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VIOLENCE AGAINST LAWYERS: THE INCREASINGLY ATTACKED PROFESSION

STEPHEN KELSON

I. INTRODUCTION

On August 20, 1986, Patrick Sherrill, a full-time substitute postal carrier, entered the Edmond Post Office in Oklahoma and killed fourteen co-workers and injured six others.¹ As a result of that incident, America has become increasingly aware of the growing problem of workplace violence. As researchers have noted, “[w]hile there had been a small number of limited cases, workers basically vented their anger and frustration in non-violent ways and workplaces were generally free from the threats of intruders. Now, and perhaps permanently, violence has become commonplace.”² Since the Edmond Post Office incident, serious cases of workplace violence have occurred throughout the United States, touching nearly all professions in one way or another, and have even affected our school system.

Although few lawyers consider violence to be a serious problem worthy of their personal attention, there is an indication that violence against lawyers, as a whole, increased nationwide throughout the 1980s and 1990s.³ Violence can come from clients, opposing parties, and interested parties in any field of the legal profession, and at any place or time. In Chicago, after a traumatizing divorce and custody fight, a woman’s ex-husband savagely shot and killed her attorney.⁴ In Santa Fe, New Mexico, an attorney who took on child murder and civil-rights cases, along with poor clients nobody else wanted, was killed in a drive-by shooting while walking to court.⁵ Following a non-fatal stabbing, a Long Island attorney laughed, “If it’s not dipped in garlic it [the knife] doesn’t work.”⁶ But violent attacks against

¹ MICHAEL D. KELLEHER, PROFILING THE LETHAL EMPLOYEE: CASE STUDIES OF VIOLENCE IN THE WORKPLACE 31 (1997).

² *Id.* at 32.

³ Whereas, there is no system for reporting incidents involving violent threats and attacks in the Law Society of Upper Canada, the Canadian Bar Association, or the American Bar Association, the general sense is that violence against lawyers is indeed on the increase. Margaret Brady, *Lawyers as Victims*, FIN. POST, Jan 10, 1998, at 24.

⁴ Mark Duran Samuels, *For Courts, Epidemic of Violence Hits too Close to Home*, CHI. DAILY L. BULL., May 21, 1998, at 1.

⁵ *Lawyer Slain on Way to Court*, DESERET NEWS, Aug. 14, 1999, at A02

⁶ Elizabeth Wasserman, *Lawyer Laughs Off Stabbing*, NEWSDAY, June 24, 1993, at 06.

lawyers are no laughing matter. Lawyers need to examine why such violence happens and how to avoid it. Why are more and more individuals involved in litigation resorting to violence? Lawyers need to know what steps they can take pro-actively to prevent such violence from happening to them.

This article will examine the growing rate of violence against the legal profession. It will also present opinions as to why parties who are involved in litigation are increasingly turning to violence against lawyers, and it will make recommendations as to what lawyers can do to prevent potentially violent situations.

II. A PROFILE OF VIOLENCE AGAINST THE LEGAL PROFESSION

Although violent crimes continually declined during the 1990s, violence against the legal profession has been on the increase since 1980.⁷ This rise in violence has affected every state and every field of the legal profession. Lawyers working for a city, county or state government, small or large firm, as in-house counsel, or in private practice, need to address the potential of work-related violence.

A. *Statistical Research in the Legal Profession*

No detailed study of violence in the legal profession has been made. However, some very informative studies do exist on this subject. Two such studies use statistical information provided by the U.S. Marshals Service and an independent survey by the American Bar Association Section of Family Law. Both are discussed hereafter.

In Frederick S. Calhoun's *Hunters and Howlers: Threats and Violence Against Federal Judicial Officials in the United States*, the author uses statistics gathered by the U.S. Marshals Service to provide the most thorough study of violence in the legal profession.⁸ Although the study only examines violence against federal judicial officials, it provides the legal profession with a somber warning. From October 1, 1980, through September 30, 1993, a total of 3,096 inappropriate communications/threats and assaults were reportedly made against federal judicial officials. This was an average of 238 inappropriate communications/threats and assaults per year.⁹ In comparison, 710 inappropriate communications/threats were reported by the U.S. Marshals Service in the twelve months ending in 1998¹⁰ and 497 in 1999,¹¹ totaling 1,208 inappropriate communications/threats and assaults in

⁷ Brady, *supra* note 3, at 24.

⁸ FREDERICK S. CALHOUN, *HUNTERS AND HOWLERS: THREATS AND VIOLENCE AGAINST FEDERAL JUDICIAL OFFICIALS IN THE UNITED STATES, 1789-1993* (U.S. Marshals Service, 1998).

⁹ *Id.* at 51.

¹⁰ Kim Smith, *Threat Investigator Works to Keep Judges from Harm*, LAS VEGAS SUN, Aug 10, 1999, available at <http://www.lasvegassun.com/sunbin/. . ./509159941.html>.

