

II. BACKGROUND

In his handwritten amended complaint, plaintiff makes a host of claims. Plaintiff alleges that Mary Canino, a hearing examiner at Graterford unjustly took away a prison job from him on September 9, 1997. Around that same time, plaintiff contends that Robert Crawford, Levi Hosband, and Elliot Bennett, as members of a Program review Committee at Graterford conspired with Ms. Canino to take away his job. Plaintiff contends that John Henschel wrongfully denied him a new job in 1997 and conspired with Leslie Kloss to do so. He also claims that Maryann Williams, a grievance coordinator conspired with Ms. Canino to harass him in 1997.

Plaintiff avers that in 1996 Kim Ulisney, the person responsible for acceptance of mail at Graterford, delivered legal correspondence to him 10 days late and opened it. He claims that in 1996 Charles Brubach, a grievance coordinator, was made aware of a similar instance of tampering with legal mail and did nothing.

Plaintiff alleges that Corrections Officer Joseph Jamison repeatedly subjected him to physical abuse and threats from November 20, 1997 to January 29, 2000. Specifically, plaintiff asserts that Officer Jamison attempted to assault him sexually on at least one occasion, has repeatedly encouraged other inmates to attack plaintiff by calling him a “snitch,” and has threatened to kill plaintiff.

Plaintiff contends that Correctional Officers Edward Fessler and Frank Singleton and Lieutenant John Kelly have subjected him to “harassment and discrimination.” Plaintiff asserts that Fessler and Kelly harassed him because he is African American and that Kelly also did so because plaintiff is a Muslim. Plaintiff offers no motivation for harassment by Singleton and no

time frame for when the harassment took place. In addition, he claims that Sergeant Joseph Balberchak threatened him “with continuous punishment and arrest if [he] refused DNA testing.”

Plaintiff also asserts claims against various healthcare workers. Specifically, plaintiff claims that Nurse Shelly Martin¹ gave him medication to which he had an allergic reaction and almost died. Plaintiff provides no further details as to when² or how this incident occurred.

Plaintiff contends that prison officials operating in supervisory positions failed to address and remedy his various complaints. Plaintiff alleges that he mailed four letters to Superintendent Vaughn, over the course of two years, expressing his complaints regarding his treatment by staff members at Graterford. The last of these letters, dated June 6, 1999, plaintiff has attached as an exhibit to his amended complaint. In this letter, plaintiff describes his sexual assault and other alleged instances of maltreatment and threats by Officer Jamison. The letter also complains of the prison’s alleged “job discrimination” against plaintiff, detailing how prison staff wrongfully fired him from his employment in the prison’s kitchen. Plaintiff claims that the letter to Vaughn was also copied to Clifford O’Hara at the Pennsylvania Department of Corrections. Plaintiff has also attached as an exhibit to his amended complaint a cover letter, dated July 11, 1999, that allegedly was sent to O’Hara with a copy of the Vaughn letter. Plaintiff also claims that he mailed a letter, dated January 23, 1998, to Robert Bitner at the Pennsylvania Department of Corrections,

¹ In addition to Nurse Martin, plaintiff has sued Doctors Boxer and Saranoff and Nurse Joseph Carred. Nurse Martin, however, appears to be the only healthcare worker that is a party to the present motion to dismiss.

² The timing of the incident is relevant in determining whether plaintiff’s claim against Martin is time-barred. Defendants’ memorandum accompanying the motion to dismiss suggests that the exhibits plaintiff attached to his amended complaint show that the incident occurred in 1996.

describing how his grievances against Officer Jamison were not properly being addressed by prison officials at Graterford and how he feared for his welfare.

Plaintiff claims other defendants unconstitutionally denied him access to the court system. Wright contends that William Zenkal, is the person responsible for issuing prisoners passes to use Graterford's law library. Plaintiff has attached to his amended complaint a request form, dated November 11, 1999, which informed Zenkal of a deadline for an impending court filing and his need to use the law library for five days. Plaintiff claims that he sent a request slip on October 29, 1999 to William Conrad, the unit manager for plaintiff's cell block, complaining that he was not being assigned adequate library time and had only been granted five days over a two-month period. Plaintiff also claims that he made Leslie Hatcher aware of his denial to access the courts on October 25, 1999.

