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## We Can Settle This Here or Downtown: Mediation or Arrest for Domestic Violence Calls - Eagleston v. Guido

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# We Can Settle This Here or Downtown: Mediation or Arrest for Domestic Violence Calls?

*Eagleston v. Guido*<sup>1</sup>

## I. INTRODUCTION

Mediation policies may serve as a way for victims of equal protection violations to be compensated if a state worker invokes the defense of qualified immunity to avoid liability.<sup>2</sup> However, if the state worker is a police officer and is "following orders" by acting under a custom or policy devised or enforced by a superior, a party might be able to claim an equal protection violation under 42 U.S.C. § 1983 and sue the officer's superior.<sup>3</sup> A police officer's use of qualified immunity came into question in *Eagleston v. Guido*.<sup>4</sup> In *Eagleston*, the use of mediation practices to deal with domestic disputes was questioned.<sup>5</sup>

Domestic violence recently has emerged from behind closed doors and into public scrutiny.<sup>6</sup> It has been a serious problem for many years, but the reluctance of victims to report crimes has kept the problem under wraps.<sup>7</sup> When a domestic squabble is reported to the police, they often employ department policies to handle the dispute.<sup>8</sup> These policies must be effective because "when a person is victimized again after police leave the scene, the police response is questionable and fault for the crime begins to shift from the perpetrator to the officer who could have prevented it."<sup>9</sup>

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1. 41 F.3d 865 (2d Cir. 1994).

2. See, e.g., *Pierson v. Ray*, 386 U.S. 547 (1967); *Monell v. Department of Social Serv. of the City of New York*, 436 U.S. 658 (1978).

3. SHELDON NAHMOD, *CIVIL RIGHTS AND CIVIL LIBERTIES LITIGATION: THE LAW OF SECTION 1983* 241 (1986) (citing *Freeman v. Franzen*, 695 F.2d 485 (7th Cir. 1982)).

4. *Eagleston*, 41 F.3d 865 (2d Cir. 1994).

5. *Id.* at 865.

6. Randall D. Armentrout, *Car 54 Where Are You?: Police Response to Domestic Violence Calls*, 40 *DRAKE L. REV.* 361, 362 (1991); see also, Martin Miller, *Browns Aid Charity Against Spouse Abuse Awareness: Father of O.J. Simpson's slain wife makes brief statement before ball for Interval House Crisis Shelters*, *LOS ANGELES TIMES*, Nov. 27, 1994, at B3. (Lou Brown, Nicole Simpson's father, acknowledges that spousal abuse is a topic that has only recently come to the forefront.) *Id.*

7. *Id.* at 362-63.

8. *Id.* at 370.

9. *Id.* at 367.

This Note will examine two policies used by police in dealing with domestic violence: mediation<sup>10</sup> and arrest.<sup>11</sup> It will also study which party is responsible when a policy is deemed inadequate and a victim does not receive proper protection.

## II. FACTS AND HOLDING

In *Eagleston*, the plaintiff was a victim of domestic violence and brought a Section 1983 action alleging that defendants denied her Fourteenth Amendment right of equal protection by failing to protect her against her abusive husband, Thomas Eagleston.<sup>12</sup> The complaint hinged on the alleged arrest policy, or lack thereof, which was in place for domestic violence disputes in Suffolk county.<sup>13</sup> Instead of calling for arrests, the Suffolk county arrest policy arguably consisted of mediation between the feuding spouses.<sup>14</sup>

On October 20, 1986, after being served with divorce papers from his wife, Thomas Eagleston began engaging in violent activity against her.<sup>15</sup> In the next two months,<sup>16</sup> Mrs. Eagleston complained to the Suffolk County Police Department ten times about her husband's abuse.<sup>17</sup> Mrs. Eagleston's complaints resulted in an order of protection, on October 23, against any violent acts by Thomas Eagleston, an extension of such order on November 26 and numerous visits from the police.<sup>18</sup> While the police visited the Eagleston home several times, they only made one arrest on November 23, when Mr. and Mrs. Eagleston were both apprehended.<sup>19</sup> The couple later dropped all charges.<sup>20</sup>

Despite police intervention on numerous occasions, Mrs. Eagleston was severely injured by her husband's violence on December 27, 1986.<sup>21</sup> Following

