



**U.S. Department of Justice**

**Federal Bureau of Prisons**

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*Dublin, California 94568*

March 11, 1998

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

**FROM:** Harlan W. Penn, Regional Counsel  
**SUBJECT:** Monthly Report for February 1998

»» CASES OF INTEREST ««

**SUPREME COURT:**

James Jacks v. Crabtree, et al., (SHE) petition for writ of certiorari was filed January 7, 1998 by the Federal Public Defender/Oregon in this 3621(e) action, challenging BOP's use of prior criminal convictions in eligibility determinations for early release. Awaiting notice of status.

**NINTH CIRCUIT MATTERS:**

Grafman v. Hood (TCN) Government filed Notice of Appeal of District Court's decision ordering USPC to reinstate forfeiture of street time on Special Parole Term violator.

Sevier v. Crabtree (SHE) 3621(e) case. Update: DOJ declined appeal.

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. Update: DOJ declined appeal. 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 May 17, 1996.

**DISTRICT COURT MATTERS:**

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. Trial date May 4, 1998.

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. Motion was denied January 5, 1998. Awaiting Solicitor General decision regarding appeal.

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. Settlement agreement executed February 24, 1998.

Newson v. U.S.A. (NEL), \$6,000,000 FTCA case in which wife and husband sue U.S. for injuries she suffered in September 1994 auto accident involving inmate driver. Accident occurred when blowing sand on freeway resulted in six car rear-end pile up, in which Newson was driving the first vehicle. All parties are now in federal district court due to third-party complaint filed by U.S.A., in order to seek contribution from other defendants. BOP liability is clear under Nevada tort law, damages is the main issue. Matter now in discovery, depositions to be scheduled in May.

**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. Settlement discussions ongoing. Trial resumption postponed.

U.S. v. Mark Thierman (TCN) Three TCN staff appeared as witnesses for U.S. at criminal forfeiture case. Staff prepared, assisted by Paralegal Tom Byron.

State of Oregon v. Billy Lee Oatney (TCN) Material witness hearing for five TCN staff who have been named as material witnesses in penalty phase of a capital murder case in Oregon.

Hearing on February 23, 1998 resulted in one staff being excused. Testimony will take place March 13 or March 17, 1998. Paralegal Tom Byron assisted AUSA Gerry Frank at hearing.

**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:** None

**ENVIRONMENTAL MATTERS:**

PHX - Possible soil contamination at Firing Range. Firing Range is used by numerous agencies. Vehicles are used as targets in some practices. Vehicle recently used as target was not drained of fluids before target practice, although soil tests conducted were negative for anti-freeze, results from other tests are still pending. Review of use of vehicles as targets is underway.

**SETTLEMENTS:**

Lucas v. White, see above. \$500,000 FTCA settlement to be shared among three plaintiffs in private settlement agreement with training and other actions to be taken by the Bureau of Prisons.

**CRIMINAL CASE TRACKING**

**1. TOTAL CRIMINAL CASES REFERRED THIS MONTH:15**

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:**

U.S. v. Richard Lewis (TCN) 18 USC 1001 prosecution

against inmate Lewis, register No. 28914-048, for soliciting documents to falsify and falsifying documents provide documentation of history of substance abuse to support his application to DAP program for purpose of becoming eligible for early release incentive award.

**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. 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 March 23, 1998.

U.S. v. Aaron Stone (LOM), 1995 hostage situation. Plea agreement reached. Sentencing March 30, 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

**SEX OFFENSES:**

U.S. v. Phyllis Goree (PHX), Prosecution against former staff for engaging in sex with inmate and introduction of drugs into a prison.

**WEAPONS:** None

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

**ASSAULT:**

LOM - Two multiple inmate assaults referred.

PHX - One staff assault referred (declined)

One inmate assault referred (declined)

SHE - Two staff assaults referred  
One inmate assault referred

**ESCAPE:** None

**FRAUD/FORGERY:**

TRM - alteration of incoming money orders referred to U.S. Postal Service.

**HOMICIDE:** None

**INTRODUCTION/POSSESSION OF CONTRABAND:**

LOS - three attempted introduction of marijuana visiting room cases referred.

SDC - heroin possession case accepted.

SDC - attempted introduction of marijuana visiting room case pending indictment.

**PROPERTY:** None

**SEX OFFENSES:**

LOS - inappropriate staff/inmate relationship under OIG/FBI investigation.

**WEAPONS:** None

▶▶ STATISTICS ◀◀

<u>Tort Claims:</u>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	
Received	34	40											
Closed	38	64											
Reconsidered		0	0										
Pending	110		86										
Over 6 Mo.	1	3											
<u>Investigations Pending Over 60 Days:</u>													
	BRN	DUB	LOM	LOF	LOS	NEL	PHX	SAF	SDC	SHE	TRM	TCN	
TOTAL	0	7	1	0	0	0	1	0	0	1	1	0	11
<u>FOI/PA:</u>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	



<u>Litigation:</u>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV
DEC											
Open Cases:	294*	303									
New Cases:	21	21									
HC		19	17								
FTCA		1	1								
Bivens		4	2								
Other	0	1									
Closed		134	12								
Lit Reports	13	15									

*\*Total Number of Open Cases Reflects LMS and PACER Reviews with Institution Legal Staff Conducted since Last Report*



**U.S. Department of Justice**

**Federal Bureau of Prisons**

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*Dublin, California 94568*  
April 10, 1998

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

**FROM:** Harlan W. Penn, Regional Counsel  
**SUBJECT:** Monthly Report for March 1998

►► CASES OF INTEREST ◄◄

**SUPREME COURT:**

James Jacks v. Crabtree, et al., (SHE) petition for writ of certiorari was filed January 7, 1998 by the Federal Public Defender/Oregon in this 3621(e) action, challenging BOP's use of prior criminal convictions in eligibility determinations for early release. Awaiting notice of status.

**NINTH CIRCUIT MATTERS:**

Furguiel v. Benov (TRM), affirmed, that prior armed robbery conviction renders inmate ineligible for 3621e reduction. The Court found no Cort v. Crabtree retroactivity issue, as inmate was never eligible and subsequent regulations and policy did not alter that status.

**DISTRICT COURT MATTERS:**

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. Bivens defendant Macy dismissed from action. Final settlement conference April 29, 1998, FTCA trial May 26, 1998.

Hermanson v. Hood (TCN), Bivens complaint alleging 1st Amendment



violations due to enforcement of Zimmer Amendment provisions prohibiting displaying NC-17, R & X rated movies to inmates. Court dismissed defendants Hawk & Reno and BOP.

Warren v. Crabtree (SHE) 3621(e) case. Government filed Motion to Dismiss asserting BOP argument that habeas corpus petition challenging the denial of a 3621(e) early release was not ripe for judicial review until inmate had completed all three phases of the DAP program. Court denied, and found that cases are ripe for judicial review as soon as BOP makes initial, prospective eligibility determination.

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. Motion was denied January 5, 1998. Solicitor General denied BOP request for appeal.

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. Settlement agreement executed February 24, 1998.

Ben Kalka & Ken Mitchell v. John Megathlin, et al (TCN) Bivens case dismissed by Judge Browning in which inmate Kalka and attorney Ken Mitchell alleged that staff actions (inspecting legal mail) violated attorney-client privilege and that contacting other law enforcement agencies with information was not a violation of a clearly established right. We have requested publication of the opinion for the language granting qualified immunity on these issues.

Newson v. U.S.A. (NEL), Previously reported, \$6,000,000 FTCA case in which wife and husband sue U.S. for injuries she suffered in September 1994 auto accident involving inmate driver. BOP liability is clear under Nevada tort law, damages is the main issue. Matter now in discovery, depositions to be scheduled in May. Defense counsel have met -AUSA advises that U.S. liability will be substantial, as Susan Newson's actual medicals now exceed \$300,000 after several surgeries and she is unable to work. Policy limits of other defendants total approx. \$1million.

#### **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. Settlement discussions ongoing. Trial

resumption postponed.

State of Oregon v. Billy Lee Oatney (TCN), Capital murder case in Oregon at which five TCN staff were subpoenaed for penalty phase by defense after material witness finding by state Court. Defendant was a former inmate at TCN (defense wanted to establish that defendant was "good" inmate). Staff testified March 17, 1998. Jury convicted and handed down death penalty. Paralegal Tom Byron assisted USAO during hearing to oppose subpoena for staff and testified at the penalty hearing.

**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:** None

**ENVIRONMENTAL MATTERS:** None

**SETTLEMENTS:**

Wickline v. U.S.A. (LOF/NEL) FTCA case regarding lost inmate property settled for \$124.00. Form 40s could not establish proper handling of inmates' property during transfer between institutions.

**CRIMINAL CASE TRACKING**

1. **TOTAL CRIMINAL CASES REFERRED THIS MONTH:**26
2. **CRIMINAL CASES ACCEPTED FOR PROSECUTION AWAITING TRIAL/DISPOSITION:**

**ASSAULT:**

U.S. v. Gonzales, et al. (SAF), April 25, 1998 trial date set for inmate/inmate assault by five inmates Joel Gonzales, #94461-198, Anthony Avaloz, #04519-031, Loebardo Valenzuela, #46662-198, Jorge Munoz-Garcia # 09780-051, and Lorenz Gomez-Tovar, #47560-198.

**ESCAPE:** None

**FRAUD/FORGERY:**

U.S. v. Richard Lewis (TCN), 18 USC 1001 prosecution against inmate Lewis, register No. 28914-048, for soliciting documents to falsify and falsifying documents provide documentation of history of substance abuse to support his application to DAP program for purpose of becoming eligible for early release incentive award.

**HOMICIDE:**

U.S. v. Roy Green (LOM), inmate indicted April 2, 1998 for murder of SOS Scott Williams (2 counts) and assaults on four other officers.

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. Sentenced to 10 years/3 years supervised release March 23, 1998.

U.S. v. Aaron Stone (LOM), 1995 hostage situation. Plea agreement reached. Sentencing April 27, 1998.

**INTRODUCTION/POSSESSION OF CONTRABAND:**

U.S. v. Chavira (PHX), found in possession of contraband of drugs and sentenced to additional 22 months.

U.S. v. Greenwood and Cain (PHX), entered pleas of guilty. Sentencing is pending.

U.S. v. Venegas (PHX), pled guilty to attempted introduction of contraband and sentenced to 33 months.

**PROPERTY:** None

**SEX OFFENSES:**

U.S. v. Phyllis Goree (PHX), Prosecution against former staff for engaging in sex with inmate and introduction of drugs into a prison.

U.S. v. Mark Miles (LOS), former Correctional Officer, who pled guilty to misdemeanor Abusing a Position of Authority for sexual relationship with inmate, sentenced to 1 year probation/3 months CCC or home detention March 16, 1998.

**WEAPONS:** None

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

**ASSAULT:**

TRM - 1 unarmed inmate/inmate assault declined

LOM - 1 serious inmate/inmate assault declined

PHX - 1 inmate/inmate assault declined  
2 inmate/staff assaults declined  
1 inmate/inmate attempted sexual assault declined

SAF - 2 inmate/inmate assault referred, one declined to date

SHE - 3 inmate assaults referred

**ESCAPE:** None

**FRAUD/FORGERY:** None

**HOMICIDE:** None

**INTRODUCTION/POSSESSION OF CONTRABAND:**

LOM - 3 cases declined, 1 pending

LOS - 2 Visiting Room attempts referred

TRM - 1 Visiting Room attempt accepted, 2 declined

**PROPERTY:** None

**SEX OFFENSES:** None

**WEAPONS:**

LOM - 6 referrals declined



*\*Total Number of Open Cases Reflects LMS and PACER Reviews with  
Institution Legal Staff Conducted since Last Report*



U.S. Department of Justice

Federal Bureau of Prisons

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Dublin, California 94568

May 6, 1998

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

**FROM:** Harlan W. Penn, Regional Counsel  
**SUBJECT:** Monthly Report for April 1998

▶▶ CASES OF INTEREST ◀◀

**SUPREME COURT:**

James Jacks v. Crabtree, et al., (SHE) petition for writ of certiorari was filed January 7, 1998 by the Federal Public Defender/Oregon in this 3621(e) action, challenging BOP's use of prior criminal convictions in eligibility determinations for early release. Awaiting notice of status.

**NINTH CIRCUIT MATTERS:**

United States v. Kenneth Gibson (District of Nevada) Appeal from the denial of a Writ of Mandamus filed by inmate with a 922(g) conviction who completed DAP outside the Ninth Circuit and sought to have Court designate him to location in Ninth Circuit, or order application of Ninth Circuit case law and BOP policy to enable him to receive early release. Appeal challenges BOP policy of granting or denying early release for DAP on basis of where inmates are housed.

