



U.S. Department of Justice

Federal Bureau of Prisons

Dublin, California 94568

August 21, 1997

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

FROM: Harlan W. Penn (WRD)
Regional Counsel

SUBJECT: Monthly Report for July 1997

►► CASES OF INTEREST ◄◄

NINTH CIRCUIT MATTERS:

Jacks v. Crabtree, Anderson v. Crabtree, Mason v. Crabtree, Brown v. Crabtree (SHE)-Consolidated for Appeal.

Petition for re-hearing **En Banc** filed. Mandate stayed. The June 11th decision had upheld the Bureau of Prison's exercise of discretion to not reduce inmate sentences under 3621(e).

Sule v. Wade, et al (SHE) Conditions of transportation during transfer from institution following disturbance upheld as use of correctional judgement.

DISTRICT COURT 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. Mediation suspended while Plaintiffs consider settlement offer and injunctive proposals.

Galvez v. Adams (SAF), inmate alleges that his INS detainer, which precludes halfway house eligibility, is grounds for a sentence reduction of six months to equalize his penalty.

TRIALS/HEARINGS:

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 September 25, 1997 in Los Angeles.

U.S. v. Zubick (LOS), three hearings in Los Angeles re sentence computation/credit issues. Writ granted and inmate release ordered July 30, 1997.

3621(e) LITIGATION:

Gammage v. Clarke-Cain (BRN), CCC failure to secure employment.

Urquhart v. Clarke-Cain (BRN), two-level enhancement. Case is moot, as reduction already granted.

Warren v. Crabtree (SHE), inmate denied sentence reduction on original conviction offenses of 924(c) and 922(g).

Bird v. Floyd (PHX), inmate eligible for 3621(e) sentence reduction under *Cort* decision.

McFarland v. Hawk (SAF), inmate eligible for 3621(e) sentence reduction under *Davis* decision.

RELIGION:

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

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

Currier v. Hayes (DUB), FTCA action in which six staff members allege negligent administration of PPD test. Government's motion to dismiss filed August 1, 1997. Hearing on motion October 28, 1997.

CASES INVOLVING THE ENSIGN AMENDMENT: None

ENVIRONMENTAL MATTERS: None

MISCELLANEOUS MATTERS:

Angie Wiesman reported as the Supervisory Attorney at USP
Lompoc and Jay Furtick reported as the Attorney Advisor at FDC
Seatac.

CASES DISMISSED PURSUANT TO PRISON LITIGATION REFORM ACT: None

SETTLEMENTS: None

CRIMINAL CASE TRACKING

1. **TOTAL CRIMINAL CASES REFERRED THIS MONTH:** 8 California/all
declined. 6 non-California -all still pending

Pre-indictment FBI investigation continuing in 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 still to be scheduled in U.S. v. Aaron Stone, 1995
hostage situation at LOM.

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

ASSAULT: None

ESCAPE: None

FRAUD/FORGERY: None

HOMICIDE:

U.S. v. Carlos Miranda and Chris Anderson (LOM), 1993
murder of inmate James Jackson, trial scheduled for September
23, 1997 in Los Angeles.

INTRODUCTION/POSSESSION OF CONTRABAND:

Venegas Reg. No. 45264-198

Chavira Reg. No. 06994-040

PROPERTY: None

WEAPONS: None

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

ASSAULT: None

ESCAPE: None

FRAUD/FORGERY: None

HOMICIDE: None

INTRODUCTION/POSSESSION OF CONTRABAND:

LOM - 7 (all declined)

PHX - 1 pending, Inmate Bernard 97206-012, four balloons of marijuana

PROPERTY: None

WEAPONS:

LOM - 1 (declined)

»» STATISTICS ««

<u>Tort Claims:</u>		JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT
NOV	DEC										
Received	44	34	58	28	65	53	59				
Closed	55	30	105	25	26	67	63				
Reconsidered	0	0	0	0	1	0	1				
Pending	130	134	87	90	130	116	111				
Over 6 Mo.		0	5	3	4	6	5	1			

Investigations Pending Over 60 Days:

BRN	DUB	LOM	LOF	LOS	NEL	PHX	SAF	SDC	SHE	TRM	TCN	TOTAL
0	0	19	5	0	0	3	0	0	2	0	0	29

<u>FOI/PA:</u>		JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV
DEC												
Received	27	28	32	24	36	36	38					
Closed	44	16	28	29	30	38	39					
Pending	19	31	35	30	36	34	33					
30 days	6	8	10	9	15	9	4					

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
00	0	0	0	0	0	0	0	0	0	0	0	0

*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	83	90					

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

Open Cases:	342	326	335	344	348	352	369				
New Cases:	27	14	15	21	14	22	21				
HC		15	8	8	17	11	16	16			
FTCA	2	2	3	0	1	1	1				
Bivens		7	4	3	3	2	3	2			
Other	3	0	1	1	0	2	2				
Closed		29	30	6	12	10	18	4			
Lit Reports	10	10	9	9	9	8	12				



U.S. Department of Justice

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Dublin, California 94568

September 4, 1997

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

FROM: Harlan W. Penn (WRO)
Regional Counsel

SUBJECT: Monthly Report for August 1997

»» CASES OF INTEREST ««

NINTH CIRCUIT MATTERS:

No new decisions.

