

The Massachusetts District Attorneys Association 18th Annual Prosecutors Conference Continued Professional Training

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AMERICAN LAW ENFORCEMENT 2012: Some Thoughts on Managing Risk

Thank you so much for inviting me to Massachusetts to speak to you regarding our chosen profession, Law Enforcement. I approach life (and our profession) with a combination of systems design, risk management and legal concepts that will sometime over the next few hours, particularly early in this session, seem rather incongruent.

I know I have a mixed group of District Attorney personnel here today including line personnel, supervisors, managers and executives. I am also aware that some of you are on the "Prosecution" side and some of you are "Victim/Witness" Advocates. And I know you represent a number of different organizations from throughout the State.

With this in mind, not every single word I am going to say today will apply to you, but by the end of the day it should all tie together and you will leave with a ton of knowledge regarding the role of "real" Risk Management in your specific operations, and what you can do with this wonderful discipline to better protect yourself, your team, your community, your organization and our nation.

The principles of Risk Management are global in nature and apply to every task you (or your people) do in your complex job. I will use examples throughout our day together to illustrate problems and solutions to issues you face on a daily basis.

If you have been to any of my programs over the last four decades I plan on giving you ideas, concepts, strategies and tactics to expand upon my thoughts that "Predictable is Preventable" into helping you build "Predictable and Reliable" performance from your organization.

You can look at me wearing five hats over the next few hours. The first hat I wear with the greatest amount of pride is my 33-year relationship with the California Highway Patrol. I retired in 2006 and much of what I say is based on events that I have personally been involved in within that fine organization.

The second hat I wear is that of an attorney, licensed to practice in California State Courts and a few Federal Courts. Some of what I say will come from that education and experience over the last 30 years. Most of my practice has been directed in the field of law enforcement – particularly in the area of giving Chiefs and Sheriff’s and other law enforcement leaders advice on how to keep themselves and their department out of trouble. I am not licensed to practice law in Massachusetts, so please do not consider any of what I have to say as “legal” advice.

The third hat I wear is my Risk Management hat. Long before I ever went to law school, I was educated and trained at USC in the field of Safety and Systems management, and my focus was on the management of risk.

My next hat is “Below 100”. The number of deaths in law enforcement operations is troubling so please take a look at the site and what is being done nationally to address the issue of LODD in our profession.

And my newest venture (hat) is my Lexipol hat. It was an idea ten years ago and now a major effort to standardize policy, procedures and training in Law Enforcement. 95+% of the law enforcement agencies in California are using the Lexipol Knowledge Management System, and we also have a presence in many other states around America. I would love to have a presence in Massachusetts some day. Check out what we are doing at www.lexipol.com.

With this in mind, if I say something that does not make sense immediately please be patient because it might be coming from an unexpected “hat”. It should all make sense by this afternoon.

I speak to you in four different capacities. First, I want to consider your current job within your department. Most of what I say will be directed at what you do today in your current job. Many of the ideas I will give you over the next several hours you will be able to implement instantly should you choose to do so.

Second, some of you will leave your current assignment or rank and move vertically or horizontally within your department - and even perhaps outside of your current operations. Maybe I will say something over the next few hours that you think is a good idea, but cannot implement at your current rank or job. Perhaps someday you will be able to do so.

The third had I see you wearing is your “inquisitive” one. I get a lot of phone calls, emails and other inquiries along this line. “Why is the District Attorney making us do this”? “Why are they requiring this audit”? “Why is the Governor demanding an investigation on this when everyone knows it is bogus”? Perhaps I will be able to answer these legitimate inquiries in advance and explain why smart law enforcement executives do (or should do) what they do.

And the final hat I see you wearing is your “sharing” hat. Please don’t keep any of this stuff secret. If I say something today that piques your interest – take it back and share it with everyone else in our profession.

Bottom Line: There are so many things you can do right now as a line employee, supervisor, manager or executive to make sure things get done right in our profession.

This in turn will allow your organization and personnel to maximize customer service, increase your safety and the safety of your personnel and public, and minimize liability exposure. Each of these issues is extremely important to your continued and future success.

