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# Violence In The Courtroom: Culpability, Personal Responsibility, Sensitivity And Justice

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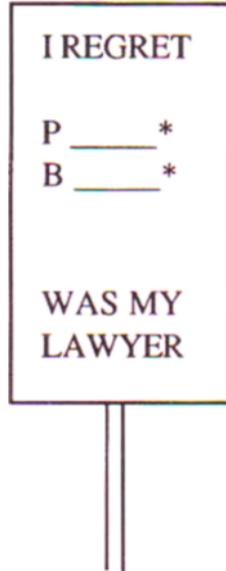
"Lawyers get so mesmerized by the courtroom contest that we forget that we should be healers of conflict" ..... attributed to Chief Justice Warren Burger, United States Supreme Court

Attempting to understand and prevent courtroom violence requires that we do more than purchase security devices, hire additional bailiffs (Belli, 1993; Huber, 1993; NY Times, 1993; Douglas, 1992; Hodges, 1992; Perkins, 1992) or arm our judiciary (Margolick, 1993; Hanna, 1992). We must begin by understanding that the best way of dealing with interpersonal disputes may not be in the courtroom with judges, attorneys and juries. In the alternative, we may be much more successful in such matters if our procedures required disputants to be responsible for their own solutions. Such an approach can exist only in a system that endorses such responsibility with the same intensity that it pursues adjudicated solutions. For disputants to sit and to discuss, to mediate or arbitrate and to solve face-to-face those difficulties which have arisen may begin to reduce the tension, frustration and loss of dignity which may be at the root of the violence that we are seeing (Melvin, 1993; Scott, 1993; Smith, 1992; Moss, 1992; Shulruff, 1992; Mahoney, 1986, 1987; Tuma, 1987; Brumley, 1987; Deller, 1988).

The rash of courtroom killings occurring in the United States have horrified and mystified those who must stand by and watch (Taylor, 1992; Gonzalez, 1993; Hinds, 1993; Suro, 1993; Copilevitz, 1993; Crawford, 1992; FWST, 1992; Cheever, 1992; Sanders, 1992; LA Times, 1991; Terry, 1992; NY Times, 1992; FWST, 1992; DMN, 1992; Sennott, 1986; DMN, 1986; Texas Bar Journal, 1992). Additionally, there have been articles that have attempted to respond in some way to these events. One such article espoused that there was nothing contained in a particular domestic relations case, which ended in several killings and woundings, that would have justified the obvious rage and destruction which occurred (Hull, 1992). Another suggested, contrary to what some have suggested, that the system of justice in this country could not be held responsible for such courtroom rampages. Further, she continued, that lawyers and members of the court should not be seen to be at fault. (Miers, 1992). Is the system at fault? Is a system which propagates the myth of effective justice in our society responsible for what happens when people rely on the myth without meaningful results?

Within our justice system there seems to be gross insensitivity to the human condition. There is a growing frustration by the population at large about how they are handled, not only in criminal cases, but especially in domestic proceedings. A well known attorney and former judge, in response to a question about how the average citizen feels about what lawyers and the Bar does, responded that people do not care what lawyers do or about what the Bar does. She went on to say that they do not believe that the system delivers to them what it promises. Further, she said that they do not care about arguments over rule changes. They have lost faith in a system that does not deliver justice for all of the people.

Someone once said that our system of justice is the worst in the world, except for all the others. A certain implication is clear; another seems equally important. There are many problems with our system of jurisprudence and the way in which it is administered by those who claim to be its advocate. Not all people who are involved in criminal or domestic disputes respond to the frustration that they may feel by shooting members of the court. It seems equally true that not all individuals who do come to the courtroom with violence on their mind, do so because of frustration with the system. These may be guided by voices within themselves, or by feelings of threat from the society at large, or because they may not be in contact with the same reality that most of us are.



\*Name of attorney on picket sign deleted by author.

**Figure 1.** Picket sign carried by a casually dressed, neatly groomed white male in his mid thirties, at Market Street and 5th Street, San Francisco, California, August 10, 1992 at approximately 1300, during the convention of the American Bar Association.

