Assault II, is basis for ineligibility for sentence reduction. Motion to Stay filed pending 9th Cir. decision in Mason, et al. v. Crabtree.

Renner v. Crabtree (SHE), prior conviction for Assault II, is basis for ineligibility for sentence reduction. Motion to Stay filed pending 9th Cir. Decision in Mason, et al. v. Crabtree.

Johnson v. Crabtree (SHE), 842(h) stolen explosives conviction, argument made that case is not ripe, as inmate does not graduate DAP until September, 1997.

Marrese v. Hood (TCN), 2113(a) bank robbery conviction.

Camper v. Benov (TRM), prior robbery conviction.

Cleary v. Benov (TRM), "old law" eligibility denial.

Elledge v. Benov (TRM), 924(c)(1) use of firearm.

Gonzalez v. Benov (TRM), enhancement case filed before Downey Ops Memo issued.

Holden v. Benov (TRM), allegation that CCC eligibility requirement is an ex post facto violation.

**RELIGION:**

Low v. Clarke-Cain (BRN), see above.

**MEDICAL MALPRACTICE TORT CLAIMS/LITIGATION REFERENCING GAO  
REPORT ON AGENCY MEDICAL CARE: None**

**CASES INVOLVING THE ENSIGN AMENDMENT: None**

**ENVIRONMENTAL MATTERS:**

Backup boilers at LOM have been retrofitted to Santa Barbara County environmental standards.

**MISCELLANEOUS MATTERS:**

Lucas, Mercadel, and Douthit v. White (DUB), three former female inmates allege they were sexually assaulted and harassed by male inmates and staff while housed in SHU at FDC Dublin. Third mediation session canceled. Meeting of DOJ Representation Committee April 29, 1997 attended by Director and General Counsel; decisions pending.

Schuett v. BOP (CSF), Plaintiff, a wheelchair bound paraplegic, alleges the BOP, several named staff, and the Associate Director of Friends Outside Half Way House (FOHH), violated his rights in connection with his placement at FOHH and subsequent disciplinary action for escape. Schuett

alleges FOHH was not handicap- accessible and that he sustained injuries while housed there. Three days after his arrival at FOHH, Schuett "walked away". Case dismissed April 16, 1997.

During the institution lockdown following the homicide and assaults at LOM on April 3, 1997 the Paralegal Specialist was assigned to the DHO office and the Legal Administrative Assistant was assigned to assist the Emergency Preparedness Officer in roster preparation.

**CASES DISMISSED PURSUANT TO PRISON LITIGATION REFORM ACT:**

Dixon v. U.S.A. (LOM), dismissed for failure to provide inmate account information.

**SETTLEMENTS:**

\$3,500.00 settlement in Graham v. USA (DUB), FTCA action in which inmate filed a tort claim because she was hit by a roll of roofing material which fell through the ceiling at FCI Dublin.

**CRIMINAL CASE TRACKING**

**1. TOTAL CRIMINAL CASES REFERRED THIS MONTH: 8**

Pre-indictment FBI investigation continuing for the prosecution of Inmate Roy Green, Reg. No. 21545-044, for the murder of SOS Scott Williams and assaults of four other staff at LOM.

The U.S. Attorney's Office in Los Angeles is prepared to seek ten indictments for the October 1995 disturbance.

**2. CRIMINAL CASES ACCEPTED FOR PROSECUTION AWAITING TRIAL/  
DISPOSITION:**

**ASSAULT:**

Attempted Murder of STRADER, Michael, Reg. No.  
06058-081 (LOF):

LOTICCOLO, Salvatore, Reg. No. 57203-097

DAVIDSON, Thomas, Reg. No. 23152-037

FLEMING, Daniel, Reg. No. 18418-050

ESCAPE: None

FRAUD/FORGERY: None

HOMICIDE:

U.S. v. Larry Dean Murgage, 1993 murder of LOM inmate in  
which responding staff member died of a heart attack.  
Sentenced to life without parole May 1, 1997.

INTRODUCTION/POSSESSION OF CONTRABAND:

U.S. v. Vandroff, prosecution of former TRM staff member  
for agreeing to accept money from inmate for drug  
introduction. Sentenced April 14, 1997 to five years  
probation, six months home detention, 2000 hours community  
service, and \$200.00 special assessment.

PROPERTY: None

WEAPONS: None

### 3. CRIMINAL MATTERS REFERRED (MATTERS DECLINED ARE NOTED)

ASSAULT:

TAYLOR, Castalon Reg. No. 74034-011 (DUB), inmate threw  
food and water on staff. Declined.

RENDON-ABUNDEZ, Juna, Reg. No. 56617-080 (SHE), assault on  
staff. Pending.

DENT, Rodney, Reg. No. 04810-010 (SHE), assault on staff.  
Pending.

DANIELS, Richard, Reg. No. 15791 (SHE), assault on staff.  
Pending.

