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Workplace Violence and Security: Are There Lessons for Peacemaking?

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Workplace Violence and Security: Are There Lessons for Peacemaking?

Frances E. Zollers*
Elletta Sangrey Callahan**

ABSTRACT

The workplace can serve as a microcosm for global peace initiatives. The many facets of workplace violence provide various lessons for peacemaking. There are a variety of types and causes of workplace violence. There are also many techniques for dealing with workplace violence. Modern management practices parallel the values that are conducive to peace. Corporate structures that promote trust, participation, and dignity are transportable to the local, national, and global markets for peace.

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The workplace is often portrayed as a violent and scary place.¹ We are beset by media images of the employee gone berserk who shoots up an office or plant floor, killing and injuring co-workers.² We read accounts of the robbery that suddenly and inexplicably turns into a mass killing of employees and customers.³ Workplace violence is seen as a major challenge for employers.⁴ Gallons of ink have been devoted to analyzing the phenomenon and constructing prevention programs. Millions of dollars are spent on technology and consultants to treat this subject.⁵ There are typologies of violent acts that occur at work,⁶ profiles of the “typical” aggressor,⁷ programs to combat workplace violence, checklists of equipment to buy,⁸ and processes to undertake to prevent incidents from occurring.⁹

1. See, e.g., Dianne R. Layden, *Workplace Violence: Frontier Justice on the Job*, 23 LEGAL STUD. F. 479 (1999); Romuald A. Stone, *Workplace Homicide: A Time for Action*, BUS. HORIZONS, Mar.-Apr. 1995, at 3; Peggy Stuart, *Murder at Work*, PERSONNEL J., Feb. 1992, at 27; Gary Stussie, *The Real Terror at Work*, RISK MGMT., May 2002, at 30; Janice Windau & Guy Tuscano, *Murder Inc.—Homicide in the American Workplace*, 89 BUS. & SOC. REV. 58 (1994); *Working in the Kill Zone*, RISK MGMT., Oct. 1994, at 16, available at 1994 WL 13561847; Jonathan A. Segal, *When Charles Manson Comes to the Workplace*, HR MAG., June 1994, at 33; *It's Murder in the Workplace*, FORTUNE, Aug. 9, 1993, at 12; *Death on the Job*, ECONOMIST, Dec. 3, 1994, at 39.

2. See Jay Croft, *Shooting Rampage: The Scene “I Can't Believe This—I Could Have Been Me.”* ATLANTA J.-CONST., July 30, 1999, at B2; Janine DeFao & Ray Delgado, *Homicide, Suicide at Safeway/Worker Kills Ex-Boss, Then Himself, Cops Say*, SAN FRAN. CHRON., July 15, 2002, at A1; *Hotel Worker Kills 5 in Shooting Spree, Police Say*, CNN, Dec. 31, 1999, at www.cnn.com/1999/US/12/30/hotel.shooting.02/index.html; *Multiple Shootings in 1999*, CNN, Nov. 2, 1999, at www.cnn.com/US/9911/02/multiple.shootings.02/index.html.

3. See Donna Freedman, *Bank Job Has 2nd Fatality*, CHI. TRIB., Nov. 9, 2002, at 16; Tammy Joyner & Renee DeGross, *Combating Workplace Violence: Businesses Stress Prevention, But Random Acts Hard to Stop*, ATLANTA J.-CONST., July 15, 2001, at A10; Robert E. Pierre, *A Nightmare in 40 Seconds: Nebraska Town Reels From Deadly Bank Robbery*, WASH. POST, Sept. 30, 2002, at A1.

4. See Bill Zalud, *Corporate America Identifies Threats; New Challenges Emerge*, SECURITY DISTRIBUTING & MARKETING, Sept. 1, 2002, at 11, available at 2002 WL 14042323 (reporting on Pinkerton's 2002 “Top Security Threats and Management Issues Facing Corporate America,” that identified workplace violence for the fourth year in a row as the greatest security concern for security managers in Fortune 1000 companies).

5. See Kevin Dobbs, *The Lucrative Menace of Workplace Violence*, TRAINING, Mar. 2000, at 54 (stating that companies have doubled budgets for violence-prevention services; training for hundreds or thousands of employees can exceed six figures).

6. See *infra* notes 18-27 and accompanying text.

7. See *infra* notes 94-106 and accompanying text.

8. See Michael G. Harvey & Richard A. Cosier, *Homicides in the Workplace: Crisis or False Alarm?*, BUS. HORIZONS, Mar.-Apr. 1995, at 16-17 (estimating the 1993 security equipment outlay for use in business at \$22 billion a year and detailing the items that are purchased and recommended, including surveillance cameras, alarms, bulletproof glass, and drop safes).

9. See *infra* notes 46-126 and accompanying text.

Alternatively, the workplace is presented as a peaceful village where diverse groups come together to work toward a common purpose and create an important exemplar of civil society.¹⁰ The truth, of course, lies somewhere in between these extremes. Business organizations do not mirror perfectly a society or nation. Places of work do not wage war, nor do they provide for the general welfare, except insofar as they provide jobs and pay wages. Nevertheless, the workplace is a community in which people gather to further common objectives and with which its members identify.¹¹

Most importantly, for our purposes, the workplace community is guided by external legal principles, internal policies and practices, and moral values; it develops a culture. Accordingly, comparisons between a workplace and a politically-based society may be sufficiently robust to justify examining as models for peace corporate structures and processes¹² designed to make the workplace secure. Moreover, an organization's response to workplace violence reflects the strength of its commitment to traditional liberal values such as privacy, transparency, and employee rights.¹³ These values are recognized as critical to achieving sustainable peace.¹⁴ Thus, lessons learned about peacemaking may be relevant to organizational efforts to deter workplace violence, in the same way that corporate security-enhancement strategies may be transferable to society.

This Article will examine the dimensions and causes of workplace violence. It will also inquire into current thinking regarding the methods, processes, and structures of preventing and treating this phenomenon, and the objections that may be leveled against such responses insofar as they infringe on workers' privacy and other rights. The events of September 11, 2001 have raised the

10. See, e.g., Randall J. Alford, *The Regenerative Organization*, 19 NAT'L PRODUCTIVITY REV. 49 (2000); Cynthia L. Estlund, *The Changing Workplace as a Locus of Integration in a Diverse Society*, 2000 COLUM. BUS. L. REV. 331 [hereinafter Estlund, *Changing Workplace*]; Cynthia L. Estlund, *Working Together: The Workplace, Civil Society, and the Law*, 89 GEO. L.J. 1 (2000) [hereinafter Estlund, *Working Together*].

11. See Estlund, *Working Together*, *supra* note 10, at 8-13.

12. See generally, e.g., Caryn Beck-Dudley & Steven H. Hanks, *On Virtue and Peace: Creating a Workplace Where People Can Flourish*, 36 VAND. J. TRANSNAT'L L. 427 (2003); Thomas Dunfee & Timothy L. Fort, *Corporate Hypergoals, Sustainable Peace, and the Adapted Firm*, 36 VAND. J. TRANSNAT'L L. 563 (2003); Terry Morehead Dworkin & Cindy A. Schipani, *Gender Voice and Correlations with Peace*, 36 VAND. J. TRANSNAT'L L. 527 (2003); Timothy L. Fort & Cindy A. Schipani, *Adapting Corporate Governance for Sustainable Peace*, 36 VAND. J. TRANSNAT'L L. 377 (2003); Dana Muir, *Groundings of Voice in Employee Rights*, 36 VAND. J. TRANSNAT'L L. 485 (2003); Gretchen Spreitzer, *Implications of Organizational Leadership and Employee Voice for Peace*, Presentation at 2002 William Davidson Institute Conference, Corporate Governance and Sustainable Peace (Nov. 22-24, 2004).

13. See *infra* notes 127-32 and accompanying text.

14. See, e.g., Timothy L. Fort & Cindy A. Schipani, *An Overview of the Symposium on Corporate Governance, Stakeholder Accountability, and Sustainable Peace*, 35 VAND. J. TRANSNAT'L L. 379, 381 (2002).

stakes,¹⁵ causing some employees to be more willing to accept encroachments on their personal freedom while others, especially over time, are less accepting. Nonetheless, if there are nuggets of peacemaking in these processes that are transportable beyond the workplace, it may be instructive to analyze them to determine whether they scale beyond the organization, locally, nationally, or globally.

I. DIMENSIONS

This Article draws from others' work to define and categorize workplace violence in the sustainable peace context.¹⁶ In this Section, this Article discusses that definition, presents a workplace violence typology developed by the Injury Prevention Research Center at the University of Iowa, and attempts to describe the scope of the issue.

Headline-grabbing reports of murders committed by ex-employees are among the most extreme examples of workplace violence.¹⁷ However, observers agree that many other behaviors should be so labeled.¹⁸ The federal Occupation Safety and Health Administration's (OSHA) definition of workplace violence includes conduct ranging from verbal threats to homicide, occurring within or away from the workplace.¹⁹ Other proposed definitions are similarly broad in terms of conduct and consequences, encompassing physical, psychological, and property damage.²⁰ Thus, there is sufficient recognition that "workplace violence" goes beyond physical injury and death and includes threats, intimidation, harassment, and humiliation, and this Article embraces that broader definition.²¹

15. See Ann Davis, *Employers Dig Deep into Workers' Pasts, Citing Terrorism Fears*, WALL ST. J., Mar. 12, 2002, at A1.

16. See *infra* notes 24-42 and accompanying text.

17. See Defao & Delgado, *supra* note 2, at B2.

18. See *infra* notes 21-22 and accompanying text.

19. Occupational Safety and Health Admin., *Factsheet on Workplace Violence* (2002), available at http://www.osha.gov/OshDoc/data_General_Facts/factsheet-workplace-violence.pdf [hereinafter OSHA Factsheet].

20. Alternative definitions include "any incident in which a person is abused, threatened or assaulted in circumstances relating to their [sic] work." Karen Hainsworth, *Office Hours: Violence at Work*, GUARDIAN, April 29, 2002, at 2 (quoting the Trade Union Council). Also, definitions include "[a]ny act against an employee that creates a hostile work environment and negatively affects the employee, either physically or psychologically." Steve Kaufer & Jung W. Mattman, *Workplace Violence: An Employer's Guide* (2001), available at http://noworkviolence.com/articles/employers_guide.htm.

