

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PHILIP FRAZIER	:	CIVIL ACTION
<i>pro se plaintiff</i>	:	
vs.	:	
	:	
MARY ANN CLARK; CAPT. CAISON; LT. KNAUER; and SGT. COX	:	
defendants.	:	No. 94-7426

ORDER AND MEMORANDUM

ORDER

AND NOW, to wit, this 27th day of August, 1998 after a non-jury trial held February 2, 1998 through February 6, 1998 and April 23, 1998, for the reasons set forth in the attached memorandum,

IT IS ORDERED that:

1. The Court **FINDS IN FAVOR** of defendants Mary Ann Clark, Captain Creighton Caison, Lieutenant Raymond Knauer, and Sergeant Robert Cox, and against plaintiff, Philip Frazier, on the claim that defendants violated plaintiff's constitutional right of access to the courts;

2. The Court **FINDS IN FAVOR** of defendants Mary Ann Clark, Lieutenant Raymond Knauer, and Sergeant Robert Cox, and against plaintiff, Philip Frazier, on the claim that defendants subjected plaintiff to cruel and unusual punishment in violation of the Eighth Amendment of the Constitution.

3. The Court **FINDS** that defendants, Mary Ann Clark, Captain Creighton Caison, Lieutenant Raymond Knauer, and Sergeant Robert Cox, are entitled to qualified immunity.

4. Judgment is **ENTERED** in favor of defendants Mary Ann Clark, Creighton Caison, Raymond Knauer, and Robert Cox, and against plaintiff, Philip Frazier.

MEMORANDUM

I. Background

Plaintiff initiated this litigation *pro se*, in December, 1994, asserting claims under 42 U.S.C. § 1983 against Joseph D. Lehman, who was then Commissioner of the Pennsylvania Department of Corrections. In April 1995, the Court granted Commissioner Lehman's Motion to Dismiss the Complaint without prejudice to plaintiff's right to file an amended complaint, which he did on June 6, 1995. A number of Pennsylvania Department of Corrections employees were named as defendants in the Amended Complaint.

In August, 1996, upon motion of defendants, the Court dismissed the action as to some defendants and dismissed one of plaintiff's claims, his claim for deprivation of personal property. On August 12, 1997, the Court, *inter alia*, granted defendants' Motion for Summary Judgment with respect to plaintiff's claim that his confinement in administrative custody violated due process.

Remaining in the case for trial were plaintiff's claim that defendants Mary Ann Clark, Lieutenant Raymond Knauer, and Sergeant Robert Cox subjected plaintiff to cruel and unusual punishment by depriving him of basic toiletries, namely a toothbrush, toothpaste, comb, and washcloth, and plaintiff's claim that defendant Captain Creighton Caison and defendants Cox, Knauer, and Clark violated his constitutional right of access to the courts by losing a box of his legal materials and by refusing to grant him access to law books while he was in administrative custody.

The Court has jurisdiction under 28 U.S.C. § 1331. The case was tried non-jury from February 2, 1998 to February 6, 1998 and on April 23, 1998. Based on the following findings of facts and conclusions of law, the Court finds in favor of all defendants on all of plaintiff's claims.

II. Findings of Fact

A. Parties

1. At all times material to this case, plaintiff was a prisoner at State Correctional Institution (SCI)-Graterford. Plaintiff was transferred to SCI-Graterford from SCI-Huntingdon on April 6, 1994. Until June 20, 1994, plaintiff was housed in the M Block, a restricted housing unit (“RHU”) at SCI-Graterford.

2. At all times material to this case, defendants were employees of the Pennsylvania Department of Corrections assigned to SCI-Graterford. Ms. Clark was the Inmate Grievance Coordinator, Captain Caison was the Administrative Officer and sat on the Program Review Committee in April, May, and June of 1994, Lieutenant Knauer was the Supervising Correctional Officer in M Block, and Sergeant Cox was the Property Officer.

B. Access to the Courts

1. Loss of Legal Papers¹

3. When plaintiff was transferred from SCI-Huntingdon, his belongings, including a box of legal materials, were delivered to the Property Room at SCI-Graterford.

4. While plaintiff was in the RHU at SCI-Graterford, his property remained in the Property Room, except for the box of legal materials at issue in this suit, and another box of legal materials which was delivered to plaintiff on June 8, 1994. Tr. of Feb. 4, 1998 at 197.

5. Sergeant Cox was the Supervisor in the Property Room in 1994. Officer Calvin Hardnett was responsible for handling requests for personal property from prisoners housed in M Block. Tr.

