

# memorandum

DATE: December 6, 1999

Mid-Atlantic Regional Office, Annapolis Junction, MD 20701

REPLY TO: Bill Burlington, Regional Counsel  
ATTN OF: Mid-Atlantic Region

SUBJECT: November 1999 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
Received	196	152	244	182	171	209	187	207	178	156	149	
Answered	166	189	176	172	186	202	235	153	213	155	120	

TORT CLAIMS	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	215	231	220	228	221	245	233	218	189	173	180	
Received	63	64	66	52	63	60	63	44	54	45	72	
Answered	51	71	49	55	44	67	66	65	69	55	62	
# Pending	231	220	228	221	245	233	218	189	173	180	182	
# Over Six Month in the process of settling.	1	1	0	0	0	0	0	1*	0	2	0	

FBI/PRIVACY	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	32	26	38	30	33	36	37	47	34	35	33	
# Received	48	52	50	56	53	60	56	44	47	45	29	
# Answered	54	40	58	53	50	59	46	57	46	47	38	
# Pending	26	38	30	33	36	37	47	34	35	33	24	
# Over 20 Working Days two archived	0	0	1*	4**	1	1*	6**	5*	7*	3*	1	

LITIGATION	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Cases Pending	306	309	309	277	259	253	259	250	251	251	249	
New Cases Received	19	14	15	23	11	20	17	21	11	8	11	
Habeas Corpus	11	8	10	14	5	11	4	11	7	5	5	
Bivens	2	3	2	2	0	4	4	4	1	0	2	
FTCA	2	2	2	1	2	1	0	3	2	0	3	
Other	4	1	1	6	4	4	9	3	1	3	1	
Cases Closed	16	14	47	41	17	12	26	20	11	10	16	
Cases Pending	309	309	277	259	253	259	250	251	251	249	244	
Lit Reports Completed	15	16	12	15	8	15	12	19	15	13	12	
Cases/Hearings or Trials	0	1	1	2	0	0	0	0	0	0	0	
Settlements/Awards	1	0	0	0	0	1	1	0	0	0	1	
\$ Settlements/Awards (in Thousands)	\$20.0	0	0	0	0	\$22.5	\$25.0	0	0	0	\$145.0	

**SIGNIFICANT DECISIONS OR ADVERSE DECISIONS:**

**FMC LEXINGTON** - The petitions of inmates challenging their 3621(e) early release ineligibility were granted in Brooks v. Thoms (2-pt. enhancement); Good v. Thoms (2-pt. enhancement); Hart v. Thoms (2-pt. enhancement); Mayes v. Thoms (Bailey case); Mudron v. Thoms (2-pt. enhancement); and Smith v. Thoms (922(g)). Brooks has an Aggravated Assault in his background and Smith has a detainer, so neither are early release eligible at this time. All of these cases will be appealed to the Sixth Circuit, possibly consolidated with the cases currently on appeal.

**SETTLEMENTS:**

**FCI MANCHESTER** (Administrative Claim Stump) - Plaintiff's attorney responded to our \$325,000 settlement offer by asking for \$550,000. We countered with \$425,000 on December 1, 1999, and they have now come back with a "bottom line" figure of \$500,000. We will be working with the Department of Justice to finalize this settlement in the near future.

**FCI MILAN** - Welch v. Reno - In a case handled primarily by the Labor Law Branch, we settled a handicap discrimination case which raised the question of whether an alleged handicapped employee could be required to undergo firearms training.

**FMC LEXINGTON** - In Maltz v. USA, an FTCA medical malpractice case involving allegations of failure to diagnose lung cancer, plaintiff agreed to settle for \$60,000, \$10,000 of which will go back to the U.S. government to pay for a Medicare lien.

**FCI MEMPHIS** - Love v. United States - A settlement conference has been scheduled for December 7, 1999 in this case. Plaintiff was struck in the head by a vent cover and liability is clear. He initially sought \$35,000 in damages. Because of the minor nature of the injury and his brief complaints, we offered him \$50 administratively. He refused to accept it,

filed suit, and has recently generously lowered his offer of settlement to \$3,500. We have been authorized to settle the case for a maximum of \$1,000.

