

UNITED STATES GOVERNMENT

**memorandum**

**Date:** October 30, 1998

**Reply to:** Sherree L. Sturgis, Regional Counsel, Southeast Region  
**Attn of:** Federal Bureau of Prisons, Atlanta, GA 30331

**Subject:** **Monthly Report - October 1998**

**To:** **Wallace H. Cheney**, General Counsel and  
 Assistant Director, Federal Bureau of Prisons  
 Washington, D.C. 20534

**I. ADMINISTRATIVE LEGAL ACTIVITIES - SUMMARY REPORT**

**A. Administrative Tort Claims - 1998**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st		113	69	69	89	104	101	88	104	107	112	
Rec's in month	39	55	88	38	63	36	74	38	49	50		
Recons. rec'd	0	3	4	2	1	0	3	0	0	01		
Ans'd in month	22	49	69	52	46	58	54	29	55	58		
Pending at end	117	118	107	103	111	101	88	81	100	104		
Over 180 days	6	3	1	3	2	3	0	*1	*2	*3		

\*ONE (1) of the three referred to OIA

**B. Tort Claim Investigation Status: As of October 30, 1998**

	ATL	COL	E D G	E G L	E S T	G U A	J E S	M I A	MIM	MNA	MON	PEN	TAL	TDG	YAZ
PENDING	36	14	1	0	0	7	6	2	10	11	1	1	7	3	5
>60 DAYS	*9	1	0	0	0	0	0	0	0	4	0	0	1	0	0

\*2 of the 9 referred to OIA

**C. FOI/Privacy Act Requests - 1998**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1 <sup>st</sup>		12	18	19	21	15	31	27	14	14	12	
Rec'd in month	21	9	18	19	15	24	24	29	35	41		
Ans'd in month	10	18	22	26	41	14	33	44	43	44		
Pending at end	24	21	19	25	15	7	27	14	14	12		
Over 30 days	4	4	3	6	2	2	9	2	0	0		

**D. FOIA Requests for records: As of October 30, 1998**

	ATL	COL	EGL	EST	GUA	JES	MIA	MIM	MNA	MON	PEN	TAL	TDG	YAZ
PENDING		1	1		1	1			1			3	3	1
>30 DAYS														

**II. LITIGATION ACTIVITY - 1998 SOUTHEAST REGION**

**A. SUMMARY REPORT**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Cases Open	522	515	525	535	537	542	539	531	<b>661</b> **	594		
New Cases	16	2	18	15	15	10	11	24	14	6		
Habeas Corpus	10	1	9	6	8	8	6	12	8	0		
FTCA	0	0	2	2	2	0	1	1		0		
Bivens	5	1	6	5	5	2	4	8	5	3		
Other	1	0	1	2	0	0	0	2	1	1		
Bivens/FTCA	0	0	0	0	0	0	0	1		2		
Lit Reports	11	1	2	5	5	0				0		
Cases Closed	77	9	8	5	13	5	14	32	<b>109</b> *	73		

\*\* ACTUAL COUNT OF OPEN CASES

\* CLOSED AFTER REVIEW WITH INST. LEGAL STAFF'S CASE LOGS

**B. SETTLEMENTS AND AWARDS:**

Renee Clark v, United States of America, 1:97cv404-D-D (S.D> Miss.) This is the case where the female inmate was released 34 days late at TAL. She subsequently violated supervised release and was returned to custody. The 34 days were credited against her supervised release violator term. [REDACTED]

b5

**C. SIGNIFICANT CASES, TRIALS or HEARINGS:**

1. Freson v. U.S. et al., 97-1373-CIV-GRAHAM (FFLS)

In this Bivens/FTCA case, a courier who was making a delivery to FCI Miami alleges that he became involved in a verbal altercation with a Lieutenant who assaulted him by hitting him with his fist, causing him to strike a flagpole with his face, break his glasses and sustain injury. The U.S. Attorney has taken a personal interest and is handling this case himself. [REDACTED]

b2 The case is set for trial on November 3, 1998.

2. Blackwell v. Graham, 97-482-CIV-UNGARO-BENAGES (FFLS)

In this Bivens case, an inmate alleges that he was assaulted by a case manager who struck him with a fist. The case manager did receive disciplinary action for Unprofessional Conduct, and documentation created at the time suggests this was because he had been found to have assaulted the inmate. However, the Warden who made the decision has submitted a declaration stating that it was really for Unprofessional Conduct based on language, not physical assault. [REDACTED]

b5 He is not considered credible on this point because he has submitted conflicting statements at various times. Motion practice has not resulted in dismissal. The judge adopted an adverse report and recommendation on somewhat different grounds than the magistrate recommended, and found that a jury could find the plaintiff was attacked without provocation and that his injury was not de minimis. The case has been reported as ready for trial to the judge by the magistrate, but a trial date has not been set.

