

The duty to protect: ethical and legal considerations for law enforcement officer...

Profession



There is neither a law mandating that the police protect the citizens they serve, during a crime, nor any constitutional duty imposed on the police to protect the citizens. The concept has been at issue in several court cases around the world. In the infamous “Yorkshire Ripper” case, Lord Keith of Kinkel found that the relationship between the police and a victim was not enough to establish a duty of care. His findings in this case formed the base of a public policy principle that gives the police protection against liability stemming from negligent prevention or detection of crimes (Walsh, 2011). Lord Keith seemed to reason that this restricted liability was necessary to maintain an effective police service. Several cases in Canada, South Africa, New Zealand and Australia, including *Jane Doe v. Board of Commissioners of Police for the Municipality of Metropolitan Toronto et al*, *Odhavi Estate v. Woodhouse*, and *Hill v. Hamilton-Wentworth Regional Police Services Board*, have been dismissive of this reasoning, favoring instead, an approach where cases could proceed in the court system based on possible tort violations (Walsh, 2011).

In the case at hand, judges in Florida have had differing opinions as well. Broward County Judge Patti Englander Henning ruled that Deputy Scot Peterson had a duty to protect the students at Marjory Stoneman Douglas High School, but that ruling was overruled the same day by Federal Court Judge Beth Bloom. Judge Bloom stated, absent a custodial relationship, there is no duty to protect. Judge Bloom added, citing the 1989 Supreme Court decision *DeShaney v. Winnebago County*, that the due process clause “is phrased as a limitation on the state’s power to act, not as a guarantee of certain minimal levels of safety and security” (Cassens Weiss, 2018, para.

10). The argument raised in this claim was that Deputy Peterson ordered a Code Red lockdown, which limited movement of the students within the school (Hassan, 2018; Court, 2019).

That said, police officers should, and need, to understand the moral and ethical underpinnings of their jobs. The opening statement of the International Chiefs of Police Association (1957) Law Enforcement Code of Ethics, states, in part, “ As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation and the peaceful against violence or disorder” (para. 2). Kooker (1947) states that the public can be forgiving of blunders and errors committed during good faith efforts, but acts of omission, failure to act, or malfeasance will be dealt with severely.

Today’s courts of law, as well as the courts of public opinion, have started to take a very serious look at law enforcement, their actions, and inactions, investigating them with a fine-tooth comb. This is evidenced by the recent, unprecedented criminal charges filed in Florida against a former School Resource Officer, who chose not to enter a school when a gunman was actively killing students. Former Broward County Sheriff’s Deputy Peterson has been charged with eleven counts, including negligence, child neglect and perjury (Anderson, 2019).

The perjury charge(s) are not worthy of discussion at this time, as they relate to the fact that Peterson lied, at some point during the investigation.

The charges pertaining to negligence will have to be determined by the court based upon the percentage of fault assigned to Deputy Peterson for his inaction.

The child neglect charges are where the most scrutiny lies, and where the court may be required to set precedent. At the heart of the state's case is that Deputy Peterson's role as a School Resource Officer, he should be held to the standards of a caregiver. Florida law defines a caregiver as the parent, legal custodian, permanent guardian, adult household member, or other person responsible for a child's welfare as defined in subsection 54 (Florida Statute § 39. 01 (10), 2018). " Other person responsible for a child's welfare" includes the child's legal guardian or foster parent; an employee of any school, public or private child day care center, residential home, institution, facility, or agency; a law enforcement officer employed in any facility, service, or program for children that is operated or contracted by the Department of Juvenile Justice; or any other person legally responsible for the child's welfare in a residential setting; and also includes an adult sitter or relative entrusted with a child's care. For the purpose of departmental investigative jurisdiction, this definition does not include the following persons when they are acting in an official capacity: law enforcement officers, except as otherwise provided in this subsection; employees of municipal or county detention facilities; or employees of the Department of Corrections (Florida Statute § 39. 01 (54), 2018). It would appear, as written, Deputy Peterson's role as a School Resource Officer makes him exempt from prosecution on these charges.