**NEW RFRA CASES AND UPDATES ON PREVIOUSLY REPORTED CASES,  
TRIALS OR HEARINGS:**

**USP TERRE HAUTE** - Special Confinement Unit - We have received a number of requests for clergy visits from inmates in the Special Confinement Unit. Apparently, a [REDACTED] from Heartbeat Prison Ministries, have encouraged three inmates they visited to spread the word that others should request that the [REDACTED] become their "spiritual advisors."

**FCI MANCHESTER** - Rose v. U.S. - In this wrongful death, FTCA trial, we have had one day of testimony. Plaintiff's expert stated BOP staff violated the standard of care by not referring inmate Rose to a downtown hospital, even when an EKG was read as normal. The trial will resume December 6<sup>th</sup>, at which time the government will put on our case. Our expert is from the University of Kentucky Medical School. We are optimistic that we will prevail. b7C

**FCI MEMPHIS** - Cockerell v. U.S. - Former Memphis Police Officer [REDACTED] and his wife, have filed a lawsuit for \$1.25 million. Plaintiffs allege that FCI Memphis staff were negligent in not maintaining a mat or other padding at the bottom of the rope climb on the obstacle course. On April 24, 1998, the Memphis Police Department's TACT Squad was using the obstacle course for training. [REDACTED] was on the rope climb obstacle, lost his grip, and fell approximately 20 feet, landing on his back. He filed an administrative claim and subsequently took a medical disability retirement from the Police Department. The tort claim was denied.

**FCI MILAN** - Sexton v. U.S. - This FTCA case was filed by a female visitor who slipped and fell on the FCI Milan parking lot in January 1997. The AUSA and the institution attorney have been interviewing witnesses. Depositions are being scheduled for BOP staff for December and January. The plaintiff was deposed in early November and examined by the U.S.'s expert witness, the current President of the Hand Surgeons Association of the United States. The plaintiff appears sincere, credible and our expert has confirmed significant injury/damage to the broken wrist. In December, we will be flying the safety employee who conducted the investigation while he was assigned to FCI Milan's Safety Department, from Forrest City to Milan to be deposed. [REDACTED] b5

b5



**CRIMINAL MATTERS:**

**FCI BECKLEY** - Thomas Durham was indicted July 7, 1999, for Possessing Contraband (a weapon). He pled guilty to the charge on September 20, 1999. He was sentenced November 24, 1999, to 24 months (consecutive).

**FCI BECKLEY** - Damian Johnson was indicted September 28, 1999, for Possessing Contraband (Marijuana). He plead guilty to the charge November 29, 1999. Sentencing is scheduled for February 2000.

**FCI BECKLEY** - Leo Markoneti was indicted September 28, 1999, for Possessing Contraband (Marijuana). The AUSA dismissed the indictment in November to delay releasing informant information that would interfere with another investigation.

**FCI BECKLEY** - Marlo Evans was indicted September 28, 1999, for Possessing Contraband (Marijuana). A hearing is scheduled for December 6, 1999, at which time he may plead guilty to the charge.

**FCI BECKLEY** - William Brown was indicted September 28, 1999, for Possessing Contraband (Marijuana). A hearing is set for December 7, 1999, at which time he may plead guilty to the charge.

**FCI PETERSBURG** - USA v. Danny Shafer - The criminal jury trial in this case was held in Richmond on November 4, 1999. Inmate Shaefer was charged with escaping from the PET camp on or about September 12, 1998. Inmate Shafer, represented by counsel, was allowed by the Court to testify, outside the presence of the jury, on his reason why he left the camp. Shafer contends he has been illegally convicted for his current drug offense and state officials have allegedly indicated such to him. He asserted essentially, he wanted his day in court, so he left the camp to insure he had his day in court. The jury, after approximately 15 minutes deliberation, found Shafer guilty of escape. Sentencing is scheduled for February 8, 2000.

