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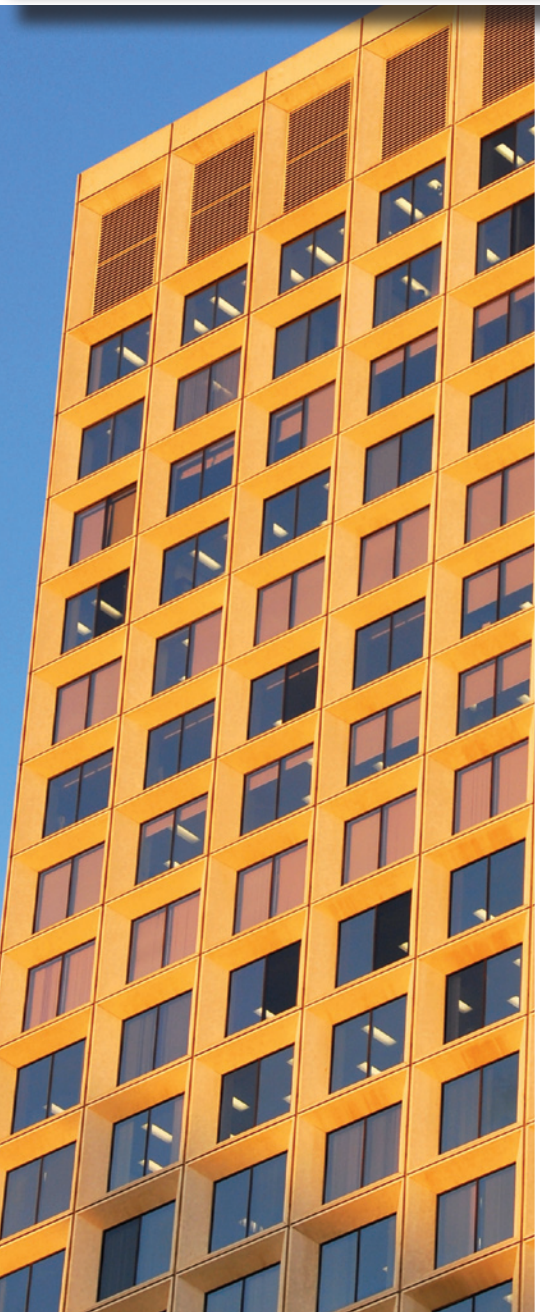

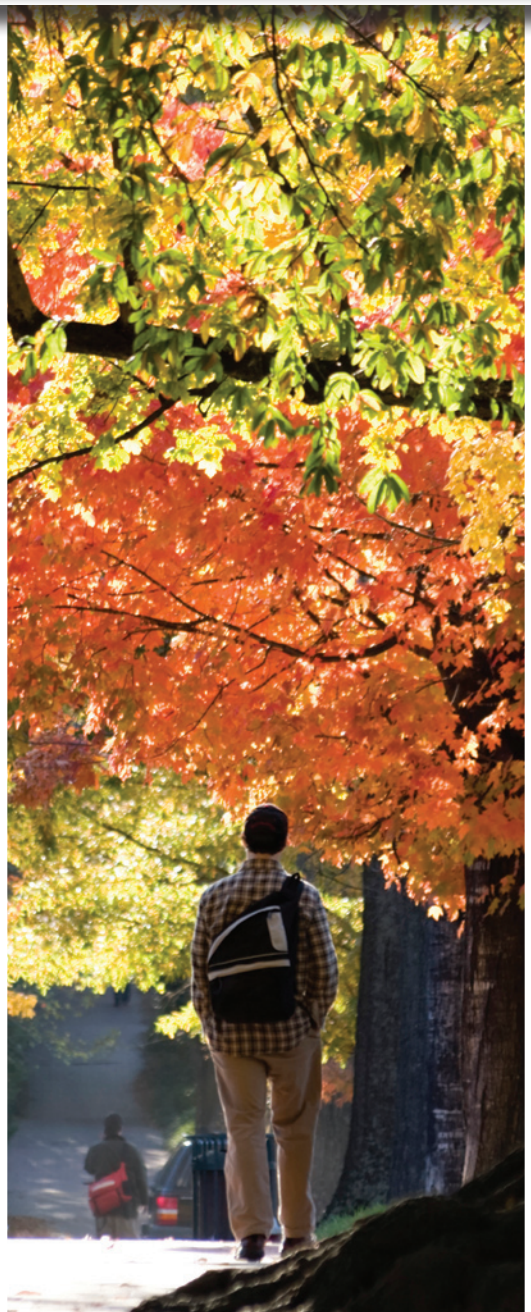

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Director**

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FBI Law Enforcement Bulletin

Features

Campus Safety
By Mario Scalora, Andre Simons, and Shawn VanSlyke
1 *Effective assessment and management strategies can help authorities address various threats facing campuses.*

Threat Assessment Teams
By Steve Albrecht
15 *Threat assessment teams strive to prevent or manage violence at schools and workplaces.*

Retaliation in Discrimination Cases
By Lisa A. Baker
25 *Employers should take proactive steps to train managers to ensure that they understand the concept of retaliation.*

Departments

11 **Leadership Spotlight**
Hey, Did You Hear About...?

12 **Perspective**
The Tragic Toll of Police Work

14 **Unusual Weapon**
Pepper Pager

22 **Bulletin Reports**
Stalking Victimization
Language Barriers
Reducing Crime
Community Policing

24 **ViCAP Alert**
Homicide Victim

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Campus Safety

Assessing and Managing Threats

By MARIO SCALORA, Ph.D., ANDRE SIMONS, M.A., and SHAWN VANSLYKE, J.D.

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Since the shootings at Virginia Tech, academic institutions and police departments have dedicated substantial resources to alleviating concerns regarding campus safety. The incident in Blacksburg and the similar tragedy at Northern Illinois University have brought renewed attention to the prevention of violence at colleges and universities.

Campus professionals must assess the risk posed by known individuals, as well as by anonymous writers of threatening communications. The authors offer threat assessment and management strategies to address the increased demands faced by campus law enforcement, mental health, and administration officials who assess and manage threats, perhaps several simultaneously.[1]

A CHALLENGE

Campus police departments have come under increasing pressure to address targeted violence and related threatening activity. College and university grounds often are porous, vulnerable to various types of threats (e.g., stalking, domestic violence, and other activities conducted by disturbed or disgruntled students and employees) from both internal and external sources.

The campus safety professional must deal both reactively and proactively with these numerous threats. As much of the current literature concerning campus violence has focused on the elementary and high school levels, campus safety officials often must rely on data and research related to a younger age demographic operating in less diverse physical environments.

Campus law enforcement and safety agencies often are small compared with urban police departments, yet they operate within large, active communities. Further, campus safety officials must work with a variety of stakeholders, including faculty, staff, administrators, students, and community members, and coordinate with law enforcement agencies responsible for the overall jurisdiction within which the institution is located. The campus safety official must accomplish all of this while preserving the tenets of an academic environment that values debate, free expression, and creativity. Unfortunately, the effort may be complicated by the fact that some people view law enforcement through an adversarial lens where campus safety measures conflict with these academic ideals.

A SOURCE OF HELP

Through the application of case experience, education, specialized training, and research,

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the FBI's National Center for the Analysis of Violent Crime (NCAVC), part of the Critical Incident Response Group (CIRG), provides behaviorally based investigative and operational support to complex and time-sensitive situations involving violent acts or threats. Its Behavioral Analysis Unit-1 (BAU-1) assesses the risk of potential terrorist acts, school shootings, arsons, bombings, cyber attacks, and other incidents of targeted violence. Since April 2007, the unit has responded to numerous college and university requests to address cases of potential mass shooters. However, BAU-1 also has worked cooperatively with campus safety officials to craft effective threat management strategies pertaining to many other types of campus-oriented threats.

- For 20 years, a male subject with no formal relationship to or status on a campus but residing nearby continually harassed students and staff and blatantly disregarded formal requests to stay away from the grounds. Recently, he sent a letter containing hyperreligious references and veiled threats to the administration in which he expressed outrage over the revealing nature of dress exhibited by coeds attending services at his church.
- Extremists targeted a university laboratory because of its use of animals in research. Officials became concerned that one or more insiders set up the attack and continued to pose a threat to the safety of the laboratory, campus, and staff. University professors engaged in biomedical research received death threats, including those targeting their family members, at their residences.

> ***"College and university grounds often are porous, vulnerable to various types of threats...from both internal and external sources."***

- College authorities received a frantic call from a parent of an incoming freshman who had found a profile on a social networking Web site of his assigned roommate and discovered several references to bombing the school and taking mass casualties. When subsequently confronted, the student of concern explained that these simply reflected his creative side and sense of humor.
- A cheerleader advisor at a large university received an anonymous letter containing threats to disrupt collegiate sporting events and kill innocent people, including school children, unless authorities met seemingly bizarre demands, the nature of which pertained to network television coverage and the perceived discrimination against cheerleader squads outfitted in sleeveless tops.
- A human resources specialist reported the potentially problematic termination of a disgruntled employee who allegedly made multiple references to recent acts of school violence and commented on how easily such an incident could occur within the individual's own campus. The employee also reportedly threatened, "They better not fire me if they don't want the same thing here."

AN EFFECTIVE APPROACH

As a policing plan, a collaborative and standardized threat assessment protocol can prove valuable in addressing the various internal and external threats to campuses. Ideally, it involves flexible strategies to evaluate the range of observable behavioral factors (e.g., identified versus anonymous subject,

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the individual's motivations). Threat assessment methodology considers contextual, target- and subject-specific, and behavioral factors to determine the risk of violence.[2] Different from profile-based techniques focused primarily on subject characteristics, models of this approach deal more with the interaction of the perpetrator's behavior, the target's vulnerability, and related factors.[3] Further, threat assessment differs from various surveys that evaluate site or asset vulnerabilities.[4]

A prevention-oriented strategy, threat assessment strives to accurately identify risks and to implement appropriate measures designed to minimize the potential for violence. To this end, investigators must evaluate the nature of the concerning (e.g., threatening or agitated) behaviors; the possible motives and nature of the displayed grievance; and the target's, or victim's, reaction. The nature and intensity of the threat posed depends on how far the subject has escalated along a chain of behaviors that move from ideation to threatened or problematic action.

