

LAW OFFICE OF
KUEHNE DAVIS LAW
PROFESSIONAL ASSOCIATION

BENEDICT P. KUEHNE*
SUSAN DMITROVSKY
MICHAEL T. DAVIS
*Board Certified
Appellate Practice and
Criminal Trial Practice

MIAMI TOWER, SUITE 3550
100 S.E. 2ND Street
MIAMI, FLORIDA 33131-2154
Telephone: 305-789-5989
Facsimile: 305-789-5987
ben.kuehne@kuehnelaw.com
susand@kuehnelaw.com
mdavis@kuehnelaw.com

FORT LAUDERDALE OFFICE
1 W. Las Olas Blvd., Suite 500
Fort Lauderdale, FL 33301

REPLY TO: Miami

June 3, 2019

Dudley Goodlette, Special Master
Suite 409, The Capitol
404 S Monroe Street
Tallahassee, FL 32399-1100
Goodlette.dudley@flsenate.gov

Re: Scott Israel
Executive Order of Suspension, Executive Order No. 19-14
Sheriff Israel's Bench Memorandum

Dear Special Master Goodlette:

Sheriff Israel submits his Bench Memorandum in support of a recommendation by the Special Master that he should be reinstated to the office of Broward Sheriff.

INTRODUCTION

Running as a Democrat against the then-incumbent Republican Sheriff, Scott Israel was elected as the 16th Sheriff of Board County in 2012. Sheriff Israel, re-elected as Sheriff to serve a 4-year-year term in 2016, served as the Broward Sheriff until his suspension by Governor DeSantis on January 11, 2019, through Executive Order 19-14. That Executive Order suspended Sheriff Israel for purported neglect of duty and incompetence.

Sheriff Israel at all times as Broward Sheriff served dutifully and in a manner consistent with the duties, standards, and expectations of a County sheriff. The allegations of Executive Order 19-14, the Governor's Bill of Particulars, and the Governor's arguments and position supporting the suspension are demonstrably inaccurate and fail to

establish grounds sufficient to warrant the Sheriff's removal from office for neglect of duty or incompetence. For the reasons stated in this memorandum, the Special Master should recommend to the Florida Senate that Sheriff Israel be reinstated to office.

FACTUAL ANALYSIS

Sheriff Israel has been a sworn and certified law enforcement officer for forty (40) years. His law enforcement career began as a patrol officer for the Fort Lauderdale Police Department in 1979. As Sheriff, he led a public safety and law enforcement agency of 5,600 budgeted positions that includes 1,500 law enforcement personnel, 1,300 detention deputies, 700 firefighters, 450 regional communications staff, and 150 child protection investigators, among other employees.

Citing Sheriff Israel for his responses to the Fort Lauderdale airport shooting on January 6, 2017, and the February 14, 2018 Marjory Stoneman Douglas High School shooting ("MSD shooting"), Governor DeSantis suspended him for "neglect of duty and incompetence for the purposes of Article IV, Section 7, of the Florida Constitution." Previous Governor Rick Scott, who was in office when the two cited incidents occurred and for a significant time thereafter, did not act to suspend Sheriff Israel.

The "Powers, duties, and obligations" of the sheriff are set out in §30.15, Florida Statutes (2018). "Sheriffs, in their respective counties, in person or by deputy, shall:"

(a) Execute all process of the Supreme Court, circuit courts, county courts, and boards of county commissioners of this state, to be executed in their counties.

(b) Execute such other writs, processes, warrants, and other papers directed to them, as may come to their hands to be executed in their counties.

(c) Attend all sessions of the circuit court and county court held in their counties.

(d) Execute all orders of the boards of county commissioners of their counties, for which services they shall receive such compensation, out of the county treasury, as said boards may deem proper.

- (e) Be conservators of the peace in their counties.
- (f) Suppress tumults, riots, and unlawful assemblies in their counties with force and strong hand when necessary.
- (g) Apprehend, without warrant, any person disturbing the peace, and carry that person before the proper judicial officer, that further proceedings may be had against him or her according to law.
- (h) Have authority to raise the power of the county and command any person to assist them, when necessary, in the execution of the duties of their office; and, whoever, not being physically incompetent, refuses or neglects to render such assistance, shall be punished by imprisonment in jail not exceeding 1 year, or by fine not exceeding \$500.
- (i) Be, ex officio, timber agents for their counties.
- (j) Perform such other duties as may be imposed upon them by law.
- (k) Establish, if the sheriff so chooses, a Coach Aaron Feis Guardian Program to aid in the prevention or abatement of active assailant incidents on school premises....

