

The Myth of Police Protection...



Just Dial 911?

The Myth of Police Protection... Police Have No Legal Duty to Protect Citizens from Criminal Attack

APRIL 01, 2000 by *Richard W. Stevens, Esq.*

Richard Stevens is a lawyer in Washington, D.C., and author of Dial 911 and Die (Mazel Freedom Press, 1999).

Underlying all “gun control” ideology is this one belief.” “Private citizens don’t need firearms because the police will protect them from crime.” That belief is both false and dangerous for two reasons.

First, the police cannot, and do not protect everyone from crime. Second, **the government and the police in particular owe no legal duty to protect individuals from criminal attack.** When it comes to deterring crime and defending against criminals, *individuals are ultimately responsible for themselves and their loved ones.* Depending solely on police emergency response means relying on the telephone as the only defensive tool. Too often, citizens in trouble dial 911 . . . and die.



Statistics confirm the obvious truth that the police in America cannot prevent violent crime. In 1997 for example, nationwide there were 18,209 murders, 497,950 robberies, and 96,122 rapes.¹ All those crimes were neither prevented, nor deterred by the police and the criminal justice system.

Many criminals use firearms to commit their crimes. For example, in 1997 criminals did so in 68 percent of murders and 40 percent of robberies.² Thus criminals either have, or can obtain firearms illegally. The existing “gun control” laws do not stop serious criminals from getting guns and using them in crimes.

Practically speaking, it makes little sense to disarm the innocent victims while the criminals are armed. It is especially silly to disarm the victims when too often the police are simply unable, or unwilling to protect them. As Richard Mack, former sheriff of Graham County, Arizona, has observed: **“Police do very little to prevent violent crime. We investigate crime after the fact.”**

Americans increasingly believe, however, that all they need for protection is a telephone. Dial 911 and the police, fire, and ambulance will come straight to the rescue. It's faster than the pizza man. Faith in a telephone number and the local cops is so strong that Americans dial 911 over 250,000 times per day.

Yet does dialing 911 actually protect crime victims? Researchers found that less than 5 percent of all calls dispatched to police are made quickly enough for officers to stop a crime or arrest a suspect.³ The 911 bottom line: "cases in which 911 technology makes a substantial difference in the outcome of criminal events are extraordinarily rare."⁴

No Duty to Protect...

It's not just that the police cannot protect you. ***They don't even have to come when you call.*** In most states the government and police owe no legal duty to protect individual citizens from criminal attack. **The District of Columbia's highest court spelled out plainly the "fundamental principle that a government and its agents are under no general duty to provide public services, such as police protection, to any particular individual citizen."**⁵

In the especially gruesome landmark case the "no-duty" rule got ugly. Just before dawn on March 16, 1975, two men broke down the back door of a three-story home in Washington, D.C., shared by three women and a child. On the second floor one woman was sexually attacked. Her housemates on the third floor heard her screams and called the police.

The women's first call to D.C. police got assigned a low priority, so the responding officers arrived at the house, got no answer to their knocks on the door, did a quick check around, and left. When the women frantically called the police a second time, the dispatcher promised help would come—but no officers were even dispatched.

The attackers kidnapped, robbed, raped, and beat all three women over 14 hours. **When these women later sued the city and its police for negligently failing to protect them or even to answer their second call, the court held that government had no duty to respond to their call or to protect them. Case dismissed.**

The law is similar in most states. A Kansas statute precludes citizens from suing the government or the police for negligently failing to enforce the law or for failing to provide police or fire protection. A California law states that "neither a public entity nor a public employee is liable for failure to establish a police department or otherwise provide police protection service."⁶ As one California appellate court wrote, "police officers have no affirmative statutory duty to do anything."⁷

The state legislatures and courts protect government entities and police departments from civil liability for failing to provide adequate police protection. Some states invoke the "sovereign immunity" defense, a throwback to the days when the subjects were forbidden to sue the king. Other states have statutes that prevent legal challenges to police "discretionary" functions. **Courts preclude lawsuits in those states by holding that answering emergency calls or providing police protection are "discretionary" functions.**

Many states evade liability by relying on the ironically named "public duty" doctrine. Like a George Orwell slogan, that doctrine says: police owe a duty to protect the *public* in general, but *not* to protect any particular *individual*.

