UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MARK LONGWORTH,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**Case No. 4:03CV897SNL**
	)	
ST. LOUIS METROPOLITAN POLICE DEPARTMENT, BOARD OF POLICE COMMISSIONERS, ET. AL.,	)	
	)	
Defendants.	)	

ORDER

In accordance with the memorandum filed herein this date,

IT IS HEREBY ORDERED that defendants' motion for summary judgment (#12) be and is **GRANTED IN PART** and **DENIED IN PART** as follows:

1) Summary judgment is granted to the defendants and against the plaintiff on all §1983 claims as contained in Count I of the plaintiff's complaint;

2) summary judgment is granted to the defendants and against the plaintiff on plaintiff's §1983 municipal liability failure-to-train claim as contained in Count II of the plaintiff's complaint;

3) summary judgment is granted to the defendants and against the plaintiff on Count IV of the plaintiff's complaint;

4) summary judgment is denied as to the plaintiff's Title II ADA claim for failure to accommodate as contained in Count I of the plaintiff's complaint;

5) summary judgment is denied as moot on Count III of the plaintiff's complaint and plaintiff's claims of assault and battery, as well as a possible claim for malicious prosecution, is remanded to the state court; and,

6) any and all purported claims related to or pertaining to alleged violations of the First, Fifth, and Fourteenth Amendment, Title VII (Civil Rights Act of 1964), and Missouri Constitution are dismissed.

IT IS FURTHER ORDERED that Count III of the plaintiff's complaint is hereby **REMANDED** to the Circuit Court of the City of St. Louis, pursuant to 28 U.S.C. §1367(c)(2) and (4), for further proceedings.

IT IS FINALLY ORDERED that only the plaintiff's Title II ADA claim for failure to accommodate, as contained in Count I of the plaintiff's complaint, remains for trial on August 18, 2004 in the courtroom of the undersigned.

Dated this 6th day of August, 2004.

Stephen N. Limbaugh

SENIOR UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MARK LONGWORTH,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**Case No. 4:03CV897SNL**
	)	
ST. LOUIS METROPOLITAN POLICE DEPARTMENT, BOARD OF POLICE COMMISSIONERS, ET. AL.,	)	
	)	
Defendants.	)	

MEMORANDUM

Plaintiff has filed this multi-count complaint alleging constitutional violations and state-law torts in connection with his arrest on June 4, 2001. This matter is before the Court on the defendants' motion for summary judgment (#12), filed March 30, 2004. Plaintiff has recently filed his response, and the matter is now ripe for disposition. This cause of action is set for trial on the Court's jury trial docket of August 16, 2004.

Courts have repeatedly recognized that summary judgment is a harsh remedy that should be granted only when the moving party has established his right to judgment with such clarity as not to give rise to controversy. New England Mut. Life Ins. Co. v. Null, 554 F.2d 896, 901 (8th Cir. 1977). Summary judgment motions, however, "can be a tool of great utility in removing factually insubstantial cases from crowded dockets, freeing courts' trial time for those that really do raise genuine issues of material fact." Mt. Pleasant v. Associated Elec. Coop. Inc., 838 F.2d 268, 273 (8th Cir. 1988).

Pursuant to Fed.R.Civ.P. 56(c), a district court may grant a motion for summary judgment if all of the information before the court demonstrates that "there is no genuine issue as to material

fact and the moving party is entitled to judgment as a matter of law." Poller v. Columbia Broadcasting System, Inc., 368 U.S. 464, 467, 82 S. Ct. 486, 7 L.Ed.2d 458 (1962). The burden is on the moving party. Mt. Pleasant, 838 F.2d at 273. After the moving party discharges this burden, the nonmoving party must do more than show that there is some doubt as to the facts. Matsushita Elec. Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 586, 106 S. Ct. 1348, 89 L.Ed.2d 538 (1986). Instead, the nonmoving party bears the burden of setting forth specific facts showing that there is sufficient evidence in its favor to allow a jury to return a verdict for it. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 106 S. Ct. 2505, 91 L.Ed.2d 202 (1986); Celotex Corp. v. Catrett, 477 U.S. 317, 324, 106 S. Ct. 2548, 91 L.Ed.2d 265 (1986).

In passing on a motion for summary judgment, the court must review the facts in a light most favorable to the party opposing the motion and give that party the benefit of any inferences that logically can be drawn from those facts. Buller v. Buechler, 706 F.2d 844, 846 (8th Cir. 1983). The court is required to resolve all conflicts of evidence in favor of the nonmoving party. Robert Johnson Grain Co. v. Chem. Interchange Co., 541 F.2d 207, 210 (8th Cir. 1976).

Given the confusing nature of the plaintiff's complaint, and the inartful pleading of the instant motion and response thereto, it is difficult for the Court to clearly ascertain the facts in this case; however, the following appears to be supported by the record.

