IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JEROME HAMILTON, Plaintiff, v. FAITH LEAVY, PAMELA FAULKNER, WILLIAM QUEENER, FRANCES LEWIS, GEORGE M. DIXON, JACK W. STEPHENSON, DEBORAH L. GRAIG, JOANNE SMITH, DENNIS LOEBE, ELDORA C. TILLERY, FRANCIS COCKROFT, JERRY BORGA, RICHARD SHOCKLEY, Defendants.	)	Civil Action No. 94-336-KAJ

MEMORANDUM ORDER

I. Introduction

The procedural history and the factual background of this case have been previously set forth in detail in published and unpublished opinions.[1] For present purposes, it is sufficient to state that the Third Circuit Court has remanded the case to this court to "reconsider whether the defendants are entitled to quasi-judicial absolute

[1] *See Hamilton v. Leavy*, 322 F.3d 776 (3d Cir. 2003) ("*Hamilton II*"); *Hamilton v. Leavy*, No. Civ. A. 94-336-GMS, 2001 WL 848603 (D. Del. July 27, 2001); *Hamilton v. Leavy*, 117 F.3d 742 (3d Cir. 1997) ("*Hamilton I*"); and *Hamilton v. Lewis*, No. 94-336-SLR, 1995 WL 330728 (D. Del. May 26, 1995).

immunity" and to address the law of the case doctrine and whether the Defendants[2] are entitled to qualified immunity. *Hamilton v. Leavy*, 322 F.3d 776, 786-787 (3d Cir. 2003)

Presently before me is the Defendants' renewed motion for summary judgment (D.I. 260; the "Motion"). Also before me is Plaintiff Jerome Hamilton's ("Hamilton") cross-motion for partial summary judgment (D.I. 268; the "Cross-Motion") and Hamilton's "Motion to strike and/or for leave to file a short reply to defendants supplemental submission in support of summary judgment following remand" (the "Motion to Strike"). (D.I. 313.) For the reasons set forth herein, the Defendants' Motion (D.I. 260) will be denied, Hamilton's Cross-Motion (D.I. 268) will be granted, and Hamilton's Motion to Strike (D.I. 313) will be denied.

II. Discussion

A. Quasi-judicial absolute Immunity

"Quasi-judicial absolute immunity attaches when a public official's role is 'functionally comparable' to that of a judge." *Hamilton II*, 322 F.3d at 785 (quoting *Butz v. Economou*, 438 U.S. 478, 513 (1978)). In a Memorandum Opinion issued in July 2001, the Defendants were held not to be entitled to quasi-judicial absolute immunity because quasi-judicial immunity "generally does not extend to prison officials." (D.I. 242 at 14.) Cited in support of that conclusion was *Cleavinger v. Saxner*, 474 U.S. 193 (1985), which held that a committee of prison officials who disciplined an inmate after a

[2]The "Defendants" are Faith Leavy ("Leavy"), Pamela Faulkner ("Faulkner"), William Queener ("Queener"), Frances Lewis ("Lewis"), George Dixon ("Dixon"), Jack Stephenson ("Stephenson"), Deborah Craig ("Craig"), JoAnne Smith ("Smith"), Dennis Loebe ("Loebe"), Eldora Tillery ("Tillery"), Francis Cockroft ("Cockroft"), Jerry Borga ("Borga"), and Richard Shockley ("Shockley").

hearing was not entitled to quasi-absolute judicial immunity. (*Id*.) The Third Circuit pointed out, however, that *Cleavinger* does not "hold *per se* that prison officials can never receive quasi-judicial immunity." *Hamilton II*, 322 F.3d at 785 (citing *Cleavinger*, 474 U.S. 193). The Third Circuit explained that "*Cleavinger* requires that [a court] analyze whether the particular defendants ... are entitled to [quasi-judicial] immunity" and this court "did not do so." *Id.* at 785. The Third Circuit also explained that in *Cleavinger*, "the Supreme Court analyzed the independence and safeguards accompanying the committee's decision-making process" before holding that members of a prison disciplinary committee could not receive quasi-judicial immunity, and, that in this case, they did "not know what facts pertaining to the committees' independence and safeguards were sufficiently proven for summary judgment purposes." *Id*. Accordingly, the Third Circuit remanded this case in order for this court to consider "whether the defendants are entitled to quasi-judicial absolute immunity." *Id*.