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10. Mediation in domestic disputes often entails an officer becoming more involved in disputes and attempting to counsel conflicting parties. LAWRENCE SHERMAN, DOMESTIC VIOLENCE, NATIONAL INSTITUTE OF JUSTICE: CRIME FILE-STUDY GUIDE, 1-2 (1988). In the late 1960's, this method of dispute resolution was very popular and was partially funded by the United States Department of Justice. *Id.* However, by the mid-70's, the technique was criticized for not punishing offenders and because police lacked necessary training. *Id.* Mediation policies are still used in some areas today. *Id.*

11. "Arrest" policies are designed to punish offenders and to separate parties to avoid immediate harm. *Id.* These policies are unpopular with police because many feel that what happens between a husband and wife should remain private. *Id.* A major advantage of this policy is that it avoids officer discretion and mandates an arrest of perpetrators. *Id.*

12. *Eagleston*, 41 F.3d at 868.

13. *Id.*

14. *Id.* at 874.

15. *Id.* at 869.

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

an argument in which he charged his wife with infidelity, Mr. Eagleston stabbed her more than thirty times with a carving knife.<sup>22</sup>

On December 7, 1989, Mrs. Eagleston brought suit against ten police officers, the former police commissioner, the current police commissioner, the Suffolk County Police Department and Suffolk County.<sup>23</sup> The court dismissed her claims against two policemen and Mrs. Eagleston voluntarily dismissed charges against another policeman and Commissioner Guido.<sup>24</sup> On April 22, 1992, the district court granted four additional officers summary judgment on statute of limitations grounds<sup>25</sup> and Officer Ozer summary judgment under the theory of qualified immunity.<sup>26</sup>

The first jury trial in this case proceeded in May 1992, against the Suffolk county, former Police Commissioner, Dewitt Treder, and two remaining policemen.<sup>27</sup> The district judge dismissed the claims against the officers on grounds of qualified immunity and submitted the remaining claims to the jury.<sup>28</sup> After the jury deadlocked on the remaining claims, the district court judge declared a mistrial.<sup>29</sup>

A second jury trial began in August 1993.<sup>30</sup> The jury determined that the domestic violence dispute policy used by police in Suffolk County was not unconstitutional in its protection of women.<sup>31</sup> The jury further found that the policy was unconstitutional because it denied equal protection to victims of domestic violence.<sup>32</sup> Despite this finding, the jury failed to reach a unanimous decision on whether the policy was the proximate cause of Mrs. Eagleston's injuries.<sup>33</sup> With the jury's lack of consensus, the judge was forced to declare a mistrial and granted the defendants' motion for a directed verdict.<sup>34</sup> The judge stated "the plaintiff had failed to establish that either the County of Suffolk or Police Commissioner Treder 'had a policy of denying women or victims of domestic violence equal protection of the law.'<sup>35</sup>

On appeal, the Second Circuit Court of Appeals affirmed the trial judge's decision that the plaintiff had failed to establish that the police policy denied

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22. *Id.*

23. *Id.* at 865.

24. *Id.* at 869.

25. N.Y. CIV. PRAC. L. & R. § 214 (McKinney 1994).

26. *Eagleston*, 41 F.3d at 870. Officers Bugge, Kopf, Kern and Donnelly were granted summary judgment on statute of limitations grounds.

27. *Id.*

28. *Id.*

29. The jury deadlocked after three days of deliberation. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

victims of domestic violence equal protection.<sup>36</sup> Differing from the trial court's opinion, the Second Circuit looked to a 1991 county progress report dealing with domestic violence.<sup>37</sup> The court found that the relationship between a five-fold increase in arrests for domestic violence between 1986 and 1991 and the county's institution of an arrest policy in domestic violence<sup>38</sup> should have been admitted into evidence.<sup>39</sup> Even though the Second Circuit admitted this evidence, the court found that this evidence alone was not enough to overrule the directed verdict.<sup>40</sup>

In addition, the Second Circuit determined that the directed verdict should stand because a jury could not have concluded that the county's practice of dealing with domestic violence deviated from its dealing with other acts of violence.<sup>41</sup> Furthermore, the court found that the deviation in policies, from mediation to arrest, was "insufficient to create a jury issue in the absence of a showing that its purpose was invidious discrimination against women."<sup>42</sup> Judge Jacobs concluded his opinion by stating that it is a community's right to decide to use mediation in family disputes if it finds that this technique is the most promising way to confront domestic violence.<sup>43</sup>

### III. LEGAL HISTORY

#### A. Supervisor Liability

Supervisor liability arose under the doctrine of immunity, a concept popularized in the 1970's and 1980's.<sup>44</sup> Persons acting under the color of state law have often enjoyed immunity from suits.<sup>45</sup> District attorneys<sup>46</sup> and police officers<sup>47</sup> traditionally have used this privilege.