2. Porto v. U.S.,

The inmate alleges medical malpractice as to treatment for his diabetes and an infection of his toe while at FCI Jesup, which led to amputation of his toe and ultimately his lower leg. There have been a number of depositions taken and a mediation meeting with opposing counsel. We still have a motion pending for dismissal on the basis of failure to file within the statutory limitations period. The case is set for trial on November 5, 1998. If this case goes to trial, it will be a battle of the experts.

4. Viera v. U.S., 2-97-0499-12 (FSC)

The inmate alleges medical malpractice in that the BOP did not properly treat an injury he sustained to his achilles tendon. The tendon was sutured by an orthopedic surgeon and the sutures became infected. He was treated with antibiotics, but because of the infection he was transferred to an outside hospital and a cast was applied to his leg. His leg eventually healed with some scarring and he regained a full range of motion. He reinjured his leg while playing basketball at another institution. [REDACTED]

[REDACTED] b5 The treating orthopedic doctor is our expert witness. [REDACTED]

[REDACTED] b5 A motion based on failure to file an appropriate claim in accordance with the statutory time frames will be filed in the near future. The case is set on the trial calendar for November 2, 1998.

D. RELIGIOUS CASES:

E. ENSIGN AMENDMENT CASES:

F. PLRA 1915 DISMISSALS: NONE

G. CRIMINAL CASES:

**New Cases:**

1.

III. TRAVEL AND LEAVE SCHEDULE FOR November 1998:

[REDACTED] b6

Travel - OCTOBER 1, 1998, FT. LAUDERDALE ON PORTO v. US  
Annual Leave -

[REDACTED]

**b6**

Travel - None Scheduled  
Annual Leave - November 12 & 13, 25 & 27

[REDACTED]

**b6**

Travel - None Scheduled  
Annual Leave - October 8-9, (military leave)

[REDACTED]

**b6 - Honors Attorney**

Travel - None Scheduled  
Annual Leave -

[REDACTED] b6  
Travel -  
Annual Leave -

[REDACTED] b6  
Travel -  
Annual Leave -

[REDACTED] b6  
Travel -  
Annual Leave -

#### IV. Other Matters

A Regional Inquiry Team was dispatched to FCI Yazoo City to review the situation of an inmate who went on a hunger strike and was taken to an outside hospital shortly before his release date, where he remains in a comatose state. Van Vandivier was assigned as attorney-advisor to the team. Preliminary information is that the inmate was intent on causing himself to be in a poor state of health when he was released so the State of Mississippi would be unwilling to assume responsibility for his medical care and so would not prosecute him on pending charges. A final report from the inquiry team should be available in the near future.

cc: Regional Director and Deputy Regional Director, SER  
All Regional Counsel and Associate General Counsel

UNITED STATES GOVERNMENT  
**memorandum**

**Date:** December 4, 1998

**Reply to:** Sherree L. Sturgis, Regional Counsel, Southeast Region  
**Attn of:** Federal Bureau of Prisons, Atlanta, GA 30331

**Subject:** **Monthly Report - November 1998**

**To:** **Wallace H. Cheney**, General Counsel and  
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**I. ADMINISTRATIVE LEGAL ACTIVITIES - SUMMARY REPORT**

**A. Administrative Tort Claims - 1998**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1st		113	69	69	89	104	101	88	104	107	112	128
Rec's in month	39	55	88	38	63	36	74	38	49	50	59	
Recons. rec'd	0	3	4	2	1	0	3	0	0	01	01	
Ans'd in month	22	49	69	52	46	58	54	29	55	58	55	
Pending at end	117	118	107	103	111	101	88	81	100	104	118	
Over 180 days	6	3	1	3	2	3	0	*1	*2	*3	0	

\*Two (2) of the five referred to OIA

**B. Tort Claim Investigation Status: As of November 30, 1998**

	ATL	COL	E D G	E G L	E S T	G U A	J E S	M I A	MIM	MNA	MON	PEN	TAL	TDG	YAZ
PENDING	48	18	3	1	2	4	5	5	5	3	1	1	19	1	3
>60 DAYS	20	2	0	0	0	0	0	0	0	2	0	0	7	0	0

