



U.S. Department of Justice

Federal Bureau of Prisons

Dublin, California 94568

February 5, 1999

**MEMORANDUM TO CHRISTOPHER ERLEWINE
ASSISTANT DIRECTOR/GENERAL COUNSEL**

FROM: Harlan W. Penn, Regional Counsel
SUBJECT: Monthly Report for January, 1999

LITIGATION

NINTH CIRCUIT MATTERS:

Ballou v. Perrill, (SET) 9th Circuit Respondent/Appellee's Brief filed January 25, 1999. DAP appeal involving ineligibility based on a prior bank robbery conviction. Petitioner claims staff verbally informed him of his eligibility prior to entering the program and BOP subsequently applied \$ 550.58, revoking his eligibility.

Blue v. Bailey, (SAF) Habeas petition seeking presentence credit. On December 8, 1998, case was dismissed, but appealed by the inmate to the 9th Circuit Court of Appeals.

U.S. v. Gibson, (WRO) 9th Circuit Court of Appeals unpublished opinion upholds BOP. Inmate filed Mandamus challenging BOP decision to rescind 3621(e) early release due to prior robbery conviction.

NEW 3621(e) CASES:

Darmiento v. Crabtree, (SHE) Habeas DAP petition - two level enhancement.

DeChambeau v. Crabtree, (SHE) Habeas DAP petition - two level enhancement.

Foley-Clark v. Reese, (DUB) Habeas DAP petition - two level enhancement.

Gray v. Crabtree, (SHE) Habeas DAP petition -felon in possession of a firearm.

Grier v. Crabtree, (SHE) Habeas DAP petition - two level enhancement.

Gwyn v. Crabtree, (SHE) Habeas DAP petition - two level enhancement and program failure.

Johnson v. Crabtree, (SHE) Habeas DAP petition - two level enhancement.

Katz v. Crabtree, (SHE) Habeas DAP petition - two level enhancement and §922g.

Lightbourne v. Crabtree, (SHE) Habeas DAP petition - two level enhancement.

Martin v. Campbell, (TAF) Habeas DAP petition - unarmed bank robbery.

Marshall v. Crabtree, (SHE) Habeas DAP petition - two level enhancement.

Ramos v. Crabtree, (SHE) Habeas DAP petition - two level enhancement.

Samaniego v. Crabtree, (SHE) Habeas DAP petition - two level enhancement.

Shibuya v. Reese, (DUB) Habeas DAP petition - two level enhancement.

Subia v. Crabtree, (SHE) Habeas DAP petition - two level enhancement and §922g.

Warden v. Crabtree, (SHE) Habeas DAP petition - two level enhancement.

Williams v. Crabtree, (SHE) 1998 Habeas DAP petition - two level enhancement.

Williams v. Crabtree, (SHE) 1999 Habeas DAP petition - two level enhancement and §922g conviction.

Wills v. Crabtree, (SHE) Habeas DAP petition - two level enhancement.

Young v. Crabtree, (SHE) Habeas DAP petition - two level enhancement.

NEW CASES/OTHER:

Bowen v. Crabtree, (SHE) Habeas petition challenging sentence computation.

Davidson v. Bailey, (SAF) Habeas petition in which inmate is challenging his criminal conviction via a Section 2241 claim.

Jones v. Hood, (TCN) Habeas petition challenging the USPC's decision to rescind parole and upwardly depart from the guidelines for drug use in prison (FCI Lompoc) and a pre-existing history of heroin abuse, spanning almost 25 years. Issues raised are purely U.S. Parole Commission.

Lund v. U.S. (SET) FTCA action alleging injuries suffered from an alleged slip and fall in the SHU shower.

Moore v. Crabtree, (SHE) Habeas petition challenging sentence computation and USPC action.

Reed v. I.R.S., (SHE) Bivens action alleging various constitutional violations including false imprisonment.

Resnick v. Adams, (LOM) Bivens action alleging violation of First Amendment rights. Specifically, the inmate alleges that he is not being provided a Kosher diet.

Resnick v. Adams, (LOM) Bivens action alleging inadequate medical treatment for a leg condition

Rutkowski v. Crabtree, (SHE) Habeas petition challenging computation of sentence and USPC action.

Wharton v. Crabtree, (SHE) Habeas petition alleging staff blocking access to the Courts.

SIGNIFICANT DEVELOPMENTS:

Allen v. Crabtree, (SHE) Court held that DAP staff determination that inmate did not qualify for RDAP participation because there was no corroboration of self-reported alcohol abuse violated Cort v. Crabtree, 113 F3d 1089 (CA9 1997). District Court ruled that once inmate receives a provisional 3621 (e) release eligibility determination BOP can not apply new program eligibility rules.

Betz v. Crabtree, (SHE) On December 8, 1998, relying on Downey, judge granted habeas petition by stating BOP may not use sentencing enhancements of subsequent conviction to revoke previous grant of DAP eligibility. The BOP had denied eligible

status due to conviction of attempted escape and the offense characteristics which included violence. (Petitioner fled from military police at high speed, threatened use of force against police, rammed police vehicle and collided with civilian vehicle. This provided five point sentence enhancement.) Staff determined this offense disqualified petitioner from CCC placement and was rationale for denying eligibility. Respondent's Motion to Vacate Judgement and Motion for Reconsideration of the Court's Opinion and Order submitted December 18, 1998. Motion denied by court January 11, 1999.

Copeland v. Hood, (TCN) On December 3, 1998 Judge dismissed, with prejudice, the habeas petition which sought reversal of DHO action and, restoration of forfeited good time, stemming from a 110 Refusing to Provide a Urine Sample. Inmate claimed he suffered from "Shy Bladder", which the Magistrate apparently adopted in issuing R&R to grant petitioner's relief. Due to significant correctional issues involved, FCI Tucson successfully opposed the R&R.

Davis v. Perrill, (SET) Habeas petition alleging property was improperly withheld when inmate was transferred from FDC Sheridan to FDC SeaTac. Response filed on November 6, 1998. On December 11, 1998, Magistrate Judge issued a Report and Recommendation, recommending denial of Petitioner's motion for preliminary injunctive relief, and petition for writ.

Hogan v. U.S., (SDC) FTCA action alleging retaliatory transfer. Plaintiff agreed to stay the majority of their discovery requests based upon defendant's intent to file motion to transfer case. The motion to transfer should be filed by February 5, 1999 and a hearing on the motion is set for March 1, 1999.

Kurtz v. U.S., (SHE) FTCA action alleging the BOP was negligent in failing to prevent inmate from attempting to commit suicide by hanging. Inmate is permanently impaired and received compassionate release on November 18, 1998. Trial was held January 26 & 27, 1999. Judge ruled from the bench finding no negligence on the part of BOP.

Manning v. U.S., (SHE) FTCA action alleging the BOP was negligent for failing to provide a ladder to climb onto the top bunk. Plaintiff claims he fell and suffered head and neck injuries and the BOP failed to provide adequate medical care. Trial was set for January 25, 1999 but postponed until March 1999.

Mitchell v. USA, (PHX) FTCA action alleging assault and injury by other inmates due to the BOP's failure to protect. Judge has advised the government to raise the discretionary function exception in this case. Plaintiff has raised a failure to protect.

Mota v. U.S., (SDC) FTCA action regarding alleged injury during escorted trip. Pre-Trial Conference was held on November 9, 1998. Mandatory settlement conference held on December 2, 1998. The bench trial originally set for January 26, 1999 gave way to settlement negotiations. A settlement of \$7,500 was reached on the eve of trial.

Nelson v. Crabtree, (SHE) Court holds that BOP cannot apply rule/program change after the provisional eligibility for 3621(e) release is made, to do so violates Cort v. Crabtree. Nelson received a two point enhancement under USSG 2101.1 and upon implementation of 5162.04, his provisional eligibility for early release was overturned. District court found no likelihood of success on appeal to warrant stay.

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

Romero v. BOP, (PHX) FTCA action for wrongful death by hanging. A trial date of July 27, 1999 has been set.

Smith v. BOP, (PHX) On January 7, Judge dismissed all allegations in this action except for a claim involving the improper opening of legal mail by staff. There are two remaining BOP defendants.

CRIMINAL CASE TRACKING

Criminal Cases												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Referred	29											
Accepted	1											
Declined	15											
Pending Decision	13											

Declined Cases:

(DUB) Inmate who worked in laundry received check for deposit into trust fund account from attorney of a second inmate for payment of the second inmate's "laundry account" that was supposedly owed to the first inmate who worked in the laundry.

(PHX) Inmate assaulted an inmate on the Recreation Yard.

(PHX) Female inmate died at a local hospital of unknown reasons. The SIS referred and declined after the results of autopsy indicated inmate died of natural causes.

(PHX) Inmate assaulted another inmate and sustained numerous contusions to his face.

(SAF) Inmate intentionally brushed up against a Food Service Staff Member.

(SAF) Inmate was intoxicated while on furlough status to a halfway house.

(SAF) Two inmates were involved in a slap and push incident.

(SET) Inmate assaulted another inmate. AUSA declined to prosecute in favor of administrative disciplinary proceedings.

(SET) Inmate assault on Staff. AUSA declined to prosecute in favor of administrative disciplinary proceedings.

(TCN) ISO discovered Marijuana on an inmate, who had just been received from INS on illegal re-entry charges. The matter was referred for prosecution on but was declined, due to the small quantity of narcotics involved.

(TCN) Inmate was found to be in an unauthorized area. As Senior Officer was attempting to escort the inmate to the Lieutenant's Office, inmate pushed past the officer striking him on the left arm with his elbow. Officer received no injuries.

(TCN) Senior Officer observed an inmate sticking another inmate in the chest with a homemade syringe. The syringe contained a liquid substance, which tested positive for amphetamine (crank).

(TCN) Senior Officer was removing hand restraints from inmate in SHU when inmate pulled away, causing strained muscles of Officer's fingers.

(TCN) Inmate was physically assaulted by 4 inmates in the Unit Dorm while asleep in his bunk. The victim was treated for multiple abrasions/contusions. Two of the four assailants tested positive for the use of intoxicants.

(TRM) Inmate was found in possession of a minute amount of heroin (minute amount).

Active Prosecutions:

ASSAULT:

U.S. v. Dahkoshay, (SHE) Inmate assaulted another inmate with a weapon containing a razorblade. Victim's arm was severely cut. Trial set for March 30, 1999.

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

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

ESCAPE:

U.S. v. Finkle, (LOM) Escape from the FPC in January of 1998. Trial was scheduled for January 19, 1999. On January 15, 1999, the U.S. Attorney's Office dismissed charges.

U.S. v. Lewis, (TCN) Prosecution of inmate Lewis, currently at FCI PHX, for soliciting drug abuse treatment records from outside source to falsify, and falsifying records to document history of substance abuse to support his application to the Bureau's RDAP program for purpose of § 3621(e) early release eligibility. Grand Jury Indictment was handed down on January 20, 1999, charging Lewis with 2 Counts of Attempted Escape (TCN & PHX), and 1 Count of Fraud.

U.S. v. Nikrasch, (LOM) Escape from the FPC in December of 1995. Inmate pled guilty to one count of Escape from a Federal Institution, one count of Possessing and or Passing Counterfeit \$100 Bills, and one count of Possessing over \$5,000 in Counterfeit Currency. Sentencing rescheduled for February 22, 1999.

HOMICIDE:

U.S. v. Green, (LOM) Inmate indicted April 2, 1998 for murder of SOS Scott Williams (2 counts) and assaults on four other officers. On December 2, 1998, the Attorney General authorized the USAO to seek the death penalty in this case. On December 10, 1998, the USAO filed the Notice of Intent to Seek the Death Penalty. On December 15, 1998, a status conference was scheduled, however, inmate Green refused to come out of his cell to attend. Defense Attorneys have made mention of possibly requesting another trial continuance until August of 1999.

U.S. v. Lindsey, (PHX) November 1, 1997 murder of inmate Jackson. Lindsey was indicted on September 8, 1998, made his first appearance on October 22, 1998, and pled not guilty. The court has scheduled a new trial date of March 10, 1999. The defense has submitted a request to interview 14 inmate witnesses.

INTRODUCTION/POSSESSION OF CONTRABAND:

U.S. v. Reagor, (PHX) Inmate Reagor attempted to secrete a balloon on the Recreation yard containing brown heroin. On October 22, 1998 the U.S. Attorney's Office accepted for prosecution.

PROPERTY: None

SEX OFFENSES:

U.S. v. Secrease, (DUB) Former Correctional Officer pled guilty to one count of Knowingly Engaging in a Sexual Act with a Ward (Inmate) in violation of 18 U.S.C. 2243(b). Sentenced on January 15, 1999, to two months home confinement, 18 months probation and \$500.00 fine.

WEAPONS: None

» **STATISTICS** «

ADMINISTRATIVE REMEDIES											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
80											

FREEDOM OF INFORMATION/PRIVACY ACT:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	27											
CLOSED	24											
PENDING	19											
20 DAYS	1											
6 MONTHS	0											
APPEALS	0											

FOI/PA PENDING MORE THAN 20 DAYS ON JANUARY 31, 1999:														
BRN	DUB	LOF	LOM	LOS	NEL	PHX	SAF	SDC	SET	SHE	TAF	TCN	TRM	TOTAL
0	0	0	0	0	0	0	0	0	0	1	0	0	0	1

LITIGATION:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
OPEN AT BEGINNING OF MONTH	356											
NEW CASES RECEIVED	30											
HC	26											
FTCA	1											

BIVENS	3												
OTHER	0												
CLOSED	3												
PENDING AT END OF MONTH	383												
LITIGATION REPORTS COMPLETED	29												

ADMINISTRATIVE TORT CLAIMS													
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	
RECEIVED	30												
CLOSED	31												
RECONSIDER	1												
PENDING	95												
OVER 6 MONTHS	0												

rt Claim Investigations Over 60 Days:

BRN	DUB	LOF	LOM	LOS	NEL	PHX	SAF	SDC	SET	SHE	TAF	TCN	TRM	TOTAL
0	9	0	0	0	0	0	0	2	0	5	0	0		14

SCHEDULED LEAVE:

[REDACTED] Annual Refresher Training on 2/1, 2/5, 2/11, 2/24, 2/25.

[REDACTED] Annual Refresher Training during the week of 2/22 - 26.

[REDACTED] Training on Pre-sentencing Issues the week of 3/1 - 5 in Glynnco, Georgia.

[REDACTED] Annual leave on 2/2- 3 and Annual Refresher Training on 2/16 - 19.

[REDACTED] Annual leave on 2/26.

[REDACTED] Retirement Training on 2/24-25.

[REDACTED] Annual Refresher Training 2/16-17, 2/23-24, and Annual leave 2/26 - 3/5.

b6.



U.S. Department of Justice

Federal Bureau of Prisons

Dublin, California 94568

March 1, 1999

**MEMORANDUM TO CHRISTOPHER ERLEWINE
ASSISTANT DIRECTOR/GENERAL COUNSEL**

FROM: Harlan W. Penn, Regional Counsel
SUBJECT: Monthly Report for February, 1999

LITIGATION

NEW 3621(e) CASES:

Castillo v. Crabtree, (SHE) DAP petition, INS detainer.

Gonzalez v. Adams, (LOM) DAP petition, prior conviction for assault.

Gray v. Crabtree, (SHE) DAP petition, 922(g) conviction and prior conviction for aggravated assault.

Gregg v. Crabtree, (SHE) DAP petition, 922(g) conviction and two point sentencing enhancement.

Knaeble v. Crabtree, (SHE) DAP petition, 922(g) conviction and two point sentencing enhancement.

NEW CASES/OTHER:

Alfrey v. Crabtree, (SHE) *Bivens* action alleging staff failed to protect inmate from an attack by another inmate which resulted in inmate death.

Huss v. Crabtree, (SHE) Habeas petition challenging termination of visitation by inmate's wife.