In *Cleavinger*, the Supreme Court stated that the following factors are "characteristic of the judicial process" and are to be considered in determining the applicability of quasi-judicial absolute immunity:

> (a) the need to assure that the individual can perform his functions without harassment or intimidation: (b) the presence of safeguards that reduce the need for private damages actions as a means of controlling unconstitutional conduct; (c) insulation from political influence; (d) the importance of precedent; (e) the adversary nature of the process and (f) the correctability of error on appeal

474 U.S. at 202 (citing *Butz*, 438 U.S. at 511). Applying these principles to the members of a federal prison's discipline committee, which heard cases where inmates were charged with prison rules violations, the Supreme Court held that the members of

this disciplinary committee were not entitled to quasi-judicial absolute immunity because they did not perform a classic adjudicatory function. *Cleavinger*, 474 U.S. at 203. "Unlike a federal or state judge," the members of the discipline committee were "not independent" because they were "not professional hearing officers, as are administrative law judges … instead [they were] prison officials … temporarily diverted from their usual duties." *Id*. at 203-204. The Supreme Court also found that the committee members were "employees of the Bureau of Prisons and they [we]re the direct subordinates of the warden who reviews their decision." *Id*. at 204. Finally, the Supreme Court found that because these discipline committee members "work[ed] with the fellow employee who lodge[d] the charge against the inmate upon whom they s[a]t in judgment …[they] are under obvious pressure to resolve a disciplinary dispute in favor of the institution and their fellow employee." *Id*.

Furthermore, in *Cleavinger*, the Supreme Court also found that because few of the "procedural safeguards contained in the Administrative Procedure Act" were present, the members of the disciplinary committee were not entitled to absolute immunity.

> The prisoner was to be afforded neither a lawyer nor an independent nonstaff representative. There was no right to compel the attendance of witnesses or to cross-examine. There was no right to discovery. There was no cognizable burden of proof. No verbatim transcript was afforded. Information presented often was hearsay or self-serving. The committee members were not truly independent. In sum, the members had no identification with the judicial process of the kind and depth that has occasioned absolute immunity.

Cleavinger, 474 U.S. at 206.

After further discovery upon remand, the following evidence was presented with regard to the independence and procedural safeguards utilized by the Multi-Disciplinary Team ("MDT")[3] and the Delaware Department of Corrections Central Institutional Classification Committee ("CICC ").[4] Like the members of the discipline committee in *Cleavinger*, members of the MDT and CICC are prison employees. (D.I. 267 at 16.) Similarly, MDT and CICC members are direct subordinates of the warden, who can veto or change their decisions. *Id*. Furthermore, neither the MDT nor the CICC worked under the state or federal Administrative Procedures Acts and inmates are not permitted to have legal representation before either the MDT or the CICC, inmates are not provided with lawyers, inmates are not permitted to call or cross examine witnesses, discovery is not permitted, and there is no burden of proof. (*Id.* at 17).

In support of its assertion that the CICC defendants are entitled to quasi-judicial immunity, the Defendants assert that the CICC is independent. (D.I. 261 at 11) (citing *Cleavinger*). The Defendants claim that the CICC is independent because it is made up of staff members representing a cross section of bureau personnel, which ensures that decisions affecting a particular inmate are objective, and that members are limited to three year appointments and must remain off the CCIC before being re-appointed. (*Id*. at 12-13.) The Defendants further argue that the CCIC is independent because internal procedures require a CCIC member to abstain from voting on a matter where the individual has made a recommendation as a member of the MDT. (*Id*. at 13.) The

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[3]Leavy, Faulkner, and Queener are members of the MDT. (*See* D.I. 242 at 1.)

[4]Lewis is the chairperson of the CICC. Dixon, Stephenson, Craig, Smith, Loebe, Tillery, Cockroft, Borga, and Shockley are members of the CICC. (See D.I. 242 at 1.)

