

B O S T O N G L O B E

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SOURCE: By Eileen*McNamara,*Globe Staff

CRITICS FAULT POLICE UNIT IN HUB MURDER

The murder of a South End woman could have been prevented if the Boston Police Department were committed to its own*Domestic*Violence*Unit, according to critics who charge the operation is little more than a "public relations gimmick."

Although it ostensibly has jurisdiction over the more than 12,000*domestic*violence*cases the police handle every year, the unit -- with only four officers and no support staff -- actually reviews only a fraction of those.

"Sometimes a woman is killed even when the system does everything right," said Marguerite Haider, director of the Family Services Unit in the Norfolk County district attorney's office. "What chance does a woman have if there is no system at all?"

Detectives never referred the Miriam Lopez Peres case to the*Domestic*Violence*Unit despite an escalating pattern of abuse that dated back at least to Oct. 30, 1985, when she got a court order barring a former boyfriend from harassing her.

Peres died April 20 after someone fired a shotgun blast through the front window of her apartment on Aguadilla Street. Police have charged her ex-boyfriend, Angel Carrasquillo, with the shooting. In the six months before her death, Peres and her family filed at least four police reports accusing Carrasquillo of beating her, kicking in the walls of her apartment, destroying her belongings, cutting her brother with a knife and slashing his tires.

Two days before her death, police took her telephone report that bricks were being thrown through her window at 1 a.m. and 6 a.m., but they did not send any officers to investigate.

Carrasquillo, who was never arrested or even questioned in connection with the prior incidents, is now in Charles Street Jail, charged with first degree murder.

"Working in Boston on this issue would probably kill me," said Joanne Tulenon, director of the Family*Violence*Project in the Seattle city attorney's office. "What happens to these women here is outrageous. The indifference breaks my heart."

Tulenon consulted briefly with Kathleen Hennessey, Mayor Flynn's adviser on women's issues, about*domestic*violence*this year while on leave from Seattle to study at Harvard's John F. Kennedy School of Government.

"My conclusion is that the whole system here needs to be overhauled. But that would take a lot of effort and a lot of commitment and, frankly, I just

don't see that, she said.

Since a landmark case in Torrington, Conn., in 1983, several courts across the country have held police departments and municipalities liable for failing to protect women from abusive partners or neglecting to perform duties ordered by laws like the Massachusetts Abuse Prevention Act.

In the Peres case, Deputy Superintendent James Claiborne acknowledged in an interview that police did not give the victim a card informing her of her rights, as required by the nine-year-old state law. It is not department policy to distribute such cards, though it is "common procedure" to inform a victim orally of the law's protections, he said.

And Claiborne attributed the department's persistent failure to arrest Carrasquillo, even after felony complaints including assault and battery with a knife, to the judicial system's reluctance to prosecute domestic violence cases because victims might "change their minds."

The Boston Police Department is reviewing its handling of the Peres case but, Hennessey said, "it would be wrong to assume the police did not do their job. Lots of people didn't do their job along the way, including the family and the community. The Hispanic community tends to be very insular and not trust authority."

The police contend they did not arrest Carrasquillo prior to the killing because Peres and her family failed to press charges in court, but a clerk at Boston Municipal Court confirmed that Peres had made an effort to file a complaint but was sent home to get the complaint number from the police incident report.

"Is it any surprise she didn't go back?" asked Elba Crespo, a member of the board of Casa Myrna Vasquez, a Boston shelter for battered women.

"Domestic violence is the only crime where the onus is entirely on the victim. Where was the help for this woman? Lawyers have a hard time figuring out the courthouse and she is expected to do it alone? And if she can't figure it out, we abandon her?"

Massachusetts has been slower than other states to take the issue of domestic violence seriously, according to Tulenon and others who work on the issue. A December 1985 study by the Governor's Anti-Crime Council found a widespread failure by police departments and the courts to enforce the Abuse Prevention Act. A few communities, however, have made a commitment and tightened their police procedures.

In Quincy, for example, after every domestic violence call, the investigating officer completes a brief summary for the Family Services Unit in the Norfolk County district attorney's office, in addition to the regular police report. The summaries are collected daily and the Family Services Unit follows up with offers of counseling and court advocacy for the victim.

In addition, the Quincy Police Department is coordinating its records with those of the Family Services Unit so that, at the flip of a card file, a dispatcher can radio a cruiser responding to a domestic violence call that this is a household with a history of abuse. Such a procedure protects the police as well as the woman. According to FBI statistics, 81 of the 473 police officers killed between 1974 and 1983 were slain responding to disturbance calls.

"I think I can say with confidence that it would not have happened in Quincy," Haider, director of that unit, said of the Peres murder. "After the first incident, certainly after the second, he would have been arrested and the department would have preferred its own charges against him if the victim was unable or unwilling. It never would have gone this far."

Officers who work for Boston's Domestic Violence Unit get high marks for commitment from advocates for battered women, but there are doubts about how seriously their efforts are viewed by their superiors. The unit is usually the first one tapped when officers are needed by higher profile units such as Homicide and Community Disorders.

"I don't see a lot coming out of it," Haider said of the Boston unit. "My impression is of some good people with good intentions who are very frustrated because they get no support. It's clearly not a big priority."

It often takes a lawsuit or public outrage to prompt change. Connecticut passed a mandatory arrest law, requiring police to arrest the batterer in domestic violence cases, after Tracey Thurmon won a \$1.9 million judgment against the Torrington Police Department. Seattle instituted mandatory arrest after a wife beater killed the woman and the lawyer representing her. Pennsylvania followed suit in 1985 after a man killed his wife and her two daughters, ages 10 and 14.

Mandatory arrest can make a difference. In Duluth, Minn., a two-year study completed in 1984 found a 47 percent reduction in the number of repeat calls after the law was changed.

Last month, Gov. Dukakis signed into law a bill that will require every police recruit in Massachusetts to have eight hours of training on domestic violence issues. It is a small victory, proponents say, like the law enacted last December requiring police departments to place domestic violence check-off boxes on all incident reports.

Boston police forms already have those checkoff boxes and a policy requiring the area duty supervisor to make sure they are completed. The boxes were marked on only one of the four reports filed by Peres in the six months before her death.

"In the Peres case, this man certainly gave the system many opportunities to intervene. Where was the system cluing into the signals that he was getting more and more out of control? The Massachusetts Department of Public Health's own statistics say that a woman is killed by an abusive partner every 22 days in this state. I want to know how come public officials aren't outraged by

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'NO QUICK FIX' IN ABUSE CASE, JUDGE RULES

Eight days ago, Dorchester District Court Judge Paul H. King denied a battered woman's plea that her husband be ordered out of their apartment temporarily to ensure her safety.

Two days later, according to the woman, her husband, enraged that she had sought help and emboldened by the judge's inaction, beat her again and struck her 10-year-old daughter. Police reports confirm the beating and the striking of the girl.

Informed of the subsequent beatings Monday, King again refused to order the woman's husband out of the house.

"If he's threatening you, assaulting you and battering you, I suggest you go and file a criminal complaint," he told the Dorchester mother of three, who is entitled to civil protection under the Abuse Prevention Act, an eight-year-old state law that an unpublicized report by a gubernatorial task force last year stated is often breached by judges in the district courts.

"There is no quick fix in the Dorchester court," King told the 30-year-old woman as he issued an order that prohibited her husband from beating her but permitted him to remain at home. "I read The Boston Globe, too, ma'am."

During an interview yesterday at the courthouse in Codman Square, King said his remark was a reference to several articles that have appeared in the Globe about noncompliance with the domestic abuse law by two judges in Somerville District Court -- articles that the woman, a reader of the Boston Herald, said she had not seen. "I figure she read them and thought, 'Here's a quickie way to get him out of the house,'" King said.

He denied the woman's request that her husband be temporarily evicted because, he said, "I don't believe she was beaten. I didn't see any bruises; most women bruise pretty easily." The woman was wearing a winter coat during both court appearances.

Asked if he had reviewed the police account about the second reported beating, King said he was not convinced a report existed. "I asked her the names of the police officers and she didn't know. I don't even know if the police make reports on these things," he said. A police spokesman said officers had responded to a call from the woman and filed a report that reflected the version of events she related to King in court.

King's refusal to grant a vacate order in this case reflects a longstanding reluctance on his part, he said, to "put a man out of his own house," reflecting criticism voiced by advocates for battered women, victims and court employees interviewed by the Globe.

"If I see visible signs -- that's visible signs by my standards now -- that a woman's been beaten up, I'll put him out for a few days," he said. "I do it very seldom. Maybe more than we both think. I don't believe in breaking up families."

In making a determination about whether to issue a vacate order, King said he routinely asks plaintiffs -- as he did in this case -- whether the husband pays the rent and where he would stay if temporarily evicted. Both issues are irrelevant, according to judicial guidelines for domestic abuse cases issued last January by Judge Samuel E. Zoll, chief justice of the district courts.

"If the plaintiff and the defendant are household members and the defendant is abusing the plaintiff, then a vacate order is appropriate irrespective of whether the defendant is the owner or the lessee of the household premises," the guidelines state.

King, the brother of former Gov. Edward J. King, has not read the guidelines. "I've glanced at them, I guess. If I read every set of standards issued by that office, that's all I'd do," King said of the administrative directives sent from Zoll's office. "If that's in there, let him come out and sit here."

Zoll declined comment on King's handling of this case or his attitude toward domestic violence. "I would have to say that a decision in a particular or individual case is the responsibility of the judge deciding the case and his findings of fact and application of the law is not reviewable by me," Zoll said.

Had he read the guidelines prepared by a task force of his district court colleagues, King said he would not have felt obliged to follow them. "That's a consensus opinion. It's not binding on me or on anyone else. I decide things the way I see them. If I think it's warranted, I grant it on the basis of what I see before me. I realize full well that someday I'll make a mistake. No one gets all 100s in college."

One judge who can be credited with a perfect score, King said, is Somerville District Court Judge Paul P. Heffernan for his actions in the Pamela Nigro Dunn case that is now the subject of a Judicial Conduct Commission investigation. The state agency charged with monitoring judges behavior on and off the bench is reviewing allegations that, although Heffernan granted Dunn's request for a restraining order against her husband, he denied her plea for police protection and castigated her in open court for wasting his time and the taxpayer's money.

"You want to gnaw on her and she on you, fine, but let's not do it at the taxpayers' expense," he told Paul J. Dunn during the couple's last of four appearances before him in March. Pamela Dunn's body was found at the Lexington dump in August. Her husband is still being sought as a suspect in her murder.

"Judge Heffernan got 100 percent on that one," King said. "He gave her a good dose of what I like to call reality therapy. That's the way I talk to them. I don't think I'm demeaning. I tell them: 'Hey, you married him; the next one might not be so easy to find and who's going to support your kids?' You consider that demeaning? I call that reality therapy."

King said he has "lots of critics who don't like the way I do things. I've said it before: I'm not going to be intimidated."

He is equally candid in expressing his low opinion of the Abuse Prevention Act, describing it as a law passed by legislators "who want to be all things to all people," because the issue "was in vogue." More preferable than this "quick fix, instant-gratification solution," he said, is for women to file criminal charges against their husbands, "although I can understand their reluctance to do that."

More often than not, King said, the law is used by one party "to get a leg up in a divorce. I don't want to give anyone the edge. The 209A (the chapter number of the Abuse Prevention Act in the General Laws) is what you call a very loose law. The judge doesn't have to do anything. There's an awful lot of discretion there. And don't forget there's abuse on both sides. There are women who abuse their husbands."

King predicted the law will stay on the books but "it's going to fall out of fashion."

"I think marriage is a tough job. I believe in the sanctity of marriage. You can't make it so easy. I think we're paying now for no-fault divorce with

all the problems we have. I don't think women should be beaten, believe me. I'm against sin. We're all against sin. But a lot of them are abusing this thing.

"My wife tells me I hate women," he said with a laugh. "I don't hate women. I just hate what they do sometimes."

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DORCHESTER JUDGE STRIPPED OF RIGHT TO HEAR MOST CASES

Judge Paul H. King yesterday was stripped of his authority to hear everything but civil liability and contract cases and barred indefinitely from sitting in the Dorchester court, where he has been on the bench for 19 years.

Judge Samuel E. Zoll, chief justice of the district courts in Massachusetts, announced the reassignment in a one-sentence statement after reading an interview with King in The Boston Globe in which the 58-year-old jurist responded to allegations that he flouted the state's*domestic*abuse law by saying that he was free to run his courtroom and interpret the laws of the commonwealth as he saw fit, without interference from his administrative superiors.

The action means that King will be prohibited from hearing criminal, care and protection, juvenile and*domestic*abuse cases for an indefinite period. As a practical matter, the action is just short of removal from the bench, which can be accomplished only by order of the state Supreme Judicial Court or an act of impeachment by the state Legislature.