Police Advice: "Get a Gun"

A Massachusetts statute spells out the rule there: the government has no legal duty “to provide adequate police protection, prevent the commission of crimes, investigate, detect or solve crimes, identify or apprehend criminals or suspects, arrest or detain suspects, or enforce any law.”⁸ That “no-duty” rule brings tragedy, as one Massachusetts woman learned in the worst way.

James Davidson had been abusing and harassing his wife, Catherine Ford, after their separation.⁹ Catherine got a court order against James to stop his misconduct. The Grafton police knew about James, and told her that they couldn’t provide protection around the clock. One officer frankly advised her to “buy a gun because the only way to deal with violence is violence.”

Catherine did not take that advice. Over the next 15 months James continued to harass and stalk Catherine, and he repeatedly threatened to kill her and her family. James terrorized Catherine and her family at their homes. He attacked her at her workplace. James’s own psychiatrist warned Catherine that James had plans to kill her. Despite all of his vicious and unlawful behavior, the police never arrested James for violating the court order.

James issued his final death threat on January 16, 1986. Catherine reported this threat to the police. At about 6 o’clock the next evening, James started kicking down Catherine’s back door. When she ran out the front door, James spotted her and chased her even as she charged through moving traffic on the street. She pounded on a neighbor’s door, but no one would let her inside. As she ran to the next house, James caught her and shot her three times in the face and neck. He then shot himself. Miraculously Catherine survived, but was totally paralyzed for life.

Catherine sued the town of Grafton for failing to protect her. Her lawyers argued that the police owed a legal duty to stop James, and thus the police owed a legal duty to protect Catherine. A Massachusetts statute required the police to arrest James for his repeated violations of the court order, but the police had failed to arrest him.

The Massachusetts court in *Ford v. Town of Grafton* held the city was not liable. The court order that was supposed to restrain James and protect Catherine did not amount to an “assurance of safety or assistance” from the police department. According to the court, when the police advised Catherine “to get a gun for protection,” that was a warning to her that the police were unable to assure her safety or protect her. **Because she got no assurances of safety from the police, she had no legal right to rely on the police to protect her. Case dismissed.**

Catherine Ford might have escaped James’s murderous intentions unharmed if she had taken the police officer’s advice to “get a gun” and had received a basic course in defensive firearms handling and safety. Studies show that Americans use firearms successfully over two and a half million times each year to stop criminals.¹⁰ Tragically, she chose instead to rely on a court order and the police.

These two cases are not legal oddities. The general rule of law in the United States is that government owes a duty to protect the public in general, but owes no legal duty to protect any particular person from criminal attack. Neither the U.S. Constitution nor the federal civil rights laws require states to protect citizens from crime. As a federal appeals court bluntly put it, ordinary citizens have “no constitutional right to be protected by the state against being murdered by criminals or madmen.”¹¹

Exceptions to the no-duty rule apply when the police have expressly promised to protect a specific person from an identifiable danger. Informers in a witness protection program, for example, might have an enforceable right to protection. Yet it will make little difference to a dead victim if a court some years later decides that the police did owe a duty but failed to protect him, and then awards damages to next of kin.

Picture the situation: government establishes a police force and installs 911 emergency call service. Then the government announces to the world that “you don’t need a firearm for self-defense,” and so enacts “gun control” laws to make it difficult or impossible legally to get and use a gun. Meanwhile violent criminals remain illegally armed with guns and other weapons.

Now imagine you are snapped awake one night by the sounds of your door breaking in. You reach for the telephone to dial 911. The 911 emergency operator never answers. Or the police answer, take your frantic report, but don’t come. Or they come too late. In any of these scenarios, the burglar gets in, knifes you, and steals your VCR.

