

UNITED STATES GOVERNMENT

memorandum

Mid-Atlantic Regional Office, Annapolis Junction, MD 20701

DATE: February 7, 2001
Justin Callahan
 REPLY TO: Bill Burlington, Regional Counsel
 ATTN OF: Mid-Atlantic Region
 SUBJECT: January 2001 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 167
 Answered 144

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

Pending 180
 # Received 27
 # Answered 66
 # Pending 146
 # Over Six Month 2*

*In Central Office pending settlement authority.

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

Pending 33
 # Received 45
 # Answered 48
 # Pending 32
 # Over 20 Working Days 1*

*Awaiting file from archives.

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

Cases Pending 174
 New Cases Received 13
 Habeas Corpus 7
 Bivens 3
 FTCA 0
 Other 3
 Cases Closed
 Cases Pending
 Lit Reports Completed 8
 Cases/Hearings or Trials 0
 Settlements/Awards 1
 \$ Settlements/Awards \$100.0
 (\$ in Thousands)

SIGNIFICANT DECISIONS OR ADVERSE DECISIONS:

FCC BUTNER - Tony Jones v. U.S. - On January 23rd, the 4th Circuit ruled that the sentencing court lacks jurisdiction to amend the language used in the J & C regarding fine payment, once 7 days have expired from the date the sentence was imposed. In this case, Butner staff had written the court indicating that the court had improperly delegated responsibility to the BOP to set the timing of the fine payment. The district court then made the fine due immediately, so the inmate could pay the fine through the IFRP. The 4th Circuit indicated the district court was without jurisdiction to amend the J & C.

FMC LEXINGTON - Rosales-Garcia v. Holland - On January 31, 2001, the 6th Circuit held it violates due process to hold indefinitely, a Cuban detainee who does not have pending criminal charges. Inmate Rosales-Garcia had been held at FMC Lexington since 1997, when INS decided not to parole him to the community. [REDACTED] b2

FCC BUTNER - Stokely v. BOP - The court granted our motion for summary judgment in this action where the Plaintiff claimed that the Bureau's mandatory HIV testing program violated his civil rights. The court held that the mandatory testing is for the health, safety and welfare of each inmate... which is a legitimate penological interest that outweighs the Plaintiff's expectation of privacy.

SETTLEMENTS:

FCI MEMPHIS - Sammie Stroud v. Reno - In this Title VII, racial discrimination case, the parties reached an agreement to settle for \$85,000 compensatory damages, plus \$15,000 in attorneys fees. This case was handled by the Labor Law Branch, with settlement coming after an Administrative Law Judge's finding of discrimination.

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

FCI MANCHESTER - Tilson v. Gibson - In this Bivens suit for injunctive relief only, Judge Coffman denied our Motion for Summary Judgment, finding that medical staff may have been deliberately indifferent to inmate Tilson's serious medical needs (painful inguinal hernia). Since this ruling, we had the inmate seen by an outside surgeon, and in January the hernia was surgically repaired. We have filed a motion asking the court to dismiss the case as moot.

FCI BECKLEY - Eichler v. U.S. - A pretrial conference was held on January 8, 2001. The Judge issued an order that preliminary discovery on the issue of damages be completed by May 8, 2001, and that government experts be identified by July 23, 2001.

FCI BECKLEY - Lee v. Olson - This is an old Ensign Amendment challenge. It remained active after Amatel due to procedural issues. The case was dismissed for failure to state a claim.

CRIMINAL:

FCI BECKLEY - Inmate Matthew Garvey, Reg. No. 33417-037, was indicted in September for Possession of Contraband (a weapon). He pled guilty to the charge on January 29, 2001.

FCI PETERSBURG - On December 7, 2000, during the evening count in VA Hall, inmate [REDACTED], a white inmate, was allegedly assaulted by three black inmates with a lock in a sock. [REDACTED] received minor injuries as a result of the assault but was taken to the outside hospital for treatment. SIS staff initially discussed the matter with the FBI, however, under the standing agreement with the FBI, USAO, and the institution, the FBI initially indicated the case would not be accepted because of the minor nature of the assault. Subsequently, inmate [REDACTED], wrote a letter to the USAO in Richmond complaining that the assault was racially motivated, as all three of the alleged assailants were members of the Nation of Islam, and have expressed at one time their hatred of the white man. Inmate [REDACTED] also alleged that it is common for black staff to call white inmates by the name of "white boy or cracker". SIS has subsequently been informed that USAO has accepted the matter for investigation by the FBI and possible prosecution as a hate crime. b7C

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

FMC LEXINGTON - On January 20, 2001, [REDACTED], was released from FMC Lexington, Atwood Camp, pursuant to President Clinton's act of commuting her sentence to time served. [REDACTED] was the last ITS Plaintiff incarcerated at Lexington.

FCI MEMPHIS - Dixon v. Reno - In a strange twist, EEO complainant Cassandra Dixon, filed a criminal complaint in state court alleging that a co-worker was guilty of misdemeanor harassment, for questioning what Ms. Dixon was doing with Warden Joe Young's travel voucher. Ms. Dixon currently has an EEO suit filed against Memphis claiming racial and gender discrimination. The EEO suit is being handled by the Labor Law Branch. We are preparing requests for representation on behalf of the staff member against whom criminal charges were filed. [REDACTED] b2

FCI ELKTON - Wilson v. BOP - The Union attorney has filed a request with the court to review DOJ's decision not to provide DOJ attorney representation to FCI Elkton employee, [REDACTED] in a Bivens suit. The Union confused its ability to challenge a DOJ certification that an employee was not within the scope of his duties under 28 USC section 2679(d)(3), with a decision not to provide representation, which is not judicially reviewable. b6

FCI PETERSBURG - Matter of Michael Little - Inmate Little filed a complaint with the Virginia Department of Health Professions (Medical Licensure) alleging Dr. Allen, Clinical Director, committed malpractice by not properly supervising other medical staff. Inmate Little alleges his interferon pens were mixed up with another inmate's. In a January 4, 2001, letter the Enforcement Division of the Department of Health

Professionals informed Dr. Allen that upon review of the response filed on Dr. Allen's behalf by the BOP, there was no apparent violation of laws or regulations pertaining to the practice of medicine.

Electronic Inmate Law Library - On January 17, 2001, Butner staff hosted a meeting regarding a pilot program where FMC Butner inmates would be given access to an electronic law library. Visiting staff were given a demonstration of the hardware and software. Warden Art Beeler has recently sent a new pilot proposal to Margaret Hambrick, in which he addressed many of the issues that were resolved at the Butner meeting.

Personnel Issues

Staff Leave and Travel

[REDACTED] February, 13-15 Regional Office, Clinical Directors Training, Baltimore
February 26-29, New Attorney Training, RC/AGC Meeting

b6

FCI CUMBERLAND- [REDACTED], annual leave, February 8th and 9th.

[REDACTED]

Mid-Atlantic Region Litigation for the Month of January 2001

MARO Consolidated Legal Center					
	Bivens	HC	FTCA	Other	Total
FCI CUM	0	1	0	0	1
FCI MEM	0	1	0	0	1
FCI MRG	0	0	0	0	0
MXR	0	0	0	2	2
Hazelton	0	0	0	0	0
Ohio Co.	0	0	0	0	0
	0	2	0	2	4

Butner Consolidated Legal Center					
	Bivens	HC	FTCA	Other	Total
FCC BUT	0	0	0	1	1
FCI PET	0	2	0	0	2
PET MED	0	0	0	0	0
FPC SEY	0	0	0	0	0
Winton	0	0	0	0	0
VA Contracts	0	0	0	0	0
	0	2	0	1	3

Lexington Consolidated Legal Center					
	Bivens	HC	FTCA	Other	Total
FMC LEX	1	0	0	0	1
FCI ASH	0	2	0	0	2
FCI MAN	0	0	0	0	0
Big Sandy	0	0	0	0	0
McCreary	0	0	0	0	0
	1	2	0	0	3

Beckley Consolidated Legal Center					
	Bivens	HC	FTCA	Other	Total
FCI BEC	2	1	0	0	3
FPC ALD	0	0	0	0	0
USP LEE	0	0	0	0	0
Glenville	0	0	0	0	0
McDowell	0	0	0	0	0
	2	1	0	0	3

	Bivens	HC	FTCA	Other	Total
Regional Total	3	7	0	3	13

4624

memorandum

DATE: March 8, 2001 Mid-Atlantic Regional Office, Annapolis Junction, MD 20701

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

SUBJECT: February 2001 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 167 114
 Answered 144 170

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

Pending 180 146
 # Received 27 39
 # Answered 66 41
 # Pending 146 139
 # Over Six Month 2 2*
 *Serious personal injury cases still under review.

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

Pending 33 32
 # Received 45 46
 # Answered 48 43
 # Pending 32 36
 # Over 20 Working Days 1 2*
 *These two overdue requests were mailed out of this office on 3-5-01.

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

Cases Pending 174
 New Cases Received 13 11
 Habeas Corpus 7 4
 Bivens 3 5
 FTCA 0 0
 Other 3 2
 Cases Closed
 Cases Pending
 Lit Reports Completed 8 9
 Cases/Hearings or Trials 0 1
 Settlements/Awards 1 1
 \$ Settlements/Awards \$100.0 \$22.0
 (\$ in Thousands)

SIGNIFICANT DECISIONS OR ADVERSE DECISIONS:

FCI BECKLEY - U.S. v. Brown - An order was issued in December by the sentencing judge in the District of Massachusetts directing the Bureau to grant this inmate jail credit. A motion was filed challenging the court's authority to enter the order. The Judge denied the motion to reconsider or vacate the order. The Judge did issue an amended J&C. The inmate's sentence was recalculated based on the amended J&C. The Judge was still not satisfied with the manner in which the sentence was calculated. As a result, the inmate was granted an additional 47 days of good conduct time, in an effort to honor the court's intentions.

