



U.S. Department of Justice
Federal Bureau of Prisons

Dublin, California 94568

February 14, 2000

**MEMORANDUM FOR CHRISTOPHER ERLEWINE, ASSISTANT DIRECTOR/
GENERAL COUNSEL, GENERAL COUNSEL & REVIEW**

FROM: Harlan W. Penn, Regional Counsel

SUBJECT: Monthly Report for January 2000

LITIGATION

NEW CASES (3621(e))

Adams vs. Pendleton, (TCN) DAP petition complaining of 3621(e) ineligibility due to instant 922(g) conviction and prior for armed robbery. On January 5, 2000, judge issued order denying petition.

Brooks vs. Hood, (SHE) DAP petition complaining of 3621(e) ineligibility due to 2 point weapon enhancement.

Colfax vs. Hood, (SHE) DAP petition complaining of 3621(e) ineligibility due to 922(g) conviction and history of aggravated assault.

Hinton vs. Calcotte, (LOM) DAP petition complaining of 3621(e) ineligibility due to 922(g) conviction.

Robinson vs. Hood, (SHE) DAP petition complaining of 3612(e) ineligibility due to 922(g) conviction and history of robbery.

Stephens vs. Hood, (SHE) DAP petition complaining of 3621(e) ineligibility. Petitioner was determined to be ineligible on the presumption of a 2 point enhancement. Despite having had a prior 18 U.S.C. 924(c) conviction vacated, the BOP presumes (absent clear intent of the court to the contrary) the inmate would have received a 2 point enhancement had he not been convicted of the 924(c). Petitioner also ineligible based on a history of aggravated assault.

NEW CASES (Non 3621(e))

Ames vs. Pontesso, (PHX) Bivens complaint alleging staff lost his personal property.

Barroca vs. Federal Detention Center, Dublin, (DUB) Inmate seeking a temporary restraining order to stop the installation of the Inmate Telephone System II at the FDC. Inmate claims that he is not a class member of the Washington vs. Reno.

Cleveland vs. Hood, (SHE) Habeas petition challenging denial of visiting privileges and calculation of payments under the Inmate Financial Responsibility Program (IFRP).

Frias vs. Hawk, (SDC) Bivens complaint alleging he was denied adequate medical care, improper vaccination, and that staff incorrectly addressed their mistake.

Moreno vs. Hood, (SHE) Habeas petition challenging calculation of payments under the Inmate Financial Responsibility Program (IFRP).

Rogers vs. BOP, (DUB) Bivens complaint alleging denial of access to courts by denial of personal property and legal mail.

Rowe vs. Tharpe, (LOM) Habeas petition complaining of discipline charge for assaulting another arising out of 1995 riot. (Note: petitioner currently being prosecuted for participation in 1995 riots.)

Venegas vs. Hood, (SHE) Habeas petition contesting the determination that surgery was not medically necessary.

SIGNIFICANT DEVELOPMENTS/APPEALS

Alvarado vs. Fitzpatrick, (LOM) Order dated August 26, 1999, denied habeas petition and terminated case.

Barth vs. Reno, (TCN) Title VII civil rights complaint alleging gender, age, and handicap discrimination in employment. Plaintiff, a retired PHS Nurse Practitioner, alleged a pervasive, hostile work environment forced her to take early retirement. On January 6, 2000, Judge William D. Browning adopted the Magistrate's Report and Recommendation and granted Defendant's Partial Motion for Summary Judgement with respect to the constructive discharge claim.

Ford vs. Pontesso, (PHX) BOP ordered to reconsider petitioner's 3621(e) eligibility. Originally denied eligibility due to 2 point weapon enhancement.

Gerritsen vs. Pontesso, (PHX) R&R issued advising dismissal of case in which inmate has a conviction for escape from a camp.

Holmes vs. United States (SDC) Plaintiff alleged inadequate medical care when he slipped while climbing to the upper bunk bed. Magistrate Judge Burns has set this matter for a conference on February 24, 2000.

Kennedy vs. United States, (LOM) Order dated August 19, 1999, dismissed both the tort claim and claims against individual defendants.

Miller vs. Reese, (DUB) Inmate was erroneously informed of her eligibility for a sentence reduction on or about August 10, 1995 - several weeks after Program Statement 5162.02 was issued in July 1995. In a non published opinion, the Ninth Circuit Court of Appeals affirmed the denial of the one year early release pursuant to 3621(e). The Court found inmate's arguments regarding retroactivity and due process without merit.

Ordaz-Diaz vs. Perrill, (SET) On January 25, 2000, Magistrate Judge Weinberg recommended dismissal of the petition based on Petitioner's failure to exhaust his administrative remedies.

Plata vs. Cobos, (LOS) Chief Judge Hatter, ordered BOP to re-evaluate petitioner's eligibility for early release. Petitioner was originally denied eligibility due to 2 point weapon enhancement.

Richenback vs. Fitzpatrick, (LOM) BOP ordered to reconsider petitioner's 3621(e) eligibility.

Robinson vs. Hawk, (SDC) Court granted government's motion to dismiss, without prejudice, complaint alleging improper transfer, designation, and housing.

Romero vs. United States, (PHX) This inmate suicide case had earlier been reported as settled. After verbally accepting the settlement offer, the decedent's life companion and mother of his surviving minor children rejected the settlement offer. A motion to dismiss is expected to be filed in the near future.

Teran vs. Morrison, (LOM) Order dated October 7, 1999, dismissed case without prejudice for lack of prosecution.

Wilson vs. Perrill, (SET) R&R recommended dismissal of petition due to Petitioner's failure to raise an issue challenging the legality or duration of his confinement.

CRIMINAL CASE TRACKING

Criminal Cases												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Referred	22											
Accepted	3											
Declined	27											
Pending Decision	28											

NEW INFORMATION ON ACTIVE PROSECUTIONS

ASSAULT

United States vs. Amaya-Jaquez, (TCN) Defendant Amaya pled guilty on October 29, 1999, to 3 misdemeanor assaults, and was sentenced on January 13, 2000, to 6-months C.A.G. consecutive to current federal term. AUSA admitted that he was unaware of the full extent of Amaya's offense (assaulted 3 BOP officers and almost caused a larger scale disruption involving other inmates) when he entered into plea agreement. Judge Zapata agreed, stating that Amaya was receiving an extremely lenient sentence, "a break he does not deserve," and contemplated exceeding the guidelines, however, he realized it would undoubtedly be overturned on appeal. We are seeking aggressive prosecution on 2 pending assault cases, one of which resulted in serious physical injury to a staff member.

United States vs. Lopiccicolo, (LOM) Inmate on inmate assault at FCI Lompoc February 1997. Trial held on January 4 and on January 5, Defendant Fleming plead guilty to Conspiracy to Commit Assault. On January 7, 2000, Defendants Lopiccicolo and Davidson plead guilty to Assault with a Dangerous Weapon with Intent to do Bodily Harm. Davidson and Lopiccicolo are scheduled to be sentenced on February 2, 2000; Fleming is scheduled for sentencing on September 8, 2000.

United States vs. Ponce-Hernandez, (TCN) On January 11, 2000, inmate Ponce-Hernandez assaulted a Correctional Officer, causing multiple fractures of the right orbital region and temporal mandibular joint, which required surgery to repair. Post-surgically, officer was suffering from blurred, double vision in right eye. AUSA accepted case for prosecution January 13, 2000.

United States vs. Mendoza-Aguilar, (TCN) AUSA accepted case for prosecution of inmate on staff assault which resulted in multiple contusions and abrasions to the face and upper torso to staff

member.

United States vs. Guyton (LOM) Inmate on staff assault in August 1997 at USP Lompoc. Indictment returned on December 28, 1999. No trial date yet.

United States vs. Joseph Frank Rowe, et al., (LOM) Case involves the 1995 riot. Indictment involving six inmates was returned on December 21, 1999. Indictment involves four counts of rioting and thirteen counts of assault.

United States vs. Villegas (LOM) Inmate on inmate assault at USP Lompoc in December 1996. Indictment returned December 10, 1999. No trial date yet.

United States vs. Wehmhoefer, (LOM) Inmate on inmate assault at USP Lompoc in March 1997. Trial began on January 25, 2000, and inmate was found guilty of assault with intent to commit murder, assault with a dangerous weapon with intent to do bodily harm, and assault resulting in serious bodily injury. Sentencing set for April 17, 2000.

INTRODUCTION/POSSESSION OF CONTRABAND

United States vs. Brooks, (LOM) Indictment against correctional officer for Bribery of a Public Official and Attempting to Provide or Possess Contraband in a Prison returned on January 26, 2000. No trial date yet.

United States vs. Dixon, (SHE) Inmate indicted for possession of a controlled substance in prison. Trial set for February 8 & 9, 2000.

United States vs. Salazar-Martinez, (PHX) Inmate and visitor indicted January 25, 2000, for introduction of contraband into institution.

OTHER

United States vs. Ressam, (SET) On January 20, 2000, a nine(9) count superseding indictment was filed against Ahmed Ressam and Abdelmajid Dahoumane. The defendants are charged with An Act of Terrorism Transcending a National Boundary, Placing an Explosive in Proximity to a Terminal, False Identification Documents, Use of a Fictitious Name for Admission, False Statement, Smuggling, Transportation of Explosives, Possession of an Unregistered Firearm, and Carrying an Explosive During the Commission of a Felony. The trial date was postponed until July 2000. The Special Administrative Measures under 28 C.F.R. § 501.3 remain in place for inmate Ressam.

STATISTICS

ADMINISTRATIVE REMEDIES											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
102											

FREEDOM OF INFORMATION/PRIVACY ACT:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	28											
CLOSED	29											
PENDING	24											
30 DAYS	3*											
6 MONTHS	0											
APPEALS	6											

*2 received within 5 days of due date, one after due date.

FOI/PA PENDING MORE THAN 20 DAYS:														
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	0	0	0	0	0

ADMINISTRATIVE TORT CLAIMS												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	29											
CLOSED	34											
RECONSIDER	0											
PENDING	103											
OVER 6 MONTHS	2											

Tort Claim Investigations Over 60 Days:														
BRN	DUB	LOF	LOM	LOS	NEL	PHX	SAF	SDC	SET	SHE	TAF	TCN	TRM	TOTAL

Tort Claim Investigations Over 60 Days:

0	2	0	0	3	0	0	0	0	0	0	0	0	0	5
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LITIGATION:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
OPEN AT BEGINNING OF MONTH	379											
NEW CASES RECEIVED	14											
HC	10											
FTCA												
BIVENS	3											
OTHER	1											
CLOSED	5											
PENDING AT END OF MONTH	388											
LITIGATION REPORTS COMPLETED	22											

MISCELLANEOUS

Wilson Moorer (PHX) was selected as Employee of the Month for February, 2000.

WRO



U.S. Department of Justice
Federal Bureau of Prisons

Dublin, California 94568

March 8, 2000

**MEMORANDUM FOR CHRISTOPHER ERLEWINE, ASSISTANT DIRECTOR/
GENERAL COUNSEL, GENERAL COUNSEL & REVIEW**

FROM: Harlan W. Penn, Regional Counsel
SUBJECT: Monthly Report for February 2000

LITIGATION

NEW CASES (3621(e))

Fitzwater vs. Hood, (SHE) DAP petition contesting 3621(e) ineligibility due to 2 point weapon enhancement.

Narte vs. Hood, (SHE) DAP petition contesting 3621(e) ineligibility due to prior state conviction for Assault II.

Pullins vs. Hood, (SHE) DAP petition contesting 3621(e) ineligibility due to 922(g) conviction.

Robertson vs. Clark (LOM) DAP petition contesting 3621(e) ineligibility due to 2 point weapon enhancement.

Shelton vs. Clark (LOM) DAP petition contesting 3621(e) ineligibility due to 922(g) conviction.

Tezak vs. Pendleton (TCN) DAP petition contesting 3621(e) ineligibility due to old-law inmate status, detainer, and current conviction for threatening a witness, 18 U.S.C. 1512(b).

NEW CASES (Non 3621(e))

Bryant vs. BOP, (SET) Habeas petition contesting CCC discipline action.

Cervantes-Munoz vs. Pendleton, (TCN) Habeas petition contesting DHO imposed discipline.

Glasner vs. United States (SHE) FTCA action arising from assignment to an upper bunk, inadequate means for accessing the upper bunk, and inadequate medical care.

Marsh vs. United States (DUB) Combined FTCA/Bivens complaint arising from medical treatment for alleged ruptured breast implant caused by alleged improperly performed mammogram and rectal bleeding.

Rogers vs. Bureau of Prisons, (PHX) Bivens action alleging staff willfully withheld legal and personal property.

Swan vs. United States (DUB) Combined FTCA/Bivens suit complaining of medical treatment provided after inmate on inmate assault.

Weling vs. Bailey, (SAF) Habeas petition contesting DHO action for theft while in CCC which resulted in return to closer custody and subsequent failure to complete DAP.

White vs. Pontesso, (PHX) Habeas petition contesting allegedly illegal custody because all counts on his Judgment and Commitment Order were dismissed (clerical error).

SIGNIFICANT DEVELOPMENTS/APPEALS

Aguirre vs. Clark, (TRM) Inmate is a Bowen class inmate. AUSA plans to file a motion to stay proceeding until Ninth Circuit can rule on Federal Public Defender's motion to rehear Bowen/Gavis case.

Barroca vs. Federal Detention Center, (DUB) Inmate Barroca filed a Temporary Retraining Order seeking to stop the installation of the Inmate Telephone System II at the FDC. Barroca claims that he is not a class member of the Washington v. Reno. The Court has dismissed Barroca's complaint without prejudice for failure to exhaust his administrative remedies.

Blue vs. Bailey, (SAF) Ninth Circuit ordered remand with instructions to dismiss this sentence credit case on February 10, 2000.

Carter vs. United States (TRM) Medical malpractice case. Although we received a favorable R&R filed January 7, 2000, advocating dismissal of case without prejudice for failure to timely serve government, the court has ordered us to respond to fact that inmate did his part by informing US Marshals to serve government.