¹ For continuity, there are some references to plaintiff’s toiletries claim in this part of the Memorandum.

of Feb. 4, 1998 at 181. Beyond reviewing request slips from M Block when they came to the Property Room and giving them to Officer Hardnett, Sergeant Cox was not involved in delivering personal property to M Block, Tr. of Feb. 4, 1998 at 192, although he investigated the delivery of plaintiff's box of legal materials when the box was reported missing.

6. In 1994, the Property Room procedure was as follows: when a request slip for stored property was received from a prisoner, a three-copy personal property inventory form was completed. One copy remained in the Property Room, and two copies were delivered with the property. The inmate was required to sign the form, and was given one signed copy with his property; the second signed copy was returned to the Property Room. Tr. of Feb. 4, 1998 at 182.

7. For property requests from M Block, Officer Hardnett located the property and completed a personal property inventory form, or supervised an inmate clerk in doing so. Tr. of Feb. 4, 1998 at 181. Property in boxes was delivered to M Block by van by another officer from the Property Room. Id. Boxes of property were then distributed to inmates by cell block officers. Id. at 220.

8. A box of plaintiff's legal papers was delivered to M Block on April 20, 1994 by the Property Room. Officer Hardnett signed the personal property inventory form on April 20, 1994. Tr. of Feb. 5, 1998 at 7. The personal property inventory form discloses that box was delivered to Robin McCray, another inmate who was housed in M Block about six cells from plaintiff's cell. Tr. of Feb. 5, 1998 at 27.

9. At trial, Sergeant Cox could not explain why the box of plaintiff's materials was delivered to M Block on April 20, 1994, since there was no evidence of a request by plaintiff for his legal material before that date. Tr. of Feb. 4, 1998 at 218.

10. At trial, Officer Hardnett could not explain why he arranged for delivery of a box of legal

materials to be delivered to plaintiff on April 20, 1994, since there was no record of a request for that box. Tr. of Feb. 5, 1998 at 36-37.

11. According to Mr. McCray, when the box arrived, he signed the personal property inventory form without looking at the box. Tr. of Apr. 23, 1998 at 20. He then immediately realized that the box did not belong to him and returned it to the officer, with the two sheets of the personal property inventory form still attached. Tr. of Apr. 23, 1998 at 22. Mr. McCray testified that he told plaintiff, on the same day, that plaintiff's box had been misdelivered to him. Tr. of Apr. 23, 1998 at 20, 33.

12. In preparation for trial, Mr. McCray sent a letter to counsel for defendants, John Shellenberger, in which he stated that the above events occurred on May 2, 1994. Mr. McCray testified that the events occurred in April, 1994 and that he was mistaken as to the date of the delivery in the letter. Cf. Tr. of Apr. 23, 1998 at 30 with Tr. of Apr. 23, 1998 at 38-40. The personal property inventory form is dated April 20, 1994.

13. The Court finds that the box of plaintiff's legal materials was delivered to Mr. McCray on April 20, 1994.

14. On April 26, 1994, plaintiff sent a request slip to Sergeant Cox, requesting, among other things, toiletries and personal legal papers. See Exh. P-8; Tr. of Feb. 4, 1998 at 218.

15. On May 2, 1994, plaintiff signed an inventory slip for a box of legal papers. The inventory slip had previously been dated April 20, 1994 and both the date and a signature on the slip, identified as that of Robin McCray, had been crossed out. Exh. P-1.

16. Plaintiff testified that he received two packages of legal papers on May 2, 1994, not a box of legal materials, but that he was desperate for the legal materials, so he signed the personal

property inventory slip, notwithstanding the fact that it erroneously described what was delivered as a box of legal materials. Tr. of Feb. 2, 1998 at 86.

17. The aforementioned personal property inventory form was marked "Done 5/2/94" by the inmate clerk who worked in the Property Room. Tr. of Feb. 5, 1998 at 7. Other records disclose that on May 2, 1994, Robin McCray also received a box of legal material. Tr. of Feb. 5, 1998 at 36. Exh. P-54.

18. On May 3, 1994, plaintiff filed a request slip with a prison counselor stating that he received a "box" of legal papers on May 2, 1994, but not all of his legal papers were in the box, and that some of his legal papers had been misdelivered to another inmate. He asked for an explanation. Exh. P-9.

19. On June 2, 1994, plaintiff filed a grievance, number G-25980, with Ms. Clark regarding the loss of his legal papers, access to law books, and toiletries. Exh. P-11. In the grievance, plaintiff stated that he had not received toothpaste, toothbrush or wash cloth, but he did not mention a comb. Tr. of Feb. 4, 1998 at 150.

20. In 1994, all inmate grievances were directed to Ms. Clark. She personally investigated all grievances or asked other staff members to investigate, and then Ms. Clark responded to the inmate. Tr. of Feb. 5, 1998 at 47. Def. Exh. 29.

