CHAPTER 5

VIOLENCE IN THE WORKPLACE: PREVENTION STRATEGIES

RAYMOND B. FLANNERY, JR.*

Violence in the United States is disquietingly commonplace and increasing with time.[1] Homicide, terrorism, physical and sexual assault, robbery, serious car accidents, and natural and man-made disasters are common examples of societal violence. As violence has increased in society at large, there has been a similar increase in violence in the workplace. The four major violent crimes of homicide, assault, robbery, and rape are becoming frequent events in corporate/industrial settings, police/court/corrections venues, health care facilities, and educational institutions. Offices, assembly lines, courts, hospitals, and schools are no longer safe havens for employees. The reasons for this increase in crime are unclear, but genetics, medical illness, substance abuse, poverty, discrimination, and the ready availability of weapons have all been cited as possible contributing factors.[2]

While violence is predictable in policing, it is less expected in other work settings, and employees continue incorrectly to consider themselves safe at work. Most think of violence as something that happens in the streets late at night among drug dealers in settings of urban poverty. This is not accurate. Consider the findings for corporate/industrial settings.

Homicide. In the United States each year, it is estimated that 800 to 1,400 persons are murdered at work. After motor vehicle ac-

*Director of Training, Massachusetts Department of Mental Health, Boston, Massachusetts.

[1]National Research Council, Understanding and Preventing Violence (National Academy Press 1993), 1.

[2]*Id. See also* Flannery, Post-Traumatic Stress Disorder: The Victim's Guide to Healing and Recovery (Crossroads Press 1992).

cidents and machine-related deaths, murder was the third leading cause of work-site death in the 1980s in this country.[3]

Who was most at risk? Gasoline service station employees, real estate agents, transportation workers, hotel/motel employees, and retail sales personnel were among the groups with the highest rates of work-site homicide. Half of these deaths occurred in the South, many between 10:00 p.m. and 1:00 a.m. Eighty percent of the victims were males over the age of 35 killed by firearms. Of all occupational deaths to females in the 1980s, 40 percent were homicides, and females were six times as likely to be strangled as males. Each of these industries involves exposure to the public and to the handling of monies, which may increase the risk of being robbed and murdered by common criminals.

Increasingly, however, it is disgruntled workers who are exacting harm on their colleagues. Such episodes often follow a major loss of self-esteem and may arise from the worker's discharge, layoff, or repeated harassment by a supervisor.

For example, a male employee was placed involuntarily on long-term disability leave. He returned to the printing company where he had been employed, murdered 8 colleagues, and injured 12 more. A harassed postal employee learned of losing his job from a message on his home telephone answering machine. In a cold and calmly calculating way, he returned to the post office and shot several colleagues.

Similar incidents occur all too frequently. While medicine and behavioral science have much to learn about these assailants, a history of depression, substance abuse, past episodes of violence, and/or a recent major life stress such as a death in the family are common findings. In addition, for many of the disgruntled employee assailants, their lives were their jobs.

Assaults. Assaults are another common and serious workplace event. Simple and aggravated assaults comprise 800 of every 1,000 episodes of violence.[4]

Assaults are traditionally grouped into four categories. *Physical* assaults are acts of unwanted physical contact with intent to harm another and may include biting, kicking, slapping, and punching. *Sexual* assaults are acts of unwanted sexual contact and include

---

[3]Flannery, Violence in the Workplace, 1970–1994: A Methodological Review (Cambridge Hospital 1994) (manuscript under review).

[4]National Research Council, *supra* note 1.

fondling, exposure, and rape. *Nonverbal intimidation,* the third category, involves acts of threat toward others by the assailant's personal behavior (stalking, pounding walls) or by the use of property (e.g., firearms, tire irons held as weapons). The fourth category, *verbal threats,* are statements of intended harm or threat to harm meant to frighten the victim.

Assaults occur frequently in many settings. Taxi drivers, bus drivers, bank tellers, and assembly line personnel are at risk for this form of work-site violence. Similar findings could be reported for police and corrections, health care settings, and educational environments, pointing to the increased risk of violence for employees at work.

What happens psychologically to the employee victim? Employees become victims by direct acts of aggression or by witnessing such events befalling their colleagues. These acts of violence almost universally create psychological trauma for victim survivors. Psychological trauma includes stages of being psychologically in shock, then terrified, and then angry. Signs or symptoms of psychological trauma include hypervigilance, an exaggerated startle response, sleep disturbances, and recurring and intrusive memories of the event. Employee victims also usually report a sense of loss of mastery, disruptions in their networks of colleagues and friends, and an inability to make meaningful sense of why the violent episode happened.

For many employee victims, the intense, personal responses to these events pass with time, but not for all. For some, the feelings, symptoms, and disruptions in mastery, attachments to others, and making meaning of events associated with violence continue. If left untreated, the aftermath of these violent acts may result in the medical condition known as Post-Traumatic Stress Disorder (PTSD).[5]

While society is unable to predict with full accuracy who will become violent, there are steps that organizations and individuals, including the arbitration community, may take to reduce the probability of risk of violence, and to address the aftermath of those episodes that do occur so that the long-term consequences of untreated PTSD are precluded.

Strategies for Prevention

Corporations, health care settings, schools, and police/corrections have begun to formally address the problem of workplace

[5]Flannery, *supra* note 2.

violence. In each setting a three-part approach has emerged as the best course of action to prevent violence, where possible, and to minimize its potentially negative impact in those situations where it unavoidably occurs. The approach includes: (1) preincident training, where employees are trained to prevent or contain episodes of violence; (2) stress-management interventions, where employees learn strategies to remain calm during stressful episodes at work to reduce the possibility of risk for violence and injury; and (3) employee victim(s) debriefings, where employees involved in episodes of violence have an opportunity to review the experiences so that the potential long-term negative consequences are precluded or reduced to a minimum.

This paper presents a comprehensive approach to the angry employee who may potentially lose control and become assaultive. The specific focus is on assaultive behavior because it is the most common crime, is a common arbitrational grievance, and can occur during the hearing process itself.[6] It is important to understand the basic mental health principles for addressing employee anger, whether in the form of assault, verbal abuse, or insubordination, because such anger left unchecked may result in the disgruntled employee's becoming assaultive again or even committing homicide in the workplace during or after any of the various steps in the arbitrational process.

The arbitration community has many differing constituent voices,[7] and each constituent group may not be able to respond to each principle noted below. For example, the neutral arbitrator may not be able to inquire about the angry employee's psychological contract at work, whereas this knowledge may be helpful to the union representative. Space limitation precludes detailed analysis here, but to the extent that the division of labor of these guidelines can be cooperatively addressed by the parties, the risk of violence during and after the arbitrational process is reduced. These principles are for individual members of the Academy. The Academy itself may wish to consider a standardized policy and training approach to employee anger for all its membership.