Davis vs. Rardin, (LOM) Order dated January 27, 2000, dismissed complaint and terminated case.

Iniego vs. Clark, (TRM) RDAP staff missed a 2 point SOC and found inmate eligible for year off. Judge has issued an R&R and amended R&R that recommends relief for the inmate based on promissory estoppel theories, and alternatively, on Cort. However, there is no "affirmative misconduct" as required to apply estoppel against the government, and Cort does not apply as inmate was first evaluated in

March 1998, after the issuance of the Director's Discretion policy. Government objections filed.

Janis vs. Rardin, (LOM) Order dated February 7, 2000, dismissed complaint and terminated case.

Motions to dismiss filed in Ford v. Pontesso, McArtor v. Pontesso, Shaw v. Pontesso, and Wood v. Pontesso (PHX), based on the recent opinion in Bowen v. Hood.

Parmelee vs. Perrill, (SET) Bivens complaint dismissed with prejudice for plaintiff's failure to pay court imposed sanctions under Rule 11.

Sauseda vs. Bureau of Prisons, (PHX) Dismissed by court on August 11, 1999.

Ninth Circuit upheld the Director's discretion contained in Program Statement 5162.04 in Bowen v. Hood, 2000 WL 126588 (9th Cir. (OR)) (SHE). The opinion refers to two groups of inmates: the Gavis Group and the Bowen Group. With regard to the Gavis inmates, the Court upheld the Director's decision to use the discretion vested in her by Congress to categorically deny otherwise statutorily eligible inmates early release. With regard to the Bowen inmates, the Court held the BOP may not retroactively apply Program Statement 5162.04 to inmates who had previously received a favorable eligibility determination even though they had not yet entered the DAP.

Vaccaro vs. Dobre (NEL) 1991 \$10m Bivens case for deliberate indifference of serious medical need - low back condition. BOP Defendants' Motion to Dismiss was granted in part. Three defendants and related causes of action have been dismissed from the case. Two defendants remain with specific issue identified by Court - whether staff issued order to inmate to lift furniture, and if so was order in violation of known medical restrictions. Pretrial Order is due March 6. Case to be set for trial as to remaining defendants.

Williams vs. Bailey, (SAF) DHO-based habeas petition dismissed by court on February 3, 2000.

Wilson vs. Perrill, (SET) On January 27, 2000, Judge Zilly adopted the magistrate's Report and Recommendation and dismissed habeas corpus petition due to his failure to raise an issue challenging the legality or duration of his confinement.

CRIMINAL CASE TRACKING

Criminal Cases												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Referred	22	13										
Accepted	3	5										
Declined	27	8										
Pending Decision	28	32										

NEW INFORMATION ON ACTIVE PROSECUTIONS

ASSAULT

United States vs. Guthrie, (PHX) AUSA tentatively accepted for prosecution inmate on staff assault which resulted in staff member requiring sutures and outside medical attention.

United States vs. Ung, (SET) AUSA accepted for prosecution (but no formal charges yet) inmate on staff assault.

United States vs. Mendoza-Aguilar, (TCN) AUSA accepted for prosecution inmate on staff assault resulting in multiple contusions and abrasions to staff's face and upper torso.

United States vs. Milton, (LOM) Indictment for May 8, 1999, inmate on staff assault returned on February 2, 2000. No trial date yet.

United States vs. Ponce-Hernandez (TCN) AUSA accepted for prosecution inmate on staff assault which resulted in staff receiving multiple fractures to right orbital region and jaw which required surgical repair.

ESCAPE

United States vs. Nikrasch, (LOM) FPC Lompoc escape and counterfeit case sentencing has been continued until May 2000.

HOMICIDE

United States vs. Green, (LOM) Trial has been continued until June 20, 2000. Staff met with Williams family and staff victim in preparation of victim impact statement.

INTRODUCTION/POSSESSION OF CONTRABAND

United States vs. Brooks, (LOM) Case involves correctional officer that has been charged with Bribery of a Public Official, 18 U.S.C. §201(b)(2)(c) and Attempt to Provide or Possess Contraband in a Prison, 18 U.S.C. §1791. Indictment returned on January 26, 2000. Case is scheduled for trial on March 14, 2000.

United States vs. Dixon, (SHE) Inmate Dixon pled guilty to possession of controlled substance in prison on February 8, 2000.

STATISTICS

ADMINISTRATIVE REMEDIES											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
102	81										

FREEDOM OF INFORMATION/PRIVACY ACT:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	28	42										
CLOSED	29	19										
PENDING	24	47										
30 DAYS	3*	2*										
6 MONTHS	0	0										
APPEALS	6	1										

*1 received within 5 days of due date, 1 records pending from Archives

FOI/PA PENDING MORE THAN 20 DAYS:															
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	0	0	0	0	0	

ADMINISTRATIVE TORT CLAIMS

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	29	38										
CLOSED	34	44										
RECONSIDER	0	0										
PENDING	103	97										
OVER 6 MONTHS	2	3										

Tort Claim Investigations Over 60 Days:

BRN	DUB	LOF	LOM	LOS	NEL	PHX	SAF	SDC	SET	SHE	TAF	TCN	TRM	TOTAL
0	0	0	0	0	1	0	0	0	0	3	0	0	0	4

LITIGATION:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
OPEN AT BEGINNING OF MONTH	379	388										
NEW CASES RECEIVED	14	14										
HC	10	10										
FTCA		1										
BIVENS	3	3										
OTHER	1	0										
CLOSED	5	9										
PENDING AT END OF MONTH	388	393										
LITIGATION REPORTS COMPLETED	22	18										

MISCELLANEOUS

The FCI Terminal Island Legal Department offices will be closed from March 23 to April 3, 2000, due to asbestos abatement.

FCI Phoenix Warden Pontesso and Attorney Matt Carney are scheduled to meet with Jose Rivera, United States Attorney on March 6 to discuss the handling of civil cases involving FCI, Phoenix.



U.S. Department of Justice

Federal Bureau of Prisons

Dublin, California 94568

April 4, 2000

**MEMORANDUM FOR CHRISTOPHER ERLEWINE, ASSISTANT DIRECTOR/
GENERAL COUNSEL, GENERAL COUNSEL & REVIEW**

FROM: Harlan W. Penn, Regional Counsel
SUBJECT: Monthly Report for March 2000

LITIGATION

NEW CASES (3621(e))

Armenta-Baeza vs. Barron, (LOM) DAP petition contesting 3621(e) ineligibility due to 2 point weapon enhancement.

Loyd vs. Adams, (LOM) DAP petition contesting 3621(e) ineligibility due to 922(g) conviction.

Torres vs. Hood, (SHE) DAP petition contesting 3621(e) ineligibility due to prior conviction for assault.

NEW CASES (Non 3621(e))

Arriaga vs. Hawk, (PHX) Habeas petition seeking federal credit for time already credited to state sentence.

Ciglar vs. Andrews, (TCI) Habeas petition contesting DHO action which resulted in transfer and subsequent inability to complete RDAP.

Crooker vs. Adams, (LOM) Habeas petition regarding manuscript concerning explosives.

Cruz-Pagan vs. Holder, (LOM) Bivens complaint alleging failure to protect at USP and subsequent inadequate medical care at USMCFP.

Davis vs. Hood, (SHE) Habeas petition challenging his sentence calculation.

Duvall vs. Hood, (SHE) Habeas petition requesting protective custody status because of his mental condition.

Flowers vs. United States, (LOM) Represented FTCA suit complaining of assault by staff and failure to train.

Gossai vs. Federal Bureau of Prisons, (LOM) Bivens action contesting restrictions on visitation.

Harper vs. Banderant, (LOM) Bivens action in which multiple plaintiffs allege staff failed to release them from SHU after investigation concerning incident between rival gangs.

Lucas vs. LeBlanc, (SDC) Habeas petition claiming district court had no jurisdiction to execute extradition certification and that petition is improperly held. Order to Show Cause hearing held March 27, 2000; court ordered U.S. Marshals Service to stay extradition until April 25, 2000.

Merriweather vs. Hood, (SHE) Habeas petition challenging DHO action and seeking restoration of good time credits.

Reyes vs. MCC, (SDC) Represented Bivens complaint alleging denial of medical care resulting in infection, surgery and subsequent hand deformity.

Sandez vs. Hood, (SHE) Habeas petition challenging medical treatment.

Shorter vs. Rardin, (LOM) Habeas petition challenging DHO hearing which was held in response to court ordered rehearing in previous habeas petition.

Valdez-Pacheco vs. Franco, (LOM) FTCA/Bivens complaint alleging failure to place relatives on plaintiff's visiting list.

Williams vs. Feathers, (LOS) Bivens complaint regarding discipline process.

SIGNIFICANT DEVELOPMENTS/APPEALS

Betz vs. Crabtree, (SHE) The Ninth Circuit issued a favorable ruling holding the BOP had discretion to deny early release because of his history of attempted escape. Further, the Court wrote "even though the BOP had announced that it had exercised its discretion in Betz's favor (with knowledge of the underlying facts of the conviction that it now claims makes Betz ineligible), it has the power to change its mind." The opinion has been submitted for publication.

Harbaugh, Register No. 09431-023 and Earls, Register No. 60706-065, (SET) emergency motions were heard in USDC in Portland. The Federal Public Defender's Office (FPD) sought to have Judge Haggerty issue

an order to enforce his previous orders granting the petitioner's writs, despite the contrary ruling by the Ninth Circuit in Bowen vs. Hood. Judge Haggerty denied the FPD's request. The FPD then sought an emergency order from the Ninth Circuit enforcing the District Court's previous order. The Ninth Circuit denied the FPD's request.

Janis vs. Rardin, (LOM) Notice of Appeal Filed by inmate on March 9, 2000. (Case reported dismissed in February 2000 report.)

LaFrance vs. Wand, (LOS) USDC ordered Bureau to reconsider 3621(e) eligibility regarding prior violent conviction. Agency request for appeal currently pending.

Lund vs. United States, (SET) On March 16, 2000, both parties participated in court-mandated mediation. Settlement attempts were unsuccessful.

Merritt vs. Morck, (LOS) Majority of Bivens complaint gutted by Magistrate's R&R. If adopted, only retaliation claim against 3 defendants will proceed.

Parmelee vs. Benov, (SDC) Plaintiff's appeal to 9th Circuit dismissed for failure to pay filing fee. (Complaint originated with various institutions rejecting manual "How to Win Prison Discipline Hearings".)

Pettis vs. U.S. Navy, (SDC) Plaintiff, a former halfway house resident, claims sexual harassment at the hands of a top Navy official who supervised her cadre unit on the North Island Naval Base. Judge Brewster signed an order February 10, 2000, dismissing all BOP defendants with regard to Plaintiff's FTCA and Bivens claims. Plaintiff was granted leave to amend; however, if she fails to do so, this case will proceed as a Title VII action against the Secretary of the Navy and defendant Jackson (Naval official).

Rogers vs. Lathers (SDC) Petitioner has filed an appeal with the Ninth Circuit seeking review of the district court's findings. Petitioner originally sought immediate release from federal custody. He was charged with Escape (from a halfway house) and has been returned to closer custody.

CRIMINAL CASE TRACKING

Criminal Cases												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Referred	22	13	22									
Accepted	3	5	3									
Declined	27	8	5									
Pending Decision	28	32	47									

NEW INFORMATION ON ACTIVE PROSECUTIONS

ASSAULT

United States vs. Guma, (SET) USAO accepted for prosecution an inmate on staff assault occurring March 17, 2000.

United States vs. Guyton, (LOM) Defendant pled guilty to one count in inmate on staff assault which occurred in August 1997. Sentencing set for April 24, 2000.

United States vs. Lillie, (LOM) Trial involving 1995 riot scheduled for April 25, 2000.

United States vs. Lopiccicolo, (LOM) Inmate on inmate assault on February 4, 1997, at FCI Lompoc. Sentencing of Davidson and Lopiccicolo took place March 29, 2000. After pleas of guilty to Assault with Dangerous Weapon with Intent to do Bodily Harm, Davidson was sentenced to 92 months consecutive to his current sentence, with 3 years supervised release and \$100 special assessment. Lopiccicolo sentenced to 63 months, with 3 years supervised release and \$100 special assessment.

United States vs. Rowe, (LOM) Trial arising from 1995 riot is set for May 2, 2000.

United States vs. Villegas (LOM) Trial arising from inmate on inmate assault in December 1996 set for May 2, 2000.

INTRODUCTION/POSSESSION OF CONTRABAND

United States vs. Brooks, (LOM) Case involves correctional officer charged with Bribery of a Public Official and Attempt to Provide or Possess Contraband in a Prison. On February 25, 2000, Brooks pled guilty to one count of Bribery of a Public Official. Contraband charge dismissed as part of the plea agreement. AUSA indicated Bribery charge carries the more severe penalty. Sentencing scheduled for May 23, 2000.

SEX OFFENSES

(SDC) Two male staff members are under grand jury investigation for sexual abuse of a ward. AUSA Amalia Meza has been assigned to this matter.

STATISTICS

ADMINISTRATIVE REMEDIES											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
102	81	95									

FREEDOM OF INFORMATION/PRIVACY ACT:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	28	42	52									
CLOSED	29	19	72									
PENDING	24	47	27									
30 DAYS	3*	2*	5*									
6 MONTHS	0	0	0									
APPEALS	6	1	1									

*Waiting for records from Archives

FOI/PA PENDING MORE THAN 20 DAYS:														
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	4*	0	0	1*	0

*Waiting for records from Archives

ADMINISTRATIVE TORT CLAIMS													
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	
RECEIVED	29	38	33										
CLOSED	34	44	52										
RECONSIDER	0	0	1										
PENDING	103	97	79										
OVER 6 MONTHS	2	3	2										

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

* Matter has pending litigation

LITIGATION:													
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	
OPEN AT BEGINNING OF MONTH	379	388	393										
NEW CASES RECEIVED	14	14	19										
HC	10	10	12										
FTCA		1	1										
BIVENS	3	3	6										
OTHER	1	0	0										

CLOSED	5	9	1									
PENDING AT END OF MONTH	388	393	411									
LITIGATION REPORTS COMPLETED	22	18	14									

MISCELLANEOUS

The Terminal Island legal department is temporarily relocated through the month of April 2000.