During Sheriff Israel's tenure as Broward Sheriff, the Broward Sheriff's Office was accredited as a law enforcement agency in accordance with the Commission for Florida Law Enforcement Accreditation ("CFA"), the premier state law enforcement accreditation program in the United States. At the time of the MSD shooting, the Broward Sheriff's Office was certified by the Commission on Accreditation for Law Enforcement Agencies ("CALEA), representing the "gold standard" in public safety, for its law enforcement, communications, and detention policies. This CALEA national certification is known as the "triple crown" among law enforcement agencies, with the BSO having attained Excelsior Status. BSO has 18 separate accreditations in Sheriff Israel's tenure.

In addition to his statutory and commonly understood responsibility as Broward County's chief law enforcement officer, the Broward Sheriff's Office under Sheriff Israel entered into or continued existing operational contract agreements by which municipalities and governmental entities within Broward County contract with the BSO to effect municipal law enforcement. Parkland, Florida is one such contracting municipality. In every instance of municipal or local government contracting for law enforcement services, the staffing

allocation pursuant to the contract is determined by the contracting agency, not BSO.

In the case of the Parkland operating contract, the appointment of commanders (holding the rank of Captain) is made in cooperation and consultation with the contracting entity, the Town of Parkland, with the Town selecting its commander from a list of recommended officers. When BSO entered into the Parkland contract, the BSO was required to absorb the existing Parkland Police Department officers into the BSO organization. Sheriff Israel had no individual involvement with or control over this absorption of existing municipal police officers.

The Fort Lauderdale Airport and Seaport are also contracting entities with BSO whose law enforcement jurisdiction does not separately come within the statutory duties of the Broward Sheriff. The responsibilities of the BSO at the Fort Lauderdale-Hollywood Airport are set out in the contracting documents.

Under Sheriff Israel's guidance, the BSO instituted "active shooter training" for its deputies and the community as early as 2013, even though such training was not required by the Florida Criminal Justice Standards and Training Commission ("CJSTC"). The BSO training program exercise at Pompano Beach High School in May 2013 was considered a template for police trainers nationwide, evaluating the multi-disciplinary multi-team, coordinated response to a group of gunmen entering the school. This real-life simulation exercise was a part of BSO's twice-a-year full training scenarios.

Prior to the February 14, 2018 MSD shooting, BSO conducted active shooter training for all its deputies in 2015 and 2016, and was continually involved in staggered training for its deputies, monthly training for specialty units, including conducting classes on building tactics, handgun and rifle training, combat lifesaver programs, rescue task force exercises, and tabletop applications for active shooter scenarios that add to active shooter response capabilities.

BSO's training processes and practices were aligned with national best practices, including the implementation of the BSO Active Shooter Policy in effect at the time of the Marjory Stoneman Douglas High School mass shooting. That policy, using "may" as the operative consideration

when devising a law enforcement response to an active shooter, stated: “if real time intelligence exists, the sole deputy or team of deputies may enter the area and/or structure to preserve life.” This policy was consistent with national standards, had not been criticized previously by the Florida Department of Law Enforcement, and did not materially differ from policies utilized by other Florida law enforcement agencies. Its implementation by BSO was carefully evaluated and vetted, was subjected to intense scrutiny, was compared with active shooter policies existing within the State of Florida and throughout the United States, and was made available to the Florida Department of Law Enforcement.

The BSO active shooter policy was not and had never been considered a limitation on law enforcement entry into an active shooting or hostage situation. It was implemented as a reasonably prudent authorization that adjusted the existing “Todd Fatta Policy” in place before Sheriff Israel’s first election as Sheriff. The Todd Fatta Policy required all high risk operations – including active shooter responses – to include a SWAT Team analysis and other protocols before entry is authorized. In Sheriff Israel’s view, consistent with the stated position of his command staff, the Todd Fatta policy was too restrictive.