Some, however, may find themselves involved in specific legal proceedings, or involved with the justice system for the first time, or possibly involved in proceedings which drag on for long periods of time without resolution. These citizens may feel no other recourse than to physically strike at the system that appears to be hurting them. If their expectation had been of non-help, perhaps such reactions could be avoided. However, when the promise and resulting expectation is of sensitivity and help, which is ultimately not received, the possibility and reality of their response can turn ugly.

Certainly, it may be difficult to understand all of the issues involved in such reactions to the system. One thing does seem clear: there are a combination of factors which impinge upon our ability to resolve disputes with others in our society. To say that the system is not at fault is to ignore what happens when individuals go through divorce in this country (Dao, 1993). The routine of handling such matters, and the insensitivity which is often displayed both by the adversarial court, as well as the attorney, is appalling in many instances. It has become a routine response rather than an individualized and sensitive approach.

Those experiencing a divorce know the frustration, hurt and feelings of alienation that often occur. Coupled with an unresponsive system, routine approaches, other stress-filled events in a person's life, and questionable psychological and intellectual functioning, the problems associated with dispute resolution escalate exponentially. While it is not the place of the court or of the attorney to become mental health care provider for the parties, this does not excuse either from examining itself with the goal of improving its response to such situations.

Those experiencing frustration, alienation and hurt during marriage and family disputes often know the limits of what they can expect to receive from their particular situation. The real issue, in many cases, may be having a receptive, caring outlet for the frustrations and hurt that they feel. Such an outlet may reduce the carryover frustrations which may later lead to acts of violence.

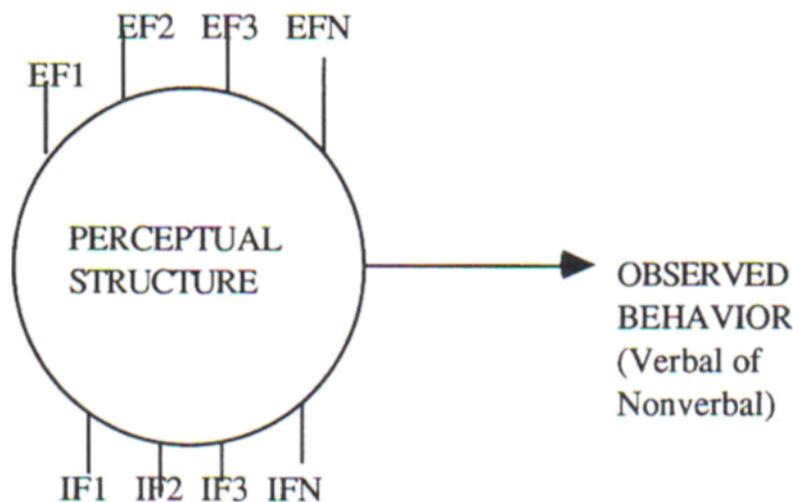
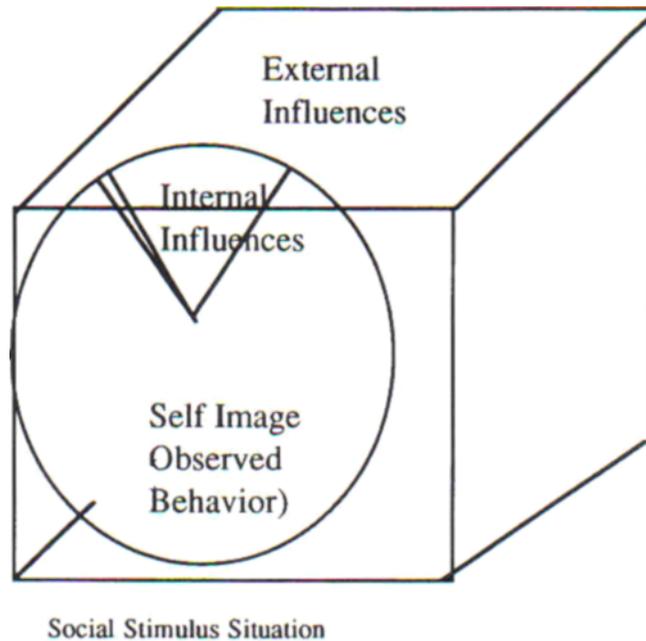
Such violence may either be passive-aggressive or active aggression either within or without the courtroom setting. As a basis for understanding this phenomenon, certain premises must be examined: First of all, all behavior is caused. Behavior is not accidental. Behavior is caused by some set of events, even though they might not be completely discernible at a given time. And secondly, all behavior has purpose. No behavior exists that is not

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purposeful in some way. This, too, may be so even though the purpose may not be immediately knowable by those who observe it. For purposes of argument, these premises may allow us to understand the problem of violence within this particular venue.