Mixon v. Clark, (TRM) Habeas petition in which inmate wants jail credit, but cannot receive it due to 18 USC 3585(b). Specifically, inmate alleges that state erred by not transferring primary custody to the federal government, such that the state

sentence would have been concurrent to the federal sentence. Instead, inmate first had to complete service of his state sentenced before starting his federal sentence.

Vallier v. Clark, (TRM) Habeas petition in which inmate wants jail credit applied to his old law sentence. Inmate is at USP Leavenworth, but filed his petition in the CDCA before transferring. AUSA is inclined to respond on the merits.

SIGNIFICANT DEVELOPMENTS:

Betz v. Crabtree, (SHE) DAP petition, two-point enhancement. On December 8, 1998, relying on Downey, judge granted habeas petition by stating BOP may not use sentencing enhancements of subsequent conviction to revoke previous grant of DAP eligibility. The BOP had denied eligible status due to conviction of attempted escape and the offense characteristics which included violence. (Petitioner fled from military police at high speed, threatened use of force against police, rammed police vehicle and collided with civilian vehicle. This provided five point sentence enhancement.) Staff determined this offense disqualified petitioner from CCC placement and was rationale for denying eligibility. Respondent's Motion to Vacate Judgement and Motion for Reconsideration of the Court's Opinion and Order submitted December 18, 1998. Motion denied by court January 11, 1999.

Blum v. Hardin-Cassel, (PHX) *Bivens* action alleging discrimination, denial of legal calls, and unjust sanctions. On February 18, 1999, Judge dismissed defendant Hardin-Cassel but did not dismiss Warden Floyd. Case will likely proceed to trial on the issue of retaliation for filing previous lawsuits. Trial date not set.

Davis v. Perrill, (SET) Habeas petition alleging property was improperly withheld when inmate was transferred from FDC Sheridan to FDC SeaTac. On January 29, 1999, Judge adopted the Magistrate Judge's Report and Recommendation, denying without prejudice the motion for preliminary injunctive relief and petition for writ of habeas corpus.

Hogan v. U.S., (SDC) FTCA action, retaliatory transfer. Plaintiff agreed to stay the majority of discovery requests based upon defendant's intent to file motion to transfer case. The motion to transfer should be filed by February 5, 1999 and a hearing on the motion is set for March 1, 1999.

Lindsey v. U.S., (PHX) Homicide trial. Trial date of May 12, 1999 set.

Lund v. U.S., (SET) FTCA action, slip and fall in SHU shower.

Answer filed on February 23, 1999.

Manning v. U.S., (SHE) FTCA action alleging the BOP was negligent for failing to provide a ladder to climb onto the top bunk. Plaintiff claims he fell and suffered head and neck injuries and the BOP failed to provide adequate medical care. Trial was set for January 25, 1999 but postponed until March 1999.

Mawhinney v. U.S., FTCA action, slip and fall from stool while accessing top bunk. Los Angeles USAO asked for \$250,000 settlement authority; BOP authorized \$100,000. Plaintiff agreed to accept \$125,000 at settlement conference February 25, 1999. That amount under consideration.

Miller v. Reese, (DUB) DAP petition, two-point enhancement. Order denying petition and judgment in favor of respondent entered on November 16, 1998. On January 21, 1999, the Warden received correspondence which appeared to be an appeal.

Mitchell v. USA, (PHX) FTCA action alleging assault and injury by other inmates due to the BOP's failure to protect. Judge has advised the government to raise the discretionary function exception in this case. Plaintiff has raised a failure to protect.

Nadal v. BOP, (SAF) *Bivens* action alleging violation of First Amendment Rights by selectively placing Greatest Severity Public Safety Factor due to religious and political beliefs. Dismissed with prejudice on January 28, 1999. Inmate appealed to the Ninth Circuit on January 29, 1999.

Nelson v. Crabtree, (SHE) DAP petition, two-point enhancement. Court holds that BOP cannot apply rule/program change after the provisional eligibility for 3621(e) release is made, to do so violates Cort v. Crabtree. Nelson received a two point enhancement under USSG 2101.1 and upon implementation of 5162.04, his provisional eligibility for early release was overturned. District court found no likelihood of success on appeal to warrant stay.

Nelson v. Lathers, (SDC) Habeas petition, CCC inmate tested positive for methamphetamine, returned to closer custody and lost 3621e date. Judge released inmate on "appeal bond" after indicating he believed inmate had been disciplined for use of Vicks inhaler. Response filed by San Diego USAO, who appeared at hearing on February 26, 1999. Court refused to return inmate to custody. Awaiting written order.

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

Romero v. BOP, (PHX) FTCA action, wrongful death by hanging. A trial date of July 27, 1999 has been set.

Smith v. BOP, (PHX) FTCA action, legal mail. On January 7, Judge dismissed all allegations in this action except for a claim involving the improper opening of legal mail by staff. Two remaining BOP defendants.

Troutt v. Adams, (SAF) Bivens action alleging plaintiff was subjected to unnecessary and painful rectal examination. Favorable Report and Recommendation issued by the Magistrate recommending dismissal of this case on February 26, 1999.

CRIMINAL CASE TRACKING

Criminal Cases												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Referred	29	19										
Accepted	1	4										
Declined	15	16										
Pending Decision	13	28										

Active Prosecutions:

ASSAULT:

U.S. v. Dahkoshay, (SHE) Inmate assaulted another inmate with a weapon containing a razorblade. Victim's arm was severely cut. Trial set for March 30, 1999.

U.S. v. Simmons, (LOM) Assault of a Correctional Officer that occurred on December 14, 1997. On December 3, 1998, the Defendant was found guilty of Assault of a Law Enforcement Officer. Sentencing rescheduled for March 15, 1999.

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

ESCAPE:

U.S. v. Lewis, (TCN) Prosecution of inmate for soliciting drug abuse treatment records from outside source to falsify and falsifying records to document history of substance abuse to support his application to the Bureau's RDAP program for purpose of § 3621(e) early release eligibility. Grand Jury Indictment was handed down on January 20, 1999, charging Lewis with 2 Counts

of Attempted Escape (TCN & PHX), and 1 Count of Fraud.

U.S. v. Nikrasch, (LOM) Escape from the FPC in December of 1995. Inmate pled guilty to one count of Escape from a Federal Institution, one count of Possessing and or Passing Counterfeit \$100 Bills, and one count of Possessing over \$5,000 in Counterfeit Currency. Sentencing rescheduled for February 22, 1999.

HOMICIDE:

U.S. v. Green, (LOM) Murder of Scott Williams (2 counts) and assaults on four other officers. Continuance signed by the Judge, trial continued to October 19, 1999.

U.S. v. Lindsey, (PHX) November 1, 1997 murder of inmate Jackson. Lindsey was indicted on September 8, 1998, made his first appearance on October 22, 1998, and pled not guilty. The court has scheduled a new trial date of May 12, 1999.

INTRODUCTION/POSSESSION OF CONTRABAND:

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

PROPERTY: None

SEX OFFENSES:

U.S. v. Hyson, (DUB) Twenty-two count indictment returned against former Correctional Officer at Dublin on February 17, 1999, for knowingly engaging in and attempting to engage in a sexual act with a ward (inmate) in violation of 18 U.S.C. 2243(b) (15 misdemeanor counts); knowingly engaging in sexual contact with a ward in violation of 18 U.S.C. 2244(a)(b) (2 misdemeanor counts); knowingly and willfully providing false statements and representations in a matter within the jurisdiction of an agency of the United States in violation of 18 U.S.C. 1001 (1 felony count); and willfully and knowingly stating and subscribing to material matters which he did not believe to be true while under oath (perjury) in violation of 18 U.S.C. 1621 (4 felony counts). Arraignment March 11, 1999.

WEAPONS: None

►► **STATISTICS** ◀◀

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

80	94													
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FREEDOM OF INFORMATION/PRIVACY ACT:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	27	38										
CLOSED	24	34										
PENDING	19	23										
20 DAYS	1	3										
6 MONTHS	0	0										
APPEALS	0	1										

FOI/PA PENDING MORE THAN 20 DAYS ON FEBRUARY 28, 1999:														
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	2*

*Records for 3rd overdue being retrieved from another Region

ADMINISTRATIVE TORT CLAIMS												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	30	39										
CLOSED	31	43										
RECONSIDER	1	0										
PENDING	95	91										
OVER 6 MONTHS	0	2										

Tort Claim Investigations Over 60 Days:														
BRN	DUB	LOF	LOM	LOS	NEL	PHX	SAF	SDC	SET	SHE	TAF	TCN	TRM	TOTAL
0	14	0	0	0	0	0	0	0	0	12	0	0	0	26

LITIGATION:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
OPEN AT BEGINNING OF MONTH	356	383										
NEW CASES RECEIVED	30	9										
HC	26	8										
FTCA	1	0										

BIVENS	3	1											
OTHER	0	0											
CLOSED	3	3											
PENDING AT END OF MONTH	383	389											
LITIGATION REPORTS COMPLETED	29	7											

PERSONNEL:

WXR Legal Staff from DUB, LOS, TCN, PHX, SET, SDC, SHE, and the Regional Counsel are attending National Legal Training for Detention Center Issues on Jekyll Island March 1 - March 5, 1999.



U.S. Department of Justice

Federal Bureau of Prisons

Dublin, California 94568

April 8, 1999

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

FROM: Harlan W. Penn, Regional Counsel
SUBJECT: Monthly Report for March, 1999

LITIGATION

NEW 3621(e) CASES:

Cervantes v. Hood (SHE) DAP habeas petition, two-point enhancement case.

Curley v. Crabtree (SHE) DAP petition, two-point sentencing enhancement.

Davis v. Hood (SHE) DAP habeas petition Felon in Possession of a Firearm 18 U.S.C. 922(g) conviction.

Eckert v. Hood (SHE) DAP habeas petition Felon in Possession of a Firearm 18 U.S.C. 922(g) conviction.

Fucci v. Ihle (TRM) DAP petition, 18 USC 241 (conspiracy to violate civil rights, underlying offense was cross-burning).

Gallardo v. Cobos (BRN) DAP petition, two-point sentencing enhancement.

Mitchell v. Clark (TRM) DAP petition, 922(g) conviction.

Meyers v. Campbell (TAF) DAP petition, prior assault conviction.

Mujahid v. Crabtree (SHE) DAP habeas petition Felon in Possession of a Firearm 18 U.S.C. 922(g) conviction.

Southwick v. Crabtree (SHE) DAP petition, two-point sentencing enhancement.

Wharton v. Crabtree (SHE) DAP habeas petition also including application of PSF and custody classification.

White v. Cobos (BRN) DAP petition, 922(g) conviction plus two-point sentencing enhancement.

Yeager v. Hood (SHE) DAP habeas petition prior conviction of aggravated assault.

NEW CASES/OTHER:

Bartoli v. USA (SHE) FTCA action alleging staff negligence in failing to use the proper paint on a curb. Plaintiff slipped, fell, and broke her hip.

Belasco v. Adams (SAF) Habeas petition in which inmate is challenging his criminal conviction through a 2241 filing.

Chasser v. Fitzpatrick (LOM) Habeas petition in which inmate alleges he was denied an early release and CCC placement because he is not eligible for parole as he is serving an old law sentence.

Crooker v. Adams (LOM) Habeas petition in which inmate alleges his release date has been illegally prolonged due to disciplinary sanctions resulting in loss of good time. Inmate also alleges the BOP is not offering him any prerelease opportunities such as CCC placement.

Crow v. Department of Justice (PHX) *Bivens* suit alleging improper medical treatment of an ankle condition at PHX and MIL.

Fottler v. Morton (NEL) *Bivens* complaint alleging exposure to asbestos and deliberate indifference to serious medical risk.

Holland v. Hawk (SDC) *Bivens* complaint for replacement of negligently filled prescription eyeglasses and delay in provision of same after staff mailed his dark-tinted eyeglasses home.

Holland v. Lathers (SDC) *Bivens* complaint regarding loss of watch and demand for replacement from outside source.

Mainard v. Fitzpatrick (LOM) Habeas petition in which inmate alleges his due process rights were violated during investigation of an incident report and that he was not permitted to address his grievance through the Administrative Remedy Program.

Most v. Stratman (SDC) *Bivens* complaint alleging deliberate indifference to medical needs (inmate alleged he developed carpal

tunnel syndrome) when law library chairs were replaced. Inmate also complains about improper transfer out of Western Region and subsequent inadequate medical care to include denial of leg braces.

Resnick v. Warden Hayes (DUB) Inmate appeals District Court's dismissal of *Bivens* case complaining of placement in Special Housing Unit due to discipline charge which was subsequently expunged.

Robinson v. Hawk (SDC) *Bivens* complaint alleging retaliation, threats, and wanton infliction of pain based on being required to mail home legal papers, instructed to drop litigation, transfer, security/custody scoring and housing, the latter of which resulted in alleged assault and rape. Plaintiff also complains of being ignored and retaliated against when he attempted to report illegal drug activity at institution.

Romanowski v. Hawk (TCI) Habeas petition requesting order for 6 months CCC.

SIGNIFICANT DEVELOPMENTS:

Atadero v. Bureau of Prisons (TRM) DAP habeas petition dismissed with prejudice. Inmate completed DAP in 1993 and contested retroactive policy denying eligibility based on prior robbery conviction.

Belasco v. Adams (SAF) Inmate is attempting to add Title VII allegation regarding his removal from prison job. Report and Recommendation for dismissal on 03/22/99.

Berry v. Pontesso (PHX) Habeas petition challenging DHO ordered restitution, dismissed on 02/24/99.

Currier v. United States (DUB) First supplemental FTCA/*Bivens* complaint by six employees alleging TB test negligently administered during pre- or post-employment screening. Case originally dismissed with instructions for claims to be pursued first through FECA.

Estate of Crosser v. United States (SDC) Discovery on-going in FTCA action alleging wrongful death and negligent treatment of multiple health problems.

Kalka v. Pontesso (PHX) On 03/19/99, Judge dismissed majority of lawsuit except for allegations of denial of job and restriction of legal materials. Judge seeks further input on issues.

O'Reilly v. Constance Reese (DUB) Adverse DAP decision finding improper retroactive application of new Categorization of Offense policy. Petitioner released but motion for clarification or

order

(or appeal) is anticipated considering court's failure to consider transitional services requirement and disparity in amount of sentence reduction. Other similar cases pending on same issue.

Parmelee v. Benov (SDC) *BIVENS* complaint regarding rejection of "How to Win Prison Discipline Cases", mandatory settlement conference postponed until 06/24/99.

Parmelee v. Perrill (SET) Access to court, retaliation complaint wherein court permitted *Bivens* plaintiff to file second amended complaint adding defendants and additional issues concerning access to courts.

Saelee v. United States (DUB) FTCA re roller skating injury. Settlement being discussed due to discovery of additional prior skating accidents which were brought to the attention of administrators.

United States v. Dahkowschay (SHE) Inmate assaulted another inmate with a weapon containing a razor blade. Trial began March 30, 1999 and lasted three days. Inmate Dahkowschay was convicted on two counts: assault with a deadly weapon and assault resulting in serious bodily injury.

Vander v. US DOJ (SAF) Former inmate argues his claim of inadequate medical care in connection with a job-related injury is not barred by *Demko*.

Zavala v. Constance Reese (DUB) DAP habeas petition concerning INS detainer dismissed. Inmate has filed appeal.

CRIMINAL CASE TRACKING

Criminal Cases												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Referred	29	19	22									
Accepted	1	4	0									
Declined	15	16	16									
Pending Decision	13	28	32									

Active Prosecutions:

ASSAULT:

United States v. Dahkoshay (SHE) Inmate convicted 04/02/99 of assault with serious bodily injury and assault with deadly

weapon. Expected sentence range approximately 100 months. Teresa Cruse and Stan Butterfield assisted at trial.

United States v. Sal Lopiccolo (LOM) Inmate on inmate assault 02/04/97 at FCI Lompoc. Trial scheduled for 05/18/99, continuation possible.

United States v. Julian Lee Simmons (LOM) Inmate on staff assault 12/14/97 at USP Lompoc. Defendant found guilty with sentencing rescheduled for 05/10/99.

