Appendix A

NIOSH Publication Abstract
Violence in the Workplace: Risk Factors and Prevention Strategies

ABSTRACT

This document reviews what is known about fatal and nonfatal violence in the workplace to determine the focus needed for prevention and research. The document also summarizes issues to be addressed when dealing with workplace violence in various settings such as offices, factories, warehouses, hospitals, convenience stores, and taxicabs.

Violence is a substantial contributor to occupational injury and death, and homicide has become the second leading cause of occupational injury death. Each week, an average of 20 workers are murdered and 18,000 are assaulted while at work or on duty. Nonfatal assaults result in millions of lost workdays and cost workers millions of dollars in lost wages.

Workplace violence is clustered in certain occupational settings: For example, the retail trade and service industries account for more than half of workplace homicides and 85% of nonfatal workplace assaults. Taxicab drivers have the highest risk of workplace homicides of any occupational group. Workers in health care, community services, and retail settings are at increased risk of nonfatal assaults.

Risk factors for workplace violence include dealing with the public, the exchange of money, and the delivery of services or goods. Prevention strategies for minimizing the risk of workplace violence include (but are not limited to) cash-handling policies, physical separation of workers from customers, good lighting, security devices, escort services, and employee training. A workplace violence prevention program should include a system for documenting incidents, procedures to be taken in the event of incidents, and open communication between employers and workers. Although no definitive prevention strategy is appropriate for all workplaces, all workers and employers should assess the risks for violence in their workplaces and take appropriate action to reduce those risks.

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Appendix B

Weingarten Rights
5 USC 7114(a)(2)(B)

5 USCA S 7114
5 U.S.C.A. ' 7114

UNITED STATES CODE ANNOTATED
TITLE 5. GOVERNMENT ORGANIZATION AND EMPLOYEES
PART III--EMPLOYEES
SUBPART F--LABOR-MANAGEMENT AND EMPLOYEE RELATIONS
CHAPTER 71--LABOR-MANAGEMENT RELATIONS
SUBCHAPTER II--RIGHTS AND DUTIES OF AGENCIES AND LABOR ORGANIZATIONS

Current through P.L. 107-11, approved 5-28-01

' 7114. Representation rights and duties

(a)(1) A labor organization which has been accorded exclusive recognition is the exclusive representative of the employees in the unit it represents and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit. An exclusive representative is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership.

(2) An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at--

(A) any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment; or

(B) any examination of an employee in the unit by a representative of the agency in connection with an investigation if--

(i) the employee reasonably believes that the examination may result in disciplinary action against the employee; and

(ii) the employee requests representation.

(3) Each agency shall annually inform its employees of their rights under paragraph (2)(B) of this subsection.

(4) Any agency and any exclusive representative in any appropriate unit in the agency, through appropriate representatives, shall meet and negotiate in good faith for the purposes of arriving at a collective bargaining agreement. In addition, the agency and the exclusive representative may determine appropriate techniques, consistent with the provisions of section 7119 of this title, to assist in any negotiation.

(5) The rights of an exclusive representative under the provisions of this subsection shall not be construed to preclude an employee from--

(A) being represented by an attorney or other representative, other than the exclusive representative, of the employee's own choosing in any grievance or appeal action; or

(B) exercising grievance or appellate rights established by law, rule, or regulation; except in the case of grievance or appeal procedures negotiated under this chapter.

(b) The duty of an agency and an exclusive representative to negotiate in good faith under subsection (a) of this section shall include the obligation--

(1) to approach the negotiations with a sincere resolve to reach a collective bargaining agreement;

(2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment;

(3) to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays;

(4) in the case of an agency, to furnish to the exclusive representative involved, or its authorized representative, upon request and, to the extent not prohibited by law, data--

(A) which is normally maintained by the agency in the regular course of business;

(B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and

(C) which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining; and

(5) if agreement is reached, to execute on the request of any party to the negotiation a written document embodying the agreed terms, and to take such steps as are necessary to implement such agreement.

(c)(1) An agreement between any agency and an exclusive representative shall be subject to approval by the head of the agency.

(2) The head of the agency shall approve the agreement within 30 days from the date the agreement is executed if the agreement is in accordance with the provisions of this chapter and any other applicable law, rule, or regulation (unless the agency has granted an exception to the provision).

(3) If the head of the agency does not approve or disapprove the agreement within the 30-day period, the agreement shall take effect and shall be binding on the agency and the exclusive representative subject to the provisions of this chapter and any other applicable law, rule, or regulation.

(4) A local agreement subject to a national or other controlling agreement at a higher level shall be approved under the procedures of the controlling agreement or, if none, under regulations prescribed by the agency

Appendix C

Kalkines vs. the United States
473 F.2d 1391 (1973)

473 F.2d 1391
200 Ct.Cl. 570
(Cite as: 473 F.2d 1391)

United States Court of Claims.

George KALKINES
v.
The UNITED STATES.

No. 534-71.

Feb. 16, 1973.
As Amended on Rehearing June 1, 1973.

Action by customs bureau employee challenging his discharge. The Court of Claims, Davis, J., held that employee could not be discharged for failure to answer questions concerning his finances and payments from importers, where, although there was pending criminal investigation, he was not advised that his answers or their fruits could not be used in criminal case.

Judgment for plaintiff.

West Headnotes

[1] Officers and Public Employees k66
283k66

Public employee cannot be discharged simply because he invoked Fifth Amendment privilege against self-incrimination in refusing to respond to questions but he can be removed for not replying if he is adequately informed both that he is subject to discharge for not answering and that his replies and their fruits cannot be employed against him in criminal case. U.S.C.A.Const. Amend. 5.

[2] Criminal Law k412.1(1)
110k412.1(1)

Later prosecution of public employee cannot constitutionally use statements or their fruits coerced from employee in earlier disciplinary investigation or proceeding by threat of removal from office should he fail to answer question. U.S.C.A.Const. Amend. 5.

[3] United States k36
393k36

Bureau of customs employee could not be discharged for failure to answer questions concerning his finances and payments from importers, where, although there was pending criminal investigation, employee was not advised that his answers or their fruits could not be used in criminal case. U.S.C.A.Const. Amend. 5.

[4] Officers and Public Employees k110
283k110

Public employee cannot be held to have violated his duty to account to employer where interrogator acquiesces in request that questioning be deferred.

[5] United States k36
393k36

Treasury agent's statement to customs bureau employee, prior to questioning, that answers given cannot and would not be used against him in any criminal action, was insufficient warning to permit discharge for failure to answer, where statement did not refer to fruits of answers and remainder of colloquy showed that, although employee remained concerned about prospective criminal prosecution, agent never brought home that he would have

immunity with respect to his answers. U.S.C.A.Const. Amend. 5.

***1391** Arthur Goldstein, Huntington, N.Y., attorney of record, for plaintiff. Goldstein & Hirschfeld, Huntington, N.Y., and David Serko, New York City, of counsel.

Judith A. Yannello, Washington, D. C., with whom was Asst. Atty. Gen. Harlington Wood, Jr., for defendant.

Before COWEN, Chief Judge, DAVIS, SKELTON, NICHOLS, KASHIWA, KUNZIG, and BENNETT, Judges.

ON PLAINTIFF'S MOTION AND DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT

DAVIS, Judge:

Plaintiff George Kalkines worked for the Bureau of Customs of the Treasury Department from November 1960 until his suspension in June 1968, rising from an initial rating of GS-7 to the position of import specialist, GS-13. His suspension and subsequent discharge came about because of his alleged failure, in violation of the Customs Manual, the Customs Personnel Manual, and the ***1392** Treasury Personnel Manual, [FN1] to answer questions put to him by the Bureau of Customs relating to the performance of his duties. According to management, this failure occurred at four separate interviews, three in New York and one in Washington, each listed as an individual specification of the charge. The agency sustained his removal on this charge, upholding each of the four specifications. [FN2] The Civil Service Commission affirmed. The validity of this determination is brought before us by the parties' cross- motions for summary judgment, both of which invoke the administrative record on which we rest for our decision. [FN3]

FN1. The Customs Manual provided (§ 27.39 (j)): "Customs employees shall disclose any information in their possession pertaining to customs matters when requested to do so by a customs agent, and shall answer any proper questions put to them by customs agents."
The Customs Personnel Manual stated (ch. 735, § 3, ¶ 3f): "Every customs employee is required to disclose any information he has concerning customs matters when requested to do so by a customs agent. Every customs employee is required to answer any proper questions posed by a customs agent. Every customs employee, when requested to do so by a customs agent, shall furnish to such agent, or authorize him in writing to obtain, information of the employee's financial affairs which bears a reasonable relationship to customs matters."
The Treasury Personnel Manual declared (ch. 735, § 0.735-48): "When directed to do so by competent Treasury authority, employees must testify or respond to questions (under oath when required) concerning matters of official interest. See further 31 CFR 1.10."

FN2. The original notice contained three other charges which were not sustained by the agency and are not before us.

FN3. There was a full-scale hearing within the Treasury Department (the "agency hearing"), which the record sets forth in question-and-answer form, as well as some additional testimony taken by the Civil Service Commission's Regional Office, of which we have a narrative summary.

