

UNITED STATES GOVERNMENT  
memorandum

DATE: February 8, 2000

Mid-Atlantic Regional Office, Annapolis Junction, MD 20701

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

SUBJECT: January 2000 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						

ceived	161
swered	149

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

ending	194
ceived	54
swered	45
rt	198
Month	0

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

ling	30
ived	60
vered	35
ing	55
20 Working Days	7*
les archived	

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

ending	250
es Received	14
orpus	10
	3
	1
	0

Cases Closed	15
Cases Pending	249
Reports Completed	17
/Hearings or Trials	0
Settlements/Awards	1
\$ Settlements/Awards	\$500.0
(\$ in Thousands)	

**SIGNIFICANT DECISIONS OR ADVERSE DECISIONS:**

**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. A favorable R&R was entered in January recommending that the District Court grant our Motion to Dismiss. Specifically, the Magistrate Judge recommended the Court find the inmate's request for an injunction to stop Beckley from rejecting commercially nude photographs was moot, since the inmate is no longer at FCI Beckley. The Magistrate Judge also recommended the Court dismiss the inmate's Ensign Amendment challenge for failure to state a claim, in light of Amatel v. Reno. To date, objections have not been filed by inmate Maydak.

**FCI BECKLEY** - Lee v. Olson - This case is an old Ensign Amendment case. A favorable R&R was entered in January recommending the case be removed from the Court's docket in light of Amatel v. Reno. To date, objections have not been filed by inmate Lee.

**FCI BECKLEY** - Edwards v. Olson, et al. - In 1997, inmate Edwards filed a Bivens claim against numerous staff members alleging he was scored a medium inmate to keep him at FCI Beckley to maintain the number of white inmates at the facility. On January 11, 2000, the Magistrate Judge entered an R&R recommending the District Court find that the Defendants are not entitled to qualified immunity, and that an evidentiary hearing be held to determine whether any Defendant used race as a factor in determining the inmate's custody classification. Objections to the R&R are being drafted.

**FCI MEMPHIS** - Danner v. Reno, et al. - In Plaintiff's Response to Defendant's Motion to Dismiss/Motion for Summary Judgment, Plaintiff conceded that her Bivens claims should be dismissed for lack of jurisdiction. Plaintiff also conceded that her stated FTCA claims were barred by the exception provisions of the FTCA. The only claim remaining was Plaintiff's Title VII claims of sexual harassment and retaliation. As a result, this case has been transferred to the Labor Law Branch, Central Office.

**SETTLEMENTS:**

**FCI Manchester** - Stump v. United States - (Administrative Claim) - We have a tentative agreement to settle this administrative, wrongful death claim for a cash payment of \$500,000. We have now received DOJ approval and have communicated that to Plaintiff's attorney.

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

**FCI MILAN** - Anderson v. Hemingway - This is a Habeas Corpus/TRO case concerning an inmate's return to FDC Milan from a CCC based upon a positive U/A test. The inmate challenged the CDC hearing. A Reply Brief was prepared and submitted to the AUSA and the inmate's BP-10 was granted for a new hearing. After much discussion in the Regional Office, the inmate was sent back to the CDC pending a rehearing.

**CRIMINAL:**

**USP TERRE HAUTE** - Special Confinement Unit - The Federal Death Penalty Resource Counsel Project has not yet asked to set up a meeting with Warden Lappin, regarding concerns they raised with the Director. On a related note, we have received a request from inmate Garza's attorney, asking for permission to video tape Garza making a request for Clemency to President Clinton. While we have seen a draft of the Clemency regulations, no execution date has been set for inmate Garza. BOP's execution protocol has been finalized and is ready for DOJ review.

**FCI BECKLEY** - Inmate Michael Kokoski, Reg. No. 02115-061, walked away from FPC Beckley in 1996. He was subsequently arrested in Montana and has now been transported back to Beckley for escape prosecution. Trial was scheduled for February 2, 2000. On February 1, 2000, inmate Kokoski pled guilty to the charge. Sentencing is set for April 2000.

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

**FCI ASHLAND** - Bryan Sublett v. Ashland Employees Club - We were notified this week that the Department denied representation to the Employees Club in this case as the Club was not an agency of the federal government. The employee, Bryan Sublett, filed a case under state tort law, alleging the Employees Club was negligent in serving him alcohol and then permitting him to drive. He claims this was the proximate cause of a car accident which resulted in the loss of a portion of his leg. This occurred in May of 1997 during Correctional Officer Week activities. The Employees Club President requested representation on behalf of the Club.

**FCI MILAN** - Milan has had a great increase in the filing of BP-9's. The inmates continue to cite the Samples & Todd cases as argument that §922(g) & §924(c) convictions cannot be utilized to deny §3621(e) eligibility. Legal staff at Milan



Page 5  
MXR Monthly Report

anticipate an ever increasing number of habeas corpus challenges.

**FCI BUTNER** - D.C. Contract Monitoring Visit-Greensville, VA - In late January I had an opportunity to visit the Virginia Department of Corrections facility at Greensville, VA, where we have a contract to house 1000 D.C. Department of Corrections inmates. The facility appears very well run. The most common complaint we heard from inmates involved overdue parole and parole revocation hearings. I think we will have to watch this contract very carefully for the first year, as the D.C. Department of Corrections appears to have given these inmates many legitimate complaints. This facility will receive on site monitoring visits every 90 days.

**FCI PETERSBURG** - Inmate Telephone Issue - On February 1<sup>st</sup>, Petersburg was to institute a policy that all but one inmate phone in the housing units would be turned off during work hours (7:30 - 4:30). Inmate [REDACTED] contacted the ACLU, who in turn contacted Douglas McSwain, counsel for plaintiffs in the ITS settlement.

[REDACTED] b5  
[REDACTED] When informed of this, Warden Brooks issued amended guidelines indicating that the housing unit phones would remain available to inmates each work day from 10:30 to 12:30.

**Personnel Issues**

[REDACTED] b6  
**Staff Leave and Travel**

New Litigation Cases by Institution and Type  
 Received During the Month of January 2000

	ALD	ASH	BEC	BUT*	CUM	ELK	LEX	MAN	MEM	MIL	MRG	PET	SEY	THA	TOT
BIV	0	0	0	1	0	0	1	0	0	0	0	0	0	1	3
FTCA	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
HC	0	0	1	0	1	1	5	1	0	0	0	1	0	0	10
OTH	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TOT	0	0	1	1	1	1	7	1	0	0	0	1	0	1	14

\*Represents both the FCI and LSCI

# memorandum

DATE: March 9, 2000

Mid-Atlantic Regional Office, Annapolis Junction, MD 20701

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

SUBJECT: February 2000 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	161	131										
Answered	149	155										

TORT CLAIMS	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	194	198										
Received	54	51										
Answered	45	68										
Pending	198	179										
Six Month	0	0										

FOI/PRIVACY	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	30	55										
# Received	60	101										
# Answered	35	93										
# Pending	55	63										
# Over 20 Working Days	7*	3*										
*Two files archived												

LITIGATION	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Cases Pending	250	249										
New Cases Received	14	19										
Habeas Corpus	10	9										
Bivens	3	2										
FTCA	1	1										
Other	0	7										
Cases Closed	15	10										
Cases Pending	249	258										
Lit Reports Completed	17	12										
Cases/Hearings or Trials	0	0										
Settlements/Awards	1	0										
\$ Settlements/Awards Thousands)	\$500.0	0										

**SIGNIFICANT DECISIONS OR ADVERSE DECISIONS:**

**FCI MEMPHIS** - Sheets v. DOJ, et al. - On November 25, 1998, we were advised that the jury returned a verdict in favor of the plaintiff in this Title VII cause of action. Specifically, the jury found that the plaintiff had been subjected to disparate treatment (\$25,000 compensatory damages); a hostile work environment (\$75,000 compensatory damages); and retaliation (\$100,000 compensatory damages). The jury also found that the plaintiff was constructively discharged and entitled to back pay in the amount of \$116,131.

Subsequently, we filed a Motion for Judgment Notwithstanding the Verdict, arguing that the evidence adduced at trial did not support the jury's verdict of any of the claims. On February 16, 2000, the court granted our motion with regard to plaintiff's disparate treatment claim and her retaliation claim reducing the jury award by \$125,000. However, the court denied our motion as to her hostile work environment claim, awarded her \$116,131 in back pay based on her constructive discharge claim, ordered her reinstated and awarded her attorney's fees. We are recommending appeal.

**FCI ELKTON** - Boucher v. LaManna - The Northern District of Ohio ruled in the Bureau's favor that it was within the Director's discretion to deny early release eligibility to an inmate based on a 2 point enhancement.

**FCI BECKLEY** - Edwards v. Olson, et al. - In 1997, inmate Edwards filed a Bivens claim against numerous staff members, alleging he was scored a medium inmate to keep him at FCI Beckley to maintain the number of white inmates at the facility. On January 11, 2000, the Magistrate Judge entered an R&R recommending the District Court find that the Defendants are not entitled to qualified immunity, and that an evidentiary hearing be held to determine whether any Defendant used race as a factor in determining the inmate's custody classification. Objections to the R&R were filed in February, arguing that case law allows staff to take racial balance into account when making transfer decisions.

**SETTLEMENTS:**

**FCI MANCHESTER** - Stump v. United States - This case appears to be settled for \$500,000. All that remains is for settlement to be presented to the Probate Court in Ohio. Plaintiff's attorney states the Court has already given oral approval, so we do not anticipate any problem getting final approval.

**FCI MANCHESTER** - Majeeda Abdul-Hakeem, et al. v. United States, et al. - Inmate Imam Abu Muhammad's, a.k.a. Brian Hines, alleged common law wife Majeeda Abdul-Hakeem, brought suit against staff at FCI Manchester and FCI Oxford to regain her status as a visitor on inmate Abu Muhammad's approved visitor list. She was removed from inmate Muhammad's visitation list after several attempts to circumvent institution rules at FCI Oxford. In order to settle this claim Ms. Abdul-Hakeem was offered reinstatement to inmate Muhammad's visitation list. Ms. Abdul-Hakeem declined this offer of settlement and further litigation will ensue.

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

**FCI BECKLEY** - Eichler v. U.S. - This is an FTCA case arising from an accident with the institution's bus in 1995. Settlement authority in the amount of \$20,000 was granted, but our offer was rejected. A settlement conference is scheduled for May 2000. Trial is set for July 2000 in Louisville, Kentucky.

**CRIMINAL:**

**FCI ASHLAND** - United States v. Dr. Mark Praeger - FCI Ashland staff physician, Dr. Mark W. Praeger, will be prosecuted for illegally dispensing controlled substances. Dr. Praeger is raising the defense of duress, stating that individuals threatened him and his family if he did not write the prescriptions. Many BOP staff have been subpoenaed to testify during the week of March 6<sup>th</sup>.

**FMC LEXINGTON** - On February 4, inmate Andrew Felton, 17173-056, was indicted by a grand jury for Assault on another inmate.

**FPC BUTNER** - Inmate Michael Little pled guilty to escape and was sentenced to 12 months consecutive.

**FCI BECKLEY** - Michael Kokoski, Reg. No. 02115-061, walked away from FPC Beckley in 1996. He was subsequently arrested in Montana and transported back to Beckley for prosecution for escape. On February 1, 2000, inmate Kokoski pled guilty to the charge. Sentencing is set for April 24, 2000.

**FCI BECKLEY** - Marlo Evans, Reg. No. 25852-083, was sentenced February 28, 2000, and received an 8-month consecutive sentence for Possessing Contraband (Marijuana).

**FCI BECKLEY** - William Brown, Reg. No. 53012-060, was sentenced February 28, 2000, and received an 8-month consecutive sentence for Possessing Contraband (Marijuana).

**FCI BECKLEY** - Damian Johnson, Reg. No. 35070-083, was sentenced February 22, 2000, and received a 6-month consecutive sentence for Possessing Contraband (Marijuana).

**FCI BECKLEY** - Barry Parker, Reg. No. 46031-066, was indicted December 8, 1999, for Possessing Contraband (weapon). He pled guilty to the charge on February 22, 2000.

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

**FMC LEXINGTON** - On February 18, 2000, Judge Coffman, E.D. Ky., entered an order for FMC Lexington to provide her P.O. with a medical status report on inmate [REDACTED] every fifteen days, and for a contract University of Kentucky doctor to provide a medical report every month. [REDACTED] apparently filed a motion for a sentence modification to Judge Coffman, his sentencing judge, alleging his medical condition could not be treated while in BOP custody. b7C

**D.C. Issues Training** - The D.C. Issues Training went extremely well this month. We were very impressed with both the oral presentations and the written materials that legal staff prepared. We are particularly grateful to Don Anderson and Paul Layer for their informative presentation on D.C. Sentencing. I think all staff preferred the smaller group format, as it gave them an opportunity to interact with the speakers. Final thanks to Dave Essig and Lynn Bouchillon for all their efforts in coordinating the hotel, travel and meeting room details.

**FCC Butner** - Legal Consolidation - Beginning as early as April 1, 2000, the legal staff at the Butner Complex may relocate to the soon-to-open FMC. With the move, legal staff will institute a shared services arrangement between the Butner institutions. Space for legal staff is being provided in the FMC Administration Building. We will provide you with new phone numbers when the move takes place.

New Litigation Cases by Institution and Type  
Received During the Month of February 2000

	ALD	ASH	BEC	BUT *	CU M	ELK	LEX	MA N	MEM	MIL	MRG	PET	SEY	MXR	THA	TOT
BIV	0	0	0	1	0	0	0	1	0	0	0	0	0	0	0	2
FTC A	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1
HC	0	2	0	0	1	0	1	0	1	0	1	1	0	1	1	9
OTH	0	0	0	7	0	0	0	0	0	0	0	0	0	0	0	7
TOT	0	2	0	8	1	0	1	1	1	0	1	2	0	1	1	19

\*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	0	0	2	0	0	1	1	0	0	0	0	0	0	1	5
FTC A	0	0	0	0	0	0	1	0	0	0	0	1	0	0	0	2
HC	0	2	1	0	2	1	6	1	1	0	1	2	0	1	1	19
OTH	0	0	0	7	0	0	0	0	0	0	0	0	0	0	0	7
TOT	0	2	1	9	2	1	8	2	1	0	1	3	0	1	2	33

\*Represents both the FCI and LSCI

## UNITED STATES GOVERNMENT

memorandum

DATE: April 7, 2000

Mid-Atlantic Regional Office, Annapolis Junction, MD 20701

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

SUBJECT: March 2000 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	161	131	153
Answered	149	155	161

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

# Pending	194	198	179
# Received	54	51	61
# Answered	45	68	50
# Pending	198	179	182
# Over Six Month	0	0	1

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

# Pending	30	55	63
# Received	60	101	64
# Answered	35	93	81
# Pending	55	63	46
# Over 20 Working Days	7*	3*	7●

\*Two files archived; ●2 archived-2 mailed 4/4/00

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

Cases Pending	250	249	258
New Cases Received	14	19	12
Habeas Corpus	10	9	9
Bivens	3	2	1
FTCA	1	1	2
Other	0	7	0
Cases Closed	15	10	11
Cases Pending	249	258	259
Lit Reports Completed	17	12	16
Cases/Hearings or Trials	0	0	0
Settlements/Awards	1	0	0
\$ Settlements/Awards	\$500.0	0	0
(\$ in Thousands)			



## SIGNIFICANT DECISIONS OR ADVERSE DECISIONS:

**FCI BUTNER - Weston v. U.S.** (D.C. Criminal Proceeding)- The Court of Appeals for the District of Columbia, has reversed and amended a district court opinion (reported at 69 F.Supp. 2d 99 (D.D.C. 1999)), which permitted Butner mental health staff to involuntarily medicate Rusty Weston. Mr. Weston has been charged with murdering two U.S. Capitol security officers in July of 1998. The Circuit ruled that the District Court impermissibly allowed BOP to medicate Weston based on his dangerousness to staff, without also addressing whether Weston could be medicated to make him competent to stand trial. This latter issue raised many of Weston's arguments that medication would violate his 6th Amendment right to counsel, and 5th Amendment Due Process right to present his anticipated insanity defense. We will work with AUSA Ron Walutes on the remand hearing.

