

INTRODUCTION

I've written and taught classes for decades on all types of issues concerning supervising federal employees. I find myself specializing in how to deal with problem employees that come to us in all forms and pose all types of distressing behaviors.

While all those behaviors affect the efficiency and effectiveness of federal operations, those effects are not equal. I'm not referring to the seriousness of the acts, but rather to the type of harm. For example, the government considers willful misuse of a government vehicle a serious act, and it's only one of three offenses specifically cited in federal law that commands an automatic penalty, in this case a *minimum* 30-day suspension, which essentially means you have to have a good reason *not* to fire somebody for it. I'm not saying it isn't serious, but if you look at it from a practical standpoint, the effect on the agency really is minimal. Sure, Uncle had to pay a bit more for gas and maintenance, the vehicle depreciated, the vehicle was not available for legitimate use, and there might have been some embarrassment when a private citizen saw it park in front of a strip club and a government employee go inside.

But nobody was hurt. Nobody lost any sleep. Nobody but the employee suffered any emotional harm. No office had to close down. Productivity was not endangered, except by employees gossiping for a while when a coworker gets suspended or fired. And I could make the same point for all types of otherwise serious offenses like theft, embezzlement, falsification, and dozens of others that, while major offenses deserving serious discipline, have little *practical* effect on the day-to-day operations of the offices or activities where they occurred.

There is one category of behaviors, or more properly misbehaviors, that has a dreadful and major effect on organizations: coworkers who disrupt. This disruption, even when it occurs at a low level, does affect productivity. It does cause employees to lose sleep, it does cause emotional harm, top employees do leave and find other jobs, it does cause employees to change their day-to-day work habits, it even does cause physical harm, and yes, offices have had to actually close down because of it.

Just ask any employee, even the most strong-willed, how he or she emotionally reacted when a supervisor made even a subtle reference to being sexually interested in him or her. Or, ask anybody who's simply worked around a perpetually angry coworker constantly listing for the benefit of coworkers his or her hatreds. Even if you agreed with the objects of his

or her disaffection, you start going out of your way to avoid the person, thereby affecting your own effectiveness.

Those are the topics of this book—employees whose disruptive behaviors affect their coworkers and hence the efficiency of your operation; and illegal harassment. In the first portion of the book I will cover disruptive behaviors that fall into two broad categories: verbal and physical intimidating behaviors and harassment against employees based upon prejudice. The first seven chapters will show you how to identify and deal with these intimidating and bullying acts. I'll show you the legal foundation, the tools we have available, and then turn to the practical steps to take when dealing with verbal behaviors and then incidents of actual workplace violence.

The remaining chapters will turn to illegal harassment of all types, but with more emphasis on sexual harassment. We'll look at the legal foundation, and then carry you through the steps in combating the behaviors.

CHAPTER ONE

DEFINING VIOLENCE

INTRODUCTION

“IF I CAN’T HAVE HER, NOBODY ELSE WILL”

“It’s not a matter of *if* he’s going to kill me, it’s only a matter of *when*,” she calmly told the Air Force investigator. She was a GS-4 at Myrtle Beach Air Force Base, working as a civilian in the base hospital. Her estranged husband, Airman Jeromy Willis, an active duty Air Force enlisted man, had a history of violent acts before and during his Air Force career. Airman Willis had most recently gone to the trailer she was living in, attached a hose from a propane tank into the trailer, turned it on, and tried to light the gas. She survived that one.

A few weeks earlier, right after they separated, he had gone to the base hospital and screamed at his wife in front of dozens of patients and employees. He stated that, if she did not come back, he was going to bring her son to her job site and kill them both.

When the criminal investigator from the Air Force Office of Special Investigations (OSI) confronted the husband, he showed not the slightest remorse and brazenly told the investigator, “If I can’t have her, nobody else will.” The investigator wrote a detailed report to the base commander recommending, if not begging, him to immediately initiate court martial proceedings, including pre-trial confinement, against the husband. The base commander dawdled and dithered, thinking that maybe they should wait until Airman Willis did something really bad.