As Figure 2 (Rosenbluh, 1974) and Figure 3 (Sherif, 1969) indicate, all that is available to us in attempting to understand the actions of another is the behavior which we are able to observe. This behavior may be verbal or non-verbal. Observable behavior gives us only a glimmer of what is going on inside and the reasons for it. Often, from this limited information, we make major judgments.

### Self Image Cube



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Throughout life, factors impinge upon us from within and without. The factors may be cumulative in effect and come together at any time in our life. They come, not equally, but certainly together to create the particular behavior which may be observed by others. The same apparent observed behavior in two people may actually be caused by many different facets of the internal and external structural makeup. Individual observed behavior is the direct result of the culmination of all of these factors. Assuming that behavior is purposeful and not accidental, then the violence that is observed in the courtroom is related to the multiplicity of factors interacting with each other and being expressed by the actor at a particular time in the actor's life.

To ignore this, is to ignore the complexity of the human mind and the perceptual components of everything that we do. Few people, if any, respond to their world based strictly on the facts existing around them. However, most believe that they do. Further, it may be true that absolute reality is a fantasy and that each of us creates a personal reality based on the way in which we perceive the world around us at any given time (Rosenbluh, 1974). Perception may be defined as a distortion of whatever we experience in the world in order to make it meaningful. Direct sensing mechanisms, such as eyes and ears may operate similarly among individuals. However, perceptual processes are unique to the individual and may represent a very particular set of external and internal factors which are being expressed. Therefore, understanding and interpretation must necessarily be different from person to person. It seems ludicrous to ignore these factors in attempting to analyze what happened in the Fort Worth or Dallas courtroom, or in the other courtrooms that over the years have been plagued by senseless violence.

Certainly, our system is at fault. Certainly, the way in which the business of administering justice is done has to be altered in order to address at least some of these issues. Addressing them all may not be possible. However, a meaningful solution may involve a rethinking of the way in which cases are handled now. Perhaps this will involve greater sensitivity on the part of judges to the psychological factors involved. The time to become sensitive is before the violence strikes. Perhaps the answer lies in becoming aware of the factors involved in violence and in attempting to deal with them by sensitive action before problems occur. It may also be important for attorneys not to disregard that even seemingly minor judicial proceedings may be masking a major life event for the person experiencing it.

It is not enough to brush critical factors away intellectually or to be concerned after the fact. It is not enough to assume that if proper security measures are taken within the courtrooms and within the courthouses of this country, such will prevent these types of violence from occurring. Unfortunately, they will continue to occur. They will continue in the hallways of courthouses, in the streets, and in the houses of those who are directly affected by our system. For these multitudes, it is a system that fails to deliver that which it has promised.

Our justice system has been well inculcated into all of our lives. There are many who believe that it is impossible to perform any legal act without consulting an attorney. The fact is that individuals enter into many legal acts and contracts everyday without such advice, and that most of them are honored. It should also be mentioned that it is not always necessary to seek legal redress for all disputes. Calling our attention to international disputes, very few end up in court. True, they may end in war. However, eventually almost all of them end up at the bargaining table where details and difficulties are worked out between the parties involved.

While it may be threatening to some that disputes can be resolved without their intervention, a far more important opportunity exists for all of us in this field. It may be the opportunity to devise a better way to resolve interpersonal disputes. It may even be possible to prevent some of the violence that comes from not devising such a system. This can only be accomplished with the help of those in the legal profession, those who are about to be attorneys, by those who make the laws, and by those who form the esteemed judiciary who interpret and pronounce the law (Moncrief, 1993; FWST, 1993).