MXR IMPLEMENTATION - Lopez v. Davis - Despite a letter from the AUSA who handles Lexington cases, the 6th Circuit has still not remanded the FCI Ashland and FMC Lexington appeals back to the District Court, for action consistent with the Lopez decision.

[REDACTED]

b2

FCI BUTNER - United States v. Russell Weston - In a thoughtful, 61 page opinion, Judge Emmett Sullivan has ruled that the Bureau of Prisons may involuntarily medicate Russell Weston. Russell Weston is the individual who allegedly shot and killed two Capitol security guards in the summer of 1998. The court found two bases for medicating Mr. Weston -- his dangerousness, and the governmental interest in restoring his competence so that he can stand trial on these serious charges. This is a major victory for the government. Several BOP witnesses' testimony is cited in the opinion, including Sally Johnson, M.D., and Phill Wise. The judge stayed his order until March 17th, so that an appeal can be filed.

FCI CUMBERLAND - Inmate [REDACTED] alleged failure to protect/deliberate indifference in releasing him to the compound following an assault. Evidence was introduced to show a thorough investigation was conducted and that the investigation revealed no threat. He was given a different job assignment to remove him from the area of potential harm (he said he was assaulted because he would steal food for people). The court granted summary judgment in the BOP's favor, concluding that because of the investigation and job reassignment, the BOP was not deliberately indifferent. Interestingly, the judge concluded that just because the inmate still felt threatened did not show the BOP was deliberately indifferent. Also, the Court concluded that the inmate failed to meet the objective prong of the Farmer standard, given his de minimus injuries.

b7C

FCI CUMBERLAND - Kevin Taylor v. Hawk - In this Bivens/FTCA case, the Plaintiff alleged that he was assaulted because the unit officer stayed outside of the unit after a controlled move. Evidence was introduced to demonstrate that the inmate was assaulted after the compound was closed for the evening and that the officer was actually in the unit, and that the inmate owed a gambling debt to the assailant. It was also pointed out that the inmate had changed his factual account on more than one occasion. The judge granted summary judgment, finding the evidence submitted by defendants was

overwhelming and that the evidence produced by the Plaintiff was insufficient to overcome BOP's evidence.

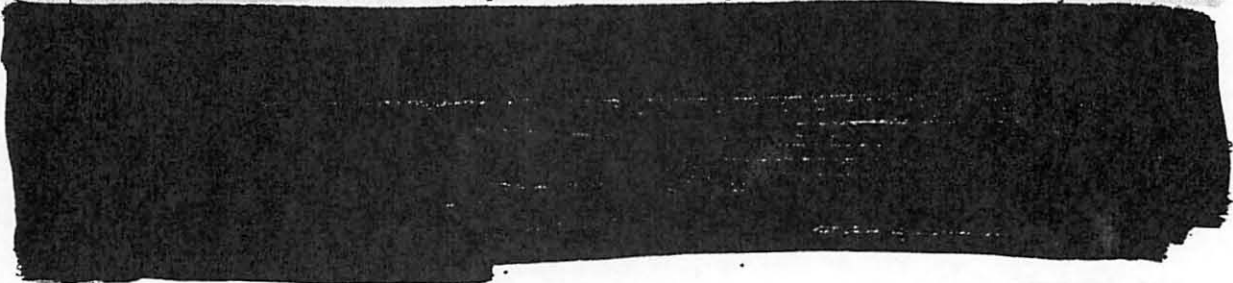
FCI MORGANTOWN - Medley v. Hawk Sawyer, et al. - Employee attempted to bring a Bivens action pursuant to 42 U.S.C. §1985 Subpart (3) and 42 U.S.C. §1986. The Court found where there is a comprehensive scheme for employee grievances, they may not circumvent that process by seeking damages in a Bivens action.

SETTLEMENTS:

FCI MEMPHIS - Vargas v. Reno - MXR staff are working with NERO staff to see that this EEO complainant receives the restored annual leave that we agreed to give him when we settled this case. Unfortunately, the signed settlement agreement did not get to the HRM staff at Allenwood, and the employee has in the meantime transferred to Brooklyn. NERO staff have been very helpful in correcting our oversight.

MXRO - Billie Nidiffer, represented by counsel, filed an administrative tort claim with a sum certain of \$750,000 alleging neglect during his withdrawal from drugs and alcohol while housed at FDC Milan. Inmate Nidiffer was never seen by a physician during his serious withdrawal, suffering cardiac arrest, septic pneumonia, gangrene and other conditions. He was transferred to a local hospital after suffering cardiac arrest. A review of the claim both by the Bureau and by AFIP was unfavorable. Since the time of filing, the claimant died of unrelated causes. We have offered \$5000 to the personal representative to settle the claim. Attorney Kevin Walasinski is awaiting further communication from the attorney.

FCI MEM - Castillo v. Bureau of Prisons - Michael Pybas worked with Labor Law Attorney Elizabeth Long to prepare and advise our negotiator (Senior Deputy Regional Director Bill Keller) for the mediation, which was conducted by Mediators for the EEOC. As a result of this alternate dispute resolution process, they were able to settle this Memphis case in its entirety for \$20,000 plus \$2,000 attorney's fees.



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

FMC LEXINGTON - Ashkot Khachatoorian v. US - On February 22, 2001, Magistrate Todd granted judgment for the Defendant United States in this FTCA action. Plaintiff, a former FMC Lexington inmate,

represented by two attorneys, alleged he stepped in a hole in a grate in a courtyard of a housing unit, permanently injuring his leg. Judge Todd reasoned that regardless of whether Plaintiff was considered an invitee or licensee under Kentucky law, the hole in the grate was so obvious that there was no duty on behalf of the United States to warn of the defect. Plaintiff damaged his own case by testifying at trial that the hole was so obvious that he could see it from fifty feet away and that it was in an area which he frequented all the time.

New "No Flesh" Menu Option - We have received a number of BP-10's from Muslim inmates who were recently removed from the Common Fare. In particular, we have a number of BP-10's from Nation of Islam inmates complaining that they require a common fare diet. Unfortunately, we are finding that the inmate interviews frequently do not contain enough information to adequately respond to these complaints.

CRIMINAL:

FCI BECKLEY - [REDACTED] former Chaplain, was indicted on January 31, 2001, for Possession with Intent to Distribute Heroin. Trial is set to begin April 17, 2001.

FCI BECKLEY - Inmate [REDACTED], and Inmate [REDACTED] were previously indicted for Assault (18 U.S.C. § 111(a)(1) and 111(b)). The charges stem from the disturbance at FCI Beckley in December 1999. Discovery continues as we prepare for trial. Trial is scheduled for March 27, 2001. b7c

FCI BECKLEY - Inmate [REDACTED] was indicted in September for Possession of Contraband (a weapon). He pled guilty to the charge in January 2001. He is scheduled to be sentenced April 9, 2001.

MXRO - U.S. Attorney's Office, E.D. Virginia: (18 USC 3624(c)) - We continue to receive letters from criminal AUSA's in the E.D. of Virginia requesting that we limit halfway house time of short term, white collar offenders, to 10% of the sentence imposed. We are trying to track these requests from our regional office, but it becomes very problematic, as many of these inmates are designated to institutions outside MXR.

FCC BUTNER - U.S. v. Praileau - a jury returned a verdict of not guilty on all charges in this inmate on staff assault case.

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

FMC LEXINGTON- On February 6, an order was issued for inmate [REDACTED] to be writted back to his sentencing court, the District of South Carolina, for a hearing on the downward departure of his sentence for medical reasons. Burgess, a \$1.6M tax evader, is apparently an influential member of the local community. The judge, Ross Anderson, never ruled on defendant's motion before sentencing and is claiming jurisdiction of this issue accordingly. Instead, he sentenced Burgess to eighteen months for fraud and ordered him to FMC Lexington for a "30 day study" to include inspection of the FMC by b7c

Burgess' personal physician and a report to the court of the suitability of the FMC to care for Burgess' diabetes. Months later, after learning the BOP would not comply with the inspection recommendation, Burgess was writted back to South Carolina to be examined by his personal physician who will testify as the court's expert on our care of his diabetes. FMC Lexington will have their Clinical Director testify over the phone as to Burgess' lack of compliance with diet, consistent throughout his medical history. Joe Tang obtained and sent the AUSA and defense attorney Burgess' complete commissary records which show he enjoyed eating candy, sweet buns, ice cream, chips, other high sugar or sodium products, and smoking Marlboros.

FMC BUTNER - Electronic Inmate Law Library - We have submitted updated cost information on the Butner request for a pilot project using an electronic law library for the FMC inmate population. The Warden and the Regional Director both support this proposal, particularly in view of the limited Education Department staff at FMC Butner.