Zoll said King was informed of the decision yesterday. King could not be reached for comment.

Although the Globe article detailing King's views on*domestic*violence*was apparently the catalyst for the suspension, Zoll seemed to be responding to years of complaints about the judge, who prides himself on the independent manner in which he rules his court. Critics describe King's style as autocratic.

"He would like me to do it differently," King said of Zoll during an interview Wednesday. "I've told him, 'It's pretty hard for a lion to change his spots. When they drag me down the aisle the final time, I'll be singing 'I Did It My Way.'"

Complaints about King, according to court employees, lawyers, advocates for battered women and police interviewed by the Globe in the last several weeks, include allegations that he regularly demeans defendants and court officers alike, that he refuses to grant protective orders to battered women, that he frees repeat offenders on little or no bail, that he is hostile to welfare recipients and overly zealous in extracting child support payments from defendants who appear before him, even on unrelated matters. Court observers charge, as well, that King behaves erratically on the bench, suspending proceedings without warning for indefinite periods to retire to his chambers to take medication for his crippling arthritis.

King was greeted as a reformer 12 years ago when he was elevated to presiding justice of the court after his predecessor, Judge Jerome P. Troy, was removed from the bench by the Supreme Judicial Court for unethical business dealings, neglect of his court duties and abuse of his judicial position.

However, the complaints about King are not new to Zoll. Eighteen months ago, a clerk at the courthouse on Washington Street near Codman Square used one of her days off to drive to Zoll's Salem office and confront him with material she had collected about King during her 10 years there.

Soon after her visit, King was transferred out of Dorchester for four months to Brockton District Court, where he immediately made headlines for his verdict in a sexual assault case. King acquitted a plastic surgeon who admitted fondling and kissing a patient during an examination. The doctor testified that he told the woman: "I thought you wanted it," and then apologized when she protested. "I have to give the defendant the benefit of the doubt," King said in announcing his verdict from the bench.

Zoll would neither confirm nor deny that the brief transfer to Brockton was related to his discussions with Mary Climo, the clerk who visited him in the spring of 1985.

Climo was assigned to assist battered women seeking help under the state's Abuse Prevention Act until mid-1985 when King transferred her to a comparably paid job in the nonsupport unit. King told the Globe he moved her because "she was burned out." Climo, and advocates for battered women who dealt with her, suspect she was transferred for doing her job too well.

Josephine Mattino, a former counselor at a Quincy shelter for abused women who now works with the homeless in Brockton, said she relied on Climo to press her clients' cases with King, who admitted Wednesday that he routinely refuses to issue protective orders. Because a lawyer is not needed to file an abuse complaint, most women appear in court without formal counsel.

"Mary was fantastic; she really fought for these women and he didn't like it. To be blunt, Judge King was a pain . . . He intimidated the women with his really smarty remarks. He told them 'you're wasting the court's time.' He wouldn't give vacate orders. He'd say, 'I'm not going to put this man out of his house.' I'd keep them in the shelter until the hearing five days later and then pray we'd get another judge."

King does not reserve his verbal harassment for women seeking judicial protection from abusive spouses, according to court employees, who contend that they, along with lawyers, defendants and prosecutors, are often targets of his acid tongue.

It is an accusation the judge does not deny. "The employees say I demean them? I'm too tough on them? I'll tell you what you get from the probation people: 'We work the hardest and we're not appreciated.' You know what I say to them: 'If you don't like it here, go somewhere else.' I believe in confrontation; confrontation begets solution." He acknowledged that he often dresses down employees in open court in front of the public. "I don't yell; I have a loud voice. I take care of something when it happens. I don't wait around till the end of the day."

One disgruntled probation officer, who accused the judge of publicly humiliating him, blocking his career advancement and illegally withholding money from his paycheck over disputed sick leave, got a restraining order in 1984 to block King from deducting the funds until the issue was resolved through the union grievance procedure. The former employee, John Taylor, 38, who is black, has filed a complaint with the Massachusetts Commission Against Discrimination against King, who is white.

King's critics are not confined to the dilapidated courthouse or the largely working-class neighborhood where it is located. In a 1983 court-monitoring report, the Unitarian Universalist Service Committee -- a nonsectarian, nonprofit organization concerned with issues of social justice -- criticized King for excessive vigilance in setting high child support payments that the men are often financially unable to meet, for the haste with which he informs defendants of their rights and for inappropriately imposing court costs on defendants.

In the interview with the Globe on Wednesday, King dismissed the findings of the group's 11-week study as "absolutely laughable. I'm one of the few judges that even reads them their rights and the UUs didn't like that I did it en masse. Ha."

He said a single reading of rights saves time in a busy courtroom that handles about 30 arraignments daily and serves about 300,000 people a year. "All I know is you've got to get out of here at 5 o'clock. No one wants to work overtime. Zoll tells me 'You've got to finish by four.' I tell him 'I'm running a court here, not a bank.'"

Even King's critics acknowledge that he is one of the hardest-working judges in the 69-court system, arriving at work before 8 a.m. and leaving well after 6 p.m. and often working weekends.

King was appointed to the bench in 1967 by Republican Gov. John A. Volpe, despite the West Roxbury resident's activism in the Democratic Party. A campaign worker for state Sen. Joseph D. Ward during the gubernatorial campaign in 1960, King also worked in campaigns for Treasurer Robert Q. Crane before being named to the bench. His brother is former Democratic Gov. Edward J. King.

A native of Revere, he grew up in East Boston. A 1951 graduate of Boston College, he met and married his wife, the former Margaret Egan, while both were students at Boston College Law School. She graduated with him in 1955, even though she had borne the first of their seven children in January of that year. She practiced law for 10 years after the children were grown.

"My wife says I hate women," King said with a laugh during the interview in which he charged that many of the women who seek protective orders against their husbands are lying. "I don't hate women. I just hate what they do sometimes."

King is more amused than disturbed by his critics, whom he has often seemed to taunt during his tenure. In 1980, when 50 off-duty police officers demonstrated outside the courthouse to protest his bail procedures, he said, "The police are not going to run this court. The defendants are not going to run this court. The defense attorneys are not going to run this court. The district attorney is not going to run this court. I'm going to run this court."

Ernest Winsor, a staff attorney with the Massachusetts Law Reform Institute, said King's case demonstrates the dangers of "the unreviewability of district court judges."

"King looked good after Troy but not for long. This is one of those sad things about district court judges. Because they are largely unreviewed, they tend to become arrogant. They begin to think of their court as a barony. As the years have gone by, King has gotten more and more dictatorial. It all boils down to a judge who is completely confident that he's on God's holy mission. He's become a petty tyrant."

489 U.S. 189 printed in FULL format.

DeSHANEY, a minor, by his guardian ad litem, et al. v. WINNEBAGO COUNTY DEPARTMENT OF
SOCIAL SERVICES et al.

No. 87-154

SUPREME COURT OF THE UNITED STATES

489 U.S. 189; 109 S. Ct. 998; 1989 U.S. LEXIS 1039; 103 L. Ed. 2d 249; 57 U.S.L.W. 4218

November 2, 1988, Argued

February 22, 1989, Decided

SYLLABUS: Petitioner is a child who was subjected to a series of beatings by his father, with whom he lived. Respondents, a county department of social services and several of its social workers, received complaints that petitioner was being abused by his father and took various steps to protect him; they did not, however, act to remove petitioner from his father's custody. Petitioner's father finally beat him so severely that he suffered permanent brain damage and was rendered profoundly retarded. Petitioner and his mother sued respondents under 42 U. S. C. § 1983, alleging that respondents had deprived petitioner of his liberty interest in bodily integrity, in violation of his rights under the substantive component of the Fourteenth Amendment's Due Process Clause, by failing to intervene to protect him against his father's violence. The District Court granted summary judgment for respondents, and the Court of Appeals affirmed.

Held: Respondents' failure to provide petitioner with adequate protection against his father's [***2] violence did not violate his rights under the substantive component of the Due Process Clause. Pp. 194-203.

(a) A State's failure to protect an individual against private violence generally does not constitute a violation of the Due Process Clause, because the Clause imposes no duty on the State to provide members of the general public with adequate protective services. The Clause is phrased as a limitation on the State's power to act, not as a guarantee of certain minimal levels of safety and security; while it forbids the State itself to deprive indi-

viduals of life, liberty, and property without due process of law, its language cannot fairly be read to impose an affirmative obligation on the State to ensure that those interests do not come to harm through other means. Pp. 194-197.

(b) There is no merit to petitioner's contention that the State's knowledge of his danger and expressions of willingness to protect him against that danger established a "special relationship" giving rise to an affirmative constitutional duty to protect. While certain "special relationships" created or assumed by the State with respect to particular individuals may give rise to an affirmative duty, [***3] enforceable through the Due Process Clause, to provide adequate protection, see *Estelle v. Gamble*, 429 U.S. 97; *Youngberg v. Romeo*, 457 U.S. 307, the affirmative duty to protect arises not from the State's knowledge of the individual's predicament or from its expressions of intent to help him, but from the limitations which it has imposed on his freedom to act on his own behalf, through imprisonment, institutionalization, or other similar restraint of personal liberty. No such duty existed here, for the harms petitioner suffered occurred not while the State was holding him in its custody, but while he was in the custody of his natural father, who was in no sense a state actor. While the State may have been aware of the dangers that he faced, it played no part in their creation, nor did it do anything to render him more vulnerable to them. Under these circumstances, the Due Process Clause did not impose upon the State an affirmative duty to provide petitioner with adequate protection. Pp. 197-201.

(c) It may well be that by voluntarily undertaking to provide petitioner with protection against a danger it played [***4] no part in creating, the State acquired a duty under state tort law to provide him with adequate protection against that danger. But the Due Process Clause does not transform every tort committed by a state actor into a constitutional violation. Pp. 201-202.

COUNSEL: Donald J. Sullivan argued the cause for petitioners. With him on the briefs was Curry First.

Mark J. Mingo argued the cause for respondents. With him on the brief were Wayne M. Yankala and Joel I. Klein.

Deputy Solicitor General Ayer argued the cause for the United States as amicus curiae urging affirmance. With him on the brief were Solicitor General Fried, Assistant Attorney General Bolton, Roy T. Englert, Jr., Barbara L. Herwig, and John S. Koppel. *

* Briefs of amici curiae urging reversal were filed for the American Civil Liberties Union Children's Rights Project et al. by Christopher A. Hansen, Marcia Robinson Lowry, John A. Powell, Steven R. Shapiro, and Helen Hershkoff; and for the Massachusetts Committee for Children and Youth by Laura L. Carroll.

Briefs urging affirmance were filed for the State of New York et al. by Robert Abrams, Attorney General of New York, O. Peter Sherwood, Solicitor General, Peter H. Schiff, Deputy Solicitor General, and Michael S. Buskus, Assistant Attorney General, Joseph I. Lieberman, Attorney General of Connecticut, J. Joseph Curran, Jr., Attorney General of Maryland, Dave Frohnmayer, Attorney General of Oregon, LeRoy S. Zimmerman, Attorney General of Pennsylvania, Donald J. Hanaway, Attorney General of Wisconsin, and Charles Hoonstra, Assistant Attorney General; and for the National Association of Counties et al. by Benna Ruth Solomon and Douglas A. Poe.

Gwendolyn H. Gregory, August W. Steinhilber, and Thomas A. Shannon filed a brief for the National School Boards Association as amicus curiae.

[***5]

JUDGES: Rehnquist, C. J., delivered the opinion of the Court, in which White, Stevens, O'Connor, Scalia, and Kennedy, JJ., joined. Brennan, J., filed a dissenting opinion, in which Marshall and Blackmun, JJ., joined, post, p. 203. Blackmun, J., filed a dissenting opinion, post, p. 212.

OPINIONBY: REHNQUIST

OPINION: [*191] [**1001] CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

Petitioner is a boy who was beaten and permanently injured by his father, with whom he lived. Respondents are social workers and other local officials who received complaints that petitioner was being abused by his father and had reason to believe that this was the case, but nonetheless did not act to remove petitioner from his father's custody. Petitioner sued respondents claiming that their failure to act deprived him of his liberty in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution. We hold that it did not.

I

The facts of this case are undeniably tragic. Petitioner Joshua DeShaney was born in 1979. In 1980, a Wyoming court granted his parents a divorce and awarded custody of Joshua to his father, Randy DeShaney. The father shortly thereafter moved [***6] to Neenah, a city located in Winnebago County, Wisconsin, taking the infant Joshua with him. There he entered into a second marriage, which also ended in divorce.