Crouching behind a chair with a telephone in your hand, you were defenseless because the government took away your private defense tools and handed you a telephone number to call for emergency help. You relied on that telephone number, and the help never came. The government’s policy made you a crime statistic.

Government lulls the public into trusting it to provide everything, takes away the people’s means of providing for themselves, and then claims it has no duty to provide after all. Noting the fatal irony in the “gun control” context, James Bovard has written that “government has a specific, concrete obligation to disarm each citizen, but only an abstract obligation to defend the citizen.” “Gun control;” Bovard notes, “is one of the best examples of laws that corner private citizens—forcing them either to put themselves into danger or to be a lawbreaker.”¹²

Laying Bare the State Protection Myth

The drive to prohibit private firearms ownership highlights the statist’s goals in a way everybody can understand. They aim to disarm ordinary nonviolent citizens, even those who face high risk of criminal attack, and substitute police protection in place of self-defense. Meanwhile the police will not be held liable to individual citizens for failing to defend them.

Government “social programs” and various mandatory “insurance” programs operate in the same way. First, the government programs distort the market forces that provide housing, food, medical care, transportation, and other goods and services. People shift to depending on the government programs instead of taking individual decisions and action.

When the government programs fail, however, the people relying on those programs have little or no effective recourse. At best, dissatisfied people can file bureaucratic appeals to the very agencies that harmed or cheated them. There can be judicial review of bureaucratic decisions in some cases also, but the judges are usually part of the same government, and they typically defer to the original government agency’s decision anyway.

In nearly all cases the citizen bears the stress and expense of pursuing appeals of bureaucratic decisions. The cost of appealing a government decision is already high. **The effect of high appeal costs is to stop people from appealing—which gives results just like the “no duty,” “sovereign immunity,” and “public duty” rules. Government grabs power but sheds accountability.**

The problem with government programs is not just that citizens have only narrow and costly avenues for appeals of decisions. While a government social program is operating, it is likely making worse the very problem it was trying to “solve.” People cannot get out of a government program and return to private action or free-market solutions because of the effects of the program itself. Legislators point to the “failure” of the market, whine about the problems with the government program, and then prescribe more government. The voters reward those legislators by re-electing them.

Government power ratchets up the same way under a “gun control” regime. As laws discourage innocent citizens from defending themselves, the violent criminals remain undeterred. Absent some other, overweening factor, violent crime cannot possibly decrease in that environment; it more likely must increase. The statist response will naturally be to restrict firearms ownership even more, and to enhance the police presence. Greater police presence means more police, more surveillance, more reporting to government what citizens are doing. Nearly 170 million citizens lost their lives to their own governments in the twentieth century.¹³ There is little reason to celebrate a police state.

Revealing the lie underlying the “gun control” agenda strengthens the case against socialism and the welfare state on many levels. If the argument advances the cause of individual liberty, then it is an argument worth making.

Notes

1. *Federal Bureau of Investigation, Uniform Crime Reports for the United States (1997), pp. 9, 22, 19.*
2. *Ibid.*, pp. 14, 25.
3. *Gordon Witkin, Monika Guttman, and Tracy Lenzy, “This is 911 . . . Please Hold,” U.S. News & World Report, June 17, 1996, p. 30.*
4. *Ibid.*, quoting *Northeastern University Professor George Kelling and lawyer Catherine Coles.*
5. *Warren v. District of Columbia, 444 A.2d 1, 4 (D.C. 1981), quoting the trial court decision.*
6. *California Government Code, § 845.*
7. *Souza v. City of Antioch, 62 California Reporter, 2d 909, 916 (Cal. App. 1997).*
8. *Mass. Gen. Laws Ann. Ch. 258 § 10(h).*
9. *The facts and law of this case are set forth in Ford v. Town of Grafion, 693 N.E.2d 1047 (Mass. App. 1998).*
10. *See Gary Kleck and Marc Gertz, “Armed Resistance to Crime: The Prevalence and Nature of Self-Defense with a Gun,” Journal of Criminal Law and Criminology 164 (1995), p. 86.*
11. *Bowers v. DeVito, 686F. 2nd 616, 618 (7th Cir. 1982).*
12. *James Bovard’s introduction to Richard W. Stevens, Dial 911 and Die (Hartford, Wisc.: Mazel Freedom Press, 1999).*
13. *R. J. Rummel, Death By Government (New Brunswick, N.J.: Transaction Publishers, 1994), pp. 1-25.*