ATL - 2 of >60 Days referred to OIA

**C. FOI/Privacy Act Requests - 1998**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1 <sup>st</sup>		12	18	19	21	15	31	27	14	14	12	11
Rec'd in month	21	9	18	19	15	24	24	29	35	41	24	
Ans'd in month	10	18	22	26	41	14	33	44	43	44	28	
Pending at end	24	21	19	25	15	7	27	14	14	12	11	
Over 30 days	4	4	3	6	2	2	9	2	0	0	0	



**D. FOIA Requests for records: As of November 30, 1998**

	ATL	COL	EGL	EST	GUA	JES	MIA	MIM	MNA	MON	PEN	TAL	TDG	YAZ
PENDING			1		1		1	3	2	2			1	
>30 DAYS														

**E. ADMINISTRATIVE REMEDIES**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	
195	169	201	217	167	115	176	229	239	159	152		

**II. LITIGATION ACTIVITY - 1998 SOUTHEAST REGION**

**A. SUMMARY REPORT**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Cases Open	522	515	525	535	537	542	539	531	661 **	594	600	606
New Cases	16	2	18	15	15	10	11	24	14	6	14	
Habeas Corpus	10	1	9	6	8	8	6	12	8	0	4	
FTCA	0	0	2	2	2	0	1	1		0	1	
Bivens	5	1	6	5	5	2	4	8	5	3	6	
Other	1	0	1	2	0	0	0	2	1	1	3	
Bivens/FTCA	0	0	0	0	0	0	0	1		2	0	
Lit Reports	11	1	2	5	5	0				0	11	
Cases Closed	77	9	8	5	13	5	14	32	109 *	73	8	

\*\* ACTUAL COUNT OF OPEN CASES

\* CLOSED AFTER REVIEW WITH INST. LEGAL STAFF'S CASE LOGS

**B. SETTLEMENTS AND AWARDS:**

**C. SIGNIFICANT CASES, TRIALS or HEARINGS:**

1. Freson v. U.S. et al., 97-1373-CIV-GRAHAM (FFLS)

In this Bivens/FTCA case, a courier who was making a delivery to FCI Miami alleges that he became involved in a verbal altercation with a Lieutenant who assaulted him by hitting him with his fist, causing him to strike a flagpole with his face, break his glasses and sustain injury.

[REDACTED] b5 Dan Ritchey returned from Colorado to assist at trial. The case went to trial on November 3, 1998. We are awaiting the decision.

2. Viera v. U.S., 2-97-0499-12 (FSC)

The inmate alleges medical malpractice in that the BOP did not properly treat an injury he sustained to his achilles tendon. The tendon was sutured by an orthopedic surgeon and the sutures became infected. He was treated with antibiotics, but because of

the infection he was transferred to an outside hospital and a cast was applied to his leg. His leg eventually healed with some scarring and he regained a full range of motion. He reinjured his leg while playing basketball at another institution. [REDACTED]

[REDACTED] b5 The case was set on the trial calendar for November 2, 1998, but the court will reset the date (or not) after it decides the governments motion to dismiss.

**D. RELIGIOUS CASES:**

**E. ENSIGN AMENDMENT CASES:**

**F. PLRA 1915 DISMISSALS:** NONE

**G. CRIMINAL CASES:**

**New Cases:**

1. U.S. v. Rafael Algarin de Jesus, Crim.No. 98-195(HL) (D.P.R.) This is the case of a correctional officer who is charged with having sex with an inmate at MDC Guaynabo. Alma Lopez is monitoring the progress of the case and will assist the USAO as needed.
2. U.S. v. Jose Cruz-Manquial, Crim.No. 98-194(CC) (D.P.R.) This is the case of a correctional officer who is charged with having sex with an inmate at MDC Guaynabo. Alma Lopez is monitoring the progress of the case and will assist the USAO as needed.

**III. TRAVEL AND LEAVE SCHEDULE FOR November 1998:**

[REDACTED] b6  
Travel - None

[REDACTED] b6  
Travel - None

[REDACTED] b6  
Travel - None

[REDACTED] b6  
Travel - To ICT in Glynco 12/1/98 - 12/18/98

[REDACTED] b6  
Travel - None

[REDACTED] b6  
Travel - None

[REDACTED] b6  
Travel - None

[REDACTED] b6  
Travel - None

cc: Regional Director and Deputy Regional Director, SER  
All Regional Counsel and Associate General Counsel