On March 27, 2000, the former FCI Phoenix Employee Development Manager was sentenced to life without the possibility of parole for the murder of 2 individuals in Phoenix. Defendant was not employed by Bureau at time of murders.



U.S. Department of Justice
Federal Bureau of Prisons

Dublin, California 94568

May 2, 2000

**MEMORANDUM FOR CHRISTOPHER ERLEWINE, ASSISTANT DIRECTOR/
GENERAL COUNSEL, GENERAL COUNSEL & REVIEW**

FROM: Harlan W. Penn, Regional Counsel

SUBJECT: Monthly Report for April 2000

LITIGATION

NEW CASES (3621(e))

Cheung vs. Clark, (TRM) Habeas petition contesting 3621(e) ineligibility due to current conviction for 18 U.S.C. § 892, 894, Extending Credit Through Extortionate Means, which falls under Director's Discretion policy.

Torres vs. Hood, (SHE) Habeas petition contesting 3621(e) ineligibility due to prior assault conviction.

NEW CASES (Non 3621(e))

Chilcothe vs. Hawk, (SHE) Bivens action challenging FDC Sheridan's housing three inmates per cell with limited time out of the cell each day.

Clark vs. Arizona Department of Corrections (PHX) Habeas petition by Arizona State inmate with a 120-month concurrent Federal sentence, in which he requested a Federal sentence computation.

Cozine vs. United States (SHE) Bivens/FTCA action seeking damages for improperly denying inmate the ability to serve state and federal sentences concurrently. Previous opinion by Judge in District of Oregon Habeas petition found the inmate had been "wrongly confined" for approximately 19 months.

Folawiyo vs. Schultz (DUB) Habeas petition regarding computation of supervised release violator term and State sentence.

Grant vs. Reno, (LOS) The plaintiff, a former contract employee, alleges breach of contract, wrongful termination, and discrimination.

Molina vs. Hood, (SHE) Habeas petition challenging disciplinary action.

Larson vs. Bureau of Prisons, Third Party Defendant, (NEL) Third party plaintiff sues Bureau seeking contribution/indemnification as a result of Parkin vs. Larson, originally venued in District Court, Clark County, Nevada, now removed to District of Nevada. Former employee Parkin complains of contract psychologist Larson's release of information which resulted in Parkin's termination.

Renner vs. Hood, (SHE) Habeas petition challenging adequacy of dental care provided by institution.

Rodriguez-Chevannes vs. Adams, (LOM) Bivens action complaining of assault by staff, unsanitary condition, and denial of medical attention.

Stewart vs. Adams, (LOM) Bivens action alleging deliberate indifference in the provision of medical services, and failure to notify next of kin of illness.

SIGNIFICANT DEVELOPMENTS/APPEALS

Cooney and Moore vs. Meese (DUB) - Bivens/injunctive action filed in 1987 by inmates to maintain individual room locks and inmate keys. AUSA preparing declarations prior to giving 10 day notice to Plaintiffs' counsel that inmate keys will be confiscated.

Davis vs. Rardin, (LOS) Plaintiff filed Notice of Appeal in this Bivens complaint concerning the conditions of confinement in the Special Housing Unit.

Gerritsen vs. Pontesso, (PHX) On April 3, 2000, District Court dismissed this DAP petition in which inmate had escaped from a Camp.

Lund vs. United States (SET) Case involves alleged slip and fall exiting SHU shower. AUSA seeking settlement authority for up to \$50,000.

Richenback vs. Fitzpatrick, (LOM) The District Court for the Central District of California stayed the judgment in the habeas corpus action now on appeal in the Ninth Circuit. As a result, the petitioner's sentence was recalculated and his community placement will be considered only as part of his Good Conduct Time sentence.

Rowe vs. Tharpe, (LOM) On March 31, 2000, Judge ordered case transferred to the District of Colorado.

The Federal Public Defender filed Applications to Vacate the District Court's Orders Staying its Judgements Pending Appeal to the U.S. Court of Appeals for the Ninth Circuit with the U.S. Supreme Court in the following FCI Sheridan cases: Katz vs. Crabtree, Earls vs. Hood, Harbaugh vs. Hood, and Williams vs. Crabtree.

United States vs. Ressay, (SET) On April 21, 2000, the FBI renewed the special administrative measures against inmate Ressay. Trial is scheduled for July 10, 2000 in Los Angeles.

CRIMINAL CASE TRACKING

Criminal Cases												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Referred	22	13	22	13								
Accepted	3	5	3	3								
Declined	27	8	5	15								
Pending Decision	28	32	47	42								

NEW INFORMATION ON ACTIVE PROSECUTIONS

ASSAULT

United States vs. Guma: (SET) On April 20, 2000, the U.S. Attorney's Office filed assault charges against INS detainee, Aga Guma, Reg. No. 00607-461. Inmate Guma assaulted officer from behind, punching and kicking him until responding staff were able to restrain him.

United States vs. Guyton (LOM) Case involves assault on staff that occurred on August 14, 1997 at USP Lompoc. Sentencing date continued until after June 12, 2000.

United States vs. Lillie, (LOM) Case involves the 1995 riot. Trial originally set for April 25 continued to July 25, 2000.

United States vs. Milton, (LOM) Case involves assault on staff that occurred on May 8, 1998 at USP Lompoc. Trial is tentatively scheduled for July 18, 2000.

United States vs. Rowe, (LOM) Case involves the 1995 riot. Trial originally set for May 2, 2000, has been continued.

United States vs. Villegas (LOM) Case involves the assault of another inmate that occurred on December 14, 1996, at USP Lompoc. The defendant pleaded guilty to Assault with a Dangerous Weapon with

Intent to Do Bodily Harm on April 25, 2000. Sentencing is scheduled for July 10, 2000.

United States vs. Wehmhoefer, (LOM) Case involves the assault of another inmate that occurred on March 4, 1997. Inmate found guilty of Assault with Intent to Commit Murder, Assault with a Dangerous Weapon with Intent to do Bodily Harm, and Assault Resulting in Serious Bodily Injury. On April 17, 2000, inmate was sentenced to life imprisonment.

United States vs. Williams, (LOM) Case involves the 1995 riot. Trial originally set for May 9, 2000. AUSA has indicated trial will likely be continued.

ESCAPE

United States vs. Terrance Nikrasch, (LOM) Case involves an escape from the FPC in December 1995. Sentencing continued until May of 2000

HOMICIDE

United States vs. Roy Green, (LOM) Trial has been continued until June 20, 2000. Defense counsel made a request for a continuance. The BOP has not stipulated to the request. All of the Williams family and the victims have been notified of the possible continuance.

INTRODUCTION/POSSESSION OF CONTRABAND

United States vs. Brooks, (LOM) Case involves correctional officer that has been charged with Bribery of a Public Official and Attempt to Provide or Possess Contraband in a Prison. Brooks pled guilty to one count of Bribery of a Public Official. Contraband charge was dismissed as part of the plea agreement. AUSA indicated that Bribery charge carries the more severe penalty. Sentencing scheduled for May 23, 2000.

STATISTICS

ADMINISTRATIVE REMEDIES											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
102	81	95	59								

FREEDOM OF INFORMATION/PRIVACY ACT:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	28	42	52	34								
CLOSED	29	19	72	39								
PENDING	24	47	27	20								
30 DAYS	3*	2*	5*	2*								
6 MONTHS	0	0	0	0								
APPEALS	6	1	1	3								

*Waiting for records from Archives.

FOI/PA PENDING MORE THAN 20 DAYS:														
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	2*	0	0	0	0

*Waiting for records from Archives

ADMINISTRATIVE TORT CLAIMS												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	29	38	33	34								
CLOSED	34	44	52	51								
RECONSIDER	0	0	1	0								
PENDING	103	97	79	62								
OVER 6 MONTHS	2	3	2	2								

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

* Matter has pending litigation

LITIGATION:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
OPEN AT BEGINNING OF MONTH	379	388	393	411								
NEW CASES RECEIVED	14	14	19	12								
HC	10	10	12	6								
FTCA		1	1	0								
BIVENS	3	3	6	6								
OTHER	1	0	0	0								
CLOSED	5	9	1	1								
PENDING AT END OF MONTH	388	393	411	422								
LITIGATION REPORTS COMPLETED	22	18	14	8								

MISCELLANEOUS



U.S. Department of Justice
Federal Bureau of Prisons

Dublin, California 94568

June 5, 2000

MEMORANDUM FOR CHRISTOPHER ERLEWINE, ASSISTANT DIRECTOR/
GENERAL COUNSEL, GENERAL COUNSEL & REVIEW

FROM: Harlan W. Penn, Regional Counsel

SUBJECT: Monthly Report for May 2000

LITIGATION

NEW CASES (3621(e))

Barrero-Bueno vs. Clark (TRM) DAP petition contesting 3621(e) ineligibility due to INS detainer.

NEW CASES (Non 3621(e))

Salgado vs. Hood (SHE) Habeas petition challenging DHO action.

Shirely vs. Adams (LOM) Habeas petition regarding sentence computation issues.

Smith vs. Hood (SHE) Habeas petition challenging disciplinary action.

Toney vs. Hood (SHE) Habeas petition seeking to overturn 18 U.S.C. § 924(c) conviction pursuant to *Bailey vs. U.S.*

SIGNIFICANT DEVELOPMENTS/APPEALS

The denial to rehear Bowen will affect at least two cases in which we asked for a reasonable stay pending its resolution - *Biddles vs. Clark* (TRM) and *Aguirre vs. Clark*, (TRM) both of whom have inmates in the Bowen class. [REDACTED]

b2

Harwood vs. Andrews (TCN) Taft DAP case in which inmate was released at FPC Yankton due to an unrelated case on March 1. District Judge then ordered inmate released based on DAP case on March 31.

Hunt vs. Bailey (SAF) DAP petition contesting 3621(e) ineligibility due to prior robbery conviction dismissed by court.

Iniego vs. Clark (TRM) We received an amended adverse R&R. The first R&R recommended relief based on a promissory estoppel theory. The amended R&R erroneously relies on Cort and Bowen. In *Iniego*, staff made the mistake of not flagging the 2 point SOC, which produced an eligibility notice. As a result, we have been trying to distinguish erroneously issued notices versus the notices in Cort and Bowen.

[REDACTED]

b2

Lund vs. United States (SET) Case involves alleged slip and fall exiting SHU shower. Mediation resulted in a settlement of \$40,000.

Matlock vs. United States (LOM) AUSA indicated she would be forwarding a settlement letter requesting settlement authority in the amount of no more than \$25,000 in an FTCA case regarding dental care. On May 25, 2000, AUSA provided the letter and raised her requested authority to \$50,000. The settlement conference is presently scheduled for June 2, 2000.

United States v. Ressay (SET) Special Administrative Measures (SAM) defendant's attorneys have requested a postponement of the scheduled July 10, 2000, trial in Los Angeles.

CRIMINAL CASE TRACKING

Criminal Cases												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Referred	22	13	22	13	9							
Accepted	3	5	3	3	2							
Declined	27	8	5	15	9							
Pending Decision	28	32	47	42	40							

NEW INFORMATION ON ACTIVE PROSECUTIONS

ASSAULT

United States vs. Rowe (LOM) Case involves the 1995 riot. Trial date is set for September 5, 2000.

United States vs. Williams (LOM) Case involves the 1995 riot. Trial continued until August 1, 2000.

ESCAPE

United States vs. Nikrasch (LOM) Case involves an escape from the FPC and counterfeiting charges in December 1995. Sentencing continued to July 24, 2000.

HOMICIDE

United States vs. Green (LOM) Trial has been continued until January 9, 2001.

INTRODUCTION/POSSESSION OF CONTRABAND

United States vs. Brooks (LOM) Former correctional officer sentenced on bribery charge to 6 months incarceration and 3 years supervised release. Surrender date is June 30, 2000. Charge of attempt to provide or possess contraband in prison dismissed.

STATISTICS

ADMINISTRATIVE REMEDIES											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
102	81	95	59	65							

FREEDOM OF INFORMATION/PRIVACY ACT:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	28	42	52	34	40							
CLOSED	29	19	72	39	33							
PENDING	24	47	27	20	27							
30 DAYS	3*	2*	5*	2*	5*							
6 MONTHS	0	0	0	0	0							
APPEALS	6	1	1	3	3							

*Waiting for records from Archives.

FOI/PA PENDING MORE THAN 20 DAYS:														
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	4*	0	1	0	0

*Waiting for records from Archives

ADMINISTRATIVE TORT CLAIMS													
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	
RECEIVED	29	38	33	34	57								
CLOSED	34	44	52	51	42								
RECONSIDER	0	0	1	0	2								
PENDING	103	97	79	62	79								
OVER 6 MONTHS	2	3	2	2	4								

Tort Claim Investigations Over 60 Days:														
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	0	0	0	0	0

LITIGATION:													
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	
OPEN AT BEGINNING OF MONTH	379	388	393	411	422								
NEW CASES RECEIVED	14	14	19	12	5								
HC	10	10	12	6	5								
FTCA		1	1	0	0								
BIVENS	3	3	6	6	0								

LITIGATION:												
OTHER	1	0	0	0	0							
CLOSED	5	9	1	1	1							
PENDING AT END OF MONTH	388	393	411	422	426							
LITIGATION REPORTS COMPLETED	22	18	14	8	7							

WR0

U.S. Department of Justice

Federal Bureau of Prisons

Dublin, California 94568

July 6, 2000

**MEMORANDUM FOR CHRISTOPHER ERLEWINE, ASSISTANT DIRECTOR/
GENERAL COUNSEL, GENERAL COUNSEL & REVIEW**

FROM: Harlan W. Penn, Regional Counsel
SUBJECT: Monthly Report for June 2000

LITIGATION

NEW CASES (3621(e))

Badillo vs. Slade, (VIM) Habeas petition contesting DAP ineligibility due to two-point enhancement.

