

LEFT OF BOOM

MONTHLY NEWSLETTER OF CLINICAL SECURITY SOLUTIONS

ANNUAL THREAT MANAGEMENT CONFERENCE - EXPERT ADVICE

Our Clinical Security Solutions team recently had the privilege of attending the 30th Annual Threat Management Conference hosted by the Association of Threat Assessment Professionals and the Los Angeles Police Department. We were honored to network with more than 1,000 other professionals from many disciplines, including law enforcement, social work, corporate security, forensic psychology, and health care.

Our team attended presentations from leading researchers and practitioners in the field of Behavioral Threat Assessment and Management. We also heard from some of the leading voices in employment law and learned much about employers' rapidly changing legal landscape. **In this expanded edition of Left of Boom, we will summarize some of the key insights offered by these experts.**

The boundaries of "Duty of Care" and administrative "Negligence" regarding workplace violence prevention are expanding.

Occupational Safety and Health Administration (OSHA) regulations require that all employers maintain a work environment free from recognized hazards and create a "Duty of Care" that includes threats and/or workplace violence. The current "Duty of Care" standard is expanding due to recent case law and regulatory decisions.

Behavioral Threat Assessment and Management is now recognized as a distinct sub-discipline of Forensic Psychology. The growth of this field and the increase in the level of expertise expected of threat assessment professionals, such as formal Certified Threat Manager accreditation, has created a Standard of Practice for workplace violence prevention and threat assessment. Additionally, the current ANSI National Standard for Workplace Violence and Active Assailant – Prevention, Intervention, and Response (ASIS WVPI AA-2020) clearly articulates **the establishment of Multi-Disciplinary Threat Management Teams as a best practice.** Failure to meet this Standard of Practice can lead to allegations of negligence. Negligent design or negligent operation of a Threat Management Team could also serve as a basis for liability.

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Clinical Security Solutions Founder Don Robinson (L) and James Sporleder (R), Founder of Regulus NW



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Change is Coming, and it Starts in California

Some states may have workplace violence prevention standards that exceed the Federal OSHA standards. For example, California OSHA is currently proposing a new draft regulation that includes an important change in the definition of “threat of violence.” The proposed new definition of workplace violence removes the 2018 reference to “physically” injury and now reads:

“Threat of violence means a statement or conduct that causes a person to fear for their safety b/c there is a reasonable possibility the person might be physically injured, and that serves no legitimate purpose.”

The new California OSHA regulation will require employers to:

- Have a comprehensive written Workplace Violence Prevention plan,
- Effective procedures to accept and respond to reports of workplace violence concerns, including method of investigation, communications, remediations,
- Maintain a violent incident log
- Develop and provide comprehensive training, including “general awareness” on WPV including employer plan, definitions, how to report
- Provide increased training if the employer has had a WPV incident in past five years

While these requirements would only apply in California, it has been our experience that initiatives and regulations implemented by California OSHA are subsequently adopted by other states and Federal OSHA as well. Additionally, a Federal OSHA decision in a 2019 case (Integra Health Management) expanded the Federal General Duty Clause by finding the employer liable under the General Duty Clause for third-party violent acts against their employees.

A Cautionary Tale of Negligent Threat Assessment

A recent case out of California (Bowe Cleveland v. Taft Union High School District (Cal. App. 5th, March 25, 2022), addressed the liability and negligence of a school district regarding their threat assessment of a student that resulted in a school shooting. Specifically, the school district employees involved in the threat assessment and management process were found to be 54% responsible for the \$3.8 million in total damages sustained by the plaintiff. This is very significant—**in its failures, the district was deemed more responsible than the shooter.**



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On appeal, **the verdict was upheld**, and the appellate court affirmed there was no blanket immunity to the district for all the actions of the threat management team. The appellate court upheld negligence on the part of the district due to the following omissions by the Threat Assessment Team members:

- Failed to carry out the assessment collectively
- Failed to communicate amongst themselves concerning the identified student of concern
- Failed to include the school resource officer in the threat assessment
- Failed to adequately communicate with the subject student's mother
- Failed to recommend counseling to the mother as an intervention tactic
- Failed to collectively continue to monitor the student and update/reassess the safety plan