21. See *supra* notes 19-20 and accompanying text.

A variety of approaches has been taken to categorizing violence in the workplace.²² Most useful here is the typology developed by the Injury Prevention Research Center, which focuses on the relationship between the perpetrator's role with respect to the victim.²³ The first group of incidents (Type I) involves a stranger entering the workplace to commit a crime, killing or injuring employees in the process.²⁴ This is typified by the gas station or late-night diner robbery where employees are handling money and often working alone at the time of the incident.²⁵ The robbery turns into a homicide or assault when the perpetrator encounters resistance or wants to eliminate witnesses.²⁶ As illustrated by Figure 1, most incidents of workplace homicide fall into this category.²⁷

22. See THOMAS CAPOZZOLI & R. STEVEN MCVEY, *MANAGING VIOLENCE IN THE WORKPLACE* 23-26 (1996); INJURY PREVENTION RESEARCH CENTER, *WORKPLACE VIOLENCE: A REPORT TO THE NATION* (University of Iowa, 2001) [hereinafter *A REPORT TO THE NATION*]. OSHA recognizes three types of workplace violence; the *Report to the Nation* recognizes four. We adopt the latter approach it breaks out violence incidents occasioned by domestic disputes that play out in the workplace (Type IV). The U.S. Department of Justice parses its data by type of victimization. See Detis T. Duhart, *Violence in the Workplace, 1993-99*, BUREAU OF JUSTICE STATISTICS SPECIAL REPORT, 2001, at 10, available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/vw99.pdf>. Statistics are presented for rape and sexual assault, robbery, aggravated assault, and simple assault. Homicide data are further categorized by method. Shooting is consistently the leading cause of death. See *id.* This framework is not useful to the present inquiry. First, it is limited to violent conduct that rises to the level of criminal behavior. Second, it does not shed any light on the link between corporate responses to workplace violence and peacemaking.

23. See *A REPORT TO THE NATION*, *supra* note 22, at 4.

24. See *id.* at 5.

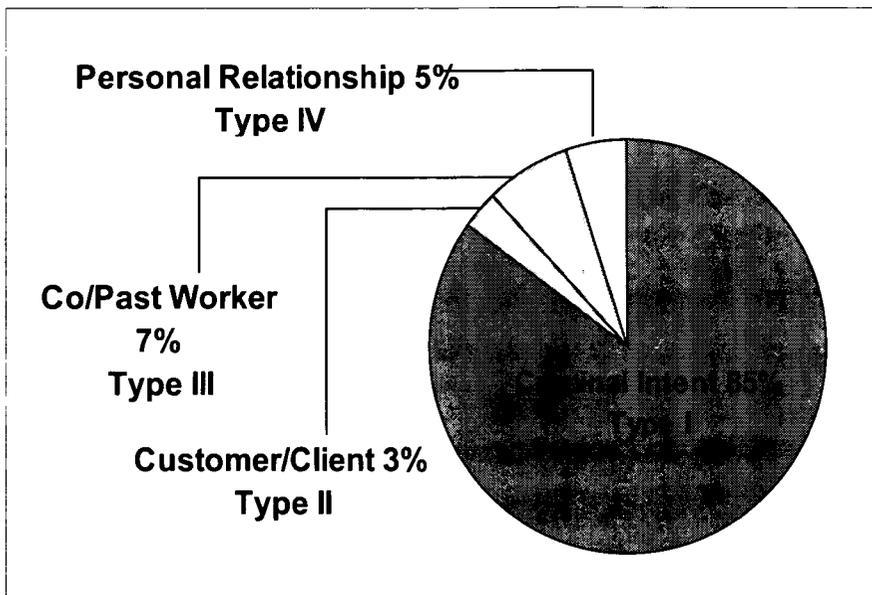
25. *Id.*

26. See Kathryn Tyler, *Targets Behind the Counter*, *MAG.*, Aug. 1999, at 108.

27. See *infra* Figure 1; see also *A REPORT TO THE NATION*, *supra* note 22, at 5.

Figure 1

Percent of Work-Related Homicides by Type United States, 1997



Total number of homicides = 860

Source: Census of Fatal Occupational Injuries, BLS

Type II incidents involve a customer or client who is legitimately on the premises at the time he kills or injures a worker.²⁸ This category's victims include health care workers, school teachers, police officers, and prison guards²⁹—occupations that are often identified as being significantly at risk for experiencing workplace violence.³⁰

Type III is comprised of worker-on-worker incidents.³¹ These include the occasions we read about in the news where a current or past employee kills or injures other employees—often out of revenge.³² Unlike Type I and Type II crimes, those committed against co-workers are not more prevalent in some industries than in others.³³ More common incidents in this category, albeit less dramatic and newsworthy, are threats, intimidation, and harassment by co-workers.³⁴

Type IV violent incidents grow out of a personal relationship between the perpetrator and the victim.³⁵ The assailant knows his victim to be at work and enters the workplace to harm him or her over an issue unrelated to work.³⁶ This is the situation where a spouse, for example, comes to the workplace to do harm to his or her partner because of issues unrelated to work.³⁷ Not surprisingly, this category affects more women than men.³⁸

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28. A REPORT TO THE NATION, *supra* note 22, at 4.
 29. *Id.* at 7.
 30. *See infra* Figure 2.
 31. *See* A REPORT TO THE NATION, *supra* note 22, at 9.
 32. *Id.*
 33. *Id.*
 34. *Id.* at 4.
 35. *Id.*
 36. *Id.* at 11.
 37. *Id.*
 38. *Id.*

Figure 2: Typology of Workplace Violence

Category	Definition	Occupations at Risk	Management Strategies
Type I	Aggressor on premises to commit a crime	Retail Convenience stores Late-night businesses Taxi drivers Cash businesses	Training Crisis management team Monitoring Physical safeguards
Type II	Aggressor on premises as customer or client	Health care workers School teachers Mental health workers Police	Training Communication Dispute resolution Crisis management team Monitoring Physical safeguards
Type III	Worker-on-worker	All	Training Communication Dispute resolution Crisis management team Profiling Monitoring Physical safeguards
Type IV	Aggressor has personal relationship with victim, which is source of hostility	All (but women are more often victims than men)	Training Crisis management team Monitoring Physical safeguards

Based on data found in *Workplace Violence: A Report to the Nation*, published by the Injury Prevention Research Center at the University of Iowa (2001)

This approach to categorization is helpful because it identifies applicable management responses by type.³⁹ As illustrated by Figure 2, measures taken to prevent incidents in one category may very well be unsuitable for the others. Insufficient understanding of workplace violence may cause businesses to mispend resources on prevention techniques that have little or nothing to do with the reality of actual or likely risks.⁴⁰

The Bureau of Labor Statistics (BLS) publishes annual figures for workplace homicides and assaults.⁴¹ These data point to a decrease in crimes committed in the workplace, as illustrated by Figure 3.

39. *Id.* at 6.

40. *See* Dobbs, *supra* note 5, at 54-62.

41. Annual data for fatal and non-fatal workplace injuries are available at the Bureau of Labor Statistics website, at <http://www.bls.gov>.

Figure 3: Longitudinal View of Workplace Deaths & Injuries

Year	Workplace Homicides	Assaults
1992	1044	1281
1993	1074	1329
1994	1080	1321
1995	1036	1280
1996	927	1165
1997	860	1111
1998	714	962
1999	651	909
2000	677	929 (preliminary)
2001	639	Not yet available

Derived from BLS data

These data are out of synch with media reports suggesting that workplace violence is on the rise.⁴² The relative proportions of various crimes also belies widely-held perceptions of the most common types of workplace violence. For example, homicides represented only 0.1% of workplace crimes during 1993-1999, while simple assaults represented 72.5% of these incidents.⁴³ These figures contrast sharply with the stereotypical scenario of the disgruntled employee exacting his toll on co-workers. To be sure, this instance shows up in the statistics, but does not occupy high rankings.⁴⁴

There are a number of possible reasons for these apparent contradictions. First, workplace homicides did, in fact, increase in the mid-1990s⁴⁵ before declining to their current level. Commentators observing the phenomenon in that time frame would have reported accurately that workplace homicide was on the rise.⁴⁶ Moreover, although rates are falling, workplace homicide remains the leading cause of work-related death for women, the second leading cause for men, and the fourth leading cause of work-related death overall.⁴⁷ Also, there is evidence suggesting that the proportion of

42. See *supra* note 1.

43. Duhart, *supra* note 22, at 2.

44. See Figure 1 (indicating that Type I incidents perpetrated by strangers represent 85% of workplace homicides, while worker-on-worker homicides comprise 7% of workplace homicides).

45. See Figure 3.

46. *Id.*

47. See OSHA Factsheet, *supra* note 19.

workplace homicides perpetrated by co-workers may be rising.⁴⁸ Lastly, and more sinister in nature, it has been suggested that the “crisis” in workplace violence has been exaggerated by those who benefit when employers engage consultants and purchase equipment to stem the tide of violent incidents.⁴⁹

Regardless of the possible disconnect between perception and reality, reliable data do exist regarding the dimensions of criminal conduct in the workplace.⁵⁰ In addition to the BLS statistics noted above,⁵¹ an important U.S. Department of Justice report, based on the National Crime Victimization Survey, describes criminal behavior in the workplace.⁵² Defined broadly, however, workplace violence is difficult to quantify. Very little information is available about the incidence of non-criminal workplace violence behaviors.⁵³ Accordingly, we are unable to present an overall assessment of the scope of non-criminal workplace conduct. Available data, however, are consistent with statistics on workplace crime, in the sense that they do not indicate rapidly-increasing rates of misconduct.⁵⁴ The number of sexual harassment charges filed with the Equal Employment Opportunity Commission (EEOC), for example, was relatively stable for 1995-2001.⁵⁵

48. John T. Adams, *Workplace Deaths Decline, Co-Worker Homicides Rise*, HR MAG., Feb. 2001, at 12.

49. See Dobbs, *supra* note 5, at 54; Harvey & Cosier, *supra* note 8, at 11; Erik Larson, *Trigger Happy: A False Crisis: How Workplace Violence Became a Hot Issue*, WALL ST. J., Oct. 13, 1994, at A1. *But see* MARK BRAVERMAN, PREVENTING WORKPLACE VIOLENCE 132-33 (1999) (presenting a rejoinder to the assertion that workplace violence is a “false crisis”).

50. See *infra* note 54.

51. See *supra* Figures 1 & 3 and accompanying text.

52. See Duhart, *supra* note 22, at 1. According to this report, violent crime in the workplace declined 44% over the period 1993-1999, while all violent crime declined by 40%. This is consistent with the overall drop in crime rates during the period. *Id.* If the workplace mirrors society, a falling crime rate in the latter should produce a falling victimization rate in the former.