[*192] The Winnebago County authorities first learned that Joshua DeShaney might be a victim of child abuse in January 1982, when his father's second wife complained to the police, at the time of their divorce, that he had previously "hit the boy causing marks and [was] a prime case for child abuse." App. 152-153. The Winnebago County Department of Social Services (DSS) interviewed the father, but he denied the accusations, and DSS did not pursue them further. In January 1983, Joshua was admitted to a local hospital with multiple bruises and abrasions. The examining physician suspected child abuse and notified DSS, which immediately obtained an order from a Wisconsin juvenile court placing Joshua in the temporary custody of the hospital. Three days later, the county convened an ad hoc "Child Protection Team" -- consisting of a pediatrician, a psychologist, a police detective, the county's lawyer, several DSS caseworkers, and various hospital personnel -- to consider Joshua's situation. At this meeting, the Team decided [***7] that there was insufficient evidence of child abuse to retain Joshua in the custody of the court. The Team did, however, decide to recommend several measures to protect Joshua, including enrolling him in a preschool program, providing his father with certain counselling services, and encouraging his father's girlfriend to move out of the home. Randy

DeShaney entered into a voluntary agreement with DSS in which he promised to cooperate with them in accomplishing these goals.

Based on the recommendation of the Child Protection Team, the juvenile court dismissed the child protection case and returned Joshua to the custody of his father. A month later, emergency room personnel called the DSS caseworker handling Joshua's case to report that he had once again been treated for suspicious injuries. The caseworker concluded that there was no basis for action. For the next six months, the caseworker made monthly visits to the DeShaney home, during which she observed a number of suspicious injuries on [*193] Joshua's head; she also noticed that he had not been enrolled in school, and that the girlfriend had not moved out. The caseworker dutifully recorded these incidents in [***8] her files, along with her continuing suspicions that someone in the DeShaney household was physically abusing Joshua, but she did nothing more. In November 1983, the emergency room notified DSS that Joshua had been treated once again for injuries that they believed to be caused by child abuse. On the caseworker's next two visits to the DeShaney home, she was told that Joshua was too ill to see her. Still DSS took no action.

In March 1984, Randy DeShaney beat 4-year-old Joshua so severely that he fell into a life-threatening coma. Emergency brain surgery revealed a series of hemorrhages caused by traumatic injuries to the head inflicted over a long period of time. [**1002] Joshua did not die, but he suffered brain damage so severe that he is expected to spend the rest of his life confined to an institution for the profoundly retarded. Randy DeShaney was subsequently tried and convicted of child abuse.

Joshua and his mother brought this action under 42 U. S. C. § 1983 in the United States District Court for the Eastern District of Wisconsin against respondents Winnebago County, DSS, and various individual employees of DSS. The complaint [***9] alleged that respondents had deprived Joshua of his liberty without due process of law, in violation of his rights under the Fourteenth Amendment, by failing to intervene to protect him against a risk of violence at his father's hands of which they knew or should have known. The District Court granted summary judgment for respondents.

The Court of Appeals for the Seventh Circuit affirmed, 812 F. 2d 298 (1987), holding that petitioners had not made out an actionable § 1983 claim for two alternative reasons. First, the court held that the Due Process Clause of the Fourteenth Amendment does not require a state or local governmental entity to protect its citizens from "private violence, or other [*194] mishaps not attributable to the conduct of its employees." *Id.*, at 301.

In so holding, the court specifically rejected the position endorsed by a divided panel of the Third Circuit in *Estate of Bailey by Oare v. County of York*, 768 F. 2d 503, 510-511 (1985), and by dicta in *Jensen v. Conrad*, 747 F. 2d 185, 190-194 (CA4 1984), cert. denied, 470 U.S. 1052 (1985), [***10] that once the State learns that a particular child is in danger of abuse from third parties and actually undertakes to protect him from that danger, a "special relationship" arises between it and the child which imposes an affirmative constitutional duty to provide adequate protection. 812 F. 2d, at 303-304. Second, the court held, in reliance on our decision in *Martinez v. California*, 444 U.S. 277, 285 (1980), that the causal connection between respondents' conduct and Joshua's injuries was too attenuated to establish a deprivation of constitutional rights actionable under § 1983. 812 F. 2d, at 301-303. The court therefore found it unnecessary to reach the question whether respondents' conduct evinced the "state of mind" necessary to make out a due process claim after *Daniels v. Williams*, 474 U.S. 327 (1986), and *Davidson v. Cannon*, 474 U.S. 344 (1986). 812 F. 2d, at 302.

Because of the inconsistent approaches taken by the lower courts in determining when, if ever, the failure of a [***11] state or local governmental entity or its agents to provide an individual with adequate protective services constitutes a violation of the individual's due process rights, see *Archie v. Racine*, 847 F. 2d 1211, 1220-1223, and n. 10 (CA7 1988) (en banc) (collecting cases), cert. pending, No. 88-576, and the importance of the issue to the administration of state and local governments, we granted certiorari. 485 U.S. 958 (1988). We now affirm.

II

The Due Process Clause of the Fourteenth Amendment provides that "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law." Petitioners [*195] contend that the State n1 deprived Joshua of his liberty interest in "free[dom] from . . . unjustified intrusions on personal security," see *Ingraham v. Wright*, 430 U.S. 651, 673 (1977), by failing to provide him with adequate protection against his father's violence. The claim is one invoking the substantive rather than the procedural component of the Due Process Clause; petitioners do not [**1003] claim that the State denied Joshua protection without according [***12] him appropriate procedural safeguards, see *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972), but that it was categorically obligated to protect him in these circumstances, see *Youngberg v. Romeo*, 457 U.S. 307, 309 (1982). n2

n1 As used here, the term "State" refers generically to state and local governmental entities and their agents.

n2 Petitioners also argue that the Wisconsin child protection statutes gave Joshua an "entitlement" to receive protective services in accordance with the terms of the statute, an entitlement which would enjoy due process protection against state deprivation under our decision in *Board of Regents of State Colleges v. Roth*, 408 U.S. 564 (1972). Brief for Petitioners 24-29. But this argument is made for the first time in petitioners' brief to this Court: it was not pleaded in the complaint, argued to the Court of Appeals as a ground for reversing the District Court, or raised in the petition for certiorari. We therefore decline to consider it here. See *Youngberg v. Romeo*, 457 U.S., at 316, n. 19; *Dothard v. Rawlinson*, 433 U.S. 321, 323, n. 1 (1977); *Duignan v. United States*, 274 U.S. 195, 200 (1927); *Old Jordan Mining & Milling Co. v. Societe Anonyme des Mines*, 164 U.S. 261, 264-265 (1896).

***13]

But nothing in the language of the Due Process Clause itself requires the State to protect the life, liberty, and property of its citizens against invasion by private actors. The Clause is phrased as a limitation on the State's power to act, not as a guarantee of certain minimal levels of safety and security. It forbids the State itself to deprive individuals of life, liberty, or property without "due process of law," but its language cannot fairly be extended to impose an affirmative obligation on the State to ensure that those interests do not come to harm through other means. Nor does history support such an expansive reading of the constitutional text. [*196] Like its counterpart in the Fifth Amendment, the Due Process Clause of the Fourteenth Amendment was intended to prevent government "from abusing [its] power, or employing it as an instrument of oppression," *Davidson v. Cannon*, *supra*, at 348; see also *Daniels v. Williams*, *supra*, at 331 ("to secure the individual from the arbitrary exercise of the powers of government," and "to prevent governmental power from being 'used for purposes [***14] of oppression'" (internal citations omitted); *Parratt v. Taylor*, 451 U.S. 527, 549 (1981) (Powell, J., concurring in result) (to prevent the "affirmative abuse of power"). Its purpose was to protect the people from the State, not to ensure that the State protected them from each other. The Framers were content to leave the extent of governmental obligation in the latter area to the democratic

political processes.

Consistent with these principles, our cases have recognized that the Due Process Clauses generally confer no affirmative right to governmental aid, even where such aid may be necessary to secure life, liberty, or property interests of which the government itself may not deprive the individual. See, e. g., *Harris v. McRae*, 448 U.S. 297, 317-318 (1980) (no obligation to fund abortions or other medical services) (discussing Due Process Clause of Fifth Amendment); *Lindsey v. Normet*, 405 U.S. 56, 74 (1972) (no obligation to provide adequate housing) (discussing Due Process Clause of Fourteenth Amendment); see also *Youngberg v. Romeo*, *supra*, at 317 [***15] ("As a general matter, a State is under no constitutional duty to provide substantive services for those within its border"). As we said in *Harris v. McRae*: "Although the liberty protected by the Due Process Clause affords protection against unwarranted government interference . . . , it does not confer an entitlement to such [governmental aid] as may be necessary to realize all the advantages of that freedom." 448 U.S., at 317-318 (emphasis added). If the Due Process Clause does not require the State to provide its citizens with particular protective [**1004] services, it follows that the State cannot [*197] be held liable under the Clause for injuries that could have been averted had it chosen to provide them. n3 As a general matter, then, we conclude that a State's failure to protect an individual against private violence simply does not constitute a violation of the Due Process Clause.

n3 The State may not, of course, selectively deny its protective services to certain disfavored minorities without violating the Equal Protection Clause. See *Yick Wo v. Hopkins*, 118 U.S. 356 (1886). But no such argument has been made here.

***16]

Petitioners contend, however, that even if the Due Process Clause imposes no affirmative obligation on the State to provide the general public with adequate protective services, such a duty may arise out of certain "special relationships" created or assumed by the State with respect to particular individuals. Brief for Petitioners 13-18. Petitioners argue that such a "special relationship" existed here because the State knew that Joshua faced a special danger of abuse at his father's hands, and specifically proclaimed, by word and by deed, its intention to protect him against that danger. *Id.*, at 18-20. Having actually undertaken to protect Joshua from this danger -- which petitioners concede the State played

489 U.S. 189, *197; 109 S. Ct. 998, **1004;
1989 U.S. LEXIS 1039, ***16; 103 L. Ed. 2d 249

no part in creating -- the State acquired an affirmative "duty," enforceable through the Due Process Clause, to do so in a reasonably competent fashion. Its failure to discharge that duty, so the argument goes, was an abuse of governmental power that so "shocks the conscience," *Rochin v. California*, 342 U.S. 165, 172 (1952), as to constitute a substantive due process violation. Brief for Petitioners 20. n4

n4 The genesis of this notion appears to lie in a statement in our opinion in *Martinez v. California*, 444 U.S. 277 (1980). In that case, we were asked to decide, inter alia, whether state officials could be held liable under the Due Process Clause of the Fourteenth Amendment for the death of a private citizen at the hands of a parolee. Rather than squarely confronting the question presented here -- whether the Due Process Clause imposed upon the State an affirmative duty to protect -- we affirmed the dismissal of the claim on the narrower ground that the causal connection between the state officials' decision to release the parolee from prison and the murder was too attenuated to establish a "deprivation" of constitutional rights within the meaning of § 1983. *Id.*, at 284-285. But we went on to say:

"[T]he parole board was not aware that appellants' decedent, as distinguished from the public at large, faced any special danger. We need not and do not decide that a parole officer could never be deemed to 'deprive' someone of life by action taken in connection with the release of a prisoner on parole. But we do hold that at least under the particular circumstances of this parole decision, appellants' decedent's death is too remote a consequence of the parole officers' action to hold them responsible under the federal civil rights law." *Id.*, at 285 (footnote omitted).

Several of the Courts of Appeals have read this language as implying that once the State learns that a third party poses a special danger to an identified victim, and indicates its willingness to protect the victim against that danger, a "special relationship" arises between State and victim, giving rise to an affirmative duty, enforceable through the Due Process Clause, to render adequate protection. See *Estate of Bailey by Oare v. County of York*, 768 F. 2d 503, 510-511 (CA3 1985); *Jensen v. Conrad*, 747 F. 2d 185, 190-194, and n. 11 (CA4 1984) (dicta), cert. denied, 470 U.S. 1052 (1985); *Balistreri v. Pacifica Police Dept.*, 855 F. 2d 1421, 1425-1426 (CA9 1988). But see, in addition to the opinion of the Seventh Circuit below, *Estate of Gilmore v.*

Buckley, 787 F. 2d 714, 720-723 (CA1), cert. denied, 479 U.S. 882 (1986); *Harpole v. Arkansas Dept. of Human Services*, 820 F. 2d 923, 926-927 (CA8 1987); *Wideman v. Shallowford Community Hospital Inc.*, 826 F. 2d 1030, 1034-1037 (CA11 1987).