United States v. Scott Wehmhoefer (LOM) Inmate on inmate assault 03/04/97 at USP Lompoc. Trial scheduled for 05/19/99, continuation possible.

ESCAPE:

United States v. Richard Lewis (TCN) Grand jury indictment on 01/20/99, charging inmate with 2 counts of attempted escape and 1 count of fraud for soliciting drug treatment documents to support history of substance abuse in order to benefit from 3621(e) release.

United States v. Terrance Nikrasch (LOM) Inmate pled guilty to one count each of escape, possessing/passing counterfeit currency, possessing counterfeit currency over \$5,000 in case arising from escape from FPC Lompoc in 12/95. Sentencing scheduled for 04/26/99.

HOMICIDE:

United States v. Roy Green (LOM) Trial continued to 10/19/99. Defense counsel visited/inspected institution 03/04/99.

United States v. Matt Lindsey (PHX) Trial rescheduled for 05/12/99.

INTRODUCTION/POSSESSION OF CONTRABAND:

United States v. Reagor (PHX) Prosecution accepted on inmate attempting to secrete balloon of brown heroin.

PROPERTY: None

SEX OFFENSES:

United States v. Jon Hyson (DUB) Twenty-two count indictment against former correctional officer alleging sex acts with inmate, attempted sex acts, providing false information, and perjury issued 02/17/99. Arraignment postponed to unknown date

in 4/99.

WEAPONS: None

►► STATISTICS ◄◄

ADMINISTRATIVE REMEDIES											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
80	94	108									

FREEDOM OF INFORMATION/PRIVACY ACT:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	27	38	29									
CLOSED	24	34	41									
PENDING	19	23	11									
20 DAYS	1	3	1									
6 MONTHS	0	0	0									
APPEALS	0	1	1									

FOI/PA PENDING MORE THAN 20 DAYS ON MARCH 31, 1999:															
BRN	DUB	LOF	LOM	LOS	NEL	PHX	SAF	SDC	SET	SHE	TAF	TCN	TRM	TOTAL	
0	0	0	0	0	0	0	0	0	0	1	0	0	0	1	

ADMINISTRATIVE TORT CLAIMS													
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	
RECEIVED	30	39	45										
CLOSED	31	43	40										
RECONSIDER	1	0	0										
PENDING	95	91	96										
OVER 6 MONTHS	0	2	0										

Tort Claim Investigations Over 60 Days:															
BRN	DUB	LOF	LOM	LOS	NEL	PHX	SAF	SDC	SET	SHE	TAF	TCN	TRM	TOTAL	
0	15	0	0	0	0	0	0	0	0	0	0	0	0	15	

LITIGATION:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
OPEN AT BEGINNING OF MONTH	356	383	389									
NEW CASES RECEIVED	30	9	19									

HC	26	8	16									
PTCA	1	0	1									
BIVENS	3	1	2									
OTHER	0	0	0									
CLOSED	3	3	10									
PENDING AT END OF MONTH	383	389	391									
LITIGATION REPORTS COMPLETED	29	7	7									

PERSONNEL:

Honors Attorney Ann Ma entered on duty at WXRO 3/14/99.



U.S. Department of Justice

Federal Bureau of Prisons

Dublin, California 94568

May 11, 1999

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

FROM: Harlan W. Penn, Regional Counsel
SUBJECT: Monthly Report for April, 1999

LITIGATION

NEW 3621(e) CASES:

Babcock v. Reese, (DUB) DAP petition challenging ineligibility of year off due to two point enhancement for possession of a weapon during instant offense.

Blair v. Hood, (SHE) DAP petition challenging ineligibility of year off due to conviction of Felon in Possession of a Firearm, 18 U.S.C. § 922(g).

Broxson v. Hood, (SHE) DAP petition challenging ineligibility of year off due to two point enhancement for possession of a weapon during instant offense.

Johnson v. Hood, (SHE) DAP petition challenging ineligibility of year off due to a two point enhancement for possession of a weapon during instant offense.

Jones v. Hood, (SHE) DAP petition challenging ineligibility of year off due to a two point enhancement for possession of a weapon during instant offense.

Lightbourne v. Reese, (DUB) DAP petition challenging ineligibility of year off due to a two point enhancement for possession of a weapon during instant offense.

Lynch v. Hood, (SHE) DAP petition challenging ineligibility of year off due to a two point enhancement for possession of a

weapon during instant offense.

Taylor v. Reese, (DUB) DAP petition challenging ineligibility of year off due to a two point enhancement for possession of a weapon during instant offense.

Whipple v. Reese, (DUB) DAP petition challenging ineligibility of year off due to a two point enhancement for possession of a weapon during instant offense.

Yeager v. Hood, (SHE) DAP petition challenging ineligibility of year off due to a history of aggravated assault.

NEW CASES/OTHER:

Butler v. Wallace, (LOM) Bivens action alleging due process violations during a disciplinary hearing.

Coral v. Sanchez, (LOS) FTCA/Bivens complaint alleging the defendants violated his Fifth, Sixth, and Eighth Amendment Rights during his arrest and deliberate indifference to his medical needs upon booking.

Curtis v. Bailey, (TCN) Habeas petition in which inmate is attempting to appeal his criminal conviction via a 2241 petition.

Leiphardt v. Clark, (TRM) Habeas petition alleging retaliatory rewrite of an incident report in which the charges were upgraded.

Ordaz-Diaz v. Perrill, (SET) Habeas petition in which petitioner claims he is entitled to prior custody from the date INS lodged a detainer against him, even though he was in state custody at the time. The State eventually gave him credit for all time spent in State custody.

Taylor v. Adams, (LOM) Habeas petition alleging improper classification.

SIGNIFICANT DEVELOPMENTS:

Bilodeaux v. Fitzpatrick, (LOM) On March 30, 1999, the Court dismissed the case stating that the BOP did not abuse its discretion by its determination of ineligibility for early release. The petitioner filed a Notice of Appeal on April 5, 1999, with the Ninth Circuit.

Dawson v. Fitzpatrick, (LOM) The Court issued an order granting the petitioner's habeas relief based upon the Downey and Gavis decisions, ordering that the petitioner be deemed eligible for sentence reduction under 18 U.S.C. §3261 upon his successful completion of DAP. The BOP is in the process of requesting

appeal of the decision.

Fischer v. Reno, (PHX) Former employee filed a case alleging employment discrimination pursuant to the Rehabilitation Act. Referred to LMR West.

Foley-Clark v. Reese, (DUB) Adverse action in companion case to O'Reilly ordering one year sentence credit to inmate for improper retroactive application of new Program Statement on Categorization of Offenses. Inmate's sentence was recomputed and released from custody.

Hidalgo v. Perrill, (SET) *Bivens* action in which the Court adopted the Magistrate's Report and Recommendation, granting Defendant's motion for summary judgment.

LaBostrie v. Seifert, (LOS) *Bivens* complaint alleging the defendants violated his Fifth and Fourteenth Amendment Rights when he was denied access to the Visiting Room. Judge granted the government's motion for summary judgment and dismissed the plaintiff's action with prejudice. Defendants Carlson, Seifert, Vaughn, and Bryant were dismissed from the action for improper service of process; defendant Morrison granted qualified immunity.

Montano-Figueroa v. Crabtree, (SHE) Federal Public Defender's Office petitioned U.S. Supreme Court for a writ of certiorari, Supreme Court No. 98-8258. This case deals with the Inmate Financial Responsibility Program.

O'Reilly v. Reese, (DUB) Adverse DAP decision finding improper retroactive application of new Categorization of Offense policy. Petitioner released. Other similar cases pending on same issue.

Parmelee v. Benov, (SDC) *Bivens* complaint regarding rejection of "How to Win Prison Discipline Cases". Mandatory settlement conference postponed until June 24, 1999.

Parmelee v. Perrill, (SET) Access to court, retaliation complaint wherein court permitted *Bivens* plaintiff to file second amended complaint adding defendants and additional issues concerning access to courts.

Rizvi v. Crabtree, (SHE) Habeas petition challenging Warden's ability to impose restrictions on inmate-inmate correspondence. Judge entered an adverse order that Petitioner should either be allowed to correspond with his son (another inmate) or be given a due process hearing challenging the reasons for the denial. The Court allowed the BOP to file a responsive pleading addressing

the Due Process issue.

Romero v. BOP, (PHX) A trial date of July 27, 1999, has been set in this wrongful death FTCA case.

Saelee v. U.S., (DUB) FTCA action regarding roller skating injury. Settlement being discussed due to discovery of additional prior skating accidents.

Savocchio v. Crabtree, (SHE) Habeas petition in which inmate is seeking protective custody status. Judge issued an Order converting the habeas petition to a *Bivens* action. BOP has requested the AUSA to file a Motion for Reconsideration.

Shibuya v. Reese, (DUB) Previously reported DAP petition challenging ineligibility of year off due to a two point enhancement imposed at the time of sentencing for possession of a weapon. Companion case to O'Reilly. Court noted that legal issues were resolved in the O'Reilly case and ordered response to present petition to establish a factual record about the inmate's drug abuse program participation.

Vander v. U.S. DOJ, (SAF) Former inmate argues his claim of inadequate medical care in connection with a job-related injury is not barred by *Demko*.

Villa-Curiel v. Floyd, (PHX) This case involving a request for DAP credit for an inmate with a detainer was dismissed as moot on April 26, 1999.

Vosburgh v. BOP, (SHE) Inmate seeking TRO preventing the BOP from administering incorrect dosages of insulin.

Zavala v. Reese, (DUB) DAP habeas petition concerning INS detainer dismissed. Inmate has filed appeal.

CRIMINAL CASE TRACKING

Criminal Cases												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Referred	29	19	22	18								
Accepted	1	4	0	1								
Declined	15	16	16	11								
Pending Decision	13	28	32	35								

Active Prosecutions:

ASSAULT:

U.S. v. Dahkowschay, (SHE) Inmate assaulted another inmate with a weapon containing a razor blade. Trial began March 30, 1999 and lasted three days. Inmate was convicted on two counts: assault with a deadly weapon and assault resulting in serious bodily injury.

U.S. v. Hillard, (LOM) Case involves the assault of two Correctional Officers on October 22, 1995, during the October 1995 disturbance. On March 15, 1999, inmate plead guilty to one count of violating 18 U.S.C. §111(a)(1), Assault on a Correctional Officer. Sentencing is scheduled for June 7, 1999.

U.S. v. Lopiccolo, (LOM) Case involves the assault of another inmate that occurred on February 4, 1997, at FCI Lompoc. Although trial scheduled for May 18, 1999, expect a continuance.

U.S. v. Wehmhoefer, (LOM) Case involves the assault of another inmate that occurred on March 4, 1997. Trial scheduled for September 7, 1999.

U.S. v. Simmons, (LOM) Case involves the assault of a Correctional Officer that occurred on December 14, 1997. On December 3, 1998, the Defendant was found Guilty of Assault on a Law Enforcement Officer. Sentencing scheduled for May 10, 1999.

ESCAPE:

U.S. v. Lewis (TCN) Grand jury indictment on January 20, 1999, charging inmate with 2 counts of attempted escape and 1 count of fraud for soliciting drug treatment documents to support history of substance abuse in order to benefit from 3621(e) release.

U.S. v. Nikrasch, (LOM) Case involves an escape from the FPC in December of 1995. Inmate pled guilty to one count of Escape from a Federal Institution, one count of Possessing and/or Passing Counterfeit \$100 Bills, and one count of Possessing over \$5,000 in Counterfeit Currency. Sentencing rescheduled for July 19, 1999.

HOMICIDE:

U.S. v. Green, (LOM) Continuance signed by the Judge trial continued to October 19, 1999.

U.S. v. Lindsey, (PHX) Prosecution of inmate Lindsey, for November 1, 1997 murder of inmate Bernard Jackson, (41722-008). The court has scheduled a new trial date of June 29, 1999.

INTRODUCTION/POSSESSION OF CONTRABAND:

U.S. v. Reagor, (PHX) Prosecution accepted on inmate attempting to secrete balloon of brown heroin.

PROPERTY: None

SEX OFFENSES:

U.S. v. Hawthorne, (DUB) Former Correctional Officer at Dublin pleaded guilty to Knowingly Engaging in a Sexual Act with a Ward (inmate) in violation of 18 U.S.C. 2243(b) (5 misdemeanors counts) and Knowingly and Willfully Providing False Statements and Representations in a Matter within the Jurisdiction of an Agency of the United States in violation of 18 U.S.C. 1001 (1 felony count). Sentencing set for July 12, 1999.

U.S. v. Hyson, (DUB) Twenty-two count indictment returned against former Correctional Officer at Dublin on February 17, 1999, for Knowingly Engaging in and Attempting to Engage in a Sexual Act with a Ward (inmate) in violation of 18 U.S.C. 2243(b) (15 misdemeanor counts); Knowingly Engaging in Sexual Contact with a Ward (inmate) in violation of 18 U.S.C. 2244(a)(b) (2 misdemeanor counts); Knowingly and Willfully Providing False Statements and Representations in a Matter within the Jurisdiction of an Agency of the United States in violation of 18 U.S.C. 1001 (1 felony count); and Willfully and Knowingly Stating and Subscribing to Material Matters which he did not believe to be true while under oath (perjury) in violation of 18 U.S.C. 1621 (4 felony counts). Arraignment held on March 29, 1999. Trial setting hearing held on April 26, 1999. Pretrial conference set for October 25, 1999. Trial set for November 1, 1999.

WEAPONS: None

▶▶ **STATISTICS** ◀◀

ADMINISTRATIVE REMEDIES											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
80	94	108	91								

FREEDOM OF INFORMATION/PRIVACY ACT:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	27	38	29	37								

CLOSED	24	34	41	36										
PENDING	19	23	11	12										
20 DAYS	1	3	1	1										
6 MONTHS	0	0	0	0										
APPEALS	0	1	1	2										

FOI/PA PENDING MORE THAN 20 DAYS ON April 30, 1999:														
BRN	DUB	LOF	LOM	LOS	NEL	PHX	SAF	SDC	SET	SHE	TAF	TCN	TRM	TOTAL
0	1	0	0	0	0	0	0	0	0	0	0	0	0	1

ADMINISTRATIVE TORT CLAIMS														
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC		
RECEIVED	30	39	45	38										
CLOSED	31	43	40	38										
RECONSIDER	1	0	0	1										
PENDING	95	91	96	97										
OVER 6 MONTHS	0	2	0	3										

rt Claim Investigations Over 60 Days:														
	DUB	LOF	LOM	LOS	NEL	PHX	SAF	SDC	SET	SHE	TAF	TCN	TRM	TOTAL
	17	0	0	1	0	0	0	0	0	0	0	0	0	18

LITIGATION:														
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC		
OPEN AT BEGINNING OF MONTH	356	383	389	391										
NEW CASES RECEIVED	30	9	19	16										
HC	26	8	16	14										
FTCA	1	0	1	0										
BIVENS	3	1	2	2										
OTHER	0	0	0	0										
CLOSED	3	3	10	10										
PENDING AT END OF MONTH	383	389	391	397										

LITIGATION REPORTS COMPLETED	29	7	7	16									
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U.S. Department of Justice

Federal Bureau of Prisons

Dublin, California 94568

June 9, 1999

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

FROM: Harlan W. Penn, Regional Counsel
SUBJECT: Monthly Report for May, 1999

LITIGATION

I. CIVIL LITIGATION

1. 3621(e) CASES

A. NEW CASES

Ford v. Pontesso, (PHX) DAP petition in which inmate was determined to be ineligible for early release based on a two-point Special Offense characteristic for possession of a weapon during a drug offense.

Marquez-Navarette v. Perrill, (SET) DAP petition where inmate is challenging the BOP's decision to deny him participation in the Residential Drug Program. A response is due on or before June 14, 1999.

Harbaugh v. Hood, (SHE) DAP petition in which inmate was determined to be ineligible for early release based on Director's discretion for possession of a weapon during his instant offense.

