

Police Have No Duty To Protect Individuals

by Peter Kasler

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Self-Reliance For Self-Defense -- Police Protection Isn't Enough!

All our lives, especially during our younger years, we hear that the police are there to protect us. From the very first kindergarten- class visit of "Officer Friendly" to the very last time we saw a police car - most of which have "To Protect and Serve" emblazoned on their doors - we're encouraged to give ourselves over to police protection. But it hasn't always been that way.

Before the mid-1800s, American and British citizens - even in large cities - were expected to protect themselves and each other. Indeed, they were legally required to pursue and attempt to apprehend criminals. The notion of a police force in those days was abhorrent in England and America, where liberals viewed it as a form of the dreaded "standing army."

England's first police force, in London, was not instituted until 1827. The first such forces in America followed in New York, Boston, and Philadelphia during the period between 1835 and 1845. They were established only to augment citizen self-protection. It was never intended that they act affirmatively, prior to or during criminal activity or violence against individual

citizens. Their duty was to protect society as a whole by deterrence; i.e., by systematically patrolling, detecting and apprehending criminals after the occurrence of crimes. There was no thought of police displacing the citizens' right of self-protection. Nor could they, even if it were intended.

Professor Don B. Kates, Jr., eminent civil rights lawyer and criminologist, states:

0. Even if all 500,000 American police officers were assigned
0. to patrol, they could not protect 240 million citizens from
0. upwards of 10 million criminals who enjoy the luxury of deciding
when and where to strike. But we have nothing like 500,000
patrol officers; to determine how many police are actually
available for any one shift, we must divide the 500,000 by four
(three shifts per day, plus officers who have days off, are on
sick leave, etc.). The resulting number must be cut in half to
account for officers assigned to investigations, juvenile,
records, laboratory, traffic, etc., rather than patrol. [1]

Such facts are underscored by the practical reality of today's society. Police and Sheriff's departments are feeling the financial exigencies of our times, and that translates directly to a reduction of services, e.g., even less protection. For example, one moderate day recently (September 23, 1991) the San Francisco Police Department "dropped" [2] 157 calls to its 911 facility, and about 1,000 calls to its general telephone number (415-553-0123). An SFPD dispatcher said that 150 dropped 911 calls, and 1,000 dropped general number calls, are about average on any given day. [3]

It is, therefore, a fact of law and of practical necessity that individuals are responsible for their own personal safety, and that of their loved ones. Police protection must be recognized for what it is: only an auxiliary general deterrent.

Because the police have no general duty to protect individuals, judicial remedies are not available for their failure to protect. In other words, if someone is injured because they expected but did not receive police protection, they cannot recover damages by suing (except in very special cases, explained below). Despite a long history of such failed attempts, however, many people persist in believing the police are obligated to protect them, attempt to recover when no protection was forthcoming, and are emotionally demoralized when the recovery fails. Legal annals abound with such cases.

Warren v. District of Columbia is one of the leading cases of this type. Two women were upstairs in a townhouse when they heard their roommate, a third woman, being attacked downstairs by intruders. They phoned the police several times and were assured that officers were on the way. After about 30 minutes, when their roommate's screams had stopped, they assumed the police had finally arrived. When the two women went downstairs they saw that in fact the police never came, but the intruders were still there. As the Warren court graphically states in the opinion: "For the next fourteen hours the women were held captive, raped, robbed, beaten, forced to commit sexual acts upon each other, and made to submit to the sexual demands of their attackers."

The three women sued the District of Columbia for failing to protect them, but D.C.'s highest court exonerated the District and its police, saying that it is a "fundamental principle of American law that a government and its agents are under no general duty to provide public services, such as police protection, to any individual citizen." [\[4\]](#) There are many similar cases with results to the same effect. [\[5\]](#)

In the Warren case the injured parties sued the District of Columbia under its own laws for failing to protect them. Most often such cases are brought in state (or, in the case of

Warren, D.C.) courts for violation of state statutes, because federal law pertaining to these matters is even more onerous. But when someone does sue under federal law, it is nearly always for violation of 42 U.S.C. 1983 (often inaccurately referred to as "the civil rights act"). Section 1983 claims are brought against government officials for allegedly violating the injured parties' federal statutory or Constitutional rights.