The occurrence of violence in our courts is not a simple problem and the solutions will not be simplistic. However, solutions must be found. They must take place before the citizenry of our nation become so enraged with what is going on, and with the lack of fulfillment of the system's promise, that they decide to resolve disputes in other, non-productive ways. It is happening today between persons who have made their life together for years, but once entering the legal system, find no other recourse than to engage in non-productive, often destructive, battles. The problem is compounded severely when children are involved. When they become pawns in these interpersonal battles, they may become unwitting soldiers in these destructive events. These often occur between two people who do not know, or who do not believe, that there is another way of handling their particular situation. Unfortunately, many people know that little will really be resolved through our legal system. All have heard stories. Some have been through the system before. However, they will go through it again because they perceive it as the only game in town.

In the alternative, it need not be the only game in town. Other processes are in place which are available. However, it will require a major educational effort throughout our system. Involved will be a major commitment to changing the ways in which we handle interpersonal disputes and those who experience them. The time may be approaching when malpractice may be an issue if alternatives to dispute resolution are not explored.

Figure 4 shows pictorially how a crisis may develop in a person's life and may give some insight into the Critical nature of such situations.

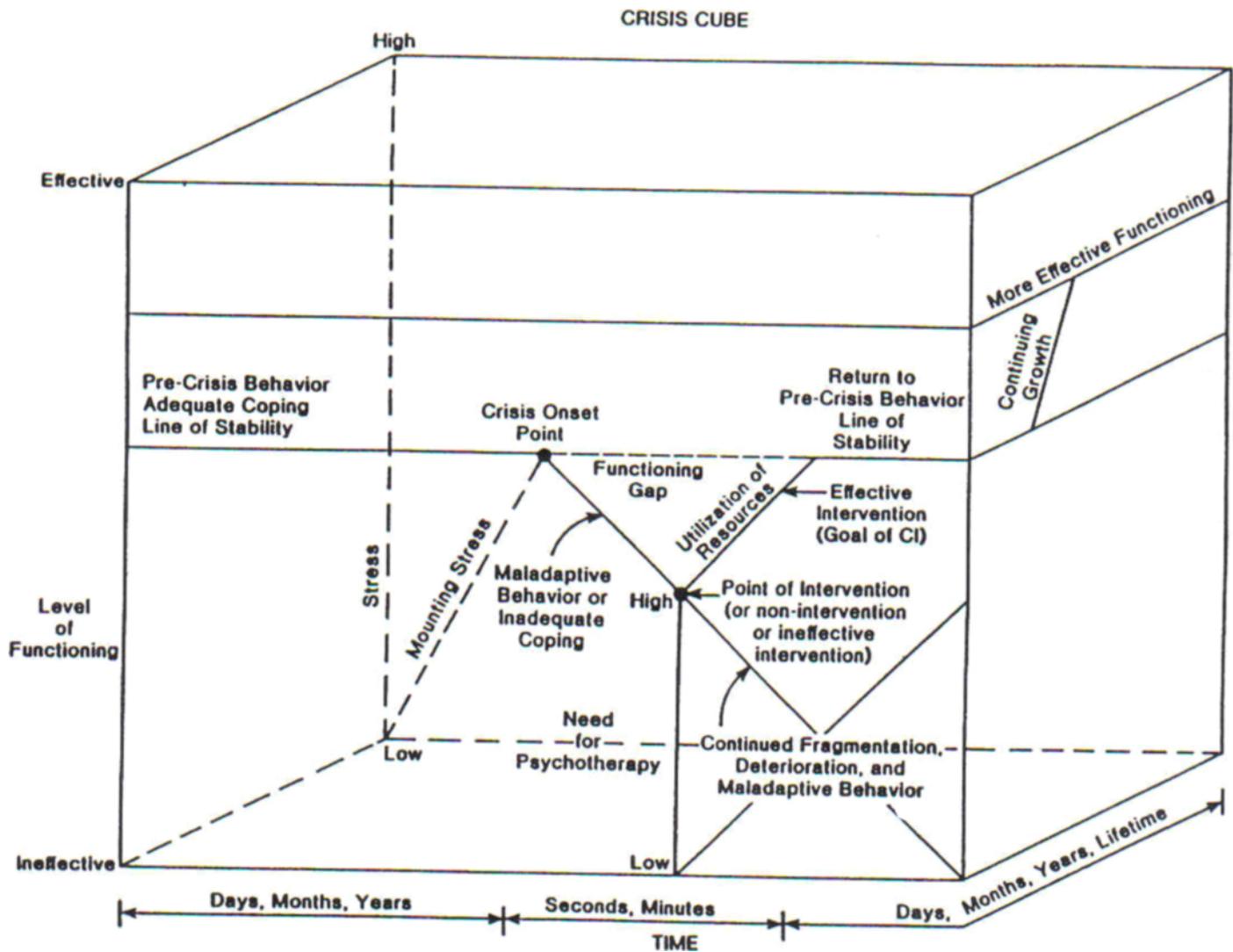


Figure 4 (Copyright © J. L. Greenstone, 1977.)

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While all of us function at a particular, yet fluctuating, level of stability, unusual stress can upset the ability to cope with life in a normal fashion. At the point where stress overwhelms usual coping mechanisms, crisis occurs for that person. Such individuals may engage in trial-and-error problem solving in an attempt to regain control. They may lash out emotionally trying to make some sense of what has happened to them. As this behavior fails them, crisis is experienced. Actions begin to deteriorate and to become maladaptive. Inadequate coping results and behavior similar to that of a mentally ill person may result. Emotional tunnel vision occurs and perspective is lost. If nothing is done to interrupt the line of maladaptive behavior, it will continue for a time. Crises, however, will not go on endlessly. They are self-limiting. The process of self-limitation, however, has its downside. It is possible for a crisis to create permanent damage or even death, if left unchecked. If the crisis is checked, or possibly prevented in the first place, individuals can be helped either to continue, or to return to, utilizing resources available to them. Under severe stress, such individuals may not be able to see or to utilize such resources. At the point that the crisis is interrupted or prevented, victims may be capable of additional growth in their life. Further, once cessation of the crisis has occurred, the danger resulting from the maladaptive behavior decreases as well.