Ben Kalka & Ken Mitchell v. John Megathlin, et al (Dist. Of AZ-TCN) Notice of Appeal filed by plaintiffs. District Court granted summary judgement rejecting plaintiff's arguments that 1st, 4th, 5th, & 6th Amendment rights were violated in handling of legal mail.

Spann v. Adams (Dist. AZ, SAF)  
Notice of Appeal filed by plaintiff to District Court's dismissal

of 2241 petition, there was no prior service on BOP or the US Attorney.

**DISTRICT COURT MATTERS:**

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. Final settlement conference April 29, 1998 - case settled for \$100,000.00.

Byrd v. Crabtree (SHE), 3621(e) 2241 decision holding against BOP determination that a prior conviction under Washington State Assault II statute qualified as "aggravated assault" to disqualify inmate for early release eligibility. Court ordered BOP to place inmate in halfway house to complete DAP early release requirements. Memorandum being prepared for appeal.

Renner v. Crabtree (SHE), 3621(e) 2241 decision holding against BOP determination that a prior conviction under Washington State Assault II statute qualified as "aggravated assault" to disqualify inmate for early release eligibility. Because inmate has already been released, Court ordered a one-year reduction in term of supervised release.

Adams v. Crabtree (SHE), 3621(e) decision holding against BOP determination that a prior conviction under Washington State Assault II statute qualified as "aggravated assault". However, Court indicated that Renner was not otherwise qualified for early release because he had committed prohibited acts and been expelled from DAP.

Hensel v. Crabtree (SHE), Court denied and dismissed habeas petition challenging the implementation of the IFRP for collection of Court imposed fines and restitution.

Newson v. U.S.A. (NEL), Previously reported, \$6,000,000 FTCA case in which wife and husband sue U.S. for injuries she suffered in September 1994 auto accident involving inmate driver. BOP liability is clear under Nevada tort law, damages is the main issue. Depositions set for June. Plaintiff Susan Newson's actual medicals now exceed \$300,000 after several surgeries and she is unable to work.

**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. Settlement agreement signed by all parties and presented to the Court May 1, 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:** None

**ENVIRONMENTAL MATTERS:** None

**SETTLEMENTS:**

Figueroa v. Macy/U.S. (DUB), see above.

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

Janet Kohlar v. Janet Reno (TCN) Settlement of Title VII employment discrimination case for no money damages.

**CRIMINAL CASE TRACKING**

1. **TOTAL CRIMINAL CASES REFERRED THIS MONTH:** 25

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

**ASSAULT:**

U.S. v. Gonzales, et al. (SAF), April 25, 1998 trial date set for inmate/inmate assault by five inmates Joel Gonzales, #94461-198, Anthony Avaloz, #04519-031, Loebardo Valenzuela, #46662-198, Jorge Munoz-Garcia # 09780-051, and Lorenz Gomez-Tovar, #47560-198.

**ESCAPE:** None

**FRAUD/FORGERY:**

U.S. v. Richard Lewis (TCN), 18 USC 1001 prosecution against inmate Lewis, Register No. 28914-048, for soliciting documents to falsify and falsifying documents provide documentation of history of substance abuse to support his application to DAP program for purpose of becoming eligible for early

release incentive award.

**HOMICIDE:**

U.S. v. Roy Green (LOM), inmate indicted April 2, 1998 for murder of SOS Scott Williams (2 counts) and assaults on four other officers. Trial date set for January 5, 1999.

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. Aaron Stone (LOM), 1995 hostage situation. Plea agreement reached. Sentencing June 1, 1998.

**INTRODUCTION/POSSESSION OF CONTRABAND:**

**PROPERTY:** None

**SEX OFFENSES:**

U.S. v. Phyllis Goree (PHX), prosecution against former staff for engaging in sex with inmate and introduction of drugs into a prison. Goree to appear before federal grand jury on 5/5/98.

**WEAPONS:** None

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

**ASSAULT:**

DUB - 1 fire setting declined.

TRM - 2 assaults on staff, 1 inmate fight referred.

PHX - 5 inmate on inmate assaults referred and declined.  
1 inmate on staff assault referred, still pending.

SAF - 3 inmate on inmate assaults referred.

SHE - 3 inmate on inmate assaults referred.

**ESCAPE:** None

**FRAUD/FORGERY:**

**HOMICIDE:** None

**INTRODUCTION/POSSESSION OF CONTRABAND:**

LOM - 2 visiting room introduction cases referred.

LOS - 1 visiting room introduction case referred.

**PROPERTY:** None

**SEX OFFENSES:**

PHX - 1 inmate-on-inmate sexual assault referred- pending.

**WEAPONS:**

LOM - 2 cases referred.

►► STATISTICS ◀◀

<u>Tort Claims:</u>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Received	34	40	62									
Closed	38	64	47									
Reconsidered		0	0	1								
Pending	110		86	102								
Over 6 Mo.	1	3	3									

Investigations Pending Over 60 Days:

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

<u>FOI/PA:</u>	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Received	21	32	23	39								
Closed	27	24	33	33								
Pending	14	22	12	18								
30 days	2	0	0	0								
6 Months	0	0	0	0								
Appeals	0	0	1	1								

FOI/PA Pending More than 30 Days on Feb. 28, 1998:

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
	91	112	114	80								

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

Open Cases: 294*	303	308	309									
New Cases:	21	21	17	18								
HC		19	17	5	14							
FTCA		1	1	5	1							
Bivens		4	2	5	2							
Other	0	1	2	1								
Closed		134	12	11	17							
Lit Reports	13	15	8	8								

\*Total Number of Open Cases Reflects LMS and PACER Reviews with  
Institution Legal Staff Conducted since Last Report



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Dublin, California 94568

June 10, 1998

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

**FROM:** Harlan W. Penn, Regional Counsel  
**SUBJECT:** Monthly Report for May 1998

▶▶ CASES OF INTEREST ◀◀

**SUPREME COURT:**

James Jacks v. Crabtree, et al. (SHE), petition for writ of certiorari filed January 7, 1998 by the Federal Public Defender/Oregon in this 3621(e) action, challenging BOP's use of prior criminal convictions in eligibility determinations for early release. Awaiting notice of status.

**NINTH CIRCUIT MATTERS:** None

**DISTRICT COURT MATTERS:**

Berry v. Crabtree, Frank v. Crabtree, Warren v. Crabtree (SHE), judgments in three 3621(e) cases decided by Judge Haggerty holding that convictions of 924(c)(1) are "crimes of violence" as defined in 924(c). Court further stated that it was reasonable for the BOP to label all 924(c) offenses as "crimes of violence" because the combination of using or carrying a gun while illegally drug trafficking, "by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense."

Byrd v. Crabtree, Renner v. Crabtree (SHE), 3621(e) decision holding against BOP determination that a prior conviction under Washington State Assault II statute qualified as "aggravated assault" to disqualify inmate for early release eligibility. Court ordered BOP to place Byrd in halfway house to complete DAP early release requirements. Before that order, Renner's release date was April 6, 1998. Memorandum being prepared for appeal.

U.S. v. Julian Lee Simmons (LOM), assault of Correctional Officer. Trial date continued pending psychological exam.

U.S. v. Aaron Stone (LOM), 1995 hostage situation. Plea agreement reached. Sentencing June 1, 1998.

**INTRODUCTION/POSSESSION OF CONTRABAND:** None

**PROPERTY:** None

**SEX OFFENSES:** None

**WEAPONS:** None

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

**ASSAULT:**

LOM - 1 inmate fight referred.  
1 assault on staff referred.  
PHX - inmate fight involving 4 inmates declined.  
2 inmate fights involving 2 inmates declined.  
SHE - 1 assault of inmate referred.  
TRM - 1 assault of staff (food tray) declined.  
1 inmate fight declined.

**ESCAPE:** None

**FRAUD/FORGERY:** None

**HOMICIDE:** None

**INTRODUCTION/POSSESSION OF CONTRABAND:**

LOM - 3 visiting room introduction cases referred.  
SHE - 1 introduction of narcotics referred.  
TRM - 1 heroin possession referred.

**PROPERTY:** None

**SEX OFFENSES:** None

**WEAPONS:**

LOM - 1 possession case referred.  
1 manufacturing case referred.

► STATISTICS ◀◀

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

Received	34	40	62	43	39	
Closed	38	64	47	36	58	
Reconsidered		0	0	1	1	0
Pending	110		86	102	110	91
Over 6 Mo.	1	3	3	2	4	

Investigations Pending Over 60 Days:

BRN	DUB	LOM	LOF	LOS	NEL	PHX	SAF	SDC	SHE	TRM	TCN	TOTAL
0	0	0	1	1	0	1	0	0	0	1	0	4

FOI/PA:	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Received	21	32	23	39	26							
Closed	27	24	33	33	29							
Pending	14	22	12	18	15							
30 days	2	0	0	0	*2							
6 Months	0	0	0	0	0							
Appeals	0	0	1	1	4							

FOI/PA Pending More than 30 Days on May 31, 1998:

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

\*In both cases, waiting for records from Federal Records Center.

Administrative Remedies:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
91	112	114	80	90							

Litigation:	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Open Cases:	297	306	311	312	329							
New Cases:	24	21	17	18	18							
HC		19	17	5	14	13						
FTCA			1	1	5	1	1					
Bivens			4	2	5	2	2					
Other	0		1	2	1	2						
Closed		134	12	11	17	1						

Lit Reports 13 15 8 8 17



U.S. Department of Justice

Federal Bureau of Prisons

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*Western Regional Office*  
Dublin, California 94568

July 10, 1998

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

**FROM:** Harlan W. Penn, Regional Counsel  
**SUBJECT:** Monthly Report for June 1998

►► CASES OF INTEREST ◄◄

**SUPRE SUPREME COURT:**

James Jacks v. Crabtree, et al. (SHE), petition for writ of certiorari filed January 7, 1998 by the Federal Public Defender/Oregon in this 3621(e) action, challenging BOP's use of prior criminal convictions in eligibility determinations for early release. Awaiting notice of status.

**NINTH CIRCUIT MATTERS:** None

**DISTRICT COURT MATTERS:**

Caballero vs. Floyd (PHX), FTCA case for inmate property, dismissed on May 1, 1998. Court granted summary judgment for defendant, relying on "detention of goods" exemption to FTCA action. U.S. Attorney's office is requesting publication.

Holland v. Pontesso (PHX), Habeas petition in which inmate claims the PLRA prevents him from challenging his criminal conviction via § 2255. District Court has ordered a response to this allegation.

Huerta-Chica v. Reno (SAF), Mandamas action in which inmate claims INS refuses to remove a detainer which makes him ineligible for halfway house placement and DAP consideration.

Kalka v. Crabtree (SHE), Bivens action against 23 defendants alleging a variety of claims including medical malpractice, lack of access to law library, religious claims.



Newson v. U.S.A. (NEL), \$6,000,000 FTCA case in which wife and husband sue U.S. for injuries she suffered in September 1994 auto accident involving inmate driver. BOP liability is clear under Nevada tort law, so damages is the main issue. Depositions scheduled for last week in July.

Parmelee v. Perrill (SET), Bivens case in which plaintiff alleges access to courts violations based on adequacy of, and access to, the main law library; opening of special mail outside his presence; being denied unmonitored legal calls; access to his legal materials; and being denied access to the Administrative Remedy process. Plaintiff seeks injunctive relief, compensatory damages, and punitive damages.

Parra-Rochin v. Fitzpatrick (LOM), 3621(e) habeas petition alleging the Bureau of Prisons allowed participation in the DAP program, but was determined to be ineligible for the sentence reduction due to an INS detainer. Inmate alleges that this decision violates the Equal Protection Clause.

Payton v. Campbell, Soderling v. Campbell, first two habeas petitions filed by TAF inmates, the first involving designation and custody classification, the second prior custody credit and good time. No specific allegations involving the contractor, but the USAO in Fresno has been advised that Wackenhut has retained private local counsel.

**TRIALS/HEARINGS:** None

**RELIGION:** None

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

**ENVIRONMENTAL MATTERS:** None

**SETTLEMENTS:** None

#### **CRIMINAL CASE TRACKING**

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

###### **ASSAULT:**

U.S. v. Julian Lee Simmons (LOM), assault of Correctional Officer that occurred on December 14, 1997. Case originally scheduled for trial on May 26, 1998, but trial date vacated due to inmate's conduct during hearing. Judge ordered competency hearing.

