

School Safety?

Teacher sues school after active shooter drill gone bad

By Perry A. Zirkel



After the successive school shootings before and after 9/11, including Columbine and Newtown, the public and school leaders have put a priority on school safety. The following case is a real-life example of what can happen when well-meaning leadership focuses so narrowly on this concern as to lose sight of other interests. It also illustrates the scope of various legal bases that would appear to represent such other interests.

The Case

One month after the December 14, 2012, fatal shooting of 20 students and six staff members at Sandy Hook Elementary School in Newtown, Connecticut, the school board of Pine Eagle School District, located in rural Oregon, met. School board chair John M., who also was president and co-owner of an alarm communications company, led the formation of a safety committee, which included him, maintenance person and safety officer Shawn T., and the principal of the district's elementary and middle/high schools.

Approximately three weeks later, John M., Shawn T., the principal, and the superintendent traveled to a presentation on the "Run, Hide, Fight" recommended response to active shooter incidents. At the next board meeting, they shared what they had found out, and the board decided to require all school personnel to attend this program and each teacher to follow up with a written safety plan for his or her classroom. At the same meeting, Shawn T. told the board that he had talked with John M. about upgrading the school's security measures, including its communications system.

Soon after the meeting, the principal informed the school staff of the board's training directive. Also, John M. submitted an estimate for the security upgrade, but the board decided against it at that time.

Approximately a week later, the school staff received the training, which consisted of lectures, a video, and a question-and-answer period, but did not address active shooter drills. The safety committee planned an unannounced active shooter drill at the elementary school during the upcoming inservice day, when students were not in class and teachers were to complete their safety plans.

On April 26, the inservice day, while the teachers were in their classrooms working on their safety plans, John M. and Shawn T. entered the school in dark clothing and, to disguise their identities, paintball masks and goggles. They set off firecrackers at the entrance to simulate gunshots and split up into the two school hallways. Shawn T. entered the classroom of the first-grade teacher, who was alone working on her safety plan. He walked toward her, stopped

approximately 12 feet away, pointed a real-looking gun (which was a starter pistol) at her, and pulled the trigger. The sound and smoke were like a real gun. The masked man then said, "You're dead," and ran away.

The teacher thought the attack was authentic. When she walked toward the door, she saw a student in the hall. The teacher grabbed the student's arm and left the building. Other teachers ran for the exit; one wet herself in fear. The drill lasted only about 90 seconds. Afterward, Principal D. conducted a debriefing, showing that 13 of the 15 teachers had been "shot."

On May 9, the first-grade teacher received a note from the Pine Eagle Clinic excusing her from work until further notice. She has not been able to return to work due to severe emotional distress and post-traumatic stress disorder.

Approximately one year after the drill, the school board awarded a contract to John M.'s company to upgrade the district's alarm system.

During the following year, the teacher filed suit in federal court against the district, John M.'s

Armed assailants in schools account for only 1 percent of homicides among school-age youth; schools must balance costs and benefits when allocating crisis preparedness resources.

— *National Association of School Psychologists & National Association of School Resource Officers*

company, and various individuals in their official capacity, including John M., Shawn T., the superintendent, and the principal. Her suit was premised primarily on three federal civil rights claims and two state common law claims. The defendants filed a motion for summary judgment, i.e., rejection of the teacher's claim before reaching the trial stage.

What do you think was the court's ruling for the defendants' motion with regard to each of the following federal claims:

a) Violation of 14th Amendment "failure to train"?

In *McLean v. Pine Eagle School District* (2016), the federal district court in Oregon rather readily rejected this claim, concluding that the 14th Amendment does not support a free-standing failure-to-train claim.

b) Violation of 14th Amendment substantive due process?

The court also decided this claim in the defendants' favor, concluding that the teacher failed to show the prerequisite deprivation of life, liberty, or property. More specifically, the court rejected the teacher's asserted liberty interest, finding that purely emotional trauma, without accompanying physical injury, is insufficient to constitute the recognized 14th Amendment liberty interest in bodily security.

c) Violation of the Fourth Amendment right to be free of unreasonable governmental seizure?

Similarly, the court decided this claim in the defendants' favor, concluding that the teacher failed to show, as required in her jurisdiction, that Shawn T., by a show of official authority, intended to restrain the plaintiff teacher's liberty. First, he was a non-law enforcement official in a disguise rather than a uniform, thus simulating the action of an unlawful private active shooter. Second, his purpose was to test the Run, Hide,

Fight skills of the teachers, not to restrain their movement.

What do you think was the court's ruling for each of the defendants' arguments against the teacher's two state common law claims, which were intentional infliction of emotional distress and civil assault:

a) The court should exercise its discretion to decline to exercise supplemental jurisdiction for the state law claims upon rejecting the plaintiff-teacher's federal claims? Citing the 15 months since the teacher filed suit, including extensive pretrial depositions and interrogatories, the court decided to address, rather than abstain from, these remaining claims based on "interests of judicial economy, convenience, fairness, and comity."

b) The plaintiff failed to show the required elements of a claim of intentional infliction of emotional distress?

The court rejected the defendant's motion for summary judgment, i.e., deciding the matter in the defendants' favor rather than proceeding to a trial. Specifically, the court concluded that "a reasonable jury could find that the Defendants intended to cause Plaintiff (and others) severe emotional distress, or at least that they knew with substantial certainty that their conduct would cause such distress [and] ... that Defendants' actions were outrageous."

c) The plaintiff failed to show the required elements of a claim of civil assault?

Again, the court disagreed with the defendants, concluding instead that a reasonable jury could find that Shawn T., acting on their behalf, intended to cause the plaintiff apprehension of imminent harm and that this apprehension was reasonable under the circumstances.

d) John M. was not acting within the course of his employment with the

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alarm company, thus exempting his company from vicarious liability? The court refused to let the company off the hook and concluded that "a reasonable jury could infer that at least part of [John M.'s] motivation in planning [and executing] the unannounced active shooter drill was to encourage [the school district] to upgrade its communications system and to demonstrate the need for such an upgrade."

Conclusion

Although school safety is a major concern in the modern era, school leaders need to maintain a prudent perspective about the scope and nature of proactive practices, including training activities and security equipment, to mitigate such tragedies. Obviously, in the rational hindsight of a judge or jury, various other interests, including the emotional well-being of school staff (and students), suggest that active shooter drills require broad-based participation of not only school board members and administrators, but also teachers and parents, to minimize narrow private views and untoward consequences. For example, the failure to notify the individuals at the school here may have made the reality of the situation so effective that the trade-off may be significant liability for not only the district but also its participating officials. **P**

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