Also as a part of its active shooter training program, BSO implemented and conducted training for trainers programs for the Broward County School Board consistently through calendar year 2018. This project included a joint program with the Broward County Police Chiefs’ Association to design and implement a multi-jurisdictional cadre of instructors teaching Broward County Schools’ personnel how to respond to an active shooter incident. By 2017, all of Broward County’s elementary schools were completed, and half of the middle schools were done by 2018. BSO coordinated the creation of this Broward County Schools program, scheduling instructors to participate in the training, and providing the necessary expertise and resources to assure the success of the still-ongoing program as of the time of the Sheriff’s suspension.

On January 6, 2017, a shooting occurred at the Fort Lauderdale-Hollywood Airport (“FLL shooting”), resulting in the mass murders of five travelers. The presence of BSO deputies on the scene at the FLL shooting resulted in the near-immediate apprehension of the shooter within less than 80 seconds of the first shots being fired. Broward Deputy Sheriff Jesus Madrigal, assigned to the Delta Checkpoint in Terminal 2, immediately responded to the sound of the gunshots while on duty, and

took the shooter into custody, preventing further tragedy. Acting on his training, Deputy Madrigal's prompt response led to his and responding law enforcement officers being in positions to help victims obtain medical attention quickly and save more lives. Deputy Madrigal was recognized as 2018 Deputy of the Year by the Florida Sheriffs Association.

A subsequent investigation of the shooting led to the publication of an official post-event report that confirmed that BSO worked seamlessly with all agencies that responded to the incident. The investigation confirmed that the shooter planned the shooting by retrieving the gun he had sent through his checked baggage (a Walther 9mm pistol he had legally purchased), loaded the weapon in the men's room, and proceeded to randomly shoot people in the baggage claim area. The shooter was convicted of federal charges and sentenced to five life terms plus 120 years.

The final, as published, version of the Fort Lauderdale-Hollywood Airport Critical Incident Report (October 6, 2017), found no negligence, incompetence, or neglect of duty on the part of Sheriff Israel or the BSO. It did, however, criticize Broward County's emergency radio communications systems that is operated and controlled by Broward County. Sheriff Israel and the BSO had for years pressed the County to upgrade and enhance its regional emergency communications system. BSO is one of many users of the County's regional communications system, but has no control over its operation, implementation, or effectiveness.

The County's emergency radio communications system at the time of the Airport shooting was overwhelmed and unable to handle the communications demand. Even then, the BSO established a Command and Control Center that enabled 17 parking facilities to be cleared. The airport terminals were swept and cleared by the 18 responding SWAT Teams, and more than 15,000 passengers and other personnel were cleared and evacuated to safekeeping.

In the course of the law enforcement response and evacuation of the FLL shooting, numerous law enforcement agencies participated that were not under the control, responsibility, or supervision of the BSO. To the contrary, federal law enforcement authorities were in charge of the airport and response. BSO worked closely with the federal and other local

law enforcement teams at the scene.

It is a known and undisputed fact that Broward County's fractured communications system allowed two law enforcement agencies responding to the scene of the MSD shooting to utilize different radio channels without coordinating through the BSO. This dual communications dynamic that was neither implemented nor supervised by BSO led to significant communications and response problems at the scene of the MSD shooting.

The Broward County Administrator was, at the time of the FLL shooting and continuing through today, involved in the complex and protracted process of working toward the needed system upgrade. That upgrade had been underway well before the incident and is still a priority Broward County project. The implementation of a new system is a massive undertaking by Broward County. BSO had been an essential and integral component in the planning process during the administration of Sheriff Israel.

The February 14, 2018 mass shooting at Marjory Stoneman Douglas High School in Parkland, Florida is indeed a tragedy. But it was not a preventable tragedy given the intention of a mass murderer to commit acts of terrorism on the suburban high school campus. Sheriff Israel, along with all residents of Broward County, shares the grief of the parents and loved ones of the murdered children, teachers, and administrators. Neither Sheriff Israel nor the BSO were responsible for the mass shooting, nor was Sheriff Israel guilty of neglect of duty and incompetence in connection with that tragedy. Sheriff Israel takes full responsibility for the response of the BSO to that senseless shooting, and implemented many post-event improvements and systems in response thereto during his time as Sheriff.