In November 1967 the Bureau of Customs began an investigation sparked by information saying that plaintiff had accepted a $200 payment from an importer's representative in return for favorable treatment on valuation of a customs entry. The inquiry initially disclosed that plaintiff had had lunch with the representative on November 16th and had made a $400 deposit in his personal bank account on November 17th. He was then visited or summoned by customs agents (acting as investigatory arms of the Bureau) on several occasions, at four of which (November 28, 1967, May 2, 1968, May 8, 1968, all in New York, and June 5, 1968, in Washington) he did not answer, or indicated that he would not answer, certain questions relating to the $400 deposit, his finances, and some aspects of the performance of his customs duties. At other interviews he did answer the queries then put to him. Plaintiff's defense is that his failure to reply at the four specified times was excusable and justifiable in each instance, and therefore not

contrary to the directives cited in footnote 1, *supra*.

The most important fact bearing on the propriety of Mr. Kalkines' conduct at the interviews is that, for all or most of the time, a criminal investigation was being carried on concurrently with the civil inquiry connected with possible disciplinary proceedings against him. The United States Attorney's Office had been informed about the possible bribery before the customs agents' first interview with plaintiff, and it became active in investigating the matter in December 1967; witnesses were subpoenaed to, and did, testify before the grand jury. This criminal inquest continued until well into the spring of 1968, and perhaps even longer. Plaintiff was never indicted, the United States Attorney ultimately declining prosecution, but Mr. Kalkines saw the Damoclean sword poised overhead during the entire period with which we are concerned.

[1][2] In recent years the courts have given more precise content to the obligations of a public employee to answer his employer's work- related questions ***1393** where, as here, there is a substantial risk that the employee may be subject to prosecution for actions connected with the subject of management's inquiry. It is now settled that the individual cannot be discharged simply because he invokes his Fifth Amendment privilege against self-incrimination in refusing to respond. Gardner v. Broderick, 392 U.S. 273, 88 S.Ct. 1913, 20 L. Ed.2d 1082 (1968); Uniformed Sanitation Men Ass'n v. Commissioner of Sanitation, 392 U.S. 280, 88 S.Ct. 1917, 20 L.Ed.2d 1089 (1968). Conversely, a later prosecution cannot constitutionally use statements (or their fruits) coerced from the employee-in an earlier disciplinary investigation or proceeding-by a threat of removal from office if he fails to answer the question. Garrity v. New Jersey, 385 U.S. 493, 87 S.Ct. 616, 17 L.Ed.2d 562 (1967). But a governmental employer is not wholly barred from insisting that relevant information be given it; the public servant can be removed for not replying if he is adequately informed both that he is subject to discharge for not answering and that his replies (and their fruits) cannot be employed against him in a criminal case. See Gardner v. Broderick, *supra*, 392 U.S. at 278, 88 S.Ct. 1913, 20 L.Ed.2d 1082; Uniformed Sanitation Men Ass'n v. Commissioner of Sanitation, *supra*, 392 U.S. at 283, 284, 285, 88 S.Ct. 1917, 20 L.Ed.2d 1089 [hereafter cited as *Uniformed Sanitation Men I*]; Uniformed Sanitation Men Ass'n v. Commissioner of Sanitation, 426 F.2d 619 (C.A.2, 1970), cert. denied, 406 U.S. 961, 92 S. Ct. 2055, 32 L.Ed.2d 349 (1972) [hereafter cited as *Uniformed Sanitation Men II*].

This requirement for a sufficient warning to the employee, before questioning, was foreshadowed by the Supreme Court in *Uniformed Sanitation Men I*, and has been set forth more exactly by the Second Circuit in *Uniformed Sanitation Men II*. The highest court said that public employees "subject themselves to dismissal if they refuse to account for their performance of their public trust, after proper proceedings, which do not involve an attempt to coerce them to relinquish their constitutional rights." 392 U.S. at 285, 88 S.Ct. at 1920. "Proper proceedings" of that type means, according to Chief Judge Friendly in *Uniformed Sanitation Men II*, inquiries, such as were held in that case, [FN4] "in which the employee is asked only pertinent questions about the performance of his duties *and is duly advised of his options and the consequences of his choice*." 426 F.2d at 627 (emphasis added). The same opinion said: "To require a public body to continue to keep an officer or employee who refuses to answer pertinent questions concerning his official conduct, *although assured of protection against use of his answers or their fruits in any criminal prosecution*, would push the constitutional protection beyond its language, its history or any conceivable purpose of the framers of the Bill of Rights." 426 F.2d at 626 (emphasis added). We think that the general directives of the various Treasury and Customs manuals (footnote 1, *supra*) should be read with ***1394** this specific gloss supplied by the *Uniformed Sanitation Men* opinions.

FN4. Those employees were advised as follows at the time management put the questions to them (426 F.2d at 621): "I want to advise you, Mr.------, that you have all the rights and privileges guaranteed by the Laws of the State of New York and the Constitution of this State and of the United States, including the right to be represented by counsel at this inquiry, the right to remain silent, although you may be subject to disciplinary action by the Department of Sanitation for the failure to answer

material and relevant questions relating to the performance of your duties as an employee of the City of New York.
"I further advise you that the answers you may give to the questions propounded to you at this proceeding, or any information or evidence which is gained by reason of your answers, may not be used against you in a criminal proceeding except that you may be subject to criminal prosecution for any false answer that you may give under any applicable law, including Section 1121 of the New York City Charter."

[3] The only issue we need address is whether plaintiff was "duly advised of his options and the consequences of his choice" and was adequately "assured of protection against use of his answers or their fruits in any criminal prosecution." For the reasons which follow, we hold that this requirement was not fulfilled on any of the four occasions at which he is charged with failing to respond, that as a consequence he did not transgress the duty-to-reply regulations, and therefore that he was invalidly discharged for not answering the questions put to him.

At the interview of November 28, 1967, it is clear that no advice or warnings as to his constitutional rights was given to Mr. Kalkines, though he was told of the requirement of the Customs Manual that he answer. Despite the fact that the matter had already been presented to the United States Attorney (as the customs agents knew), plaintiff was not told that his answers (or information stemming from them) could not be used against him in a criminal proceeding. So as far as the investigators were concerned, he was left sharply impaled on the dilemma of either answering had thereby subjecting himself to the possiblity of self-incrimination, or of avoiding giving such help to the prosecution at the cost of his livelihood. The record shows conclusively that at this interview Mr. Kalkines was keenly aware of, and troubled by, the possible criminal implications, and that his failure to respond stemmed, at least in very substantial part, from this anxiety. *See also* note 6 *infra*.

[4] The next specification is that plaintiff refused to answer pertinent questions on May 2, 1968. [FN5] By this time, he had retained an attorney, but counsel was not present. Mr. Kalkines declined to answer unless he had the opportunity of consulting with his lawyer. After an exchange on this subject, the customs agent did not attempt to question him further, but called the attorney on the telephone and arranged for a joint meeting on May 8th. The Regional Office of the Civil Service Commission "concluded that there was at the least an implied acquiescence to the [plaintiff's] request for the presence of his attorney as of May 2, 1968, and, in the circumstances, the [plaintiff's] failure to answer questions on that date may not be recognized to have established a substantive basis to support" the specification as to May 2d which, accordingly, the Regional Office held not to be sustained. Without overturning the Regional Office's factual finding on this point, the Board of Appeals and Review ruled that plaintiff was nevertheless guilty of failing to respond on May 2d. The basis for this holding appears to be that an employee's obligation to answer is so absolute that it cannot even be waived by the interrogating agent's agreement to wait until the lawyer is present. This, we hold, was plain error. If, as in this instance, the interrogator acquiesces in a request that questioning be deferred, the employee cannot be held to have violated his duty to account. The directives of the manuals cannot reasonably be interpreted in so absolute, rigid, and insensitive a fashion. [FN6]

FN5. Between November 28, 1967, and May 2, 1968, he had been called for an interview on December 15th. On this occasion he was informed, according to the Civil Service Commission's Regional Office, "of his constitutional rights to remain silent and to have the presence of an attorney for consultation during the questioning, *and that anything he said could be used against him in court proceedings*" (emphasis added). He answered the questions posed, and his conduct at that interview is not charged against him in the present proceedings.

FN6. We are also very dubious about a related holding of the Board of Appeals and Review with respect to the first interview on November 28th, *supra*. The Regional Office accepted plaintiff's testimony that on that day he was first confronted with a serious allegation of misconduct on his part (with criminal implications) and as a consequence became nervous and flustered, being unable to

continue the interview and just "closed down." He did return the next day and answered detailed and extensive questions, including inquiries as to the $400 deposit on November 17th. On the basis of these facts, the Region found that plaintiff's "first refusal to reply on November 28, 1967 was effectively set aside as basis for the adverse action" and that the specification involving November 28th "is not sustained as substantive cause in support of that action."

Again, without reversing the Regional Office's finding of fact-paraphrased by the Board as: "the Region was persuaded that Mr. Kalkines' refusal to cooperate at the first interview could be attributed to shock and mental stress"- the Board of Appeals and Review reinstated that specification on the ground, apparently, that the duty to respond is so absolute that failure cannot be excused by "shock and mental stress", and even though the questions were answered the next day. This harsh position is very questionable. We have the greatest doubt that a federal employee can be validly discharged if it is determined, first, that his failure to answer queries on one day is due to such a disabling mental or emotional condition and, second, that he did respond to the questions shortly thereafter.

