UNITED STATES GOVERNMENT

memorandum

DATE: February 8, 1999Mid-Atlantic Regional Office, Annapolis Junction, MD 20701

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

SUBJECT: January 1999 Monthly Report

TO: Christopher Erlewine, General Counsel

ATTN: Amy Whalen-Risley, Executive Assistant

ADMINISTRATIVE REMEDIES	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Received	196											
Answered	166											

TORT CLAIMS	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	215											
# Received	63											
# Answered	51											
# Pending	231											
Over Six Month	1											

PRIVACY	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	32											
# Received	48											
# Answered	54											
# Pending	26											
# Over 20 Working Days	0											

LITIGATION	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Cases Pending	306											
New Cases Received	19											
Habeas Corpus	11											
Bivens	2											
FTCA	2											
Other	4											
Cases Closed	16											
Cases Pending	309											
Lit Reports Completed	15											
Cases/Hearings or Trials	0											
Settlements/Awards	1											
$ Settlements/Awards ($ in Thousands)	$20.0											

SIGNIFICANT DECISIONS OR ADVERSE DECISIONS:

FMC Lexington- Tyrone Lamont Pratt v. J. T. Holland, et al. - This case involves a challenge to BOP's old policy which interprets 18 U.S.C. Section 922(g) as a crime of violence precluding early release eligibility. The Court entered judgment in favor of Petitioner, citing the Orr decision, ordering the Respondent to immediately consider Petitioner for a sentence reduction under 3621(e). We have taken steps to preserve our appeal rights in anticipation of a ruling from the Sixth Circuit in the Orr case (The U.S. Attorney's Office supports Protective Notice of Appeal--we are awaiting Litigation Branch's clearance from DOJ.)

FCI Milan- Graham v. Mercer, et al. - This Bivens case was dismissed by the District Court under the PLRA, particularly for failure to exhaust. The case is on appeal in the 6th Cir. The AUSA and Kevin Walaskinski completed the final brief on 1/28/99, incorporating language that the BOP wanted to be placed before the appellate court.

FCI Petersburg - Platshorn v. Hahn - The Fourth Circuit, in an unpublished per curiam decision, affirmed the District Court's dismissal of this habeas petition. Platshorn essentially sought to have the ten year period of time served on the parolable portion of his aggregated sentence applied to the consecutive 33 year non-parolable sentence to which he was paroled. The Court agreed with the Bureau's interpretation of statutory authority.

SETTLEMENTS:

FMC Lexington- Wealtha Liggins v. USA - Plaintiff, an inmate visitor represented by an attorney, alleges negligence in relation to her 1993 fall on a step in the lobby of the institution. Trial was set for February 16, 1999. Plaintiff has actual medical bills of $12,000, and case law shows her pain and injury figure should be in the $23,000 to $36,000 range. After factoring in contributory negligence on the part of Plaintiff, research indicates this case is worth around $20,000 at a minimum. Plaintiff's initial offer was $40,000, which is in the reasonable range. Settlement authority was granted to this amount. We have been informed by the AUSA that the case has been settled for $20,000.

FCI Milan- Woods v. Pontesso & USA - This is an FTCA claim for lost property. After a final determination letter on the administrative claim was mailed to the claimant, an O/I investigation concluded improper staff conduct related to gross negligence in handling the inmate's personal property when he moved from one unit to another. The case was settled for $300.00.

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

USP Terre Haute - Scott Rendelman v. USA, Lt. Jones - On February 8, 1999, a bench trial will be held at the institution. Rendelman alleges Lt. Jones assaulted him while escorting him from the SHU to I-East.

FCI Memphis - Jackson v. United States - The bench trial in this case initially scheduled to begin February 1, 1999, has been rescheduled for April 1, 1999.

NEW RFRA CASES AND UPDATES ON PREVIOUSLY REPORTED CASES: None

CRIMINAL MATTERS:

FCI Beckley- Trevor Huie, Reg. No. 15143-075 - This inmate was indicted January 13, 1999, for seriously assaulting a staff member. He is charged with violating 18 U.S.C. § 111(a) and (b), as the inmate changed into steel-toed boots prior to the assault and the officer suffered serious injuries. Arraignment is scheduled for February 2, 1999.

FCI Beckley - Brian Andrews, #04844-030, was arraigned December 18, 1998, for Possession of Contraband (heroin). A plea hearing was held January 25, 1999, at which time the inmate pled guilty to the charge. Sentencing is set for April 12, 1999.

FCI Beckley - Christopher Gibson, #28880-037, was indicted on December 2, 1998, for Possession of Contraband (heroin). He was arraigned December 18, 1998, and trial is set for February 3, 1999.

FCI Manchester - U.S. v. Morey - This case is scheduled for an in-court hearing and a pre-trial conference on February 5 and 19, 1999, respectively. Jury trial is scheduled for March 1, 1999. Defendant is charged with escape from FPC Manchester and car-jacking.

FMC Lexington - Former FMC Lexington inmate James Thornton, #04919-028, pled guilty to introducing controlled substances into the institution through the visiting room. He will be sentenced in the near future.

FMC Lexington - Former mental health unit inmate Rogeliio Garcia-Fierro, #05926-000, was sentenced to 54 months of

imprisonment for two counts of assault, stemming from a 1997 assault on a unit psychologist and recreation specialist.

FCI Petersburg - United States v. Richard Stitt - Richard Stitt is a pre-sentence inmate housed at Petersburg facing the death penalty. Stitt's attorney complained to the Judge that BOP was denying Stitt sufficient telephone access to call him and that efforts to communicate with the Captain had been unsuccessful. The Warden sent a letter to the AUSA (and the AUSA passed it on to the Judge) advising that Stitt had made or attempted to make 91 calls since 12-3-98. The letter explained the monitored vs. unmonitored calling procedures. Neither Stitt nor his attorney had requested any privileged calls. The AUSA notified us that the court told Stitt's attorney that now that the attorney knows the proper procedures the court does not want to hear from him again on this issue. The letter also noted that the Captain had only received one message from the attorney and he had returned the call the same day.

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

FCC Butner- On February 11, 1999 a show cause hearing is scheduled before the Environmental Protection Agency in Atlanta, GA regarding the Notice of Violation issued to the FCI and the Hospital arising from failure to obtain generator permits in a timely fashion. Currently all necessary permits are in place. The Commercial Law Branch will be providing representation.

USP Terre Haute - Ion Scan Appeal--Harry Borom - We have just responded to our second visitor appeal of the suspension of their visiting privilege, based on a positive Ion Scan reading. We really appreciated the assistance provided to us by Paul Layer on this case. I think many of the problems that were identified at the December teleconference are being addressed by Paul and Security Technology.

FCI Milan - FCI Milan received a Letter of Demand from EPA concerning liability in the XXKEM sites in Toledo, Ohio ($65,000 in damages involving 44 responsible parties). The Commercial Law Branch was immediately notified, as well as the General Counsel for UNICOR. Jeff Lomjoco has been working with the DOJ Environmental Law Defense Division on this matter. EPA has been contacted, and all parties will be discussing potential settlement. It appears at this time that the Judgment Fund will cover any settlement.

Personnel Issues

Staff Leave and Travel

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

	ALD	ASH	BEC	BUT*	CUM	ELK	LEX	MAN	MEM	MIL	MRG	PET	SEY	THA	TOT
BIV	0	0	0	0	0	0	0	0	0	1	0	0	0	1	2
FTCA	0	0	0	1	1	0	0	0	0	0	0	0	0	0	2
HC	0	0	0	0	1	1	0	1	0	3	3	1	0	1	11
OTH	0	0	0	4	0	0	0	0	0	0	0	0	0	0	4
TOT	0	0	0	5	2	1	0	1	0	4	3	1	0	2	19

*Represents both the FCI and LSCI

UNITED STATES GOVERNMENT

memorandum

DATE: March 15, 1999Mid-Atlantic Regional Office. Annapolis Junction, MD 20701

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

SUBJECT: February 1999 Monthly Report

TO: Christopher Erlewine, General Counsel

ATTN: Amy Whalen-Risley, Executive Assistant

ADMINISTRATIVE REMEDIES	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Received	196	152										
Answered	166	189										

TORT CLAIMS	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	215	231										
# Received	63	64										
# Answered	51	71										
# Pending	231	220										
›r Six Month	1	1										

FOI/PRIVACY	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	32	26										
# Received	48	52										
# Answered	54	40										
# Pending	26	38										
# Over 20 Working Days	0	0										

LITIGATION	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Cases Pending	306	309										
New Cases Received	19	14										
Habeas Corpus	11	8										
Bivens	2	3										
FTCA	2	2										
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Cases Closed	16	14										
Cases Pending	309	309										
Lit Reports Completed	15	16										
Cases/Hearings or Trials	0	1										
Settlements/Awards	1	0										
·tlements/Awards ı Thousands)	$20.0	0										

SIGNIFICANT DECISIONS OR ADVERSE DECISIONS:

USP TERRE HAUTE - Scott Rendelman v. U.S.A. and Lt. Jones. The Judge held a bench trial at the institution on February 8, 1999, in this Bivens excessive force case. At the conclusion of the case, judgment from the bench was issued in favor of our staff.

FCI CUMBERLAND - ATKINS v. BIDWELL- On February 8th, Judge Catherine Blake in the District of Maryland dismissed this habeas case brought by an FCI Cumberland inmate who sought credit for time out of custody (May 1990--October 1992) after being mistakenly released from FCI-Butner, instead of being held to serve a consecutive 94 month federal sentence. The mistake was caught within days, the inmate knew there had been a mistake, and when the Marshals attempted to regain custody, the inmate made himself unavailable despite a requirement that he report to his Probation Officer. In October, 1992, Atkins was arrested by DC Police in a local restaurant, picking up new charges of assault on a police officer and a weapons violation, which landed him in DC custody until he was released to our detainer in May, 1995. The court found no gross negligence to support a waiver of jurisdiction over the inmate and also rejected the application of estoppel because Atkins knew all along that he was out due to mistake. The court also rejected application of the "doctrine of credit for time at liberty due to erroneous release." While the release itself was "simple negligence" by the BOP through no fault of the inmate, "the same cannot be said for the two and half year period he remained in the community." Further, he was not a "law abiding member of society" while he was out. Finding that "Atkins' interest in serving his sentence in one continuous segment is outweighed by society's interest in having him serve the full term which was legally imposed," the habeas petition was denied. We are seeking publication of this case because it succinctly summarizes in one opinion the current law applicable to mistaken release.