Moore v. Hood, (SHE) DAP petition in which inmate was determined to be ineligible for early release based on his conviction for being a Felon in Possession of a Firearm.

Sloan v. Hood, (SHE) DAP petition in which inmate was determined to be ineligible for early release based on Director's discretion for possession of a weapon during his instant offense.

B. SIGNIFICANT DEVELOPMENTS/APPEALS

Babcock v. Reese, (DUB) Adverse action in companion case to O'Reilly, dated April 29, 1999, ordering one year sentence credit to inmate for improper retroactive application of new Program Statement on categorization of offenses. Inmate's sentence was recomputed and she was immediately released from custody.

Muhammad, Jr. v. Adams, (LOM) 3621(e) case, two-point enhancement. On March 25, 1999, the Magistrate issued an adverse Report and Recommendation (R&R) recommending that the habeas petition be granted within 90 days of completion of DAP. On May 18, 1999, the Judge granted the R&R and ordered that within 90 days from the date of the Judgement, the BOP must determine whether the petitioner should receive a sentence reduction, subject to completion of the Drug Abuse Treatment Program.

Bilodeaux v. Fitzpatrick, (LOM) Petitioner filed a habeas action seeking a one year reduction of his sentence pursuant to 18 U.S.C. § 3621(e)(2)(B). He has a conviction under 18 U.S.C. § 924(c) for use of a firearm during a drug trafficking offense. On March 30, 1999, the Court dismissed the case stating that the BOP did not abuse its discretion by its determination of ineligibility for early release. The petitioner filed a Notice of Appeal on April 5, 1999, with the Ninth Circuit.

Dawson v. Fitzpatrick, (LOM) 3621(e) case based upon the Downey and Gavis decisions. Magistrate ordered Petitioner should be deemed eligible for sentence reduction upon successful completion of DAP. The BOP is in the process of requesting appeal of the decision.

Allen v. Crabtree, (SHE) Inmate whose case is currently on appeal in the United States Court of Appeals for the Ninth Circuit, is no longer eligible to complete the Drug Abuse Program (DAP). On May 19, 1999, Mr. Allen received two disciplinary reports; one for possessing unauthorized money, and the other for possessing an unauthorized item. He was recommended for disciplinary transfer on the basis of possessing an unauthorized item. He is currently being housed in the Special Housing Unit (SHU). Based on his conduct, inmate Allen has been designated as "DAP FAIL" and is currently ineligible to complete DAP.

Bowen v. Crabtree, (SHE) Inmate whose case is currently on appeal in the Ninth Circuit, is no longer eligible to complete the Drug Abuse Program (DAP). The Del Norte County Sheriff's Office lodged a detainer against inmate charging him with burglary. Inmates with detainers lodged against them are ineligible for placement in a community corrections center, and are therefore unable to complete the Drug Abuse Program.

McLean v. Crabtree, (SHE) Federal Public Defender's Office filed a Motion for Rehearing En Banc. (This motion includes the following cases: Cruanas v. Crabtree, Court of Appeals No. 98-35689; Mendoza v. Crabtree, Court of Appeals No. 98-35762; Saefong v. Crabtree, Court of Appeals No. 98-35766).

Appeal Memorandums have been filed and approved in the following cases: Gregg v. Crabtree, CV-99-137-HA; Curley v. Crabtree, 99-226-HA; Gray v. Crabtree, CV-99-109-HA; Southwick v. Crabtree, CV-99-227; Knaeble v. Crabtree, CV-99-138-HA.

Appeal Memorandums have been submitted, but not yet approved in the following cases: Gwynn v. Crabtree, CV-98-1622-HA and Mujahid v. Crabtree, CV-99-199-HA.

2. NON-3621(e) CASES

A. New cases

Walker v. United States, (LOM) FTCA/Bivens action in which inmate alleges that three magazines were lost due to BOP negligence. Tort claim was denied on May 29, 1998.

Weaver v. Hood, (SHE) Bivens action claiming BOP staff incorrectly concluded plaintiff was subject to "notification" requirements for a conviction of a crime of violence pursuant to 18 U.S.C. § 4042.

Pauly v. Hood, (SHE) Habeas petition alleging violation of due process when staff failed to respond to his administrative remedies in a timely manner, resulting in Petitioner being unable to appeal DHO hearing.

Evans v. Hood, (SHE) Habeas petition alleging PSI contained inaccurate information (past conviction for assault with a dangerous weapon), which adversely affected his custody classification score.

B. Significant Developments/Appeals

Fottler v. Morton, (NEL) In 1994 several former inmates at FPC

Nellis filed a hybrid FTCA/*Bivens* action seeking damages for alleged exposure to asbestos. The plaintiffs appealed the District Court's 1996 dismissal of the suit to the Ninth Circuit. The Ninth Circuit remanded and the District Court allowed the inmate-plaintiffs to file a Second Amended Complaint. Defendants filed their renewed Motion to Dismiss/Summary Judgment on May 24, 1999.

Parmelee v. Benov, (SDC) Plaintiff filed this *Bivens* action seeking damages for an incident which occurred in 1995. Parmelee is the author of a book entitled, "How to Win Disciplinary Hearings". He sent a copy of his book and a magazine, "Prison Legal News" to an inmate at MCC San Diego. BOP staff rejected the publications, the result of which is this suit. A Mandatory Settlement Conference has been scheduled for June 24, 1999. Defendant's Opposition to Plaintiff's Motion for Summary Judgment was filed May 7, 1999.

Hogan v. United States, (SDC) FTCA action in which plaintiff is claiming that the BOP negligently transferred him to a high level security institution. A Motion for Partial Summary Judgment will be filed by the United States seeking dismissal of all claims involving negligent transfer and the infliction of emotional distress. If the government's motion is granted, remaining issues will involve failure to protect and inadequate medical care. Depositions will begin in July/August.

Savocchio v. Crabtree, (SHE) Habeas petition in which inmate is seeking protective custody status. On April 20, 1999, Judge Stewart issued an Order converting the habeas petition to a *Bivens* action. Motion for reconsideration has been filed.

Rizvi v. Crabtree, (SHE) Habeas petition challenging Warden's ability to impose restrictions on inmate-inmate correspondence. On March 24, 1999, Judge Jones entered an adverse order in which he decided Petitioner should either be allowed to correspond with his son (another inmate) or be given a due process hearing challenging the reasons for the denial. Warden Hood decided to allow inmate Rizvi to correspond with his son at FCI Sandstone. The paperwork has been sent to FCI Sandstone for their approval.

Vosburgh v. BOP, (SHE) Inmate seeking TRO preventing the BOP from administering incorrect dosages of insulin. Inmate has recently filed Requests for Admissions and an Order to Show Cause.

Unger v. Gaines, (SAF) Inmate is alleging that he did not receive proper dental care while in BOP custody. The attorney representing Plaintiff claimed she did not receive a copy of the motion to dismiss Defendant Sandra Gaines. Therefore, the court is allowing Unger permission to file a pleading arguing why defendant Gaines should not be dismissed from the lawsuit.

Vander v. DOJ, (SAF) Court granted the government's motion for summary judgment and dismissed this case on the grounds that Plaintiff's injury occurred at work and he could not file an FTCA action outside the scope of the Inmate Accident Compensation Act.

Belasco v. Adams, (SAF) This is a case in which Plaintiff claimed the drug notification law violated *ex post facto* rules. It was dismissed by the court on May 6, 1999.

Romero v. BOP, (PHX) A trial date of July 27, 1999 has been set in this wrongful death FTCA case.

Shorter v. Rardin, (LOM) Inmate filed a habeas petition alleging that a disciplinary ruling he received during a disturbance at Terminal Island was inaccurate. On August 5, 1998, the Court dismissed the case for failure to state a claim. In October of 1998, the inmate appealed the denial stating that the District Court erred in not reviewing videotaped evidence. On May 18, 1999, the Ninth Circuit issued an order directing the BOP to either expunge the disciplinary ruling and restore the inmate's good time credits or to hold a new disciplinary hearing at which the videotape evidence is considered.

Mawhinney v. U.S., (LOS) An FTCA personal injury claim, in which

the plaintiff alleges that BOP staff were negligent in placing a stool in his cell knowing that it would be used as a step stool to assist him in ascending to his upper bunk. On May 4, 1999, the parties stipulated to settle the case for \$125,000, including attorneys' fees and costs.

Montano-Figueroa v. Crabtree, (SHE) This case deals with the Inmate Financial Responsibility Program. The Federal Public Defender's Office petitioned the U.S. Supreme Court for a writ of certiorari, Supreme Court No. 98-8258.

Nigro v. Wilson, (TRM) Order of Dismissal with prejudice entered on April 21, 1999. Inmate alleged that he received a retaliatory transfer to a high security facility.

Parmelee v. Perrill, (SET) Defendant's Motion for Summary Judgment filed on May 20, 1999. Plaintiff alleges denial of his right to access the courts in this *Bivens* action.

Romero v. BOP, (PHX) A trial date of July 27, 1999, has been set in this wrongful death FTCA case.

Saelee v. U.S., (DUB) FTCA action regarding roller skating injury. Settlement being discussed due to discovery of additional prior skating accidents.

II. CRIMINAL CASE TRACKING

Criminal Cases												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Referred	29	19	22	18	21							
Accepted	1	4	0	1	4							
Declined	15	16	16	11	19							
Pending Decision	13	28	32	35	31							

Active Prosecutions:

ASSAULT:

U.S. v. Dahkowschay, (SHE) Inmate assaulted another inmate with a weapon containing a razor blade. Trial began March 30, 1999, and lasted three days. Inmate was convicted on two counts: assault with a deadly weapon and assault resulting in serious bodily injury. Sentencing scheduled for June 4, 1999.

U.S. v. Hillard, (LOM) Case involves the assault of two Correctional Officers on October 22, 1995, during the October 1995 disturbance. On March 15, 1999, inmate plead guilty to one

count of violating 18 U.S.C. §111(a)(1), Assault on a Correctional Officer. Sentencing is scheduled for June 7, 1999.

U.S. v. Lopiccolo, (LOM) Case involves the assault of another inmate that occurred on February 4, 1997, at FCI Lompoc. Trial scheduled for July 13, 1999.

U.S. v. Wehmhoefer, (LOM) Case involves the assault of another inmate that occurred on March 4, 1997. Trial scheduled for September 7, 1999.

U.S. v. Simmons, (LOM) Case involves the assault of a Correctional Officer that occurred on December 14, 1997. On December 3, 1998, the Defendant was found Guilty of Assault on a Law Enforcement Officer. Inmate was sentenced on May 13, 1999, to 84 months, with 3 years of supervised release to follow.

U.S. v. Sandoval-Parra, (SAF) Inmate struck an officer with a closed fist on May 30, 1999. Case has been assigned, but trial has not been scheduled yet.

ESCAPE:

U.S. v. Lewis (TCN) Grand jury indictment on January 20, 1999, charging inmate with 2 counts of attempted escape and 1 count of fraud for soliciting drug treatment documents to support history of substance abuse in order to benefit from 3621(e) release.

U.S. v. Nikrasch, (LOM) Case involves an escape from the FPC in December of 1995. Inmate pled guilty to one count of Escape from a Federal Institution, one count of Possessing and/or Passing Counterfeit \$100 Bills, and one count of Possessing over \$5,000 in Counterfeit Currency. Sentencing rescheduled for July 19, 1999.

HOMICIDE:

U.S. v. Green, (LOM) Continuance signed by the Judge. Trial continued to October 19, 1999.

U.S. v. Lindsey, (PHX) Prosecution of inmate Lindsey, for November 1, 1997 murder of inmate Bernard Jackson, (41722-008). The court has scheduled a new trial date of June 29, 1999.

INTRODUCTION/POSSESSION OF CONTRABAND:

U.S. v. Reagor, (PHX) Prosecution accepted on inmate attempting to secrete balloon of brown heroin.

U.S. v. Berry, (PHX) Inmate received a visit on February 13, 1999. Based upon observations made at that time, inmate Berry was placed in dry cell status. He passed a total of 13 balloons containing marijuana. Case has been referred and accepted for prosecution.

U.S. v. Salazar-Martinez (PHX) Inmate was observed acting suspiciously in the visiting room on May 2, 1999. Based upon review of the security tapes, inmate Salazar-Martinez was placed in a dry cell. He passed 8 balloons; 5 contained marijuana and 3 contained methamphetamine. Case has been referred and accepted for prosecution.

PROPERTY: None

SEX OFFENSES:

U.S. v. Hawthorne, (DUB) Former Correctional Officer at Dublin pleaded guilty to Knowingly Engaging in a Sexual Act with a Ward (inmate) in violation of 18 U.S.C. 2243(b) (5 misdemeanor counts) and Knowingly and Willfully Providing False Statements and Representations in a Matter within the Jurisdiction of an Agency of the United States in violation of 18 U.S.C. 1001 (1 felony count). Sentencing set for July 12, 1999.

U.S. v. Hyson, (DUB) Twenty-two count indictment returned against former Correctional Officer at Dublin on February 17, 1999, for Knowingly Engaging in and Attempting to Engage in a Sexual Act with a Ward (inmate) in violation of 18 U.S.C. 2243(b) (15 misdemeanor counts); Knowingly Engaging in Sexual Contact with a Ward (inmate) in violation of 18 U.S.C. 2244(a)(b) (2 misdemeanor counts); Knowingly and Willfully Providing False Statements and Representations in a Matter within the Jurisdiction of an Agency of the United States in violation of 18 U.S.C. 1001 (1 felony count); and Willfully and Knowingly Stating and Subscribing to Material Matters which he did not believe to be true while under oath (perjury) in violation of 18 U.S.C. 1621 (4 felony counts). Arraignment held on March 29, 1999. Trial setting hearing held on April 26, 1999. Pretrial conference set for October 25, 1999. Trial scheduled for November 1, 1999.

U.S. v. Blansett, (PHX) Officer searching property of inmate Blansett found photographs of nude children. Referred and accepted for prosecution.

WEAPONS: None

>> STATISTICS <<

ADMINISTRATIVE REMEDIES											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
80	94	108	91	31							

FREEDOM OF INFORMATION/PRIVACY ACT:												
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RECEIVED	27	38	29	37	26							
CLOSED	24	34	41	36	24							
PENDING	19	23	11	12	14							
20 DAYS	1	3	1	1	1*							
6 MONTHS	0	0	0	0	0							
APPEALS	0	1	1	2	2							

FOI/PA PENDING MORE THAN 20 DAYS ON May 31, 1999:

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	1*	0	1*

*WAITING FOR RECORDS FROM ARCHIVES

ADMINISTRATIVE TORT CLAIMS												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	30	39	45	38	36							
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RECONSIDER	1	0	0	1	1							
PENDING	95	91	96	97	96							
OVER 6 MONTHS	0	2	0	3	1							

Tort Claim Investigations Over 60 Days:														
BRN	DUB	LOF	LOM	LOS	NEL	PHX	SAF	SDC	SET	SHE	TAF	TCN	TRM	TOTAL
0	11	0	0	1	0	0	0	0	0	1	0	0	0	13

LITIGATION:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
OPEN AT BEGINNING OF MONTH	356	383	389	391	372							
NEW CASES RECEIVED	30	9	19	16	14							
HC	26	8	16	14	9							
FTCA	1	0	1	0	0							
BIVENS	3	1	2	2	5							
OTHER	0	0	0	0	0							
CLOSED	3	3	10	10	8							
PENDING AT END OF MONTH	383	389	391	397	378							
LITIGATION REPORTS COMPLETED	29	7	7	16	13							



U.S. Department of Justice

Federal Bureau of Prisons

Dublin, California 94568

July 13, 1999

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

FROM: Harlan W. Penn, Regional Counsel
SUBJECT: Monthly Report for June, 1999

LITIGATION

I. CIVIL LITIGATION

1. 3621(e) CASES

A. NEW CASES

Gardner v. Cobos, (BRN) DAP petition seeking release under 3621(e). Inmate has a two-point enhancement for possession of a weapon.

