

## memorandum

DATE: February 6, 2002  
 REPLY TO: *Matthew W. Mellady for*  
 Bill Burlington, Regional Counsel  
 ATTN OF: Mid-Atlantic Region

Mid-Atlantic Regional Office, Annapolis Junction, MD 20701

SUBJECT: January 2002 Monthly Report  
 TO: Christopher Erlewine, General Counsel  
 ATTN: Linda DuBose, Executive Assistant

ADMINISTRATIVE REMEDIES	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
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Received	116											
Answered	116											

TORT CLAIMS	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
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# Pending	110											
# Received	46											
# Answered	62											
# Pending	101											
# Over Six Month	2*											

\*Serious personal injury and complex false imprisonment claims still under review.

/PRIVACY	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
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# Pending	22											
# Received	47											
# Answered	30											
# Pending	40											
# Over 20 Working Days	4*											

LITIGATION	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
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Cases Pending	75											
New Cases Received	16											
Habeas Corpus	6											
Bivens	3											
FTCA	2											
Other	5											
Cases Closed	9											
Cases Pending	82											
Lit Reports Completed	8											
Cases/Hearings or Trials	0											
Settlements/Awards	0											
\$ Settlements/Awards	0											
(\$ in Thousands)												



**SIGNIFICANT DECISIONS OR ADVERSE DECISIONS:**

**MXR CLC** - FCI Memphis and Petersburg - Tyrone Lee v. Joe Young, (discipline/good conduct time) - The case was dismissed by the court without requiring a response from the government. Petitioner challenges the loss of good conduct time resulting from discipline proceedings at FCI Petersburg prior to his transfer to FCI Memphis. He specifically contends that staff violated his due process rights during the discipline process (no incident report within 24 hours and no UDC hearing within three days). In conducting an extensive Sandin analysis, the court determined that to the extent Petitioner has been disallowed good conduct time, "any effect on the total period of time he will serve in prison is too uncertain and attenuated to constitute a deprivation of a liberty interest." The court then determined that he was not entitled to any procedural protections delineated by Wolff or its progeny. The inmate appealed and we drafted a reply brief, arguing that the inmate has a protected liberty interest in revoked good conduct time, and that Wolff did apply. We then noted that he did not point to a Wolff violation, that we afforded him all process that was due, and that the district court's dismissal should be upheld.

**LEXINGTON CLC** - FMC Lexington - [REDACTED] filed a motion with the N.D. Ill. for a downward departure of his sentence due to his medical condition. [REDACTED] is scheduled to be resented on Feb. 14. [REDACTED] theory is FMC Lexington was slow to respond to a bowel obstruction, so therefore he is in danger if he has a cardiac episode because Lexington will similarly respond slowly. Joe Tang did a lengthy declaration for Dr. Growse, Clinical Director, completely refuting this theory. On Feb. 1, [REDACTED] filed another lengthy motion further claiming poor medical care. Contrary to these allegations, the medical records indicate [REDACTED] received excellent, timely care. b7C

**SETTLEMENTS:**

**MXR CLC** - Salvateria v. U.S. - In an effort to move this Cumberland, medical malpractice case to settlement, we are working with Dr. Kendig to set up an independent medical examination (IME) of former inmate Salvateria. [REDACTED] b5

**LEXINGTON CLC** - FMC Lexington - [REDACTED] TRT-MXR-2001-06451 - This claim asserts that the inmate was injured when a piece of the ceiling in his cell fell on him while he was asleep in his bed. Investigation reveals water pipe problems and liability vests against the U.S. Dr. Ramirez is reviewing the inmate's allegations of insomnia and headaches and we will approach the inmate's counsel with a settlement offer. b7C

**BECKLEY CLC** - FCI Beckley - [REDACTED] Administrative Tort Claim - The inmate seeks \$2.5 million for headaches and damage to his left eye which occurred when a contract pharmacist gave him the wrong prescription eye drops. The inmate appears to have suffered little if any physical injury. We are currently awaiting approval from Central Office for settlement authority. b7C

**False Imprisonment Tort Claims** - As a result of two claims where inmates were erroneously kept in custody beyond their release dates we have circulated a memo, prepared by Larry Collins, to ISM and Community Corrections, suggesting with short term sentences, we need a more detailed analysis of possible jail credit before we designate the inmate. In each of our two cases, the CCM staff did not appreciate the extent of jail credit owed the inmate, which in turn helped account for the inmate being



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designated to an institution, when the term had already expired, or was about to expire.