[***17]

[*198]

We reject this argument. It is true that in certain limited circumstances the Constitution imposes upon the State affirmative duties of care and protection with respect to particular individuals. In *Estelle v. Gamble*, 429 U.S. 97 (1976), we recognized that the Eighth Amendment's prohibition against cruel and unusual punishment, made applicable to the States through the Fourteenth Amendment's Due Process Clause, *Robinson v. California*, 370 U.S. 660 [**1005] (1962), requires the State to provide adequate medical care to incarcerated prisoners. 429 U.S., at 103-104. n5 We reasoned [*199] that because the prisoner is unable "by reason of the deprivation of his liberty [to] care for himself," it is only "just" that the State be required to care for him. *Ibid.*, quoting *Spicer v. Williamson*, 191 N. C. 487, 490, 132 S. E. 291, 293 (1926).

n5 To make out an Eighth Amendment claim based on the failure to provide adequate medical care, a prisoner must show that the state defendants exhibited "deliberate indifference" to his "serious" medical needs; the mere negligent or inadvertent failure to provide adequate care is not enough. *Estelle v. Gamble*, 429 U.S., at 105-106. In *Whitley v. Albers*, 475 U.S. 312 (1986), we suggested that a similar state of mind is required to make out a substantive due process claim in the prison setting. *Id.*, at 326-327.

[***18]

In *Youngberg v. Romeo*, 457 U.S. 307 (1982), we extended this analysis beyond the Eighth Amendment setting, n6 holding that the substantive component of the Fourteenth Amendment's Due Process Clause requires the State to provide involuntarily committed mental patients with such services as are necessary to ensure their "reasonable safety" from themselves and others. *Id.*, at 314-325; see *id.*, at 315, 324 (dicta indicating that the State is also obligated to provide such individuals with "adequate food, shelter, clothing, and medical care"). As we explained: "If it is cruel and unusual

punishment to hold convicted criminals in unsafe conditions, it must be unconstitutional [under the Due Process Clause] to confine the involuntarily committed -- who may not be punished at all -- in unsafe conditions." *Id.*, at 315-316; see also *Revere v. Massachusetts General Hospital*, 463 U.S. 239, 244 (1983) (holding that the Due Process Clause requires the responsible government or governmental agency to provide medical care to suspects [***19] in police custody who have been injured while being apprehended by the police).

n6 The Eighth Amendment applies "only after the State has complied with the constitutional guarantees traditionally associated with criminal prosecutions. . . . [T]he State does not acquire the power to punish with which the Eighth Amendment is concerned until after it has secured a formal adjudication of guilt in accordance with due process of law." *Ingraham v. Wright*, 430 U.S. 651, 671-672, n. 40 (1977); see also *Revere v. Massachusetts General Hospital*, 463 U.S. 239, 244 (1983); *Bell v. Wolfish*, 441 U.S. 520, 535, n. 16 (1979).

But these cases afford petitioners no help. Taken together, they stand only for the proposition that when the State takes a person into its custody and holds him there [*200] against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being. [***20] See *Youngberg v. Romeo*, *supra*, at 317 ("When a person is institutionalized -- and wholly dependent on the State[,] . . . a duty to provide certain services and care does exist"). n7 The rationale for this principle is simple enough: when the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs -- e. g., food, clothing, shelter, medical care, and reasonable safety -- it transgresses the substantive limits on state action set by the Eighth Amendment and the Due Process Clause. See *Estelle v. Gamble*, *supra*, at 103-104; *Youngberg v. Romeo*, *supra*, at 315-316. The affirmative duty to protect arises not from the State's knowledge of the individual's predicament [**1006] or from its expressions of intent to help him, but from the limitation which it has imposed on his freedom to act on his own behalf. See *Estelle v. Gamble*, *supra*, at 103 ("An inmate must rely on prison authorities to treat his [***21] medical needs; if the authorities fail to do so, those needs will not be met"). In the substantive due process analysis, it is the State's affirmative act of restraining the individual's freedom to act on his own

behalf -- through incarceration, institutionalization, or other similar restraint of personal liberty -- which is the "deprivation of liberty" triggering the protections of the Due Process Clause, not its failure to act to protect his liberty interests against harms inflicted by other means.
n8

n7 Even in this situation, we have recognized that the State "has considerable discretion in determining the nature and scope of its responsibilities." *Youngberg v. Romeo*, 457 U.S., at 317.

n8 Of course, the protections of the Due Process Clause, both substantive and procedural, may be triggered when the State, by the affirmative acts of its agents, subjects an involuntarily confined individual to deprivations of liberty which are not among those generally authorized by his confinement. See, e. g., *Whitley v. Albers*, *supra*, at 326-327 (shooting inmate); *Youngberg v. Romeo*, *supra*, at 316 (shackling involuntarily committed mental patient); *Hughes v. Rowe*, 449 U.S. 5, 11 (1980) (removing inmate from general prison population and confining him to administrative segregation); *Vitek v. Jones*, 445 U.S. 480, 491-494 (1980) (transferring inmate to mental health facility).

[***22]

[*201]

The Estelle-Youngberg analysis simply has no applicability in the present case. Petitioners concede that the harms Joshua suffered occurred not while he was in the State's custody, but while he was in the custody of his natural father, who was in no sense a state actor. n9 While the State may have been aware of the dangers that Joshua faced in the free world, it played no part in their creation, nor did it do anything to render him any more vulnerable to them. That the State once took temporary custody of Joshua does not alter the analysis, for when it returned him to his father's custody, it placed him in no worse position than that in which he would have been had it not acted at all; the State does not become the permanent guarantor of an individual's safety by having once offered him shelter. Under these circumstances, the State had no constitutional duty to protect Joshua.

n9 Complaint para. 16, App. 6 ("At relevant times to and until March 8, 1984, [the date of the final beating,] Joshua DeShaney was in the custody and control of Defendant Randy DeShaney"). Had

the State by the affirmative exercise of its power removed Joshua from free society and placed him in a foster home operated by its agents, we might have a situation sufficiently analogous to incarceration or institutionalization to give rise to an affirmative duty to protect. Indeed, several Courts of Appeals have held, by analogy to *Estelle* and *Youngberg*, that the State may be held liable under the Due Process Clause for failing to protect children in foster homes from mistreatment at the hands of their foster parents. See *Doe v. New York City Dept. of Social Services*, 649 F. 2d 134, 141-142 (CA2 1981), after remand, 709 F. 2d 782, cert. denied sub nom. *Catholic Home Bureau v. Doe*, 464 U.S. 864 (1983); *Taylor ex rel. Walker v. Ledbetter*, 818 F. 2d 791, 794-797 (CA11 1987) (en banc), cert. pending *Ledbetter v. Taylor*, No. 87-521. We express no view on the validity of this analogy, however, as it is not before us in the present case.

[***23]

It may well be that, by voluntarily undertaking to protect Joshua against a danger it concededly played no part in creating, the State acquired a duty under state tort law to provide [*202] him with adequate protection against that danger. See Restatement (Second) of Torts § 323 (1965) (one who undertakes to render services to another may in some circumstances be held liable for doing so in a negligent fashion); see generally W. Keeton, D. Dobbs, R. Keeton, & D. Owen, *Prosser and Keeton on the Law of Torts* § 56 (5th ed. 1984) (discussing "special relationships" which may give rise to affirmative duties to act under the common law of tort). But the claim here is based on the Due Process Clause of the Fourteenth Amendment, which, as we have said many times, does not transform every tort committed by a state actor into a constitutional violation. See *Daniels v. Williams*, 474 U.S., at 335-336; *Parratt v. Taylor*, 451 U.S., at 544; [**1007] *Martinez v. California*, 444 U.S. 277, 285 (1980); *Baker v. McCollan*, 443 U.S. 137, 146 (1979); *Paul v. Davis*, 424 U.S. 693, 701 (1976). [***24] A State may, through its courts and legislatures, impose such affirmative duties of care and protection upon its agents as it wishes. But not "all common-law duties owed by government actors were . . . constitutionalized by the Fourteenth Amendment." *Daniels v. Williams*, *supra*, at 335. Because, as explained above, the State had no constitutional duty to protect Joshua against his father's violence, its failure to do so -- though calamitous in hindsight -- simply does not constitute a violation of the Due Process Clause. n10

n10 Because we conclude that the Due Process Clause did not require the State to protect Joshua from his father, we need not address respondents' alternative argument that the individual state actors lacked the requisite "state of mind" to make out a due process violation. See *Daniels v. Williams*, 474 U.S., at 334, n. 3. Similarly, we have no occasion to consider whether the individual respondents might be entitled to a qualified immunity defense, see *Anderson v. Creighton*, 483 U.S. 635 (1987), or whether the allegations in the complaint are sufficient to support a § 1983 claim against the county and DSS under *Monell v. New York City Dept. of Social Services*, 436 U.S. 658 (1978), and its progeny.

[***25]

Judges and lawyers, like other humans, are moved by natural sympathy in a case like this to find a way for Joshua and his mother to receive adequate compensation for the grievous [*203] harm inflicted upon them. But before yielding to that impulse, it is well to remember once again that the harm was inflicted not by the State of Wisconsin, but by Joshua's father. The most that can be said of the state functionaries in this case is that they stood by and did nothing when suspicious circumstances dictated a more active role for them. In defense of them it must also be said that had they moved too soon to take custody of the son away from the father, they would likely have been met with charges of improperly intruding into the parent-child relationship, charges based on the same Due Process Clause that forms the basis for the present charge of failure to provide adequate protection.

The people of Wisconsin may well prefer a system of liability which would place upon the State and its officials the responsibility for failure to act in situations such as the present one. They may create such a system, if they do not have it already, by changing the tort law of the State [***26] in accordance with the regular lawmaking process. But they should not have it thrust upon them by this Court's expansion of the Due Process Clause of the Fourteenth Amendment.

Affirmed.

DISSENTBY: BRENNAN; BLACKMUN

DISSENT: JUSTICE BRENNAN, with whom JUSTICE MARSHALL and JUSTICE BLACKMUN join, dissenting.

"The most that can be said of the state functionaries in this case," the Court today concludes, "is that they

stood by and did nothing when suspicious circumstances dictated a more active role for them." Ante this page. Because I believe that this description of respondents' conduct tells only part of the story and that, accordingly, the Constitution itself "dictated a more active role" for respondents in the circumstances presented here, I cannot agree that respondents had no constitutional duty to help Joshua DeShaney.

It may well be, as the Court decides, ante, at 194-197, that the Due Process Clause as construed by our prior cases creates no general right to basic governmental services. That, [*204] however, is not the question presented here; indeed, that question was not raised in the complaint, urged on appeal, presented in the petition for certiorari, or addressed in the briefs [***27] on the merits. No one, in short, has asked the Court to proclaim that, as a general matter, [**1008] the Constitution safeguards positive as well as negative liberties.

This is more than a quibble over dicta; it is a point about perspective, having substantive ramifications. In a constitutional setting that distinguishes sharply between action and inaction, one's characterization of the misconduct alleged under § 1983 may effectively decide the case. Thus, by leading off with a discussion (and rejection) of the idea that the Constitution imposes on the States an affirmative duty to take basic care of their citizens, the Court foreshadows -- perhaps even preordains -- its conclusion that no duty existed even on the specific facts before us. This initial discussion establishes the baseline from which the Court assesses the DeShaneys' claim that, when a State has -- "by word and by deed," ante, at 197 -- announced an intention to protect a certain class of citizens and has before it facts that would trigger that protection under the applicable state law, the Constitution imposes upon the State an affirmative duty of protection.

The Court's baseline is the absence of positive [***28] rights in the Constitution and a concomitant suspicion of any claim that seems to depend on such rights. From this perspective, the DeShaneys' claim is first and foremost about inaction (the failure, here, of respondents to take steps to protect Joshua), and only tangentially about action (the establishment of a state program specifically designed to help children like Joshua). And from this perspective, holding these Wisconsin officials liable -- where the only difference between this case and one involving a general claim to protective services is Wisconsin's establishment and operation of a program to protect children -- would seem to punish an effort that we should seek to promote.

[*205] I would begin from the opposite direction. I would focus first on the action that Wisconsin has taken

with respect to Joshua and children like him, rather than on the actions that the State failed to take. Such a method is not new to this Court. Both *Estelle v. Gamble*, 429 U.S. 97 (1976), and *Youngberg v. Romeo*, 457 U.S. 307 (1982), began by emphasizing that the States had confined J. W. Gamble to prison [***29] and Nicholas Romeo to a psychiatric hospital. This initial action rendered these people helpless to help themselves or to seek help from persons unconnected to the government. See *Estelle*, supra, at 104 ("[I]t is but just that the public be required to care for the prisoner, who cannot by reason of the deprivation of his liberty, care for himself"); *Youngberg*, supra, at 317 ("When a person is institutionalized -- and wholly dependent on the State -- it is conceded by petitioners that a duty to provide certain services and care does exist"). Cases from the lower courts also recognize that a State's actions can be decisive in assessing the constitutional significance of subsequent inaction. For these purposes, moreover, actual physical restraint is not the only state action that has been considered relevant. See, e. g., *White v. Rochford*, 592 F.2d 381 (CA7 1979) (police officers violated due process when, after arresting the guardian of three young children, they abandoned the children on a busy stretch of highway at night).