On or about June 4, 2001 defendant Skaggs, a St. Louis City police officer, and his partner P.O. Agatha Santangelo, received a radio assignment concerning a "disturbance" involving a turquoise GMC van at the intersection of South Compton and Wilmington. As defendant Skaggs and his partner approached the intersection, they observed a van fitting the dispatcher's description driving away. The woman who had called in the "disturbance" informed the police officers that she had observed a man in the van counting money while a number of

other adults were arguing on the sidewalk next to the van. She further informed the police officers that several children were in the van screaming and that she believed that someone was being physically assaulted in the van. Finally, she said that as soon as the police officers had come into visual range, everyone had gotten back into the van and driven off.

Defendant Skaggs and P.O. Santangelo resumed their search for the van and ultimately located it being driven north on Michigan. They stopped the van at Eichelberger and Virginia. The parties greatly differ as their respective accounts as to what happened next.

Defendant Skaggs avers that upon stopping the van, a woman passenger (Pamela Bolden) exited the van and approached the police officers screaming "Why did you stop us? We didn't do anything." At the same time, the driver (plaintiff Mark Longworth) exited the van and began "rapidly approaching" the police officers. Defendant Skaggs avers that he attempted to tell plaintiff to put his hands on the back door of the van several times but was ignored by plaintiff. When defendant Skaggs attempted to physically turn plaintiff around to place his hands on the door, plaintiff allegedly knocked defendant Skaggs' hand with his fist, ran several yards away and began shaking his fist at the police officers. At this time, Ms. Bolden stated to the police officers that "He can't hear and he hates cops."

Defendant Skaggs avers that this was when for the first time he realized that plaintiff might be a deaf-mute. The police officers attempted to discuss the situation with Ms. Bolden, also a deaf-mute but able to read lips and apparently able to verbally communicate. Ms. Bolden was hostile to the police and not cooperative. When defendant Skaggs attempted to search the front of the van, plaintiff allegedly ran towards the van, leaped into it through the open passenger door and attempted to strike defendant Skaggs. Defendant Skaggs avers that he attempted to grab plaintiff, but missed. He then ran around the van but plaintiff had again moved some

distance from the van and the police officers. Defendant Skaggs avers that plaintiff again stood shaking his fist at the police officers.

Meanwhile, defendant Duckworth had responded to the call for assistance. Defendant Skaggs avers that he told defendant Duckworth to mace the plaintiff in order to subdue him. She proceeded to mace the plaintiff in the face with two (2) one-second bursts of mace. Plaintiff allegedly stood his ground, shaking his fist. Defendant Skaggs then grabbed the plaintiff, sweeping plaintiff's feet out from under him, knocking the plaintiff to the ground. All three police officers held him on the ground in order to handcuff his hands behind his back. Defendant Skaggs avers that all the while plaintiff continued to aggressively struggle, and in fact, kicked defendant Duckworth in the groin area and spat at her. Plaintiff was then placed in the back of one of the police cars.

Defendant Skaggs further avers that a witness, Alicia Winckowski, was passing by the scene. She recognized the plaintiff and the other occupants of the van. Although a "speaking and hearing person", Ms. Winckowski was knowledgeable in the use of sign language. Defendant Skaggs avers that Ms. Winckowski assisted the police officers by using sign language to communicate with the plaintiff and the other passengers in the van (apparently all deaf-mutes other than Ms. Bolton). Ms. Winckowski was able to ascertain the circumstances of the initial "disturbance" reported. She further advised plaintiff and the other deaf-mute occupants of the van the reason for the traffic stop, why plaintiff was being arrested, and where he was being conveyed. Finally, she informed the police officers that plaintiff had stated that he "hates the police".

Plaintiff was then conveyed to St. Alexious Hospital by two other police officers, P.O. Michael Hodge and P.O. Marvis Moodey. Plaintiff was examined, treated, and released to the police for booking at the South Patrol Station.

Plaintiff contends that upon the van being stopped, he exited the van, and stood off to the side of it. He further avers that he began using sign language in order to ask for the reasons for being stopped and that he was deaf and wanted an interpreter. He further avers that Ms. Bolden attempted to "talk" to the police officers but that they ignored her. He further avers that when defendant Duckworth appeared, both defendants walked over to him, grabbed his arms and held them behind his back. He further avers that defendant Duckworth maced him and defendant Skaggs threw him to the ground. He avers that at no time did he jump into the van, or try to hit or resist either defendant police officer. Plaintiff's Affidavit.

Ms. Bolden and plaintiff's wife (Lisa Longworth) essentially support plaintiff's version of the incident. Ms. Bolden attests that she told the defendant police officers that plaintiff was a deaf-mute with a limited ability to communicate. She further attests that she told the defendant police officers that plaintiff required an interpreter. She also attests that the defendant police officers grabbed plaintiff, maced plaintiff, and threw him to the ground. She also attests that plaintiff did not jump back into the van nor attempt to strike defendant Skaggs. Bolden Affidavit. Ms. Longworth's affidavit states the same. Lisa Longworth Affidavit.