There have been countless cases across the country dealing with egregious actions taken by police officers, such as excessive use of force cases, and the like, but this is the first time that a police officer has been criminally charged for his inaction during an active, mass shooting event in a school. This case carries with it the potential to change the way law enforcement handles “ active threat” situations, trains their officers, and constructs policy. There are other, more far-reaching possible implications aside from just “ active threat” situations, as well.

Ethical Thought Processes

There are several different thought processes that can be used to guide moral and ethical decision making. Some of the most prominent include Utilitarianism, Libertarianism and motive-based decision making.

Two of the most regarded disciples of utilitarianism are Jeremy Bentham and John Stuart Mill. Bentham said that utilitarianism, quite simply, is doing whatever maximizes pleasure and prevents pain. Bentham states that every moral argument must focus on maximizing pleasure. Mill added that the happiness of the greatest number of people should give direction on how to act (Sandel, 2009).

Libertarianism stresses the concepts of liberty, autonomy, freedom of choice and individual judgment (Sandel, 2009). While it can be argued that libertarianism has more application in political and economic realms, it can be applied to this situation in that, ethically speaking, Deputy Peterson had the freedom to choose his course of action.

When Immanuel Kant spoke of ethical decision-making, he stressed the importance of the motive. Kant believed that the motive was the most important factor, and that doing the right thing was not enough. People must do the right thing, for the right reason. Kant stated that doing the right thing based upon self-interest, was inappropriate (Sandel, 2009).

It would be difficult to argue that Deputy Peterson used any of these ethical thought processes to aid in his decision-making during the mass shooting at Marjory Stoneman Douglas High School. It is more likely that his decision-making was guided solely by fear. The facts are clear that he did something. Unfortunately, that something was nothing, seemingly taking only his own personal well-being into account during the event.

The Definition of an Ethical Problem

Ethical dilemmas can manifest in a variety of situations, but they all have common elements in place when someone is unable to identify the appropriate resolution to a given problem. First, the problem cannot be precisely described before it arises. Second, the problem unfolds at the same time as the decision-making process. Third, the problem does not lend itself to a single best solution. Finally, there are a vast number of alternatives to choose from (Van de Poel & Royakkers, 2007). Ethical problems require the decision-maker to weigh the impact of the decision based upon the interests of everyone involved and that may be impacted by the situation (Reding, et al., 2014).

There are several schools of thought regarding working one's way through an ethical problem. Two of the most prominent methods include utilitarian

and deontological thought. Utilitarianism thought is predicated on achieving the greatest good for the greatest number, after completing a risk-reward type analysis. Priority is given to the plan of action that maximizes pleasure, happiness and utility. This is considered ends-based thinking (Kidder, 1995; Sandel, 2009).

The deontological way of thinking, a rule-based methodology, is based on the concepts of duty and obligation. This reasoning states that one must consider what ought to be done, not the outcomes (Kidder, 1995).

The Ethical Decision-Making Process

Just as the definition of an ethical problem has several steps, so to, does the ethical decision-making process. The first step is that the involved person must be aware of the problem at hand. Second, they must gather as many facts relevant to the decision as possible. Third, possible solutions need to be identified. The fourth step is that the involved person must consider the stakeholders that will be affected by the alternative solutions. Finally, the person reaches a conclusion by comparing the possible solutions and weighing the outcomes. The decision-making process can be guided by personal theory, external guidance or previous experience and training (Werhane, Hartman, Archer, Englehardt, & Pritchard, 2013).

Ethical Decision-Making in Terrorist Type Events

While there is no single, widely accepted definition for terrorism, the argument can certainly be made that mass shootings, particularly school shootings, are a form of terrorism. To that end, the ethical decision-making process for a police officer that finds themselves in the middle of a school

shooting response, is like that experienced by someone in the counterterrorism field. Mass shootings are a low frequency and high impact event. These facts can make it difficult to take proportional action to mitigate the already unfolding event. This type of event requires quick, independent decisions to be made, often based on incomplete or imperfect information (Reding, et al., 2014).