The seminal case establishing the general rule that police have no duty under federal law to protect citizens is *DeShaney v. Winnebago County Department of Social Services*. [6] Frequently these cases are based on an alleged "special relationship" between the injured party and the police. In *DeShaney* the injured party was a boy who was beaten and permanently injured by his father. He claimed a special relationship existed because local officials knew he was being abused, indeed they had "specifically proclaimed by word and deed [their] intention to protect him against that danger," [7] but failed to remove him from his father's custody.

The Court in *DeShaney* held that no duty arose because of a "special relationship," concluding that Constitutional duties of care and protection only exist as to certain individuals, such as incarcerated prisoners, involuntarily committed mental patients and others restrained against their will and therefore unable to protect themselves. "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 limitation which it has imposed on his freedom to act on his own behalf." [8]

About a year later, the United States Court of Appeals interpreted *DeShaney* in the California case of *Balistreri v. Pacifica Police Department*. [9] Ms. Balistreri, beaten and harassed by her estranged husband, alleged a "special relationship" existed between her and the Pacifica Police

Department, to wit, they were duty-bound to protect her because there was a restraining order against her husband. The Court of Appeals, however, concluded that DeShaney limited the circumstances that would give rise to a "special relationship" to instances of custody. Because no such custody existed in Balistreri, the Pacifica Police had no duty to protect her, so when they failed to do so and she was injured they were not liable. A citizen injured because the police failed to protect her can only sue the State or local government in federal court if one of their officials violated a federal statutory or Constitutional right, and can only win such a suit if a "special relationship" can be shown to have existed, which DeShaney and its progeny make it very difficult to do. Moreover, *Zinermon v. Burch* [\[10\]](#) very likely precludes Section 1983 liability for police agencies in these types of cases if there is a potential remedy via a State tort action.

Many states, however, have specifically precluded such claims, barring lawsuits against State or local officials for failure to protect, by enacting statutes such as California's Government Code, Sections 821, 845, and 846 which state, in part: "Neither a public entity or a public employee [may be sued] for failure to provide adequate police protection or service, failure to prevent the commission of crimes and failure to apprehend criminals."

It is painfully clear that the police cannot be relied upon to protect us. Thus far we've seen that they have no duty to do so. And we've also seen that even if they did have a duty to protect us, practically- speaking they could not fulfill it with sufficient certainty that we would want to bet our lives on it.

Now it's time to take off the gloves, so to speak, and get down to reality. So the police aren't duty-bound to protect us, and they can't be expected to protect us even if they want to. Does that mean that they won't protect us if they have the

opportunity?

One of the leading cases on this point dates way back into the 1950s. [\[11\]](#) A certain Ms. Riss was being harassed by a former boyfriend, in a familiar pattern of increasingly violent threats. She went to the police for help many times, but was always rebuffed. Desperate because she could not get police protection, she applied for a gun permit, but was refused that as well. On the eve of her engagement party she and her mother went to the police one last time pleading for protection against what they were certain was a serious and dangerous threat. And one last time the police refused. As she was leaving the party, her former boyfriend threw acid in her face, blinding and permanently disfiguring her.

Her case against the City of New York for failing to protect her was, not surprisingly, unsuccessful. The lone dissenting justice of New York's high court wrote in his opinion: "What makes the City's position [denying any obligation to protect the woman] particularly difficult to understand is that, in conformity to the dictates of the law [she] did not carry any weapon for self-defense. Thus, by a rather bitter irony she was required to rely for protection on the City of New York which now denies all responsibility to her." [\[12\]](#)

Instances of police refusing to protect someone in grave danger, who is urgently requesting help, are becoming disturbingly more common. In 1988, Lisa Bianco's violently abusive husband was finally in jail for beating and kidnapping her, after having victimized her for years. Ms. Bianco was somewhat comforted by the facts that he was supposedly serving a seven-year sentence, and she had been promised by the authorities that she'd be notified well in advance of his release. Nevertheless, after being in only a short time, he was temporarily released on an eight-hour pass, and she wasn't notified. He went directly to her house and, in front of their 6-

and 10- year old daughters, beat Lisa Bianco to death.

