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When Police Do Not Protect, the Supreme Court Is on Their Side

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The school shooting in Parkland, Florida, has spawned the usual gun debate that will, as with each tragedy before, fizzle having accomplished nothing. While the initial outrage followed the typical script, it didn't take long for law enforcement to come under well-deserved scrutiny. A number of mistakes was made leading up to the shooting, and it is probably time we asked whether we expect too much from the police and FBI in these sorts of cases.

The shooter, Nikolas Cruz, was well-known to multiple levels of law enforcement. The Broward County Sheriff's Office received at least 18 calls about him over a 10-year stretch, and a woman reported Cruz to an FBI tip line just a month before the shooting. She described a young man who was "going to explode," who was intent on "getting into a school and just shooting the place up." She made her concerns as clear as possible, saying, "I just want to ... get it off my chest in case something does happen, and I do believe something's going to happen."

As if this prior knowledge weren't bad enough, Broward County Sheriff's Deputy Scot Peterson, was on site during the massacre, but did nothing. And the news gets worse. No sooner had Peterson resigned in disgrace than details emerged of three more deputies who had been on the scene yet remained cowering behind their cars as children died in the school.

The thought of police officers waiting outside for the violence to end is unfathomable to many, but it shouldn't be. We repeat the mantra that police officers exist to "protect and serve," but the reality is that police are not legally required to do either. Who says so? The U.S. Supreme Court.

In 1999, in the middle of a divorce, Jessica Lenahan-Gonzales of Castle Rock, Colorado, obtained a permanent restraining order against her husband, Simon, who had been stalking her. The order required him to remain at least 100 yards from her and her four children except during specified visitations. In violation of the order, her husband took his three daughters. Jessica called the police and even went to the station in person. Despite the court order, and despite knowing where the children were, the police did nothing. A day later, Simon showed up at the police station himself, engaged in shoot-out with the officers therein, and was killed. His three daughters were found dead in his vehicle outside the station.

Lenahan-Gonzales attempted to sue the police department for its failure to enforce the restraining order that was in place, but the Supreme Court ruled 7-2 against her, with Antonin Scalia writing for the majority. The opinion held that enforcement of the restraining order was not mandatory under Colorado law. Even if it were, Scalia wrote, it would not create an individual right to enforcement. And even if it did, he continued, that entitlement would have no monetary value.

The long and short of it is that the highest court in the land has said that police have no obligation to protect citizens beyond that which the police themselves decide, either individually or at the departmental level. And citizens have no recourse if police fail to act, either through incompetence or conscious decision. Gun-control advocates repeat that citizens don't need guns because we have the police. Gun-rights advocates reply that, when seconds count, the police are only minutes away. The reality is far more grim. In the eyes of the law, the police are really "crime accountants." Their job is to observe the aftermath of crimes and record what happened. If they arrive in time and if they feel so inclined, they can lend a hand. But that's up to them. Citizens have neither the right to police help nor recourse when it is refused. These are the realities that define the current debate. It is time to admit that we ask more from law enforcement than it is capable of delivering.



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