

The Psychology and Law of Workplace Violence

ABOUT THE AUTHORS

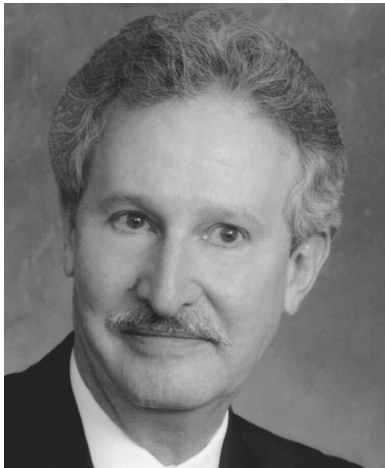


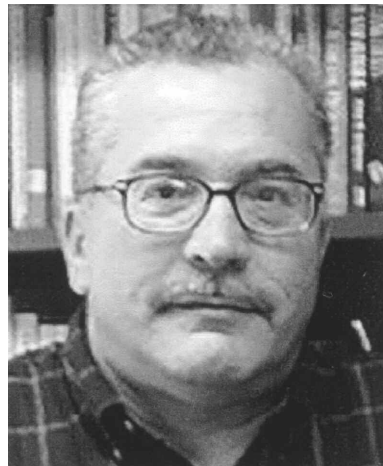
Photo by Markoos-Kent Photography.

Irvin H. Perline, Ph.D. is a licensed psychologist and has been in clinical practice since 1972. He is Professor Emeritus in Psychology at Mesa Community College, Mesa, AZ. Dr. Perline pioneered the use of the computer for the interpretation of the Rorschach Ink Blot Test, which was available on an international scale through his corporation, Century Diagnostics, Inc. He has been a clinical director of contracted psychological services through the Arizona Supreme Court. Dr. Perline received his B.S. in Psychology from Arizona State University, his M.A. in Psychology from the University of Arizona, and his Ph.D. in Psychology from Colorado State University. He

has published in the areas of behavior therapy, neuroscience, Rorschach diagnostics, and hypnosis. He is a member of the American Psychological Association, The Society for Neuroscience, The American Society of Clinical Hypnosis and the Arizona Psychological Association.

Jona Goldschmidt, J.D., Ph.D. is an associate professor of criminal justice at Loyola University Chicago. Formerly, he was in private law practice, a senior analyst with the Arizona Supreme Court Administrative Office of the Courts, an assistant executive director of the American Judicature Society, and a faculty member at Northern Arizona University. A member of the Illinois, California, U.S. Supreme Court, and other federal court bars, he received his B.S. in Communications from the University of Illinois, his J.D. from DePaul University College of Law, and his Ph.D. in the Interdisciplinary Doctoral Program in Justice Studies from Arizona State University. His

areas of research and publication include pro se litigation, unauthorized practice of law, alternative dispute resolution, sociology of professions, judicial selection, judicial ethics, and international criminal law.



The Psychology and Law of Workplace Violence

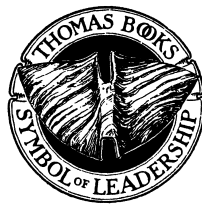
A Handbook for Mental Health Professionals and Employers

By

IRVIN H. PERLINE, Ph.D.

and

JONA GOLDSCHMIDT, J.D., Ph.D.



CHARLES C THOMAS • PUBLISHER, LTD.
Springfield • Illinois • U.S.A.

Published and Distributed Throughout the World by

CHARLES C THOMAS • PUBLISHER, LTD.
2600 South First Street
Springfield, Illinois 62704

This book is protected by copyright. No part of
it may be reproduced in any manner without
written permission from the publisher.

© 2004 by CHARLES C THOMAS • PUBLISHER, LTD.

ISBN 0-398-07432-1 (hard)
ISBN 0-398-07433-X (paper)

Library of Congress Catalog Card Number: 2003046769

*With THOMAS BOOKS careful attention is given to all details of manufacturing
and design. It is the Publisher's desire to present books that are satisfactory as to their
physical qualities and artistic possibilities and appropriate for their particular use.
THOMAS BOOKS will be true to those laws of quality that assure a good name
and good will.*

*Printed in the United States of America
MM-R-3*

Library of Congress Cataloging-in-Publication Data

Perline, Irvin H.

The psychology and law of workplace violence : a handbook for mental health
professionals and employers / by Irvin H. Perline and Jona Goldschmidt.

p. cm.

Includes bibliographical references and index.

ISBN 0-398-07432-1 (hard) -- ISBN 0-398-07433-X (paper)

1. Violence in the workplace--United States--Handbooks, manuals, etc.
2. Violence in the workplace--Psychological aspects--United States--Handbooks, manuals, etc.
3. Violence in the workplace--United States--Prevention--Handbooks, manuals, etc.
4. Employers liability--United States--Handbooks, manuals, etc.
5. Violence in the workplace--Law and legislation--United States--Handbooks, manuals, etc.
6. Violence in the workplace--United States--Cse studies. I. Goldschmidt, Jona, 1960- II. Title.

