



1. R' Yehonatan Blass (21st century Israel), *Presumption of innocence and credibility of public officials*, Daat website <http://www.daat.ac.il/mishpat-ivri/skirot/31-2.htm>

A traffic officer issued a speeding ticket for a driver. The driver denies the allegation, claiming that the complaint is for show, intended only to harass and demean him. On the other hand, the officer claims that all of his actions were authorized, and based on relevant factors. The questions are: Does a police officer, or any public official, have greater credibility than a normal citizen, such that cases of doubt will be resolved in his favour? What are the limits of this credibility? Can it be undermined? If so, when?

2. *Elmardy v. Toronto Police Services Board*, 2015 ONSC 2952

[1] Mutaz Elmardy sues Police Constable Andrew Pak and his employer, the Toronto Police Services Board, for assault, battery unlawful arrest, and for violation of his rights under the Canadian Charter of Rights and Freedoms. Mr. Elmardy says that he was detained by Constable Pak for no reason apart from the colour of his skin. He says that Constable Pak punched him in the face and beat him. He was handcuffed and held outside on a cold winter's night for 30 minutes without any legal basis.

[2] For the reasons that follow, I find that Mr. Elmardy has proven much of his case on a balance of probabilities. Constable Pak committed battery on Mr. Elmardy. Constable Pak violated Mr. Elmardy's constitutional right to be secure from arbitrary detention. He violated Mr. Elmardy's constitutional right to be secure from unreasonable search and seizure. He violated Mr. Elmardy's rights under ss.10 (a) and (b) of the Charter that arose upon his detention...

[4] I also do not make any finding that Mr. Elmardy was discriminated against on the basis of his race or that he was the victim of "racial profiling" as alleged. The police were entitled to try to chat with Mr. Elmardy. While it is tempting to try to ascribe motives, there was no evidence that the decision to stop him was based on his race. Mr. Elmardy did not prove on a balance of probabilities that the actions of Constable Pak were racially motivated. Nor was there a basis in the evidence to draw that inference...

[52] Constable Pak says that as he came around the front of his car, Mr. Elmardy was facing the scout car and Constable Poole. Mr. Elmardy turned to his right from facing Constable Poole in the car toward Constable Pak on the sidewalk. In fact, he turned his body somewhat more than 90 so that the right side of Mr Elmardy's body was facing slightly away from Constable Pak. This is known as "blading". According to Constable Pak, blading is a sign that a person may be hiding something in his pocket such as a weapon.

[53] Constable Pak says that he asked Mr. Elmardy to remove his hands from his pockets and Mr. Elmardy did not do so. In light of Mr. Elmardy's verbal hostility, blading, and refusal to remove his hands from his pockets, Constable Pak says he formed the belief that Mr. Elmardy had a weapon.

When may police officers use force?

3. Maimonides (12th century Egypt), Mishneh Torah, Laws of Murderers and Protecting Life 1:6-7

When one person pursues another to kill him, then even if the pursuer is a minor, all Israel are commanded to save the pursued individual from the pursuer, even at the cost of the pursuer's life. How so? If they warn the pursuer and he continues the pursuit, then even if he did not accept the warning, because he continues to pursue he is killed. If they can save him by harming only a limb from the pursuer...

4. Rabbi Yosef Karo, Rabbi Moshe Isserless (16th century Israel/Poland), Code of Jewish Law, Choshen Mishpat 8:5
Rabbi Yosef Karo: One also may not treat an agent of the court lightly. If one pains him, the court is licensed to strike with lashes for rebellion. The agent is credible, like two, to testify that he scorned him, for ex-communication.

Rabbi Moshe Isserless: ... He may personally act against one who refuses to comply, striking him; and if he harms (his property), he is exempt.

Indemnification of police officers

5. Tosefta, Bava Kama 9:11

If the court agent strikes with authorization and causes harm, he is exempt from liability. If he is excessive, he is liable.

6. Rabbi Chaim David haLevi (20th century Israel), Aseh Lecha Rav 4:2

The principle of "One who comes to kill you, etc.," is certainly tied to circumstances which demonstrate the likelihood of a fatality [if one does not prevent it], like the war with Midian, or a home invasion... Therefore, if it is not visible that a person's actions are likely to endanger others, there is no license to kill him...