III. STANDARD

A Rule 12(b)(6) motion to dismiss examines the sufficiency of the complaint. Conley v. Gibson, 355 U.S. 41, 45 (1957). In determining the sufficiency of the complaint I must accept all the plaintiff's allegations as true and draw all reasonable inferences therefrom. Graves v. Lowery, 117 F.3d 723, 726 (3d Cir. 1997).

The Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is "a short and plain statement of the claim" that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests.

Conley, 355 U.S. at 47. "Thus, a court should not grant a motion to dismiss 'unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would

entitle him to relief.” Graves, 117 F.3d at 726, quoting, Conley, 355 U.S. at 45-46. Moreover, although plaintiff is now represented by counsel³ when drafting the amended complaint he was acting pro se. See Zilich v. Lucht, 981 F.2d 694, 694 (3d Cir. 1992) (noting that when a plaintiff is a pro se litigant, judge has a special obligation to construe his complaint liberally).

The alternative motion, for a more definite statement, is governed by Federal Rule of Civil Procedure 12(e), which is directed to the rare case where because of the vagueness or ambiguity of the pleading the answering party will not be able to frame a responsive pleading. See Schaedler v. Reading Eagle Publication, Inc., 370 F.2d 795, 798 (3d Cir. 1967). Specifically, Rule 12(e) provides, in-part, the following.

If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired.

A court should grant a Rule 12(e) motion when the complaint does not give the defendants adequate notice of the claims against them. See Doe v. Borough of Morrisville, 130 F.R.D. 612, 615 (E.D. Pa. 1990).

IV. DISCUSSION

A. Claims Barred By The Statute of Limitations

Defendants assert that the majority of plaintiff’s claims are barred by a two-year statute of limitations. I agree. “In actions under 42 U.S.C. § 1983, federal courts apply the state’s statute of

³ I received a pro se filing by plaintiff today, August 14, 2002, entitled “Acknowledgment of Change of Address and Report of Retaliation.” I note that all future filings should be made through plaintiff’s counsel.

limitations for personal injury.” Sameric Corp. of Delaware, Inc. v. City of Philadelphia, 142 F.3d 582, 599 (3d Cir. 1998), citing Wilson v. Garcia, 471 U.S. 261, 276-78 (1985).

Pennsylvania’s statute of limitations on personal injury actions is two years. Reitz v. County of Bucks, 125 F.3d 139, 143 (3d Cir. 1997), citing 42 Pa. Cons. Stat. Ann. § 5524(2).

Many of plaintiff’s claims are barred because the two-year statute of limitations ran before his original complaint was filed on March 27, 2000. A cause of action under section 1983 accrues when the plaintiff knew or should have known of the injury upon which his claim is based. Sameric, 142 F.3d at 599. In the present case, all claims in the amended complaint relating to the following individuals are time-barred because they accrued well before March, 27 1998: Mary Canino, Robert Crawford, Levi Hosband, Elliot Bennett, John Henschel, Leslie Kloss, Kim Ulisney, Charles Brubach, Maryann Williams, and Robert Bitner. Therefore, as to those individuals I will grant defendants’ motion to dismiss.

Defendants assert that the statute of limitations also requires me to dismiss plaintiff’s claims against Nurse Shelly Martin. In their memorandum supporting the motion to dismiss, defendants contend that plaintiff’s allegations against Nurse Martin stem from an incident that occurred in 1996. To support this proposition, defendants generally cite to the exhibits plaintiff attached to his amended complaint without pointing to any one in particular. After reviewing the relevant exhibits, however, I see nothing to suggest that the statute of limitations has run on plaintiff’s claim against Nurse Martin.

Defendants’ also contend that plaintiff’s claims against Officer Jamison are barred by the statute. Plaintiff responds by invoking the continuing violations doctrine. The Court of Appeals for the Third Circuit has recognized this doctrine as an equitable exception to the timely filing

requirement. Cowell v. Palmer Twp., 263 F.3d 286, 292 (3d Cir. 2001). “When a defendant's conduct is part of a continuing practice, an action is timely so long as the last act evidencing the continuing practice falls within the limitations period; in such an instance, the court will grant relief for the earlier related acts that would otherwise be time barred.” Brenner v. Local 514, United Bhd. of Carpenters and Joiners of Am., 927 F.2d 1283, 1295 (3d Cir.1991).