FCI BECKLEY-Depew v. Hawk - Inmate originally filed suit in Massachusetts because his right to receive privileged written communications from his attorney, Mel Dahl, had been restricted for one year. This restriction was imposed after it was discovered that the attorney abused legal mail to introduce explicit sado-masochistic publications. The case, originally filed in Boston, was transferred to the Southern District of West Virginia. In November, the inmate's attorney was disbarred as a result of his resignation (made in the face of pending unrelated disciplinary charges). On February 4, 1999, the Magistrate Judge entered an R&R recommending dismissal of this case and upholding our actions.

FCI ELKTON - Washington v. LaManna - We received a favorable recommendation from Magistrate Judge Gallas in this Bivens case alleging exposure to Environmental Tobacco Smoke (ETS). The Magistrate Judge agreed with our arguments: (1) Under Wells v. Brown, 891 F.2d 591 (6th Cir. 1989) a pro se complaint that fails to specifically allege the defendants are being sued in their individual capacity is to be construed against the defendants in their official capacity; (2) because it was an official capacity suit, the complaint was barred by sovereign immunity; and (3) the plaintiff failed to allege exhaustion of administrative remedies which required dismissal under the PLRA.

FCI BECKLEY-Michel v. Olson - Inmate challenged the manner in which staff computed his sentence, arguing that it should have begun on the date he was sentenced, despite the fact he was released on bond and ordered to self-report (which he did not do). The Magistrate Judge entered an R&R requesting additional briefing on the applicability of a recent Fourth Circuit case, U.S. v. Evans, 159 F.3d 908 (4th Cir. 1998). In Evans, the Fourth Circuit interpreted the term "custody" as used in the federal escape statute. In the R&R, the Magistrate Judge suggested the Evans decision may have modified the manner by which "custody" under 18 U.S.C. § 3585(a) (Commencement of Federal sentence) is interpreted. The Magistrate Judge implied that the inmate could be considered to have been in federal "custody" as of the date and time his federal sentence was imposed, despite the fact he was released on bond. Objections to the R&R have been filed.

SETTLEMENTS:

FCI MEMPHIS-Littrell v. United States - This is an FTCA medical malpractice claim arising out of our alleged failure to diagnose the plaintiff's throat cancer while he was incarcerated at Memphis, Marion, and Oakdale. We have received OGC authorization to settle up to $25,000. A $15,00 offer was made by the AUSA in the case. A settlement conference was held on March 5, 1999. The Magistrate adjourned the conference for one month after it became apparent that the inmate and his attorney were having difficulties (Mr. Littrell upped his demand from $300,000 to $500,000 during the conference). It appears that the attorney may be attempting to withdraw from the case.

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

FMC LEXINGTON - On February 26th in Sam Hall v. Mary Ellen Thoms, Judge Forester denied Plaintiff's Motion for a TRO regarding medical treatment of alleged heart problems. (FMC Lexington received 24 hours notice of the scheduling of the hearing.)

FCI MEMPHIS-Ashley v. United States, ---F.Supp.2d---; 1997 WL 1073359 (W.D.Tenn.) This property loss FTCA claim arising out of the October 20, 1995, disturbance at FCI, Memphis has been published as we requested. We received permission to assert the Discretionary Function Exception, which the court used to bar recovery.

FCI MEMPHIS - The bench trial in Jackson v. United States, a riot-related FTCA case concerning smoke inhalation, initially scheduled to begin on February 1, 1999, has been rescheduled for April 1, 1999.

CRIMINAL MATTERS:

FCI MEMPHIS - Inmate Iniquez, Reg. No. 09700-000, assaulted Inmate Garay, Reg. No. 31895-004, with closed fists and a 33-inch piece of metal. The FBI and U.S. Attorney's office declined prosecution and released the case for administrative discipline.

FCI BUTNER-U.S. v. Stitt - In this death penalty case out of Norfolk, Virginia, Inmate Stitt received three death sentences, three life sentences, and 780 months. The Bureau has been approached by the prosecutor with a request to quickly have Stitt designated and moved from a county jail to a more secure facility.

FCI BECKLEY-Brian Andrews - Inmate was arraigned December 18, 1998, for Possessing Contraband (Heroin). A plea hearing was held January 25, 1999, at which time the inmate pled guilty to the charge. Sentencing is set for April 12, 1999.

FCI BECKLEY-Trevor Huie - Inmate was indicted January 13, 1999, for seriously assaulting a staff member. He is charged with violating 18 U.S.C. § 111(a) and (b) (Assaulting a Federal Officer - Enhanced Penalty), as the inmate changed into steel-toed boots prior to the assault and the officer suffered serious injuries. The inmate was arraigned February 2, 1999. Trial is set for April 6, 1999.

FCI BECKLEY-Christopher Gibson - Inmate was indicted on December 2, 1998, for Possessing Contraband (Heroin). He was arraigned December 18, 1998. The inmate pled guilty to the charge at the plea hearing held February 22, 1999.

FCI ELKTON-United States v. Dumersier - Inmate Dumersier was sentenced to a five month consecutive sentence for assaulting a staff member.

FCI ELKTON-United States v. Gaines - Inmate Gaines was sentenced to six months, plus two years supervised release, for escape from the Camp.

FCI ELKTON - Two new cases have been accepted for prosecution: Todd Turner # 17630-039, & Ronald Perry # 28443-037, Assault (Inmate on Inmate); and Alexander, Michael # 33454-060, Introduction of Narcotics.

FCI MANCHESTER - U.S. v. Morey - On February 19, 1999, the defendant pled guilty to escape from FPC Manchester and car-jacking. A sentencing date has not been set.

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

FCC BUTNER (Commercial Law Branch matter) - The Environmental Protection Agency conducted a hearing in Atlanta on February 11, 1999, regarding the Notice of Violation for failure to obtain air permits for generators and boilers at the complex. The EPA assessed fines totaling $344,000. There is potential for a 75% discount on the fine if the Bureau designs a supplemental environmental project at the complex that is acceptable to the EPA. There are two projects now under consideration, one involving the acquisition of land adjacent to the complex and converting it to wetlands, and the other involving conversion of some of our institution vehicles to compressed natural gas.

FCI BECKLEY - On February 12, 1999, Judge Murdock, U.S. Administrative Law Judge, Office of Hearings and Appeals, held the first Social Security and Disability Hearing at FCI Beckley.

USP TERRE HAUTE - On January 29, 1999, the Regional Counsel's Office for the Mid-Atlantic Regional Office was contacted by

an attorney from the Civil Division of the Department of Justice who indicated that the Department was not going to represent 5 of 6 individual defendants in an excessive use of force case arising out of Terre Haute brought by Inmate Karamo Kaba, Reg. No. 04601-052. This determination was made based upon a decision by the Civil Rights Division to open a criminal investigation. On February 26, 1999, USP Terre Haute was advised that the Department had agreed to expedite the Civil Rights investigation and hoped to have a decision within 30 days. Currently, the defendants are required to respond to the court on April 5, 1999.

Staff and the Union at USP Terre Haute are very concerned about the prospect that those employees will have to hire and pay for private counsel. The Executive Staff at USP Terre Haute have attempted to explain the representation system at various forums to help staff understand where, why and how such decisions are being made. The Warden is also attempting to contact the FBI to help schedule the interviewing of staff/inmates. We know that OGC is working closely with the Civil Division and the Civil Rights Division to resolve this issue.

Staff Leave and Travel

[redacted] b6

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

	ALD	ASH	BEC	BUT*	CUM	ELK	LEX	MAN	MEM	MIL	MRG	PET	SEY	THA	TOT
BIV	0	0	1	0	0	0	1	0	0	0	0	1	0	0	3
FTCA	0	0	0	0	0	0	0	0	0	1	0	1	0	0	2
HC	0	0	0	3	1	0	1	0	0	1	0	1	0	1	8
OTH	0	0	0	0	0	0	0	0	0	0	0	1	0	0	1
TOT	0	0	1	3	1	0	2	0	0	2	0	4	0	1	14

*Represents both the FCI and LSCI

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

	ALD	ASH	BEC	BUT*	CUM	ELK	LEX	MAN	MEM	MIL	MRG	PET	SEY	THA	TOT
BIV	0	0	1	0	0	0	1	0	0	1	0	1	0	1	5
FTCA	0	0	0	1	1	0	0	0	0	1	0	1	0	0	4
HC	0	0	0	3	2	1	1	1	0	4	3	2	0	2	19
OTH	0	0	0	4	0	0	0	0	0	0	0	1	0	0	5
TOT	0	0	1	8	3	1	2	1	0	6	3	5	0	3	33

*Represents both the FCI and LSCI

UNITED STATES GOVERNMENT

memorandum

DATE: April 13, 1999Mid-Atlantic Regional Office, Annapolis Junction, MD 20701

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

SUBJECT: March 1999 Monthly Report

TO: Christopher Erlewine, General Counsel

ATTN: Amy Whalen-Risley, Executive Assistant

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# Pending	215	231	220									
# Received	63	64	66									
# Answered	51	71	49									
# Pending	231	220	228									
# Over Six Month	1	1	0									

PRIVACY	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	32	26	38									
# Received	48	52	50									
# Answered	54	40	58									
# Pending	26	38	30									
# Over 20 Working Days	0	0	1*									

*File archived

LITIGATION	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Cases Pending	306	309	309									
New Cases Received	19	14	15									
Habeas Corpus	11	8	10									
Bivens	2	3	2									
FTCA	2	2	2									
Other	4	1	1									
Cases Closed	16	14	47									
Cases Pending	309	309	277									
Lit Reports Completed	15	16	12									
Cases/Hearings or Trials	0	1	1									
Settlements/Awards	1	0	0									
$ Settlements/Awards (in Thousands)	$20.0	0	0									

Statistics will be provided when we regain access to LMS.