Hunt v. Bailey, (SAF) DAP petition in which inmate is seeking 3621(e) sentence credit for completion of DAP. Petitioner has a prior conviction for Robbery and is therefore not eligible for the credit.

Woods v. Rivera, (SAF) DAP petition in which inmate is challenging a guilty finding of use of alcohol at a halfway house, return to closer custody, and loss of 3621(e) early release. Inmate has not yet received his "in person" hearing at FCI, Safford, so a motion to dismiss for ripeness was filed.

www.TXND.US
Courts GOV
click on docket
sheet

Breen v. Hood, (SHE) DAP petition challenging determination of ineligibility for early release pursuant to 18 U.S.C. § 3621(e). Petitioner was determined to be ineligible for early release based on his conviction for Bank Robbery, 18 U.S.C. § 2113(a), and prior state convictions for Armed Robbery and Robbery with a Firearm.

Furnas v. Hood, (SHE) DAP petition challenging determination of ineligibility for early release pursuant to 18 U.S.C. § 3621(e). Petitioner was determined to be ineligible for early release based on Director's Discretion for possession of a weapon during his instant offense.

Gauna v. Hood, (SHE) DAP petition challenging determination of ineligibility for early release pursuant to 18 U.S.C. § 3621(e). Petitioner was determined to be ineligible for early release based on Director's Discretion for possession of a weapon during his instant offense.

Johnson v. Hood, (SHE) DAP petition challenging determination of ineligibility for early release pursuant to 18 U.S.C. § 3621(e). Petitioner was determined to be ineligible for early release based on Director's Discretion for possession of a weapon during his instant offense.

Martin v. Hood, (SHE) DAP petition challenging determination of ineligibility for early release pursuant to 18 U.S.C. § 3621(e). Petitioner was determined to be ineligible for early release based on his conviction for being a Felon in Possession of a Firearm, 18 U.S.C. § 922(g).

Nealy v. Clark, (TRM) Inmate alleges that his instant offense of bank robbery is not a violent offense and that he should be eligible for 18 U.S.C. § 3621(e) release.

B. SIGNIFICANT DEVELOPMENTS/APPEALS

Jacks v. Crabtree, 114 F.3d 983, Supreme Court denied cert. Cite as 118 S.Ct. 1196. This case upheld Director's discretion in use of *prior convictions* as a basis for denying 3621(e) early release. Also held there was no liberty interest in 3621(e) release.

O'Reilly v. Reese, (DUB) Adverse action dated March 22, 1999, ordering one year sentence credit to inmate for improper retroactive application of new program statement on categorization of offenses. Four companion cases to O'Reilly and this case are being closed since no appeal is planned.

Muhammad, Jr. v. Adams, (LOM) 3621(e) case, two-point

enhancement. On March 25, 1999, the Magistrate issued an adverse Report and Recommendation (R&R) recommending that the habeas petition be granted within 90 days of completion of DAP. On May 18, 1999, the Judge granted the R&R and ordered that within 90 days from the date of the Judgement, the BOP must determine whether the petitioner should receive a sentence reduction, subject to completion of the Drug Abuse Treatment Program. On June 11, 1999, recommendation for appeal sent to OGC.

Marquez-Navarette v. Perrill, (SET) Petitioner filed a habeas petition claiming that he was not receiving necessary drug treatment at Taft Correctional Institution. Magistrate Judge recommended dismissal of the petition without prejudice, based on Petitioner's request to voluntarily withdraw the petition.

District of Oregon DAP litigation - adverse decisions were received in the following cases: Blair v. Hood, CV-99-484-HA; Broxson v. Hood, 99-517-HA; Cervantes v. Hood, CV-99-404-HA; Davis v. Hood, CV-99-405-HA; Eckert v. Hood, CV-99-403-HA; Johnson v. Hood, CV-99-516-HA; Jones v. Hood, 99-518-HA; Lynch v. Hood, CV-99-483-HA. Appeal Recommendations on all cases have been submitted to OGC.

Williams v. Clark, (TRM) Received adverse Opinion and Order concerning two-point weapons enhancement via Director's Discretion. Appellate memo submitted to OGC.

Salsberry v. Clark, (TRM) Received adverse report and recommendation concerning two-point weapons enhancement via Director's Discretion. Appellate memo submitted to OGC.

Cuevas v. Clark, (TRM) Government received request from court to respond to adverse opinion in Williams v. Clark matter, referenced above.

NON-3621(e) CASES

A. New cases

Manning v. January, (LOM) Habeas corpus petition involving a challenge to a DHO decision. Inmate made inappropriate comments and handed a greeting card to a staff member, for which he received an Incident Report.

Carson v. Hood, et al., (SHE) Habeas petition/Motion for Injunctive Relief challenging the Bureau's determination of ineligibility for placement in ICC due to conviction of Felon in Possession of a Firearm, 18 U.S.C. § 922(g) using P.S. 5162.04, as basis for programming decisions. Motion to Stay Surrender Date (6/30/99) granted, pending outcome of habeas/motion for injunctive relief.

Bradley Holmes v. U.S.A., B.O.P., (SDC) FTCA case where inmate claims to have undergone laminectomy surgeries of his lumbar spine prior to incarceration. The inmate alleges defendants failed to provide proper medical attention, rehabilitation and restriction of activities such as physical therapy, examination, medication, and proper accommodations (i.e. assignment to lower bunk). A total of \$250,000 in general damages is sought for alleged severe and permanent injuries to the inmate's body, nervous system and person.

Spindler and Nevell v. Mitchell, et al., (SHE) Pretrial detainees filed a Bivens action challenging conditions of confinement at the Detention Center, specifically, inmates being housed in three-man cells for twenty hours per day.

Mason v. Horan, et al., (TCN) Bivens action by pretrial detainee alleging 8th Amendment and Due Process violations, stemming from alleged inadequate medical care received at FCI Tucson following his arrest by a drug task force comprised of DEA Agents and Cochise County Sheriff Deputies in which he received a gunshot wound while trying to flee the scene. In addition to naming the United States, DOJ, FBOP, Cochise County, and FCI Tucson, Mason's attorney named FCI Tucson's Warden and Clinical Director, in their official and individual capacities. Plaintiff's Amended Complaint was received June 4, 1999.

Garofalo v. United States, (SAF/Nevada) Re-filing of FTCA suit dismissed without prejudice by Order of District of Nevada in April 1999, for failure to prosecute. Former inmate (by counsel) alleges inadequate medical care for shoulder injury suffered during BOP custody. Complaint seeks \$300,000 in damages and attorney fees.

B. Significant Developments/Appeals

July Trial Dates:

Manning v. United States, (SHE) FTCA action alleging negligence on the part of the BOP for failing to provide him with a ladder to climb onto the top bunk. Plaintiff claims he fell and received head and neck injuries. Plaintiff also claims the BOP failed to provide adequate medical care following his injury. Trial is set for July 20, 1999.

Romero v. BOP, (PHX) A trial date of July 27, 1999, has been set in this wrongful death FTCA case. Family of inmate who died at FCI Phoenix on October 2, 1995, is suing for failure to protect, seeking \$500,000 in damages. Inmate had been transferred to FCI Phoenix from FCI Safford after notifying staff of his fear of danger from other inmates. Romero repeated his concerns to staff at PHX who provided single-cell and other appropriate accommodations. Romero's death was ruled a suicide.

Other developments:

Erlin v. U.S. Parole Commission (WRO) Case involved the U.S. Parole Commission aggregating a previous sentence for which the petitioner was on parole with his current ten-year sentence. Case closed via stipulated dismissal without prejudice on May 20, 1999.

Dunn v. Saenz, et al., (DUB) Bivens action in which pretrial inmate alleged that he had been placed in administrative detention at the jail because he refused to sign a work waiver form. Defendants' motion for summary judgment was granted via order dated April 20, 1999. Being closed since no evidence to date of appeal having been filed.

Shorter v. Rardin, (LOM) Inmate filed a habeas petition alleging that a disciplinary ruling he received during a disturbance at Terminal Island was inaccurate. On August 5, 1998, the Court dismissed the case for failure to state a claim. In October of 1998, the inmate appealed the denial, stating that the District Court erred in not reviewing videotaped evidence. On May 18, 1999, the Ninth Circuit issued an order directing the BOP to either expunge the disciplinary ruling and restore the inmate's good time credits or to hold a new disciplinary hearing at which the videotape evidence is considered. The DHO held a rehearing on June 17, 1999, at which the videotape was considered. The DHO determined that the videotape did not provide any information that would exculpate inmate Shorter and upheld the original finding of guilt and sanctions imposed.

Notah v. Bailey, (SAF) Habeas action where inmate is seeking expungement of an Incident Report and six months placement in a CCC. Case dismissed on June 23, 1999.

Crosser, et al. v. United States, (SDC) FTCA wrongful death case alleges SDC medical staff provided inadequate medical care for pre-trial detainee Wayne Crosser who died of heart failure on September 30, 1996. Crosser had extensive history and recent surgery for heart disease at time of commitment at MCC San Diego.

b5

Most v. Stratman, et al., (SDC) This case involves allegations that the inmate developed carpal tunnel syndrome, and received inadequate medical care, etc. at MCC San Diego and FCI El Reno. The U.S. Attorney's Office received (via regular mail) an Amended Complaint on June 28, 1999.

Parmelee v. Benov, et al. (SDC) Inmate Parmelee filed this Bivens action, seeking damages and injunctive relief as a result of rejection of his publication "How to Win Disciplinary Hearings", sent to federal inmates in several institutions, including SDC. The Court recently granted Defendant's Motion to Withdraw Admissions Deemed Admitted and rescheduled the trial date and certain pre-trial dates. Defendant's Confidential Settlement Brief was received in chambers June 18, 1999, in which the government sets forth the position that the defendants cannot agree to a nationwide screening and delivery process for this publication. A pre-trial conference is scheduled for October 29, 1999, and the actual trial date has yet to be announced.

Hogan v. United States, (SDC) In this FTCA case former inmate Hogan seeks damages for alleged negligent transfer, housing,

inadequate protection, improper medical treatment, etc. during his federal incarceration. Discovery is ongoing in this matter, 50 witnesses have been identified and it is anticipated that many of them will be deposed by the end of the year.

Holland v. Hawk, et al., (SDC) This case involved inmate Holland's allegations of staff malice and spite when he was prohibited from possessing a pair of sunglasses which were not medically authorized. The inmate signed a voluntary dismissal of the case on June 17, 1999. Staff will store the sunglasses in the inmate's property and mail them to the inmate's designated facility.

Holland v. Lathers, et al., (SDC) Inmate Holland filed this suit alleging staff negligence regarding the decision to disallow his receipt of a watch from an outside source. The inmate signed a voluntary dismissal of this action on June 17, 1999. Staff will store the watch in the inmate's property and mail it to the inmate's designated facility.

Rieke v. Hood, (TCN) Habeas petition seeking jail credit for time spent in exclusive service of unrelated state sentence, as well as for time on loan from state on federal Writ of Habeas Corpus Ad Prosequendum. A Report and Recommendation (R&R) was written on April 21, 1999, adopting our motion to dismiss. The District Judge adopted the R&R and dismissed the petition with prejudice on June 2, 1999.

Fazzini v. Hawk, et al., (LOM) On June 2, 1999, the Court of Appeals affirmed the district court ruling affirming the denial of habeas relief concerning conditions of confinement and a prison disciplinary sanctions.

Hafner v. Hawk, et al., (LOM) On June 7, 1999, inmate Hafner stipulated to the dismissal of the case with prejudice, each party to bear its own fees and costs. The stipulation was lodged with the Court on June 8, 1999, and filed on June 21, 1999.

Fottler v. Morton, (NEL) In 1994 several inmates filed a hybrid FTCA/Bivens action seeking damages for alleged exposure to asbestos at FPC Nellis. The plaintiffs appealed the District Court's 1996 dismissal of the suit to the Ninth Circuit. The Ninth Circuit remanded and the District Court allowed the inmate-plaintiffs to file a Second Amended Complaint. Defendants filed their renewed Motion to Dismiss/Summary Judgment on May 24, 1999, which included a demand for each plaintiff to notify the Court of his current address (all have been released from custody) and his intention to prosecute the lawsuit.

II. CRIMINAL CASE TRACKING

Criminal Cases												
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Referred	29	19	22	18	21	24						
Accepted	1	4	0	1	4	4						
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Pending Decision	13	28	32	35	31	38						

Active Prosecutions:

ASSAULT:

U.S. v. Sandoval-Parra, (LOM) Inmate struck an officer with a closed fist on May 30, 1999. Case has been accepted for prosecution, but no trial date has been scheduled yet.

U.S. v. Dahkowschay, (SHE) Inmate assaulted another inmate with a weapon containing a razor blade. Inmate was convicted of Assault with a Deadly Weapon and Assault Resulting in Serious Bodily Injury. Sentence imposed: 84 consecutive months.

U.S. v. Hillard, (LOM) Case involved the assault of two Correctional Officers on October 22, 1995, during the October 1995 disturbance. On March 15, 1999, inmate plead guilty to one count of violating 18 U.S.C. §111(a)(1), Assault on a Correctional Officer. Hillard received a consecutive four month sentence on June 4, 1999.

U.S. v. Lopiccio, (LOM) Case involves the assault of another inmate that occurred on February 4, 1997, at FCI Lompoc. Trial scheduled for July 13, 1999.

U.S. v. Wehmhoefer, (LOM) Case involves the assault of another inmate that occurred on March 4, 1997. Trial scheduled for September 7, 1999.

U.S. v. Sandoval-Parra, (SAF) Inmate struck an officer with a closed fist on May 30, 1999. Case has been assigned, but trial has not been scheduled yet.

U.S. v. Amaya-Jaquez, (TCN) Inmate assaulted three staff members on May 6, 1999. The case has been accepted for prosecution, but no trial date has been set.

. APE:

U.S. v. Lewis (TCN) Grand jury indictment on January 20, 1999, charging inmate with 2 counts of attempted escape and 1 count of fraud for soliciting drug treatment documents to support history of substance abuse in order to benefit from 3621(e) release.

U.S. v. Nikrasch, (LOM) Case involves an escape from the FPC in December of 1995. Inmate pled guilty to one count of Escape from a Federal Institution, one count of Possessing and/or Passing Counterfeit \$100 Bills, and one count of Possessing over \$5,000 in Counterfeit Currency. Sentencing rescheduled for July 19, 1999.

HOMICIDE:

U.S. v. Green, (LOM) Continuance signed by the Judge. Trial continued to October 19, 1999.

U.S. v. Lindsey, (PHX) Prosecution of inmate Lindsey for November 1, 1997, murder of inmate Bernard Jackson. Trial scheduled for June 29, 1999. Acquitted on July 9, 1999.

INTRODUCTION/POSSESSION OF CONTRABAND:

U.S. v. Reagor, (PHX) Prosecution accepted on inmate attempting to secrete balloon of brown heroin.

U.S. v. Berry, (PHX) Inmate received a visit on February 13, 1999. Based upon observations made at that time, inmate Berry was placed in dry cell status. He passed a total of 13 balloons containing marijuana. Case has been referred and accepted for prosecution.

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PROPERTY: None

SEX OFFENSES:

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U.S. v. Blansett, (PHX) Officer searching property of inmate Blansett found photographs of nude children. Referred and accepted for prosecution.

WEAPONS: None

▶▶ **STATISTICS** ◀◀

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*WAITING FOR RECORDS FROM ARCHIVES

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RECONSIDER	1	0	0	1	1	2						

PENDING	95	91	96	97	96	85							
OVER 6 MONTHS	0	2	0	3	1	0							

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BRN	DUB	LOF	LOM	LOS	NEL	PHX	SAF	SDC	SET	SHE	TAF	TCN	TRM	TOTAL
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LITIGATION:

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U.S. Department of Justice

Federal Bureau of Prisons

Dublin, California 94568

August 6, 1999

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

FROM: Harlan W. Penn, Regional Counsel
SUBJECT: Monthly Report for July 1999

LITIGATION

1. NEW CASES (3621(e))

Earls v. Hood (SHE) DAP petition complaining of 3621(e) ineligibility due to 2 point weapon enhancement.