As Figure 5 indicates, as the crisis is resolved, the individual's ability to problem-solve increases.

The ability to see additional possibilities also opens up. Positive interaction with others increases and frustration is reduced. The chances for physical violence also decreases and there can be greater facilitation of the original ends of dispute resolution which were begun initially. The exact opposite seems to be true during a crisis. Problems solving ability goes down and possibilities seem limited. Interaction can be expected to be closed and frustration heightened. Chances of physical violence during a crisis also increases, and the threat to those attempting to administer dispute resolution services may also increase.

Violence, or the potential for violence, in the courtroom is a growing concern among the judiciary and the citizenry alike. While there is no single or simplistic answer to the problem, greater awareness of some of the factors involved may be of some help in planning and in response to such potential behavior. The factors listed in Figure 6 have been adapted from other sources and may give important clues to the potential for violent acts on the part of those in whom they are observed. As the number of factors increase, the likelihood of violent behavior may also increase, although the type of violent behavior may not be apparent. Observations of only a few factors does not preclude violence. Conversely, multiple factors do not predict with certainty that violence is imminent. This checklist should be used as a guide to the possibility of violence in the courtroom or in relation to a present, past or pending civil or criminal case. Factors which are observed should be noted carefully and preplanning should be undertaken concerning specific actions should the need arise. While effectively dealing with the overall problems of violence or potential violence within the judicial system is one which will probably require a rethinking of how "business" is conducted within the entire system, sound preparation, reasonable security, and a willingness to act on what is observed in an effective manner, may serve as stop-gap measures. It may not be possible to stem all violence within this setting, and certainly there will be more of it in the immediate future. However, it may be possible to prevent some of the more obvious situations from becoming violent by utilizing the factors presented. Also, see Figure 7 and Figure 8. Figure 7 shows the relationship between factors present and the likelihood of violence. Figure 8 pictorially represents the "psychology of courtroom violence."