SIGNIFICANT DECISIONS OR ADVERSE DECISIONS:

Pelissero v. Thompson, 1999 WL 133112 (4th Cir. 1999)- On March 12, 1999, the Fourth Circuit reissued an opinion supporting the Bureau of Prisons approach to early release for inmates who successfully complete a RDAP. The case involved the May 1995 rule and Program Statement, Definition of the Term, Crimes of Violence. The earlier opinion had incorrectly interpreted the 1997 rule, when in fact, both inmate plaintiffs completed RDAP before October, 1997. The new opinion, confines itself to the old rule and program statement #5162.02.

Orr v. Hawk, (6th Circuit, 1999): In an order dated March 15, 1999 (which is not yet in Westlaw), the 6th Circuit amended its opinion at 156 F.3d 651, and held that the 1995 rule and Program Statement, Definition of the Term, Crimes of Violence, were invalid for failing to conform to the case law on what constitutes a crime of violence under 18 U.S.C. §924. In effect, the amendment means the published decision no longer invalidates the 1997 rule.

FCI CUMBERLAND-MAYFIELD v. HENRY - On March 24, 1999, District Judge Messitte of the District of Maryland, ruled that the Inmate Financial Responsibility Program was constitutional. The Court found no improper delegation of authority by another District Court had occurred where financial obligations were ordered "to be paid immediately." The Court held that the Bureau's efforts to collect the financial obligations were lawful and appropriate, and finally, Inmate Mayfield had voluntarily availed himself of the benefits of the IFRP program and could not now be heard to complain. We are seeking publication of this order.

SETTLEMENTS:

Brewer v. US -(Wrongful death, FTCA case regarding deceased Manchester inmate, Jason Stump) - We received the AFIP report in this $1.8 million case, which involves the death of a 24 year old inmate, who died with two dependents. Both the plaintiff's expert and AFIP concur that the failure to timely diagnose a brain tumor resulted in inmate Stump's death. Had a CAT scan or MRI been done in a timely manner, the tumor could have been diagnosed and surgically removed.

[redacted]. b5

NEW RFRA CASES AND UPDATES ON PREVIOUSLY REPORTED CASES,

TRIALS OR HEARINGS:

MXR Common Fare Pilot Program: On March 31st, a conference call was held by Susan Van Baalen and Robert Danage, Regional Chaplaincy Administrator, regarding the Common Fare Pilot Program in MXR. This pilot seeks to test the sincerity of an inmate's religious beliefs, when the inmate asks to be placed on common fare. We will begin the pilot in May, after the Union reviews the draft Operations Memorandum.

FCI BECKLEY-Depew v. Hawk - Inmate originally filed suit in Massachusetts because his right to receive privileged written communications from his attorney, Mel Dahl, had been restricted for one year (case transferred to Southern District of West Virginia). This restriction was imposed after it was discovered that the attorney abused legal mail to introduce explicit sado-masochistic publications. In November, the inmate's attorney was disbarred as a result of his resignation (made in the face of pending unrelated disciplinary charges). On February 4, 1999, the Magistrate Judge entered an R&R recommending dismissal of this case and upholding our actions. In March, the Judge determined the inmate was prejudiced when the Magistrate disallowed Depew's former attorney to send one privileged mailing transferring the case files and work product to Depew. We were inclined to permit the mailing, however, the Magistrate Judge denied the request before we could inform the court and Mr. Dahl. On March 23rd the Judge signed an ordering granting one privileged mailing to provide Depew with the files.

FCI BECKLEY-Michel v. Olson - This is the sentence computation case where the Magistrate Judge entered an R&R requesting additional briefing on the applicability of a recent Fourth Circuit case, U.S. v. Evans, 159 F.3d 908 (4th Cir. 1998). In the R&R the Magistrate Judge suggested the Evans decision may modify the manner in which the term "custody" is interpreted for commencement of a Federal sentence. The Magistrate Judge implied that the inmate could be considered to have been in federal "custody" as of the date and time his federal sentence was imposed, despite the fact he was released on bond. Objections to the R&R were filed. The Judge has upheld the Magistrate's determination that further development of the record is needed.

FCI MEMPHIS-JACKSON V. U.S. - A bench trial was held on April 1, 1999, in this medical malpractice case arising out of the 10-20-95 disturbance. Local paramedics had triaged the inmate at the front gate for transportation to a local hospital without BOP approval. Our chief medical officer went to the front gate, examined the inmate, determined that he did not need to go to an outside hospital, and sent him back to

the Health Services Unit. The Judge did not rule, so we are awaiting a written order.

FCI BUTNER-Micolo v. Hawk, et al. - We received a favorable R&R and order in this case where a mental health inmate alleged that involuntary medication viol[illegible] his First Amendment rights because the medication [illegible]ed with his religious beliefs regarding fasting an[illegible]. The Magistrate stated that the involuntary [illegible] procedure was constitutionally sound based upon [illegible] v. Harper. Although the inmate had not demonstr[illegible]y dangerous behavior, there was significant evi[illegible] this inmate had experienced dangerous psychotic epis[illegible] the past, and the doctors were not required to wait until [illegible] plaintiff's condition deteriorated to an uncontrollab[illegible] state before they could medicate him. The court also commented on the BOP regulation for involuntary medication, stating that "gravely disabled" would not be considered an independent basis for involuntary medication, but would be read in the context of " dangerousness" for self harm. The court did hint that this conclusion was compelled by the absence of a definition of " gravely disabled" in the regulation. The court further noted that "inability to function in the open mental health population" as a grounds for involuntary medication, would not pass constitutional muster.

FCI PETERSBURG - BERQUIST v. USA - This is an FTCA medical malpractice case. The government expert's report was submitted to the court in declaration form on February 25, 1999, asserting that there was no negligence on the part of the U.S. in treating plaintiff's colon cancer. On March 5, 1999, the district court entered an order granting the government's Motion for Summary Judgment and dismissed this $1 million law suit.

FCI PETERSBURG - PLATSHORN v. HAHN - This never ending habeas petition regarding aggregation of a parolable and non-parolable sentences, was previously reported as being affirmed by the Fourth Circuit. However, on March 1, 1999, Platshorn's attorney (the attorneys in the D.C. Chatman-Bey case) filed a petition for rehearing and rehearing en banc.

FCI PETERSBURG - ZAKIYA v. RENO - This case involves inmate Douglas Ross, Reg. No. 29950-037, whose sentence expired on February 29, 1996, but remains in BOP custody as he refused to sign an agreement required by 18 U.S.C. § 3724(e) to contact the USPO and set up an installment schedule for an unpaid fine. The Government filed a reply on March 8, 1999, reasserting that petitioner is not being held in custody because of an inability to pay the fine, and he may walk through the prison door whenever he chooses by signing the form; the current petition is a successive petition, and abuse of writ as the matter has been decided in a published opinion

which was affirmed by the Fourth Circuit.

CRIMINAL MATTERS:

FCI BECKLEY - Trevor Huie, Reg. No. 15143-075, was scheduled for trial on April 6, 1999, for seriously assaulting a staff member. The Federal Public Defender on the case has notified the U.S. Attorney's Office that the inmate will plead guilty to the charge.

FCI BECKLEY - Tremayne Hubbard, Reg. No. 20872-038 was indicated February 10, 1999, for assaulting another inmate. He was arraigned in March.

FCI MEMPHIS - U.S. v. Bosley - This case involved the inmate's escape from the satellite camp. He walked away on 8-1-97 and was detained by local law enforcement officials following a routine traffic stop on 8-4-97. Bosley pled guilty to escape in December 1998. On March 29, 1999, he was sentenced to one year imprisonment and three years supervised release. This was a downward departure from the Sentencing Guidelines range of 18-24 months, based on the defendant's assumption of responsibility and attempt to voluntarily turn himself in. He argued he was on his way back to the camp when the vehicle he was riding in was stopped.

FMC LEXINGTON - Francisco Guilarte-Felipe, Reg. No. 09393-000, a Mariel Cuban on the mental health unit, was indicted for assault on a staff member. He struck a counselor without provocation while in the Central Park area of the institution.

FCI MANCHESTER - U.S. v. Alderman - The defendant is scheduled for sentencing on April 23, 1999, for assault on staff.

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

FCI MEMPHIS - The institution has a deaf inmate who has a pending DHO hearing. Throughout the investigative stage, the inmate has indicated he needs a qualified sign language interpreter present at the hearing. After reviewing the Rehabilitation Act, DOJ regulations, and pertinent case law, we decided we had an effective alternative means of communication in compliance with the Act and Regulations, and could deny the request. However, when the institution attorney, Matthew Mellady, briefed the Warden, AW, Captain, and DHO on the matter, they decided to take the safe route and hire the interpreter at a cost of $56 for a 2-hour session. The institution had already contracted with the interpreter to assist in drug education class in which the inmate is enrolled.

FCI MEMPHIS - Institution legal staff hosted a tour for the two law clerks from both the district court and the 6th

Circuit.

FMC LEXINGTON - On March 16, 1999, Warden Thoms and institution attorney, Joe Tang, met with the United States Attorney, the Chief of Civil, and AUSA Kessinger. FMC Lexington requested the meeting to discuss ways to improve relations with the local judiciary and other federal agencies, especially the U.S. Marshals Service.

Personnel Issues

FCI MEMPHIS - Matthew Mellady, Attorney, along with the Warden and ISM, attended a Justice Prisoner and Alien Transportation System Conference in Memphis on March 16, 1999.