In *Imbler v. Pachtman*,<sup>48</sup> the United States Supreme Court held that when a district attorney is acting within the scope of his duties, he possesses absolute

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36. *Id.* at 879.

37. *Id.* at 874.

38. Officers were instructed to arrest anyone who violated protection orders. *Id.*

39. *Id.* at 875.

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.* at 878.

44. See *Imbler v. Pachtman*, 424 U.S. 409 (1976); *Anderson v. Creighton*, 483 U.S. 635 (1987); *Wood v. Strickland*, 420 U.S. 308 (1975).

45. *Smith v. City of Elyria*, 857 F. Supp. 1203, 1214 (N.D. Ohio 1994) (citing *Anderson v. Creighton*, 483 U.S. 635, 641 (1987)).

46. See, e.g., *Eisenberg v. District Attorney of the County of Kings*, 847 F. Supp. 1029 (E.D. N.Y. 1994). A civil rights case was brought against a district attorney. The judge dismissed the action because the district attorney enjoyed immunity.

47. See, e.g., *Smith*, 857 F. Supp. at 1214. (Individual police officers are immune from liability under § 1983.)

48. 424 U.S. 409 (1976).

freedom from liability.<sup>49</sup> Imbler brought a civil rights action against the district attorney alleging that the attorney had used false testimony and suppressed certain valuable pieces of evidence which ultimately led to Imbler's murder charge.<sup>50</sup> In order to allow the district attorney to concentrate on his public duties and not be harassed by personal litigation, the Court held absolute immunity from this suit was necessary.<sup>51</sup>

The United States Supreme Court also addressed police officers' immunity in *Anderson v. Creighton*.<sup>52</sup> *Anderson* concerned a search which violated the Fourth Amendment.<sup>53</sup> The Court held that as long as the police officer can demonstrate "as a matter of law that a reasonable officer could have believed that the search comported with the Fourth Amendment, even though it actually did not," the officer shall be immune.<sup>54</sup>

The immunity doctrine has also been extended to judges, attorneys general, school boards and agency officials. In *Pierson v. Ray*,<sup>55</sup> the United States Supreme Court held that when judges act within their judicial discretion, they enjoy immunity from litigation.<sup>56</sup> This immunity stands even when the allegations accuse the judge of action in a malicious and corrupt manner.<sup>57</sup> A school board was also found immune from a civil rights action in *Wood v. Strickland*.<sup>58</sup> The Court determined that when a school board shows good faith in rule making, it will be granted qualified immunity in order to allow it to freely exercise its discretion without the burden of lawsuits.<sup>59</sup>

In addition, The United States Supreme Court found that the United States Attorney General enjoys immunity "so long as his actions do not violate 'clearly established statutory or constitutional rights of which a reasonable person would have known.'"<sup>60</sup> The United States Supreme Court granted further immunity in *Butz v. Economou*.<sup>61</sup> In *Butz*, agency officials in the Department of Agriculture brought an administrative action against Economou who claimed the action was brought solely because of his criticism of the agency.<sup>62</sup> The Court held that when an agency behaves in an executive fashion, the suit against it must

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49. *Id* at 422.

50. *Id.* at 409.

51. *Id.* at 423.

52. 483 U.S. 635 (1987).

53. *Id.*

54. *Id.*

55. 386 U.S. 547 (1967).

56. *Id.* at 553-54.

57. *Id.*

58. 420 U.S. 308 (1975).

59. *Id.* at 319-20.

60. *Mitchell v. Forsyth*, 472 U.S. 511, 524 (1985) (citing *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)).

61. 438 U.S. 478 (1978).

62. *Id.* at 480.

necessarily be dismissed.<sup>63</sup> In all cases where the United States Supreme Court has addressed immunity, the focal point of the Court's reasoning has been to allow those entities to freely perform their jobs without encumbering lawsuits.