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## Courtroom Risk Analysis\*

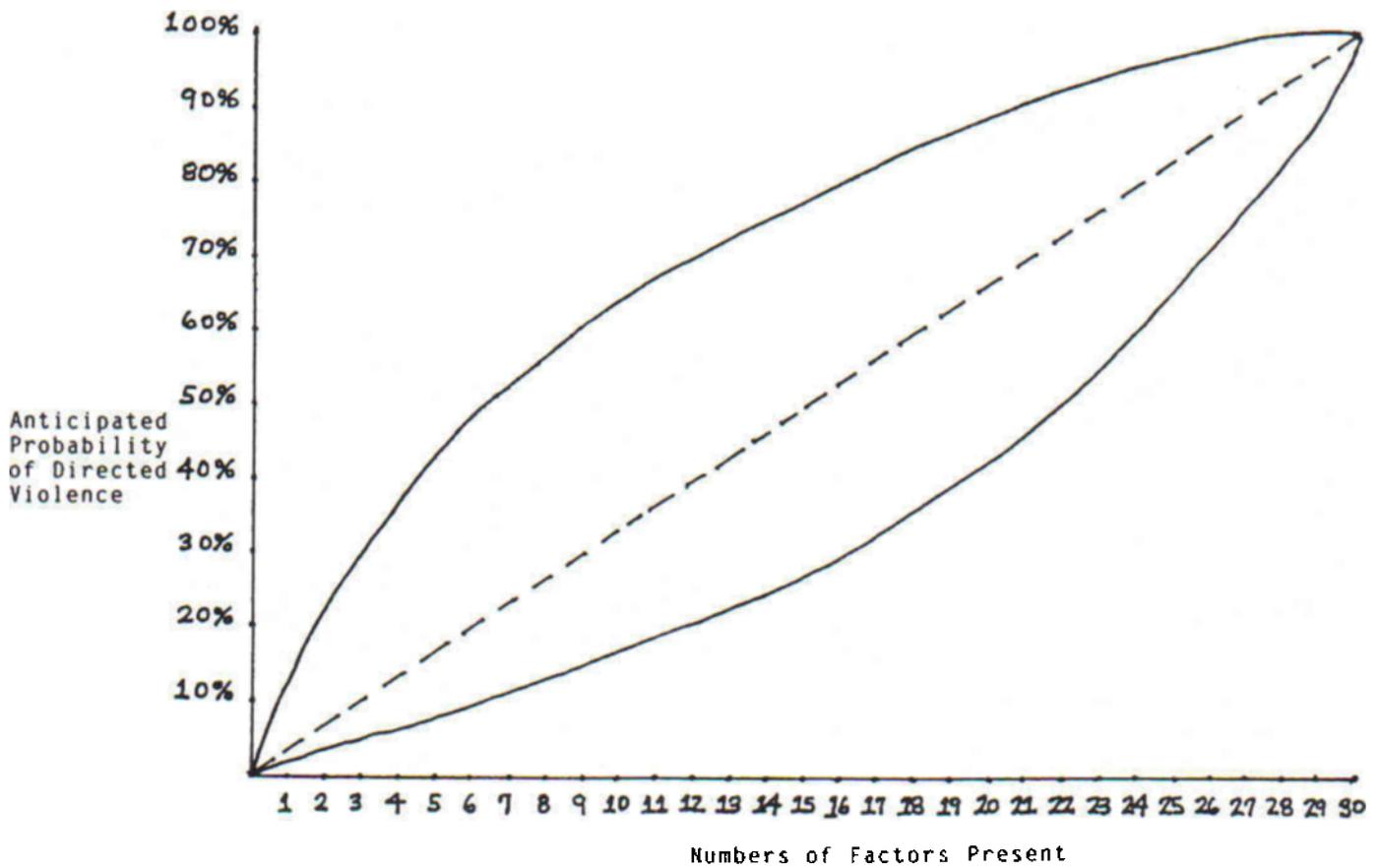
by  
Dr. James L. Greenstone  
and  
Dr. Sharon C. Leviton