Defendants also claim that there are safeguards in the CCIC's decision-making process because appeals of CICC are directed to the Office of the Classification Administrator. (*Id*.)

These arguments, however, are not well founded. Overriding the factors claimed for independence is the reality that, like the members of the discipline committee in *Cleavinger*, the members of the MDT and CICC are not hearing officers with any status independent of the prison bureacracy; they are prison officials (D.I. 262 at A235.) The members of the MDT and the CICC, like the members of the discipline committee in *Cleavinger*, are subordinates of the warden, who can veto or change their decisions. (*Id*. at 423-424, A328-329.) Simply put, MDT and CICC members are not independent in the quasi-judicial sense; they are prison officials who are subordinate to the warden and they do not perform a classic adjudicatory function. Because neither the MDT nor the CICC was independent or subject to procedural safeguards in its decision-making process, the MDT and CICC defendants are not entitled to quasi-judicial absolute immunity.

B. Qualified Immunity

In *Hamilton II*, the Third Circuit stated that, "[i]n determining whether to grant summary judgment on qualified immunity grounds, a court must first consider whether '[t]aken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right" (quoting *Saucier v. Katz*, 544 U.S. 194, 201 (2001)). 322 F.3d at 786. "[I]f a violation could be made out on a favorable view of the parties' submissions, the next, sequential step is to ask whether the right was clearly established." *Id*.

The Third Circuit, in *Hamilton II*, explained that in *Hamilton I*:

> [W]e held that Hamilton had raised a genuine issue of material fact whether defendants Leavy, Faulkner, Queener and Lewis acted with deliberate indifference to Hamilton's safety in violation of the Eighth Amendment. The District Court's opinion[5] did not discuss whether a constitutional violation occurred other than to note that we held in *Hamilton I* that a genuine issue of material fact existed as to the reasonableness of the defendants' conduct. The Court then skipped ahead to address the second prong in the qualified immunity analysis. It seems to us likely that, in so doing, the Court tacitly applied the law of the case doctrine, reasoning that *Hamilton I* had conclusively resolved for summary judgment purposes the first prong of the qualified immunity analysis.

322 F.3d at 787. The Court remanded the case for this court to decide whether the law of the case doctrine applied to defendants Leavy, Faulkner, Queener (the "MDT defendants") and Lewis. *Id*. Defendants Dixon, Stephenson, Craig, Smith, Loebe, Tillery, Cockroft, Borga, and Shockley (the "CICC defendants") were added to the case since *Hamilton I*, and therefore "lacked the opportunity to argue that they had not violated Hamilton's Eighth Amendment rights." *Id*. The Third Circuit stated that "[o]n remand, they will have the opportunity to do so." *Id*.

1. The MDT Defendants and Lewis

"The law of the case doctrine 'limits relitigation of an issue once it has been decided' in an earlier stage of the same litigation." *Hamilton II*, 322 F.3d at 787. However, "[r]econsideration of a previously decided issue may ... be appropriate when the record contains new evidence." *Id*. "But this is so only if the new evidence differs

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[5] *Hamilton v. Leavy*, No. Civ. A. 94-336-GMS, 2001 WL 848603 (D. Del. July 27, 2001).

materially from the evidence of record when the issue was first decided and if it provides less support for that decision... Accordingly, if the evidence at the two stages of litigation is 'substantially similar,' or if the evidence at the latter stage provides more support for the decision made earlier, the law of the case doctrine will apply." *Id*. (citations omitted).

The Third Circuit, in *Hamilton I*, noted that the "record indicates that the MDT defendants took no immediate action following its recommendation to the CICC that Hamilton should be placed in protective custody. It also took no action after that recommendation was rejected." 117 F.3d at 748. The Third Circuit concluded that "while it appears that the MDT defendants acted reasonably in following the internal prison procedures by recommending to the CICC that Hamilton be placed in protective custody, the reasonableness of their actions following the rejection of that recommendation remains a question." *Id.* The Third Circuit further noted that "[b]ecause neither party presented conclusive evidence on [the] issue" of whether the MDT defendants could have taken additional steps beyond recommending that Hamilton be placed in protective custody, such as placing him in administrative segregation, "there remains a genuine issue of material fact regarding whether the MDT's response to the risk Hamilton faced was reasonable." *Id*. at 748. "The failure of the MDT defendants to take additional steps beyond the recommendation of protective custody could be viewed by a factfinder as the sort of deliberate indifference to inmate safety that the Constitution forbids." *Id.* at 749.