**FMC LEXINGTON - The Sixth Circuit Court of Appeals** has granted the motions to stay new policy 3621(e) cases on appeal until a ruling is made in the Thoms v. Ernest Powell, et al. consolidated cases. These are the first group of new policy cases on appeal which are currently ripe for ruling. Oral arguments were waived in Powell.

**FCI MILAN - Brown v. Scibana** - This habeas case opinion was published and cited as Brown v. Scibana, 2000 WL 249616 (E.D. Mich.). This case upheld the 1997 version of 28 CFR 550.58, and the exclusion of inmates from RDAP who were convicted of a 922(g) offense.

**FCI ELKTON - Boucher v. LaManna** - Judge Gwin of the U.S. District Court, N.D. Ohio, upheld the Director's discretion to deny early release eligibility to an inmate with a 2-point firearms enhancement. Finding that the new Program Statement 5162.04 evidenced an attempt by the Bureau "to avoid the pitfalls of its earlier policy by shifting its attention from the statutory meaning of 'nonviolent offense' to interpreting the extent of its discretionary authority under the statute," the Court noted our new "focus on which eligible prisoners would nonetheless be denied early release via the Bureau's discretionary authority." The Court found persuasive the three Circuit decisions upholding the change, quoting extensively from the new 9th Circuit Bowen v. Hood case. It appears this case will be published, and we are making sure it gets before the 6th Circuit panel in the currently pending consolidated RDAP appeal.

**LSCI BUTNER - Taliesin v. Hawk** - Inmate Taliesin (Mark Patrick) brought this lawsuit when the Bureau refused to use only his newly changed name (by state court order) in all of its official documents. The Judge granted partial summary judgment for the defendant stating that the Bureau's name policy is not unconstitutional. However, the Court further ordered that the Bureau of Prisons provide the inmate with mail and notary services in his new name and also ordered the Bureau to prospectively include the plaintiff's new name in all official documents it creates. We have filed a motion for reconsideration citing a provision of the PLRA restricting the court's power to grant certain prospective relief.

## SETTLEMENTS:

**FCI MANCHESTER - Majeeda Abdul Hakeem, et al. v. United States, et al.** - This case, involving the visitation between inmate Imam Abu Muhammad, Reg. No. 07783-026, his daughter, and the mother of his daughter, was settled on March 31, 2000, after the plaintiff and staff at FCI Manchester agreed that visitation between the parties would resume as of April 1, 2000. Visitation between the parties involved did in fact take place at FCI Manchester on April 1, 2000. Unfortunately, Inmate Muhammad, who was not a party to the original suit, has brought a Bivens action based upon his loss of visitation privileges. Apparently, Ms. Hakeem settled this case with the full knowledge that inmate Muhammad had already filed a suit based upon the same loss of visitation privileges as were alleged in her suit.

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

**GREENSVILLE PRIVATE FACILITY - Jackson v. District of Columbia** - In March, Judge Kennedy, (D.C. District Court) entered an order upholding Virginia DOC's proposed rule which would require all inmates to be clean shaven, and to keep their hair short (one inch or less). The Court ruled that even under the demanding RFRA standard, Virginia's rule is justified based on compelling security reasons. We understand an appeal will be taken, but in the meantime, the rule may now be applied at Greenville, as Judge Kennedy refused to issue a stay.

**FCI BECKLEY - Maydak v. Olson** - This case is an old Ensign Amendment case, coupled with a challenge to staff at FCI Beckley rejecting commercially available nude photographs. An Order was entered in March dismissing the Ensign Amendment challenge. However, the judge referred the request for injunctive relief against the Bureau and the Director relating to the commercially available nude photographs back to the magistrate.

**FCI BECKLEY - Depew v. Hawk** - This inmate filed a civil action when his attorney's ability to have mail sent to the institution treated as legal mail was restricted. The restriction was based on our discovery that his attorney had sent inappropriate pornographic bondage magazines to the inmate under the guise of legal mail. The Court granted our motion to dismiss/motion for summary judgment in March. The Court rejected the argument that the attorney was conducting a test to see if prison officials were inappropriately opening legal mail. The court found the attorney failed to follow the requirements for having the envelope treated as special mail. The judge indicated that had the attorney wished to conduct such a test, "he could have mailed a copy of Ladies' Home Journal."

**FCI BECKLEY - Eichler v. U.S.** - This is an FTCA case arising from an accident with the institution's bus in 1995. Settlement authority for \$20,000 was originally granted. We recently requested settlement authority in the amount of \$48,000. Kentucky is a comparative negligence state. While we have solid staff witnesses, the plaintiffs will testify that the bus changed lanes and it was our fault. While the plaintiffs' expert could not definitely determine we were at fault, our expert could not definitely determine we were not. Additionally, the police report is no longer persuasive, as we learned during discovery that the report was completed solely on interviews with our staff. Statements by the plaintiffs were not taken as they were receiving medical treatment at the scene and were removed to the local hospital. We believe we do have some limited exposure. A settlement conference is scheduled for May 15, 2000. Trial is currently scheduled for July 25, 2000.

**CRIMINAL:**

**FCI ASHLAND - U.S. v. Dr. Mark Praeger** - FCI Ashland staff physician, Dr. Mark Praeger, was convicted of illegally dispensing controlled substances. Dr. Praeger raised the defense of duress, stating that individuals threatened him and his family if he did not write the prescriptions. The jury rejected his defense, and entered its verdict in less than two hours. A sentencing date has not been set.

**FMC LEXINGTON-** Dominic Palazzola, 153757-097, a USP Terre Haute inmate, confessed to murdering, FMC Lexington inmate Tracy Hearlson, 24663-086, in the transitional care psychiatric unit at FMC Lexington in 1998. Palazzola apparently bludgeoned Hearlson to death with a fire extinguisher. Palazzola's accomplice was Patrick Noble, 23560-086, currently incarcerated at FCI Sheridan. Noble has also confessed to being involved in the murder. Palazzola apparently mistakenly thought Noble was a member of the Aryan Brotherhood and wanted to "make his bones" and gain membership by killing Hearlson.

**FCI MEMPHIS -** Kenneth Gregory, Reg. No. 03195-063, passed three balloons of what is believed to have been heroin, introduced through his contact with a female visitor. (The incident was video taped by visiting room staff.) One of the balloons burst which resulted in his transfer to a community hospital on February 29, 2000. He was subsequently returned to the institution on March 2, 2000. Lab reports from the FBI are pending.

FCI MILAN - FCI/FDC Milan are currently working on three criminal cases. The cases are U.S. v. Williamson (possession of narcotics and weapon) and U.S. v. Camejo (a serious assault - slit another inmate's stomach). Staff are working with the U.S. Attorney's Office to seek an indictment case: US v. Wells, et al. (Introduction/possession of narcotics by five inmates and visitors. The drug was heroin).

FCI MEMPHIS - U.S. v. Green, et al - Inmates Phillip Green, Santos Negron and Larry Walters were convicted in the U.S. District Court, Western District of Tennessee of various offenses arising out of the FCI Memphis disturbance of October 1995, and appealed. The Court of Appeals held that (1) inmate's recruitment of others to join in the prison riot was sufficient to justify an upward departure; and (2) inmates' mere participation in the prison riot was sufficient to support their convictions for assisting in the riot. The Court held that the "fair and ordinary meaning of 18 U.S.C. § 1792 includes the participation in a prison riot and is prohibited and punishable as a crime."

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

Death Penalty Resource Counsel Meeting - On March 30th, I attended a meeting hosted by Margaret Hambrick and Warden Harley Lappin, with David Brock, an attorney with the Federal Death Penalty Resource Project. Mr. Brock brought with him, James Aiken, former Director of the South Carolina Department of Corrections. Mr. Brock's main concern was that lack of access to social calls may result in isolation from family, and concomitant depression that could render an inmate incompetent to assist defense counsel. Warden Lappin agreed to review the amount of social calls in the SCU, and agreed to have Mr. Aiken tour the unit at Terre Haute. The tone of the meeting was cordial and cooperative.

FCC BUTNER - The move of Butner legal staff to the Federal Medical Center has been delayed until at least April 10th. We will provide you with new phone numbers when the move takes place.

FMC LEXINGTON - In Marian Montez, Administratrix of the Estate of Tracy Hearlson v. USA, an FTCA case arising out of the homicide of inmate Tracy Hearlson at FMC Lexington, Judge Wilhoit permitted discovery by the Plaintiff until August 2000. This is consistent with the law of this district. The Plaintiff moved for discovery after the Defendant filed a motion for summary judgement using the discretionary function exception argument.

FCI CUMBERLAND - Significant Tort Claim - Former inmate [REDACTED] is claiming \$20,000,000 in personal injury as a direct result of negligence by medical staff. He alleges we failed to provide proper treatment when he had a heart attack, which he alleges resulted in permanent damage to his heart. [REDACTED] is represented by counsel. b7C

FCI MEMPHIS - In early March, Staff were contacted by Staff Judge Advocate, Naval Support Activity-Mid South (Millington Navy Base), who stated she believed our interservice support agreement violated the Posse Commitatus Act. Specifically, she took issue with language in the agreement that contemplated Navy Personnel's "supervision" of inmate workers as violative of the Act. After several discussions, the Navy has backed off from their position but has requested that we reword the agreement to remove "supervision" in favor of other terminology such as "monitor" or "oversight."

**Personnel Issues**

[REDACTED] b5

**New Litigation Cases by Institution and Type  
Received During the Month of March 2000**

	ALD	ASH	BEC	BUT *	CUM	ELK	LEX	MA N	MEM	MIL	MRG	PET	SEY	MXR	THA	TOT
BIV	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
FTCA	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1	2
HC	0	0	0	0	1	2	2	0	0	1	0	2	0	0	1	9
OTH	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TOT	0	0	0	2	1	2	2	0	0	1	0	2	0	0	2	12

\*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	0	0	3	0	0	1	1	0	0	0	0	0	0	1	6
FTCA	0	0	0	1	0	0	1	0	0	0	0	1	0	0	1	4
HC	0	2	1	0	3	3	8	1	1	1	1	4	0	1	2	28
OTH	0	0	0	7	0	0	0	0	0	0	0	0	0	0	0	7
TOT	0	2	1	11	3	3	10	2	1	1	1	5	0	1	4	45

\*Represents both the FCI and LSCI

**memorandum**

DATE: May 8, 2000

Mid-Atlantic Regional Office, Annapolis Junction, MD 20701

REPLY TO: Bill Burlington, Regional Counsel

ATTN OF: Mid-Atlantic Region

SUBJECT: March 2000 Monthly Report *April*

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	161	131	153	179								
Answered	149	155	161	130								

TORT CLAIMS	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	194	198	179	182								
# Received	54	51	61	70								
# Answered	45	68	50	71								
# Pending	198	179	182	197								
# Over Six Month	0	0	1	2								

FOI/PRIVACY	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	30	55	63	46								
# Received	60	101	64	71								
# Answered	35	93	81	74								
# Pending	55	63	46	48								
# Over 20 Working Days	7*	3*	7●	3■								

\*Two files archived; ●2 archived-2 mailed 4/4/00; ■all three archived

LITIGATION	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Cases Pending	250	249	258	259								
New Cases Received	14	19	12	24								
Habeas Corpus	10	9	9	15								
Bivens	3	2	1	6								
FTCA	1	1	2	1								
Other	0	7	0	2								
Cases Closed	15	10	11	36								
Cases Pending	249	258	259	247								
Lit Reports Completed	17	12	16	12								
Cases/Hearings or Trials	0	0	0	1								
Settlements/Awards	1	0	0	0								
\$ Settlements/Awards (\$ in Thousands)	\$500.0	0	0	0								

**SIGNIFICANT DECISIONS OR ADVERSE DECISIONS:**

USP TERRE HAUTE - Kaba Karamo v. Breakbill, et al. - We recently learned that the Civil Rights Division will not pursue criminal charges against any of the named defendants in this Bivens, use of force case. We also learned that the second Bivens suit filed by Kaba Karamo, (Karamo v. Captain Hines, et al., #TH 99-15-C-T/F), which involves very similar allegations of abuse while being placed in 4-point restraints, has been dismissed, with the court finding that Mr. Karamo's violent actions precipitated an appropriate response from our staff.

[REDACTED] b2  
[REDACTED]. To date, the Department has not agreed to pay the private attorney fees for the Lieutenants who were involved in placing and maintaining Kaba Karamo in restraints.

FCI BECKLEY - Maydak v. Hawk, et al. - On April 21<sup>st</sup>, we received an Order from Magistrate Feinberg, asking us to clarify whether it was the BOP's position that inmates may not have commercially available, individual nude photographs, and if so, had that position changed since the initiation of this suit. After discussing the case with Paul Layer and Marsha Edney, we determined that a July 19, 1999, wording change to our Program Statement on Inmate Personal Property, had indeed changed our policy to mandate that inmates may not retain or receive such individual photographs. We plan to inform the court of this change, and to file a renewed Motion for Summary Judgment.

FCI MEMPHIS - Vargas v. Reno - On March 30, 2000, the Court granted summary judgment in the Government's favor regarding Vargas's Title VII claim, his claims under Bivens, and his FTCA claims for battery, false arrest and false imprisonment. The Court denied summary judgment regarding Vargas's claims of intentional infliction of emotional distress and invasion of privacy, and his Privacy Act claim. Judge Gibbons ruled the Government failed to establish that Vargas's medical credential file was copied and disclosed based on a "need to know" or "routine use" to an OIG investigator conducting an official investigation of another medical staff member. The Judge further ruled that Vargas's EEO complaint contained adequate information to give the BOP sufficient notice to enable it to investigate potential tort claims of intentional infliction of emotional distress and invasion of privacy,

based upon the Sixth Circuit's adoption of a more liberal notice requirement. Vargas did NOT file an administrative claim under the FTCA in this case.

**SETTLEMENTS:**

FCI BECKLEY - Eichler v. United States - We are still awaiting a decision on our request for increased settlement authority (up to \$48,000) in this personal injury case, involving the Beckley bus.

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

FCI BUTNER - Woodruff v. United States - This suicide FTCA case is scheduled for trial next week in Columbia, South Carolina. We learned this week that the Judge has issued an order recusing herself. Plaintiffs filed a motion claiming the recusal was required, as the Judge was a former Assistant U.S. Attorney, who knew the AUSA defending this case. They also alleged the AUSA and the Judge ran a marathon together 10 years ago while she was still an AUSA. [REDACTED]

[REDACTED]. Trial is still scheduled for next week before a newly-appointed judge. b5

[REDACTED] b5  
b7F

FMC LEXINGTON - On April 21, 2000, Joe Tang, Attorney, and Richard Ramirez, M.D., Clinical Specialty Consultant to the Medical Director (formerly FMC Lexington Clinical Director), attended a medical status hearing before Judge Coffman. This

matter pertained to the request by FMC Lexington inmate [REDACTED] to have his sentence reduced because of his medical condition involving his kidney. He alleged inadequate medical treatment in the past, and recently sent an ex parte letter to the Judge making further allegations. After Dr. Ramirez testified, Judge Coffman was satisfied that the complaints were largely meritless and denied [REDACTED] request. However, Judge Coffman did indicate she was not satisfied with BOP's alleged failure to follow a couple of the Nephrologist's recommendations, and she stated there was a "communication problem" between the specialist and the FMC. Judge Coffman wanted all of the Nephrologist's recommendations followed, and stated she would release [REDACTED] if the medical issues "did not work out."

b7C

**CRIMINAL:**

FCI BECKLEY - Michael Kokoski, Reg. No. 02115-061, walked away from FPC Beckley in 1996. He was subsequently arrested in Montana and transported back to Beckley for prosecution for escape. On February 1, 2000, inmate Kokoski pled guilty to the charge. Sentencing was scheduled for April 24, 2000, but has been postponed.