James v. Hood (SHE) DAP petition complaining of 3621(e) ineligibility due to 2 point weapon enhancement.

Johnson v. Hood (SHE) DAP petition complaining of 3621(e) ineligibility due to 2 point weapon enhancement.

Lohrey v. Hood (SHE) DAP petition complaining of 3621(e) ineligibility due to 2 point weapon enhancement.

Maeby v. Clark (TRM) DAP petition complaining of 3621(e) ineligibility due to 2 point weapon enhancement.

Mankertz v. Hood (SHE) DAP petition complaining of 3621(e) ineligibility due to 2 point weapon enhancement.

McGilvery v. Hood (SHE) DAP petition complaining of 3621(e) ineligibility due to 2 point weapon enhancement.

Miller v. Fitzpatrick (LOM) DAP petition complaining of 3621(e) ineligibility due to 2 point weapon enhancement.

Richnback v. Fitzpatrick (LOM) DAP petition complaining of 3621(e) ineligibility due to 2 point weapon enhancement.

Robinson v. Fitzpatrick (LOM) DAP petition complaining of 3621(e) ineligibility due to 2 point weapon enhancement.

Ward v. Hood (SHE) DAP petition complaining of 3621(e) ineligibility due to 2 point weapon enhancement.

Wilson v. Hood (SHE) DAP petition complaining of 3621(e) ineligibility due to 2 point weapon enhancement.

2. NEW CASES (OTHER)

Baker v. Clark (TRM) Inmate appealing to 9th Circuit the district court's dismissal of habeas petition which complained of inadequate medical treatment and which sought order barring transfer to another institution.

Carter v. Department of Justice (SAF) Inmate seeks declaratory relief alleging DOJ improperly classified him as Mexican, rather than U.S. citizen.

Grant v. Ray (SAF) Inmate seeks mandamus relief for presentence credit for time spent in state custody.

Gutierrez v. United States Bureau of Prisons (LOM) Bivens action in which inmate alleges inadequate medical treatment for a penile wart.

Jackson v. United States (SET) Bivens/FTCA complaint alleging denial of medication and specialists resulted in seizure.

Mason v. Horan (TCN) Bivens complaint by pre-trial detainee alleging inadequate medical care.

Muhannad v. Adams (LOM) Bivens action in which inmate alleges excessive use of force during a forced cell move.

Ralston v. Hood (SHE) Habeas petition challenging sanctions (visiting restrictions) imposed by the DHO.

Rogers v. Lathers (SDC) Habeas petition seeking immediate release from custody by contesting DHO finding of escape from half-way house.

Wehmhoefer v. Seifert (LOS) Habeas petition seeking credit for time spent in federal custody that allegedly is not being credited now.

3. SIGNIFICANT DEVELOPMENTS/APPEALS

Alvarez v. David Rardin (LOM) Court dismissed the petition, terminating case.

Bilodeaux v. Fitzpatrick (LOM) Court denied the petition.

Blum v. Floyd (PHX) A settlement conference has been scheduled for 09/01/99. However, we do not have anything to offer to settle this Bivens case.

Brown v. Fitzpatrick (LOM) Court denied the petition, terminating case.

Carrington v. United States (LOM) Court dismissed the complaint against one named defendant and summary judgment was granted in favor of another and USA, terminating case.

Cooper v. Rardin (LOM) Court dismissed the petition, terminating case.

Crawford El v Rardin (LOM) Appellate court dismissed inmate's appeal of habeas petition dismissal.

Cuthair v. Rardin (LOM) Court dismissed the petition for failure to exhaust, terminating case.

Eduardo v. United States Probation (LOM) Court granted the BOP's Motion for Summary Judgment and terminated case.

Enzor v. Janet Reno (SDC) Bivens action by former executive staff member at FCI Tallahassee against several agency staff alleging retaliation, racism, unfair labor practice, etc. MCC staff member to be deposed August 19, 1999.

Estate of Wayne Crosser v. United States (SDC) US Attorney cautiously entertaining settlement with opposing counsel in FTCA action and agency recommendation has been requested by USAO.

Ford v. Rardin (LOM) Court dismissed the petition, terminating case.

Forgac v. Perrill, et al. (SET) Report and Recommendation filed recommending grant of Defendants' Motion for Summary Judgment.

Garner v. Adams (LOM) Appeal of dismissed habeas petition seeking entry into DAP is dismissed.

Gust Janis v. USA (LOM) Appellate Court affirmed the decision of the District Court dismissing FTCA action.

Iida v. Adams (LOM) Court dismissed the petition, terminating case.

Janis v. United States Attorney (LOM) Inmate's appeal of decision to deny return of confiscated materials was dismissed.

Lippert v. Halacha (LOM) Court dismissed the complaint, terminating case.

Lippert V. Rardin (LOM) Court granted Bureau's Motion for Summary Judgement except for FTCA claim which too was dismissed for failure to exhaust. Case terminated.

Mitchell v. United States (PHX) Court dismissed action.

McConville v. United States (PHX) Dismissed for failure to prosecute.

Most v. United States (SDC) Hearing in FTCA action set for August 9, 1999. Presently, Plaintiff has failed to perfect service within the statutory time frame.

Nigro, Jr. v. Wilson (TRM) Court dismissed action.

Reddic v. USA, et al (LOM) Court denied the motion to vacate, set aside or reduce sentence, terminating case.

Romero v. United States (PHX) Trial previously scheduled for trial July 27 has been postponed indefinitely due to filing of amended complaint.

Savocchio v. Crabtree (SHE) Court granted habeas petition restoring good time taken in DHO Hearing.

Stephens v. Adams (LOM) Court dismissed the petition, terminating case.

Tavares v. Bureau of Prisons (LOM) Court terminated the case without prejudice.

Tavares v. Rardin (LOM) Court dismissed the petition, terminating case.

Ulep v. Rardin (LOM) Court dismissed the petition, terminating case.

Walker v. Rardin (LOM) Appellate Court affirmed the decision of the District Court.

CRIMINAL CASE TRACKING

Criminal Cases												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Referred	29	19	22	18	21	22	16					
Accepted	1	4	0	1	4	4	4					
Declined	15	16	16	11	19	11	9					
Pending Decision	13	28	32	35	31	38	41					

Active Prosecutions:

ASSAULT:

United States v. Lopiccio (LOM) Inmate on inmate assault trial rescheduled for October 12, 1999.

United States v. Pedro Amaya-Jaquez (TCN) May 6, 1999, inmate on three staff member assault accepted for prosecution. Injuries were contusions and abrasions and one staff transported to hospital due to shortness of breath after being kicked in ribs. Although no weapon was involved, SIS Lieutenant was able to convince the AUSA/FBI of the prosecutorial merit and importance of this case to our agency for the deterrent effect to hopefully limit future staff assaults.

ESCAPE:

United States v. Terrance Nikrasch (LOM) Sentencing for December 1995 FPC escape postponed until further notice.

HOMICIDE:

United States v. Roy Green (LOM) Pretrial hearing to discuss pending motions scheduled for September 13, 1999. Trial continued until February 15 or 22, 2000.

United States v. Matt Lindsey (PHX) Jury verdict of "not guilty" was returned on July 9, 1999.

INTRODUCTION/POSSESSION OF CONTRABAND: None

PROPERTY: None

SEX OFFENSES:

United States v. Jon Hyson (DUB) Twenty-two count indictment

against former correctional officer at Dublin for sex offenses and false statements. Pretrial conference set for October 25, 1999. Trial set for November 1, 1999.

United States v. Donnell Hawthorne (DUB) After guilty plea to sex offenses and false statements, former correctional officer sentenced to five month confinement with 3 years supervised release, \$225 special assessment and 400 hours community service.

WEAPONS: None

STATISTICS

ADMINISTRATIVE REMEDIES											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
80	94	108	91	31	129	96					

FREEDOM OF INFORMATION/PRIVACY ACT:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	27	38	29	37	26	32	31					
CLOSED	24	34	41	36	24	31	25					
PENDING	19	23	11	12	14	15	21					
20 DAYS	1	3	1	1	1*	0	0					
6 MONTHS	0	0	0	0	0	0	0					
APPEALS	0	1	1	2	2	3	3					

FOI/PA PENDING MORE THAN 20 DAYS ON June 30, 1999:														
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

*WAITING FOR RECORDS FROM ARCHIVES

ADMINISTRATIVE TORT CLAIMS													
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	
RECEIVED	30	39	45	38	36	35	33						
CLOSED	31	43	40	38	38	48	25						
RECONSIDER	1	0	0	1	1	2	0						

LITIGATION:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
OPEN AT BEGINNING OF MONTH	356	383	389	391	372	378	381					
NEW CASES RECEIVED	30	9	19	16	14	13	23					
HC	26	8	16	14	9	9	15					
FTCA	1	0	1	0	0	2	1					
BIVENS	3	1	2	2	5	2	4					
OTHER	0	0	0	0	0	0	3					
CLOSED	3	3	10	10	8	10	86 ¹					
PENDING AT END OF MONTH	383	389	391	397	378	381	318					
LITIGATION REPORTS COMPLETED	29	7	7	16	13	14	14					

¹ Comprehensive audit was conducted July 6-9, 1999, resulting in an adjustment to number of cases pending. Cases pending at end of July 1999 is 318.



U.S. Department of Justice

Federal Bureau of Prisons

Dublin, California 94568

August 6, 1999

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

FROM: Harlan W. Penn, Regional Counsel
SUBJECT: Monthly Report for July 1999

LITIGATION

1. NEW CASES (3621(e))

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INTRODUCTION/POSSESSION OF CONTRABAND: None

PROPERTY: None

SEX OFFENSES:

United States v. Jon Hyson (DUB) Twenty-two count indictment

against former correctional officer at Dublin for sex offenses and false statements. Pretrial conference set for October 25, 1999. Trial set for November 1, 1999.

United States v. Donnell Hawthorne (DUB) After guilty plea to sex offenses and false statements, former correctional officer sentenced to five month confinement with 3 years supervised release, \$225 special assessment and 400 hours community service.

WEAPONS: None

STATISTICS

ADMINISTRATIVE REMEDIES											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
80	94	108	91	31	129	96					

FREEDOM OF INFORMATION/PRIVACY ACT:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	27	38	29	37	26	32	31					
CLOSED	24	34	41	36	24	31	25					
PENDING	19	23	11	12	14	15	21					
20 DAYS	1	3	1	1	1*	0	0					
6 MONTHS	0	0	0	0	0	0	0					
APPEALS	0	1	1	2	2	3	3					

FOI/PA PENDING MORE THAN 20 DAYS ON June 30, 1999:														
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

*WAITING FOR RECORDS FROM ARCHIVES

ADMINISTRATIVE TORT CLAIMS												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	30	39	45	38	36	35	33					
CLOSED	31	43	40	38	38	48	25					
RECONSIDER	1	0	0	1	1	2	0					

PENDING	95	91	96	97	96	85	93						
OVER 6 MONTHS	0	2	0	3	1	0	0						

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

LITIGATION:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
OPEN AT BEGINNING OF MONTH	356	383	389	391	372	378	381					
NEW CASES RECEIVED	30	9	19	16	14	13	23					
HC	26	8	16	14	9	9	15					
FTCA	1	0	1	0	0	2	1					
BIVENS	3	1	2	2	5	2	4					
OTHER	0	0	0	0	0	0	3					
CLOSED	3	3	10	10	8	10	86 ¹					
PENDING AT END OF MONTH	383	389	391	397	378	381	318					
LITIGATION REPORTS COMPLETED	29	7	7	16	13	14	14					

¹ Comprehensive audit was conducted July 6-9, 1999, resulting in an adjustment to number of cases pending. Cases pending at end of July 1999 is 318.



U.S. Department of Justice

Federal Bureau of Prisons

Dublin, California 94568

September 2, 1999

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

FROM: Harlan W. Penn, Regional Counsel
SUBJECT: Monthly Report for August 1999

LITIGATION

1. NEW CASES (3621(e))

Frisby v Fitzpatrick (LOM) DAP petition complaining of 3621(e) ineligibility due to 2 point weapon enhancement.

Gerritsen v Pontesso (PHX) DAP petition complaining of 3621(e) ineligibility due to escape conviction.

Grassi v Hood (SHE) DAP petition complaining of 3621(e) ineligibility due to 2 point weapon enhancement.

Mendiola v Hood (SHE) DAP petition complaining of 3621(e) ineligibility due to 2 point weapon enhancement.

Rice v Hood (SHE) DAP petition complaining of 3621(e) ineligibility due to 2 point weapon enhancement.

Shaw v Pontesso (PHX) DAP petition complaining of 3621(e) ineligibility due to 2 point weapon enhancement.

Thornton v Fitzpatrick (LOM) DAP petition complaining of 3621(e) ineligibility due to 2 point weapon enhancement.

2. NEW CASES (OTHER)

Alfrey v United States (SHE) FTCA action alleging BOP negligence for wrongful death and failure to protect.

Arias v Pendleton (TCN) Habeas petition seeking expedited extradition hearing for outstanding murder charge in Mexico.

John Doe Inmate v US DOJ (TRM) FTCA action alleging failure to enforce alleged sentence reduction agreement which was proffered in exchange for information to government.

Bracken v Clark (TRM) FTCA action alleging loss of five money orders.

Bagliere Jr. v Andrew (TRM) Habeas petition alleging BOP incorrectly scored prior offense which resulted in improper scoring of "low" custody level versus "minimum".

Combs v Clark (TRM) Habeas petition complaining sentence has been satisfied.

Gomez v Fitzpatrick (LOM) Habeas petition seeking state custody credit.

Gonzales v United States (TCN) Habeas petition seeking state prison time credit.

Gonzales v Pendleton (TCN) Habeas petition seeking state custody credit.

Heath v Pendleton (TCN) Habeas petition seeking restoration of DHO revoked good conduct time.

Lillard v Hood (SHE) Habeas petition seeking restoration of DHO revoked good conduct time.

Spindler v Mitchell (SHE) Bivens action claiming retaliation for filing a lawsuit against staff.

United States v Cereno (SDC) Habeas petition seeking sentence reduction to six month jail time and probation or in the alternative, a stay of surrender date to process his request for ICC designation.

3. SIGNIFICANT DEVELOPMENTS/APPEALS

Ballou v Perrill (SET) In an unpublished opinion, the 9th Circuit

upheld the district court's denial of an inmate's DAP habeas petition seeking early release consideration notwithstanding his prior bank robbery conviction. Inmate alleged he was verbally apprized of his eligibility and was subsequently made ineligible under § 550.58.

Estate of Wayne Crosser v. United States (SDC) FTCA action filed by family of deceased inmate scheduled for settlement conference. If negotiations are unsuccessful, depositions will be tentatively scheduled for September 27-29, 1999.

CRIMINAL CASE TRACKING

Criminal Cases												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Referred	29	19	22	18	21	22	16	12				
Accepted	1	4	0	1	4	4	4	0				
Declined	15	16	16	11	19	11	9	12				
Pending Decision	13	28	32	35	31	38	41	25				

NEW INFORMATION ON ACTIVE PROSECUTIONS

ASSAULT

United States v Wehmhoefer (LOM) Case involves the assault of another inmate that occurred on March 4, 1997. Trial originally scheduled for September 7 has been rescheduled to November 6, 1999.

United States v Sandoval-Parra (SAF) Case of inmate striking staff with closed fist. On August 24, 1999, inmate pled guilty to Assault on a Federal Officer. Sentencing scheduled for December 12, 1999.

ESCAPE

United States v. Terrance Nikrasch (LOM) Case involves an escape from the FPC in December 1995. Sentencing rescheduled for September 9, 1999.