After conducting additional discovery following remand by the Third Circuit in *Hamilton II*, the Defendants argue that "the undisputed record establishes that the MDT defendants had no authority other than to provide the recommendation that they did for

protective custody" for Hamilton, and "[a]ccordingly, there is no basis for a constitutional claim against the ... MDT defendants." (D.I. 261 at 21.) The record is disputed, however, because Hamilton points out that the Classification Procedures Manual establishes that the MDT defendants "ha[d] the power to 'initiate[] protective custody requests' at any time" and that "the shift commander can authorize the placement of the inmate requesting protective custody on administrative transfer pending the outcome of a formal investigation."[6] (D.I. 267 at 23.) The Classification Procedures Manual also provides that the MDT defendants "have the ability to initiate protective custody reviews at any time."[7] (*Id*.) Because this evidence not only does not materially deviate from the evidence in the record when *Hamilton I* was decided, but provides additional support for the *Hamilton I* decision, I find that the law of the case doctrine applies. *See Hamilton II*, 322 F.3d at 787. Therefore, the Third Circuit's holding of *Hamilton I* that "Hamilton had raised a genuine issue of material fact whether the MDT defendants acted with deliberate indifference to Hamilton's safety in violation of the Eighth Amendment" is the law of the case. *Id*. at 786.

[6]The Defendants argue that the MDT does "not have the authority to place anyone in administrative segregation" and that Hamilton "was already in administrative segregation." (D.I. 261 at 21.) However, the issue is whether the MDT defendants could have taken any steps beyond its recommendation to the CICC that Hamilton be placed in protective custody, and Hamilton's evidence shows that this is a genuine issue of material fact.

[7]The Defendants assert that these protective custody reviews, or follow-up reclassifications, are every six months (D.I. 273 at 6), but the Manual says that "in cases where the MDT feels a more frequent review is appropriate, they may do so." (D.I. 262 at A340.)

The Defendants contend that with respect to defendant Lewis, the record generated after *Hamilton I* "is materially different from the record on which the Court of Appeals based its decision." (D.I. 261 at 25.) First, the Defendants assert that the Third Circuit erroneously identified more assaults in *Hamilton I* as the basis for their conclusion that Hamilton "has a long history of being assaulted throughout the Delaware prison system." 117 F.3d at 744. The Defendants also imply that the Third Circuit erroneously understood those attacks to have occurred at Gander Hill rather than at the DCC. (D.I. 261 at 25.) Second, the Defendants state that Hamilton's cellmate was not at Gander Hill until more than a month after the MDT's recommendation and the CICC's decision to take no action. (*Id.*) Third, the Defendants claim that the attack occurred after Hamilton's cellmate learned he was a "snitcher," which was more than a month after Lewis, as part of the CICC, decided to take not action. (*Id*.) Fourth, the Defendants argue that Lewis did not have knowledge of Hamilton's grievance of March 25, 1992. (*Id*.) Finally, the Defendants state that the Superior Court ordered Hamilton to remain at Gander Hill. (*Id*.)

These contentions are irrelevant to the Third Circuit's findings in *Hamilton I* that "Lewis was made aware of a substantial risk to Hamilton's safety when she reviewed the MDT's unanimous recommendation to place Hamilton in protective custody," that "Lewis had good reason to believe that the MDT's fears were well-founded since Lewis herself approved Hamilton for protective custody on two prior occasions," and that "since Lewis should be charged with knowledge of Hamilton's known cooperation with prison officials and the subsequent branding of Hamilton as a 'snitch,' ... a fact finder could infer that Lewis knew that the threat to Hamilton's safety was imminent." 177 F.3d

at 747. The Third Circuit found that Lewis knew that Hamilton was at risk of an assault based on facts known in June 1992, not of an assault specifically by his cellmate. *See Benner v. McAdory*, 165 F. Supp. 2d 773, 778 (D. N.J. 2001) ("[A] failure to protect claim does not require that the plaintiff specifically identify the attacker as a threat prior to the occurrence of the attack"). Because the evidence that the Defendants cite does not differ materially from the evidence considered by the Third Circuit in *Hamilton I*, I hold that the law of the case applies to Lewis.