U.S. v. Aaron Stone (LOM), 1995 hostage situation. Plea.

agreement reached. Sentenced on June 1, 1998 to 36 months consecutive to current sentence. Judge assigned to the case was Judge Marshall, same judge assigned to the Roy Green case, who departed downward by 35 months; administrative action by BOP was a factor.

**ESCAPE:** None

**FRAUD/FORGERY:**

U.S. v. Richard Lewis (TCN) Inmate submitted falsified DAP documents. FBI has interviewed female accomplice in Las Vegas, who has agreed to cooperate and has signed release for production of her original treatment records, which were forged by inmate Lewis.

**HOMICIDE:**

U.S. v. Roy Green (LOM), inmate indicted April 2, 1998 for murder of SOS Scott Williams (2 counts) and assaults on four other officers. Defense counsel filed a motion stating that they cannot adequately represent their client because he refuses to speak to them unless he has contact visitation. Judge Marshall has ordered a hearing concerning the matter, but wishes to visit LOS to look at the accommodations herself prior to actually scheduling the hearing. Although scheduled for June 9, defense counsel have yet to meet with the committee at the USAO to present any mitigating factors concerning the death penalty issue.

U.S. v. Matt Lindsey (PHX), prosecution for November 1, 1997 murder of inmate Bernard Jackson. AUSA Pat Snyder is assigned to prosecute the case.

**INTRODUCTION/POSSESSION OF CONTRABAND:**

U.S. v. Lamarr Dunn (LOM), On June 16, 1998, inmate pled guilty to two counts of Possession of Contraband, 18 U.S.C. § 1791. One count involved Possession of Marijuana, the other count involved Possession of a Prohibited Object (weapon). Sentencing scheduled for September 9, 1998.

**PROPERTY:** None

**SEX OFFENSES:**

U.S. v. Robert Gorsuch (LOM), Former staff member pled guilty to one count of Abusive Sexual Contact, 18 U.S.C. § 2244. Sentencing scheduled for August 17, 1998.

**WEAPONS:** None

2. **TOTAL CRIMINAL CASES REFERRED THIS MONTH:** 23

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

**ASSAULT:**

LOM - 2 inmate on inmate assaults  
2 inmate on staff assaults  
PHX - 2 inmate on staff assaults, declined  
1 inmate on inmate assault, declined  
2 inmate fights, declined  
SAF - 1 inmate on staff assault  
SDC - 1 inmate on inmate assault  
SHE - 2 inmate on inmate assaults  
TCN - 1 inmate assault on staff, declined  
TRM - 1 inmate assault on inmate, declined  
2 inmate fights, declined

**ESCAPE:** None

**FRAUD/FORGERY:** None

**HOMICIDE:** None

**INTRODUCTION/POSSESSION OF CONTRABAND:**

LOM - 3 introductions  
1 conspiracy to introduce, declined

**PROPERTY:** None

**SEX OFFENSES:** None

**WEAPONS:**

Lom - 1 inmate manufacture of a weapon  
1 threatening a staff member and possession of a  
sharpened instrument

▶▶ **STATISTICS** ◀◀

ADMINISTRATIVE REMEDIES											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
91	112	114	80	90	110						

ADMINISTRATIVE TORT CLAIMS												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	34	40	62	43	39	48						
CLOSED	38	64	47	36	58	29						
RECONSIDER	0	0	1	1	0	0						
PENDING	110	86	102	110	91	110						
OVER 6 MONTHS	1	3	3	2	1	0						

Tort Claim Investigations Over 60 Days:												
BRN	DUB	LOM	LOF	LOS	NEL	PHX	SAF	SDC	SHE	TRM	TCN	TOTAL
0	0	0	0	1	0	0	0	0	1	7	0	9

FREEDOM OF INFORMATION/PRIVACY ACT:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	21	32	23	39	26	19						
CLOSED	27	24	33	33	29	21						
PENDING	14	22	12	18	15	13						
30 DAYS	2	0	0	0	2*	0						
6 MONTHS	0	0	0	0	0	0						
APPEALS	0	0	1	1	4	1						

\* In both cases, waiting for records from the Federal Records Center.

FOI/PA PENDING MORE THAN 30 DAYS ON JUNE 30, 1998:												
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

LITIGATION:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
OPEN CASES	297	306	311	312	329	325						
NEW CASES	24	21	17	18	18	9						
HC	19	17	5	14	13	5						
FTCA	1	1	5	1	1	1						
BIVENS	4	2	5	2	2	2						
OTHER	0	1	2	1	2	1						
CLOSED	134	12	11	17	1	13						
LITIGATION REPORTS	13	15	8	8	17	5						



U.S. Department of Justice

Federal Bureau of Prisons

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*Western Regional Office*  
Dublin, California 94568

August 17, 1998

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

**FROM:** Harlan W. Penn, Regional Counsel  
**SUBJECT:** Monthly Report for July 1998

»» CASES OF INTEREST ««

**SUPREME COURT:**

James Jacks v. Crabtree, et al. (SHE), petition for writ of certiorari filed January 7, 1998 by the Federal Public Defender/Oregon in this 3621(e) action, challenging BOP's use of prior criminal convictions in eligibility determinations for early release.

**NINTH CIRCUIT MATTERS:**

Timothy Robles vs. USA, et al. (No. CA9 96-56762)  
Court of Appeals decided that Section 401 of the comprehensive Drug Abuse Prevention & Control Act of 1970 does not permit the U.S. Parole Comm. to impose a second term of special parole after it revokes the original special parole term. BOP was ordered recompute the sentence. USPC has issued a NOA, but Robles is in custody in Hawaii facing drug charges while on release for this appeal.

Miller v. Crabtree & U.S. Parole Comm., CV-97-1338-CO -Notice of Appeal filed.

**DISTRICT COURT MATTERS:**

Cordova v. Reno (TAF), first Bivens action filed by TAF inmate naming both BOP and Wackenhut (WCC) defendants. Inmate claims refusal of dental treatment while in USMS, BOP, and WCC facilities. Fresno USAO notified of case July 28, 1998.

Cox v. Bailey (SAF), CIV 97-749-TUC-FRZ. Habeas petition in which inmate challenges his criminal sentence pursuant to 28 U.S.C. § 2241. Court has followed the CA9 decision in *Lorentson* allowing filing due to limitations imposed by AEDPA.

Onaghise v. Bailey (SAF), CIV 8-232-TUC-RMB. Habeas petition in which inmate challenges his criminal sentence pursuant to 28 U.S.C. § 2241. Court has followed the CA9 decision in *Lorentson* allowing filing due to limitations imposed by AEDPA.

Lunenburg v. Clark (SAF), CV 98-2749-CBM(SH) (C.D. Cal.) This habeas petition for DAP credit was recently transferred to the District of Arizona (Tucson) from the Central District of California.

Forgac v. Perrill, et al. (SET), C98-563 (Western Dist. of WA) Bivens case alleges violations of Access to Courts: (law library, duplication of legal materials, legal mail, legal telephone calls) and Involuntary Servitude: Pretrial inmate sanctioned to perform extra duty.

Kwasigroch v. Perrill, et al. (SET), C98-554C (Western Dist. WA) Bivens case alleges violations of access to Courts: INS detainee access to Main Law Library.

Adams v. BOP, et al. (SET), C98-149FVS (Eastern Dist. WA) Bivens in which Plaintiff alleges sexual abuse by Geiger Corrections Center staff. Complaint will be dismissed if Plaintiff does not file an amended complaint by August 14, 1998.

Newson v. U.S.A. (NEL), \$6,000,000 FTCA case in which wife and husband sue U.S. for injuries she suffered in September 1994 auto accident involving inmate driver. BOP liability is clear under Nevada tort law, so damages is the main issue. Depositions are being conducted in July and August.

**TRIALS/HEARINGS:** None

**RELIGION:** None

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

**ENVIRONMENTAL MATTERS:** None

**SETTLEMENTS:** None

#### **CRIMINAL CASE TRACKING**

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

**ASSAULT:**

U.S. v. Julian Lee Simmons (LOM), assault of Correctional Officer that occurred on December 14, 1997. Case originally scheduled for trial on May 26, 1998, but trial date vacated due to inmate's conduct during hearing. Competency hearing ordered.

U.S. v. Jesus Martinez-Solares (TCN), Inmate had been found mentally incompetent to stand trial. This was erroneous. After study at USMCFP Springfield, inmate was found competent. Defense counsel wants his client to sign plea agreement, however, it is believed that his mental state has deteriorated and another study has been requested.

**ESCAPE:**

U.S. v. Terrance Nikrasch (LOM), former FPC inmate pled guilty to escape and possession of counterfeit currency. Sentencing September 28, 1998.

**FRAUD/FORGERY:**

U.S. v. Richard Lewis (TCN), FBI has interviewed inmate Lewis' Female accomplice in Las Vegas, Nevada. She has agreed to cooperate and has signed release for production of her original WestCare treatment records, which were forged by Lewis. Prosecution stayed pending AUSA's involvement in extradition of suspects in USBP Officer murder in Nogales. Suspects, including the shooter, are currently confined in Mexico.

**HOMICIDE:**

U.S. v. Roy Green (LOM), inmate indicted April 2, 1998 for murder of SOS Scott Williams (2 counts) and assaults on four other officers. Judge Marshall visited the visiting area provided at LOS and found violation of 18 U.S.C. §3005, which provides that counsel in capital cases shall have access to the accused "at all reasonable hours."

**INTRODUCTION/POSSESSION OF CONTRABAND:**

U.S. v. Lamarr Dunn (LOM), inmate pled guilty to two counts of Possession of Contraband, 18 U.S.C. §1791. One count involved Possession of Marijuana, the other count involved Possession of a Prohibited Object (weapon). Sentencing September 9, 1998.

**PROPERTY:** None

**SEX OFFENSES:**





RECEIVED	34	40	62	43	39	48	52					
CLOSED	38	64	47	36	58	29	57					
RECONSIDER	0	0	1	1	0	0	1					
PENDING	110	86	102	110	91	110	106					
OVER 6 MONTHS	1	3	3	2	1	0	0					

Tort Claim Investigations Over 60 Days:												
BRN	DUB	LOM	LOF	LOS	NEL	PHX	SAF	SDC	SHE	TRM	TCN	TOTAL
0	1	1	1	2	0	0	0	0	0	2	1	6

FREEDOM OF INFORMATION/PRIVACY ACT:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	21	32	23	39	26	19	30					
CLOSED	27	24	33	33	29	21	29					
PENDING	14	22	12	18	15	13	14					
20 DAYS	2	0	0	0	2*	0	2**					
6 MONTHS	0	0	0	0	0	0	0					
APPEALS	0	0	1	1	4	1	2					

\* In both cases, waiting for records from Records Center.

\*\* Staff at SDC searching for old visitor logs & ISM at SHE unable to locate records.

FOI/PA PENDING MORE THAN 20 DAYS ON JULY 31, 1998:												
BRN	DUB	LOM	LOF	LOS	NEL	PHX	SAF	SDC	SHE	TRM	TCN	TOTAL
								1	1			2

LITIGATION:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
OPEN CASES	297	306	311	312	329	325	325					
NEW CASES	24	21	17	18	18	9	15					
HC	19	17	5	14	13	5	8					
FTCA	1	1	5	1	1	1	1					
BIVENS	4	2	5	2	2	2	5					
OTHER	0	1	2	1	2	1	1					
CLOSED	134	12	11	17	1	13	15					
LITIGATION REPORTS	13	15	8	8	17	5	6					



U.S. Department of Justice

Federal Bureau of Prisons

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*Western Regional Office*  
Dublin, California 94568

September 3, 1998

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

**FROM:** Harlan W. Penn, Regional Counsel  
**SUBJECT:** Monthly Report for August 1998

**NEW LITIGATION:**

Atadero v. BOP et al. (TAF), §2241 petition challenging denial of 3621(e) sentence reduction due to prior robbery conviction. Petition filed July 6, 1998. AUSA Sherrill A. LaPrade faxed petition to WXRO August 25, 1998. Response due September 28, 1998. Magistrate Judge mistakenly construed petition as alleging loss of good time credits. Dennis Wong has been assigned the litigation report, due to AUSA by September 15, 1998.

Brodin v. Hawk et. al. (SHE), Habeas Corpus action challenging jurisdiction of court in underlying criminal conviction.

Crooker v. Adams (LOM), Habeas Corpus action in which inmate alleges that he is a Medium security inmate wrongfully designated to a penitentiary. Inmate also alleges that he cannot participate in DAP, even though it was judicially recommended, because penitentiaries no longer offer the program.

Dowling vs. Crabtree (SHE), Emergency motion to release inmate to a halfway house. Inmate was mistakenly determined to be DAP early release eligible and scheduled for halfway house on September 2, 1998. FPD argues that staff error should not preclude inmate from completing community transition component as scheduled and receiving early release incentive.