Bendickson vs. Slade, (VIM) Habeas petition contesting DAP ineligibility due to two-point enhancement.

NEW CASES (Non 3621(e))

Christoferson vs. Hood (SHE) Complaint seeking declaratory relief in response to institution's denial of former camp inmate's request to visit his son who is currently incarcerated at the FCI.

Hernandez vs. Wiley, (LOS) Bivens action alleging that staff conspired to ruin his reputation with his gang associates. The plaintiff further alleges that as a direct result of the ruined reputation, he was assaulted by his gang associates while in the custody of the U.S. Marshals Service.

Hunter vs. Hood, (SHE) Habeas petition contesting DHO sanction.

Parker vs. United States, (LOM) FTCA action for alleged loss of property.

Pocsai vs. Hood, (SHE) Bivens complaint alleging failure to protect.

Salgado vs. Hood, (TRM) Habeas petition contesting DHO action.

Smith vs. Barron, (LOM) Habeas petition contesting denial of CCC and

home confinement.

SIGNIFICANT DEVELOPMENTS/APPEALS

Ames vs. Pontesso, (PHX) District Court dismissed both named defendants in this loss of property case. The case will proceed solely as an FTCA suit.

Cervantes-Munoz vs. Pendleton (TCN) On May 30, 2000, the District Court dismissed for failure to exhaust administrative remedies. This case involved a pretrial inmate's refusal to provide a urine sample for drug testing.

Bryant vs. Perrill, (SET) On June 5, 2000, the Magistrate Judge recommended dismissal of the petition because Petitioner failed to exhaust his administrative remedies.

Manning vs. January, (PHX) Habeas petition contesting discipline action dismissed by district court on June 1, 2000.

Rogers vs. BOP, (PHX) On 06/06/2000, the 9th Circuit affirmed the dismissal of this case in favor of the BOP defendants.

United States vs. Newman, (TRM) The case was previously reported; it involves the Ninth Circuit reversing the district court's decision. The district court erroneously determined Reno v. Koray could not be applied retroactively. The district court recently issued orders acknowledging reversal of its decision. As a result, preparations are underway to return the inmate back to custody as he was wrongfully awarded approximately one year in jail credit. However, Newman's defense attorney has announced his intention to file cert. Consequently, we will wait for the Supreme Court's decision before taking further action.

CRIMINAL CASE TRACKING

Criminal Cases												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Referred	22	13	22	13	9	17						
Accepted	3	5	3	3	2	1						
Declined	27	8	5	15	9	12						
Pending Decision	28	32	47	42	40	44						

NEW INFORMATION ON ACTIVE PROSECUTIONS

ASSAULT

(SAF) On June 8, 2000, inmate Ruben Fuentes-Lopez (11915-097) stabbed inmate Carlos Camarena-Perales (82714-098) 3 times in the back with a 7 ½ inch sharpened metal instrument. This case has

been accepted by the FBI for prosecution.

(PHX) On June 28, 2000, inmate Dustin Guthrie (41176-008) was indicted for assault, stemming from an assault on staff (he struck a lieutenant in the face with a closed fist December 8, 1999).

United States vs. Guyton (LOM) Status conference set for July 17, 2000. AUSA will argue that sentencing should go forward, and Defendant's information concerning 6 alleged "high profile" cases can be evaluated after sentencing. AUSA anticipates that sentencing will take place by the end of July, 2000.

United States vs. Jeffrey Thomas Milton, (LOM) Case involves assault on staff that occurred on May 8, 1998 at USP-Lompoc. Judge Manella has ordered a severance and continued the trial. The trial for Milton is scheduled for September 19, 2000 at 8:00 a.m. The trial for Krause is scheduled for September 26, 2000 at 8:00 a.m.

ESCAPE

United States vs. Patricia Young, (PHX) Defendant pled guilty to escape from FPC, Phoenix. Sentencing scheduled for August 4, 2000.

United States vs. Nikrasch, (LOM) Escape and counterfeiting charge arising from FPC. Sentencing continued to July 24, 2000.

INTRODUCTION/POSSESSION OF CONTRABAND

(PHX) Inmate Salazar-Martinez and his visitor Alice Mejia introduced marijuana and methamphetamine in the Visiting Room. Inmate Salazar-Martinez has admitted that he committed the crime, but his visitor denies the charge. Trial is set for July 12, 2000.

STATISTICS

ADMINISTRATIVE REMEDIES											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
102	81	95	59	65	75						

FREEDOM OF INFORMATION/PRIVACY ACT:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	28	42	52	34	40	50						
CLOSED	29	19	72	39	33	38						
PENDING	24	47	27	20	27	39						
30 DAYS	3*	2*	5*	2*	5*	0						
6 MONTHS	0	0	0	0	0	0						
APPEALS	6	1	1	3	3	1						

Waiting for records from Archives.

FOI/PA PENDING MORE THAN 20 DAYS:

DUB	LOF	LOM	LOS	NEL	PHX	SAF	SDC	SET	SHE	TAF	TCN	TRM	VIM	TOTAL
0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

*Waiting for records from Archives

ADMINISTRATIVE TORT CLAIMS														
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC		
RECEIVED	29	38	33	34	57	55								
CLOSED	34	44	52	51	42	20								
RECONSIDER	0	0	1	0	2	1								
PENDING	103	97	79	62	79	115								
OVER 6 MONTHS	2	3	2	2	4	1								

Tort Claim Investigations Over 60 Days:														
DUB	LOF	LOM	LOS	NEL	PHX	SAF	SDC	SET	SHE	TAF	TCN	TRM	VIM	TOTAL
0	0	1*	0	0	0	0	0	0	0	0	0	0	0	1

*Baker claim. Pending SIA investigation.

LITIGATION:														
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC		
OPEN AT BEGINNING OF MONTH	379	388	393	411	422	426								
NEW CASES RECEIVED	14	14	19	12	5	9								
HC	10	10	12	6	5	5								
FTCA		1	1	0	0	1								
BIVENS	3	3	6	6	0	2								
OTHER	1	0	0	0	0	1								
CLOSED	5	9	1	1	1	2								
PENDING AT END OF MONTH	388	393	411	422	426	433								
LITIGATION REPORTS COMPLETED	22	18	14	8	7	7								



U.S. Department of Justice

Federal Bureau of Prisons

Dublin, California 94568

August 3, 2000

**MEMORANDUM FOR CHRISTOPHER ERLEWINE, ASSISTANT DIRECTOR/
GENERAL COUNSEL, GENERAL COUNSEL & REVIEW**

FROM: Harlan W. Penn, Regional Counsel

SUBJECT: Monthly Report for July 2000

LITIGATION

NEW CASES (3621(e))

Badillo vs. Slade, (VIM) Habeas corpus petition contesting 3621(e) ineligibility due to two point weapon enhancement.

Bendickson vs. Slade, (VIM) Habeas corpus petition contesting 3621(e) ineligibility due to two point weapon enhancement.

Del Torto vs. Trammel, (NEL) Habeas corpus petition contesting 3621(e) ineligibility due to 922(g) conviction.

Ravenstein vs. Clark, (TRM) Habeas corpus petition contesting 3621(e) ineligibility due to 924(c) conviction.

Solorio vs. Clark, (TRM) Habeas corpus petition contesting 3621(e) ineligibility due to INS detainer as well as alleged impropriety of detainer and removal from UNICOR employment.

NEW CASES (Non 3621(e))

Amezquita-Perez vs. Andrews, (TCI) Habeas corpus petition contesting ineligibility for CCC placement due to INS detainer.

Burridge vs. Krupp, et al., (FPC NEL) Bivens/FTCA case by released inmate alleging interference with/denial of religious practice; deliberate exposure to hazardous asbestos; interference with legal mail and legal matters; and failure to place in appropriate District for Supervised Release supervision. Complaint names BOP and USPO employees and seeks \$20 million in damages. Motion to Dismiss filed in lieu of Answer. If Court does not dismiss, it will be transferred to the Multi-District Panel in Pennsylvania because of asbestos issues

and will be handled by DOJ Civil Division, Environmental Torts Section, rather than USAO Nevada.

Crooker vs. United States, (LOM) FTCA action alleging former inmate was illegally confined in "boxcar cells", subjected to dental and medical malpractice, and denied drug treatment.

Halsey vs. Adams, (LOM) Bivens complaint alleging deliberate indifference to medical needs and subsequent retaliation by staff for seeking treatment and relief.

Hardney vs. Barron, (LOM) Habeas corpus petition alleging violation of the Interstate Agreement on Detainer Act.

Jones-Heim vs. Reese, (DUB) Bivens action contesting DHO action for dirty UA allegedly caused by staff prescribed medication.

Lillard vs. Andrews, (TCI) Habeas corpus petition contesting discipline imposed at SeaTac.

Perry vs. Barron, (LOM) Habeas corpus petition seeking presentence credit and state/federal sentence concurrency.

Schaefer vs. Pontesso, (PHX) Bivens action challenging decision not to operate on inguinal hernia.

Woodworth vs. United States, (LOM) FTCA action alleging exposure to harmful chemicals in UNICOR, resulting in lung damage and job transfer to a lower-paying job.

Toscano vs. United States, (TRM) Habeas corpus petition seeking state/federal sentence concurrency.

SIGNIFICANT DEVELOPMENTS/APPEALS

Arriga vs. Hawks, (SAF) Habeas corpus petition regarding sentence credit dismissed June 19, 2000.

Cooney and Moore vs. Meese, (DUB) Bivens/injunctive action filed in 1987 seeking to maintain individual room locks and inmate keys. AUSA filed responsive pleading July 24, 2000.

Iniego vs. Clark, (TRM) District court approved Magistrate's recommendations to give 3621(e) eligibility relief to inmate previously granted, then denied, eligibility. Court relied upon Bowen and Cort to give persuasive weight to provisional notice via "settled expectations." U.S. Attorney's Office reluctant to appeal. BOP legal continuing to persuade them of our interests/necessity to appeal.

Matlock vs. United States, (LOM) FTCA action alleging dental malpractice settled for \$25,000 on July 10, 2000.

Muhammad vs. Adams, (LOM) Stay issued in habeas corpus petition contesting 3621(e) ineligibility pursuant to Bowen.

Resnick vs. Adams, (LOM) Defendants filed Objections to Report and Recommendation denying Defendants Adams' and Szafir's Motion for Summary Judgment on the basis of Qualified Immunity.

Scott vs. Pasao, (LOM) Parties entered into Stipulation dismissing Bivens delayed medical care case with prejudice. Judge signed Order granting same on July 21, 2000.

CRIMINAL CASE TRACKING

Criminal Cases												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Referred	22	13	22	13	9	17	6					
Accepted	3	5	3	3	2	1	0					
Declined	27	8	5	15	9	12	13					
Pending Decision	28	32	47	42	40	44	37					

NEW INFORMATION ON ACTIVE PROSECUTIONS

ASSAULT

United States vs. Guma, (SET) Trial charging inmate in staff assault was rescheduled to October 2, 2000.

United States vs. Lillie, (LOM) Case involves the 1995 riot. Trial continued to October 3, 2000.

United States vs. Rowe, (LOM) Case involves the 1995 riot. Trial continued to November 28, 2000. Continuing to respond to extensive discovery request involving SIS Files, Central and Medical Files and Inmate Rosters.

United States vs. Ung, (SET) Trial charging inmate in staff assault was rescheduled to September 25, 2000.

United States vs. Villegas, (LOM) Inmate sentenced in case involving inmate on inmate assault to 77 months (10 months concurrent and 67 months consecutive).

United States vs. Williams, (LOM) Case involves the 1995 riot. Trial continued to October, 2000.

ESCAPE

United States vs. Nikrasch, (LOM) Case involves FPC escape and counterfeiting charge. On July 24, 2000, defendant sentenced to 70 months consecutive to his current term. (60 months for escape and 10 months for counterfeiting).

INTRODUCTION/POSSESSION OF CONTRABAND

United States vs. Jose Salazar-Martinez, (PHX) Visiting room marijuana and methamphetamine introduction trial postponed to September 6, 2000, due to illness of the Public Defender.

United States vs. Sevilla-Espinoza, (TRM) Sentencing is scheduled on inmate guilty plea for August 7, 2000. The AUSA estimates a sentence of 18 - 36 months.

STATISTICS

ADMINISTRATIVE REMEDIES											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
102	81	95	59	65	75	89					

FREEDOM OF INFORMATION/PRIVACY ACT:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	28	42	52	34	40	50	33					
CLOSED	29	19	72	39	33	38	42					
PENDING	24	47	27	20	27	39	30					
30 DAYS	3*	2*	5*	2*	5*	0	1*					
6 MONTHS	0	0	0	0	0	0	0					
APPEALS	6	1	1	3	3	1	5					

*Waiting for records from Contract facility.

FOI/PA PENDING MORE THAN 20 DAYS:														
DUB	LOF	LOM	LOS	NEL	PHX	SAF	SDC	SET	SHE	TAF	TCN	TRM	VIM	TOTAL
0	0	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	29	38	33	34	57	55	37					
CLOSED	34	44	52	51	42	20	13					
RECONSIDER	0	0	1	0	2	1	0					
PENDING	103	97	79	62	79	115	139					
OVER 6 MONTHS	2	3	2	2	4	1	3					

Tort Claim Investigations Over 60 Days:														
DUB	LOF	LOM	LOS	NEL	PHX	SAF	SDC	SET	SHE	TAF	TCN	TRM	VIM	TOTAL
0	0	4*	2	0	0	0	0	0	8	0	0	0	0	14

* Pending SIS investigation.

