



**LITIGATION  
NOV**

	<b>JAN DEC</b>	<b>FEB</b>	<b>MAR</b>	<b>APR</b>	<b>MAY</b>	<b>JUN</b>	<b>JUL</b>	<b>AUG</b>	<b>SEP</b>	<b>OCT</b>
Cases Pending	277	279	296	291	301	311	322	314	310	297
285	278									
New Cases Received	8	32	12	26	12	17	18	13	13	34
17	23									
Habeas Corpus	3	22	5	13	5	8	12	2	5	13
10	11									
Bivens	4	4	5	11	3	6	4	4	6	13
2	10									
FTCA	1	4	2	1	4	2	0	4	1	3
3	2									
Other	0	2	0	1	0	1	2	3	1	5
2	0									
Cases Closed	4	19	26	9	8	5	11	4	10	11
6						18				
Cases Pending	279	296	291	301	311	322	314	310	297	285
278	265									
Lit Reports Completed	16	22	15	21	18	17	20	13	13	17
23	26									
Cases/Hearings or Trials	0	0	0	1	2	0	0	0	0	0
1	1									
Settlements/Awards	1	0	0	2	2	1	1	0	0	0
0	0									
\$ Settlements/Awards	\$1.5	0	0	\$500.15	\$.53	\$.15	\$150	0	0	0
0	0									

(\$ in Thousands)

\*We are in the process of obtaining settlement approval from the Central Office for these claims.

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

Bill Burlington, Regional Counsel, will be on annual leave January 27-31, 1997.

We say goodbye this month to Carolyn Lanphear. Carolyn will be going to FCI Cumberland, January 19, 1997. We wish her the very best of luck in her new assignment.

Bob Blackburn, Legal Tech, USP Terre Haute, will be on annual leave December 30 thru January 10, and in annual training January 27-31, 1997.

Mike Robar, Paralegal, FCI Manchester, will be institution duty officer January 14-21, 1997.

Mike Bredenberg and Michelle Fuseyamore, Attorneys, FCC Butner, will be co-instructing annual refresher training in the areas of Ethics/Standards of Conduct and Use of Deadly Force.

FCI Memphis is beginning Annual Refresher Training this week. Matthew Mellady, Attorney, will be instructing the session on legal issues, and Kathy Smallwood, Paralegal, will be involved in the HNT class instruction.

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

**FCC Butner** - The institution conducted four mental health commitment hearings via video teleconference during December.

**USP Terre Haute** - several staff members will be traveling to Wisconsin for the Farmer v. Brennan trial on January 21, 1997.

**Ensign Amendment** - While I have not actually seen the suit, I heard on the news that either Penthouse or Hustler has challenged the military's refusal to carry sexually explicit magazines in the Commissary.

**FCI Milan** - The U.S. District Court for the Eastern District of Michigan forwarded newly adopted rules for PLRA as a result of a from a meeting between Kevin Walasinski, Attorney, FCI Milan, and district court staff.

**FMC Lexington** - On December 9, 1996, a hearing was held pursuant to 18 U.S.C. § 4246 in U.S. v. Cosey. Magistrate James Todd subsequently entered an Order committing inmate Cosey to the custody of the Attorney General for continued hospitalization and treatment until the State of Georgia assumes responsibility for him or until such time his release would not pose or create substantial risk of damage to persons or property. Cosey believes certain individuals in Athens, Georgia, are killing members of his family through their control of biological/chemical machinery and these persons are in custody at the student activities center on the University of Georgia campus.

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

#### SETTLEMENTS:

**FCI Butner** - Peaslee v. Reno - In December, we received a final agency decision finding sexual harassment on the part of a former FCI Butner supervisor, Dr. Chris Norris. The

complainant, Dr. Donna Peaslee, claimed Dr. Norris made advances at her, and when she refused them, began a course of sexual harassment. In finding discrimination, the Complaint Adjudication Officer found FCI Butner was responsible for Dr. Norris' actions, despite the fact when we first learned of such behavior, we proposed that Dr. Norris be terminated (he eventually resigned). We have now been asked to attempt settlement with the complainant.