The appellate court further opined, "The multiple failures of District employees to handle information with ordinary care combined (i.e., concurred) to cause the assessment team's failure to adequately address the threat the student posed, resulting in plaintiff's injuries. This is not a case of an unknown assailant where the trier of fact had to guess how the unidentified assailant might have been stopped. **Here, the expert witness identified the causal chain, who testified that if the threat assessment team had operated within the standard of care, it was more likely than not that the shooting would have been prevented (p. 44).**"

This opinion has established as case law a standard of care for threat assessment in California and is now embedded in California civil law, as *Bowe Cleveland v. Taft Union High School District*, F079926 (Super. Ct. No. S1500CV279256).

This case, currently limited to California, **may very well serve as a precedent in other jurisdictions**, and this decision's impact may not be limited to educational settings. Employers in non-educational sectors may also be held to a higher standard of care regarding workplace violence prevention and this newly recognized standard of care for threat assessment.

Workplace Violence Restraining Orders

Many states have implemented laws allowing an employer to obtain court orders prohibiting unlawful violence or credible threats of violence against an employee. Workplace Violence Restraining Orders (WVRO) differ from other protective orders that allow victims of violence or threats of violence to ask the court for these orders themselves. WVROs are obtained by the employer on behalf of the employee. Victim employees can still avail themselves of individual protective orders.

In a recent case, an appellate court in California overturned a lower court decision to grant a WVPO. An employer filed for the WVPO after a customer became angry at an employee, filmed her without consent, made rude and inappropriate statements questioning her mental competency, and assaulted her when he forced a pen and paper toward her.



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Although the court found the description of the customer's behavior to be accurate, the appellate court found that the employer failed to present sufficient evidence establishing that any of the defendant's statements or actions created a credible threat of violence against its employee and dismissed the WVRO. (Technology Credit Union v. Rafat, Court of Appeals of California, Sixth District, August 2022, Case No. H049471).

What does this mean for organizations seeking to protect their employees?

Merely stating that the employee perceived a threat is not enough. When investigating a reported threat against an employee, organizations should elicit detailed information describing what actions led the victim employee to feel threatened and what the employee feared might have happened. **The employee's perspective is key.** Describe any physical disparities that would lead a "reasonable person" to perceive a threat. Imagine a 6-foot-five-inch-tall weightlifter accosting a ballerina.

Were there witnesses to the behavior who also perceived a threat?

- What constitutes "verbal threats?" What exactly was said?
- Are their security camera images that could confirm physical behavior during the incident?
- What can we learn from all this?

Organizations must follow recognized best practices and threat assessment and management protocols. Threat assessment is a dynamic process, threat management teams should continually reassess—**no case should ever be considered 'one and done' in the face of evolving facts or fresh concerns.**

Collaboration is key. Workplace violence prevention is a team sport. Security, HR, Legal, and Line Management staff should coordinate. Failure to treat threat assessment and management as a dynamic, changeable process as new information becomes available can be catastrophic.

The legal landscape is rapidly changing. Behavioral Threat Assessment and Management practitioners MUST be mindful of current case law and continually reassess procedures and protocols.

We can help.

Our team of Certified Threat Managers® accredited by the Association of Threat Assessment Professionals must pass a rigorous certification exam to achieve this elite certification. Certified Threat Managers must meet stringent criteria to even be able to sit for the certification exam. Applicants must have a minimum of five years' experience conducting threat assessments and must pass a rigorous exam covering the following core competencies: Threat Assessment/Management Principles and Practices, Ethics, Criminal Law, Civil Law, Employment Law, Regulatory Law, Mental Health Risk Factors, Liability and Risk Management, Report writing and Interviewing. The goal of this certification is to elevate professional standards, enhance individual performance by identifying those who strive to be the "best in the business." Certified Threat Managers not only have a solid knowledge of the core competencies tested by a rigorous examination but are also committed to maintain currency on new trends, research, and public policies through formal continued education required to maintain their certification.