HF5549.5.E43P465 2003
658.473--dc21

2003046769

*To our parents
and
To the victims of workplace violence, their relatives, loved ones, and friends.*

Preface

What do The Ford Motor Company, The Central Intelligence Agency, and McDonald's all have in common? The answer is that they have all been venues for non-object-focused workplace violence. That is, violence perpetrated to satisfy the emotional needs of the perpetrator, rather than object-motivated crimes such as theft, robbery or burglary perpetrated to obtain money or other objects. Most non-object-focused workplace crime is produced by people who are frustrated, people whose anger explodes in the workplace. Their behavior, however maladaptive, meets a variety of goals and is both functional and purposive. It is indeed a "frustration-explosion."

The more notorious of these crimes are known by their monikers. "Luby's," "Oklahoma City," "McDonald's," "Going Postal," "Columbine," and more recently, "Attack on America," have become a part of the American psyche. These highly publicized crimes are shockingly devastating but represent only the tip of the iceberg.

This book contains over 150 case histories of workplace violence taken from news journalism accounts. These case histories are fascinating—they will captivate you. Perhaps this is because we can identify with the feelings of the participants, both perpetrators and victims. Otherwise good people sometimes do bad things. Who hasn't been angry with a co-worker, a boss or supervisor, company policy, or a governmental agency, and who can't identify with the heart stopping fear this type of crime produces. Who amongst us doesn't feel a degree of fear or at least concern about a possible incident of workplace violence that might occur and involve a loved one or ourselves? What would you do if someone came into your workplace with a gun and started indiscriminately shooting, or your spouse's workplace, or your children's school?

Non-object-focused violent workplace crime is increasing and no workplace is immune. Retail businesses, factories, governmental agencies, financial institutions, family planning clinics, restaurants, schools, libraries, churches and even pre-schools have been the scenes of recent serious violent crime. The issues relevant to this type of crime and several suggestions as to how we might better protect our society from such occurrences are addressed herein.

This book examines who is committing these crimes, why they are being committed and what can be done to mitigate them along with some of the case law and major legal issues involved in employer negligence and responsibility. A workplace that has not considered the possibility of a violent workplace incident may be leaving itself open for legal action involving negligence, particularly if a threat of violence has already been made there.

Hopefully this book will increase your knowledge and understanding of this type of devastating crime that is fast becoming one of life's major threats. If this book helps to prevent even one incident of workplace violence we will consider it a success and worth the effort of writing it.

IRVIN H. PERLINE
JONA GOLDSCHMIDT

Introduction

Violence in the workplace occurs daily and is well known by anyone who reads or listens to the news. Violent workplace crime can be divided into two categories: (1) object-focused and (2) non-object-focused. The vast majority of workplace violence is object-focused. Object-focused violence is that which occurs during theft, robbery, burglary and other crimes focused on obtaining money, drugs or other objects. Any violence that occurs in an object-focused crime is subordinate to the crime. On the other hand, non-object-focused workplace violence is not focused on an object and the violence is an essential component that is used in a purposeful and functional manner to achieve a desired goal.

However, the only similarity these two types of crime have with each other is that they both result in violence and they both occur in the workplace. The defining characteristic of these two types of crime is their different combination of motivation and focus. In object-focused violence, the motivation is a perceived need that the object is thought to satisfy, while in non-object-focused violence the motivation is anger and/or psychotically determined. Because the motivation is the driving force behind a crime and the focus is what gives the crime direction and specificity, it is important to make a distinction between these two types of workplace violence. We can not understand workplace violence and develop effective prevention and mitigation strategies without making this distinction. Sometimes there is overlap between object-focused and non-object-focused violence—the thief in search of money, drugs or other objects may also be angry or psychotic, but the differences between these two types of violence still hold true.

Conceptualizing workplace violence by its motivation and focus instead of its venue breaks from tradition and represents an important conceptual advance that has the potential to revolutionize the way this topic is thought about and dealt with in the future.

This book is about non-object-focused violent crime that occurs in the workplace. This crime appears to be growing at an increasing rate, garnering a larger portion of the news, and is spreading to workplaces once considered safe-havens from violence such as libraries, churches and even preschools. As we will see, this crime is becoming ubiquitous and no workplace is immune.

Chapter 1, “Basic Psychological Concepts of Violence in the Workplace,” distinguishes between object-focused and non-object-focused workplace violence. Distilling-out the essential elements of violent workplace crime leads to a different classification schema that shows the similarity of a variety of crimes previously considered as quite different. For example, workplace violence, domestic violence, terrorist activities and hate crimes are all non-object-focused crimes. As we will see, classifying the crime according to the perpetrator’s motivation and focus yields insight into the causes of these crimes and how to prevent them.

Chapter 1 examines the basic psychological concepts necessary to understand the phenomena of violence in the workplace; where, what, when, why, how, and by whom it occurs, along with a variety of other concepts such as why and how the workplace is chosen, types of violent crime that occur in the workplace, a natural selection process that occurs in the workplace, and why workplace violence is so often indiscriminate.

Chapter 2, “Risk Factors Associated with Workplace Violence,” examines 31 social and situational, psychological, and behavioral risk factors that place a person at risk for committing a violent workplace episode. Two of these risk factors are necessary conditions for workplace violence—they must be present for a violent workplace incident to occur. Practical and useful suggestions are given on how recognize, manage and reduce risk.