To benefit from this rule, the plaintiff must demonstrate that the defendant's conduct is more than the occurrence of isolated or sporadic acts. Cowell, 263 F.3d at 292. In making this determination, district courts should consider at least three factors:

(1) subject matter--whether the violations constitute the same type of [harm], tending to connect them in a continuing violation; (2) frequency--whether the acts are recurring or more in the nature of isolated incidents; and (3) degree of permanence--whether the act had a degree of permanence which should trigger the plaintiff's awareness of and duty to assert his/her rights and whether the consequences of the act would continue even in the absence of a continuing intent to discriminate.

Id.

In the present case, it appears that plaintiff may use the continuing violation doctrine to bring his section 1983 claim against Officer Jamison. Although the continuing violations doctrine is most frequently applied in employment discrimination claims, it may also be used to bring a section 1983 claim. See id. (citing cases). First, all of plaintiff's allegations against Officer Jamison seem to constitute harassment in one form or another. Plaintiff claims Jamison sexually assaulted him, threatened him with death, and attempted to incite other inmates to attack him over the course of at least two years. Plaintiff's repeated written complaints to Vaughn over the course of those two years demonstrate the on-going nature of the alleged harassment. Moreover, the repeated letters to Vaughn show plaintiff's awareness of and willingness to assert his rights

against Jamison.⁴ Finally, the last of these letters complaining about Jamison’s continuous harassment, dated January 29, 2000, clearly falls within the statute of limitations.

B. Claims Barred By Eleventh Amendment

Defendants correctly assert that the Eleventh Amendment prevents plaintiff from suing them in their official capacity.⁵ The Eleventh Amendment provides the states immunity from suit brought by individual citizens in federal court. See Seminole Tribe of Florida v. Florida, 517 U.S. 44, 54 (1996) (“For over a century we have reaffirmed that federal jurisdiction over suits against unconsenting States ‘was not contemplated by the Constitution when establishing the

⁴ Plaintiff’s repeated letters to Vaughn demonstrate that, over the course of those two years, plaintiff attempted to remedy his problem with Officer Jamison without immediately resorting to litigation. Keeping in mind that the continuing violation doctrine is a form of equitable relief, plaintiff should not be penalized for failing to assert all of his claims within the two-year statute of limitations because he attempted to remedy his situation without involving the courts.

⁵ The Supreme Court has distinguished official capacity lawsuits from personal capacity lawsuits in the following manner:

Personal-capacity suits seek to impose personal liability upon a government official for actions he takes under color of state law. Official-capacity suits, in contrast, “generally represent only another way of pleading an action against an entity of which an officer is an agent.” As long as the government entity receives notice and an opportunity to respond, an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity. It is not a suit against the official personally, for the real party in interest is the entity. Thus, while an award of damages against an official in his personal capacity can be executed only against the official’s personal assets, a plaintiff seeking to recover on a damages judgment in an official-capacity suit must look to the government entity itself.

Kentucky v. Graham, 473 U.S. 159, 165-66 (1985) (internal citations omitted).

judicial power of the United States.’’). However, statutes that are specifically intended by Congress to abrogate immunity and enacted pursuant to section 5 of the Fourteenth Amendment, such as in 42 U.S.C. § 1983, constitute a limited exception to the Eleventh Amendment. See id. at 59.

Although plaintiff sues defendants under § 1983 in the current action, § 1983 only authorizes suits against “persons” acting under the color of state law. See Hafer v. Melo, 502 U.S. 21, 26 (1991). The Supreme Court has recognized that when a plaintiff sues a state agent in his or her official capacity for damages the suit is not against the “person” but rather against the official’s office. See id. at 27 (“State officers sued for damages in their official capacity are not ‘persons’ for purposes of the suit because they assume the identity of the government that employs them.”). Therefore, state officials acting in their official capacities are outside the class of persons subject to liability under § 1983. Id. at 22-23. To the extent plaintiff sues defendants in their official capacities, I will grant the motion to dismiss.⁶