In addition, there is no indication whatever that plaintiff was told on May ***1395** 2d that any answers could *not* be used against him criminally. At the last meeting on December 15th (*see* note 5 *supra*), the agent had specifically informed Mr. Kalkines that his answers *could* be used against him in a criminal proceeding, and in the absence of an explicit disavowal that advice could be expected to retain its force. Plaintiff justifiably remained under the impression that his replies could lead to his conviction of a criminal offense.

The third day on which plaintiff is accused of not answering was May 8, 1968. At that time he appeared with counsel. There is a dispute in the testimony as to whether the attorney improperly interfered with the questioning by preventing, in effect, the putting of particular questions. In any event, no specific questions were asked or answered, and the agent ultimately directed counsel to withdraw from the room while a statement was taken from Mr. Kalkines. Thereupon both the attorney and plaintiff left the room. Plaintiff was told that he had to answer and that he had no right to have his counsel present but declined to stay or respond. Again, the significant element is that it is indisputable that neither the employee nor the lawyer was ever advised on May 8th that the responses to the questions, and their products, could not be used against plaintiff in a criminal trial or proceeding. In whatever way one interprets the controverted evidence as to the course of that meeting, this much is clear-no such caution was given, expressly or impliedly, by the agents.

On these facts, the only outcome, for the first three of the four specifications (November 28, 1967; May 2, 1968; May 8, 1968), must be that plaintiff cannot be held to have violated his obligation to answer. At those times a criminal investigation was either in the immediate offing or was actively being carried on. At the least, there is no question but that plaintiff thought so, and had no good reason to think otherwise. He obviously obtained a lawyer primarily because he was disturbed at the possibility of a criminal accusation; that danger was uppermost in his mind. It was reasonable for him to fear that any answer he gave to the customs agents might help to bring prosecution nearer; indeed, it was sensible to think that the civil and the criminal investigations were coordinated, so that the former would help the latter. He was never told that under the law his responses to the customs agents could not be used or would not be used as bricks to build him a prison cell. On the contrary, the one time the subject was mentioned by the agents (on December 15th, *see* note 5 *supra*), they said that his replies *could* be used against him. Under the standard of the *Uniformed Sanitation Men* decisions, these three proceedings cannot be called "proper." Plaintiff was not "duly advised of his options and the consequences of his choice." Quite the opposite, he was left to squirm with a ***1396** choice he should not have been put to-the possibility of going to jail or of losing his job. *Cf*. Stevens v. Marks, 383 U.S. 234, 86 S.Ct. 788, 15 L.Ed.2d 724 (1966).

The Government suggests that Mr. Kalkines, or at least his lawyer, should have known that his answers (and their fruits) could not be used to his disadvantage, and therefore that the explicit caution mandated by *Uniformed Sanitation Men II* might be omitted. With respect to the plaintiff, a frightened

layman, this is certainly an unacceptable position; he could not be expected to know what lawyers and judges were even then arguing about. The case is hardly better for insisting that the attorney should have known, and should have been responsible for alerting his client. Garrity v. New Jersey, *supra*, 385 U.S. 493, 87 S.Ct. 616, 17 L.Ed.2d 562, was not decided until January 16, 1967, and its reach was uncertain for some years. *Gardner* and *Uniformed Sanitation Men I* did not come down until June 10, 1968-after the last failure-to-respond charged against this plaintiff. *Uniformed Sanitation Men II* was not decided until April 3, 1970 (the Supreme Court did not decline review until May 30, 1972). Many knowledgeable people believed that a specific immunity statute was necessary before anybody in the Federal Government could assure criminal immunity to individuals, including employees, being questioned in noncriminal proceedings. Perhaps, we may add, the law on the point is not yet wholly firm. At any rate, even the legendary Mr. Tutt, fictional legal genius of a generation or two ago, would have been hard put to know with any certainty, in the fall of 1967 and the spring of 1968, that this employee would be protected against prosecutorial use of his statements made to the customs agents.

This brings us to the last interview on June 5, 1968. Plaintiff was peremptorily ordered to come to Washington for this meeting with less than a day's notice; he came without his lawyer who was engaged at the time on other urgent legal business and could not leave the New York area. The record contains a transcript of a portion of the interview. An agent opened by informing Mr. Kalkines that he was required to answer questions, and inquired whether he would "answer such questions as they pertain to your employee- employer relationship to the Bureau of Customs and the duties you perform on behalf of the Customs Service." Plaintiff then said that he had "been advised by the customs agents that they are investigating me on an alleged criminal action. I was further advised by them to engage counsel." He denied that he had refused to answer proper questions and went on to say that his attorney had advised him that "since this is a criminal action" the counsel should be present; "all I [plaintiff] ask is that if there is a criminal action pending against me that I have a right to have my counsel present."

The agent replied "that the following interview is administrative in nature, that it is not criminal, that there is no criminal action pending against you and that the purpose of this interview is entirely on an employer-employee basis and that furthermore any answers given to questions put to you in the interview cannot and will not be used against you in any criminal action"; that if the interview were in connection with a criminal action the attorney would most certainly be permitted to be present and to advise; and "this is an administrative interview and do you understand that this interview is administrative and accordingly your attorney will not be permitted to be present during the interview." The agent concluded these observations by asking plaintiff whether he would answer questions in counsel's absence.

[5] The defendant urges that this was proper and sufficient advice to Mr. Kalkines that he had immunity against use of his responses. But even the agent's most explicit statement was incomplete since it did not refer to the fruits of the answers (in addition to the answers themselves). Moreover, and ***1397** very significantly, the remainder of the colloquy shows that plaintiff was still very concerned about a criminal prosecution and that the agent never properly brought home that he would have immunity with respect to his answers. This portion of the interview is set forth in the footnote. [FN7]

FN7. "A. To go over what you just said, are you stating that there is no criminal investigation relative to this matter, has this been dropped?
"Q. This interview and the purpose of this interview is purely administrative and is not a criminal action or related to a criminal action as it pertains to you.
"A. I don't understand, you are not answering my question, is there an investigation relative to me, a criminal investigation?
"Q. No, there is a conduct investigation pending against you.
"A. For the record, may I state this is the first time that I have ever been told this. I have been advised for the last 6 months that I am under investigation for a criminal action and further I don't know the difference between a conduct and a criminal action.
"Q. It is possible that if you have acted improper in

the conduct of your business that your conduct may have involved conduct which is in violation of some criminal law. I restate that this interview is administrative and is not pursuing the violation of criminal law if one existed and in view of its administrative nature, your attorney will not be present. Please answer will you or will you not answer the questions I am about to put to you?
"A. I can't see the separation in which you call an administrative interview and the allegations that have unjustly been made against me. In my position, as I have stated, I will answer any and all questions regarding my customs duties gladly, cheerfully, openly, but I would like to be afforded the opportunity of having my counsel present."

The essential aspects are four: First, in describing a "conduct" investigation the agent clearly indicated that a criminal investigation or trial was still possible; he contented himself with reiterating that his own concern was "administrative" and he was not pursuing a violation of criminal law, without denying that a criminal proceeding could possibly eventuate. Second, the agent never really responded to plaintiff's query as to whether the criminal investigation had been dropped, and did not tell him that the U. S. Attorney had refused to go forward with prosecution. [FN8] Third, the agent failed to repeat or even refer to the earlier statement about non-use for criminal purposes of plaintiff's answers in this "administrative" inquiry. Fourth, the plaintiff was obviously, and quite reasonably, left uncertain as to the connection between the questioning he was then being asked to undergo and a potential criminal action. This last element seems to us reinforced by some confused remarks of plaintiff's later on in the exchange-after the agent had commenced to ask specific questions-which seem to express great doubt about the separation between the civil and criminal sides of the investigation. [FN9] Moreover, at the agency hearing, both the interrogating agent and the plaintiff made it clear in their testimony that plaintiff was fearful on June 5th that the criminal aspect was still inextricably ***1398** linked to the so- called "conduct investigation."

FN8. This is clear enough from the transcript of the interview. It is confirmed, moreover, by Mr. Kalkines' explicit testimony at the agency hearing that at no time during that meeting did the agents tell him that criminal proceedings were not pending against him or that all criminal charges had been dropped. The agents did not testify to the contrary.

FN9. When the agent began to ask about the questioned customs transaction, the plaintiff repeated that he had never refused, and did not then refuse, to answer about his customs duties, that he wished counsel, and that he had previously answered that question. He went on: "The records cannot substantiate that to sit here and to state that there is disassociation between the allegation made against me and that this is merely the ordinary practice of Customs, I don't think is correct. This is directly associated with an allegation against me and there is no disassociation, cannot be considered an administrative action, and again let me reiterate I have and will continue to answer every question relative to my customs duty, all I ask is that I have a right to have my counsel * * *."

The sum of this June 5th episode is that, by failing to make and maintain a clear and unequivocal declaration of plaintiff's "use" immunity, the customs agents gave the employee very good reason to be apprehensive that he could be walking into the criminal trap if he responded to potentially incriminating questions, and that in that dangerous situation he very much needed his lawyer's help. The record compels this conclusion. Perhaps the agents were not more positive in their statements because there still remained at that time the possibility of prosecution. [FN10] Whatever the basis for their failure to clear up plaintiff's reasonable doubts, we are convinced the record shows that he was not "duly advised of his options and the consequences of his choice." [FN11] His failure to respond was excused on this occasion, as on the earlier dates cited in the other specifications. The agency and the Civil Service Commission erred in disregarding this justification and in holding that the duty to respond was absolute and was violated.