Plaintiff was ultimately charged with one count of resisting arrest and two counts of third-degree assault on a law enforcement officer. Eventually, the charge of resisting arrest was *nolle prossed* and the plaintiff was tried and acquitted on the two counts of assaulting a police officer.

Neither the defendants' motion nor the plaintiffs' response comports with Local Rule 4.01. Defendants' summary judgment motion lacks a "statement of uncontroverted material

facts" and the attached documents are not labeled as "exhibits". The plaintiff has failed to file any pleading which can even remotely be considered a "memorandum of law". His entire response is a seven (7)-line pleading which denies or admits unidentified facts or points of law, and three (3) superficial affidavits (the plaintiff, his wife, and Ms. Bolden). In the future, if either counsel files such inadequate pleadings, sanctions will be imposed.

The documents filed with regard to the summary judgment matter are not the only "defect" present in this case. The complaint filed in this case is not a model of artful pleading. Only Count I has a "title" identifying the alleged claims contained therein; the other three counts do not have any "title" identifying the alleged claims that they contain. Furthermore, and more importantly, nowhere does the complaint assert a claim under a federal statute or the United States Constitution. There is not a single affirmative federal subject matter jurisdictional statement in the complaint. Federal courts are courts of limited jurisdiction, and thus, a federal court is under a continuing duty to assure itself that the threshold requirement of subject matter jurisdiction has been met. *See*, U.S. Constitution, Art. III, §1; Hein v. Arkansas State University, 972 F.Supp. 1175, 1179 (E.D.Ark. 1997)(citations omitted); North Central F.S., Inc. v. Brown, et. al., 951 F.Supp. 1383, 1391-92 (N.D.Iowa 1996)(citations omitted); Mummelthie v. City of Mason City, Iowa, 873 F.Supp. 1293, 1304-05 (N.D.Iowa 1995)(citations omitted) *aff'd* 78 F.3d. 589 (8th Cir. 1996)(unpublished opinion). A plaintiff is under an affirmative duty to allege the basis for federal subject matter jurisdiction in the complaint. Victor Foods v. Crossroads Economic Development of St. Charles County, Inc., et. al., 977 F.2d. 1224, 1227 (8th Cir. 1992). In order for a court to have subject matter jurisdiction, the pleading on its face must state a cognizable claim for relief, and claims under §1983 require invocation of federal question jurisdiction under either 28 U.S.C. §1331 or 28 U.S.C. §1343. Mummelthie, at 1304 (citations

omitted). Furthermore, in a §1983 action the plaintiff must be "able to point to specific articulable constitutional rights that have been transgressed." Armstrong, et. al. v. T.O. Adams, et. al., 869 F.2d. 410, 413 (8th Cir. 1989)(citations omitted).

Failure to plead jurisdiction is generally fatal and cause for dismissal of the lawsuit. Hein, at 1179; Mummelthie, at 1304; Thomas v. St. Lukes Health Systems, 869 F.Supp. 1413, 1424-25 (N.D.Iowa 1994) *aff'd* 61 F.3d. 908 (8th Cir. 1995)(unpublished opinion). However, given the fact that Longworth's complaint is problematical, defendants have not sought summary judgment or dismissal on this ground. The parties have proceeded throughout this case on the assumption that a federal question had been presented for various constitutional and federal statutory violations. The parties have argued the case as though it were a §1983 cause of action for violations of plaintiff's Fourth Amendment rights and violation of Title II of the Americans with Disabilities Act even though nowhere in the complaint is this stated.[1]

Normally, given such a deficient complaint and lack of a challenge to it, the Court would *sua sponte* dismiss the complaint for failure to plead subject matter jurisdiction. However, the Eighth Circuit Court of Appeals has cautioned that "subject matter jurisdiction should not be used to dismiss a case containing even a remotely plausible federal claim if the parties and the courts have already made [a] vast expenditure of resources. Pioneer Hi-Breed Int'l v. Holden Found. Seeds, Inc., 35 F.3d. 1226, 1242 (8th Cir. 1994); *see also*, Hein, at 1179; Mummelthie, at 1305; Thomas, at 1425-26. Thus, in the interest of judicial economy and in light of the investment of resources of the parties and the fact that the trial date is quickly approaching, the Court will, in the alternative, consider whether Longworth's complaint can be construed as an inartful attempt

[1]Furthermore, the parties have proceeded on the assumption that supplemental jurisdiction has been presented for state-law claims of assault and battery, and perhaps, malicious prosecution. Once again, not one Missouri statute is cited as grounds for any state-law claim.

to assert plausible federal claims under §1983 for violations of plaintiff's federal constitutional rights, and/or a plausible claim under the ADA.