There are a lot of things going on in our profession right now. The job is getting more and more complex internally, and externally we face a higher level of scrutiny than ever before. 24/7 news channels are looking for something to talk about.

The Internet (see www.lawofficer.com) allows immediate exchange of information, and our public is demanding full transparency. The ever-expanding public record acts allow access to your internal records. There are very few secrets in our profession today – and the public is demanding full transparency.

Couple this with massive budget deficits, a very fragile stock market, the huge issues surrounding Brady vs. Maryland, terrorism, major methamphetamine and other illegal drug problems, potential flu pandemic, WMD and NBC preparation issues, MS-13 and other violent gang threats, Mexican Cartels, wild weather patterns, increasing retirement numbers and the resultant issues arising out of that, the Military Reserve issue continuing to sap some of our best personnel, dealing with Gen Y and Z employees and many other issues and it becomes apparent that we need to revisit the way we are doing business.

So what can be done to address the voluminous risks and increasing complexity of our jobs? I have put together a platform for success (a checklist – and I love checklists) that may assist you in better improving your operations. This platform consists of five separate and distinct issues (themes) that when put together will allow you to analyze any of the tasks we do to better assure things get done right. . Here are my “Five Concurrent Themes” for success.

Risk Management is the cornerstone of these Five Concurrent Themes. With this in mind, we need to learn about the word “risk”. Risk is part of life. You took risks coming to this class today, even if it was just a short drive or an elevator ride. You will take a risk eating lunch here today and traveling home at the end of this program.

There is not one of you in here today who has not heard the phrase, Risk Management. Unfortunately, the phrase is grossly misused, many times by people who have no clue what they are talking about. Let me assure you, the discipline of Risk Management is extraordinarily valuable to all of us in the “high risk” profession of law enforcement.

Every identifiable risk is a manageable risk. Properly managing risks prevents problems. Over the years, I have spoken extensively on the management of risk, and what your role is in law enforcement with respect to risk. This is where I would like to start our discussion.

Historically, most government operations do not take Risk Management seriously. Check any Federal, State or Local government phone directory. You will find a lot of Government Lawyers, but few if any dedicated Government Risk Managers.

This is an important point, which will be further addressed in this and the next paragraph. Next time you see a law enforcement agency in the news negatively anywhere in the U.S., give them a phone call. Find out how many personnel they have dedicated to internal affairs (post incident) investigations, and how many are dedicated to background (pre incident) investigations.

We would be better served by excluding bad people from our profession up front, rather than firing them after they participate in some nefarious behavior. Contrary to the view of some of my contemporaries, law enforcement is not some “evil cauldron” that takes good people and turns them into bad people. In the national news recently were some stories about “gymnastic” coaches molesting young girls. These predators were bad people long before the team hired them.

Along the same lines, law enforcement, for a number of poorly thought out reasons, occasionally hires bad people who continue to be bad people. Successful private sector companies take Risk Management more seriously than we do in Government. Why?

Time out for a paid political statement. America is a nation of laws. We have heard that statement a lot since the terrorist murders of 9-11. It is very important (particularly in the world of law enforcement) that we remember this thought, as it is critical to the survival of our respective country. We are a nation of laws.

Unfortunately, we have also become a nation of lawyers. I do not say this as lawyer bashing. I do not bash lawyers. Lawyers are fine people with good hearts and intentions, but with an extremely limited scope of thinking. They work in a different paradigm.

Their entire life is focused on fixing things after they go bad. That is what they study in law school (case law) and that is what they do in their practices (clients with existing problems).

Again, they are good people, but with a limited scope of vision. Many of our fine elected officials at all levels of government are lawyers. They bring this thinking of “post incident correction” with them into government work.

Risk managers do not think this way. Their whole life is focused on “pre-incident prevention of problems”. I don’t know one educated and trained risk manager in

America who holds elected office. Not one! This is not something that all of a sudden became important to me on September 11, 2001.

This has been my focus over the last four decades. What will it take to wake people up? Prevention is better than correction. Small, smart expenditures of effort and money up front can prevent massive downstream problems. You can make this happen individually and organizationally.

Webster takes a stab at defining risk as the possibility of meeting danger or suffering a harm or loss, or exposure to harm or loss. As a follow then,

Risk Management is any activity that involves the evaluation of or comparison of risks and the development, selection and implementation of control measures that change outcomes.