FCI BECKLEY - [REDACTED] was indicted April 4, 2000, for assaulting two staff members.

b7C

FCI/FDC MILAN - Kevin Walasinski, attorney, continues to work with the U.S. Attorney's Office and the FBI in securing indictments in United States v. Wells, et al. This initially appears to be a conspiracy ring between FDC Milan inmates, visitors, and street associates to introduce, possess, and distribute narcotics at FDC Milan. The drug that was discovered when the inmates were caught was heroin.

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

DC Contract at Greensville, Virginia DOC - As we start to see more litigation from District of Columbia inmates at Greensville, we have decided to implement a special grievance system that will allow them to file requests for administrative remedies on "Bureau issues." We have discussed this with Harrell Watts, and with WRO staff who have shared their policy regarding such grievances at Taft. We hope to implement the system sometime in May 2000.



FCC Butner Legal Consolidation - The move of Butner legal staff to the Federal Medical Center occurred in April. The new telephone numbers are:

[REDACTED]

b6

The address is FMC Butner  
P.O. Box 1500  
Old N.C. Highway 75  
Butner, NC 27509-1500

#### Personnel Issues

[REDACTED]

b6

#### Staff Leave and Travel

[REDACTED]

May 16<sup>th</sup> - Washington D.C. - Re-engineering Meeting  
May 22-26 - Washington D.C. - EEO Workgroup Meeting

[REDACTED] - Training in Aurora - May 30-June 2

[REDACTED] FCI Memphis - A/L - Monday, May 15

[REDACTED] FCI Milan - A/L - May 22-29

[REDACTED] FCI Cumberland - A/L - May 9-16

[REDACTED] USP Terre Haute - A/L - May 30-June 1

[REDACTED] USP Terre Haute - A/L - May 30-June 2

New Litigation Cases by Institution and Type  
Received During the Month of April 2000

	ALD	ASH	BEC	BUT *	CUM	ELK	LEX	MAN	MEM	MIL	MRG	PET	SEY	MXR	THA	TOT
BIV	0	1	0	2	0	0	1	0	0	0	0	0	0	0	2	6
FTCA	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
HC	0	0	1	3	0	0	7	0	1	1	0	1	0	0	0	14
OTH	0	0	1	1	0	0	0	0	0	0	0	0	0	0	0	2
TOT	0	1	2	6	1	0	8	0	1	1	0	1	0	0	2	23

\*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	MAN	MEM	MIL	MRG	PET	SEY	MXR	THA	TOT
BIV	0	1	0	5	0	0	2	1	0	0	0	0	0	0	3	12
FTCA	0	0	0	1	1	0	1	0	0	0	0	1	0	0	1	5
HC	0	2	2	3	3	3	15	1	2	2	1	5	0	1	2	42
OTH	0	0	1	8	0	0	0	0	0	0	0	0	0	0	0	9
TOT	0	3	3	17	4	3	18	2	2	2	1	6	0	1	6	68

\*Represents both the FCI and LSCI

UNITED STATES GOVERNMENT  
**memorandum**

**Date:** June 1, 2000

**Reply to:** Sherree L. Sturgis, Regional Counsel, Southeast Region  
**Attn of:** Federal Bureau of Prisons, Atlanta, GA 30331

**Subject:** Monthly Report - May 2000

**To:** Christopher Erlewine, Assistant Director/General Counsel  
Federal Bureau of Prisons  
Washington, D.C. 20534

**I. ADMINISTRATIVE LEGAL ACTIVITIES - SUMMARY REPORT**

**A. Administrative Tort Claims - 2000**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1 <sup>st</sup>	161	141	125	151	147	155						
Rec'd in month	35	40	51	44	60							
Recons. rec'd	0	0	2	1	1							
Ans'd in month	73	74	78	80	75							
Pending at end	148	121	143	141	155							
Over 180 days	25	25	13	23	7							

**B. Tort Claim Investigation Status: As of May 31, 2000**

	ATL	COL	ED G	E G L	E S T	G U A	J E S	MI A	MIM	MNA	MON	PEN	TAL	TDG	YAZ
PENDING	36	10	12	3	4	1	6	15	8	9	6	1	28	1	15
>60 DAYS	8	0	0	0	0	0	0	5	3	4	2	0	13	0	0

# SER Monthly Report - May, 2000

Page 2

## C. FOI/Privacy Act Requests - 2000

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Pending on 1 <sup>st</sup>	15	12	16	17	25	20						
Rec'd in month	34	33	39	50	33							
Ans'd in month	35	30	38	43	38							
Pending at end	12	16	17	25	20							
Over 30 days	0	0	0	0	0							

\*

## D. FOIA Requests for records: As of May 31, 2000

	ATL	COL	EGL	EST	GUA	JES	MIA	MIM	MNA	MON	PEN	TAL	TDG	YAZ	EDG
PENDING	3	1	0	0	0	3	4	0	0	3	0	2	2	0	2
>30 DAYS															

## E. ADMINISTRATIVE REMEDIES

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	
210	196	211	196	250								

**II. LITIGATION ACTIVITY - 2000 SOUTHEAST REGION**

**A. SUMMARY REPORT**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Cases Open	227	234	238	236	249	254						
New Cases	12	13	10	24	17							
Habeas Corpus	7	12	6	12	8							
FTCA	0	0	0	1	3							
Bivens	5	1	3	8	6							
Other	0	0	1	3	0							
Bivens/FTCA	0	0	0	0	0							
Lit Reports	16	12	15	7	16							
Cases Closed	5	9	12	11	12							

**B. SETTLEMENTS AND AWARDS:**

Settlement Authority Approved

**C. SIGNIFICANT CASES, TRIALS or HEARINGS:**

Government of the Virgin Islands and USA v. Caswell Fredericks, Criminal No. 92-52 and 98-132 (District of Puerto Rico). This high security level Virgin Islands inmate has been designated to MDC, Guaynabo. Staff report that in May, defense counsel filed a motion for an order to show cause as to why MDC Guaynabo has not complied with the court's court for programming for this inmate. The inmate is from the Virgin Islands who cooperated with the Federal Government and as a result federal officials will house him because his life would be in jeopardy if returned to the Virgin Islands prison system. Currently, this inmate is being housed at MDC, Guaynabo until the situation with other Virgin Islands inmates is resolved. (This situation involves the Virgin Islands government owing the Bureau of Prisons approximately 12 million dollars. Therefore, the Bureau of Prisons is returning all Virgin Islands inmates.) After discussion with MDC, Guaynabo legal staff, a decision was made to request that Virgin Islands inmates housed in USP, Atlanta be removed first so that MDC, Guaynabo could designate inmate Fredericks to that facility considering his security level. As a follow, MDC, Guaynabo legal staff spoke to the Warden in the Virgin Islands who indicated that presently the Virgin Islands prison system is only accepting low security inmates. Information received indicates that this creates a problem because there are no low security inmates from the Virgin Islands. In light of this, legal staff at MDC Guaynabo prepared a letter for the Court which included the programming for inmate Fredericks during the time he is confined at MDC, Guaynabo.

New Cases:

Jorge Rivera Gonzalez, et al v. United States, Civil No. 00-1196 (DRD), MDC, Guaynabo: Plaintiff and his wife bring an FTCA action for time he allegedly spent (approximately two month) in federal custody in excess of the sentence imposed by the court. Plaintiff is alleging loss of wages, mental anguish and pain and suffering and seeks \$350,000.00 in damages (\$175,000 for the past, present and future pain and suffering of the plaintiff and \$175,000 for his wife's).

**D. RELIGIOUS CASES:** None

**E. ENSIGN AMENDMENT CASES:** None

**F. PLRA 1915 DISMISSALS:** None

**G. CRIMINAL CASES:**

U.S. v. Emmett Knight/Richard Weber, 3:99cr115/LAC, N/FL - Richard Weber, formerly an inmate at FPC Pensacola was tried along with an employee of the National Park Service for allegedly selling telephone time and other unauthorized activities to other inmates assigned to the work detail at Gulf Islands National Seashore. Staff from FPC, Pensacola were called to testify as to rules and regulations of the facility. The park employee was acquitted of the charges. The inmate entered a plea to a lesser charge of Bribery of a Public Official and was sentenced to a 12-month consecutive term on May 23, 2000.

During this reporting period, FCC, Coleman reported on six (6) case which were referred to the FBI and U.S. Attorney's Office for prosecution regarding an inmate's alleged attempt to introduce a controlled substance into the complex. Two of the six cases have been accepted for prosecution by the FBI. One case involved the attempted introduction of 27 packets of marijuana weighing 7.258g.

### **III. TRAVEL SCHEDULE FOR JUNE 2000**

[REDACTED]s

Travel - Conference/Legal (Attorney/Paralegal Training) - Fort Worth, TX - 06/05/2000-06/09/2000

Travel - RC/AGC Meeting - Washington, DC - 06/19/2000-06/23/2000

[REDACTED]  
Travel - Paralegal Work Group/MSTC - Aurora, CO - 05/30/2000-06/02/2000

[REDACTED]  
Travel -FLETC - Glynco, GA - 06/05/2000-06/23/2000

[REDACTED]  
Travel -Conference/Legal (Attorney/Paralegal Training) - Fort Worth, TX - 06/05/2000-06/09/2000

b6

# memorandum

DATE: June 8, 2000 Mid-Atlantic Regional Office, Annapolis Junction, MD 20701

REPLY TO: Bill Burlington, Regional Counsel

ATTN OF: Mid-Atlantic Region

SUBJECT: May 2000 Monthly Report

TO: Christopher Erlewine, General Counsel

ATTN: Linda Dubose, Executive Assistant

*5/100 Med  
1/1/01*

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

Received	161	131	153	179	149							
Answered	149	155	161	130	121							

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

# Pending	194	198	179	182	197							
# Received	54	51	61	70	74							
# Answered	45	68	50	71	34							
# Pending	198	179	182	197	229							
# Over Six Month	0	0	1	2	2							

## FOIA/PRIVACY JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC

# Pending	30	55	63	46	48							
# Received	60	101	64	71	57							
# Answered	35	93	81	74	67							
# Pending	55	63	46	48	38							
# Over 20 Working Days	7*	3*	7●	3■	7◆							

\*Two files archived; ●2 archived-2 mailed 4/4/00; ■all three archived; ◆4 archived

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

Cases Pending	250	249	258	259	247							
New Cases Received	14	19	12	24	10							
Habeas Corpus	10	9	9	15	7							
Bivens	3	2	1	6	1							
FTCA	1	1	2	1	0							
Other	0	7	0	2	2							
Cases Closed	15	10	11	36	14							
Cases Pending	249	258	259	247	243							
Lit Reports Completed	17	12	16	12	16							
Cases/Hearings or Trials	0	0	0	1	0							
Settlements/Awards	1	0	0	0	0							
\$ Settlements/Awards Thousands)	\$500.0	0	0	0	0							



**SIGNIFICANT DECISIONS OR ADVERSE DECISIONS:**

**FCI MANCHESTER** - Nunez v. Chandler - a sentenced Mariel Cuban inmate housed at FCI Manchester brought this action challenging the Bureau's "nearer release" transfer policy, which states that inmates with INS detainers will not ordinarily be considered for them. (Program Statement 5100.06, September 3, 1999). Judge Coffman in the E.D. Kentucky ruled that this policy did not violate the Equal Protection Clause, because the Bureau's policy was entitled to deference and there was a rational basis for differences in treatment between inmates with INS detainers and those without them.

**FCI CUMBERLAND** - Hodges v. USA - Hodges, with the assistance of counsel, filed an FTCA suit seeking \$2 million. As a result of a 1997 assault, Hodges lost his eye. Hodges claimed we failed to protect him from an injury that occurred in "plain view of correctional officers;" that we failed to have sufficient officers stationed in the unit; and that we failed to provide timely and adequate medical care. The District Court granted our Motion to Dismiss on the failure to protect claim based on the discretionary function exception. The court granted summary judgment on the claim regarding medical care, finding the elapsed time between injury and transport to the local hospital reasonable (two hours) since the inmate failed to immediately report the injury and there were many security measures that had to be undertaken prior to his transport.

**SETTLEMENTS:** None

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

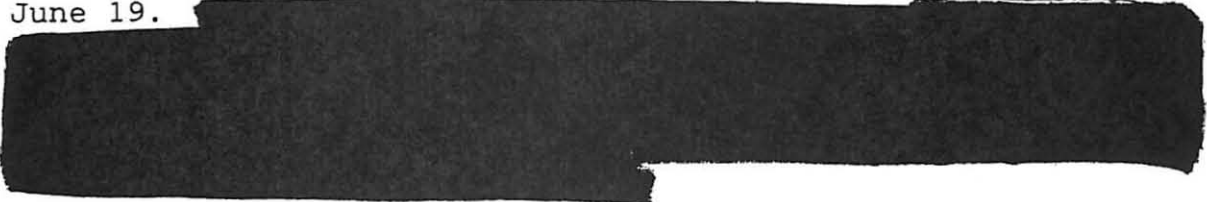
**FCI BECKLEY** - Eichler v. U.S. - This is an FTCA case arising from an accident with the institution's bus in 1995. Settlement authority for \$20,000 was originally granted. Settlement authority was recently increased to \$48,000. A settlement conference is scheduled for the beginning of June. Trial is currently scheduled for July 25, 2000.

**FCI BECKLEY** - Maydak v. Olson - This case has a long history regarding the challenge by inmate Maydak to the institution's rejection of commercially nude photographs. Recently the judge referred the request for injunctive relief against the Bureau back to the magistrate. The judge did find that the issue of injunctive relief against former Warden Olson was moot based on the inmate's transfer. A motion to dismiss was filed in May arguing the issue was moot as the revised program statement prohibits these types of photographs. The

magistrate judge notified the AUSA that an evidentiary hearing will be held July 7, 2000. The Judge did not provide specifics as to what the hearing will be about, but indicated an order would be entered before the hearing clarifying what issues will be addressed.

**FCI MILAN - Sexton v. USA** - We have conducted several examinations with the new engineering firm on this FTCA case, which involves a visitor's slip and fall in the parking lot. Preliminary verbal responses do not look favorable. Oral argument is scheduled for June 19, 2000 on the parties motions for dismissal/summary judgment.

**FCI ASHLAND - Bush v. Lowery** - A pre-trial conference is scheduled in this Bivens case for June 12, with trial set for June 19.



b5

**CRIMINAL:**

**USP TERRE HAUTE** - An August 5th execution date has been set for SCU inmate Juan Garza. Rick Schott has been working with Central Office legal staff to finalize the Execution Protocol.

**FCI MILAN - US v. Camejo** - This case was scheduled for trial the week of May 31, but has been rescheduled for the week of July 18. The case involves the assault of an inmate by Camejo causing the victim's abdominal region to be cut open.

**FCI BECKLEY** - Inmate Kokoski walked away from FPC Beckley in 1996. He was subsequently arrested in Montana and transported back to Beckley for prosecution for escape. Inmate Kokoski pled guilty in February to the charge. On May 9, 2000, inmate Kokoski received a 37-month consecutive sentence.