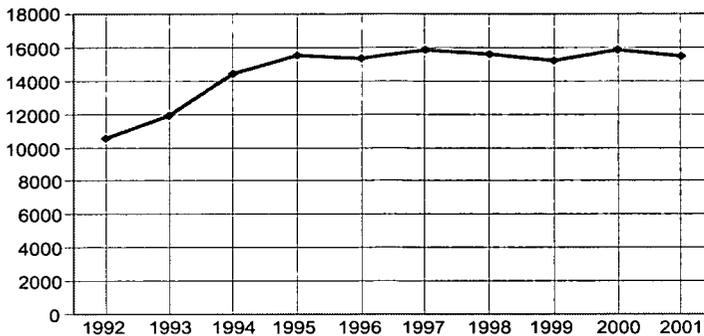
53. Most studies instead focus on violent crime in the workplace. See, e.g., Duhart, *supra* note 22.

54. See *infra* notes 57-64 and accompanying text.

55. See Figure 4.

Figure 4

**Sexual Harassment Charges
Federal, State & Local Agencies
FY 1992 – FY 2001**



Compiled by the EEOC'S Office of Research, Information, and Planning

However, sexual harassment does not encompass all behaviors we include in the definition of workplace violence and, thus, the data in Figure 4 under-represent the true dimension of workplace violence as we have defined it.⁵⁶ The data do not capture threats, intimidation, and humiliation that are not motivated by sexual harassment.⁵⁷ A recent study of incivility in the workplace found that over two-thirds of respondents experienced disrespect, condescension, social exclusion, and other forms of incivility while at work.⁵⁸ Although the researchers' definition of incivility encompasses more conduct than our definition of workplace violence, including unintended acts attributable to oversight and ignorance, the study reveals that there is more bullying occurring at work than homicide and assault data and sexual harassment figures reveal.⁵⁹ Most importantly, the researchers note that "low-level, interpersonal

56. *Id.*

57. *See id.*

58. Lila M. Cortina et al., *Incivility in the Workplace: Incidence and Impact*, 6 J. OCCUPATIONAL HEALTH PSYCHOL. 64, 75 (2001).

59. *Id.* at 64.

mistreatment can engender organizational violence.”⁶⁰ Consequently, we find the study useful to try to gauge the full range of workplace violence.

The phenomenon of workplace violence is not confined to the United States.⁶¹ The International Labour Organization (ILO), a U.N. agency, tracks statistics and trends globally.⁶² In a 1998 report, updated in 2000, the ILO pulled together studies from many nations to present a picture of the global dimensions of workplace violence, characterizing it as a “major problem.”⁶³

Even in the absence of precise figures, it is clear that millions of workers are victims of workplace violence every year.⁶⁴ It is also safe to say that awareness of workplace violence has increased, and employers are taking steps to address this important issue.⁶⁵

II. CAUSES

Stress is the ubiquitous characteristic of the plethora of causes advanced for workplace violence.⁶⁶ Three general themes permeate the list of oft-cited causes: the competitive environment of business,

60. *Id.* at 65.

61. *See infra* notes 64-65 and accompanying text.

62. Int'l Lab. Org., *Violence at Work*, at <http://www.ilo.org/ppublic/english/protection/safework/violence>.

63. *Id.* *See also* Vittorio DiMartino, *Violence at the Workplace: The Global Challenge*, available at <http://www.ilo.org/ppublic/english/protection/safework/violence/violwk/violwk.pdf>. The ILO report presents a dizzying array of information. For instance, nearly 80% of workers in South Africa experience hostile behavior in the workplace at some point in their working lives; French transport workers were experiencing acts of violence at a rising rate; in Germany, 93% of female survey respondents had been sexually harassed in the workplace; a bullying hotline in Japan received 1,700 requests for consultation in June and October of 1996. *Violence at Work*, *supra* note 62, at Preface 1-2. The ILO document also includes the results of the Third European Survey on Working Conditions, showing that three million workers are subject to violence from other workers, six million from people outside the workplace, three million experience sexual harassment, and thirteen million were subject to intimidation and bullying. Canada, too, has taken note of workplace violence. *See, e.g.*, Sally Johnston, *Hazards of Working; Workplace Ranges from Swearing, Shouting and Hitting to Murder*, EDMONTON SUN, Mar. 7, 2002, at 30. This article reported that Canada ranked fourth behind Argentina, Romania, and France in workplace violence incidents. Canada experiences about 60 murders at work per year, most of which are perpetrated by spouses or lovers, according to reports. *Id.*

64. OSHA Factsheet, *supra* note 19. OSHA estimates that two million U.S. workers are subject to violence every year. *See id.*

65. *See* Stephanie Armour, *Employers' New Measures Fight Workplace Violence*, USA TODAY, May 9, 2002, at www.usatoday.com/money/general/2002/05/09/workplace-violence.htm; *see also supra* note 63.

66. *See* Jan Norman, *Security Problems in Workplace Increasing*, ORANGE COUNTY REG., Dec. 12, 2001, Lexis, News Group File (noting one expert's opinion that “there's a direct correlation between stress and violence”).

organizational characteristics, and characteristics of the aggressor himself or non-job-related events in his life.⁶⁷

The competitive environment of business includes downsizing, increasing demands for quality, mergers, technology, changing workforce demographics, and other pressures that are the very nature of a competitive marketplace.⁶⁸ It is unrealistic to propose that such stressors be removed; they are the nature of the beast. What can be considered is how the organization can best deal with these pressures and help those affected to deal with them effectively.

The second theme is that violence triggers can be found in the corporation itself.⁶⁹ These include characteristics of the organizational culture (such as loyalty and trust, management styles, responses to aggressive behavior by employees or outsiders, quality of communication); organizational decisions affecting employees (downsizing, termination); organizational decisions affecting persons outside the organization, such as clients or members of the community (plant closings); organizational conduct affecting outsiders (poor customer service); individual behavior within the workplace (observing violence committed by others); and the physical environment (crowding, noise, air quality, ambient temperature).⁷⁰ It is not naïve to ask organizations to examine these causes in an effort to reduce violence and to make changes when necessary. We assert that effectively addressing violence triggers within the corporation itself requires infusing democratic values into management practices.

The third theme is that sometimes violence is promoted by individual factors such as domestic dysfunction overspill,⁷¹ aggressive personality, mental illness, and substance abuse.⁷² For this group of stressors, the organization's best approach may be to first detect those stressors, then either prevent those individuals from entering the workplace or help the individual cope with them, alleviate them, or treat them.⁷³ Corporate responses to this last group of root causes are likely to run contrary to traditional democratic values because they have the potential of intruding on employees' privacy and dignity.⁷⁴

67. See, e.g., Joel H. Neuman & Robert H. Baron, *Workplace Violence and Workplace Aggressor: Evidence Concerning Specific Forms, Potential Causes, and Preferred Targets*, 24 J. MGMT. 391, 402-06 (1998).

68. See Dianne R. Layden, *Workplace Violence: Further Justice on the Job*, 23 LEGAL STUD. F. 479, 480 (1999).

69. *Id.*; see also Neuman & Baron, *supra* note 67, at 402-06.

70. Layden, *supra* note 68; Newman & Baron, *supra* note 67, 402-06.

71. Tia Schnieder Denenberg et al., *Dispute Resolution & Workplace Violence*, 51 DISP. RESOL. J. 6, 9 (1996).

72. See, e.g., CAPOZZOLI & MCVEY, *supra* note 22, at 41-47.

73. See CAPOZZOLI & MCVEY, *supra* note 22, at 93-111 (suggesting methods for prevention of violence).

74. See *infra* notes 87-126 and accompanying text.

III. RESPONSES

Having identified frequently-cited causes of workplace violence, it follows that an examination of various organizational responses is warranted. The law mandates a general obligation of employers to keep the workplace safe.⁷⁵ This responsibility is interpreted to include protecting employees from violence.⁷⁶ It should not be surprising, then, to learn that strategies, frameworks, and policies for preventing and treating workplace violence abound in the literature of several disciplines.⁷⁷ Clearly, it is beyond our scope to assess all of these recommendations.⁷⁸ Drawing from the peace literature, David Barash's analytical framework provides us with valuable assistance in this regard.⁷⁹ Barash distinguishes "negative peace" efforts, that is, those directed toward preventing war, from "positive peace" measures that emphasize "the establishment of life-affirming and life-enhancing values and structures."⁸⁰ Seeking positive peace involves avoiding "structural violence," as well as outright war.⁸¹ Barash observes that

structural violence [is] a condition that is typically built into many social and cultural institutions. A slave-holding society may be at "peace" in the sense that it is not literally at war, but it is also rife with structural violence. Structural violence has the effect of denying people important rights such as economic opportunity, social and political

75. 29 U.S.C. § 654(a)(1) (2002). The OSHA statute provides that "[e]ach employer shall furnish . . . a place of employment which [is] free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees." *Id.* This section is known as the general duty of safety. For a differing view, see Ann E. Phillips, *Violence in the Workplace: Reevaluating the Employer's Role*, 44 BUFF. L. REV. 139, 144-45 (1996), for the proposition that budget restrictions and minimal enforcement activities and fines prohibit OSHA from taking an active role in protecting employees from violence.

76. See, e.g., *G. B. Goldman Paper Co. v. United Paperworkers Int'l*, 957 F. Supp. 607, 618 (E.D. Pa. 1997); *Columbia Aluminum Corp. v. U.S. Steelworkers*, 922 F. Supp. 412, 420 (E.D. Wash. 1995); see also CHARLES E. LABIG, PREVENTING VIOLENCE IN THE WORKPLACE 5 (1995) (describing a 1994 OSHA policy that employers would be cited for not protecting their workers from violence. Labig says there were five pending citations under the general duty of safety statute by April 1995.).

77. Research from many disciplines informs this Article, including research from management, human resources, labor relations, security and safety, strategy, and occupational health—as well as research from law, ethics, and peace studies.

78. For example, physical safeguards such as controlled entry, lighting, alarms, and so forth are thought to be useful in preventing Type I violence, in particular; employee assistance programs (EAP) often address mental illness and substance abuse that may lead to Type IV incidents. Neither strategy, however, is instructive for analyzing peacemaking.

79. See David R. Barash, *Introduction: Approaches to Peace*, in APPROACHES TO PEACE 1, 2 (2000).

80. *Id.*

81. See *id.* at 129.

equality, a sense of fulfillment and self-worth, and access to a healthy natural environment.⁸²

Positive peace embraces the values identified as critical to achieving sustainable peace, such as privacy, transparency, and employee rights.⁸³ Accordingly, we discuss those responses to workplace violence that we believe are most consistent with positive peace, as well as those that are least likely to advance this goal because they may contribute to structural violence.