---

[6]Steadman, Monahan, Appelbaum, Grisso, Mulvey, Roth, Robbins, & Klessen, *Designing a New Generation of Risk Assessment Research,* in Monahan & Steadman, Violence and Mental Disorder: Developments in Risk Assessment (Univ. of Chicago 1994), 297; Jenkins, Layne, & Kisner, *Homicide in the Workplace: The U.S. Experience, 1980–1988,* 40 AAOHN J. 215 (1992); Hill & Sinicropi, *Remedies, Troubled Employees, and the Arbitrator's Role,* in Arbitration 1989: the Arbitrator's Discretion During and After the Hearing, Proceedings of the 42nd Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1990), 160; Zack, Arbitration in Practice (ILR Press 1984).

[7]Zack, *supra* note 6.

Pre-Incident Training

The first component of the threefold approach to addressing violence in the workplace is for the organization to assess what types of violent acts could possibly occur, and to write out policies for addressing these potential disruptions. With policies in place, the organization then trains all employees how to respond to such episodes and to remain calm. For example, banks have written policies for tellers instructing them to calmly hand over a money bag with a red dye canister inside to would-be robbers. Policies relevant to arbitral needs may be similarly thought out.

In developing policies to address employee anger and the risk for assault, organizations and employees may find it useful to understand the nature of work, issues of general environmental safety, warning signs for escalating loss of control, and strategies for calming and/or containing employee anger.

The Nature of Work. Work is a complex human endeavor that ensures both physical survival and a psychological sense of personal self-worth. Self-worth evolves from the recognition by the self and others that one's skills and capabilities contribute to the welfare of self and one's community. Disruptions in work roles may result in a pervasive loss of self-esteem with strong feelings of anger, anxiety, and depression. These disruptions may result in aggressive behavior in the face of perceived threat and helplessness. Since many grievances involve termination and demotion,[8] it is advantageous to understand the nature of work that may be disrupted by decisions in these cases.

Originally humans survived by hunting game and gathering fruits and vegetables. Over time people planted grains and became farmers. More recently, most have moved from farming to involvement in some aspect of manufacturing, providing services, or increasing knowledge. This last evolution has included the presence of money as a symbol for bartering for food, shelter, and other basic needs.

Regardless of the period of history, in the most fundamental sense humans have worked to ensure physical survival. While the present age is one of natural abundance, people still work to survive physically. While the average person in an abundant culture does not think of this often, the loss of employment and income immediately stirs this basic instinct for survival. In the crisis

[8] *Id. See also* Kennedy, *Deadly Clients*, A.B.A. J. 58 (1994); Hill & Sinicropi, *supra* note 6.

of potential job loss or demotion, the instinct for survival may lead to disorganized coping and assaultive behavior as the helpless employee attempts to assert control over the situation.

Humans also work for psychological reasons resulting in increased self-esteem and a sense of well-being. Employees are most productive when they have a sense of reasonable mastery, social attachments to others, and a purposeful meaning in life.[9] Reasonable *mastery* refers to the process wherein employees can shape the work environment to meet their needs to some degree. By having the skills to do the job correctly, employees gain pay and advancement and contribute to society. *Social attachments* to others refers to the caring network of family, friends, and work colleagues who provide the employee with companionship, emotional support, information to solve problems, and often practical help (e.g., a loan) in solving those problems. A purposeful *meaning in life* refers to basic values or goals that make life and work worthy of the employee's investment of energy and time. Supporting a family, career advancement, and recognition by others are common examples of purposeful meaning.

In addition to these fundamentals of mastery, attachment, and meaning, Levinson has pointed out that all employees have an implicit psychological contract with their employers over and above the formal contract with its written job description and statement of benefits.[10] The psychological contract is usually unstated but represents the highly personal goal that motivates the employee at a particular work site. Common components of psychological contracts include needs for power, achievement, dominance, dependency, intellectual stimulation, approval by others, status, safety and security from physical or emotional harm, flex-time hours, a sense of belonging, self-respect, and/or personal growth. The employee usually knows or can quickly identify this personal motivation. As long as the company provides an environment that allows for personal goals to be attained, employees remain productive. When the company is unable to meet the psychological contract, an employee redefines a more appropriate job description or leaves the company.

Arbitration proceedings involving job loss or some diminishment may be experienced by an employee as a biological threat to

---

[9]Flannery, Becoming Stress-Resistant Through the Project SMART Program (Continuum Press 1990), 25.

[10]Levinson, Psychological Man (Levinson Inst. 1976).

survival, a disruption in the basic psychological domains of mastery, attachment, and meaning, and/or a specific violation of the psychological contract. Any of these three may represent a major loss of self-esteem and a true sense of loss or grief over some aspect of the employee's work role.

This sense of loss and grief is similar to that of the death of a loved one. Grief produces a broad range of feelings that includes anger, anxiety, sadness, depression, helplessness, and sometimes relief. Grieving also has a natural progression through five stages.[11] *Denial* is the first stage when the person refuses to believe or accept what is happening. This is followed by *anger* as the person feels helpless and realizes that aspirations and hopes will not be attained. *Bargaining* is the third step as the person barters for extra time to repair things.This is followed by *depression* as the person realizes that time has drawn to a close. The fifth stage is *acceptance* where the person is somewhat at peace with the outcome.

This is a natural process that every person goes through with every loss, including job loss, demotion, or transfer, and it may occur during the arbitration process. It is best understood as a normal and expected part of the process of change. The key for the parties in the arbitration proceedings is to see that the second stage of grieving, anger, is adequately addressed at some point prior, during, or after the hearing. Addressing the anger is a fundamental way to defuse potential violence.

A Safe Environment. Reducing risk for violence in the workplace should include creating a physical environment that reduces the risk for assaultive behavior. To the extent possible, office furniture should be arranged to enhance safety. Ashtrays, table lamps, objet d'art, and other forms of bric-a-brac should be kept to a minimum since these are easily used as weapons. Similarly, wall paintings should be secured to the wall. Office furniture should be arranged to permit easy exit, if need be. The desk should be near the door with the grievant's chair further in the office. Do not remain behind a desk when someone is potentially out of control. The desk could be pushed against the wall, rendering the occupant almost defenseless. Similarly, reduce personal wardrobe risk if someone is potentially losing control. Loosen neckties and remove jewelry, especially around the neck. Women should remove their heels. These basic strategies reduce the risk and

[11]Kubler-Ross, On Death and Dying (Macmillan 1969).

impact of assaultive behavior and increase ability to move quickly to safety.

Warning Signs

While no one can predict violence with certain accuracy, there are signs in individuals who are struggling to remain in control that are associated with increased risk for possible violence. An awareness of these signs can help to defuse potentially violent situations.

Medical Illness. Some medical conditions may result in violent assaults for which the person with the illness is not responsible. Persons with temporal lobe epilepsy may have occasional episodes of assaultive behavior. Persons with the serious major mental illnesses of schizophrenia, manic-depressive illness, and recurring major depressive episodes are at times assaultive. These persons are especially at increased risk for assaultive behavior if they are hearing command hallucinations to harm someone and have been using alcohol or street drugs to self-medicate the major mental illness.[12]

Some individuals have intermittent explosive disorder, a medical condition characterized by sudden unexpected aggressive outbursts with no obvious reason. The episode passes, and the person is calm and remorseful. The cause of this disorder is not fully understood, but it is related to disruptions in normal brain functioning, and the person is not accountable for the aggression.