Lessons Learned

The experiences of law enforcement officers, as well as campus public safety personnel, administrators, and mental health practitioners, can provide valuable insight. The authors offer lessons learned from their own practice and from threat assessment literature.

Avoid Tunnel Vision

When planning strategies to prevent and manage threats, authorities must recognize that campuses face them from a variety of sources, both internal and external, as indicated by the incidents addressed by BAU-1. While much attention focuses on violent students, public safety officials should resist a myopic approach and remain vigilant to *all* potential threats, recognizing that outsiders, employees, and other consumers of campus services may pose a threat to safety. Through comprehensive planning and collaboration, officials should anticipate multiple potential sources of violence and plan for copycat and hoax activity in the wake of highly publicized attacks at other institutions. While extreme acts of campus violence are rare, all stakeholders must consider themselves fortunate but not immune from the myriad safety concerns that plague colleges and universities across the nation.

Recognize Campus Values

Safety policies must respect institutions as unique environments of higher learning. Acts of extreme violence often reflect hatred, intolerance, and bigotry, and people recognize that such behavior cannot be tolerated within campus environments. Scholarship, creativity, and the fruitful exchange of ideas and learning could not thrive. Yet, the actual work of fusing pragmatic security measures with cherished Promethean ideals can prove challenging. Through education and outreach, campuses can allow safety planning and preparation to flourish as friends of an open campus environment.

In recognition of this balance, safety strategies should be flexible. Rigid policies (e.g., zero tolerance) do not necessarily promote secure environments and may contribute to outlandish applications of discipline that enrage and alienate the general campus populous. Administrators should review harsh disciplinary measures that may discourage individuals from reporting concerns and suspicions for fear a coworker or fellow student will face unjust punishment.

Communication must flow freely between consumers and providers. Students, faculty, and employees first must fully understand the mission of public safety before they can cooperate with and support it. Therefore, administrators and campus law enforcement personnel should seek opportunities to provide campus consumers with information concerning threat assessment reporting protocols, as well as information concerning confidentiality. Authorities should consider facilitating confidential reporting opportunities via text messaging, e-mail, and other Web-based resources. Attackers typically do not make direct threats to the targets, but they often "leak" their intentions to a range of bystanders. Perpetrators with hostile aspirations often manifest concerning behaviors, including ominous and menacing verbal statements; violent-themed content posted on social networking sites; and written assignments saturated with hatred, despair, and rage. Maximizing and streamlining the opportunities for these bystanders to recognize and report troubling behaviors remains one of the essential challenges faced by campus safety professionals.

> **"...a collaborative and standardized threat assessment protocol can prove valuable in addressing the various...threats to campuses."**

Assess Threatening Communications

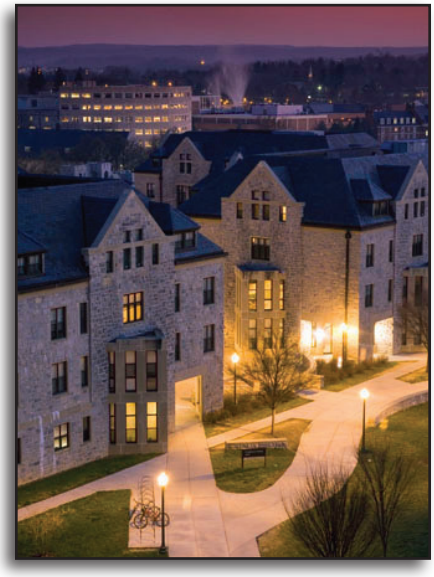
Assessing threatening or intimidating communications does not stifle creativity but, rather, represents a key aspect of maintaining a safe campus. Sometimes, faculty members may encounter disturbing or violent text or imagery from students while reviewing course assignments or conducting other classroom activities. Several noteworthy examples exist of subjects telegraphing or rehearsing violent intentions through text and video media. Though not all graphic or violent imagery necessarily predicts an individual's actions, campus personnel should report such content for a discrete threat assessment. At a minimum, a student could be pleading for help through such disturbing messages. Faculty members may feel hesitant to report them for fear of creating a chilling effect within the classroom or alienating the student. However, a discrete threat assessment might allow campus law enforcement personnel and other professionals to not only gauge risk but also work with the faculty to develop strategies to approach the student.

Officials should evaluate drawings, essays, or videos that depict extreme acts of hostility, aggression, homicide, or suicide within the totality of the circumstances. Examining such products as part of an overall tapestry or mosaic further demonstrates the important role of the threat assessment team (TAT), which also can consider other pertinent factors, such as whether the student has actively sought to obtain items depicted in drawings (e.g., trench coats, weapons, masks).[5]

For instance, a student discloses to a mental health provider a particular resentment toward an individual. The counselor then learns that the subject has posted a video online in which he insults and disparages the person. A different video features the student shooting a handgun at a firing range. In a class assignment, the same subject writes of his overwhelming sense of despair and rage against the wealthy students at the university. Taken alone, each of these factors may not seem particularly dramatic, but, taken together, the TAT can begin to fully comprehend the true level of potential risk posed by the individual and manage it effectively.

Share Responsibility

Recognizing the need to gather information on any particular subject from a variety of perspectives, threat management within the campus requires participation from multiple stakeholders, including, among others, student affairs, faculty, administrators, mental health care providers, and law enforcement officers—possibly municipal, considering the blended boundaries that often exist between on- and off-campus facilities. No single agency or other entity can manage the range of threats posed to university and college settings.



TATs should contemplate a holistic assessment and management strategy that considers the many aspects of the student's life—academic, residential, work, and social. Various colleges and universities have recognized the complexity of campus life and created teams designed to deal with crisis situations on campus, complemented by separate TATs designed to address long-term follow-up issues, such as treatment compliance and reintegration.

A TAT with diverse representation often will operate more efficiently and effectively. In one case, the BAU-1 evaluated a university student who, in the months following the shootings at Virginia Tech, had engaged in increasingly bizarre behaviors, to include the torturing of animals. The subject had collected photographs of friends and drawn target circles around the head and face of one individual. The student made numerous disturbing statements that included claiming he was the best shot in the state and asserting that he would be "the next Virginia Tech." Perhaps most disturbing, he had constructed a makeshift shooting range in his backyard for target practice.

The college's TAT had worked diligently in the months preceding this incident to establish lines of communication with external law enforcement agencies. Accordingly, the TAT activated an external network of allied agencies to identify crisis management strategies for reducing the potential for violence. Mental health practitioners and law enforcement officers and agents representing university, local, and federal organizations

instantly collaborated to design and implement an intervention strategy. Campus and municipal law enforcement officials located and interviewed the subject, then discovered that he had procured a semiautomatic handgun and a rifle. The student agreed to be voluntarily committed to a hospital for a mental health evaluation. Although he later revoked his permission, doctors had witnessed such disturbing behavior during their time with him that full commitment was authorized. One doctor considered the subject a "time bomb" who undoubtedly would have perpetrated an act of violence had the TAT not intervened. While this student was clearly engaged in disturbing behavior, the decision to intervene was enabled by preexisting channels of communication that facilitated a rapid and effective response.

Pinpoint Dangerous Individuals

Authorities should focus time and effort on individuals who actually pose a threat. Consistent across several studies and a central tenet of threat assessment literature—although some perpetrators may alert third parties or, perhaps, even their target—threatened violence does not necessarily predict that an individual ultimately will engage in the act.[6]

In the authors' experience, a direct but generic communicated threat to commit campus violence on a certain date (e.g., "I'm going to kill everyone in this library on May 9!") rarely materializes. By alerting public safety officials of their intent and the date of the attack, a threatener sets off a predictable chain of events resulting in additional security measures (e.g., bomb dogs, check points, evacuations) that ultimately reduces the chance for success. Therefore, a communicated threat announcing the plan generally proves counterproductive to the plan itself. Of course, authorities must take all threats seriously and investigate them to the fullest feasible extent. However, campus safety professionals should remain aware of the clear distinction between threateners and attackers.

> **"...threat assessment strives to accurately identify risks and to implement appropriate measures designed to minimize the potential for violence."**

Do Not Rely on Expulsion

Except as a last resort and unless absolutely necessary to ensure campus safety, authorities should avoid the temptation to simply expel students of concern to quickly resolve a risk. Isolated from other contingency and safety planning, this strategy sometimes can worsen matters. The final humiliation of expulsion may serve as a precipitating, or triggering, stressor in the subject's life and propel the marginalized and hostile individual toward violence. Even after they physically remove the subject from the campus, officials will find it difficult, if not impossible, to prevent a determined student from returning. While expulsion remains an option, authorities must carefully consider the ramifications and limitations of such an action.

Students requiring discipline often can receive monitoring through mental health or other resources mandated by campus student services or judicial affairs offices more easily if not thrust unwillingly into the unstructured outside environment. Short of subjects displaying some extremely troubling behaviors that warrant immediate expulsion, campus professionals and law enforcement officers may collaborate to monitor such individuals on a probationary status. Officials should consider

the potential for such monitoring on a case-by-case basis.

Rather than isolating the subject and possibly exacerbating existing grievances, university officials can explore ways to integrate the student into an environment where monitoring and treatment coexist with safety and security. For instance, authorities can make appropriate referrals, with follow-up, to social services, mental health, and psychological counseling resources. Although officials must ensure the overall safety of the campus, they can benefit from a supervised integration, rather than isolation, of the individual. Doing so allows them to put the student into a supportive educational environment and to monitor, reinforce, and adjust interventional treatment strategies.

Also, in certain cases involving a student separated from the university, authorities should consider reintegrating the individual, provided the maintenance of appropriate safeguards. Presumably, students who suffer from a serious physical or medical condition will have the approval to pause studies, receive treatment, and return to classes with full privileges. While these individuals clearly present an entirely different scenario from those who pose a threat, it may be worthwhile to consider reintegrating a student who receives appropriate mental health care, treatment, and counseling and who demonstrates a record of compliance with security and treatment parameters.

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If a subject presents safety concerns far too serious for reintegration to the campus environment, officials should consider active engagement in a process to ensure that the individual is not left adrift and isolated. While campus authorities do not traditionally take responsibility for assisting in students' lives once they leave the institution, it seems prudent to adopt a long-term threat-management perspective, collaborate with outside agencies, and become an active participant in the process to minimize the potential risk an individual still could pose to the campus. Campus safety professionals should check with legal counsel to verify that such contact with and monitoring of a former student is permitted.