Further, we focus on workplace violence that is triggered by organizational factors, rather than conduct that is determined primarily by extra-organizational influences.⁸⁴ Behaviors in the first category are more likely to be affected by corporate policies and practices.⁸⁵ Strategies directed toward the organization's culture and environment are, in turn, those most likely to be transferable to peacemaking.⁸⁶ To these ends, we consider training, communication, dispute resolution, crisis management teams, profiling, and monitoring.

82. *Id.* at 129.

83. *See, e.g.,* Fort & Schipani, *supra* note 12, at 381.

84. *See* Anne M. O'Leary-Kelly et al., *Organization-Motivated Aggression: A Research Framework*, 21 ACAD. MGMT. REV. 225, 228-29 (1996). The authors provide the following illustration of this categorization:

[T]he broad definition of [workplace violence] would include both the actions of an individual who robs a convenience store and those of an employee who assaults a supervisor. It seems probable, however, that the antecedents and theoretical explanations of these two actions may be quite different. In the former situation, factors such as subcultural influences and socioeconomic status may be critical, whereas factors in the organization's culture and in the employee-supervisor relationship may be important to explaining the latter situation.

Id. at 228.

85. *See id.* ("[I]f some factor in an organization's culture triggers aggressive behavior, this aggressive behavior should be open to some degree of organizational influence.")

86. *See, e.g.,* Beck-Dudley & Hanks, *supra* note 12; Fort & Schipani, *supra* note 12; Frances J. Milliken, *Understanding the Dynamics of Voice and Silence in Organizations*, Remarks Presented at the Conference on Corporate Governance and Sustainable Peace, University of Michigan Business School (Nov. 23, 2002); O'Leary-Kelly et al., *supra* note 84, at 227-28 (distinguishing "aggression" (the act) from "violence" (the consequence)). This distinction is not useful to the present discussion. Therefore, we will use "violence," the more common term, to encompass behaviors and events in both categories.

A. Strategies Consistent With Positive Peace

1. Training

Nearly every writer on this topic speaks of the need to develop or enhance worker training.⁸⁷ “Training” contemplates guidance to facilitate the implementation of new procedures, as well as education to promote learning about new concepts. Examples include training about precautionary measures, how to spot the danger signs of someone becoming violent, or how to react to a violent episode.⁸⁸ Training also includes practice in handling conflict, delivering bad news such as a poor performance evaluation or a termination, and discipline.⁸⁹ Proponents of training speak of the need to reach individuals throughout the organization and to do so repeatedly.⁹⁰

Training is a recommended strategy for all types of workplace violence,⁹¹ although its content will vary depending on which scenario is being addressed. How to react to a threatening stranger requires training aimed at defensive strategies.⁹² How to handle a threatening or bullying employee, on the other hand, requires quite a different approach that emphasizes conflict resolution skills and reporting procedures.⁹³ Most pertinently, a positive peace training approach directed toward preventing and diffusing violence spurred by organizational factors focuses on creating a corporate culture that does not tolerate violence or its precursors, but supports an atmosphere of trust and respect.⁹⁴

87. See, e.g., Nat'l Institute of Occupational Safety and Health (NIOSH), *Violence in the Workplace: Risk Factors and Prevention Strategies*, available at <http://www.cdc.gov/niosh.violrisk.html>; CAPOZZOLI & MCVY, *supra* note 22, at 127-29; William Atkinson, *The Everyday Face of Violence in the Workplace*, RISK MGMT., Feb. 2000, at 12; Jay Crawford, *When Employee Stress Turns Violent*, ACCESS CONTROL & SECURITY SYS., Feb. 1, 2002, at 2; Richard S. DeFrank & John M. Ivancevich, *Stress on the Job: An Executive Update*, 12 ACAD. MGMT. EXEC. 55, 57-65 (1998); Paul Viollis, Sr., *A Wake-Up Call for Not Only Terrorist Threats*, 21 J. ORG. EXCELLENCE 25, 28 (Summer 2002).

88. NIOSH, *supra* note 87.

89. *Id.*

90. See, e.g., LABIG, *supra* note 76, at 95-98.

91. See *supra* Figure 2.

92. *Id.*

93. *Id.*

94. We are mindful of the cautionary note raised by Gillian Flynn, *Why Employees Are So Angry*, WORKFORCE, Sept. 1998, at 26 (stating that training must be authentic and not just corporate spin).

2. Communication

Communication, like training, permeates the other peace-promotion strategies.⁹⁵ Experts say that open communication is absolutely essential in the organization to reduce stress and defuse ambiguity and anger.⁹⁶ Communications policies founded on transparency promote positive peace.⁹⁷ Managerial candor is especially important when bad news must be conveyed.⁹⁸ Rumors about layoffs or plant closings can be devastating to the working environment.⁹⁹ On an individual level, transmission of information about poor performance, unacceptable behavior, or discharge must be handled forthrightly, but in a way that preserves employee dignity.¹⁰⁰

Free expression demands the availability of a clear "upward" channel of communication, as well.¹⁰¹ Employees must be provided and be aware of an organizational outlet for grievances, suggestions, and disclosure of wrongdoing.¹⁰² Studies of whistleblowers indicate that individuals who witness workplace wrongdoing are more likely to blow the whistle if they believe the action will be effective and that the organization supports such disclosures.¹⁰³ Thus, these channels are most likely to be utilized if workers believe that their reports will be taken seriously.¹⁰⁴

95. See *supra* Figure 2.

96. See, e.g., Joel H. Neuman & Robert A. Baron, *Workplace Violence and Workplace Aggression: Evidence Concerning Specific Forms, Potential Causes, and Preferred Targets*, 24 J. MGMT. 391 (1998).

97. CAPOZZOLI & MCVEY, *supra* note 22, at 106-07.

98. *Id.* at 103-04.

99. *Id.* at 31 (noting that threat to a job is "among stressors leading to workplace violence").

100. See CAPOZZOLI & MCVEY, *supra* note 22, at 103-05; Atkinson, *supra* note 87, at 12; Carla Joinson, *Controlling Hostility*, HR MAG., Aug. 1998, at 65; Neuman & Baron, *supra* note 96.

101. See, e.g., Barbara Ettore, *The Unvarnished Truth*, 86 MGMT. REV. 54 (1997).

102. *Id.*

103. See, e.g., Janet P. Near et al., *Enhancing Whistle-Blowing Effectiveness: What Really Works 2* (2000) (unpublished manuscript, on file with the authors). Other factors that have been shown positively to influence whistleblowing. *Id.* at 26-27 (naming the seriousness of the wrongdoing as a factor); Terry Morehead Dworkin & Janet P. Near, *Whistleblower Statutes & Reality: Is There A Need for Realignment?*, 1990 PROC. PAC. S.W. BUS. L. ASS'N 73 (naming long tenure in the organization as a factor); Marcia P. Miceli & Janet P. Near, *The Relationship Among Beliefs, Organizational Position, and Whistle-Blowing Status: A Discriminant Analysis*, 27 ACAD. MGMT. J. 687 (1984) (naming the desire to get the organization back on the right track as a factor); Near, *Enhancing Whistle-Blowing Effectiveness: What Really Works*, *supra*, at 23 (naming job satisfaction as a factor).

104. See generally Janet P. Near et al., *supra* note 103.

One way to promote communication is to institute a corporate ombudsman.¹⁰⁵ The ombudsman's job is to receive complaints from organizational members, investigate them, and to make recommendations to management for resolution.¹⁰⁶ The presence of an ombudsman signals an organization's willingness to hear criticism and dissent.¹⁰⁷ The ombudsman, while typically a member of the organization, is outside of the usual reporting structure.¹⁰⁸ This introduces some neutrality into the equation.¹⁰⁹ Most importantly, the ombudsman is not the employee's supervisor and can hear complaints about the supervisor dispassionately.¹¹⁰ Naturally, the individual occupying the ombudsman role must have excellent communication skills.¹¹¹ Furthermore, it is essential that the ombudsman remain neutral and not be seen as a pawn of management.¹¹² Confidentiality is necessary to encourage individuals to trust the process and use the office as a communication channel.¹¹³ Finally, the ombudsman must have the power to investigate the charge, be creative in offering solutions, and have enough stature within the organization that his or her resolutions are adopted.¹¹⁴

Initially, many organizations have introduced the ombudsman to hear complaints about ethical lapses within the organization.¹¹⁵ Providing this outlet was intended to encourage individuals to blow the whistle within the organization, rather than to the media or regulatory agencies.¹¹⁶ Nonetheless, the ombudsman's responsibilities can be and have been broadened.¹¹⁷ Companies such

105. See Ettore, *supra* note 103; Kristine L. Hayes, Note, *Prepostal Prevention of Workplace Violence: Establishing an Ombuds Program as One Possible Solution*, 14 OHIO ST. J. DISP. RESOL. 215 (1998); Olaf Isachson, *Do You Need an Ombudsman?*, 75 HR FOCUS, Sept. 1998, at 6.

106. Hayes, *supra* note 105, at 226.

107. Elletta Sangrey Callahan et al., *Integrating Trends in Whistleblowing and Corporate Governance: Promoting Organization Effectiveness, Societal Responsibility, and Employee Empowerment*, 40 AM. BUS. L.J. 177 (2002).

108. *Id.*

109. Hayes, *supra* note 105, at 227.

110. *Id.*

111. *Id.* at 231.

112. *Id.* at 227.

113. *Id.* at 228-29.

114. *Id.* at 231.

115. *Id.* at 227.

116. See generally Terry Morehead Dworkin & Elletta Sangrey Callahan, *Internal Whistleblowing: Protecting the Interests of the Employee, the Organization, and Society*, 29 AM. BUS. L.J. 267 (1991) (discussing the differences between internal and external whistleblowing).