Because of the Court's initial fixation on the general principle [***30] that the Constitution does not establish positive rights, it is unable to appreciate our recognition in *Estelle* and *Youngberg* that this principle does not hold true in all circumstances. Thus, in the Court's view, *Youngberg* can be explained (and dismissed) in the following way: "In the substantive due process analysis, it is the State's affirmative act of restraining the individual's freedom to act on his own behalf -- through incarceration, institutionalization, or other similar restraint of personal liberty -- which is the 'deprivation of liberty' triggering the protections of the Due Process [*206] Clause, not its failure to act to protect his liberty interests against harms inflicted by other means." Ante, at 200. This restatement of *Youngberg*'s [**1009] holding should come as a surprise when one recalls our explicit observation in that case that Romeo did not challenge his commitment to the hospital, but instead "argue[d] that he ha[d] a constitutionally protected liberty interest in safety, freedom of movement, and training within the institution; and that petitioners infringed these rights by failing to provide constitutionally required conditions [***31] of confinement." 457 U.S., at 315 (emphasis added). I do not mean to suggest that "the State's affirmative act of restraining the individual's freedom to act on his own behalf," ante, at 200, was irrelevant in *Youngberg*; rather, I emphasize that this conduct would have led to no injury, and consequently no cause of ac-

tion under § 1983, unless the State then had failed to take steps to protect Romeo from himself and from others. In addition, the Court's exclusive attention to state-imposed restraints of "the individual's freedom to act on his own behalf," ante, at 200, suggests that it was the State that rendered Romeo unable to care for himself, whereas in fact -- with an I. Q. of between 8 and 10, and the mental capacity of an 18-month-old child, 457 U.S., at 309 -- he had been quite incapable of taking care of himself long before the State stepped into his life. Thus, the fact of hospitalization was critical in Youngberg not because it rendered Romeo helpless to help himself, but because it separated him from other sources of aid that, we held, the State was obligated to replace. Unlike the Court, ***32 therefore, I am unable to see in Youngberg a neat and decisive divide between action and inaction.

Moreover, to the Court, the only fact that seems to count as an "affirmative act of restraining the individual's freedom to act on his own behalf" is direct physical control. Ante, at 200 (listing only "incarceration, institutionalization, [and] other similar restraint of personal liberty" in describing relevant "affirmative acts"). I would not, however, give Youngberg [*207] and Estelle such a stingy scope. I would recognize, as the Court apparently cannot, that "the State's knowledge of [an] individual's predicament [and] its expressions of intent to help him" can amount to a "limitation . . . on his freedom to act on his own behalf" or to obtain help from others. Ante, at 200. Thus, I would read Youngberg and Estelle to stand for the much more generous proposition that, if a State cuts off private sources of aid and then refuses aid itself, it cannot wash its hands of the harm that results from its inaction.

Youngberg and Estelle are not alone in sounding this theme. In striking down a filing fee as applied to divorce cases brought by indigents, ***33 see *Boddie v. Connecticut*, 401 U.S. 371 (1971), and in deciding that a local government could not entirely foreclose the opportunity to speak in a public forum, see, e. g., *Schneider v. State*, 308 U.S. 147 (1939); *Hague v. Committee for Industrial Organization*, 307 U.S. 496 (1939); *United States v. Grace*, 461 U.S. 171 (1983), we have acknowledged that a State's actions -- such as the monopolization of a particular path of relief -- may impose upon the State certain positive duties. Similarly, *Shelley v. Kraemer*, 334 U.S. 1 (1948), and *Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961), suggest that a State may be found complicit in an injury even if it did not create the situation that caused the harm.

Arising as they do from constitutional contexts different from the one involved here, cases like *Boddie* and

Burton are instructive rather than decisive in the case before us. But they set a tone equally well established in precedent as, and contradictory to, ***34 the one the Court sets by situating the DeShaneys' complaint within the class of cases epitomized by the Court's decision in *Harris v. McRae*, 448 U.S. 297 (1980). The cases that I have cited tell us that *Goldberg v. Kelly*, 397 U.S. 254 [*1010] (1970) (recognizing entitlement to welfare under state law), can stand side by side with *Dandridge v. Williams*, 397 U.S. 471, 484 (1970) (implicitly rejecting idea that welfare is a fundamental right), and that *Goss v. [208] Lopez*, 419 U.S. 565, 573 (1975) (entitlement to public education under state law), is perfectly consistent with *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1, 29-39 (1973) (no fundamental right to education). To put the point more directly, these cases signal that a State's prior actions may be decisive in analyzing the constitutional significance of its inaction. I thus would locate the DeShaneys' claims within the framework of cases like Youngberg and Estelle, and more generally, *Boddie* and *Schneider* ***35, by considering the actions that Wisconsin took with respect to Joshua.

Wisconsin has established a child-welfare system specifically designed to help children like Joshua. Wisconsin law places upon the local departments of social services such as respondent (DSS or Department) a duty to investigate reported instances of child abuse. See Wis. Stat. § 48.981(3) (1987-1988). While other governmental bodies and private persons are largely responsible for the reporting of possible cases of child abuse, see § 48.981(2), Wisconsin law channels all such reports to the local departments of social services for evaluation and, if necessary, further action. § 48.981(3). Even when it is the sheriff's office or police department that receives a report of suspected child abuse, that report is referred to local social services departments for action, see § 48.981(3)(a); the only exception to this occurs when the reporter fears for the child's immediate safety. § 48.981(3)(b). In this way, Wisconsin law invites -- indeed, directs -- citizens and other governmental entities to depend on local departments of social services such as respondent to protect children from abuse.

The specific ***36 facts before us bear out this view of Wisconsin's system of protecting children. Each time someone voiced a suspicion that Joshua was being abused, that information was relayed to the Department for investigation and possible action. When Randy DeShaney's second wife told the police that he had "hit the boy causing marks and [was] a prime case for child abuse," the police referred her [*209] complaint to DSS. Ante, at 192. When, on three separate occasions, emergency room personnel noticed suspicious

injuries on Joshua's body, they went to DSS with this information. Ante, at 192-193. When neighbors informed the police that they had seen or heard Joshua's father or his father's lover beating or otherwise abusing Joshua, the police brought these reports to the attention of DSS. App. 144-145. And when respondent Kemmeter, through these reports and through her own observations in the course of nearly 20 visits to the DeShaney home, id., at 104, compiled growing evidence that Joshua was being abused, that information stayed within the Department -- chronicled by the social worker in detail that seems almost eerie in light of her failure to act upon it. [***37] (As to the extent of the social worker's involvement in, and knowledge of, Joshua's predicament, her reaction to the news of Joshua's last and most devastating injuries is illuminating: "I just knew the phone would ring some day and Joshua would be dead." 812 F. 2d 298, 300 (CA7 1987).)

Even more telling than these examples is the Department's control over the decision whether to take steps to protect a particular child from suspected abuse. While many different people contributed information and advice to this decision, it was up to the people at DSS to make the ultimate decision (subject to the approval of the local government's corporation counsel) whether to disturb the family's current arrangements. App. 41, 58. When Joshua first appeared at a local hospital with injuries signaling physical abuse, for example, it was DSS that made the decision to take [**1011] him into temporary custody for the purpose of studying his situation -- and it was DSS, acting in conjunction with the corporation counsel, that returned him to his father. Ante, at 192. Unfortunately for Joshua DeShaney, the buck effectively stopped with the Department.

In these [***38] circumstances, a private citizen, or even a person working in a government agency other than DSS, would doubtless feel that her job was done as soon as she had reported [*210] her suspicions of child abuse to DSS. Through its child-welfare program, in other words, the State of Wisconsin has relieved ordinary citizens and governmental bodies other than the Department of any sense of obligation to do anything more than report their suspicions of child abuse to DSS. If DSS ignores or dismisses these suspicions, no one will step in to fill the gap. Wisconsin's child-protection program thus effectively confined Joshua DeShaney within the walls of Randy DeShaney's violent home until such time as DSS took action to remove him. Conceivably, then, children like Joshua are made worse off by the existence of this program when the persons and entities charged with carrying it out fail to do their jobs.

It simply belies reality, therefore, to contend that the

State "stood by and did nothing" with respect to Joshua. Ante, at 203. Through its child-protection program, the State actively intervened in Joshua's life and, by virtue of this intervention, acquired ever more certain knowledge [***39] that Joshua was in grave danger. These circumstances, in my view, plant this case solidly within the tradition of cases like *Youngberg* and *Estelle*.

It will be meager comfort to Joshua and his mother to know that, if the State had "selectively den[ie]d its protective services" to them because they were "disfavored minorities," ante, at 197, n. 3, their § 1983 suit might have stood on sturdier ground. Because of the posture of this case, we do not know why respondents did not take steps to protect Joshua; the Court, however, tells us that their reason is irrelevant so long as their inaction was not the product of invidious discrimination. Presumably, then, if respondents decided not to help Joshua because his name began with a "J," or because he was born in the spring, or because they did not care enough about him even to formulate an intent to discriminate against him based on an arbitrary reason, respondents would not be liable to the DeShaneys because they were not the ones who dealt the blows that destroyed Joshua's life.

[*211] I do not suggest that such irrationality was at work in this case; I emphasize only that we do not know whether or not it was. [***40] I would allow Joshua and his mother the opportunity to show that respondents' failure to help him arose, not out of the sound exercise of professional judgment that we recognized in *Youngberg* as sufficient to preclude liability, see 457 U.S., at 322-323, but from the kind of arbitrariness that we have in the past condemned. See, e. g., *Daniels v. Williams*, 474 U.S. 327, 331 (1986) (purpose of Due Process Clause was "to secure the individual from the arbitrary exercise of the powers of government" (citations omitted)); *West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 399 (1937) (to sustain state action, the Court need only decide that it is not "arbitrary or capricious"); *Euclid v. Ambler Realty Co.*, 272 U.S. 365, 389 (1926) (state action invalid where it "passes the bounds of reason and assumes the character of a merely arbitrary fiat," quoting *Purity Extract & Tonic Co. v. Lynch*, 226 U.S. 192, 204 (1912)).

Youngberg's deference to a decisionmaker's professional judgment ensures that once a caseworker has decided, [***41] on the basis of her professional training and experience, that one course of protection is preferable for a given child, or even that no special protection is required, she will not be found liable for the harm that follows. (In this [**1012] way, *Youngberg's* vision of substantive due process serves a purpose similar to

that served by adherence to procedural norms, namely, requiring that a state actor stop and think before she acts in a way that may lead to a loss of liberty.) Moreover, that the Due Process Clause is not violated by merely negligent conduct, see *Daniels, supra*, and *Davidson v. Cannon*, 474 U.S. 344 (1986), means that a social worker who simply makes a mistake of judgment under what are admittedly complex and difficult conditions will not find herself liable in damages under § 1983.

As the Court today reminds us, "the Due Process Clause of the Fourteenth Amendment was intended to prevent government [*212] 'from abusing [its] power, or employing it as an instrument of oppression.'" Ante, at 196, quoting *Davidson, supra*, U.S., at 348. My disagreement with the [***42] Court arises from its failure to see that inaction can be every bit as abusive of power as action, that oppression can result when a State undertakes a vital duty and then ignores it. Today's opinion construes the Due Process Clause to permit a State to displace private sources of protection and then, at the critical moment, to shrug its shoulders and turn away from the harm that it has promised to try to prevent. Because I cannot agree that our Constitution is indifferent to such indifference, I respectfully dissent.

JUSTICE BLACKMUN, dissenting.

Today, the Court purports to be the dispassionate oracle of the law, unmoved by "natural sympathy." Ante, at 202. But, in this pretense, the Court itself retreats into a sterile formalism which prevents it from recognizing either the facts of the case before it or the legal norms that should apply to those facts. As Justice Brennan demonstrates, the facts here involve not mere passivity, but active state intervention in the life of Joshua DeShaney -- intervention that triggered a fundamental duty to aid the boy once the State learned of the severe danger to which he was exposed.

The Court fails to recognize this duty because [***43] it attempts to draw a sharp and rigid line between action and inaction. But such formalistic reasoning has no place in the interpretation of the broad and stirring

Clauses of the Fourteenth Amendment. Indeed, I submit that these Clauses were designed, at least in part, to undo the formalistic legal reasoning that infected antebellum jurisprudence, which the late Professor Robert Cover analyzed so effectively in his significant work entitled *Justice Accused* (1975).