Organic personality syndrome may also lead to hostility and aggression. There are a number of causes for the syndrome, and all involve injury to the brain. If the patient is under 20 years of age, seizure or head trauma are likely explanations; if over 50 years of age, cerebral vascular accident, Alzheimer's disease, or chronic alcohol abuse are common causes.

Post-Traumatic Stress Disorder (PTSD) is the medical condition that arises when the impact of psychological trauma is left untreated. Changes occur in psychological consciousness and in biochemistry that may leave the victim subject to hypervigilance, a mistrust of others, and recurring memories (including flashbacks) of past episodes of violence that are easily stimulated by present symbolic reminders of these past events (e.g., a bus backfires and pre-

---

[12]Flannery, *supra* note 2.

cipitates memories of live firefights in the mind of a veteran). Aggressive outbursts may occur in these victims.

This list of medical conditions is not exhaustive nor is the arbitration community expected to be experts in medicine, but it does point to the importance of knowing the medical history of the person who was out of control.[13]

The Appearance of the Grievant. It is helpful to review the physical appearance of the grievant for suggestions of disorganization. Does appearance conform to normal expectations, or are there suggestions of difficulty in being organized and in control? Is the face relaxed or taut? Is the general demeanor pugnacious and noncooperative? Is there a glazed look to the eyes which indicates extreme fright or alcohol/drug abuse? Is the person wearing dark glasses indoors or on cloudy days, which may indicate substance abuse or paranoia? Is the person otherwise disheveled without adequate explanation? Like the presence or absence of medical illness, appearance may offer some information about possible risk.

The Behavior of the Grievant. Certain patterns of behavior are associated with increased risk for aggressive outbursts. Some of the more common include restlessness, pacing back and forth, and pounding fists. Similarly, verbal threats to harm should be taken seriously. These threats may indicate a highly agitated person who is feeling overwhelmingly threatened and boxed in, and who may strike to protect self and regain a sense of mastery over the situation.

Two types of behavior should warrant special attention as risk factors. The first is the current use of drugs or alcohol. Persons who are intoxicated place everyone at risk. The abused substance alters brain chemistry and lessens the brain's normal mechanisms for control and general ability to reason. Violence is often an outcome, and delaying the hearing under these circumstances should be considered. A second high risk behavior is the grievant who reports carrying a weapon or having one within easy access. This person is reporting feeling very threatened and overwhelmed. Never demand the weapon. Instead, encourage the grievant who made this statement to talk and keep talking about the perceived injustice. If the weapon is on the grievant, ask that it be placed in a neutral corner of the room and left there. Do not reach for it. If the weapon is not present, and the grievant remains agitated, work

---

[13] *Id. See also* Hendler & Kozikowski, *Overlooked Physical Diagnosis in Chronic Pain Patients Involved in Litigation*, 34 Psychosom. 494 (1993).

out a plan whereby a third party will keep the weapon until the crisis has passed.

Violence is a complex person × event × environment interaction,[14] but an awareness of the warning signs can be helpful in reducing risk. As general rule of thumb, the more warning signs, the greater the likelihood of increased probability of risk for assault. Similarly, the more warning signs, the greater the need for actions that calm. In these matters it is better to be conservative, to take the signs of possible assault seriously, and to be wrong about the potential risk for violence than to minimize the signs and be injured.

Actions That Calm

1. Safety is the first concern. If the grievant is out of control or close to that, leave, warn others, and summon help. Often, stating that you are sending for help gives the grievant reassurance in the face of overwhelming feelings. If the grievant runs, permit it and summon help. If the grievant blocks you in the room, stand seven feet away, if possible, and keep talking, especially about the perceived injustice.
2. Take threats seriously. All threats should be investigated by appropriate authorities or by the employer's human resource management. The circumstances are assessed, the possibility of recurrence is determined, and local authorities may be notified. Consistent assessment of threats sends a clear message to employees that such behavior is not accepted.
3. Conduct the hearings and various other proceedings with basic respect and dignity when there are no undue threats or concerns for safety. Preliminary meetings and arbitration hearings normally are conducted with professional decorum, but well-conducted hearings additionally support the self-esteem of the grievant who may have been distressed by the arbitration issue.
4. Address the work-related loss or potential loss in preliminary meetings. Since loss precipitates anger and possible assaults, the grievant needs to discuss the issue of loss. This might occur with colleagues, a supervisor, or a union representative. A full discussion of the emotions generated by the grievance in advance of the hearing should help to diminish the sense of loss, result in more businesslike hearings, and decrease the risk of violent behavior.

---

[14]Flannery, *supra* note 2.

5. Restore the initial sense of mastery and attachment to others in the grievant during preliminary meetings to reduce risk. Since mastery and attachment are disrupted by grievance issues, steps taken to provide social support to the grievant by union representatives or counsel, where possible, will maintain a sense of attachment to others associated with the work setting. Similarly, encouraging the grievant to be actively involved in the hearing process (e.g., delivering materials for the case, reading about similar cases) begins to restore the sense of mastery and makes the hearing less stressful for the grievant.

6. Address the meaning of employment to the grievant to reduce risk. Early on, supervisors, counsel, or union representatives can determine the specific psychological contract of the grievant before the grievance occurred. Understanding the meaning of loss and its importance to the grievant, reviewing other strengths, and planning in advance possible ways to cope with the possible outcomes of the arbitral decision reduces anxiety, enhances self-esteem, and provides initial ways to restore purposeful meaning. If it is possible for a party to the grievance (e.g., union representative, employee assistance program) to serve as a transitional resource after the hearing, this should be stated in advance to avoid undue feelings of helplessness in the grievant.

Job terminations or demotions are major life events that involve stress and loss. Since anyone can be overwhelmed by other life stress and associated inadequate coping, risk for violence is reduced if hearings are held when the grievant is not also addressing other stressful life events that may involve loss such as recent divorce, critical illness, pregnancy, or death of a family member.

The actions are calming because they address the psychological disruptions associated with work grievances. They also address safety, loss, reasonable mastery, attachment, and meaning. By providing for these issues in advance, the grievant's anxiety is reduced, self-esteem is restored to some degree, and the arbitration hearing for just cause[15] may proceed without undue risk of harm.