C. Failure to State a Claim Under the Fourteenth Amendment

1. Prison Employment

Defendants correctly contend that plaintiff has no right under the Fourteenth Amendment

⁶ In the present case, it is unclear from the amended complaint that plaintiff is asserting any claims against defendants in their official capacities. It, however, is apparent that plaintiff intended to sue the defendants in their personal capacities. Therefore, I will not dismiss, based on Eleventh Amendment immunity, any claims asserted against defendants in their personal capacities. See Graham, 473 U.S. at 166-67 (noting that only personal defenses, such as qualified immunity, may be used in such instances).

to employment while in prison and, therefore, plaintiff's allegations against Canino, Williams, Henschel, Bennett, and Kloss do not state a claim upon which I can grant relief.⁷

Plaintiff has failed to allege a constitutional violation under the Fourteenth Amendment. The Court of Appeals for the Third Circuit has stated: "We do not believe that an inmate's expectation of keeping a particular prison job amounts either to a 'property' or 'liberty' interest entitled to protection under the due process clause." Bryan v. Werner, 516 F.2d 233, 240 (1975), citing Board of Regents v. Roth, 408 U.S. 564 (1972); see also James v. Quinlan, 866 F.2d 627, 630 (1989) ("Traditionally, prisoners have had no entitlement to a specific job, or even to any job."). Here, plaintiff has alleged that these defendants conspired to deprive him of employment while in prison. Without more, these allegations do not rise to the level of a constitutional violation.

2. Disciplinary Procedures

Plaintiff appears to assert that two defendants, Officer Fessler and Lieutenant Kelley, violated the Equal Protection Clause of the Fourteenth Amendment. Defendants argue that plaintiff's claim against Officer Fessler does not constitute a constitutional violation under the Fourteenth Amendment.⁸ Paragraph 18 of plaintiff's amended complaint alleges that "Respondent C/O Fessler abused his authority by harassing petitioner, because a [sic] African

⁷ Plaintiff apparently concedes this point by failing to address this issue in his memorandum opposing the motion to dismiss.

⁸ Defendants attempt to characterize plaintiff's claim against Fessler as arising from a Due Process Clause violation. However, the plain language of the amended complaint appears to allege an Equal Protection Clause violation.

American C/O gave petitioner an order. See: Attachment (Q).” Plaintiff’s “Attachment (Q)” is a request for an appeal from a hearing on September 7, 1997, where he was found guilty of misconduct. The request describes an incident where Fessler ordered plaintiff to serve burnt pizza to the prisoners in the cafeteria. After the prisoners refused to accept the burnt pizza, plaintiff was told by two other officers to put the burnt pizza aside and serve non-burnt pizza.

Plaintiff’s allegation against Fessler does not state a constitutional claim.⁹ From the language of his amended complaint, it appears that plaintiff is attempting to claim an equal protection violation under the Fourteenth Amendment.¹⁰ See Turner v. Safley, 482 U.S. 78, 84 (1987) (“[Prisoners] are protected against invidious racial discrimination by the Equal Protection Clause of the Fourteenth Amendment.”), citing Lee v. Washington, 390 U.S. 333 (1968). To bring a successful claim under 42 U.S.C. § 1983 for a denial of equal protection, plaintiff must show that: 1) defendants intentionally discriminated on the basis of race; 2) plaintiff suffered a legally cognizable injury; and 3) defendants were personally involved in the alleged violation. Simpson v. Horn, 80 F. Supp. 2d 477, 479 (E.D. Pa. 2000) (Brody, J.).

Plaintiff has not suffered a legally cognizable injury. Plaintiff seems to allege that Fessler reported him for misconduct, ultimately resulting in the loss of his prison employment, because he followed the orders of an African American corrections officer instead of Fessler. Because plaintiff has no right to prison employment, see James, 866 F.2d at 630, he fails to allege a

⁹ Alternatively, although defendants do not point this out, it appears that plaintiff’s claim may be time-barred because that the misconduct report by Fessler in September of 1997 appears to have been the “harassment.”

¹⁰ Plaintiff also characterizes his claim against Fessler as arising from an Eighth Amendment violation. As I will discuss below, the allegations against Fessler do not constitute an Eighth Amendment violation.

legally cognizable injury.