117. Hayes, *supra* note 105, at 227.

as Federal Express, IBM, McDonald's, and Control Data use ombudsman programs to resolve employee disputes.¹¹⁸

3. Dispute Resolution

Frequently, organizations are entreated to integrate dispute resolution systems into the workplace as an outlet for employees' anger and stress.¹¹⁹ The processes advocated for these purposes are distinguishable from traditional labor grievance arbitration, which has become encrusted with stylized procedures over time.¹²⁰ Rather, more flexible processes such as mediation, wherein a trained facilitator helps the parties articulate the bases of the dispute and work towards a solution, are contemplated.¹²¹ Here, supervisors and others are trained as facilitators to mediate disputes and grievances that inevitably arise among employees before they escalate.¹²² Also, more informal, ongoing, and adaptable dispute resolution processes can be employed.¹²³ These interactions can happen in the hallway, on the plant floor, and in the boss's office, when necessary, in order to facilitate relationships among the organization's members.¹²⁴ In these instances, all employees are trained to handle conflicts that might arise and to implement problem-solving and dispute-resolution skills.¹²⁵ The objective of this environment is to resolve minor disputes through ongoing dialogue and exchange, in order to avoid the more extreme positions and feelings often associated with unresolved conflict.¹²⁶

A key value of flexible dispute resolution is its open style.¹²⁷ It gives the parties a chance to tell their stories, which some commentators believe is the very heart of reducing anger and thus reducing potential violence.¹²⁸ There are no advocates; the parties

118. *Id.*; see also Mike France, *Now, The Dirty Laundry Gets Washed in Public*, BUS. WEEK, Oct. 27, 1997, at 150, available at 1997 WL 14813981 (adding American Express, Royal Dutch/Shell, Kodak, and Pharmacia & Upjohn to the list).

119. See, e.g., CAPOZZOLI & MCVEY, *supra* note 22, at 122-23; RICHARD V. DENENBERG & MARK BRAVERMAN, *THE VIOLENCE-PRONE WORKPLACE: A NEW APPROACH TO DEALING WITH HOSTILE, THREATENING, AND UNCIVIL BEHAVIOR* 186-96 (1999).

120. See Denenberg et al., *supra* note 71, at 15.

121. *Id.*; see also Carrie A. Bond, Note, *Shattering the Myth: Mediating Sexual Harassment Disputes in the Workplace*, 65 FORDHAM L. REV. 2489 (1997).

122. *Id.* at 2511.

123. *Id.*

124. See *supra* notes 119-21 and accompanying text.

125. *Id.*

126. See Carla Joinson, *Controlling Hostility*, HR MAG., Aug. 1998, at 65.

127. Carrie A. Bond, *Shattering the Myth: Mediation, Sexual Harassment Disputes in the Workplace*, 65 FORDHAM L. REV. 2489, 2511 (1997).

128. See, e.g., DENENBERG & BRAVERMAN, *supra* note 119, at 188.

speak for themselves, in their own voices.¹²⁹ This helps authenticate the feelings of grievance.¹³⁰ Most importantly, perhaps, is that this form of dispute resolution does not produce winners and losers in the sense that litigation or arbitration do.¹³¹ Parties are brought together to work out a solution, rather than to lay blame or find fault.¹³² Of course, the effectiveness of this type of dispute resolution depends on the availability of facilitators who are neutral and well-trained in conflict resolution, listening skills, and creative problem solving, or on the widespread training of all workers to manage their own and others' conflicts.¹³³

Dispute resolution advances democratic values of transparency and voice, without posing the serious threat to worker privacy presented by some other processes.¹³⁴ The one cautionary note is that the organization must consider what sort of documentation should accompany dispute resolution.¹³⁵ While it is important that the resolution proceedings themselves be transparent, to ensure that no one withholds information for tactical advantage,¹³⁶ we recommend that the details of dispute resolution proceedings be confidential. Confidentiality will signal that the parties are free to speak candidly and will encourage aggrieved parties to resort to the process. That said, the disputants' supervisors should be included within the circle of document access, so long as the supervisor is not the object of the complaint. The purpose here is to track a pattern of behavior that may lead to violence. For example, it would be important to know, when addressing a complaint of intimidation by one employee against another employee, that similar complaints were made about the same employee by other workers on previous occasions.

129. Denenberg et al., *supra* note 71, at 15.

130. Bond, *supra* note 127, at 5211-12.

131. *Id.*

132. *Id.* at 2511.

133. *See id.* (noting the cooperative and listening traits of the mediator and her role in the process).

134. *See infra* notes 87-132 and accompanying text.

135. Lynn P. Cohen & Lynn A. Garrigan, *Mediating Employment Disputes*, in ALTERNATIVE DISPUTE RESOLUTION § 14.23 (Ill. Institute for Continuing Legal Education 2001).

136. Denenberg et al., *supra* note 71, at 13.

4. Crisis Management Teams

Every organization must hope for the best and plan for the worst.¹³⁷ An employer, therefore, must have structures and processes in place to prevent violence, but also to treat violent incidents, should they occur.¹³⁸ Crisis management teams, which have both positive and negative peace aspects, are recommended to serve these objectives.¹³⁹ As a facilitator for positive peace, a crisis management team assesses whether the workplace is violence-prone and takes preventative measures when early warnings of violence are reported or observed.¹⁴⁰ The crisis management team has another role to play that is more in keeping with negative peace, but nevertheless important to the organization: in the event that a violent incident occurs, the team mobilizes to treat the injured or aggrieved, to provide assistance through recovery, and to extend compassion and concern for the victim.¹⁴¹ As a violence prevention mechanism, the team's role is to evaluate and probe.¹⁴² As a crisis response team, its role is to investigate and report the incident and to provide support in the aftermath.¹⁴³ Once again, training and communication are critical.¹⁴⁴ Team members must know their responsibilities and must be able to mobilize in an instant if a violent incident occurs.¹⁴⁵

Effective crisis management teams are multi-disciplinary.¹⁴⁶ Members of the crisis management team should be drawn from departments such as human resources, security, legal affairs,¹⁴⁷

137. See Vogel, Kelly, Knutson, Weir, Bye & Hurke, Ltd., *Workplace Violence Cannot be Ignored*, N.D. EMP. L. LETTER, Oct. 1997, available at Lexis, News Group File.

138. See Mark F. Murray, *Workplace Violence: Investigating the Threat and Responding to the Reality*, PRAC. L., Jan. 1999, at 15.

139. See *supra* note 137.

140. See John Nicoletti & Kelly Spooner, *Violence in the Workplace: Response and Intervention Strategies*, in *VIOLENCE ON THE JOB: IDENTIFYING RISKS AND DEVELOPING SOLUTIONS* 274-75 (Gary R. VandenBos & Elizabeth Q. Bulatao eds., 1996).

141. See, e.g., CAPOZZOLI & McVEY, *supra* note 22, at 123-27.

142. See *How to Assess Threats and Avert Workplace Violence*, 24 CAL-OSHA REP. 4 (1997).

143. See Murray, *supra* note 138, at 19-27.

144. Harvey L. Pitt & Karl A. Groskaufmanis, *When Bad Things Happen to Good Companies: A Crisis Management Primer*, 15 CARDOZO L. REV. 951, 959-60 (1994).

145. *Id.*

146. See, e.g., BRAVERMAN, *supra* note 49, at 126; LABIG, *supra* note 76, at 106-09; GERALD W. LEWIS & NANCY C. ZARE, *WORKPLACE HOSTILITY: MYTH AND REALITY* 142-44 (1999); David F. Bush & P. Gavan O'Shea, *Workplace Violence: Comparative Use of Prevention Practices and Policies*, in *VIOLENCE ON THE JOB: IDENTIFYING RISKS AND DEVELOPING SOLUTIONS* 283, 291 (Gary R. VandenBos & Elizabeth Q. Bulatao eds., 1996); Nicoletti & Spooner, *supra* note 140, at 276-77.

147. See BRAVERMAN, *supra* note 49, at 126; LABIG, *supra* note 76, at 107-09.

occupational safety, and employee assistance.¹⁴⁸ This approach has a democratizing effect. It flattens the organization and frees members from their usual reporting hierarchies.¹⁴⁹

B. *Strategies Consistent With Negative Peace*

Most workplaces are private businesses.¹⁵⁰ Thus, they do not have to grant access to anyone who seeks it, nor do they have to observe constitutional rights that a public workplace must.¹⁵¹ The privacy instinct, in particular, is so deeply embedded in the American psyche that intrusions on that privacy, even by private parties, is cause for consternation and sometimes litigation.¹⁵²

Employers justify intrusions on their workers' privacy on several grounds.¹⁵³ Most benignly, they argue that they are exercising their legitimate interest in supervision.¹⁵⁴ Who hasn't heard the warning while on the phone with customer support that the call might be monitored for quality purposes? Employers also argue that they are reducing their exposure to lawsuits.¹⁵⁵ Employers have been held liable for sexual harassment when they knew or should have known about the harassment.¹⁵⁶ Consequently, many have decided to monitor the workplace to determine if harassment is taking place.¹⁵⁷ In addition, employers can be liable for violent acts committed by employees when the perpetrator's propensity is known.¹⁵⁸ Employers argue they are justified in monitoring phone calls, email, and web surfing habits to determine if an employee is threatening coworkers,

148. LABIG, *supra* note 76, at 107-09.

149. *Id.* at 91.

150. See Peter M. Panken & Jeffrey D. Williams, *Employer Need to Observe Limits on Monitoring the Workplace and Reduce Privacy Expectations*, 71 N.Y. ST. B.J. 26, 28-34 (1999).

151. *Id.*

152. Martha Neil, *Drawing the Line: The Workplace can be a Contentious Setting as the Law Seeks to Balance the Interests of Employers and Employees*, ABA J., May 2002, at 39-40.

153. See Clay D. Creps, *Is Somebody Watching? Employee Communications and Privacy*, 44 RISK MGMT., Apr. 1997, at 22.

154. *Id.*

155. See Jay P. Kesan, *Cyber-Working or Cyber-Shirking?: A First Principles Examination of Electronic Privacy in the Workplace*, 54 FLA. L. REV. 289, 311-14 (2002); Amanda Richman, *Restoring the Balance: Employer Liability and Employee Privacy*, 86 IOWA L. REV. 1337, 1339-46 (2001); Ronald M. Green, *Walking the Line Between Violence Prevention and Employee Privacy*, 44 HR MAG. 132 (1999).