Chapter 3, “Frustration-Explosion,” introduces a theory of intentional behavior, motivation-focus theory. Incorporating concepts from behavioral and cognitive psychology, this theory emphasizes motivation and the focus of the perpetrator’s attention as the essential final path determining behavior. Based upon this theory, the anger-focus model is developed. Seven different major types of non-object-focused violence are discussed, and as shown in Chapter 3, a change in perpetrator focus can facilitate a change in the type of crime committed, or even prevent a crime from occurring. This model helps explain how and why the perpetrator chooses a particular goal and workplace venue in which to act-out the violence, and why workplace violence is so often indiscriminate. Consistent with the widely accepted classification of mental disorders, this model accounts for all instances of workplace violence and even includes violence that occurs for accidental reasons (such as ValuJet Flight 592, Everglades, FL, 1996, where 110 people were killed, along with several other instances where people died via an act of accidental violence), political assassination (Chapter 13, “Government Facilities”), or the result of terrorist activity (Chapter 16, “Terrorist Activities and Hate Crimes”). This parsimonious model offers a different perspective to current concepts of workplace violence.

Several new and original concepts are introduced in Chapter 3 including the idea of a Health Behavior Scale (HBS) based upon the concept of a continuum of health-related behaviors, with suicide on one end and health-enhancing behaviors on the other. Varieties of self-injurious behaviors such

as cigarette smoking, alcoholism, drug use, and various high-risk behaviors are placed somewhere in-between the two extremes. The HBS allows us to equate a broad variety of behaviors for harm or potential to cause harm across a widely diverse population. The HBS helps us to better understand suicide and other self-destructive behaviors and should facilitate the development of better programs to prevent self-destructive and high-risk behaviors. This is particularly relevant to the workplace because of the high incidence of suicide and high-risk behaviors in those who perpetrate non-object-focused workplace violence.

In addition, Chapter 3 develops the concept that non-object-focused violence is not a spontaneous event, but has stages and is preceded by pre-violence behavior. These pre-violence behaviors almost always, if not always, precede violence and are a critical development to our understanding of the violent response. When observed or otherwise noted, these pre-violence behaviors can serve as a warning sign that a violent act may be forthcoming. Chapter 3 concludes with a brief discussion of how the anger-focus model can be beneficially used to assess the threat of violence and hostage situations.

Chapter 4, "Prevention, Risk Mitigation Strategies, Evolution and Evolving Trends in Workplace Violence," is concerned with a variety of workplace and community strategies that can be used to prevent or mitigate the probability of a violent event. Workplace violence has evolved over the years and several trends in the continuing evolution of violence are examined. The prevention strategies developed in Chapter 4 are based upon newer concepts involving risk management versus older, outdated approaches that depend upon trying to predict a low base-rate behavior, such as workplace violence, and develop perpetrator profiles related to dangerousness. In order to identify true positives, violence predictions or profiles must often include a relatively large and unacceptable number of false positives. By identifying someone as dangerous or potentially violent, these older prediction-based approaches can cause irreparable social stigma, along with having serious economic and legal repercussion. In referring to current trends in violence prediction, Skeem and Mulvey (as cited in Mulvey & Cauffman, 2001) point out that, "Ongoing risk assessment and management have replaced prediction of dangerousness, a shift with subtle but important implications for policy, practice, and research." This chapter views non-object-focused violence as goal directed behavior that is changing in form, but not necessarily in substance, as the environmental milieu and requirements to function in the environmental milieu continue to change.

One of the questions we must ask when discussing non-object-focused workplace violence is: "Who is responsible?" Certainly we are quick to find the perpetrator of the crime responsible, and rightfully so. However, issues of responsibility must, in addition, take other factors into account.

Part Two of the text, "Legal Considerations for Employers Regarding

Workplace Violence,” examines several areas of legal concern related to and arising from workplace violence. In Part Two, the legal issues related to workplace violence that are essential for today’s businesses are presented. Employer negligence involving personnel decisions regarding hiring, supervision and retention, along with a variety of other duties to which an employer can be held accountable should a violent workplace incident occur, can result in considerable legal expense and costly pay-out. Burgeoning litigation, along with increasing case law and statutes defining employer responsibility, is necessitating an increased knowledge and sophistication regarding the legal issues related to workplace violence, and ignorance is no longer an option—nor is it a defense! As may be gleaned from Part Two, there is no substitute for legal preparedness and after-the-fact decision making will not be in the best interest of anyone. Employers have a definite need and very much desire guidelines to help them better protect themselves legally should a violent incident or threat of violence occur in their workplace. Human resource people, corporate managers, and many others responsible for the human element in business, need the information contained in this section. The material that is included in these chapters is often only available in law libraries and was not heretofore available in a summary, yet comprehensive format.

Jobs can be categorized on likelihood for violence continuum, some jobs having a greater potential for violence than others. For example, jobs involving the military, police, or security work can be considered highly likely to involve violence. Indeed, violence is a known and expected part of these jobs, and dealing with violence is an essential training component for them. Someone not willing or able to deal with violence should not take these jobs.

There are other jobs where violence can reasonably be expected to occur but is not a part of the job. Certainly some jobs, such as convenience store clerk, bartender, mental health worker, or prostitute pose a certain risk for violence, and someone should carefully consider the possibility of a violent act prior to taking these jobs.