DISTRICT COURT 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. Mediation suspended while Plaintiffs consider settlement offer and parties exchange injunctive proposals.

TRIALS/HEARINGS:

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 September 23, 1997 in Los Angeles.

Louis Naidenoff v. Donna Stratman (SDC/PHX), Court-ordered

immediate release of inmate following hearing regarding imposition of Special Parole Term Violation sentence and resulting computation based upon Parole Commission Notice of Action.

U.S. v. Sylvia Valdez (TCN), inmate wife found guilty of introducing narcotics June 19, 1997. Motion for new trial scheduled for hearing September 10, 1997.

3621(e) LITIGATION:

No new decisions.

RELIGION:

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

Harvin v. BOP (LOF), Bivens action filed by inmate who alleges he is Native American and claims he was denied Sweat Lodge. Inmate is now permitted to sweat, but still refuses to dismiss the case. AUSA has filed motion to dismiss for failure to exhaust administrative remedies and is preparing motion for summary judgment arguing qualified immunity.

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

CASES INVOLVING THE ENSIGN AMENDMENT: None

ENVIRONMENTAL MATTERS:

BOP legal staff attended the Base Realignment and Closure meeting concerning the Lompoc property on August 13, 1997. The Army will not conduct further investigation or remediation into the wood dump site, the Air Force will not ask for the antenna site, and a recommendation was made that the firing range site be designated as "active", permitting the property to transfer without remediation.

MISCELLANEOUS MATTERS:

TRM Attorney Advisor Dennis Wong, PHX Supervisory Attorney Matt Carney, SHE Attorney Advisor Toni Brown, and Assistant Regional Counsel Valerie Stewart and Jeff Campbell will attend Regional DAP training on Tuesday, September 9, 1997.

LOM Supervisory Attorney Angie Wiesman and SET Attorney Advisor Jay Furtick will be TDY in this office the week of September 15, 1997.

CASES DISMISSED PURSUANT TO PRISON LITIGATION REFORM ACT: None

SETTLEMENTS: None

CRIMINAL CASE TRACKING

1. TOTAL CRIMINAL CASES REFERRED THIS MONTH: 17

NOTE: Pre-indictment FBI investigation continuing in 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.

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

ASSAULT: None

ESCAPE: None

FRAUD/FORGERY: None

HOMICIDE:

U.S. v. Carlos Miranda and Chris Anderson (LOM), 1993 murder of inmate James Jackson, trial scheduled for September 23, 1997 in Los Angeles.

U.S. v. Aaron Stone, 1995 hostage situation at LOM, trial to be scheduled.

INTRODUCTION/POSSESSION OF CONTRABAND: None

PROPERTY: None

WEAPONS: None

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

ASSAULT:

PHX - 6

SHE - 1

LOM - 1 declined

	99	71	106	92	108	83	90	102				
<u>Litigation:</u>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	
DEC												
Open Cases:	342	326	335	344	348	352	369	373				
New Cases:	27	14	15	21	14	22	21	12				
HC		15	8	8	17	11	16	16	9			
FTCA	2	2	3	0	1	1	1	1				
Bivens		7	4	3	3	2	3	2	2			
Other	3	0	1	1	0	2	2	0				
Closed		29	30	6	12	10	18	4	5			
Lit Reports	10	10	9	9	9	8	12	2				



U.S. Department of Justice

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November 3, 1997

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

FROM: Harlan W. Penn
Regional Counsel

SUBJECT: Monthly Report for September 1997

»» CASES OF INTEREST ««

NINTH CIRCUIT MATTERS:

DISTRICT COURT MATTERS:

Evans v. Reese, (DUB), Temporary Restraining Order/Preliminary Injunction granted September 26, 1997 to permit independent urinalysis/retest and suspend discipline proceedings. Hearing October 1, 1997 in San Francisco - order to remain in effect.

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. Mediation suspended while Plaintiffs consider settlement offer and parties exchange injunctive proposals.

Sevier v. Crabtree (SHE), inmate released from custody on August 28, 1997 after hearing before Judge Haggerty regarding whether Sevier's return as halfway house failure was grounds for revocation of DAP early release date. Still pending Court's written order. Toni Brown Legal staff.

U.S. v. Lacy (DUB), order issued to permit defendant access to CD ROM containing wiretap conversations. Plea agreement reached making order moot.