Dozier v. Fitzpatrick (LOM), 3621(e) case in which the inmate alleges that he should be eligible for reduction in sentence despite prior manslaughter conviction.

Earls vs. Haro (NEL), 3621(e) case challenging denial of eligibility under Director's discretion for 841 enhancement.

Hernandez v. United States (LOS), FTCA complaint in which plaintiff alleges that MDCLA Staff began " a systemic psychological effort to create a rift between him and his co-defendants (Mexican Mafia Members) based on information that he was on a hit list." As a result, plaintiff alleges his assault by a another inmate while in the holding cell of the United States Marshal Service was due to MDCLA's negligence.

Hidalgo v. Perrill (SET), Bivens complaint in which plaintiff alleges illegal confinement in the Special Housing Unit in violation of his due process rights.

Livingston v. Bailey (SAF), 3621(e) case in which inmate alleges his firearms conviction under Section 924 (Bailey) should be dismissed.

Marsh v. Reno et al. (TAF), Bivens complaint alleging lack of medical care by both BOP and TCI. Inmate mailed copy to WXRO which was not file-stamped. Defendants are AG, Director, USMS, Wardens of LOS, TRM, SAF, PHX, BRN, and "Pleasanton", and Wackenhut Corrections Corp., TCI, and their Hospital Administrator and Clinical Director. No indication of service. Matt Carney assigned the litigation report.

Mikolacik v. Unknown Agents (LOM), FTCA/Bivens complaint in which inmate alleges he contracted a virus as a result of being double celled with inmates who were infected with the virus.

Mitchell v. USA, et al. (TAF), Bivens complaint re environmental tobacco smoke. SCRO Assistant Regional Counsel Al Munguia notified us on August 25, 1998 that he is working on the case, per OGC Litigation Branch, since there are a large number of BOP defendants in several institutions, most of them in SCRO.

Reed vs. Hawk, et. al. (SHE), Habeas Corpus action challenging jurisdiction of sentencing court to try and sentence the underlying criminal conviction.

Riggs v. Perrill (SET), Habeas Corpus in which petitioner challenges his urinalysis results, claiming BOP is required to conduct urine determination tests when loss of good conduct time is at issue. Petitioner claims his positive drug test is due to his consumption of poppy seeds. A draft motion was completed, and a response was filed on August 17, 1998.

**CRIMINAL CASE TRACKING**

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

**ASSAULT:**

U.S. v. Julian Lee Simmons (LOM), assault of Correctional Officer that occurred on December 14, 1997. Case originally scheduled for trial on May 26, 1998, but trial date vacated due to inmate's conduct during hearing. Competency hearing ordered. No new information.

U.S. v. Jesus Martinez-Solares (TCN), Inmate had been found mentally incompetent to stand trial. This was erroneous. After study at USMCFP Springfield, inmate was found competent. Defense counsel wants his client to sign plea agreement, however, it is believed that his mental state has deteriorated and another study has been requested.

**ESCAPE:**

U.S. v. Terrance Nikrasch (LOM), former FPC inmate pled guilty to escape and possession of counterfeit currency. Sentencing September 28, 1998.

**FRAUD/FORGERY:**

U.S. v. Richard Lewis (TCN), Lewis forged documents to substantiate drug use to qualify for DAP and early release. FBI has interviewed inmate Lewis' Female accomplice in Las Vegas, Nevada. She has agreed to cooperate and has signed release for production of her original WestCare treatment records, which were forged by Lewis. Prosecution stayed pending AUSA's involvement in extradition of suspects in USBP Officer murder in Nogales. Suspects, including the shooter, are currently confined in Mexico.

**HOMICIDE:**

U.S. v. Roy Green (LOM), inmate indicted April 2, 1998 for murder of SOS Scott Williams (2 counts) and assaults on four other officers. On July 30, 1998, Judge Marshall signed an order establishing new deadlines. Trial date is April 13, 1999; October 5, 1998, deadline for defense counsel to present mitigating factors to USAO concerning death penalty; October 22, 1998, deadline for USAO to send death penalty submission to DOJ; and November 23, 1998, deadline for gov't decision.

**INTRODUCTION/POSSESSION OF CONTRABAND:**

U.S. v. Lamarr Dunn (LOM), inmate pled guilty to two counts of Possession of Contraband, 18 U.S.C. §1791. One count involved Possession of Marijuana, the other count involved Possession of a Prohibited Object (weapon). Sentencing September 9, 1998.

**PROPERTY:** None

**SEX OFFENSES:**

U.S. v. Robert Gorsuch (LOM), former staff member pled guilty to one count of Abusive Sexual Contact, 18 U.S.C. § 2244. Sentencing rescheduled for September 28, 1998.

**WEAPONS:** None

2. **TOTAL CRIMINAL CASES REFERRED THIS MONTH:** 7

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

**ASSAULT:**

LOM -- 1 inmate on inmate stabbing, pending  
1 inmates assault on inmates, pending 2  
inmate on inmate, denied

**ESCAPE:** None

**FRAUD/FORGERY:**

**HOMICIDE:** None

**INTRODUCTION/POSSESSION OF CONTRABAND:**

LOM - 1 visiting room, pending  
1 conspiracy to introduce, pending

**PROPERTY:** None

**SEX OFFENSES:** None

**WEAPONS:** None

LOM - 1 introduction of weapon, pending

» **STATISTICS** «

ADMINISTRATIVE REMEDIES											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
91	112	114	80	90	110	101	114				

ADMINISTRATIVE TORT CLAIMS												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	34	40	62	43	39	48	52	50				
CLOSED	38	64	47	36	58	29	57	45				
RECONSIDER	0	0	1	1	0	0	1	2				
PENDING	110	86	102	110	91	110	106	113				
OVER 6 MONTHS	1	3	3	2	1	0	0	0				

Tort Claim Investigations Over 60 Days:												
BRN	DUB	LOM	LOF	LOS	NEL	PHX	SAF	SDC	SHE	TRM	TCN	TOTAL
0	4	0	0	3	0	1	0	2	5	1	0	18

CCM Long Beach 1

Taft 1

FREEDOM OF INFORMATION/PRIVACY ACT:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	21	32	23	39	26	19	30	20				
CLOSED	27	24	33	33	29	21	29	22				
PENDING	14	22	12	18	15	13	14	12				
20 DAYS	2	0	0	0	2	0	2	0				
6 MONTHS	0	0	0	0	0	0	0	0				
APPEALS	0	0	1	1	4	1	2	3				

FOI/PA PENDING MORE THAN 20 DAYS ON JULY 31, 1998:												
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

LITIGATION:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
OPEN CASES	297	306	311	312	329	325	325	333				
NEW CASES	24	21	17	18	18	9	15	12				
HC	19	17	5	14	13	5	8	7				

<b>FTCA</b>	1	1	5	1	1	1	1	0				
<b>BIVENS</b>	4	2	5	2	2	2	5	4				
<b>OTHER</b>	0	1	2	1	2	1	1	1				
<b>CLOSED</b>	134	12	11	17	1	13	15	4				
<b>LITIGATION REPORTS</b>	13	15	8	8	17	5	6	7				



U.S. Department of Justice

Federal Bureau of Prisons

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Dublin, California 94568

October 8, 1998

MEMORANDUM TO WALLACE H. CHENEY  
ASSISTANT DIRECTOR/GENERAL COUNSEL

FROM: Harlan W. Penn, Regional Counsel  
SUBJECT: Monthly Report for September 1998

LITIGATION

**NEW 3621(e) CASES:**

Allen v. Crabtree, (SHE) Removal from DAP program after discovery that inmate lacked proper documentation for admission.

Atadero v. Bureau of Prisons, (TAF) 3621(e) early release denied because of prior adult robbery conviction. Inmate Atadero had completed the RDAP prior to the enactment of 3621(e) and argues that subsequent preclusion is an issue of improper retroactive application of BOP policy.

Gavis v. Crabtree, (SHE) Determination inmate was ineligible for early release pursuant to Change Notice-03 to Program Statement 5330.10.

Niemeier v. Crabtree, (SHE) Determination inmate was ineligible for early release pursuant to Change Notice-03 to Program Statement 5330.10.

Washeleski v. Crabtree, (SHE) Determination inmate was ineligible for early release pursuant to Change Notice-03 to Program Statement 5330.10.

Wood v. Pontesso, (PHX) Inmate seeking 3621(e) reduction based on a 1995 memorandum requesting eligibility for the DAP Program. Denied due to a 2-point enhancement for weapons possession.



**NEW CASES/OTHER:**

Anderson v. Clark, (TRM) *Bivens* action in which inmate Anderson alleges that Warden Clark violated his Eighth Amendment rights by not releasing him to a halfway house. When we received a copy of this petition, it was accompanied by the Court's dismissal of the case without prejudice.

Cash v. Adams, (LOF) Habeas petition in which the inmate alleges that he received a false incident report upheld by the DHO.

Davis v. Rardin, (LOM) *Bivens* action in which the inmate alleges that he was placed in the Special Housing Unit for 59 days without being served a detention order or charged with any rule violation. Inmate also alleges that he was not allowed to purchase bottled water while in SHU, which resulted in damage to his skin.

Radovich v. Esqueda, (SDC) *Bivens* action in which plaintiff alleges unlawful search, seizure, arrest and detention. He also claims he was required to submit to an unlawful strip search at MCC San Diego where his religious underclothing was cut off his body. He seeks compensatory, punitive and "exemplary" damages. The incident at MCC was videotaped.

Shorter v. Reno, (TRM) *Bivens* action in which inmate alleges inadequate medical treatment for his eye condition while at FCI Terminal Island and FPC Nellis, and asks for \$7,000,000 in damages. Recently, the Court ordered the Clerk to negate the original filing of this case since the matter had not been reviewed pursuant to the PLRA. Since the Court concluded that inmate Shorter had to make partial payments, and he had not, this case currently not docketed.

Labostrie v. Seifert, (LOS) *Bivens* action in which plaintiff is a private investigator who alleges violations of his Constitutional right to access to inmates housed at MDCLA. Plaintiff was denied entrance due to failure to report criminal history on non-attorney application. Seeks injunctive, declaratory, and monetary relief.

Lundahl v. United States, (LOS) FTCA/*Bivens* action where inmate Lundahl vaguely alleges three unit staff members conspired to violate her civil rights.

Lundahl v. United States, (LOS) CV98-0639 FTCA/*Bivens* complaint, also vague as to plaintiff's allegations against MDCLA.

Meyers v. Sinavsky, (LOS) (Superior Court, CA.) *Bivens* complaint was filed in the wrong court. Plaintiff is currently in custody.

housed at MDCLA. Plaintiff alleges deliberate indifference to his medical needs, improper medications dispensed and exposure to extensive liver damage and possible death. Seeks compensatory and punitive damages.

Parker v. Adams, (LOF) Habeas petition in which inmate alleges that the BOP refuses to release him to Washington D.C., to serve the remainder of his concurrent term.

Troutt v. Adams, (SAF) *Bivens* action in which former inmate claims a PA subjected him to a painful prostate examination without medical justification.

#### **SIGNIFICANT DEVELOPMENTS:**

Bowen v. Crabtree, (SHE) 3621(e) decision affecting eleven inmates. District Court held BOP may not apply Change Notice-03 to Program Statement 5330.10 to inmates who have been determined to be provisionally eligible for the early release incentive without running afoul of the retroactivity doctrine and the Ninth Circuit's recent decision in Cort v. Crabtree, 113 F.3d 1081 (9th Cir. 1997).

Buggs v. Crabtree, (SHE) Habeas sentencing decision against BOP's computation of inmate's sentence. Although inmate was first arrested by State sovereign, Court ruled that State relinquished primary custody by failing to follow proper criminal procedure. Thus, Federal authorities became primary custodian despite inmate only coming into Federal custody pursuant to writ of habeas corpus ad prosequendum.

Forgac v. Perrill, (SET) Plaintiff filed a First Amended Complaint adding twelve new defendants on August 5, 1998.

Furguiel v. Benov, (TRM) August 25, 1998, opinion negates an opinion previously filed on March 10, 1998. In this 301 case, the 9th Circuit concluded that there was no issue of retroactivity concerning the policy against prior violent convictions since the BOP had never informed him he was not eligible. The key was that the inmate had no "settled expectations" that he was ever eligible for early release.

Hogan v. USA, (TFM) *Bivens*/FTCA case concerning allegations that occurred primarily at APL, with some minor allegations arising from TRM, SDC, and WA. Dismissed due to improper venue.