Many jobs fall at the other end of the violence continuum, the so-called non-violent jobs, where violence is not a known or expected part of the job. Certainly one does not expect violence to occur in jobs involving most retail outlets, factories, offices, libraries, churches, or schools.

This book is about violence that occurs on the job, but is not part of the job, nor is expected to be part of the job. It is about violence that occurs between co-workers, spouses, customers, clients, or others who violently act out their emotional needs in the workplace.

Part Three, “Case Histories of Workplace Violence,” is a compendium that chronicles over 150 case histories with accompanying analyses and related follow-up information taken mainly from journalistic accounts over the last half of the twentieth century.

These case histories report with journalistic objectivity the details of the major and some minor incidents of non-object-focused violence that have

occurred in the American workplace. Topical coverage of the case histories is broad and representative. In addition to the standard corporate venues, case histories include violence occurring in schools, civil disobedience when it involves the workplace, terrorist activities and hate crimes when they occur at work, non-work-related relationship issues when they lead to violence at work, transportation violence, and government work-related violent crimes including political assassination. Each case history has been formatted according to (1) Date and Place, (2) Alleged Perpetrator, (3) Motive, (4) Perpetrator Focus, (5) Perpetrator Goal in Carrying out the Violent Act, (6) Workplace Choice, (7) Workplace Violence Risk Factors Relating to this Incident, (8) Background of Perpetrator and this Workplace Situation, (9) The Crime, (10) Disposition of Perpetrator and Victims, and (11) References.

Some case histories contain interesting sidebar information related to but not necessarily associated with a particular case history. For example, the shooting at Columbine is frequently touted in the media as the deadliest case of school violence in American history. Not true! The deadliest case occurred May 18, 1927, when Andre Kehoe, unsuccessful farmer and school board member, angered by higher taxes, dynamited a grade school in Bath, Michigan, killing 36 children and two adults (*see Columbine High School, Littleton, CO, 1999*).

Or, the analogy we can draw but haven't seen before, between the shooting at Kent State University and the June 4, 1989 shooting at Tiananmen Square in Beijing, when the Chinese military fired upon and killed university students protesting their government (*see Kent State University, Kent, OH, 1970*). Seemingly without consideration of the analogous behavior at Kent State less than twenty years earlier, the incident at Tiananmen Square is often cited in the American press as a glaring example of the lack of human rights in China.

Or, the victory for gun manufacturers and gun enthusiasts when on August 6, 2001, the California Supreme Court overturned a California appeals court ruling that the families of the eight people shot to death at the Pettit & Martin law firm were entitled to sue the manufacturers of the TEC-DC9 weapon used in the massacre (*see Pettit & Martin, San Francisco, CA, 1993*).

Or, the first product-tampering case to glean national attention, when the over-the-counter pain medication Tylenol® was laced with cyanide resulting in the death of seven people. The product had to be recalled, and Johnson & Johnson sued its liability insurers for the estimated \$100 million for the cost of the recall. In 1986, a federal judge ruled that the company was not entitled to be reimbursed, that extra recall coverage could have been purchased separately, but Johnson & Johnson decided not to buy it because it was too expensive (*see Over-the-Counter Drug Retail Outlets, Chicago, IL, 1982*).

There are dozens of such interesting instances of sidebar material scattered throughout the case history material. As will be seen from the case histories,

angry people produce the majority of workplace violence. Happy and contented people do not produce violent crime!

Case histories are categorized and cross-referenced in three appendixes, useful in their own right. Appendix A contains a chronological list of the case histories and includes in addition to the date of the crime a listing of the type of crime, venue, alleged perpetrator and perpetrator disposition, and number of victims and victim disposition. Appendix B lists the incidences chronologically by state and Appendix C lists workplace violence incidents alphabetically by workplace.

After reading this book you should be better able to understand these crimes and the motivation behind them, better able to put your mind into the mind-set of the perpetrator, better able to understand the legal issues involved, and better able to construct effective measures to prevent these crimes from occurring. After reading this book you may not view your workplace as safe and secure as you once did.

Acknowledgments

We want to thank Joan Porter Perline, who lent her considerable organizational and editorial skills to the project. Her constructive criticism and suggestions helped make this a better book. We are grateful to Patricia E. Penn, Ph.D., and Loretta Stalans, Ph.D., who read and fruitfully commented on portions of the manuscript. We want to thank reference librarians, Paula Sklar and Michelle Rigual, and library assistant John Williams for their help in finding reference material difficult to locate. Finally, we want to thank Michael Payne Thomas and his capable staff at Charles C Thomas, Publisher, Ltd. for transforming the manuscript into a book.