FN10. There is a question whether the idea of a criminal proceeding had been entirely dropped by June 5th. The defendant says it had been but admits that formal notification to that effect was not given by the United States Attorney's Office until some months later. In any event, the customs agent who interrogated plaintiff on June 5th conceded at the

agency hearing that, if Mr. Kalkines had then made what appeared to the agents to be incriminating responses or had revealed circumstances which were obviously of a criminal nature, a report would probably have been made to the U.S. Attorney. The agent's superior, who was present at the interrogation, testified at the agency hearing to similar effect.

FN11. An example of proper advice is that given in *Uniformed Sanitation Men II, see* note 4 *supra*.

The result is that, for this reason, [FN12] plaintiff's discharge in 1968 was invalid, and he is now entitled to recover his lost pay, less offsets. His motion for summary judgment is granted and the defendant's is denied. The amount of recovery will be determined under Rule 131(c). [FN13]

FN12. We do not reach or consider any of plaintiff's other contentions, including the argument that in any event he was entitled to the assistance of a lawyer at the May 8th and June 5th interviews even if properly advised as to his options.

FN13. Plaintiff is granted 30 days to file, if he desires, an amendment to his petition requesting restoration under Public Law 92- 415, 86 Stat. 652 (August 29, 1972) to his position in the Bureau of Customs. *See* General Order No. 3 of 1972 (Dec. 12, 1972), paras. 3(a), 4(b).

Appendix D

Research Article
"Threat Assessment: Defining an Approach for Evaluating Risk of Targeted Violence"

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Threat Assessment: Defining an Approach for Evaluating Risk of Targeted Violence‡

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Although the field of risk assessment has made tremendous advances in the past 20 years, assessments of targeted violence continue to pose a significant challenge to law enforcement, mental health, and other professionals. These specific and critical assessments require an innovative approach. The threat assessment model, developed and refined by the U.S. Secret Service, provides a useful framework for thinking about assessments of potential for targeted violence. In this paper, we attempt to define this approach as it has been developed by the Secret Service, and apply it within the existing professional/scientific literature on risk assessment. We begin with a brief review of existing models and approaches in risk assessment, and identification of some gaps in our existing knowledge as it relates to assessments of targeted violence. We then proceed with an outline of the threat assessment approach, including a review of principles and guiding operational questions, and discussion of its use in assessment of targeted violence.

The effective assessment and management of people identified as being at risk for violence continues to be a significant concern in the mental health and criminal justice communities. Traditionally, mental health professionals have been involved in decisions about the risk that their clients may pose to third parties, and patients' readiness for discharge, need for secure treatment, or likelihood of violent recidivism (Borum, 1996; Borum, Swartz, & Swanson, 1996). Court and correctional systems have similarly been required to make risk-related decisions about pre-trial release, parole, and appropriateness of community sanctions (Melton, Petrila, Poythress, & Slobogin, 1997; Quinsey, Harris, Rice, & Cormier, 1998; Rice, 1997). These recommendations and decisions have usually been aimed at preventing violent behavior.

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In contrast, the primary role of law enforcement professionals in violent crime has historically been reactive, rather than preventive. Most investigators are called upon to investigate violent crimes *after* they have occurred, and to aid in bringing the perpetrators to justice.

Recent changes in the law, in protective responsibilities, and in contexts for violence, however, have changed the nature of some risk assessments tasks that professionals are required to perform (Bureau of Justice Assistance, 1996; de Becker, 1997; Fein & Vossekuil, 1998; Fein, Vossekuil, & Holden, 1995; Meloy, 1998; VandenBos & Bulatao, 1996; Wheeler & Baron, 1994). Specifically, mental health and law enforcement professionals are now being called upon, not just to assess risk for general violent recidivism, but to assess risk for specific types of violence. Others, such as corporate security managers, human resource of professionals, and school principals and counselors, also may be faced with situations of potential targeted violence. The task in such a situation is to determine the nature and degree of risk a given individual may pose to an identified or identifiable target(s). Although technologies and models have been developed for assessing risk of general recidivism and violence, assessing risk for targeted violence may require a very different approach.

We believe that a threat assessment model is most appropriate for use in assessing risk for targeted violence. In this paper, we attempt to define this approach as it has been developed by the United States Secret Service, and apply it within the existing professional/scientific literature on risk assessment.

This paper begins with a brief review of traditional risk assessment models and approaches in risk assessment, and identification of some gaps in our existing knowledge as it relates to assessments of targeted violence. It then proceeds with an outline of the threat assessment approach, including a review of principles and guiding operational questions, and discussion of its use in assessment of targeted violence.

Approaches to Risk Assessment

Over the past 20 years, there has been an evolution in the way mental health professionals have thought about and conducted assessments of violence potential (Borum *et al*., 1996; Heilbrun, 1997; Litwack, Kirschner, & Wack, 1993; Melton *et al*., 1997; Monahan, 1996; Webster, Douglas, Eaves, & Hart, 1997). Conceptually, there has been a shift from the violence prediction model, where dangerousness was viewed as dispositional (residing within the individual), static (not subject to change) and dichotomous (either present or not present) to the current risk assessment model where dangerousness or "risk" as a construct is now predominantly viewed as contextual (highly dependent on situations and circumstances), dynamic (subject to change) and continuous (varying along a continuum of probability).

The evolution has not only changed the way that professionals think about assessments, but also the way that they conduct them. Many behavioral scientists are aware of the classic "clinical versus actuarial" debate, the thrust of which is a polemic about whether clinical decisions, including decisions about violence risk, should be made by clinical judgement ("using our heads") or by using statistical formulas (Dawes, Faust, & Meehl, 1989; Melton *et al*., 1997; Miller & Morris, 1988; Quinsey *et al*., 1998).

Fairly read, the existing literature on the comparison of these two methods, across a number of decisional tasks, suggests that statistical formulas consistently perform as well or better than clinical judgements (Borum, Otto, & Golding, 1993; Dawes *et al*., 1989;

Garb, 1994; Grove & Meehl, 1996; Meehl, 1970; Melton *et al*., 1997; Quinsey *et al*., 1998). This is a logical conclusion since it is well known that reliability sets the lower threshold for validity, and statistical equations, when properly applied, will always predict with perfect reliability, whereas clinical judgements may not (Borum, 1996).

The potential for improved accuracy has led some scholars to suggest that actuarial methods (statistical equations) are the preferred method for making decisions about likelihood of future violence (Dawes *et al*., 1989; Faust & Ziskin, 1988; Grove & Meehl, 1996; Quinsey *et al*., 1998). This position has been supported, in part, by pessimistic results from the first generation studies on predictive accuracy of clinical judgements by mental health professionals (Monahan, 1981). However, as Monahan (1988) has noted, those studies were plagued by weak criterion measures of violence (resulting in specious false positives) and restricted validation samples (because those who are at greatest risk for violence, and about whom there is likely to be the greatest professional consensus, cannot and will not be released into the community for follow-up).

A second generation of research, within the past 15 years, has resulted in conclusions which are much more optimistic and suggest that mental health professionals' assessments of risk do have some predictive validity (Borum, 1996; Lidz, Mulvey, & Gardner, 1993; Monahan & Steadman, 1994; Monahan, 1997; Mossman, 1994; Otto, 1992). Indeed, in a recent review of 58 existing data sets on violence prediction, Mossman (1994) found that although actuarial equations performed better than human judgements for long-term follow up (one year or more), the average accuracy of the formulas for shorter time periods (less than one year) were comparable to the average for clinical predictions (p.789).

Even if actuarial methods were consistently superior, however, these methods can only be applied when appropriate equations exist, have been adequately validated, and are applicable to the question and population at issue (Melton *et al*., 1997; Monahan, 1997). Although some positive efforts have been made in this regard, actuarial technology is still not well developed for many clinical populations or risk assessment tasks. Accordingly, the prevailing method for risk assessments is to conduct evaluations which are empirically based and informed by research, but where the ultimate decision relies on clinical judgement (Melton *et al*., 1997).

This is similar to the model proposed by Monahan (1981) almost 20 years ago in which he recommended that clinicians identify the actuarial risk factors in a given case and establish a relevant base rate to anchor judgements about the probability of violence. This approach may be useful for making global assessments of risk for among criminal offenders or people with mental disorder. But the model is more difficult to apply to assessments of targeted violence because the base rates are extremely low and the research base is so far lacking. Most research studies have examined either convicted criminal offenders or people with mental disorders, and the criterion focus has been on general criminal and/or violent recidivism (Bonta, Law, & Hanson, 1998; Steadman, Mulvey, Monahan, *et al*., 1998). Research regarding risk factors and patterns of behavior in these groups may not generalize well to other groups and other types of assessment such as workplace violence, relationship violence, stalking, school violence, or assassination of public figures. Similarly, little information is available about predictors for specific types of violence, although it is known that different types of violence may have different predictors (Campbell, 1995; Furby *et al*., 1989; Hall, 1996; Hanson & Bussiere, 1996; Quinsey, Lalumiere, Rice, & Harris, 1995). Thus, although the risk assessment literature generally is quite substantial, it is unclear how, whether or to what

extent, the aggregate data from this research will generalize to assessments of risk for targeted violence (Fein & Vossekuil, 1998).