¹¹ Andrew Wolfson, *Judges, Prosecutors Feel Vulnerable: Capps Killing Illustrates Perils they Face at Work, Home*, THE COURIER-JOURNAL LOCAL NEWS, Jun 13, 2000,

only a two-year period. Furthermore, of the four federal judges killed over the last two centuries, two were killed in the past thirteen years.¹² Admittedly, the U.S. Marshals Service's statistics are not a complete database, in that, it is uncertain what percentage of threats and assault have actually been reported. But it does give the most complete study on violence in the legal profession, and shows that incidents of violence against the legal profession at the federal level are increasing.¹³

Although no one has made a detailed study of violence against the judiciary or legal profession at the state or local level, few people would dispute that the amount of violence would be less than that experienced at the federal level.¹⁴ The problems that are disrupting state and local courts are far more serious and occur more frequently than anything the federal courts face.¹⁵

The results of an informal 1997 fax survey of members of the ABA Section of Family Law reported the following: of the 253 respondents, 60 percent reported an opposing party in a case had threatened them and 17 percent reported that their own clients threatened them.¹⁶ Twelve percent reported they had been victims of violence at the hands of either a client or an opposing party at least once.¹⁷ Still, only one of four respondents said that they had taken any special precautions to ensure their own safety. All bar members need to understand that the potential for violence exists and should not be ignored.

B. *An On-Line Search*

Lawyers need to recognize the daily risk they take when they meet with clients or other parties who are involved in litigation. An on-line search for information relating to violence against the legal profession found 246 articles involving 289 different incidents of violence against lawyers.

1. Violent Clients.

Of the 246 articles, 35 cases of violence involved clients attacking their own lawyers. For example, in Washington, a defendant charged with fatally stabbing an 8-year-old boy, punched one of his attorneys unconscious.¹⁸ In North Dakota, a

available at <http://www.courier-journal.com/localnews/2000/0006/13/000613fear.html>.

¹² CALHOUN, *supra* note 8, at 45 (discussing the murders of Judge Richard Daronco of the Southern District of New York, on May 21, 1988, and Judge Robert S. Vance, of the Eleventh Circuit Court of Appeals, in December of 1989).

¹³ For additional information from the U.S. Marshal Service, see <http://www.usdoj.gov/marshals>.

¹⁴ CALHOUN, *supra* note 8, at 41.

¹⁵ *Id.* at 29.

¹⁶ Kelly McCurry, *Family Lawyers Face Threats, Violence, Survey Says*, TRIAL, Feb. 1998, at 91 (1998).

¹⁷ Mark Hansen, *Lawyers in Harm's Way*, 84 A.B.A.J. 93 (1998).

¹⁸ Ellen Sorokin, *Shiflett Defendant Attacks his Lawyer Knocks Attorney Unconscious in*

man beat his former criminal defense attorney to death and set his apartment on fire.¹⁹ In Florida, ten years after winning a \$75,000.00 judgment, a man shot his former lawyer, claiming the lawyer "ruined his life."²⁰

In the same study, 68 cases involved parties perpetrating violence against the opposing sides' lawyers, and 63 cases involved one of the parties in litigation perpetrating violence against a judge. In Alaska, a 69-year old woman, supporting herself on two canes, entered the office of the lawyer who was representing the opposing insurance company and shot him in the back.²¹ In Fort Lauderdale, a man involved in a wrongful-firing lawsuit shot and killed a pregnant lawyer and a witness during a deposition.²² In Indiana, a man involved in the legal guardianship of an 81-year-old woman was arrested for threatening the judge presiding over the civil case.²³ In Maryland, an indictment was ordered for three members of a drug ring. The indictment was the result of a plan by the members to kill the federal judge who was scheduled to sit on their murder trial.²⁴

2. Work-Related Violence

In total, 80 percent of the incidents in the on-line search were identified as work-related violence. The implications are far-reaching. Attackers used a variety of weapons, from guns and knives to the more obscure weapons such as a pencil,²⁵ crossbow,²⁶ ice pick,²⁷ mail bombs,²⁸ a scythe, razor blade,²⁹ stun gun,³⁰ dynamite,³¹ hammer,³² and bare hands.³³ In some cases, attackers hired hit men to perform the

Court, WASH. TIMES (D.C.), Oct. 20, 2000, available at 2000 WL 4167676.

¹⁹ Jack Sullivan, *Duis Killer gets Life Sentence, William Pretzer, a client of Fargo Attorney*, THE FARGO FORUM, Nov. 2, 1999 WL 272708.

²⁰ Melissa Prentice, *Law Firms Rethinking Security in Wake of Shooting*, SAN ANTONIO EXPRESS-NEWS, Oct. 26, 1997, at 1B.

²¹ *Woman, 69, Gets Year for Shooting Lawyer*, ANCHORAGE DAILY NEWS, Feb. 18, 1999, at B2.

²² *Two Shot to Death in Court Office*, PEORIA J. STAR, May 28, 1994, at A2.

²³ Kim L. Hooper, *Man is Charged with Threatening Judge*, THE INDIANAPOLIS STAR, Jun. 24, 2000, available at 2000 WL 2000176146.

²⁴ *Three Indicted in Plot to Kill Federal Judge*, WASH. TIMES (D.C.), Apr. 29, 2000, 2000 WL 4154616.

²⁵ *Defendant Stabs Lawyer with Pencil*, SAN DIEGO UNION & TRIB., Mar. 18, 1995, at A3.

²⁶ *Deliberations Begin in Family Murder Trial*, READING TIMES & EAGLE (PA), Apr. 20, 1993, at B2.

²⁷ Debra Cassens Moss, *Lawyer Stabbed*, 73 A.B.A.J. 43 (1987).

²⁸ *Mail Bomber Convicted*, PITT. POST-GAZETTE, Nov. 6, 1996, at A21.

²⁹ Curtis L. Taylor, *Lawyer Slashed by Razor*, NEWSDAY, Aug. 6, 1992, at 34.

³⁰ *July 30, 1997, Miami*, at <http://www.deadlawyers.com/disgrmtl.htm>.