Additionally, law enforcement officers, in these mass shooting type events, must consider and ensure the legitimacy of their intervention, and accompanying tactics. While the need to take action to stop the threat may seem obvious, the following items must be considered; what amount and quality of information is required to make the decision to act, and what are the appropriate means of intervention for the situation at hand (Reding, et al., 2014)?

Werhane, Hartman, Archer, Englehardt, and Pritchard (2013) offer that unethical decisions, such as those made in the case at hand, are typically not deliberate, but rather a result of the failure of an individual to engage in ethical reflection, prior to being placed in that position. Failure to plan, in advance of a situation often leads to mistakes, or in this situation, freezing in place.

Law enforcement officers were introduced in school settings in the United States in the 1950s. In the 1970s, the term School Resource Officer, was developed, coincidentally, in Florida. School Resource Officers have typically been associated with a three-prong approach of teaching, mentoring and enforcing laws. Most officers develop relationships with their students and

are role models to many. However, when asked, most School Resource Officers believe that their primary function is that of protection and enforcement (McKenna & Pollock, 2014). Given the sensitive nature of the population they serve, School Resource Officers can often find themselves facing ethical decisions and problems. For instance, with their multitude of roles, what is the best course of action to take when an infraction is committed? Should they assume the role of teacher, mentor or enforcer? The answer can typically be found after an assessment of the following question; what would be the most defensible, best justified response given the circumstances (McKenna & Pollock, 2014)? School settings, unlike general society, may provide obstacles when making ethical decisions, given the possibility of zero-tolerance policies that can be present.

As the number of School Resource Officers grew rapidly in the 1990s, in part, as a result of the Columbine High School murders, the Safe Schools Act of 1994 was passed. The Safe Schools Act was created in order to provide funding and resources to school districts in accordance with goal six of the National Education Goals. Goal six called for every school to be free of drugs and violence by the year 2000. In addition, the Safe Schools Act mandated planning for long-term strategies to combat and prevent school violence by partnering together schools, law enforcement, health, social services and other appropriate organizations (Safe Schools Act of 1994, 1994). While admirable, the goal has yet to come to fruition, as evidenced by the spate of shootings over the past two decades, as well as the continued instances of victimization occurring within our schools.

Incidents such as Columbine and Sandy Hook have strengthened the case for the presence of School Resource Officers in all schools as it would stand to reason that having a first responder already on-scene during a mass shooting could dramatically decrease the offenders ability to inflict harm, assuming the School Resource Officer takes action. After all, that is the job of the School Resource Officer, the police in general, as well as the overriding expectation of the public at large. This exact sentiment is conveyed in by the United States Department of Homeland Security (2008) in their booklet, Active Shooter: How to Respond. The booklet states, “ Law enforcement’s purpose is to stop the active shooter as soon as possible. Officers will proceed directly to the area in which the last shots were heard.”

The Parkland Scenario

On February 14, 2018, Nikolas Cruz entered Marjory Stoneman Douglas High School and engaged in a violent rampage that left 17 people dead. During the mass shooting event, Deputy Peterson, the School Resource Officer assigned to the school, failed to enter and confront the shooter. Deputy Peterson had been in law enforcement for 32 years, serving 28 of those years in a School Resource Officer capacity. At approximately 2: 21 p. m., Cruz began his assault on the students and faculty. At approximately 2: 23 p. m., Deputy Peterson located a spot in which to hide, where he remained for approximately 48 minutes during the assault (Florida Department of Law Enforcement, 2019). Deputy Peterson was not wearing his department issued ballistic vest during the incident, nor did he have access to a patrol rifle. In the aftermath of the mass shooting Deputy Peterson was the subject of several interviews, with both law enforcement and the media. Most of his

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accounts of the incident included several discrepancies and were contradicted by video and witness accounts. At the conclusion of the investigation, Deputy Peterson was found to have been derelict in his duty as an officer by not acting in accordance with his training and willfully deciding not to intervene in the mass shooting (Florida Department of Law Enforcement, 2019). Deputy Peterson had been trained in “ active threat” response, in 2007, 2012 and 2016. The Broward County Sheriff’s Department policy regarding “ active threat” responses was ambiguous, stating that Deputies, particularly during solo responses “ may” enter the scene of the shooting in order to stop the shooter and save lives (Nehamas, 2018). Adding to the mass confusion and chaos typically associated with this type of event was the inability, or unwillingness, of several supervisors to make critical decisions.