U.S. v. Twitty (PHX), four staff subpoenaed as witnesses by Federal Public Defender at detention hearing on criminal charges resulting from threats against staff and staff's family. Inmate detained, two Count grand jury indictment returned on September 25, 1997. Jane Haschemeyer Legal staff.

Wilson v. Crabtree (SHE), hearing September 26, 1997 on Emergency Motion for Immediate Release for inmate who was returned to SHE from halfway house as a DAP program failure. Judge Haggerty ruled that early release date vested prior to halfway house participation, because not until CN-01 was community transition clearly indicated as a required part of the DAP. Court held that because inmate had entered the DAP in March 1996, Cort applied and BOP could not revoke the early release date. Wilson was ordered immediately released. Toni Brown Legal staff, Dr. Gary George, Regional DAP Coordinator called as expert witness.

TRIALS/HEARINGS:

Kalka and Mitchell v. Megathlin, et al (TCN), depositions of staff at TCN and Warden Pontesso at PHX took place September 12-15, 1997 prior to close of discovery in this Bivens case.

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 held September 29-30, 1997 in Los Angeles, but recessed for settlement discussions. Previously the Court ordered Low placed in a halfway house for High Holidays.

U.S. v. Alex Aguirre, et al. (LOS), sentencing September 1-5, 1997 of twelve Mexican Mafia defendants; ten life sentences imposed.

U.S. v. Sylvia Valdez (TCN), hearing on FPD's Motion for New Trial after inmate's wife was convicted of introduction of controlled substances (heroin and cocaine) in violation of 18 U.S.C. 1791. FPD contended that government had failed to prove its case because language at 28 C.F.R. 6.1 required proof that Warden had not consented to the introduction. Judge Zapata disagreed and sentenced Valdez to 5 years probation (1st offense, 3 children).

3621(e) LITIGATION:

Archer v. Hayes (DUB), 922(g)(3) and 924(a) convictions.

Floyd v. Adams (SAF), "old law" inmate challenging failure to award early release incentive after he completed the 500 hour and institution transitional portion of DAP.

Graham v. Crabtree (SHE), inmate alleges early release vested with completion of the 500 hours portion of DAP, and that failure to complete community transition portion of DAP is not a bar to early release.

Harmon v. Crabtree (SHE), habeas challenging denial of early release eligibility due to prior history for robbery.

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:

NOV received at TCN for autowash discharge water was successfully negotiated after contact with Pima County Compliance Office. Institution had previously received verbal approval for operation. Excellent coordination between institution and Central Office staff.

NOV received at PHX regarding underground fuel storage tanks. All non-compliance items have been resolved and proof of compliance will resolve the NOV.

PHX also continuing discussions with Del Webb regarding their proposal for a regional waste water treatment plant (Del Webb has a large development planned near the institution).

MISCELLANEOUS MATTERS:

Honors Attorney Abigail Brown arrived for duty on September 15, 1997.

Institution Legal staff Toni Brown, Matt Carney and Dennis Wong attended Regional DAP Coordinator's Training on September 9 with Regional Legal staff.

Jay Furtick, MDC Seatac, and Angie Wiesman, LOM, participated in training at WRO September 15, 16, & 17.

CASES DISMISSED PURSUANT TO PRISON LITIGATION REFORM ACT: None
SETTLEMENTS: None

CRIMINAL CASE TRACKING

1. TOTAL CRIMINAL CASES REFERRED THIS MONTH: 14

NOTE: Pre-indictment FBI investigation continuing in 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.

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

ASSAULT: None

ESCAPE: None

FRAUD/FORGERY: None

HOMICIDE:

U.S. v. Carlos Miranda and Chris Anderson (LOM), 1993 murder of inmate James Jackson, trial began September 23, 1997 in Los Angeles.

U.S. v. Aaron Stone (LOM), 1995 hostage situation. Plea agreement reached, sentencing scheduled for November 10, 1997.

INTRODUCTION/POSSESSION OF CONTRABAND:

U.S. v. Chavira (PHX), trial not yet scheduled.

U.S. v. Greenwood and Cain (PHX), trial not yet scheduled.

U.S. v. Venegas (PHX), trial not yet scheduled.