Officials may find that some students are suitable candidates for nontraditional or creative arrangements that enhance security without exacerbating or increasing the risk of violence. For example, a community college received reports of disturbing behavior from a male student making troubling statements and stalking females. Although only one semester from graduating, his behavior had escalated to the point that he could not remain on campus. Expelling this student potentially could have stoked resentment while simultaneously cutting off the college's ability to monitor

his moods, statements, and behaviors. Thinking creatively, officials arranged for him to receive video-recorded copies of classes at his off-campus residence. An administrator who previously had positive interactions with the student and who had the individual's trust served as a primary point of contact. The administrator maintained regular interaction with the student to ensure the completion of his assignments and, more important, to gauge his level of anger and his disposition. The individual successfully completed assignments via e-mail, graduated on time, and avoided becoming further disenfranchised as a result of an expulsion.

Use a Single Point of Contact

When monitoring cases, campus safety professionals should consider providing a single contact (i.e., a "temperature taker") to a subject. The initial intervention with a student may prove insufficient as additional follow-up may be necessary. In some cases, continued monitoring of the subject's behavior or communications will be needed. Either way, someone must have responsibility for monitoring or conducting follow-up of the situation. Given that multiple campus entities could partner to provide support, authorities must ensure communications to a subject are consistent and "on the same page" to avoid confusion.

The FBI's Behavioral Analysis Unit, part of the Critical Incident Response Group, offers assistance in conducting threat assessments and developing risk management strategies. The unit can be reached at 703-632-4333.

A Campus Example

Campus authorities can perform collaborative threat assessment and management activities by organizing existing resources. It is critical to have one entity responsible for coordinating and monitoring situations. The University of Nebraska-Lincoln (UNL) has successfully implemented a TAT that has addressed dozens of situations. It consists of officers specially trained in threat assessment, as well as a consulting psychologist. Other campus personnel (such as those in human resources and mental health and student services) participate on an as-needed basis. The university's police department has primary responsibility for the security of the campus and properties and the investigation of criminal incidents occurring on university grounds.

University stakeholders can make a referral for a threat assessment when encountering a concerning behavior, and, through various campus educational activities, the TAT encourages them to do so. In addition to training sessions to encourage prevention and early reporting, TAT members also reach out to human resources and student affairs staff with guidelines and criteria for use in screening for problematic student or employee issues that may raise concerns or warrant referrals. The TAT also monitors campus and local police contacts for incidents (e.g., domestic violence, protection orders, stalking allegations) that may warrant further assessment or monitoring of potential threats to the campus setting. Additionally, TAT members coordinate interventions with other university services, as well as monitor situations as warranted, to ensure that there is no flare-up of a posed threat. As a key focus, the TAT has educated and collaborated with a wide range of university stakeholder groups.

CONCLUSION

Colleges and universities strive to attain the noble goal

of making society better. Unfortunately, recent events have highlighted the reality that not even these institutions of higher learning are immune to unthinkable acts.

Of course, campus and law enforcement authorities want to address this problem and keep students, faculty, and others safe. While all segments of society, including campuses, face danger of some sort, by incorporating effective threat assessment and management strategies, officials can put measures in place that will meet this challenge head-on.✦

Endnotes

[1] Throughout this article, the authors refer to campus law enforcement in general terms. They understand that campuses may vary regarding the presence and amount of law enforcement and public safety officers.

[2] J. Berglund, R. Borum, R. Fein, and B. Vossekuil, "Threat Assessment: Defining an Approach for Evaluating Risk of Targeted Violence," *Behavioral Sciences and the Law* 17 (1999): 323-337; and M.J. Scalora, D.G. Wells, and W. Zimmerman, "Use of Threat Assessment for the Protection of Congress," in *Stalking, Threats, and Attacks Against Public Figures*, ed. J. Hoffman, J.R. Meloy, and L. Sheridan (New York, NY: Oxford University Press, 2008).

[3] J. Berglund, R. Borum, R. Fein, W. Modzeleski, M. Reddy, and B. Vossekuil, "Evaluating Risk for Targeted Violence in Schools: Comparing Risk Assessment, Threat Assessment, and Other Approaches," *Psychology in the Schools* 38 (2001): 157-172.

[4] U.S. Department of Justice, National Institute of Justice, *Threat Assessment: An Approach to Prevent Targeted Violence* (Washington, DC, 1995).

[5] A standard definition of TATs does not exist. Generally, such teams are multidisciplinary in nature, bringing together campus professionals responsible for safety and behavioral management (e.g., campus safety, law enforcement, mental health, EAP, human resources, and student affairs personnel). Team composition also may vary based upon the focus of the TAT (e.g., issues pertaining to students or personnel, external threats), as well as the resources available given the size of the institution.

[6] *Threat Assessment: An Approach to Prevent Targeted Violence*.

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Hey, Did You Hear About…?

"Hey, did you hear about the reorganization that is coming?"

"You're kidding. Is the chief moving all the lieutenants around again? Did you hear anything specifically about me?"

"Well, I don't know any details, but something is happening. I'm hearing it from a pretty reliable source."

These types of informal conversations occur every day in our organizations. Sometimes, the rumors are big; sometimes, they are little. Sometimes, the gossip is based on fact; sometimes, it is pure speculation or opinion. And, while most every squad or unit has one or two gossipmongers (some malicious, some overly nosy), the truth is that we all engage in rumor and gossip at some level. The real issue surrounding these informal communications is their value. Do gossip and rumor hurt our organizations, or do they serve a legitimate purpose?

The downsides are significant. Gossip is a surefire way to spread incorrect information. Even when the content is fairly accurate, it usually is so out of context that the truth still is distorted. Incorrect and incomplete information can cause a variety of problems in an agency, not the least of which is damaged personal and even organizational reputations. Rumors also often cause unnecessary anxiety. Part of the human condition in any change setting is that we first ask ourselves (and often others), "How will this affect me?" That question generally is followed by "What will I lose?" These two questions can work an organization into a frenzy in just a short amount of time. In fact, research has shown that rumor and gossip can demoralize a workforce, waste valuable time, and even weaken productivity.[1]

My kids have been hearing me say for many years, "Gossip makes you weak!" Yet, I have to be fair and pay gossip and rumor its proper due. Organizations need informal communications for many reasons. We use them to socialize by stirring conversation. We use them to establish buy in on projects and people. We use them to align practice with our organization's vision, mission, and values. We use informal communications to actually form our organizational cultures. The trick is to determine the motive in our conversations.

To this end, I offer a few suggestions. Self-evaluate every time you sense yourself or others starting to engage in rumor or gossip. If the conversation has no value other than to vent or entertain, then stop. Hold yourself accountable, and hold others accountable as well.

Lead as transparently as possible, and provide as much information to your employees as you can. Gossip and rumor occur most frequently when policies, information, and initiatives are ambiguous. Absent credible information, "employees are likely to engage in…behaviors, such as gossip and rumor, to explain the unexplained."[2]

Informal communications are an inherent part of organizational life. They can be harmful or actually add value to an agency. Effective leaders respect the power of these communications and develop strategies to mitigate the bad while leveraging the good. So, did you hear about…?✦

Endnotes

[1] P. Bordia and N. Difonzo, "How Top PR Professionals Handle Hearsay: Corporate Rumors, Their Effects, and Strategies to Manage Them," *Public Relations Review* 26, no. 2 (2000): 173-190.

[2] R. Houmanfar and R. Johnson, "Gossip and Rumor in Organizations: A Brief Overview"; retrieved November 18, 2009, from *http://www.obmnetwork.com/consulting/tips/houmanfar_gossip/*

Dr. Jeff Green, chief of the FBI Leadership Development Institute, prepared this Leadership Spotlight.

Perspective

The Tragic Toll of Police Work
It's Time for a Compassionate Approach

By Joseph Pangaro, C.P.M.

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Having served my community for 24 years, I have come to some understanding about this career in law enforcement and the things we do. Our profession calls on us to be the calm during a storm, the voice of reason in unreasonable situations, and the emotionless authority that makes things better. These are high ideals for mortal men and women.

The Observers of Society

From the time we graduate from the police academy, we are advised that we simply are observers of happenings. We are not personally involved in the events we encounter. We are told that the horrific scenes and the destruction of people's lives we witness are part of the job. The pain and suffering we see people living with are not our pain and suffering. Don't take it home with you. Forget about it. Ignore it.

That sounds easy until you are called on to tell a wife that her husband was killed in a senseless car accident; to watch helplessly as a mother cries over the dead body of her drug-addicted child; or to see precious, innocent children abused by the adults in their lives. We as law enforcement personnel have to witness and live with such terrible situations every day. We are taught to push these images out of our minds and leave them at work. The culture of law enforcement encourages us to believe that we can just move on from these things, but I don't think it really works that way. I believe that these default positions build up and take a toll on us over the years. They wear us down emotionally.

The Effects of Policing

I point to the sobering statistics of law enforcement suicide. Every year in the United States, criminals kill between 100 and 150 of us.[1] This is a staggering reality and a tragic part of our job. What is worse, though, is that we kill ourselves at twice that rate, almost 300 police suicides a year.[2] That is higher than any other profession, and there is a reason. I believe that reason is the common practice of moving through the painful, emotionally draining situations we face every day and trying

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to ignore them. We are tough. Those things don't bother us. Right?

Cop humor is famous in our circles. The things we say and the jokes we make at some of the scenes we end up at would leave the people outside our profession speechless. If they heard some of the comments and wisecracks we make, they would run out of the room screaming, convinced that we were crazy. Cops, however, know that this humor is not callousness. It is a way to deal with the things we encounter and a way to have control over what we cannot fix or make better. The key here is understanding that this dark humor is a coping mechanism, not a "dealing with it" mechanism. These two expressions are extremely different and so is the emotional truth of the situation. It is between these two phrases and the real-life places we live that can damage us, not as cops but as people.

> "From the time we graduate from the police academy, we are advised that we simply are observers of happenings."

The Concept of Compassion

This is where the concept of compassion and the understanding of how it fits into our lives must come into play. The compassion I am talking about is not simply feeling sorry for someone or being upset that they are in a predicament. Rather, it is an all-encompassing emotion that has attendant actions. For our own good, we must seek out this compassion to help us not just live through these difficult situations but to survive them over the long haul.