³¹ *Swedish Man Kills Self, Maims Lawyer in Court Explosion*, ARIZ. REPUBLIC/ PHOENIX GAZETTE, Jun. 13, 1996, at A7.

³² Brady, *supra* note 3, at 24.

³³ *News: Man Indicted in Lawyer Attack*, PATRIOT LEDGER, Jan. 19, 1995, at 06.

task.³⁴ The study revealed that the preparation for these attacks ranged from little to extensive.

Lawyers are in a profession that normally requires them to deal with conflict on a daily basis, and for that reason the occurrence of violence is always a possibility. From the on-line research, I discovered that violence frequently occurs in numerous areas of the profession. As reported by Pamela Horn, a Kansas Bar Assistant and Director of Membership in 1994:

The most volatile area appears to be the domestic forum. The types of conflicts engendered by divorces, child custody disputes, termination of parental rights, and other highly charged emotional circumstances create a particularly fertile environment for potential violence to occur.³⁵

Horn, however, does not identify the domestic forum as the sole area where lawyers are at risk of violence.³⁶ Violence is prevalent in employment law, civil cases, and criminal law as well.³⁷

The collected articles from the on-line search reveal that violence has touched numerous fields of the legal profession. For example, in Louisiana, a client shot and killed the attorney who was representing him in a job-related injury case.³⁸ A judge in Panhandle, Florida was killed within his courthouse after the conclusion of an alimony hearing.³⁹ In a sexual assault case, a defendant attempted to hire someone to kill the victim and his attorney.⁴⁰ A man involved in a loan dispute in Chicago, shot and killed his lawyer.⁴¹ A man pulled a gun in a law office and began shooting due to his frustration in a bank account and property dispute.⁴² An attorney who took on child murder and civil right cases was killed as he walked to court.⁴³ (ED: is this the same case as footnote 5?) In New York, a man awaiting charges of stock fraud was charged with conspiracy to murder a Manhattan judge.⁴⁴ Such incidents are becoming ever more common.

³⁴ *Man accused of Trying to Hire Killer*, COURIER-J. (Louisville Ky.), Oct. 6, 1990, at 12A.

³⁵ Pamela Horn, *Violence Against Lawyers*, 63-Aug. J. Kan. B.A. 6 (1994).

³⁶ *Id.*

³⁷ *Id.* at 6.

³⁸ *Client Kills Lawyer*, 69 A.B.A.J. 1622 (Nov. 1983).

³⁹ *Panhandle Mourns 3 Slain in Courthouse*, THE MIAMI HERALD, Jul. 30, 1987.

⁴⁰ *Man Accused of Plot to Kill Victim, Lawyer*, MILWAUKEE J. & SENTINEL, Dec. 2, 1995, at A8.

⁴¹ *Client Charged in Lawyer's Death*, CHIC. TRIB., May 2, 1996.

⁴² Neil Steinber, *Man Charged in 2 Slaying at Loop Office*, CHI. SUN-TIMES, Feb. 28, 1994, at 11.

⁴³ *Arrest made in Lawyer Shooting*, ALBUQUERQUE TRIB., Mar. 6, 2000, available at www.abqtrib.com/archives/news.

⁴⁴ Dean E. Murphy, *Man in Stock Fraud Case is Charged with Plotting to Kill Judge Who Raised His Bail*, N.Y. TIMES, Aug. 10, 2000.

3. Where Attacks Occur

Violence touches every area of a lawyer's life. It is perhaps for this reason that no formal study has been made which focuses on violence against lawyers. The workplace of an attorney is not necessarily just the office. An attorney might travel to visit clients, investigate facts at the scene of events, take depositions at many locations, and attend various courts. Due to the nature of the profession, an attorney could become a victim of violence at any place at anytime.

In the majority of articles discussing violence against lawyers, physical violence occurs in the courtroom during hearings and trials.⁴⁵ For example, in California, a defendant, dubbed the "Koreatown Slasher" stabbed his lawyer in front of the jury.⁴⁶ During a reading of guilty verdicts in a high-profile case, three defendants lunged at the prosecutor.⁴⁷ A district attorney physically assaulted a public defender while in the judge's chambers.⁴⁸ Upset with divorce and child custody rulings as well as sexual molestation charges against him, a man in Texas calmly stood and began shooting at lawyers and judges, killing two lawyers and wounding a third lawyer and two judges.⁴⁹

Numerous attacks on attorneys have also taken place in law offices, and outside the workplace. In New Jersey, a client entered his lawyer's office and attempted to

⁴⁵ Securing the courtroom from violent outbursts has been a problem throughout the 1990's, and there still is no easy solution. Because no agency collects data on a statewide or national basis, it is not known exactly how many incidents occur in courtrooms. The only known attempt to study courtroom violence at the state level was made by Barbara E. Smith for the National Sheriffs' Association in 1991. WILLIAM H. PETERSEN AND BARBARA E. SMITH, PH.D., COURT SECURITY: TRAINING GUIDELINES AND CURRICULA, NATIONAL SHERIFF'S ASSOCIATION (May 1991). BARBARA E. SMITH, PH.D., APPENDIX: PROFILING COURT SECURITY VIOLATIONS: A GUIDE FOR TRAINERS AND COURT SECURITY PERSONNEL: A REPORT TO THE NATIONAL SHERIFF'S ASSOCIATION AND THE STATE JUSTICE INSTITUTE (January 1991).