PROPERTY: None

WEAPONS: None

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

ASSAULT:

Joiner, Cynthia, Reg. No. 03751-025 (DUB), assault on staff

Assault cases from PHX declined:

Garcia, Carlos, Reg. No. 32800-080, assault on inmate
Cadotte, Douglas, Reg. No. 40157-008, assault on staff
Mitchell, Rayfield, Reg. No. 60839-065, assault on staff

Assault (inmate fight) cases from TRM declined:

Magnum, Lawrence, Reg. No. 53865-097
Jones, Darryl Lee, Reg. No. 14850-116
Rosales, Luis, Reg. No. 07280-041
Sparks, Charles, Reg. No. 08429-112
Knox, Gemora, Reg. No. 06530-112
Webb, Marty, Reg. No. 06015-112
Livingston, Matthew, Reg. No. 49176-008
Gutierrez, Amador, Reg. No. 11772-051

ESCAPE:

Hanson, Teresa, Reg. No. 27158-013 (DUB furlough transfer)

FRAUD/FORGERY: None

HOMICIDE: None

INTRODUCTION/POSSESSION OF CONTRABAND:

Veal, Bruce, Reg. 02517-089

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	53	59	57	57			
Closed	55	30	105	25	26	67	63	35	21			
Reconsidered		0	0	0	0	1	0	1	2	0		
Pending	130	134	87	90	130	116	111	131	167			
Over 6 Mo.		0	5	3	4	6	5	1	2	4		
<u>Investigations Pending Over 60 Days:</u>												
BRN	DUB	LOM	LOF	LOS	NEL	PHX	SAF	SDC	SHE	TRM	TCN	TOTAL
0	0	21	1	0	0	3	1	3	0	1	0	30
<u>FOI/PA:</u>		JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV

DEC

Received	27	28	32	24	36	36	38	21	19
Closed	44	16	28	29	30	38	39	26	23
Pending	19	31	35	30	36	34	33	28	24
30 days	6	8	10	9	15	9	4	9	13

Over 6 Months - 0

FOI/PA Pending More than 30 Days on Sept. 30, 1997:

BRN	DUB	LOM	LOF	LOS	NEL	PHX	SAF	SDC	SHE	TRM	TCN	TOTAL
	0	0	11	0	0	0	0	0	0	1	0	0

12

*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	83	90	102	102			

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

Open Cases:	342	326	335	344	348	352	369	376	387		
New Cases:	27	14	15	21	14	22	21	12	16		
HC		15	8	8	17	11	16	16	9	9	
FTCA	2	2	3	0	1	1	1	1	0		
Bivens		7	4	3	3	2	3	2	2	1	
Other	3	0	1	1	0	2	2	0	5		
Closed		29	30	6	12	10	18	4	5	5	
Lit Reports	10	10	9	9	9	8	12	2	6		



U.S. Department of Justice

Federal Bureau of Prisons

Dublin, California 94568

November 6, 1997

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

FROM: Harlan W. Penn, Regional Counsel
SUBJECT: Monthly Report for October 1997

»» CASES OF INTEREST ««

NINTH CIRCUIT MATTERS:

Jacks v. Crabtree, Anderson v. Crabtree, Mason v. Crabtree
9th Cir.Nos. 97-35029, 97-35030, 97-35039 (SHE) Public Defender's
Petition for Rehearing was denied on October 14, 1997. The
decision of the three judge panel, written by Judge Kosinski
which upheld the Director's discretion to include prior
convictions for violent crimes as eligibility criteria for the
DAP early release incentive. The decision also held that
3621(e)(2)(B) did not create a liberty interest in the one-year
sentence reduction.

DISTRICT COURT MATTERS:

Evans v. Reese, (DUB), Temporary Restraining Order/Preliminary
Injunction granted September 26, 1997 to permit independent
urinalysis/retest and suspend discipline proceedings. Hearing
October 1, 1997 and subsequent Order October 8 - order remains in
effect. Inmate provided new urine/blood on October 16th.

Graham v. Crabtree (SHE), 3621(e) year off was granted to inmate
who failed community transition component and was returned to

closer custody. In a Hearing on Motion for Immediate Release, Court stated that inmate did not have notice of requirement to complete third phase until CN-01 to 5530.10 was issued, and therefore

Cort v. Crabtree requires original eligibility determination to stand. Regional Counsel is seeking appeal of the Order. Appeal memorandum to be submitted.

Jacobson v. Urriste Bivens case filed in Utah against staff at MDC-LA, FPC NEL and FCI FLO by inmate now at Ft. Worth, alleging deliberate indifference to medical needs, inadequate treatment of diabetes and resulting disorders/conditions. Plaintiff was a practicing M.D. prior to conviction.

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. Mediation suspended while Plaintiffs consider settlement offer and parties exchange injunctive proposals.

Sevier v. Crabtree (SHE) 3621(e). Order granting inmate/petitioner's Motion to Enforce Judgment, and holding that inmate who failed the community transitional services portion of the DAP was still eligible for year-off sentence reduction, but only because of the language agreed to in the Stipulated Order entered into previously. Inmate was released on bail after the August 24, 1997 hearing in this case, pending the issuance of the Order. The importance of the decision is that it holds the DAP consists of three phases, all of which must be completed in order to successfully complete DAP and be eligible for year-off. "Stipulated Orders" are unique to District of Oregon 3621(e) litigation.

Sitton v. Adams (SAF), 3621(e) Dismissed as moot after current conviction determined not a crime of violence per Downey, and inmate received year-off sentence reduction.