FCI BUTNER - Michelle Fuseyamore, Attorney, will be attending an Environmental Regulation Course, in St. Louis, Missouri, April 6-9, 1999.

FCI MANCHESTER - The institution was selected by the Regional Office to receive a legal intern position for the summer of 1999.

Staff Leave and Travel

[redacted]

b6

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

	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	0	0	0	1	0	0	0	2
HC	0	0	0	1	2	1	0	1	1	1	0	2	0	1	0	10
OTH	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1
TOT	0	0	1	1	2	1	0	1	1	2	0	4	0	1	1	15

*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	0	1	0	0	0	1	0	0	2	0	1	0	0	2	7
FTCA	0	0	1	1	1	0	0	0	0	1	0	2	0	0	0	6
HC	0	0	0	4	4	2	1	2	1	5	3	4	0	1	2	29
OTH	0	0	0	4	0	0	0	0	0	0	0	2	0	0	0	6
TOT	0	0	2	9	5	2	2	2	1	8	3	9	0	1	4	48

*Represents both the FCI and LSCI

UNITED STATES GOVERNMENT

memorandum

DATE: May 10, 1999 Mid-Atlantic Regional Office, Annapolis Junction, MD 20701

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

SUBJECT: April 1999 Monthly Report

TO: Christopher Erlewine, General Counsel

ATTN: Amy Whalen-Risley, Executive Assistant

ADMINISTRATIVE REMEDIES	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Received	196	152	244	182								
Answered	166	189	176	172								

TORT CLAIMS	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	215	231	220	228								
# Received	63	64	66	52								
# Answered	51	71	49	55								
# Pending	231	220	228	221								
# Over Six Month	1	1	0	0								

PRIVACY	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	32	26	38	30								
# Received	48	52	50	56								
# Answered	54	40	58	53								
# Pending	26	38	30	33								
# Over 20 Working Days	0	0	1*	4**								

*File archived; **three files being retrieved from archives

LITIGATION	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Cases Pending	306	309	309	277								
New Cases Received	19	14	15	23								
Habeas Corpus	11	8	10	14								
Bivens	2	3	2	2								
FTCA	2	2	2	1								
Other	4	1	1	6								
Cases Closed	16	14	47	41								
Cases Pending	309	309	277	259								
Lit Reports Completed	15	16	12	15								
Cases/Hearings or Trials	0	1	1	2								
Settlements/Awards	1	0	0	0								
$ Settlements/Awards (In Thousands)	$20.0	0	0	0								

SIGNIFICANT DECISIONS OR ADVERSE DECISIONS:

FCI MEMPHIS-Jackson v. U.S. - This is a medical malpractice case arising out of the riot of October 20, 1995. A bench trial was held on April 1, 1999, and judgment was rendered in favor of the defendant. This decision wraps up a very significant chapter in the story of FCI, Memphis. We have now concluded all of the litigation surrounding the inmate riot. In brief, we now have four successful criminal prosecutions, no liability under either Bivens or the FTCA (although we did pay a few claims administratively) and five different district court opinions concluding that our response to the riot was reasonable in all aspects (medical care, emergency response, disposition of property, housing conditions, and use of restraints).

FCI ALDERSON- Bayles v. Wise - A Motion to Set Aside Judgment Order Pursuant to F.R. Civ. P. Rule 60(b) was filed in March. This inmate was granted relief in accordance with Wiggins v. Wise based on this district's determination that the 2-point enhancement provision of Section 9 in P.S. 5162.02 was invalid. The basis of the motion was the recent Pelissero decision which upheld the 2-point provision of P.S. 5162.02. The Motion was denied in April. The inmate will be released to a half-way house May 9, 1999.

SETTLEMENTS: None.

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

MXR Common Fare Pilot Program - The Common Fare Pilot Program in MXR and at other selected institutions began May 1. A new OM #020-99 has been issued which explains the pilot. This pilot seeks to test the sincerity of an inmate's religious beliefs when he asks to be placed on common fare. We expect an increase in BP-9's and litigation as inmates currently on common fare are re-evaluated between May 1 and May 16.

USP Terre Haute - Kaba v. Lt. Breckbill, et al. - This is the Bivens case where the Department delayed granting of representation to all but one of the defendants until the FBI completed an investigation. The FBI has completed their local investigation, but since inmates that need to be interviewed have been transferred, other FBI offices still need to complete their part of the investigation. The AUSA handling the case has just requested a second extension of 30 additional days.

FCI MEMPHIS-Love v. United States - This is an FTCA case where the inmate was hit on the head by a falling vent cover. Our investigation revealed that staff knew the vent was loose,

submitted a work order for repair and two weeks later, the repair still not done, it fell and hit the inmate on the head. (The vent cover was located directly above his cell door.) Liability is clear, and this case is about damages.

FCI BECKLEY-Eichler v. U.S. - This is an FTCA case arising from an accident with the institution's bus. Depositions of the Bureau staff members involved in the accident that remain at FCI Beckley were held on March 12, 1999. The deposition of the staff member that transferred from FCI Beckley was taken at FCI Jesup on April 19, 1999. A similar bus was sent by Terre Haute to FMC Lexington for review by accident reconstruction experts for each side.

FCI BECKLEY- Depew v. Hawk - On April 15, 1999, the court entered an order allowing recently disbarred attorney Mel Dahl to mail one package containing the inmate's case file and materials to inmate Depew by April 30, 1999, and ordered the Bureau to treat the package as special mail. On May 3, 1999, the package was received. Mel Dahl did not follow the requirements outlined in the letter and required by policy. However, the mail was treated as special mail based on the order entered April 15, 1999.

FCI BECKLEY-Williams v. Conley - Pursuant to an order entered April 6, 1999, a hearing was held on April 7, 1999, regarding inmate Williams' claim that inadequate medical treatment provided at FCI Beckley resulted in additional portions of his amputee stump being removed due to infection. Based on the evidence presented by the Clinical Director at the hearing, the court found no evidence the inmate's health was in immediate danger. The court informed the inmate he had inappropriately filed the case as a § 2241 and that it would be appropriate under either Bivens or FTCA. The court requested a private attorney to represent the inmate and ordered the Bureau to provide a complete copy of the inmate's medical record to the attorney by May 7, 1999. After obtaining the inmate's consent to release the information, a copy of the medical record was provided to the attorney.

FCI MILAN-Norman v. Pontesso - Injunction: On April 13, 1999, a status conference via telephone was held with the DOJ attorney and Paul Layer on this Ensign Amendment case. The magistrate is leaning toward a transfer of venue due to the inmate's transfer to a federal facility in Texas. Plaintiff's appointed counsel did not object to such a suggestion.

FCI MILAN-Sexton v. USA- This FTCA case involves the slip

and fall of a visitor at FCI Milan on January 30, 1997, in the parking lot. We have pictures showing the parking lot was ice covered and documents indicate we did not have salt for a period of time prior to the fall, the day of the fall, and after the fall. The visitor broke her wrist. She is represented by counsel who clearly wants the $250,000 damages. We finished responding to requests for documents and interrogatories on April 19, 1999, and just received a request for admissions on April 30, 1999. This case has a very bad fact pattern.

CRIMINAL MATTERS:

FCI MANCHESTER-U.S. v. Alderman - On May 21, 1999, the Defendant is scheduled to be sentenced for possession of narcotics.

FCI MANCHESTER-U.S. v. McSwain - Inmate and two civilians were indicted on April 23, 1999, for attempted drug introduction and possession of narcotics in the visiting room.

FCI MANCHESTER-U.S. v. Dugger - An inmate was indicted on April 23, 1999, for attempted drug introduction and possession of narcotics in the visiting room.

FCI MANCHESTER-U.S. v. Huffman - An inmate was indicted on April 28, 1999, for attempted drug introduction and possession of narcotics in the visiting room.

FCI BECKLEY - [redacted] was indicted January 13, 1999, for seriously assaulting a staff member. He is charged with violating 18 U.S.C. § 111(a) and (b), as the inmate changed into steel-toed boots prior to the assault and the officer suffered serious injuries. The inmate was arraigned February 2, 1999. Trial was set for April 6, 1999. On April 7, 1999, inmate [redacted] pled guilty to the charge. Sentencing is scheduled for July 6, 1999.

b7C

FCI BECKLEY - [redacted] was indicted February 10, 1999 for assaulting another inmate. Trial was scheduled for May 5, 1999, but was rescheduled for June 7, 1999, when the court granted the inmate's request for substitution of counsel the week before trial.

FCI BECKLEY - [redacted] was arraigned December 18, 1998, for Possessing Contraband (heroin). A plea hearing was held January 25, 1999, at which time the inmate pled guilty to the charge. The inmate was sentenced to 18 months (consecutive) on April 12, 1999.

SITUATIONS OF INTEREST, CONTACT WITH FEDERAL BENCH, HAZARDOUS

WASTE SITES, ETC.:

Regional Counsel's Office - On Friday, April 30, 1999, in celebration of "Law Day," the Regional Counsel's Office held a reception. This year's theme (established nationally by the ABA) was "Celebrate Your Freedom" with emphasis on "Quest for Equality." The guest speaker was Larry Adams, AUSA, District of Maryland. He was very complimentary regarding the support provided the U.S. Attorney's Office by the Regional Counsel's Office and stated that the BOP is one of the top two or three Agencies out of the 60 Agencies they deal with in the Civil Division. Mr. Adams went on to discuss how he feels the BOP's " Quest for Equality" shows up in the fair way Federal inmates are treated.

Regional Counsel's Office - On April 28, Marian Callahan, Assistant Regional Counsel, was the featured "speaker" at a regular teleconference for institution safety managers in the region hosted by Dennis Stamper, Regional Safety Administrator. Marian reminded the Safety Mangers of the crucial role they play in both the remedy and tort processes in terms of effective fact-gathering and investigation. She also stressed the importance of good, contemporaneous investigations of accidents, including the need for photos, and statements of witnesses (staff, inmate and civilian), where necessary. The Safety Managers were asked to communicate with the institution legal staff concerning accidents, and to anticipate a tort claim rather than wait for the claim to come in to start an investigation. Marian also discussed CECA and BOPCA claims.