Personnel Issues

[REDACTED]

b6

Staff Leave and Travel

[REDACTED] - March 12th and 13th, 2001 Regional Office

[REDACTED] - March 19-23, annual leave

[REDACTED], Regional Office, March 12 -13, 2001

June 1978

Actual vs. Budget - Operating Expenses

	Actual	Budget	Variance
Advertising			
Travel			
Telephone			
Utilities			
Postage			
Repairs			
Supplies			
Insurance			
Professional Fees			
Depreciation			
Interest			
Income Tax			
Total			

	Actual	Budget	Variance
Advertising			
Travel			
Telephone			
Utilities			
Postage			
Repairs			
Supplies			
Insurance			
Professional Fees			
Depreciation			
Interest			
Income Tax			
Total			

	Actual	Budget	Variance
Advertising			
Travel			
Telephone			
Utilities			
Postage			
Repairs			
Supplies			
Insurance			
Professional Fees			
Depreciation			
Interest			
Income Tax			
Total			

	Actual	Budget	Variance
Advertising			
Travel			
Telephone			
Utilities			
Postage			
Repairs			
Supplies			
Insurance			
Professional Fees			
Depreciation			
Interest			
Income Tax			
Total			

	Actual	Budget	Variance
Advertising			
Travel			
Telephone			
Utilities			
Postage			
Repairs			
Supplies			
Insurance			
Professional Fees			
Depreciation			
Interest			
Income Tax			
Total			

Mid-Atlantic Region Litigation for the Month of March 2001

MARO Consolidated Legal Center					
	Bivens	HC	FTCA	Other	Total
FCI CUM	0	1	0	0	1
FCI MEM	0	1	0	0	1
FCI MRG	0	0	0	0	0
MXR	0	0	0	0	0
Hazelton	0	0	0	0	0
Ohio Co.	0	0	0	0	0
	0	2	0	0	2

Putner Consolidated Legal Center					
	Bivens	HC	FTCA	Other	Total
FCC BUT	0	0	0	1	1
FCI FET	0	0	0	0	0
FET MED	0	0	0	0	0
FPC SEY	0	0	0	0	0
Winton	0	0	0	0	0
VA Contracts	0	0	0	0	0
	0	0	0	1	1

Lexington Consolidated Legal Center					
	Bivens	HC	FTCA	Other	Total
FMC LEX	1	0	0	1	2
FCI ASH	1	0	0	0	1
FCI MAN	0	0	0	0	0
Big Sandy	0	0	0	0	0
McCreary	0	0	0	0	0
	2	0	0	1	3

Beckley Consolidated Legal Center					
	Bivens	HC	FTCA	Other	Total
FCI BEC	0	2	0	0	2
FPC ALD	0	0	0	0	0
USF LEE	0	0	0	0	0
Glennville	0	0	0	0	0
McDowell	0	0	0	0	0
	0	2	0	0	2

	Bivens	HC	FTCA	Other	Total
Regional Total	4	4	0	1	8

Mid-Atlantic Region Litigation Year To Date

NARO Consolidated Legal Center					
	Bivens	HR	FTCA	Other	Total
FBI CHM	0	1	0	0	1
FBI MEM	1	1	0	0	2
FBI MBS	0	0	0	0	0
MXR	0	0	0	0	0
Harold G.	0	0	0	0	0
Ohio Co.	0	0	0	0	0
	1	2	0	2	5

Baltimore Consolidated Legal Center					
	Bivens	HR	FTCA	Other	Total
FBI FBI	0	1	0	0	1
FBI FBI	0	0	0	0	0
FBI FBI	0	0	0	0	0
FBI FBI	0	0	0	0	0
Walters	0	0	0	0	0
McIntyre	0	0	0	0	0
	2	3	0	3	8

Lexington Consolidated Legal Center					
	Bivens	HR	FTCA	Other	Total
FBI LEX	1	1	0	0	2
FBI ASH	0	0	0	0	0
FBI MAN	0	0	0	0	0
Big Sandy	0	0	0	0	0
McIntyre	0	0	0	0	0
	3	4	0	0	7

Beverly Hills Consolidated Legal Center					
	Bivens	HR	FTCA	Other	Total
FBI FBI	1	0	0	0	1
FBI ALB	0	0	0	0	0
FBI LEE	0	0	0	0	0
Losville	0	0	0	0	0
Howell	0	0	0	0	0
	2	2	0	0	4

	Bivens	HR	FTCA	Other	Total
Regional Total	6	11	0	2	19

memorandum

DATE: April 6, 2001 Mid-Atlantic Regional Office, Annapolis Junction, MD 20701

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

SUBJECT: March 2001 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	167	114	138									
Answered	144	170	115									

TORT CLAIMS	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	180	146	139									
# Received	27	39	36									
# Answered	66	41	35									
# Pending	146	139	171									
# Over Six Month	2	2	2*									

*Serious personal injury cases still under review.

FOIA/PRIVACY	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	33	32	36									
# Received	45	46	39									
# Answered	48	43	40									
# Pending	32	36	33									
# Over 20 Working Days	1	2	3*									

*Awaiting files from archives on all three requests

LITIGATION	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Cases Pending	174											
New Cases Received	13	11	8									
Habeas Corpus	7	4	3									
Bivens	3	5	3									
FTCA	0	0	0									
Other	3	2	2									
Cases Closed												
Cases Pending			79									
Lit Reports Completed	8	9	13									
Cases/Hearings or Trials	0	1	0									
Settlements/Awards	1	1	1									
\$ Settlements/Awards	\$100.	\$22.	\$375.									
(\$ in Thousands)												

SIGNIFICANT DECISIONS OR ADVERSE DECISIONS:

FCI BECKLEY - Paul King v. United States, et al. - [REDACTED]

[REDACTED]. Inmate King alleges Mr. Taylor called him a snitch in front of other inmates. Some time later, inmate King was assaulted by inmates. While [REDACTED] denies ever calling inmate King a snitch, another employee-defendant told the Office of Internal Affairs that he overheard [REDACTED] call King a snitch, but wasn't sure if any inmates overheard the remark.

b6
b5

MARO - United States v. Tony Jones, 238 F.3d 271 (4th Cir. 2001) - We have sent out guidance to each MXR Warden regarding how to implement this recent decision, which changes our practice of writing the court with a request that the Court amend a Judgment and Commitment Order to make a fine or restitution order payable immediately. A copy of our guidance has been sent to Harrell Watts.

FCC Butner - Jean Brown v. U.S. - In this FTCA/Bivens case alleging sexual assault of an inmate, we received an Order denying our Motion for Reconsideration. Judge Boyle ruled that the Plaintiff could file her FTCA action one day after the six month statute of limitations had run, based on the theory of "equitable tolling." He also dismissed the Regional Director, and now the Director is the sole remaining Bivens defendant in the case. The Assistant U.S. Attorney has submitted a recommendation for interlocutory appeal to the Civil Appellate Division. We also submitted a recommendation which has been reviewed by Joyce Zoldak and forwarded to the Civil Appellate Division. The Court has given us until May 7th to file an Answer.

SETTLEMENTS:

FCI BUTNER - Zachowski v. U.S. - We reported in December a tentative settlement in this FTCA suicide case. The case has been settled for \$375,000.

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

FCI Memphis - Cockerell v. U.S. - The Cockerell FTCA case will be tried before District Judge Gibbons beginning April 30th in Memphis. Cockerell is a medically retired Memphis police officer who fell 20 feet off the "tough one" during SORT training on the FCI Memphis SORT course. Pre-trial is set for April 20th. AUSA Harriet Halmon will try the case and Michael Pybas will assist.

FCI BECKLEY- Debbie Stevens will be in Richmond, Virginia on April 5, 2001 for the Fourth Circuit argument for Cunningham v. Scibana, Case No. 1:00-0223 (FPC Alderson). This inmate filed a habeas action wherein she disputed the determination that her tampering with a consumer product conviction precluded her eligibility for early release. The magistrate judge had entered findings that recommended she be declared eligible for early release. Objections were filed. The District Court Judge declined to adopt the magistrate judge's recommendation and upheld our determination that she was ineligible for early release. The inmate, through the Federal Public Defenders Office, appealed the case to the Fourth Circuit.

CRIMINAL:

FMC LEXINGTON - Joe Tang assisted Criminal AUSA Dave Marye, E.D. Ky., with preparation of the murder cases against inmates [REDACTED] arising out of the 1998 bludgeoning death of inmate Tracy Hearlson, 24663-086, at FMC Lexington. Joe assisted with locating staff and inmates, obtaining criminal discovery materials and releasability issues. Trial is tentatively set for April 23, 2001. b7C

FCI BECKLEY - [REDACTED] was indicted in September for Possession of Contraband (a weapon). He pled guilty to the charge in January 2001. He is scheduled to be sentenced April 9, 2001.

FCI BECKLEY - [REDACTED] were previously indicted for Assault (18 U.S.C. § 111(a)(1) and 111(b)). The charges stem from the disturbance at FCI Beckley in December 1999. Discovery continues as we prepare for trial. Trial is scheduled for April 10-11.

FCI BECKLEY - [REDACTED] former Chaplin, was indicted on January 31, 2001, for Possession with Intent to Distribute Heroin. Trial is set to begin April 17, 2001.

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

MXR - We have three serious medical malpractice FTCA cases at the administrative stage. Nideffer alleged neglect while an inmate at FDC, Milan during his withdrawal from drugs and alcohol. After cardiac arrest he was transferred to a local hospital. AFIP and BOP review indicate serious lapses in care. Claimant has since died of unrelated causes. The sum certain is \$750,000. We offered \$5000 in settlement. The estate's attorney is currently requesting \$150,000. We are in the process of obtaining information on what the claim may be worth, and we will be attempting to settle. Salvatierra suffered a heart attack and heart damage at FCI, Cumberland. AFIP and BOP review indicate lapses in care. We have received a demand of \$2.5 million and [REDACTED]. Claimant's attorney asserts that the non-economic damage cap in Maryland does not apply. We are doing further research on this issue. Dalton complains of misdiagnosis primarily at FCI, Cumberland. We are researching statute of limitations issues. Inmate claims current paralytic condition is the result of neglect, delay in treatment, etc. We have requested review by Dr. Kendig and we are awaiting his response. Demand is \$10 million.

FMC LEXINGTON - Judge Forester, E.D. Ky. called an emergency hearing in Antonio Pagan v. Thoms, and gave Defendant two days to file a response in this official capacity Bivens case. Pagan claims to be in extreme pain and in need of bladder obstruction surgery. Examination of his records showed his claims were meritless. The hearing was canceled after our medical argument and exhaustion argument were filed. Judge Forester has given Plaintiff a chance to file remedies,

but dismissal is likely in the near future.