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

**FCI ELKTON** - Randy Smith attended an arbitration hearing in Pittsburgh between the general contractor and a sub-contractor who built FCI Elkton. The BOP had two employees that

testified during the hearing. The case has been managed by the Central Office, but staff were unable to be at the hearing and asked that Randy Smith step in.

FCC Butner -

[REDACTED]

bb

**Personnel Issues**  
**Staff Leave and Travel**

[REDACTED] December 7-10 Re-engineering, San Diego  
December 13-15 Regional Office  
December 21-30 Annual Leave

[REDACTED] - annual leave - Dec 22 - Jan 2, 2000.

[REDACTED] - annual leave - Dec 23, 1999.

[REDACTED] - annual leave - Dec 9-10, and  
December 27-30

bb

[REDACTED] - annual leave - Dec 6-10

[REDACTED] - annual leave - Dec 27-31

[REDACTED] - annual leave - Dec 23

[REDACTED] - annual leave - Dec 23-Jan 2, 2000.

[REDACTED] - annual leave - Dec 26-Jan 1, 2000.

[REDACTED] - annual leave - Dec 22 - Dec 25

[REDACTED] - annual leave - Dec 17-28

[REDACTED] - annual leave - Dec 27-30

[REDACTED] - annual leave - Dec 27-30

[REDACTED] - annual leave - Dec 20-27

[REDACTED] - annual leave - Dec 23-27

[REDACTED] - annual leave - Dec 23-28

[REDACTED] - annual leave - Dec 23-27

New Litigation Cases by Institution and Type  
 Received During the Month of November 1999

	ALD	ASH	BEC	BUT *	CU M	ELK	LEX	MA N	MEM	MIL	MRG	PET	SEY	MXR	THA	TOT
BIV	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1	2
FTC A	0	0	0	0	0	0	0	1	1	0	0	0	0	0	1	3
HC	1	0	0	1	0	0	2	0	0	1	0	0	0	0	0	5
OTH	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0
TOT	1	1	0	1	0	0	2	1	1	1	0	0	0	0	2	10

\*Represents both the FCI and LSCI

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

	ALD	ASH	BEC	BUT *	CU M	ELK	LEX	MA N	MEM	MIL	MRG	PET	SEY	MXR	THA	TOT
BIV	0	1	1	1	3	2	1	2	1	2	1	2	0	0	8	25
FTC A	0	1	1	3	3	1	1	1	2	1	0	2	0	0	2	18
HC	2	2	4	12	9	2	17	7	3	11	3	6	0	2	6	86
OTH	0	0	0	25	0	1	3	0	1	0	0	3	0	0	1	33
TOT	2	4	6	40	15	6	22	10	7	14	4	13	0	2	17	162

\*Represents both the FCI and LSCI

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UNITED STATES GOVERNMENT  
 memorandum

DATE: January 10, 2000

Mid-Atlantic Regional Office, Annapolis Junction, MD 20701

REPLY TO: Bill Burlington, Regional Counsel  
 ATTN OF: Mid-Atlantic Region

SUBJECT: December 1999 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**

Received                    196 152 244 182 171 209 187 207 178 156 149 146  
 Answered                   166 189 176 172 186 202 235 153 213 155 120 180

**TORT CLAIMS**                    **JAN FEB MAR**            **APR MAY**            **JUN JUL AUG SEP OCT**  
                                          **NOV DEC**

# Pending                    215 231 220 228 221 245 233 218 189 173 180 182  
 # Received                    63 64 66 52 63 60 63 44 54 45 72 59  
 # Answered                   51 71 49 55 44 67 66 65 69 55 62 38  
 # Pending                    231 220 228 221 245 233 218 189 173 180 182 194  
 # Over Six Month            1 1 0 0 0 0 0 1\* 0 2 0 0

\*In the process of settling.