21. After Ms. Clark received plaintiff's grievance, she forwarded copies to Sergeant Cox and Lieutenant Knauer and asked for a response. Tr. of Feb. 5, 1998 at 51.

22. On June 9, 1994, Sergeant Cox responded to Ms. Clark regarding plaintiff's grievance. Relying on the computer records of deliveries, he told her, among other things, that legal material was sent to plaintiff on May 5, 1994, and that he returned the material because it was not what he

needed. Sergeant Cox testified that the date differed from that on the inventory slip because of a delay in entering deliveries in the computer. Exh. D-19; Tr. of Feb. 4, 1998 at 209.

23. On June 21, 1994, Lieutenant Knauer responded to Ms. Clark regarding plaintiff's grievance. Lieutenant Knauer's response only addressed plaintiff's complaint about lack of toiletries. It did not mention the lost legal papers. Exh. D-23.

24. Ms. Clark sent plaintiff received two responses to his grievance, a response dated July 6, 1994, and a response dated July 8, 1994. Exh. D-24, Exh. D-25. Tr. of Feb. 4, 1998 at 151. She did so because she asked two different staff members, Sergeant Cox and Lieutenant Knauer, to investigate plaintiff's grievance, and received their responses at different times. Tr. of Feb. 5, 1998 at 54-55.

25. On July 8, 1994, plaintiff wrote a request slip to Ms. Clark, in response to her responses to his grievance. Tr. of Feb. 4, 1998 at 152; Exh. D-26. In that request, plaintiff only addressed the issue of his legal papers. He did not mention toiletries.

26. Plaintiff claims to have filed another grievance with Ms. Clark on July 12, 1994. Exh. P-12. Defendant Clark has no record of receiving the July 12, 1994 grievance. Tr. of Feb. 5, 1998 at 56. However, on July 12, 1994, in response to plaintiff's request dated July 8, 1994, Ms. Clark sent a note to Sergeant Cox asking him to give plaintiff his legal materials. Exh. D-27.

27. Officer Hardnett responded, with a written response on Ms. Clark's note, that plaintiff's footlocker had a lock on it, and he could not open it. On the same note, there is a notation from Sergeant Cox that plaintiff received all of his property on July 20, 1994. Exh. D-27, Tr. of Feb. 5, 1998 at 58.

28. After receiving these replies from Officer Hardnett and Sergeant Cox, Ms. Clark did

nothing further about plaintiff's grievance because she believed that he had received all of his property on July 20, 1994. Tr. of Feb. 5, 1998 at 58.

29. On July 20, 1994, plaintiff was released from administrative custody and received all of his personal property that remained in the Property Room.

30. On September 13, 1994, plaintiff filed a request slip with Ms. Clark requesting an interview about his grievance. Exh. P-13; Tr. of Feb. 2, 1998 at 74; Tr. of Feb. 5, 1998 at 66.

31. On September 20, 1994, plaintiff met with Ms. Clark and Captain Caison to discuss his lost legal papers. Tr. of Feb. 2, 1998 at 74, Tr. of Feb. 5, 1998 at 67.

32. In preparation for the meeting, Captain Caison telephoned the Property Room and M Block. Captain Caison testified that he learned that the property had been sent to plaintiff in M Block but had been delivered to the wrong inmate. He also learned that none of plaintiff's property remained in the Property Room. Captain Caison then called M Block and instructed the corrections officers stationed there to search the storage room and M Block for plaintiff's legal material. He was told that plaintiff's legal materials were not in M Block. Tr. of Feb. 5, 1998 at 84-85.

33. It was Captain Caison's understanding that corrections officers had searched the cell of the inmate to whom plaintiff's papers had been misdelivered, and that those officers could not find the papers. Tr. of Feb. 5, 1998 at 100. Captain Caison did not personally interview the officers who were on duty on M Block on April 20, 1994, when plaintiff's papers were misdelivered. He relied on a report from Lieutenant Knauer that the missing papers could not be found on M Block. Tr. of Feb. 5, 1998 at 108-109.

34. Lieutenant Knauer testified that on April 21, 1994, he was told that there was "a mistake made in the distribution of one box of property." Tr. of April 23, 1998 at 111, 118. It was his

testimony that he then went to the Property Room, saw plaintiff's box and the inventory slip and told Sergeant Cox to deliver it to plaintiff. Id. at 111-12, 118.

35. Lieutenant Knauer testified that Captain Caison never instructed him to search for plaintiff's box, Tr. of Apr. 23, 1998 at 122, and that he never undertook such a search because he did not believe that plaintiff's box of legal materials was missing. Id. at 121.