LEXINGTON CLC - FCI Manchester - [REDACTED] TRT-MXR-2001-04493, is one of the tort claims for a late release mentioned above. Settlement negotiations continue with the receipt of a \$100,000 counter offer by the inmate's lawyer. We will be presenting a counter offer of approximately \$15,000. b7C

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

LEXINGTON CLC - FCI Ashland - Rogerick Vanzant v. USA, et al. - Plaintiff alleges his First Amendment rights, RFRA rights and equal protection rights under the Equal Protection Clause were violated by his unit counselor and manager. Vanzant received incident reports for poor sanitation, and was also sanctioned for leaving his unit to watch Muslim tapes in the chapel, even though he was on unit restrictions. [REDACTED] b2

**CRIMINAL:**

BECKLEY CLC - Dennis Thomas, former Chaplain, FCI Beckley, was sentenced January 28, 2002, in Huntington, West Virginia, by Judge Chambers, to a 41-month sentence for Possession with Intent to Distribute Heroin, in violation of 21 USC §841(a)(1). The Court found Thomas was responsible for 14 grams of heroin. Under the guidelines the base offense level was 16. In accordance with 2D1.1(b)(2), the base offense level was increased by two points because the object of the offense was the distribution of a controlled substance in a correctional facility. The level was also increased by two points pursuant to 3B1.3, as Thomas abused a position of public trust in a manner that significantly facilitated the commission of the offense. With an overall offense level of 20 and no criminal history points, the guideline range was 33 - 41 months. The Judge sentenced Thomas to the maximum penalty allowed under the guidelines.

BECKLEY CLC - FCI Beckley - [REDACTED] and [REDACTED] were previously indicted for Assault (18 U.S.C. § 111(a)(1) and 111(b)). The charges stem from the disturbance at FCI Beckley in December 1999. A new trial date has not been set. b7C

BECKLEY CLC - FPC Alderson - [REDACTED] former Correctional Officer, has been indicted for Abusive Sexual Contact, in violation of 18 U.S.C. § 2244. Trial has been postponed. A new trial date has not been set. b7C

MXR CLC - FCI Morgantown - U.S.A. v. Coger - This case has been set for trial to begin February 11, 2002. It involves a former FCI Morgantown staff member who has been charged with extortion pursuant to 18 U.S.C. § 872(f), Extortion by Officers or Employees of the U.S. The defendant was allegedly extorting money and favors from inmates at the institution.

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

District of Columbia Prisoners in Virginia Facilities - We have had several habeas petitions filed in the E.D. Virginia, where the inmate names as custodian the Virginia Warden, even though the underlying issue involves a BOP sentence computation or a decision by the U.S. Parole Commission. Judge Ellis has asked the U.S. Attorney's Office to brief the issue of who is the proper respondent in such cases. This issue is of some importance, as some in the U.S. Attorney's Office initially felt



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these petitions should be filed in the District of Columbia, not the E.D. Virginia. After much discussion, they will now concede the petitions are properly filed against the Virginia warden in the E.D. Virginia, but that given the federal interests, the U.S. Attorney's Office should be permitted to respond on behalf of the BOP or U.S. Parole Commission.

Joseph Washington - The State of Ohio and the U.S. Attorney's Office for the Southern District of Ohio have written the Attorney General and Director Hawk Sawyer, complaining that the BOP refused to follow a state court order that called for consecutive service of inmate Washington's state and federal sentences. We originally refused to take this inmate, citing the federal court J & C which called for concurrent service of the two sentences. However, after being approached by the U.S. Attorney's Office, the court has now issued a new order which indicates the court would support the BOP assuming primary custody, which in effect means the two sentences will be consecutive. Since Ohio is now in NERO, we are working with Hank Sadowski to arrange for the transfer of primary custody to the BOP. [REDACTED] b2