THE POLICE HAVE "NO AFFIRMATIVE DUTY" TO PROTECT US

This makes it very clear - the burden to defend and or use deadly force, is a RIGHT that lies with you personally to ACT accordingly and appropriately should you fear for your life and/or limb.

Affirmative duty to protect. Cf. Reciprocal obligations;

South v. Maryland, 59 U.S. (How.) 396, 15 L.Ed.433 (1856) (the U.S. Supreme Court ruled that local law-enforcement had no duty to protect individuals, but only a general duty to enforce the laws.);

DeShaney v. Winnebago County Department of Social Services, 489 U.S. 189, 109 S.Ct. 998, 1989 (1989) (There is no merit to petitioner's contention that the State's knowledge of his danger and expressions of willingness to protect him against that danger established a "special relationship" giving rise to an affirmative constitutional duty to protect. While certain "special relationships" created or assumed by the

State with respect to particular individuals may give rise to an affirmative duty, enforceable through the Due Process [489 U.S. 189, 190] Clause, to provide adequate protection, see *Estelle v. Gamble*, 429 U.S. 97; *Youngberg v. Romeo*, 457 U.S. 307, the affirmative duty to protect arises not from the State's knowledge of the individual's predicament or from its expressions of intent to help him, but from the limitations which it has imposed on his freedom to act on his own behalf, through imprisonment, institutionalization, or other similar restraint of personal liberty.); <http://laws.findlaw.com/us/489/189.html>

Bowers v. Devito, 686 F.2d 616 (7th Cir. 1982) (There is no constitutional right to be protected by the state against being murdered by criminals or madmen. It is monstrous if the state fails to protect its residents against such predators but it does not violate the due process clause of the Fourteenth Amendment, or, we suppose, any other provision of the Constitution. The Constitution is a charter of negative liberties; it tells the state to let the people alone; it does not require the federal government or the state to provide services, even so elementary a service as maintaining law and order.); (No duty to protect) = Rule 12(b)(6) Motion to Dismiss; Cf. Reciprocal obligations;

Warren v. District of Columbia (444 A.2d 1, 1981) ((O)fficial police personnel and the government employing them are not generally liable to victims of criminal acts for failure to provide adequate police protection ... this uniformly accepted rule rests upon the fundamental principle that a government and its agents are under no general duty to provide public services, such as police protection, to any particular citizen ... a publicly maintained police force constitutes a basic governmental service provided to benefit the community at large by promoting public peace, safety and good order.); <http://forums.philosophyforums.com/showthread.php?t=6260>

Hartzler v. City of San Jose, 46 Cal.App.3d 6, 120 Cal.Rptr. 5 (1975) (The administrator of the estate of Ruth Bunnell who had been killed by her estranged husband brought a wrongful death action against the city whose police department refused to respond to her call for protection some 45 minutes before her death. Mrs. Bunnell had called the police to report that Mack Bunnell had called saying he was on his way to her home to kill her. She was told to call back when Mack Bunnell arrived. The police had responded 20 times to her calls in the past year, and on one occasion, arrested her estranged husband for assaulting her. The Court of Appeal held that the police department and its employees enjoyed absolute immunity for failure to provide sufficient police protection. The allegations that the police had responded 20 times to her calls did not indicate that the police department had assumed any special relationship or duty toward her such as would remove its immunity.); <http://www.copcrimes.com/brophy.htm#Hartzler>