36. Mr. McCray testified that no one searched his cell for the missing box of legal materials in his presence. Tr. of Apr. 23, 1998 at 34. He also testified that no prison official had spoken to him about the missing papers after April 20, 1994. Tr. of Apr. 23, 1998 at 47.

37. Plaintiff met with Ms. Clark and Capt. Caison on September 20, 1994. During that meeting, Captain Caison suggested to plaintiff that he should contact his attorney about duplicating the legal papers, and told plaintiff that SCI-Graterford would pay the cost of copying the papers. Tr. of Feb. 5, 1998 at 87. Captain Caison testified that plaintiff refused to consider this offer. Tr. of Feb. 5, 1998 at 88.

38. Shortly after the meeting, Ms. Clark responded to plaintiff with respect to his grievance. Exh. D-28. She stated that Captain Caison suggested to plaintiff that he contact his attorney to "reconstruct whatever he is missing," and that Captain Caison had denied plaintiff's request that the prison accept responsibility for the missing papers.

39. Plaintiff testified that he attempted to contact his attorney to request copies of his legal papers but did not receive any response. Tr. of Feb. 2, 1998 at 133.

40. Captain Caison sat on the Program Review Committee ("PRC") which reviewed plaintiff every thirty days while he was housed in the RHU. Of relevance to this case is that the PRC reviewed plaintiff on May 11, 1994. The report of that review does not mention the lost legal papers

or lack of toiletries. Exh. D-12. Captain Caison testified that at the PRC meeting on June 8, 1994, plaintiff complained about not being provided with toiletries, and about not receiving legal materials, and that is noted in the report of the PRC review. Tr. of Feb. 5, 1998 at 92-93, 127-28, Exh. P-54. Lieutenant Knauer, who attended the PRC meetings, responded at the June 8, 1994 meeting that plaintiff had been issued toiletries. Tr. of Feb. 5, 1998 at 96.

41. On June 8, 1994, the PRC asked the Property Room to deliver a box of legal materials to plaintiff. That box was delivered and is not at issue in this case. Tr. of Feb. 4, 1998 at 196-200.

42. The report of the PRC review of plaintiff on July 6, 1994 does not mention the missing records. Exh. P-56.

43. At trial, Captain Caison conceded that plaintiff's box of legal materials had been given to the wrong inmate and was lost. Tr. of Feb. 5, 1998 at 97-98.

44. The Court finds that the box of plaintiff's legal materials at issue was given to the wrong inmate and was lost.

2. The Items In the Box of Legal Materials

45. Plaintiff testified that the missing box of legal materials contained all of his correspondence with his attorneys; reports from private investigators, doctors and other experts; statements from potential witnesses; his personal notes from every proceeding involved in his case, and a "cross-index" which allowed him to quickly find testimony about a person or subject. Tr. of Feb. 2, 1998 at 114-149; Tr. of Feb. 3, 1998 at 39; Tr. of Feb. 5 at 146.

46. At his deposition in 1996, when asked what materials were missing, plaintiff did not mention the extensive list of statements from witnesses and some other materials about which he testified at trial. Tr. of Feb. 4, 1998 at 95-96.

3. No Harm Resulted From the Loss of the Box of Legal Materials

a. Plaintiff Received Copies of All the Material Lost in 1994

47. Prior to trial, Mr. Shellenberger contacted Louis Priluker, the attorney who had represented plaintiff during post-conviction proceedings. From Mr. Priluker, Mr. Shellenberger retrieved a significant number of documents relating to plaintiff's criminal and civil litigation. At trial, plaintiff identified many of these documents as having been in the box lost in 1994.

48. As a result of Mr. Shellenberger's efforts, at trial, plaintiff obtained copies, from Mr. Priluker's files, of much of the legal material which was in the missing box.

49. At trial, plaintiff stated that he had submitted many of the documents in the missing box in support of a 42 U.S.C. § 1983 action, Frazier v. City of Philadelphia et al., Civil Action No. 85-6383. Tr. of Feb. 3, 1998 at 25. This action was dismissed because the court concluded plaintiff was making claims more appropriate to a habeas motion, rather than a claim under § 1983. Tr. of Feb. 4, 1998 at 78.

50. Plaintiff also testified that he filed documents, copies of which were in the missing box, in support of a habeas corpus action, Frazier v. Lehman, Civil Action No. 90-7084. Tr. of Feb. 3, 1998 at 34. The habeas action was dismissed for failure to exhaust state remedies. Tr. of Feb. 4, 1998 at 81.

51. The Court located the records of those cases and provided plaintiff with copies of many documents which plaintiff claimed were lost in 1994.