FMC LEXINGTON- Joe Tang and FMC Lexington Clinical Director Michael Growse, M.D., prepared a detailed response to the medical report of inmate 1, prepared by Burgess' personal physician in South Carolina and court-appointed "expert." Dr. Weber, an endocrinologist, was critical of our care of Burgess' brittle diabetes. Weber praised Burgess' eating of vast quantities of junk food as a good way of preventing low blood sugar. Burgess is on writ to South Carolina, where the court is considering a motion for his home confinement due to his medical condition. Our detailed response pointed out Burgess received all his needs for his insulin pump, specialty consultation, permission to eat in the diet kitchen, counseling by our registered dietician, but refused to cooperate with managing his diabetes and continued to smoke and eat junk food, which has been a consistent pattern with Burgess even before incarceration. A hearing will be held in the future to address this issue.

b7c

b2

FMC LEXINGTON - Inmate from Los Angeles, filed a motion and declarations from outside medical personnel alleging he is not receiving proper medical care for his heart problems. He sought a downward departure from his sentence before sentencing, and has continued to pursue this issue even after sentencing. Judge Takasugi, C.D. Ca., initially called a hearing on this matter, but canceled the hearing after we prepared a written response to the inmate's allegations. Judge Takasugi now only requests a written follow-up response to Tobeler's claim that he needs External Enhancement Counter Pulsation, an experimental treatment for cardiovascular problems.

b7c

MARO - Public Works Projects - Marian Callahan prepared a memo, which Margaret Hambrick sent to each MXR Warden, informing them of the new Program Statement, #5250.02, Public Works and Community Service Projects. Marian's memo lists all the public works projects in MXR, and suggests how Wardens can get more inmates involved in these projects.

Personnel Issues

FMC LEXINGTON -

FMC BUTNER will be hosting the Medical/Legal Issues Training at the complex from April 23-26.

b6

FCI CUMBERLAND -

The first step in the process of...
 establishing a...
 organization...
 is to determine the...
 needs of the...
 organization and...
 to develop a...
 plan that...
 addresses these...
 needs.

Once the...
 needs are...
 determined...
 the next...
 step is to...
 develop a...
 strategy...
 that...
 will...
 meet...
 these...
 needs.

The...
 final...
 step is to...
 implement...
 the...
 strategy...
 and...
 to...
 evaluate...
 the...
 results.

In...
 conclusion...
 the...
 process...
 of...
 developing...
 a...
 strategy...
 that...
 meets...
 the...
 needs...
 of...
 the...
 organization...
 is...
 a...
 continuous...
 process.

Mid-Atlantic Region Litigation for the Month of March 2001

MARU Consolidated Legal Center					
	Bivens	HC	FTCA	Other	Total
FCI CUM	0	1	0	0	1
FCI MEM	0	1	0	0	1
FCI MRG	0	0	0	0	0
MXR	0	0	0	0	0
Hazelton	0	0	0	0	0
Ohio Co.	0	0	0	0	0
	0	2	0	0	2

Burner Consolidated Legal Center					
	Bivens	HC	FTCA	Other	Total
FPC BUT	0	0	0	1	1
FCI FET	0	0	0	0	0
FET MED	0	0	0	0	0
FPC SEY	0	0	0	0	0
Winton	0	0	0	0	0
VA Contracts	0	0	0	0	0
	0	0	0	1	1

Lexington Consolidated Legal Center					
	Bivens	HC	FTCA	Other	Total
FMC LEX	1	0	0	1	2
FCI ASH	1	0	0	0	1
FCI MAN	0	0	0	0	0
Big Sandy	0	0	0	0	0
McCreary	0	0	0	0	0
	2	0	0	1	3

Beckley Consolidated Legal Center					
	Bivens	HC	FTCA	Other	Total
FCI BEE	0	2	0	0	2
FPC ALP	0	0	0	0	0
FPC LEE	0	0	0	0	0
Glennville	0	0	0	0	0
McIntosh	0	0	0	0	0
	0	2	0	0	2

	Bivens	HC	FTCA	Other	Total
Regional Total	4	4	0	1	9

memorandum

DATE: May 7, 2001 Mid Atlantic Regional Office, Annapolis Junction, MD 20701

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

SUBJECT: April 2001 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	167	114	138	122								
Answered	144	170	115	103								

TORT CLAIMS	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	180	146	139	128								
# Received	27	39	36	34								
# Answered	66	41	35	39								
# Pending	146	139	128	113								
# Over Six Month	2	2	2*	3*								

*Serious personal injury cases still under review.

/PRIVACY	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	33	32	36	33								
# Received	45	46	39	63								
# Answered	48	43	40	54								
# Pending	32	36	33	45								
# Over 20 Working Days	1	2	3	4*								

*Awaiting files from archives on three requests; 1 request MXR portion completed, waiting on contract review.

LITIGATION	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Cases Pending	174			79								
New Cases Received	13	11	8	9								
Habeas Corpus	7	4	3	5								
Bivens	3	5	3	2								
FTCA	0	0	0	1								
Other	3	2	2	1								
Cases Closed				7								
Cases Pending				79	81							
Lit Reports Completed	8	9	13	11								
Cases/Hearings or Trials	0	1	0	0								
Settlements/Awards	1	1	1	0								
\$ Settlements/Awards	\$100.	\$22.	\$375.	0								
(\$ in Thousands)												

C. HEARINGS/TRIALS: -

1) United States v. Hector Ayala, (EDPA) On March 5, 2001, the Court held a resentencing on a case involving a joint state federal plea

3

agreement which did not properly take into account state law. This office has been working with the U.S. Attorney's office over the past three years in an effort to best accommodate the Federal Court's intent. Ron Booher, Regional ISM and Michael Tafelski assisted at the hearing.

2) United States v. Bin Laden, 98 Cr. 1023 (SDNY) - The trial judge held two hearings involving MCC NY in the Embassy Bombing case. On March 27, 2001, Judge Sand held a hearing regarding the conditions of confinement for inmate Mohammed Adam, 45047-054. The attorney complained about restrictions. The court told the defense attorney she needed to abide by MCC's policies.

On March 29, 2001, Judge Sand held a hearing concerning voluminous subpoenas served by the attorney for inmate Mohammed Al-Owhali, 42371-054, on the media, numerous government agencies (including MCC New York), and current and former government employees. Judge Sand was extremely skeptical about the attorney's justification for the subpoenas and held them to be over broad. Judge Sand instructed the attorney to revise the subpoenas to government entities and resubmit them for review.

3) U.S. v. Mercardo, - (SDNY) On April 3, 2001, a sentencing hearing was held before Judge Marrero regarding MCC New York inmate Damaso Mercardo, 12353-054. The hearing was expedited as concerns for the medical care of the inmate needed to be addressed. Dr. Glover and Andrea Girolamo, Attorney assisted at the hearing by explaining the inmate's medical condition and the care the Bureau can provide. The judge sentenced the inmate to the balance of his supervised release time (7 months), committed him to the custody of the Bureau and asked that he be placed at a facility where he can receive adequate medical care.

D. RELIGIOUS CASES:

1) Toulouse, et. al. v. United States, et. al., 00-4840 (DNJ) Three FCI Fort Dix inmates allege that the institution has not provided them proper materials to perform the required sweat lodge ceremonies. In addition, one inmate alleges that he was injured trying to split firewood. The representation requests of the

SIGNIFICANT DECISIONS OR ADVERSE DECISIONS:

FCI BECKLEY - Paul King v. United States, et al. - We learned that the Department of Justice has approved our recommendation for private counsel representation of the Beckley defendants in this Bivens suit. Beckley inmate Paul King alleges defendant Taylor called him a snitch in front of other inmates. Some time later, inmate King was assaulted by inmates. While defendant Taylor denies ever calling inmate King a snitch, another employee-defendant told the Office of Internal Affairs that he overheard defendant Taylor call King a snitch, but wasn't sure if any inmates overheard the remark.

[REDACTED]

FCI MEMPHIS - Demetrius Hutcherson (Inmate Death) - Michael Pybas has utilized the attorney work-product privilege to order an investigation into the death of FCI Memphis inmate, Demetrius Hutcherson. Inmate Hutcherson committed suicide by hanging himself with his belt, on April 21, 2001. The FBI is also investigating this incident.

FCI MANCHESTER - Kenneth Allen (Victim of beating by escaped inmate) - Civilian Kenneth Allen has filed a request for reconsideration of his \$100,084.00 administrative claim, which was filed after he was beaten by an escapee from Manchester Camp. Mr. Allen has also sent copies of his request to Kentucky Senator Mitch McConnell and Congressman Hal Rogers. We denied the claim based on the Discretionary Function Exemption to the FTCA.

[REDACTED]

FCI CUMBERLAND - Facundo v. United States - The District Court granted Summary Judgment in favor of the Government in this FTCA case involving negligent classification, medical care, dental care, and concerns with placement in IFRP refuse status. In a comprehensive decision by District Judge Andre Davis of the District of Maryland, it was determined that the discretionary function exception shielded the Bureau from FTCA liability arising from classification of inmates. Regarding medical and dental care, "The evidence in this case indicates a level of concern for, and prompt responses to Facundo's needs; he does not raise the faintest hint of medical malpractice." Concerning IFRP the Court noted that inmates are not required to participate in IFRP; however, "they are not free to stop the payments and continue to receive the benefits afforded those who live up to their voluntarily accepted obligations."

SETTLEMENTS:

FCI MILAN - Billie Nediffer (FTCA Administrative Claim) - We have offered \$20,000 to plaintiff's attorney in this failure to treat case out of FDC Milan. Inmate Nediffer suffered damages when he was not treated for drug withdrawal. Plaintiff's last demand was \$150,000. This medical malpractice case has been approved for settlement negotiations by Dr. Kendig.

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

FCI MEMPHIS - Cockerell, et ux. v. United States - At the pre-trial conference the court referred the matter to a Magistrate for settlement conference scheduled for May 21. The trial will be held approximately 30 days thereafter if a settlement cannot be reached. A memo is being forwarded to the Litigation Branch seeking settlement authority in this claim brought by a Memphis Police Officer who broke his back after falling off a rope on the SORT training course at FCI Memphis.