While potential government defendants have avoided liability in suits by claiming immunity, injured parties also have sought recovery by filing civil rights suits.<sup>64</sup> In a civil rights suit, the injured party seeks recovery from a supervisor for a wrong committed against them by a lower government official and under a policy enforced or created by the supervisor.<sup>65</sup>

In addition to showing that the policy or custom which the official was following has been approved and adopted by the superior,<sup>66</sup> the plaintiff must demonstrate the supervisor's personal involvement in the subordinate's unconstitutional conduct.<sup>67</sup> In *Bleakley v. Jekyll Island--State Park Authority*,<sup>68</sup> a state employee brought an equal protection claim against her employer when she was dismissed because of her age.<sup>69</sup> The court held that Bleakley's boss could not be held liable under an equal protection claim because there was insufficient evidence to show adoption of a policy geared toward discharging employees due to age.<sup>70</sup> The statute governing civil rights and granting equal protection, 42 U.S.C. § 1983, states:

every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress.<sup>71</sup>

Equal protection has been recognized when people are similarly situated and such persons are expected to be treated similarly, absent a legitimate governmental interest.<sup>72</sup>

Courts and commentators have recognized that a prima facie Section 1983 case must show that the defendant's conduct was the cause in fact of the constitutional violation, the conduct was inferior to the necessary standard of care, the conduct was under color of state law and that the plaintiff suffered injury.<sup>73</sup>

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63. *Id.* at 513.

64. NAHMOD, *supra* note 3, at 242.

65. *Id.*

66. *Bleakley v. Jekyll Island--State Park Auth.*, 536 F. Supp. 236, 246 (S.D. Ga. 1982).

67. NAHMOD, *supra* note 3, at 242.

68. *Id.*

69. *Bleakley*, 536 F. Supp at 237.

70. *Id.* at 246.

71. 42 U.S.C. § 1983 (1979).

72. LAURENCE H. TRIBE, *AMERICAN CONSTITUTIONAL LAW* 1436-39 (2d ed. 1988).

73. NAHMOD, *supra* note 3, at 56-57.

The Second Circuit considered all of these requirements in *Dwares v. City of New York*.<sup>74</sup> The court held that in order to bring a successful civil rights Section 1983 claim, one must satisfy three factors.<sup>75</sup> The court required that the challenged conduct result from custom and policy, and that the conduct caused the plaintiff's injury.<sup>76</sup>

Several other cases have required more than mere negligence for a party to meet the first requirement for a valid equal protection claim.<sup>77</sup> In these cases, the United States Supreme Court and other circuits appear to alter the standard to one of intentional discrimination or deliberate indifference.<sup>78</sup> For example, in *Specht v. Jensen*,<sup>79</sup> the Tenth Circuit held that the city was not liable in civil rights action because its standard for alleged illegal searches did not show a deliberate indifference on the part of the city.<sup>80</sup>

In *Ricketts v. City of Columbia*,<sup>81</sup> the Eighth Circuit was faced with a domestic abuse case which arose when police exercised their custom of not arresting abusive husbands and tried to use a type of mediation to help the couple solve their problems.<sup>82</sup> The Eighth Circuit said that "[a]n equal protection claim arises upon a showing that 'it is the policy or custom of the police to provide less protection to victims of domestic violence than to other victims of violence, and that discrimination against women was a motivating factor' behind this policy or custom."<sup>83</sup>

The second factor necessary for a plaintiff to establish a claim under equal protection is a causal relationship between the unconstitutional policy and deprivation of a plaintiff's right, privilege or immunity secured by the courts or laws of the United States.<sup>84</sup> The jury is often left to find the presence of this fact,<sup>85</sup> unless the causal link between the policy and injury is too remote or tenuous.<sup>86</sup> When the link is not sufficient, a judge decides if this second requirement is met.<sup>87</sup>

Looking at the causal relationship between unconstitutional policy and the plaintiff's injury, the United States Supreme Court found that an alleged violation

74. 985 F.2d 94 (2d. Cir. 1993).

75. *Dwares*, 985 F.2d at 100.

76. *Id.* at 100; *see also*, *Rendell-Baker v. Kohn*, 457 U.S. 830, 835 (1982).

77. *Maddox v. City of Los Angeles*, 792 F.2d 1408, 1413 (9th Cir. 1986); *Daniels v. Williams*, 474 U.S. 327 (1986); *Davidson v. Cannon*, 474 U.S. 344 (1986).