He did. One week later, he walked into his wife’s job site at the hospital, pulled out his service automatic and put three nine-millimeter rounds into her head. He went immediately to the base legal office where he saw his aunt and uncle speaking to an Air Force lawyer in a conference room. He tried to force the door open, but his uncle was able to keep it mostly shut. He stuck his pistol through the crack and fired off a volley into the room, thankfully missing all inside.

He ran and disappeared for two weeks, but after his picture and story were featured on *America’s Most Wanted*, he was captured by Texas Rangers in a Texas border town.

Everybody paid. Airman Willis got off the lightest, spending the rest of his life breaking rocks at Leavenworth. His wife paid with her life. The Air Force and the Colonel were sued to the tune of tens and tens of millions of dollars.

The family sued both the Air Force *and* the Colonel in his personal capacity—a rare occurrence since the Justice Department usually substitutes the government as the defendant when a federal employee gets sued in his or her personal capacity. In this case the Justice Department cut him loose and let the family sue him successfully for everything he owned.

The Air Force was so shaken by the events at Myrtle Beach that it sent the investigator to conduct a detailed investigation of the airman's background from his upbringing, to his adulthood, to his entry and subsequent career in the Air Force.

The investigator later told me that going through the man's life was like watching a plot unfold in a book or movie where, even if you don't know the ending, you just know what is going to happen. It was at the same time inevitable, yet could have been stopped at any time.

Airman Willis had the classic upbringing that leads to these events—sexually and physically abused as a child, brought up in a violent environment, imbued with a hatred of women, and taking all types of drugs. The investigator told me that Willis should never have gotten into the Air Force for any one of a dozen reasons. Disturbing signs continued to surface after Airman Willis entered active duty. He constantly got into fights and other confrontations at basic training, and gave the Air Force dozens of reasons to board him out of the service administratively. After he married, visits to his home by police and base security personnel for spousal abuse were routine. Sadly, even up to the time of her death, management had many opportunities to take actions that would have saved her life.

SEVENTEEN SECONDS OF TERROR

On February 16, 2012 at the Department of Homeland Security (DHS) office in the Long Beach Federal Building, managers Kevin Kozak and Perry Woo called in supervisory special agent Ezequiel Garcia for a disciplinary interview. (All details and quotations from *AP Exclusive: 17 seconds of terror in gov't office shooting*. Tami Abdollah, October 29, 2015.)

Without warning, Garcia stood up, drew his service pistol, and fired across a desk at Kozak. The wounded Kozak, while being shot, began wrestling with Garcia. Kozak screamed at Garcia, "Don't do it! It's not worth it! We both have kids." Garcia answered, "It's too late!"

Kozak collapsed from his wounds, so Garcia turned to fire at Woo, who tried

to grab Garcia's gun, but Garcia shoved him onto a couch and put his gun to Woo's head. In an extraordinary act of heroism, severely bleeding from seven bullet wounds that would cripple him for life, Kozak stood and yelled at Garcia, "Zeke, it's me you want! I'm here!" When Garcia turned toward him, Kozak yelled to Woo: "Shoot him! Shoot him!" Woo stood, drew his weapon, and killed Garcia with one shot to his head. During the exchange, Garcia had fired 27 rounds, changing magazines once.

Kozak later said in an interview with the Associated Press (AP), "I never thought I'd have to defend myself in a secure office on a secure floor in a secure building. Wow, was I wrong."

After an 18-month investigation, it emerged that DHS had according to AP, "missed clear warning signs of a disgruntled federal agent's descent toward violence and could have intervened before he started a deadly gun battle inside a government office building."

DHS concluded that Garcia was a "walking advertisement for workplace intervention." No small part of his motivation was an overwhelming sense of being treated unfairly. He had been the subject of four sexual harassment allegations in one year, all substantiated, which resulted in his being transferred, increasing his Los Angeles county commute by more than an hour. He blamed DHS because he felt the extensive commute made it hard for him to reconcile with his wife. He also complained constantly to coworkers that his supervisors were unfairly scrutinizing him carefully in an attempt to demote him.