156. See *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998).

157. See Green, *supra* note 155, at 136.

158. See *Bryant v. Livigni*, 619 N.E.2d 550 (Ill. App. 1993); *Foster v. The Loft Inc.*, 526 N.E.2d 1309 (Mass. App. Ct. 1988); *Yunker v. Honeywell, Inc.*, 496 N.W.2d 419 (Minn. Ct. App. 1993).

customers, and others.¹⁵⁹ Employers also argue that monitoring employees' use of email and the Internet is necessary to assure security.¹⁶⁰ Finally, employers cite lost productivity brought on by using technology for other than work-related activities as a rationale for monitoring employees' use.¹⁶¹

Whatever may be the foundation for privacy intrusions, looking in on employees' conduct raises the concern that processes designed to make the workplace safe directly infringe on privacy rights.¹⁶² Legislators and courts have been called upon to define the legal parameters of privacy rights in the workplace.¹⁶³

1. Profiling

The objective of profiling is to predict future behavior on the basis of personal qualities and behaviors.¹⁶⁴ Many commentators have identified characteristics or behaviors that are viewed as indicators of the propensity to commit workplace violence: an unexplained change in work habits,¹⁶⁵ blaming others,¹⁶⁶ becoming easily frustrated,¹⁶⁷ and the inability to accept criticism,¹⁶⁸ to name just a few. At its simplest, the profile is that of a white male loner with military training who is a gun enthusiast.¹⁶⁹ Profiling is based on the assumption that the violent personality can be detected by administering a test or conducting a background check or interview.¹⁷⁰

The utility of this strategy is unclear, however. First, profiling is over-broad, including many people who pose little or no risk of committing heinous acts.¹⁷¹ Additionally, interpreting the information acquired through profiling for signs of a propensity for

159. Kesan, *supra* note 155, at 311-14.

160. *Id.* at 311.

161. *Id.* at 314.

162. *Id.* at 320.

163. Public employers, of course, are subject to the Fourth Amendment right to privacy, and may be limited by state constitutional provisions, as well. *See, e.g.*, John Theuman, Annotation, *Constitutionality of Secret Video Surveillance*, 91 A.L.R. 5th 585 (2001); Mitchell Waldman, Annotation, *Constitutional Expectation of Privacy in Internet Communications*, 92 A.L.R. 5th 15 (2001).

164. LABIG, *supra* note 76, at 11-12.

165. *See, e.g.*, Joinson, *supra* note 100, at 66.

166. *See, e.g.*, Jurg W. Mattman, *Preventing Violence in the Workplace*, available at http://noworkviolence.com/articles/preventing_violence.htm.

167. *See, e.g.*, Viollis, *supra* note 87, at 27.

168. *See, e.g.*, Atkinson, *supra* note 87, at 12.

169. *See* Viollis, *supra* note 87, at 28.

170. *See* CAPOZZOLI & MCVY, *supra* note 22, at 94-98, 100-02.

171. *See* BRAVERMAN, *supra* note 49, at 2. *But see* LABIG, *supra* note 76, at 12 (arguing that profiling can cause underestimation of an individual becoming violent). Labig, too, seeks to dispel the myth of a profile for violence. *Id.* at 11-13.

violence is an inexact science at best.¹⁷² Further, this information is usable only when there is an opportunity to assess the perpetrator's personality and demeanor in advance of a violent act.¹⁷³ Thus, the practical usefulness of profiling is limited to pre-employment screening and Type III cases.¹⁷⁴

Employers are justifiably concerned about liability for negligent hiring if they do not discover signs of violent tendencies before hiring and the employee then kills or injures someone.¹⁷⁵ Nevertheless, pre-employment screening is fraught with further challenges.¹⁷⁶ For example, it could easily become a pretext for discrimination against minorities, who have a disproportionate percentage of criminal arrests and convictions,¹⁷⁷ or against the disabled whose disability is mental illness.¹⁷⁸ Additionally, it has become difficult to glean anything useful from previous employers, as more and more organizations have adopted policies to provide no more information than dates of service.¹⁷⁹

Profiling also presents an enormous threat to privacy rights.¹⁸⁰ Employers are urged to check marital status, finances, employment history, criminal records, and the like.¹⁸¹ The common law recognizes "unreasonable intrusion upon the seclusion of another" as an invasion of privacy tort.¹⁸² This cause of action may be available to an employee or applicant challenging psychiatric, personality, honesty, or drug testing by a corporation.¹⁸³ More critically in the present

172. See LABIG, *supra* note 76, at 12-13.

173. *Id.*

174. See *supra* Figure 2.

175. See, e.g., Alfred G. Feliu, *Workplace Violence and the Duty of Care: The Scope of an Employer's Obligation to Protect Against the Violent Employee*, 20 EMPLOYEE REL. L.J. 381 (1994-95).

176. See BRAVERMAN, *supra* note 49, at 3 (describing profiling as "useless as a predictive tool and illegal in almost all cases from an employment law standpoint").

177. See CAPOZZOLI & MCVEY, *supra* note 22, at 95.

178. See Equal Employment Opportunity Commission (EEOC), *Enforcement Guidance on the Americans with Disabilities Act and Psychiatric Disabilities*, available at <http://www.eeoc.gov/docs/psych.html>.

179. See Feliu, *supra* note 175, at 390.

180. *Id.* at 390-93.

181. *Id.* at 394-95.

182. RESTATEMENT (SECOND) OF TORTS § 652A (1977). The tort is committed by "[o]ne who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns . . . if the intrusion would be highly offensive to a reasonable person." *Id.* The other three common law privacy torts are commercial exploitation of a person's name or likeness, public disclosure of private facts, and depiction of a person in a false light. See *id.* §§ 652C-E.

183. See Frank C. Morris, Jr., *Workplace Privacy Issues: Avoiding Liability*, 52 A.L.I.-A.B.A. 697, 702 (1999). Summary judgment for the defendant was granted where an intrusion claim was based on the employer's knowledge of the plaintiff's psychiatric treatment. See *Eddy v. Brown*, 715 P.2d 74 (Okla.1986). The employee had been referred by his employer for psychiatric evaluation. See *id.* at 76. The court held

context, profiling may be seen as a form of structural violence, given the invasions of privacy and intrusions on personal dignity involved in this practice.¹⁸⁴

2. Monitoring

In the recent past, technological advances have had a profound impact on the U.S. workplace.¹⁸⁵ In 1998, 52 percent of U.S. employees used computers for work.¹⁸⁶ That figure rose to 57 percent in 2001.¹⁸⁷ In the same three-year span, job-related Internet use—including e-mail—rose dramatically, from 18 to nearly 42 percent.¹⁸⁸ These phenomena have led to increased organizational concern as to employee misuse of computer facilities and third-party access to sensitive data and equipment.¹⁸⁹ Hackers (from inside and outside the organization) and viruses can wreak havoc on technology and information.¹⁹⁰ A computer network can be used to disclose or obtain trade secrets.¹⁹¹ Accordingly, businesses have sought to identify strategies to protect their interests in these regards.¹⁹² This has led, in turn, to market and societal responses: software manufacturers have developed inexpensive monitoring programs,¹⁹³ and employees and activists have raised questions about workers' privacy rights.¹⁹⁴

that the information was "of legitimate concern" to the employer because the treatment reports were maintained in plaintiff's employment records. *See id.* at 77. This tort claim has also been used to challenge property searches and the use of electronic monitoring devices.

184. *See* Feliu, *supra* note 175, at 390-93.

185. *See* U.S. General Accounting Office, Report to the Ranking Minority Member, Subcommittee on 21st Century Competitiveness, Committee on Education and the Workforce, U.S. House of Representatives, *Employee Privacy: Computer-Use Monitoring Practices and Policies of Selected Companies*, at 4 (Sept. 2002) [hereinafter GAO Report] (citing U.S. Department of Commerce, *A Nation Online: How Americans are Expanding Their Use of the Internet* (February 2002), available at Lexis Nexis, Administrative Agencies Materials File).

186. *Id.*

187. *Id.*

188. *Id.*

189. *Id.* All of the GAO respondents, 14 Fortune 1000 firms, reported that they maintained records of all Internet site visits and computer file activity, and stored copies of all employee e-mail. *Id.* at 6. The respondents offered three rationales for keeping these records: "[T]o create duplicate or back-up files in case of system disruptions; to manage computer resources such as system capacity to handle routine e-mail and Internet traffic; and to hold employees accountable for company policies." *Id.* at 3. Six of the respondents analyzed these data on a routine basis, while the remaining eight did so only when they became aware, from other information, that an employee might have violated firm policy. *Id.* at 7-8.

190. *Id.* at 3.

191. *Id.* at 1-3.

192. *Id.* at 4.

193. *Id.* at 5.

194. *Id.* at 4.

Legal claims alleging that electronic monitoring violates privacy rights, in addition to testing-based suits,¹⁹⁵ have been based on the common law “unreasonable intrusion upon the seclusion of another” tort.¹⁹⁶ Additionally, the Omnibus Crime Control and Safe Streets Act of 1968,¹⁹⁷ as amended by the Electronic Communications Privacy Act of 1986 (ECPA),¹⁹⁸ prohibits employers from intercepting or disclosing business-related electronic communications.¹⁹⁹ The law

195. See *supra* notes 104-05 and accompanying text.

196. See RESTATEMENT (SECOND) OF TORTS § 652A. The pertinent language of this section is set forth in note 184. In a widely-discussed case, this cause of action was asserted by an employee who used his employer’s e-mail system to exchange messages, some with offensive content, with his supervisor. See *Smyth v. Pillsbury Co.*, 914 F. Supp. 97 (E.D. Pa. 1996). In one message, the plaintiff threatened to “kill the backstabbing [sales management] bastards.” *Id.* at 98 n.1. Another characterized an upcoming company party as the “Jim Jones Koolaid affair.” *Id.* The employer subsequently discovered the messages and fired the plaintiff for making “inappropriate and unprofessional” statements. *Id.* at 98. Although the defendant had a well-communicated policy that the contents of e-mail messages were confidential, could not be accessed by the employer, and would not be used as a basis for disciplinary action, the court held in favor of the defendant. See *id.*

[U]nlike urinalysis and personal property searches, we do not find a reasonable expectation of privacy in e-mail communications voluntarily made by an employee to his supervisor over the company e-mail system notwithstanding any assurances that such communications would not be intercepted by management. Once plaintiff communicated the alleged unprofessional comments to a second person (his supervisor) over an e-mail system which was apparently utilized by the entire company, any reasonable expectation of privacy was lost.

Significantly, the defendant did not require plaintiff, as in the case of a urinalysis or personal property search to disclose any personal information about himself. Rather, plaintiff voluntarily communicated the alleged unprofessional comments over the company e-mail system.

Id. at 101. Further, the court held that the employer’s reading of the messages was insufficiently offensive to constitute a tortious invasion of plaintiff’s privacy, even if the plaintiff had had a reasonable expectation of privacy. *Id.* The court determined that “the company’s interest in preventing inappropriate and unprofessional comments or even illegal activity over its e-mail system outweighs any privacy interest the employee may have in those comments.” *Id.*

197. Wire and Electronic Communications Interception and Interception of Oral Communications Act, 18 U.S.C. §§ 2510-22 (1994).