Or more simply stated, Risk Management is the process of looking into the future (short or long term) and asking what can go wrong and then doing something about it to prevent it from going wrong. In RM 101 you are taught the concept of **RPM**. Recognition, Prioritization, Mobilization.

First you must recognize the risks you face in your particular job description. Next you must prioritize them in terms of potential frequency, severity and available time to think prior to acting. Finally, you have to mobilize (act) to do something about the recognized and prioritized risks. How do we get started on this road to getting things done right?

While there are many (ten) different families of risk management, today I want to focus on just two of them. First, the big picture, organizational risk management (**ORM**), or how to manage the overall risks of your law enforcement organization. This big system contains a number of sub systems, and when they all work together in concert, things end up going right. I will not be spending much time on this issue today, but each of you here today has a key role in these processes.

Second, the smaller picture, operational risk management (**orm**), or how to manage the risk of a specific event or incident, for example, dealing with a specific CI, a specific warrant service, testimony in court, dealing with a specific juvenile witness on a gang case, a specific affidavit for a warrant preparation, forced entry, or similar single event. There are risks involved in each of the tasks we do, and someone has to be thinking during the planning and the performance of these tasks.

Both **ORM** (Organizational Risk Management) and **orm** (operational risk management) involve the proper development and full implementation of systems. Theme Two for the day is the concept of Systems, and what this word means to you in your specific job description.

Systems. The word gets thrown around a lot but what does it mean. According to Webster – “an organized or established procedure” or “an accumulation of processes”. When you check under process and procedure, you will find “a particular way of accomplishing something” and also “a series of steps followed in a regular definite order”.

Whenever I see a tragedy in law enforcement (or outside of our profession for that matter) I always do the Systems DUI Analysis. Was there a properly **designed** system in place? Was it **up to date**? Was it being **implemented**? It gets down to design, update and implementation.

There are plenty of examples of organizations and incidents in our profession where well-designed systems were either not in place, not up to date, or most often not being implemented and severe consequences resulted.

Please do not subscribe to the thinking that there is nothing that can be done to prevent tragedies. I am sick of that attitude! While we have a very risky profession, we are not in the most risky profession. Timber operations, commercial fishing, aviation, structural metal workers, and long haul drivers all have higher adjusted loss rates than we do.

But take a look at some of the leaders in those occupations, and see what they are doing. Timber operations are risky, but Boise-Cascade is underrepresented in problems. Aviation is dangerous, but Southwest Airlines does not kill people on their planes. Trucking is dangerous, but UPS has a great safety record in their long haul operations. Chemical plant operations are dangerous, but Dupont is a vanguard in their industry.

Well-designed systems, kept up to date and fully implemented will never let you down. This is also true in our profession. First your agency has to build good systems (policies) and keep these policies up to date. This is the responsibility of your Executive team.

Next, your supervision and management team has to assure that all department personnel are doing what they are getting paid to do, i.e. following the policies of your law enforcement organization. Why is this so important? If you take the time to study the nasty consequences we get involved in, so many of them get down to “systems” not being implemented. There are three principle reasons that systems are not followed. They are:

Arrogance: The rules do not apply to me.

Ignorance: I have no idea what the rules are.

Complacency: I have done it this way for a long time and will continue to do so.

More on this later, and this is a major concern of mine for our profession. But for right now, let me ask you this question. Does “Bud” (or Budette) work in your department? Let me identify “Bud” for you.

Our third theme is Customer Service. This is such a critical issue today, and frankly many members of the law enforcement community do not quite understand the ramifications of not taking this seriously. I will talk about this in much greater detail later on today, but for right now here is a quick three-point guide to creating Customer Loyalty.

Get things done right the first time.

Treat people right all the time.

Add in the “WOW” factor whenever possible.

Our Fourth Theme is Accountability and the increasing lack of it in society and our profession. This is a dying concept in so many organizations, with craziness abounding. Statements like “... that is not my job...” and “she doesn’t work for me...” and “...we have never done it that way before...” are getting a bit tired and quite frankly customers are getting fed up with employees who are unable or unwilling to accept the fact that they need to be accountable.