**FOI/PRIVACY**                    **JAN FEB MAR**            **APR MAY**            **JUN JUL AUG SEP OCT**  
                                          **NOV DEC**

# Pending                    32 26 38 30 33 36 37 47 34 35 33 24  
 # Received                   48 52 50 56 53 60 56 44 47 45 29 41  
 # Answered                   54 40 58 53 50 59 46 57 46 47 38 35  
 # Pending                    26 38 30 33 36 37 47 34 35 33 24 30  
 # Over 20 Working Days    0 0 1\* 4\*\* 1 1\* 6\*\* 5\* 7\* 3\* 1 2

●two archived

**LITIGATION**                    **JAN FEB MAR**            **APR MAY**            **JUN JUL AUG SEP OCT**  
                                          **NOV DEC**

Cases Pending               306 309 309 277 259 253 259 250 251 251 249 244  
 New Cases Received        19 14 15 23 11 20 17 21 11 8 11 14  
 Habeas Corpus              11 8 10 14 5 11 4 11 7 5 5 6  
 Writs                        2 3 2 2 0 4 4 4 1 0 2 4  
 FICA                         2 2 2 1 2 1 0 3 2 0 3 0  
 Other                         4 1 1 6 4 4 9 3 1 3 1 4

<b>Cases Closed</b>	16	14	47	41	17	12	26	20	11	10	16	8
<b>Cases Pending</b>	309	309	277	259	253	259	250	251	251	249	244	250
<b>Reports Completed</b>	15	16	12	15	8	15	12	19	15	13	12	6
<b>/Hearings or Trials</b>	0	1	1	2	0	0	0	0	0	0	0	1
<b>Settlements/Awards</b>	1	0	0	0	0	1	1	0	0	0	2*	1
<b>\$ Settlements/Awards</b>	\$20.0	0	0	0	0	\$22.5	\$25.0	0	0	0	\$205*	1.0

(\$ in Thousands) \*Corrected figure.



**SIGNIFICANT DECISIONS OR ADVERSE DECISIONS:**

**FCI PETERSBURG - Posey v. Dewalt** - In an order filed December 13, 1999, the Court issued an opinion dismissing the above habeas petition in which Posey sought transfer to a camp and removal of a VA parole violation detainer he claimed was preventing his transfer to a camp. In an excellent opinion, the court found Posey had no due process rights to speedy adjudication of the VA parole violation detainer, since he is in custody on the federal sentence; and even if the VA detainer adversely affects his federal classification, he is not entitled to any procedural protections. The AUSA is being requested to ask the Court to publish the decision.

**FCI CUMBERLAND - Saunders v. United States of America** - Our motion for summary judgment was granted. Saunders, a paraplegic inmate, alleged that we negligently maintained the television switches in his unit. Because our housing units did not have wheelchair ramps, the inmate backed up to the pole with the switch and reached for the exposed metal switch plate from behind. The judge did not order payment of an initial filing fee because she believed FCI Cumberland had not forwarded to her a copy of the Plaintiff's account statement in a timely manner. We filed a motion for reconsideration, explaining to the Court that the decision to impose a filing fee is mandatory. The Court granted our motion, ordered payment of an initial filing fee and the subsequent installment payments.

**FCI CUMBERLAND - McSheffrey v. United States** - Our motion for summary judgment was granted. The inmate claimed that staff were negligent because his property was stolen from his cell. He also claimed that staff lost his sweat pants when packing his property. He argued that staff had a pattern and practice of negligently packing inmate property. The court noted that the Plaintiff had failed to file an appropriate response to the summary judgment motion. The Court stated that the Plaintiff could not rely on Rule 56(f) to avoid summary judgment based on various conclusory claims.

**FCI MILAN - Fortino v. Scibana** - This case involved a habeas action challenging the 1997 version of 28 CFR §550.50, et seq., specifically, the denial of early release to an inmate with a Public Safety Factor of Sex Offender. The Court ruled that the BOP acted within its discretion in denying the Petitioner consideration for early release under 18 U.S.C. §3621(e)(2)(B) based upon the inmate's inability to complete the community-based transitional services component of RDAP due to his classification as a sex offender, We have

requested that the US Attorney's Office seek the Court's permission to have the case published.