BATISTA, Miguel Reg. No. 91869-011 (DUB), minor inmate  
assault. Declined.

WILLS, Anita Reg. No. 87612-011 (DUB), minor inmate assault. Declined.

ESCAPE: None

FRAUD/FORGERY: None

HOMICIDE: None

INTRODUCTION/POSSESSION OF CONTRABAND:

CHAVIRA, Reg. No. 06994-040 (PHX), referred for possession of cocaine and heroin. Accepted for prosecution.

PROPERTY: None

WEAPONS: None

HERNANDEZ, Ruben Reg. No. 04880-112 (TRM). Pending.

»» STATISTICS ««

<u>Tort Claims:</u>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV
DEC											
Received	44	34	58	28							
Closed	55	30	105	25							
Reconsidered	0	0	0	0							
Pending	130	134	87	90							
Over 6 Mo.	0	0	3	4							

<u>Investigations Pending Over 60 Days:</u>												
BRN	DUB	LOM	LOF	LOS	NEL	PHX	SAF	SDC	SHE	TRM	TCN	TOTAL
1	0	1	0	0	7	0	0	1	3	0	13	

<u>FOI/PA:</u>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV
DEC											
Received	27	28	32	24							
Closed 44	16	28	29								
Pending	19	31	35	30							
30 days 6	8	10	9								

Over 6 Months - 0  
1996 Open - 1

FOI/PA Pending More than 30 Days:



BRN	DUB	LOM	LOF	LOS	NEL	PHX	SAF	SDC	SHE	TRM	TCN	TOTAL
	0	0	7	0	0	0	1	0	0	0	0	0

8

\*Does not include inmates transferred out of Region or CCMs.

Administrative Remedies:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
99	71	106	92								

Litigation:

DEC

Open Cases: 342 326 335 344

New Cases: 27 14 15 21

HC 15 8 8 17

FTCA 2 2 3 0

Bivens 7 4 3 3

Other 3 0 1 1

Closed 29 30 6 12

Lit Reports 10 10 9 9



U.S. Department of Justice

Federal Bureau of Prisons

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Dublin, California 94568

June 13, 1997

MEMORANDUM TO WALLACE H. CHENEY,  
ASSISTANT DIRECTOR/GENERAL COUNSEL

FROM: Harlan W. Penn, WRD  
Regional Counsel

SUBJECT: Monthly Report for May 1997

»» CASES OF INTEREST ««

**NINTH CIRCUIT MATTERS:**

Cort, et al. v. Crabtree, CA9 96-36226, 96-36228, 96-36231 (consolidated) order issued April 11, 1997 (opinion to follow) stating that inmates with 2113(a) convictions for unarmed bank robbery were not convicted of "crimes of violence" and thus were eligible for sentence reduction. Order directed BOP to exercise discretion in awarding sentence reduction. Opinion has now been received basing decision on policy change not applying retroactively.

**DISTRICT COURT MATTERS:**

**TRIALS/HEARINGS:**

Asberry v. Bureau of Prisons (LOS), EEO case involving former Lieutenant demoted for conducting an unauthorized investigation. Trial May 13, 1997 in Los Angeles; jury awarded plaintiff \$500,000.00. Hearing on award reduction May 17, 1997.

Low v. Clarke-Cain (BRN), Religious Freedom Restoration Act case in which inmate sought injunctive relief for practice of Satmar sect of Hasidic Judaism. Trial June 25, 1997 in Los Angeles.

**3621(e) LITIGATION:**

Birth v. Crabtree (SHE) Petitioner denied eligibility because of INS detainer, Motion to Dismiss filed since inmate has not completed DAP.

Gammage v. Clarke-Cain (BRN), program failure at CCC, petitioner asserts that his reduction cannot be rescinded.

McFarland v. Adams (SAF), 2113(a) bank robbery conviction. Inmate cites Cort and Downey as authority for reduction to be re-instated. Answer pending, have requested a stay in order for OM to be issued.

Marrese v. Hood (TCN), 2113(a) bank robbery conviction. May 29, 1997 Order by Judge Zapata (by Stipulation of parties) finds inmate eligible for sentence reduction per Cort but leaves sentence reduction to discretion of BOP.

Matthew v. Hayes (DUB), 2113(a) bank robbery conviction. Eligibility rescinded by Change Notice.

**RELIGION:**

Low v. Clarke-Cain (BRN), see above.

**MEDICAL MALPRACTICE TORT CLAIMS/LITIGATION REFERENCING GAO REPORT ON AGENCY MEDICAL CARE: None**

**CASES INVOLVING THE ENSIGN AMENDMENT: None**

ENVIRONMENTAL MATTERS: None

MISCELLANEOUS MATTERS:

Lucas, Mercadel, and Douthit v. White (DUB), three former female inmates allege they were sexually assaulted and harassed by male inmates and staff while housed in SHU at FDC Dublin. Third mediation session canceled. Representation granted for all defendants requesting. Mediation of claims continues.