Like the antebellum judges who denied relief to fugitive slaves, see *id.*, at 119-121, the Court today claims that its decision, however harsh, is compelled by existing legal doctrine. On the contrary, the question presented by this case [*213] is an open one, and our Fourteenth Amendment precedents may be read more broadly or narrowly depending upon how one chooses to read them. Faced with the choice, I would adopt a "sympathetic" reading, one which comports with dictates of fundamental justice and recognizes that compassion need not be exiled from the province of judging. Cf. A. Stone, *Law, Psychiatry, and Morality* 262 (1984) ("We will make mistakes if we go forward, but doing nothing can be the worst mistake. [***44] What is required of us is moral ambition. Until our composite sketch becomes a true portrait of humanity we must live with our uncertainty; we will grope, we will struggle, and our compassion may be our only guide and comfort").

Poor Joshua! Victim of repeated attacks by an irresponsible, bullying, cowardly, and intemperate father, and abandoned by respondents who placed him in a dangerous predicament and who knew or learned what was going on, and yet did essentially nothing except, as the Court revealingly observes, ante, at 193, "dutifully recorded these incidents in [their] files." It is a sad commentary upon American life, and constitutional principles -- so full of late of patriotic fervor and proud proclamations [**1013] about "liberty and justice for all" -- that this child, Joshua DeShaney, now is assigned to live out the remainder of his life profoundly retarded. Joshua and his mother, as petitioners here, deserve -- but now are denied by this Court -- the opportunity to have the facts of their case considered in the light of the constitutional protection that 42 U. S. C. § 1983 is meant to provide.

1ST CASE of Level 2 printed in FULL format.

JANE DOE et al., Appellants, v. CALUMET CITY et al., Appellees.

Docket No. 75347

SUPREME COURT OF ILLINOIS

161 Ill. 2d 374; 641 N.E.2d 498; 1994 Ill. LEXIS 107; 204 Ill. Dec. 274

August 4, 1994, Filed

SUBSEQUENT HISTORY: [*1]**

Rehearing Denied October 3, 1994.

PRIOR HISTORY: Appeal from the Appellate Court for the First District; heard in that court on appeal from the Circuit Court of Cook County, the Hon. Dean Sodaro, Judge, presiding.

DISPOSITION: Appellate court affirmed in part and reversed in part; circuit court affirmed in part and reversed in part; cause remanded.

COUNSEL: Eunice Ward, of Nottage & Ward, Edward T. Stein, Cecile Singer and Clifford Zimmerman, all of Chicago, for appellants.

Gregory E. Rogus and Paul E. Wojcicki, of Segal, McCambridge, Singer & Mahoney, Ltd., of Chicago, for appellee City of Calumet City.

Robert B. Baal and Paul G. O'Toole, of Baal & O'Connor, of Chicago, for appellees James Horka, Daniel Surufka and Kevin Beasley.

Thomas G. DiCianni, of Ancel, Glink, Diamond, Cope & Bush, P.C., of Chicago (David Lincoln Ader, of counsel), for appellees Village of Burnham and Gregory Giglio.

Michael Deutsch, Joan P. Gibbs and Suzanne L. Shende, of New York, New York, and Nadine Taub, of Newark, New Jersey, for amicus curiae The Center for Constitutional Rights.

JUDGES: NICKELS, HEIPLE, BILANDIC

OPINIONBY: NICKELS

OPINION: [*379] [**501] JUSTICE NICKELS delivered the opinion of the court:

This appeal reviews whether plaintiffs have stated a [*380] cause of action against defendant police officers and their respective municipalities for conduct while responding to a police call. Plaintiffs are Jane Doe (Jane) and her two minor children, Betty and John. Defendants on appeal are Calumet City and its officers James Horka, Daniel Surufka and Kevin Beasley; and the Village of Burnham and its officer Gregory Giglio. An additional defendant, Ben Valentine, is not a subject of this appeal.

Plaintiffs filed a complaint in the circuit court of Cook County charging defendants inter alia with: (1) negligence; (2) intentional infliction of emotional distress; and (3) liability for gender discrimination under 42 U.S.C. § 1983 (1982). The circuit court [***2] granted defendants' motion to dismiss all three counts for failure to state a claim upon which relief could be granted. (Ill. Rev. Stat. 1987, ch. 110, par. 2-615.) The appellate court, with one justice dissenting, affirmed. (240 Ill. App. 3d 911.) We granted plaintiffs leave to appeal and took jurisdiction pursuant to Supreme Court Rule 315(a) (107 Ill. 2d R. 315(a)).

In reviewing the negligence count, we must determine whether the plaintiffs have alleged sufficient facts to show that a special relationship existed between Betty, John and the defendants such that the Local Governmental and Governmental Employees Tort Immunity Act (hereinafter Tort Immunity Act) does not preclude liability. (Ill. Rev. Stat. 1965, ch. 85, par. 1-101 et seq.) In addition, we must determine whether an exception to the Tort Immunity Act exists for willful and wanton negligence of a police officer. On review of the intentional infliction of emotional distress count, we decide whether plaintiffs' complaint alleges sufficient facts to support each element of a cause of action. We review plaintiffs' gender discrimination count to determine whether plaintiffs' complaint satisfies [***3] the statutory [*381] prerequisites for a cause of action under 42 U.S.C. § 1983 (1982). We also examine the application of our pleading rules to section 1983 claims in light of the Supreme Court's decision striking down height-

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ened pleading standards for civil rights litigation in the Federal courts.

A motion to dismiss tests the legal sufficiency of a pleading and a court must accept all well-pleaded facts as true. (*Szajna v. General Motors Corp.* (1986), 115 Ill. 2d 294, 298, 104 Ill. Dec. 898, 503 N.E.2d 760.) The following recitation of facts is therefore taken from the plaintiffs' complaint. At 4:30 a.m. a male intruder, Valentine, illegally entered the apartment of plaintiffs while they slept. Valentine entered Jane's bedroom and climbed on top of her, grabbing her clothing and touching her breasts and genital area. At [**502] this time, Valentine declared his intention to rape Jane and also threatened to kill her.

Jane's two minor children, Betty and John, were in the room during Valentine's attack of Jane. Afraid for the safety of her children, Jane pleaded with Valentine not to continue the attack [***4] with her children present. Valentine got off the bed and directed the children to leave. Valentine followed the children out of the bedroom, threatening to kill them.

Jane then made a break for the front door and Valentine caught her on the stairs leading from the apartment. Valentine and Jane fell down the stairs and Valentine then beat Jane and again threatened to kill her. Jane grabbed hold of the railing and would not let go. Valentine then left Jane and reentered the apartment where Betty and John remained, locking the door behind him. Jane unsuccessfully attempted to gain entry to the apartment by kicking and pushing the door.

Jane, clothed only in undergarments, then left the building screaming. Several neighbors, having heard the screams, dialed 911. Officer Giglio was the first to arrive at the scene. Officer Horka arrived a short time later and assumed a supervisory role.

[*382] Officer Horka asked Jane what had happened. Jane told him that there was a man in her apartment, and that the man had tried to rape her and had threatened to kill her and her children. Jane also told Officer Horka that her children were still in the apartment and she feared for their safety. Jane pleaded [***5] with Horka to break down the door and rescue her children. Several neighbors also pleaded with the officers to break down the door.

Officer Horka declined to break down the door, stating that he did not want to be responsible for the property damage. Jane repeatedly stated that she would pay for any damage and screamed that she herself would save her children. When Jane attempted to rescue her children, several defendant police officers ordered her to stay put and then physically restrained her. The plain-

tiffs' complaint also alleges that the defendant police officers prevented neighbors from breaking down the door. Instead of breaking down the door, an unknown defendant police officer called the landlord who resided in South Holland, Illinois, and requested a key.

Plaintiffs' complaint alleges that Officer Horka questioned Jane in a rude, demeaning and accusatory manner and asked inappropriate questions. Horka asked Jane: "Where is your husband?" "Do you know the guy?" "Why would you leave your children in the apartment if there was a strange man there?" "Why did you leave the apartment without a key?" Officer Horka also described Jane as "an hysterical woman" and stated that "this [***6] girl is freaking out." The complaint also alleges that Officer Horka stated that Jane was not coherent, while the neighbors could fully comprehend Jane's statements.

After questioning Jane, Officer Horka checked the front door and rang several apartment buzzers. Officer Horka and Officer Giglio then walked around the [*383] building allegedly checking Jane's windows and rear door. Plaintiffs' complaint claims the rear balcony sliding glass doors, 12 feet above ground level, were unlocked and ajar. In addition, plaintiffs' complaint alleges that the rear door of the building and the back door to Jane's apartment were unlocked.

Officer Horka ordered Officer Giglio to stay at the back door. Officer Horka then walked to the front of the building where he met Officer Surufka, who had just arrived at the scene. Officer Horka spoke by radio to his supervisor, Sergeant Targonski, who directed Horka to break down the door. Officer Beasley then arrived at the scene. Several paramedics arrived and told the officers that a "lock pick," a locksmith, and ladder were available for gaining entry into the apartment. Officers Horka, Giglio, Surufka and Beasley did not attempt to gain entry into Jane's apartment. [***7] Officers Beasley and Surufka tapped on windows and rang the doorbell to the apartment.

At approximately 5 a.m., Investigator Miller of the Calumet City police department arrived at the scene and interviewed Jane. Accompanied by several officers, Investigator Miller entered the apartment through the rear door of the building and the back door of the apartment, which were unlocked. When the officers arrived, they found Valentine [**503] raping Betty. From the time the officers arrived until Investigator Miller interceded, Valentine had repeatedly raped Betty and forced her to perform deviate sexual acts. Also during this time, Valentine choked and threatened John.

From these facts, plaintiffs' complaint framed three

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theories for transferring the cost of their injuries to the defendant police officers and their respective municipalities. Betty and John brought a negligence count alleging the special duty exception to defendants' statutory immunity. In addition, the negligence count [*384] also alleged willful and wanton misconduct. Jane brought a count alleging intentional infliction of emotional distress. Jane, Betty and John all joined in a count seeking recovery for gender discrimination pursuant [***8] to 42 U.S.C. § 1983 (1982).

Section I examines whether Betty and John have alleged sufficient facts to state a cause of action for negligence. Section II examines whether Jane has stated a cause of action for intentional infliction of emotional distress. Section III questions whether plaintiffs' complaint satisfies the statutory prerequisites for personal and municipal liability under 42 U.S.C. § 1983 (1982).

II. Intentional Infliction of Emotional Distress

We next consider whether [***22] plaintiffs' complaint states a cause of action for intentional infliction of emotional distress. That count was brought on behalf of Jane against all the defendant police officers and their municipalities. The trial court granted defendants' [*392] section 2-615 motion (Ill. Rev. Stat. 1987, ch. 110, par. 2-615), and the appellate court affirmed (240

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Ill. App. 3d 911). On review of a section 2-615 motion to dismiss, we examine the face of the complaint to determine whether there are any set of facts which may be proved that would entitle the plaintiff to relief. *Toys "R" Us, Inc. v. Adelman* (1991), 215 Ill. App. 3d 561, 564, 158 Ill. Dec. 935, 574 N.E.2d 1328.

In order to state a cause of action for intentional infliction of emotional distress, a party must allege facts which establish that: (1) the defendant's conduct was extreme and outrageous; (2) the defendant either intended that his conduct should inflict severe emotional distress, or knew that there was a high probability that his conduct would cause severe emotional distress; (3) the defendant's conduct in fact caused severe emotional distress. [***23] (*Public Finance Corp. v. Davis* (1976), 66 Ill. 2d 85, 4 Ill. Dec. 652, 360 N.E.2d 765.) Applying the principles of review [**507] stated above, we review each element in turn.

First, defendants' conduct must be extreme and outrageous. Conduct is of an extreme and outrageous character where "recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, 'Outrageous!'" (Restatement (Second) of Torts § 46, Comment d, at 73 (1965).) Such conduct must be differentiated from the "mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities" that are part of the costs of complex society from which the law provides no protection. (Restatement (Second) of Torts § 46, Comment d, at 73 (1965).) Whether conduct is extreme and outrageous is judged on an objective standard based on all the facts and circumstances of a particular case. *McGrath v. Fahey* (1988), 126 Ill. 2d 78, 90, 127 Ill. Dec. 724, 533 N.E.2d 806.

The extreme and outrageous character of the conduct can arise from [***24] the abuse of a position of power. (*Kolegas v. Hefel Broadcasting Corp.* (1992), 154 Ill. 2d 1, 21, [*393] 180 Ill. Dec. 307, 607 N.E.2d 201.) The Restatement lists police officers, school authorities, landlords and collecting creditors as examples of types of individuals who in exercising their authority can become liable for extreme abuses of their positions. (Restatement (Second) of Torts § 46, Comment e, at 74 (1965).) When abuse of a position of authority is at issue, courts also examine whether the defendant reasonably believed that his objective was legitimate. (*McGrath v. Fahey* (1988), 126 Ill. 2d 78, 88, 127 Ill. Dec. 724, 533 N.E.2d 806.) While all conduct is not immunized, more latitude is given to a defendant pursuing his legitimate objectives. See, e.g., *Public Finance*, 66 Ill. 2d at 92 ("A creditor must be given some latitude to pursue reasonable methods of collecting debts

even though such methods may result in some inconvenience, embarrassment or annoyance to the debtor"); *Gibson v. Chemical Card Services Corp.* (1987), 157 Ill. App. 3d 211, 109 Ill. Dec. 416, 510 N.E.2d 37 [***25] (noting that employer had legitimate objective in conducting theft investigation in finding conduct was not outrageous).