I. H. P.
J. G.

Contents

| | <i>Page</i> |
|---------------------------|-------------|
| <i>Preface</i> | vii |
| <i>Introduction</i> | ix |
| <i>Figures</i> | xxv |
| <i>Tables</i> | xxvii |

PART ONE: UNDERSTANDING THE PSYCHOLOGY OF WORKPLACE VIOLENCE

IRVIN H. PERLINE

| | |
|--|-----|
| CHAPTER 1. BASIC PSYCHOLOGICAL CONCEPTS OF VIOLENCE IN THE WORKPLACE | .5 |
| Differentiating between Object-focused Workplace Violence and Non-object-focused Workplace Violence | .5 |
| What Constitutes Violence | .6 |
| Who Becomes Violent | .6 |
| Why Violence is Chosen | .7 |
| Why and How the Workplace is Chosen | .7 |
| Types of Violent Workplace Crime | .8 |
| Incidence and Some Statistics on Workplace Violence | .8 |
| Workplace Natural Selection Process | .9 |
| Indiscriminate Violence | .9 |
| CHAPTER 2. RISK FACTORS ASSOCIATED WITH WORKPLACE VIOLENCE | .11 |
| Necessary, Sufficient, and Contributory Conditions | .11 |
| Risk Factors and Workplace Violence | .12 |
| Social and Situational Risk Factors | .13 |
| Opportunity for Violence and Availability | .13 |
| Hiring | .14 |
| Lay-off and Firing | .14 |
| Dispute | .15 |

| | |
|---|------------|
| Job Change | .16 |
| Evaluation and Disciplinary Action | .16 |
| Injustice | .16 |
| Corporate Culture, Management Style, Supervision, and Remedies | .17 |
| Job Security | .17 |
| Incentive Programs | .18 |
| Outplacement Services and Severance Packages | .18 |
| Health, Family, or Social Problems | .18 |
| Support and Resources | .19 |
| Role Models, Peer Groups, and Suggestion | .20 |
| Acceptance and Rejection | .21 |
| Psychological Risk Factors Relevant to Workplace Violence | .22 |
| Frustration | .23 |
| Perceived Injustice | .24 |
| Entitlement, Boundaries, and Limits | .25 |
| Reciprocity and Closure | .27 |
| Impulse Control, Resistance, or Coping Skills | .27 |
| Stress | .28 |
| Poor or Impaired Judgement | .29 |
| Mental Problems or Disorder | .29 |
| Personal Security, Need, and Desperation | .30 |
| Identity and Self-esteem Issues | .31 |
| Connection and Empathy | .31 |
| Social and Situation Control | .31 |
| Behavioral Risk Factors Relevant to Workplace Violence | .31 |
| Learned Violence and Acting Out | .32 |
| Weapons Interest and Use | .32 |
| Alcohol or Substance Use | .32 |
| Psychotropic Medication | .33 |
| Note | .33 |
| CHAPTER 3. FRUSTRATION-EXPLOSION | .34 |
| Motivation-focus Theory | .34 |
| Anger-focus Model | .36 |
| Anger | .37 |
| Anger Motive with a Focus on Healthy Adaptation | .37 |
| Anger Motive with a Focus on Work-related Issues | .39 |
| Anger Motive with a Focus on Non-work-related Relationship Issues | .39 |
| Anger Motive with a Focus on Depressive Issues | .39 |
| Anger Motive with a Focus on Anxiety Issues | .42 |
| Anger Motive with a Focus on Personality Issues: | |

Inadequacy42
 Anger Motive with a Focus on Personality Issues:
 Dependency43
 Psychosis/Drug States44
 Multi-category Violence44
 Accident44
 Not Otherwise Specified44
 Object-focused Violence and Mixed-focused Violence44
 Pre-violence Behaviors and the Stages of Violence45
 Threat of Violence and Hostage Situations49
 Notes49

**CHAPTER 4. PREVENTION, RISK MANAGEMENT
 STRATEGIES, AND EVOLVING TRENDS OF
 WORKPLACE VIOLENCE51**
 Prevention and Risk Management Strategies51
 Workplace-specific Issues51
 Community Issues52
 Evolving Trends of Workplace Violence54
 Notes59

**PART TWO: LEGAL CONSIDERATIONS FOR
 EMPLOYERS REGARDING WORKPLACE VIOLENCE**

JONA GOLDSCHMIDT

CHAPTER 5. COMPENSATION V. LITIGATION63
 Introduction63
 Workers’ Compensation63
 The Quid Pro Quo of Workers’ Compensation64
 Forms of Exclusivity64
 Employer’s Negligent Failure to Prevent Attack65
 Claims for Intentional Misconduct66
 Actions for Non-physical Injuries67
 Summary of Legal Actions Not Barred by Workers’
 Compensation67
 Processing of Workers’ Compensation Claims68
 Notes69

**CHAPTER 6. EMPLOYER LIABILITY AND CRIMINAL
 HISTORY INQUIRIES71**
 Introduction71
 Employer’s Duties Under Negligence Law71
 Duty to Protect Employees72