**ADVERSE DECISIONS OR SIGNIFICANT DECISIONS:**

**FPC Alderson - Leacock v. Reno** - After filing our motion for a new trial in this case, a hearing was held in early December, where the Judge strongly recommended that the two sides try to settle, rather than force the court to rule on the government's motion for a new trial, suggesting that he would probably deny the motion and let Defendants take an appeal. This case stems from an adverse jury verdict, finding racial discrimination in the Bureau's firing of an African American physician at Alderson. The jury awarded \$30,000 and the plaintiff's attorneys have requested \$97,000 in attorney fees. The parties submitted that for \$60,000 the case could very likely be settled. We have now made a formal \$60,000 settlement offer to plaintiff's attorney.

**FCI Butner - Rish v. Johnson** - We recently received a denial of our second Motion for Summary Judgment in this case. Inmate Rish, along with two other former Butner inmates, allege they were exposed to HIV and Hepatitis B, when Butner staff failed to provide them with appropriate protective gear in connection with their work as inmate orderlies in the hospital unit. As part of our motion we raised Qualified Immunity, and Section 803 of the PLRA, which requires proof of physical injury before you have a remedy for emotional damages. The Department has indicated that they are not inclined to recommend appeal on these issues. We are now requesting that if the Department does not allow an appeal, that private counsel be appointed for the three remaining individual defendants.

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

**FCI Memphis - Ashley v. BOP** - On December 17, 1996, even though this was supposed to have been a scheduling conference, because the plaintiff had not responded to the government's Motion, the Judge gave him the opportunity to do so in open court. Rather than respond to the Motion, plaintiff merely reargued the facts of his complaint. The AUSA, Brian Quarles, reiterated that plaintiff has failed to establish the burden and has not demonstrated a prima facie case for negligence or constitutional deprivation in either his complaint or his response to the government's Motion. This case arises out of an assault that occurred against Ashley during the riot in October of 1995 and a disagreement over his classification. The court did not make a ruling.

**REPRESENTATION NOT RECOMMENDED FOR STAFF:** None

**SIGNIFICANT FTCA CLAIMS:** None

**MEDICAL MALPRACTICE CASES UPDATE:** None

**SIGNIFICANT ADMINISTRATIVE REMEDIES:** None

**NEW RFRA CASES AND UPDATES ON PREVIOUSLY REPORTED CASES:**

**USP Terre Haute - Abdul-Shaheed v. Kimibler, et al.**, TH 96-268-C-R/H

This is a Bivens action filed against correctional officers at USP Terre Haute. The main thrust of the case consists of allegations of excessive force. However, the inmate does raise a First Amendment issue regarding destruction of religious material during the shakedown.

**ALTERNATIVE DISPUTE RESOLUTION EFFORTS:** None

**18 U.S.C. § 3621(e) LITIGATION:**

**FPC Alderson - Hall v. Wise** - in a companion case to Wiggins v. Wise (previously reported) the court has ruled that a conviction for being a felon in possession of a firearm is not a violent offense, and that the Bureau's Program Statement, Crimes of Violence, is ultra vires, to the extent that it does not follow the 4th Circuit caselaw of 18 U.S.C. § 924(c). We are getting tremendous pressure from the Federal Public Defender to reclassify the inmates who have won their cases. Our position has been that the court invited the Bureau to develop a new Program Statement, and that is what we are doing. Once a new Program Statement is developed, we will implement it at Alderson. Until then, the women will not be classified for early release.

**FCI Milan - Alston v. Pontesso**, challenges BOP's designation of possession of firearm by a prohibited person as a crime of violence for purposes of eligibility for early release.

Rasnake v. Pontesso - inmate challenges BOP's determination that his two point enhancement for possession of a weapon makes his instant offense a crime of violence and makes him ineligible for the year-off provisions of VCCLEA.

**FCI Ashland - Childs v. USBOP** - in addition to VCCLEA claims, this habeas petition raises due process and equal protection claims. The Magistrate Judge issued a R&R recommending that the exhaustion requirement be waived in light of the inmate's release date. Objections were filed with the Court seeking dismissal for failure to exhaust as

mandated under the PLRA. The petition fails to state how the inmate's due process rights were violated. The petition claims that white inmates are routinely granted early release consideration, but black inmates are not.