Due to the inadequacy of the pleadings, including the inartfully-drafted complaint[2], the Court has expended a great deal of time divining the substance of the plaintiff's claims. It appears that plaintiff is asserting §1983 claims for violations of his Fourth Amendment and Fourteenth Amendment rights, including false arrest, false imprisonment, excessive force in effectuating the arrest, and malicious prosecution. It further appears that plaintiff is asserting an Americans with Disabilities Act claim regarding the failure of the defendant police officers to provide him with an "in-field" interpreter skilled in sign language. Plaintiff appears to further assert a claim for the alleged failure of the St. Louis City police department to train the defendant police officers in "proper techniques that are available and should be utilized in detaining and questioning individuals who are suffering from a disability such as Plaintiff's deafness." Plaintiff appears to further assert state-law claims of assault and battery. Finally, plaintiff appears to assert a claim for punitives in general.

Defendants assert that 1) that defendants Skaggs and Duckworth are entitled to qualified immunity on the §1983 claims; 2) that defendant Police Board members are entitled to sovereign immunity on the state-law claims; 3) that the ADA does not require an "in-field" interpreter before, during, or after an arrest; 4) that punitive damages cannot be assessed against the Board

---

[2]The complaint, originally filed in state court, has four (4) counts: Count I - False Arrest, Imprisonment, and Violation of Civil Rights; Count II - no title; Count III - no title; and Count IV - no title. As stated before, the complaint is devoid of any reference to the jurisdictional basis for each count and fails to differentiate the claims as to each of the defendants. It has taken the Court considerable time and effort to interpret the claims, account for the jurisdictional basis for the claims, and ascertain which defendants are subject to which claims. The drafting of this complaint does not reflect the standard of professionalism this Court has come to expect from licensed Missouri attorneys.

members, in their official capacities, under either the ADA or §1983; and 5) defendant Board members cannot be held liable for the constitutional acts of its police officers or under the doctrine of *respondeat superior* on plaintiff's §1983 claims.

After careful consideration of the matter, the Court will dismiss all the §1983 claims against all defendants, remand the state-law claim of assault and battery against defendants Skaggs and Duckworth, and deny summary judgment on the plaintiff's ADA claim.[3]

§1983 Claims

In his complaint, plaintiff brings his §1983 claims against the St. Louis City Police Department, the Board of Police Commissioners, the individual Board members in their official capacities, and two individual police officer: Skaggs and Duckworth. It is well-established that neither the St. Louis Police Department or the Board of Police Commissioners are suable entities under §1983. *See*, Will v. Michigan Dept. of State Police, 491 U.S. 58, 71 (1989); Edwards v. Baer,863 F.2d. 606, 609 (8th Cir. 1988); Best v. Schoemehl, 652 S.W.2d. 740, 742 (Mo.App. 1983). These entities may only be sued by bringing an action against the individual members of the Board in their official capacity.

As for defendants Skaggs and Duckworth, plaintiff does not specify the capacity in which he is suing them. The caption of his complaint names them as **POLICE OFFICER DENNIS SKAGGS, DSNO7558** and **POLICE OFFICER GENA DUCKWORTH, DSN4581**.

Public servants, such as police officers, may be sued under §1983 in either their official capacity, their individual capacity, or both. Johnson v. Outboard Marine Corporation, 172 F.3d. 531,

[3]Also, punitive damages may not be sought under Title II of the ADA, *see*, Barnes v. Gorman, 536 U.S. 181, 188 (2002) nor assessed against governmental entities under §1983, *see*, City of Newport v. Fact Concerts, 453 U. S 247, 262 (1981). As will be explained, the plaintiff's §1983 claims are really claims against all defendants in their official capacities.

535 (8th Cir. 1999); Lopez-Buric v. Notch, et. al., 168 F.Supp.2d. 1046, 1049 (D.Minn. 2001). In actions against police officers, a plaintiff must specifically plead individual capacity in order put the police officer (or any other public servant) on notice of personal liability. Andrus v, Arkansas, 197 F.3d. 953 (8th Cir. 1999). In order to sue a public servant (or in this case, individual police officers) in his/her individual capacity, "a plaintiff must expressly and unambiguously state so in the pleadings, otherwise, it will be assumed that the defendant is sued only in his or her official capacity.". Johnson, at 535 *citing* Artis v. Francis-Howell North Band Booster Ass'n, Inc., 161 F.3d. 1178, 1182 (8th Cir. 1998); Lansdown v. Chadwick, 152 F.Supp.2d. 1128, 1137-38 (W.D.Ark. 2000) ***aff'd*** 258 F.3d. 754 (8th Cir. 2001). In order to meet this pleading requirement, a §1983 plaintiff need only to state somewhere in the complaint that the plaintiff "sues each and all defendants in both their individual and official capacities." Lopez-Buric, at 1050 *quoting* Nix v. Norman, 879 F.2d. 429, 431 (8th Cir. 1989). Absent such an express statement, the suit is construed as being against the public servant defendants/law enforcement defendants as being against them in their official capacity; and as such, is merely a suit against their governmental employer itself. Bankhead v. Knickrehm, 360 F.3d. 839, 844 (8th Cir. 2004); Johnson, at 535; Lopez-Buric, at 1049. Qualified immunity is a defense only against a claim in one's individual capacity. Bankhead, at 844; Johnson, at 535.