One way to foster compassion is to see people for who they are, regardless of why they have come into our lives. Developing compassion for all of the people we encounter should be a goal. Extending it to the victims we deal with is not difficult. They deserve our attention and priority. But, for the "bad guys," extending our compassion often can prove challenging. These people usually do not engender our warmest thoughts. It is here, however, that we can try to change our thoughts and actions. First of all, it is the decent thing to do; after all, we are the guardians in any given situation. Treating defendants with compassion helps reveal the decency within us. People end up in unfortunate situations for many reasons. Admittedly, most of them of their own doing but, sometimes, just because of problematic lifestyles. That does not excuse them of their actions; we all have to be accountable for our choices. My point here is simply that some people have made ill-fated choices based on the hand they were dealt. Anyone can find themselves in a difficult spot at some point in their lives. We all know people like this, and some of us have those people in our own families. Treating such people with dignity and compassion speaks more about us than them.

Next, and most important, we must be compassionate toward ourselves. We must change the culture of law enforcement that ignores the emotional scars the job can leave on our souls. We must address these situations, accept the horror of them, and talk about how they can affect us. We are not too tough to be moved by the death of a child or the collapse of someone's life. The purpose of this self-compassion and facing the terrible things we see is not to make us touchy-feely cops or to get in touch with our nurturing sides but, rather, to help us address the negative feelings that come with the experiences we have. Once we deal with these feeling head-on, we can put them into perspective, which will take away their power over us. It is only then that we can move on without damage.

Our career provides us with an unprecedented glimpse into the world of human interaction. It is a double-edged sword, though. On the one hand, we

have a "backstage pass to life"; we see things and go places that most people only hear or read about. On the other, we sometimes have to conduct our business in the depths of people's cruelty to each other. It is an honor to be in law enforcement and a great trust the people of our society have given us. We must not allow the rigors of the work and the fact that we are placed into some extremely difficult situations to deprive us of the joy this life has to offer. By making these changes in our police culture, perhaps we can save some of our 300 brothers and sisters who die by their own hand each year.

Conclusion

After 24 years on the job, I have made my peace with the evils people do to each other. The idealistic beliefs of my youth have matured over time. I have come to accept the fact that I cannot save the whole world, but what I can do is make small differences in the lives of the people I encounter. In this way, I help them and take care of myself. We all need to take care of the person inside. All of the officers who have killed themselves call out to us. We must listen and learn from them. We must start a dialogue that is long overdue.✦

Endnotes

[1] U.S. Department of Justice, Federal Bureau of Investigation, *Law Enforcement Officers Killed and Assaulted*, *http://www.fbi.gov/ucr/ucr.htm#leoka*.

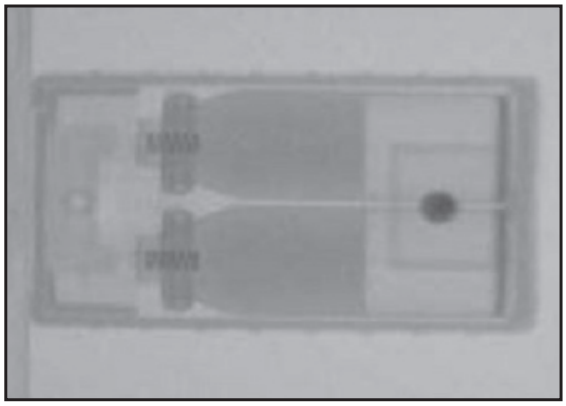
[2] The National P.O.L.I.C.E. Suicide Foundation, *http://www.psf.org*; and Tears of a Cop, *http://www.tearsofacop.com*.

Readers interested in beginning a dialogue about this vital concern can reach the author at jpangaro@yahoo.com.

Unusual Weapon

Pepper Pager

This plastic item is designed to look like a pager. It actually dispenses pepper spray. Law enforcement officers should be aware that offenders may attempt to use this device, which can pose a serious threat.



Threat Assessment Teams

Workplace and School Violence Prevention

By STEVE ALBRECHT, D.B.A.

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An angry ex-employee bursts into the lobby of his former employer and yells at the frightened receptionist, "You tell the CEO he's a dead man. I'll make sure he never sees his family again!" A woman gets a phone call at work from her estranged husband, who tells her he knows about her new boyfriend, also employed at the same company. "I will kill you both, and I'll shoot any cop who tries to stop me!" An information technology (IT) director reviews several hundred threatening e-mails from an anonymous source who has not honored a cease-and-desist order from the organization's attorney. Speaking to his friend, a 15-year-old high school sophomore says that he hired a locksmith to make a spare key to his father's gun cabinet, just in case he needs to "take care of some people" who have bullied him.

At a minimum, each of these incidents can bring intense fear to a workplace or school campus. Worse, such events can lead to violence resulting in the injuries or deaths of innocents. Further, perpetrators often kill themselves or die as a result of suicide by cop.[1]

In response to horrific situations, including shootings and mass murders in workplaces, schools, malls, churches, and government agencies, progressive

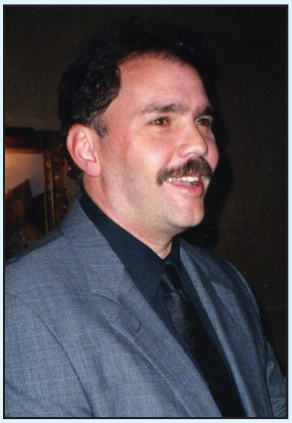
and forward-thinking public- and private-sector organizations form threat assessment teams (TATs) to help prevent or manage incidents.[2] Law enforcement agencies constitute an important part. They can assess the nature and reality of the threats, provide valuable information to the group, and offer a realistic view as to potential solutions. Police serve both an advisory and action-oriented role; they can help with the assessment, start or continue an investigation, or take other appropriate measures, such as making arrests or initiating mental health holds.

NATURE OF THREATS

TATs aim to assess dangerousness, not to predict violence; only the perpetrators ultimately know their intentions. Further, the teams do not rely on profiles when managing cases. They focus on analyzing the contextual behaviors of possible perpetrators and any potential victims they intersect with. Tied to TATs' concentration on behavior, threat assessment encompasses just a window in time. The team's depiction of a subject one day could change completely upon receipt of new information the following day. For instance, an angry or depressed man could seem stable until his wife suddenly leaves him. As a result, the TAT may dramatically alter its assessment of his potential for violence.

More than focusing on warning signs or threats alone, assessment involves a unique overall view of changing, relevant, and related behaviors of concern. Experts say that the identification and resolution of threat cases involves early detection of "attack related" behaviors.[3] Perpetrators of targeted acts of violence engage in covert and overt behaviors preceding and accompanying their attacks. They consider, plan, prepare, share, and, in some cases, move on to action.

The threat assessment approach does not rely on direct communication of a threat as the primary threshold for an appraisal of risk, protective intervention, or corrective action. Rather, a greater chance exists that third parties (e.g., coworkers, friends, other students, and family), not actual targets, hear threats.[4]



"Like-minded, concerned professionals gathered together in person or via a teleconference can use the power of synergy to find dynamic solutions in a short time."

Dr. Albrecht retired from the San Diego, California, Police Department and currently serves as a security consultant and author.

TEAM CONCEPT

Like-minded, concerned professionals gathered together in person or via a teleconference can use the power of synergy to find dynamic solutions in a short time. Using TATs changes the dynamics in employee- or student-related threat situations from What do *I* do? to What do *we* do? These meetings allow the participants to share ideas, experiences, fears, and concerns in a problem-solving environment. TATs serve five primary functions.

1) *Information gathering*: What does the team know about the threatener and the targets?

2) *Interviewing*: What can TAT personnel learn from anyone personally or professionally connected to the perpetrator and victims?

3) *Evaluation*: What does all of this information mean in terms of threats of violence to people and the organization?

4) *Decision making*: What should the team do now and in the immediate future? Who will take the lead role in managing the subject's behaviors or actions (e.g., human resources, law enforcement, security, campus police, EAP, mental health clinicians)?

5) *Follow-up*: If the emotional temperature has cooled around this situation, how will the TAT continue to monitor the people and behaviors involved so that it does not reescalate?

Workplace-Based TAT Members

Typical TAT participants (or their designees) fall into two categories. Primary team members are the hands-on decision makers; secondary team members provide insights to the primary TAT personnel.

Primary Team Members

Law enforcement officers assist with reporting, arrest, or prosecution; patrols; criminal database research; and, further, they provide peace of mind. A security director addresses access control issues and implements guards and emergency- or security-related policies and procedures, such as lockdown drills or evacuations. Legal counsel representatives provide suggestions as to labor law concerns, due diligence, and union contracts; more important, they possibly can make TAT meetings part of the attorney-client work-product privilege, allowing for better protection of information derived by the team in case of future litigation.

> ***"TATs aim to assess dangerousness, not to predict violence; only the perpetrators ultimately know their intentions."***

A human resources (HR) director addresses issues related to discipline or termination, organizational policies and procedures, benefits, and HR-related legal issues (in conjunction with company counsel). Employee assistance program (EAP) or psychological services clinicians provide insight as to the perpetrators' and victims' states of mind and the need for fitness-for-duty evaluations, hospitalization, crisis treatment, or police response; if in a treating relationship with the involved individuals, these representatives may need advice as to when to excuse themselves from group discussions. Finally, the employee's supervisor, although not privy to the contents and length of the entire meetings, should provide specific answers or insights about the perpetrator's behaviors or any potential targets.

Secondary Team Members

While they may not want to attend TAT meetings, senior managers can streamline certain processes, make strategic decisions, allocate money to hire additional experts, or approve the provision of severance or other benefits (e.g., medical or mental health). Labor-relations personnel can help the team understand the complexities of any contracts or agreements between the organization and the unions. As union representatives also do not want dangerous employees in the workplace, they can provide the TAT with information about the perpetrator-employee and likely targets, as well as feedback about the culture of

Threat Assessment Team Questions

The following questions can serve as a starting point for the threat assessment team members' initial discussion about the dangerousness of a current or former employee, student, or outside threatener.

1) Is the subject troubling or troubled?

2) Has the individual exhibited this behavior in the past or is it new?

3) In the case of an employee, does the organization wish to terminate or keep the subject?