198. Pub. L. No. 99-508, 100 Stat. 1848 (1986).

199. In pertinent part, the law subjects to civil and criminal penalties an individual who

(a) intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication;

(b) intentionally uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when . . .

applies to both telephone and e-mail transmissions.²⁰⁰ Nonetheless, two of the statute's exceptions provide significant flexibility to organizations that seek to monitor the activities of their employees.²⁰¹ First, there is no liability for communications where one of the parties consents to the interception.²⁰² Second, monitoring is permitted

(iv) such use or endeavor to use (A) takes place on the premises of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or (B) obtains or is for the purpose of obtaining information relating to the operations of any business or other commercial establishment the operations of which affect interstate or foreign commerce; . . .

(c) intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection

18 U.S.C. § 2511. Although the employee's expectation of privacy is critical to the success of his or her claim in many privacy-based causes of action, it is irrelevant to the determination whether this statute has been violated. *See Briggs v. Am. Air Filter Co.*, 630 F.2d 414, 417 (5th Cir. 1980).

200. 18 U.S.C. § 2510.

201. 18 U.S.C. § 2511(2)(a)(i). A third exception may apply, as well:

It shall not be unlawful under this chapter for an operator of a switchboard, or an officer, employee, or agent of a provider of wire or electronic communication service, whose facilities are used in the transmission of a wire or electronic communication, to intercept, disclose, or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the provider of that service, except that a provider of wire communication service to the public shall not utilize service observing or random monitoring except for mechanical or service quality control checks.

Id.; *see also* *United States v. McLaren*, 957 F. Supp. 215, 217-20 (M.D. Fla. 1997) (holding, in a case of first impression, that information in cellular telephone calls intercepted by an employer who reasonably suspected interference with its property rights was covered by this exception and therefore admissible in criminal trial of employee). *See generally* GAO Report, *supra* note 185, at 5 (stating that the ECPA "does not prevent access to electronic communications by system providers, which could include employers who provide the necessary electronic equipment or network to their employees").

202. 18 U.S.C. § 2511(d). The pertinent section establishes that

It shall not be unlawful under this chapter for a person not acting under color of law to intercept a wire, oral, or electronic communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State.

Id.; *see also* *United States v. Gomez*, 900 F.2d 43, 44 (5th Cir. 1990). Consent can be express or implied. *Gomez*, 900 F.2d at 44. Employees who are aware that their employers routinely monitor their telephone conversations for business purposes may be held to have consented to interception. For example, a police telecommunicator was held to have consented to "systematic" monitoring of her conversations where her

when conducted in the ordinary course of business, using a device furnished by the employer or by a communications provider.²⁰³

employer had made clear that supervisors would listen to some calls to facilitate employee education and evaluation. *See* Griffin v. Milwaukee, 74 F.3d 824, 827 (7th Cir. 1996). This determination was reinforced by the visual obviousness of the recording equipment, which was located in a glass case in the plaintiff's work area. *Id.* Other courts have taken a different approach, however. A salesperson who was told that her business calls might be taped for training purposes, but that personal calls would be monitored only to the extent necessary to determine the business or personal nature of the call, had not consented to monitoring of calls in the latter category. *See* Watkins v. L.M. Berry & Co., 704 F.2d 577, 581 (11th Cir. 1983). Similarly, an employee who was told that her employer might resort to monitoring because he was concerned about her use of the business telephone for personal calls did not consent to have her calls intercepted. *See* Deal v. Spears, 980 F.2d 1153, 1157 (8th Cir. 1992). Further, although the ECPA exempts from liability transmissions where one party has consented to monitoring, some state statutes require the consent of all parties. *See, e.g.,* CAL. PENAL CODE § 631 (West 1999); FLA. STAT. ANN. ch. 934.03 (West 1998); 720 ILL. COMP. STAT. 5/14-3 (West 1999).

203. 18 U.S.C. § 2510(5)(a)(I). The statute prohibits monitoring involving an "electronic, mechanical, or other device." *Id.* Such devices are defined to exclude

(a) any telephone or telegraph instrument, equipment or facility, or any component thereof, (i) furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business

Id. A determination whether monitoring was conducted in the ordinary course of business may focus on one or more of three factors: the objective for monitoring the communication, the manner in which it was conducted, and its content. *Id.* The legislative history of the statute sheds little light on this inquiry. *See* Briggs, 630 F.2d at 418-19. Thus, a woman who recorded incoming and outgoing telephone calls from the family-operated funeral home because she suspected her spouse of business and personal improprieties did not act in the ordinary course of that business. *See* United States v. Murdock, 63 F.3d 1391 (6th Cir. 1995). The recordings suggested that her husband might have accepted a \$90,000 bribe in his capacity as a local government official. *See id.* at 1393. She was also concerned that he might be having an affair. *See id.* at 1396. The Sixth Circuit's determination in this case was based on both motive and method: "spying on [one's] spouse" was not deemed consistent with the ordinary course of business. *Id.* at 1400. Further, the indiscriminateness of the recording activity, which involved monitoring many calls made and received by employees other than the person believed to be involved in improper activity, removed it from the exception's scope. *Id.*

The Eighth Circuit, utilizing the same two factors, held that an employer who suspected that a particular employee was involved in a burglary of his store had a legitimate business reason to monitor her telephone calls, but did not do so in the "ordinary course of business" because he reviewed 22 hours of taped conversations without regard to their personal or business content. *See* Deal, 980 F.2d at 1158 (noting that the defendant "might legitimately have monitored [the employee's] calls to the extent necessary to determine that the calls were personal and made or in violation of store policy"). The Eleventh Circuit, in contrast, has emphasized the communication's subject matter, holding that monitoring an employee's business call is within the ordinary course because its content is of legal interest to the employer. *See* Epps v. St. Mary's Hosp., 802 F.2d 412, 416-17 (11th Cir. 1986). The Epps court

There is little information available as to the extent of significant employee computer, e-mail, or Internet misuse. What little is available, however, suggests that that serious misuse is infrequent.²⁰⁴ Monitoring is often perceived as an affront to employee dignity.²⁰⁵ Further, it is difficult to accomplish without crossing the line between the individual's work and personal life. Given these and other legitimate privacy concerns, and especially if the scope of this problem is relatively modest, employers should consider approaches to electronic monitoring that incorporate positive peace characteristics, such as communication and informal dispute resolution.²⁰⁶ Most business organizations that monitor their

concluded that the contested communication was a business call because “[i]t occurred during office hours, between co-employees, over a specialized extension which connected the principal office to a substation, and concerned scurrilous remarks about supervisory employees in their capacities as supervisors.” *Id.* at 417. This approach was also taken by the Eleventh Circuit in *Watkins*, 704 F.2d 577.

The Fourth Circuit adopted the motive and method approach in a case where the employer explained that its fear of bomb threats led it to record all telephone calls on certain lines. *See Sanders v. Robert Bosch Corp.*, 38 F.3d 736 (4th Cir. 1994). The court did not accept this justification, because only “scant” evidence was provided that bomb threats had been received prior to monitoring and no such threats were made during the six to seven months that the recording device was used. *Id.* at 741. In light of these questions regarding the employer's motive, the court declined to find a business justification for the “drastic” method adopted—i.e., monitoring every call, every day on designated lines. *Id.* This implies that there is a direct relationship between motive and method, that the significance and likelihood of the risk determines the appropriate extent of surveillance. The court's skepticism of the defendant's proffered rationale for its monitoring activities was clearly communicated. The opinion observed, however, that the employer's failure to notify security personnel that it was using the recording device was the most persuasive consideration in its determination that the activity was not conducted in the ordinary course of business. *See id.* Application of this exception, the court reasoned, requires evaluating whether the monitoring device was used covertly or openly, given the central statutory objective—that is, to protect individual privacy rights. *See id.* A number of states have statutes similar to the ECPA.

Sanders and Smyth v. Pillsbury Co., 914 F. Supp. 97 (E.D. Pa. 1996), involved possible workplace violence. In *Sanders*, the employer was unable to persuade the court that its fear of bomb threats justified continuous, secret monitoring of selected telephone lines. In *Smyth*, dismissal of an employee who had communicated personal threats against management personnel via e-mail was upheld. These cases are distinguishable for a number of reasons unrelated to the workplace violence threats presented. They involve different causes of action and notice of the monitoring, for example. In the decision favoring the employer, the potential aggressor was known, he was employed by the firm, and the existence of the threat was clearly substantiated; in the other, the company was unable to identify a potential perpetrator, the person's or persons' connection to the organization was unknown, and there was no evidence that bomb threats had ever been made. A comparison of these cases suggests that the courts may require employers to substantiate their security concerns before these interests are allowed to trump employee privacy.

204. *See* GAO Report, *supra* note 185, at 8. Fewer than 1% of employees at the respondent companies was investigated annually for computer-related misconduct. *Id.*

205. *See id.* at 5 (noting perception of such monitoring as an attack on privacy).

206. *See* GAO Report, *supra* note 185, at 2.

employees' computer use provide clear notice of this practice.²⁰⁷ Computer use policies typically state that equipment and Internet access are provided for business purposes, discourage any expectation of privacy, discuss acceptable and unacceptable uses, address confidentiality issues, and identify consequences for misuse.²⁰⁸ This information is disseminated in printed materials and via a variety of additional, more interactive methods.²⁰⁹ To foster transparency and participation, employees might be given the chance to review employers' records of their activities.²¹⁰ Further, workers might take part in drafting and updating their employers' monitoring policies.²¹¹ Finally, employers might agree to access information collected via electronic monitoring only when they have independent evidence of a policy violation or other problem.²¹²

IV. BRINGING PEACEMAKING TO THE WORKPLACE

For better or for worse, places of work are changing. On the one hand, they are no longer the authoritarian, top-down oligarchies of the past.²¹³ Frederick Taylor²¹⁴ and his time-motion studies have given way to W. Edwards Deming,²¹⁵ quality management, and teams. On the other hand, the compact between worker and organization is being renegotiated.²¹⁶ Loyalty to the organization in exchange for a promise of secure employment has been replaced by pay for performance in exchange for high mobility.²¹⁷ The management literature is rife with essays envisioning the new workplace.²¹⁸ The subjects are change management, team building, empowering workers, and other management practices that introduce democratic values into the workplace. Change management

207. *Id.* at 9-11.

208. *Id.* at 10-12.

209. *Id.* at 12-13.

210. *Id.* at 10-11.

211. *Id.*

212. *See id.* at 10-11.