| | |
|--|------|
| Duty Under Premises Liability Law | .73 |
| Foreseeability | .73 |
| Hiring and Criminal History Inquiries | .74 |
| Obtaining Criminal Histories | .74 |
| The ADA, Title VII, and Criminal History Inquiries | .76 |
| State Offender Protection Statutes | .78 |
| Employee Right of Access to Personnel File | .79 |
| Notes | .80 |
| | |
| CHAPTER 7. FEDERAL REGULATION OF EMPLOYER INVESTIGATIONS AND MEDICAL EXAMINATIONS | .85 |
| Introduction | .85 |
| Fair Credit Reporting Act | .85 |
| ADA Restrictions on Medical Inquiries | .87 |
| Hiring and Retention Based on Medical Information | .87 |
| The “Direct Threat” Defense | .88 |
| Reasonable Accommodation | .89 |
| Mandatory Mental Examinations | .89 |
| Illustrative ADA Cases | .90 |
| Notes | .91 |
| | |
| CHAPTER 8. EMPLOYER LIABILITY FOR NEGLIGENT HIRING AND SUPERVISION | .95 |
| Introduction | .95 |
| Negligent Hiring | .95 |
| Duty to Conduct Background Investigation | .96 |
| Negligently Conducted Background Investigation | .96 |
| Criminal Records and Risk of Harm | .98 |
| No Liability without Special Relationship | .99 |
| Willful or Criminal Conduct and the Doctrine of Respondeat Superior | .99 |
| Negligent Rehiring | .100 |
| Negligent Referral and Misrepresentation | .100 |
| Negligent Supervision or Retention | .102 |
| Notice and “Constructive” Notice of Dangerousness | .102 |
| Bad Acts that Do Not Establish Notice of Dangerousness | .102 |
| Illustrative Cases of Negligent Hiring/Supervision | .103 |
| Liability for Off-premises Injuries | .104 |
| Notes | .104 |
| | |
| CHAPTER 9. LIABILITY FOR NEGLIGENT FAILURE TO PROTECT FROM DANGEROUS SURROUNDINGS | .107 |
| Introduction | .107 |
| Negligence | .107 |

Foreseeability and Workplace Violence108
 Duty to Provide Security111
 The California Foreseeability Battleground111
 The McDonald’s Massacre111
 Security Experts and the Issue of Proximate Cause112
 Retreat from the “Totality of Circumstances” Rule113
 Garages Held Not “Inherently Dangerous”114
 Removing the Adequacy-of-Security Question from the Jury ...114
 Expanding the Scope of Premises Liability116
 Notes118

CHAPTER 10. LIABILITY FOR CLAIMS BROUGHT BY
 REJECTED APPLICANTS AND TERMINATED

EMPLOYEES126
 Introduction126
 Defamation127
 Qualified Privilege127
 Letters of Reference and Immunity Statutes128
 Privacy130
 Invasion of Privacy and Intrusion Upon Seclusion130
 Searches in the Public Workplace: A Guideline for
 Private Employers131
 Videotape Monitoring132
 Locker and Vehicle Searches133
 Searches of Briefcases and Personal Belongings134
 Wiretapping and Eavesdropping134
 Intrusive Application and Interview Questions136
 Use of Lie Detectors138
 Release of Confidential Information139
 Searches under Post-9-11 Federal Law140
 Infliction of Emotional Distress142
 Intentional Infliction142
 Negligent Infliction143
 Wrongful Discharge144
 Challenges to “Zero-tolerance” Discharges145
 Civil Rights Liability147
 Section 1983 Actions for Deprivation of Civil Rights147
 Employment Discrimination148
 Relationship of Title VII to Duty to Provide Safe
 Workplace148
 Substance Abuse148
 State Anti-violence Statutes149
 Notes150

PART THREE: CASE HISTORIES OF WORKPLACE VIOLENCE

IRVIN H. PERLINE

| | |
|--|------------|
| Introduction | 165 |
| Note | 166 |
| CHAPTER 11. CIVIL DISORDER | 167 |
| Introduction | 167 |
| Civil Disorder Case Histories | 169 |
| CHAPTER 12. CORPORATE AND SMALL BUSINESS | 181 |
| Introduction | 181 |
| Corporate and Small Business Case Histories | 182 |
| CHAPTER 13. GOVERNMENT FACILITIES | 231 |
| Introduction | 231 |
| Government Facilities Case Histories | 232 |
| CHAPTER 14. INTERPERSONAL RELATIONSHIPS | 265 |
| Introduction | 265 |
| Interpersonal Relationships Case Histories | 268 |
| CHAPTER 15. SCHOOLS | 290 |
| Introduction | 290 |
| Schools Case Histories | 296 |
| CHAPTER 16. TERRORIST ACTIVITIES AND HATE CRIMES .. | 352 |
| Introduction | 352 |
| Terrorist Activities and Hate Crimes Case Histories | 358 |
| CHAPTER 17. TRANSPORTATION | 399 |
| Introduction | 399 |
| Transportation Case Histories | 400 |
| CHAPTER 18. UNITED STATES POSTAL SERVICE | 411 |
| Introduction | 411 |
| United States Postal Service Case Histories | 413 |
| <i>Appendexes</i> | |
| A. Chronology of Workplace Violence Case Histories Including Perpetrator and Victim Information | 441 |
| B. Chronological Listing of Workplace Violence Case Histories by State | 446 |

| | |
|--|-----|
| C. Alphabetical Listing of Case Histories by Workplace | 451 |
| <i>References</i> | 457 |
| <i>Index of Cases</i> | 465 |
| <i>Name Index</i> | 469 |
| <i>Subject Index</i> | 472 |