**FCI MILAN** - FCI/FDC staff continue working with the U.S. Attorney's Office and the FBI in securing indictments in U.S. v. Wells, et al. This initially appeared to be a conspiracy ring between FDC Milan inmates, visitors and street associates to introduce, possess and distribute narcotics at FDC Milan. The drug that was discovered was heroin.

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

FCI CUMBERLAND - Significant Tort Claim - T-MXR-99-511 - Former inmate [REDACTED] filed an administrative claim alleging we failed to provide proper medical treatment for a heart attack. He claimed that our failure to transport him to the hospital during his cardiac episode resulted in 20% damage to his heart. We have received the written report from AFIP, which concluded [REDACTED] was suffering from a myocardial infarction at the time he reported to Health Services. Because he was not taken to the outside hospital he did not receive the proper medications to prevent permanent muscle damage. [REDACTED] has at least 20% muscle damage to his heart. b7c

FCI ASHLAND - Sublett v. FCI Ashland Employees Club - the plaintiff recently filed a motion to amend his complaint adding FCI Ashland as a defendant. The plaintiff's attorney is scheduled to depose the former employee club president on June 12, 2000. The Chief of Civil for the Eastern District of Kentucky has been made aware of the motion. Since the U.S. Attorney's Office has not been served, no action will be taken at this time.

**Personnel Issues**

[REDACTED] b5

[REDACTED]

[REDACTED]

**Staff Leave and Travel**

[REDACTED] - June 6-8 Regional Planning Meeting, MXR  
June 19-23 Regional Counsel/Associate  
General Counsel's Meeting, D.C.  
June 30 Tour Virginia Death Row at Sussex I b6

[REDACTED] - Legal Conference, Fort Worth, June 5-9, 2000

Page 7  
MXR Monthly Report

New Litigation Cases by Institution and Type  
Received During the Month of May 2000

	ALD	ASH	BEC	BUT*	CUM	ELK	LEX	MAN	MEM	MIL	MRG	PET	SEY	MXR	THA	TOT
BIV	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
FTCA	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
HC	1	0	2	0	0	0	1	1	0	0	2	0	0	0	0	7
OTH	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	2
TOT	1	0	2	2	0	1	1	1	0	0	2	0	0	0	0	10

\*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	MAN	MEM	MIL	MRG	PET	SEY	MXR	THA	TOT
BIV	0	1	0	5	0	1	2	1	0	0	0	0	0	0	3	13
FTCA	0	0	0	1	1	0	1	0	0	0	0	1	0	0	1	5
HC	1	2	4	3	3	3	16	2	2	2	3	5	0	1	2	49
OTH	0	0	1	10	0	0	0	0	0	0	0	0	0	0	0	11
TOT	1	3	5	19	4	4	19	3	2	2	3	6	0	1	6	78

\*Represents both the FCI and LSCI

**memorandum**

DATE: July 6, 2000 Mid-Atlantic Regional Office, Annapolis Junction, MD 20701

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

SUBJECT: June 2000 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	161	131	153	179	149	144
Answered	149	155	161	130	121	246

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

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# Received	54	51	61	70	74	57
# Answered	45	68	50	71	34	51
# Pending	198	179	182	197	229	217
# Per Six Month	0	0	1	2	2	4

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

# Pending	30	55	63	46	48	38
# Received	60	101	64	71	57	76
# Answered	35	93	81	74	67	66
# Pending	55	63	46	48	38	50
# Over 20 Working Days	7*	3*	7●	3■	7♦	4♦

\*Two files archived; ●2 archived-2 mailed 4/4/00; ■all three archived; ♦4 archived; ♦3 archived;

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

Cases Pending	250	249	258	259	247	243
New Cases Received	14	19	12	24	10	14
Habeas Corpus	10	9	9	15	7	9
Bivens	3	2	1	6	1	2
FTCA	1	1	2	1	0	1
Other	0	7	0	2	2	0
Cases Closed	15	10	11	36	14	7
Cases Pending	249	258	259	247	243	250
Lit Reports Completed	17	12	16	12	16	9
Cases/Hearings or Trials	0	0	0	1	0	1
Settlements/Awards	1	0	0	0	0	0
\$ Settlements/Awards Thousands)	\$500.0	0	0	0	0	0

**SIGNIFICANT DECISIONS OR ADVERSE DECISIONS:**

**FCI MANCHESTER** - Palasty v. Snyder - Inmate Palasty is attempting to challenge the Ensign Amendment. Initially brought as a class action, Judge Coffman has dismissed all plaintiffs except Palasty. We have forwarded the complaint to Marsha Edney in DOJ.

**FCI MEMPHIS**- Young v. Edmonds, et al.- In this Bivens complaint, inmate Young alleges excessive use of force against three correctional officers stemming from an incident which occurred in the Special Housing Unit on November 11, 1999. Specifically, Young contends one of the officers attempted to dislocate his arm by slamming the food slot against it and the officers subsequently assaulted him when he was released from his cell uncuffed. One of the defendants in this case was subsequently disciplined for Providing a False Statement and Endangering the Safety of Staff. The SIS investigation, found no evidence of excessive use of force during the incident.

**SETTLEMENTS:**

**FCI BECKLEY** - Eichler v. U.S. - This is an FTCA case arising from a accident with the institution's bus in 1995. Settlement could not be reached during a recent settlement conference. Trial is scheduled to begin in Louisville, Kentucky, on July 25, 2000.

**USP TERRE HAUTE** - Lane v. Thomas - A tentative settlement for \$75 has been reached in this Bivens case with respect to a use of force situation. The defendant wished to settle the case for administrative convenience since he is eligible and ready to retire, but did not want to retire with a case pending. Therefore, he felt that it was in his best interest to settle for a nominal amount with, of course, no admission of wrongdoing. Legal staff spoke with the defendant at length about the ramifications of such a decision and he decided to end the case in this matter. AUSA Gerry Coraz was also intricately involved in this matter.

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

**FCC Butner** - We received what is partially an "adverse decision" in the Taliesin v. Hawk case. This case involved the inmate's allegation that the Bureau's "name change policy" is unconstitutional because it requires him to use his committed name as an AKA or alias on all official documents to be filed in his records. The court upheld the policy and granted the government's motion for summary judgment on that

Page 4  
MXR Monthly Report

issue. However, the court granted summary judgment in favor of the Plaintiff on his claims that the Bureau should provide him with mail and notary services in his new name. Although this is technically an order against the Bureau, it has no practical effect as we always have and continue to provide Plaintiff with these services.

**FCI MILAN** - Sexton v. U.S. - Oral arguments were heard on cross motions for summary judgment in this parking lot slip and fall FTCA case. The oral argument went well for the United States.

**FCI MEMPHIS** - Video-conference depositions were held in the Vargas case at the U.S. Attorney's Office. Dr. Naimey was deposed on June 16<sup>th</sup> and former SIS Lt. Jim Hough, was deposed on June 30<sup>th</sup>.

**FCI BECKLEY** - Maydak v. Olson - The magistrate judge ordered a hearing to determine whether the issue presented in this case (BOP decision to prohibit inmates from receiving commercially nude photographs) is moot and whether the Bureau has a de facto policy prohibiting inmates from possession these photos. The hearing is scheduled for July 11, 2000. A motion to reconsider has been filed, as well as objections to the order. The magistrate recently vacated the writ to have the inmate appear at the hearing, ordering that the inmate appear telephonically. The order noted that the court would attempt to decide the issue on the documents before it, giving us hope that a hearing will not be held.

**FCI ELKTON** - Wilson v. BOP, et al. - Inmate Wilson alleges in this Bivens suit that Officer Ramey and others used excessive force and threatened him in retaliation for filing a BP-9. The Office of Internal Affairs investigated this matter and recommended sustaining misconduct charges against Officer Ramey. Based on the OIA investigation, and the fact that several staff at Elkton will support inmate Wilson's allegations regarding Lt. Ramey, I am recommending that the U.S. Attorney's Office not represent Lt. Ramey.

**CRIMINAL:**

**Special Confinement Unit** - SCU inmate Hammer has filed a motion with his sentencing court, asking to drop all appeals. In the papers, inmate Hammer states he is guilty of killing another inmate, is competent to waive his appeals, and no longer wishes to appeal his death sentence. The court is



planning to hold a hearing in the near future, via Picturatel, regarding this motion.

**FCI BECKLEY** - Inmate Abu Shakur was indicted April 4, 2000, for assaulting a staff member. He is scheduled to be sentenced in September.

**FCI BECKLEY** - Inmate Barry Parker was indicted December 8, 1999, for Possessing Contraband (Weapon). He was sentenced to 24 months in May.

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

**FCI PETERSBURG** - Ibn Tajiddin Sabir - Mr. Sabir is a pretrial study case at Petersburg. On Sunday, June 25, inmate Sabir was involved in an altercation with a Correctional Officer, which left Sabir with a broken jaw. This incident was referred to the Office of the Inspector General for investigation. The court was notified of the incident, and inmate Sabir underwent oral surgery on June 27<sup>th</sup>. Inmate Sabir was then transferred to FMC Rochester.

**FCI CUMBERLAND** - Tort Claim - Inmate Reeder died in May of 1999 at FCI Cumberland. His family alleges that ten days after he suffered a heart attack, Reeder approached Health Services with chest pains. They claim we offered him aspirin rather than sending him to the hospital. They also claim that staff made him walk to Health Services on the day of his death, thus causing his death. We have preliminarily rejected the claim based on certain technicalities, but we expect the family to resubmit.

**FCI MILAN** - Warden Hemingway and Kevin Walasinski met with the Federal Judges in the Eastern District of Michigan to discuss FCI Milan and issues related to the FDC. There was some mis-information provided to the Court surrounding the MOU between the BOP and USMS concerning the acceptance of pre-trial inmates in detoxification and with acute medical conditions. The Judges were provided a copy of the memorandum, our medical procedures were discussed, and the Court was advised that FDC Milan houses many pre-trial inmates with medical conditions and that acute cases (those requiring hospitalization) would be sent to an outside hospital by the BOP, and transported and supervised by USMS staff. The meeting was very successful.

**FCI CUMBERLAND** - Kelly McDonald, Attorney, will host a tour of 25 Department of Justice legal interns on July 20, 2000.

**Personnel Issues**



Page 8  
MKR Monthly Report

New Litigation Cases by Institution and Type  
Received During the Month of June 2000

	ALD	ASH	BEC	BUT*	CUM	ELK	LEX	MAN	MEM	MIL	MRG	PET	SEY	MXR	THA	TOT
BIV	0	0	0	0	0	1	0	0	1	0	0	0	0	0	0	2
FTCA	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
HC	0	1	1	0	1	0	2	1	0	2	1	0	0	0	0	9
OTH	0	0	0	1	0	0	0	0	0	0	0	0	0	1	0	2
TOT	0	1	1	2	1	1	2	1	1	2	1	0	0	1	0	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	MAN	MEM	MIL	MRG	PET	SEY	MXR	THA	TOT
BIV	0	1	0	5	0	2	2	1	1	0	0	0	0	0	3	15
FTCA	0	0	0	2	1	0	1	0	0	0	0	1	0	0	1	6
HC	1	3	5	3	4	3	18	3	2	4	4	5	0	1	2	58
OTH	0	0	1	11	0	0	0	0	0	0	0	0	0	1	0	13
TOT	1	4	6	21	5	5	21	4	3	4	4	6	0	2	6	92

\*Represents both the FCI and LSCI

**U.S. Department of Justice  
Federal Bureau of Prisons**

*Mid-Atlantic Regional Office  
10010 Junction Drive, Suite 100-N  
Annapolis Junction, MD 20701*

Official Business  
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**MEMORANDAM FOR CHRIS ERLEWINE, GENERAL COUNSEL**

**DATE:** August 5, 2000

**FROM:** Bill Burlington, Regional Counsel  
Mid-Atlantic Region

**SUBJ:** July 2000 Monthly Report

**ATTN:** Linda Dubose, Executive Assistant

ADMINISTRATIVE REMEDIES	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Received	161	131	153	179	149	144	175					
Answered	149	155	161	130	121	246	138					

TORT CLAIMS	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	194	198	179	182	197	229	217					
# Received	54	51	61	70	74	57	67					
# Answered	45	68	50	71	34	51	68					
# Pending	198	179	182	197	229	217	214					
# Over Six Month	0	0	1	2	2	4	1					

FOI/PRIVACY	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	30	55	63	46	48	38	50					
# Received	60	101	64	71	57	76	57					
# Answered	35	93	81	74	67	66	66					
# Pending	55	63	46	48	38	50	41					
# Over 20 Working Days	7*	3*	7●	3■	7◆	4◇	7✱					

\*Two files archived; ●2 archived-2 mailed 4/4/00; ■all three archived; ◆4 archived; ◇3 archived; ✱5 archived;

LITIGATION	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Cases Pending	250	249	258	259	247	243	250					
New Cases Received	14	19	12	24	10	14	12					
Habeas Corpus	10	9	9	15	7	9	6					
Bivens	3	2	1	6	1	2	3					
FTCA	1	1	2	1	0	1	1					
Other	0	7	0	2	2	0	2					
Cases Closed	15	10	11	36	14	7	16					
Cases Pending	249	258	259	247	243	250	246					
Lit Reports Completed	17	12	16	12	16	9	7					
Cases/Hearings or Trials	0	0	0	1	0	1	2					
Settlements/Awards	1	0	0	0	0	0	1					
\$ Settlements/Awards	\$500.0	0	0	0	0	0	\$0.075					
(\$ in Thousands)												

**SIGNIFICANT DECISIONS OR ADVERSE DECISIONS:**

FCI Beckley - Maydak v. Hawk - Magistrate Mary Feinberg has recommended enjoining BOP's Program Statement, Inmate Personal Property, as it applies to inmates who want to receive sexually explicit commercial photographs. The Magistrate found the policy to be vague, thus inviting staff to apply their own personal prejudices about inmates receiving such photos. Since this was also an Ensign Amendment case, we are working with DOJ attorney Marsha Edney, to file objections.

FCC BUTNER - Francis v. Hawk Sawyer, et al. - In a highly contested case, we received a favorable ruling upholding the Bureau's decision to classify routine hernias as not presently medically necessary. In this case, plaintiff was diagnosed with a hernia, and he claimed he had constant pain. The court upheld the decision of medical staff that the hernia had not progressed to the point where surgery was medically necessary. [REDACTED] b5

FCI ELKTON - Pepper v. LaManna - Judge Economus ruled in our favor in this habeas cases where inmate Pepper sought release from custody. Pepper alleges that the BOP failed to properly take him into custody for service of his federal sentence. Pepper received a state and federal sentence for fraud. The state sentencing judge ordered his state sentence to run concurrently with his federal sentence and that he serve his time in a federal facility. BOP officials refused to take Pepper into custody until he had served his state sentence because the state had primary jurisdiction. The Judge agreed with the BOP that the BOP was not obligated to take Pepper into custody until he had served his state sentence.

FCI ASHLAND - Bryan Sublett v. FCI Ashland Employees Club, et al. - The institution received a Notice of Nonsuit terminating all litigation in this case against all parties with prejudice.

FCI MILAN - Sexton v. United States - On July 24, 2000, the Court issued its Order and Opinion on both parties' motions for dismissal/summary judgment. There were three main issues addressed in the Order. First, the Court determined under Michigan law that the plaintiff was a licensee and not an

invitee. Secondly, the Court ruled the lack of consortium claim was properly filed. Finally, the Court permitted the United States to raise issues related to the negligent medical care provided to the plaintiff during her surgery to repair her wrist.