FCI MANCHESTER - Palasty v. Hawk - (Ensign Amendment Case) - DOJ has filed a response to appellant's brief in the 6th Circuit. DOJ is concerned that the 6th Circuit has decided to hear this case. Given that concern, DOJ has argued that appellants did not file a timely appeal of the District Court's decision to uphold the Ensign Amendment, but only properly appealed the decisions on class certification and exhaustion of administrative remedies.

FPC CUMBERLAND - Alicia Daniels-Lewis, attorney, Mid-Atlantic Regional Office, attended a deposition in the case of FPC Cumberland employee Kathy Reed v. Ecolab, Inc. While the BOP is not a party to this law suit, Ms. Reed alleges she sustained injuries while combining bleach in the laundry. Basically Ms. Reed's cause of action is based on strict liability, however, the BOP is concerned that Ecolab may attempt to bring us in as a third party defendant on the basis that the bleach was tampered with or stored improperly.

FCI CUMBERLAND - Lugo v. Gunja - This habeas case brought by a D.C. Code inmate directly involves educational good time credits for D.C. inmates. The case also involves complex questions about the applicability of industrial good time and meritorious good time under 18 U.S.C. § 4162 and D.C. Code provisions. We are working closely with ISM at the institutional, regional, and central office levels, and with Legislative and Correctional Issues Branch to be sure about the inmate's sentence computation and the Bureau's response (due on May 9, 2001) in the District of Maryland.

CRIMINAL:

FCI BECKLEY - Matthew Garvey, Reg. No. 33417-037, was indicted in September for Possession of Contraband (a weapon). He pled guilty to the charge in January 2001. He was sentenced April 9, 2001 to 27 months consecutive.

FCI BECKLEY - [REDACTED] were previously indicted for Assault (18 U.S.C. § 111(a)(1) and 111(b)). The charges stem from the disturbance at FCI Beckley in December 1999. Discovery continues as we prepare for trial. Trial is scheduled for May 30-31. b7C

FCI BECKLEY - [REDACTED] former Chaplin, was indicted on January 31, 2001, for Possession with Intent to Distribute Heroin. Trial is set to begin May 22, 2001.

FCI BECKLEY - Abu Shakur, Reg. No. 16391-016, was indicted April 4, 2000, for assaulting a staff member. He was sentenced to 10 years

consecutive on September 13, 2000. In April, inmate Shakur's sentence was affirmed by the Fourth Circuit.

FMC LEXINGTON - Former FMC Lexington female camp inmates Lisa Contreras, 05982-030, and Christine Mahoney, 07661-040, were sentenced to eight months each for their escape from Atwood Camp on October 7, 2000. They will serve their sentences consecutive to their current sentences.

FMC LEXINGTON - On April 16, 2001, Dominic Palazzola, 53757-097, pled guilty to second degree murder for the death of inmate Tracy Hearlson at FMC Lexington in September 1998. Palazzola will receive a sentence in the range of 262 to 327 months. [REDACTED] has not yet agreed to plead, and his trial has been continued until the summer or next fall. b7c

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

FMC LEXINGTON - Joe Tang assisted AUSA John Barton in the District of South Carolina with the resolution of a home detention issue regarding inmate [REDACTED], a locally-prominent businessman who had the local community pressuring the sentencing judge for release. AUSA John Barton recognized Judge Ross Anderson wanted a resolution involving home detention or confinement, so an agreed order between the AUSA and defense counsel was entered which indicated [REDACTED] received proper care for his brittle diabetes at FMC Lexington, but given his unique medical condition, his sentence is reduced to time served and he is ordered to serve home detention. This case was highly unusual because the sentencing judge claimed to preserve jurisdiction after sentencing because he did not rule on a medical downward departure motion, and the judge had appointed inmate [REDACTED] personal physician and friend as court expert to "inspect" FMC Lexington for [REDACTED] (request denied). However, after significant efforts of FMC Lexington in assisting the AUSA to uphold our reputation in caring for [REDACTED] and the interests of justice, the AUSA and defense counsel came to this resolution. [REDACTED] b5

FCI PETERSBURG - Inmate [REDACTED] filed an administrative remedy claiming he is illiterate, and the 300 minute telephone limit is not enough to maintain family ties since he cannot read or write. His remedy was denied based upon the rationale provided by the Central Office. It was also noted that he has been enrolled in the GED program which will improve his literacy (it's debatable whether he is actually illiterate). It was also noted that from April 1st through 18th, he made a total of 42 telephone calls.

Personnel Issues:

[REDACTED] b6

Mid-Atlantic Region Litigation for the Month of April 2001

MARO Consolidated Legal Center					
	Bivens	HC	FTCA	Other	Total
FCI CUM	0	3	0	0	3
FCI MEM	0	1	0	0	1
FCI MRG	0	0	0	0	0
MXR	0	0	0	0	0
Hazelton	0	0	0	0	0
Ohio Co.	0	0	0	0	0
	0	4	0	0	4

Butner Consolidated Legal Center					
	Bivens	HC	FTCA	Other	Total
FCC BUT	1	0	0	1	2
FCI PET	1	0	0	0	1
PET MED	0	0	0	0	0
FPC SEY	0	0	0	0	0
Winton	0	0	0	0	0
VA	0	0	0	0	0
Contracts	0	0	0	0	0
	2	0	0	1	3

Lexington Consolidated Legal Center					
	Bivens	HC	FTCA	Other	Total
FMC LEX	0	1	0	0	1
FCI ASH	0	0	0	0	0
FCI MAN	0	0	0	0	0
Big Sandy	0	0	0	0	0
McCreary	0	0	0	0	0
	0	1	0	0	1

Beckley Consolidated Legal Center					
	Bivens	HC	FTCA	Other	Total
FCI BEC	0	0	1	0	1
FPC ALD	0	0	0	0	0
USP LEE	0	0	0	0	0
Glennville	0	0	0	0	0
McDowell	0	0	0	0	0
	0	0	1	0	1

	Bivens	HC	FTCA	Other	Total
Regional Total	2	5	1	1	9

Mid-Atlantic Region Litigation Year To Date

MARO Consolidated Legal Center					
	Bivens	HC	FTCA	Other	Total
FCI CUM	0	5	0	0	5
FCI MEM	2	2	0	0	4
FCI MRG	0	0	0	0	0
MXR	0	0	0	2	2
Hazelton	0	0	0	0	0
Ohio Co.	0	0	0	0	0
	2	7	0	2	11

Butner Consolidated Legal Center					
	Bivens	HC	FTCA	Other	Total
FCC BUT	3	0	0	5	8
FCI PET	1	3	0	0	4
PET MED	0	0	0	0	0
FPC SEY	0	0	0	0	0
Winton	0	0	0	0	0
VA Contracts	0	0	0	0	0
	4	3	0	5	12

Lexington Consolidated Legal Center					
	Bivens	HC	FTCA	Other	Total
FMC LEX	2	2	0	1	5
FCI ASH	1	3	0	0	4
FCI MAN	2	0	0	0	2
Big Sandy	0	0	0	0	0
McCreary	0	0	0	0	0
	5	5	0	1	11

Beckley Consolidated Legal Center					
	Bivens	HC	FTCA	Other	Total
FCI BEC	2	4	1	0	7
FPC ALD	0	0	0	0	0
USP LEE	0	0	0	0	0
Glenville	0	0	0	0	0
McDowell	0	0	0	0	0
	2	4	1	0	7

	Bivens	HC	FTCA	Other	Total
Regional Total	13	19	1	8	41

memorandum

DATE: June 7, 2001 Mid-Atlantic Regional Office, Annapolis Junction, MD 20701

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

SUBJECT: May 2001 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	167	114	138	122	149							
Answered	144	170	115	103	180							

TORT CLAIMS	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	180	146	139	128	113							
# Received	27	39	36	34	33							
# Answered	66	41	35	39	33							
# Pending	146	139	128	113	120							
# Over Six Month	2	2	2	3	3*							

*Three are Serious personal injury cases still under review.

FOI/PRIVACY	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	33	32	36	33	45							
# Received	45	46	39	63	56							
# Answered	48	43	40	54	61							
# Pending	32	36	33	45	38							
# Over 20 Working Days	1	2	3	4	2*							

*Awaiting files from archives on both requests

LITIGATION	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Cases Pending	174			79	81							
New Cases Received	13	11	8	9	4							
Habeas Corpus	7	4	3	5	3							
Bivens	3	5	3	2	1							
FTCA	0	0	0	1	0							
Other	3	2	2	1	0							
Cases Closed				7	10							
Cases Pending			79	81	75							
Lit Reports Completed	8	9	13	11	13							
Cases/Hearings or Trials	0	1	0	0	1							
Settlements/Awards	1	1	1	0	1							
\$ Settlements/Awards	\$100.	\$22.	\$375.	0	\$50.0							

(\$ in Thousands)

SIGNIFICANT DECISIONS OR ADVERSE DECISIONS:

FMC LEXINGTON - Berry v. Thoms - Judge Wilhoit dismissed an Eighth Amendment failure to protect Bivens lawsuit against a correctional officer and counselor for Plaintiff's failure to exhaust administrative remedies. Plaintiff was assaulted in his housing unit by another inmate and did not file suit until nearly a year after the assault. He did not file any administrative remedies but merely sent a cop-out to Attorney Joe Tang. Plaintiff argued this constituted "substantial compliance" with the remedy system, especially since he could not receive money through the remedy system.