In her report, she studied 243 reported cases of court security violations (from 1989 to 1991) that occurred in the 190 courthouses that responded to a nationwide survey. The results of this survey revealed that most incidents occurred in the criminal court. Of the 243 security violations, 107 involved individual attacks that resulted in one hundred and twenty-four injuries. Of the 107 attacks, 24 percent of the intended victims were judges, 5 percent were prosecution attorneys and 3 percent were defense attorneys. 74 percent of the assailants were defendants, 8 percent were spectators, four percent were Plaintiffs, 6 percent had another role in the proceeding, and 8 percent had no role at all. Of 75 suspects who verbalized a reason to officials for the attack, the most frequently stated were revenge, escape, intimidation, and to influence the court. Where the 1991 study is very informative, it only represents 29 states and 77 counties nationwide.

⁴⁶ *Judge Denies Mistrial after Lawyer Slashed*, FRESNO BEE, Feb. 2, 1993, at A4.

⁴⁷ *New Victims' Rights*, LAW CRIME WATCH WEEKLY, Vol. 5, No.2 Jan. 12, 1999, at 1.

⁴⁸ Rinat Fried, *Push Comes to Shove in Judge's Chambers*, THE RECORDER, Nov. 10, 1997, at 1.

⁴⁹ Hugh Aynesworth, *Courtroom Gunman Kills 2 Lawyers*, WASH. TIMES (D.C.), Jul. 2, 1992, available in 1992 WL 8132999.

kill the lawyer with a machete.⁵⁰ A criminal lawyer was stabbed to death at a bank by someone who was believed to be a former client.⁵¹ A lawyer was killed during a court deposition in Fort Lauderdale.⁵² Following a bitter divorce, an ex-husband gunned down his wife's attorney outside his law office.⁵³ In Boston, a man killed himself after a confrontation with his wife's divorce lawyer outside of the lawyer's office.⁵⁴

4. Facing Reality

Violence in the legal profession can come from both sides of any given case and reach nearly all aspects of a lawyer's life. What can be done to prevent violence from the parties involved in litigation? How does one recognize the signs of potential violence? Once potential violence presents itself, what should be done? What can be done? All lawyers should consider these questions.

Recognizing the danger is the first step for lawyers to deal with the problem of violence. It is easy to think "it won't happen to me," but the reality is that violent crime in the legal profession and in family law in particular is on the increase and may happen in your own workplace. Just because it has not happened to you, it does not mean that violence is not occurring and will not occur in the future. "No law office is immune to what happen[s]," said Carrie Wells, of Heard Goggan Blair and Williams, a San Antonio tax law firm.⁵⁵ "We all have potential problems . . . It's always a concern – clients acting violently[.]" said one attorney after a shooting/suicide in a Miami office.⁵⁶

III. WHY DO PARTIES IN LITIGATION RESORT TO VIOLENCE?

Acts of violence and aggression physically express anger. Violence and aggression can take many forms, including physical attacks, verbal or ritualistic attacks, threats, and passive aggression.⁵⁷ A number of experts "agree that family problems, substance abuse, use of illegal drugs, layoffs, and poverty are major contributors"⁵⁸ to violence in the workplace. But what about violence against

⁵⁰ Jennifer Van Doren, *Indictment Charges man with Threatening Lawyer*, REC. N. N.J., Dec. 13, 1997, at A4.

⁵¹ *The State*, L.A. TIMES, Feb 29, 29, 1988, at 2.

⁵² *Two Shot to Death in Court Office*, PEORIA J. STAR, May 28, 1994, at A2.

⁵³ Samuels, *supra* note 4, at 1.

⁵⁴ STEVE ALBRECHT, FEAR AND VIOLENCE ON THE JOB: PREVENTION SOLUTIONS FOR THE DANGEROUS WORKPLACE 50 (Carolina Academic Press 1997).

⁵⁵ Prentice, *supra* note 20, at 1B.

⁵⁶ Vanessa Bauza & Charles Strouse, *Man Shoots Lawyer, Kills Self: Former Client had a 10-Year Grudge Against Miami Attorney*, SUN-SENTINEL (Ft. Lauderdale Fla.), July 30, 1997, at 5B.

⁵⁷ SETH ALLCORN, ANGER IN THE WORKPLACE: UNDERSTANDING THE CAUSES OF AGGRESSION AND VIOLENCE 15 (1994).

⁵⁸ Jurg W. Mattman, CPP, *Preventing Violence in the Workplace (Workplace Violence*

lawyers?

The specific reasons why individuals in litigation resort to violence against lawyers are complex. At the federal, state, and local level, violence generally involves an individual who is “caught up in a judicial proceeding that somehow, rationally or not, violated his sense of fairness or his selfish desire for freedom or relief from punishment.”⁵⁹ For example, as one individual wrote to a popular web site:

A message to lawyers everywhere: Times are changing and your little ol’ law degree can’t stop a bullet, a knife, a car, a fire. . .or my mean, drug-dealing, drug-informing, carbon based life form ex husband whom YOU, and others LIKE YOU, protect. Sooner or later he will turn on you (call your lawyer and see if it will stop him!!!) Your job has NOTHING TO DO WITH JUSTICE. If there were real justice in this world all lawyers (and my ex husband) would have spontaneously dropped dead about 15 minutes ago.⁶⁰

While some in the profession simply consider violence as individual cases where a client “just snapped,” “wanted to get even,” or “just wasn’t satisfied,” the real reasons why clients result to violence against members of the legal profession are much more complex.