Another factor relevant in determining whether conduct is extreme or outrageous is defendant's awareness that the plaintiff is particularly susceptible to emotional distress because of a physical or mental condition or peculiarity. (*Public Finance*, 66 Ill. 2d at 94; Restatement (Second) of Torts § 46, Comment f, at 75 (1965).) Conduct which might otherwise be considered merely rude or abusive may be deemed outrageous where the defendant knows that the plaintiff is particularly susceptible to emotional distress. *McGrath*, 126 Ill. 2d at 88; *Kolegas*, 154 Ill. 2d at 21.

Applying these considerations, we now determine whether plaintiffs' complaint adequately alleges extreme and outrageous conduct on the part of any of the defendant police officers. Plaintiffs' complaint alleges that Jane was assaulted in her apartment and the police were summoned to assist her. Horka, the supervising [***26] [*394] officer, was advised by Jane that there was an intruder in her home who had attacked her and threatened to kill her children. Plaintiffs' complaint alleges that Officer Horka questioned Jane in rude, demeaning, and accusatory manner, dismissing her as "hysterical." In addition, Officer Horka asked inappropriate questions, such as, "Why did you leave your children in the apartment if there was a strange man there?" The complaint alleges that Officer Horka declined to break down the door because he did not want to be responsible for any property damage.

We believe these facts are sufficiently outrageous to satisfy the first element of a cause of action against Officer Horka. An average member of the community would no doubt resent a police officer who treated a sexual assault victim in a rude and demeaning manner, and would consider it outrageous for an officer to refuse to break down a door in such a situation because of the fear of liability for property damage. It is also reasonable to infer that Officer Horka knew that Jane was in an emotional state that would make her susceptible to severe emotional distress. [**508] Jane told Horka that she had only recently escaped a sexual assault and [***27] expressed her fear for the safety of her children.

Our conclusion is bolstered by the fact that Officer Horka was in a position of power as the officer in control of the scene. The appellate court incorrectly limited the application of the abuse of power factor in deter-

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mining outrageous conduct to circumstances where the position was used as a means of coercion. While coercion might be the most common abuse of a position of power, an abuse of a position of power can be a factor in finding outrageous conduct regardless of coercion. For example, this court found using the medium of radio to insult a plaintiff to be an abuse of power supporting a finding of outrageous conduct. (*Kolegas*, 154 Ill. 2d at 22.) In [*395] viewing the allegations of the complaint in a light most favorable to the plaintiffs, Officer Horka abused a position of power when he questioned a recent sexual assault victim in a rude, demeaning manner and refused to save her children for fear of personal liability for property damage.

We also note that the outrageous character of Officer Horka's conduct is not ameliorated by any reasonable belief he was pursuing a legitimate [***28] objective. Freedom from personal liability for property damage is not a legitimate objective of a police officer summoned to protect people from a dangerous intruder. Moreover, Officer Horka's treatment of Jane was not necessary to determine appropriate police response. Plaintiffs' complaint adequately alleged sufficient facts to support a finding that Officer Horka's conduct was outrageous.

Plaintiffs complaint does not allege sufficient facts to support any outrageous conduct on the part of the other officers that responded to the call. The only allegations regarding Officers Surufka, Beasley, and Giglio are that they arrived at the scene, followed Horka's orders, and did not act to rescue Betty and John. There are no allegations that the other officers questioned Jane in a rude manner or declined to save Betty and John out of fear of personal liability. As the plaintiffs' complaint fails to allege sufficient facts to satisfy the element of outrageous conduct on the part of Officers Surufka, Beasley and Giglio, the count for intentional infliction of emotional distress against them was properly dismissed.

Proceeding with the intentional infliction of emotional distress count against [***29] Officer Horka, we must determine whether the plaintiffs' complaint supports the remaining elements for a cause of action. In order to satisfy the intent element, there must be facts pleaded that show Horka either intended that his conduct inflict [*396] severe emotional distress or knew that there was a high probability that his conduct would cause severe emotional distress. (*Public Finance Corp.*, 66 Ill. 2d at 90.) In view of the recent assault on Jane and the threat to Betty and John, a reasonable jury could find that Officer Horka disregarded the high probability that his conduct would cause severe emotional distress when he dismissed Jane's pleas to help her children.

Plaintiffs' complaint must also allege that Jane actu-

ally suffered severe emotional distress. This element is necessary to prevent fictitious claims. The complaint alleges that Jane required psychological care after the incident. We also bear in mind that "the extreme and outrageous character of the defendant's conduct is in itself important evidence that the distress has existed." (Restatement (Second) of Torts § 46, Comment J, at 78 (1965).) We find that [***30] the outrageous nature of Horka's conduct, combined with allegations in the complaint, when taken in a light most favorable to the plaintiff, make a satisfactory showing that Jane suffered severe emotional distress.

Last, plaintiffs' complaint must state facts that show Officer Horka's conduct was a cause of Jane's emotional distress. We recognize that Jane was already suffering emotional distress caused by Valentine's attack on her and her fear for the safety of her children. However, an injury may have more than one legal cause and a culpable defendant cannot escape liability by claiming that the conduct of other persons constituted a contributing cause. (*Phelan v. Santelli* (1975), 30 Ill. App. 3d 657, 334 N.E.2d 391.) A cause "is sufficient if it concurs with some other cause acting at the same time, which in [**509] combination with it, causes the injury." (Illinois Pattern Jury Instructions, Civil, No. 15.01 (3d ed. 1989).) We find that a reasonable jury could find [*397] that Officer Horka's conduct was a legal cause of Jane's emotional distress. The fact that Officer Horka's conduct only aggravated the emotional distress Jane was already suffering [***31] goes properly to the measure of damages. See generally W. Prosser, Torts § 52, at 320 (4th ed. 1971).

Therefore, plaintiffs' complaint states a cause of action on behalf of Jane for intentional infliction of emotional distress against defendant Horka and Calumet City. The trial court erred in dismissing that claim. The intentional infliction of emotional distress claims against Surufka, Beasley, Giglio and the Village of Burnham were properly dismissed.

III. Gender Discrimination

Plaintiffs Jane, Betty and John all join in a count alleging gender discrimination against Officer Horka and Calumet City. This count was brought pursuant to 42 U.S.C. § 1983 (1982). While not itself conferring any substantive rights (see *Baker v. McCollan* (1979), 443 U.S. 137, 144 n.3, 61 L. Ed. 2d 433, 442 n.3, 99 S. Ct. 2689, 2694 n.3), section 1983 establishes a cause of action for "the deprivation of any rights, privileges, or immunities secured by the Constitution and laws" by any person acting "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory." (42 U.S.C. § 1983 [***32] (1982).) As there

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are substantial differences between the prerequisites for personal liability and municipal liability under section 1983, we treat those defendants separately.

A. Plaintiffs' Section 1983 Claim Against Officer Horka

In order to state a section 1983 claim against Officer Horka, plaintiffs' must allege sufficient facts to support two elements. First, the plaintiffs must allege that Officer Horka has deprived them of a Federal right. Second, plaintiffs must allege that Officer Horka acted under color of State law. (*Fellhauer v. City of Geneva* (1991), 142 Ill. 2d 495, 514, 568 N.E.2d 870, 154 Ill. Dec. 649, quoting *Gomez v. Toledo* [*398] (1980), 446 U.S. 635, 640, 64 L. Ed. 2d 572, 577, 100 S. Ct. 1920, 1923.) As a police officer responding to a call while on duty, there is no doubt that Officer Horka was acting under color of State law, and he raises no issue in regard to this element. Therefore, the sole issue presented is whether the facts in plaintiffs' complaint, when viewed in a light most favorable to the plaintiffs, show a deprivation of a Federal right.

Plaintiffs' complaint alleges gender discrimination in violation [***33] of the equal protection clause of the fourteenth amendment. (U.S. Const., amend. XIV.) The fourteenth amendment equal protection clause protects individuals from invidious classifications made by State and local governments. (*Personnel Administrator v. Feeney* (1979), 442 U.S. 256, 60 L. Ed. 2d 870, 99 S. Ct. 2282.) The equal protection guarantee applies not only to legislative classifications, but also to discriminatory administration and enforcement of the law. (*Smith v. Ross* (6th Cir. 1973), 482 F.2d 33, 36-37; *Huey v. Barloga* (N.D. Ill. 1967), 277 F. Supp. 864.) Where gender discrimination is at issue, the differential treatment of men and women must bear a close and substantial relationship to a legitimate governmental objective. *Craig v. Boren* (1976), 429 U.S. 190, 197, 50 L. Ed. 2d 397, 407, 97 S. Ct. 451, 457.

In support of the gender discrimination claim, plaintiffs' complaint alleges that Officer Horka violated the plaintiffs' right to equal protection by treating Jane's complaint differently [***34] than if it were made by a male and by acting on gender-based stereotypes of females. Plaintiffs purport to state a cause of action for gender discrimination on behalf of Jane, Betty and John. However, the allegations in the complaint are directed only to gender discrimination suffered by Jane. Plaintiffs have provided no support for their contention that section 1983 can provide redress for an injury that [*399] resulted from the deprivation of a constitutional right of another person. Therefore, we treat Jane as the sole plaintiff in our analysis of the section 1983 claim.

We find that the allegations in the complaint, when viewed in a light most favorable to the plaintiffs, make out a cognizable claim [**510] of gender discrimination. Initially, the manner in which Officer Horka treated Jane raises an inference of gender discrimination. Jane was clothed only in undergarments and had just suffered a sexual assault and a battle to escape her attacker. She also feared for her children, who remained at the mercy of her attacker. After being informed of this situation, Officer Horka allegedly questioned Jane in a rude and demeaning tone as to why she would leave her apartment with a strange man there [***35] and leave without a key. Horka allegedly also stated that he could not understand Jane and that she was not "coherent," while neighbors present could understand Jane at all times. In addition, Officer Horka described Jane, a woman old enough to have two children, as a "girl." A reasonable trier of fact could determine that such conduct shows Officer Horka discredited Jane's statements and dismissed her complaints based on her gender.

Against the backdrop of Officer Horka's treatment of Jane, Officer Horka's alleged comments give additional support for finding a cause of action for gender discrimination. Several cases have found potential equal protection violations where police fail to adequately respond to domestic violence complaints lodged by women. (See, e.g., *Thurman v. City of Torrington* (D. Conn. 1984), 595 F. Supp. 1521; *Balistreri v. Pacifica Police Department* (9th Cir. 1990), 901 F.2d 696.) Despite being told of the attack on Jane and the threats against her children, Horka asked, "Where is your husband?" and "Do you know the guy?" before determining that he would not break down the door. Whether the attacker [***36] [*400] was Jane's husband or someone she knew would not change the nature of the attack on Jane or the danger to Betty and John.

We acknowledge that these comments are capable of an innocent construction. However, against the backdrop of Officer Horka's alleged treatment of Jane, a reasonable trier of fact could find that Officer Horka dismissed Jane's plea for swift action because he continually believed this was a domestic situation less deserving of his attention. Such conduct is not at all related to any governmental purpose. Therefore, the complaint adequately states a cause of action for gender discrimination on behalf of Jane against Officer Horka.

We also note that the appellate court was in error when it incorrectly required a showing of a culpable municipal policy to impose personal liability on Officer Horka under section 1983. This error resulted from a failure to determine the capacity in which Officer Horka was sued. A suit against a government official in his

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personal capacity seeks to impose personal liability for actions taken under color of State law. (See *Kentucky v. Graham* (1985), 473 U.S. 159, 165-66, 87 L. Ed. 2d 114, 121-22, 105 S. Ct. 3099, 3105 [***37] (distinguishing personal and official capacity suits).) Where a judgement is obtained against a government official in his personal capacity, the judgment must be executed only against the official's personal assets. In contrast, a suit against a government official in his official capacity is essentially another manner of pleading an action against the entity of which the official is an agent. (*Graham*, 473 U.S. at 165, 87 L. Ed. 2d at 121, 105 S. Ct. at 3105.) A judgment against a government official sued in his official capacity is satisfied by the government entity itself. *Graham*, 473 U.S. at 166, 87 L. Ed. 2d at 121, 105 S. Ct. at 3105.