Davidson v. City of Westminster, 32 Cal.3d 197, 185 Cal.Rptr. 252 (1982) (A husband and wife who were assaulted in a laundromat while the assailant was under surveillance by officers, brought legal action against the city and the officers for intentional and negligent infliction of emotional distress and for negligent investigation, failure to protect and failure to warn. The Supreme Court held that: (1) the mere fact that the officers had previously recognized the assailant from a distance as a potential assailant because of his resemblance to a person suspected of perpetrating a prior assault did not establish a "special relationship" between officers and assailant under which a duty would be imposed on officers to control assailant's conduct; (2) factors consisting of officer's prior recognition of assailant as likely perpetrator of previous assault and officer's surveillance of assailant in laundromat in which victim was present did not give rise to special relationship between officers and victim so as to impose duty on officers to protect victim from assailant; and (3) victim could not maintain cause of action for intentional or reckless infliction of emotional distress, in view of fact that it was not alleged that officers failed to act for the purpose of causing emotional injury, and that in the absence of such an intent to injure, officer's inaction was not extreme or outrageous conduct.); <http://www.copcrimes.com/brophy.htm#Hartzler>

Westbrooks v. State, 173 Cal.App.3d 1203, 219 Cal.Rtr. 674 (1985) (The widow and sons of a motorist who drove into the void where a collapsed bridge had been, brought action against the State, county, and county deputy sheriff. The California Department of Transportation (Cal Trans) was aware that a violent storm with heavy rains had caused a bridge on State route 118 to collapse. A county deputy sheriff had observed the beginning of the collapse, reported it and requested assistance from Cal Trans. A jury award of \$1,300,000 was reversed in part by the Court of Appeal which held: (1) the county deputy sheriff had no duty to warn drivers that the state highway bridge had collapsed during the storm, and his efforts to warn drivers did not in any way increase the risk of harm to users of the highway, and therefore the county was not liable to motorist's wife and children; and (2) the judgment was upheld against the state because the Cal Trans was notified at 1:52 a.m. and at 2:35 a.m., but no Cal Trans personnel nor CHP officer appeared at the scene until 5:45 a.m., and that such delay was unreasonable.); <http://www.copcrimes.com/brophy.htm#Hartzler>

Ne Casek v. City of Los Angeles, 233 Cal.App.2d 131, 43 Cal.Rptr. 294 (1965) (In an action against police officers and city for personal injuries sustained by Kathryn Ne Casek when she was knocked down on a sidewalk by two suspects who had been arrested by the officers, the Court of Appeal held the amount of force or method used by a police officer in attempting to keep an arrested person or persons in custody is a discretionary act for purpose of application of doctrine of immunity of government officials from civil liability for their discretionary acts, and therefore Ms. Ne Casek who was injured by two escaped suspects who had been handcuffed together could not maintain an action against the arresting officers based on the officer's alleged negligence in using insufficient force to keep the prisoners in custody.); <http://www.copcrimes.com/brophy.htm#Hartzler>

Susman v. City of Los Angeles, et al., 269 Cal.App.2d 803, 75 Cal.Rptr. 240 (1969) (An action was brought by several landowners against the City of Los Angeles and the State pleading eleven separate causes of action for damages arising out of the Watts' Riots' of 1965. The Court of Appeal held that none of the allegations presented was sufficient to show any duty owed by any of the officials named as defendants to act to prevent or avoid the harm suffered by the plaintiffs.); <http://www.copcrimes.com/brophy.htm#Hartzler>

Antique Arts Corp. v. City of Torrence, 39 Cal.App.3d 588, 114 Cal.Rptr. 332 (1974) (A silent burglar alarm installed on the premises of the store operated by the plaintiff was, during the course of a robbery by two armed men, activated at 3:32 p.m. and the alert message was relayed to the police department.