SETTLEMENTS:

MXR CLC - Cockerell v. U.S. - At the May 21st settlement conference, we settled this personal injury case for \$50,000. We had been authorized to go as high as \$60,000, given the significant injuries suffered by plaintiff. This case involved a Memphis police officer who was severely injured while training on the FCI Memphis SORT course. As a result of this case, each MXR CLC supervisor has been asked to review the agreements which institutions have drafted regarding use of their facilities

FCI MILAN - [REDACTED] - We continue to make good progress in our efforts to settle this FTCA administrative claim, wherein the estate of former FDC Milan inmate [REDACTED] sues for personal injury suffered when medical staff failed to recognize the effects of drug and alcohol withdrawal. [REDACTED]. Plaintiff's attorney recently came down from \$150,000 to \$90,000.

b7C
b5

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

MXR CLC - U.S. v. Wilson - May 25, 2001, MARO received a copy of a motion filed by [REDACTED], a pretrial inmate at FCI, Memphis, challenging the 300 minute monthly phone limit as it applies to attorneys placed on the inmate's telephone list. The motion alleged that Wilson had exhausted his 300 minutes by May 18, 2001, that staff informed him he would not be allowed to use the telephone (including calls to his attorneys), until June 2001. Wilson sought "unrestricted telephone calls to counsel rather than including legal calls in his monthly allotment."

Before the government could respond, the Judge ruled (May 29, 2001) in favor of Wilson, granted his motion and ordered FCI, Memphis to "not include any of Bryant Wilson's telephone calls to counsel representing him within the 300 minutes of telephone use per month he is allowed."
On

May 31, 2001, the MXR CLC sent a letter with attachments to the AUSA outlining the three methods of communication with attorneys (including two types of phone calls). We demonstrated that Wilson had been informed about placing properly requested legal calls on unmonitored phones and that he in fact had requested at least one. We explained that if he chose to put his attorneys on his phone list, then he was agreeing that calls made to them on inmate phones would be monitored and would count against his 300 minutes, but that doing so would not

prohibit him from making requests for unmonitored legal calls that would not count against his minutes and that he could make such calls to the extent staff resources would allow. We also pointed out that none of the 300 minutes of telephone calls made during the month were to the numbers listed for his attorneys. This letter was attached as an exhibit to the government's motion for reconsideration or clarification.

CRIMINAL:

BECKLEY CLC - [REDACTED]

[REDACTED] were previously indicted for Assault (18 U.S.C. § 111(a)(1) and 111(b)). The charges stem from the disturbance at FCI Beckley in December 1999. Discovery continues as we prepare for trial. The trial, scheduled for May 30-31, has been postponed.

FCI BECKLEY - [REDACTED]

former Chaplin, was indicted on January 31, 2001, for Possession with Intent to Distribute Heroin. Trial, set for May 22, 2001, has been rescheduled for July 17, 2001.

FMC LEXINGTON - [REDACTED]

has agreed to plead guilty to Voluntary Manslaughter resulting in the death of inmate Tracy Hearlson at FMC Lexington in September 1998. This will result in a sentence in the range of seven to eight years. This plea would bring closure to the Hearlson homicide case and the FTCA civil case arising out of Hearlson's murder will be reopened.

b7c

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

FCI MANCHESTER - Civilian [REDACTED]

has been offered \$279.10, for his role in helping to apprehend an escapee from Manchester Camp. At the same time, we have denied [REDACTED] tort claim, wherein he seeks over \$100,000 for minor physical injuries he suffered during a scuffle with the escapee. [REDACTED]

b7c
b5

RALEIGH CCM OFFICE - Inmate [REDACTED]

is being retained at the halfway house in Charleston, West Virginia, as a result of an inquiry to the Director by his sentencing judge, Joseph Goodwin. After initially designating [REDACTED] to a halfway house for service of his 15 month sentence, we received a request from the Tax Division, citing the 10% limitation in 18 U.S.C. §3624(c), asking BOP to place [REDACTED] in a BOP facility. When the Judge learned of our plans to move [REDACTED] to the Beckley Camp, he wrote the Director objecting to the re-designation, quoting BOP staff who told him we make direct court commitments to halfway houses when the sentence is 18 months or less. We are working with Paul Layer on a response to Judge Goodwin.

FMC LEXINGTON - Atwood Camp inmates are filing motions with their

Mid-Atlantic Region Litigation for the Month of May 2001

MAPO Consolidated Legal Center					
	Bivens	HC	FTCA	Other	Total
FCI CIM	0	0	0	0	0
FCI MEM	0	0	0	0	0
FCI MRG	0	0	0	0	0
MXR	0	0	0	0	0
Hazelton	0	0	0	0	0
Ohio Co.	0	0	0	0	0
	0	0	0	0	0

Baltimore Consolidated Legal Center					
	Bivens	HC	FTCA	Other	Total
FCI BBT	0	0	0	0	0
FCI BBT	0	0	0	0	0
FCI BBT	0	0	0	0	0
FCI BBT	0	0	0	0	0
Wilson	0	0	0	0	0
VA Contracts	1	1	0	0	2
	1	1	0	0	2

Lexington Consolidated Legal Center					
	Bivens	HC	FTCA	Other	Total
FMC LEX	0	0	0	0	0
FCI ASH	0	0	0	0	0
FCI MAN	0	0	0	0	0
Big Sandy	0	0	0	0	0
McCreary	0	0	0	0	0
	0	0	0	0	0

Roanoke Consolidated Legal Center					
	Bivens	HC	FTCA	Other	Total
FCI BBT	0	0	0	0	0
FCI ALB	0	0	0	0	0
FCI LEX	0	0	0	0	0
Roanoke	0	0	0	0	0
McWell	0	0	0	0	0
	0	2	0	0	2

	Bivens	HC	FTCA	Other	Total
Regional Total	1	1	0	0	4

Mid-Atlantic Region Litigation Year To Date

MARO Consolidated Legal Center					
	Rivens	HC	FTCA	Other	Total
FCI CUM	0	0	0	0	0
FCI MEM	0	0	0	0	0
FCI MRG	0	0	0	0	0
MXR	0	0	0	0	0
Hazelton	0	0	0	0	0
Ohio	0	0	0	0	0
	2	7	0	2	11

Partner Consolidated Legal Center					
	Rivens	HC	FTCA	Other	Total
FCI MEM	4	0	0	0	4
FCI PFT	1	0	0	0	1
FCI DEI	0	0	0	0	0
FCI SEY	0	0	0	0	0
WILSON	0	0	0	0	0
VA	0	1	0	0	1
	5	1	0	0	6

Lexington Consolidated Legal Center					
	Rivens	HC	FTCA	Other	Total
FMC LEE	2	0	0	0	2
FCI ASH	1	0	0	0	1
FCI MAN	0	0	0	0	0
Big Sandy	0	0	0	0	0
McCreary	0	0	0	0	0
	3	0	0	0	3

Shelby Consolidated Legal Center					
	Rivens	HC	FTCA	Other	Total
FCI BEY	0	0	1	0	1
FCI ALI	0	0	0	0	0
FCI LEE	0	0	0	0	0
Blountville	0	0	0	0	0
Blountwell	0	0	0	0	0
	0	0	1	0	1

	Rivens	HC	FTCA	Other	Total
Regional Total	14	8	1	0	23

memorandum

DATE: July 6, 2001 Mid-Atlantic Regional Office, Annapolis Junction, MD 20701

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

SUBJECT: June 2001 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	167	114	138	122	149	131						
Answered	144	170	115	103	180	113						

TORT CLAIMS	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	180	146	139	128	113	113						
# Received	27	39	36	34	33	34						
# Answered	66	41	35	39	33	25						
# Pending	146	139	128	113	120	124						
# Over Six Month	2	2	2	3	3	4*						

*Three are Serious personal injury cases still under review.

/PRIVACY	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	33	32	36	33	45	38						
# Received	45	46	39	63	56	49						
# Answered	48	43	40	54	61	46						
# Pending	32	36	33	45	38	37*						
# Over 20 Working Days	1	2	3	4	2	3*						

*Awaiting files from archives on one requests

LITIGATION	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Cases Pending	174			79	81	75						
New Cases Received	13	11	8	9	4	13						
Habeas Corpus	7	4	3	5	3	5						
Bivens	3	5	3	2	1	5						
FTCA	0	0	0	1	0	1						
Other	3	2	2	1	0	2						
Cases Closed				7	10	10						
Cases Pending			79	81	75	78						
Lit Reports Completed	8	9	13	11	13	6						
Cases/Hearings or Trials	0	1	0	0	1	0						
Settlements/Awards	1	1	1	0	1	0						
\$ Settlements/Awards	\$100.	\$22.	\$375.	0	\$50.0	0						
(\$ in Thousands)												

SIGNIFICANT DECISIONS OR ADVERSE DECISIONS:

FCI MANCHESTER - Palasty v. Hawk (Ensign Amendment Suit) - The Sixth Circuit has affirmed the dismissal of this attempted class action challenge to the Ensign Amendment's limitation on receiving sexually explicit publications. The Court dismissed the case, finding that an inmate could not adequately represent the class of 60 inmates, and that the one plaintiff who exhausted administrative remedies, did not file a timely challenge to the lower court's finding that the Ensign Amendment did not violate the inmate's First Amendment rights.

FCI CUMBERLAND - Burrell v. Gunja - We received a very favorable ruling supporting our reduction of the rate of good time given to an inmate who refused to attend a mandatory literacy program, under 18 U.S.C. § 3624(f). In essence, the court held that Sandin stands for the proposition that earned good time cannot be taken without procedural due process protections, but there is no "liberty interest" involved in the mere opportunity to earn good time. Given the impact of this decision, especially with District of Columbia inmates, we have asked that this opinion be published.

FCI LEXINGTON - McGee v. Thoms - Judge Forester dismissed this 3621(e) habeas petition based upon mootness because McGee had been expelled from the RDAP. However, the dicta from the opinion indicates the Court does not believe the BOP has the authority to categorically deny inmates early release based upon pre-conviction behavior prior to inmates' graduation from RDAP, an issue actually fully addressed in Lopez.