Kalka & Mitchell v. Meathlin, et al., (TCN) (9th Cir. ) appeals the District Court's grant of defendants' Motion for Summary Judgement, in *Bivens* action based on 1st, 5th, 14th, and 14th Amendment grounds, alleging prison officials improperly

his legal mail, disclosed privileged material to AUSA and IRS, who in turn, obtained search warrant to search Kalka's cell/legal materials. In the same motion, Kalka seeks mandamus action against prison officials at OXF and extension to file appeal brief. Defendants' reply filed September 2, 1998 opposing mandamus relief and extension. By order dated September 21, 1998, 9th Circuit denied mandamus relief, granted motion for extension, and accepted Plaintiffs' opening brief. Answer due October 21, 1998.

Mota v. United States, (SDC) Pretrial Conference has been continued and calendared for November, 9 1998.

Parmelee v. Benov, (SDC) On September 14, 1998 continuance filed for telephonic status conference before Magistrate Judge. Calendared for October 16, 1998.

Riggs v. Perrill, (SET) Response to Petitioner's Reply Brief filed on September 30, 1998.

United States v. Keese, (TRM) Habeas petition concerning a detainer dismissed as moot.

**CRIMINAL CASE TRACKING**

Criminal Cases												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
<b>Referred</b>									26			
<b>Accepted</b>									3			
<b>Declined</b>									16			
<b>Pending Decision</b>									7			

**Declined Cases:**

(DUB) Inmate assaulted another inmate.

(LOM) On August 3, 1998 inmate activated a metal detector, and subsequent search located a weapon in his left shoe.

(PHX) On August 30, 1998, staff conducted a routine pat-down of inmate. The inmate attempted to secrete a substance in his pocket and refused orders to produce the item. Inmate resisted staff attempts to be restrained and several other staff members then used force against inmate Burke. Two staff members received minor injuries from the use of force.

(PHX) On August 31, 1998, inmates were observed fighting in the

Recreation Cage.

(PHX) On September 8, 1998, inmate assaulted another inmate.

(PHX) On September 23, 1998, inmates were involved in a fight.

(PHX) On September 26, 1998, inmate became combative while being escorted to SHU for using intoxicants. Inmate was taken to the ground by staff.

(PHX) On September 28, 1998, inmates were observed fighting in UNICOR.

(TCN) On September 15, 1998 staff became aware that an inmate submitted a fraudulent claim against the BOP/United States, under the FTCA.

(TCN) On September 11, 1998 inmate assaulted another inmate, by striking him with closed fists in SHU. Each inmate received minor/superficial injuries.

(TCN) On September 9, 1998 inmate became verbally abusive with staff and was placed in hand restraints/taken to SHU. While under staff escort to SHU, inmate spat at/hit Senior Officer Specialist.

(TCN) On September 16, 1998, while housed in SHU, inmate was observed ingesting a foreign object and refused staff orders to produce the item, instead swallowing it. Inmate was placed on dry cell status. 1.29 grams of a brown tar-like substance, wrapped in plastic, was discovered. The substance tested positive for heroin but the inmate was no longer in official dry cell status nor under constant staff supervision.

(TRM) Inmate was found with approximately 90 grams of marijuana. Although the U.S. Attorney's Office has indicated their intention to prosecute due to quantity and since the inmate will serve another 15+ years, we are attempting to persuade the Attorney General AUSA about the importance of prosecuting the inmate.

(TRM) Inmate assaulted another inmate.

(TRM) Inmate was found in possession of marijuana (.6).

(TRM) Inmate was found in possession of heroin (.8).

#### **Active Prosecutions:**

#### **ASSAULT:**

U.S. v. Lee, (SAF) Gerald Lee, Reg. No. 49025-008 assaulted Nathaniel Askew, Reg. No. 88847-011 with a pool ball in a sock. Sentencing scheduled for October 5, 1998.

U.S. v. Martinez-Solares, (TCN) 1996 staff assault perpetrated by inmate Martinez (a.k.a. Gomez-Diaz) on female counselor. Following competency examination, inmate pled guilty. Staff member/victim appeared at sentencing on September 24, 1998 and provided victim impact statement. Awaiting further update from AUSA as to particulars of plea agreement.

United States v. Simmons, (LOM) Assault of a correctional officer that occurred on December 14, 1997. Inmate Simmons found competent to stand trial. Trial scheduled for October 20, 1998.

United States v. Wehmhoefer, (LOM) Assault of another inmate that occurred on March 4, 1997. Trial scheduled for October 13, 1998.

**ESCAPE:** None

**FRAUD/FORGERY:**

U.S. v. Lewis, (TCN) Prosecution of inmate Lewis, Reg. No. 28914-048, for soliciting drug abuse treatment records from outside source to falsify and falsifying documents to provide documentation of history of substance abuse to support his application to RDAP program for purpose of becoming eligible for § 3621(e) early release incentive. Grand Jury Hearing initially set for September 30, 1998, but postponed due to scheduling

**HOMICIDE:**

United States v. Green, (LOM) On July 30, 1998, Judge Marshall signed an order establishing new deadlines. Trial date is April 13, 1999; October 5, 1998, deadline for defense counsel to present mitigating factors to USAO concerning death penalty; October 22, 1998, deadline for USAO to send death penalty submission to DOJ; and November 23, 1998, deadline for prosecution decision to file a notice of intent to seek the death penalty. Currently participating in several criminal discovery requests.

U.S. v. Lindsey, (PHX) Prosecution of inmate Matt Lindsey, Register No. 02331-061 for November 1, 1997 murder of inmate Bernard Jackson, Register No. 41722-008. Lindsey was indicted on September 8, 1998.

**INTRODUCTION/POSSESSION OF CONTRABAND:**

U.S. v. Toler, (PHX) Trial for introduction of narcotics

scheduled for trial on October 6, 1998. Four staff members are expected to testify along with former staff member Phyllis Goree.

**PROPERTY:** None

**SEX OFFENSES:**

U.S. v. Goree, (PHX) Sentencing for Sexual Contact with a Prisoner and Accepting a Bribe is scheduled for October 5, 1998.

United States v. Gorsuch, (LOM) Former staff member pled guilty to one count of Abusive Sexual Contact, 18 U.S.C. §2244. Sentenced on September 28, 1998. Received a sentence of 51 months, 3 year term of supervised release, and \$100 special assessment.

**WEAPONS:** None

►► STATISTICS ◀◀

ADMINISTRATIVE REMEDIES											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
91	112	114	80	90	110	101	114	126			

FREEDOM OF INFORMATION/PRIVACY ACT:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	21	32	23	39	26	19	30	20	33			
CLOSED	27	24	33	33	29	21	29	22	33			
PENDING	14	22	12	18	15	13	14	12	12			
20 DAYS	2	0	0	0	2	0	2	0	0			
6 MONTHS	0	0	0	0	0	0	0	0	0			
APPEALS	0	0	1	1	4	1	2	3	0			

FOI/PA PENDING MORE THAN 20 DAYS ON SEPTEMBER 30, 1998:												
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

ADMINISTRATIVE TORT CLAIMS												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	34	40	62	43	39	48	52	50	27			
CLOSED	38	64	47	36	58	29	57	45	36			
RECONSIDER	0	0	1	1	0	0	1	2	1			
PENDING	110	86	102	110	91	110	106	113	105			
OVER 6 MONTHS	1	3	3	2	1	0	0	0	0			

Tort Claim Investigations Over 60 Days:												
BRN	DUB	LOM	LOF	LOS	NEL	PHX	SAF	SDC	SHE	TRM	TCN	TOTAL
0	3	3	0	1	0	1	0	3	0	1	1	13

LITIGATION:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
OPEN AT BEGINNING OF MONTH	286	297	306	311	312	329	325	325	333			
NEW CASES RECEIVED	24	21	17	18	18	9	15	12	17			
HC	19	17	5	14	13	5	8	7	8			
FTCA	1	1	5	1	1	1	1	0	2			
BIVENS	4	2	5	2	2	2	5	4	7			
OTHER	0	1	2	1	2	1	1	1	0			
CLOSED	13	12	11	17	1	13	15	4	2			
PENDING AT END OF MONTH	297	306	311	312	329	325	325	333	348			
LITIGATION REPORTS COMPLETED	13	15	8	8	17	5	6	7	7			



U.S. Department of Justice

Federal Bureau of Prisons

Dublin, California 94568

November 12, 1998

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

**FROM:** Harlan W. Penn, Regional Counsel  
**SUBJECT:** Monthly Report for October 1998

**LITIGATION**

This report includes information from all Western Region Institutions except only partial information was received from FCI, Terminal Island and no information was received from FCI Dublin. Next month's report will incorporate these reports.

**NEW 3621(e) CASES:**

Nelson v. Crabtree, (SHE) Habeas petition challenging BOP determination inmate was ineligible for early release pursuant to Director's discretion when he was previously determined to be eligible.

Williams v. Clark, (TRM) Habeas petition challenging BOP determination inmate was ineligible for DAP and early release due to a 2-point enhancement.

**NEW CASES/OTHER:**

Grafman v. Hood, (TCN) *Bivens* complaint against Wardens Hood and Floyd, a TCN Case Manager, unknown staff of the USPC, plaintiff's USPO, and the Behavioral Systems Southwest CCC. The inmate is alleging false imprisonment, violation of civil rights by USPC in imposing unlawful 2nd term of special parole, damages relating to plaintiff's contracting Hepatitis C, slander when he was classified as a sex offender, and emotional distress. This follows Grafman's successful habeas corpus petition, which found the USPC lacked authority to impose 2nd special parole term. Order granting relief compelled USPC to reissue new Notice of



Action, amending plaintiff's release date to account for street time.

Hardy v. Crabtree, (SHE) Habeas petition.

Hogan v. USA, (SDC) *Bivens*/FTCA refiled, originally filed in the same district and dismissed for improper venue. Case concerning allegations which occurred primarily at ATL, with some minor allegations arising from TRM, SDC, and COA. All individual government defendants have been named in their official capacities only. AUSA Wang intends to file a Motion to Dismiss on or before December 4, 1998.

Jones v. Hood, (TCN) Motion to Reinstate Petition for Habeas Corpus, although no service of original petition. PACER info reveals that § 2241 petition was filed April 29, 1998, with a May 6, 1998 order for service to be effected at government expense. On September 11, 1998, Judge Browning dismissed the case under Rule 41(b), for failure to prosecute. Petitioner's motion to reinstate was filed on October 23, 1998. It is uncertain as to what the underlying issue is, though it is believed to be a state/federal concurrency matter. Review of Administrative Remedies fails to reveal any filings by this inmate.

McGowan v. Greenhill, (SHE) *Bivens* action alleging excessive use of force against Correctional Officer.

Reed v. Adams, (LOM) FTCA action in which the inmate alleges that he received injuries to his shoulders, back, and head as a result of a fall.

Simpson v. Files, (LOM) *Bivens* action in which the inmate alleges that his legal material was destroyed, that he was prevented from accessing the law library, and that he was assaulted while housed in the Special Housing Unit.

#### **SIGNIFICANT DEVELOPMENTS:**

Bowen v. Crabtree, (SHE) 3621(e) decision affecting eleven inmates. Court held BOP may not apply Change Notice-03 to Program Statement 5330.10 to inmates who have been determined to be provisionally eligible for the early release incentive without running afoul of the retroactivity doctrine and the Ninth Circuit's recent decision in Cort v. Crabtree, 113 F.3d 1081 (9<sup>th</sup> Cir. 1997). Supplemental Order issued requiring inmates to complete community transition phase of the program prior to receiving year off.

Kalka & Mitchell v. Megathlin, (TCN) (9th Cir.) Kalka appeals the District Court's grant of defendants' Motion for Summary

Judgement, in *Bivens* action based on 1st, 5th, 6th, & 14th Amendment grounds, alleging prison officials improperly read his legal mail, disclosed privileged material to AUSA and IRS, who in turn, obtained search warrant to search Kalka's cell/legal materials. In the same motion, Kalka seeks mandamus action against prison officials at OXF and extension to file appeal brief. Defendants' reply filed September 2, 1998 opposing mandamus relief and extension. By order dated September 21, 1998, 9th Circuit denied mandamus relief, granted motion for extension, and accepted Plaintiffs' opening brief. Answer due October 21, 1998. Government obtained 30-day extension to answer Kalka's opening brief which appeals the district court's grant of defendants' Motion for Summary Judgement. TCN legal staff assisting AUSA in drafting reply brief. Answer due December 4, 1998.

Kurtz v. USA, (SHE) FTCA action alleging negligence on behalf of Bureau staff in failing to prevent inmate from attempting to commit suicide by hanging. Inmate is permanently impaired. Trial date set for January 26 and 27, 1999.