The dispatch message to the units in the field was at 3:43 p.m., and a police unit arrived at the scene of the robbery at 3:44 p.m. The delay in the transmission of the dispatch enabled the robbers to complete the robbery and escape with jewelry and merchandise in the amount of \$49,000. The Court of Appeal held that Govt. Code section 846 provides for immunity if no police protection is provided; or, if police protection is provided, but that protection is not sufficient.. "The statutory scheme makes it clear that failure to provide adequate police protection will not result in governmental liability, nor will a public entity be liable for failure to arrest a person who is violating the law. The statutory scheme shows legislative intent to immunize the police function from tort liability from the inception of its exercise to the point of arrest, regardless of whether the action be labeled discretionary' or ministerial."); <http://www.copcrimes.com/brophy.htm#Hartzler>

<http://straylight.law.cornell.edu/supct/html/04-278.ZS.html>

Police have no legal duty to respond and prevent crime or protect the victim. There have BEEN OVER 10 various supreme and state court cases the individual has never won. Notably, the Supreme Court STATED about the responsibility of police for the security of your family and loved ones is "You, and only you, are responsible for your security and the security of your family and loved ones. That was the essence of a U.S. Supreme Court decision in the early 1980's when they ruled that the police do not have a duty to protect you as an individual, but to maintain public order and protect society as a whole."

"It is well-settled fact of American law that the police have no legal duty to protect any individual citizen from crime, even if the citizen has received death threats and the police have negligently failed to provide protection."

Sources:

7/15/05 SUPREME COURT OF THE UNITED STATES No. 04-278 TOWN OF CASTLE ROCK, COLORADO, PETITIONER v. JESSICA GONZALES, INDIVIDUALLY AND AS NEXT BEST FRIEND OF HER DECEASED MINOR CHILDREN, REBECCA GONZALES, KATHERYN GONZALES, AND LESLIE GONZALES

On June 27, in the case of Castle Rock v. Gonzales, the Supreme Court found that Jessica Gonzales did not have a constitutional right to individual police protection even in the presence of a restraining order. Mrs. Gonzales' husband with a track record of violence, stabbing Mrs. Gonzales to death, Mrs. Gonzales' family could not get the Supreme Court to change their unanimous decision for one's individual protection. YOU ARE ON YOUR OWN FOLKS AND GOVERNMENT BODIES ARE REFUSING TO PASS THE Safety Ordinance.

(1) Richard W. Stevens. 1999. *Dial 911 and Die*. Hartford, Wisconsin: Mazel Freedom Press.

(2) *Barillari v. City of Milwaukee*, 533 N.W.2d 759 (Wis. 1995).

(3) *Bowers v. DeVito*, 686 F.2d 616 (7th Cir. 1982).

(4) *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189 (1989).

(5) *Ford v. Town of Grafton*, 693 N.E.2d 1047 (Mass. App. 1998).

(6) *Warren v. District of Columbia*, 444 A.2d 1 (D.C. 1981).

"...a government and its agencies are under no general duty to provide public services, such as police protection, to any particular individual citizen..." - *Warren v. District of Columbia*, 444 A.2d 1 (D.C. App. 1981)

(7) "What makes the City's position particularly difficult to understand is that, in conformity to the dictates of the law, Linda 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 NY which now denies all responsibility to her."

Riss v. New York, 22 N.Y.2d 579, 293 N.Y.S.2d 897, 240 N.E.2d 806 (1958).

(8) "Law enforcement agencies and personnel have no duty to protect individuals from the criminal acts of others; instead their duty is to preserve the peace and arrest law breakers for the protection of the general public."

Lynch v. N.C. Dept. of Justice, 376 S.E. 2nd 247 (N.C. App. 1989)

New York Times, Washington DC

Justices Rule Police Do Not Have a Constitutional Duty to Protect Someone By LINDA GREENHOUSE Published: June 28, 2005

The ruling applies even for a woman who had obtained a court-issued protective order against a violent husband making an arrest mandatory for a violation.

Justices Rule Police Do Not Have a Constitutional Duty to Protect Someone

By LINDA GREENHOUSE - The New York Times

Published: June 28, 2005

WASHINGTON, June 27 - The Supreme Court ruled on Monday that the police did not have a constitutional duty to protect a person from harm, even a woman who had obtained a court-issued protective order against a violent husband making an arrest mandatory for a violation.

