

The Right, and Now the Wrong of 2017

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It is easy to go down into Hell; night and day, the gates of dark Death stand wide; but to climb back again, to retrace one's steps to the upper air—there's the rub, the task.

—Virgil

In my December 2017 editorial, I presented a values-based roundup of the year. That column explained the criteria for the selections of the most right and most wrong in 2017 in terms of 3 ethical theories: utilitarianism, deontology, and virtue ethics. December featured the good in federal practice. This month, the editorial turns to the bad in federal practice.

Sadly, there were far more candidates for the ethical worst of 2017 in the DoD, VA, and PHS than those of us dedicated to federal service would wish to see. Unfortunately, this reflects both the current state of our society and the nature of the human condition.

On Sunday morning, November 5, 2017, near my hometown of San Antonio, Texas, a gunman in military gear and firearms murdered 26 people who were worshipping at a rural Baptist church. The context of this horrific offense simultaneously mocked the fidelity of our armed forces and a religious faith that in many forms has been a foundation of our nation. Leading forensic mental health experts advise against using the name of mass murderers to avoid perversely glorifying them, and I will adopt that wise convention here.¹

Soon after the massacre, news organizations reported that the perpetrator had served in the Air Force, stationed in my adopted home of New Mexico. The shooter had been given a bad conduct discharge after a court-martial in 2012 found him guilty of brutally assaulting his then current wife and their child.² More than 1 military law expert has opined that perhaps the discharge should have been dishonorable, given the brutality of the conduct, although whether that verdict would have made it more likely, the crime was reported is not certain.

The day following the mass shooting,

the Air Force euphemistically acknowledged that it had made an “error,” “mistake,” in not reporting the attacker’s violent history to the federal database, which tracks such offenders to prevent them from lawfully purchasing a weapon. These words and others, such as *blunder* and *failure*, used in the media do an injustice to the worshippers’ lives lost that ill-fated morning.³

I must stop here and emphasize as strongly as possible that the selection of this attack is in no way meant to demonize the Air Force as an agency or any individual serving in it. In fact, further investigation suggested that all branches of the armed forces did not fulfill their reporting obligations under the law. Nor am I making the unprovable claim, as some politicians have hinted, that if the Air Force had followed its procedure and policy, the shooter would never have taken 26 innocent lives. Although I note that this is exactly the assumption driving a number of lawsuits brought by the victims’ families against the Air Force for its failure to follow its rules.

Rather, I chose this terrible incident because of its universality and generalizability as a paradigm of what philosopher Hannah Arendt called the banality of evil. As she wrote in her book *Eichmann in Jerusalem*, “There is a strange interdependence between thoughtlessness and evil.”⁴ Although the law must deem the attack a capital crime, ethics should see it as a the ripple effect of hundreds of small moral failures of dozens of individuals and the system that neither inspired nor held them accountable for taking routine tasks as morally serious. An Office of Special Investigations officer told CNN, “The system as it is now is personality dependent, which is obviously irresponsible and broken,” noting that accurate recording of case details depends on the discretion of individual case workers.⁵

Those federal workers are no better or worse than any of us. This bloody tragedy that might be dismissed as an administrative oversight powerfully demonstrates that even the

smallest task matters greatly. It is the systemic, long-standing, repeated nature of the DoD's improper reporting of servicemen and women that makes this action ethically problematic and warrants my selection as the worst event of 2018.

Major newspapers on November 7 carried a report from the Associated Press with a damning headline, "Pentagon has known of crime reporting lapses for 20 years."⁶ National Public Radio reported that several Inspector General investigations had documented that over this period the DoD was not regularly reporting violent offenses to the National Criminal Information Center database as mandated. A Fordham law professor and gun regulation specialist quoted on the program zeroed in on an absence of accountability as the leadership flaw that permitted rank and file staff to ignore their protocols. "It's a 'who's watching the watchers' kind of issue," he said. "There is no oversight over the Air Force or over the FBI that demands that these regulatory obligations are actually followed through with."⁷

Finally, after the tragedy, it was discovered that the Air Force had not just 1 but 2 chances to prevent the gunman from future firearm purchases. The shooter had escaped from a psychiatric facility—his status in the psychiatric hospital was unclear—but it is known that he was admitted after he had smuggled weapons onto the base and threatened to kill his commanders. His hospitalization should have been reported to the national database, which would have raised a red flag when he tried to buy guns.⁸

Each of the hundreds of prosaic decisions that indirectly contributed to the Texas shooting was borne of a juggernaut of small compromises from procrustean bureaucratic leadership at the top to mindless conformity at the bottom: a breach all 3 ethical theories. Even if 1 unfiled report leads to no untoward outcome, it is clear that for utilitarianism, it is safer and sounder public policy to take lawful steps to prevent individuals with violent pasts and the potential to kill others from purchasing firearms. Deontologically, whether by omission or commission, not reporting such individuals violates the duty of veracity, as it withholds the truth from those who have a right to possess

it. Finally, for this horror to be possible, many people had to not act with integrity, accountability, and trustworthiness.

Many may criticize my a choice to begin the new year so inauspiciously drawing attention to ethical failures and such a malicious crime. I would counter this criticism with the contention that a sober analysis of serious moral lapses in terms of the ethical theory introduced last month is a most salutatory welcome to 2018. So as we embark upon a new year in federal practice, let us strive not only for clinical expertise and administrative efficiency, but also for moral excellence.

Author Disclosure

The author reports no actual or potential conflicts of interest with regard to this article.

Disclaimer

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