**FCI PETERSBURG** - Taylor v. Dewalt - This case was dismissed in a very well reasoned order dated October 26, 1999. Inmate Taylor challenged the BOP's decision to deny him halfway house placement and home confinement because he refused to participate in IFRP. He also claimed IFRP was unconstitutional because the BOP was attempting to blackmail him into making payments. Taylor also sought additional jail time credit and complained his GCT was computed incorrectly. Judge Brinkema dismissed his sentence computation issue based upon his failure to exhaust administrative remedies. The Court did note that he was not entitled to jail time credit because his detention occurred prior to the date of his offense; and that his GCT was computed properly because GCT is awarded for time served. The Court permitted his challenge to IFRP to proceed without exhaustion because Taylor raised the constitutionality of the program. The court found the program to be constitutional facially and as applied to Taylor, as he has no right to halfway house placement or home confinement under the statute.

**FMC LEXINGTON** - Holliday v. Ward, et al. - Plaintiff is an inmate diagnosed as psychotic who has filed approximately 40 law suits in state and federal courts across the country as far back as the 1930's. This suit arose after plaintiff's unit manager and staff attorney dealt with his excessive legal materials stored in the unit team room, and made the inmate sort through his yellowing and molding papers and mail out the closed litigation materials. The court used the three strikes provision of the PLRA in entering a *sua sponte* dismissal in this Bivens action after reviewing an extensive list of his previously dismissed frivolous filings.

**SETTLEMENTS:**

**FCI MANCHESTER** - Stump v. United States - Administrative Claim - We are in the initial stages of settling this administrative, wrongful death case for \$500,000. We have general agreement from plaintiff's counsel and Roger Einerson of the Torts Branch, that \$500,000 represents a good settlement. We are now waiting for plaintiff to determine whether settlement will be a lump sum cash payment, or a structured settlement. Rene Brinker Fornshill has been a tremendous help to us acting as liaison with the Department.

**FCI MEMPHIS** - Love v. United States - At the settlement conference held December 8, 1999, Plaintiff agreed to settle the case (he was struck on the head by a vent cover and

libability was clear) for \$1,000 and "appropriate" medical evaluation.

**NEW RFRA CASES AND UPDATES ON PREVIOUSLY REPORTED CASES,  
TRIALS OR HEARINGS:**

**FCI ELKTON** - David Raymond Nugent v. John J. LaManna - The government filed its brief with the Sixth Circuit Court of Appeals. This case raises allegations of excessive exposure to Environmental Tobacco Smoke (ETS). The district court dismissed the complaint on summary judgment, finding sufficient evidence that the defendant had made efforts to enforce its smoking policy prohibiting smoking in housing units. The inmate alleged that the policy was ineffective and that staff could not enforce the policy.



**FCI BECKLEY** - Maydak v Olson - This case is an old Ensign Amendment case, coupled with a challenge to staff members rejecting commercially available nude photographs. The case is being handled by Main Justice in D.C. An order was entered December 14, 1999, requesting information as to whether the Ensign Amendment language appeared in the 2000 budget and whether the Ensign Amendment was currently enforced by the BOP. A response was filed in December, indicating the Ensign language is in the current appropriations bill; the Amendment is being enforced by BOP.

**FCI MANCHESTER** - Rose v. USA - Trial was held in this FTCA case on November 30-December 1, 1999. Plaintiff's medical expert did not establish the element of causality. He only testified regarding the breach of duty element. Defendant's counsel moved for summary judgment after plaintiff's witnesses were finished testifying. Judge Kaufman granted our motion, dismissing teh case with prejudice.

**CRIMINAL MATTERS:**

**FCI BECKLEY** - Inmate Marlo Evans was indicted September 28, 1999, for Possessing Contraband (Marijuana). He pled guilty to the charge December 6, 1999.

**FCI BECKLEY** - Inmate William Brown was indicted September 28, 1999, for Possessing Contraband (Marijuana). He pled guilty to the charge on December 7, 1999.