52. In response to a question from the Court, plaintiff agreed that, between Mr. Priluker's files and the court records of plaintiff's earlier federal litigation, the § 1983 case and the habeas action, plaintiff received copies of all the documents in the missing box, with one exception.

Plaintiff claims that Louis Szojka, a police chemist, testified at a suppression hearing before plaintiff's criminal trial in 1983, and that plaintiff's handwritten notes of that testimony were in the missing box. Tr. of Apr. 23, 1998 at 145, 153. No testimony from the police chemist appears in the transcript of that hearing., Tr. of Feb. 4, 1998 at 123, and plaintiff's counsel at that time cannot recall any such testimony. Tr. of Apr. 23, 1998 at 134-35.

53. There is no credible evidence that Louis Szojka testified at the suppression hearing.

54. In 1997, plaintiff received copies of some of the documents that had been in the missing box from an attorney who had briefly represented him. Tr. of Feb. 4, 1998 at 106.

55. The Court finds that, as of the time of trial, plaintiff had recovered copies of all the documents that were in the box lost in 1994.

b. Litigation in which Plaintiff Used the Material Lost in 1994

56. In the years before the box of legal material was lost, plaintiff filed a substantial number of motions and suits regarding his conviction and incarceration.

57. Plaintiff filed post-trial motions, pro se, in the Court of Common Pleas in March 1985, including his claims about Louis Szojka's testimony. Exh. D-35. Plaintiff filed a petition for ineffective assistance of counsel in the Court of Common Pleas in April 1986. Exh. D-36; Tr. of Feb. 3, 1998 at 82-87. In these actions, plaintiff used material that was in the box lost in 1994.

58. The Court of Common Pleas held an evidentiary hearing on plaintiff's claim of ineffective assistance of counsel in 1987 and denied plaintiff's claim. At that hearing, the Court heard testimony from a number of people whose correspondence and reports to plaintiff were, according to plaintiff, in the box of missing material. Tr. of Feb. 4, 1998 at 64-65.

59. The Court of Common Pleas held hearings on plaintiff's post-conviction petitions in

1987, seven years before the box of legal materials was lost. Tr. of Feb. 3, 1998 at 44.

60. Plaintiff filed a habeas motion in federal court in 1990, four years before the box of legal materials was lost. Tr. of Feb. 3, 1998 at 34.

61. Plaintiff also filed a Post Conviction Relief Act claim in the Court of Common Pleas on August 7, 1995. Tr. of Feb. 4, 1998 at 89. That action is still pending. *Id.* at 91-92.

4. Access to Law Books While in Administrative Custody

62. With the exception of the grievance which plaintiff filed with Ms. Clark, plaintiff presented no evidence on his claim that he was denied access to law books while in administrative custody.

C. Eighth Amendment Claim of Cruel and Unusual Punishment/Deprivation of Toiletries

63. Plaintiff testified that he was not given any toiletries when he arrived at SCI-Graterford from SCI-Huntingdon, and that, although he asked prison staff members, including Lieutenant Knauer, for toiletries every day, he was not provided with a toothbrush, toothpaste, washcloth, soap or comb. Tr. of Feb. 2, 1998 at 21; Tr. of Feb. 4, 1998 at 155.

64. In 1994, all prisoners entering SCI-Graterford for placement in the general population received a “basic set up” package, which included a comb, toothbrush, toothpaste, razor, envelopes, soap and a cup. Tr. of Feb. 5, 1998 at 30. However, prisoners housed in the RHU were not given a “basic set-up” package, nor were they allowed to use their own personal toiletries. Tr. of Feb. 5, 1998 at 30-31; Tr. of Apr. 23, 1998 at 72.

65. In 1994, all prisoners housed in the RHU were given a “basic issue” bag by the corrections officers on the cell block. Tr. of Feb. 5, 1998 at 30-31. The bag included, among other

things, a wash cloth, a comb, toothbrush and toothpaste. There was, among other things, a bar of soap in each cell in the RHU.

66. In 1994, an “adjustment record” was kept of the activities, twenty-four hours a day, of every inmate in RHU. Tr. of Apr. 23, 1998 at 68. Corrections officers on each eight hour shift noted what occurred. Thus, each prisoner in the RHU had three notations per day on his adjustment record. Tr. of Apr. 23, 1998 at 68.

67. Plaintiff’s adjustment record discloses that he was given a “basic issue” bag on April 7, 1994, when he was received in M Block. Exh. D-20, Tr. of Apr. 23, 1998 at 75.

68. Plaintiff did not raise the issue of toiletries at his meeting with the PRC in May, 1994. Exh. D-12.

69. When plaintiff complained to the PRC on June 8, 1994 that he had not received toiletries, the housing lieutenant, Lieutenant Knauer, who was present at the PRC meeting, said that plaintiff had received them. Tr. of Feb. 5, 1998 at 93.