FMC LEXINGTON - An attorney representing the family of deceased inmate Tracy Hearlson, 24663-086, filed a tort claim alleging wrongful death and personal injury arising out of the September 1998 death of Hearlson. Hearlson was found dead in a common area on the outpatient mental health unit, his head caved in, apparently by a fire-extinguisher. To date, nobody has been indicted for this crime.

Personal Issues

Staff Leave and Travel

[redacted] b6

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

	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	1	2
FTCA	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
HC	0	1	1	2	0	0	4	2	0	1	0	1	0	1	1	14
OTH	0	0	0	2	0	1	1	0	0	0	0	1	0	0	1	6
TOT	0	1	1	4	1	1	5	2	1	1	0	2	0	1	3	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	0	1	0	1	0	1	0	0	2	0	1	0	0	3	9
FTCA	0	0	1	1	1	0	0	0	1	1	0	2	0	0	0	7
HC	0	1	1	6	4	2	5	4	1	6	3	5	0	2	3	43
OTH	0	0	0	6	0	1	1	0	0	0	0	3	0	0	1	12
TOT	0	1	3	13	6	3	7	4	2	9	3	11	0	2	7	71

*Represents both the FCI and LSCI

UNITED STATES GOVERNMENT

memorandum

DATE: June 4, 1999 Mid-Atlantic Regional Office, Annapolis Junction, MD 20701

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

SUBJECT: May 1999 Monthly Report

TO: Christopher Erlewine, General Counsel

ATTN: Amy Whalen-Risley, Executive Assistant

ADMINISTRATIVE REMEDIES	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Received	196	152	244	182	171							
Answered	166	189	176	172	186							

TORT CLAIMS	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	215	231	220	228	221							
# Received	63	64	66	52	63							
# Answered	51	71	49	55	44							
# Pending	231	220	228	221	245							
# Over Six Month	1	1	0	0	0							

PRIVACY	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	32	26	38	30	33							
# Received	48	52	50	56	53							
# Answered	54	40	58	53	50							
# Pending	26	38	30	33	36							
# Over 20 Working Days	0	0	1*	4**	1							

*File archived; **three files being retrieved from archives

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

to get a second enlargement of time to respond to this case the U.S. Attorney's Office, Southern District of Indiana, had to file a declaration from Helene Goldberg explaining the situation. The court has granted an extention until July 7, 1999. We have received word that the FBI investigation has been completed and we are waiting for the Civil Rights Division to forward their report to Ms. Goldberg's Office.

CRIMINAL MATTERS:

FCI BECKLEY - Inmate [redacted] received an 18-month consecutive sentence on May 3, 1999, for Possessing Contraband (Heroin). b7C

FCI BECKELY - Inmate [redacted] was indicted for assaulting another inmate. Trial was initially scheduled for May 5, 1999, but was rescheduled when the court granted the inmate's request for substitution of counsel the week before trial. A superceding indictment was issued in May charging the inmate with possessing contraband (a weapon). The trial is scheduled to commence June 8, 1999, although the inmate has indicated he intends to enter a guilty plea prior to trial.

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

[redacted] b5

FCI BUTNER - Two administrative remedies have been filed challenging the new ITS II telephone system. The inmates are upset about the mechanism in the system that requires the recipient to press a number to decline or accept a call, and the intermittent branding of the call as from an inmate in a

federal prison. The inmates claim that these features violate the consent decree because the system inappropriately uses inmate trust funds to provide security features. The consent decree authorizes the inmate to file an action to enforce the settlement agreement in the Eastern District of Kentucky if the inmate is dissatisfied with the BP-9 response, therefore we are conferring with Doug Curless, Litigtion Branch, regarding the appropriate response.

Personal Issues

Kelly McDonald: We welcome Kelly McDonald, Attorney Advisior, FCI Cumberland, to the Mid-Atlantic Region. Kelly comes to us from private practice in St. Louis, Missouri. Before that, Kelly was a law clerk at both the U.S. District and Circuit Court levels. Please help Kelly feel at home with the BOP.

Dawn Tanner, Legal Assistant, FCI Petersburg, received the Mid-Atlantic Regional Director's Award for Asian/Pacific Islander/Native American Indian Program Manager of the Year for 1998.

Vickie Petricka, Paralegal Specialist, MARO - Please congratulate Vickie on her successful completion of the paralegal training program. On June 1st, the official graduation ceremony took place. Vickie will remaining in MARO pending her next assignment.

Staff Leave and Travel

[redacted] b6

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

	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	0	0	0	0	0	1	1
FTCA	0	0	0	0	1	1	0	0	0	0	0	0	0	0	0	2
HC	0	0	1	0	1	0	0	1	0	1	0	0	0	0	1	5
OTH	0	0	0	4	0	0	0	0	0	0	0	0	0	0	0	4
TOT	0	0	1	4	2	1	0	1	0	1	0	0	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	MAN	MEM	MIL	MRG	PET	SEY	MXR	THA	TOT
BIV	0	0	1	0	1	0	1	0	0	2	0	1	0	0	4	10
FTCA	0	0	1	1	2	1	0	0	1	1	0	2	0	0	0	9
HC	0	1	2	6	5	2	5	5	1	7	3	5	0	2	4	48
OTH	0	0	0	10	0	1	1	0	0	0	0	3	0	0	1	16
TOT	0	1	4	17	8	4	7	5	2	10	3	11	0	2	9	83

*Represents both the FCI and LSCI

UNITED STATES GOVERNMENT

memorandum

DATE: July 9, 1999 Mid-Atlantic Regional Office, Annapolis Junction, MD 20701

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

SUBJECT: June 1999 Monthly Report

TO: Christopher Erlewine, General Counsel

ATTN: Mina Raskin, Acting Executive Assistant

ADMINISTRATIVE REMEDIES	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Received	196	152	244	182	171	209						
Answered	166	189	176	172	186	202						

TORT CLAIMS	JAN	FEB	MAR	APR	MAY	JUN	JU'	DEC
# Pending	215	231	220	228	221	245		
# Received	63	64	66	52	63	60		
# Answered	51	71	49	55	44	6[illegible]		
# Pending	231	220	228	221	245	2[illegible]		
# Over Six Month	1	1	0	0	0			

RIVACY	JAN	FEB	MAR	APR	MA'
# Pending	32	26	38	30	[illegible]
# Received	48	52	50	56	5[illegible]
# Answered	54	40	58	53	50
# Pending	26	38	30	33	36
# Over 20 Working Days	0	0	1*	4**	1

# Pending	37	
# Over 20 Working Days	1*	

*File archived; **three files being retrieved from archives

Hi Joyce, Task completed

LITIGATION	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	S[illegible]	[illegible]	DEC
Cases Pending	306	309	309	277	259	253					
New Cases Received	19	14	15	23	11	20					
Habeas Corpus	11	8	10	14	5	11					
Bivens	2	3	2	2	0	4					
FTCA	2	2	2	1	2	1					
Other	4	1	1	6	4	4					
Cases Closed	16	14	47	41	17	12					
Cases Pending	309	309	277	259	253	259					
Lit Reports Completed	15	16	12	15	8	15					
Cases/Hearings or Trials	0	1	1	2	0	0					
Settlements/Awards	1	0	0	0	0	1					
$ Settlements/Awards ($ in Thousands)	$20.0	0	0	0	0	$22.5					

SIGNIFICANT DECISIONS OR ADVERSE DECISIONS:

FMC LEXINGTON - Jordan v. Thoms, Powell v. Thoms, and Bailey v. Thoms - In these early release cases, Judges Wilhoit and Forrester strike down our new rule. In support of the decision to invalidate the new rule, the Court relies on Guideo v. Booker, 37 F. Supp. 1289 (D. Kansas 1999), which mistakenly read the new rule. In the Jordan case Judge Wilhoit also determined that the inmate had successfully completed the RDAP, despite a declaration from the DAP Co-ordinator explaining that Jordan had been expelled from the Transitional Services portion of the program for incurring incident reports. The U.S. Attorney's Office is joining us in recommending an expedited appeal.

FCI PETERSBURG - Zakiya aka Douglas Ross v. Reno - On May 4, U.S. District Judge Leonie Brinkema entered an order effectively invalidating a portion of the Inmate Financial Responsibility Program Statement, and 18 U.S.C. §3624(e) which require BOP to hold beyond a scheduled release date, inmates who refuse to sign an agreement to adhere to an installment schedule while on supervised release. The U.S. Attorney's Office, and Tom Booth, DOJ, do not favor appeal, an appeal should be taken.

SETTLEMENTS:

FCI PETERSBURG - Walker v. USA - This previously [illegible] medical tort case was settled for $22,500. The case involved: a torn achilles tendon the former inmate received at a county jail on June 20, 1997, while in the custody of the USMS. After arriving at Petersburg on July 9, 1997, he was properly diagnosed as having a possible torn achilles tendon. However, he did not see an orthopedic specialist until September 3, 1997, with surgical repairs being made on September 29, 1997. Plaintiff's expert asserted the care was substandard as did the U.S.'s expert. The Central Office authorized settlement between $15,000-$25,000.

FCI MEMPHIS - Herrera v. USA - [redacted] This case involves inmate Herrera being stabbed in the eye by another Memphis inmate, after Herrera had indicated he needed protection. As a result of the stabbing, the inmate lost sight in one eye. In denying our Motion for Summary Judgment, the Court pointed out that BOP had notice of Herrera's protection needs, yet failed to conduct a proper investigation. Trial is set for July 17, 1999.

b5

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

FCI MEMPHIS - Common Fare Pilot - We now have two administrative appeals challenging removal from Common Fare. In each case, it appears staff did not apply the proper test in deciding to remove the inmate. I am concerned that we do not spell out criteria for Chaplaincy staff to apply in the Operations Memo, which results in them focusing on the wrong issues.