Stress Management

The second general approach that organizations are developing to address work-site violence and its aftermath is to strengthen the

[15] *See* Hill & Sinicropi, *supra* note 6; Zack, *supra* note 6.

capacity of the employee to cope with life stress in general and work-site violence in particular. Stress management approaches reduce the general level of work-site stress, especially in high demand work environments, and enhance productivity. Stress management initiatives empower employees, which may lead to reduced stress by increasing the awareness of possible work-site risks and how to address them.[16] Stress management interventions have also been effective in reducing the potential negative effects of psychological trauma associated with work-site violence.[17]

While the general public thinks stress management means a balanced diet, relaxation, and physical exercise, there are important additional skills that are of assistance. For 12 years, I followed 1,200 men and women to see who coped well with stress and what strategies they utilized in solving the life stress that they encountered. I refer to these adaptive problem-solvers as *stress-resistant persons.* They utilize six strategies for maintaining good health and a sense of well-being:

1. *Reasonable mastery.* Effective problem-solvers clearly identify the problem at hand, gather information for a solution, develop strategies to resolve the matter, and implement and evaluate a course of action.
2. *Task involvement.* People need a reason to live, and stress-resistant persons develop such goals. Career development, raising children, and community involvement are common choices.
3. *Healthy life-style choices.* Stress-resistant persons avoid the dietary stimulants of caffeine and nicotine, participate in weekly aerobic exercise, and have a period of daily relaxation.
4. *Social support.* Adaptive problem-solvers seek out others for emotional support, companionship, and occasional help with life's dilemmas.
5. *Humor.* Humor keeps life stress in perspective, and good copers employ a sense of humor or associate with those who do.
6. *Concern for the welfare of others.* Found in all the world's great religious and ethical codes, concern for the welfare of others provides a purpose in life and reduces life stress for the provider as well as the recipient.

---

[16]Murphy, DuBois, & Harrell, *Accident Reduction Through Stress Management,* 1 J. Bus. Psychol. 5 (1986).

[17]Flannery, *supra* note 9.

To teach these skills of stress-resistance to those who may be interested in learning them, I developed Project SMART (*S*tress *M*anagement *a*nd *R*elaxation *T*raining).[18] Project SMART includes a gradual reduction in dietary stimulants, periods of relaxation and exercise, and practice in developing generic problem-solving skills. Project SMART can be done individually or in small groups and appears helpful in increasing the capacity to reduce or buffer the potential negative impact of life stress on health.

Stress-resistant persons employ strategies 1, 3, and 5 for developing reasonable mastery. They utilize strategies 2, 4, and 5 for creating and maintaining caring attachments to others, and they focus on strategies 2, 4, and 6 to provide a meaningful purpose in life. The utilization of these six strategies results in improved health, well-being, and productivity, and, in terms of potential workplace violence, prepares employees to remain calm and think clearly in times of crisis.[19]

Employee Victim Debriefing

No matter how earnest an organization or business is in preventing workplace violence, such episodes will happen. The third strategy of the comprehensive approach is to debrief employee victims after these inevitable events have occurred. Debriefing reduces the immediate stress of the violent episode; restores mastery, attachment, and meaning; and prevents the long-term consequences of untreated PTSD.

The most widely utilized approach is Critical Incident Stress Debriefing (CISD).[20] In this group approach, employee victims meet shortly after the event to review its psychological impact. The debriefing begins by establishing the facts of what actually happened. Next, group members share their thoughts about the event and discuss at length their feelings about what happened. The debriefing closes with specific strategies for continued coping with the aftermath of the violent episode, especially intrusive memories of the event and PTSD symptoms. Each member of the group is encouraged to participate in every step of the process, and a debriefing may last as long as four consecutive

---

[18]*Id. See also* Flannery, *supra* note 2.

[19]Murphy, et al., *supra* note 16.

[20]Mitchell & Everly, Critical Incident Stress Debriefing (CISD): An Operations Manual for the Prevention of Traumatic Stress Among Emergency Services and Disaster Workers (Chevron Publishing 1993).

hours. The CISD process can be repeated as often as employee victims perceive the need.

The CISD process may be coupled with a more comprehensive approach for assault victims that includes individual crisis intervention, group CISD debriefings, an employee victim support group, family counseling, where indicated, and stress-management groups. This approach is known as the Assaulted Staff Action Program (ASAP).[21] Empirical evidence has shown this program to decrease PTSD symptoms; to restore mastery, attachment, and meaning in assaulted employee victims; and to substantially reduce the frequency of violent episodes.

While medicine and behavioral science seek to further our understanding of the causes of workplace violence and to better address its impact, the evidence to date indicates that work-site violence occurs, that it can cause personal crisis and psychological trauma in many employee victims, and that an approach of pre-incident training, stress management, and employee victim debriefing can be effective in reducing the negative impact of such violence and is easily learned.[22]

The aftermath of untreated violence in the workplace is costly in terms of human suffering, lost productivity, and medical expense. The arbitration community can easily access what is known about enhancing work-site safety and, in doing so, improve the safety and quality of life for its members.

Comment

M. DAVID VAUGHN*

As Stokely Carmichael, the 1960s radical, reminded us, "violence is as American as apple pie." Not surprisingly—perhaps inevitably—a certain amount of violence and related behavior, such as threats, harassment, physical pranks, and horseplay, has always been present in the workplace.

Employers prohibit violent and disruptive behavior because it is inconsistent with the order, stability, and cooperation required for efficient operation. Such behavior threatens the safety of people

---

[21]Flannery, Hanson, Penk, Futton, & Flannery, *The Assaulted Staff Action Program (ASAP): An Approach to Coping With the Aftermath of Duty-Related Violence*, in Keita, Job Stress Intervention: Current Practice and Future Directions (American Psychological Ass'n, 1994).

[22]Flannery, Violence in the Workplace (Crossroads Press 1995).

*Member, National Academy of Arbitrators, Gaithersburg, Maryland.

and property, costs money, and creates potential liabilities. If the perpetrators of violence are allowed to go unpunished, repetition is likely.

Terminating or otherwise disciplining employees who engage in violent or disruptive conduct at the workplace has been a universal employer response. For those workplaces where the terms and conditions of employment are set through collective bargaining, employer disciplinary decisions are subject to challenge through the grievance/arbitration procedures, and the employer's actions are upheld only where they are for just cause. Nonunionized employees receive whatever protections their employers and the courts provide.

Employer actions to deal with violent and disruptive behavior in the workplace have been the subject of a significant body of arbitral decisions[1] and commentary. Space precludes discussion of the arbitral doctrines that have been developed, but I particularly commend Arbitrator Margery Gootnick's chapter in *Labor and Employment Arbitration.*[2] I note that, because of the serious consequences of violence in the workplace, the risk of recurrence, and the importance of deterrence, an employee who engages in acts of violence at the workplace may be terminated without resort to progressive discipline, in most cases even without a requirement of special notice or specific rule prohibiting this conduct.

Despite the fact that the risk of violence has always been present to some degree, most employees have considered the workplace environment relatively safe. However, in recent years the amount of violence in the workplace has increased, and its nature has changed.[3] Much workplace violence is the result of robbery, domestic disputes, or causes other than conflict between employees, and the increase in employee-initiated violence has been somewhat exaggerated. The media regularly headlines incidents of workplace violence, focusing on violence committed by employ-

---

[1]Examples of recently published cases with substantive discussion of violence, harassment, threats, and horseplay include: *Paratransit, Inc.*, 100 LA 981 (Brand 1993); *General Dynamics, Fort Worth Div.*, 100 LA 180 (Francis 1992); *Everfresh, Inc.*, 99 LA 1038 (Allen 1993); *Indiana Convention Center & Hoosier Dome*, 98 LA 713 (Wolff 1992).