Despite the lack of empirical guidance, mental health, criminal justice, and other professionals are regularly and increasingly required to assess the nature and degree of threat for a specific type of violence posed by individuals who have come to official attention. Police officials, workplace supervisors, school principals, and others who are approached with information about an instance of potential targeted violence must increasingly take action to gather information about the risk of violence and then attempt to resolve any problematic situation.

While the base rates for these specific violent events are often quite low, this does not absolve investigators and evaluators from responsibility to assess risk in the instant case. For example, if a worker makes a threat against the life of his supervisor, that case cannot be dismissed based solely on the fact that the base rate for workplace homicides committed by co-workers is miniscule. The rarity of this event, however, limits the utility of an approach that is driven by base rates or is purely actuarial. Statistical formulas are likely never to be useful for predicting infrequent instances of targeted violence such as school or workplace homicides, because the base rate is so low that, mathematically, high rates of accuracy are nearly impossible. Similarly, a strictly clinical approach to assessment of targeted violence may also be limited. An alleged potential assailant may not be seriously mentally disordered. If the potential perpetrator does suffer from a mental disorder, the relationship of the disorder to potential targeted violence may be unknown. And exclusive reliance on clinical techniques, such as interviews and psychological tests—common features in clinical assessments—may provide only partial, inaccurate, or irrelevant information to the task of predicting an act of targeted violence. Thus, an alternate approach is required.

THREAT ASSESSMENT

Until recently, most law enforcement investigations of violent crime have been conducted *after* the offense has occurred. However, with new stalking laws, restraining orders, and increased concern about violence in schools and in the workplace, there is a growing impetus to develop responses to prevent violent behavior by responding to the threats and behavior of individuals that place other identifiable persons at increased risk of harm (Buzawa & Buzawa, 1996; Heide, 1998; Kelleher, 1996; Meloy, 1998).

Thus far, the United States Secret Service has been the main law enforcement agency with long-standing responsibilities to prevent targeted violence crimes: namely, assassination of national leaders. Since the early 1990s the Secret Service has been responsible for preventing attacks against the President and other national leaders. Secret Service agents routinely conduct investigations and "threat assessments" of individuals whose behavior causes concern about the safety of persons under Secret Service protection. While some military and other governmental agencies have responsibilities for assessing threats by groups or individuals in the context of counter-terrorism, the trend emerging from stalking laws and related concerns about threats and high risk persons is bringing, for the first time, threat assessment duties to almost every law enforcement department in the country.

Expectations for how to handle these cases are likely to be unclear and unfamiliar to most law enforcement personnel, even to those who are very skilled and experienced

investigators. The skills and background required to conduct competent threat assessments are in some ways different from those needed for other types of investigations (Fein *et al*., 1995).

Traditionally, investigators have been asked to gather, document, and evaluate facts about an incident in order to establish that a crime was committed, to identify and apprehend the suspect, to recover any stolen property, and to assist the state in prosecuting the suspect (Swanson, Chemalin, & Territo, 1984). Threat assessment, in contrast, is a set of investigative and operational activities designed to identify, assess, and manage persons who may pose a threat of violence to identifiable targets (Fein *et al*., 1995).

Threat assessments require a new way of thinking and a new set of skills for criminal justice professionals. These investigations involve analysis of a subject's behavior and examination of patterns of conduct that may result in an attack on a particular target(s). The level of threat posed by a given subject at a given time becomes a central concern in the investigation and management of the case.

Mental health professionals are sometimes called upon in these circumstances either to assist law enforcement or to conduct independent evaluations to assess risk and recommend strategies to prevent future violence. Mental health professionals faced with threat assessment responsibilities cannot rely on conventional models and data. The persons to be examined and the outcomes of concern may be different from those traditionally encountered in clinical and forensic evaluations. Adequate actuarial approaches have not been (and are not likely to be) developed. The extant research base may have limited generalizability. Therefore, mental health examiners will also have to develop new skills and new ways of thinking about these assessments.

Conceptual Approach

The threat assessment approach is a fact-based method of evaluation that has been developed, refined, and used by the U.S. Secret Service in its protective intelligence activities to protect the President of the United States and other U.S. and foreign leaders. Although the approach was developed based on data about persons who attacked or attempted to attack public officials and figures in the U.S., much of the general approach can be applied with some modification to evaluating risk for other forms of targeted violence.

Conceptually, this approach is innovative in two ways: (1) it does not rely on descriptive, demographic, or psychological profiles and (2) it does not rely on verbal or written threats as a threshold for risk (Fein & Vossekuil, 1998).

First, the threat assessment approach moves away from the idea of "profiling," and instead looks at pathways of ideas and behaviors that may lead to violent action. The notion of "psychological profiles" was initially developed as an investigative technique to aid in determining the "type" of person most likely to commit a given offense based on inferences from the evidence and/or the subject's behavior at the scene (Holmes & Holmes, 1996). While this may be an effective strategy for limiting the field of suspects after a crime has occurred, it is not a useful framework for prospectively identifying persons who are at greater or lesser degrees of risk for targeted violence. Nevertheless, the idea that there are "profiles" of perpetrators of targeted violence, including assassination, workplace violence, and school violence is a popular one.

For example, in the human resource literature, there are numerous references suggesting that the "profile" of the "violent employee" is of a white male in his mid-30s, who is a loner, etc. (e.g., Kinney & Johnson, 1993, p.40). The problem with this approach is that, since instances of targeted workplace violence are rare, profiles will neither be sufficiently sensitive nor specific. Given the relative infrequency of events such as workplace violence, assassination, or school homicide, the vast majority of people who "fit" any given profile will not engage in that behavior. Conversely, there have been (and will continue to be) people who commit these acts who do not fit any known profile.

In the literature on assassination, the classic "profile" of the "American assassin" is of a male attacker (Kirkham *et al.*, 1969). Although most persons who have attempted to assassinate presidents have been male, several assassins—including Lynette "Squeaky" Fromme and Sara Jane Moore—were female. Reliance on a profile of male presidential assassins would rule out the possibility that a woman might try to kill the President. Instead of looking at demographic and psychological characteristics, the threat assessment approach, focuses on a subject's thinking and behaviors as a means to assess his/her progress on a pathway to violent action. The question in a threat assessment is not "What does the subject 'look like'?" but "Has the subject engaged in recent behavior that suggests that he/she is moving on a path toward violence directed toward a particular target(s)?".

Second, the threat assessment approach does not rely on direct communication of threat as a threshold for an appraisal of risk or protective action. Investigators make a distinction between people who *make* threats and those who *pose* a threat. Persons who appear to pose a threat provoke the greatest level of concern. Although some people who make threats ultimately pose threats, many do not.

The U.S. Secret Service investigates thousands of cases in which threats have been made toward protected officials. Analysis of Secret Service case files suggests that very few of these threateners have ever made an attempt to harm a protectee. Conversely, there are also some people who pose threats who never communicate direct threats. In fact, *none* of the 43 people who attacked a public figure in the last 50 years in the United States ever communicated a threat directly to the intended target (Fein & Vossekuil, 1999). In a earlier line of research, Dietz and Martell (1989) reached a similar conclusion:

> "We have disproved the myth that threats and threateners are the only communications or people of concern. The most common assumption in all quarters—laymen, mental health professionals, law enforcement professionals and lawmakers—is that threats foretell more dangerous behavior, but that other odd communications do not. This is a groundless assumption and the source of more misguided policy and decision making than any other error in this field" (pp. 166-167).

Principles of Threat Assessment

There are three fundamental principles underlying the threat assessment approach (Fein & Vossekuil, 1998). The first principle is that targeted violence is the result of an understandable and often discernible process of thinking and behavior. Acts of targeted violence are neither impulsive nor spontaneous. Ideas about monitoring an attack usually develop over a considerable period of time. In targeted violence, the subject must engage in planning around a series of critical factors such as which target(s) to select, the proper

time and approach, and the means for violence. A potential attacker may collect information about the target, the setting of the attack, or about similar attacks. He or she may communicate ideas to others. For some of these individuals the process of planning and thinking about the attack dominates their lives and provides a sense of purpose or an attainable goal by which they see an end to their emotional pain.

The second principle is that violence stems from an interaction among the potential attacker, past stressful events, a current situation, and the target. As noted above in the discussion of the risk assessment model, researcher and practitioners are moving away from exclusive focus on the individual and toward a more situational/contextual understanding of risk.

An assessment of the attacker may consider relevant risk factors, development and evolution of ideas concerning the attack, preparatory behaviors, and an appraisal of how the individual has dealt with *unbearable* stress in the past. When usual coping mechanisms are ineffective, people often react by becoming physically ill, psychotic, self-destructive, or violent toward others. It is useful to consider how the potential attacker has responded in the past when stressful events overwhelmed his/her coping resources. An assessment of the risk may be informed by an examination of the person's history of response to traumatic major changes or losses, such as loss of a loved one (e.g., ending of an intimate relationship or loss of a parent) or loss of status (e.g., public humiliation, failure or rejection, or loss of job or financial status). The salience of the risk may be determined by examining the *types* of event that have led the individual to experience life as unbearably stressful, the *response* to those events, and the likelihood that they may *recur*.