LITIGATION:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
OPEN AT BEGINNING OF MONTH	379	388	393	411	422	426	433					
NEW CASES RECEIVED	14	14	19	12	5	9	14					
HC	10	10	12	6	5	5	10					
FTCA		1	1	0	0	1	2					
BIVENS	3	3	6	6	0	2	4					
OTHER	1	0	0	0	0	1	0					
CLOSED	5	9	1	1	1	2	4					
PENDING AT END OF MONTH	388	393	411	422	426	433	443					

LITIGATION:

LITIGATION REPORTS COMPLETED	22	18	14	8	7	7	6					
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*Weekly
Report*

**Department of Justice
Federal Bureau of Prisons**

Dublin, California 94568

September 5, 2000

**MEMORANDUM FOR CHRISTOPHER ERLEWINE, ASSISTANT DIRECTOR/
GENERAL COUNSEL, GENERAL COUNSEL & REVIEW**

FROM: *JMU*
Harlan W. Penn, Regional Counsel

SUBJECT: Monthly Report for August 2000

LITIGATION

NEW CASES (3621(e))

Flockhart vs. Barron, (LOM) Habeas corpus petition alleging BOP failed to comply with residential requirement of DAP program in his case, thus denying petitioner the full benefit of early release.

Gottschalk vs. Andrews, (TCI) Habeas corpus petition contesting 3621(e) ineligibility due to prior conviction for aggravated assault.

Lynch vs. Hood, (SHE) Habeas corpus petition contesting 3621(e) ineligibility due to 2 point weapon enhancement.

Murphy vs. Hood, (SHE) Habeas corpus petition contesting 3621(e) ineligibility due to current escape conviction precluding CCC placement.

Nagib vs. Andrews, (TCI) Habeas corpus petition contesting 3621(e) ineligibility due to alleged retroactive application of Program Statement 5162.04.

Solario vs. Clark, (TRM) Habeas corpus petition contesting 3621(e) ineligibility due to detainer preclusion to CCC placement.

NEW CASES (Non 3621(e))

Ainge vs. Lynch (Hood), (SHE) Habeas corpus petition contesting imposition of 10, not 5 year supervised release term.

Akintobi vs. United States, (LOS) FTCA complaint regarding loss of personal property.

Bagha vs. U.S. Parole Commission, (TCI) Habeas corpus petition contesting probation violation.

Joseph vs. Andrews, (TCI) Habeas corpus petition contesting parole related issue as well as alleged improper transfer.

LaFradez v. Andrews, (TCI) Habeas corpus petition demanding pretrial credit while on writ and serving state time.

Harrell vs. Federal Bureau of Prisons, (SET) FTCA complaint alleging personal injury due to staff negligence.

Northrop vs. United States, (LOM) Complaint alleging plaintiff is being confined by the Bureau of Prisons because of a tax lien against his body.

Perry vs. Barron, (LOF) Habeas corpus petition seeking state custody credit.

Rodriguez vs. Warden at Eloy Detention Center, (PHX) Bivens complaint complaining of discipline imposed at Eloy Detention Center. Regional Director named as defendant, otherwise, case is solely against contract staff.

Russell vs. Bureau of Prisons, (TCI) Habeas corpus petition complaining of less than full 6 month CCC placement/referral.

Tratar vs. Hood, (SHE) Habeas corpus petition demanding 38 days jail credit.

SIGNIFICANT DEVELOPMENTS/APPEALS

Davis vs. Rardin, (LOM) Ninth Circuit dismissed appeal based on failure to pay filing fees.

McArtor vs. Pontesso, (PHX) Habeas corpus petition contesting 3621(e) ineligibility due to 2 point weapon enhancement dismissed.

Mikolacik vs. Unknown Agents, (LOM) Ninth Circuit dismissed appeal based on failure to prosecute.

Moore vs. Meese, (DUB) Injunctive action filed in 1987 by DUB inmates to maintain individual room locks and inmate keys. Following August 11, 2000 hearing, Judge Breyer continued TRO, ordered counsel to draft preliminary injunction language, and encouraged alternative security arrangements.

Most vs. Stratman, (SDC) Bivens/FTCA complaint alleging deliberate indifference to carpal tunnel syndrome and retaliatory transfer as a

result of complaints remanded by 9th Circuit to address only retaliatory transfer issue. Dismissal of other issues upheld by 9th Circuit. In a footnote, the 9th Circuit notes the district court properly dismissed plaintiff's challenge to the 1915(g) IFP denial since plaintiff had three or more appeals dismissed as frivolous.

Schaefer vs. Pontesso, (PHX) Tentative settlement was reached in this case in which inmate will be provided surgical repair of his inguinal hernia.

Smith vs. Pontesso, (PHX) R&R recommends dismissal of habeas corpus petition contesting 3621(e) ineligibility due to 23 year old prior aggravated assault conviction.

Wood vs. Pontesso, (PHX) R&R recommends dismissal of habeas corpus petition contesting 3621(e) ineligibility due to 2 point weapon enhancement.

CRIMINAL CASE TRACKING

Criminal Cases												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Referred	22	13	22	13	9	17	6	8				
Accepted	3	5	3	3	2	1	0	3				
Declined	27	8	5	15	9	12	13	7				
Pending Decision	28	32	47	42	40	44	37	35				

NEW INFORMATION ON ACTIVE PROSECUTIONS

ASSAULT

United States vs. Lillie, (LOM) Case involves the 1995 riot. Indictment on this inmate was returned on December 21, 1999. Trial continued to October 3, 2000. New information: AUSA recommended dismissal of action based on conflicting witness reports. Warden Adams concurred with recommendation, and AUSA notified of BOP's position. Awaiting dismissal papers.

United States vs. Milton, (LOM) Inmate on staff assault May 1998. Trial for Milton continued to October 10, 2000. Trial for Krause set for September 26, 2000.

ESCAPE

United States vs. Young, (PHX) Defendant sentenced for escape from FPC Phoenix to supervised release in Las Vegas after approximately 3.5 months in pretrial status.

STATISTICS

ADMINISTRATIVE REMEDIES											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
102	81	95	59	65	75	89	75				

FREEDOM OF INFORMATION/PRIVACY ACT:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	28	42	52	34	40	50	33	41				
CLOSED	29	19	72	39	33	38	42	32				
PENDING	24	47	27	20	27	39	30	39				
30 DAYS	3*	2*	5*	2*	5*	0	1*	0				
6 MONTHS	0	0	0	0	0	0	0	0				
APPEALS	6	1	1	3	3	1	5	0				

*Waiting for records from Archives.

FOI/PA PENDING MORE THAN 20 DAYS:														
DUB	LOF	LOM	LOS	NEL	PHX	SAF	SDC	SET	SHE	TAF	TCN	TRM	VIM	TOTAL
0	0	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	29	38	33	34	57	55	37	45					
CLOSED	34	44	52	51	42	20	13	80					
RECONSIDER	0	0	1	0	2	1	0	0					
PENDING	103	97	79	62	79	115	139	104					
OVER 6 MONTHS	2	3	2	2	4	1	3	1					

Tort Claim Investigations Over 60 Days:

DUB	LOF	LOM	LOS	NEL	PHX	SAF	SDC	SET	SHE	TAF	TCN	TRM	VIM	TOTAL
1	0	4*	4	0	0	1	0	0	11	0	0	0	0	21

* Pending SIA investigation.

LITIGATION:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
OPEN AT BEGINNING OF MONTH	379	388	393	411	422	426	433	443				
NEW CASES RECEIVED	14	14	19	12	5	9	14	17				
HC	10	10	12	6	5	5	10	13				
FTCA		1	1	0	0	1	2	2				
BIVENS	3	3	6	6	0	2	4	1				
OTHER	1	0	0	0	0	1	0	1				
CLOSED	5	9	1	1	1	2	4	3				
PENDING AT END OF MONTH	388	393	411	422	426	433	443	457				
LITIGATION REPORTS COMPLETED	22	18	14	8	7	7	6	4				

MISCELLANEOUS:

On September 12, 2000, the National Sentencing Policy Institute will tour FCI/FPC Phoenix. Approximately 100 Federal judges and 100 support staff are expected for this tour.



U.S. Department of Justice

Federal Bureau of Prisons

Dublin, California 94568

September 5, 2000

**MEMORANDUM FOR CHRISTOPHER ERLEWINE, ASSISTANT DIRECTOR/
GENERAL COUNSEL, GENERAL COUNSEL & REVIEW**

FROM: Harlan W. Penn, Regional Counsel
SUBJECT: Monthly Report for August 2000

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retaliatory transfer issue. Dismissal of other issues upheld by 9th Circuit. In a footnote, the 9th Circuit notes the district court properly dismissed plaintiff's challenge to the 1915(g) IFP denial since plaintiff had three or more appeals dismissed as frivolous.

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CRIMINAL CASE TRACKING

Criminal Cases												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Referred	22	13	22	13	9	17	6	8				
Accepted	3	5	3	3	2	1	0	3				
Declined	27	8	5	15	9	12	13	7				
Pending Decision	28	32	47	42	40	44	37	35				

NEW INFORMATION ON ACTIVE PROSECUTIONS

ASSAULT

United States vs. Lillie, (LOM) Case involves the 1995 riot. Indictment on this inmate was returned on December 21, 1999. Trial continued to October 3, 2000. New information: AUSA recommended dismissal of action based on conflicting witness reports. Warden Adams concurred with recommendation, and AUSA notified of BOP's position. Awaiting dismissal papers.

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ESCAPE

United States vs. Young, (PHX) Defendant sentenced for escape from FPC Phoenix to supervised release in Las Vegas after approximately 3.5 months in pretrial status.

STATISTICS

ADMINISTRATIVE REMEDIES											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
102	81	95	59	65	75	89	75				

FREEDOM OF INFORMATION/PRIVACY ACT:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	28	42	52	34	40	50	33	41				
CLOSED	29	19	72	39	33	38	42	32				
PENDING	24	47	27	20	27	39	30	39				
30 DAYS	3*	2*	5*	2*	5*	0	1*	0				
6 MONTHS	0	0	0	0	0	0	0	0				
APPEALS	6	1	1	3	3	1	5	0				

*Waiting for records from Archives.

FOI/PA PENDING MORE THAN 20 DAYS:														
DUB	LOF	LOM	LOS	NEL	PHX	SAF	SDC	SET	SHE	TAF	TCN	TRM	VIM	TOTAL
0	0	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	29	38	33	34	57	55	37	45				
CLOSED	34	44	52	51	42	20	13	80				
RECONSIDER	0	0	1	0	2	1	0	0				
PENDING	103	97	79	62	79	115	139	104				
OVER 6 MONTHS	2	3	2	2	4	1	3	1				

Tort Claim Investigations Over 60 Days:														
DUB	LOF	LOM	LOS	NEL	PHX	SAF	SDC	SET	SHE	TAF	TCN	TRM	VIM	TOTAL
1	0	4*	4	0	0	1	0	0	11	0	0	0	0	21

* Pending SIA investigation.

LITIGATION:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
OPEN AT BEGINNING OF MONTH	379	388	393	411	422	426	433	443				
NEW CASES RECEIVED	14	14	19	12	5	9	14	17				
HC	10	10	12	6	5	5	10	13				

FTCA		1	1	0	0	1	2	2				
BIVENS	3	3	6	6	0	2	4	1				
OTHER	1	0	0	0	0	1	0	1				
CLOSED	5	9	1	1	1	2	4	3				
PENDING AT END OF MONTH	388	393	411	422	426	433	443	457				
LITIGATION REPORTS COMPLETED	22	18	14	8	7	7	6	4				

MISCELLANEOUS:

On September 12, 2000, the National Sentencing Policy Institute will tour FCI/FPC Phoenix. Approximately 100 Federal judges and 100 support staff are expected for this tour.



U.S. Department of Justice

Federal Bureau of Prisons

Dublin, California 94568

November 7, 2000

MEMORANDUM FOR CHRISTOPHER ERLEWINE, ASSISTANT DIRECTOR/
GENERAL COUNSEL, GENERAL COUNSEL & REVIEW

FROM: Harlan W. Penn, Regional Counsel
SUBJECT: Monthly Report for October 2000

LITIGATION

NEW CASES (3621(e))

Longo vs. Schultz - (DUB) Habeas corpus petition contesting 3621(e) ineligibility due to 2 point weapon enhancement.

NEW CASES (Non 3621(e))

Bates vs. Clark - (LOF) *Bivens* action complaining of improper or insufficient dental care.

Cleveland vs. Hood - (SHE) Habeas corpus petition requesting discipline record be amended.

Crespo-Perez vs. Reno - (LOS) FTCA/*Bivens* action complaining of lack of medical care.

Maier vs. Hood - (SHE) Habeas corpus petition seeking transfer to camp facility.

Montgomery vs. Hood - (SHE) Habeas corpus petition seeking additional GCT.

Haddix vs. United States - (VIM) Habeas corpus petition complaining of failure to abide by sentencing agreement to grant state credit.

Ramos vs. United States - (LOM) Inmate filed a request for "clarification" and "verification" concerning how his federal sentence is to run in relation to his state time. U.S. Attorney's Office is

treating the matter as a § 2241 Petition for Writ of Habeas Corpus.

Smith vs. Hood - (SHE) Habeas petition contesting DHO finding of guilt on charge of testing positive for morphine upon inmate's return to CCC after 48 hour pass.

SIGNIFICANT DEVELOPMENTS/APPEALS

Blair vs. Reno - (PHX) Habeas petition seeking additional pre-sentence credit dismissed. Petition also complained that TCI staff give non-African-American inmates longer CCC and home confinement placement.

Crooker vs. United States - (LOM) FTCA action dismissed with prejudice, on October 18, 2000, but an appeal is anticipated.

Decker vs. Fitzpatrick - (LOF) The District Court for the Central District of California stayed the judgment in the habeas corpus petition regarding 3621(e) eligibility now on appeal in the Ninth Circuit. As a result, the petitioner's sentence was recalculated and he will not be going to his CCC Placement.

Larson vs. United States - (SHE) FTCA action alleging medical malpractice. Settlement conference held October 25 with plaintiff proposing \$52,500. Case dismissed pending outcome of settlement negotiations.