[2]Gootnick, *Violence and Horseplay*, in Labor and Employment Arbitration, eds. Bornstein & Gosline (Matthew Bender 1989), chapter 23.

[3]Society for Human Resource Management, Workplace Violence: Business as Usual? (1993) (hereafter SHRM Study); *Working Under the Gun: Office Violence Is on the Rise and Most Firms Aren't Ready to Deal With It*, Wash. Post, May 8, 1994, at H1; *Companies See More Workplace Violence*, Wall St. J., Apr. 12, 1994, at B1; *Increasingly the Shadow of Violence Hangs Over U.S. Workers*, Wash. Post, Jan. 2, 1994, at H2.

ees and highlighting workplace stresses and/or confrontations preceding the blowups.[4]

A significant percentage of employee-initiated workplace violence and disruption results from threats to an employee's job, cultural differences (e.g., race or sex), psychological problems, or drug abuse[5]—factors that previously did not exist n the work force, at least not to the same degree as now. Although most reported disruptions do *not* involve weapons, a surprising 17 percent are shootings and 8 percent, stabbings,[6] perhaps reflecting the greater availability of weapons in society and the greater willingness to use them in workplace disputes.

Many of the guns and hostages episodes that grab the headlines originate with particularized complaints by employees, but spill over beyond the object of their concerns to victimize uninvolved fellow employees and others. Both perception and reality have raised the level of employee anxiety about workplace violence and about fellow employees who may be the source of such violence.[7] The perception of threats from violence has become an issue of significant concern to both employers and employees.[8] For ease of reference, I will call these changed manifestations and perceptions the "new violence."

In this response to Raymond Flannery's presentation on strategies for preventing violence in the workplace, I will focus on two areas that impact most directly on the arbitration process: (1) the implications for arbitration of efforts by employers to assess and prevent workplace violence and disruption created by difficult, dangerous employees; and (2) arbitral responses to deal with difficult and dangerous participants in the grievance/arbitration process.[9]

Employer Responses to Prevent Workplace Violence

Flannery indicates that it is possible, in theory, to identify employees at risk for disruptive or violent behavior and then take

---

[4]*See, e.g.*, Mantell & Albrecht, Ticking Bombs: Defusing Violence in the Workplace (Irwin 1994).

[5]Survey by Northwestern National Life Insurance Company (1993) (hereafter Insurance Study), *quoted in* Thompson, *Violence in the Workplace* (March 1994) (presentation to American Bar Association Section on Labor and Employment Law, Committee on Individual Rights and Responsibilities).

[6]SHRM Study, *supra* note 3.

[7]*Id.*

[8]Insurance Study, *supra* note 5.

[9]Any participant in the process could be disruptive or threatening, but this discussion focuses on grievants.

action to minimize its occurrence. His research largely confirms the conclusions of most labor relations practitioners, based largely on observation and common sense. Such identification is almost invariably true in retrospect, where employees who have committed violent acts in the workplace are commonly found to have manifested behavioral warning signs beforehand.[10]

An increasing number of employers are responding to incidents of workplace violence or to the perception of such threats by initiating formal, affirmative programs to identify and assess threats and to prevent violence, applying the threat assessment techniques, profiles, and strategies Flannery described. In fact, these so-called "threat assessment and reduction" programs have become commercialized. Some firms and consultants recommend and aggressively market prepackaged or tailor-made programs, which find receptive audiences among managers and employees. If the trend continues, workplace violence and threat assessment programs to prevent it may become the 1990s issue receiving attention equivalent to that accorded drugs and drug testing in the 1980s.

I believe that the implementation of threat assessment programs and other employer efforts to prevent workplace violence will challenge traditional arbitral doctrines used to evaluate threatening or violent employee behavior, resulting in modification of just cause standards and in arbitral reassessment of management actions to address risks of violence.

Although threat assessment programs vary greatly, common elements include, as Flannery has stated, affirmative efforts—"proactive," in threat assessment jargon—to identify employees and situations with the potential for violence. The programs include training supervisors to observe workplace conduct as well as establishing or enhancing reporting requirements to survey and monitor the workplace.[11] Their purpose is to identify employees who fit particular profiles of appearance, manner, communication, interests, and behavior which may indicate increased risk of violent behavior. For example, at a 1993 conference sponsored by the U.S. Postal Service, consultants compiled a checklist of 15 behavioral warning signs: poor pattern of work attendance,

---

[10]Jensen & Karlinsky, *The Prevention and Management of Trauma in the Workplace*, in Symposium on a Growing American Phenomenon: Workplace Violence (U.S. Postal Service 1993).

[11]Surveillance and other methods used by employers to gather information raise additional issues which are beyond the scope of this paper.

requirement of excessive supervisory involvement, decreases in productivity, inconsistent work performance, poor relationships with co-worker, problems with concentration, forgetfulness, failure to follow safety precautions or increases in accident-proneness, poor health and hygiene, significant changes in behavior, strong interest in guns or weapons, signs of alcohol/drug abuse, evidence of significant stressors affecting employee's personal life, excuses/blaming for problems or errors, and chronic signs of depression.[12]

Following identification of employees who "fit the profile," employers implementing threat assessment and reduction programs are encouraged to make affirmative efforts to minimize the risks. Some efforts, such as encouraging identified employees to seek assistance and support through employee assistance programs (EAPs) or other counseling, may be benign from a labor relations perspective.[13] However, the logical consequence of threat identification, and the one advocated by many threat assessment proponents, is that employees so identified, who refuse to partake of offered assistance or who are unresponsive to it, should be subject to employer action separating them from the problem or from the workplace,[14] either by termination, other discipline, or nondisciplinary removal. What distinguishes these new efforts from traditional employer reaction to workplace violence is their focus on prevention through a systematic, multidisciplinary, "scientific" program, rather than response after the fact.

Actions to remove or reduce these perceived threats include: changes in work assignments, schedules, or supervisors; voluntary or involuntary leave; and suspensions or retirement (early, disability, or regular). Depending on the cause of the threat, the response of the employee, and the contractual parameters, termination (disciplinary or nondisciplinary) may be the preferred—or even the only—way to reduce the threat. Such efforts will almost inevitably alter the terms and conditions of employment and, unless consensual, are likely to be grieved and brought to arbitration. There arbitrators and advocates will face a major issue of the 1990s: new efforts to address the new violence.

---

[12]Jensen & Karlinsky, *supra* note 10.

[13]Forced medical evaluation of employees and the use of EAPs in connection with threat assessment are also beyond the scope of this paper.

[14]Presentations and plans are worded cautiously for obvious reasons; however, many imply that, if employers investigate complaints, make referrals, and receive evaluations that an employee represents a genuine threat, they may take action against any employee who fails to accept counseling.