78. *Id.*

79. 863 F.2d 700 (10th Cir. 1988).

80. *Id.* at 702.

81. 6 F.3d 775 (8th Cir. 1994).

82. *Ricketts v. City of Columbia*, 36 F.3d 775, 780 (8th Cir. 1994).

83. *Id.* (citing *Hynson v. City of Chester*, 864 F.2d 1026, 1031 (3d Cir. 1988)).

84. *Dwares*, 985 F.2d at 98.

85. *Ricketts*, 36 F.3d at 779.

86. *Martinez v. California*, 444 U.S. 277, 285 (1980); *see also*, *Bielevicz v. Dubinon*, 915 F.2d 845, 851 (3d Cir. 1990).

87. *Id.*



was too tenuous a consequence of the parole officers' action to hold them responsible under federal civil rights law to send the issue to the jury in *Martinez v. State of California*.<sup>88</sup> The parolee's alleged violation included the murder of a young girl.<sup>89</sup> The Court held that the murder was too remote a result to find the parole board liable for murder on merely granting parole.<sup>90</sup> Similarly, the *Ricketts* Court found that the evidence was insufficient to show the police policy of non-arrest in domestic violence cases was the cause of murder of the wife's mother and rape of the wife.<sup>91</sup> The Eighth Circuit also found that the statistics showing fewer arrests in domestic violence cases as opposed to non-domestic violence cases have led solely to speculation.<sup>92</sup>

Courts have been reluctant to hold a municipality liable under Section 1983 of the Civil Rights Act.<sup>93</sup> However, there are exceptions.<sup>94</sup> In *City of Canton, Ohio v. Harris*,<sup>95</sup> the United States Supreme Court held that the inadequacy of police training may serve as grounds for holding a municipality liable under a § 1983 claim.<sup>96</sup> In *Bell v. City of Miami*,<sup>97</sup> the United States District Court of Southern Florida held that police conduct was a result of the city's policy and that the city would be proven liable with sufficient evidence of a causal link.<sup>98</sup>

### B. Mediation and Arrest Policies

Since the issue of domestic violence has only recently become prevalent in our society, there has not been much litigation concerning mediation in arrest policies.<sup>99</sup> Despite the lack of litigation concerning mediation and domestic violence, courts have held that no matter what policy the police utilize, they may not selectively deny protective services to certain disfavored minorities without violating the Equal Protection Clause.<sup>100</sup> While not denying protective services, the United States Supreme Court, in *DeShaney v. Winnebago County Department*

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88. 444 U.S. 277 (1980).

89. *Id.* at 277.

90. *Id.* at 285.

91. *Id.* at 780.

92. *Id.*

93. See, e.g., *Eagleston*, 41 F.3d at 865; *Ricketts*, 36 F.3d at 775; *Watson v. City of Kansas City*, 857 F.2d 690 (10th Cir. 1988); *McKee v. City of Rockwall*, 877 F.2d 409 (5th Cir. 1989).

94. See, e.g., *City of Canton v. Harris*, 489 U.S. 378 (1989) (holding that the inadequacy of police training may serve as a basis for holding a municipality liable in a § 1983 case); see also, *Bell v. City of Miami*, 733 F. Supp. 1475 (1990) (holding that the city was liable when police conduct was a result of city policy).

95. 89 U.S. 378 (1989).

96. *Id.*

97. 733 F. Supp. 1475 (S.D. Fla. 1990).

98. *Bell*, 733 F. Supp. at 1476.

99. Armentrout, *supra* note 6, at 362.

100. *Ricketts*, 36 F.3d at 779. (citing *DeShaney v. Winnebago County Dep't of Social Serv.*, 489 U.S. 189, 197 (1989)).

of Social Services,<sup>101</sup> held that the state has no affirmative duty to protect a victim from an abusive offender, absent legislation from Congress.<sup>102</sup>

#### IV. INSTANT DECISION

In the instant case, the court found that three police officers were immune from suit.<sup>103</sup> The *Eagleston* court noted that qualified immunity serves as a "judicially-created restraint from the threat of civil punishment."<sup>104</sup> The court looked at each officer's conduct to determine if his failure to arrest Mr. Eagleston was one of "objective legal reasonableness."<sup>105</sup>