A. Naming, Blaming, and Claiming

To gain an understanding of why individuals violently turn against the legal profession, it is essential to examine why people turn to the legal system in the first place. In an article entitled *The Emergence and Transformation of Disputes: Naming, Blaming, Claiming*,⁶¹ the author examines the idea of disputes as social constructs. For individuals to arrive at the point where they are willing to litigate, they go through a three-step transformative process involving “naming,” “blaming,” and “claiming.”⁶² In this theory, a large portion of any dispute exists only in the minds of the disputants.⁶³ Disputes arise when an individual’s “unperceived injurious experiences” become “perceived injurious experiences.” This perception in the mind of an individual is called “naming.”⁶⁴ The next step occurs when the perceived injurious experience becomes a grievance, where the injured person feels wronged and believes that something must be done in response to the injury. This is “blaming.”⁶⁵ A third transformation, “claiming,” occurs when

Research Institute), at http://noworkviolence.com/articles/preventing_violence.htm(last visited Oct. 27, 2000).

⁵⁹ CALHOUN, *supra* note 8, at 42.

⁶⁰ Letters, comments: 4/29/00, at <http://deadlawyers.com/letters.htm>.

⁶¹ William L.F. Felstiner et al., *The Emergence and Transformation of Disputes: Naming, Blaming, Claiming*, 15 LAW & SOC’Y REV. 631 (1981).

⁶² *Id.*

⁶³ *Id.* at 631-32.

⁶⁴ *Id.*

⁶⁵ *Id.* at 634-35.

an individual voices the grievance and asks for a remedy from the party they perceived has injured them. When a claim is rejected, it becomes a dispute.⁶⁶

The author characterizes the entire process of "naming," "blaming," and "claiming" as subjective, unstable, reactive, complicated, and incomplete.⁶⁷ Many factors will also affect the speed and degree of the transformative process, including the relationship between the parties, experiences of the individuals, current pressures, personalities, etc.⁶⁸ So, by the time a client has brought his dispute to an attorney, there is a lot of baggage attached to the situation and individual parties.

B. *Conflict and Expectations*

When a party takes the next step and comes to an attorney, there are four possible methods to resolve the conflict. These methods include negotiation, mediation, arbitration, and litigation.⁶⁹ "Clients usually have substantial emotional and financial investments in whatever case is going on[,]""⁷⁰ and in these different procedures, parties look to their attorneys for help in satisfying their needs. As Felstiner suggests, "[t]he essence of professional jobs is to define the needs of the consumer of professional services."⁷¹ Clients need more than just legal assistance. They also need someone to help manage their aggression. The lawyer aids in protecting the client from acting on his or her own impulses by serving as an "[a]uxiliary [e]go," offering the client new approaches and solutions to the conflict.⁷²

The breakdown in the process occurs when the progressive methods of resolution do not help or do not appear to help the party to achieve a satisfactory outcome. As one attorney said following an attack at her office building, "[t]here is always someone on the other side of every legal issue who feels they have lost control or are losing something."⁷³ This loss of control can happen in a number of ways. First, the party becomes severely frustrated with the system during the process. Second, a litigated ruling does not come out in the party's favor and he/she is unprepared to face the loss. Third, a litigated ruling comes out in their favor but it does not represent a solution to their needs.⁷⁴ This can also happen when lawyers "create" some of the needs they satisfy and create disputes to fit their own interests rather than those of their clients. Sheer economic competition among professionals

⁶⁶ *Id.* at 636.

⁶⁷ Felstiner et al., *supra* note 61, at 637.

⁶⁸ *Id.* at 640.

⁶⁹ Gerald R. Williams, *Negotiation as a Healing Process*, 1996 J. DISP. RESOL. 1, 8-12.

⁷⁰ Prentice, *supra* note 20, at 1B.

⁷¹ Felstiner et al., *supra* note 61, at 636.

⁷² Jean Roiphe, *Aggression, Unconscious Conflict, and the Role of the Lawyer*, 16 CARDOZO L. REV. 1205, 1214 (1995).

⁷³ Prentice, *supra* note 20, at 1B.

⁷⁴ Bauza, *supra* note 56, at 5B.

may fuel conflict among their clients.⁷⁵ In such a case, the following may occur:

The [lawyers] furnish information about choices and consequences unknown to clients; offer a forum for testing the reality of the client's perspective; help clients identify, explore, organize and negotiate their problems and give emotional and social support to clients who are unsure of themselves or their objectives.⁷⁶

Such actions do not always bring about satisfactory outcomes and the client may leave the lawyer/client relationship frustrated, feeling powerless and believing that the lawyer and the system have failed him. Unfortunately, in many cases, the client then chooses to act upon his/her own.

C. *Dangerous Solutions*

Professor Gerald R. Williams, of the J. Reuben Clark Law School at Brigham Young University, states in his article *Negotiation as a Healing Process*⁷⁷ that aggression from conflict has the potential to escalate from verbal threats to physical violence between the parties; , in the worst case, this violence may take the form of murder.⁷⁸ Another problem arises when the violence is directed against another, other than the perceived "victimizer."⁷⁹ Rene Girald states, "[w]hen unappeased, violence seeks and always finds a surrogate victim."⁸⁰ This displaced violence can be turned against friends, family, children, lawyers, judges, and against the client himself.⁸¹

IV. WHAT CAN BE DONE TO PREVENT VIOLENCE AGAINST LAWYERS?

A number of procedures can prevent violence against lawyers. Some lawyers might feel that, by focusing on the prevention of violence, the profession will become paranoid and fearful. As one attorney said, "[y]ou can't walk around

⁷⁵ Thomas E. Schacht, Psy.D., *Prevention Strategies to Protect Professionals and Families Involved in High-Conflict Divorce*, 22 U. ARK. LITTLE ROCK L. REV. 565, 570 (2000).