**FCI BECKLEY** - Inmate Barry Parker was indicted December 8, 1999, for Possessing Contraband (Weapon).

**FCI BECKLEY** - Inmate Michael Kokoski walked away from FPC Beckley in 1996. He was subsequently arrested in Montana and has now been transported back to Beckley for prosecution for escape. Trial is scheduled for February 2, 2000.

**USP TERRE HAUTE - Special Confinement Unit** - The Federal Death Penalty Resource Counsel Project has written, asking to meet with the Director. They apparently want to address with her concerns they have received from inmates in the unit. More specifically, they are concerned with the location of the unit in Terre Haute, and the fact the unit is being run as a closed unit.

On a related note, no execution date has yet been set for Juan Raul Garza. We are apparently waiting for the Department to finalize new clemency regulations before the date is set. We expect the Department to ask that the execution date be set 90 days in advance, to allow more time to consider the clemency application.

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

**FCI MILAN** - FCI Milan is working with the U.S. Attorney's Office in the development of the U.S. Attorney's Office strategic plan for FY 2000. We are asking for an increased effort in the prosecution of drug cases at FCI/FDC Milan.

**FCI PETERSBURG** - On Wednesday, December 29, 1999, at approximately 9:20 a.m., a UNICOR foreman had three inmates working on a pipe in the UNICOR cable factory. When the supervisor returned to the area he noticed that approximately two linear feet of asbestos containing material had fallen from the pipe and noticed that one inmate was sweeping up the lagging. Safety was notified and safety informed the supervisor to shut the job down. Subsequently, the site was cleared of workers and the factory was closed; and an abatement contractor came in for emergency removal and testing. Initial testing showed elevated counts of asbestos fibers in accordance with work place standards. The last test results received on Monday, January 3, showed levels well below acceptable standards and the factory was re-opened. Safety directed, on January 29, 1999, that the three inmates immediately involved be sent to medical for baseline testing. However, medical reports that approximately 24 inmates showed up to be tested. The review of the incident continues. The

legal office has set up a file on the incident in anticipation of tort claims, etc.

**Personnel Issues**

**Staff Leave and Travel**

[REDACTED]

January 18-21 Washington, D.C. - Legal Re-engineering  
January 24-28 Greensville, VA - Visit VA DOC Facility

FCI ELKTON - [REDACTED] - House Hunting Trip -  
February 7-16, 2000

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FCI PETERSBURG - [REDACTED] - Washington D.C. -  
Reengineering January 18-21, 2000

USP TERRE HAUTE - [REDACTED] - Correctional Officer Relief  
January 24-28, 2000

[REDACTED]

[REDACTED]

New Litigation Cases by Institution and Type  
Received During the Month of December 1999

	ALD	ASH	BEC	BUT *	CUM	ELK	LEX	MA N	MEM	MIL	MRG	PET	SEY	MXR	THA	TOT
BIV	0	0	0	2	0	0	0	0	0	0	1	1	0	0	0	4
FTCA	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
HC	0	0	0	1	0	1	0	0	1	0	0	2	0	0	1	6
OTH	0	0	0	3	0	0	0	0	0	0	0	0	0	1	0	4
TOT	0	0	0	6	0	1	0	0	1	0	1	3	0	1	1	14

\*Represents both the FCI and LSCI

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

	ALD	ASH	BEC	BUT *	CUM	ELK	LEX	MA N	MEM	MIL	MRG	PET	SEY	MXR	THA	TOT
BIV	0	1	1	3	3	2	1	2	1	2	2	3	0	0	8	29
FTCA	0	1	1	3	3	1	1	1	2	1	0	2	0	0	2	18
HC	2	2	4	13	9	3	17	7	4	11	3	8	0	2	7	92
OTH	0	0	0	28	0	1	3	0	1	0	0	3	0	1	1	38
TOT	2	4	6	47	15	7	22	10	8	14	5	16	0	3	18	177

\*Represents both the FCI and LSCI