**SETTLEMENTS:**

USP TERRE HAUTE - Lane v. Thomas - The Defendant in this Bivens action decided to settle the case in the amount of \$75 since he is planning on retiring in the near future. This case was outlined in the previous month's report.

FCI MEMPHIS - Ulises Vargas v. Reno, et al. - A settlement conference was held in this case on July 18<sup>th</sup>. Christine Martinez, AW(O), represented the BOP, and met with Magistrate Breen accompanied by AUSA Harriett Halmon. Following protracted mediation, Mr. Vargas' attorney offered to settle the case for \$60,000 (down from \$100,000), although the individual items totaled less than \$30,000. AUSA Halmon declined to counter offer from the Government's initial \$1,000 settlement offer and advised Judge Breen accordingly. On July 28<sup>th</sup>, AUSA Halmon filed a renewed Request for Summary Judgment.

[REDACTED]

b5

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

FCI BECKLEY - Eichler v. United States - The Beckley FTCA bus accident case was tried to a judge during the week of July 24<sup>th</sup>. The trial lasted three days. At the conclusion of the evidence, the judge indicated he would be rendering his opinion within the next couple of weeks.

[REDACTED]

b5  
b2

Plaintiffs were asking for over \$1 million in damages.

[REDACTED]

FCI MEMPHIS - Cockerell v. United States - Depositions are scheduled for August 14<sup>th</sup> for [REDACTED] Construction Foreman, and former Captain, [REDACTED]. This is the FTCA case filed by a Memphis police officer for injuries he received while using the FCI Memphis obstacle course. [REDACTED] deposition will be via video teleconferencing from the U.S. Attorney's Office in Baltimore. Harriett Halmon, AUSA, will also depose the defendants, Memphis PD SWAT member Cockerell and his wife. b6

**CRIMINAL:**

FCI MILAN - Inmate Jeffrey Wells plead guilty to Count 3 of the indictment charging him with violation of 18 USC 1791(a)(2) - Possession of a Prohibited Object by Federal Inmates. This charge relates to the December 21, 1999, incident in which the immediate use of force was required on inmate Wells after he attempted to flush an item down the toilet. The item was confiscated after Wells was restrained and tested positive for heroin. Ten individuals were indicted (including visitors), however, three have been dismissed. The trial for the remaining six individuals is scheduled for August 29, 2000.

FCI BECKLEY - Inmate [REDACTED] was indicted on two counts of Assault. These charges arise out of the disturbance at FCI Beckley on December 10, 1999. b7C

FCI BECKLEY - Inmate [REDACTED] was indicted on one count of Assault. This charge arises out of the disturbance at FCI Beckley on December 10, 1999.

**Special Confinement Unit** - SCU inmate Hammer has filed a motion with the Third Circuit, asking to drop all appeals. In July, the Third Circuit Court of Appeals, via picturetel, heard inmate Hammer's oral argument in support of his motion. Inmate Hammer indicated he was guilty of murdering another inmate, and wanted to die. He said it was cruel and unusual punishment not to know when he was going to die, and thus, he wants to be executed as soon as possible. The Court seemed moved by his testimony, and indicated they would rule on the motion in early August.

FMC LEXINGTON - Inmate Andrew Felton pled guilty to assault



on another inmate, and was sentenced to a thirty-three month federal term on July 10.

FCI MILAN - US v. Camejo - This inmate-on-inmate assault case set for trial in July has been rescheduled for the week of August 15<sup>th</sup>. Camejo just fired his court appointed lawyer which will delay the case until September 2000. Kevin Walasinski, Attorney, FCI Milan, is working with the AUSA, SIA, HRM and Regional Counsel on the review of Gigilo materials.

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

FCI PETERSBURG - U.S. v. Krilich - Inmate Krilich was originally sentenced to 64 months for RICO violations; the government appealed. The re-sentencing hearing is set for September 8, 2000, in Chicago. Krilich's attorneys are alleging that the BOP cannot provide proper medical care, especially for his cardiac condition. Krilich's attorneys want him on home confinement. A report from BOP is due to the court by August 10<sup>th</sup>. The BOP has made four attempts to have Krilich receive a cardiac stress test. Twice the inmate has refused; once he actually went to the appointment and then refused the test; and on August 7th he was asked again and again refused.

FCI CUMBERLAND - Significant Tort Claim - Inmate Reeder died in May 1999. His family alleges that ten days after he suffered a heart attack Reeder approached Health Services with chest pain. They claim the BOP offered him aspirin rather than sending him to the hospital. They also claim that staff made him walk to Health Services on the day of his death, thus causing his death.

[REDACTED]

b2

FCI CUMBERLAND - Significant Tort Claim - Salvatierra - A letter was received from Dr. Kendig opining that staff were negligent. Kelly McDonald, attorney FCI Cumberland, has contacted the attorney for the claimant to seek additional medical records. We expect responsive documents within the next week or so.

FCI MILAN - US v. Garcia - The BOP was served with a subpoena in this criminal case for five inmate telephone calls, records, etc. A court order was issued in early July denying the government's motion to quash, but limited the subpoena time frames. We have complied with 95% of the materials requested and are working with the AUSA and defense counsel on the other matter.

**Personnel Issues**

[REDACTED]

b6

[REDACTED]

[REDACTED]

[REDACTED]

**Staff Leave and Travel**

[REDACTED]

August 14-15: San Diego-BOP Physician Training  
August 21-23: Region, and US Attorney Meeting at  
USP Lee

b6

New Litigation Cases by Institution and Type  
Received During the Month of July 2000

	ALD	ASH	BEC	BUT*	CUM	ELK	LEX	MAN	MEM	MIL	MRG	PET	SEY	MXR	THA	TOT
BIV	0	0	0	1	0	0	0	0	0	0	1	0	0	0	1	3
FTCA	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
HC	0	0	0	0	0	0	2	0	0	1	0	3	0	0	0	6
OTH	0	0	0	1	0	0	0	0	0	0	0	0	0	1	0	2
TOT	0	0	0	2	1	0	2	0	0	1	1	3	0	1	1	12

\*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	MAN	MEM	MIL	MRG	PET	SEY	MXR	THA	TOT
BIV	0	1	0	6	0	2	2	1	1	0	1	0	0	0	4	18
FTCA	0	0	0	2	2	0	1	0	0	0	0	1	0	0	1	7
HC	1	3	5	3	4	3	20	3	2	5	4	8	0	1	2	64
OTH	0	0	1	12	0	0	0	0	0	0	0	0	0	2	0	15
TOT	1	4	6	23	6	5	23	4	3	5	5	9	0	3	7	104

\*Represents both the FCI and LSCI

# memorandum

DATE: September 8, 2000 Mid-Atlantic Regional Office, Annapolis Junction, MD 20701

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

SUBJECT: August 2000 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	161	131	153	179	149	144	175	174				
Answered	149	155	161	130	121	246	138	155				

TORT CLAIMS	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	194	198	179	182	197	229	217	214				
# Received	54	51	61	70	74	57	67	74				
# Answered	45	68	50	71	34	51	68	44				
# Pending	198	179	182	197	229	217	214	236				
# Over Six Month	0	0	1	2	2	4	1	2				

PRIVACY	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	30	55	63	46	48	38	50	41				
# Received	60	101	64	71	57	76	57	76				
# Answered	35	93	81	74	67	66	66	62				
# Pending	55	63	46	48	38	50	41	56				
# Over 20 Working Days	7*	3*	7●	3■	7◆	4◇	7✕	6◇				

\*Two files archived; ●2 archived-2 mailed 4/4/00; ■all three archived; ◆4 archived; ◇3 archived; ✕5 archived; ◇3 archived

LITIGATION	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Cases Pending	250	249	258	259	247	243	250	246				
New Cases Received	14	19	12	24	10	14	12	24				
Habeas Corpus	10	9	9	15	7	9	6	18				
Bivens	3	2	1	6	1	2	3	2				
FTCA	1	1	2	1	0	1	1	2				
Other	0	7	0	2	2	0	2	2				
Cases Closed	15	10	11	36	14	7	16	38				
Cases Pending	249	258	259	247	243	250	246	232				
Lit Reports Completed	17	12	16	12	16	9	7	14				
Cases/Hearings or Trials	0	0	0	1	0	1	2	1				
Settlements/Awards	1	0	0	0	0	0	1	1				
\$ Settlements/Awards	\$500.0	0	0	0	0	0	\$0.075	\$1.5				

(\$ in Thousands)

**SIGNIFICANT DECISIONS OR ADVERSE DECISIONS:**

**FCI BECKLEY** - Maydak v. Hawk - Magistrate Mary Feinberg has recommended enjoining BOP's Program Statements, Inmate Personal Property and Correspondence, as they apply to inmates who want to receive sexually explicit commercial photographs, finding them to be unconstitutionally vague. Marsha Edney has recently filed objections.

**FCI MANCHESTER** - Steven Palasty, et al. v. Hawk - In another Ensign Amendment challenge, a Motion to Dismiss has been filed by DOJ attorney Ori Lev. Inmate Palasty tried to file a class action, but Judge Jennifer Coffman refused to certify the class, and has limited this case to inmate Palasty's claim that the Ensign Amendment unconstitutionally infringes his First Amendment right to receive publications like Playboy and Penthouse.

**USP TERRE HAUTE** - Kaba Karamo v. Lt. Breakbill et al. - The Department has agreed to pay the past and future fees of the private counsel who has been authorized to represent Terre Haute staff members Randy Jones, Hilbert Martin and Kirt Breakbill. These three Lieutenants have had a Motion for Summary Judgment filed on their behalf by private counsel, and we are now waiting for the Court to rule on the motion.

**FCI ELKTON** - Mark Wilson v. Bureau of Prisons - [REDACTED] In this suit, inmate Wilson claims [REDACTED] was verbally abusive, threatening and used excessive force in part due to inmate Wilson filing a BP-9 against a correctional officer. [REDACTED]

b5  
b6

**SETTLEMENTS:**

**FCI MILAN** - Sexton v. United States - A settlement conference has been set in Detroit, on October 5<sup>th</sup>, in this slip and fall case out of Milan. [REDACTED]

b5

**FCI MORGANTOWN** - Steven Hale v. United States - a pre-trial conference was held in Clarksburg, WV, with a U.S. Magistrate Judge as mediator in this FTCA case involving loss of a very lengthy trial transcript, along with other personal items. Former inmate Hale and his counsel were present. The Bureau made a final offer of \$1,500 which was accepted by Mr. Hale.

Although we are still awaiting a signed release from Mr. Hale's counsel, this settlement has hopefully ended a lengthy and arduous case.

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

**FCI BECKLEY** - Eichler v. United States - The Beckley FTCA bus accident case was tried to a judge during the week of July 24<sup>th</sup>. The trial lasted three days. At the conclusion of the evidence, the judge indicated he would rendering his opinion within the next couple of weeks. We are still awaiting a decision.

**FCI BUTNER** - Woodruff v. United States - This Butner suicide case was tried the week of August 21<sup>st</sup>. While we felt the AUSA did an outstanding job presenting our defense, this case could go either way. The Judge did not rule at the conclusion of the evidence, but requested post-trial briefs. From questions the Judge asked, he was obviously concerned that an inmate who we identified as mentally ill, was allowed to commit suicide.

**FCI MEMPHIS** - Cockerell v. United States - Depositions were held on August 14<sup>th</sup> for Keith Herndon, Construction Foreman, and former Captain Bill Taylor in this case arising from injuries to a Memphis Police Officer while using the FCI's obstacle course. The AUSA also deposed the defendants.

**CRIMINAL:**

**FCI BECKLEY** - Abu Shakur, Reg. No. 16391-016, was indicated April 4, 2000, for assaulting a staff member. He is scheduled to be sentenced September 11, 2000.

**FCI PETERSBURG** - United States v. Krilich - Inmate Robert Krilich, Reg. No. 06108-424, (\$200M dollar man), was originally sentenced to 64 months for RICO violation. The US appealed the sentence, won, and Krilich was orally re-sentenced from the bench to an 87 month sentence on February 11, 2000. However, the Judge never issued a new J&C. Krilich's attorneys have filed numerous motions requesting home confinement in lieu of incarceration asserting that his medical condition is such (heart) that the BOP cannot provide for his care. The BOP has scheduled Krilich for a stress test on four occasions and each time he has found a reason to refuse. A hearing was set for September 8, 2000. However, on August 23, 2000, the U.S. filed a motion asserting that pursuant to 18 U.S.C. § 3582, the court was without jurisdiction to continue to review Krilich's sentence and the

MXR Monthly Report

oral sentence of February 11<sup>th</sup> should be final. Alternatively, it was asserted that if the motion was denied, that the court should order a 60 day medical and psychological evaluation of Krilich at a BOP medical facility. The court, on August 30, 2000, ordered that Krilich be transported by air to FMC Lexington for a battery of tests (cardiac and psychological) to determine his medical condition. According to the AUSA Krilich will be ordered to cooperate with the testing. Krilich was medically airlifted to LEX on September 6, 2000. The court hearing has been continued until October 31, 2000, pending receipt of the study.

**FCI CUMBERLAND** - On August 26, 2000, Inmate Richard Rosebar (#43369-083) of FPC Cumberland escaped. On Monday, August 28, 2000, Rosebar returned from his "self proclaimed" furlough, claiming that we cannot charge him with escape, as he self surrendered within a reasonable time. Kelly McDonald spoke with the U.S. Attorney's Office for the District of Maryland, and they have agreed to prosecute Mr. Rosebar for escape.

**USP TERRE HAUTE SPECIAL CONFINEMENT UNIT** - The Third Circuit Court of Appeals ruled on August 31<sup>st</sup>, that appeals in death penalty cases are not mandatory, and that SCU inmate Hammer is mentally competent and thus, entitled to withdraw the appeal of his death sentence. This clears the way for inmate Hammer to be executed, as he has indicated that he will not seek clemency.

**FMC LEXINGTON** - Brian O'Leary, Reg. No. 03626-036, is under investigation and pending prosecution for possessing a homemade shank and amphetamines in his mattress.

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

**FCI MEMPHIS**- Mike Pybas, Deputy Regional Counsel, will visit FCI, Memphis September 12-14, regarding the transition of duties as the Legal Office is closed. He will also meet with staff at the U.S. Attorney's Office to discuss the continuity of legal assistance to that office.

**USP LEE COUNTY** - On August 23<sup>rd</sup>, I spoke at a meeting arranged by U.S. Attorney Robert Crouch, regarding the impact that USP Lee will have in the Western District of Virginia. Approximately 25 members of the "federal family" were in attendance, including a Magistrate Judge who will hear cases

coming from the institution. Due to the very remote location of the institution, the Magistrate indicated she was willing to travel to the institution to hold hearings. The U.S. Marshall is very interested in video-conference court proceedings, as an alternative to transporting high security inmates out of USP Lee for court hearings. It was clear from the meeting that problems with DC inmates housed at Red Onion (VA DOC contract with DC) have caused concern in the federal family about the impact our institution will have, particularly in view of the fact we will have DC inmates at USP Lee.