How should arbitrators deal with employer efforts to identify at-risk employees in advance and to take preventive action against workplace violence when those efforts impact on employee rights under collective bargaining agreements? Traditional doctrines, which assess and punish violent conduct only *after* it has occurred, may be inadequate to meet the needs of either employers or employees. Arbitrators must be prepared to reexamine the doctrines dealing with discipline and disqualification in order to give effect to employer threat assessment programs, provided there is proper contractual foundation and sufficient behavioral evidence establishing their validity. At the same time these programs have a clear potential for abuse and for interference with employee rights. Arbitrators must be cautious not to be sucked into the "fad" aspects of the programs. Some lack proper design or implementation; others are simply traditional management responses under new names.

Disciplinary Responses

Some employer responses to the new violence fit within traditional doctrine. Elements of the profile include poor attendance, inconsistent job performance, and confrontations with co-workers, which may, in and of themselves, support discipline. Disturbed employees sometimes manifest their problems in hostile or threatening actions that are separately disciplinable, even though falling short of actual violence. Clearly, discipline for such conduct remains appropriate; threat reduction doctrine generally favors earlier, stronger intervention. However, difficulties exist for employers in disciplining employees for minor, precursor behavior, if the real concern is an employee's potential for serious violence, since minor offenses may not support the employee's removal and may precipitate confrontation even when management's action is carefully orchestrated.

An additional employer strategy to control violence within traditional rules is to establish work rules that spell out prohibited conduct and give less tolerance or "zero tolerance" of disruptive behavior (e.g., harassment, threats, pranks, horseplay) which may be precursors of more serious trouble. Such rules notify employees of required standards of conduct and give them early warning that violations will result in discipline. Management attention to stricter rules may provide comfort and support to fearful employees. "Zero tolerance" rules may be particularly useful in disrupted workplaces

with a history of horseplay or a culture of sexually harassing language or actions. Discipline in these situations is still based on employee *conduct*, and it fits well within the traditional arbitral analysis of just cause.

The reasonableness of invoking existing rules of conduct at earlier stages or creating stricter rules and heavier penalties for their violation can and will be assessed by arbitrators on a case-by-case basis. The enforcement of these rules singles out disruptive and potentially violent employees at an earlier stage, documents corrective efforts, and gives the employer (and union) increased leverage in getting them into counseling. There are, however, obvious limitations on the use of tighter rules. Employer work rules must be reasonable in form and application. Arbitrators are unlikely to uphold discharge of employees for minor incidents of disruptive or threatening behavior in the absence of demonstrated application of progressive discipline. Tolerance of similar behavior by "normal" employees may make the employer vulnerable to charges of disparate treatment. Supervisors may be reluctant to enforce rules against employees whom they fear. Employees may be reluctant to testify against violators. Discipline which leaves the employee in the same work situation as before may exacerbate, rather than improve, the situation. Further, such rules are likely to be least successful in deterring the conduct of those employees who are more disturbed.

The employer's underlying concern that a minor incident is simply a precursor to serious violence will be difficult to get into the record. Clearly, evidence of this larger context must be objective and tied to the conduct at issue. Should that evidence be admitted, and if so, what weight should the arbitrator give it in assessing the proper penalty? Is it appropriate for the arbitrator to consider evidence of the employer's more serious underlying concerns, with which the employee has not been charged? The presumption that employees who commit serious acts of violence fit a profile and engage in predictive behavior requires that arbitrators reexamine the general practice of viewing each offense in isolation rather than as a manifestation of a larger problem. Even minor incidents of violent or threatening behavior may have to be assessed as part of overall behavior.

Threat assessment and reduction programs go beyond the regulation of overtly disruptive conduct and identify employees for intervention, response, and ultimately "removal from the workplace" on the basis of personal characteristics and nonviolent

conduct. Thus, employees who engage in aberrant behavior (e.g., refuse to speak to other employees except for business necessity, talk obsessively about guns or conspiracies, or simply stare at others) may be identified as threats and targeted for threat reduction. If these employees do not respond to offered assistance, "threat reduction" may be a euphemism for termination. The problems with that action under the traditional just cause analysis are numerous, although not always obvious.

The profile of the high-risk employee described by Flannery and others—a middle-aged, white, male loner who is interested in guns and has suffered personal loss—is very broadly drawn, perhaps too broad for significant prediction. Most of us have had arbitrations where half of the work force would fit the profile, at least around deer hunting season.

The fact that violent employees fit the profile does not mean that all employees who fit the profile engage in—or are significantly likely to engage in—violent behavior. Indeed, only a small percentage of employees who fit the high-risk profile ever engage in disruptive or violent behavior. Thus, use of such a "profile" to remove suspects from the work force would punish many, many innocent employees,[15] even when they are subjected to further medical screening. Indeed, an American Psychiatric Association study tracked long-term patients identified by their therapists as certain risks to engage in violence. Of those extremely high-risk, closely monitored, professionally assessed patients, two out of three did *not* engage in violent conduct.[16] Correlations between profile-based identification and violent behavior are likely to be significantly, perhaps exponentially, lower in typical workplace environments even with medical assessment.

The use of profiles to trigger intervention and to discipline employees who do not accept or respond to treatment *assumes* the very conclusion that traditionally has been accepted only *after* the fact: that the employee is unable to comply with workplace rules defining acceptable conduct. The employer's requirement for counseling and treatment assumes that affected employees need intervention. If they do *not* need treatment, is it appropriate to take action against them for failure to obtain it?

---

[15]The profile relies on stereotypes, which are inherently offensive, even if they contain statistical truth. However, there is disagreement as to the profile. For example, Park Deitz profiles the most violent employee as a young black male in the *Wall Street Journal* article, *supra* note 3.

[16]American Psychiatric Association, amicus brief, *cited in Barefoot v. Estelle*, 463 U.S. 880, 920 (1983).

The use of profiles to identify employees as threats and take action against them creates significant opportunities for mischief resulting from bias, intolerance, personal conflicts, and negligence in the assessment response. Social interaction on the job ordinarily cannot be compelled. One employee's inappropriate behavior or attire is another's life style. Life-style differences, even when fellow employees do not want to work with someone who is different, have not traditionally been a basis to discipline or disqualify an employee.[17] Threat-based programs are at least in conceptual tension with the tolerance of differences many employers are trying to cultivate. Supervisor training and multidisciplinary assessment and support may be designed to minimize inappropriate use of the profile, but there remains significant potential for abuse.

This area, like others in the workplace, must consider the Americans with Disabilities Act (ADA).[18] The relationship between the ADA and arbitration was thoroughly and ably covered earlier in the program in the presentation on arbitration of health-related issues. An employer has the obligation to accommodate employees with real or perceived disabilities, including psychological disabilities. There is an exception for employees who pose "direct threats to the health or safety of themselves or others."[19] However, in order to fall within the exception, an employer must demonstrate a "high probability of substantial harm" based on analysis of the job requirements in light of current medical knowledge.

The use of profile-based behavioral analysis to discipline or discharge employees runs contrary to a presumption of the right to continue employment absent cause, which has long been recognized in arbitration.