### A Checklist ---Civil and Criminal Cases---

- \_\_\_\_\_ 1. The case before the court is the result of a family dispute or divorce, especially if children are involved.
- \_\_\_\_\_ 2. History of causing deliberate encounters with the police or confrontations with other authorities relate to a personal case before the court of in relation to orders of the court.
- \_\_\_\_\_ 3. Current or historical use of minor children as a tool, pawn or weapon against either part to the case.
- \_\_\_\_\_ 4. Historical problems, singular or serial, between the parties to the suit severe enough to warrant police intervention.
- \_\_\_\_\_ 5. The conflict between the litigants involve allegations of child abuse or spouse abuse.
- \_\_\_\_\_ 6. Where there are allegations of abuse, a complaint has been filed by either or both parties which has been, or is about to be, presented in court.
- \_\_\_\_\_ 7. Direct threats from one part against the other or by third parties against either or both parties.
- \_\_\_\_\_ 8. Expressed feelings of powerlessness or helplessness to effect the outcome of one's own case.
- \_\_\_\_\_ 9. Outburst which reflect feelings that the court, opposing counsel, one's own attorney or other judicial authorities are part of a conspiracy to thwart the disputant's efforts.
- \_\_\_\_\_ 10. History of difficult court appearances of ineffective legal battles.
- \_\_\_\_\_ 11. Unusual interest in, or expenditures of limited personal resources for, reforming an inadequate, unfair or unjust judicial system. Such interests or expenditures seem disproportionate to other activities in the actor's life.
- \_\_\_\_\_ 12. History of recent, multiple life stressors either directly related or unrelated to the current case.
- \_\_\_\_\_ 13. High levels of personal dissatisfaction with one's life.
- \_\_\_\_\_ 14. Cultural background of litigant which emphasizes a major importance of "loss of face," or of male dominance in relationships.
- \_\_\_\_\_ 15. Perceived or actual lack of personal support systems. May be seen as a loner or as interested in non-human interactions.
- \_\_\_\_\_ 16. Verbalizations concerning homicide or suicide.
- \_\_\_\_\_ 17. Verbalizations concerning holding the court or family members hostage.
- \_\_\_\_\_ 18. Verbalizations concerning "setting affairs in order," or which may sound like the making of a "verbal will."
- \_\_\_\_\_ 19. History of impulsive acts.
- \_\_\_\_\_ 20. A "gut feeling" by the court or by attorneys that something is about to happen of a violent nature.
- \_\_\_\_\_ 21. Recent purchase of weapon and ammunition absent a historical interest in such items.
- \_\_\_\_\_ 22. History of high interest in weapons coupled with substantial recent purchases of weapons or ammunitions.
- \_\_\_\_\_ 23. History of perceived or actual multiple personal losses.
- \_\_\_\_\_ 24. History of multiple life changes within a relatively short time period.
- \_\_\_\_\_ 25. Diagnosed psychiatric disorder of either or both litigants.
- \_\_\_\_\_ 26. Inappropriately subdued affect, or behavior which is an inconsistent reaction to the actual issues at hand.
- \_\_\_\_\_ 27. History of previous violent acts.
- \_\_\_\_\_ 28. History, as a child, of violent acts with animals.

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- \_\_\_\_ 29. A developmental history which indicates a lack of early, constant and nurturant attachments.
  - \_\_\_\_ 30. Subject grew up within a impulsive family structure or in an overly controlled family.
  - \_\_\_\_ 31. Violence in subject's family of orientation seen as a mode of communication.
  - \_\_\_\_ 32. Peer group of the subject endorses violence.
  - \_\_\_\_ 33. History of or current job instability.
  - \_\_\_\_ 34. Medical history of Central Nervous System trauma or current subjective CNS symptoms such as complaints of dizziness, blackouts, amnesia, memory loss, headaches, nausea, episodic rage or sense of confusion with remorse.
  - \_\_\_\_ 35. Objective Central Nervous System signs.

\*Several of the COURTROOM RISK ANALYSIS items have been adapted, in part, from the "high risk factors" developed for negotiators by the F.B.I. Input and assistance by Dr. George Mount is acknowledge and appreciated.



Anticipated relationship between the number of COURTROOM RISK ANALYSIS factors present in the courtroom and the probability of violence directed toward the court immediately, or in the future, by either or both litigants.

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Figure 7.