As the Marjory Stoneman Douglas High School Public Safety Commission Report (January 2, 2019) ("MSD Report") detailed, the shooting was planned and executed by a former student who was in lawful possession of the deadly weapons he used to exact his revenge on the school for unknown reasons that he can only be attributed to the workings of his diabolically twisted mind. The shooter acted out a terrorist plot designed to take the lives of innocent students and schools personnel. The MSD found no incompetence or neglect of duty on the part of Sheriff Israel, and offered a constructive critique of what went wrong

that day and in the many months preceding the shooter's deadly assault, including the failure of on-site Deputy Scott Peterson to enter the school to locate and confront the shooter. Deputy Peterson is no longer a law enforcement officer.

MSD Commission Chair Sheriff Bob Gualtieri, the elected Sheriff of Pinellas County and a licensed lawyer in good standing with The Florida Bar, stated publicly that he saw no basis for Sheriff Israel's suspension from office as a result of the Marjorie Stoneman Douglas shooting. In an interview with respected journalist Tony Pipitone, MSD Commission Chair Gualtieri confirmed that nothing in the MSD Commission report constituted grounds for the removal of Sheriff Israel from office by the Governor. <https://www.nbcmiami.com/news/local/MSD-Commission-Chair-Would-Not-Recommend-Removal-of-BSO-Sheriff-From-Office-502532751.html> (December 11, 2018).

Well before the MSD Commission issued its final report, the MSD shooting was used during the political campaign for Governor as a platform by then-candidate DeSantis to demand the removal of Sheriff Israel. This demand, repeated loudly and often in order to obtain the financial and political support of the National Rifle Association ("NRA"), was made even before the then-candidate had any factual inkling of what had happened at the MSD shooting. Without any facts, expert assistance, or even a rudimentary knowledge of law enforcement practices, then-candidate DeSantis placed unwarranted and unjustified blame on Sheriff Israel, the popular and well-respected Sheriff of Broward County who was handily elected as a Democrat by a landslide margin in 2016.

Solely to secure votes, DeSantis made a political campaign promise to parents of the murdered students and the NRA that he would remove Sheriff Israel from office if then-Governor Scott did not do so. Yet, Governor Scott, fully informed of all the information purportedly considered by Governor DeSantis, chose not to exercise the suspension power in connection with conduct occurring during his term as Governor.

Governor DeSantis made good on his partisan political campaign pledge when he suspended Sheriff Israel on January 11, 2019, citing neglect of duty and incompetence as the grounds for the suspension. As further evidence of the abjectly political nature of his suspension order, Governor DeSantis addressed his suspension of Sheriff Israel during his

inaugural State of the State speech to a joint session of the Florida Legislature on March 5, 2019. In that speech, the Governor warned the Senate to not interfere with the suspension: “Why any senator would want to thumb his nose at the Parkland families and to eject Sheriff Tony, who is doing a great job and has made history as the first African-American sheriff in Broward history, is beyond me.” <https://www.news4jax.com/news/politics/sheriff-comment-by-desantis-causes-stir> (March 5, 2019).

LEGAL ANALYSIS

Generally, neglect of duty as the term is used in Article IV, section 7(a), refers “to the neglect or failure on the part of a public officer to do and perform some duty or duties laid on him as such by virtue of his office or which is required of him by law. *See Israel v. Desantis*, 2019 WL 1771730, 3 (Fla. April 23, 2019), quoting *State ex rel. Hardie v. Coleman*, 155 So. 129, 132 (1934). A different standard applies to an allegation of incompetency, defined as “any physical, moral, or intellectual quality, the lack of which incapacitates one to perform the duties of his office’ and ‘may arise from gross ignorance of official duties or gross carelessness in the discharge of them ... [or] from lack of judgment and discretion.” *Id.* Sheriff Israel faithfully carried out the statutory and expected duties imposed upon him, has done so in a competent manner, and maintains the full capacity to continue to competently fulfill his responsibilities as Broward Sheriff.

The Governor’s effort to impose duties on Sheriff Israel that are beyond those invested in the Sheriff by statute, common practice, and the ordinary expectations of office does not make out a valid case for suspension. The Governor’s contention that the BSO Active Shooter Policy was deficient and led to the MSD mass shooting is both unfounded and not based on any precedent, existing standards, or model policies. To the contrary, the Governor’s citation to the Active Shooter Policy does not point to any requirement or expectation that is omitted from the policy. Moreover, nothing in the MDS Commission Report faults Sheriff Israel for neglect of duty or incompetence.