Arbitrators Roger Abrams and Dennis Nolan have analyzed the concept of just cause from the perspective of whether employees have lived up to a shared, usually unwritten and unarticulated, "fundamental understanding" of the employment relationship, that is, employees obtain their pay and benefits as well as a limited and conditional right to continued employment in return for "satisfactory work."[20] What part of that obligation is violated when the employee fits a profile or engages in eccentric behavior not

---

[17]*See, e.g., Diaz v. Pan Am. World Airways*, 442 F.2d 385, 3 FEP Cases 337 (5th Cir.), *cert. denied*, 404 U.S. 950 (1971). *See also* 29 C.F.R. 1604.1(iii).

[18]42 U.S.C. §12101 *et seq.*

[19]42 U.S.C. §12113(b).

[20]Abrams & Nolan, *Toward a Theory of "Just Cause" in Employee Discipline Cases*, 1985 Duke L.J. 594 (1985).

prohibited by a work rule but still performs the job satisfactorily? An element of satisfactory work listed by Abrams and Nolan is avoidance of conduct that interferes with the employer's ability to operate the business successfully.[21] Although they describe "conduct inconsistent with the business" primarily in terms of off-the-job behavior, an employee's on-job conduct may also betray the fundamental employment relationship without necessarily violating a specific or reasonable work rule. Does an employee have the right to make co-workers and supervisors live in fear for their safety? May the employee be divested of that right only by engaging in conduct that proves their fears well founded? Should an employee's removal from the workplace for aberrant behavior, if sufficiently extreme and properly documented, be allowed? These are difficult questions with no easy answers. Threat assessment methodology may assist arbitrators in making decisions in these areas.

Nondisciplinary Responses

Another way for employers to deal with employees identified as threats may be removal from the workplace for nondisciplinary reasons, that is, disqualifying them as unfit.[22] However, nonconsensual reassignment, demotion, or removal on the basis of job disqualification inevitably contravenes employee rights under the collective bargaining agreement. If a grievance is filed, the employer must prove that the disqualification justified that action, notwithstanding contractual rights.[23]

Disqualification because of psychological characteristics, lifestyle or cultural differences, or preferences of fellow employees or customers has been difficult for employers to sustain. In such situations arbitrators require high levels of proof that the employee was not able to perform the job duties over an extended period of time, that the employer provided reasonable opportunity and assistance, but that the disability is not likely to improve. In an article subtitled "an inquiry into how arbitrators deal with a grievant's personal problems,"[24] Arbitrator Marcia Greenbaum

---

[21] *Id.* at 597.

[22] For example, a traffic signal repairer who becomes colorblind could be removed on a nondisciplinary basis because the employee can no longer perform the job duties. No "fault" of the employee is involved.

[23] Elkouri & Elkouri, How Arbitration Works, 4th ed. (BNA Books 1985), 576.

[24] Greenbaum, *The "Disciplinatrator," the "Arbichiatrist," and the "Social Psychotrator,"* 37 Arb. J. No. 4, 50 (1982).

reported that arbitrators sustained only 10 of 38 reviewed cases where employers had discharged employees for mental or emotional illness.[25] Arbitrators held employers to a stiff burden to demonstrate the grievants' inability to perform the job duties or their risk of harm to others.

Termination on the basis of disqualification may require the employer to prove attempted employee accommodation through a transfer, for example, when no other jobs were available for the employee or when attempted reassignments were unsuccessful. However, reassignment within the same workplace, a common accommodation in other contexts, may not be sufficient to reduce the threat posed by potentially violent employees.

Employee behavior fitting the risk-assessment profile does not necessarily result in inability to perform the duties of the assigned job. When the employee is able to perform the job duties, disqualification must be based either on the generalized interference standard or on the employee's temperament. In jobs requiring use of or access to weapons, arbitrators should be receptive to these arguments. In jobs with less sensitivity, it may be difficult to persuade an arbitrator that termination should result from abstract disqualification derived from the employee's potentially violent profile. Taking action against employees who are disruptive or difficult may make a troublesome situation worse. Picture an employee who believes that the world is antagonistic and is subjected to removal from the job by the very supervisor perceived as the antagonist. This is a good illustration of the principle that even people who are paranoid have real enemies. It virtually invites the type of response the employer is seeking to avoid.

Evaluating Risk-Assessment Programs

Let me suggest a very general checklist for use by arbitrators and advocates in cases involving threat assessment and reduction programs:

1. The profile should be used only as a screening device, with appropriate behavioral and medical evaluation a necessary step prior to taking action against an employee.
2. The aberrational aspects of the employee's demeanor and behavior must be documented with specifics, including inci-

---

[25] *Id.* at 58–59.

dents in which the employee displayed the suspect behavior. That documentation must be correlated to the specific disruption of the workplace which is the employer's concern.

3. The employee's demeanor and behavior should have been evaluated and medically diagnosed, and disciplinary determinations made taking into account the medical diagnosis. The employer's action must be appropriate to the concern, as documented by medical testimony and specific examples from the workplace. That evaluation must be incorporated into a threat assessment, taking into account the probability, duration, and severity of adverse conduct. Parties and arbitrators should be wary of general and conclusory descriptions, of demeanor and behavior analyzed only by lay persons, or of medical evaluation made only after the fact, or in anticipation of the arbitration hearing.
4. The employer must demonstrate that reasonable efforts were made to obtain medical assistance for the employee who refused or was unresponsive to the efforts. There are also issues of confidentiality to be addressed in obtaining and presenting that evidence.
5. The employee must have been given notice that the demeanor and behavior were unacceptable and would result in discipline or disqualification (depending on the nature of the action) if not corrected. The employer must demonstrate that the employee was given opportunity to correct the behavior, but that the unacceptable behavior and its impact on the workplace continued.
6. The employer must demonstrate that the employee's continued presence at the workplace poses probability of substantial harm.
7. The employer must demonstrate that less extreme measures were not available or were not appropriate, and probably would not have cured the problem.

Let me make these additional points. Potentially violent employees represent a threat to bargaining unit employees and union representatives as well as supervisors and others. The union's role in these cases is particularly difficult. Cooperative approaches between employers and unions are particularly important. When allowed to operate under the usual rules and without special sensitivity, the adversary system and the arbitration process may make a difficult situation worse. Sometimes all concerned would

be better off by resolving the problem of the potentially violent employee through medical, retirement, or other nonadversarial means. Of course, some cases proceed to arbitration because there is no alternative, requiring a premium for all participants on sensitivity and creativity. Where an employee's right to industrial due process has been materially violated, but the conduct at issue indicates that the employee would pose a substantial risk if returned to the workplace, consideration should be given by the parties and arbitrators to alternative remedies in place of traditional reinstatement (e.g., severance pay, front pay, or retirement). The employer, or both parties in appropriate circumstances, may wish to signal the arbitrator that any order of reinstatement should be subject to the grievant's obtaining treatment.