LEXINGTON CLC - FMC Lexington - Joe Tang worked with the Clinical Director Michael Growse, Dr. Mike Nelson, HSD, Labor Law Deputy Tamara Chrisler, and the HRM at Victorville, on a disability issue regarding a job applicant for Victorville, CA, whose physical was done by Dr. Growse locally as a courtesy. The candidate reported he was recently diagnosed with MS, though he is in good condition now and can pass Glynco and do all the physical requirements of being a CO. [REDACTED] b5 b6

LEXINGTON CLC - FMC Lexington - In the Spring of 2001 a folder containing sensitive staff information was inadvertently left unattended for less than two hours on a desk in UNICOR where inmates have access. The Union brought this to the attention of the Warden, who was already aware of the incident and had taken steps to address the issue. After several unsuccessful attempts with the Union, the Warden issued a memorandum to all staff concerning the event and procedures to follow if they felt private information had been compromised. The Union filed a grievance which proceeded to arbitration. The ALJ decided that the Warden needed to provide staff with another notice. The Union obtained no more relief than was previously provided by the Warden in her first memorandum. After notice was provided, a class action form was circulated by a local law firm by staff at FMC Lexington. For a fee of \$25.00 and 40% contingency fee the firm will file an action based on violation of the Privacy Act. Legal staff were informed that the suit may be filed as early as this week, and have alerted the U.S. Attorney's Office.

**Personnel Issues:**

[REDACTED]



UNITED STATES GOVERNMENT

## memorandum

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**LEXINGTON CLC** - FMC Lexington - Robert Krilich filed a motion with the N.D. Ill. for a downward departure of his sentence due to his medical condition. Krilich is scheduled to be resentedenced on Feb. 14. Krilich's theory is FMC Lexington was slow to respond to a bowel obstruction, so therefore he is in danger if he has a cardiac episode because Lexington will similarly respond slowly. Joe Tang did a lengthy declaration for Dr. Growse, Clinical Director, completely refuting this theory. On Feb. 1, Krilich filed another lengthy motion further claiming poor medical care. Contrary to these allegations, the medical records indicate Krilich received excellent, timely care.

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**LEXINGTON CLC** - FMC Lexington - Munoz, Alfredo (58668-004) TRT-MXR-2001-06451 - This claim asserts that the inmate was injured when a piece of the ceiling in his cell fell on him while he was asleep in his bed. Investigation reveals water pipe problems and liability vests against the U.S. Dr. Ramirez is reviewing the inmate's allegations of insomnia and headaches and we will approach the inmate's counsel with a settlement offer.

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**CRIMINAL:**

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BECKLEY CLC - FCI Beckley - Myron Bonds, Reg. No. 12444-058, and Kelly Baugh, Reg. No. 35370-083 were previously indicted for Assault (18 U.S.C. § 111(a)(1) and 111(b)). The charges stem from the disturbance at FCI Beckley in December 1999. A new trial date has not been set.

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b5  
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**Personnel Issues:**

[REDACTED]

b6



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## Mid-Atlantic Region Litigation for the Month of January 2002

MARO Consolidated Legal Center						Butner Consolidated Legal Center					
	Bivens	HC	FTCA	Other	Total		Bivens	HC	FTCA	Other	Total
FCI CUM	2	0	1	0	3	FCC BUT	0	1	0	3	4
FCI MEM	0	1	0	0	1	FCI PET	0	1	0	0	1
						PET MED	0	0	0	0	0
FCI MRG	0	0	0	0	0	FPC SEY	0	0	0	0	0
MXR	0	1	0	0	1	Winton	0	0	0	0	0
Hazelton	0	0	0	0	0	VA Contracts	0	0	0	0	0
Ohio Co.	0	0	0	0	0		0	2	0	3	5
	2	2	1	0	5						

Lexington Consolidated Legal Center						Beckley Consolidated Legal Center					
	Bivens	HC	FTCA	Other	Total		Bivens	HC	FTCA	Other	Total
FMC LEX	0	1	1	2	4	FCI BEC	0	0	0	0	0
FCI ASH	1	0	0	0	1	FPC ALD	0	0	0	0	0
FCI MAN	0	1	0	0	1	USP LEE	0	0	0	0	0
Big Sandy	0	0	0	0	0	Glenville	0	0	0	0	0
McCreary	0	0	0	0	0	McDowell	0	0	0	0	0
	1	2	1	2	6		0	0	0	0	0

	Bivens	HC	FTCA	Other	Total
Regional Total	3	6	2	5	16