In the instant action, plaintiff has failed to include any language in his complaint evidencing a clear and unambiguous intent to sue defendants Skaggs and Duckworth in their individual capacities. The caption contains absolutely no statement as to the capacity in which they are sued. The complaint states in ¶3 that at all times mentioned defendants Skaggs and Duckworth were "duly commissioned police officers . . . and were acting within the course and scope of their employment. . . .". All the defendants are represented by the same attorney in the City Counselor's Office; i.e. defendants Skaggs and Duckworth are represented by municipal attorney, not a privately-retained

attorney. In short, there is nothing in the complaint which expressly states that defendants Skaggs and Duckworth are being sued in their individual capacities. Thus, the Court must assume that defendants Skaggs and Duckworth are being sued in their official capacities only.[4]

A governmental entity may not generally be held liable for the allegedly unconstitutional acts of its employees under the doctrine of *respondeat superior*. Monell v. Department of Social Services, 436 U.S. 658 (1978); Johnson, at 535 *citing* Monell, *supra*. A municipality may be held liable for the unconstitutional acts of its employees when those acts implement or execute an unconstitutional policy or custom. Monell, 436 U.S. at 694; Johnson, at 535; Mettler v. Whitledge, 165 F.3d. 1197, 1204 (8th Cir. 1999). A plaintiff may establish municipal liability under §1983 by proving that his or her constitutional rights were violated by an action pursuant to official municipal policy or misconduct so pervasive among non-policymaking employees of the municipality as to constitute a custom or usage with the force of law. Spencer v. Knapheide Truck Equipment Co., et. al., 183 F.3d. 902, 905 (8th Cir. 1999). The plaintiff must show that the municipality, through the alleged misconduct, was the "moving force" behind the injury alleged. Board of County Commissioners of Bryan County, Okla. v. Brown, 520 U.S. 397, 405 (1997).

In Count I, plaintiff has failed to alleged the existence of any particular policy or custom which caused the plaintiff's alleged constitutional injuries. He fails to allege or in any way identify any municipal policy or custom which was the "moving force" behind the alleged tortious conduct by the individual defendants. He fails to produce any evidence from which a reasonable juror could find that the individual defendants' actions were the direct result of an official municipal policy or custom. All plaintiff has alleged is a single incident of tortious and/or unconstitutional conduct by the

[4]Since the plaintiff's §1983 claims are construed as a suit against St. Louis City, the defendants' argument regarding qualified immunity is irrelevant.

individual defendants. A single incident of police misconduct cannot form the basis for imposing liability on the government employer. Oklahoma City v. Tuttle, 471 U.S. 808 (1985); Mettler, at 1205; Mosley v. Reeves, 99 F.Supp.2d. 1048, 1054 (E.D.Mo. 2000). Plaintiff has presented nothing that would indicate any liability on the part of the City for the alleged police misconduct. Summary judgment will be granted to the defendants on plaintiff's §1983 claims as contained in Count I.

In Count II, plaintiff's §1983 claim appears to be directed solely at the defendant Board members. Furthermore, it appears that plaintiff's Count II claim is a failure-to-train claim regarding the lack of an "in-field" interpreter. As stated before, a §1983 claim against the Board members in their official capacity is actually a claim against the municipality. In order to impose liability on a government entity based upon a failure-to-train claim, a plaintiff must show that the government entity's lack of training amounts to deliberate indifference to the rights of the public who come in contact with the government entity's employees; that a deliberate choice was made regarding this lack of training; that it would have been obvious to reasonable decision-makers that this lack of adequate training would result in constitutional violations; and that there was a causal connection between this lack of training and the plaintiff's injury. Canton v. Harris, 489 U.S. 378 (1989). A plaintiff may show deliberate indifference from evidence of decisionmakers' continued adherence to a training program they knew or should have known to be deficient in preventing employees' unconstitutional/tortious conduct. Ward v. City of Des Moines, 184 F.Supp.2d. 892, 898 (S.D.Iowa 2002) *citing* Brown, 520 U.S. at 407. A plaintiff can also impose liability upon showing that a pattern of tortious conduct by inadequately training employees indicates a lack of proper training, as opposed to a single negligent administration of the training program. Ward, at 898 *citing* Brown, 520 U.S. at 407-08; *see also*, Smith v. Watkins, 159 F.3d. 1137, 1138-39. Finally, a plaintiff can impose liability upon showing that "factors peculiar to the officer involved in the incident is the

moving force behind the plaintiff's injury." Ward, at 898 *citing* Brown, 520 U.S. at 407-08; *see also*, Smith v. Watkins, at 1139.