CRIMINAL MATTERS:

FCI BECKLEY- Tremayne Hubbard, Reg. No. 20872-038 - This inmate was indicted for assaulting another inmate. The inmate entered a guilty plea to the charge on June 21, 1999. Sentencing is scheduled for September 13, 1999.

FCI BECKLEY - Trevor Huie, Reg. No. 15143-075 - This inmate was indicted January 13, 1999, for seriously assaulting a staff member. Trial was set for April 6, 1999. On April 7, 1999, inmate Huie plead guilty to the charge. Sentencing was scheduled for July 6, 1999. The sentencing has been postponed.

FCI ELKTON - In U.S. v. Ivan Joesph, inmate Joesph is accused of assaulting a correctional officer. The jury found inmate Joesph guilty. Sentencing is scheduled for September 7, 1999.

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

FMC LEXINGTON - The tort claim filed by [redacted] b7C Administratrix of the Estate of Tracy Hearlson, 24663-086, was denied under 28 U.S.C. Section 2680(a), the discretionary function exception to the FTCA. Hearlson was the victim of a homicide in the transitional care mental health unit at FMC Lexington in September, 1998. The tort claim alleges staff negligently failed to protect Hearlson by releasing him from protective custody after he was involved in a fight. However, the decision whether to place Hearlson in PC or transfer him or other inmates is a purely discretionary function within the meaning of 2680(a). Approval to use this argument was obtained from Mary Leach of the Torts Branch at DOJ.

FMC LEXINGTON - We have received numerous requests from Judge Joe Hood, E.D. Ky., and the U.S. Attorney's Office Civil and Criminal Chiefs, for consideration of a compassionate release for [redacted] an inmate sentenced by Judge Hood. [redacted] is suffering from terminal lung cancer and his compassionate release has now been approved by Central Office. b7C

USP TERRE HAUTE - The Department of Justice has not authorized representation for some of the defendants in Kaba Karamo v. Lt. Brechbill, et al. DOJ has approved government

representation for Defendant [redacted] AW Custody, and has decided to pay for private counsel for Defendants [redacted] both Correctional Officers. Representation has been denied at this time for Defendants [redacted], all lieutenants. The allegations made by the Plaintiff include use of force and retaliation claims. b6

FCI BUTNER - The institution received an inquiry from the Director regarding pending litigation - Woodruff v. US. Woodruff was sent to FCI Butner for a study by Magistrate Judge Catoe, (D.S.C.), and committed suicide while in our custody. Judge Catoe attended a meeting where the Director was present and expressed his discontent that two inmates he has sent to the Bureau for a study, have committed suicide. (The second inmate was still in the U.S. Marshals' custody at the time of his suicide.) Woodruff's family filed a wrongful death claim which is currently pending in South Carolina. We were able to provide much of the information from the litigation prepared on the case, to respond to Judge Catoe's concerns.

Personal Issues

Staff Leave and Travel

b6

[redacted]

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

	ALD	ASH	BEC	BUT*	CUM	ELK	LEX	MAN	MEM	MIL	MRG	PET	SE
BIV	0	0	0	1	0	0	0	0	0	0	0	1	0
FTCA	0	0	0	0	0	0	0	0	0	0	0	0	0
HC	1	0	0	2	2	0	3	0	1	1	0	1	0
OTH	0	0	0	1	0	0	2	0	1	0	0	0	0
[illegible]T	1	0	0	4	2	0	5	0	2	1	0	2	0

*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	0	1	1	1	0	1	0	0	2	0	2	0	0	6	14
FTCA	0	0	1	1	2	1	0	0	1	1	0	2	0	0	1	10
HC	1	1	2	8	7	2	8	5	2	8	3	6	0	2	4	59
OTH	0	0	0	11	0	1	3	0	1	0	0	3	0	0	1	20
TOT	1	1	4	21	10	4	12	5	4	11	3	13	0	2	12	103

*Represents both the FCI and LSCI

UNITED STATES GOVERNMENT

memorandum

DATE: August 9, 1999 Mid-Atlantic Regional Office, Annapolis Junction, MD 20701

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

SUBJECT: July 1999 Monthly Report

TO: Christopher Erlewine, General Counsel

ATTN: Mina Raskin, Acting Executive Assistant

ADMINISTRATIVE REMEDIES	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Received	196	152	244	182	171	209	187					
Answered	166	189	176	172	186	202	235					

TORT CLAIMS	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	215	231	220	228	221	245	233					
# Received	63	64	66	52	63	60	63					
# Answered	51	71	49	55	44	67	66					
# Pending	231	220	228	221	245	233	218					
# Over Six Month	1	1	0	0	0	0	0					

PRIVACY	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	32	26	38	30	33	36	37					
# Received	48	52	50	56	53	60	56					
# Answered	54	40	58	53	50	59	46					
# Pending	26	38	30	33	36	37	47					
# Over 20 Working Days	0	0	1*	4**	1	1*	6**					

*File archived; **three files being retrieved from archives

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

SIGNIFICANT DECISIONS OR ADVERSE DECISIONS:

FMC LEXINGTON - Jordan v. Thoms, Powell v. Thoms, Bailey v. Thoms, George v. Thoms - In these early release cases, Judges Wilhoit and Forrester struck down our new rule. In support of the decision to invalidate the new rule, the Court relied on Guido v. Booker, 37 F.Supp. 1289 (D. Kansas 1999), which mistakenly read the new rule. In the Jordan case Judge Wilhoit initially determined that the inmate had successfully completed the RDAP, despite a declaration from the DAP Co-ordinator explaining that Jordan had been expelled from the Transitional Services portion of the program for incurring incident reports. After filing a motion for reconsideration, Judge Wilhoit retreated, and inmate Jordan has now been brought back to Lexington from a halfway house. We are waiting for notification from DOJ that an appeal has been authorized in these cases.

FMC LEXINGTON - John Davis v. Beeler - In this old rule, early release case, Judge Forrester invalidated the Bureau's requirement that an inmate who violates Supervised Release, must again complete RDAP before he is eligible for early release. In effect, Judge Forrester held the term of Supervised Release is part of the initial term of confinement. We are filing a Motion for Reconsideration, citing two recent 6th Circuit opinions which state Supervised Release is a sentence separate and apart from the initial confinement sanction.

FCI MORGANTOWN - Kirby v. Bledsoe - In an unreported decision, without much analysis, Judge Irene Keeley, has upheld the Bureau's new rule on early release. Inmate Kirby has filed an appeal, and it appears the 4th Circuit will soon be asking the government to file an informal brief. If the case is handled with informal briefs, it is likely an unpublished opinion will result.

FCI MILAN - Taylor v. Pontesso - This is a habeas corpus case concerning the 1995 RDAP regulations. The case was remanded from the 6th Cir. with instructions to comply with its Order in Orr. After review and consultation with the Regional Counsel and U.S. Attorney's Office, it was decided that Taylor was eligible for the reduction. Taylor is currently on supervised release and contact with the U.S. Probation Department is supportive of the reduction of 1-year on his supervised release due to McClain v. Bureau of Prisons, 9 F.3d 503 (6th Cir. 1999), which requires supervised release reduction when an inmate's sentence computation was in error. Work continues to file the appropriate motions to satisfy the various agencies.

SETTLEMENTS:

FCI MEMPHIS - Herrera v. USA - In this failure to protect case, we sought settlement authority in the amount of $50,000. This case involved inmate Herrera being stabbed in the eye by another Memphis inmate, after Herrera had indicated he needed protection. As a result of the stabbing, the inmate lost sight in one eye. We eventually settled the case for $25,000, b5 b5

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

FCI PETERSBURG- McNeill v. Dewalt, This habeas action which was reported as dismissed last month is re-opened as an appeal. The district court dismissed this action on June 18, 1999, in which McNeill sought credit toward his federal sentence for time spent serving a state sentence in primary state jurisdicition. Notice of appeal was filed by inmate on July 1, 1999. Becuase he is pro se we expect that the CA4 will require informal briefing in the case. ((The BOP wrote to the sentencing federal court to review the inmate's case under Barden since he sought concurrent serivce. The district court was adivsed we would do so. The federal sentencing judge responded that he did not intend MCNeill sentence to run with state time and his federal sentence should not start until he came into BOP custody [as currently computed].)) We will submit the judge's letter to the CA4.

FCI PETERSBURG- Walker v. U.S.A.; This medical malpractice case was previously reported as closed in the June report as settled for $22,500.00. A copy of the Agreed Order of Dismissal, filed June 30, 1999 was received from the AUSA on July 27, 1999.

CRIMINAL MATTERS:

FCI MEMPHIS - We are happy to report that Matthew Mellady, has been given authorization to act as a Special U.S. Attorney to prosecute FPC Millington escape cases (where the U.S. Attorney's Office would otherwise decline prosecution). We have entered this "pilot program" on a trial basis for one year, hoping that we can impress upon inmates that even a short absence from the Camp may subject them to criminal prosecution.

FCI BECKLEY - Thomas Durham, Reg. No. 22185-016, was indicted July 7, 1999, for Possessing Contraband (a weapon).

FMX LEXINGTON - After extensive discussion between FMC Lexington and the prosecuting AUSA, a decision was reached not to continue pursuing criminal assault charges against b7C b7C , a chronic Mariel Cuban mental health inmate who struck a staff member in the Central

Park area of the institution in September, 1998. Pursuant to 18 U.S.C. Section 4241(b), an independent competency to stand trial study was completed by an outside psychiatrist who found Guilarte-Felipe not mentally competent to stand trial. Our mental health staff agree with the results of the study, and the assault victim (who was not injured) did not object to the AUSA declining prosecution. Judge Wilhoit dismissed the indictment on July 20, 1999. Staff feel a sufficient "message" has been sent to the inmate population regarding the consequences for assaulting staff. b7C

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

FMC LEXINGTON - Lexington U.S. Attorney's Office - During a recent Institution Character Profile, Margaret Hambrick met with U.S. Attorney Joseph Famularo, E.D. Kentucky, at which time he requested that BOP give the U.S. Attorney's Office a position. This request was based on an increase in litigation that will result from several institutions being built within the E.D. KY. Ms. Hambrick indicated we would provide information, which they could use to make their request for additional positions, but that we did not have positions to give them.