**FCI MILAN** - Administrative Tort Claim T-MXR-00-096, [REDACTED] b1C  
[REDACTED], has been forwarded to the Central Office for approval of a review by the Armed Forces Pathology Division. This claim alleges medical malpractice in that the inmate was not provided proper medical care to treat his detoxification from alcoholism and Xanax dependency. The inmate was subsequently rushed to an outside hospital. He was intubated while in route, suffered a cardiac arrest in the hospital emergency room, and required local hospitalization, and continued care at FMC Rochester. The claim has several problems related to medical care and supervision.  
[REDACTED] b5

#### **Personnel Issues**

**FMC LEXINGTON-** [REDACTED] b5  
[REDACTED] b6

**FMC LEXINGTON-** [REDACTED]

**FCI MEMPHIS** - [REDACTED]





New Litigation Cases by Institution and Type  
Received During the Month of August 2000

	ALD	ASH	BEC	BUT*	CUM	ELK	LEX	MAN	MEM	MIL	MRG	PET	SEY	MXR	THA	TOT
BIV	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1	2
FTCA	0	0	0	0	0	1	0	0	0	1	0	0	0	0	0	2
HC	0	1	0	3	1	0	6	2	1	2	0	1	0	0	1	18
OTH	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	2
TOT	0	1	0	5	1	2	6	2	1	3	0	1	0	0	2	24

\*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	MAN	MEM	MIL	MRG	PET	SEY	MXR	THA	TOT
BIV	0	1	0	6	0	3	2	1	1	0	1	0	0	0	5	20
FTCA	0	0	0	2	2	1	1	0	0	1	0	1	0	0	1	9
HC	1	4	5	6	5	3	26	5	3	5	4	11	0	1	3	82
OTH	0	0	1	14	0	0	0	0	0	0	0	0	0	2	0	17
TOT	1	5	6	28	7	7	29	6	4	6	5	12	0	3	9	128

\*Represents both the FCI and LSCI

**memorandum**

DATE: September 8, 2000 Mid-Atlantic Regional Office, Annapolis Junction, MD 20701

REPLY TO: Bill Burlington, Regional Counsel

ATTN OF: Mid-Atlantic Region

SUBJECT: August 2000 Monthly Report

TO: Christopher Erlewine, General Counsel

ATTN: Linda Dubose, Executive Assistant

*Please  
file in  
monthly  
report  
binder*

ADMINISTRATIVE REMEDIES	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Received	161	131	153	179	149	144	175	174				
Answered	149	155	161	130	121	246	138	155				

TORT CLAIMS	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	194	198	179	182	197	229	217	214				
# Received	54	51	61	70	74	57	67	74				
# Answered	45	68	50	71	34	51	68	44				
# Pending	198	179	182	197	229	217	214	236				
# Over Six Month	0	0	1	2	2	4	1	2				

PRIVACY	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	30	55	63	46	48	38	50	41				
# Received	60	101	64	71	57	76	57	76				
# Answered	35	93	81	74	67	66	66	62				
# Pending	55	63	46	48	38	50	41	56				
# Over 20 Working Days	7*	3*	7●	3■	7◆	4◇		7✱	6◇			

\*Two files archived; ●2 archived-2 mailed 4/4/00; ■all three archived; ◆4 archived; ◇3 archived; ✱5 archived; ◇3 archived

LITIGATION	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Cases Pending	250	249	258	259	247	243	250	246				
New Cases Received	14	19	12	24	10	14	12	24				
Habeas Corpus	10	9	9	15	7	9	6	18				
Bivens	3	2	1	6	1	2	3	2				
FTCA	1	1	2	1	0	1	1	2				
Other	0	7	0	2	2	0	2	2				
Cases Closed	15	10	11	36	14	7	16	38				
Cases Pending	249	258	259	247	243	250	246	232				
Lit Reports Completed	17	12	16	12	16	9	7	14				
Cases/Hearings or Trials	0	0	0	1	0	1	2	1				
Settlements/Awards	1	0	0	0	0	0	1	1				
\$ Settlements/Awards	\$500.0	0	0	0	0	0	\$0.075	\$1.5				

(\$ in Thousands)

**SIGNIFICANT DECISIONS OR ADVERSE DECISIONS:**

**FCI BECKLEY** - Maydak v. Hawk - Magistrate Mary Feinberg has recommended enjoining BOP's Program Statements, Inmate Personal Property and Correspondence, as they apply to inmates who want to receive sexually explicit commercial photographs, finding them to be unconstitutionally vague. Marsha Edney has recently filed objections.

**FCI MANCHESTER** - Steven Palasty, et al. v. Hawk - In another Ensign Amendment challenge, a Motion to Dismiss has been filed by DOJ attorney Ori Lev. Inmate Palasty tried to file a class action, but Judge Jennifer Coffman refused to certify the class, and has limited this case to inmate Palasty's claim that the Ensign Amendment unconstitutionally infringes his First Amendment right to receive publications like Playboy and Penthouse.

**USP TERRE HAUTE** - Kaba Karamo v. Lt. Breakbill et al. - The Department has agreed to pay the past and future fees of the private counsel who has been authorized to represent Terre Haute staff members [REDACTED] b6 [REDACTED]. These three Lieutenants have had a Motion for Summary Judgment filed on their behalf by private counsel, and we are now waiting for the Court to rule on the motion.

**FCI ELKTON** - Mark Wilson v. Bureau of Prisons - I am not recommending that the Department provide U.S. Attorney representation for Bivens defendant [REDACTED]. In this suit, inmate [REDACTED] claims [REDACTED] was verbally abusive, threatening and used excessive force in part due to inmate [REDACTED] filing a BP-9 against a correctional officer. An OIA investigation contains declarations from correctional officers at Elkton, which tend to corroborate inmate [REDACTED] allegations that unnecessary force was used.

**SETTLEMENTS:**

**FCI MILAN** - Sexton v. United States - A settlement conference has been set in Detroit, on October 5<sup>th</sup>, in this slip and fall case out of Milan. [REDACTED] b5 [REDACTED]

**FCI MORGANTOWN** - Steven Hale v. United States - a pre-trial conference was held in Clarksburg, WV, with a U.S. Magistrate Judge as mediator in this FTCA case involving loss of a very lengthy trial transcript, along with other personal items. Former inmate Hale and his counsel were present. The Bureau made a final offer of \$1,500 which was accepted by Mr. Hale.

Although we are still awaiting a signed release from Mr. Hale's counsel, this settlement has hopefully ended a lengthy and arduous case.

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

**FCI BECKLEY** - Eichler v. United States - The Beckley FTCA bus accident case was tried to a judge during the week of July 24<sup>th</sup>. The trial lasted three days. At the conclusion of the evidence, the judge indicated he would rendering his opinion within the next couple of weeks. We are still awaiting a decision.

**FCI BUTNER** - Woodruff v. United States - This Butner suicide case was tried the week of August 21<sup>st</sup>. While we felt the AUSA did an outstanding job presenting our defense, this case could go either way. The Judge did not rule at the conclusion of the evidence, but requested post-trial briefs. [REDACTED] b5

**FCI MEMPHIS** - Cockerell v. United States - Depositions were held on August 14<sup>th</sup> for Keith Herndon, Construction Foreman, and former Captain Bill Taylor in this case arising from injuries to a Memphis Police Officer while using the FCI's obstacle course. The AUSA also deposed the defendants.

**CRIMINAL:**

**FCI BECKLEY** - Abu Shakur, Reg. No. 16391-016, was indicated April 4, 2000, for assaulting a staff member. He is scheduled to be sentenced September 11, 2000.

**FCI PETERSBURG** - United States v. Krilich - Inmate Robert Krilich, Reg. No. 06108-424, (\$200M dollar man), was originally sentenced to 64 months for RICO violation. The US appealed the sentence, won, and Krilich was orally re-sentenced from the bench to an 87 month sentence on February 11, 2000. However, the Judge never issued a new J&C. Krilich's attorneys have filed numerous motions requesting home confinement in lieu of incarceration asserting that his medical condition is such (heart) that the BOP cannot provide for his care. The BOP has scheduled Krilich for a stress test on four occasions and each time he has found a reason to refuse. A hearing was set for September 8, 2000. However, on August 23, 2000, the U.S. filed a motion asserting that pursuant to 18 U.S.C. § 3582, the court was without jurisdiction to continue to review Krilich's sentence and the

oral sentence of February 11<sup>th</sup> should be final. Alternatively, it was asserted that if the motion was denied, that the court should order a 60 day medical and psychological evaluation of Krilich at a BOP medical facility. The court, on August 30, 2000, ordered that Krilich be transported by air to FMC Lexington for a battery of tests (cardiac and psychological) to determine his medical condition. According to the AUSA Krilich will be ordered to cooperate with the testing. Krilich was medically airlifted to LEX on September 6, 2000. The court hearing has been continued until October 31, 2000, pending receipt of the study.

**FCI CUMBERLAND** - On August 26, 2000, Inmate Richard Rosebar (#43369-083) of FPC Cumberland escaped. On Monday, August 28, 2000, Rosebar returned from his "self proclaimed" furlough, claiming that we cannot charge him with escape, as he self surrendered within a reasonable time. Kelly McDonald spoke with the U.S. Attorney's Office for the District of Maryland, and they have agreed to prosecute Mr. Rosebar for escape.

**USP TERRE HAUTE SPECIAL CONFINEMENT UNIT** - The Third Circuit Court of Appeals ruled on August 31<sup>st</sup>, that appeals in death penalty cases are not mandatory, and that SCU inmate Hammer is mentally competent and thus, entitled to withdraw the appeal of his death sentence. This clears the way for inmate Hammer to be executed, as he has indicated that he will not seek clemency.

**FMC LEXINGTON** - Brian O'Leary, Reg. No. 03626-036, is under investigation and pending prosecution for possessing a homemade shank and amphetamines in his mattress.

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

**FCI MEMPHIS-** Mike Pybas, Deputy Regional Counsel, will visit FCI, Memphis September 12-14, regarding the transition of duties as the Legal Office is closed. He will also meet with staff at the U.S. Attorney's Office to discuss the continuity of legal assistance to that office.

**USP LEE COUNTY** - On August 23<sup>rd</sup>, I spoke at a meeting arranged by U.S. Attorney Robert Crouch, regarding the impact that USP Lee will have in the Western District of Virginia. Approximately 25 members of the "federal family" were in attendance, including a Magistrate Judge who will hear cases

coming from the institution. Due to the very remote location of the institution, the Magistrate indicated she was willing to travel to the institution to hold hearings. The U.S. Marshall is very interested in videoc-conference court proceedings, as an alternative to transporting high security inmates out of USP Lee for court hearings. It was clear from the meeting that problems with DC inmates housed at Red Onion (VA DOC contract with DC) have caused concern in the federal family about the impact our institution will have, particularly in view of the fact we will have DC inmates at USP Lee.

**FCI MILAN** - Administrative Tort Claim T-MXR-00-096, [REDACTED] b7C  
[REDACTED] has been forwarded to the Central Office for approval of a review by the Armed Forces Pathology Division. This claim alleges medical malpractice in that the inmate was not provided proper medical care to treat his detoxification from alcoholism and Xanax dependency. The inmate was subsequently rushed to an outside hospital. He was intubated while in route, suffered a cardiac arrest in the hospital emergency room, and required local hospitalization, and continued care at FMC Rochester. b5  
[REDACTED]

#### **Personnel Issues**

**FMC LEXINGTON-** [REDACTED] b5  
[REDACTED] b6

**FMC LEXINGTON-** [REDACTED]

**FCI MEMPHIS** - [REDACTED]





New Litigation Cases by Institution and Type  
Received During the Month of August 2000

	ALD	ASH	BEC	BUT*	CUM	ELK	LEX	MAN	MEM	MIL	MRG	PET	SEY	MXR	THA	TOT
BIV	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1	2
FTC A	0	0	0	0	0	1	0	0	0	1	0	0	0	0	0	2
HC	0	1	0	3	1	0	6	2	1	2	0	1	0	0	1	18
OTH	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	2
TOT	0	1	0	5	1	2	6	2	1	3	0	1	0	0	2	24

\*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	MAN	MEM	MIL	MRG	PET	SEY	MXR	THA	TOT
BIV	0	1	0	6	0	3	2	1	1	0	1	0	0	0	5	20
FTC A	0	0	0	2	2	1	1	0	0	1	0	1	0	0	1	9
HC	1	4	5	6	5	3	26	5	3	5	4	11	0	1	3	82
OTH	0	0	1	14	0	0	0	0	0	0	0	0	0	2	0	17
TOT	1	5	6	28	7	7	29	6	4	6	5	12	0	3	9	128

\*Represents both the FCI and LSCI

# memorandum

DATE: October 12, 2000 Mid-Atlantic Regional Office, Annapolis Junction, MD 20701

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

SUBJECT: September 2000 Monthly Repc

TO: Christopher Erlewine, Gener

ATTN: Linda Dubose, Executive Assistant

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TORT CLAIMS	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
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# Answered	45	68	50	71	34	51	68	44	42			
# Pending	198	179	182	197	229	217	214	236	236			
# Over Six Month	0	0	1	2	2	4	1	2	1			

FOIA/PRIVACY	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	30	55	63	46	48	38	50	41	56			
# Received	60	101	64	71	57	76	57	76	53			
# Answered	35	93	81	74	67	66	66	62	41			
# Pending	55	63	46	48	38	50	41	56	68			
# Over 20 Working Days	7	3	7	3	7	4	7	6	21★			

\*5 archived; 8 mailed 10-2

LITIGATION	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
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Bivens	3	2	1	6	1	2	3	2	2			
FTCA	1	1	2	1	0	1	1	2	3			
Other	0	7	0	2	2	0	2	2	5			
Cases Closed	15	10	11	36	14	7	16	38	12			
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Lit Reports Completed	17	12	16	12	16	9	7	14	10			
Cases/Hearings or Trials	0	0	0	1	0	1	2	1	2			
Settlements/Awards	1	0	0	0	0	0	1	1	2			
\$ Settlements/Awards	\$500.0	0	0	0	0	0	\$ .075	\$1.5	\$987			

(\$ in Thousands)

**SIGNIFICANT DECISIONS OR ADVERSE DECISIONS:**

**FCI BUTNER** - Woodruff v. United States - After a four day trial, the Judge entered a verdict of \$907,000 (plus interest and costs) for the family of deceased Butner inmate Bryant Woodruff. The court found the government responsible for inmate Woodruff's 1997 suicide, saying Butner staff failed to properly treat inmate Woodruff's depression, and did not properly monitor Woodruff, despite our knowledge that he had recently attempted suicide. The verdict was based on the credibility of witnesses. I do not believe there are grounds for an appeal, even though the AUSA has indicated he would like to appeal.

**FCI ELKTON** - Mark Wilson v. Bureau of Prisons - The Department of Justice is still considering whether they should grant representation to Elkton employee [REDACTED] b5  
[REDACTED] DL

[REDACTED] Inmate Wilson claims  
[REDACTED] was verbally and physically abusive.  
[REDACTED]

**FCI MORGANTOWN** - Silvia Medley v. Bledsoe, et al. - In this Bivens/EEO suit, I had recommended DOJ representation for [REDACTED] b6  
[REDACTED] the Union President at FCI Morgantown. DOJ has just informed us that representation will not be provided to [REDACTED] as the only allegations against him concern actions he would have taken in his capacity as Union President. Accordingly, the Department says representation must come from his Union. I have notified the Warden and [REDACTED] of DOJ's decision.

**FMC LEXINGTON** - Thomas Greer v. Thoms - Judge Wilhoit upheld our policy precluding inmates with prior crimes of violence from early release under 3621(e). Greer has a prior conviction for Aggravated Battery. In his two sentence Order, Judge Wilhoit cited the cases relied upon in Respondent's brief as the basis for the dismissal of the habeas petition.

**FCI BECKLEY** - Mayday v. Olson - The District Court entered an order September 28, 2000, finding the Bureau's past and present policies on commercially available nude or sexually explicit photographs are reasonably related to a legitimate penological interest. Accordingly, the Judge upheld P.S. 5580.05 and P.S. 5580.06 under Turner. In the analysis under the first Turner factor the Judge noted, "BOP staff is far

more familiar than this court could ever be with the various ploys used by prisoners to skirt prison regulations, and the BOP must be free to implement their regulations without untoward interference from the court system."