In 1989, in a suburb of Los Angeles, Maria Navarro called the L. A. County Sheriff's 911 emergency line asking for help. It was her birthday and there was a party at her house, but her estranged husband, against whom she had had a restraining order, said he was coming over to kill her. She believed him, but got no sympathy from the 911 dispatcher, who said: "What do you want us to do lady, send a car to sit outside your house?" Less than half an hour after Maria hung up in frustration, one of her guests called the same 911 line and informed the dispatcher that the husband was there and had already killed Maria and one other guest. Before the cops arrived, he had killed another.

But certainly no cop would stand by and do nothing while someone was being violently victimized. Or would they? In *Freeman v. Ferguson* [13] a police chief directed his officers not to enforce a restraining order against a woman's estranged husband because the man was a friend of the chief's. The man subsequently killed the woman and her daughter. Perhaps such a specific case is an anomaly, but more instances of general abuses aren't at all rare.

In one such typical case [14], a woman and her son were harassed, threatened and assaulted by her estranged husband, all in violation of his probation and a restraining order. Despite numerous requests for police protection, the police did nothing because "the police department used an administrative classification that resulted in police protection being fully provided to persons abused by someone with whom the victim has no domestic relationship, but less protection when the victim is either: 1) a woman abused or assaulted by a spouse or boyfriend, or 2) a child abused by a father or stepfather." [15]

In a much more recent case, [\[16\]](#) a woman claimed she was injured because the police refused to make an arrest following a domestic violence call. She claimed their refusal to arrest was due to a city policy of gender-based discrimination. In that case the U. S. District Court of Appeals for the Fifth Circuit held that "no constitutional violation [occurred] when the most that can be said of the police is that they stood by and did nothing..." [\[17\]](#)

Do the police really harbor such indifference to the plight of certain victims? To answer that, let's leave the somewhat aloof and dispassionate world of legal precedent and move into the more easily understood "real world." I can state from considerable personal experience, unequivocally, that these things do happen. As to why they occur, I can offer only my opinion based on that experience and on additional research into the dark and murky areas of criminal sociopathy and police abuse.

One client of my partner's and mine had a restraining order against her violently abusive estranged husband. He had recently beaten her so savagely a metal plate had to be implanted in her jaw. Over and over he violated the court order, sometimes thirty times daily. He repeatedly threatened to kill her and those of use helping her. But the cops refused to arrest him for violating the order, even though they'd witnessed him doing so more than once. They danced around all over the place trying to explain why they wouldn't enforce the order, including inventing numerous absurd excuses about having lost her file (a common tactic in these cases). It finally came to light that there was a departmental order to not arrest anyone in that county for violating a protective order because the county had recently been sued by an irate (and wealthy) domestic violence arrestee.

In another of our cases, when Peggi and I served the man with

restraining orders (something we're often required to do because various law enforcement agencies can't or won't do it), he threatened there and then to kill our client. Due to the vigorous nature of the threat, we went immediately to the police department to get it on file in case he attempted to carry it out during the few days before the upcoming court appearance. We spent hours filing the report, but two days later when our client went to the police department for a copy to take to court, she was told there was no record of her, her restraining order, her case, or our report.

She called in a panic. Without that report it would be more difficult securing a permanent restraining order against him. I paid an immediate visit to the chief of that department. We discussed the situation and I suggested various options, including dragging the officer to whom Peggi and I had given the detailed death threat report into court to explain under oath how it had gotten lost. In mere moments, an internal affairs officer was assigned to investigate and, while I waited, they miraculously produced the file and our report. I was even telephoned later and offered an effusive apology by various members of the department.