Vaccaro v. Dobre (NEL), MSJ filed Bivens case against staff at FPC Nellis for deliberate indifference to medical needs (in 1990) after 9th Cir. reversed and remanded District Court dismissal of the case.

TRIALS/HEARINGS:

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 held September 29-30, 1997 in Los Angeles, but recessed for settlement discussions. Previously the Court ordered Low placed in a halfway house for High Holy Days.

3621(e) LITIGATION:

DUB petitions re INS detainer/exclusion from CCC placement:

Andalon v. Hayes
Arboleda v. Hayes
Ocoro v. Hayes
Onate v. Hayes

RELIGION:

Low v. Clarke-Cain (BRN), see above.
Harvin v. BOP (LOF), settled, see below.

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

CASES INVOLVING THE ENSIGN AMENDMENT: None

CASES DISMISSED PURSUANT TO PRISON LITIGATION REFORM ACT:

Walter Smith v. H. Harrison, M.D. (TCN) No service, Court dismissed Bivens action alleging inadequate medical care, based on plaintiff's failure to pay the \$120.00 filing fee, pursuant to PLRA.

ENVIRONMENTAL MATTERS:

LOM: Base Realignment and Closure conference teleconference on LOM Wood Dump Site held October 9, 1997.

PHX: Notice of Violation issued regarding the water treatment lagoons. Letter regarding violations and timetable for remedy sent, no public posting necessary.

TCN: Notice of Violation issued for a vehicle washing station which had previously been inspected and approved. Coordinated efforts of Inst. Staff, Region and Commercial Law branch resulted in an informal resolution of the matter.

SETTLEMENTS:

Harvin v. BOP (LOF), Bivens action filed by inmate who alleges he is Native American and claims he was denied Sweat Lodge. Inmate stipulated with Government that he was permitted to sweat, has now been released. No admission of liability, no financial compensation.

CRIMINAL CASE TRACKING

1. TOTAL CRIMINAL CASES REFERRED THIS MONTH: 23

NOTE: Pre-indictment FBI investigation continuing in the prosecution for the murder of SOS Scott Williams and assaults of four other staff at LOM.

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

ASSAULT:

U.S. v. Twitty, (PHX) assault on staff, indicted last month, now involved in pleas agreement with U.S. Attys Office.

ESCAPE: None

FRAUD/FORGERY: None

HOMICIDE:

U.S. v. Carlos Miranda and Chris Anderson (LOM), 1993 murder of inmate James Jackson. Trial began September 23, 1997 and ended in hung jury - rescheduled for November 18, 1997.

U.S. v. Aaron Stone (LOM), 1995 hostage situation. Plea agreement reached, sentencing November 10, 1997.

INTRODUCTION/POSSESSION OF CONTRABAND:

U.S. v. Chavira (PHX), trial not yet scheduled.

U.S. v. Greenwood and Cain (PHX), trial not yet scheduled.

U.S. v. Venegas (PHX), trial not yet scheduled.

PROPERTY: None

WEAPONS: None

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

ASSAULT:

Alvina, Reg. No. 02519-112 (LOM) Codes 224, 109 declined

Barker-Hernandez, Reg. No. 14318-004 (SHE)

Cain, Reg. No. 66049-198 (LOF), Code 101 declined

Dunn, Reg. No. 30058-037 (LOM), Codes 101A, 104,
109, 307 accepted

Ferrell, Reg. No. 29531-048 (PHX) pending

Herrera, Esequel, Reg. No. 44302-080 (SHE) pending

Johnson, Reg. No. 01871-070 (LOM) Codes 101, 198 declined

Olivares, Reg. No. 27117-013 (PHX) pending

Patterson, Jerney, Reg. No. 59890-065 (SHE) pending

Rosado, Reg. No. 39331-066 (LOM) Codes 101A, 198, 307
declined

Shadzad, Reg. No. 07476-112 (LOM) declined

Williams, Reg. No. 01797-112 (PHX) pending

Yarborough, Reg. No. 82470-012 (DUB) declined

ESCAPE:

Custard, Reg. No. 02728-031 (LOM) pending

Galindo, Reg. No. 03104-112 (LOM) accepted

FRAUD/FORGERY: None

HOMICIDE:

Colasanti, Reg. No. 60983-065 (LOM) declined

INTRODUCTION/POSSESSION OF CONTRABAND:

Hawkins, Reg. No. 06077-097 (LOM) declined

Orozco, Reuben (staff - LOS) pending

Smallwood, Reg. No. 42708-080 (LOM) declined

Walmsley, John, Reg. No. 58274-065 (SHE)

PROPERTY: None

WEAPONS:

Grover, Reg. No. 02040-112 (LOM) declined

Linningham, Reg. No. 60684-080 (LOM) declined

Roque-Baranco, Reg. No. 09696-000 (LOM) pending

▶▶ STATISTICS ◀◀

<u>Tort Claims:</u>		JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT
NOV	DEC										
Received	44	34	58	28	65	53	59	57	57	46	
Closed	55	30	105	25	26	67	63	35	21	89	
Reconsidered	0	0	0	0	1	0	0	1	2	0	0
Pending	130	134	87	90	130	116	111	131	167	124	
Over 6 Mo.		0	5	3	4	6	5	1	2	4	3

Investigations Pending Over 60 Days:

BRN	DUB	LOM	LOF	LOS	NEL	PHX	SAF	SDC	SHE	TRM	TCN	TOTAL
0	2	15	0	0	0	7	1	2	0	0	0	26

<u>FOI/PA:</u>		JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV
DEC												
Received	27	28	32	24	36	36	38	21	19	37		
Closed	44	16	28	29	30	38	39	26	23	31		
Pending	19	31	35	30	36	34	33	28	24	30		
30 days	6	8	10	9	15	9	4	9	13	0		

Over 6 Months - 0

FOI/PA Pending More than 30 Days on Sept. 30, 1997:

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

*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	83	90	102	102	121		

Litigation:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	
DEC											
Open Cases:	342	326	335	344	348	352	369	376	387	396	
New Cases:	27	14	15	21	14	22	21	12	16	20	
HC		15	8	8	17	11	16	16	9	9	12
FTCA	2	2	3	0	1	1	1	1	0	3	
Bivens		7	4	3	3	2	3	2	2	1	3

Other	3	0	1	1	0	2	2	0	5	2	
Closed		29	30	6	12	10	18	4	5	5	11
Lit Reports	10	10	9	9	9	8	12	2	6	14	



U.S. Department of Justice

Federal Bureau of Prisons

Western Regional Office
Dublin, California 94568

December 8, 1997

MEMORANDUM TO WALLACE H. CHENEY
ASSISTANT DIRECTOR/GENERAL COUNSEL

FROM: Harlan W. Penn, Regional Counsel
SUBJECT: Monthly Report for November 1997

»» CASES OF INTEREST ««

NINTH CIRCUIT MATTERS:

Montano-Figueroa v. Crabtree, CV97-1108 (District of Oregon). Notice of Appeal filed 11/19/97. District Court denied inmate's habeas petition challenging the IFRP with a finding that IFRP is constitutional because it is voluntary.

Webber v. Crabtree, CV97-493 (District of Oregon). Notice of Appeal filed October 22, 1997. District Court granted summary judgment for BOP upholding the ban on sale of tobacco products at FPC Sheridan.

Blum v. Stauffer, CIV96-863 PHX (District of Arizona) Ninth Circuit affirmed District Court's dismissal.

DISTRICT COURT MATTERS:

Evans v. Reese (DUB), Temporary Restraining Order/Preliminary Injunction granted September 26, 1997 to permit independent urinalysis/retest. Stay of discipline proceedings lifted November 21, 1997. A DHO Hearing was held on November 25, 1997.

Figueroa v. Macy/U.S. (DUB), Consolidated Bivens/FTCA actions involving death of former DUB female inmate from stroke following transfer to FMC Carswell in 1995. Settlement conference scheduled for December 12, 1997. No offer will be made.

Jacobson v. Urriste (NEL), Bivens case filed in Utah against staff at LOS, NEL and FLF by inmate now at FTW, alleging deliberate indifference to medical needs, inadequate treatment of diabetes and resulting disorders/conditions. Plaintiff was a practicing M.D. prior to conviction.

Lucas, Mercadel, and Douthit v. White (DUB), Bivens/FTCA cases in which three former female inmates allege they were sexually assaulted and harassed by male inmates and staff while housed in SHU at FDC Dublin. Mediation suspended while Plaintiffs consider settlement offer and parties exchange injunctive proposals.

Vaccaro v. Dobre (NEL), Bivens case against staff at NEL for deliberate indifference to medical needs in 1990. Motion for Summary Judgment filed after 9th Circuit reversed and remanded District Court dismissal of the case, holding service of U.S. Attorney is not necessary in a Bivens case. Government has filed a Motion to Dismiss on numerous grounds, which is under submission.

TRIALS/HEARINGS:

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 held September 29-30, 1997 in Los Angeles, but recessed for settlement discussions; scheduled to resume February 10, 1998.

RELIGION:

Houston v. Fitzpatrick (LOF), Bivens action filed by Nation of Islam inmate alleging denial of First and Fourteenth Amendment rights in allocation of Chapel resources, rejection of incoming publications, housing assignments.

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

CASES DISMISSED PURSUANT TO PRISON LITIGATION REFORM ACT:

Huckleberry v. Adams CIV 96-714, Dist. Arizona. Judge Roll dismissed for failure to pay filing fees.