CASES DISMISSED PURSUANT TO PRISON LITIGATION REFORM ACT: None

SETTLEMENTS:

Moracco v. Reno (SAF) USAO settled case for \$12,363 after plaintiff filed de novo trial demand (arbitration award was \$0). Tucson U.S. Attorney's Office will provide memorandum explaining action. Inmate shackled with leg irons and belly chain fell from institution van while being transported for medical procedure and suffered shoulder injury.

CRIMINAL CASE TRACKING

1. TOTAL CRIMINAL CASES REFERRED THIS MONTH: 21

Pre-indictment FBI investigation continuing for the prosecution of Inmate Roy Green, Reg. No. 21545-044, for the murder of SOS Scott Williams and assaults of four other staff at LOM.

Trial to be scheduled soon in U.S. v. Aaron Stone, 1995 hostage situation at LOM.

A referral for prosecution was made this month for LOS Correctional Officer for inmate sexual contact.

2. CRIMINAL CASES ACCEPTED FOR PROSECUTION AWAITING TRIAL/  
DISPOSITION:

ASSAULT: None

ESCAPE:

U.S. v. Betz (NEL) Inmate indicted for attempted escape and

attempted murder of post sentry on duty when inmate ran car through gate at air base. Trial date June 2, 1997.

**FRAUD/FORGERY:** None

**HOMICIDE:** None

**INTRODUCTION/POSSESSION OF CONTRABAND:**

U.S. v. Valdez (TCN) Prosecution of inmate's wife for introduction of narcotics scheduled for June 17, 1997.

**PROPERTY:** None

**WEAPONS:** None

**3. CRIMINAL MATTERS REFERRED (MATTERS DECLINED ARE NOTED)**

**ASSAULT:**

DERAS-VASQUEZ, Miguel, Reg. No. 73404-080 (TRM) - declined  
KIRK, Harriet, Reg. No. 91852-011 (DUB)  
THOMPSON, Karen, Reg. No. 98393-012 (DUB)  
HICKOX, Bobby, Reg. No. 94966-012 (LOS)  
SNIFFEN, Todd, Reg. No. 855158-022 (SHE)  
GARRINGTON, Reg. No. 94302-012 (PHX)  
NUNEZ, Reg. No. 10521-014 (PHX)  
TAPIA, Reg. No. 59229-065 (PHX)  
FERANDEZ, Reg. No. 09066-000 (PHX)  
LEZINE, Reg. No. 07299-085 (PHX)  
WILLIAMS, Reg. No. 01797-112 (PHX)

**ESCAPE:**

SERNERNO-CADRERA, Mario, Reg. No. 07953-112

**FRAUD/FORGERY:** None

**HOMICIDE:** None

**INTRODUCTION/POSSESSION OF CONTRABAND:**

STANFORD, Johnny, Reg. No. 07735-112 (LOS)  
VENEGAS, Reg. No. 45264-198 (PHX) - accepted

Weapons cases declined at LOM:  
 SERRANO, Elier, Reg. No. 06645-000  
 SWABY, Michael, Reg. No. 05115-045  
 SMITH, Anthony, Reg. No. 97346-012  
 BROOKS, Charles, Reg. No. 49230-066

Drug cases declined at LOM:  
 WALDRON, Brian, Reg. No. 16430-016  
 RITCH, Scott, Reg. No. 26474-008

PROPERTY: None

WEAPONS: None

» STATISTICS «

<u>Tort Claims:</u>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV
DEC											
Received	44	34	58	28	65						
Closed	55	30	105	25	26						
Reconsidered	0	0	0	0	1						
Pending	130	134	87	90	130						

Over 6 Mo.      0      5      3      4      6

Investigations Pending Over 60 Days:

BRN	DUB	LOM	LOF	LOS	NEL	PHX	SAF	SDC	SHE	TRM	TCN	TOTAL
0	5	8	1	0	0	7	0	0	2	0	23	

<u>FOI/PA:</u>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV
DEC											
Received	27	28	32	24	36						
Closed 44	16	28	29	30							
Pending	19	31	35	30	36						
30 days 6	8	10	9	15							

Over 6 Months - 0

1996 Open - 0

FOI/PA Pending More than 30 Days:

BRN	DUB	LOM	LOF	LOS	NEL	PHX	SAF	SDC	SHE	TRM	TCN	TOTAL
	0	0	10	0	1	0	0	0	0	0	2	0

13

\*Does not include inmates transferred out of Region or CCMs.

Administrative Remedies:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
99	71	106	92	108							

<u>Litigation:</u>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV
DEC											
Open Cases:	342	326	335	344	348						
New Cases:	27	14	15	21	14						
HC		15	8	8	17	11					
FTCA	2	2	3	0	1						
Bivens	7	4	3	3	2						
Other	3	0	1	1	0						
Closed	29	30	6	12	10						
Lit Reports	10	10	9	9	9						