⁷⁶ Felstiner, *supra* note 61, at 645-46.

⁷⁷ Williams, *supra* note 69.

⁷⁸ *Id.* at 15.

⁷⁹ *Id.* at 13-14.

⁸⁰ Rene Girald, *Violence the Sacred 2* (1977), cited in Gerald R. Williams, *Negotiation as a Healing Process*, 1996 J. DISP. RESOL. 1, 14-15.

⁸¹ See also *Gunman Slays Two During Deposition*, TULSA TRIB. & TULSA WORLD (OK), Feb. 27, 1994, at N12; *Lawyer Beaten Up by His Own Client*, BOSTON GLOBE, Jul. 13, 1989, at 24; *Lawyer Shot Over Will*, HOUS. CHRON., Oct. 23, 1997, at 39; *Man Kills Two Lawyers in Fort Worth Courtroom*, EDMONTON J., Jul. 2, 1992, at A12; *Man Shoots, Kills Lawyer, Himself in Kent, Wash.*, ORLANDO SENTINEL, Dec. 30, 1993, at A13; Bob Driehaus, *Murder Plot Targeted Prosecutor, Teacher*, CINCINNATI POST, Apr. 8, 1999, available in WL 040899; *Robber Attacks Lawyer, Injures 4 Court Workers*, ORLANDO SENTINEL, Dec 4, 1991, at A14.

looking over your shoulder all the time . . . If someone wants to shoot you, they'll shoot you."⁸² The truth is that the profession should be conscious of the potential for violence. Violence against lawyers is increasing, and simply ignoring the problem will not prevent it from happening or affecting you in some way. If you or someone in your office has not been a victim of some form of violence, it does not mean that it will not happen in the future. There are a number of methods that might help attorneys feel more secure in their jobs. These same methods can also be used in all law practices. But first, lawyers must recognize the signals of violence and must know how to deal with violence when it occurs. I am not so optimistic as to say that all violence will or can be prevented. However, there are methods that, if applied properly, will help reduce and prevent violence against the legal profession.

A. *Healing: A "Client-Centered" Approach*

Overall, the best way for a lawyer to prevent a client's violence is to help clients deal with their own problems.⁸³ In the work by David A. Binder, Paul Bergman, and Susan C. Price entitled *Lawyers as Counselors: A Client-Centered Approach*, the authors present a method lawyers can use both to prevent violence and, at the same time, to help the clients find answers to their own problems.⁸⁴ Other authors also offer methods to better aid in healing clients and, thus, avoid violence by emphasizing the following: unconditional love and caring, the need of a relationship, the need to return to wholeness, the need to listen, the development of a healing attitude, and striving toward restoration.⁸⁵ Some attorneys at this point might think "I'm not a psychologist" or "I'm not here to help my clients solve all of their problems. I'm a litigator and I solve problems through litigation." These statements are true but many times clients feel differently.

A lawyer has a duty to help his or her client. As professionals, all lawyers have a role in the lives of their clients. As Gerald R. Williams suggests, when an individual seeks the help of a lawyer, the relationship between the two "is best understood in terms of the metaphor of a vessel. . . ."⁸⁶ This vessel "has the *capacity* to contain the potentially dangerous energies activated by the conflict and to *channel* them in ways that are socially and individually non-destructive."⁸⁷ He further assured those in the legal profession that this relationship does not require lawyers to be therapists, but calls for them to actively fulfill their "proper roles as

⁸² Prentice, *supra* note 20, at 1B.

⁸³ DAVID A BINDER ET AL., *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* 19 (1991).

⁸⁴ *Id.* at 19-23.

⁸⁵ Lois Gold, *Influencing Unconscious Influences: The Healing Dimension of Mediation*, in *MEDIATING: INTERPERSONAL CONFLICTS—A PATHWAY TO PEACE* 255 (Mark S. Umbreit, ed., 1995).

⁸⁶ Williams, *supra* note 69, at 23.

⁸⁷ *Id.* at 23 (emphasis added).

members of a learned profession.”⁸⁸ By using a “client-centered approach,” a good lawyer will become a better lawyer by taking those steps: helping the client identify problems from the client’s perspective, involving the client in the process and exploring new solutions, encouraging a client to make substantial decisions, providing advice based on a client’s values, acknowledging the client’s feelings and recognizing their importance, and repeatedly conveying a desire to help.⁸⁹

1. Identifying Real Issues and Problems

A lawyer must understand the problems that a client faces. Unfortunately, in the world today where attorneys face an increasing number of clients and cases, as well as increased competition with other attorneys, the profession in many respects has become commercialized. Many lawyers have moved to focusing solely on the litigious problems that they identify from their client’s circumstances. When this happens, the lawyer takes the chance that he or she might overlook real problems and issues. To prevent this from happening, an attorney must try to understand the problems and issues of a client from the client’s point of view.⁹⁰

The lawyer’s obligation is to use his or her professional talents on the client’s behalf in order to achieve the client’s wishes, not to advance the lawyer’s.⁹¹ Each client seeking help from an attorney is different in background, lifestyle, financial needs, desires, etc. These and many other factors aid in creating the client’s perspective of a problem. From the first meeting, the lawyer should attempt to understand the viewpoint of the clients and what they seek to achieve. For example, when people become involved in negotiations, mediations, and/or adjudication to get specific matters resolved, many seek something more than legal aid, including acknowledgment, affirmation, a way to say goodbye with dignity, etc.⁹² The lawyer should ask pertinent questions in order to learn as much as possible about the situation.