ENVIRONMENTAL MATTERS: None

SETTLEMENTS: None

CRIMINAL CASE TRACKING

1. TOTAL CRIMINAL CASES REFERRED THIS MONTH:

NOTE: Grand Jury proceedings continuing in the murder of SOS Scott Williams and assaults of four other staff at LOM.

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

ASSAULT: None

ESCAPE: None

FRAUD/FORGERY: None

HOMICIDE:

U.S. v. Matt Lindsey (PHX), prosecution of inmate Matt Lindsey, Register No. 02331-061 for November 1, 1997 murder of inmate Bernard Jackson, Register No. 41722-008. AUSA Pat Snyder is assigned to prosecute the case.

U.S. v. Theodore Kaczynski, UNABOMBER trial now in jury selection in Sacramento. DUB legal staff has responded to all defense subpoenas.

U.S. v. Carlos Miranda and Chris Anderson (LOM), 1993 murder of inmate James Jackson. Trial began September 23, 1997 and ended in hung jury; new trial in progress.

U.S. v. Aaron Stone (LOM), 1995 hostage situation. Plea agreement reached, sentencing still to be scheduled.

INTRODUCTION/POSSESSION OF CONTRABAND:

U.S. v. Chavira (PHX), trial not yet scheduled.

U.S. v. Greenwood and Cain (PHX), trial not yet scheduled.

U.S. v. Venegas (PHX), trial not yet scheduled.

PROPERTY: None

WEAPONS: None

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

ASSAULT:

DUB - 2 inmate/staff assault referrals declined
1 inmate/staff assault referral pending
LOM - 1 referral declined (Norris, Reg. No. 01604-087)

SDC - 2 inmate/inmate sexual assault referrals
declined

TRM - 1 inmate/inmate referral declined

SHE - 1 inmate/inmate referral declined

PHX - 1 inmate/inmate referral declined

ESCAPE:

LOM - 1 attempt referral declined

FRAUD/FORGERY: None

HOMICIDE:

LOM - 1 attempt referral pending

INTRODUCTION/POSSESSION OF CONTRABAND:

LOM - 2 possession referrals pending

PROPERTY: None

WEAPONS:

LOM - 4 referred/2 declined

» STATISTICS «

<u>Tort Claims:</u>	JANFEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Received	44	34	58	28	65	53	59	57	57	46	35
Closed	55	30	105	25	26	67	63	35	21	89	14
Reconsidered	0	0	0	0	1	0	1	2	0	0	1
Pending	130	134	87	90	130	116	111	131	167	124	144
Over 6 Mo.	0	5	3	4	6	5	1	2	4	3	7

Investigations Pending Over 60 Days:

	BRN	DUB	LOM	LOF	LOS	NEL	PHX	SAF	SDC	SHE	TRM	TCN
TOTAL	0	3	9	1	0	1	0	1	2	0	1	0
18												

<u>FOI/PA:</u>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Received	27	28	32	24	36	36	38	21	19	37	37	
Closed	44	16	28	29	30	38	39	26	23	31	41	
Pending	19	31	35	30	36	34	33	28	24	30	26	
30 days	6	8	10	9	15	9	4	9	13	0	0	

Over 6 Months - 0

FOI/PA Pending More than 30 Days on Nov. 28, 1997:

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

*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	83	90	102	102	121	74	

<u>Litigation:</u>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Open Cases:	342	326	335	344	348	352	369	376	387	396	400	
New Cases:	27	14	15	21	14	22	21	12	16	20	16	
HC		15	8	8	17	11	16	16	9	9	12	

FTCA	2	2	3	0	1	1	1	1	0	3	1
Bivens		7	4	3	3	2	3	2	2	1	3
	1										
Other	3	0	1	1	0	2	2	0	5	2	0
Closed		29	30	6	12	10	18	4	5	5	11
	12										
Lit Reports	10	10	9	9	9	8	12	2	6	14	6



U.S. Department of Justice

Federal Bureau of Prisons

WRD

Dublin, California 94568

January 13, 1998

MEMORANDUM TO WALLACE H. CHENEY
ASSISTANT DIRECTOR/GENERAL COUNSEL

FROM: Harlan W. Penn, Regional Counsel
SUBJECT: ~~Monthly Report for December 1997~~

»» CASES OF INTEREST ««

NINTH CIRCUIT MATTERS:

Harris v. Turner, et al (NEL) CA9 dismissed appeal for lack of jurisdiction. Appeal of District Court's decision to dismiss Complaint with leave to amend and dismissal of several Bivens defendants from original complaint.

Sevier v. Crabtree (SHE) 3621(e) case. Notice of Appeal filed challenging District Court's Order that eligibility is determined by Stipulated Order, regardless of inmate's ability to complete all three phases of DAP.

