

OPTIONAL FORM 99 (7-90)

**FAX TRANSMITTAL**

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UNITED STATES GOVERNMENT

**memorandum**

Mid-Atlantic Regional Office, Annapolis Junction, MD 20701

DATE: December 6, 1994  
 REPLY TO: Bill Burlington, Regional Counsel  
 ATTN OF: Mid-Atlantic Region  
 SUBJECT: November 1994 Monthly Report  
 TO: Wallace H. Cheney, General Counsel  
 ATTN: Nancy Redding, Executive Assistant

*Joyal Tolzak*

ADMINISTRATIVE REMEDIES	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Received	104	92	122	94	110	157	93	112	84	63	76	
Answered	111	93	93	111	120	131	124	102	110	63	58	
TORT CLAIMS	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	231	224	182	215	206	187	204	221	183	180	155	
# Received	71	60	85	62	74	67	61	63	61	59	72	
# Answered	78	92	61	70	93	53	50	96	63	99	74	
# Pending	224	182	215	206	187	204	221	183	180	155	167	
# Over Six Month	0	0	0	5	0	3	0	1	1	0	0	
FOI/PRIVACY	JAN	FEB	MAR	APR	MAY	JUN*	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	194	140	159	117*	91	42	120	74	94	82	59	
# Received	58	122	66	32	48	115	52	95	78	45	61	
# Answered	112	103	72	58	81	57	98	74	94	69	56	
# Pending	140	159	153	91	42	120	74	94	82	59	65	
# Over 30 Days	79	79	72	62	25	30	43	13	24	31	29	
LITIGATION	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Cases Pending	177	186	201	197	199	218	224	224	263	267	283	
New Cases Received	19*	26	22	19	23	24	17*	29*	12	9	13	
Habeas Corpus	6	8	8	6	7	10	9	7	2	4	2	
Bivens	11	14	5	8	8	13	6	16	7	2	6	
FTCA	1	2	3	2	4	1	1	4	1	1	3	
Other	1	2	6	3	4	0	1	2	2	2	2	
Cases Closed	8	11	21	19	6	18	11	7	6	12	10	
Cases Pending	186	201	197	199	218	224	237	263	267	283	291	
Lit Reports Completed	11	12	25	16	23	21	28	19	19	22	17	
Trials/Hearing or Trials	0	0	1	1	2	3	0	0	0	0	1	
Settlements/Awards	0	0	1	1	1	0	1	1	0	0	0	
Settlements/Awards (\$ in Thousands)	\$0	\$0	\$0.1	\$10	\$155	0	\$.05	\$.07	0	0	0	

\*Corrected figure.

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ITEMS OF INTEREST, PERSONAL LEAVE, BUSINESS TRIPS, MOVES, ETC.

Bill Burlington, Regional Counsel, will be Acting Warden at FCI Ashland December 7-9, 1994, and on annual leave December 16, 21-23 and 26-30.

Wanda Hunt, Deputy Regional Counsel, will be on annual leave December 27-30.

Marian Callahan, Assistant Regional Counsel, will be on annual leave December 19-23.

Kathy Harris, Paralegal Specialist, will be on annual leave December 23-30.

Tom Read, Attorney, FCI Memphis, will be on annual leave December 8-9, and 27-30.

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SITUATION OF INTEREST, CONTACT WITH FEDERAL BENCH, HAZARDOUS WASTE SITES, ETC.:

Suicide Investigation - FCI Butner - On November 23rd, inmate CRESS, James, committed suicide at FCI Butner. Due to some rather unusual circumstances about the death, the FBI has decided to investigate this death to rule out homicide. The region is going to conduct a psychological autopsy next week, and I have talked with the Regional Director about having the report done at my direction

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EEO Hearing - Paralegal Trainee Debra Griffin - On November 22nd, I testified in an EEO hearing in Dallas, in response to former paralegal trainee Debra Griffin's allegation that she was transferred from the trainee program due to her race (African American). Steve Simon, LMR Branch, represented the Bureau. The case has been taken under submission with a decision expected around January 1, 1995.

FCI Milan - in response to the possibility of a hazardous waste dump and incinerator being placed in close proximity to the institution, the government's title to the land was researched. It was determined that the government owns the property fee simple which means we also control the mineral and water rights. The institution had been informed that our response to the placement of the waste site would carry more weight if we owned the land fee simple. This information has

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FCI Morgantown - Judge Maxwell, Northern District of West Virginia, has issued two preemptive orders against transferring inmates in INS cases. These two orders followed a show cause order in Zack v. Warden of FCI Morgantown, 2:94CV178, a non-INS case following a disciplinary transfer. Bob Babineau, CMC, has suggested using the remarks section of a SENTRY screen referenced by designators to ensure notification to legal where a court or unusual situation may cause problems with an inmate transfer.

FMC Lexington - We recently received three complaints filed under the FTCA by inmates previously confined at FMC Lexington. Two complaints name Eddie Smith as the perpetrator, while the third complaint does not identify a specific individual. Inmate allegations were investigated against Mr. Smith, but there was not enough evidence to take any action. Mr. Smith was finally fired after one of the inmate complainants wore a "wire" during one of their sexual encounters. The administrative complaints were denied based on Mr. Smith being outside the scope of his employment.

FCI Petersburg - USA v. Weaver, E.D.Va., Inmate Weaver plead guilty to possession of a dangerous weapon and assault with intent to do serious bodily harm. This incident involved an inmate-on-inmate assault.

SUBSTANTIVE PLEADINGS (COMPLAINT, MOTION FOR SUMMARY JUDGMENT, ETC.): None

SETTLEMENTS: None

ADVERSE DECISIONS OR SIGNIFICANT DECISIONS:

Michelle Murray v. Officer Harris, 93-259, E.D. Ky., FCI Ashland

On November 29, 1994, a jury deliberated less than 30 minutes before delivering a favorable verdict for Tim Harris, a Correctional Officer at FCI Ashland. Officer Harris had been accused of improper sexual contact during a visual search of inmate Michelle Murray. Inmate Murray is a pre-operative transsexual who filed suit against numerous Ashland staff, alleging verbal and physical harassment. All defendants except Officer Harris had been dismissed earlier by the court. This case has attracted considerable media attention in the local area. Inmate Murray has now been transferred to Milan.

UPDATE ON CASES, TRIALS OR HEARINGS, ETC. NOTED IN PRIOR REPORTS:

Taylor v. United States, 5:94-CV-372-D1, E.D.N.C., FPC Seymour Johnson

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On November 29, 1994, we received a favorable ruling that the Inmate Accident Compensation Act covers injuries suffered outside the institution during work assignments with other federal agencies. Plaintiff Taylor lost his finger while splitting logs for the Air Force as part of his prison work assignment on Seymour Johnson, AFB. Plaintiff was represented by a law firm who took the position that Title 18 U.S.C. Section 4126 only covers injuries suffered within a Bureau of Prisons institution.

Mount v BOP, 94-268-GK, D.D.C., FCI Petersburg

Plaintiff filed a motion alleging that due to the large volume of legal material he had, he was required to leave a portion of it behind when he was transferred from Ft. Worth and Petersburg. Petersburg was not aware that a motion was filed, but received a court order this week ordering the institution to provide the plaintiff with the withheld materials. In response a declaration was prepared stating that the plaintiff had been provided all his property and material upon his departure from Petersburg.

REPRESENTATION NOT RECOMMENDED FOR STAFF: None

SIGNIFICANT FTCA CLAIMS: None

SIGNIFICANT ADMINISTRATIVE REMEDIES: None

MEDICAL MALPRACTICE CASES: None