There are different requirements for establishing personal and municipal liability in a suit brought under [*401] section 1983. In order to establish personal liability, "it is enough to show that the official, acting under color of state law, caused the deprivation of a federal right." (*Graham*, 473 U.S. at 166, 87 L. Ed. 2d at 122, 105 S. Ct. at 3105.) Personal liability [***38] can be imposed regardless of whether the conduct of the offending party was pursuant to a municipal policy or custom.

In order to impose municipal liability, regardless of whether the municipal liability is pleaded as official capacity liability, a plaintiff must make the further showing that the underlying deprivation resulted from a municipal policy or custom. The doctrine of respondeat superior does not apply in section 1983 litigation and municipal liability cannot be premised merely on the employment relationship between the actor and the municipality. [**511] (*Monell v. Department of Social Services* (1978), 436 U.S. 658, 691, 56 L. Ed. 2d 611, 636, 98 S. Ct. 2018, 2036.) Instead, municipal liability under section 1983 requires that the municipality be at fault by having some municipal policy, custom or usage that is the "moving force" behind the deprivation of a Federal right. *Monell*, 436 U.S. at 694, 56 L. Ed. 2d at 638, 98 S. Ct. at 2037-38.

Plaintiffs' complaint was inartfully drawn in that it does not specifically state that the action against Horka was brought [***39] against him in his personal capacity. The Supreme Court has acknowledged that some complaints may not clearly specify whether the suit is brought against a defendant in his official or personal capacity. (*Graham*, 473 U.S. at 167 n.14, 87 L. Ed. 2d at 122 n.14, 105 S. Ct. at 3106 n.14.) In such cases, the "'course of proceedings'" will typically indicate the nature of the liability sought to be imposed. (*Graham*,

473 U.S. at 167 n.14, 87 L. Ed. 2d at 122 n.14, 105 S. Ct. at 3106 n.14, quoting *Brandon v. Holt* (1985), 469 U.S. 464, 469, 83 L. Ed. 2d 878, 884, 105 S. Ct. 873, 876.) In the present case, [*402] Calumet City was also listed as a defendant and considering the action against Horka in his official capacity would therefore be redundant. Thus, plaintiffs' action was brought against Officer Horka in his personal capacity and no policy or repeated instances of similar conduct need be shown to impose this liability.

B. Plaintiffs' 1983 Claim Against Calumet City

Our last task is to determine whether plaintiffs [***40] have stated a cause of action under section 1983 against Calumet City. The Supreme Court set forth the elements for municipal liability under section 1983 in *Monell v. Department of Social Services* (1978), 436 U.S. 658, 56 L. Ed. 2d 611, 98 S. Ct. 2018. Under *Monell*, section 1983 plaintiffs must establish (1) that they have suffered the deprivation of a constitutionally protected interest, and (2) that the deprivation was caused by an official policy, custom, or usage of the municipality. (*Monell*, 436 U.S. at 694, 56 L. Ed. 2d at 638, 98 S. Ct. at 2037-38.) As we have already determined that plaintiffs' complaint alleges sufficient facts to support a charge of gender discrimination, our sole remaining inquiry is whether that deprivation was caused by an official policy, custom or usage of Calumet City.

Plaintiffs have alleged the following facts to support the existence of a culpable municipal policy or custom of gender discrimination. First, plaintiffs allege that the conduct of Officer Horka during the incident is evidence of a municipal custom of gender [***41] discrimination. Second, plaintiffs point to Calumet City's past policy of strip-searching females, but not males, for nonfelony offenses. This policy was found unconstitutional by the District Court for the Northern District of Illinois. (*Doe v. Calumet City* (N.D. Ill. 1990), No. 87-3594 (mem. op. & order).) Plaintiffs allege that this policy institutionalized the disparate treatment of women. Third, plaintiffs argue that the municipality ratified the disparate [*403] treatment of women by failing to institute policies to counteract the discriminatory effects of the strip searches. Fourth, plaintiffs argue that Calumet City ratified Officer Horka's conduct by not bringing Officer Horka up on charges specifically related to gender discrimination. Last, plaintiffs point out sexist comments, such as "Isn't this just like a woman," allegedly made by unidentified officers at the scene.

As a matter of analytical clarity, it is important to determine the manner in which plaintiffs have attempted to demonstrate the municipal custom or policy. One way to establish official policy is to show that the deprivation

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results from the execution of a policy put in place by high level officials such as [***42] "lawmakers or * * * those whose edicts or acts may fairly be said to represent official policy." (*Monell*, 436 U.S. at 694, 56 L. Ed. 2d at 638, 98 S. Ct. at 2037-38.) Where the conduct of high level officials responsible for establishing policy causes the deprivation, municipal policy is conclusively established without a showing of repeated instances of similar conduct. *Pembaur v. City of Cincinnati* (1986), 475 U.S. 469, 480-81, 89 L. Ed. 2d 452, 463, 106 S. Ct. 1292, 1299.

Where the conduct of high level officials' is not implicated, plaintiffs must establish municipal fault through "custom" or "inadequate training." In order to establish a [**512] particular custom, a plaintiff must show a practice is so settled and widespread that policymaking officials can be said to have either actual or constructive notice of the practice. (See *Bordanaro v. McLeod* (1st Cir. 1989), 871 F.2d 1151, 1156-58.) Therefore, it is necessary to show that the conduct has been repeated with the apparent acquiescence of policy makers. Where the plaintiff attempts [***43] to establish that the deprivation was caused by a policy of inadequate training, the deficiency must be the "moving force" behind the deprivation and [*404] amount to "deliberate indifference" to the rights of the persons that the police come into contact with. *City of Canton v. Harris* (1989), 489 U.S. 378, 389, 103 L. Ed. 2d 412, 427, 109 S. Ct. 1197, 1205.

Plaintiffs cannot establish that Officer Horka's gender discrimination was caused by any policy put in place by high ranking policymakers. Officer Horka is not a high ranking policymaker whose edicts represent municipal policy. Moreover, the policy of strip searching only women, even if meeting the requirements of an official policy, was not the "cause" of Officer Horka's conduct. In order for a policy to be the cause of the deprivation, there must be an "affirmative link between the policy and the particular constitutional violation involved." (*City of Oklahoma City v. Tuttle* (1985), 471 U.S. 808, 823, 85 L. Ed. 2d 791, 804, 105 S. Ct. 2427, 2436.) While we acknowledge that the strip-search policy and the alleged [***44] conduct of Officer Horka were both forms of gender discrimination, Officer Horka was not attempting to strip search Jane when the alleged constitutional deprivation took place. Therefore, plaintiff cannot show a municipal policy put in place by a high ranking official caused the deprivation of her rights.

Similarly, plaintiffs' allegations are insufficient to impose municipal liability based on a failure to train. The only allegation relating to failure to train is that Calumet City failed to institute a policy to counteract the strip-search policy. Even if this deficiency amounted to de-

liberate indifference to the constitutional rights of those who came into contact with the police, it was not the "moving force" behind the gender discrimination suffered by Jane. Failure to implement a policy to counteract discriminatory strip searches is simply not closely enough related to be the proximate cause of the gender discrimination suffered by Jane.

[*405] As the conduct of policymakers is not implicated and the allegations regarding failure to train are insufficient, plaintiffs must rely on a showing of custom. Plaintiffs have pleaded facts from which a reasonable trier of fact could determine [***45] that gender discrimination in general was so settled and widespread that the policymakers had either constructive or actual notice of such conduct. The plaintiffs did not allege one isolated instance of discrimination by one rogue officer. Against the backdrop of the strip-search policy, the alleged discriminatory actions of both Officer Horka and the other officers at the scene provide sufficient allegations that gender discrimination was widespread. Moreover, the complaint charges that Calumet City acquiesced in the discriminatory conduct by failing to either establish an effective policy to counteract the strip-search policy or investigate the charges of discrimination in this case. These allegations were sufficient to prevent the dismissal of the action against Calumet City based on the pleadings.

Conclusion

Our holdings are summarized as follows. Plaintiffs' count alleging simple negligence towards Betty and John was properly dismissed by the trial court. Plaintiffs' allegations, however, support a cause of action on behalf of Betty and John for willful and wanton misconduct against Officer Horka and Calumet City. Plaintiffs' count brought on behalf of Jane alleging intentional [***46] infliction of emotional distress states a cause of action against Officer Horka and Calumet City. Plaintiffs' count alleging gender discrimination states a cause of action on behalf of Jane against Officer Horka in his personal capacity and Calumet City.

For the reasons stated, the judgments of the appellate and circuit courts are affirmed in part and reversed [*406] in part. The cause is remanded to the circuit court for further proceedings.

[**513] Appellate court affirmed in part and reversed in part; circuit court affirmed in part and reversed in part; cause remanded.

DISSENTBY: HEIPLE

DISSENT: JUSTICE HEIPLE, concurring in part and

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dissenting in part:

I join the majority opinion in all aspects except its ruling on plaintiffs' claim of gender discrimination. Up until it addresses this point, the majority offers a reasoned analysis of what a jury could and could not find when plaintiffs' allegations are taken as true, as we must do when faced with a dismissal on the pleadings.

Courts should recognize that a cause of action does not lie whenever someone is offended by the frictions that occur from day-to-day human contact. Taking plaintiffs' allegations at face value, Jane Doe was subject to language which a sensitive [***47] person might have found offensive, but which cannot be the basis for a section 1983 or section 1988 claim (42 U.S.C. §§ 1983, 1988 (1988)).

If asked to summarize the gist of plaintiffs' complaint in this regard, it would be that: Officer Horka raised his voice to plaintiff Jane Doe, he described her as hysterical to his fellow officers, and he asked arguably demeaning questions in an attempt to find out the facts. Calumet City's alleged gender discrimination was committed not from any facts related to plaintiffs' undeniably horrific day in question, but rather from a long-since-ceased policy of strip searching women but not men who were arrested for certain crimes. According to plaintiffs, this induced officers other than Horka to tell distasteful jokes.

The insufficiency of plaintiffs' complaint, however, is best illustrated not by summarizing the allegations, but rather by simply setting them forth. I therefore do so [*407] here, eliminating their many conclusions of law which we need not accept as true. In support of their claim, plaintiffs alleged the following facts:

"34. Defendant HORKA, in questioning JANE, was rude, demeaning, accusatory and [***48] raised his voice."

"35. HORKA's questions included: (a) Where is your husband? (b) Do you know the guy? (c) Why would you leave your children in the apartment if there was a strange man there? and (d) Why did you leave your apartment without the key?"

"77. Defendant HORKA, when describing the incident to his commander and/or to other officers arriving at the scene, described plaintiff JANE DOE with phrases such as 'an hysterical woman', 'this girl is freaking out', and 'she's not coherent anymore' and said that he could not understand her."

"78. Several neighbors at the scene, at all times, could

fully understand and comprehend what JANE was saying and was concerned about."

"[81]b. That, at least, through August of 1987, the defendant Calumet City had a policy, practice or custom of strip searching females, but not males, who were arrested for non-felony charges without any basis for a belief that the arrestee was concealing a weapon or a controlled substance."

"[81]c. That this policy of strip searching women, as described in P81(b), fostered, condoned and institutionalized amongst officers of the Calumet City Police Department the differential treatment of women."

"[81]d. Prior [***49] to December 20, 1987, the defendant Calumet City did not act in an effective manner to counteract the previously fostered, condoned and institutionalized differential treatment of women by officers of the Calumet City Police Department."

"[81]e. That defendant Horka was brought up on charges of [the incident in question], however, none of these charges were for gender discrimination or in any way addressed Horka's differential treatment of women. This constituted ratification of Horka's conduct."

"[81]f. That, upon information and belief, several Calumet City officers (not defendant HORKA) at the scene [*408] on December 20, 1987 made blatantly sexist jokes regarding plaintiff Jane Doe and the developing situation. These sexist jokes were to the effect of 'what would you expect from a woman' and 'isn't it just like a [**514] woman' to be in a situation like the one at hand. None of these officers were brought up on charges or reprimanded for these comments, which similarly ratified their conduct." (Emphasis in original.)

The fourteenth amendment does not guarantee that a student of Emily Post or Amy Vanderbilt will arrive at the scene when one calls the police for assistance. Section 1983 does [***50] not provide a cause of action whenever a word or phrase is spoken which happens to be on the current list of politically incorrect utterances. Neither the Constitution nor the Federal statutes require officers to speak tactfully or deferentially to a person because of his or her gender.

Because I believe that finding a cause of action for gender discrimination on the pleadings filed by plaintiffs is untenable and, indeed, wholly ridiculous, I dissent from that portion of the majority's ruling. I join the balance of an otherwise well thought out and presented opinion.

CHIEF JUSTICE BILANDIC joins in this partial concurrence and partial dissent.