4) As a first assessment, does the individual resemble an emotional threatener (less likely to act) or an unemotional one (more prone to strike)?

5) What does the TAT know about this person's mental health, substance abuse, weapons use, or criminal history?

6) What work or military history does the individual have?

7) Does the team have information about this person's family dynamics, friends, or social support network?

8) What history does the subject have of domestic violence or stalking? Is it connected to anyone currently (e.g., family, spouse, dating relationships, employees)?

9) Does anyone have restraining orders against this person? Does the subject have one against someone else? Does the individual have a history of being a party to any civil litigation?

10) Is he or she desperate or showing signs of anger, rage, depression, or despair?

11) Do others have concerns about this person's behavior?

12) How geographically or physically close is the subject to his or her targets?

13) What might change in the subject's life to increase or decrease the risk of violence?

the workplace. The employee's supervisor will only attend portions of the meetings to offer suggestions about how to deal with or deter the perpetrator.

The facilities manager can help with concerns about access control, safety and security, or potential problem areas in the facility, such as hiding places, lockers, or hazardous materials. A risk management/safety officer, often in conjunction with the security director, can provide insight into facility protection issues. Some TATs may include an IT representative if the threats originate from cyberspace.

School-Based TAT Members

TATs based on a campus or in a school district may include many of the same professionals or differ slightly. These teams gather together to discuss the troubling or threatening behavior of current or former students or parents, outside criminals (e.g., gang members or pedophiles), or school employees, such as a teacher, counselor, or administrative staff member.

As the top-ranking officials, principals and vice principals can make immediate decisions, as well as consult with district authorities (e.g., the superintendent or a designee). Master teachers may have specific information about classroom behaviors, security concerns, rumors and gossip, threats, parenting issues, or relationship

14) Could anything happen in the potential victim's situation to alter the chance of action by the subject?

15) What does this person want? Can the team solve his or her problem? Is the subject making a demand or threat or disclosing a cause?

16) Is the person on the path from ideas to actions?

17) Does the subject seem homicidal or suicidal? Angry or depressed?

18) Is there evidence of repetition or escalation of threats or violence or boundary probing? It becomes a significant concern when a person makes multiple contacts in multiple ways.

19) Has there been a series of red flag events? Is the person's behavior becoming more or less erratic? Staying the same or escalating? Is this escalation becoming rapidly apparent (over days or even hours)? Or, is it a slower process (weeks, months, or even years)?

20) Does he or she have the capacity to organize, plan, and prepare for violence?

21) If the TAT wrote the suspect's name on a piece of paper and drew concentric circles outward, whose names could it write in the circles as potential victims? Spouse, children, or other family members? Supervisor or coworkers? Security officers or investigators? An attorney who served civil papers? A police officer or detective who contacted the subject recently?

22) Has the team seen or heard evidence of target selection, planning, weapons acquisition, increased mental illness, hostile communications with one or more potential victims, or rationalization of motives?

23) Are one or more key life factors failing and, therefore, igniting the subject's rage?

24) Does it appear more or less likely that a violent action will be directed against the target? What specific information and reasoning led to this conclusion?

25) As the TAT perceives it today, is this primarily an HR, law enforcement, security, or mental health issue? Who must work in combination with each other?

problems that the subject in question may be having with another student. Additional selected teachers can help the TAT by discussing certain problematic classroom conduct issues or potentially dangerous behaviors, especially when considered in the proper context, on the part of the subject. School district attorneys can provide legal support and insight into regulations, such as the Family Educational Rights and Privacy Act (FERPA), the Health Insurance Portability and Accountability Act (HIPAA), and union issues involving district employees.

School nurses, although restricted by what they can reveal about a student in their care, possibly can speak in general terms about the climate, culture, or underlying health or behavioral issues on campus. District and on-campus counselors may have specific insights into problem students or employees, although they cannot release certain information because they face the same ethical boundary issues as any other treating professional.

School police and resource officers can provide armed protection, intelligence information, and knowledge of previous problems with the same perpetrator; conduct arrests, prosecutions, and locker searches; implement physical security improvements, such as metal detectors, panic or burglar alarms, and cameras; and help with crisis response plans,

Sources for Additional Information

Federal Bureau of Investigation, National Center for the Analysis of Violent Crime, *Workplace Violence: Issues in Response*, available at *http://www.fbi.gov/publications/violence.pdf*

Frederick Calhoun, *Hunters and Howlers: Threats and Assaults Against Judicial Officials in the United States, 1789-1993* (Darby, PA: Diane Publishing Co., 2000)

Frederick Calhoun and Stephen Weston, *Threat Assessment and Management Strategies: Identifying the Howlers and Hunters* (Boca Raton, FL: CRC Press, 2009)

National Threat Assessment Center Web site: *http://www.secretservice.gov/ntac.shtml*

including liaison with such mutual aid groups as fire departments, paramedics, other police agencies, or the county sheriff's department. Campus security personnel can support the efforts of the police and provide intelligence gathering; rumor control; and information about groups or individuals and previous problems, situations, or incidents. Often younger, they may have better rapport with students than campus police officers.

Facilities or maintenance directors can help with access control improvements, security, and evacuation plans and provide support to any responding police or fire agencies. Although limitations exist, selected parents and students can provide knowledge and insight into the subject and problematic behaviors, but they should not attend an entire TAT meeting.

THREAT EVALUATION

As a starting point, TAT members can ask a series of questions to evaluate the dangerousness of a threatening current or former employee, student, or other individual. Also, the presence of certain high-risk indicators can give TAT personnel reason for concern.

- Psychotic, schizophrenic, bipolar, or paranoid personality disorders
- Substance abuse, especially alcohol, pain medication, or stimulant drugs
- Past use of violence or weapons to solve problems
- Frequent blaming behavior
- Severe depression
- Evidence of highly antisocial behavior (e.g., police contacts, civil order violations, trespassing at work or on campus)
- Previous sexual intimacy between the victim and the suspect
- No regard for his or her own life or the lives of others

PROOF OF SUCCESS

Does the use of threat assessment tools, strategies, and responses lower the possibility of violence by working so well that they deter a potentially violent perpetrator without anyone ever knowing? This begs the question, How can a negative be proven? In other words, silence often rewards successful vigilance in countering potential violence. The bad guy returns home, goes away, or decides that the evil plan is not worth the risk. The truth is, no one really knows why someone chooses to use violence or why that person is deterred.

In August 1999, neo-Nazi Buford Furrow shot and killed a Filipino letter carrier simply because he was not white and then entered a Los Angeles-area Jewish Community Center where he fired over 70 shots with a submachine gun. He

wounded three adults and three children during his rampage. After his arrest, he revealed that he had planned to shoot people at the Museum of Tolerance in Los Angeles but was deterred because he felt it had too much security in place. So, what proof exists that these ideas, suggestions, discussions, plans, actions, and implementations have worked? Success equals peace.

CONCLUSION

Unfortunately, as the news media highlights, disturbing incidents can happen at organizations and campuses anywhere. Such violent events result in unspeakable fear, injury, or death.

The wave of the future for violence prevention is a group of stakeholders with the appropriate expertise meeting on a regular or as-needed basis to address internal or external threats to a workplace or school. Threat assessment teams serve this purpose and, more important, help keep employees and students safe.✦

Endnotes

[1] For additional information, see Anthony J. Pinizzotto, Edward F. Davis, and Charles E. Miller III, "Suicide by Cop: Defining a Devastating Dilemma," *FBI Law Enforcement Bulletin*, February 2005, 8-20.

[2] For additional information, see Mario Scalora, Andre Simons, and Shawn VanSlyke, "Campus Safety: Assessing and Managing Threats," *FBI Law Enforcement Bulletin*, February 2010, 1-10.

[3] U.S. Department of Justice, Federal Bureau of Investigation, National Center for the Analysis of Violent Crime, *Workplace Violence: Issues in Response*, available at *http://www.fbi.gov/publications/violence.pdf*; Frederick Calhoun, *Hunters and Howlers: Threats and Assaults Against Judicial Officials in the United States, 1789-1993* (Darby, PA: Diane Publishing Co., 2000); and *http://www.secretservice.gov/ntac.shtml*.

[4] *http://www.secretservice.gov/ntac.shtml*

Bulletin Honors

The *FBI Law Enforcement Bulletin* seeks submissions from agencies who wish to have their memorials featured in the magazine's Bulletin Honors department. Needed materials include a short description, a photograph, and an endorsement from the agency's ranking officer. Submissions can be mailed to Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Quantico, VA 22135, or e-mailed to *leb@fbiacademy.edu*.

Bulletin Reports

Stalking Victimization

The Bureau of Justice Statistics (BJS) has released *Stalking Victimization in the United States*. The special report presents findings on nonfatal incidents based on the largest data collection of such behavior to date. Data were collected in a supplement to the National Crime Victimization Survey (NCVS) and sponsored by the Office on Violence Against Women (OVW). Topics covered in the report include stalking and harassment prevalence rates by demographic characteristics, offender attributes, victim-offender relationship, duration of stalking, cyberstalking, protection measures, and emotional impact. The document also contains data concerning whether victims sought help from others, the involvement of a weapon, injuries sustained, other crimes perpetrated by the stalker, and response by the criminal justice system.

Highlights from the report revealed that about half (46 percent) of stalking victims experienced at least one unwanted contact per week, and 11 percent of victims said that they had been stalked for 5 years or more. Approximately 1 in 4 stalking victims reported some form of cyberstalking, such as e-mail (83 percent) or instant messaging (35 percent). Women were at greater risk than men for stalking victimization; however, women and men were equally likely to experience harassment. Nearly 3 in 4 stalking victims knew their offender in some capacity. More than half of stalking victims lost 5 or more days from work. The report is available at the BJS Web site, *http://www.ojp.usdoj.gov/bjs*, and at the National Criminal Justice Reference Service's Web site, *http://www.ncjrs.gov*, under NCJ 224527.

Language Barriers

Bridging the Language Divide: Promising Practices for Law Enforcement is an Office of Community Oriented Policing Services (COPS) report that discusses overcoming language barriers. Changing demographics across the United States have led to a need for law enforcement agencies to be able to communicate more effectively with the people in their jurisdictions. The COPS Office and the Vera Institute of Justice formed a partnership to identify and disseminate promising practices that some police departments have implemented so that others can model programs after these to address language barriers they face. The report (NCJ 227423) can be accessed at the National Criminal Justice Reference Service's Web site, *http://www.ncjrs.gov*.