Training for active shooter incidents has taken off since the fateful day at Columbine High School on April 20, 1999. Prior to that event, training dictated that the first responding officers would contain the scene and wait for the SWAT team to show up. Current procedures, which seem to have mitigate the threat in several instances, call for the first responders to act, with the goal of stopping the shooter as quickly as possible. Studies show that most of these incidents are over within mere minutes, with the shooter either taking his own life or being stopped during contact with the initial responding officers (Blair & Schweit, 2014; Fletcher, 2016).

Courses of Action

The most obvious course of action is on-going ethics training. If the employee has a sufficient ethical background at the time of hire, on-going discussion and training is crucial. Jones and Owens (1995) suggest the concept of management through values and an accompanying three tiered approach to ethics training. A management through values approach emphasizes the institutionalization of the core values and ethics of an entity, from top to bottom. Ethical issues, and the expected accompanying behaviors are discussed in detail in order to eliminate any questions. The three-tiered approach to ethics training, which has been instituted by the Huntsville, AL Police Department, involves training at the recruit, in-service and supervisory levels. This training model presents on-going opportunities to discuss and elicit solutions to ethical problems that may arise.

The construction of clear, concise and unambiguous written policy is also a must. In tense situations, officers are already forced to act upon imperfect information. They should not and cannot be tasked with deciphering ambiguous directives. Additionally, the officers need to be aware of what the policies direct them to do, and think about how they will respond before ever being placed in the precarious situation they find themselves in. If a situation is predictable, it is preventable.

On-going training is very valuable to success. In this incident, training had been completed, but it did not lead to the desired end. Specific training, individual discussion and introspection are important. Perhaps that combination would have led to the realization that Deputy Peterson was not

ready, willing and able to fulfill his duties at Marjory Stoneman Douglas High School.

Of particular importance, when speaking about the role of a School Resource Officer, are regular meetings with school administrators. These meetings can serve as an opportunity to develop shared understandings of ethical dilemmas, and what type of intervention is expected in a certain circumstance (McKenna & Pollock, 2014).

The institution of a Guardian Program is yet another potential solution. These programs are specific to the prevention of school violence, most notably, mass shootings. The Guardian Program allows teachers and staff, after passing a rigorous training program, to carry concealed firearms for self-protection and the protection of fellow staff members and students.

Lastly, and clearly, least favorable to the officers themselves, are the continued options of departmentally imposed discipline, and civil litigation. The police have the responsibility to monitor their own actions, and administer discipline, up to and including termination, where applicable. A department that does not police themselves, cannot effectively police the community. Regarding civil litigation, Jones and Owens (1995) have found that it does not appear to be a vehicle for structural changes in policing, however, it can still be an effective way to control the actions and decisions of the individual.

Ask most officers across the country, and the answer to the question of what should have been done in the Parkland scenario is obvious. Enter the school,

confront the shooter, and do everything possible to stop the killing. The strategies that have been used, and should be continued for instances such as this, appear to be clear; train for likelihood of the event, have a personal plan in place for a response, make policy crystal clear and have competent officers and supervisors in place to take actions.

The Parkland incident was horrible, which goes without saying. The actions (or inactions) of Deputy Peterson have put the spotlight on law enforcement response and ethics. Although his decision-making was likely not deliberately unethical, he clearly failed to do the right thing for, either the greater good or in concert with his duty and obligation. The decision to do nothing was a personal one for Deputy Peterson, but what remains to be seen is was it solely an unethical decision to not act, or was it also criminal?

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