7. Rabbi Asher Weiss (21st century Israel), Minchat Asher to Shemot #39

The law of a "pursuer" only applies for a clear pursuer. One may not kill in a case of possible pursuit, for possible rescue of a life certainly does not override a certainty!

8. Mishnah Makkot 2:2

Just as chopping wood is a voluntary activity, so [one only goes to a city of refuge] for [accidental murder that occurs in the course of] a voluntary activity. This excludes... an agent of the court.

9. Maimonides (12th century Egypt), Mishneh Torah, Laws of Murderers and Protecting Life 5:6

An agent of the court who struck the party who refused to come to court...

Why is a police officer indemnified?

10. Tosefta, Gittin 3:8

An agent of the court who strikes with the court's permission and causes harm by accident is exempt. If it is on purpose, he is liable. This is for repair of the world.

11. Rabbi Shimon ben Tzemach Duran (14th-15th century Spain/Algiers), Tashbetz 3:82

A person is always considered forewarned, whether his act is accidental or intentional... but they exempted an expert doctor and an agent of the court who erred. If we would not exempt him for error, he would refrain from healing...

12. Rabbi Dr. Avraham Sofer Abraham, Nishmat Avraham Choshen Mishpat 306

It appears that he is liable to pay, according to the letter of the law, and the same is true in all similar cases of treatment where experience has taught us that sometimes one [accidentally] treats healthy sites, causing great harm. Of course, this is where he could have known clearly, immediately, which was the appropriate site, and he was negligent...

13. Rabbi Eliyahu ben Chaim (16th century Turkey), Responsum 111

These insults, which are not issued as a strategy to induce him to pay his debts, but are only a function of anger and rage – it is obvious that this is not at all similar to the case of Rabbeinu Yerucham...

14. Rabbi Yaakov Reischer (17th century Prague), Shevut Yaakov 3:140

So that he would not accustom himself to this, for it is improper for a sage to be angry, and a demanding person cannot teach, for rage rests in the heart of fools, in order to avoid this... I have ruled that he must pay the doctor to heal him well...

Who Watches the Watchmen?

15. Talmud, Bava Kama 112b

An agent of the court is believed like two [witnesses]. But this is only for *shamta*; for *peticha*, which would cost him money for the scribe, we would not trust the agent.

16. Numbers 16:12-15

And Moshe sent a summons for Datan and Aviram, and they said, "We will not ascend. Is it insignificant that he brought us up from a land flowing with milk and honey, to kill us in the wilderness? Will he also rule over us?? He has not brought us to a land flowing with milk and honey, giving us portions of fields and vineyards! Even if they were to put out our eyes, we will not ascend!" And Moshe was very angry...

17. Rabbi Yisrael Isser Wolf (18th-19th century Ukraine), Shaar Mishpat 8:2

It would be shocking to say that an officer of the court is exempt even if he could have accomplished the goal through other means. If someone is pursuing another person to kill him, such that any Jew is biblically obligated to save him even at the cost of the attacker's life, and there is no greater "officer of the court" than this, we still say that if he could save the victim by wounding the attacker, and instead he kills him, he is liable!...

And one cannot say, "Then what good is a court," for even if a court errs in appraising property, or an officer of the court errs in any [financial] matter, we say their sale is invalid. (Ketuvot 100) Certainly here; there is no greater error than this!...

18. Rulings of the Jerusalem Rabbinical Court for Financial Matters and Clarification of Jewish Status III pg. 245

[Rabbi Yosef Rosen] in Tzofnat Paneiach 42 was asked about a situation involving a Rabbi, when part of the community complained that he was not conducting his rabbinate properly. He responded that a Rabbi is credible against those who complain, for two reasons. First, they accepted him, so that his word is testimony... Also, he has the status of the community's agent; since there can be no community without a Rabbi, for they cannot all be scholars, just as an agent is credible, so the Rabbi is credible...

19. Rashi (11th century France) to Bava Kama 112b

"Is believed like two" – for he would not lie in court.

Review questions

When may police officers use force?

Must a police officer be certain when using force to prevent what appears to be a fatal attack?

Why is an officer indemnified for error?

What are three exceptions for this indemnification?

Why do police officers have automatic credibility?