His previous supervisor said that Garcia told him that DHS, "had taken away from him everything that mattered" and added that he had to "talk [Garcia] off the ledge every day in an effort to motivate him to work." He had made troublesome remarks to his wife two days before the shooting that bothered her so much that she wrote them down.

The DHS report stated that there were, "missed opportunities for intervention that, had they been pursued, may have prevented the tragic result," and that his behaviors, "demonstrate acts of misconduct and behavior that would have alerted management, if they had been aware of his history." The report gave numerous examples, a few of which:

- DHS briefly revoked Garcia's authorization to carry his pistol and badge in August 2011, six months before the shootings, because he told his supervisor he had been taking Vicodin over the previous eight months for back pain. The supervisor opposed giving Garcia his weapon back, as he worried that Garcia would harm himself and others. He did not push the matter because he worried that Garcia might sue him.

- Since at least 2008, Garcia had sought treatment for depression, post-traumatic stress disorder and back pain, and had prescriptions for depression, anxiety, insomnia and pain. An autopsy of Garcia found a mild psychostimulant in his system from one of his prescriptions.
- Garcia was cleaning his pistol in the office on the day of the shootings and inexplicably put two extra 9mm magazines on his belt for two days prior to the shooting.
- Garcia blamed the post-traumatic stress disorder and serious back and neck injuries on the LAPD, which had mistakenly arrested him when he was working undercover 15 years earlier. OPM denied his request for disability retirement. The report stated that this “failure to obtain justice to his satisfaction for the wrongful assault” was another factor in his sense of victimhood.

In the same AP interview with Kozak, a former federal prosecutor, he said DHS, “failed to perform due diligence allowing Garcia to return to full duty and giving him back his gun....The agency was grossly negligent. The shooting should never have happened. He shouldn’t have been allowed to come back to work.”

These two cases and countless like them teach us that events like these *are* preventable. Protecting the health and safety of employees is the federal supervisor’s number-one responsibility. Even before dealing with performance, conduct, and other supervisory issues, the federal supervisor must do everything possible to make sure that all employees are safe from all manner of physical danger.

Dangers can confront the federal worksite in a variety of forms. Take the simple example of an employee suffering from a bad case of the flu coming to work in an office around other employees. Many supervisors, impressed by the employee’s dedication to the job or fearful of confrontation or a grievance, will do nothing. However, the right-thinking supervisor will recognize the danger that the employee poses to other employees and their families, and immediately send the employee home on involuntary sick leave.

Safety issues are another example. Supervisors in both white and blue collar environments must take an aggressive approach to situations that pose a hazard or danger to employees. This ranges from something as simple as making sure people wear seat belts when driving government vehicles to full-blown, detailed safety inspections of the job site.

The most prominent example these days is workplace violence. We’ve all seen the stories and the statistics. Not to belabor them—because you

wouldn't be reading this book if you didn't take the matter seriously—but just a few samples to illustrate the magnitude of the problem.

In any given week, about 20 American workers are murdered. The leading cause of work-related deaths in most states is workplace violence. It is the leading cause of workplace fatalities among women employees, and about 20% of these fatalities were caused by husbands or male partners, past or present.

Data on non-lethal acts of violence is difficult to gather because so much of it goes unreported, but the federal government estimates that about one million American workers are attacked every year.

DEFINING WORKPLACE VIOLENCE

HOW FEDERAL AGENCIES DIFFER FROM OTHER EMPLOYERS

Before we take our first step in discussing workplace violence, we must lay the foundation with a crucial prefatory note: dealing with workplace violence and related issues like intimidating conduct, antisocial behavior, and non-verbal aggression is markedly different in federal service from the private sector for several reasons.

Virtually all federal employees have, depending upon their employment status, varying rights and protections that both define and limit how federal agencies deal with the types and levels of workplace violence. For example, employees in the competitive service who have finished probation and those in the excepted service who have completed the trial period have appeal rights to the Merit Systems Protection Board (MSPB) over, among other actions, disciplinary actions over 14-day suspensions. While the MSPB is wholly unsympathetic towards violent and otherwise cruel federal employees, it does set standards for exactly what behaviors agencies may sanction and those they must grudgingly tolerate.