It is true that in the real world, law enforcement authorities very often do perpetuate the victimization. It is also true that each of us is the only person upon whom we can absolutely rely to avoid victimization. If our client in the last anecdote hadn't taken responsibility for her own fate, she might never have survived the ordeal. But she had sufficient resolve to fend for herself. Realizing the police couldn't or wouldn't help her, she contacted us. Then, when the police tried their bureaucratic shuffle on her, she called me. But for her determination to be a victim no more, and to take responsibility for her own destiny, she might have joined the countless others victimized first by criminals, then by the very system they expect will protect them.

Remember, even if the police were obligated to protect us (which they aren't), or even if they tried to protect us (which they often don't, a fact brought home to millions nationwide as they watched in horror the recent events in Los Angeles), most often there wouldn't be time enough for them to do it. It's about time that we came to grips with that, and resolved never to abdicate responsibility for our personal safety, and that of our loved ones, to anyone else.

1. Guns, Murders, and the Constitution (Pacific Research Institute for Public Policy, 1990).

2. A "dropped" call in police dispatcher parlance is one that isn't handled for a variety of reasons, such as because it goes unanswered. Calls from people who get tired of waiting on hold and hang up are classified as "drops" as well.

3. KGO Radio (Newstalk 810), 6:00 PM report, 09-26-91, and a subsequent personal interview with the reporter, Bernie Ward.

4. Warren v. District of Columbia, 444 A.2d 1 (D.C. Ct. of Ap., 1981).

5. See, for example, Riss v. City of New York, 22 N.Y.2d 579, 293 NYS2d 897, 240 N.E.2d 860 (N.Y. Ct. of Ap. 1958); Keane v. City of Chicago, 98 Ill. App.2d 460, 240 N.E.2d 321 (1968); Morgan v. District of Columbia, 468 A.2d 1306 (D.C. Ct. of Ap. 1983); Calogrides v. City of Mobile, 475 So.2d 560 (S.Ct. A;a. 1985); Morris v. Musser, 478 A.2d 937 (1984); Davidson v. City of Westminster, 32 C.3d 197, 185 Cal.Rptr. 252, 649 P.2d 894 (S.Ct. Cal. 1982); Chapman v. City of Philadelphia, 434 A.2d 753 (Sup.Ct. Penn. 1981); Weutrich v.

Delia, 155 N.J. Super 324, 326, 382 A.2d 929, 930 (1978); Sapp v. City of Tallahassee, 348 So.2d 363 (Fla.Ct. of Ap. 1977); Simpson's Food Fair v. Evansville, 272 N.E. 2d 871 (Ind.Ct. of Ap.); Silver v. City of Minneapolis, 170 N.W.2d 206 (S.Ct. Minn. 1969) and Bowers v. DeVito, 686 F.2d 61 (7th Cir. 1982).

6. 109 S.Ct. 998 (1989).

7. "Domestic Violence -- When Do Police Have a Constitutional Duty to Protect?" Special Agent Daniel L. Schofield, S.J.D., FBI Law Enforcement Bulletin January, 1991.

8. DeShaney v. Winnebago County Department of Social Services, 109 S.Ct. 998 (1989) at 1006.

9. 901 F.2d 696 (9th Cir. 1990).

10. 110 S.Ct. 975, 984 (1990).

11. Riss v. City of New York, 22 N.Y.2d 579, 293 NYS2d 897, 240 N.E.2d 860 (N.Y. Ct. of Ap. 1958).

12. Riss, Ibid.

13. 911 F.2d52 (8th Cir. 1990).

14. Thurman v. City of Torrington, 595 F.Supp.1521 (D.Conn. 1984).

15. "Domestic Violence -- When Do Police Have a Constitutional Duty to Protect?" Special Agent Daniel L. Schofield, S.J.D., FBI Law Enforcement Bulletin January, 1991.

16. McKee v. City of Rockwall, Texas, 877 F.2d409 (5th Cir.

1989), cert. denied, 110 S.Ct.727 (1990).

[17.](#) McKee v. City of Rockwall, Texas, Id. at 413.

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