The second prong of the qualified immunity defense is that the constitutional right must be clearly established. *Hamilton II*, 322 F.3d at 787. This court found that "Hamilton's right to be protected from known risks was clearly established in August 5, 1992."[8] *Id*. However, the Third Circuit explained that this was not sufficient. "[T]he question is whether a reasonable public official would know that his or her specific conduct violated clearly established rights." *Id*. For the MDT defendants, it is whether a reasonable person serving on the MDT would know that doing nothing beyond recommending that Hamilton be placed in protective custody would likely violate his constitutional rights. For Lewis, it is whether a reasonable CICC chairperson would know that a decision to take "no action" on the MDT recommendation violated clearly established rights.

The Defendants do not argue whether a reasonable MDT member would know that doing nothing beyond merely recommending to the CICC that Hamilton be placed in protective custody, or whether a reasonable chairperson of the CICC would know that

[8]August 5, 1992 was the day that Hamilton was attacked by his cellmate.

not placing Hamilton in protective custody after receiving such a recommendation by the CICC violated clearly established rights. (D.I. 261 at 28-29.) Rather, the Defendants argue that the MDT defendants and Lewis had no reason to know that Hamilton's safety was in danger. (*Id*.) The Defendants' argument, however, does not meet the standard for establishing whether a public official is entitled to qualified immunity because their argument is subjective, and the standard is objective, not subjective. *See Grant v. City of Pittsburgh*, 98 F.3d 116, 121 (3d Cir. 1996). Moreover, the evidence suggests that the MDT defendants and Lewis did know that Hamilton faced a "substantial risk of serious harm" if he were placed in the general prison population, and thus violated his violated his Eighth Amendment right by failing to protect him.[9] *Farmer v. Brennan*, 511 U.S. 825, 828 (1994). Because the law of the case applies to the MDT defendants and Lewis, and neither the MDT defendants nor Lewis has produced evidence that a reasonable official in their positions would not have protected Hamilton, they are not entitled to qualified immunity.

2. The CICC defendants

Subsequent to *Hamilton I*, Hamilton amended the complaint to add the CICC defendants. Because the Defendants never argued whether the CICC defendants

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[9]The Third Circuit stated that after considering "Hamilton's history of violent clashes throughout the Delaware prison system, and acknowledg[ing] his statement that 'protective custody concerns exist throughout the state,'" the MDT defendants "concluded, unanimously, that Hamilton was in such danger as to justify isolating him from the general population in protective custody." *Hamilton I*, 117 F.3d at 747. "The MDT's recommendation that Hamilton be placed in protective custody was evidence that "Hamilton faced a substantial risk of serious harm." *Id*. The Third Circuit also stated that "the facts constitute sufficient circumstantial evidence upon which a factfinder could conclude that Lewis 'must have known' of the risk to Hamilton's safety." *Id*.

violated Hamilton's Eighth Amendment rights, the Third Circuit remanded the case in order to give them the opportunity to do so. *Hamilton II*, 322 F.3d at 787.

The Defendants argue that Tillery did not violate Hamilton's Eighth Amendment right to be protected from "violence at the hands of other prisoners," *Farmer*, 511 U.S. at 833, because she was not a member of the MDT and not a member of the CICC on the date that the CICC defendants determined to take "no action" on the MDT's recommendation to place Hamilton in protective custody. (D.I.261 at 21.) Citing to the record, Hamilton claims that at the time Hamilton was attacked by his cellmate, Tillery was a "classification officer" and her job was to "review MDT recommendations to ensure the MDT made proper recommendations based on the inmates' institutional history and individual circumstances." (D.I. 267 at 30.) Hamilton asserts that Tillery's review of the same materials reviewed by the MDT "allowed her to acquire the same knowledge of the danger to Mr. Hamilton's safety known to the MDT and to act, as permitted by [the] Classification Guidelines Manual, to protect him by initiating the protective custody procedures." (*Id*.) The Defendants do not respond to these claims. Thus, taken in a light most favorable to Hamilton, a reasonable fact finder could conclude that Tillery violated Hamilton's Eighth Amendment right by failing to protect him.