Reducing Crime

Local elected officials and police departments across the United States are discovering that communities can "build" their way out of persistent crime problems that often cannot be solved just through arrests. The new Office of Community Oriented Policing Services (COPS) publication, *A Policymaker's Guide to Building Our Way Out of Crime: The Transformative Power of Police-Community Developer Partnerships*, examines case studies in Charlotte, North Carolina; Minneapolis, Minnesota; and Providence, Rhode Island, and chronicles the accomplishments of this strategic alliance in these cities. It addresses efforts to reduce crime and improve economic vitality through partnerships comprising elected and appointed officials at all levels of government, community development leaders, financial industry investment strategists, private foundation executives, and law enforcement managers. This document, based on a longer COPS guidebook, provides evidence that police-community developer partnerships can convert crime hot spots that ruin entire neighborhoods into safety-generating community assets. For further information, access the publication (NCJ 227421) at the National Criminal Justice Reference Service's Web site, *http://www.ncjrs.gov.*

Community Policing

The Office of Community Oriented Policing Services (COPS) has released *Community Policing: Looking to Tomorrow,* which summarizes a series of roundtable discussions held across the country where police chiefs, sheriffs, and other leaders shared their views on community policing. The voices of the law enforcement leaders heard in this report are varied and reflect a broad policing experience, but what they have in common is a continuing interest in delivering the best quality police service to the communities they serve. Section I presents the roundtable participants' views about what community policing looks like today and the challenges it faces and summarizes their predictions about how community policing may evolve in the future. Section II provides suggestions about how police departments and city leaders can work together to enhance their community policing efforts and continue to strive to take community policing to the next level. Readers may access the report (NCJ 227424) at the National Criminal Justice Reference Service's Web site, *http://www.ncjrs.gov.*

ViCAP Alert

HOMICIDE VICTIM

Janine Ann Johler

The Garfield County, Colorado, Sheriff's Office is investigating the discovery of a dismembered body found on private property adjacent to Garfield County Road 137, also known as Canyon Creek Road, located approximately parallel to the 109 mile mark of Interstate 70 (I-70). The area of the discovery is located on the north side of the interstate approximately 5 miles west of Glenwood Springs.

A postmortem exam conducted on June 13, 2009, revealed that the body is that of an adult Caucasian female with brown hair and blonde highlights. The female victim also had tattoos and dental work. At this point, not all of the remains have been recovered.

The body has been positively identified through fingerprint comparison as 38-year-old Janine Ann Johler of Aurora, Colorado, near Denver. Janine Ann Johler had been reported to the Aurora Police Department by her family as missing on May 7, 2009.

The Garfield County Sheriff's Office is working in conjunction with the Aurora Police Department, other Denver-area law enforcement agencies, the Colorado Bureau of Investigation, and the FBI in continuance of this investigation. Garfield County Crime Stoppers seeks information that could lead to the arrest and conviction of the person or persons involved in the murder of Janine Ann Johler.

Individuals with any information pertaining to this vicious crime should contact Garfield County Crime Stoppers at 970-945-0101; Denver Metro Crime Stoppers at 720-913-7867; or the FBI's Violent Criminal Apprehension Program (ViCAP) at 800-634-4097. This and other ViCAP Alerts can be reviewed at *http://www.fbi.gov/wanted/vicap/vicap.htm*. Individuals can remain anonymous.

Retaliation in Discrimination Cases

Eliminating Fear of Reprisal

By LISA A. BAKER, J.D.

© shutterstock.com

Employee: Hi boss, I understand you wanted to see me.

Manager: Yes, thanks for coming in. We need to talk about some things that came up in your performance review.

Employee: I know this hasn't been the best year, but I've had quite a bit on my mind.

Manager: I understand that, and I know the fact that you didn't get that promotion last year hit you hard, but I need a commitment from you. I think you've been too focused on your case you filed claiming you were discriminated against, and I think what you've done by pursuing this leads me to question whether you can be a team player. I just don't think I can give you a satisfactory rating.

Employee: You know that will keep me from my pay increase.

To the uninformed manager, this opening dialogue might appear a reasonable and effective way to address concerns and counsel an employee. However, in light of recent U.S. Supreme Court rulings addressing retaliation against employees for their involvement in discrimination actions, this conversation is fraught with potential legal liability. This article explores what constitutes retaliation within the context of the federal antidiscrimination statutes offering protection to employees

> **“…the number of retaliation claims have increased dramatically during the past decade.”**

Special Agent Baker is chief of the Legal Instruction Unit at the FBI Academy.

at all levels of the government, as well as the private sector. In addition, the article discusses recent Supreme Court rulings expansively interpreting these provisions.

The federal statutes that prohibit discrimination on the basis of race, color, sex, national origin, age, disability, and genetic information, as well as gender-based wage differences, also prohibit retaliation against individuals involved in a claim of discrimination. According to statistics maintained by the Equal Employment Opportunity Commission (EEOC), the number of retaliation claims have increased dramatically during the past decade. In 1998, retaliation claims constituted 24 percent of the claims of discrimination filed under all of the antidiscrimination statutes. In 2008, this number rose to over 34 percent. Claims of unlawful retaliation under Title VII of the Civil Rights Act alone constituted over 30 percent of the total number of claims of retaliation.[1]

Generally, individuals alleging retaliation must establish that they are covered individuals by demonstrating that they engaged in activity protected by a discrimination statute and the employer took an adverse action against them on account of the protected activity. Finally, plaintiffs must be able to show causal connection between the protected activity and the adverse employment.

COVERED INDIVIDUALS ENGAGED IN PROTECTED ACTIVITY

The provisions against retaliation within the antidiscrimination statutes protect covered individuals who engage in a protected activity. A covered individual includes an employee or applicant for employment who has opposed any discriminatory practice by the employer or has “made a charge, testified, assisted, or participated in any manner in an investigation, proceeding or hearing.”[2] Included as well are former employees.[3] For example, making disparaging comments and providing an unsubstantiated negative recommendation to a former employee’s prospective employer because of the former employee’s past claim of discrimination could be actionable as retaliation despite the lack of a current employment relationship. The activities covered by the employment-related anti-retaliation protections include opposing a discriminatory practice (the opposition clause) and filing a charge of discrimination or testifying, assisting, or otherwise participating in an investigation, proceeding, or hearing addressing a claim of discrimination (the participation clause).[4]

Opposition Clause

Opposition to a discriminatory employment practice occurs when employees, either directly or indirectly, communicate to their employer a reasonable, good-faith belief that the employer has engaged in unlawful employment discrimination.[5] For example, in *Moore v. City of Philadelphia*, comments made to a commanding officer by police officers regarding inappropriate and offensive racial comments by their supervisor

constituted opposition to discriminatory practices.[6] Critically, an employee need not have filed a formal complaint of discrimination with the employer to be deemed to have opposed unlawful discrimination. Merely voicing concerns about discrimination to a supervisor or other representative of management will suffice.

The scope of the protection afforded under the opposition clause was addressed by the Supreme Court in *Crawford v. Metropolitan Government of Nashville and Davidson County.*[7] In this case, Vicky Crawford sued her former employer, alleging that she was fired after she was interviewed as part of an internal investigation into allegations of sexual harassment by a coworker. In response to the questions, she indicated that she observed several instances of sexually harassing behavior. Soon after the internal investigation was completed, Metro fired Crawford, as well as the two other accusers. Metro asserted that Crawford's termination was for embezzlement. Crawford sued, claiming unlawful retaliation.

The lower courts ruled in favor of the employer, dismissing the lawsuit on the grounds that Crawford did not satisfy the opposition clause because she had not herself initiated a complaint to management about discrimination or harassment but simply answered questions as part of an internal investigation.[8] The Supreme Court reversed, construing the opposition clause to include more than initiating a formal complaint. The Court stated,

> There is, then, no reason to doubt that a person can "oppose" by responding to someone else's question just as surely as by provoking the discussion, and nothing in the statute requires a freakish rule protecting an employee who reports discrimination on her own initiative but not one who reports the same discrimination in the same words when her boss asks a question.[9]

"The protections against retaliation within the antidiscrimination statutes protect covered individuals who engage in a protected activity."

The Supreme Court commented that this expansive interpretation of the opposition clause is critical to give full meaning to the protections against retaliation. A contrary result could encourage employees to remain silent about discriminatory practices against themselves or against others. The Court stated, "This is no imaginary horrible given the documented indications that '[f]ear of retaliation is the leading reason why people stay silent instead of voicing their concerns about bias and discrimination.'"[10]

Participation Clause

The antiretaliation provisions prohibit discrimination against an individual on account of the individual's making a charge, testifying, assisting, or participating in any manner in an investigation, proceeding, hearing, or litigation under the antidiscrimination statutes.[11] In addition, the EEOC and a minority of federal appellate courts prohibit retaliation against someone who is closely related to or associated with the person claiming discrimination.[12] For example, a husband and wife are employed by the same police department. The wife files a claim asserting she was unlawfully discriminated against on account of her gender. Her husband's supervisor decides to make life more difficult for the husband because of the lawsuit. The supervisor ostracizes him from key team-building exercises and places a caricature of him on the squad

bulletin board. This would constitute unlawful retaliation.

In addition, an individual is protected from retaliation for participation in a claim of discrimination even if this claim involved another employer. For example, an applicant for employment is denied employment because the would-be employer learns that she brought a claim against her former employer for sexual harassment. The would-be employer decides not to hire her out of a concern that she could be disruptive within the workplace. The applicant could prevail on a claim of retaliation by the would-be employer if she can demonstrate her prior actions were a significant factor in the decision not to hire her.[13]

Underlying Claim of Discrimination

Many courts have limited the reach of the antiretaliatory protections by requiring the person claiming retaliation for opposing, and in some cases participating, in a proceeding against the employer to hold an objectively reasonable, good-faith belief that the employer practice or conduct at issue constitutes unlawful discrimination.[14] For example, in a case involving a claim of sexual harassment and retaliation, the court dismissed both causes of action after concluding no reasonably objective person would have believed that a single, isolated crude comment would constitute sexual harassment. Therefore, the employee did not engage in a protected activity for purposes of a claim of retaliation.[15] However, this also means that a case of retaliation can be established even if the underlying claim of discrimination is not substantiated. As stated by one court, an individual claiming retaliation "'need not prove the merits of the underlying discrimination complaint' in order to seek redress"[16] as long as the belief is objectively reasonable.