Plaintiff Longworth has provided no evidence of defects in the St. Louis City Police Department's training program, especially with regards to encounters in the field with deaf-mute individuals. He has shown neither that decisionmakers continued to adhere to a training program they knew or should have known had failed to prevent officers' failure to provide adequate communication with deaf-mute individuals in the field. He has failed to provide any evidence of special training needs or a pattern of tortious conduct by inadequately trained officers indicating a lack of proper training for dealing with deaf-mute individuals in the field. All plaintiff has shown is a single incident of an alleged violation of federal rights. A single incident does not alone permit an inference of municipal culpability and causation unless accompanied by a showing that the municipality failed to train its employees to handle recurring situations presenting an obvious potential for such a violation. Ward, at 898-99 *citing* Brown, 520 U.S. at 408. Plaintiff has not presented such evidence. In summary, plaintiff has not presented any evidence regarding the police department's training program with regard to encounters with deaf-mute individuals, much less point to any deficiencies in the training program. Defendant Board members are entitled to judgment on Count II as a matter of law.

ADA Claim

Although plaintiff fails to identify under which section of the ADA he is pursuing his claim in Count I, the Court agrees with the defendants that Title II of the ADA is most appropriate.[5] Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such

[5]Furthermore, by definition of Title II of the ADA, plaintiff's claim can only be brought against a government entity; i.e. not against any one of the defendants in his or her individual capacity. *See*, Calloway v. Boro of Glassboro Department of Police, 89 F.Supp.2d. 543, 557 (D.NJ. 2000)(citations omitted).

disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. §12132. A "public entity" includes "any department, agency, special purpose district, or other instrumentality of a State or States or local government." 42 U.S.C. §12131(1)(B). A disabled plaintiff can succeed in an action under Title II if he can show that, by reason of his disability, he was either "excluded from participation in or denied the benefits of the services, programs, or activities of a public entity," or was otherwise "subjected to discrimination by any such entity." 42 U.S.C.§12132; Hainze v. Richards, 207 F.3d. 795, 799 (5th Cir. 2000); Gorman v. Bartch, 152 F.3d. 907, 912 (8th Cir. 1998); McCray v. City of Dothan, 169 F.Supp.2d. 1260, 1273 (M.D.Ala. 2001).

There appears to be no dispute that plaintiff is a "qualified individual with a disability" and that the St. Louis City Police Department is a "public entity". *See*, Gorman at 912; Calloway, at 552; Hanson v. The Sangamon County Sheriff's Department, 991 F.Supp. 1059, 1063 (C.D.Ill. 1998). The issue is whether plaintiff was denied the benefits of a program, service, or activity of the St. Louis City Police Department due to the alleged failure of defendants Skaggs and Duckworth to provide him, at the time of his in-field questioning and subsequent arrest, with a qualified interpreter. In other words, whether Title II of the ADA applies to in-the-field investigations by police officers that may or may not lead to an arrest. The defendants argue that it is entitled to summary judgment because police interrogations preceding or during arrests are not activities falling within the protection of Title

II.[6] After a careful review of relevant caselaw, it appears that this is an issue of first impression within the Eighth Circuit.[7]

Neither the defendants' motion nor the plaintiff's pleadings (his complaint or "response" to the instant motion) identify the program or service of which the plaintiff was allegedly denied the benefits. The Court's review of all the pleadings, especially the plaintiff's complaint, indicates to it that the plaintiff is contending that, by failing to contact an interpreter before or after arresting him in the field, the police department discriminated against him in the provision of the police department's services, programs or activities. Courts which have considered the applicability of Title II to investigative and arrest activities have reached varying conclusions.

ADA claims related to police investigations and arrests have been brought under two distinct types of disability discrimination scenarios:

> "The first is that police wrongly arrested someone with a disability because they misperceived the effects of that disability as criminal activity. The second is that, while police properly investigated and

---

[6]Although the plaintiff makes the generalized statement that defendants (presumably referring to Skaggs and Duckworth) "failed to obtain the services of an appropriate interpreter in dealing with the Plaintiff prior to, during and **after** his arrest . . .", Plaintiff's Complaint, Count I, pg. 3, ¶5 (emphasis provided), any claim regarding events after his arrest are dismissed. It is undisputed that defendants Skaggs and Duckworth did not accompany plaintiff once he was transported from the arrest scene, and were not present at his booking later at the station. Furthermore, plaintiff has provided no evidence whatsoever of the events that took place once he was arrested and transported from the arrest scene.

[7]The Eighth Circuit has addressed the issue of applicability of Title II in the context of an arrest; however, the claim pertained to injuries received by a wheel-chair bound arrestee when he was transported post-arrest in a police van that was not equipped with wheelchair restraints. Gorman v. Bartch, *supra.* The appellate court not only determined that Title II was applicable to police departments, but further held that the plaintiff's allegations that a city police department and its officers failed to provide him with the benefit of post-arrest transportation appropriate in light of his disability fell within the purview of Title II. The Court found that Title II applied because arrestee transportation is a program or service ordinarily provided by the police department and the "benefit" denied to the plaintiff was to be transported in a safe and appropriate manner consistent with his disability. Gorman, at 913.

> arrested a person with a disability for a crime unrelated to that disability, they failed to reasonably accommodate the person's disability in the course of the investigation or arrest, causing the person to suffer greater injury or indignity in that process than other arrestees."