Manning v. Reeves, (PHX) On appeal in the 9th Circuit. This case had previously been reported closed on August 1, 1997.

Mota v. USA, (SDC) Pre-Trial Conference has been continued and calendared for November 9, 1998. Plaintiff's ex parte application to continue pre-trial conference was denied as per order signed on October 20, 1998, by Judge Gonzalez.

Parmelee v. Benov, (SDC) On September 14, 1998, continuance filed for telephonic status conference before Magistrate Judge. Calendared for October 16, 1998. On October 30, 1998, a second telephonic case management/settlement conference was scheduled before Magistrate Judge Burns.

**CRIMINAL CASE TRACKING**

Criminal Cases												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Referred										14		
Accepted										1		
Declined										5		
Pending Decision										8		

**Declined Cases:**

(SAF) On October 13, an inmate was found with a swollen face and

another inmate is suspected of assault.

(SAF) On October 13, an inmate was found with bruises and another inmate is suspected of assault.

(TCN) On October 24, 1998, an inmate threw his food tray out of the food trap in SHU, striking a Senior Officer in the leg. No injuries observed. Declined October 29, 1998, in favor of administrative disciplinary action.

(TCN) On October 11, 1998, a Correctional Counselor had instructed an inmate to depart the north side of Yucca Unit and return to his assigned unit, Yucca South. As she turned her back, other staff observed the inmate draw back a clenched fist and make a swinging motion towards the back of her head. There was no contact. Inmate was placed in SHU without incident. Declined October 16, 1998 in lieu of administrative action.

(TCN) On October 5, 1998 inmate assaulted a Senior Officer when he threw his food tray out of the food trap in SHU, striking him in the leg. No injuries were sustained. Declined October 7, 1998, for administrative disciplinary proceedings.

#### **Active Prosecutions:**

##### **ASSAULT:**

U.S. v. Martinez-Solares, (TCN) Prosecution for 1996 staff assault perpetrated by inmate Martinez (A.K.A. Gomez-Diaz) on female counselor. Following competency examination, inmate pled guilty to 18 U.S.C. § 111 Assault charge on September 24, 1998. Staff member/victim appeared at sentencing and provided her victim impact statement. Inmate was sentenced by Judge Roll to a 30-month term.

U.S. v. Simmons, (LOM) Case involves the assault of a correctional officer that occurred on December 14, 1997. Trial scheduled for December 1, 1998.

U.S. v. Wehmhoefer, (LOM) Case involves the assault of another inmate that occurred on March 4, 1997. Trial scheduled for January 12, 1998.

U.S. v. Lee, (SAF) Case involves the assault of another inmate with a pool ball in a sock. Sentencing scheduled for October 5, 1998.

##### **ESCAPE:**

U.S. v. Nikrasch, (LOM) Case involves an escape from the FPC in

December of 1995. Inmate pled guilty to one count of Escape from a Federal Institution, one count of Possessing and/or Passing Counterfeit \$100 Bills, and one count of Possessing over \$5,000 in Counterfeit Currency. Sentencing scheduled for November 2, 1998.

**FRAUD/FORGERY:**

U.S. v. Lewis, (TCN) Prosecution of inmate Lewis for soliciting drug abuse treatment records from outside source to falsify, and falsifying records to provide documentation of history of substance abuse to support his application to RDAP program for purpose of § 3621(e) early release eligibility. Grand Jury Hearing held October 14, 1998, with indictments to follow in near future.

**HOMICIDE:**

U.S. v. Matt Lindsey, (PHX) Prosecution of inmate Matt Lindsey, for November 1, 1997, murder of inmate Bernard Jackson. Lindsey was indicted on September 8, 1998. Lindsey made his first appearance on October 22, 1998, and pled not guilty. His attorney is Jeffrey Allen Williams. Trial is set for December 9, 1998.

U.S. v. Green, (LOM) On July 30, 1998, Judge Marshall signed an order establishing new deadlines. Trial date is April 13, 1999; October 5, 1998, deadline for defense counsel to present mitigating factors to USAO concerning death penalty; October 23, 1998, deadline for USAO to send death penalty submission to DOJ; and November 23, 1998, deadline for gov't decision to file a notice of intent to seek the death penalty. Defense counsel met the October 5, 1998, deadline; Prosecutors met the October 23, 1998, deadline. Decision concerning Death Penalty expected by mid-November.

**INTRODUCTION/POSSESSION OF CONTRABAND:**

U.S. v. Reagor, (PHX) On October 22, 1998 the U.S. Attorney's Office accepted for prosecution an incident which occurred on July 29, 1998. On that date, inmate Reagor attempted to secrete a balloon on the Recreation yard containing brown heroin.

U.S. v. Toler, (PHX) On October 8, 1998, a jury found defendant not guilty of Bribing a Federal Official and Attempted Introduction of Contraband (narcotics).

**PROPERTY:** None

**SEX OFFENSES:**

U.S. v. Goree, (PHX) Defendant was sentenced on October 5, 1998.

She received 2 years supervised release and a \$2,000 fine. She previously pled guilty to Sexual Contact with a Prisoner and Accepting a Bribe.

**WEAPONS:** None

»» STATISTICS ««

ADMINISTRATIVE REMEDIES											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
91	112	114	80	90	110	101	114	126	126		

FREEDOM OF INFORMATION/PRIVACY ACT:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	21	32	23	39	26	19	30	20	33	34		
CLOSED	27	24	33	33	29	21	29	22	33	28		
PENDING	14	22	12	18	15	13	14	12	12	18		
20 DAYS	2	0	0	0	2	0	2	0	0	1		
6 MONTHS	0	0	0	0	0	0	0	0	0	0		
APPEALS	0	0	1	1	4	1	2	3	0	0		

FOI/PA PENDING MORE THAN 20 DAYS ON OCT. 31, 1998:

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

ADMINISTRATIVE TORT CLAIMS

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	34	40	62	43	39	48	52	50	27	40		
CLOSED	38	64	47	36	58	29	57	45	36	53		
RECONSIDER	0	0	1	1	0	0	1	2	1	0		
PENDING	110	86	102	110	91	110	106	113	105	92		
OVER 6 MONTHS	1	3	3	2	1	0	0	0	0	0		

Tort Claim Investigations Over 60 Days:

BRN	DUB	LOM	LOF	LOS	NEL	PHX	SAF	SDC	SHE	TRM	TCN	TOTAL
0	2	0	0	1	0	0	0	3	0	0	0	6

LITIGATION:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
OPEN AT BEGINNING OF MONTH	286	297	306	311	312	329	325	325	333	348		

<b>NEW CASES RECEIVED</b>	24	21	17	18	18	9	15	12	17	9		
<b>HC</b>	19	17	5	14	13	5	8	7	8	4		
<b>FTCA</b>	1	1	5	1	1	1	1	0	2	1		
<b>BIVENS</b>	4	2	5	2	2	2	5	4	7	4		
<b>OTHER</b>	0	1	2	1	2	1	1	1	0	0		
<b>CLOSED</b>	13	12	11	17	1	13	15	4	2	1		
<b>PENDING AT END OF MONTH</b>	297	306	311	312	329	325	325	333	348	356		
<b>LITIGATION REPORTS COMPLETED</b>	13	15	8	8	17	5	6	7	7	10		



U.S. Department of Justice

Federal Bureau of Prisons

Dublin, California 94568

December 2, 1998

MEMORANDUM TO WALLACE H. CHENEY  
ASSISTANT DIRECTOR/GENERAL COUNSEL

FROM: Harlan W. Penn, Regional Counsel  
SUBJECT: Monthly Report for November 1998

LITIGATION

This report includes information from all Western Region Institutions except MDC Los Angeles from which no information was received. Next month's report will incorporate their information.

**NEW 3621(e) CASES:**

Cuevas v. Clark, (TRM) Habeas petition concerning 3621(e) early release. Inmate was denied year off eligibility due to two point firearm enhancement. Response deadline extended 60 days.

O'Reilly v. Reese, (DUB) Habeas petition in which inmate contends she has been improperly denied a one year reduction in sentence under 18 U.S.C. 3621(e) following successful completion of residential drug abuse program based upon a two level enhancement imposed at sentencing for possession of a firearm. First case in this district challenging the Director's discretion to deny benefits under the new program statement on categorization of offenses. Litigation report sent to AUSA on November 14, 1998, and response filed on November 19, 1998.

Williams v. Clark, (TRM) Habeas petition concerning 3621(e) early release. Inmate denied year off eligibility due to two point firearm enhancement. Litigation report prepared and submitted by Bob Ballash.

**NEW CASES/OTHER:**

Araujo v. B.O.P., (SHE) Bivens action alleging improper medical

care concerning diagnosis and treatment of colon cancer.

Carter v. U.S., (TRM) FTCA action in which inmate was incarcerated at TRM in the late 1980's, where he alleges medical staff failed to diagnose and treat bleeding in his brain. Inmate filed a tort claim which was denied based on the statute of limitations. Complaint forwarded to the U.S. Attorney's Office for assignment.

Davenport v. Zickefoose, (SHE) *Bivens* action alleging staff denied his right to practice his religion (Jewish rites and observations).

McGowan v. Greenhill, (SHE) *Bivens* action alleging excessive use of force against Correctional Officer.

Parmelee v. Conger, (SET) *Bivens* in which plaintiff alleges due process violations stemming from a disciplinary hearing. Case assigned to the Regional Office.

**SIGNIFICANT DEVELOPMENTS:**

Ballou v. Perrill, (SET), 9<sup>th</sup> Circuit Ct. of App. Appellate Brief due January 21, 1998. After entering the Residential Drug Abuse Program, Petitioner was deemed ineligible for early release under 3621(e) based on a prior bank robbery conviction. Petitioner seeks early release eligibility under 3621(e) based on promissory estoppel and ex post facto principles.

Cox v. Bailey, (SAF) Petitioner challenging the circumstance of his arrest. This case was dismissed without prejudice at plaintiff's request on October 26, 1998.

Davis v. Perrill, (SET) Petitioner, alleges that his property was improperly withheld when he was transferred from FDC Sheridan to FDC SeaTac. Response filed on November 6, 1998.

Forgac v. Perrill, (SET) Motion for Summary Judgment filed on November 16, 1998. Plaintiff, a pretrial inmate claims his constitutional rights were violated when staff punished him for refusing to provide a urine sample, required him to perform extra duty as a disciplinary sanction, refused to provide an adequate number of legal copies, and denied him access to the Main Law Library, while housed in the Special Housing Unit.

Gavis v. Crabtree, (SHE) 3621(e) decision affecting three (3) inmates. BOP may not use Director's Discretion to disqualify inmates with possessory offenses or inmate with a two-point enhancement from receiving the sentence reduction benefit.



Hogan v. U.S., (SDC) *Bivens*/FTCA refiled, originally dismissed for improper venue. Case concerning discipline issues which occurred primarily at ATL, with some minor allegations arising from TRM, SDC, and COA. All individual government defendants have been named in their official capacities only. AUSA intends to file a Motion to Dismiss on or before December 4, 1998.

Kalka & Mitchell v. Megathlin, (TCN) (9th Cir.) Kalka appeals the district court's grant of defendants' Motion for Summary Judgment in legal mail/IRS search warrant case. TCN legal staff completed second Litigation Report/reply brief and provided to AUSA on November 25, 1998. Answer due December 4, 1998.

Kurtz v. U.S., (SHE) FTCA action alleging negligence on behalf of Bureau staff in failing to prevent inmate from attempting to commit suicide by hanging. Inmate is permanently impaired. Trial date set for January 26-27, 1999. Inmate received compassionate release on November 18, 1998.

Ledford v. Perrill, (SET) (HC) Petitioner claims BOP staff incorrectly computed his sentence, failing to grant prior custody credit for time spent in state custody. Response filed on November 13, 1998.

Mota v. USA, (SDC) FTCA regarding alleged injury during escorted trip. Pre-Trial Conference was held on November 9, 1998. A mandatory settlement conference will be held on December 2, 1998. The U.S. Attorney's Office does not intend to entertain settlement negotiations at this time. A projected January 1999 trial date is expected to be set.

Onaghise v. Bailey, (SAF) Petitioner challenging the circumstance of his arrest. Case was dismissed by the court on September 28, 1998. This case was appealed to the 9<sup>th</sup> Circuit on October 20, 1998.

Parmelee v. Benov, (SDC) Rejection of "How to win Prison Disciplinary Cases" *Bivens* case. Parties are ordered to designate their respective experts in writing by February 19, 1999. Supplemental or second date for designation of experts on March 5, 1999.