Figures

| | |
|--|-----|
| Figure 2-1. Diagrammatic Representation of Life Space Showing Person (P), Goal (t), and Barrier (I) | .24 |
| Figure 3-1. Anger-focus Model of Non-object-focused Workplace Violence | .35 |
| Figure 3-2. Schematic Diagram Showing How Risk Factors can Facilitate and Intentionally Violent Workplace Incident | .36 |
| Figure 3-3. Diagram of Health Behavior Scale | .40 |
| Figure 3-4. Stages of Non-Object-Focused Violence | .46 |
| Figure 3-5. Probability of Violence as a Function of Risk Level | .48 |

Tables

| | | |
|-------------|---|-----|
| Table 2-1. | Risk Factors Associated with Non-object-focused Workplace Violence | 12 |
| Table 3-1. | Anger-focus Model of Non-object-focused Workplace Violence | 38 |
| Table 11-1. | Civil Disorder Case Histories | 169 |
| Table 11-2. | Chronology of Major Twentieth Century Riots Affecting the United States Workplace | 175 |
| Table 12-1. | Corporate and Small Business Case Histories | 182 |
| Table 12-2. | Additional Corporate and Small Business Incidents | 223 |
| Table 13-1. | Government Facilities Case Histories | 232 |
| Table 13-2. | Notable Incidents of Courthouse Violence in the United States | 260 |
| Table 14-1. | Interpersonal Relationships Case Histories | 268 |
| Table 15-1. | Schools Case Histories | 296 |
| Table 15-2. | Additional School Incidents | 342 |
| Table 16-1. | Summary of Hate Crime Statistics, 1999 | 354 |
| Table 16-2. | Terrorist Activities and Hate Crimes Case Histories | 358 |
| Table 16-3. | Chronology of Notable Product-tampering Crimes and Product-tampering Hoaxes | 393 |
| Table 16-4. | Chronology of Notable Bombings of the American Workplace in the Twentieth Century | 396 |
| Table 17-1. | Transportation Case Histories | 400 |
| Table 18-1. | United States Postal Service Case Histories | 413 |

The Psychology and Law of Workplace Violence

Part One

Understanding the Psychology of Workplace Violence

IRVIN H. PERLINE

Chapter 1

Basic Psychological Concepts of Violence in the Workplace

When I speak I must be heard, or else why bother!

—Zino Francescatti (1902–1991)
French Violinist

In this chapter we will examine concepts pertinent to understanding violence. We will see that violence is not a spontaneous, haphazard occurrence but is, with the exception of accidental violence, both purposive and functional and occurs for the most part when people become angry beyond their means to cope. We will see that the workplace is chosen because the workplace is a good place to make a statement and that any crime that can occur outside the workplace can occur in the workplace. We will also examine some cost factors associated with workplace violence and examine a natural selection process that occurs in the workplace that accounts for both why an employee is dismissed from the job and why it is that the dismissed employee is desperate and so often violent. We conclude the chapter with a discussion of the indiscriminate aspects of workplace violence.

DIFFERENTIATING BETWEEN OBJECT-FOCUSED WORKPLACE VIOLENCE AND NON-OBJECT- FOCUSED WORKPLACE VIOLENCE

Workplace violence is violence that occurs in the workplace or at some other venue when the

violence is related to work.

Because object-focused and non-object-focused violent crime both occur in the workplace, they have traditionally been viewed as a workplace issue and classified under the rubric of workplace violence (Bureau of Justice Statistics, 1998; National Institute of Occupational Safety and Health, 1996). However, while defining violent crime by the venue makes sense from a certain point of view, it is not necessarily the best way to classify workplace crimes.

The fact of the matter is that object-focused workplace violence committed during robbery, theft, and burglary has a very different motivation and focus than non-object-focused workplace violence, even though the two types of violent crime share the same venue. Classifying crime based on its venue instead of its motivation and focus obscures the real issues responsible for the perpetration of the crimes and is therefore an obstacle to developing a reasonable and effective crime prevention strategy. The venue in which the crime is carried out is probably one of the least significant aspects of a crime. Classifying violent crime according to its venue, while objective and advantageous for statistical analyses, does very little to help us understand the motivation driving violent crime, and does not help us to develop preventa-

tive strategies.

Traditionally, workplace violence and domestic violence are treated separately. According to traditional considerations, violence is defined as domestic violence when there is a close, or intimate, relationship between the perpetrator and victim. However, regardless of the relationship between the perpetrator and the victim, workplace violence and domestic violence are very similar crimes; they are both non-object-focused crimes, and they are both motivated by anger. Like a venue classification schema, classifying violent crime according to the relationship between perpetrator and victim, may offer objectivity when gathering and analyzing statistical data, but it does little to help us understand the underlying motivation driving these crimes or how to prevent them.

According to the anger-focus model of workplace violence presented in this text, when “domestic” violence is expressed at work it becomes workplace violence with a *non-work-related relationship* focus. Workplace violence with a non-work-related relationship focus is the topic of Chapter 14, “Interpersonal Relationships.”

The perpetrators of non-object-focused violence are generally very desperate individuals who are willing to surrender their freedom or even their life in an attempt to achieve their goal. This fact very much differentiates the perpetrator of non-object-focused violence from the perpetrator of object-focused violence. Perpetrators of object-focused violence do not expect to get arrested or die in the process of committing their crime.