Every one in the organization, up, down and around the chain of command, has accountability. There are different levels of accountability, but each of us is accountable to do our jobs correctly. When accountability is not present, you have mediocrity. Mediocrity is at the top of a slippery slope that ends up in a loss of integrity.

Integrity is the fifth of these “Five Concurrent Themes”. Lose integrity and you will not be able to achieve the manifestation of integrity known as ethical behavior. Lose your ethical behavior, and you have lost the public trust.

Without the public trust, we have nothing. Where did this slippery slope start? Mediocrity is a cancer that can spread quickly in an organization, and if not eliminated, it will destroy your operations.

I have this odd belief that our citizens have the right to expect that all of our personnel possess this “integrity”, and not just at point of hire but throughout their employment career – and I am a huge fan of ongoing background investigations. And not to be Mr. Negative here – but how much damage could one bad employee in your organization do?

So why have I wasted some time out of your life with this. Our chosen profession is extremely complex and filled with risk. I am not kissing up to you, and I do not say this when I talk to a group of real estate people, or lawyers or bankers. Law Enforcement work is complex stuff, and it is getting more complex.

What I am trying to do here is to give you a “checklist approach” (and I love checklists and I am begging you to read “Checklist Manifesto” by Dr. Atul Gawande and it has direct applicability to what you do) to getting things done right.

Whatever the task is that you are doing or planning on doing, please start to analyze (if you have time) the task along these lines.

What is the Risk involved in this task, and how can I best manage that risk?

What is the our department system (policy) and how can I best assure its implementation?

Is there a “customer service” component here, and if so how can I maximize customer service on this task?

Who is accountable for what on this specific task?

What are the issues of integrity involved in this specific task?

If you try this for just a week, you will get it down to a couple of seconds per task. And if you use it regularly, you will have a higher probability of getting things done right and staying out of trouble.

And the anchor for these Five Concurrent Themes and my focus for our brief time together is the wonderful discipline of Risk Management.

Here are three statements that have guided me through most of my adult life. First is a quote, albeit paraphrased, from the great risk management guru of the 40’s, Dr. Archand Zeller.

“The Human does not change. During the period of recorded history, there is little evidence to indicate that man has changed in any major respect. Because the man does not change, the kinds of errors he commits remain constant. The errors that he will make can be predicted from the errors he has made.”

What does this mean? We have not figured out any new ways to screw things up. We are making the same mistakes over and over again. Mines have figured out no new ways to collapse. Ships have figured out no new ways to sink. Refineries have not figured out any new ways to blow up. Firefighters have not figured out new ways to get in trouble. Restaurants have not figured out any new ways to poison people.

Airplanes have not figured out any new ways to be involved in accidents. This was demonstrated by Cal Rodgers in 1911 in the very first cross-country flight in the U.S. on the Vin Fiz! If you “google” that, you will read a fascinating story.

Law Enforcement organizations and law enforcement officers have not figured out any new ways to screw things up. To be sure, there are variations on a theme, but in reality it is the same stuff over and over again.

The second statement important in my life thus far came from my mentor, professor and friend Chaytor Mason. He was a risk management guru in the 70’s. Here is a capsulized version of his response when I accused him of being the smartest person who ever lived.

“The smartest person in the world is the woman or man who finds the fifteenth way to hold two pieces of paper together.”

My instant response when I first heard this was confusion, but then I figured it out. While there are no new ways to screw things up (Zeller) there are always new ways to fine tune and revisit our existing systems to prevent bad things from happening.

Status quo (we have always done it that way – we have never done it that way) no longer works. Unfortunately, I see a lot of it in law enforcement operations. There is always a better way of doing business, the 15th way, and we must constantly be looking for it. And, the third thought...

“Things that go wrong in life are predictable and predictable is preventable.”

Thanks for your patience. I have been using this line since 1980 and I appreciate your indulgence. Want proof? Take a look at your newspaper today. Hopefully I will have a copy of the local paper with me today, and we can read some of the top stories from around America and I will prove to you that....

IT IS ALL PREDICTABLE AND PREVENTABLE!