2. Actively Involving a Client

Lawyers often create their own problems that need to be solved. At some point, all lawyers have had the experience of sitting with an individual who is voicing his or her complaints; the lawyer, while listening, answers (aloud or internally) the litigious solutions that come to mind. By focusing solely on the legal issues and solutions, lawyers tend to dehumanize their clients.⁹³ In numerous aspects, this is what law school trains individuals to do. A lawyer runs through a checklist of

⁸⁸ *Id.* at 24.

⁸⁹ BINDER, *supra* note 83, at 19-23.

⁹⁰ *Id.* at 19.

⁹¹ David Barnhizer, *Princes of Darkness and Angels of Light: The Soul of the American Lawyer*, 14 ND J. L. ETHICS & PUB POL’Y 371, 429 (2000).

⁹² Gold, *supra* note 85, at 257.

⁹³ Barnhizer, *supra* note 91, at 430.

elements that are needed to prove a case. In reality though, there is usually more than a single solution to a client's problem. The lawyer should actively suggest different solutions. Once this is done, a lawyer can examine the consequences with his client and discuss solutions. In doing so, the client and lawyer become a team in a professional relationship, where the lawyer is informing the client as to what is at stake in the situation, who else is at risk, and possibilities as to how individual expectations can be met. Remember, the client must be involved. The lawyer is expected to communicate and keep the client informed about the status of a matter. A lack of lawyer-client communication breeds hostility to the profession and complaints against the lawyer.⁹⁴

3. Encouraging the Client to Make Substantial Decisions

In the "client-centered" method, the client needs to take an active role in decision-making.⁹⁵ In doing so, the client is able to find solutions that are best suited to fulfill his or her goals and achieve satisfaction. The lawyer's role in this step is to inform the client of possible consequences, including legal and non-legal consequences.⁹⁶

At this point, I find it important to again refer to Gerald R. William's *Negotiation as a Healing Process*. Although this work centers around the topic of negotiation, it presents five steps that all clients must go through in order to be healed from conflict. These steps are denial, acceptance, sacrifice, leaps of faith, and renewal.⁹⁷ I feel that these steps best fit in the "encouraging" stage of the "client-centered" relationship for the reason that, throughout all decision-making, the lawyer is attempting to encourage the client to move through and overcome the conflict.⁹⁸ Through the five steps presented above, conflicts become "opportunities to increase in self-knowledge and in an empathetic understanding of the world around us."⁹⁹

Denial occurs when clients refuse to consider that they might be the ones at fault or that they must change. During acceptance, the clients move from denial to acceptance of the "possibility that they themselves are part of the problem" and they themselves could do something different to better achieve a resolution.¹⁰⁰ The third step of sacrifice is often referred to as "ritual mortification," and requires the clients to ponder what steps they are willing to take to better achieve a resolution.¹⁰¹

⁹⁴ Chris Puma, *The Missing Link: Does Lawyer-Bashing Warrant Additional Protection for Lawyers?*, 19 J. LEGAL PROF. 207, 228 (1995). See Douglass G. O'Brien, *Being a Lawyer is No Joke!*, 66 N.Y. S.T.B.J. 6, 10 (Mar./Apr. 1994).

⁹⁵ BINDER, *supra* note 83, at 16.

⁹⁶ *Id.* at 20-21.

⁹⁷ Williams, *supra* note 69, at 42.

⁹⁸ BINDER, *supra* note 83, at 20.

⁹⁹ Williams, *supra* note 69, at 46.

¹⁰⁰ *Id.* at 47.

¹⁰¹ *Id.* at 48-49.

The lawyer encourages the clients on to this step by reminding them of the costs of litigation, what is necessary to prepare the case, the possibilities of an unfavorable outcome, etc.¹⁰² The lawyer does nothing illegal or unethical in presenting this information. What a lawyer is doing is informing the client as to what is at stake in the situation, who is at risk, and possibilities as to how to meet expectations. A sacrifice is not always necessary, but it must be explained that, in litigation, parties find themselves in a win-lose situation; it is better if they are willing to find better legal or non-legal outcomes or to be prepared to accept the consequences of legal action.

When the clients accept that they are willing to make a sacrifice, hoping that in doing so, the conflict will come to a more meaningful and productive resolution, they take a "leap of faith."¹⁰³ In such cases, a client might apologize, admit wrong, lower demands, or make reparations.¹⁰⁴ A "leap of faith" presents a number of potential legal and non-legal risks for a client.¹⁰⁵ The lawyer aids by encouraging the client and by informing the client as to the different possibilities and outcomes. The ultimate goal in these first four steps is to produce a "[r]enewal or [h]ealing."¹⁰⁶ This transformative process is best expressed as a "change of heart" and is often compared to something of a spiritual nature.¹⁰⁷ The client faces a challenge in his or her life and successfully finds a way through it with the aid of a lawyer.

4. Providing Advice Based on the Client's Values

Throughout the entire conflict, the lawyer seeks to protect the client's interests. Although the lawyer gives encouragement through the entire process, he or she must provide the client with an opinion about the client's decision. After all, that is why the client has sought professional help in the conflict. Knowledgeable advice can better aid clients to make a crucial decision—by providing them with assurance that they have made a good decision or by informing them if there are better ways to resolve the conflict. The clients then feel that they have more control of the situation.¹⁰⁸

5. Acknowledging a Client's Feelings

Lawyers are often considered as cold-hearted individuals, void of feeling. It must be remembered that conflicts nearly always convey some emotion. It is this emotion that drives individuals to act on their own and, at times, to resort to violence. Clients need to vent and to talk about their feelings. They want to make

¹⁰² *Id.* at 49.