Gothier v. Enright, 186 F.3d. 1216, 1220-21 (10th Cir. 1999)(citations omitted); Anthony v. City of New York, - F.Supp.2d. - , 2001 WL 741743 (S.D.N.Y. 2001) *aff'd* 339 F.3d. 129 (2nd Cir. 2003); Crocker v. Lewiston Police Dept., - F.Supp.2d. - , 2001 WL 114977 (D.Me. 2001).[8] As stated before, plaintiff Longworth's claim is of the second type: failure of the police officers to provide him with a qualified interpreter during the course of their investigation and in-the-field arrest.

In the relatively small number of federal cases addressing the second type of alleged Title II discrimination, conclusions have differed as to applicability. In Gorman, *supra.*, the Eighth Circuit held that "[t]ransportation of arrestee to the station house is . . . a service of the police within the meaning of the ADA." Id., at 909, 912. In Rosen v. Montgomery County, Md., 121 F.3d. 154 (4th Cir. 1997) a deaf plaintiff was stopped for erratic driving, failed a field sobriety test, arrested and taken to the station house where he signed a consent form and was given a chemical test. His ADA claim alleged that the police had made no attempt to communicate with him and had ignored his requests for an interpreter and a TTY telephone so he could call a lawyer. The Fourth Circuit held that a drunk driving arrest was not a program or activity of the police department and the arrest did not fall within the purview of the ADA. Id., at 157. In Calloway, *supra.*, the deaf plaintiff's ADA claim alleged that the police had failed to provide her with an interpreter during a station-house investigative questioning which lead to her arrest. The Court found that investigative questioning at the police station was a program or activity which fell within the protection of the ADA. Id., at 556.

---

[8]It is the Court's policy to avoid citing unpublished opinion unless necessary to analyze the relevant law in a thorough manner. In this case, since the issue before the Court is a novel issue, the Court finds that any caselaw, published or otherwise, is extremely helpful to its analysis and reaching its ultimate determination.

In Hanson, *supra.*, the deaf plaintiff alleged that he was denied the opportunity to post bond and make a telephone call because no interpreter was provided and/or TTY phone provided. The Court held that these allegations were sufficient to state a claim under Title II of the ADA. Id., at 1063. In Hainze, *supra.*, the Court held that a mentally ill plaintiff who had been shot when he approached the police officers while holding a knife and failed to put down the knife after repeated orders to do so did not have a cause of action under the ADA because "Title II does not apply to an officer's on-the street responses to reported disturbances or other similar incidents . . . prior to the officer's securing the scene and ensuring that there is no threat to human life." Id., at 797, 801. In a similar vein, the Court in McCray, *supra.* found that the police officers were obligated under the ADA to accommodate a deaf arrestee with an interpreter upon his arrest in a restaurant. The Court reached this conclusion after finding that the defendants had presented no evidence suggesting that the deaf arrestee had posed any "threat to human safety" which created a necessity for questioning him or arresting him prior to complying with his request for an interpreter. Id., at 1275. Finally, in Patrice v. Murphy, 43 F.Supp.2d. 1156 (W.D.Wash. 1999), the Court found that a deaf arrestee who had been questioned and arrested in her home following a domestic disturbance did not make out a claim under the ADA for failure of the police to have provided an interpreter because "an arrest is not the type of service, program, or activity from which a disabled person could be excluded or denied the benefits, although an ADA claim may exist where the claimant asserts that he has been arrested because of his disability (i.e. he has been subjected to discrimination). In the case at hand, . . . plaintiff's claim is that defendants failed to make reasonable accommodation to allow the plaintiff to enjoy the benefits of police services. Plaintiff's claim fails to state a viable cause of action under §12132 of the ADA." Id., at 1160.

Upon review of these cases, the Court finds a common thread running through them. It appears that these decisions are fact-driven with the most important facts being 1) whether the investigative questioning and/or arrest is at the station-house or in-the-field; and 2) if in-the-field, did the plaintiff pose a "threat to human safety" which required quick response of the police officers to the situation. In Hainze, *supra.*, the Court observed that Title II does not apply to officer's on-the-street responses to reported disturbances or other similar incidents, whether or not those calls involve subjects with mental disabilities, prior to the officer's securing the scene and ensuring that there is no threat to human life. Id., at 801.

> "Law enforcement personnel conducting in-the-field investigations already face the onerous task of frequently having to instantaneously identify, assess, and react to potentially life-threatening situations. To require the officers to factor in whether their actions are going to comply with the ADA, in the presence of exigent circumstances and prior to securing the safety of themselves, other officers, and any nearby civilians, would pose an unnecessary risk to innocents."

Id., at 801. The Hainze Court further held that once officers responding to a disturbance call have secured the area and no threat to human safety existed, officers would be under a duty, under the ADA to reasonably accommodate the individual's disability in handling and transporting him. Id., at 802. In McCray, *supra.*, the Court adopted the reasoning of the Hainze Court and held that police activity is a government program under the ADA, but only when the circumstances surrounding the activity is "secure" and there is "no threat to human safety" . . . [i]n other words, police investigative activities are government programs, but it is per se reasonable to disregard a suspect's disability until overriding concerns of public safety are ensured." Id., at 1275.