The Defendants argue that Smith, Dixon, and Cockroft did not violate Hamilton's Eighth Amendment rights because they were not present at the CICC meeting when the "no action" decision was made with regard to the MDT's recommendation. (D.I. 261 at 21-22.) Hamilton argues that even though they were not present, Smith, Dixon, and Cockroft had the authority to initiate "protective custody procedures at any time." (D.I.

267 at 31-32.) The Defendants did not respond to these allegations. (D.I. 273.) Accordingly, taken in a light most favorable to Hamilton, the facts that Hamilton has alleged are sufficient for a reasonable fact finder to conclude that Smith, Dixon, and Cockroft violated his constitutional rights.

Defendants argue that Stephenson, Craig, Loebe, Borga and Shockley, the CICC defendants that were present when the "no action" decision was taken on the MDT's recommendation, did not violate Hamilton's Eighth Amendment rights because they were not responsible for his safety and even if they were, Hamilton's "failure to cooperate with the MDT evinces a clear waiver of any Eighth Amendment claim." (D.I. 261 at 23-24.) Hamilton points to evidence in the record that the CICC was responsible for his safety (D.I. 267 at 28), and that claims that the CICC discussed his case when they decided to take "no action," and that Lewis, Stephenson, Craig, Loebe, Borga and Shockley were therefore "aware of a substantial risk to Hamilton's safety when [they] reviewed the MDT's unanimous recommendation to place Hamilton in protective custody." *Hamilton I*, 117 F.3d at 747. Because there is evidence that the CICC was responsible for Hamilton's safety, and because the Defendants do not deny Stephenson's, Craig's, Loebe's, Borga's and Shockley's knowledge of a general risk to Hamilton's safety, and because there is no basis for the Defendants allegation that Hamilton waived his constitutional rights by failing to cooperate, I hold that, taken in a light most favorable to Hamilton, a reasonable fact finder could conclude that Stephenson, Craig, Loebe, Borga and Shockley violated his constitutional rights.

As discussed above, the next question is "whether a reasonable public official would know that his or her specific conduct violated clearly established rights."

Hamilton II, 322 F.3d at 787. On this issue, the Defendants have not submitted any evidence that a reasonable CICC member would not know that following the MDT's recommendation that Hamilton be placed in protective custody violated his Eighth Amendment right to be protected from violence at the hands of other prisoners.[10] (*See* D.I. 261 at 28-29.) Because a reasonable fact finder could conclude that the CICC defendants violated his Eighth Amendment rights, and the Defendants have not submitted any evidence that a reasonable CICC member would not know that not acting on an MDT recommendation to protect Hamilton violated his clearly established rights, the CICC defendants are not entitled to qualified immunity. Therefore, the Defendants' Motion will be denied.

C. Hamilton's motion to strike

Because the Defendants' Motion is denied, Hamilton's Motion to Strike is moot and will therefore be denied.

[10] "Where a defendant asserts a qualified immunity defense in a motion for summary judgment, the plaintiff bears the initial burden of showing that the defendant's conduct violated some clearly established statutory or constitutional right." *Donahue v. Gavin*, 280 F.3d 371, 378 (3d Cir. 2002) "Only if the plaintiff carries this initial burden must the defendant then demonstrate that no genuine issue of material fact remains as to the objective reasonableness of the defendant's belief in the lawfulness of his actions." *Id*. The burden was thus on the Defendants to establish the objective reasonableness of their belief in the lawfulness of their actions, and they have failed to provide evidence in that regard.

III. Conclusion

Accordingly, the Defendants' Motion (D.I. 260) is DENIED, Hamilton's Cross-Motion (D.I. 268) is GRANTED, and Hamilton's Motion to Strike (D.I. 313) is DENIED as moot.

Kent A. Jordan
UNITED STATES DISTRICT JUDGE

March 24, 2004
Wilmington, Delaware