# THE PSYCHOLOGY OF COURTROOM VIOLENCE

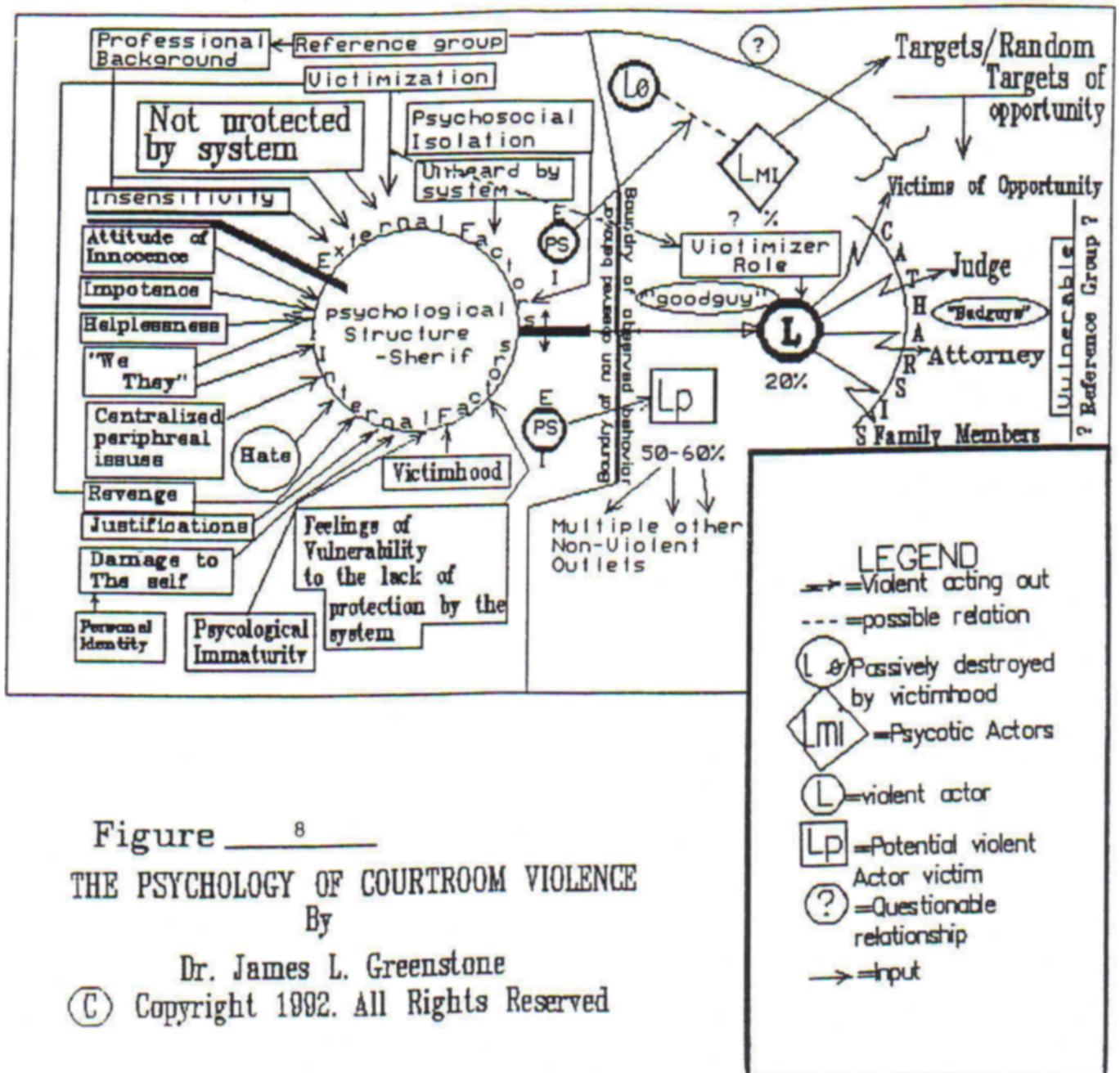


Figure 8  
 THE PSYCHOLOGY OF COURTROOM VIOLENCE  
 By  
 Dr. James L. Greenstone  
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