The same appears to be true with respect to plaintiff's allegations against defendant Kelly. In his amended complaint plaintiff asserts only that "Lt. Kelly is the respondent responsible for harassing petitioner because he is an African American Muslim." This, without more, fails to state a claim for which relief can be granted.

D. Eighth Amendment Violations

Defendants contend that plaintiff's allegations against defendants Fessler, Singleton, Balberchak, and Jamison do not constitute Eighth Amendment violations. I conclude that plaintiff's assertions against Fessler, Balberchak, and Singleton do not state a claim but those against Jamison do.

Plaintiff claims that Fessler and Singleton harassed him by being verbally abusive and threatening to charge him with misconduct. He also alleges that Sergeant Balberchak threatened him with "punishment and arrest" if he did not submit to DNA testing. It is well-established that verbal abuse or threats alone do not state a constitutional claim. See Maclean v. Secor, 876 F. Supp. 695, 698 (E.D. Pa. 1995) (Brody, J.) (citing cases). "This is so because '[n]ot every unpleasant experience a prisoner might endure while incarcerated constitutes cruel and unusual punishment.'" Ramos v. Vaughn, No. Civ. 94-2596, 1995 WL 386573, *4 (E.D. Pa. June 27, 1995) (Dubois, J.), quoting Ivey v. Wilson, 832 F.2d 950, 954 (6th Cir.1987).

Plaintiff's allegations against Jamison, however, suggest serious misconduct. Beyond threats and verbal abuse, plaintiff claims that Jamison sexually assaulted him and incited other inmates against him. The Supreme Court has recognized that "The Constitution does not

mandate comfortable prisons, but neither does it permit inhumane ones, and it is now settled that the treatment a prisoner receives in prison and the conditions under which he is confined are subject to scrutiny under the Eighth Amendment.” Farmer v. Brennan, 511 U.S. 825, 832 (1994) (internal citations and quotations omitted). Moreover, “[b]eing violently assaulted in prison is simply not ‘part of the penalty that criminal offenders pay for their offenses against society.’” Farmer, 511 U.S. at 834, quoting Rhodes v. Chapman, 452 U.S. 337, 349 (1981). At least one Court of Appeals has held that sexual assault by a prison guard clearly violates the Eighth Amendment. See Schwenk v. Hartford, 204 F.3d 1187, 1197 (9th Cir. 2000) (“A sexual assault on an inmate by a guard--regardless of the gender of the guard or of the prisoner--is deeply ‘offensive to human dignity.’”) (determining that it is clearly established under the Eighth Amendment that prison guards cannot sexually assault prisoners). I conclude that plaintiff has stated a claim against defendant Jamison.

E. Access To The Courts

Plaintiff alleges that defendants Zenkal, Hatcher, and Conrad violated his right to access the court system by denying him use of Graterford’s law library. Plaintiff’s allegations against the specific defendants are vague. However, my examination of the amended complaint and the attachments thereto reveals that in the Fall of 1999 plaintiff had to prepare a response to a Finley letter for a case that was pending in state court. Plaintiff asserts that from September 1999 until November of that same year he was allowed only five days of access to the law library despite numerous requests.

Plaintiff has failed to state a claim that defendants denied him access to the courts. The

Supreme Court has determined that plaintiffs denied access to prison law libraries must plead that a resulting injury occurred to state a claim. See Lewis v. Casey, 518 U.S. 343, 349 (1996); see also Oliver v. Fauver, 118 F.3d 175, 178 (3d Cir. 1997) (noting that inmate must demonstrate that the alleged shortcomings hindered his efforts to pursue a legal claim); Jones v. Horn, No. CIV. A. 97-3921, 1998 WL 297636, at *4 (E.D. Pa. June 4, 1998) (Bechtle, J.) (“A plaintiff must show some injury, such as the loss of a legal claim.”). For instance, the Lewis Court noted that to demonstrate an actual injury, an inmate could show that a complaint he prepared was dismissed for failure to satisfy some technical requirement, or that he was unable to file any complaint at all. Lewis, 518 U.S. at 351. Here, plaintiff does not make such an assertion. He does not claim that his response to the Finley letter was deficient in anyway or that he was barred from filing his response. I will dismiss plaintiff’s claims that he was denied access to the courts.