ADVERSE ACTION

Individuals claiming unlawful retaliation must demonstrate that the employer took an adverse action against them. In the case of *Burlington Northern and Santa Fe Railway Company v. White*[17] the Supreme Court broadened what can be considered an adverse action for purposes of a claim of retaliation. Prior to this ruling, a split of opinion existed as to what would amount to an adverse action in a claim of retaliation. Some courts took a narrow approach, holding that an ultimate employment decision, such as hiring or firing, had to be impacted.[18] Other courts applied the same standard in a claim of retaliation as that applied in substantive discrimination cases, meaning that the action must have impacted the terms, conditions, or benefits of employment.[19] Still other courts generously interpreted the retaliation protections, holding that the definition of adverse action was more expansive than that in the substantive discrimination case.[20] The Supreme Court ultimately agreed with the more expansive interpretation, making it easier for individuals to argue that they have been negatively impacted by retaliatory actions.

In *Burlington Northern*, Sheila White complained to her employer that she was sexually harassed by her supervisor. The supervisor was disciplined, and she was removed from her normal assignment and reassigned to a more arduous position with less desirable duties. She sued, claiming that her reassignment was in retaliation for her claim

of sexual harassment. Subsequently, there was a dispute at work and White was suspended indefinitely without pay for insubordination. White challenged her suspension and won after her employer concluded that she was not insubordinate and awarded her back pay. White added an additional charge of retaliation for her suspension.

A jury returned a verdict in White's favor, finding that she had been retaliated against. On appeal, the court ruled against her, concluding that she had not suffered an adverse action.[21] This was appealed to the full panel of the Sixth Circuit Court of Appeals, which reinstated the jury verdict.[22] The justices, however, did not agree on the appropriate standard to apply in defining what constituted an adverse employment action in a retaliation case. The Supreme Court agreed to hear the case to resolve this issue.

The Supreme Court held that an expansive interpretation of the definition of adverse action is needed in retaliation claims to safeguard the intent of antiretaliation provisions, which is to prohibit employers from engaging in conduct that could deter individuals from complaining of discrimination. The Supreme Court concluded, "[t]he scope of the antiretaliation provision extends beyond workplace-related or employment-related retaliatory acts and harms."[23] In other words, "an employer can effectively retaliate against an employee by taking actions not directly related to his employment or by causing him harm *outside* the workplace."[24] A more narrow interpretation of adverse action "would not deter the many forms that effective retaliation can take."[25]

> ***Individuals claiming unlawful retaliation must demonstrate that the employer took an adverse action against them.***

The Supreme Court's definition of adverse action is not without limits. A decision to report discrimination does not "immunize that employee from those petty slights or minor annoyances that often take place at work and that all employees experience."[26] To constitute an adverse action, the plaintiff must be able to show that a reasonable employee would have found the action materially adverse, meaning it would dissuade a reasonable employee from pursuing a claim of discrimination.[27] Key to finding material adversity is determining whether the employer's action would deter someone from pursuing a claim of discrimination, and "normally petty slights, minor annoyances, and simple lack of good manners will not create such deterrence."[28] Determining whether an action is materially adverse requires an assessment of its impact within the facts and circumstances of the specific case at issue. For example, the Supreme Court noted that a sudden change in work schedule might not be materially adverse to some but may be significant to a single parent with critical day care needs.[29]

Applying these principles to the case at hand, the Court concluded that there was sufficient evidence to support the jury's verdict in favor of the plaintiff. The Court noted that a reassignment, such as that which occurred in the *White* case, could be materially adverse, even though she was reassigned to duties within her job description where the reassignment led to her performing more strenuous and less attractive duties.[30] In addition, the Court rejected Burlington's argument that the suspension without pay was insignificant given she was reinstated and awarded back pay. The Court concluded that a reasonable employee may choose avoiding the economic hardship and emotional turmoil of a suspension over pursing a claim of discrimination even if the employee is later made whole.[31]

While the Supreme Court made it easier to establish that an adverse action was taken, what remains for the plaintiff is to demonstrate that the involvement in the protected activity was a substantial or motivating factor in the adverse action. In other words, a casual connection must be established.

CAUSAL CONNECTION

To establish a claim of retaliation, the plaintiff must establish a link between the protected activity and the adverse action. In other words, there must be a retaliatory motive as opposed to legitimate, nonretaliatory reasons for the action. For example, the negative reference for future employment was driven not by the discrimination claim from the former employee but, rather, because of a history of poor performance. To establish this casual connection, plaintiffs must either have direct proof of the retaliatory motive or prove it through circumstantial evidence.

Direct Evidence

Direct evidence of the retaliatory motive consists of some type of written or oral statement made by the offending party that provides an indication that the adverse action was undertaken on account of the plaintiff's involvement in the protected activity. For example, in *Moore v. City of Philadelphia,*[32] white police officers complained to management about how African-American officers were being treated by commanding officers. The white officers later asserted that they were retaliated against for speaking out regarding this discriminatory conduct. The court noted direct evidence of the retaliatory motive based on the commanding officer's comment to the complaining officer that "if he made an EEOC complaint, he would make his (the complaining officer's) life a living nightmare."[33]

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Indirect or Circumstantial Evidence

In most cases, direct evidence of the retaliatory motive is lacking. The most common way to establish the retaliatory motive is through circumstantial evidence. In such cases, the plaintiff must establish that he or she engaged in a protected activity and that this was a motivating factor in the adverse action, leading to treatment that was harsher than similarly situated employees who did not engage in the protected activity.[34] The burden then shifts to the employer to articulate legitimate, nonretaliatory reasons for the adverse action.[35] For example, the poor performance review was the result of actual performance-related problems and not due to involvement in a claim of discrimination. If the employee fails to do this or the plaintiff establishes that the purported reason offered by the employer is pretextual, the plaintiff will prevail.[36] In some cases, a plaintiff may be able to demonstrate that the reason advanced by the employer is pretextual by pointing to direct evidence of its lack of legitimacy. A factor often raised and considered in such cases is the timing of the protected activity relative to the adverse action. In these cases, plaintiffs assert that the closer in time between the protected activity and the adverse action, the more likely the adverse action was retaliatory.[37] However, more than just closeness in time is typically needed. For example, as stated by one court, "[i]nsubordinate employees may not insulate themselves from discipline by announcing an intention to

claim discrimination just before the employer takes action."[38]

Plaintiffs also may attempt to establish the pretextual nature of the purported reason for the adverse action indirectly. Typically, this is established by showing that the employer treated similarly situated employees differently than the plaintiff. One way this may be established is if the employer treated the employee differently after complaining of the discriminatory conduct by placing the employee's work performance under greater scrutiny or "keeping a book" on the employee.[39]

CONCLUSION

The antiretaliation provisions within discrimination statutes are designed to ensure that individuals are not deterred from making, or otherwise being involved in, a claim of discrimination. To this end, the Supreme Court recently reiterated that such protections should be broadly construed, reaching conduct that a substantive claim of discrimination does not reach. As a result, employers should take proactive steps to train managers and supervisors to ensure that they understand the concept of retaliation and how to keep their actions and decisions from falling within its reach. Emphasis should be on treating the employee involved in a discrimination complaint the same as other employees. Any action taken against such employees for legitimate, nonretaliatory motives should be supported by adequate and appropriate documentation.✦

Endnotes

[1] U.S. Equal Employment Opportunity Commission, "Charge Statistics FY 1997 through FY 2008"; *http://www.eeoc.gov/eeoc/statistics/enforcement/charges.cfm*. (last visited November 30, 2009).

> ***"To establish a claim of retaliation, the plaintiff must establish a link between the protected activity and the adverse action."***

[2] 42 U.S.C. § 2000e-3(a). *See also* Age Discrimination Act at 29 U.S.C. § 623(d); Fair Labor Standards Act at 29 U.S.C. § 215(a)(3); Americans with Disabilities Act (ADA) at 42 U.S.C. § 12203(a). In addition, the antiretaliation provision in the ADA provides for broader protection by making it unlawful "to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter." Thus, the ADA prohibits not only disability-based claims of discrimination in employment practices but also disability-based discrimination in other contexts, such as discrimination in state and local government services, public accommodations, and commercial and telecommunication facilities.

[3] *Robinson v. Shell Oil Co.*, 519 U.S. 337 (1997). *See also Rochon v. Gonzales*, 438 F.3d 1211 (D.C.Cir. 2006).

[4] *See* EEOC Compl.Man at § 8-I(A).

[5] *See id*. at § 8-II(B).

[6] *Moore v. City of Philadelphia*, 461 F.3d 331 (3rd Cir. 2006). *See also Moyo v. Gomez*, 40 F.3d 982 (9th Cir. 1995) (refusing to obey an order that discriminated against African-American inmates constituted opposition).

[7] 129 S.Ct. 846 (2009).

[8] *Crawford v. Metropolitan Government of Nashville and Davidson County, Tennessee*, 2005 WL 6011557 (M.D.Tenn. 2005), *aff'd by Crawford v. Metropolitan Government of Nashville and Davidson County, Tennessee*, 211 Fed.Appx. 373 (2006).

[9] 129 S. Ct. at 851.

[10] *Id*. at 852, *quoting* Brake, *Retaliation*, 90 Minn. L.Rev. 18, 20 (2005).

[11] *See* 42 U.S.C. § 2000e-3(a).

[12] The Sixth Circuit rejected retaliation by association claims and overruled prior Circuit precedent on this issue in an *en banc* decision rendered on June 5, 2009 in *Thompson v. North American Stainless, L.P.,* 2009 WL 1563443 joining the Third, Fifth and Eight Circuits in declining to recognize such claims. The EEOC recognizes a claim for third party retaliation in circumstances where the employee has not engaged personally in any protected activity. *See, e.g.,* 2 EEOC Compliance Manual §8.II(B)(3)(c). *Wu v. Thomas*, 863 F.2d 1543, 1547-48 (11th Cir. 1989) and *McDonnell v. Cisneros*, 84 F.3d 256, 262 (7th Cir. 1996) lend some support for the EEOC's view.