Wilson v. Crabtree (SHE) 3621(e) case. Notice of Appeal filed challenging District Court's Order finding that halfway house component was not adequately noticed as an early release eligibility requirement until CN-01 was issued 5/17/1996.

DISTRICT COURT MATTERS:

Berry v. Crabtree, Frank v. Crabtree (SHE), Habeas cases, both challenging 3621(e) early release ineligibility due to

18 U.S.C. §924(c) conviction.

Cleary v. Benov (SAF), 3621(e) case, in which District Court has held that BOP must find an "old law" inmate "eligible" for early release after completion of DAP, only because all DAP paperwork notes that inmate is "old law" (estoppel theory), and inmate was never advised that he was not otherwise eligible. Order also clearly states that actual decision to grant early release is in discretion of the Director and Court has no authority to order early release. Inmate is now in halfway house completing community transition component, mandatory release date will occur simultaneously with CCC completion.

Figueroa v. Macy/U.S. (DUB), Consolidated Bivens/FTCA actions involving death of former DUB female inmate from stroke following transfer to FMC Carswell in 1995. U.S. Attorney's Office urging reconsideration of our position that no settlement offer should be made. Awaiting further comments from government expert physician.

Johnson v. Crabtree (SHE), 3621(e) case. District Court granted habeas for inmate finding that 18 U.S.C. 842(h) is not a crime of violence and issue of eligibility is ripe upon notification of provisional eligibility determination. Motion for reconsideration filed on issue of ripeness

Lucas, Mercadel, and Douthit v. White (DUB), Bivens/FTCA cases in which three former female inmates allege they were sexually assaulted and harassed by male inmates and staff while housed in SHU at FDC Dublin. Mediation suspended while Plaintiffs consider settlement offer and parties exchange injunctive proposals.

U.S. v. Artt (DUB), Defense counsel filed motion to return inmate to DUB from Alameda County Jail. Judge merely recommended the transfer. Two co-defendants are now housed at DUB and inmate is subject to deportation. Warden has agreed to the transfer.

Vaccaro v. Dobre (NEL), Bivens case against staff at NEL for deliberate indifference to medical needs in 1990. Previously reported, still under submission.

TRIALS/HEARINGS:

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 held September 29-30, 1997 in Los Angeles, but recessed for settlement discussions; scheduled to resume February 10, 1998.

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

CASES DISMISSED PURSUANT TO PRISON LITIGATION REFORM ACT:

Huckleberry v. Adams, (SAF) District Court dismissed for failure to pay \$120 filing fee.

ENVIRONMENTAL MATTERS: None

SETTLEMENTS:

Janice West v. U.S. (DUB), FTCA slip and fall case involving broken walkway at DUB settled by U.S. Attorney's Office for \$50,000.00.

CRIMINAL CASE TRACKING

1. TOTAL CRIMINAL CASES REFERRED THIS MONTH: 13

NOTE: Grand Jury proceedings continuing in the murder of SOS Scott Williams and assaults of four other staff at LOM.

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

ASSAULT: None

ESCAPE: None

FRAUD/FORGERY: None

HOMICIDE:

U.S. v. Theodore Kaczynski, UNABOMBER trial in Sacramento. DUB legal staff has responded to all prosecution requests and defense subpoenas.

U.S. v. Matt Lindsey (PHX), prosecution of inmate

Matt Lindsey, Register No. 02331-061 for November 1, 1997 murder of inmate Bernard Jackson, Register No. 41722-008. AUSA Pat Snyder is assigned to prosecute the case.

U.S. v. Carlos Miranda and Chris Anderson (LOM), 1993 murder of inmate James Jackson. Retrial began November 18, 1997, resulting in jury verdict of guilt for manslaughter December 15, 1997. Sentencing February 23, 1998.

U.S. v. Aaron Stone (LOM), 1995 hostage situation. Plea agreement reached. Sentencing January 23, 1998.

INTRODUCTION/POSSESSION OF CONTRABAND:

U.S. v. Chavira (PHX), trial not yet scheduled.

U.S. v. Greenwood and Cain (PHX), trial not yet scheduled.

U.S. v. Venegas (PHX), trial not yet scheduled.

PROPERTY: None

WEAPONS: None

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

ASSAULT:

Winston, Reg. No. 19697-016 (LOM)
Pardon-Guerra, Reg. No. 09418-000 (SHE)
Cantillo, Reg. No. 13148-018 (SHE)
McGee, Reg. No. 97157-012 (SHE)
Villegas, Reg. No. 84226-011 (PHX) - declined

ESCAPE:

Custard, Reg. No. 02728-031 (LOM, attempt) - declined

FRAUD/FORGERY: None

HOMICIDE:

Colasanti, Reg. No. 60983-065 (LOM, attempt) - declined

INTRODUCTION/POSSESSION OF CONTRABAND:

Paniagua, Reg. No. 09267-112 (LOS)