The Arbitration Hearing

Flannery addressed the problem of dealing with difficult and dangerous people—and the threat of violence they may pose—in connection with the arbitration hearing. The grievance/arbitration process distills from the work force some of its most difficult and disturbed members and places them in our hearings to confront and be confronted by the very managers and/or coworkers they perceive to be responsible for their problems. Many grievants have been involuntarily separated from their jobs and are angry about their treatment. Given the importance that jobs play in the lives of workers and the dislocation following job loss, it is remarkable that terminated employees are not more angry and less able to control their feelings.

Most experienced arbitrators and advocates have been involved in arbitration cases where violence took place or was threatened. Some have already resulted in tragedy; in others tragedy was avoided, sometimes only narrowly, without the participants even knowing how close was the call. The rising tide of violence in society and in the workplace and the availability of weapons suggests that the number and seriousness of these incidents will increase.

How are arbitrators to deal with threats? We lack the metal detectors, secure hearing rooms and lockable chambers, armed bailiffs, and other security measures available to the court system. Our hearing rooms are open and unscreened. Arbitrators, advo-

cates, and witnesses sit shoulder to shoulder with grievants. Except in the occasional public safety hearing, security is no closer or more effective than the rent-a-cop in the hotel lobby. It is unrealistic and probably undesirable to imitate courtroom security measures. The problem is not that arbitrators lack the accoutrements of security. We have other responsibilities to the process. We must maintain our neutrality and ensure that nothing we do compromises or gives the appearance of compromising that neutrality. To initiate security measures might well be seen as signaling prejudgment of the grievant. To the contrary, a working premise in arbitration is that the process and its participants will be rational and orderly. The rational informality of the arbitration process has been one of its strengths. Because of the increased risk of violence in the workplace and the contentiousness of some arbitration cases, it is time we recognize that the accessibility of the arbitration hearing and the way it is generally run create genuine risks to arbitrators and other hearing participants, for which arbitrators and advocates share responsibility. "Hoping to goodness" that nothing bad happens is a strategy for disaster.

How can arbitrators and others respond, in light of our larger responsibilities and the absence of courtlike security measures? There are no simple or perfect answers. Part of the answer lies in increasing our own awareness. Flannery and others have prepared checklists for arbitrators to spot warning signals of impending violence. They have made suggestions as to how arbitrators can respond when dangers are perceived. Arbitrators and advocates should pay attention to those guidelines. Threat assessment and reduction programs offer training to managers and labor relations staffs to recognize threats and respond to violence or the threat of violence. Consideration should also be given to training union representatives. And specific, practical training should be available to arbitrators through the Academy's educational activities.

People, although hostile and irrational, usually respond to proper treatment and are influenced by the expectations of others. It has always been important for the employer to treat employees with dignity, even when taking adverse action against them. Dignity helps to reduce the sense of loss and sets the tone for proceedings to follow. Union representatives, sensitive to the pressures under which the grievant may be operating, must provide support and assistance, not merely the required fair representation. Management and union advocates must try to ensure that their clients and witnesses understand the importance of an

orderly and dignified hearing process. Normally advocates can assess the potential for disruption and become aware of particular pressure points (e.g., issues, witnesses, subject areas, exhibits), that are likely to trigger disruption. They should work with their clients and witnesses in advance of the hearing to minimize problems.

In dealing with potentially violent persons, advocates should work cooperatively to assess the situation, take precautions, and work out guidelines for handling the problem. We arbitrators ordinarily do not know about security needs and may not consider it proper to raise the issue unless the parties tell us. Union representatives may rightly believe that the grievant has been wronged and therefore has a right to feel angry, but they may doubt that the employee would act out that anger. However, they should cooperate in security arrangements by contemplating the "worst case" scenario without coloring the arbitrator's impression of the grievant. By advance planning, precautions can be taken in appropriate cases to ensure a secure hearing room, security protection, and/or weapon checks, and the arbitrator can be alerted in a manner not prejudicial to the process.

Arbitrators and advocates can take comfort from a premise that the best protection results from maintaining and enhancing the traditional approach of arbitration, that is, dignifying the worker and the situation at issue and providing a positive and therapeutic opportunity for the worker to obtain a fair hearing and just result. A strength of arbitration is its therapeutic value. Most arbitrators are skilled in maintaining dignity and calm in the hearing particularly in the case of agitated employees. Giving the grievant an attentive audience is a positive experience and minimizes the likelihood of hostile or disruptive responses, particularly since part of the grievant's purpose in the hearing is to show ability to comply with rules of conduct. Arbitrators are adept at minimizing demonstration of personal rancor by supervisors and fellow employees who testify against the grievant so that their testimony does not degenerate into personal attacks.

Arbitrators and advocates can utilize recesses to work more effectively with hostile or difficult witnesses and to cool down potential disruption. An arbitrator can defuse these situations by speaking directly to the grievant if things seem to be getting out of hand: "I know, Mr. Smith, that this incident (or even this hearing) is very upsetting to you. Stay calm and you'll have an opportunity to tell your side of the story."

There are limitations on how arbitrators can assess and respond to threats, however. Flannery suggests that one way to assess employees in advance of the hearing is to make inquiries of their supervisors and fellow workers. Such inquiries by arbitrators are not usually possible, even when the arbitrator may be aware of the possibility of a threat. When advocates do not raise the issue themselves the arbitrator can inquire in a nondirective, non-accusatory manner. Many arbitrators would not find it appropriate to ask at all, since the exchange of this information may imply prejudgment by the arbitrator, a concession by the union, or a prejudicial accusation by the employer. Inquiries by the arbitrator to ascertain a threat must be general and nondirective (e.g., "In light of the nature of the charges, is there a need for special precautions in the hearing?" or "Is there anything special I need to be aware of in connection with the hearing?") Unfortunately, the circumstances where arbitrators feel least comfortable asking these questions may be the very ones where the advocates feel least able to work together or to volunteer the information.

Having complimented the advocates for their general sensitivity and practicality concerning grievants who may be disruptive or violent, let me indicate that advocates, particularly management advocates, are frequently required, as part of their job, to exacerbate the problem. For example, an employee, charged with assault, insubordination, or other confrontational behavior, who denies/minimizes the behavior will frequently be goaded on cross-examination by the employer's counsel in an attempt to produce the very behavior that the employee denies. I respectfully suggest that is an overused technique, to which the "new violence" lends new risk, and to which arbitrators and advocates should apply restraint. Union representatives may also exacerbate the situation with disturbed employees, giving them unrealistic expectations of their case. Using inflammatory rhetoric, they may help stir up an already disturbed grievant. Such cheerleading is a traditional part of advocacy, but should be applied sparingly in dealing with grievants who constitute a threat of violence.

Conclusion

We live in an open society, and our workplaces and hearing rooms reflect that openness. The price of openness is that a number of potentially dangerous employees are allowed to continue working, and those who are fired are allowed to challenge

the action and confront their accusers. As the level of concern about violence has increased, many employers have responded to minimize that risk. Their responses inevitably limit employee rights. Arbitrators stand as the balancers between employers' legitimate and heightened concerns about violence and the rights of employees under collective bargaining agreements. The coming decade will offer arbitrators a challenge to maintain that balance.