70. Lieutenant Knauer testified at trial that if an inmate in RHU said he did not have a toothbrush or a washcloth, it was the practice of corrections officers to search his cell, and if no toothbrush or washcloth was found, the inmate would be issued one. Tr. of Apr. 23, 1998 at 70.

71. On June 2, 1994, plaintiff filed a grievance, number G-25980, with Ms. Clark regarding his legal papers, access to law books, and toiletries. Exh. P-11. In the grievance, plaintiff stated that he had not received toothpaste, toothbrush or wash cloth, but he did not mention a comb. Tr. of Feb. 4, 1998 at 150.

72. On June 21, 1994, Lieutenant Knauer responded to Ms. Clark regarding plaintiff’s grievance. Lieutenant Knauer stated that plaintiff had received all the toiletries to which he was

entitled. Exh. D-23.

73. Because plaintiff was not entitled to toiletries from his personal belongings, Sergeant Cox did not respond to the issue of toiletries in plaintiff's grievance. Tr. of Feb. 4, 1998 at 204-5.

74. On June 4, 1994, plaintiff received a washcloth. Defense Exh. 4; Tr. of Apr. 23, 1998 at 80. Plaintiff testified that this was the first washcloth that he received. Plaintiff also testified that "within a month" after he arrived at Graterford, he had received toothpaste. Tr. of Feb. 2, 1998 at 107-108.

75. The report of the PRC review on July 6, 1994 does not mention the failure to provide toiletries.

76. Lieutenant Knauer testified at trial that since plaintiff received a "basic set up," the washcloth was a replacement. It was not unusual for a washcloth to wear out within two months. It was a practice of the corrections officers at SCI-Graterford to request that the old washcloth be returned for an inmate to be issued a new one. Tr. of Apr. 23, 1998 at 80-81.

77. Plaintiff is, by his own admission, "nearly bald," although he had more hair in 1994 when the events at issue occurred, than he did at trial. Tr. of Feb. 2, 1998 at 104.

III. Conclusions of Law

A. Standard for Claims Under 42 U.S.C. § 1983

Plaintiff brings suit under 42 U.S.C. § 1983. To establish a claim under § 1983, plaintiff must prove that defendants acted under color of state law in a manner which deprived him of a constitutional right. See Carter v. City of Philadelphia, 989 F.2d 117, 119 (3d Cir. 1993). The Court concludes that all defendants acted under color of state law in this case.

B. Access to the Courts

The right of access to the courts encompasses not just access to the court, but “meaningful access.” To establish a violation of that right, a plaintiff must show an actual injury, namely that some action by prison officials hindered the prisoner’s ability to pursue a legitimate legal claim. See Lewis v. Casey, –U.S.–, 116 S.Ct. 2174, 2180 (1996) quoting Bounds v. Smith, 430 U.S. 817 (1977).

The text of § 1983 does not include a state of mind requirement. Parratt v. Taylor, 451 U.S. 527, 534-35 (1981). Rather, the state of mind requirement necessary to obtain relief under § 1983 is drawn from the alleged constitutional violation underlying the § 1983 claim. Pink v. Lester, 52 F.3d 73, 74 (4th Cir. 1995). Because the right of access to the courts is drawn from many constitutional provisions, courts have differed on the defendant’s state of mind that a plaintiff must establish to succeed. See, e.g., Crawford-El v. Britton, 951 F.2d 1314, 1318 (D.C. Cir. 1991) overruled on other grounds 118 S.Ct. 1584 (1998) (plaintiff must show intentional interference with right of access to the courts); Johnson v. Miller, 925 F.Supp. 334 (E.D. Pa. 1996) (at most, plaintiff must show deliberate indifference by defendant).

In ruling on defendants’ Motion for Summary Judgment in this case, the Court held that, with respect to the access to the courts claim, and in addition to showing an actual injury, plaintiff needed to establish deliberate indifference by a defendant. Frazier v. Bitner, No. 94-7426, slip op. at 23-24 (E.D. Pa. August 12, 1997). The Court remains of that view and rules that to be successful in his claim that defendants violated his constitutional right of access to the courts, plaintiff must establish that defendants acted with “deliberate indifference,” and that he sustained an actual injury as a result. The Court uses the term “deliberate indifference,” as has the Third Circuit in the context of § 1983 suits, as synonymous with “reckless indifference” and “reckless disregard.” See Johnson, 925

F.Supp. at 338 n.3 citing inter alia, Shaw by Strain v. Stackhouse, 920 F.2d 1135, 1145 (3d Cir. 1990); Williams v. Borough of West Chester, 891 F.2d 458, 464 n. 10 (3d Cir. 1989).