All federal employees, regardless of probationary or appointment status, are covered by the Americans with Disabilities Act (ADA), which is enforced by the Equal Employment Opportunity Commission (EEOC), and the ADA covers many issues related to violence. For example, as we'll discuss in detail later, the ADA and the EEOC regulations set strict standards for when you may and may not send employees to mental fitness-for-duty examinations. One federal agency, ignoring them, marched an employee who was disrespectful to an IG off to a psychiatric exam, which resulted in the unforeseen outcome of EEOC directing the agency to write the employee a check with a lot of zeros after a number.

On the other hand, in the private sector employees not protected by a contract (over 90%), serve at will and can be separated for any reason not prohibited by law. For example, virtually all the pamphlets, manuals, and policy guidance provide signs to watch for to identify potential violent offenders, one of which is someone who talks too much about guns. A private sector company could legally fire an employee who fit that description or was a member of the NRA. On the other hand, there's no way you would get away with removing a tenured employee in federal service for the exact same acts.

In federal service we have limited resources and options for dealing with many of these problems. For example, many ask why federal civil service cannot send employees exhibiting aberrant or disruptive behavior involuntarily into government or private treatment facilities. The answer is simple: Congress has never seen fit to give federal agencies the authority or the extensive resources necessary to rehabilitate troublesome civilian employees. On the other hand, Congress has seen fit to give the military such power and resources, giving it far more options than we civilians have. Any options along those lines are simply off the table for us civilians.

With that foundation, let's turn to defining workplace violence.

WHAT IS WORKPLACE VIOLENCE

First, we must define our terms, because there are many competing definitions out there. As good as any is the definition from the National Institute for Occupational Safety and Health (NIOSH), which defines workplace violence as:

Any physical assault, threatening behavior or verbal abuse occurring in the work setting. It includes but is not limited to beatings, stabbing, suicides, shootings, rapes, near suicides, psychological traumas such as threats, obscene phone calls, an intimidating presence, and harassment of any nature such as being followed, sworn at or shouted at.

It's good definition, as far as it goes, but I would add three elements for the federal workplace. First, workplace violence is not limited to the physical boundaries of the office building or other field work sites of federal employees or is it limited to the office hours of work. "Workplace" violence could occur anywhere. A federal employee who goes to a coworker's or supervisor's house and threatens or attacks him or her is just as guilty of workplace violence as if it happened at the office during working hours.

Second, violent behavior in a federal workplace is not limited to deliberate acts with intent to harm. Violent behavior also includes horseplay and other

physical acts that are not necessarily intentionally threatening or abusive. While these actions may seem harmless, they can escalate and have a negative and disruptive effect on the workplace. Management has every right to prohibit the behavior and discipline those who commit it, as I will discuss in [Chapter 5, Physical Violence](#).

Third, workplace violence includes any other form of intimidation. The NIOSH definition mentions “intimidating presence.” Intimidating presence is not limited to verbal acts, and includes non-verbal behaviors that unsettle the worksite. Federal employees have been successfully disciplined for non-verbal acts like making the sign of a pistol with forefinger and thumb in somebody’s direction or drawing the forefinger across the throat.

For purposes of the federal worksite, we shall define workplace violence as:

Any hostile physical, verbal, or intimidating act. Physical acts include any aggressive physical contact such as striking or even pushing another employee, even horseplay and other acts not necessarily intended to harm. Oral acts include direct physical threats, implied threats, or any menacing speech. Other intimidating behavior includes physical gestures, body language, or proximity intended to frighten other employees.

TYPES OF WORKPLACE VIOLENCE

Workplace violence takes four basic forms. In order of frequency in federal agencies, you will be confronted with violence in these forms:

Violence by Coworkers

The most common form of workplace violence is that committed by federal employees against their coworkers—the workplace shooting at DHS that we discussed earlier in this chapter. As we shall see, this violence can take many forms from verbal abuse to full-blown acts of physical violence that may even involve weapons.