The goal of the “checklist” I just provided is to assist you in “getting things done right”. However, getting things done right is no longer good enough. We must also recognize the need for solid customer service on every incident we encounter. Too many people think that “customer service” means we do things right. Well, that is partially through. Here are some thoughts on creating “loyal customers”.

My Customer Loyalty program also has three principle components. They are doing things right, treating people right, and adding in the “WOW” factor. My goal over the next hour is to show you why this is so valuable to you, your organization and our profession, and give you some extra tools to make sure that creating customer loyalty is part of every incident you handle.

Let’s take these one at a time.

A. Getting the Right thing done the Right Way the First Time.

I have beaten this to death this morning – but it imperative that the “tasks, incidents and events” our people handle get done right.

B. While treating everyone involved with the highest level of dignity and respect possible under the circumstances.

Technical Competence is no longer good enough. It must be complemented with Dignity and Respect. It is essential that our people treat people right in each of these encountered tasks.

Unfortunately, there is a lack of dignity and respect in America. The simple things we took for granted in decades past are now virtually non-existent. Holding doors, please and thank you, smiling, properly addressing people, and the like are disappearing rapidly.

Many times I meet people outside of our profession, and they complain about some cop not treating them right. My question is “where did the cop learn that behavior?” We did not teach our people how to be rude and uncaring. Like anything else, it is learned long before they come into our profession.

We must all work within our families and our teams at work to improve the way people are treated. It is critical that we revisit some basic rules of decency.

Go back to when you were 5 years old. It doesn't matter where you were then. All of your parents gave you a lecture when you were a kid that went something like this.

1. Treat people the way you would like to be treated. This is the golden rule and oddly enough, it still works. How would you like a loved one treated in this type of incident?
2. A smile goes a long way and it is international in nature. It is not a sign of being weak, it is a sign of being nice. You can be totally tactically aware with a smile on your face.
3. If you don't have something nice to say, don't say it. Being a wise guy with short, curt answers is not what we need. Explain what you are doing.
4. Listen at least as much as you talk. People want to be heard about their specific problem or issue. Slow down and listen to what is being said.

5. Don't make promises you can't keep, and keep the ones you make. Not only is this being decent, but also it will keep you out of legal trouble.
6. Keep your hands to yourself unless you are required to touch someone. So many problems start when we escalate to a touch or push. Use your head on this and make sure your people understand this.
7. Apologize when you really do make a mistake and try to fix it now. Study after study shows that this works better than stalling and not admitting fault. Again, how would you like to be treated.
8. You get more flies with honey than you get with vinegar. Be nice!

C. Add in the “WOW” Factor whenever you can.

So what is this “WOW” factor? It is simple, because it was developed by firefighters. Their goal is to get everyone you contact to be saying “WOW” when they finish the contact. Chief Brunacini (Phoenix FD) had this idea decades ago. His logic was as follows. If we can create five “WOW” experiences per day that are witnessed by ten people who will then tell ten people about it, we will have five-hundred people a day who think we are pretty neat.

That is 3500 per week or 14,000 per month or 168,000 per year. In twenty years we will be able to positively influence over 3 Million people. That will be the entire population of Phoenix by then and we will have a loyal customer base. And all he predicted ended up being accurate. When Chief Brunacini retired in 2006 he had the full support of the citizens of Phoenix and got everything he asked for.

Again, please do not dismiss this as the ramblings of a psycho ex-cop trying to fill time. I am not naïve, and I know that some (possibly many) of our contacts will never say “WOW” regardless of what you do for them. On the other hand however, are some (many) that will be surprised that you took the extra step to help them in their particular problem.

Here are some areas where you can create “WOW”.

Initial Greetings with people you contact - Courtesy, dignity, respect, are the start to every successful contact. “How are you doing today” is a nice start on most non-confrontational incidents. Finding out what is going on, please and thank you, answering their questions and advising people of additional services available. If it was your mom or dad involved in this event – how would like them treated. Give these behaviors a try. By the way, if it were you on the other side of the counter, what would make you say “WOW”?

Telephone issues – Answering in a timely manner, understandable, polite, listening, directing calls to appropriate parties, proper use of hold button, and call terminating techniques. Following through when you transfer a call to another more appropriate point of contact. It is important that you regularly check your voice mail, and respond to calls made to you. If you are going to be absent for a period of time, put that on your message and give the caller another option. Also, we all need to be 24/7 on the Internet just like most of the people in your community are.