The Governor essentially imposes obligations on the Sheriff that are the responsibilities of other officials, such as the Broward County Commission and the Broward County Administrator in connection with the maintenance and operation of the Broward County emergency

communications system. The Governor also seeks to hold the Sheriff accountable for the duties and responsibilities of the Federal Bureau of Investigation and the U.S. Department of Homeland Security at the Fort Lauderdale-Hollywood Airport. The Governor further assigns responsibility to the Sheriff for the unforeseen dereliction of duty by BSO Deputy Peterson, notwithstanding that neither the Sheriff nor any responsible BSO official was aware of or had notice of any likely deficiency on the part of Deputy Peterson in fulfilling his official law enforcement functions as a School Resource Officer.

The Governor's justification of the suspension order by claiming Sheriff Israel failed to fulfill duties which he, as a matter of practical and legal reality, lacked the authority to carry out, goes beyond the allowable constitutional limits for an executive suspension of an elected official. The Special Master should reject these assertions as placing unreasonable demands and expectations on the elected Sheriff and holding him strictly liable for the unprecedented, unexpected, and unknown mass shootings by two criminal perpetrators intent on taking innocent lives in public places. Absent from the Governor's suspension order is any direction or suggestion that sheriffs are obligated to adopt a set of policies to address the Governor's expectations. The Governor has no law enforcement experience, and is unaware of the policies, protocols, and practices that govern law enforcement agencies and officials. The MSD Commission, by contrast, was chaired by a career law enforcement officer and lawyer, Sheriff Gualtieri, who is aware of law enforcement obligations and expectations, and who did not conclude any misfeasance, neglect of duty, or incompetence on the part of Sheriff Israel.

The Governor's conclusion that Sheriff Israel failed to protect the peace, health, safety, and welfare of Broward County sets a standard of post-hoc perfection that is not consistent with statutory or common law duties and can never be achieved in light of the reality that misguided, devious criminals will act to take innocent lives and commit horrendous crimes with tragic results. As a matter of law and fairness, Sheriff Israel should not be subjected to removal from office for failing to prevent two mass shootings for which no one, including Sheriff Israel, had any advance notice. The Governor's suspension is no different than holding the Governor of Virginia, or the Virginia Beach Mayor, or the local police chief responsible for the tragic mass shooting in Virginia Beach just last weekend, or the principal law enforcement officers responsible for the

myriad mass shootings that have occurred since the MSD shooting.

Essentially, the impact of the Governor's suspension order is that every police leader is now strictly responsible for preventing any and all mass shootings and other public tragedies, a standard that has never before been imposed on any elected sheriff or any other public official in the State of Florida. Imposing such sweeping responsibility upon elected sheriffs for the conduct of deviant, malicious criminal perpetrators is unfounded in law, policy, or custom, and establishes a frightening precedent. The Special Master should reject this unprecedented obligation as a requirement of office.

CONCLUSION

Sheriff Israel fulfilled his responsibilities in a conscientious, competent manner. He hired skilled, talented deputies and staff. He adequately oversaw and implemented law enforcement training, and instituted programs, protocols, and policies consistent with the protection of the public safety. He duly functioned as a conservator of the peace in Broward County as the elected Sheriff. He and his senior staff fully expected his deputies them to perform their duties competently. During his tenure, crime in Broward County was substantially reduced, a clear indication of the Sheriff's competence and commitment to his duties and responsibilities.

RESERVATION OF REBUTTAL TO GOVERNOR'S SUBMISSION

Sheriff Israel reserves the ability to submit a rebuttal to the Governor's Bench Memorandum in light of the Governor's affirmative burden of proof in these proceedings. Sheriff Israel also reserves the right to raise any new arguments, as applied to evidence disclosed by the parties and presented at the hearing, either in a rebuttal memorandum or at the final hearing.

REQUESTED RELIEF

For the foregoing reasons, Sheriff Israel asks the Special Master to recommend that he be reinstated to office.

Respectfully submitted,
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Benedict P. Kuehne

**BENEDICT P. KUEHNE
STUART N. KAPLAN**

Copy:

Jeremiah Hawkes, Senate General Counsel

hawkes.jeremiah@flsenate.gov

Nicholas A. Primrose, Deputy General Counsel

Nicholas.primrose@eog.myflorida.com

Christie M. Letarte, Special Counsel, letarte.christie@flsenate.gov