After careful consideration of the matter, the Court finds that police activity of investigative questioning and arrest in-the-field is a government program under the ADA, but only when the

circumstances surrounding the activity is "secure" and no "threat to human safety" is present. This conclusion does not end the Court's inquiry because the motion before the Court is one for summary judgment. Whether the circumstances surrounding the investigative questioning and arrest of the plaintiff in-the-field were "secure" and whether plaintiff posed a "theat to human safety" are fact questions still left unanswered. The facts of what actually occurred on June 4, 2001 are hotly contested. Furthermore, the defendants assert that they are not liable because they reasonably accommodated the plaintiff's disability by attempting to communicate with him through the assistance of Ms. Bolden and Ms. Winckowski. "Whether an accommodation is reasonable `involves a fact-specific, case-by-case inquiry that considers, among other factors, the effectiveness of the modification in light of the nature of the disability in question." McCray, at 1275 *quoting* Staron v. McDonald's Corp., 51 F.3d. 353, 356 (2nd Cir. 1995). Plaintiff attests that he is a deaf-mute unable to read lips. He also attests that because of "developmental problems" he has a limited ability to read and write. He also attests that sign language (presumably American Sign Language) is his primary form of communication. Longworth claims that defendants Skaggs and Duckworth refused his requests for an interpreter during their questioning and subsequent arrest. In light of Longworth's asserted inability to fully understand English, the appropriateness of using laypersons as interpreters is a disputed issue of material fact. The disputed circumstances regarding the June 4, 2001 incident and the appropriateness of using laypersons as interpreters precludes summary judgment.

State Law Claims of Assault and Battery

After careful consideration of the matter, the Court has decided to remand the assault and battery claims to state court. Since the Court has dismissed the plaintiff's §1983 claims, including his claim of excessive force in effectuating his arrest, the Court believes that any evidence regarding

assault and battery would overshadow and predominate the federal ADA claim remaining for trial. The ADA claim is strictly limited to whether the police were required to accommodate the plaintiff's disability because no exigent circumstances existed or because exigent circumstances existed, the police officers were not obligated to provide an in-the-field interpreter; and furthermore, regardless of whether exigent circumstances existed, the use of laypersons to interpret for the plaintiff was a reasonable accommodation of his disability. Although some evidence of the force used to subdue the plaintiff might be admissible, this evidence will not be relevant. However, if the Court should try the assault and battery claim, the prejudicial nature of the use of force to subdue the plaintiff would clearly cloud the issues presented by the ADA claim. The Court believes that the assault and battery claim is a separate and distinct claim that can be adequately heard before the state court. Thus, the Court declines to exercise supplemental jurisdiction over the state-law tort claims. 28 U.S.C. §1367(c)(2) and (4).

In summary, the Court grants summary judgment to the defendants on the §1983 claims as contained in Count I, including but not limited to plaintiff's claims of false arrest, false imprisonment, and excessive force; grants summary judgment to the defendants on plaintiff's §1983 municipal liability claim for failure-to-train as contained in Count II; and grants summary judgment on Count IV's punitive damages claim. The Court will deny as moot the defendants' summary judgment motion as to Count III having decided to remand it to the state court.[9] The Court will deny the defendants' motion for summary judgment as to plaintiff's ADA claim as contained in Count I of his complaint.

[9]The Court is not quite sure whether or not the plaintiff has stated a malicious prosecution claim also in Count III. The Court is confident that the matter can be taken up with the state court.

As a final note, plaintiff in Count I of his complaint, makes a general assertion that the actions of defendants violated the plaintiff's rights under the "First, Fourth, Fifth, and Fourteenth Amendments to the United States Constitution, the American With Disabilities Act **[sic]** and the Civil Rights Act of 1964 and the Missouri Constitution." Plaintiff's Complaint, pg. 4, ¶12. There is absolutely no allegation in his complaint which comports with any First, Fifth and Fourteenth Amendment violations; i.e. no facts or evidence presented by the plaintiff as to a freedom of speech violation, or a double jeopardy or self-incrimination or due process violation, or an equal protection violation. The Court is hard-pressed to find a Title VII violation in the context of an arrest lawsuit grounded on disability discrimination; and finally, the plaintiff has failed to make any allegations or present any facts which identify the circumstances under which any identified part of the Missouri Constitution has been violated. Consequently, the Court dismisses any claims that the plaintiff might be asserting as §1983 claims under the First, Fifth, and Fourteenth Amendments, claims under the Civil Rights Act of 1964 (presumably Title VII), and claims pursuant to violations of the Missouri Constitution.

Dated this 6th day of August, 2004.

Stephen N. Limbaugh

SENIOR UNITED STATES DISTRICT JUDGE