Riggs v. Perrill, (SET) (HC) On November 20, 1998, the Court adopted the Magistrate Judge's Report and Recommendation, issuing an order denying and dismissing Petitioner's case with prejudice. Petitioner sought additional "source determination" testing when he received a positive urinalysis test while housed at a halfway house. Petitioner claimed the positive test result was due to poppy seed consumption.

Rodriguez v. Adams, (SAF) Dismissed as moot on October 23, 1998.

Unger v. Gaines, (SAF) Plaintiff filed a First Amended Complaint on November 25, 1998, adding Dr. Lawrence Gaskin, D.D.S. as an additional defendant.

CRIMINAL CASE TRACKING

Criminal Cases												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Referred										14	15	
Accepted										1	0	
Declined										5	12	
Pending Decision										8	3	

**Declined Cases:**

INMATE/STAFF - (DUB) Inmate on staff assault perpetrated by inmate [REDACTED] threw a cup of apple juice on the employee while confined in the special housing unit. Declined because act was minor and not life threatening.

INMATE/INMATE - (PHX) On November 11, 1998, inmates [REDACTED] were involved in a fight on the Recreation Yard with inmates [REDACTED]. Inmate [REDACTED] sustained abrasions to his head and puncture wounds to the right side of his chest. He was transported to a local hospital. Inmate [REDACTED] sustained a laceration to the right side of his face and was also transported to a local hospital. Inmate [REDACTED] sustained a two inch laceration above his right eye. Inmate [REDACTED] sustained second degree burns to his head and right shoulder. Inmates [REDACTED] sustained a contusion to the back of his head. The case was declined for prosecution because of a lack of evidence and the victim refused to testify .

INMATE/INMATE - (PHX) On November 11, 1998, inmates [REDACTED] and [REDACTED] began fighting in a cell in the Special Housing Unit. [REDACTED] was treated for a previously injured cut near his eye. This case was declined for prosecution because it did not meet prosecutorial guidelines.

INMATE/INMATE - (SAF) On October 27, 1998 inmate [REDACTED] and [REDACTED] were involved in a fight.

INMATE/INMATE - (SAF) On November 3, 1998 inmate [REDACTED] and [REDACTED] were involved in a fight.

INMATE/INMATE - (SAF) On November 2 & 6, 1998, bed fires were set by inmate [REDACTED] Inmate [REDACTED] paid [REDACTED] to set fire to the bed of inmate [REDACTED] due to a debt [REDACTED] owed [REDACTED]

INMATE/STAFF (MINOR) - (TCN) On November 11, 1998, inmate [REDACTED] while showering in SHU, threw a wet towel and spat at an Senior Officer Specialist when the officer denied the inmate's request for an additional razor. After brief confrontational avoidance, inmate [REDACTED] was restrained and returned to his cell. Subsequently, inmate [REDACTED] broke the window to his cell door, placed his two arms out of the opening and threatened staff with a sharpened pencil in each hand. The inmate was placed in ambulatory restraints. Incident referred on November 13, 1998, with prosecution declined on November 16, 1998, in lieu of administrative disciplinary procedures.

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INMATE/INMATE - (TCN) On November 18, 1998, inmate [REDACTED] reported that the previous evening, inmate [REDACTED], had touched his buttocks, in a sexual manner, while he was sleeping. Medical assessments revealed no injuries. The case was referred November 18, 1998 and declined on November 19, 1998, with recommendations that the BOP exercise its internal inmate disciplinary procedures.

INMATE/INMATE - (TCN) On November 13, 1998, inmate [REDACTED], while proceeding through the service line in the Dining Hall, threw his plate of food at inmate [REDACTED], who was working behind the serving line. No injuries were sustained by either inmate and it is believed that the assault occurred when [REDACTED] refused to give [REDACTED] additional food items. Matter referred and declined on November 16, 1998, in favor of administrative disciplinary procedures.

INMATE/INMATE - (TRM) Inmates [REDACTED] were involved in a fight in J-Unit on November 11, 1998. Only minor injuries were sustained.

INMATE/INMATE - (TRM) Inmates [REDACTED] were involved in a fight on November 11, 1998. INMATE/STAFF - (TRM) Inmate [REDACTED] assaulted an officer during a pat search on November 17, 1998, the inmate hit the officers hand.

**Active Prosecutions:**

**ASSAULT:**

U.S. v. Gonzalez, (SAF) On July 19, 1997, inmate Gonzalez and Avaloz assaulted inmate DeLa Rossa. Inmates Valenzuela, Munoz-Garcia and Gomez-Tovar assisted in the assault. On March

23, 1998 inmates Munoz-Garcia and Avaloz pled guilty to simple assault. Gonzales pled guilty to simple assault on June 15, 1998. Avaloz received a 6-month sentence concurrent to his current offense, special assessment of \$10.00 and restitution in an amount to be determined in the future. Munoz-Garcia received a sentence of time served and a \$10.00 special assessment. Gonzalez received a sentence of time served, \$10.00 special assessment and 12 months of supervised release on July 17, 1998. Valenzuela received a sentence of time served, special assessment of \$10.00 and an undetermined amount of restitution on August 4, 1998. Gomez-Tovar's indictment was dismissed on November 16, 1998.

U.S. v. Lee, (SAF) On October 30, 1997, Lee assaulted inmate Askew with a pool ball in a sock. He received a sentence of 51 months imprisonment followed 3 years of supervised release.

U.S. v. Simmons, (LOM) Case involves the assault of a Correctional Officer that occurred on December 14, 1997. Trial scheduled for December 1, 1998.

U.S. v. Wehmhoefer, (LOM) Case involves the assault of another inmate that occurred on March 4, 1997. Trial scheduled for January 12, 1999.

#### **ESCAPE:**

U.S. v. Finkle, (LOM) Case involves an escape from the FPC in January of 1998. Trial scheduled for January 19, 1999.

U.S. v. Nikrasch, (LOM) Case involves an escape from the FPC in December of 1995. Inmate pled guilty to one count of Escape from a Federal Institution, one count of Possessing and/or Passing Counterfeit \$100 Bills, and one count of Possessing over \$5,000 in Counterfeit Currency. Sentencing scheduled for November 2, 1998.

#### **FRAUD/FORGERY:**

U.S. v. Lewis, (TCN) Prosecution of inmate for soliciting drug abuse treatment records from outside source to falsify, and falsifying records to document history of substance abuse to support application to RDAP program for purpose of § 3621(e) early release eligibility. Grand Jury Hearing held October 14, 1998. AUSA has requested witness interviews of BOP staff for December 15, 1998.

#### **HOMICIDE:**

U.S. v. Green, (LOM) On July 30, 1998, Judge Marshall signed an order establishing new deadlines. Trial date is April 13, 1999;

October 5, 1998, deadline for defense counsel to present mitigating factors to USAO concerning death penalty; October 23, 1998, deadline for USAO to send death penalty submission to DOJ; and November 23, 1998, deadline for gov't decision to file a notice of intent to seek the death penalty. Currently participating in several criminal discovery requests. Defense counsel met the October 5, 1998, deadline; Prosecutors met the October 23, 1998; conference with Attorney General's Committee concerning the Death Penalty on November 20, 1998; decision concerning Death Penalty expected by first of December; filing deadline for Intent to seek the death penalty is December 10, 1998.

U.S. v. Lindsey, (PHX) Prosecution of Lindsey, for November 1, 1997 murder of inmate Jackson. Lindsey was indicted on September 8, 1998. Lindsey made his first appearance on October 22, 1998 and pleaded not guilty. Although trial is scheduled for December 9, 1998, AUSA advises it will be continued to a date after the first of the year.

**INTRODUCTION/POSSESSION OF CONTRABAND:**

U.S. v. Reagor, (PHX) On October 22, 1998 the U.S. Attorney's Office accepted for prosecution an incident which occurred on July 29, 1998. On that date, inmate Reagor attempted to secrete a balloon on the Recreation yard containing brown heroin. No new information.

**PROPERTY:** None

**SEX OFFENSES:**

U.S. v. Secrease, (DUB) Former Correctional Officer pled guilty to one count of knowingly engaging in a sexual act with a ward (inmate) in violation of 18 U.S.C. 2243(b). Sentencing is scheduled for January 15, 1999.

**WEAPONS:** None

» STATISTICS «

ADMINISTRATIVE REMEDIES											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
91	112	114	80	90	110	101	114	126	126	108	

FREEDOM OF INFORMATION/PRIVACY ACT:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	21	32	23	39	26	19	30	20	33	34	33	
CLOSED	27	24	33	33	29	21	29	22	33	28	31	
PENDING	14	22	12	18	15	13	14	12	12	18	20	
20 DAYS	2	0	0	0	2	0	2	0	0	1	1	
6 MONTHS	0	0	0	0	0	0	0	0	0	0	0	

<b>APPEALS</b>	0	0	1	1	4	1	2	3	0	0	3	
<b>FOI/PA PENDING MORE THAN 20 DAYS ON NOV. 30, 1998:</b>												
<b>BRN</b>	<b>DUB</b>	<b>LOM</b>	<b>LOF</b>	<b>LOS</b>	<b>NEL</b>	<b>PHX</b>	<b>SAF</b>	<b>SDC</b>	<b>SHE</b>	<b>TRM</b>	<b>TCN</b>	<b>TOTAL</b>
									1			1

<b>ADMINISTRATIVE TORT CLAIMS</b>												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
<b>RECEIVED</b>	34	40	62	43	39	48	52	50	27	40	37	
<b>CLOSED</b>	38	64	47	36	58	29	57	45	36	53	42	
<b>RECONSIDER</b>	0	0	1	1	0	0	1	2	1	0	0	
<b>PENDING</b>	110	86	102	110	91	110	106	113	105	92	87	
<b>OVER 6 MONTHS</b>	1	3	3	2	1	0	0	0	0	0	0	

<b>Tort Claim Investigations Over 60 Days:</b>												
BRN	DUB	LOM	LOF	LOS	NEL	PHX	SAF	SDC	SHE	TRM	TCN	TOTAL
0	4	0	0	1	0	0	0	6	5	0	0	16

<b>LITIGATION:</b>												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
<b>OPEN AT BEGINNING OF MONTH</b>	286	297	306	311	312	329	325	325	333	348	356	
<b>NEW CASES RECEIVED</b>	24	21	17	18	18	9	15	12	17	9	8	
<b>HC</b>	19	17	5	14	13	5	8	7	8	4	3	
<b>FTCA</b>	1	1	5	1	1	1	1	0	2	1	1	
<b>BIVENS</b>	4	2	5	2	2	2	5	4	7	4	4	
<b>OTHER</b>	0	1	2	1	2	1	1	1	0	0	0	
<b>CLOSED</b>	13	12	11	17	1	13	15	4	2	1	11	
<b>PENDING AT END OF MONTH</b>	297	306	311	312	329	325	325	333	348	356	353	
<b>LITIGATION REPORTS COMPLETED</b>	13	15	8	8	17	5	6	7	7	10	10	



U.S. Department of Justice

Federal Bureau of Prisons

Dublin, California 94568

January 5, 1999

MEMORANDUM TO CAROLYN A. SABOL  
ACTING ASSISTANT DIRECTOR/GENERAL COUNSEL

FROM: Harlan W. Penn, Regional Counsel  
SUBJECT: Monthly Report for December, 1998

LITIGATION

**NINTH CIRCUIT MATTERS:**

Berry v. Crabtree, (SHE) Apellee Crabtree'S brief filed arguing the BOP decision that inmates with convictions of 18 USC 924(c) are ineligible for early release was proper.

Montano-Figueroa, (SHE) Published decision on December 8, 1998. Inmate challenged the BOP's IFRP and collection of court ordered fines and collections. CA9 upheld the IFRP and ruled that 18 USC 3572(d) was not a bar to the BOP's diversion of a portion of inmate's pay to meet "legitimate financial obligations."

Stamper v. Adams, (SAF) Unpublished decision on November 18, 1998. Favorable decision from Ninth Circuit holding that *Koray* ruling can be applied retroactively as it is merely an interpretation of an existing statute and not an unforeseen new rule of law.

**NEW 3621(e) CASES:**

Brammer v. Fitzpatrick, (LOM) Denial of sentence reduction due to a § 2113(a) Bank Robbery even though inmate completed RDAP.

Claggett v. Cobos, (LOS) Denial of sentence reduction due to two-point firearm enhancement.

Dawson v. Fitzpatrick, (LOM) Denial of sentence reduction due to two-point firearm enhancement. Inmate has not completed RDAP.

Muhammad v. Adams, (LOM) Denial of sentence reduction due to two-point firearm enhancement.