In addition to assessing the potential attacker and past stressful events, the evaluator must also appraise the current situation and the target. Consideration of the current situation includes both an appraisal of the likelihood that past life events that have triggered consideration of self-destructive or violent behavior will recur (or are recurring) and an assessment of how others in the subject's environment are responding to his/her perceived stress and potential risk. Since others may act to prevent violence, it is useful to know whether people around the subject support, accept, or ignore the threat of violence or whether they express disapproval and communicate that violence is an impermissible and unacceptable solution to the problem.

Finally, an evaluator must assess relevant factors about the intended target, including the subject's degree of familiarity with the target's work and lifestyle patterns, the target's vulnerability, and the target's sophistication about the need for caution.

The third principle is that a key to investigation and resolution of threat assessment cases is identification of the subject's "attack-related" behaviors. Those who commit acts of targeted violence often engage in discrete behaviors that precede and are linked to their attacks, including thinking, planning and logistical preparations. Attack-related behaviors may move along a continuum beginning with the development of an idea about attack, and moving to communication of these ideas or an inappropriate interest in others, to following, approaching, and visiting the target or scene of the attack, even with lethal means. Learning about and analyzing these behaviors may be critical to an appraisal of risk.

Conducting the Assessment

As with any comprehensive risk appraisal, information in a threat assessment investigation should be gathered from multiple sources. More confidence can be placed in data which can be corroborated. Information sources may include personal interviews with the subject, material created or possessed by the subject, interviews with persons who know or have known the subject, and records and archival information. Information should be sought in at least five areas: facts bringing the subject to attention, the subject, attack-related behaviors, motive(s), and target selection (Fein & Vossekuil, 1998; Fein *et al*., 1995).

As a preliminary matter, an assessor should evaluate the circumstances that first brought the individual to official attention (e.g., investigator, school principal, HR manager, etc.). If the initial concern was precipitated by the report of someone else, rather than by direct observation of the subject's behavior, then it is reasonable to consider the credibility of the informant. Sometimes, people will provide false information about another's behavior or propensity for violence as a retributive measure or as a diversionary tactic for their own violent intentions. Thus, the veracity of the facts bringing the subject to attention should be carefully investigated.

Three types of information about the subject are typically collected; identifying information, background information, and information about the subject's current situation and circumstances. Identifying information would include name, physical description, date of birth, identification numbers, etc. Background information would include residences, education, military and employment history, history of violence and criminal behavior, mental health/ substance abuse history, a relationship history, as well as information on the subject's expertise and use of weapons, history of grievances, and history of harassing others. Current life information would include stability of living and employment situations, nature and quality of relationships and personal support, recent losses, pending crises or changes in circumstances, hopelessness, desperation, and any "downward" progression in social, occupation, or psychological functioning.

The third area of inquiry is attack-related behaviors. As previously noted, attacks of targeted violence may be preceded by a series of preparatory behaviors including selection and location of the target, securing a weapon, subverting security measures, etc. Behaviors of concern include: (1) an unusual interest in instances of targeted violence, (2) evidence of ideas or plans to attack a specific target (e.g., diary notes, recent acquisition of a weapon), (3) communications of inappropriate interest or plans to attack a target (although direct threats to the target may be rare, subjects may communicate information about intentions to family, friends, co-workers, etc.), (4) following a target or visiting a possible location of an attack, and (5) approaching a target or protected setting. Any history of attack-related behaviors committed with a weapon and any illegitimate breaches of security are cause for concern. This is particularly true if a weapon was acquired proximate to the development of an inappropriate interest or plan of attack.

The fourth area of inquiry relates to the subject's motives. Motives may vary considerably depending on the nature and type of targeted violence (e.g., school homicide, relationship violence, assassination, workplace violence), but they are almost always directly related to target selection. Determining motive can give an indication of which potential target(s) might be at risk. Understanding motive might also be useful in determining the degree of risk. Attacks are not always motivated by animosity or hostility

toward the target. In fact, contrary to popular belief, in the area of American assassination, political ideology or objectives have motivated very few assassination attempts on political figures. Major motives of U.S. public official and public figure attackers and near-attackers were: to achieve notoriety or fame, to bring attention to a personal or public problem, to avenge a perceived wrong or retaliate for a perceived injury, and to end personal pain/to be removed from society/to be killed (Fein & Vossekuil, 1999). Motives for violence toward public figures may be different than those for violence toward other targets. In any case, the potential motive should be investigated and not just assumed.

Finally, attention should be given to target selection. Depending upon the motive, a potential assailant may consider multiple targets choosing one. An aggrieved worker, for example, might consider violence toward a given supervisor, or a human resources manager, or the CEO of a company before selecting one or more targets that permit the attacker to accomplish his/her symbolic or instrumental objectives. Evaluators should be aware of how a potential attacker's directions of interest may have shifted over time and may shift in the future. If multiple targets have been considered, it is useful to note why the subject has discounted them, as they may provide additional information about motive, planning, attack-related behaviors, and potential intervention.

Key Questions in Threat Assessment Investigations

The U.S. Secret Service, based on experience and assassination research, has identified 10 key questions to guide a protective intelligence or threat assessment investigation (Fein & Vossekuil, 1998). These questions flow directly from the fundamental threat assessment principles outlined above and can be adapted by evaluators for use in assessing other threats of targeted violence.

Question 1: What motivated the subject to make the statements, or take the action, that caused him/ her to come to attention?

This is the fundamental "why" question of any investigation. It is useful for an investigator to explore a variety of possibilities in direct and indirect ways, rather than relying exclusively on the subject's own insights or disclosure. It is worth considering whether the subject might be trying to obtain help, to cause problems for another individual (e.g., co-worker, student, intimate partner), to avenge a perceived wrong, to consider (or commit) suicide, or to bring attention to a particular problem. It is also helpful to inquire about whether the subject is using his/her actions as a means to end a "problem," and the extent to which he/she views violence as a legitimate means to that end.

Question 2: What has the subject communicated to anyone concerning his/her intentions?

As noted above, the communication of a direct threat to the target should not be a necessary or sufficient condition for determining that a subject *poses* an actual threat—or the only basis for initiating an inquiry. Many individuals who engage in targeted violence do not direct threats to their targets, but communicate their ideas, plans, or intentions to others. Some also keep journals or diaries recording their thoughts and behaviors.

Collateral informants (family, friends, caregivers, and co-workers) should be questioned about any unusual or inappropriate ideas and any signs of the subject's desperation or deterioration.

Question 3: Has the subject shown an interest in targeted violence, perpetrators of targeted violence, weapons, extremist groups, or murder?

Some perpetrators of targeted violence show an unusual interest in acts similar to the one they are planning. They may talk excessively about these events, make inquiries about the consequences of such actions, make inquiries about obtaining a weapon, or even attempt to contact prior perpetrators of these acts. Affiliation with or interest in extremist groups may not be a specifically predictive factor but some perpetrators of targeted violence give themselves "permission" for violence by believing that they are acting in accord with extremist groups or ideology (Pynchon & Borum, 1999).

Question 4: Has the subject engaged in attack-related behavior, including any menacing, harassing, and/or stalking-type behavior?

Very few attackers of U. S. public official and figures had histories of arrests for violent crime or crimes involving a weapon; however, many had histories of harassing other persons. It is not yet known whether perpetrators of other kinds of targeted violence have similar histories. Patterns of harassment or menacing behavior may be cause for concern. If a subject engaged in harassment or menacing behavior in the past, how were they stopped? How were these situations resolved?

Consideration should also be given to the individual's willingness to use violence against a given target, blaming a target for a grievance, developing an unusual interest in the target, planning and discussing plans, preparatory behaviors, following a target, approaching a site, and attempting to breach security.

Question 5: Does the subject have a history of mental illness involving command hallucinations, delusional ideas, feelings of persecution, etc. with indications that the subject has acted on those beliefs?

Mental illness appears only rarely to play a key role in assassination behaviors (Fein & Vossekuil, 1999). The extent to which this applies to other forms of targeted violence is currently unknown. What is known, generally, however, is that mental illness *per se* does not have a strong association with violent behavior. Rather, any association between mental illness and violence appears primarily to be related to substance abuse and/or specific psychotic symptoms.

Evidence related to compliance with command hallucinations is mixed. (See Hersh & Borum, 1998.) Early studies suggested that rates at which people followed commands was low, yet more recent studies with larger samples show compliance rates ranging from 40% to 89%. Risk of compliance seems greatest when the voice is familiar and there is a delusional belief consistent with the command. Consideration of an individual's past history of compliance with commands is also relevant.

Similarly, delusions may not always be a basis for action, but they may increase risk, particularly if the delusion involves perceived threat of harm by others and overriding of internal controls. Persons who reported these symptoms were about twice as likely to engage in assaultive behavior as those with other psychotic symptoms, and six times more likely than those without mental disorder (Swanson, Borum, Swartz, & Monahan, 1996). Acting on delusions is not uncommon, but it is also not inevitable. Wessely *et al.* (1993) found that 60-77% of psychotic inpatients reported acting on a delusion at least once. Persecutory delusions were most likely to be acted on, and risk of action increased if the person was aware of evidence which supported the delusion and actively sought out such evidence. Likewise, in a study of 54 psychiatric inpatients Junginger, Parks-Levy, & McGuire (1998) examined the degree to which their past incidents of violence were motivated by concurrent delusions. Most violent incidents did *not* appear to be motivated by delusions, but 40% of subjects reported at least one violent event that was "probably" or "definitely" motivated by a concurrent delusion.