Vehicle Operations – So much of public opinion is developed by the way we behave in the view of the public - particularly in the way we drive – and park - our vehicles.

Please, drive within the law and policy, keep your equipment clean, use the seatbelts and turn signals (that is the little stalk on the left side of the steering wheel – push up when making a right turn, and down when making a left turn), acknowledging courteous driving behaviors, parking in designated spaces. When someone gives you a break in traffic, acknowledge this courtesy with a wave or other gesture.

Response to calls and other events – Timeliness is essential. If you have made an appointment, be there on time. If something unexpected comes up, then be sure to call and inform the party you will be late. Nothing angers people more than being delayed. They are as busy as you are.

Following up after the initial contact works very well. Many organizations have proven this. Check after the contact (within 24 hours) to see if there is anything else you can do to assist the person you contacted earlier. You will be amazed at what you hear from the people you contact. Please do not use this opportunity as a justification to follow up with a person for your personal gain.

Dealing with “bad customers”. To be sure, some of those you will contact are problem people who will never be “loyal” or a raving fan. Having said this, it is still good to treat them as well as you can under the circumstances. They might be a witness to your behavior someday. Or you might be able to turn them into an informant. Or your decency might (and I agree this is rare) actually help change his/her life.

I know I talk fast, but I have to as this is a very short class. Earlier today, I asked if you have ever had a negative experience with an organization that made you so angry that you vowed you would never do business with that organization again. And if I recall correctly, almost every hand went up. (Somehow I knew that would happen and that is why it is typed in the handout material which was prepared several weeks ago).

Now I will ask a second question. How many of you in here have had a positive experience with an organization that made you say, “WOW”? My guess is that several hands will go up when this question is posed.

After we get done today, take the time to do the following exercise. Take a moment to think, and list the three most negative contacts you have had with any organization.

Identify the specific behavior that really made you mad, and list that behavior on the left lines below.

Now, think about the three most positive contacts you have had with any organization, and again list the specific employee behavior that made this contact so great.

NEGATIVE BEHAVIORS

POSITIVE BEHAVIORS

1. _____

1. _____

2. _____

2. _____

3. _____

3. _____

As simple as it seems, don't participate in the behaviors you have identified on the left side above. Simultaneously, do the things that are listed on the right side. Take a look at some of the lists of your fellow workers. Talk about the things that you can do to create the loyal customers that are so essential for our continued success.

If you do not feel that this is your job, then perhaps you have chosen the wrong line of work. This job is a service job and you are a public servant. It is so darn easy to make every contact an opportunity to create a loyal customer for life. Your imagination (within the confines of your policy and procedures manuals) is the only limit.

Be nice and use your head to create "WOW" with as many people as you can. They are all jurors, voters, and members of our great public. You have a key role here and taking this seriously will have major benefits in the future.

Well that wraps it up for our brief time together. Thanks for coming back after the breaks and for your attention throughout the day.

I came here with the focused goal of helping you improve your performance in your District Attorney operations. There is always room for improvement and a better way to do things.

So here is the bottom line for our time together. The Managers and Executives of your department have the huge responsibility to build good policies and keep them up to date.

They also have the obligation to make sure they promote women and men who have the guts to behave like supervisors, and to have the necessary audits and inspections in place to assure that

the good policies in fact are taken seriously. Rules without enforcement are just nice words.

If you are the supervisor (today or in the future) you have to take your role of “systems implementation” seriously. If you don’t feel comfortable taking people on and holding them accountable, then perhaps you need to reconsider your position.

And if you are that line employee – that bottom line road dog Prosecutor or Victim/Witness professional or D.A. Investigator, you have to know the policies that apply to your job and follow the darn things – not some of the time, not most of the time – but all of the time.

Allowing Arrogance, Ignorance, and Complacency in your operations will ultimately get your people in big trouble in this high-risk job – so please take this seriously.

I thank you for your attention. Please keep the brave soldiers and sailors in your prayers, remember your role in Homeland Security and always take the time to work safely.

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