The *Eagleston* court had no occasion to question the intent of the police department's policy for handling domestic violence.<sup>106</sup> However, it did note that in the absence of showing that a policy's purpose was invidious discrimination, there must be sufficient evidence showing a disparate impact on women for a violation of equal protection to be established.<sup>107</sup> Although the plaintiff attempted to provide evidence showing that the police policy had a disparate impact on women, the district court did not accept numerous pieces of evidence offered by the plaintiff.<sup>108</sup> The Second Circuit excluded all of the following evidence: Mrs. Eagleston's testimony, 1984 Suffolk County Legislature's Resolution, the former Police Commissioner's orders to the police, legislative minutes, raw data on domestic disputes and police testimony regarding mediation.<sup>109</sup>

While the *Eagleston* court excluded numerous items from evidence, the Second Circuit concluded that the trial court improperly determined that a progress report, detailing the county's shift from a predominantly mediation oriented to arrest policy, was immaterial.<sup>110</sup> This report represented an increase in domestic violence arrests after 1987.<sup>111</sup> The court conceded that statistical evidence alone has been sufficient to prove discrimination,<sup>112</sup> but it ruled that the increase may

101. 89 U.S. 189, 197 (1989).

102. *Id.* at 202.

103. *Eagleston*, 41 F.3d at 872.

104. *Id.* (citing *Magnotti v. Kuntz*, 918 F.2d 364, 365 (2d Cir. 1990)).

105. *Id.* The court evaluated each officer individually. First, the court found that Officer Ozer was immune because his failure to arrest Mr. Eagleston was objectively reasonable. The court felt that Ozer was reasonably unsure of his authority to deny Mr. Eagleston access to his rented apartment in the basement of the Eagleston household. Second, the court noted that Officer Pesale could not arrest Mr. Eagleston because of his unknown whereabouts. Finally, the court recognized that Officer Milward's actions were objectively reasonable because, absent an admission or more convincing evidence, he could not arrest Mr. Eagleston.

106. *Eagleston*, 41 F.3d at 865.

107. *Id.* at 875-76.

108. *Id.*

109. *Id.*

110. *Id.* at 874-75.

111. *Id.* at 874.

112. *Id.* at 877; see *McCleskey v. Kemp*, 481 U.S. 279 (1987).

have to do with other factors, such as revealing an unwillingness to have a spouse arrested.<sup>113</sup> The court's doubt as to the causation of the plaintiff's injury precluded her from gaining recovery.<sup>114</sup>

In reviewing the use of mediation in the domestic violence case, the court applied the general rule from *Ricketts*,<sup>115</sup> noting the differences in domestic and non-domestic disputes.<sup>116</sup> These differences produce factors that "may affect a police officer's decision to arrest or not to arrest in any given situation."<sup>117</sup> The court ruled that a community can decide if mediation is the best method for handling family disputes.<sup>118</sup> The Second Circuit further held that the police department's policy may stand without violating the equal protection clause.<sup>119</sup>

## V. COMMENT

When commenting on domestic violence, it becomes necessary to examine how widespread and serious the problem really is. Studies have shown that between one-fifth to one-third of all women will be physically assaulted by a partner in their lifetime.<sup>120</sup> Of these women who are battered by their spouses, most will remain with the abusive husband,<sup>121</sup> and if they do leave, most will return.<sup>122</sup> There are several reported reasons for a domestic violence victim to remain with their husband, including: fear, money, private matters, and lack of

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113. *Id.* at 875.

114. *Id.*

115. 6 F.3d at 781.

116. *Id.*

117. *Id.*

118. *Eagleston*, 41 F.3d at 878.

119. *Id.*

120. AMA COUNCIL ON SCIENTIFIC AFFAIRS, VIOLENCE AGAINST WOMEN 7 (1991).

121. Herbert et al., *Coping with an Abusive Relationship: I. How and Why Do Women Stay?*, 53 J. MARRIAGE & THE FAMILY 311 (1991).