Salsberry v. Clark, (TRM) Denial of sentence reduction due to two-point firearms enhancement.

Sattes v. Cobos, (BRN) Denial of sentence reduction due to two-point firearms enhancement.

**NEW CASES/OTHER:**

Broderick v. Goodroe, (LOS) *Bivens* action. Plaintiff alleges denial of access to proper medication while housed at MDCLA and that he was forced to consume Prozac and denied access to necessary medical procedures.

Camerena v. Adams, (LOM) Habeas petition in which inmate alleges that he has been improperly classified.

Ceja v. Seifert, (LOS) Habeas petition in which plaintiff alleges he was erroneously found guilty by the DHO of possession of narcotics. He alleges the substance was medication provided by the prison pharmacist.

Erlin v. U.S. Parole Commission, (LOS) *Bivens*/FTCA action. Plaintiff alleges the U.S. Parole Commission exceeded its authority by taking him into custody based on a parole violation, that BOP failed to honor the court's order to release him on or about October 28, 1997, and that he was denied medical care and received indifferent treatment which led to his stroke and bodily injury.

Grafman & Grafman v. Hood, (TCN) *Bivens* action alleging civil rights violations, special parole, false imprisonment, personal injury, slander, and intentional infliction of emotional distress.

Kennedy v. Belchinsky, (LOM) *Bivens* action alleging inadequate dental treatment.

Merritt v. Morck, (BRN) *Bivens* action alleging Fifth and Eighth Amendment violations, job discrimination, back pay, and longevity.

Moses v. FPC Phoenix Federal Prison, (PHX) No jurisdiction cited but appears to be an FTCA action. Inmate alleges she fell from top bunk in her housing unit due to the lack of a ladder.

Most v. Stratman, (TCN) *Bivens* action. Plaintiff alleges he developed Carpal Tunnel Syndrome when new typing chairs were



purchased by the Education Department, and that all MCC San Diego defendants had personal knowledge of his physical problems but intentionally failed to assist him.

Rieke v. Hood, (TCN) Habeas petition seeking jail credit. Inmate temporarily removed from State of Arizona custody pursuant to a Writ ad Prosequendum for trial on Federal drug charges in the District of Minnesota. At sentencing, the Federal court ordered that Petitioner's 50-month term be served concurrently with any other sentence, State or Federal. Inmate seeks jail credit for the time spent on writ, the period that he was subject to a Federal detainer and retroactive application of the concurrent sentencing order, to include time spent during exclusive service of his state term.

Steiner v. IRS, (SHE) *Bivens* action alleging various Constitutional violations, including false imprisonment.

Thompson v. Crabtree, (SHE) Habeas petition alleging excessive use of force by a Correctional Officer.

Urrutia-Valle v. Seifert, (LOS) Habeas petition seeking review of the Magistrate Court's certification and order of petitioner's extradition.

**SIGNIFICANT DEVELOPMENTS:**

Blue v. Bailey, (SAF) - Habeas petition seeking presentence credit. On December 8, 1998, case was dismissed.

Copeland v. Hood, (TCN) On December 3, 1998, Judge William Browning dismissed, with prejudice, the habeas petition which sought expungement of a DHO Report and restoration of forfeited good time, stemming from a *110 Refusing to Provide a Urine Sample* charge. Copeland claimed he suffered from "Shy Bladder" syndrome, and Magistrate issued a Report and Recommendation (R&R) to grant the petition. Due to the significant correctional issues involved FCI Tucson legal staff opposed the Magistrate's R&R.

Cozine v. Crabtree, (SHE) Habeas petition concerning jail credit issues and concurrent state and federal time. Solicitor General decided against appeal.

Davis v. Perrill, (SET) Habeas petition alleging property was improperly withheld when inmate was transferred from FDC Sheridan to FDC SeaTac. Response filed on November 6, 1998.

Kurtz v. U.S., (SHE) FTCA action alleging negligence in failing to prevent inmate from attempting to commit suicide by hanging.

Inmate is permanently impaired. Inmate received compassionate release on November 18, 1998.

Mota v. U.S., (SDC) FTCA action regarding alleged injury during escorted trip. Pre-Trial Conference was held on November 9, 1998. Mandatory settlement conference held on December 2, 1998. The U.S. Attorney's Office does not intend to entertain settlement negotiations at this time. A bench trial has been calendared and set for January 26, 1999.

Parmelee v. Benov, (SDC) Bivens action. Rejection of "How to Win Prison Disciplinary Cases". Parties ordered to designate their respective experts in writing by February 19, 1999. Supplemental or second date for designation of experts March 5, 1999.

Riggs v. Perrill, (SET) Habeas petition. On November 20, 1998, inmate failed a drug test and requested additional source determination testing because he claimed the positive result was due to poppy seed consumption. Judge adopted the Magistrate's Report and Recommendation, issuing an Order denying and dismissing the petition with prejudice.

Thompson v. Crabtree, (SHE) D. Ore. decision re disposition of petitions under 28 U.S.C. 2241 which raise issues that would previously have been brought in a Motion to Vacate, Correct of Set Aside Judgement under U.S.C. 2255 but are now barred under Anti-Terrorism and Effective Death Penalty Act of 1996. Cases will be transferred, when filed, to the District of conviction.

**CRIMINAL CASE TRACKING**

Criminal Cases												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
<b>Referred</b>										14	15	16
<b>Accepted</b>										1	0	0
<b>Declined</b>										5	12	7
<b>Pending Decision</b>										8	3	9

**Declined Cases:**

(DUB) \*FCI Dublin Criminal case tracking information was not available at time of preparation of monthly report. Monthly report was submitted early due to Ms. Augustine's absence on annual leave until after the new year.

(SAF) Inmate on Inmate Assault - Inmate was found with bruises and is suspected of being assaulted by another inmate.

(SET) Inmate on Inmate Assault - AUSA declined to prosecute in

favor of administrative disciplinary proceedings.

(SET) Inmate on Staff Assault - INS inmate spat in officer's face. AUSA declined to prosecute in favor of administrative disciplinary proceedings.

(SET) Inmate on Staff Assault - INS inmate threw Kool-Aid at an officer. AUSA declined to prosecute in favor of administrative disciplinary proceedings.

(SHE) \*SIS has not provided the figures. Will update December criminal referrals in January.

(TCN) Visiting Room - A female visitor identifying herself as the sister of an inmate produced what was later discovered to be falsified photo ID to gain entry into FCI Tucson. The visitor had used the inmate's sister's name to gain entry. The incident was referred but declined in lieu of administrative disciplinary action.

(TCN) Inmate on Staff Assault - Inmate threw water at staff. There were no injuries involved. The matter was referred as a minor assault but was declined that same day.

(TCN) Possession of Narcotics - While conducting a search of inmate locker staff discovered .4 gram of suspected marijuana. The substance tested positive for marijuana and was referred but declined in lieu of administrative disciplinary action.

(TRM) \*Statistics pending. Delay due to recent retirement of SIS.

**Active Prosecutions:**

**ASSAULT:**

U.S. v. Simmons, (LOM) Assault of a Correctional Officer that occurred on December 14, 1997. On December 3, 1998, the defendant was found guilty of Assault on a Law Enforcement Officer. Sentencing scheduled for February 22, 1999.

U.S. v. Wehmhoefer, (LOM) Assault of another inmate that occurred on March 4, 1997. Trial rescheduled for May 19, 1999.

**ESCAPE:**

U.S. v. Finkle, (LOM) Escape from FPC in January of 1998. Trial scheduled for January 19, 1999.

U.S. v. Nikrasch, (LOM) Escape from FPC in December of 1995. Inmate pled guilty to one count of Escape from a Federal

Institution, one count of Possessing and/or Passing Counterfeit \$100 Bills, and one count of Possessing over \$5,000 in Counterfeit Currency. Sentencing was rescheduled for December 21, 1998, but is now postponed with no new date.

**FRAUD/FORGERY:**

U.S. v. Lewis, (TCN) Soliciting drug abuse treatment records from outside source to falsify records to document history of substance abuse to support application to RDAP program for purpose of § 3621(e) early release eligibility. Grand Jury hearing held October 14, 1998. AUSA requested witness interviews of BOP staff for December 15, 1998. AUSA and FBI Special Agent met with FCI Tucson SIS/legal staff, as well as potential witnesses for trial on December 17, 1998. AUSA confident that inmate can successfully be prosecuted for Attempted Escape and two counts of Fraud, as well as Witness Tampering, as he contacted the witness to urge her to recant/change her testimony.

**HOMICIDE:**

U.S. v. Green, (LOM) On July 30, 1998, Judge signed an order establishing new deadlines. Trial date is April 13, 1999; On December 2, 1998, the Attorney General authorized the USAO to seek the Death penalty in this case. On December 10, 1998, the USAO filed the Notice of Intent to Seek the Death Penalty. On December 15, 1998, a status conference was scheduled, however, inmate Green refused to come out of his cell to attend. Judge agreed to hold the conference at MDC-Los Angeles, however, MDC-Los Angeles, for security reasons, refused to allow inmate Green's mother to enter the institution to attend the conference. The Judge postponed all future status conferences unless the parties requested it. Judge also stated that the parties are to submit their information in writing from this point forward. Lastly, Judge requested a Memorandum of Law explaining why inmate Green could not be banned from the courtroom during the trial, as well as information concerning application of restraints and video conferencing. Note that 9th Circuit case law prohibits exclusion of a defendant from the courtroom unless he exhibits disruptive behavior in the courtroom.

U.S. v. Lindsey, (PHX) November 1, 1997 murder of inmate Jackson. Lindsey was indicted on September 8, 1998, made his first appearance on October 22, 1998, and pled not guilty. Trial date has been postponed to January 27, 1999.

**INTRODUCTION/POSSESSION OF CONTRABAND:**

U.S. v. Reagor, (PHX) Inmate Reagor attempted to secrete a balloon on the Recreation yard containing brown heroin. On

October 22, 1998 the U.S. Attorney's Office accepted for prosecution.

**PROPERTY:** None

**SEX OFFENSES:**

U.S. v. Secrease, (DUB) Former Correctional Officer pled guilty to one count of Knowingly Engaging in a Sexual Act with a Ward (Inmate) in violation of 18 U.S.C. 2243(b). Sentencing is scheduled for January 15, 1999.

**WEAPONS:** None

►► **STATISTICS** ◀◀

ADMINISTRATIVE REMEDIES											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
91	112	114	80	90	110	101	114	126	126	108	86

FREEDOM OF INFORMATION/PRIVACY ACT:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	21	32	23	39	26	19	30	20	33	34	33	28
CLOSED	27	24	33	33	29	21	29	22	33	28	31	32
PENDING	14	22	12	18	15	13	14	12	12	18	20	16
20 DAYS	2	0	0	0	2	0	2	0	0	1	1	1
6 MONTHS	0	0	0	0	0	0	0	0	0	0	0	0
APPEALS	0	0	1	1	4	1	2	3	0	0	3	0

FOI/PA PENDING MORE THAN 20 DAYS ON DEC. 31, 1998:														
BRN	DUB	LOF	LOM	LOS	NEL	PHX	SAF	SDC	SET	SHE	TAF	TCN	TRM	TOTAL
0	0	0	0	0	0	0	0	0	0	1	0	0	0	1

ADMINISTRATIVE TORT CLAIMS												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	34	40	62	43	39	48	52	50	27	40	37	39
CLOSED	38	64	47	36	58	29	57	45	36	53	42	31
RECONSIDER	0	0	1	1	0	0	1	2	1	0	0	0
PENDING	110	86	102	110	91	110	106	113	105	92	87	95
OVER 6 MONTHS	1	3	3	2	1	0	0	0	0	0	0	0

Tort Claim Investigations Over 60 Days:

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

LITIGATION:													
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	
OPEN AT BEGINNING OF MONTH	286	297	306	311	312	329	325	325	333	348	356	353	
NEW CASES RECEIVED	24	21	17	18	18	9	15	12	17	9	8	19	
HC	19	17	5	14	13	5	8	7	8	4	3	11	
FTCA	1	1	5	1	1	1	1	0	2	1	1	1	
BIVENS	4	2	5	2	2	2	5	4	7	4	4	6	
OTHER	0	1	2	1	2	1	1	1	0	0	0	1	
CLOSED	13	12	11	17	1	13	15	4	2	1	11	16	
PENDING AT END OF MONTH	297	306	311	312	329	325	325	333	348	356	353	356	
LITIGATION REPORTS COMPLETED	13	15	8	8	17	5	6	7	7	10	10	8	

SCHEDULED LEAVE:

[REDACTED]

[REDACTED]

[REDACTED]

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