F. Medical Eighth Amendment Claim

Plaintiff has failed to state a claim that Nurse Martin was deliberately indifferent to his serious medical needs. In Estelle v. Gamble, 429 U.S. 97 (1976), the Supreme Court recognized that deliberate indifference to the serious medical needs of prisoners constitutes unnecessary and wanton infliction of pain proscribed by the Eighth Amendment. Id. at 104. However, not every claim of inadequate medical care violates the Eighth Amendment. “An accident, although it may produce added anguish, is not on that basis alone to be characterized as wanton infliction of unnecessary pain.” Id. at 105.

Deliberate indifference requires a state of mind more blameworthy than negligence.

Farmer, 511 U.S. at 835. The Estelle Court determined: “In order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs. It is only such indifference that can offend ‘evolving standards of decency’ in violation of the Eighth Amendment.” Id. at 106.. In defining the “deliberate indifference,” the Supreme Court has held that “a prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.” Id. at 837. For example, injecting a prisoner with penicillin despite knowing that the prisoner was allergic to such medicine and then failing to treat the allergic reaction would constitute deliberate indifference. See Estelle, 429 U.S. at 104 n.10, citing Thomas v. Pate, 493 F.2d 151, 158 (7th Cir. 1974).

In the present case, plaintiff has not alleged that Nurse Martin was the deliberately indifferent to his serious medical needs. Rather, plaintiff’s amended complaint states: “Nurse Shelly [Martin] is the respondent who gave petitioner allergic Medication that almost resulted in Petitioner’s death.” Despite the liberal standards for pleading under Rule 8(a), plaintiff’s allegation is insufficient to suggest that Nurse Martin had the requisite knowledge to be deliberately indifferent to plaintiff’s medical needs. See, e.g., Grove v. Prison Health Servs., Inc., Civ. A. No. 90-4955, 1990 WL 167936, *2 (E.D. Pa. Oct. 29, 1990) (dismissing claim for failure to plead actions constituting deliberate indifference). Moreover, the it is indistinguishable from an allegation claiming professional negligence, which is not actionable under the Eighth Amendment. See Farmer, 511 U.S. at 835; Estelle, 429 U.S. at 106 (“Thus, a complaint that a

physician has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment.”).

G. Supervisory Defendants

Plaintiff has adequately alleged that the supervisory defendants Vaughn and O’Hara were aware of and acquiesced in the unconstitutional behavior of Officer Jamison. A plaintiff may establish section 1983 supervisory liability by showing that a supervisor tolerated past or ongoing misbehavior that violates the Constitution. Baker v. Monroe Twp., 50 F.3d 1186, 1191 n.3 (3d Cir. 1995); see also Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988) (“A defendant in a civil rights action must have personal involvement in the alleged wrongs; liability cannot be predicated solely on the operation of *respondeat superior* Personal involvement can be shown through allegations of personal direction or of actual knowledge and acquiescence”).

Here, plaintiff claims that he mailed four letters to Vaughn over the course of two years, the final one dated June 6, 1999, describing how Officer Jamison had sexually assaulted him and continued to harass him and attempted to incite other inmates against him. Plaintiff also claims that he sent a copy of the Vaughn letter to O’Hara at the Pennsylvania Department of Corrections and that neither supervisor did anything to investigate the ongoing incidents or discipline Jamison.¹¹ Such inaction violates the Eighth Amendment. See Smith v. Mensinger, 293 F.3d 641, 651 (3d. Cir. 2002) (“The restriction on cruel and unusual punishment contained in the Eighth

¹¹ Plaintiff also asserts that he mailed a letter, dated January 23, 1998, to Robert Bitner at the Pennsylvania Department of Corrections, describing how his grievances against Officer Jamison were not properly being addressed by prison officials.

Amendment reaches non-intervention just as readily as it reaches the more demonstrable brutality of those who unjustifiably and excessively employ fists, boots or clubs.”). I will not dismiss the claims against Vaughn and O’Hara.

4. Defendant's motion for a more definite statement with regard to plaintiff's claim against Kelley is DENIED as moot.

THOMAS N. O'NEILL, JR., J.