213. *See* W. EDWARDS DEMING, *OUT OF THE CRISIS* (1986) [hereinafter DEMING, *OUT OF THE CRISIS*]; W. EDWARDS DEMING, *THE NEW ECONOMICS FOR INDUSTRY, GOVERNMENT, EDUCATION* (2d ed. 2000) [hereinafter DEMING, *THE NEW ECONOMICS*]

214. FREDERICK WINSLOW TAYLOR, *THE PRINCIPLES OF SCIENTIFIC MANAGEMENT* (1911).

215. *See* DEMING, *OUT OF THE CRISIS*, *supra* note 214; DEMING, *THE NEW ECONOMICS*, *supra* note 214.

216. *See, e.g.*, Estlund, *Working Together*, *supra* note 10, at 66-69; Murray Weidenbaum, *A New Social Contract for the American Workplace*, CHALLENGE, Jan.-Feb. 1995, at 51.

217. *See* Estlund, *Working Together*, *supra* note 10, at 68-69.

218. *See generally id.*

literature talks about trust, communication, and loyalty.²¹⁹ Quality literature places heavy reliance on teams that have autonomy to make decisions.²²⁰ We are not so naïve as to believe that the workplace has become the peaceable kingdom, or even an experiment in true democracy, but culture change is certainly underway—at least in successful companies.²²¹ There is no end to the rationales for why such a change is necessary—globalization, competitive pressure, technology, restructuring—and we are not in a position to identify exact causes. Rather, our purpose is to note the trend and to speculate about what effects it might have on workplace violence.

Commentators write about the “toxic” workplace and its effect on violence.²²² Characteristics of this toxicity include authoritarianism, one-way (top-down) communication, and polarization between executives and the workforce.²²³ It is not coincidental that the elements of toxicity are associated with old-style management practices. These elements produce a loss of individual control, which leads to stress, which may lead to violence.²²⁴ The workplace violence literature, as detailed above, recommends processes that correspond to modern management methods.²²⁵ Fostering communication and instituting dispute resolution mechanisms tend to democratize the workplace.²²⁶ If a corporation were to adopt these procedures with the objective of preventing workplace violence, it will have made great strides in fostering a culture of organizational openness and participation.²²⁷

While preaching transparency and democratization, the workplace violence literature also poses significant challenges to the

219. See, e.g., Michael Beer & Nitin Nohria, *Cracking the Code of Change*, HARV. BUS. REV., May-June 2000, at 133; John P. Kotter & Leonard A. Schlesinger, *Choosing Strategies for Change*, HARV. BUS. REV., Mar.-Apr. 1979, at 106.

220. See, e.g., Beer & Nohria, *supra* note 219, at 136.

221. See *id.* at 133.

222. See, e.g., John K. Slage, *Attack on Violence*, INDUSTRY WK., Feb. 17, 1997, at 15; see also LEWIS & ZARE, *supra* note 142, at 58-66.

223. See *id.*

224. See Slage, *supra* note 222.

225. See *id.*; Beer & Nohria, *supra* note 222.

226. See Slage, *supra* note 222.

227. One article suggests a link between reducing workplace violence and meeting the Baldrige criteria for quality. *Creating a Violence-Free Company Culture*, NATION'S BUS., Feb. 1995, at 22. The article recounts the story of Wainwright Industries, which won the Baldrige National Quality Award in 1994 for small business. *Id.* (“As it turns out, a company that does meet the Baldrige competition’s rigorous standards may, as an incidental benefit, wind up with the closest thing possible to a completely violence-free company culture.”). A spokesman for the company pointed to the use of teams as a key to its success. He remarked that teamwork helps people take ownership in each other and the company, thus creating an environment that facilitates dealing with problems and frustrations that could explode into violence. *Id.*

privacy interests of employees.²²⁸ Security consultants recommend surveillance of work spaces and worker conduct in those spaces.²²⁹ The justification is to keep the workplace free of threatening behavior, harassment, and violations of the law.²³⁰ The very act of surveilling, however, directly contradicts notions of openness and dignity, especially if the monitoring is covert.

V. BRINGING THE WORKPLACE TO PEACEMAKING

How will the events of September 11, 2001 affect the ways in which people think about and respond to workplace violence? Incredibly, the 2001 statistics of workplace homicides do not include the nearly 3,000 people who lost their lives on that day. Yet, most of the people in the World Trade Center and the Pentagon were working when the planes hit. The rescue workers who perished were on the job. Presumably, many of the passengers on the hijacked airplanes were traveling on business. There may be valid statistical reasons for excluding these people from workplace violence data for 2001. However, in a project that examines workplace violence literature and practice for lessons to apply to peace, we are struck by the convergence of these two concepts in this single event. If there were ever an occasion to analyze the relationship between workplace violence and war, September 11 is that time. One major question is the extent to which employers will seek workplace safety through the use of aggressive, negative peace structures that have the unintended consequence of promoting structural violence. The second is whether employees will tolerate these strategies.

Previous work has examined the corporation in the global economy and what it can contribute to peace.²³¹ The 2001 Symposium on Corporate Governance, Stakeholder Accountability, and Sustainable Peace focused primarily on the corporation as an economic actor on the global stage.²³² It raised large questions about whether the corporation produces or contradicts peace.²³³ This Article takes a more intimate view of the corporation; it looks inside the organization to determine whether there is peacemaking going on within the corporate walls. However, it is interesting to note that

228. See, e.g., GAO Report, *supra* note 185.

229. See, e.g., Harvey & Cosier, *supra* note 8, at 17.

230. See generally *id.*; GAO Report, *supra* note 185.

231. See generally Symposium, *Corporate Governance, Stakeholder Accountability, and Sustainable Peace*, 35 VAND. J. TRANSNAT'L L. 379 (2002).

232. See generally *id.*

233. See generally *id.*

many of the themes struck in the 2001 symposium have applicability here.

A number of authors pointed out the connections between democratic values and peace.²³⁴ This Article has attempted to demonstrate that many procedures instituted to defuse workplace violence introduce an element of democracy into the workplace. Is it possible that democratization designed to stem workplace violence will spill into the community and encourage peace? Admittedly, the democratizing processes analyzed here do not turn the corporation into an actual democracy. It is still a hierarchical organization. Workers do not elect their supervisors or the officers of the corporation. Only if they are also shareholders will they have any say in electing the board of directors. Nevertheless, it is interesting to note that processes such as dispute resolution, teamwork, and open communication tend to flatten out the organization and de-emphasize the hierarchy. In short, the workplace becomes more democratic.

Peace literature points to characteristics for producing peace.²³⁵ They include trust, participation, and acknowledging dignity.²³⁶ We find these characteristics imbue many of the structures and processes we have examined as useful to bring peace to the workplace. For example, dispute resolution mechanisms, creating an ombudsperson, and treating employees with respect and sensitivity all connect to peace. Teams allow the faceless organization to break down into manageable work groups, which in turn allows the corporation to act as a mediating institution.²³⁷ We believe that modern management practices, including those that defuse and prevent workplace violence, parallel the very values that are conducive to peace. Thus, we posit that corporate structures that promote trust, participation, and dignity are transportable to the local, national, and global "markets" for peace.

234. See, e.g., Terry Morehead Dworkin, *Whistleblowing, MNCs, and Peace*, 35 VAND. J. TRANSNAT'L L. 457 (2002); Timothy L. Fort & Cindy A. Schipani, *The Role of the Corporation in Fostering Sustainable Peace*, 35 VAND. J. TRANSNAT'L L. 389 (2002); Lee A. Tavis, *Corporate Governance and the Global Social Void*, 35 VAND. J. TRANSNAT'L L. 487 (2002).

235. See Julia Brunner & Stephen J. Toupe, *International Law and Constructivism: Elements of an Interactional Theory of International Law*, 39 COLUM. J. TRANSNAT'L L. 19, 70 n.203 (summarizing peace literature).

236. See Fort & Schipani, *supra* note 234, at 432 (arguing that humanizing, face-to-face conduct is an element of peaceful cooperation).

237. See TIMOTHY L. FORT, *ETHICS AND GOVERNANCE: BUSINESS AS A MEDIATING INSTITUTION* (2001); Callahan et al., *supra* note 107 (teams as mediating institutions).

VI. CONCLUSION

Further research is required to advance the discussion about what strategies for combating workplace violence can teach. Initially, we need to know more authoritatively what the full range and prevalence of workplace violence is. We have imperfect information to date. Those organizations and agencies that track workplace violence are, in our judgment, defining the phenomenon too narrowly. Future research should examine non-criminal, but nevertheless threatening, behavior that can be a precursor to violent acts that qualify as criminal conduct. It seems clear that addressing the precursors to overt violence is far preferable to reacting to an overtly violent act after it has occurred. Similarly, we believe that preventative, rather than treatment, strategies hold the most hope for teaching peace. Therefore, further research should examine what behaviors occur in the workplace that are not captured by official statistics, but which nevertheless set the stage for overt violence.

Interest in and commentary about workplace violence has increased in the last decade or so.²³⁸ It has been long enough that many workplaces have instituted some of the processes and structures described in this Article.²³⁹ Future research should include field studies of those organizations that have implemented positive peace violence prevention programs to determine if they are having their intended effect. Such research should necessarily include whether incidents of violence have decreased since the implementation of these programs, but it should also examine whether the culture of the organization has changed as a result of the programs. In other words, can it be shown that workplaces that employ such programs do indeed become more democratic, more sensitive to employees' needs, and more participatory generally? If so, has the transition improved the corporation's ability to carry on its central mission of supplying goods or services? Intuitively it would seem that corporate performance would be enhanced with the implementation of procedures that promote positive peace. However, rigorous research is needed to support or deny what intuition says should be so.

Our research into workplace violence prevention convinces us that the workplace can be a microcosm for global peace initiatives. Conversely, peace studies and peacemaking can inform the debate about workplace violence prevention. The challenge is for workplaces

238. See, e.g., Stone, *supra* note 1.

239. See, e.g., *id.*

to resist the temptation, especially after the events of September 11 and the ongoing war on terrorism, to lock down and adopt a bunker mentality. For some forms of workplace violence (Type I violence most especially), physical safeguards and some surveillance (video cameras in banks, for example) are appropriate. Nevertheless, the quest for security should not overshadow the valuable lessons learned in seeking positive peace measures that support openness, participation, and equality. We submit that the measures undertaken to combat workplace violence that hold the greatest promise for sustainable workplace peace are those that instill democratic values into the workplace, acknowledge the dignity of workers, and inspire trust.

* * *