122. Benigno Aguirre, *Why Do They Return? Abused Wives in Shelters*, 30 J. NAT. ASSN. OF SOCIAL WORKERS 350, 352 (1985).

a place to go.<sup>123</sup> This also explains why most instances of domestic violence go unreported.<sup>124</sup>

When police do intervene, it is imperative that they do so in such a way to lessen the chances of the violence continuing once the officer has left the scene. One of the main problems with police intervention, is the officers' attitude. "Many officers think domestic abuse calls are dangerous, frustrating, time-consuming, and not 'real' police work."<sup>125</sup>

What police policy is most effective in handling domestic violence, mediation or arrest? With the attitude of some officers in mind, it would be easy to draw the conclusion that mediation would not be as effective as arrest. Mediation takes time, compassion and a belief that one is doing something important. A study in Minneapolis supports this conclusion.<sup>126</sup> The findings demonstrated that the arrested offenders were half as likely to commit repeated violent acts than the nonarrested offenders.<sup>127</sup> Like any study, there are unanswered questions of whether the victim was deterred from calling police again by the offender, whether the victim lied to interviewer, or whether the offender was now beating someone else.<sup>128</sup>

123. In order to get a feel for the dilemma facing a battered wife, one can only hear what a battered wife has to say:

I wanted to leave my husband a long time ago - but I'd got nowhere to go. Five or six years ago there wasn't a Women's aid about, was there? I haven't got anyone in this country that I could turn to: I've got friends - which are all his friends. I warned my husband many times that I was going to leave him, but he knew that I'd got nowhere to go. He won't give me no money to save up, so I can't go back to my country. If I could go back to my country, I wouldn't come back. But he wouldn't give me any money. He said that any time I wanted to leave I'd never make the door - he'd do me in before I'd reached the door.

JAN PAHL, PRIVATE VIOLENCE AND PUBLIC POLICY: THE NEEDS OF BATTERED WOMEN AND THE RESPONSE OF THE PUBLIC SERVICES 37 (1985); *see also*, LENORE E. WALKER, THE BATTERED WOMAN 71-184 (1979); *see also*, Jim Newton and Andrea Ford, *The O.J. Simpson Murder Trial: Victim's Tearful Sister Alleges Simpson Abuse*, LOS ANGELES TIMES, Feb. 4, 1995, at A1. (Denise Brown, Nicole Simpson's sister, describes two incidents in detail in which her sister was abused by O.J. Simpson.)

124. Walker, *supra* note 123, at 111. A study showed that only two percent of violent incidents were reported to police. While a different study breaks down the reasons police were not called: private or personal matter, 49%; afraid of reprisal, 12%; crime not important enough, 11%; police could not or would not do anything, 10%; reported to someone else, 4%; and other reasons, 14%. Patricia A. Langan & Christopher A. Innes, *Preventing Domestic Violence Against Women*, BUREAU OF JUSTICE STATISTICS 1 (1986).

125. Armentrout, *supra* note 6, at 365.

126. SHERMAN, *supra* note 10, at 2-3.

127. *Id.* at 3. The methods of measuring the results in the study consisted of contacting the victims every two weeks for the six months following a domestic violence incident to ascertain whether there had been repeat attacks and tracking official records for repeat contacts between police and offenders. *Id.*

128. *Id.*

A police custom of mediating with the offender and victim does have some advantages.<sup>129</sup> These advantages may include: more training of police in this area, which would lead to a better understanding of victims' plights; more flexibility in approaching these volatile situations; and hopefully, more advice and information for the offender to preclude repeated attacks.<sup>130</sup>

An arrest policy may be advantageous by removing discretion from the officer,<sup>131</sup> especially given their attitude<sup>132</sup> and lack of training in the domestic violence field.<sup>133</sup> Given the Minneapolis study, an arrest policy also seems to have a better impact on offenders.<sup>134</sup> An arrest policy has the immediate effect of separating the offender and the victim.<sup>135</sup> Another important advantage of arrest is the punishing of the offender, and hopefully, deterring future violent episodes.

Although the *Eagleston* court may have held that a community has a constitutional right to implement and enforce a mediation policy in dealing with domestic violence,<sup>136</sup> practically speaking, that policy may have a detrimental effect on women in that community. A change is necessary. One possible system includes four main areas: arrest, referral, training and the improvement of information services.<sup>137</sup>

First, an arrest should take place automatically in the case of a domestic assault.<sup>138</sup> Second, the officer should present to the woman a list of agencies where she could seek help and support.<sup>139</sup> Third, training should "sensitize [sic] officers to the real problems of fear, pain, humiliation and a sense of helplessness" that the victims feel.<sup>140</sup> This training would create a more positive response and would shift the focus from public order to victims' needs.<sup>141</sup> Finally, more national information concerning specific domestic violence cases should be integrated into the local police computer system.<sup>142</sup> This information would increase an officer's knowledge of a party's violent history or of any injunctions that have been issued against the offender. This proposal would combine the greatest advantages of an arrest policy and mediation policy. It would have the

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129. JOHN M. HAYNES, THE FUNDAMENTALS OF FAMILY MEDIATION 1-29 (1994).