STATISTICS

ADMINISTRATIVE REMEDIES											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
80	94	108	91	31	129	96	70				

FREEDOM OF INFORMATION/PRIVACY ACT:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	27	38	29	37	26	32	31	40				
CLOSED	24	34	41	36	24	31	25	46				
PENDING	19	23	11	12	14	15	21	15				
20 DAYS	1	3	1	1	1*	0	0	0				
6 MONTHS	0	0	0	0	0	0	0	0				
APPEALS	0	1	1	2	2	3	3	2				

FOI/PA PENDING MORE THAN 20 DAYS ON June 30, 1999:														
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

*WAITING FOR RECORDS FROM ARCHIVES

ADMINISTRATIVE TORT CLAIMS												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	30	39	45	38	36	35	33	51				
CLOSED	31	43	40	38	38	48	25	34				
RECONSIDER	1	0	0	1	1	2	0	2				
PENDING	95	91	96	97	96	85	93	112				
OVER 6 MONTHS	0	2	0	3	1	0	0	4				

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

*Claimant has multiple claims that have been combined into one case. Currently at the Office of the Inspector General. Issues before the Grand Jury meeting mid-September, 1999.

LITIGATION:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
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NEW CASES RECEIVED	30	9	19	16	14	13	23	20				
HC	26	8	16	14	9	9	15	16				

FTCA	1	0	1	0	0	2	1	3				
BIVENS	3	1	2	2	5	2	4	1				
OTHER	0	0	0	0	0	0	3	0				
CLOSED	3	3	10	10	8	10	86	0				
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LITIGATION REPORTS COMPLETED	29	7	7	16	13	14	14	14				

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Gerritsen v Pontesso (PHX) DAP petition complaining of 3621(e) ineligibility due to escape conviction.

Grassi v Hood (SHE) DAP petition complaining of 3621(e) ineligibility due to 2 point weapon enhancement.

Mendiola v Hood (SHE) DAP petition complaining of 3621(e) ineligibility due to 2 point weapon enhancement.

Rice v Hood (SHE) DAP petition complaining of 3621(e) ineligibility due to 2 point weapon enhancement.

Shaw v Pontesso (PHX) DAP petition complaining of 3621(e) ineligibility due to 2 point weapon enhancement.

Thornton v Fitzpatrick (LOM) DAP petition complaining of 3621(e) ineligibility due to 2 point weapon enhancement.

2. NEW CASES (OTHER)

Alfrey v United States (SHE) FTCA action alleging BOP negligence for wrongful death and failure to protect.

Arias v Pendleton (TCN) Habeas petition seeking expedited extradition hearing for outstanding murder charge in Mexico.

John Doe Inmate v US DOJ (TRM) FTCA action alleging failure to enforce alleged sentence reduction agreement which was proffered in exchange for information to government.

Bracken v Clark (TRM) FTCA action alleging loss of five money orders.

Bagliere Jr. v Andrew (TRM) Habeas petition alleging BOP incorrectly scored prior offense which resulted in improper scoring of "low" custody level versus "minimum".

Combs v Clark (TRM) Habeas petition complaining sentence has been satisfied.

Gomez v Fitzpatrick (LOM) Habeas petition seeking state custody credit.

Gonzales v United States (TCN) Habeas petition seeking state prison time credit.

Gonzales v Pendleton (TCN) Habeas petition seeking state custody credit.

Heath v Pendleton (TCN) Habeas petition seeking restoration of DHO revoked good conduct time.

Lillard v Hood (SHE) Habeas petition seeking restoration of DHO revoked good conduct time.

Spindler v Mitchell (SHE) Bivens action claiming retaliation for filing a lawsuit against staff.

United States v Cereno (SDC) Habeas petition seeking sentence reduction to six month jail time and probation or in the alternative, a stay of surrender date to process his request for ICC designation.

3. SIGNIFICANT DEVELOPMENTS/APPEALS

Ballou v Perrill (SET) In an unpublished opinion, the 9th Circuit

upheld the district court's denial of an inmate's DAP habeas petition seeking early release consideration notwithstanding his prior bank robbery conviction. Inmate alleged he was verbally apprized of his eligibility and was subsequently made ineligible under § 550.58.

Estate of Wayne Crosser v. United States (SDC) FTCA action filed by family of deceased inmate scheduled for settlement conference. If negotiations are unsuccessful, depositions will be tentatively scheduled for September 27-29, 1999.

CRIMINAL CASE TRACKING

Criminal Cases												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Referred	29	19	22	18	21	22	16	12				
Accepted	1	4	0	1	4	4	4	0				
Declined	15	16	16	11	19	11	9	12				
Pending Decision	13	28	32	35	31	38	41	25				

NEW INFORMATION ON ACTIVE PROSECUTIONS

ASSAULT

United States v Wehmhoefer (LOM) Case involves the assault of another inmate that occurred on March 4, 1997. Trial originally scheduled for September 7 has been rescheduled to November 6, 1999.

United States v Sandoval-Parra (SAF) Case of inmate striking staff with closed fist. On August 24, 1999, inmate pled guilty to Assault on a Federal Officer. Sentencing scheduled for December 12, 1999.

ESCAPE

United States v. Terrance Nikrasch (LOM) Case involves an escape from the FPC in December 1995. Sentencing rescheduled for September 9, 1999.

STATISTICS

ADMINISTRATIVE REMEDIES											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
80	94	108	91	31	129	96	70				

FREEDOM OF INFORMATION/PRIVACY ACT:													
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	
RECEIVED	27	38	29	37	26	32	31	40					
CLOSED	24	34	41	36	24	31	25	46					
PENDING	19	23	11	12	14	15	21	15					
20 DAYS	1	3	1	1	1*	0	0	0					
6 MONTHS	0	0	0	0	0	0	0	0					
APPEALS	0	1	1	2	2	3	3	2					

FOI/PA PENDING MORE THAN 20 DAYS ON June 30, 1999:														
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

*WAITING FOR RECORDS FROM ARCHIVES

ADMINISTRATIVE TORT CLAIMS													
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	
RECEIVED	30	39	45	38	36	35	33	51					
CLOSED	31	43	40	38	38	48	25	34					
RECONSIDER	1	0	0	1	1	2	0	2					
PENDING	95	91	96	97	96	85	93	112					
OVER 6 MONTHS	0	2	0	3	1	0	0	4					

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

*Claimant has multiple claims that have been combined into one case. Currently at the Office of the Inspector General. Issues before the Grand Jury meeting mid-September, 1999.

LITIGATION:													
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	
OPEN AT BEGINNING OF MONTH	356	383	389	391	372	378	381	318					
NEW CASES RECEIVED	30	9	19	16	14	13	23	20					
HC	26	8	16	14	9	9	15	16					

FTCA	1	0	1	0	0	2	1	3				
BIVENS	3	1	2	2	5	2	4	1				
OTHER	0	0	0	0	0	0	3	0				
CLOSED	3	3	10	10	8	10	86 ¹	0				
PENDING AT END OF MONTH	383	389	391	397	378	381	318	338				
LITIGATION REPORTS COMPLETED	29	7	7	16	13	14	14	14				

1. Comprehensive audit was conducted July 6-9, 1999, resulting in an adjustment to number of pending cases. Case pending at end of July is 318.



U.S. Department of Justice

Federal Bureau of Prisons

Dublin, California 94568

October 4, 1999

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

FROM: Harlan W. Penn, Regional Counsel
SUBJECT: Monthly Report for September 1999

LITIGATION

1. NEW CASES (3621(e))

Biddles v. Clark, (TRM) DAP petition complaining of 3621(e) ineligibility due to 2 point weapon enhancement.

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

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

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

Hall v. Hood, (SHE) DAP petition complaining of 3621(e) ineligibility due to § 922(g) conviction and prior robbery conviction.

Holguin v. Clark, (TRM) DAP petition complaining of 3621(e) ineligibility due to 2 point weapon enhancement.

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

Morris v. Hood, (SHE) DAP petition challenging his priority position on the DAP WAIT list.

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

2. NEW CASES

Burzynski v. Bailey, (SAF) Habeas petition complaining the Bureau of Prisons violated the terms of his plea agreement when he was not placed at a camp facility.

Flowers v. Finnerly, (LOM) Bivens action complaining of inadequate medical treatment and alleged assault.

Freeman v. United States, (LOM) Mandamus petition in which inmate challenges ITS system.

Pelland v. Clark, (TRM) Habeas petition claiming inmate was held 25 days past sentence expiration.

Pocsai v. Hood, (SHE) Habeas petition challenging placement in Administrative Detention.

Salameh v. Carlson, (LOM) Bivens action alleging excessive use of force.

Teran v. Morrison, (LOM) Bivens action in which inmate alleges his life is in jeopardy as a result of staff actions.

Villegas v. Adams, (LOM) Habeas petition complaining of placement in Administrative Detention, separation status from Mexicanemi, and limited access to the law library.

Wharton v. Hood, (SHE) Habeas petition seeking restoration of DHO forfeited good time credits.

Wilson v. Perrill, (SET) Habeas petition complaining of due process and policy violation when he was returned to secure institution from halfway house.

3. SIGNIFICANT DEVELOPMENTS/APPEALS

Applegate v. United States, (DUB) Former inmate's FTCA suit alleging sexual battery, harassment and forced oral copulation by staff in 1995 dismissed upon settlement of \$90,000 on September 2, 1999.

Baker v. Barrera, (SDC) Bivens action against contract psychiatrist for alleged negligent diagnosis, treatment, proscripton of drug being considered for DOJ representation.

Estate of Wayne Crosser v. United States, (SDC) Parties agreed to settle FTCA action for \$152,000. Pending signature by plaintiff's counsel.

Dozier v. Fitzpatrick, (LOM) Court ordered BOP to reconsider DAP petitioner's eligibility without relying on PSI information concerning 1971 manslaughter conviction.

Parmelee v. Perrill, (SET) Defendants' motion for summary judgement

granted, dismissing case with prejudice. AUSA believes this is plaintiff's third strike under PLRA.

Romero v. United States, (PHX) Case originally slated for trial in July indefinitely postponed pending amended complaint.

Salsberry v. Clark, (TRM) Notice of appeal filed on adverse opinion regarding DAP 2 point weapon enhancement petition.

Sattes v. Cobos, (BRN) Adverse decision granting petition for 3621(e) eligibility.

CRIMINAL CASE TRACKING

Criminal Cases												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Referred	29	19	22	18	21	22	16	12	13			
Accepted	1	4	0	1	4	4	4	0	1			
Declined	15	16	16	11	19	11	9	12	6			
Pending Decision	13	28	32	35	31	38	41	25	24			

4. NEW INFORMATION ON ACTIVE PROSECUTIONS

ASSAULT

United States v. Lopiccolo, (LOM) Inmate assault on another that occurred February 4, 1997, at FCI Lompoc. Trial originally scheduled for October 12, 1999. Prosecution's motion for continuance to be ruled upon October 4, 1999.

United States v. Sandoval-Parra, (SAF) Inmate pled guilty on August 24, 1999, to Assaulting Federal Officer (struck officer with closed fist). Sentencing scheduled for December 12, 1999.

ESCAPE

United States v. Nikrasch, (LOM) Counterfeit currency and escape case from FPC in December 1995. New counsel appointed for inmate. Sentencing rescheduled for November 1999.

FRAUD/FORGERY

United States v. Lewis, (TCN) Inmate pled guilty to fraud in exchange for dropping 2 attempted escape charges (fabricated drug abuse treatment records to benefit from 3621(e) program). Sentencing set for October 21, 1999.

STATISTICS

ADMINISTRATIVE REMEDIES											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
80	94	108	91	31	129	96	70	75			

FREEDOM OF INFORMATION/PRIVACY ACT:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	27	38	29	37	26	32	31	40	35			
CLOSED	24	34	41	36	24	31	25	46	34			
PENDING	19	23	11	12	14	15	21	15	16			
20 DAYS	1	3	1	1	1*	0	0	0	0			
6 MONTHS	0	0	0	0	0	0	0	0	0			
APPEALS	0	1	1	2	2	3	3	2	3			

FOI/PA PENDING MORE THAN 20 DAYS ON June 30, 1999:														
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

*WAITING FOR RECORDS FROM ARCHIVES

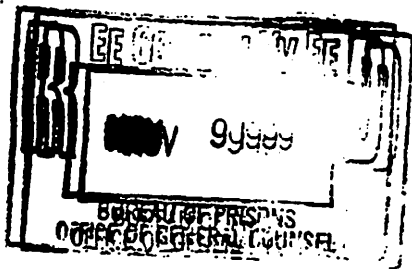
ADMINISTRATIVE TORT CLAIMS												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	30	39	45	38	36	35	33	51	38			
CLOSED	31	43	40	38	38	48	25	34	50			
RECONSIDER	1	0	0	1	1	2	0	2	1			
PENDING	95	91	96	97	96	85	93	112	101			
OVER 6 MONTHS	0	2	0	3	1	0	0	4	4			

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

LITIGATION:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
OPEN AT BEGINNING OF MONTH	356	383	389	391	372	378	381	318	338			
NEW CASES RECEIVED	30	9	19	16	14	13	23	20	19			
HC	26	8	16	14	9	9	15	16	15			
FTCA	1	0	1	0	0	2	1	3	0			
BIVENS	3	1	2	2	5	2	4	1	3			

1. Comprehensive audit was conducted July 6-9, 1999, resulting in an adjustment to number of pending cases. Case pending at end of July is 318.

OTHER	0	0	0	0	0	0	3	0	1			
CLOSED	3	3	10	10	8	10	86 ¹	0	5			
PENDING AT END OF MONTH	383	389	391	397	378	381	318	338	352			
LITIGATION REPORTS COMPLETED	29	7	7	16	13	14	14	14	25			



WRO

U.S. Department of Justice
Federal Bureau of Prisons

Dublin, California 94568

November 4, 1999

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

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

SUBJECT: Monthly Report for October 1999

LITIGATION

1. NEW CASES (3621(e))

Decker vs. Fitzpatrick, (LOM) DAP petition complaining of 3621(e) ineligibility due to 2 point weapon enhancement.

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

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

Iniego vs. Clark, (TRM) DAP petition complaining of 3621(e) ineligibility due to 2 point weapon enhancement.

McArtor vs. Pontesso, (PHX) DAP petition complaining of 3621(e) ineligibility due to 2 point weapon enhancement.

Mitchell vs. Andrews, (TRM) DAP petition complaining of 3621(e) ineligibility due to lack of documented drug abuse problem.

O'Donnell vs. Fitzpatrick, (LOM) DAP petition complaining of 3621(e) ineligibility due to 2 point weapon enhancement.

Searcy vs. Hood, (SHE) DAP petition complaining of 3621(e) ineligibility due to § 922(g) conviction.

Smith vs. Pontesso, (PHX) DAP petition complaining of 3621(e) ineligibility due to prior conviction for battery with great bodily injury.

Criminal Cases												
Declined	15	16	16	11	19	11	9	12	6	12		
Pending Decision	13	28	32	35	31	38	41	25	24	30		

4. NEW INFORMATION ON ACTIVE PROSECUTIONS

ASSAULT

United States vs. Sandoval-Parra (SAF) Inmate on staff assault on May 30, 1999. Sentencing scheduled for December 12, 1999.

United States vs. Lopiccio, (LOM) Inmate on inmate assault on February 14, 1997, at FCI Lompoc. Trial scheduled for November 16, 1999.

United States vs. Amaya-Jaquez, (TCN) Defendant charged with assaulting 3 staff May 6, 1999. While being transported to court recently, defendant recognized and threatened to kill DUSM. With additional charges being contemplated, AUSA negotiating with defendant's attorney a plea agreement.

United States vs. Wehmhoefer, (LOM) Inmate on inmate assault on March 4, 1997. Trial has been rescheduled for January 25, 2000.

ESCAPE

United States vs. Nikrasch, (LOM) FPC Lompoc December 1995 escape along with 2 counterfeit charges. New counsel appointed for inmate. Sentencing rescheduled for November.