FCI BUTNER - PLRA Filing Fees - We have had two recent contacts from Pat Conner, Clerk of the 4th Circuit, asking what efforts institution staff have taken to collect PLRA filing fees. Ms. Conner has cited Hall v. Stone, intimating that the 4th Circuit will enforce, via its contempt power, the PLRA requirement that the custodian take money from the inmate account, regardless of whether the inmate will sign a commissary form authorizing the withdrawal. All MXR staff have been advised that once we receive notification from the court or clerk's office that fees are due, we are to withdraw the funds.

b5

b5

b5

b5

FCI MILAN - On July 13, 1999, FCI Milan in conjunction with the Hon. Bernard Friedman, U.S. District Judge, E.D. Michigan, conducted the Judge's annual tour of FCI/FDC Milan. This all day event encompassed a prison transport bus picking up the visitors at the Courthouse in Detroit, background of FCI Milan and the BOP, a tour of both facilities, lunch and a meeting with the Warden and Executive Staff. The tour consisted of one new federal judge, and 30 staff, including law clerks and administrative personnel for the federal judges, and one Sixth Circuit Court of Appeals Judge. It was well received.

Personal Issues

b6

b6

b6

Staff Leave and Travel

b6 : August 10-12 Regional Office
August 18-20 Annual Leave

b6 will be on annual leave August 30 - September 3, 1999.

b6 will be on Annual Leave from 8/2-8/6/99.

b6 : Administrative Leave (CLE) -- August 13

b6 Annual Leave -- August 13 through August 20.

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

	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	1	0	1	0	0	0	1	4
FTCA	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
HC	0	0	0	1	0	0	0	0	1	0	0	0	0	0	2	4
OTH	0	0	0	9	0	0	0	0	0	0	0	0	0	0	0	9
TOT	0	0	0	10	1	0	0	0	2	0	1	0	0	0	3	17

*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	0	1	1	2	0	1	0	1	2	1	2	0	0	7	18
FTCA	0	0	1	1	2	1	0	0	1	1	0	2	0	0	1	10
HC	1	1	2	9	7	2	8	5	3	8	3	6	0	2	6	63
OTH	0	0	0	20	0	1	3	0	1	0	0	3	0	0	1	29
TOT	1	1	4	31	11	4	12	5	6	11	4	13	0	2	15	120

*Represents both the FCI and LSCI

UNITED STATES GOVERNMENT

memorandum

DATE: September 3, 1999 Mid-Atlantic Regional Office, Annapolis Junction, MD 20701

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

SUBJECT: August 1999 Monthly Report

TO: Christopher Erlewine, General Counsel

ATTN: Mina Raskin, Acting Executive Assistant

ADMINISTRATIVE REMEDIES	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Received	196	152	244	182	171	209	187	207				
Answered	166	189	176	172	186	202	235	153				

TORT CLAIMS	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	215	231	220	228	221	245	233	218				
# Received	63	64	66	52	63	60	63	44				
# Answered	51	71	49	55	44	67	66	65				
# Pending	231	220	228	221	245	233	218	189				
)ver Six Month	1	1	0	0	0	0	0	1*				

ın the process of settling.

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

*File archived; **three files being retrieved from archives; *awaiting all five files from archives

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

, in Thousands)

SIGNIFICANT DECISIONS OR ADVERSE DECISIONS:

FCI CUMBERLAND - Coker v. Henry - In this Bivens case, the District Court allowed an inmate to voluntarily dismiss his case, and in so doing, avoid the obligation to pay the full $150 PLRA filing fee. We have filed a Motion for Reconsideration, pointing out that under the PLRA, the obligation to pay the full filing fee is incurred upon filing the complaint. Dismissal of the complaint by the court or the inmate, does not affect the inmate's obligation to pay the full fee.

FCI MEMPHIS - Davidson v. Luttrell - This RDAP two-point enhancement case was dismissed in the District Court. The petitioner appealed. The Court of Appeals vacated the District Court's judgment in light of Orr and remanded the case back to the District Court.

FCI MILAN - Taylor v. Pontesso - This is a habeas corpus petition challenging the 1995 RDAP regulations. The case was remanded from the 6th Circuit with instructions to comply with its order in Orr. After review with the U.S. Attorney's Office it was decided that Taylor was eligible for the reduction. Taylor is currently on supervised release. The U.S. Probation Department is supportive of the one year reduction on his supervised release due to the decision in McClain v. Bureau of Prisons, 9 F.3d. 503 (6th Cir. 1993), which requires SR reduction when an inmate's sentence computation was in error.

FCI MILAN - Todd v. Scibana - This was a habeas action challenging the 1997 RDAP regulations, specifically the two-point enhancement for a firearm. On July 28, 1999, the Court issued an Order granting the petition and citing the Guido v. Booker, 37 F.Supp 1302 (D. Kansas 1999) decision. The Court felt that the BOP was attempting to circumvent the line of federal cases holding the BOP cannot use a sentencing enhancement to define an inmate as violent. The Court completely disregarded the fact that we determined the Petitioner's offense was non-violent. A Motion for Reconsideration was filed on August 26, 1999, based in part on Bellis.

FCI ELKTON - Nugent v. LaManna, et al. - In this Bivens case the District Court found that our efforts to enforce the no smoking policy defeated plaintiff's claims we were deliberately indifferent to his medical needs.

SETTLEMENTS:

FMC Lexington - Maltz v. U.S. - We have requested settlement authority in the amount of $70,000, in this failure to

diagnose cancer case out of Lexington. Our expert states we were negligent in failing to diagnose the cancer earlier, but he is not clear that the delay caused any harm. Plaintiff countered with an oncologist who states our delay did adversely affect Mr. Maltz' chances of recovery. The Judge is allegedly pro-plaintiff, and suffering from cancer himself. We have requested settlement authority in the amount of $70,000. Dr. Duggirala concurs that we should settle this case. A second settlement conference is scheduled for September 14.

FCI Manchester - Administrative Claim regarding death of inmate Stump - We learned from Renee Fornshill that preliminary talks with Larry Klinger, Torts Branch, are positive, and they believe this case is appropriate for settlement in the $500,000 range. We will meet with plaintiff's counsel, to try and sell a structured settlement.

NEW RFRA CASES AND UPDATES ON PREVIOUSLY REPORTED CASES, TRIALS OR HEARINGS: None

CRIMINAL MATTERS:

FCI BECKLEY - On August 19, 1999, inmate Trevor Huie, Reg. No. 15143-075, was sentenced for violating 18 U.S.C. §§ 111(a) and (b). After three hours of testimony by various staff and legal arguments, the Judge determined the assault was in fact an aggravated assault. The Judge found Inmate Huie's base offense level to be 15 and added points for the following: two points for more than minimal planning involved, i.e., inmate had a mouth guard in place, had put on steel-toed boots and padded gloves, and waited until the officer was alone in the unit; three points were added because the victim was an official; four points were added due to serious injuries; and three points were subtracted for acceptance of responsibility. The total offense level was 21 with a guideline range of 46-57 months. The Judge sentenced Huie to 57 months (consecutive) and explained he wanted to send a strong message to the inmates at the facility that assaults on officers would not be tolerated. The Judge ordered restitution in the amount of $14,344.33 to Dept. of Labor (Worker's Compensation), payable at $50.00 a month. A letter of appreciation from Chris Erlewine to John File, the Assistant U.S. Attorney, has been prepared.

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

USP TERRE HAUTE - On September 14, 1999, Warden Lappin will meet with representatives from the Death Penalty Resource Project, Norfolk, Virginia. We anticipate they will complain about the length and frequency of social visits in the Special

Confinement Unit. We intend to invite Peggy Griffey, from the Capitol Crimes Unit, DOJ. We are hopeful that Doug Curless will also be able to attend.

FCI PETERSBURG - On August 24, 1999, nine new Federal judges, along with six other staff from the Federal Judiciary Center, visited the institution for a tour and discussion with executive staff and inmates on the imprisonment portion of a Federal sentence as a part of the new judges' training. The judges all expressed how pleased they were with the appearance of the institution and the interaction between staff and inmates. As usual, many of them questioned the impact of the long sentences for drugs and the disparity between crack and powder cocaine. Several of the new judges were also very interested in the racial breakdown of the inmate population, and questioned why the BOP in its statistics includes Hispanics in the white racial category.

Personnel Issues

b6

Staff Leave and Travel

[redacted] August 30-Sept. 1 - Pensacola (re-engineering)

September 13-15 USP Terre Haute

[redacted] September 20-24 - ICP USP Terre Haute

[redacted] September 7-10 - annual leave

[redacted] September 3, 7 & 30 - annual leave

[redacted] September 16-17 - administrative leave (CLE)

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

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

*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	0	1	1	3	2	1	1	1	2	1	2	0	0	7	22
FTCA	0	1	1	2	3	1	0	0	1	1	0	2	0	0	1	13
HC	1	1	4	11	8	2	12	6	3	9	3	6	0	2	6	74
OTH	0	0	0	23	0	1	3	0	1	0	0	3	0	0	1	32
TOT	1	2	6	37	14	6	16	7	6	12	4	13	0	2	15	141

*Represents both the FCI and LSCI

UNITED STATES GOVERNMENT

memorandum

DATE: October 6, 1999Mid-Atlantic Regional Office, Annapolis Junction, MD 20701

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

SUBJECT: September 1999 Monthly Report

TO: Christopher Erlewine, General Counsel

ATTN: Mina Raskin, Acting Executive Assistant

ADMINISTRATIVE REMEDIES	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Received	196	152	244	182	171	209	187	207	178			
Answered	166	189	176	172	186	202	235	153	213			

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

the process of settling.