Parker vs. United States - (LOM) FTCA action involving lost property. Settlement reached but the inmate now refuses to cooperate.

Perry vs. Barron - (LOF) Habeas Corpus Petition involving sentence computation. Report & Recommendation adopted - petition dismissed with prejudice but an appeal is anticipated.

U.S. vs. Lazarenko - (DUB) Defendant, formerly the Prime Minister of the Ukraine, now an inmate at FDC Dublin, filed a motion to be released from protective custody into general population. FBI had provided information concerning unspecified threats against the inmate. Judge granted the motion *ex parte* before reviewing Government's opposition. Inmate placed in general population October 4, 2000.

Sara Jane Moore vs. Meese - (DUB) Injunctive action filed in 1987 by inmates to maintain individual room locks and inmate keys. Hearing September 22, 2000 on Govt.'s motion to reconsider. No preliminary injunction issued, pending negotiations between parties re Government's proposal for "alternative security measures." Proposal for surveillance cameras in housing units under Regional review.

Vaccaro vs. Dobre, et al - (NEL) Trial held October 4-5, 2000, before Judge D.W. Hagen, District of Nevada, in *Bivens* case against correctional officers for deliberate indifference of a serious

medical need. After trial and oral argument the Court rendered judgement for the defendants. Asst. Regional Counsel Valerie Stewart participated at trial with AUSA Ruth Cohen. The Court held that the plaintiff had failed to prove his allegations that staff were advised of his medical restrictions, and ordered him to work in violation of the restrictions. The Judgement ends over eight years of litigation.

White vs. Pontesso - (PHX) Habeas petition contesting allegedly illegal confinement based on clerical error on J&C was transferred to Eastern District of California and is being handled as 2255 petition.

CRIMINAL CASE TRACKING

Criminal Cases												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Referred	22	13	22	13	9	17	6	8	7	11		
Accepted	3	5	3	3	2	1	0	3	2	1		
Declined	27	8	5	15	9	12	13	7	5	4		
Pending Decision	28	32	47	42	40	44	37	35	35	41		

NEW INFORMATION ON ACTIVE PROSECUTIONS

ASSAULT

United States vs. Guyton - (LOM) Inmate on staff assault occurred August 1997. Defendant pled guilty March 2000. Case continued to January 23, 2001.

United States vs. Mendoza-Aguilar - (TCN) Trial date for inmate on staff assault continued to December 12, 2000.

United States vs. Milton, et al - (LOM) Inmate on staff assault occurred May 1998. Cases were severed but both were continued to January 9, 2001.

ESCAPE

United States vs. Hungerford - (TCN) Escape prosecution arising from inmate's failure to report to CCC December 27, 1999. Inmate pled guilty just prior to trial. Sentencing scheduled for December 2000.

CONTRABAND

United States vs. Kumar - (LOM) Trial set for November 21, 2000.

United States vs. Mejia - (PHX) (companion to Salazar-Martinez)
 Visitor found guilty October 5 of introduction of contraband.
 Sentencing scheduled for December 18, 2000.

United States vs. Parrado-Herrera (PHX) USAO accepted prosecution of
 inmate for receiving marijuana and heroin in visiting room. Inmate
 has been released from custody.

United States vs. Salazar-Martinez - (PHX) Inmate pled guilty and
 sentenced August 38 to a 28 month consecutive sentence with 3 years
 of supervised release.

OTHER

United States vs. Fairman - (SET) Pre-trial detainee pending trial
 on November 13 for bank robbery has been referred and accepted for
 prosecution on witness tampering charges arising from telephone
 calls made from institution. Trial on latter charges to be held in
 conjunction with robbery trial.

STATISTICS

ADMINISTRATIVE REMEDIES											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
102	81	95	59	65	75	89	75	95	85		

FREEDOM OF INFORMATION/PRIVACY ACT:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	28	42	52	34	40	50	33	41	34	38		
CLOSED	29	19	72	39	33	38	42	32	39	42		
PENDING	24	47	27	20	27	39	30	39	34	30		
30 DAYS	3*	2*	5*	2*	5*	0	1*	0	1*	2*		
6 MONTHS	0	0	0	0	0	0	0	0	0	0		
APPEALS	6	1	1	3	3	1	5	0	2	6		

*Waiting for records from Archives.

FOI/PA PENDING MORE THAN 20 DAYS:														
DUB	LOF	LOM	LOS	NEL	PHX	SAF	SDC	SET	SHE	TAF	TCN	TRM	VIM	TOTAL
0	0	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	29	38	33	34	57	55	37	45	35	33		
CLOSED	34	44	52	51	42	20	13	80	23	54		
RECONSIDER	0	0	1	0	2	1	0	0	0	1		
PENDING	103	97	79	62	79	115	139	104	116	96		

OVER 6 MONTHS														
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Tort Claim Investigations Over 60 Days:														
DUB	LOF	LOM	LOS	NEL	PHX	SAF	SDC	SET	SHE	TAF	TCN	TRM	VIM	TOTAL
0	0	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 AT BEGINNING OF MONTH	379	388	393	411	422	426	433	443	457	468				
NEW CASES RECEIVED	14	14	19	12	5	9	14	17	13	9				
HC	10	10	12	6	5	5	10	13	4	7				
FTCA		1	1	0	0	1	2	2	2	1				
BIVENS	3	3	6	6	0	2	4	1	2	1				
OTHER	1	0	0	0	0	1	0	1	4	0				
CLOSED	5	9	1	1	1	2	4	3	2	6				
PENDING AT END OF MONTH	388	393	411	422	426	433	443	457	468	471				
LITIGATION REPORTS COMPLETED	22	18	14	8	7	7	6	4	5	9				

U.S. Department of Justice

Federal Bureau of Prisons

Dublin, California 94568

October 4, 2000

**MEMORANDUM FOR CHRISTOPHER ERLEWINE, ASSISTANT DIRECTOR/
GENERAL COUNSEL, GENERAL COUNSEL & REVIEW**

FROM: Harlan W. Penn, Regional Counsel
SUBJECT: Monthly Report for September 2000

LITIGATION

NEW CASES (3621(e))

NEW CASES (Non 3621(e))

Akintobi vs. United States, (LOS) Inmate brings negligence action for loss of personal clothing while incarcerated at MDCLA. (LOS)

Askew vs. United States (SAF) Second Bivens action alleging failure to protect and inadequate medical treatment following inmate assault.

Baker vs. United States, (SDC) FTCA claim alleging medical malpractice for prescribing inappropriate medication.

Berry vs. Schultz, (DUB) Motion seeking order to prevent destruction of contaminated personal and legal materials left at CCC upon his return to custody.

Crompton vs. Department of Justice, (LOM) FOIA action seeking release of materials from multiple agencies, BOP included.

Dugan vs. Clark (LOS) Habeas petition seeking jail credit.

Fellows vs. Bureau of Prisons, (PHX) Bivens complaint alleging denial of dental treatment while housed in SHU.

Smith vs. Hood, (SHE) Habeas petition contesting discipline action

for positive urinalysis which resulted in return to custody. Strother vs. Hood, (VIM) Motion seeking transfer back to SHE and complaining of lack of legal materials/references at VIM.

United States vs. Lazarenko, (DUB) Motion by defendant's counsel seeking release of defendant into general population from SHU where he is being held based on information from FBI.

Washington vs. Adams, (LOM) Habeas petition contesting custody classification, and alleged improperly scored prior unarmed bank robbery.

White vs. Andrews, (TCI) Habeas petition seeking work furlough.

Wolff vs. Hood, (SHE) Habeas petition contesting discipline action for refusing to enter general population. Petitioner claims harassment and disregard of his safety on account of child molestation conviction.

SIGNIFICANT DEVELOPMENTS/APPEALS

Burzynski vs. Bailey, (SAF) Previously denied habeas petition seeking camp placement consistent with plea agreement appealed to 9th Circuit by petitioner.

Erlin vs. United States (WXR), FTCA complaint alleging plaintiff was wrongly incarcerated when the Parole Commission issued a violator warrant without jurisdiction was dismissed due to statute of limitations. Previously, Erlin's habeas petition was granted by the district court causing his immediate release and the decision contained language indicating a Bivens complaint may be called for in this matter.

Moore vs. Meese, (DUB) Injunctive action filed in 1987 by DUB inmates to maintain individual room locks and inmate keys. Hearing held September 22, 2000 on Government's motion to reconsider. No preliminary injunction issued, pending negotiations between parties on Government's proposal for "alternative security measures."

Parkin vs. Larson (WXR) Following a hearing on September 18 Judge Pro issued an Order granting the government's motion to dismiss and remanding this matter back to state court. Defendant, a former BOP employee, who terminated employment following a MSPB settlement, has filed a damages action against a local psychologist who was hired by Management at FPC Nellis to perform a "fitness for duty" exam, as a condition of Parkin's employment. Parkin has sued Dr. Larson for release of medical information to the Warden at FPC Nellis. BOP staff are now subject to being called as witnesses in the state action.

Schaefer vs. Pontesso, (PHX) Hernia surgery has been scheduled for this inmate with Bivens action pending. Following the surgery, this case should be dismissed via stipulation of the parties.

Unger vs. Gaines, (SAF) The issue of qualified immunity for HSA

Gaines will be argued before the 9th Circuit in the next several weeks. This inmate filed a Bivens action regarding the amount of time it took him to receive dentures.

Vaccaro vs. Dobre (NEL) This \$15 million Bivens case is set for trial before Judge Hagen on October 3. Originally filed with 17 defendants, five causes of action, the Court has dismissed all but one allegation and two defendants. The inmate/plaintiff alleges that correctional staff issued an order to lift heavy furniture, when he had medical/weight restrictions which resulted in a back injury. AUSA Ruth Cohen and Assistant Regional Counsel Valerie Stewart will present the defense for the two remaining defendants.

On September 20, the Court and counsel conferred regarding the issue of transporting plaintiff to Las Vegas for trial purposes. The Court was advised the U.S. Marshal will require reimbursement from plaintiff in the approximate amount of \$3,000 for costs of transportation to Las Vegas.

CRIMINAL CASE TRACKING

Criminal Cases												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Referred	22	13	22	13	9	17	6	8	7			
Accepted	3	5	3	3	2	1	0	3	2			
Declined	27	8	5	15	9	12	13	7	5			
Pending Decision	28	32	47	42	40	44	37	35	35			

NEW INFORMATION ON ACTIVE PROSECUTIONS

ASSAULT

United States vs. Lillie, (LOM) Case involves the 1995 riot. Indictment on this inmate was returned on December 21, 1999. AUSA recommended dismissal of action based on conflicting witness reports. Warden Adams concurred with recommendation, and AUSA notified of BOP's position. On September 6, 2000, indictment ordered dismissed without prejudice.

United States vs. Lopiccolo, (LOM) Case involves the assault of another inmate that occurred on February 4, 1997, at FCI Lompoc. On September 8, 2000, defendant Fleming, on plea of guilty of conspiracy to commit assault, was sentenced to 30 months, with 3 years supervised release, and a special assessment of \$100.

United States vs. Mendoza-Aguilar, (TCN) Trial tentatively scheduled for October 31 in Tucson in inmate-on-staff assault.

United States vs. Ung (SET) An Information (Misdemeanor) was filed against the defendant for charges of assault against a correctional counselor and the assault did inflict bodily injury.

United States vs. Williams, (LOM) Case involves the 1995 riot. Indictment on this inmate was returned on December 21, 1999. A review of PACER on September 26, 2000, revealed that the AUSA moved to dismiss the case without prejudice. The court ordered the dismissal on July 31, 2000. The dismissal was taken without notifying the agency or the victim.

HOMICIDE

United States vs. Anderson and Miranda, (LOM) Case involves a homicide at USP Lompoc from 1993. In 1997, both defendants were convicted of voluntary manslaughter. On January 25, 2000, the Ninth Circuit reversed the convictions based on a failure to give a jury instruction for involuntary manslaughter. The case is set for a new trial on October 10, 2000. Defendants entered into a plea agreement. Defendant Anderson was sentenced to 37 months. Defendant Miranda was sentenced to 18 months.

CONTRABAND

United States vs. Jose Salazar-Martinez, (PHX) Inmate and visitor visiting room contraband case set for trial on October 3.

STATISTICS

ADMINISTRATIVE REMEDIES											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
102	81	95	59	65	75	89	75	95			

FREEDOM OF INFORMATION/PRIVACY ACT:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	28	42	52	34	40	50	33	41	34			
CLOSED	29	19	72	39	33	38	42	32	39			
PENDING	24	47	27	20	27	39	30	39	34			
30 DAYS	3*	2*	5*	2*	5*	0	1*	0	1*			
6 MONTHS	0	0	0	0	0	0	0	0	0			
APPEALS	6	1	1	3	3	1	5	0	2			

*Waiting for records from Archives.

FOI/PA PENDING MORE THAN 20 DAYS:														
DUB	LOF	LOM	LOS	NEL	PHX	SAF	SDC	SET	SHE	TAF	TCN	TRM	VIM	TOTAL
0	0	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	29	38	33	34	57	55	37	45	35			
CLOSED	34	44	52	51	42	20	13	80	23			
RECONSIDER	0	0	1	0	2	1	0	0	0			

PENDING	103	97	79	62	79	115	139	104	116			
OVER 6 MONTHS	2	3	2	2	4	1	3	1	1			

Tort Claim Investigations Over 60 Days:														
DUB	LOF	LOM	LOS	NEL	PHX	SAF	SDC	SET	SHE	TAF	TCN	TRM	VIM	TOTAL
0	0	4*	0	0	0	0	0	0	0	0	0	0	0	4

* Pending SIA investigation.