The decision, with an opinion by Justice Antonin Scalia and dissents from Justices John Paul Stevens and Ruth Bader Ginsburg, overturned a ruling by a federal appeals court in Colorado. The appeals court had

permitted a lawsuit to proceed against a Colorado town, Castle Rock, for the failure of the police to respond to a woman's pleas for help after her estranged husband violated a protective order by kidnapping their three young daughters, whom he eventually killed.

The theory of the lawsuit Ms. Gonzales filed in federal district court in Denver was that Colorado law had given her an enforceable right to protection by instructing the police, on the court order, that "you shall arrest" or issue a warrant for the arrest of a violator. She argued that the order gave her a "property interest" within the meaning of the 14th Amendment's due process guarantee, which prohibits the deprivation of property without due process.

The district court and a panel of the United States Court of Appeals for the 10th Circuit dismissed the suit, but the full appeals court reinstated it and the town appealed. The Supreme Court's precedents made the appellate ruling a challenging one for Ms. Gonzales and her lawyers to sustain.

A 1989 decision, *DeShaney v. Winnebago County*, held that the failure by county social service workers to protect a young boy from a beating by his father did not breach any substantive constitutional duty. By framing her case as one of process rather than substance, Ms. Gonzales and her lawyers hoped to find a way around that precedent.

But the majority on Monday saw little difference between the earlier case and this one, *Castle Rock v. Gonzales*, No. 04-278. Ms. Gonzales did not have a "property interest" in enforcing the restraining order, Justice Scalia said, adding that "such a right would not, of course, resemble any traditional conception of property."

Although the protective order did mandate an arrest, or an arrest warrant, in so many words, Justice Scalia said, "*a well-established tradition of police discretion has long coexisted with apparently mandatory arrest statutes.*"

Joseph Lozito, better than a cop

City Argues NYPD Had No "Special Duty" To Protect Subway Hero From Madman's Rampage
by [Ben Yakas](#) in [Gothomist.com](#) on Jan. 27th, 2013

Back in February 2011, a 24-year-old Brooklyn man went on a 28-hour stabbing rampage across Brooklyn and Manhattan, killing four people and injuring four others. An unremorseful [Maksim Gelman](#) later admitted to the deaths and [was sentenced](#) to 200 years-to-life in prison. His last victim, straphanger Joseph Lozito, [later sued the police](#) for not doing more to prevent the madman's actions and not coming to his aid in a timely fashion. And now, [city lawyers are arguing that](#) the NYPD had no "special duty" to protect him during the attack, despite the fact that cops were on the train at the time and may have been too scared to engage with Gelman.

Lozito [was taking the subway](#) from Penn Station to West 66th Street to go to his job at the Alice Tully Hall box office when he was confronted by Gelman on February 12, 2011. Lozito said that Gelman was wildly pounding on the motorman's door, pretending to be a cop, when he turned to him and said, "You are going to die." Gelman lunged at the 6-foot-2, 270-pound Lozito with a knife, stabbing him multiple times in the head. But Lozito was able to use some MMA moves to pin him to the ground. Afterwards, officer Terrance Howell tapped him on the shoulder and said he could get up: "By the time he got there, the dirty work was already done," Lozito said.

It later turned out that Howell and fellow officer Tamara Taylor, who were part of the manhunt looking for Gelman, had locked themselves in the front room with the conductor because they thought Gelman had a gun. Lozito [told the Philadelphia Inquirer](#), “When the news was brought to my attention that police had an opportunity to intervene and maybe prevent the whole incident, and it was explained to me they chose to stay in the motorman’s compartment instead of coming out, I was very upset.”

Lozito sued for negligence, but city lawyers say his demand for unspecified money damages should be tossed because the police had no “special duty” to protect him or any individual on the train that day—there’s a long-standing legal precedent requiring cops to put the public safety of all ahead of any one individual’s rights. *According to the **official** NYPD account and Howell’s affidavit, Howell was the one who tackled and subdued Gelman.*