**FCI CUMBERLAND** - Jeffress v. Gunja - The Court dismissed this case without prejudice and ruled that the inmate should have filed a 2255 in the district of conviction, and that he could not avoid AEDPA by filing a 2241. The institution attorney is drafting a letter to the AUSA asking him to request that this opinion be published, but she has spoken to the AUSA informally and he is not confident the Judge will want to publish it.

**SETTLEMENTS:**

**FCI MILAN** - Inmate [REDACTED], TRT-MXR-00-096 - This is an administrative tort claim for medical malpractice. The claim raises issues of medical records missing from the inmate's file which are relevant to his care at FDC Milan. The inmate arrived at FDC Milan withdrawing from alcohol and psychopathic medication. [REDACTED]

b1C  
b5

**FCI MILAN** - Sexton v. United States - A settlement conference was held in Detroit, on October 5<sup>th</sup>, in this slip and fall case out of Milan. After three hours with the Judge, we were able to settle this case for \$80,000.

**FCI BUTNER** - Zachowski v. United States - We have just sent a lengthy settlement recommendation in this Butner FTCA suicide case. [REDACTED]

b5

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

**FCI BECKLEY** - Eichler v. United States - The Beckley FTCA bus accident case was tried to a judge during the week of July

24<sup>th</sup>. The trial lasted three days. At the conclusion of the evidence, the judge indicated he would be rendering his opinion within the next couple of weeks. We are still awaiting a decision.

**FCI ALDERSON** - Cunningham v. Scibana - This inmate has a habeas action pending wherein she disputes the determination that her tampering with a consumer product conviction precludes her eligibility for early release. On July 3, 2000, the magistrate judge entered findings that recommended she be declared eligible for early release. We filed objections on July 20, 2000. We recently received a final order reversing the Magistrate and finding inmate Cunningham not eligible for early release.

**CRIMINAL:**

**FMC LEXINGTON** - On September 7, Patrick Noble, 23560-086, and Dominic Palazzola, 53757-097, were indicted by a grand jury for First Degree Murder in the death of Tracy Hearlson, 24663-086 at FMC Lexington in September 1998.

**Special Confinement Unit** - SCU inmate David Hammer was given a November 15 execution date by District Court Judge Malcolm Muir. A full scale execution practice session is scheduled at Terre Haute on October 31 to November 2<sup>nd</sup>. Inmate Hammer and Inmate McVeigh are currently threatening litigation over the local Coroner's position that Indiana law requires an autopsy be performed on any inmate who dies in custody, even if the cause of death is via execution.

**FCI BECKLEY** - Inmate Abu Shakur was indicted April 4, 2000, for assaulting a staff member. He was sentenced to 10 years (consecutive) on September 13, 2000.

**FCI BECKLEY** - Inmate Garvey was indicted in September for Possession of Contraband (a weapon).

**FCI BECKLEY** - Inmate Richard Rosebar, Reg. No. 43369-083, was indicted for escape after the inmate went on a "self proclaimed" furlough claiming that the BOP could not charge him with escape as he self surrendered within a reasonable period of time.

**SITUATIONS OF INTEREST, CONTACT WITH FEDERAL BENCH, HAZARDOUS**

**WASTE SITES, ETC.:**

**FCI Petersburg** - On September 20<sup>th</sup>, FCI Petersburg received a Notice of Violation from the Virginia Department of Environmental Quality, regarding our failure to take all necessary steps to close a solid waste management facility (landfill) which is located on our property. The landfill has been inactive for some time. Unfortunately, staff failed to comply with oral instructions on how to close the landfill during an August, 1999 inspection.

[REDACTED]

b5

**FCI BECKLEY-** During our staff recall in September, we presented a thank you letter to John File for his dedication to prosecuting an inmate that had assaulted a staff member. This gave John a glimpse of the impact his prosecutions have at the facility and provided staff the opportunity to thank John personally. Staff gave John a standing ovation for his work in prosecuting inmate Shakur, and for the other successful prosecutions John has had at this institution. Numerous staff came up to John after the recall to shake his hand and tell John the difference he makes in the institution. He was very moved by the experience.

**FCC BUTNER** - Mike Bredenberg and Milt Williams attended a training session with the U.S. Attorneys Office for the Eastern District of Virginia on September 27, 2000.

**Personnel Issues**

[REDACTED]

b6

**Staff Leave and Travel**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Page 6  
MXR Monthly Report

New Litigation Cases by Institution and Type  
Received During the Month of September 2000

	ALD	ASH	BEC	BUT*	CUM	ELK	LEX	MAN	MEM	MIL	MRG	PET	SEY	MXR	THA	TOT
BIV	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1	2
FTCA	0	0	1	0	0	0	0	0	1	0	0	0	0	0	1	3
HC	0	3	0	0	0	0	4	1	0	0	0	0	0	0	1	9
OTH	0	0	0	3	0	0	1	0	0	0	0	0	0	1	0	5
TOT	0	3	1	3	0	0	5	1	1	1	0	0	0	1	3	19

\*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	MAN	MEM	MIL	MRG	PET	SEY	MXR	THA	TOT
BIV	0	1	0	6	0	3	2	1	1	1	1	0	0	0	6	22
FTCA	0	0	1	2	2	1	1	0	1	1	0	1	0	0	2	12
HC	1	7	5	6	5	3	30	6	3	5	4	11	0	1	4	91
OTH	0	0	1	17	0	0	1	0	0	0	0	0	0	3	0	22
TOT	1	8	7	31	7	7	34	7	5	7	5	12	0	4	12	147

\*Represents both the FCI and LSCI



## memorandum

DATE: November 9, 2000 Mid Atlantic Regional Office, Annapolis Junction, MD 20740

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

SUBJECT: October 2000 Monthly Report

TO: Christopher Erlewine, General Counsel

ATTN: Linda Dubose, Executive Assistant

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# Received	54	51	61	70	74	57	67	74	68	37		
# Answered	45	68	50	71	34	51	68	44	42	40		
# Pending	198	179	182	197	229	217	214	236	236	200*		
# Over Six Month	0	0	1	2	2	4	1	2	1	4		

\*open ELK files transferred to NERO.

1/PRIVACY	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	30	55	63	46	48	38	50	41	56	68		
# Received	60	101	64	71	57	76	57	76	53	68		
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Bivens	3	2	1	6	1	2	3	2	2			

FTCA	1	1	2	1	0	1	1	2	3	0		
Other	0	7	0	2	2	0	2	2	5	1		
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Reports Completed	17	12	16	12	16	9	7	14	10	10		
Cases/Hearings or Trials	0	0	0	1	0	1	2	1	2	2		

Settlements/Awards	1	0	0	0	0	0	1	1	2	2
\$ Settlements/Awards	\$500.0	0	0	0	0	0	\$ .075	\$1.5	\$987	\$5.4
(\$ in Thousands)										

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[REDACTED]

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[REDACTED]

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[REDACTED]

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sentence was served during a leap year does not automatically transform the sentence into one for a year and day and thus make him eligible for good conduct time.

**SETTLEMENTS:**

**FCI BECKLEY** - Buck v. USA - This is a tort action for loss of personal property. The inmate alleged \$400.00 worth of personal property was lost or misplaced by staff at FCI Beckley when he was moved to the Special Housing Unit, and then transferred to FMC Lexington after a disturbance at Beckley. The action is filed in Pennsylvania, as the inmate is currently incarcerated at USP Allenwood. The inmate settled the action for \$100.00.

**FCI Butner** - Zachowski (FTCA Claim) - We have just sent a lengthy settlement recommendation in this Butner FTCA suicide case. Michelle Fuseyamore and I met with counsel for the Zachowski family, at which time they lowered their demand from \$3 million to \$500,000.

[REDACTED] b5

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

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[REDACTED] b2

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ordered a specific set of tests be done on study case McIntosh within two weeks, and threatened to call a BOP representative to the hearing and show cause why a contempt of court order should not be issued. The court had previously issued a study order and attached an outside doctor's recommended list of tests. The FMC Lexington Clinical Director, within his discretion, ordered different tests, which apparently agitated the court. FMC Lexington staff have now complied with the recommendation of the court and are forwarding a report to the court.

**FCI MANCHESTER** - Gianette v. Snyder - Plaintiff wrote a letter to the Court which was construed as a Bivens action and a temporary restraining order was issued on September 25, 2000. In the letter, the inmate claimed that his life was in jeopardy due to his having to implement and maintain a hunger strike since September 2, 2000, in order to insure his safety and security within the institution as a result of matters involving the death of a former employee. An emergency hearing was held on October 4, 2000, at which time the Court granted the respondent's motion to dissolve the temporary restraining order.

**CRIMINAL:**

**Special Confinement Unit:** A full scale execution practice session took place at Terre Haute on November 1st. During this session, the institution and Department of Justice Command Centers were linked. As the practice session ended on Wednesday, we received word that the sentencing court had stayed inmate Hammer's execution date until January 31, 2001, so that he could prepare a \$2255 collateral attack on his sentence. If he does not file by January 31<sup>st</sup>, the Court will impose a new execution date of February 21, 2001.

We are receiving increased criticism over the Warden's recent decision to only allow telephonic news media interviews with inmates in the Special Confinement Unit. Yesterday, we received a letter from Robert Lystad, Esquire, in the Washington D.C. firm of Baker and Hostetler, indicating that they believe our current practice is unconstitutional. Apparently Mr. Lystad represents several news organizations including National Public Radio, USA Today, and the Reporters Committee for Freedom of the Press. We will prepare a response to their letter.

[REDACTED]

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

**FCI Petersburg** - We previously reported a NOV from the Virginia Department of Environment Quality on closure of a debris landfill. In a letter dated October 25, 2000, the institution was informed that the materials submitted by the institution on September 29, 2000, addressed all of the remaining issues in regards to closure of the landfill. The letter also advised that DEQ would be informed that the institution is now in compliance with SMWR requirements. The recommendation will also be made that the facility would be "de-referred" from enforcement status. The letter indicates the landfill site would be considered officially closed in accordance with the SMWR effective September 29, 2000. Facilities indicates this date



New Litigation Cases by Institution and Type  
Received During the Month of October 2000

	ALL	ASH	BEN	BUT	CUM	ELF	LEX	MAN	MEH	MIL	MRS	PET	SEY	MNR	THA	TOT
BIV	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
FTCA	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
HC	1	1	1	0	0	0	3	0	0	0	1	0	0	0	0	7
OTH	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
TOT	1	1	1	1	0	0	3	1	0	0	1	0	0	0	0	9

\*Represents both the FCI and LSCI

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

	ALL	ASH	BEN	BUT	CUM	ELF	LEX	MAN	MEH	MIL	MRS	PET	SEY	MNR	THA	TOT
BIV	0	1	0	0	0	3	2	2	1	1	1	0	0	0	0	11
FTCA	0	0	1	0	1	1	1	0	1	1	0	1	0	0	2	11
HC	2	0	1	1	5	3	33	6	3	5	5	11	0	1	4	98
OTH	0	0	1	10	0	0	1	0	0	0	0	0	0	3	0	23
TOT	2	1	2	11	6	7	37	8	5	7	6	12	0	4	12	150

\*Represents both the FCI and LSCI

## memorandum

DATE: November 9, 2000 Mid-Atlantic Regional Office, Annapolis, MD

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

SUBJECT: October 2000 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	161	131	153	179	149	144	175	174	161	136		
Answered	149	155	161	130	121	246	138	155	182	106		

TORT CLAIMS	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	194	198	179	182	197	229	217	214	236	236		
# Received	54	51	61	70	74	57	67	74	68	37		
# Answered	45	68	50	71	34	51	68	44	42	40		
# Pending	198	179	182	197	229	217	214	236	236	200*		
# Over Six Month	0	0	1	2	2	4	1	2	1	4		

\*open ELK files transferred to NERO.

I/PRIVACY	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
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[REDACTED] Thus, we will continue to try and negotiate a settlement at a figure below \$500,000. The attorneys for claimant have three very good experts and appear ready to litigate this case.

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b5

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may be wrong as to closure since the monitoring period does not end for a couple of more years.

FCI PETERSBURG - On November 2, 2000, new federal judges, along with a member of the Sentencing Commission, toured FCI Petersburg and interviewed inmates as part of their training as newly appointed federal judges.

FPC MILLINGTON - We have recently learned that the Navy wants to excess 104 acres at Millington. Our region would like to obtain all 104 acres to prohibit someone else purchasing the property and using it for a use inconsistent with ours.

#### Personnel Issues

[REDACTED] b2

[REDACTED]

#### FCC BUTNER

[REDACTED]

#### Staff Leave and Travel

FMC LEXINGTON- [REDACTED] - annual leave Nov. 20-24.

MXRO - [REDACTED] - annual leave November 20-24. b6



New Litigation Cases by Institution and Type  
Received During the Month of 0000000000

	ALD	ASH	BE*	BUT*	CUM	ELK	LEX	MAN	ME*	MI*	MS*	PET	SEY	MXR	THA	TOT
BIV	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
FTCA	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
HC	1	1	1	0	0	0	0	0	0	0	0	0	0	0	0	7
OTH	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
TOT	1	1	1	1	0	0	0	0	0	0	0	0	0	0	0	9

\*Represents both the FBI and DOJ

New Litigation Cases by Institution and Type  
Received During the Month of 0000000000

	ALD	ASH	BE*	BUT*	CUM	ELK	LEX	MAN	ME*	MI*	MS*	PET	SEY	MXR	THA	TOT
BIV	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
FTCA	0	0	1	0	2	1	1	0	0	0	0	1	0	0	0	12
HC	0	0	0	0	5	3	0	0	0	0	0	11	0	1	4	48
OTH	0	0	1	10	0	0	1	0	0	0	0	0	0	3	0	24
TOT	0	0	1	10	7	4	2	0	0	0	0	12	0	4	12	146

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## memorandum

DATE: December 11, 2000

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

SUBJECT: November 2000 Monthly Report

TO: Christopher Erlewine, General Counsel

ATTN: Linda Dubose, Executive Assistant

*Please  
File*

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# Answered	45	68	50	71	34	51	68	44	42	40	52	
# Pending	198	179	182	197	229	217	214	236	236	200	185	
# Over Six Month	0	0	1	2	2	4	1	2	1	4	2*	

\*These claims are in the Central Office pending settlement approval.

F PRIVACY	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	30	55	63	46	48	38	50	41	56	68	38	
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# Pending	55	63	46	48	38	50	41	56	68	38	45	
# Over 20 Working Days	7	3	7	3	7	4	7	6	21	3	3*	

\*All three are awaiting files from archives.

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Bivens	3	2	1	6	1	2	3	2	2			

FTCA	1	1	2	1	0	1	1	2	3	0	0
Other	0	7	0	2	2	0	2	2	5	1	1
Cases Closed	15	10	11	36	14	7	16	38	12	15	17
Cases Pending	249	258	259	247	243	250	246	232	236	230	219



Lit Reports Completed      17   12   16   12   16   9   7   14   10   10   4

**SIGNIFICANT DECISIONS OR ADVERSE DECISIONS:**

**FCI ASHLAND** - Michael Bush v. Dr. Lowery - This Bivens, medical malpractice case was tried to a jury on November 27<sup>th</sup>. Inmate Bush claimed Dr. Lowery was deliberately indifferent to his serious medical condition (Spina bifida). The jury deliberated only 25 minutes before entering a verdict for former FCI Ashland Medical Officer, Clifton Lowery.

**USP TERRE HAUTE** - United States v. David Paul Hammer - Judge Malcolm Muir, M.D. Pennsylvania, has ruled that inmate Hammer has a year from the denial of his appeal, to file his 2255 motion. Thus, inmate Hammer has until approximately December 2001, before he even files his 2255 motion. Judge Muir also ruled that when all appeals are completed, he will not set a new execution date, but will leave that to the Bureau of Prisons.