[REDACTED]. The Court cites no authority for its dicta.

b5

FCI CUMBERLAND - Lugo v. Gunja - Petitioner is a D.C. inmate currently incarcerated at FCI, Cumberland. He filed a petition seeking the award of meritorious good time credits and educational good time credits earned while in BOP custody. We argued that the meritorious good time credits section of the D.C. Code (and by analogy 18 U.S.C. § 4162) is wholly discretionary and therefore does not create protected liberty interest in receiving such credits. The court dismissed this issue with prejudice holding that petitioner "plainly has no statutory or constitutional right to receive them, as their award is utterly discretionary by statute." Although we conceded that Petitioner was probably entitled to receive educational good time credits, we indicated that we were in the process of implementing our program and that Petitioner's courses taken while in BOP custody would be reviewed to see what, if any, credits he would be entitled. The court dismissed this portion as not ripe stating that the credit involved would have no effect at present except to advance his parole eligibility date, but because no decision had yet been made to withhold such credits he is not yet being confined in violation of the constitution or any laws. This issue was dismissed without prejudice.

SETTLEMENTS:

FCI MILAN - Billy Nidiffer - We continue our efforts to settle this FTCA administrative claim, wherein the estate of former FDC Milan inmate Billy Nidiffer sues for personal injury suffered when medical staff failed to recognize the effects of drug and alcohol withdrawal.

We have now offered \$35,000, in response to plaintiff's latest offer of \$90,000.

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

FCI MEMPHIS - U.S. v. Wilson - This is a previously reported case in which pre-trial inmate [REDACTED] challenged the 300 minute limit on monitored telephone calls. The court ruled prior to hearing from the government and ordered that calls to Wilson's attorneys placed on the ITS II system not be counted against his 300 minute limit. The court has not yet ruled on the government's motion for clarification but did acknowledge in court that she had ruled before the government was given a chance to respond. b7C

Wilson has since filed a motion for a transfer from FCI/FDC Memphis stating that his legal visits, telephone privileges and access to legal materials are inadequate. He also alleges that staff, including the Warden, Associate Warden and Correctional Counselor have threatened retaliation for his allegations. This is a high-profile, capital murder case involving several armed bank robberies, the last of which included the homicide of a 79 year-old bank customer. The government is contemplating seeking the death penalty and the state has already indicated it will seek the death penalty. A cooperating witness is being held in the CCA facility in Mason, Tennessee, the facility Wilson has requested to be transferred to. The U.S. Attorney's office took great steps to see that Wilson would be housed at FCI/FDC Memphis and made arrangements with the USMS to place him there and to keep him separate from the cooperating co-defendant. Therefore, the AUSA is opposing the motion. The AUSA is also opposing the motion as factually false and has indicated the government's willingness to have a hearing on the matter.

CRIMINAL:

LSCI BUTNER - Inmate [REDACTED] pled guilty to Possession of Marijuana, and [REDACTED] pled guilty to Introduction of Contraband, as a result of a conspiracy to introduce drugs into LSCI Butner.

FCI BUTNER - Inmate [REDACTED] is charged with killing another inmate at FCI Butner. [REDACTED] is currently scheduled for trial in the Eastern District of North Carolina the week of July 23, 2001. However, according to [REDACTED] competency evaluation, he is not competent to stand trial on these charges. Accordingly, the U.S. Attorney's Office may decide to dismiss the charges. b7C

FCI BECKLEY - Inmate [REDACTED] were previously indicted for Assault. The charges stem from the disturbance at FCI Beckley in December 1999. Discovery continues as we prepare for trial. The trial was postponed from May 30-31.

FCI BECKLEY - [REDACTED], former Chaplain, was indicted on January 31, 2001, for Possession with Intent to Distribute Heroin. The trial has been rescheduled for July 17, 2001. It will likely be postponed.

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MXR Monthly Report

FPC ALDERSON - [REDACTED] former Correctional Officer, has been indicated for Abusive Sexual Contact in violation of 18 U.S.C. §2244. Trial has been rescheduled for September 5, 2001.

b7C

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

[REDACTED] (Raleigh CCM Office) - Inmate [REDACTED] is being retained at the halfway house in Charleston, West Virginia, as a result of an inquiry to the Director by his sentencing judge, Joseph Goodwin. After initially designating Spears to a halfway house for service of his 15 month sentence, we received a request from the Tax Division, citing the 10% limitation in 18 U.S.C. §3624(c), to place [REDACTED] in a BOP facility. When the Judge learned of our plans to move [REDACTED] to the Beckley Camp, he wrote the Director objecting to the re-designation, quoting BOP staff who told him we make direct court commitments to halfway houses when the sentence is 18 months or less. We are working with Paul Layer on a response to Judge Goodwin.

FPC ALDERSON - [REDACTED] - We have just denied the tort claim of Alderson inmate, [REDACTED], who claims she was sexually assaulted by a male staff member. In fact, the former staff member has been indicted, and will go to trial this July. We denied the tort claim, citing West Virginia agency law that supports our position that the male employee was not acting within the scope of his duties when he sexually assaulted inmate Craig.

BUTNER CLC - Involuntary Medication Hearings - Recently Butner has had an increase in the number of involuntary medication cases where the hearing officer determined that a pretrial inmate was not dangerous, and the only reason to treat him was to restore his competency for trial (i.e. Brandon). All have been referred back to the AUSA to determine whether the court wants to hold its own involuntary medication hearing. Currently there are three such cases outstanding, and one has been scheduled for hearing in the S.D. N.Y. on September 9, 2001.

Personnel Issues:

[REDACTED]

[REDACTED]

b6

Staff Leave and Travel

[REDACTED] - July 16 & 17 - Beckley and Lee County
July 19 - 30 - Annual Leave

[REDACTED] - July 2-3 - Annual Leave

Mid-Atlantic Region Litigation for the Month of June 2001

MARO Consolidated Legal Center					
	Bivens	HC	FTCA	Other	Total
FCI CUM	0	0	0	0	0
FCI MEM	0	0	0	0	0
FCI MRG	0	0	0	0	0
MXR	0	0	0	0	0
Hazelton	0	0	0	0	0
Ohio Co.	0	0	0	0	0
	0	0	0	0	0

Butner Consolidated Legal Center					
	Bivens	HC	FTCA	Other	Total
FCC BUT	2	1	0	2	5
FCI PET	0	0	0	0	0
PET MED	1	1	0	0	2
FPC SEY	0	0	0	0	0
Winton	0	0	0	0	0
VA Contracts	0	0	0	0	0
	3	2	0	2	7

Lexington Consolidated Legal Center					
	Bivens	HC	FTCA	Other	Total
FMC LEX	0	1	0	0	1
FCI ASH	1	0	0	0	1
FCI MAN	0	0	0	0	0
Big Sandy	0	0	0	0	0
McCreary	0	0	0	0	0
	1	1	0	0	2

Beckley Consolidated Legal Center					
	Bivens	HC	FTCA	Other	Total
FCI BEC	0	2	0	0	2
FPC ALD	1	0	1	0	2
USP LEE	0	0	0	0	0
Glennville	0	0	0	0	0
McDowell	0	0	0	0	0
	1	2	1	0	4

	Bivens	HC	FTCA	Other	Total
Regional Total	5	5	1	2	13

Mid-Atlantic Region Litigation Year To Date

MARO Consolidated Legal Center					
	Bivens	HC	FTCA	Other	Total
FCI CUM	0	5	0	0	5
FCI MEM	2	2	0	0	4
FCI MRG	0	0	0	0	0
MXR	0	0	0	2	2
Hazelton	0	0	0	0	0
Ohio Co.	0	0	0	0	0
	2	7	0	2	11

Butner Consolidated Legal Center					
	Bivens	HC	FTCA	Other	Total
FCC BUT	6	1	0	7	14
FCI PET	2	4	0	0	6
PET MED	0	0	0	0	0
FPC SEY	0	0	0	0	0
Winton	0	0	0	0	0
VA Contracts	0	1	0	0	1
	8	6	0	7	21

Lexington Consolidated Legal Center					
	Bivens	HC	FTCA	Other	Total
FMC LEX	2	3	0	1	6
FCI ASH	2	3	0	0	5
FCI MAN	2	0	0	0	2
Big Sandy	0	0	0	0	0
McCreary	0	0	0	0	0
	6	6	0	1	13

Beckley Consolidated Legal Center					
	Bivens	HC	FTCA	Other	Total
FCI BEC	2	8	1	0	11
FPC ALD	1	0	1	0	2
USP LEE	0	0	0	0	0
Glenville	0	0	0	0	0
McDowell	0	0	0	0	0
	3	8	2	0	13

	Bivens	HC	FTCA	Other	Total
Regional Total	19	27	2	10	58

memorandum

DATE: August 7, 2001 Mid-Atlantic Regional Office, Annapolis Junction, MD 20701

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

SUBJECT: July 2001 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	167	114	138	122	149	131	126					
Answered	144	170	115	103	180	113	127					

TORT CLAIMS	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	180	146	139	128	113	113	124					
# Received	27	39	36	34	33	34	50					
# Answered	66	41	35	39	33	25	16					
# Pending	146	139	128	113	120	124	159					
# Over Six Month	2	2	2	3	3	4	4*					

*Three are serious personal injury cases still under review.

FOI/PRIVACY	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
# Pending	33	32	36	33	45	38	37					
# Received	45	46	39	63	56	49	53					
# Answered	48	43	40	54	61	46	60					
# Pending	32	36	33	45	38	37	33					
# Over 20 Working Days	1	2	3	4	2	3	4*					

*Awaiting files from archives on two requests; as of 8-6-01 other two have been mailed.