FRAUD/FORGERY

United States vs. Lewis, (TCN) Inmate accepted plea agreement and was sentenced October 21, 1999, to 3 month consecutive term for falsifying drug treatment documents in effort to access RDAP. Judge considered 8-9 month period defendant spent in SHU in relation to charge as mitigating factor.

MISCELLANEOUS

Former FCI Phoenix staff member [REDACTED] criminal trial for murder has been postponed to January 11, 2000, in Phoenix. Defendant was not employed with BOP at time of killing. b7C

STATISTICS

ADMINISTRATIVE REMEDIES

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
80	94	108	91	31	129	96	70	75	63		

FREEDOM OF INFORMATION/PRIVACY ACT:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	27	38	29	37	26	32	31	40	35	24		
CLOSED	24	34	41	36	24	31	25	46	34	26		
PENDING	19	23	11	12	14	15	21	15	16	14		
30 DAYS	1	3	1	1	1*	0	0	0	0	1*		
6 MONTHS	0	0	0	0	0	0	0	0	0	0		
APPEALS	0	1	1	2	2	3	3	2	3	0		

* WAITING FOR RECORDS FROM CONTRACT FACILITY

FOI/PA PENDING MORE THAN 20 DAYS ON June 30, 1999:

	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

ADMINISTRATIVE TORT CLAIMS

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	30	39	45	38	36	35	33	51	38	42		
CLOSED	31	43	40	38	38	48	25	34	50	32		
RECONSIDER	1	0	0	1	1	2	0	2	1	0		
PENDING	95	91	96	97	96	85	93	112	101	111		
OVER 6 MONTHS	0	2	0	3	1	0	0	4	4	2		

Tort Claim Investigations Over 60 Days:

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

* Claims currently being considered for settlement.

LITIGATION:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
OPEN AT BEGINNING OF MONTH	356	383	389	391	372	378	381	318	338	352		
NEW CASES RECEIVED	30	9	19	16	14	13	23	20	19	16		
HC	26	8	16	14	9	9	15	16	15	14		
FTCA	1	0	1	0	0	2	1	3	0	0		
BIVENS	3	1	2	2	5	2	4	1	3	2		
OTHER	0	0	0	0	0	0	3	0	1	0		
CLOSED	3	3	10	10	8	10	86 ¹	0	5	7		
PENDING AT END OF MONTH	383	389	391	397	378	381	318	338	352	361		
LITIGATION REPORTS COMPLETED	29	7	7	16	13	14	14	14	25	15		

Note: Report from MCC San Diego unavailable due to scheduled leave of legal staff.

1. Comprehensive audit was conducted July 6-9, 1999, resulting in an adjustment to number of pending cases. Cases pending at end of July is 318.



U.S. Department of Justice
Federal Bureau of Prisons

Dublin, California 94568

December 2, 1999

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

FROM: Harlan W. Penn, Regional Counsel

SUBJECT: Monthly Report for November 1999

LITIGATION

1. NEW CASES (3621(e))

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

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

Plata vs. Wands, (BRN) DAP petition complaining of 3621(e) ineligibility due to 2 point weapon enhancement.

Stirgus vs. Hood, (SHE) DAP petition complaining of 3621(e) ineligibility due to 2 point sentencing enhancement and 922(g) conviction.

2. NEW CASES (Non 3621(e))

Almanza vs. Perrill, (SET) Habeas petition seeking good conduct time for one year and one day sentence.

Ames vs. Pontesso, (PHX) Bivens action alleging confiscation of legal material, failure to accept administrative remedies and planting of drugs on inmate by staff members.

El-Williams vs. MCC Dental Director, (SDC) Bivens complaint alleging staff ignored medical and dental needs and inhibited exercise of religious beliefs.

English vs. Reno, (SAF) Bivens complaint seeking emergency shoulder surgery. Surgery scheduled prior to transfer to TCI but now inmate refuses operation by contract orthopedic surgeon affiliated with TCI.

Gill vs. Fitzpatrick, (LOM) Habeas petition in which inmate contests his award of jail credit.

Hatter vs. United States, (LOS) FTCA complaint alleging loss of personal property at MDC LA.

Holmes vs. United States, (SDC) FTCA complaint alleging slip and fall and improper medical care.

Pettis vs. United States Navy, (SDC) Title VII action filed by a former inmate. No BOP involvement although named as defendant.

Wharton vs. Hood, (SHE) Habeas petition contesting disciplinary action for writing to daughter in light of Warden imposed restriction.

Wharton vs. Hood, (SHE) Habeas petition contesting placement in Special Housing Unit.

3. SIGNIFICANT DEVELOPMENTS/APPEALS

Forgac vs. Perrill, (SET) Plaintiff appeals grant of defendants' motion for summary judgement.

Hogan vs. United States, (SDC) Depositions of staff anticipated for January 2000 in classification/transfer/failure to protect FTCA action.

Lott vs. Perrill, (SET) Stipulation of Dismissal filed on November 10, 1999, after petitioner received the requested prior custody credit.

Parmelee vs. Benov, (SDC) A final order granting defendants' motion for summary judgement received in Bivens case centering on rejection of publication.

Rogers vs. Lathers, (SDC) Habeas petition contesting DHO decision denied.

Romero vs. United States, (PHX) FTCA wrongful death action settled by AUSA without BOP settlement authority.

Trentadue vs. United States, (SDC) Denial of qualified immunity on appeal to 10th Circuit in case involving death of inmate allegedly caused by staff.

On November 4, 1999, oral arguments were held before the Ninth Circuit Court of Appeals on the retroactivity of new DAP program statement (Bowen, et al), director's discretion disqualifications (Gavis, et al)

Oregon vs. DeBolt, (SHE) Trial held in state criminal action against staff member charged with assault IV, harassment, and reckless driving which occurred on institution property. Eight prosecution witnesses testified after state complied with 28 C.F.R. § 16.22. Defense initially refused to comply with regulation and prosecutor was able to get 14 staff subpoenas quashed. Defense subsequently complied and three staff witnesses were approved. Trial concluded November 30 with conviction for harassment and acquittal on assault and reckless driving.

CRIMINAL CASE TRACKING

Criminal Cases												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Referred	29	19	22	18	21	22	16	12	13	22	31	
Accepted	1	4	0	1	4	4	4	0	1	4	0	
Declined	15	16	16	11	19	11	9	12	6	12	17	
Pending Decision	13	28	32	35	31	38	41	25	24	30	49	

4. NEW INFORMATION ON ACTIVE PROSECUTIONS

ASSAULT

United States vs. Amaya-Jaquez, (TCN) Inmate pled guilty to 3 counts of misdemeanor assault on staff. Sentencing anticipated for January, 2000.

United States vs. Lopiccolo, (LOM) Inmate on inmate assault on February 14, 1997, at FCI Lompoc. Status conference November 8, 1999. Trial continued until January 4, 2000.

ESCAPE

United States vs. Terrance Nikrasch, (LOM) FPC Lompoc 1995 escape along with 2 counterfeit charges. Sentencing continued until January 2000.

STATISTICS

ADMINISTRATIVE REMEDIES											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
80	94	108	91	31	129	96	70	75	63	92	

FREEDOM OF INFORMATION/PRIVACY ACT:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	27	38	29	37	26	32	31	40	35	24	13	
CLOSED	24	34	41	36	24	31	25	46	34	26	20	
PENDING	19	23	11	12	14	15	21	15	16	14	7	
30 DAYS	1	3	1	1	1*	0	0	0	0	1*	0	
6 MONTHS	0	0	0	0	0	0	0	0	0	0	0	
APPEALS	0	1	1	2	2	3	3	2	3	0	1	

* WAITING FOR RECORDS FROM CONTRACT FACILITY

FOI/PA PENDING MORE THAN 20 DAYS ON June 30, 1999:														
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	30	39	45	38	36	35	33	51	38	42	44	
CLOSED	31	43	40	38	38	48	25	34	50	32	57	
RECONSIDER	1	0	0	1	1	2	0	2	1	0	0	
PENDING	95	91	96	97	96	85	93	112	101	111	98	
OVER 6 MONTHS	0	2	0	3	1	0	0	4	4	2	5	

Tort Claim Investigations Over 60 Days:														
BRN	DUB	LOF	LOM	LOS	NEL	PHX	SAF	SDC	SET	SHE	TAF	TCN	TRM	TOTAL
0	4	0	1*	1	0	0	0	0	2	0	0	0	0	8

*Pending OIG

LITIGATION:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
OPEN AT BEGINNING OF MONTH	356	383	389	391	372	378	381	318	338	352	361	
NEW CASES RECEIVED	30	9	19	16	14	13	23	20	19	16	13	
HC	26	8	16	14	9	9	15	16	15	14	8	
FTCA	1	0	1	0	0	2	1	3	0	0	2	
BIVENS	3	1	2	2	5	2	4	1	3	2	3	
OTHER	0	0	0	0	0	0	3	0	1	0	0	
CLOSED	3	3	10	10	8	10	86 ¹	0	5	7	4	
PENDING AT END OF MONTH	383	389	391	397	378	381	318	338	352	361	370	
LITIGATION REPORTS COMPLETED	29	7	7	16	13	14	14	14	25	15	16	

1. Comprehensive audit was conducted July 6-9, 1999, resulting in an adjustment to number of pending cases. Cases pending at end of July is 318.



U.S. Department of Justice
Federal Bureau of Prisons

Dublin, California 94568

January 5, 2000

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

FROM: Harlan W. Penn, Regional Counsel

SUBJECT: Monthly Report for December 1999

LITIGATION

1. NEW CASES (3621(e))

Eller vs. Wands, (LOS) DAP petition complaining of 3621(e) ineligibility due to 2 point weapon enhancement.

Freeman vs. Clark, (TRM) DAP petition complaining of 3621(e) ineligibility due to no documented drug abuse problem during evaluation period.

Gaston vs. Clark, (TRM) DAP petition complaining of 3621(e) ineligibility due to 922(g) conviction.

Harwood vs. Andrews, (TCN) DAP petition complaining of 3621(e) ineligibility notwithstanding failure to complete entire residential program.

Johnson vs. Clark, (LOM) DAP petition complaining of 3621(e) ineligibility due to 2 point weapon enhancement.

Lee vs. Hood, (SHE) DAP petition complaining of 3621(e) ineligibility due to 922(g) conviction.

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

Phillips vs. Hood, (SHE) DAP petition complaining of 3621(e) ineligibility due to 2 point weapon enhancement and 922(g) conviction.

NEW CASES (Non 3621(e))

Askew vs. Ferriol, (SAF) Bivens action complaining of staff's failure to protect and provide proper medical after serious assault.

Buker vs. United States, (LOM) Bivens action alleging numerous constitutional violations in response to his reporting of perceived improprieties.

Kalka vs. Hawk, (PHX) Bivens action alleging exposure to environmental tobacco smoke recently transferred from District of Columbia. Status report filed in court 12/15/99.

Krause vs. Perrill, (SET) Habeas petition challenging sentence computation.

Leiva vs. Adams, (LOM) Habeas petition challenging a disciplinary action.

McElyea vs. Arpaio, (PHX) Habeas petition seeking sentence credit. Petition denied by magistrate.

SIGNIFICANT DEVELOPMENTS/APPEALS

Curtis vs. Bailey, (SAF) Habeas petition challenging ineffective assistance of counsel, prosecutorial misconduct dismissed 12/09/99.

Davidson vs. Bailey, (SAF) Previously denied habeas petition contesting ineffective assistance of counsel and sentencing issues on appeal to 9th Circuit.

Decker vs. Fitzpatrick, (LOM) DAP habeas petition contesting ineligibility due to 2 point weapon enhancement granted in that petitioner is to be determined eligible upon successful completion of treatment program.

Dozier vs. Fitzpatrick, (LOM) Court ordered BOP to review 1971 manslaughter conviction in DAP habeas petition contesting ineligibility due to same. Review indicated manslaughter conviction was negligent and no other disqualifying factor exists.

Kalka vs. Pontesso, (PHX) Bivens complaint dismissed for plaintiff's failure to demonstrate 3 cubic foot limitation on legal matter was retaliatory or that he was denied legal idles or job changes.

Maeby vs. Clark, (TRM) Adverse R&R submitted in DAP habeas petition denying eligibility based on 2 point weapon enhancement. Objections to R&R filed.

Parmelee vs. Benov, (SDC) Bivens complaint contesting rejection of publication, previously granted summary judgement on behalf of defendants, appealed to 9th Circuit by inmate.

State of Oregon vs. DeBolt, (SHE) Staff member sentenced to 2 years probation, anger management, 80 hours community service, no contact with victim, and \$619 fine in conviction for harassment. Same trial resulted in acquittal on charges of assault and reckless driving.

United States vs. Hyson, (DUB) Self surrender date of 2/4/2000 set for former employee sentenced to 5 months custody, 3 years supervised release on charges of sex with ward and false statements.

United States vs. Ressam, (SET) Special administrative measures in accordance with 28 C.F.R. § 501.3 imposed on detainee arrested for attempting to smuggle explosives and timing devices into United States.

Vaccaro vs. Dobre (NEL) Defendant's filed their Reply to the Opposition to the Motion to Dismiss in this \$10m Bivens case for deliberate indifference of serious medical need - low back condition. The case dates back to 1991 and with its convoluted history the US Attorneys Office is hopeful the Motion will be granted and the case brought to a satisfactory end.

White vs. Cobos, (LOS) DAP habeas petition contesting ineligibility due to 922(g) conviction granted; BOP ordered to reconsider eligibility.

CRIMINAL CASE TRACKING

Criminal Cases												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Referred	29	19	22	18	21	22	16	12	13	22	31	14
Accepted	1	4	0	1	4	4	4	0	1	4	0	0
Declined	15	16	16	11	19	11	9	12	6	12	17	18
Pending Decision	13	28	32	35	31	38	41	25	24	30	49	45

NEW INFORMATION ON ACTIVE PROSECUTIONS

ASSAULT

United States vs. Sandoval-Parra, (SAF) Inmate sentenced to 7 month term for assault on correctional officer.

United States vs. Mendoza-Aguilar, (TCN) Prosecution accepted for 11/24/99 inmate assault on correctional officer with fists which resulted in contusions, abrasions.

United States vs. Carlos Villegas, (LOM) Inmate on inmate assault that occurred on 12/14/96, at USP Lompoc. Indictment returned on 12/10/99.

United States vs. Rowe, (LOM) 1995 riot case. Indictment involving six inmates returned 12/21/99. Indictment involves 4 counts of rioting and 13 counts of Assault.

United States vs. Kevin Guyton, (LOM) Inmate on staff assault on 08/14/97. Indictment returned 12/28/99.

STATISTICS

ADMINISTRATIVE REMEDIES											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
80	94	108	91	31	129	96	70	75	63	92	73

FREEDOM OF INFORMATION/PRIVACY ACT:												
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
RECEIVED	27	38	29	37	26	32	31	40	35	24	13	39
CLOSED	24	34	41	36	24	31	25	46	34	26	20	21
PENDING	19	23	11	12	14	15	21	15	16	14	7	25
30 DAYS	1	3	1	1	1*	0	0	0	0	1*	0	2**
6 MONTHS	0	0	0	0	0	0	0	0	0	0	0	0
APPEALS	0	1	1	2	2	3	3	2	3	0	1	0

* WAITING FOR RECORDS FROM CONTRACT FACILITY

**Requests received from Central Office within 5 days of 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	30	39	45	38	36	35	33	51	38	42	44	41
CLOSED	31	43	40	38	38	48	25	34	50	32	57	32
RECONSIDER	1	0	0	1	1	2	0	2	1	0	0	1

ADMINISTRATIVE TORT CLAIMS												
PENDING	95	91	96	97	96	85	93	112	101	111	98	108
OVER 6 MONTHS	0	2	0	3	1	0	0	4	4	2	5	2

Tort Claim Investigations Over 60 Days:														
BRN	DUB	LOF	LOM	LOS	NEL	PHX	SAF	SDC	SET	SHE	TAF	TCN	TRM	TOTAL
0	5	0	1*	5	0	0	0	0	0	1	0	0	0	12

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