[13] *See Christopher v. Stouder Memorial Hospital*, 936 F.2d 870 (6th Cir.), *cert. denied*, 502 U.S. 1013 (1991).

[14] *Clark County v. Breeden*, 532 U.S. 268 (2001) (Dismissing claim of retaliation after holding that no reasonable person would have concluded that the alleged conduct amounted to sexual harassment in violation of Title VII). *See also Moore v. City of Philadelphia*, 461 F.3d 331 (3rd Cir. 2006) (plaintiffs claim of retaliation could go forward as there was an objectively reasonable belief that the employer had engaged in unlawful discrimination);

Harper v. Blockbuster, 139 F.3d 1385 (11th Cir. 1998) (plaintiffs could not proceed on claim of retaliation as they lacked an objective, good-faith belief that they had been subjected to unlawful discrimination); *Tatt v. Atlanta Gas Light Company*, 138 Fed.Appx. 145 (11th Cir. 2005); *Mattson v. Caterpillar*, 359 F.3d 885 (7th Cir. 2004). There is some disagreement as to whether this good-faith requirement applies to the participation clause. A few courts have allowed a claim of retaliation to proceed by an individual who participated in a discrimination case even if it is established later that the case was without merit and the underlying charges were malicious and defamatory. *See Johnson v. University of Cincinnati,* 215 F.3d 561 (6th Cir. 2000); *Booker v. Brown & Williamson Tobacco Co.*, 879 F.2d 1304 (6th Cir. 1989). In *Mattson v. Caterpillar, Inc*, the court concluded that the same standard should apply to both opposition and participation clause cases, meaning the claim of underlying discrimination must not be utterly baseless. *See Mattson* at 891.

[15] *See Brannum v. Missouri Department of Corrections*, 518 F.3d 542 (8th Cir. 2008); *Webb-Edwards v. Orange County Sheriff's Office*, 525 F.3d 1013 (11th Cir. 2008).

[16] *Moore v. City of Philadelphia*, 461 F.3d 331, 345, (3rd Cir. 2006), *quoting Aman v. Cort Furniture Rental Corp*., 85 F.3d 1074, 1085 (1996). *See also*; *McClain v. NorthWest Community Corrections Center Judicial Corrections Board*, 440 F.3d 320 (6th Cir. 2006); *Trent v. Valley Electric Association, Inc.,* 41 F.3d 524 (9th Cir. 1994).

[17] 548 U.S. 53 (2006).

[18] *See Mattern v. Eastman Kodak Co.,* 104 F.3d 702 (5th Cir.); *Manning v. Metropolitan Life Insurance Co.*, 127 F.3d 686 (8th Cir. 1997).

[19] *See Von Gunten v. Maryland*, 243 F.3d 858 (4th Cir. 2001); *Robinson v. Pittsburgh*, 120 F.3d 1286 (3rd Cir. 1997).

[20] *See Rochon v. Gonzales*, 438 F.3d 1211 (C.A.D.C. 2006); *Washington v. Illinois Department of Revenue*, 420 F.3d 658 (7th Cir. 2005); *EEOC v. Outback Steakhouse of Florida*, 75 F.Supp.2d 756 (N.D.Ohio 1999).

[21] *White v. Burlington Northern & Sante Fe Railway Co.,* 364 F.3d 789 (6th Cir. 2002).

[22] *White v. Burlington Northern & Santa Fe Railway Co.*, 364 F.3d 789 (6th Cir. 2004), *rev'g* 310 F.3d 443 (2002).

[23] 548 U.S. at 67.

[24] *Id.* at 64, *quoting Rochon v. Gonzales*, 438 F.3d 1211, 1213 (D.C.Cir. 2006) (retaliation based on the FBI's refusal to investigate threats made by an inmate against former FBI agent).

[25] *Id*. at 65.

[26] *Id.* at 69.

[27] *Id.* at 68-69.

> **"The antiretaliation provisions within discrimination statutes are designed to ensure that individuals are not deterred from making…a claim of discrimination."**

[28] *Id*. at 69.

[29] *Id*.

[30] *Id.* at 72.

[31] *Id.* at 72-73. Post-*Burlington Northern* cases include C*rawford v. Carroll*, 529 F.3d 961 (11th Cir. 2008) (adverse action was taken after an employee who complained of discrimination received a negative performance evaluation and thus was denied a merit increase, despite the fact that the employee later successfully challenged the evaluation and was awarded back pay); *Nagle v. Village of Calumet Park*, 554 F.3d 1106 (7th Cir. 2009) (Police officer did not suffer adverse action as needed in his claim of retaliation when he was reassigned to less prestigious strip mall detail).

[32] 461 F.3d 331 (3rd Cir. 2006).

[33] *Id*. at 338.

[34] *See Nichols v. Southern Illinois University-Edwardsville*, 510 F.3d 772 (7th Cir. 2008).

[35] *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973); *St. Mary's House Ctr. v. Hicks*, 509 U.S. 502 (1993).

[36] *Nichols v. Southern Illinois University-Edwardsville*, 510 F.3d 772 (7th Cir. 2008) (officers' claim of retaliation failed when employer's stated reasons for firing officers were substantiated by the merit board. Officers were fired not for engaging in protected activity but, rather, following a determination that officers were grossly insubordinate and made false statements regarding the chief and other officials); *Hervey v. County of Koochinching*, 527 F.3d 711 (8th Cir. 2008).

[37] *Hervey v. County of Koochinching*, 527 F.3d 711 (8th Cir. 2008); *Green v. Franklin National Bank of Minneapolis*, 459 F.3d 903 (8th Cir. 2006); *Rochon v. Gonzales*, 438 F.3d 1211 (3rd Cir. 2006) (causation established with proximity in time to the protected activity and the adverse action).

[38] *Hervey v. County of Koochinching*, 527 F.3d 711, 723 (8th Cir. 2008) (termination of officer not in retaliation for pursuing claim of discrimination but rather on account of acts of insubordination and performance-related concerns); *Webb-Edwards v. Orange County Sheriff's Office*, 525 F.3d 1013 (11th Cir. 2008) (plaintiff failed to establish an inference of retaliatory motive when decision to not transfer her to school resource officer occurred 6 months after she complained of sexual harassment).

[39] EEOC Compl.Man. at § E(II), *citing Hossaini v. Western Missouri Medical Center*, 97 F.3d 1085 (8th Cir. 1996).

Law enforcement officers of other than federal jurisdiction who are interested in this article should consult their legal advisors. Some police procedures ruled permissible under federal constitutional law are of questionable legality under state law or are not permitted at all.

Bulletin Notes

Law enforcement officers are challenged daily in the performance of their duties; they face each challenge freely and unselfishly while answering the call to duty. In certain instances, their actions warrant special attention from their respective departments. The *Bulletin* also wants to recognize those situations that transcend the normal rigors of the law enforcement profession.

Officer Golla

Officer Pfeiffer

Early one morning, Officers Matthew Golla and Thomas Pfeiffer of the Bloomsburg, Pennsylvania, Police Department responded to a structure fire. Upon their arrival and before the fire department came, the officers observed heavy black smoke coming from the buildings and immediately entered, knowing most of the occupants were asleep. Officers Golla and Pfeiffer methodically went door to door alerting the sleeping residents of the fire and evacuating persons safely. Eventually, the fire consumed several buildings in the block. Thanks to the quick, decisive, and courageous actions of Officers Golla and Pfeiffer, 27 people escaped, and no loss of life occurred.

Officer Culbertson

Officer Jason Culbertson of the Caln Township, Pennsylvania, Police Department was on patrol when he heard a radio call in the neighboring city, which had been experiencing a series of arsons of occupied dwellings. As he was nearby when another one was reported, Officer Culbertson was the first emergency responder on the scene. The outside rear staircase, which served as the only exit from an apartment occupied by two women, was engulfed in flames. Acting quickly, Officer Culbertson grabbed his fire extinguisher and ascended the steps. Using his body as a shield and knocking down the flames with his extinguisher, he guided the two occupants to safety.

Nominations for the ***Bulletin Notes*** should be based on either the rescue of one or more citizens or arrest(s) made at unusual risk to an officer's safety. Submissions should include a short write-up (maximum of 250 words), a separate photograph of each nominee, and a letter from the department's ranking officer endorsing the nomination. Submissions should be sent to the Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Quantico, VA 22135.

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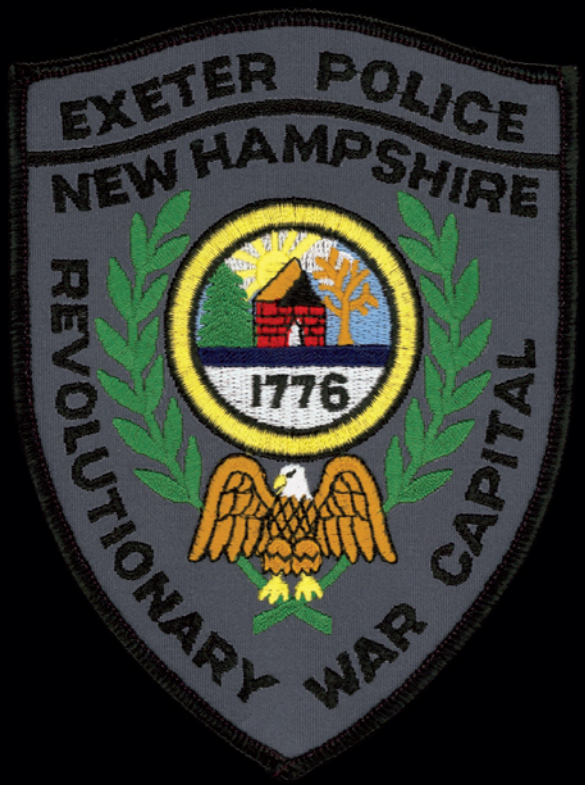

The Granite County, Montana, Sheriff's Office is housed in the tower of the county jail, in continuous use since it was built in 1896, depicted in the center of the patch. The flag tied with the yellow ribbon shows patriotism and support for men and women serving in the military. The mountains, blue sky, and green grass represent the area's beauty and cleanliness.

The patch of the Exeter, New Hampshire, Police Department depicts the Exeter Powder House, built in 1771 and used to store gun powder during the Revolutionary War. Exeter served as the "Revolutionary War Capital" of the state, as denoted on the patch. In 1776, the New Hampshire State Constitution was signed in Exeter.