LITIGATION	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Cases Pending	174			79	81	75	78					
New Cases Received	13	11	8	9	4	13	7					
Habeas Corpus	7	4	3	5	3	5	0					
Bivens	3	5	3	2	1	5	2					
FTCA	0	0	0	1	0	1	3					
Other	3	2	2	1	0	2	2					
Cases Closed				7	10	10	3					
Cases Pending			79	81	75	78	81					
Lit Reports Completed	8	9	13	11	13	6	10					
Cases/Hearings or Trials	0	1	0	0	1	0	0					
Settlements/Awards	1	1	1	0	1	0	0					
\$ Settlements/Awards	\$100.	\$22.	\$375.	0	\$50.0		0	0				

(\$ in Thousands)

SIGNIFICANT DECISIONS OR ADVERSE DECISIONS:

BUTNER CLC - Russell Weston v. United States - The District of Columbia Circuit has affirmed the District Court's decision that the Bureau of Prisons may involuntarily medicate Russell Weston, in order to restore his competence to stand trial. The opinion is somewhat confusing, but generally favorable to the Bureau. So far, medication has not been administered to inmate Weston, as the defense has indicated they will immediately file an appeal to the Supreme Court. We have not yet confirmed that a request for a stay has been filed.

[REDACTED] b5

LEXINGTON CLC - Gary Lynn Wilder v. Thoms - Judge Forester dismissed the petition for writ of habeas corpus with prejudice. Wilder challenged his ineligibility for early release and the timing of his provisional eligibility determination. In dicta from another case, McGee v. Thoms, Judge Forester had indicated he believed the BOP did not have the discretion to make eligibility determinations until after RDAP graduation. We filed a supplemental response in Wilder after the McGee opinion was issued, arguing Lopez allows pre program eligibility determination. The dismissal in Wilder was based upon Wilder's alleged admission that Lopez did control after RDAP graduation, which Judge Forester claimed amounted to Wilder abandoning prosecution of his case.

[REDACTED] b5

SETTLEMENTS:

FCI MILAN - Billy Nidiffer v. United States - We are pleased to report that we have reached a tentative settlement of this medical malpractice case for \$50,000. This is the case where medical staff at FDC Milan failed to recognize that inmate Nidiffer was having serious medical side effects due to his withdrawal from alcohol and narcotics.

[REDACTED] b5

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

LEXINGTON CLC - Lillian Rose, Administratrix of the Estate of Robert Rose v. USA - The Sixth Circuit upheld the Eastern District of Kentucky's dismissal of this FTCA action which alleged medical malpractice on the part of FCI Manchester staff resulting in the death of inmate Rose from a heart attack. The case was tried and the United States moved for summary judgment, which was granted, after Plaintiff's attorney failed to put on any evidence to prove the element of causation.

MARO CLC - Survivors of inmate Howard Reeder, Reg. No. 12413-058, have filed a wrongful death action in the District of Maryland. Several days after undergoing angioplasty at a Washington Hospital, inmate Reeder was walking the track at FCI Cumberland. He later died after reporting to Health Services that he was not feeling well. AFIP review of this case is favorable. The inmate's minor son and wife

each filed a tort claim for \$500,000. They are represented by counsel.

BECKLEY CLC - Gershen v. U.S. - This is a FTCA case filed by a BOP employee at FCI Beckley. The employee alleges defamation, embarrassment, humiliation, slander, loss of self-esteem, emotional distress, loss of possible career opportunities and work place violence. This case arose out of incident during annual training when a HRM employee discussed this employee's discipline during the training session.

MARO CLC - Fardaei v. Gunja - FCI Cumberland inmate filed a petition for Writ of Habeas Corpus seeking reinstatement into the RDAP Program, credit for time previously spent in the program, and accelerated counseling. After initially being admitted to the RDAP Program, the new RDAP Coordinator reviewed that decision and determined he did not have an adequately documented history of drug or alcohol abuse and counseling, and removed him from the class. When records of treatment (received from the inmate's minister) were received, we advised staff to readmit the inmate into the RDAP Program. Once he was readmitted, we then moved to have the case dismissed as moot. The court granted our motion, but additionally stated that we had no duty to permit him to remain in the RDAP Program, that the removal did not amount to an atypical and significant hardship on the inmate, that the decision to remove him was not arbitrary and capricious, and that there was no constitutionally protected interest in remaining in the program.

CRIMINAL:

MARO CLC - U.S. v. Lisa Lockhart - The defendant in this case is the sister of an inmate incarcerated at FCI Memphis. On February 29, 2000, she introduced multiple balloons filled with marijuana and heroin into the institution, successfully passing them to the inmate in the visiting room. Staff had confidential information in advance and detained the visitor until law enforcement could arrive. The inmate was placed in a dry cell and the balloons were recovered. The defendant refused to cooperate with the ensuing investigation and was indicted. Trial is currently scheduled for August 15, 2001.

BECKLEY CLC - [REDACTED], former Chaplin, was indicted on January 31, 2001, for Possession with Intent to Distribute Heroin. Trial was set for May 22, 2001, and then rescheduled for July 17, 2001. Trial has been scheduled for August 21, 2001. b7c

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

BUTNER CLC - We received a very unique request from the Navy. Military inmate [REDACTED] has been convicted of sexual abuse of children. As he approached his release date on his military sentence, he confessed to abusing approximately 50 other children, and indicated he would continue such conduct if he is released without treatment. In order to receive treatment, he has waived approximately 2 years of good time. He is now at Butner for a psychiatric evaluation. This case raises several difficult legal questions, such as what effect should be given to this waiver, and can the Bureau use 4246 to commit this military prisoner beyond his b7c

release date.

BUTNER CLC - [REDACTED] competency evaluation - On July 26, FMC Butner sent an interim report to Judge Marshall, in which we asked for additional time to report both on our opinion of [REDACTED] competence, and the suggested course of treatment.

CONTRACT FACILITIES IN VIRGINIA - Jackson v. District of Columbia, (2001 WL 765413) On July 10th, the District of Columbia Circuit issued a decision which contains some language that may impact on our ability to send certain types of DC offenders to our contract facilities in the State of Virginia. The case involves a RFRA challenge to the Bureau's ability to place Muslim and Rastafarian inmates from the District of Columbia into Virginia state facilities, where a short haircut and facial hair policy applies to all inmates. While the court dismissed the case due to failure to exhaust, it did indicate that if the inmates do exhaust, the District Court should consider the inmate's argument that a less restrictive approach to accommodating their religious beliefs would be for the BOP to avoid placing Muslim and Rastafarian inmates into Virginia facilities.

MARO CLC - T-MXR-2000-01426 - Inmate [REDACTED], filed an administrative tort claim alleging medical malpractice while housed at FCI Cumberland. Inmate [REDACTED] was treated for venous insufficiency when in fact cervical cord compression affected his ability to walk. He is now housed at FPC Seymour Johnson. Inmate [REDACTED] claim is for \$10 million. AFIP's review found delays in diagnosis and departures from the standard of care. We are currently preparing a settlement recommendation memo to OGC.

Personnel Issues:

b6

Category	Item	Value	Unit
A

B

C

Mid-Atlantic Region Litigation for the Month of July 2001

MARO Consolidated Legal Center					
	Rivens	HC	FTCA	Other	Total
FCI CUM	1	0	1	1	3
FCI MEM	0	0	0	0	0
FCI MRG	0	0	0	0	0
MXR	0	0	0	0	0
Hazelton	0	0	0	0	0
Ohio Co.	0	0	0	0	0
	1	0	1	1	3

Patterson Consolidated Legal Center					
	Rivens	HC	FTCA	Other	Total
FCI PUE	0	0	0	1	1
FCI PET	1	0	0	0	1
PET MED	0	0	0	0	0
PFC SEY	0	0	0	0	0
Wilton	0	0	0	0	0
VA Contracts	0	0	0	0	0
	1	0	0	1	2

Lexington Consolidated Legal Center					
	Rivens	HC	FTCA	Other	Total
FMC LEX	0	0	0	0	0
FCI ASH	0	0	0	0	0
FCI MAN	0	0	0	0	0
Big Sandy	0	0	0	0	0
McCreary	0	0	0	0	0
	0	0	0	0	0

Bohler Consolidated Legal Center					
	Rivens	HC	FTCA	Other	Total
FCI BEC	0	0	0	0	0
FCI ABE	0	0	0	0	0
FCI LEP	0	0	0	0	0
Glenville	0	0	0	0	0
Belleville	0	0	0	0	0
	0	0	2	0	2

	Rivens	HC	FTCA	Other	Total
Regional Total		0	3	2	5

Mid-Atlantic Region Litigation Year To Date

MARC Consolidated Legal Center					
	Bivens	HC	FTCA	Other	Total
FCI COM	1	0	0	0	1
FCI MEM	0	0	0	0	0
FCI MRC	0	0	0	0	0
MXR	0	0	0	0	0
Hazlett	0	0	0	1	1
Ohio Co.	0	0	0	0	0
	3	7	1	2	13

Butler Consolidated Legal Center					
	Bivens	HC	FTCA	Other	Total
FCI BUT	0	1	0	0	1
FCI IEE	0	1	0	0	1
FCI MEM	0	0	0	0	0
FCI SES	0	0	0	0	0
Wetzel	0	0	0	0	0
VA	0	1	0	0	1
Contractors					
	9	6	0	8	23

Lexington Consolidated Legal Center					
	Bivens	HC	FTCA	Other	Total
FCI LEX	0	0	0	0	0
FCI ASH	0	0	0	0	0
FCI MAN	0	0	0	0	0
Big Sandy	0	0	0	0	0
McClary	0	0	0	0	0
	6	6	0	1	13

Newport Consolidated Legal Center					
	Bivens	HC	FTCA	Other	Total
FCI NEW	0	0	0	0	0
FCI ZVI	0	0	0	0	0
FCI SES	0	0	0	0	0
Newport	0	0	0	0	0
McClary	0	0	0	0	0
	3	8	4	0	15

	Bivens	HC	FTCA	Other	Total
Regional Total					