130. *Id.*; see also Sherman, *supra* note 10, at 1-4; UNITED NATIONS OFFICE, CENTRE FOR SOCIAL DEVELOPMENT AND HUMANITARIAN AFFAIRS, STRATEGIES FOR CONFRONTING DOMESTIC VIOLENCE: A RESOURCE MANUAL (1993).

131. SHERMAN, *supra* note 10, at 1-2.

132. Armentrout, *supra* note 6, at 365.

133. *Id.* at 366. A study found that "sixty-two percent of police officers felt their fellow officers were not adequately trained" in handling these duties. *Id.*

134. SHERMAN, *supra* note 10, at 3.

135. *Id.*

136. *Eagleston*, 41 F.3d at 878.

137. PAHL, *supra* note 123, at 122-24.

138. *Id.* at 122.

139. *Id.* at 123.

140. *Id.*

141. *Id.*

142. *Id.* at 124.

immediate impact of providing safety to the victim while supplying the victim with options, all administered by someone who was trained to handle such difficult situations.

Another proposed change to the policies that police departments use in handling domestic violence is special domestic violence units.<sup>143</sup> These units would consist of predominantly female officers who would work exclusively with domestic violence intervention.<sup>144</sup> The unit would improve the victim's first contact with the police, treat the call as a priority, expedite matters concerning litigation, increase investigation into the assault, increase links between police and community volunteers and provide information and support for victims.<sup>145</sup>

Personalizing attention on victims is the main advantage of this proposal. It would no doubt help battered women more than a simple arrest policy or a mediation policy currently in force in most communities. However, the cost of such a special unit could be prohibitive and may preclude many well intentioned locales from implementing it.

Having examined the policies commonly used by police in dealing with domestic violence and proposed changes, it is now obligatory to scrutinize the immunities enjoyed by those who utilize the policies. The purpose of qualified immunity is to give government actors protection from personal liability "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."<sup>146</sup>

It may make sense to afford an officer immunity when he is merely following an established departmental policy. This protection allows him to do his duty by proscribed procedures without fear of a potential lawsuit. Imagine if an officer could get sued by someone who was arrested, only later to be released. The officer would have trouble doing his job well. However, when a woman is beaten by her spouse, and there is evidence that it could have been prevented with proper police intervention, it stands to reason that someone should be held responsible. In fact, the public focus often shifts to the police when this occurs.<sup>147</sup> In cases like this, where there is a showing that a policy does not aid a victim in the best way, the police department should be held responsible. This idea is admittedly idealistic because there is no hard evidence showing what is the best possible domestic violence policy. Plus, what works in one community, say Minneapolis, may not work elsewhere.<sup>148</sup> Immunity for a municipality may not be proper when that municipality knowingly utilizes a policy that does not respond to a victim's needs.

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143. UNITED NATIONS OFFICE, *supra* note 130, at 31.

144. *Id.*

145. *Id.* at 31-36.

146. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

147. *Armentrout*, *supra* note 6, at 367.

148. *SHERMAN*, *supra* note 10, at 3.

## VI. CONCLUSION

Domestic violence is a very serious problem in our society. Victims have the right to the best protection possible. A specialized unit to deal with domestic violence calls is a necessary change for police departments and should be implemented if financially feasible. If not, then the four prong proposal, described above, would definitely be a marked improvement to current police department policies. It would cost less, still grant victims the support and information they need and afford officers with the training that is so important in these instances. Although well intentioned, mediation policies are just not enough. An arrest policy at least alleviates the present danger of violence, but alone, still only provides short term relief. A more comprehensive method of handling domestic violence, like the ones discussed in this Note, is essential to the health and well-being of battered women.

Finally, a municipality that is considered immune from lawsuits will not feel the urgency to change their current, inadequate policy. In order for them to modify their policy to be more attentive to victims of domestic violence, they need to be held responsible for their shortcomings. With these changes, the problems of domestic violence will decrease and allow women not to live in fear of their abusive husbands and without hope of recourse.

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