LITIGATION:													
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	
OPEN AT BEGINNING OF MONTH	379	388	393	411	422	426	433	443	457				
NEW CASES RECEIVED	14	14	19	12	5	9	14	17	13				
HC	10	10	12	6	5	5	10	13	4				
FTCA		1	1	0	0	1	2	2	2				
BIVENS	3	3	6	6	0	2	4	1	2				
OTHER	1	0	0	0	0	1	0	1	4				
CLOSED	5	9	1	1	1	2	4	3	2				
PENDING AT END OF MONTH	388	393	411	422	426	433	443	457	468				
LITIGATION REPORTS COMPLETED	22	18	14	8	7	7	6	4	5				



U.S. Department of Justice

Federal Bureau of Prisons

Dublin, California 94568

November 7, 2000

**MEMORANDUM FOR CHRISTOPHER ERLEWINE, ASSISTANT DIRECTOR/
GENERAL COUNSEL, GENERAL COUNSEL & REVIEW**

FROM: Harlan W. Penn, Regional Counsel
SUBJECT: Monthly Report for October 2000

LITIGATION

NEW CASES (3621(e))

Longo vs. Schultz - (DUB) Habeas corpus petition contesting 3621(e) ineligibility due to 2 point weapon enhancement.

NEW CASES (Non 3621(e))

Bates vs. Clark - (LOF) *Bivens* action complaining of improper or insufficient dental care.

Cleveland vs. Hood - (SHE) Habeas corpus petition requesting discipline record be amended.

Crespo-Perez vs. Reno - (LOS) FTCA/*Bivens* action complaining of lack of medical care.

Maier vs. Hood - (SHE) Habeas corpus petition seeking transfer to camp facility.

Montgomery vs. Hood - (SHE) Habeas corpus petition seeking additional GCT.

Haddix vs. United States - (VIM) Habeas corpus petition complaining of failure to abide by sentencing agreement to grant state credit.

Ramos vs. United States - (LOM) Inmate filed a request for "clarification" and "verification" concerning how his federal sentence is to run in relation to his state time. U.S. Attorney's Office is

treating the matter as a § 2241 Petition for Writ of Habeas Corpus.

Smith vs. Hood - (SHE) Habeas petition contesting DHO finding of guilt on charge of testing positive for morphine upon inmate's return to CCC after 48 hour pass.

SIGNIFICANT DEVELOPMENTS/APPEALS

Blair vs. Reno - (PHX) Habeas petition seeking additional pre-sentence credit dismissed. Petition also complained that TCI staff give non-African-American inmates longer CCC and home confinement placement.

Crooker vs. United States - (LOM) FTCA action dismissed with prejudice, on October 18, 2000, but an appeal is anticipated.

Decker vs. Fitzpatrick - (LOF) The District Court for the Central District of California stayed the judgment in the habeas corpus petition regarding 3621(e) eligibility now on appeal in the Ninth Circuit. As a result, the petitioner's sentence was recalculated and he will not be going to his CCC Placement.

Larson vs. United States - (SHE) FTCA action alleging medical malpractice. Settlement conference held October 25 with plaintiff proposing \$52,500. Case dismissed pending outcome of settlement negotiations.

Parker vs. United States - (LOM) FTCA action involving lost property. Settlement reached but the inmate now refuses to cooperate.

Perry vs. Barron - (LOF) Habeas Corpus Petition involving sentence computation. Report & Recommendation adopted - petition dismissed with prejudice but an appeal is anticipated.

U.S. vs. Lazarenko - (DUB) Defendant, formerly the Prime Minister of the Ukraine, now an inmate at FDC Dublin, filed a motion to be released from protective custody into general population. FBI had provided information concerning unspecified threats against the inmate. Judge granted the motion *ex parte* before reviewing Government's opposition. Inmate placed in general population October 4, 2000.

Sara Jane Moore vs. Meese - (DUB) Injunctive action filed in 1987 by inmates to maintain individual room locks and inmate keys. Hearing September 22, 2000 on Govt.'s motion to reconsider. No preliminary injunction issued, pending negotiations between parties re Government's proposal for "alternative security measures." Proposal for surveillance cameras in housing units under Regional review.

Vaccaro vs. Dobre, et al - (NEL) Trial held October 4-5, 2000, before Judge D.W. Hagen, District of Nevada, in *Bivens* case against correctional officers for deliberate indifference of a serious

medical need. After trial and oral argument the Court rendered judgement for the defendants. Asst. Regional Counsel Valerie Stewart participated at trial with AUSA Ruth Cohen. The Court held that the plaintiff had failed to prove his allegations that staff were advised of his medical restrictions, and ordered him to work in violation of the restrictions. The Judgement ends over eight years of litigation.

White vs. Pontesso - (PHX) Habeas petition contesting allegedly illegal confinement based on clerical error on J&C was transferred to Eastern District of California and is being handled as 2255 petition.

CRIMINAL CASE TRACKING

Criminal Cases												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Referred	22	13	22	13	9	17	6	8	7	11		
Accepted	3	5	3	3	2	1	0	3	2	1		
Declined	27	8	5	15	9	12	13	7	5	4		
Pending Decision	28	32	47	42	40	44	37	35	35	41		

NEW INFORMATION ON ACTIVE PROSECUTIONS

ASSAULT

United States vs. Guyton - (LOM) Inmate on staff assault occurred August 1997. Defendant pled guilty March 2000. Case continued to January 23, 2001.

United States vs. Mendoza-Aguilar - (TCN) Trial date for inmate on staff assault continued to December 12, 2000.

United States vs. Milton, et al - (LOM) Inmate on staff assault occurred May 1998. Cases were severed but both were continued to January 9, 2001.

ESCAPE

United States vs. Hungerford - (TCN) Escape prosecution arising from inmate's failure to report to CCC December 27, 1999. Inmate pled guilty just prior to trial. Sentencing scheduled for December 2000.

CONTRABAND

United States vs. Kumar - (LOM) Trial set for November 21, 2000.

United States vs. Mejia - (PHX) (companion to Salazar-Martinez)
 Visitor found guilty October 5 of introduction of contraband.
 Sentencing scheduled for December 18, 2000.

United States vs. Parrado-Herrera (PHX) USAO accepted prosecution of
 inmate for receiving marijuana and heroin in visiting room. Inmate
 has been released from custody.

United States vs. Salazar-Martinez - (PHX) Inmate pled guilty and
 sentenced August 38 to a 28 month consecutive sentence with 3 years
 of supervised release.

OTHER

United States vs. Fairman - (SET) Pre-trial detainee pending trial
 on November 13 for bank robbery has been referred and accepted for
 prosecution on witness tampering charges arising from telephone
 calls made from institution. Trial on latter charges to be held in
 conjunction with robbery trial.

STATISTICS

ADMINISTRATIVE REMEDIES											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
102	81	95	59	65	75	89	75	95	85		

FREEDOM OF INFORMATION/PRIVACY ACT:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	28	42	52	34	40	50	33	41	34	38		
CLOSED	29	19	72	39	33	38	42	32	39	42		
PENDING	24	47	27	20	27	39	30	39	34	30		
30 DAYS	3*	2*	5*	2*	5*	0	1*	0	1*	2*		
6 MONTHS	0	0	0	0	0	0	0	0	0	0		
APPEALS	6	1	1	3	3	1	5	0	2	6		

*Waiting for records from Archives.

FOI/PA PENDING MORE THAN 20 DAYS:														
DUB	LOF	LOM	LOS	NEL	PHX	SAF	SDC	SET	SHE	TAF	TCN	TRM	VIM	TOTAL
0	0	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	29	38	33	34	57	55	37	45	35	33		
CLOSED	34	44	52	51	42	20	13	80	23	54		
RECONSIDER	0	0	1	0	2	1	0	0	0	1		
PENDING	103	97	79	62	79	115	139	104	116	96		

OVER 6 MONTHS														
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Tort Claim Investigations Over 60 Days:														
DUB	LOF	LOM	LOS	NEL	PHX	SAF	SDC	SET	SHE	TAF	TCN	TRM	VIM	TOTAL
0	0	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 AT BEGINNING OF MONTH	379	388	393	411	422	426	433	443	457	468				
NEW CASES RECEIVED	14	14	19	12	5	9	14	17	13	9				
HC	10	10	12	6	5	5	10	13	4	7				
FTCA		1	1	0	0	1	2	2	2	1				
BIVENS	3	3	6	6	0	2	4	1	2	1				
OTHER	1	0	0	0	0	1	0	1	4	0				
CLOSED	5	9	1	1	1	2	4	3	2	6				
PENDING AT END OF MONTH	388	393	411	422	426	433	443	457	468	471				
LITIGATION REPORTS COMPLETED	22	18	14	8	7	7	6	4	5	9				



U.S. Department of Justice
Federal Bureau of Prisons

Dublin, California 94568

December 11, 2000

**MEMORANDUM FOR CHRISTOPHER ERLEWINE, ASSISTANT DIRECTOR/
GENERAL COUNSEL, GENERAL COUNSEL & REVIEW**

FROM: Harlan W. Penn, Regional Counsel
SUBJECT: Monthly Report for November 2000

LITIGATION

NEW CASES (3621(e))

Bonderov vs. Clark - (LOS) Petition for Writ of Habeas Corpus contesting 3621(e) ineligibility.

Myers vs. Pontesso - (PHX) Petition for Writ of Habeas Corpus contesting 3621(e) ineligibility.

Vu vs. Hood - (SHE) Petition for Writ of Habeas Corpus contesting 3621(e) ineligibility.

NEW CASES (Non 3621(e))

Altman v. Andrews - (TAF) Petition for Writ of Habeas Corpus seeking credit for state custody.

Choi v. Andrews - (TAF) Petition for Writ of Habeas Corpus seeking good conduct time for 366 day sentence.

Davis vs. Reno, et al (LOM) *Bivens* complaint alleging improper single cell assignment.

Martin vs. Hood (SHE) Petition for Writ of Habeas Corpus contesting, among other non-BOP issues, the fact that staff are relying on uncounseled convictions reported in PSI to elevate security classification.

Rivero-Proenza vs. Reno - (LOM) Petition for Writ of Habeas Corpus by INS detainee alleging he is improperly being held in high security institution designed to house convicted criminals.

Miller vs. Jusino - (SET) Petition for Writ of Habeas Corpus contesting DHO sanctions.

Thomas vs. Hood - (SHE) Petition for Writ of Habeas Corpus contesting sentence computation.

SIGNIFICANT DEVELOPMENTS/APPEALS

Alfrey vs. Crabtree & Alfrey vs. United States - (SHE) Government's motion for summary judgement granted in consolidated FTCA and Bivens suits alleging failure to protect resulting in inmate's death. Discretionary function exemption applied. Notice of Appeal filed by plaintiff's counsel September 20, 2000.

Appleby-El vs. Keohane - (LOM) Bivens complaint alleging due process and 8th Amendment violations arising from placement in M Unit and two-hour watch status and subsequent transfer to ADX Florence dismissed.

Arriaga vs. Hawk - (SAF) Inmate's appeal of denied habeas petition dismissed by 9th Circuit. Petitioner originally sought federal credit for time already credited to state sentence.

Cruz-Pagan vs. Holder - (LOM) Bivens complaint alleging failure to protect at USP and subsequent inadequate medical care at USMCFP was dismissed without prejudice for plaintiff's failure to timely file opposition to government's motion to dismiss.

Curtis vs. Bailey - (SAF) Inmate appealed to 9th Circuit the dismissal of his petition contesting criminal conviction on account of alleged inadequate assistance of counsel and prosecutorial misconduct. 9th Circuit dismissed appeal.

El-Williams vs. Hawk-Sawyer - (SDC) Civil rights complaint alleged discriminatory practices in hiring only Christian spiritual leaders. Government granted summary judgement on issue and case terminated.

Erlin vs. United States - (WXR) Previously represented plaintiff, now pro se, appealed to 9th Circuit the dismissal of his FTCA complaint due to statute of limitations. Complaint alleged plaintiff was wrongly incarcerated when the Parole Commission issued a violator warrant without jurisdiction. Previously, Erlin's habeas petition was granted by the district court causing his immediate release and the decision contained language indicating a Bivens complaint may be called for in this matter.

Freeman vs. United States - (LOS) U.S. District Court dismissed with prejudice plaintiff's second amended Bivens complaint complaining of Inmate Telephone System.

Jackson vs. Bailey - (SAF) Due to appellant's failure to perfect appeal (failed to file an opening brief), the 9th Circuit dismissed case in which inmate appealed dismissal of habeas petition concerning parole issues.

Livingston vs. Bailey - (SAF) Inmate petitioned to have 924(c) conviction set aside on account of Bailey. Court agreed and set aside this conviction. Court also transferred petition to Central District of California for re-determination of petitioner's sentence on remaining offenses.

Sara Jane Moore v. Meese - (WXR) Injunctive action filed in 1987 by DUB inmates to maintain individual room locks and inmate keys. Ongoing negotiations between parties regarding Government's proposals for "alternative security measures." Proposal for surveillance cameras to inmate counsel November 28, 2000.

Obermeyers vs. U.S. Dep't. of Justice, et al. - (WXR) Defendant's Motion for Summary Judgement granted in FTCA/§ 1983 complaint which alleged inmate was improperly housed at penitentiary (DUB) contrary to 18 U.S.C. § 4083. Both theories were time barred.

Schaeffer vs. Pontesso - (PHX) Inmate seeking hernia repair through litigation has received medical care based on agreement of parties. Court dismissed case without prejudice November 21, 2000.

Unger vs. Gaines - (SAF) 9th Circuit rejected interlocutory appeal of qualified immunity for Health Services Administrator. Discovery will now commence in district court.

CRIMINAL CASE TRACKING

Criminal Cases												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Referred	22	13	22	13	9	17	6	8	7	11	15	
Accepted	3	5	3	3	2	1	0	3	2	1	0	
Declined	27	8	5	15	9	12	13	7	5	4	11	
Pending Decision	28	32	47	42	40	44	37	35	35	41	45	

NEW INFORMATION ON ACTIVE PROSECUTIONS

CONTRABAND

United States vs. Kumar - (LOM) Trial set for December 30, 2000.

HOMICIDE

United States vs. Green - (LOM) May 29, 2001, is the new trial date.