Question 6: How organized is the subject? Is he/she capable of developing and carry out a plan?

Rather than using the presence or absence of mental illness as a proxy for an individual's capacity to execute a plan of attack, it is more useful to take a "functional" approach. Many people with mental disorders are quite well organized in their ability to plan their behavior. The evaluator should determine what steps would be necessary to carry out a given plan of targeted violence and then assess whether and the extent to which the subject is capable of developing and executing a viable plan of attack, including acquiring weapons, gaining access to the target, and foiling security measures. If the subject is mentally ill, however, it is useful to determine whether the subject is in treatment and likely to comply, and what his/her capacities might be when treated, as opposed to untreated.

Question 7: Has the subject experienced a recent loss and or loss of status, and has this led to feelings of desperation and despair?

Here, the investigator/evaluator is trying to determine whether the subject has experienced an event that has caused him/her to experience life as unbearably stressful. Significant losses may be material (treasured object), relational (death or separation of close relationship), or losses of status (narcissistic injury). Potential losses can be examined in at least four domains: family relations, intimate/peer relations, occupational, and self-image/status. It is relevant here also to assess the degree of hopelessness/desperation and the subject's potential for suicide. Inquiry into past stressful events may help the evaluator to determine the type of negative event that may occur in the future and to gauge the subject's likely response to them.

Question 8: Corroboration—What is the subject saying and is it consistent with his/ her actions?

In any threat assessment investigation, an attempt should be made to corroborate as much information as possible from collateral sources. This information can then be used to assess the credibility and plausibility of the subject's statements and explanations. The

evaluator should compare the subject's own account of ideas, motives, and behavior to those of others who know the subject. Similarly, such corroboration can aid in the assessment of an individual's capacity for attack.

Question 9: Is there concern among those that know the subject that he/she might take action based on inappropriate ideas?

It is valuable to investigate whether others who know the subject are afraid of him/ her or are concerned that he/she may act violently. Such concern may be based on threats or "rantings." Others may have only noticed unexplainable changes in the subject's behavior or new and unusual ideas or interests. In any case, this concern and the specific bases for it should be carefully and thoroughly inquired.

Question 10: What factors in the subject's life and/or environment might increase/decrease the likelihood of the subject attempting to attack a target?

In addition to assessing the subject's current life circumstances, it is also necessary to evaluate foreseeable changes in circumstances that could serve either to stabilize or destabilize the individual. Destabilizers and "risky conditions" may be useful opportunities for intervention. Alternatively, they may be markers for periods in which additional investigative scrutiny is warranted, as in the case of a terminally ill family member who is expected to die within the next month, or in the situation of a volatile employee whose final appeal hearing of a termination decision is approaching. Conversely, the existence of a comprehensive system of support, and strong therapeutic alliances addressing the individual's social and security needs, may serve as a protective factor. Competent and adequate professional supervision and control will also influence the degree of risk for exposure to destabilizing factors. For people with psychological problems, involvement with treatment may also have a protective effect in reducing risk (Estroff & Zimmer, 1994; Estroff, Zimmer, Lachicotte, & Benoit, 1994; Swanson *et al*., 1997).

CONCLUSION

Assessments of targeted violence pose a significant challenge to law enforcement, mental health, and other professionals. In the past 20 years, the field of risk assessment has made tremendous advances, particularly in actuarial methods for assessing risk in certain populations. However, extremely rare events such as school homicide, workplace violence, or assassination do not lend themselves well to predictability with statistical equations. Additionally, the extent to which existing knowledge about criminal offenders and people with severe mental illness will generalize to other populations (e.g., those in school or general employment settings) has yet to be determined. Nevertheless, those who engage in behavior or communication of concern must be assessed.

The threat assessment approach, developed and refined by the U.S. Secret Service, provides a useful framework for thinking about assessments of potential for targeted violence. This is a fact-based method of assessment/investigation that does not rely on profiles, but focuses on an individual's patterns of thinking and behavior to determine whether, and to what extent, they are moving toward an attack. This approach can

complement existing risk assessment technology and offer guidance for those who must assess and attempt to prevent targeted violence.

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Appendix F

Physical Security Checklist Sample

Physical Security Checklist

Introduction

It is often helpful to conduct a quick examination of an organization's current workplace violence posture. The Physical Security Checklist is a simple tool that should require less than an hour for a manager or executive to complete. Once completed, it can be used to identify those areas that may need attention.

While many of the concepts and methods described in this manual have been incorporated into the Physical Security Checklist, it is not intended to substitute for a full review of the manual or a thorough examination of an organization's policies, plans, and procedures.

Finally, the results of the checklist are at best a snapshot in time. An organization's situation, needs, and history will evolve. The checklist should be used periodically to determine what policies, plans, and procedures should similarly change.

PHYSICAL SECURITY CHECKLIST

NOTE: This checklist has been prepared and published for adaptation and use by employers. Attention is directed to the fact that individual organizations will have specific Workplace Violence (WPV) requirements which are not possible to list here. A “yes" response to the question does not necessarily indicate that the organization is free of WPV problems in that area.

POLICIES		**Yes**	**No**
1	Is there a formal workplace violence policy in place?		
2	Is it policy to use hiring processes as part of an integrated workplace violence screening/reduction procedure?		
3	Is there a drug-free workplace policy in effect?		
4	Is use/possession of alcohol prohibited in the workplace and during work hours?		
5	Is there a policy making workplace safety and security the responsibility of all employees?		
6	Is there a clearly defined and fair discipline policy?		
7	Is there a policy prohibiting the possession of weapons in the workplace?		
8	Are there policies that promote a respectful workplace by prohibiting harassment and requiring cooperation and civil communication (applicable to all employees and managers)?		
9	Are all policies relating to workplace violence clearly communicated to all employees?		
10	Are company WPV policies seriously regarded by management?		
11	Are company WPV policies enforced?		

PERSONNEL SCREENING		**Yes**	**No**
1	Does employer use a formal written application form for all hires?		
2	Do all applicants authorize in writing the employer to conduct a full background investigation?		
3	Does the employer reserve the right to withhold or terminate employment if background investigation results are unsatisfactory?		
4	Does the employer verify all periods of non-employment during prior 7-10 years?		
5	Does the employer call each previous employer and inquire into applicants' history of threats, violence, inappropriate behavior or illegal harassment in addition to normal job performance topics?		
6	Does the employer consider a demonstrated commitment to respectful/non-violent interaction with others to be a bona fide occupational qualification for all employees?		
7	Does the employer contact all listed personal references on application for information to verify items claimed on application?		
8	Are prior employers and references used to develop the names of persons who also know the applicant?		
9	Are these "developed" references contacted to provide information regarding the applicant?		

10	Are applicants required to disclose and discuss all prior incidents of violence in which they have been in any way involved?		
11	Are such prior violence accounts verified?		
12	Are employees required to disclose that they have ever applied for a temporary restraining order?		
13	Are employees required to disclose that they have ever been served with a temporary restraining order?		

WORKPLACE VIOLENCE THREAT ASSESSMENT & MANAGEMENT		**Yes**	**No**
1	Does employer encourage upward reporting of employee WPV concerns?		
2	Are employees notified that they are required to notify management of the following:		
	a. direct threats of harm to employees or customers?		
	b. allusions to violence made during conflict with co-workers, subordinates, or supervisors?		
	c. angry outbursts by employees or customers?		
	d. drug/alcohol use/possession on the job?		
	e. weapons in the workplace or employer-owned parking lot?		
	f. intimidation of employees at the workplace?		
	g. employee involvement in incidents of domestic violence?		
	h. employee involvement in incidents of stalking?		
	i. employee fears of harm at work from any cause?		
	j. applying for or being the subject of any temporary restraining order?		
3	Does employer use the following methods of obtaining WPV concerns information?		
	a. outside hotline?		
	b. designated senior manager for WPV concern reporting?		
	c. standard forms distributed to supervisors?		
	d. periodic discussions with employees and supervisors		
	e. outside consultants?		
	f. employee/supervisor surveys?		
	g. exit interviews?		
4	Are all supervisors trained to properly collect, document and refer reported incidents of threats of targeted violence?		
5	Is collected information reviewed by a person trained in WPV issues?		
6	Does employer have any established "Threat Management Team," or functional equivalent?		
7	Do all employees know how to access the "Threat Management Team?"		
8	Has the entire "Threat Management Team" received specific training in assessing and managing WPV?		
9	Did that training include managing scenarios that were realistic to the employer's workplace?		
10	Does the policy establishing the Team dictate that SAFETY is to be its primary guiding principle?		
11	If not SAFETY, what other primary principle is the Team mandated to use in its work?		
12	Does the Team include a Senior Management Executive who can commit the employer, and its resources, in order to undertake all necessary action?		