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

*File archived; **three files archived;●all five files archived;■six files archived.

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

($ in Thousands)

SIGNIFICANT DECISIONS OR ADVERSE DECISIONS:

FCI MILAN - Todd v. Scibana - This habeas action reported last month challenges the 1997 version of 28 CFR §550.50, et seq., specifically, the two-point enhancement for a firearm. On July 28, 1999, the Court issued an Order granting the petition. The Court Ordered a Status Report due August 27, 1999. The inmate is now at FPC Duluth. Per the Order, the Court was advised that the inmate was now RDAP eligible, but due to a release date in November 2005, he would not be placed in a program until closer to his release date. A Notice of Appeal has been filed in this case.

FCI MILAN - Welch v. Reno (Title VII/Rehab Case) - Former employee seeks $300,000 in damages plus attorney fees based on the contention that she was constructively discharged due to a back injury which, in her doctor's opinion, prohibited firearm's certification. Plaintiff alleges that as an accounting technician, the firearms requirement is not an essential function of her position, and that other staff have been granted extended waivers for firearms based upon medical conditions. Plaintiff seeks both back pay and front pay, as well as an award/order that she will not be required to return to work at FCI Milan or the BOP due to an alleged hostile work environment. A settlement conference was held on September 20, 1999, with BOP labor law staff, the Warden, the AUSA, and Kevin Walasinski. The AUSA was not supportive of the settlement offer. BOP will need to monitor this case carefully. The AUSA and BOP Labor Law attorney will be at FCI Milan the week of October 11, 1999, to interview witnesses.

USP TERRE HAUTE - Special Confinement Unit - Inmate Hammer's standby counsel filed a motion with the Third Circuit alleging that he was not being provided adequate telephone access with his attorneys, and requesting that he be permitted legal calls to paralegals/legal assistants within the attorney's offices. After being informed of the extensive telephone access provided by staff at Terre Haute, the Third Circuit denied Hammer's motion, finding that he had been given adequate access to counsel.

SETTLEMENTS:

FCI MANCHESTER - T-MXR-99-70 - On September 24, 1999, Marian Callahan and I traveled to Columbus, Ohio, to attempt settlement of this wrongful death, administrative tort claim. While DOJ had approved settlement at $500,000, we presented a structured settlement plan with a benefit package totaling $325,000. We are waiting for plaintiff's reply.

NEW RFRA CASES AND UPDATES ON PREVIOUSLY REPORTED CASES,

TRIALS OR HEARINGS:

FCI CUMBERLAND - Saunders v. USA - Saunders, a paraplegic inmate, has filed an FTCA complaint alleging the BOP negligently maintained the television switches in his unit; he seeks $2,500 for injuries to his hand. The Judge did not order payment of an initial filing fee because she believed FCI Cumberland had not forwarded a copy of the plaintiff's account in a timely manner. Since the institution had responded within one day of receipt of the order, Kelly McDonald, Attorney, got the pro se law clerk to agree the order was premature and BOP could ask for reconsideration. Reconsideration was not sought as the inmate had no money in his account and the BOP interpreted the order to require installments. When BOP withdrew funds for the first installment, the inmate moved the Court for a Contempt Order arguing that the BOP had violated the Court's order. A response was filed arguing that BOP did provide the account information in a timely manner and based on the PLRA and the original order, BOP was required to forward installment payments from the plaintiff's account.

FCI CUMBERLAND - Hodges v. USA - Inmate Hodges, with the assistance of retained counsel, has filed a suit under the FTCA, seeking $2 million in damages. Hodges was assaulted in 1997, which resulted in the loss of one eye. Hodges alleges we failed to protect him from an injury that occurred in plain view of correctional officers, that there were an insufficient number of officers; and he received inadequate and untimely medical care. [redacted] b2

FCI BECKLEY - Fleming v. US BOP - Summary Judgment was granted in the Bureau's favor in this Privacy Act case. The inmate challenged the drug quantities in the PSI and therefore, challenged the staff's reliance on the PSI. Although Summary Judgment was entered in our favor, the court did find that the PLRA exhaustion requirement did not apply to this lawsuit because it was a Privacy Act claim that challenged the PSI, and since staff did not have the authority to amend the PSI exhaustion could provide no relief, and it was not a challenge to prison conditions.

FCI PETERSBURG - Braxton v. Dove - The Sixth Circuit, in a June 27, 1999 order, overturned the dismissal of this habeas petition filed by Braxton in 1997 while he was confined at Ashland. The Sixth Circuit, based on the Orr decision, remanded the case to the district court to review Braxton's denial of early release eligibility because of a two point enhancement for possession of a firearm, after having been

acquitted on a §922(g) conviction. Braxton's classification was changed from "ineligible" to "eligible" on July 19, 1999. He was transferred to the halfway house component of the early release program on August 20, 1999. The district court issued an order September 13, 1999, granting the petition, only to the extent the BOP was directed to consider him for early release without consideration of the §922(g) conviction and to respond to the court within 30 days regarding compliance with the order. The AUSA is filing a response notifying the court the issue is now moot.

FMC LEXINGTON - In Gravens v. Thoms, Judge Wilhoit dismissed Petitioner's habeas action, which challenged the BOP's new regulation interpreting weapons possession crimes as precluding eligibility for early release benefits. Curiously, Judge Wilhoit opined Petitioner's case was not yet ripe for adjudication because he was still in the drug program and had not yet graduated and he was therefore not yet given " consideration for early release." Judge Wilhoit's opinion is a victory for the Respondent in a District where Judges Wilhoit and Forester previously ruled in favor of the inmate petitioners in new rule 3621(e) cases, issuing opinions which showed a lack of understanding of the issues in the cases.

FCI MEMPHIS - Davidson v. Luttrell - This RDAP/2-point enhancement case was dismissed in the District Court. The Petitioner appealed. The Court of Appeals vacated the district court's judgment in light of Orr and remanded the case back to the district court. Originally dismissed *sua sponte* by the district court, the court has issued an Order to respond. Upon reconsideration, the inmate has already been determined to be provisionally eligible for early release since the 2-point enhancement was the only disqualifying factor. We have drafted an affidavit and intend to file a motion to dismiss based on mootness.

FCI PETERSBURG - Phillips v. Hawk Sawyer, et al. - The Court issued an order dismissing this case with prejudice on September 30, 1999, due to the statute of limitations. The case has a long history since it was filed in D.C. in 1997. The original case alleged fraud in UNICOR operations at FPC Petersburg. Inmate Phillips then asserted staff had failed to protect him when he was not transferred from Petersburg; that his constitutional rights were violated by his placement in SHU for protection; and that staff retaliated by not approving a furlough or transfer for him to a work cadre in Baltimore (close to his wife). The court had set the matter for fast

track and a trial date had been set for October 7, 1999. The court issued a order on September 30, 1999, dismissing the case with prejudice. (Note: the allegation of fraud in the furniture factory made by plaintiff in this case mirrored the fraudulent scheme for which plaintiff had been convicted.)

CRIMINAL MATTERS:

FCI BECKLEY - Tremayne Hubbard, Reg. No. 20872-038, was initially indicted for assaulting another inmate. A superseding indictment was issued in May, charging the inmate with possessing contraband (a weapon). The inmate entered a guilty plea to the charge on June 21, 1999. The sentencing scheduled for September was postponed until October 28, 1999.

FCI BECKLEY - Thomas Durham, Reg. No. 22185-016, was indicted July 7, 1999, for Possessing Contraband (a weapon). He pled guilty to the charge on September 20, 1999.

FCI BECKLEY - William Brown, Reg. No. 53012-060, was indicted September 28, 1999, for Possessing Contraband (Marijuana).

FCI BECKLEY - Leo Markoneti, Reg. No. 37568-053, was indicted September 28, 1999, for Possessing Contraband (Marijuana).

FCI BECKLEY - Marlo Evans, Reg. No. 25852-083, was indicted September 28, 1999, for Possessing Contraband (Marijuana).

FCI BECKLEY - Damian Johnson, Reg. No. 35070-083, was indicted September 28, 1999, for Possessing Contraband (Marijuana).

FMC LEXINGTON - On September 28, 1999, Danny Stone, the brother and accomplice of Sheila Troxell, Reg. No. 05872-032, was convicted by a jury before Judge Karl Forester, E.D. Ky., on charges of conspiring to effectuate the Escape (walkaway) of Troxell from FPC Lexington, Atwood. The sentencing is in December. Troxell previously entered a guilty plea and will be sentenced around the same time by Judge Forester.

FCI CUMBERLAND - USA v. Danny Rae Shafer - This previously reported case for escape from the camp on September 12, 1998, has been reset for trial on November 4, 1999, after having been delayed for completion of a mental competency study.

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

FMC LEXINGTON - The mother of homicide victim Tracy Hearlson, Reg. No. 24663-086, has filed an FTCA suit alleging wrongful death and personal injury arising out of Hearlson's

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

	ALD	ASH	BEC	BUT *	CUM	ELK	LEX	MAN	MEM	MIL	MRG	PET	SEY	MXR	THA	TOT
BIV	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
FTCA	0	0	0	1	0	0	1	0	0	0	0	0	0	0	0	2
HC	0	1	0	0	1	0	3	1	0	1	0	0	0	0	0	7
OTH	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	1
TOT	0	1	0	2	1	0	4	2	0	1	0	0	0	0	0	11

*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	0	1	1	3	2	1	2	1	2	1	2	0	0	7	23
FTCA	0	1	1	3	3	1	1	0	1	1	0	2	0	0	1	15
HC	1	2	4	11	9	2	15	7	3	10	3	6	0	2	6	81
OTH	0	0	0	24	0	1	3	0	1	0	0	3	0	0	1	33
TOT	1	3	6	39	15	6	20	9	6	13	4	13	0	2	15	152

*Represents both the FCI and LSCI