**FCI MANCHESTER** - Palasty v. Hawk - On November 1, 2000, Judge Jennifer Coffman dismissed this Ensign Amendment case, brought originally by 47 inmates at FCI Manchester. Judge Coffman followed the "well-reasoned" opinion in Amatel, finding the statute to be constitutional, and the Bureau's interpretation of the statute permissible. This is the second recent opinion in this region upholding our Incoming Publications Program Statement, and its interpretation of the Ensign Amendment. The other decision, Paul Lee v. Olsen involved FCI Beckley.

**SETTLEMENTS:**

**FCC BUTNER** - Zachowski v. United States - We have reached a tentative settlement in this Butner FTCA suicide case. Michelle Fuseyamore and myself met with counsel for the Zachowski family, and exchanged several counter-offers, before reaching a tentative settlement at \$375,000.

[REDACTED]

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

**FCI BECKLEY** - Eichler v. United States - This Beckley FTCA bus accident case was tried to a judge during the week of July 24<sup>th</sup>. The trial lasted three days. At the conclusion of the evidence, the judge indicated he would render his opinion within the next couple of weeks. We are still awaiting a decision.

**FCI MANCHESTER** - Jason Claude Gianetta v. George Snyder - Plaintiff wrote a letter to the Court which was construed as a motion to voluntarily dismiss or withdraw his complaint, and a motion for appointment of counsel. He further asked the Court to order payment of his filing fees by the BOP. The Court granted the motion to voluntarily withdraw the complaint and rendered the motion for appointment of counsel moot. The motion for payment of filing fees was denied.

**CRIMINAL:**

**FCI PETERSBURG** - United States v. Barry Earl Williams - Inmate Barry Williams, 22371-083, escaped from the FPC on April 12, 2000, and stole a government truck which he used in his escape. He was subsequently tried and convicted for escape and theft of government property. On November 16, 2000, he was sentenced to 34 months on each charge to run concurrent with each other and consecutive to his current sentence.

**USP TERRE HAUTE** - **Special Confinement Unit** - The Garza execution which was scheduled for December 12<sup>th</sup>, has now been postponed for six months by President Clinton.

We have some indication that inmate Timothy McVeigh has asked to withdraw his appeals, and will learn on December 12, whether the sentencing court will either set an execution date, or give the Bureau permission to set such a date. According to inmate McVeigh, he has told the judge he wants to have an execution date set as soon as possible.

We continue to receive media criticism over the Warden's recent decision to only allow telephonic news media interviews with inmates in the Special Confinement Unit. After responding to several letters, and pointing out that three Supreme Court decisions have held that the media has no constitutional right to interview a particular inmate, the tone of the criticism has changed. Previously, the letters claimed we were violating the constitutional rights of the media to gather news. The most recent article makes no mention of our policy violating the constitution.

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

**FMC LEXINGTON** - Jose Bonilla Romero v Thoms - Judge Wilhoit

ordered FMC Lexington staff to provide legal assistance and a translator to Petitioner, who had his habeas petition dismissed sua sponte for not complying with the fee order. A unit staff member wrote a memo indicating Petitioner had tried to comply with the order, so Wilhoit entered this order for assistance to be provided to Petitioner. A motion to reconsider will be filed.

#### Personnel Issues

[REDACTED]

#### Staff Leave and Travel

LEX - [REDACTED], annual leave Dec. 18<sup>th</sup> - 26<sup>th</sup>.  
Attending training in Jekyll Island from Dec. 11-13.

FCC BUTNER - [REDACTED] Regional Office Dec. 4<sup>th</sup> - 6<sup>th</sup>,  
Dec. 11-13, Jekyll Island.

MAN - [REDACTED] unknown length of time, back injury.

CUM - [REDACTED] annual leave Dec. 20 - 26th.

MXR - [REDACTED] Jekyll Island, Dec. 11-14  
[REDACTED] annual leave Dec. 26-29  
[REDACTED] annual leave Dec. 26-29  
[REDACTED] annual leave Dec. 27-29  
[REDACTED] annual leave Dec. 26

1. The first section of the report is a summary of the work done during the month. This section should be completed by the end of the month.

2. The second section of the report is a detailed account of the work done during the month. This section should be completed by the end of the month.

3. The third section of the report is a summary of the work done during the month. This section should be completed by the end of the month.

4. The fourth section of the report is a detailed account of the work done during the month. This section should be completed by the end of the month.

New Litigation Cases by Institution and Type  
Received During the Month of November 2000

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

\*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	MAN	MEM	MIL	MRG	PET	SEY	MXR	THA	TOT
BIV	0	1	0	6	1	3	2	2	1	1	1	0	0	0	6	24
FTCA	0	0	1	2	2	1	1	0	1	1	0	1	0	0	2	12
HC	2	8	7	7	5	3	33	6	4	5	5	12	0	1	4	102
OTH	0	0	1	18	0	0	1	1	0	0	0	0	0	3	0	24
TOT	2	9	9	33	8	7	37	4	6	7	6	13	0	4	12	162

\*Represents both the FCI and LSCI

## memorandum

DATE: January 9, 2001

Mid-Atlantic Regional Office, Annapolis Junction, MD 20701

REPLY TO: Bill Burlington, Regional Counsel

ATTN OF: Mid-Atlantic Region

SUBJECT: December 2000 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	161	131	153	179	149	144	175	174	161	136	158	138
Answered	149	155	161	130	121	246	138	155	182	106	153	164

TORT CLAIMS	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	194	198	179	182	197	229	217	214	236	236	200	185
# Received	54	51	61	70	74	57	67	74	68	37	56	33
# Answered	45	68	50	71	34	51	68	44	42	40	52	37
# Pending	198	179	182	197	229	217	214	236	236	200	185	180
# Over Six Month	0	0	1	2	2	4	1	2	1	4	2*	2*

These claims are in the Central Office pending settlement approval.

FOI/PRIVACY	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	30	55	63	46	48	38	50	41	56	68	38	45
# Received	60	101	64	71	57	76	57	76	53	68	55	40
# Answered	35	93	81	74	67	66	66	62	41	98	47	38
# Pending	55	63	46	48	38	50	41	56	68	38	45	33
# Over 20 Working Days	7	3	7	3	7	4	7	6	21	3	3	30

Two are awaiting files from archives.

LITIGATION	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Cases Pending	250	249	258	259	247	243	250	246	232	236	230	219
New Cases Received	14	19	12	24	10	14	12	24	19	9	6	9
Habeas Corpus	10	9	9	15	7	9	6	18	9	7	4	5
Bivens	3	2	1	6	1	2	3	2	2	1	1	4
FTCA	1	1	2	1	0	1	1	2	3	0	0	0
Other	0	7	0	2	2	0	2	2	5	1	1	0
Cases Closed	15	10	11	36	14	7	16	38	12	15	17	54
Cases Pending	249	258	259	247	243	250	246	232	236	230	219	174
Lit Reports Completed	17	12	16	12	16	9	7	14	10	10	4	3
Cases/Hearings or Trials	0	0	0	1	0	1	2	1	2	2	1	1
Settlements/Awards	1	0	0	0	0	0	1	1	2	2	0	1
\$ Settlements/Awards	\$500.0	0	0	0	0	0	\$0.075	\$1.5	\$987	\$5.4	0	\$7.35

(\$ in Thousands); ELK, THA, & MIL cases transferred to NER/NCR closed out in MXR.

**SIGNIFICANT DECISIONS OR ADVERSE DECISIONS:**

FCI BECKLEY - Edwards v. Olson - In 1997, inmate Edwards filed a Privacy Act lawsuit alleging challenge alleging information in his PSI was erroneous. He also included a Bivens claim against numerous staff alleging he was scored a medium to keep him at Beckley to maintain the number of white inmates at the facility. On January 11, 2000, the Magistrate entered an R&R recommending that the defendants are not entitled to qualified immunity, that the motion for summary judgment be denied, that counsel be appointed; and that an evidentiary hearing be held to determine whether any defendants used race as a factor in determining the inmate's custody classification. Objection to the R&R were filed. The AUSA has notified us that the District Judge has entered an order dismissing the case on qualified immunity grounds and holding under Turner analysis, race may be considered for security reasons. We are asking that this case be published.

FCI CUMBERLAND - Menichino v Gunja - This habeas sentence computation petition was dismissed, with Judge Motz using the Antiterrorism and Effective Death Penalty Act of 1996, section 2244(a), to bar a successive 2241 petition, citing Valona v. U.S., 138 F.3d 693 (7<sup>th</sup> Cir. 1998).

**SETTLEMENTS:**

FCI BUTNER - Zachowski v. United States - We have reached a tentative settlement in this Butner FTCA suicide case. Michelle Fuseyamore and I met with counsel for the Zachowski family, and exchanged several counter-offers, before reaching a tentative settlement at \$375,000. Signed settlement forms have been sent to the Central Office. I indicated to plaintiff's attorney that they should allow three weeks for review and approval from the Department of Justice.

[REDACTED] b5

FCI MANCHESTER - Shehee v. Robertson - Inmate Shehee signed a settlement agreement dismissing the entire Bivens action against FCI Manchester commissary supervisory for \$7,350, which represents Shehee's back wages. Shehee claimed he was wrongfully fired in 1995 from his commissary job to cover up his knowledge of staff scams going on in the commissary. This amount will be paid out of DOJ's judgment fund.

[REDACTED] b5

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

FMC LEXINGTON - Ashot Khachatoorian v. USA - On December 4, 2000, a trial was conducted in this FTCA case before Magistrate James Todd. The Plaintiff alleged he stepped in a hole in a grate in a corner of a unit courtyard, injuring his leg which had a metal pin in it. Plaintiff claims he suffered on-going serious pain because of the alleged incident. Our witnesses testified all areas of the unit, including the grate, are inspected on a regular basis by unit staff, the unit officer and Safety. Also, the area in question was out of bounds for inmates, because they threw trash in the grate and trampled on the grass and blew smoke into the

Page 3  
MXR Monthly Report

unit. No medical testimony was entered in this case. Magistrate Todd deferred on ruling on this case, and asked both sides to first submit briefs on the issue of the standard of care owed to inmates in a prison.

FCI BECKLEY - Eichler v. U.S. - This Beckley FTCA bus accident case was tried to a judge during the week of July 24<sup>th</sup>. On December 12, 2000, the Judge entered Findings of Fact, apportioning fault to 65% on the part of the plaintiff and 35% on the part of the United States. A pretrial conference is scheduled for January 8, 2001, at which time a date will be selected for a hearing on the issue of damages. The medical damages at the time of trial totaled approximately \$125,000. The original claim was for nearly \$1.4 million. The AUSA is requesting a December 2001 trial date on the issue of damages.

FCI MANCHESTER - Tilson v. Gibson - This is a hernia case out of Manchester, where the Court denied our motion for summary judgment. In the order, Judge Coffman found material issues of fact in dispute, stating that in denying this inmate's request for surgical repair of the hernia, we ignored complaints that the hernia causes chronic pain, which in turn limited his mobility. Inmate Tilson was then seen by a contract surgeon who determined he does in fact have a hernia, and surgery has been scheduled later this month to repair it, pending pre-certification approval in Medical Services, Central Office.

[REDACTED]

b2

**CRIMINAL:**

**Special Confinement Unit** - Inmate Timothy McVeigh has withdrawn all further appeals of his death sentence. Judge Matche has given him until January 11, 2001, to change his mind. If he does not do so, the Judge has given the Bureau of Prisons authority to set an execution date. Inmate McVeigh has indicated that he does plan to file a Clemency petition.

Warden Lappin reports that there have been several media requests to interview McVeigh, including one from A & E, which inmate McVeigh has indicated he would like to do. We also just received an interview request from 60 Minutes. However, the 60 Minutes request claims the group is not the same ones who were involved in the earlier, 60 Minutes interview done by Ed Bradley. During that earlier Ed Bradley interview, the film crew violated the rules which Warden Lappin had set for the interview. After the show aired, Warden Lappin wrote 60 Minutes informing them that they had violated our rules, and that the violation would be taken into consideration if they requested another interview.

FCI MANCHESTER - US v. Bruce G. Peck - The defendant is being prosecuted on grounds that he falsely filed tax returns for 1995. According to information received, the defendant was incarcerated at FCI Manchester when he filed the fraudulent returns. The institution was contacted by an IRS agent and AUSA regarding information pertaining to the inmate's access to tax forms while incarcerated. The case is to be heard on Monday, January 8, 2001.

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



FMC LEXINGTON - Eastern District of Kentucky Chief Judge Henry Wilhoit has announced his intention to step down on 12/31/2000, taking "senior status," where he will have a very limited case load. Judge Karl Forester will succeed Judge Wilhoit as Chief Judge in that District. Judge William Bertlesman of Covington will go on senior status as of 1/31/2001. In the interim, Judge Jennifer Coffman will handle Judge Wilhoit's case load in Lexington, and Judge Wilhoit will continue to handle his case load out of Ashland.

Winton Correctional Facility - We have recently received the Use of Force policy from the Wackenhut private correctional facility that will be located in Winton, N.C. The facility is scheduled to receive inmates on March 1, 2001. The policy cites as authority for the use of force by Wackenhut staff, two North Carolina statutes. The statutes permit private citizens to assist law enforcement officers to effect an arrest or prevent an escape, and to detain, and in some cases, use force against those who commit certain crimes in their presence. We will be working with Central Office to review this policy.

Compassionate Release-Donna Hall (Lexington) - Right before the holidays, FPC Lexington inmate Donna Hall filed a motion with her sentencing court, asking for a compassionate release based on her recent diagnosis of terminal cancer. After discussions with the Court and U.S. Attorney's office, Marian Callahan and Darrell Lauer were able to have Ms. Hall released from custody within two weeks of the time she filed the petition. We sincerely appreciate the assistance that we received from Central office, most notable Chris Erlewine and Lorna Glassman.

Electronic Inmate Law Library - There will be a meeting on January 17, 2001, for those institutions who would like to be involved in a pilot program where inmates would be given access to an electronic law library. This meeting will focus on available technology, costs, and the criteria which should govern the pilot. At this point, no final decision has been made to allow such pilots to go forward.

FMC LEXINGTON - Jose Bonilla Romero v. Thoms - After the BOP filed a motion to reconsider which showed that the inmate did have access to translators and legal aid, Judge Wilhoit did strike his previous order

#### Personnel Issues

[REDACTED]

b6

#### Staff Leave and Travel

[REDACTED] C.O. Performance Evaluation Workgroup, Jan. 23-26

[REDACTED] ICP FCI Beckley, January 22-26, 2001

New Litigation Cases by Institution and Type  
Received During the Month of December 2000

	ALD	ASH	BEC	BUT*	CUM	ELK	LEX	MAN	MEM	MIL	MRG	PET	SEY	MXR	THA	TOT
BIV	0	0	1	0	1	0	0	1	0	0	1	0	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	0	0	0	4	1	0	0	0	0	0	0	0	5
OTH	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TOT	0	0	1	0	1	0	4	2	0	0	1	0	0	0	0	9

\*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	MAN	MEM	MIL	MRG	PET	SEY	MXR	THA	TOT
BIV	0	1	1	6	2	3	2	3	1	1	2	0	0	0	6	28
FTCA	0	0	1	2	2	1	1	0	1	1	0	1	0	0	2	12
HC	2	8	7	7	5	3	37	7	4	5	5	12	0	1	4	107
OTH	0	0	1	18	0	0	1	1	0	0	0	0	0	3	0	24
TOT	2	9	10	33	9	7	41	11	6	7	7	13	0	4	12	171

\*Represents both the FCI and LSCI