SEX OFFENSES

United States vs. McKnight - (PHX) Retired Asst. Food Service Administrator scheduled to appear before Magistrate on November 29, 2000. Defendant is accused of engaging in sexual relations with inmate.

STATISTICS

ADMINISTRATIVE REMEDIES											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
102	81	95	59	65	75	89	75	95	85	66	

FREEDOM OF INFORMATION/PRIVACY ACT:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	28	42	52	34	40	50	33	41	34	38	36	
CLOSED	29	19	72	39	33	38	42	32	39	42	36	
PENDING	24	47	27	20	27	39	30	39	34	30	30	
30 DAYS	3*	2*	5*	2*	5*	0	1*	0	1*	2*	1*	
6 MONTHS	0	0	0	0	0	0	0	0	0	0	0	
APPEALS	6	1	1	3	3	1	5	0	2	6	1	

*Waiting for records from Archives.

FOI/PA PENDING MORE THAN 20 DAYS:														
DUB	LOF	LOM	LOS	NEL	PHX	SAF	SDC	SET	SHE	TAF	TCN	TRM	VIM	TOTAL
0	0	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	29	38	33	34	57	55	37	45	35	33	61	
CLOSED	34	44	52	51	42	20	13	80	23	54	59	
RECONSIDER	0	0	1	0	2	1	0	0	0	1	0	
PENDING	103	97	79	62	79	115	139	104	116	96	98	
OVER 6 MONTHS												

Tort Claim Investigations Over 60 Days:

DUB	LOF	LOM	LOS	NEL	PHX	SAF	SDC	SET	SHE	TAF	TCN	TRM	VIM	TOTAL
0	0	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 AT BEGINNING OF MONTH	379	388	393	411	422	426	433	443	457	468	471	
NEW CASES RECEIVED	14	14	19	12	5	9	16	17	12	9	10	
HC	10	10	12	6	5	5	10	13	4	7	9	
FTCA		1	1	0	0	1	2	2	2	1	0	
BIVENS	3	3	6	6	0	2	4	1	2	1	1	
OTHER	1	0	0	0	0	1	0	1	4	0	0	
CLOSED	5	9	1	1	1	2	4	3	2	6	10	
PENDING AT END OF MONTH	388	393	411	422	426	433	443	457	468	471	471	

LITIGATION:

LITIGATION REPORTS COMPLETED	22	18	14	8	7	7	6	4	5	9	6	
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U.S. Department of Justice
Federal Bureau of Prisons

Dublin, California 94568

January 5, 2001

**MEMORANDUM FOR CHRISTOPHER ERLEWINE, ASSISTANT DIRECTOR/
GENERAL COUNSEL, GENERAL COUNSEL & REVIEW**

FROM: Harlan W. Penn, Regional Counsel

SUBJECT: Monthly Report for December 2000

LITIGATION

NEW CASES (3621(e))

McIntosh vs. Clark - (LOS) Petition for Writ of Habeas Corpus contesting 3621(e) ineligibility due to prior assault conviction.

NEW CASES (Non 3621(e))

Adams vs. Boston - (SHE) *Bivens* complaint alleging First Amendment violation for discipline imposed based on telephone conversation as well as staff's alleged failure to protect. Inmate has been released and portions of complaint may be moot.

Cook vs. Murphy, et al. - (SHE) Petition for Writ of Habeas Corpus challenging decision not to grant petitioner protective custody status. Inmate expected to be released January 27, 2001.

Foley vs. USA, et al. - (DUB) FTCA/*Bivens* action filed by inmate who voluntarily participated in sting operation in which staff was arrested and successfully prosecuted for inmate sexual abuse. Inmate claims defendants failed to protect her from the staff member, released information concerning her role in the investigation, failed to train the staff, permitted her assault and battery, falsely imprisoned her, and subjected her to emotional distress.

Felix-Perez vs. Acosta and Lathers - (SDC) Counsel-represented inmate filed *Bivens* complaint alleging staff member attempted to

forcibly remove clitoris ring from pre-trial detainee as well as improper digital search. Complaint also alleges failure to supervise, ignoring staff's alleged propensity for sexual assault of females. This case was subject of a December 16, 2000, article in *San Diego Union Tribune*.

Garza vs. Hawk-Sawyer - (LOM) Bivens complaint alleging Ensign Amendment is unconstitutional.

Hagins vs. Bureau of Prisons - (SHE) FOIA complaint alleging staff used incorrect information in files and that it adversely affected his classification.

Hayes vs. Hawk-Sawyer, et al. - (SDC) Bivens complaint alleging assault by staff at MCC San Diego and subsequent lack of medical treatment at FCI Lompoc.

Howland vs. Bureau of Prisons - (SHE) Petition for Writ of Habeas Corpus in which inmate serving concurrent state/federal sentences is seeking jail time credit applied toward federal sentence (*Kayfez*).

Hunt vs. Jessip, et al. - (PHX) Bivens complaint alleging conspiracy between CCC staff and CCM to cause inmate to be returned to closer custody as a result of a positive urinalysis for drugs.

Moore vs. Hedges - (LOS) Petition for Writ of Habeas Corpus contesting sentence computation based on CCC escape and alleged failure to place him in CCC where he would be protected from assault.

Reed vs. United States, et al. - (WXR) Hearing on Emergency Petition for Writ of Habeas Corpus concerning whether or not there was liberty interest when inmate is released to halfway house, such that due process required before transfer back to closer supervision (county jail). Government argued there was none whatsoever per *Sandin* as inmate was still in BOP custody, and that placement from CCC to jail was analogous to transfer between institutions. Judge found in favor of Bureau based on fact that inmate spent nights at CCC, and thus, had no liberty interest yet.

Shells vs. Andrews - (TCI) Petition for Writ of Habeas Corpus seeking credit for federal sentence for time spent in custody on state proceedings.

Smith vs. Sawyer - (PHX) Bivens action by WITSEC inmate complaining he is not eligible for education programs which are offered to inmates in general population.

Tringali vs. Adams, et al. - (LOM) FTCA/Bivens complaint alleging improper medical care.

United States vs. Franklin - (SHE) Petition for Writ of Habeas Corpus seeking re-sentencing to comply with purported agreement to honor pre-sentence custody credit already credited to state sentence.

United States vs. Santiago - (WXR) "Motion Requesting Prior Jail Time Credit" to be handled as Petition for Writ of Habeas Corpus. Inmate seeks 151 days credit for federal sentence that was to run concurrent to undischarged state sentence. Petitioner claims Bureau returned him to state custody instead of designating him to federal institution.

SIGNIFICANT DEVELOPMENTS/APPEALS

Arriaga vs. Hawk - (SAF) Petitioner's appeal to Ninth Circuit of lower court's dismissal of habeas petition was dismissed. Petitioner originally sought federal credit for time already credited to state sentence.

Baker vs. United States - (SDC) FTCA case complaining of medical care has a mandatory settlement conference scheduled for May 16, 2001.

Burridge vs. Krupp, et al. - (NEL) Court granted Defendant's Motion to Dismiss in this *Bivens*/FTCA case by released inmate alleging interference with/denial of religious practice; deliberate exposure to hazardous asbestos; interference with legal mail and legal matters; and failure to place in appropriate District for Supervised Release supervision.

Folawiyo vs. Schultz - (DUB) Habeas petition regarding computation of supervised release violator term and State sentence denied with prejudice.

Gerritsen vs. Pontesso - (PHX) Ninth Circuit upheld dismissal of previously denied DAP petition on grounds that Bureau did not impermissibly retroactively change eligibility criteria. Petitioner also contested Bureau's refusal to allow him to complete DAP based on escape conviction. Ninth Circuit held escapees are not a protected class and denial of continued participation in DAP was based on legitimate penological interest.

Larson vs. United States - (SHE) FTCA action alleging medical malpractice has been settled for \$42,829.32.

Maier vs. Hood - (SHE) Petition for Writ of Habeas Corpus seeking transfer to camp facility dismissed as moot.

McGowan vs. Greenhill - (SHE) Dismissed Bivens complaint that was appealed to Ninth Circuit was dismissed for Appellant's failure to comply with court rules regarding appeal. Original case complained of excessive force of staff in response to plaintiff pulling away from restraint as well as conditions of confinement in SHU allegations.

Most vs. Stratman, et al. - (SDC) Hearing on government's Motion for Summary Judgement in Bivens complaint alleging retaliation for legal pursuits has been calendared for January 8, 2001.

Neville vs. Hawk - (SHE) Bivens case complaining of triple bunking (see also *Wainwright vs. Hawk & Granger vs. Hawk*) dismissed due to plaintiff's escape.

Pettis vs. Navy, et al. - (SDC) Bureau of Prisons, Pacific Furlough, and Department of Justice have been terminated from this Title VII complaint by former inmate.

Resnick vs. Adams - (LOS) Settlement negotiations commenced in Bivens complaint concerning medical care. Settlement concurred with by Medical Director.

United States vs. Miller - (PHX) December 8, 2000, Judge ordered inmate released to supervised release effective December 15. Inmate had been mistakenly placed on parole for a non-parolable offense and then brought back into BOP custody.

Vu vs. Hood - (SHE) Petition for Writ of Habeas Corpus contesting ineligibility for 3621(e) release is expected to be voluntarily dismissed on account of INS agreeing to lift detainer which originally caused inmate not to be eligible. Inmate expected to be released in January 2001.

Wainwright vs. Hawk & Granger vs. Hawk - (SHE) Two Bivens cases complaining of triple bunking have been held to heightened pleading by judge ordering dismissal of Director Hawk and former Regional Director Carlson. Plaintiffs ordered to amend complaint to detail number of days in alleged triple bunk status and any medical or psychological harm.

Woods vs. Bailey - (SAF) Premature Petition for Writ of Habeas Corpus contesting pending DHO action dismissed by court.

CRIMINAL CASE TRACKING

Criminal Cases												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Referred	22	13	22	13	9	17	6	8	7	11	15	16
Accepted	3	5	3	3	2	1	0	3	2	1	0	0
Declined	27	8	5	15	9	12	13	7	5	4	11	5
Pending Decision	28	32	47	42	40	44	37	35	35	41	45	56

ASSAULT

United States vs. Guma - (SET) Inmate sentenced to 71 months for assault on staff member.

United States vs. Fuentes-Lopez - (SAF) Previously accepted inmate on inmate assault with sharpened instrument has been declined.

United States vs. Mendoza-Aguilar - (TCN) Inmate on staff assault. Originally scheduled for trial December 12 has been postponed.

United States vs. Milton, et al. - (LOM) Case involving May 1999 inmate on staff assault case involving two defendants has been bifurcated. Trial for inmate Milton scheduled for January 9 and trial for inmate Krause scheduled for January 20, 2001.

United States vs. Ponce-Hernandez - (TCN) Inmate on staff assault trial date set for January 13, 2001.

CONTRABAND

United States vs. Hankey - (LOM) Inmate pled guilty to possession with intent to distribute. Sentencing hearing set for February 26, 2001.

United States vs. Kumar - (LOM) Status hearing set for January 22, 2001, with new attorney being appointed to represent defendant.

United States vs. Mejia - (PHX) Inmate visitor sentenced on introduction of contraband charge to 16 months incarceration.

ESCAPE

United States vs. Hungerford - (TCN) Inmate sentenced on December 11, 2000, to time served (approximately 8 months). Of note is that this inmate has significant health problems including several strains of hepatitis and liver disease.

United States vs. Ibarra - (SAF) Inmate failed to report to CCC after furlough transfer from FCI Safford October 10, 2000.

HOMICIDE

United States vs. Green - (LOM) May 29, 2001, is the new trial date.

STATISTICS

ADMINISTRATIVE REMEDIES											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
102	81	95	59	65	75	89	75	95	85	66	72

FREEDOM OF INFORMATION/PRIVACY ACT:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	28	42	52	34	40	50	33	41	34	38	36	35
CLOSED	29	19	72	39	33	38	42	32	39	42	36	33
PENDING	24	47	27	20	27	39	30	39	34	30	30	32
30 DAYS	3*	2*	5*	2*	5*	0	1*	0	1*	2*	1*	2*
6 MONTHS	0	0	0	0	0	0	0	0	0	0	0	0
APPEALS	6	1	1	3	3	1	5	0	2	6	1	2

*Waiting for records from Archives.

FOI/PA PENDING MORE THAN 20 DAYS:														
DUB	LOF	LOM	LOS	NEL	PHX	SAF	SDC	SET	SHE	TAF	TCN	TRM	VIM	TOTAL
0	0	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	29	38	33	34	57	55	37	45	35	33	61	42
CLOSED	34	44	52	51	42	20	13	80	23	54	59	37
RECONSIDER	0	0	1	0	2	1	0	0	0	1	0	0
PENDING	103	97	79	62	79	115	139	104	116	96	98	103
OVER 6 MONTHS												

Tort Claim Investigations Over 60 Days:														
DUB	LOF	LOM	LOS	NEL	PHX	SAF	SDC	SET	SHE	TAF	TCN	TRM	VIM	TOTAL
0	0	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 AT BEGINNING OF MONTH	379	388	393	411	422	426	433	443	457	468	471	469	
NEW CASES RECEIVED	14	14	19	12	5	9	16	17	12	9	8	17	
HC	10	10	12	6	5	5	10	13	4	7	8	8	
FTCA	0	1	1	0	0	1	2	2	2	1	0	0	
BIVENS	3	3	6	6	0	2	4	1	2	1	0	8	
OTHER	1	0	0	0	0	1	0	1	4	0	0	1	
CLOSED	5	9	1	1	1	2	4	3	2	6	10	10	
PENDING AT END OF MONTH	388	393	411	422	426	433	443	457	468	471	469	476	
LITIGATION REPORTS COMPLETED	22	18	14	8	7	7	6	4	5	9	6	7	

MISCELLANEOUS

The Bureau of Land Management recently extended the special use permit of the land occupied by FCI/FPC Phoenix for an additional 20 years. The current permit was scheduled to expire in 2003.