WHAT CONSTITUTES VIOLENCE

Violence is an abrupt and/or severe force and can be either physical or psychological. It can be purposeful, incidental, consequential, or accidental. Humans, animals, or the environment can be the cause of violence. Violence has a cause, something to which it is applied, a place or venue where it occurs, and a consequence or effect. The present study is concerned mainly with violence in a workplace venue intentionally caused by humans.

Physical violence of necessity includes psychological violence, but psychological violence does not require physical violence. Psychological vio-

lence involves intellectual and emotional violence and incorporates manipulation, intimidation, and denigration. Like physical violence, psychological violence may be planned or unplanned, and carefully or haphazardly executed.

The concept of abuse is broader. Abuse also involves maltreatment but differs from violence in that it also incorporates the concept of neglect. Thus, psychological abuse comes about concomitantly when there is physical abuse, when there is psychological violence, or when the psychological needs of an individual are ignored or otherwise unmet.

Psychological abuse is more commonly perpetrated than physical abuse. It is safer in the sense that it can be more difficult to detect and, therefore, retaliation is generally more difficult. Furthermore, unlike physical abuse, it doesn’t necessarily require breaking the law. Psychological abuse, like physical abuse, comes about more readily when the relationship between perpetrator and victim is not equal.

The physical abuse found in the schoolyard becomes psychological abuse in the workplace as perpetrators mature and become more psychologically sophisticated—and many workplaces that eschew physical abuse are psychologically violent or abusive. As will be seen in the case histories contained in this book, there is a price to be paid when, by ignorance or design, an organization is psychologically violent or abusive.

WHO BECOMES VIOLENT

Workplace violence is a desperate act committed largely by angry people. It not only injures and kills others, but also is self-destructive. It makes the statement to the victims, the survivors, and indeed to the world, that one has suffered injustice, is angry, and now others must also suffer. In the mind of the perpetrator, the violent response is a fair and just—if not a necessary—act. The perpetrator is willing to risk ruining his life to achieve his goal. People are not quick to engage in an act of violence that they perceive will most likely and immediately lead to their own ruin or demise. Even the severely depressed, who turn their anger inward and terminate their life via suicide, have

for days, weeks, months, or even years given thought to other alternatives.

Violence becomes a more likely response as the risk level for violence increases. Once management recognizes workplace violence as an issue for serious concern, there is much that can be done, reasonably and inexpensively, to protect the workplace by reducing the risk factors that are associated with non-object-focused workplace violence. Risk factors are discussed in Chapter 2, “Risk Factors Associated with Workplace Violence.”

WHY VIOLENCE IS CHOSEN

We must consider why violence is the manifest form of expression. In other words, why is violence chosen? Why not bring flowers or a box of candy to the workplace when angry? Certainly, some people do bring flowers or a box of candy. However, the violent act satisfies a particular goal for the perpetrator that neither flowers nor candy can satisfy. We must recognize that all violent criminal acts have certain elements in common. For example, all produce fear, not only in the victims, but in others who were more peripherally or tangentially involved, and, to a lesser extent, in others who were not involved what-so-ever but hear about the crime through the news or other media.

While people like to receive flowers or candy, nobody likes to be on the receiving end of a violent act. Violence gets attention and it hurts. It causes a variety of unpleasant emotions in those receiving it, in those who are near it, and even in those who only hear about it. People often respond to extreme violence whether turned inward in the form of suicide, or outward in the form of serious physical assault or murder, with an admixture of profound emotions including anger, fear, regret, grief, and sometimes—when demands are associated with a future threat—compliance.

Violence is a form of emotional expression that makes a statement. The more extreme the violent act, the stronger the statement. Emotionally, in the mind of the perpetrator, the violence helps to “right a wrong.” Through a mechanism of reciprocity it provides closure and can satisfy a variety of emotional needs in the perpetrator.

One only has to witness the response of a frustrated two-year-old to conclude that violence is a natural response to frustration. The violent response tends to be suppressed as we develop physically and gain intellectual, emotional, and social maturity. However, when people become angry beyond their means to cope, the violent act becomes a more viable alternative as a form of expression. Violence in response to anger is more basic psychologically than a non-violent response to anger. It does not require the amount of insight, judgement, understanding, empathy, and impulse control that a non-violent response to anger requires.

Most people do not commit an act of violence in the workplace. For many, their coping skills are not sufficiently stressed, while others react to the stress by some adaptive means or other maladaptive means than physical violence, such as psychological abuse to others, or subjecting themselves to potentially life-threatening, high-risk behaviors.

Everyone has a breaking point at which they can no longer cope. Given the myriad types of social, financial, marital, and emotional problems with which people must cope, extra frustration or perceived injustice, whether at home or on the job, will be enough to push some people over the edge. In addition, television, movies, the news media, role models, and peer groups facilitate the learning of violence and acting out as an appropriate, quick, and effective response to anger. People are becoming desensitized to violence and violence for some is becoming the norm.

WHY AND HOW THE WORKPLACE IS CHOSEN

The workplace represents a good venue for violence because it is a good place to make a statement. When we have a statement to make, we want the statement to be heard, and violence, particularly workplace violence, is one way to insure our statement will be heard. The greater the violence the stronger the statement, and the more likely it will be heard. A sufficiently violent statement made in the workplace is almost guaranteed to be heard. The alternative to making a statement that is heard is to make a statement that is not