1. Loss of Box of Legal Materials

a. Mary Ann Clark

The Court concludes that Mary Ann Clark did not act with deliberate indifference towards plaintiff with regard to his lost legal materials. Ms. Clark asked other staff members to investigate plaintiff's claim, she arranged a meeting with plaintiff and Captain Caison to resolve the issue, and after that meeting, when plaintiff had refused to accept Captain Caison's suggestion for resolution, she again asked Sergeant Cox to search for plaintiff's belongings. Ms. Clark only ceased to investigate plaintiff's claim when she was told that plaintiff had received all of his property from the Property Room.

b. Captain Creighton Caison

The Court concludes that Captain Creighton Caison did not act with deliberate indifference towards plaintiff with regard to his lost legal materials. Captain Caison did not know of the lost materials until September 1994, when Ms. Clark arranged a meeting with plaintiff. Prior to the meeting, Captain Caison spoke to Lieutenant Knauer and the Property Room and asked prison staff members in M Block and the Property Room to search for the materials, and Captain Caison was told that those searches occurred and the materials were not found. In addition, Captain Caison offered to pay the expense of copying legal documents if plaintiff obtained them from his attorney. Plaintiff rejected that offer.

c. Sergeant Robert Cox

The Court concludes that Sergeant Robert Cox did not act with deliberate indifference

towards plaintiff with regard to his lost legal materials. With the exception of initially receiving plaintiff's request, Sergeant Cox was not involved in the mis-delivery of plaintiff's box. He did not locate the box in the Property Room, nor did he transport the box to M Block. When Sergeant Cox was made aware of the situation by Ms. Clark, who was investigating plaintiff's grievance, he responded promptly and fully with the information in the Property Room records. He also looked into the matter a second time at Ms. Clark's request.

d. Lieutenant Raymond Knauer

The Court concludes that Lieutenant Raymond Knauer acted with deliberate indifference towards plaintiff with regard to the loss of his legal papers. The Court finds that Lieutenant Knauer's detailed testimony about his investigation into the misdelivery of the box on April 21, 1994, which contradicts the testimony of the other defense witnesses, is not credible. Moreover, under Lieutenant Knauer's testimony, he found the missing box of legal materials in the Property Room on April 21, 1994 and directed that it be delivered to plaintiff. Assuming that to be true, he was advised thereafter, both by Ms. Clark, when she sent him a copy of plaintiff's grievance of June 2, 1994, and at the June, 1994 PRC review of plaintiff, that the box was still missing, long after it was supposedly delivered to plaintiff at Lieutenant Knauer's direction on April 21, 1994. And, when Lieutenant Knauer was asked for his comments on plaintiff's grievance, he responded to Ms. Clark with respect to the toiletries claim, but said absolutely nothing about the missing box. Likewise, when he was asked by Captain Caison on September 20, 1994 whether M Block, including the storage area, had been searched for the missing records, he replied in the affirmative. Thus, regardless of what occurred on April 21, 1994, Lieutenant Knauer was informed that the box of legal materials was still missing long thereafter and he did nothing about it. More specifically, he was in a position to

investigate the loss of the box of legal materials and respond to plaintiff's grievance as requested, but failed to do so. Nevertheless, as set forth *infra*, because plaintiff suffered no actual injury as a result of the loss of the box of legal materials, Lt. Knauer did not violate plaintiff's constitutional right of access to the courts.

e. Plaintiff Failed to Prove That He Suffered Actual Injury From the Loss of the Legal Materials

In ruling on defendants' Motion for Summary Judgment, the Court wrote that, with respect to the access to the courts claim, although it was a close question, plaintiff had set forth "the bare minimum necessary to create a genuine issue as to whether plaintiff suffered injury." Frazier, slip op. at 28-29. The Court encouraged plaintiff to present any additional evidence available on this issue at trial. Id. at 29. No such evidence was presented.

Most important, with credit to the diligence of Mr. Shellenberger, plaintiff is now in possession of copies of all of the legal materials that were in the missing box. Thus any actual injury would have had to occur between the loss of the papers in 1994 and trial, which concluded in April, 1998. Prior to the loss of the papers, plaintiff filed a number of suits and motions in state and federal court, relying on those documents as evidence. After the box was lost, plaintiff filed an action under the Post Conviction Relief Act. That action is still pending, and plaintiff now has the ability to present copies of the missing documents as evidence in that litigation.² Therefore, the Court concludes that plaintiff has presented no evidence of actual injury as a result of the loss of the box of legal materials.