13	Are all employees/supervisors/managers required to cooperate with the Team in its inquiries?		
14	Is the Team immediately reachable to all employees 24 hours a day?		
15	Has the employer pre-identified the following specialists for the Team to use as necessary?		
	a. Employee Assistance Program professionals experienced in handling WPV matters?		
	b. Fitness-for-Duty assessors (psychologists/psychiatrists)		
	c. treatment professionals (psychologists/psychiatrists)		
	d. background researchers		
	e. licensed investigators		
	f. physical security consultants		
	g. outplacement/employment agencies		
	h. attorneys experienced in WPV matters		
	i. Threat Assessment and Management (TAM) Professionals		
	j. Critical Incident Stress counselors		
16	Does the Team monitor cases as necessary after immediate incidents are resolved?		
17	Has the Team fully determined law enforcement resources/responses available to the employer?		

RISK ASSESSMENTS		**Yes**	**No**
1	Do employees frequently work during hours of darkness?		
2	Do customers visit during hours of darkness?		
3	Are customers/visitors frequently in distress/crisis during interactions with staff?		
4	Does employer dispense/serve/allow alcohol on premises?		
5	Do employees handle cash on premises?		
6	Are cash or other valuables kept on premises overnight?		
7	Are drugs dispensed/stored on premises?		
8	Are the premises in an immediate area that has experienced robberies/assaults/homicides or other violent crimes?		
9	Are employees expected to confront persons committing crimes (shoplifting, etc.?)		

ACCESS CONTROL		**Yes**	**No**
1	Are there conspicuous signs communicating open/closed hours, prohibiting trespassing, and restricting the public to certain areas of premises?		
2	Private areas are separated by: (check all that apply)		
	a. signage		
	b. cordons		
	c. counters		
	d. partitions		
	e. fences		
	f. glass walls		
	g. walls (wallboard)		
	h. walls (masonry)		
	i. walls (ballistic resistant)		
	j. normally unlocked doors		

	k. normally locked doors		
3	Employees access private areas by:		
	a. key		
	b. combination lock (mechanical)		
	c. electronic combination keypad (shared code)		
	d. electronic combination keypad (employee-specific code)		
	e. electronic access device (card, fob, etc.)		
	f. admission by other staff only		
4	Logging of entry/exit is done for:		
	a. no one		
	b. all non-employee visitors		
	c. after-hours employees		
	d. customers/clients		
	e. vendors		
	f. deliveries		
	g. all persons and all hours		
5	Entry/exit log-ins compiled using:		
	a. manual system (sign-in sheets)		
	b. video camera recording		
	c. electronic data		
6	Entry/exit data is reviewed:		
	a. never		
	b. systematically as an assigned duty		
	c. only after incidents have occurred		
7	Visitors are controlled while on premises by:		
	a. no one (open access in all areas)		
	b. visitor badge/sticker only		
	c. escorted at all times by employees		
8	Are unauthorized persons excluded from premises?		
9	Are organization access control procedures enforced?		
10	Parking areas:		
	a. are publicly accessible at all hours without restriction		
	b. are fenced and gated		
	c. are access restricted to authorized parkers via permit		
	d. are access restricted to authorized parkers via card access/code or similar device		
	e. are access restricted to authorized parkers admitted by attendant/guard		
	f. are patrolled at least hourly by maintenance personnel		
	g. are patrolled at least hourly by security guards		
	h. are monitored via CCTV cameras		
	i. include emergency service intercom stations		
	j. are lit well during all hours.		
11	How are former employees/contractors prevented from accessing private areas?		
	a. no restrictions imposed on former employees/contractors		
	b. policy only		
	c. retrieval of keys/access devices		
	d. change of locks/combinations/codes upon separation		

	e. cancellation of computer/voicemail and electronic access code/devices upon separation		
	f. changes of combination/locks/codes whenever loss of keys/codes/combinations are reported		
	g. periodic changes of combination/locks/codes		
	h. special notice to all receptionists, security personnel or others who grant normal or after-hours access		
12	Persons at entrances are observable:		
	a. while approaching entry		
	b. while at entry		
	c. by CCTV camera system showing whole body		
	d. by CCTV camera system showing facial details sufficient for identification		
	e. through open sightline (no barriers)		
	f. through open sightline (over counter/through open window)		
	g. through closed window in/at doorway		
	h. through door viewer (peep hole)		
	i. enhanced by intercom/microphone/speaker		
13	The receptionist or others who meet with the public is visible:		
	a. from outside the premises		
	b. only within reception area		
	c. from secure areas by open space plan		
	d. from secure area through window		
	e. from secure area through video camera		
14	Sounds in the reception area can be heard:		
	a. only within reception area		
	b. from secure areas through open space plan		
	c. from secure area through window		
	d. from secure area through intercom		
15	Lighting is sufficient to observe people at a distance at all times in:		
	a. interior work areas		
	b. halls		
	c. stairways		
	d. outside building entrances		
	e. inside elevators		
	f. elevator lobbies		
	g. exterior walkways		
	h. parking areas		
	i. gates		
	j. exterior storage areas		
16	Does organization use security officers?		
17	Do security officers receive at least the same training in WPV given to all staff?		
18	Are security officers in uniforms clearly distinguishable from other employees?		
19	Do security officers receive formal classroom training in general security topics?		
20	Do security officers receive sufficient training on site to ensure full working knowledge of facility systems/procedures?		

21	Are all security officers provided with information/pictures relative to persons deemed to pose threats?		
22	Does organization use law enforcement special duty officers during high-risks periods?		

THREAT COMMUNICATIONS		**Yes**	**No**
1	The organization uses:		
	a. panic buttons (to on-site staff)		
	b. panic buttons (to off-site alarm company)		
	c. premises perimeter alarms (local only)		
	d. premises perimeter alarms (to off-site alarm company)		
	e. verbal code words/phrases to indicate duress		
	f. hand or other signals to indicate duress		
	g. network-wide computer duress messages		
2	Does the organization use a telephone threat form?		
3	Are the telephone threat forms:		
	a. the subject of training for all staff?		
	b. collected and filed by a central designee?		
	c. reviewed immediately by supervisors/management?		
	d. referred as appropriate to incident management team?		
	e. referred as appropriate to law enforcement?		
4	Are all exits well-marked?		
5	Are all staff familiar with all exits for workspace?		
6	Saferooms/Refuges:		
	a. there is/are designated saferooms or refuges known to staff		
	b. saferooms have solid core doors with functioning locks or heavy duty slide bolts		
	c. saferooms have telephones		
	d. saferooms have first aid kits		
	e. doors to saferooms have viewers allowing exterior views		
	f. saferooms have alternate exits		
	g. saferooms have flashlights		
	h. staff knows to remain in saferoom until removed by law enforcement personnel		

PROCEDURES/TRAINING		**Yes**	**No**
A	***Pre-incident***		
1	Staff is trained in recognizing/reporting pre-incident indicators		
2	Management trained in pre-termination procedures:		
	a. appropriate timing		
	b. appropriate location		
	c. removing potential hazards from site		
	d. adequate management staffing		
	e. adequate security staffing		
	f. meeting scripting		
	g. maintaining employee dignity		
	h. appropriate responses to threats and intimidation		
	i. return of company property by ex-employee		
	j. return of personal property to ex-employee		

	k. termination of computer and physical access		
3	Staff is trained in dealing with anxious/defensive persons		
4	Supervisors are trained in dealing with employee arguments and fights		
5	Staff trained in robbery prevention procedures?		
6	Staff trained in company violence reaction procedures?		
B.	***During incident***		
1	Staff employs techniques to reduce the stress/anxiety/anger in anxious and frustrated individuals		
2	Staff employs team approach whenever possible		
3	Staff moves bystanders to safe areas early		
4	Staff takes immediate steps to ensure own/others' safety		
5	Staff summons required security/police/medial assistance		
6	Staff takes steps to secure or evacuate facility as indicated?		
7	Staff notifies management of situation as early as appropriate?		
C.	***Post-Incident***		
1	Medical attention provided to all injured parties		
2	Facility and personnel security re-established		
3	Post-incident stress sessions held as indicated		
4	Management information communication plan initiated (internal and external publics)		
5	Liaison/cooperation with law enforcement is maintained		
6	Area clean up accomplished as soon as appropriate		
7	Organization legal/risk/liability review conducted		
8	Victims, witnesses, and families provided on-going mental-health and other services as necessary		
9	Post-incident review conducted by management assisted by impartial outside resources (i.e., consultants, investigators, psychologist, etc.)		
	a. fact-finding completed		
	b. involved parties counseled/disciplined as appropriate		
	c. Pre-existing procedures/training examined for possible revision in view of new history		
	d. changes made to facility security as indicated		
	e. staff re-training conducted		

MISCELLANEOUS		**Yes**	**No**
1	Are all WPV policies/plans/procedures developed with the assistance of persons who have specialized training and experience in WPV?		
2	Do those persons provide expertise in:		
	a. employment law?		
	b. physical security?		
	c. employee assistance?		
	d. threat assessment and management?		
	e. psychology?		
3	Are organization WPV policies/plans/procedures reviewed by experts on a regular basis?		
4	Do all employees receive annual rebriefings on company WPV/safety/security policies/plans/procedures?		

NOTES:

COMPILED BY:
DATE:

Provided by Safeguard Services, Inc.