**FMC Lexington - McGriff v. Beeler** - petitioner challenges the BOP's interpretation of his current offense of Felon in Possession of a Firearm, 922(g), as a crime of violence under 3621(e).

#### **SIGNIFICANT NEW CRIMINAL REFERRALS SINCE LAST MONTH'S REPORT:**

**FCI Petersburg** - An indictment was returned charging inmates James Poteet, Reg. No. 23675-083, Miles Clarke, Reg. No. 23674-083, and Correctional Officer Gregg Smith with introduction and conspiracy to possess and possession of controlled substances with intent to distribute. The inmates are also being charged with bribery of a public official; with the officer being charged with receipt of a bribe by a public official. The indictment charges that from January 1995 to September 1996, Officer Smith allegedly supplied the inmates with marijuana, which they used and resold to others. Defendants were arraigned on December 31, 1996, and all plead not guilty. Officer Smith requested and was appointed an attorney. Trial is scheduled for March 3, 1997.

**FCI Memphis** - On December 15, 1996, FCI Memphis staff observed Sandra Rojas pass a potato chip bag to inmate Shell in the visiting room. The bag was seized and was found to contain small bags of marijuana. FBI and local law enforcement officials were called. Ms. Rojas was detained and ultimately arrested. Additional marijuana was found in her motel room. The matter has been referred to the U.S. Attorney's Office for prosecution.

#### **UPDATE ON PREVIOUSLY REPORTED CRIMINAL MATTERS:**

**FCI Milan** - Inmate Christopher Snow has a trial date of January 14, 1997, for possession of contraband in prison and assault of federal employee. The inmate rejected a plea agreement to combine these charges with a pending drug charge.

**FCI Milan** - Inmate Morrison is scheduled for trial January 18, 1997, for two counts of attempted murder, two counts of aggravated assault, and one count of witness tampering.

**FCI Beckely** - The prosecution of inmate Hudgins for possessing contraband (marijuana) will start January 7, 1997, and is expected to last for two days. This is Beckley's first criminal prosecution.

#### **SUCCESSFUL PROSECUTIONS OR ANY ACQUITTALS SINCE LAST MONTH'S REPORT:**

**FCI Petersburg - U.S. V. Arlin Raney** - a one day trial was held on December 5, 1996, in this criminal trial in which Raney was charged with escape from the Petersburg Camp in 1995. After approximately 10 minutes of deliberation, the jury returned a verdict of guilty. Sentencing is scheduled for February 17, 1997.

**USP Terre Haute** - On December 10, 1996, William Smith, Reg. No. 87774-012, plea bargained for a sentence of 18 consecutive months with three years of supervised release for an incident that occurred in the visiting room on March 5, 1994. During a visit by Smith's wife, Bonita Smith, she provided Smith with heroin. Although Bonita Smith has not yet been sentenced, the AUSA thinks that she will sign a plea bargain within the next few weeks.

REHABILITATION ACT: None

New Litigation Cases by Institution and Type  
Received During the Month of December 1996

	ALD	ASH	BEC	BUT*	CUM	LEX	MAN	MEM	MIL	MRG
BIV	0	0	0	1	1	2	1	1	1	0
FTCA	0	0	0	0	0	1	0	1	0	0
HC	0	1	0	0	0	1	0	1	3	5
OTH	0	0	0	0	0	0	0	0	0	0
TOT	0	1	0	1	1	4	1	3	4	5

New Litigation Cases by Institution and Type  
Received Calendar Year to Date

	ALD	ASH	BEC	BUT*	CUM	LEX	MAN	MEM	MIL	MRG
BIV	1	2	0	2	13	8	11	2	11**	1
FTCA	3	2	1	2	1	3	4	7	3	0
HC	21	4	7	13	2	16	4	5	10	15
OTH	1	0	0	1	3	2	1	1	2	0
TOT	26	8	8	18	19	29	20	15	26	16

\* Represents the Complex

\*\* One case subtracted because it was inadvertently counted twice.