The reasons underlying violence between coworkers are too numerous to count. Sometimes it’s the culmination of a long feud; often it’s caused by angry people being pushed over the edge; sometimes it’s the result of horseplay gone too far; and in a small percentage of cases, much less than people think, the attacker suffers from mental problems that cause the attack.

While we’ll look at all four forms of violence, this book will concentrate on violence by coworkers for the simple reason that it is the one form of violence over which managers have the greatest control. Your measures

in dealing with the other three forms of violence will be mainly preventive and passive—security measures, employee training, and administrative controls.

A supervisor is in a very different position when dealing with violent acts by employees. As a supervisor, you have total control over whom you hire, the rules employees are subject to, how you monitor employees. Supervisors have the power to take low-level corrective actions to stop problems while they are still minor, and then ultimately the serious disciplinary actions either for one-time serious acts or for the last of a series of acts resulting in prior progressive discipline.

Violence by Clients

Next in incidence of frequency is violence by the clients or customers of an agency. The most common example, of course, is federal law enforcement officers who get attacked by a variety of people on the job whom they're required to deal with. These federal employees though, are usually specifically trained and equipped to deal with those situations.

Agencies must also confront the greater problem of dangers facing employees who are not law enforcement officials. Federal employees who work in government hospitals, such as the VA, military, or Indian Health Service facilities, are subject to attacked by patients for a variety of reasons.

Social Security Administration offices that are open to the public occasionally have angry claimants who attempt a variety of retaliatory measures when they get bad news. Out here in the west, the hatred of federal resource agencies like the Forest Service and Bureau of Land Management is intense among many rural residents, and it is not uncommon for employees who work in the field to be subjected to constant danger from physical attacks, even including firearms.

What makes this form of violence different is that it is the job of your employees to deal with these people. You cannot simply say that you will no longer deal with the public. You have to be in those locations and you have to deal with those people.

Violence by Relations

The third most frequent form of workplace violence is that committed by relations of employees. This is the classic ex-boyfriend or angry husband coming into the workplace to threaten or attack one of your employees. As with the criminal act that we'll discuss in the next section, the violence is unrelated to what the federal agency does.

However, unlike the criminal act, it is not a random act; the offender committing it is there for a reason and has specifically targeted this particular person. The danger, though, is not limited to the person being targeted. Many of these incidents result in serious injury or death to coworkers who are simply innocent bystanders. In the case of Airman Willis above, he also fired off several more shots at a JAG officer and several relatives of his wife who were talking with the officer trying to persuade the Air Force to take the danger to the wife seriously.

Criminal Activity

The last and least likely is straightforward criminal activity that is unrelated to the purpose and mission of the agency. The motive is unrelated to anything the agency does, and the agency is essentially a random victim. When I worked for OPM in San Francisco, our downtown office was on the fringes of an area of creeping gentrification and still inhabited by a variety of the *demimonde*. The area is now a yuppie heaven, with condos, boutiques, beautifully appointed and lavishly landscaped office buildings, and one of America's most beautiful baseball parks. At that time, though, it was not and while it was not common, we did have people come into the building, usually for the purpose of stealing something from offices, who would react violently if caught or otherwise confronted.

A related problem was that employees working late and leaving after work in the winter months going home after dark and walking many blocks to parking lots or public transportation where they were susceptible to street crime. Not only did we take appropriate preventive security measures in the office, we even went so far as to prohibit employees from staying past certain times to minimize the dangers they might face when leaving work.

Similarly, many other federal agencies have been victimized by assaults on employees by people breaking in, committing armed robbery, or committing other violent crimes some of these sadly resulting in death or serious injury to federal employees. Again, the important feature of these acts of violence is that they are completely unrelated to what the Federal agency does.

TOOLS IN DEALING WITH WORKPLACE VIOLENCE

Throughout this book, we shall examine a variety of tactics and strategies for dealing with workplace violence. None of them, however, will have much of an impact individually. You have to work at it with a variety of measures, and what is important is that you spend time dealing with the issue. Nancy Austin in *Passion for Excellence* tells us that there is no such thing as quality time. If you want something to change in an organization, you have to