² From plaintiff's testimony, it is apparent that he was quite concerned about the loss of his handwritten notes. Those notes were recovered, but it is not clear how they may be used in court proceedings under federal and state rules of evidence.

2. Access to Law Books While in Administrative Custody

With the exception of including the issue in the grievance which plaintiff sent to Ms. Clark, plaintiff failed to present any evidence on his claim that he was denied access to law books while in the RHU at SCI-Graterford. Therefore, the Court concludes that plaintiff has not proven that this denial occurred, or that he suffered any harm from the alleged denial, or that defendants acted with deliberate indifference with regard to the alleged denial.

C. Eighth Amendment Claim/Withholding of Basic Toiletries

The Eighth Amendment prohibition against “cruel and unusual” punishment includes a prohibition of depriving prisoners of “the minimal civilized measures of life’s necessities.” Rhodes v. Chapman, 452 U.S. 337, 347 (1981). Among these minimal necessities are the items necessary for basic hygiene, including a toothbrush, toothpaste, a comb, and a washcloth. See Carver v. Bunch, 946 F.2d 451, 452 (6th Cir. 1991); McCoy v. Chesney, 1997 WL 38163, (E.D. Pa. July 2, 1997); Rossiter v. Andrews, No. 96-6257, 1997 WL 137195 (E.D. Pa. March 15, 1996).

To prove a claim of cruel and unusual punishment, plaintiff must meet both prongs of an objective and subjective test. Young v. Quinlan, 960 F.2d 351, 359-60 (3d Cir. 1992). He must establish, objectively, that the deprivation was sufficiently serious to deprive him of the “minimal civilized measure of life’s necessities,” and that prison officials acted with deliberate indifference. Id. at 361. In the context of the Eighth Amendment, “[a] prison official is deliberately indifferent when he knows or should have known of a sufficiently serious danger to an inmate.” Id. at 361.

The Court concludes under all the evidence that plaintiff has failed to establish that he was ever deprived of basic toiletries. Accordingly, the Court does not reach the issue of whether defendants were deliberately indifferent to plaintiff with regard to his Eighth Amendment claim.

The records at SCI-Graterford disclose that plaintiff received a “basic issue” bag including toiletries on April 7, 1994. That is denied by plaintiff. Although plaintiff met with the PRC on May 11, 1994, and filed a complaint with a prison counselor about his legal papers on May 3, 1994, there is no record of plaintiff stating that he had been denied toiletries until he filed his grievance with Ms. Clark on June 2, 1994, nearly two months after he arrived at Graterford. And plaintiff has acknowledged that by June 1994 he had both a washcloth and toothpaste. For these reasons, the Court does not find plaintiff’s testimony credible on the issue of whether he was deprived of basic toiletries, and concludes that plaintiff was not deprived of the “the minimal civilized measures of life’s necessities.”

With regard to this claim, the Court also notes that Sergeant Cox was not involved, in any way, with issuing toiletries to plaintiff because prisoners housed in RHU’s are not allowed to have personal toiletries. They may only use the toiletries issued by officers in the RHU.

D. Qualified Immunity

Defendants have argued that qualified immunity provides them with a defense against this action. Government officials are shielded from liability if their conduct does not violate “clearly established statutory or constitutional rights” of which a reasonable public official would be aware. Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982); see, also, Crawford-El, 118 U.S. at 1592; Anderson v. Creighton, 483 U.S. 635 (1987).

The Court concludes that defendants, Mary Ann Clark, Capt. Creighton Caison, and Sergeant Robert Cox, did not violate any clearly established statutory or constitutional right of which a reasonable public official would be aware. Therefore, those defendants are shielded from liability in this case by qualified immunity. With respect to Lieutenant Raymond Knauer, although the Court

found that his conduct amounted to deliberate indifference, the deliberate indifference standard was not “well-established” in 1994. To the contrary, as set forth in this Court’s Opinion on defendant’s Motion for Summary Judgment, other courts have held that an intentional deprivation is required to establish such a claim and that was the situation in 1994. Frazier, slip op. at 21-27. Thus, notwithstanding Lieutenant Knauer’s deliberate indifference with respect to the missing box of legal materials, and noting that plaintiff has failed to establish any actual injury as a result of the loss of legal materials, the Court concludes that, as with the other defendants, Lieutenant Knauer is entitled to qualified immunity.

IV. Conclusion

Plaintiff has failed to establish the elements necessary to succeed on his claims that defendants violated his right of access to the courts and that defendants subjected him to cruel and unusual punishment in violation of the Eighth Amendment. In addition, all defendants are entitled to qualified immunity. Therefore, judgment is entered in favor of all defendants and against plaintiff on all of plaintiff’s claims.

BY THE COURT:

JAN E. DUBOIS, J.