¹⁰³ Williams, *supra* note 69, at 51-52.

¹⁰⁴ *Id.* at 53.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 56.

¹⁰⁷ *Id.* at 51-56.

¹⁰⁸ BINDER, *supra* note 83, at 21.

sure that the lawyer understands what is important and at stake to them. A lawyer who says, “[a]ll of this for something as stupid as material possessions,” misses the point.¹⁰⁹ At times, material possessions are used as an outlet for the feelings that the client has in a conflict. By learning about the client’s feelings in the conflict, the lawyer is better able to aid in achieving solutions that will satisfy the client.

In the process of mediation, acknowledging a client’s feelings is referred to as “connecting.” In making this connection a lawyer directly affects the quality of the relationship and helps the client to better “bear pain” and “garner strength.” The lawyer shows the client that he or she is not alone or acting alone in the conflict.¹¹⁰

6. Repeatedly Conveying a Desire to Help

The simplest of all the steps for the lawyer is to show a desire to help the client. In many instances, lawyers believe that they convey their desire to help the client by agreeing to take the case and putting time into the preparation of the case. This is not good enough. The lawyer should not give the impression that the conflict is now out of the hands of the client and up to the lawyer to handle. The client needs to feel that he or she is an active part of the case. The lawyer needs to keep the client informed as to the progression of the case and respond quickly to the client’s questions. If the lawyer cannot make the call himself, he should have another member of the office call the client. Make sure that some kind of contact is made and the client is kept informed and up-to-date on the case.

By actively focusing on a “client-centered approach,” the lawyer can contain a potentially dangerous situation and channel that energy to solve the client’s own problems on a more satisfactory basis.¹¹¹ Furthermore, by going through these relatively simple principles—identifying problems from the client’s perspective, involving the client in the process and exploring new solutions, encouraging a client to make substantial decisions, providing advice based on a client’s values, acknowledging the client’s feelings and recognizing their importance, and repeatedly conveying a desire to help—a lawyer working in family law will significantly lower the possibility of being attacked by his or her own client. On the other hand, it is up to the attorneys on both sides of a conflict to apply these principles, to prevent their clients from turning to violence and taking vengeance on the other party, the other party’s attorney, and the legal profession as a whole.

B. *Recognizing Signs of Violence and Avoidance*

An essential skill for lawyers to develop is recognizing signs of potential danger. Studies have shown that warning signs foreshadowed 85 percent of all workplace

¹⁰⁹ *Lawyer Shot 6 Times Resumes Work, Man Facing Divorce Held*, COM. APPEAL (Memphis, TN), Aug. 19, 1997, at B2.

¹¹⁰ Gold, *supra* note 85, at 253-54.

¹¹¹ BINDER, *supra* note 83, at 23-24.

violence.¹¹² From my on-line search it appears that, in many instances, lawyers saw violence coming but did not know what to do about it. Once members of the legal profession can recognize these signs and characteristics, they have a tool to protect themselves in the future. Although very little research has been done concerning the characteristics of violent clients in the legal profession, in-depth research has been done on the characteristics of potentially dangerous employees. The profession can use these very characteristics to recognize the warning signs of potential violence. Many differing methods exist to aid in predicting potentially violent individuals. Some of these take the form of models that include an individual's personal characteristics as well as workplace factors.

1. The Profile Model

Profiling creates a biographical sketch of individuals from their patterns and behavioral characteristics. Because little has been done to examine the profiles of individuals that have committed violence against the legal profession, it is necessary to look at workplace violence in general and see what information it can provide. In workplace violence, an employee often expresses his violent intentions long before acting on them. Using those studied behavioral characteristics from actual workplace homicides, it is believed that one can then "provide the basis for intervention, staff training, and deterrence."¹¹³ However, one must keep in mind that this type of analysis profiling is not perfect because it attempts to predict the thoughts and plans of another by looking at what has already occurred.¹¹⁴

The extent of contact between a lawyer and client can make it difficult for a lawyer to draw up a conclusive profile. However, during those times that a lawyer is with a client, or other participant, the lawyer should be seeking to better understand that individual through a line of questions. These questions can, and often will, aid in creating a profile of the individual. Although the characteristics of a potentially dangerous employee may not directly apply to a client or a participant's profile, by creating a profile a lawyer will be more likely to recognize potential danger from the observed characteristics.

Appendix A from *Profiling the Lethal Employee: Case Studies of Violence in the Workplace* by Michael D. Kelleher shows characteristics or behavioral warning signs of the potentially lethal employee.¹¹⁵ Many of these characteristics may directly apply to the clients and participants involved in a lawyer's case.

Characteristic or behavioral warning signs of workplace violence from a potentially lethal employee or client will include: (1) an 80-97 percent likelihood that the perpetrator will be male; (2) that the age of the potentially lethal individual will most likely be over 30 and less than 60 years; (3) he may be socially isolated,

¹¹² Kevin Grauberger, *Workplace Violence – How Employers Can Avoid Taking a Beating*, KANSAS EMPLOYMENT L. LETTER, Vol. 4, No. 6 (Sept. 1997), at 4.

¹¹³ Kelleher, *supra* note 1, at 8.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

living alone for many years, recently changed job location, suffering a separation or divorce; (4) he will have experienced one or more directly linked triggering events prior to acting violently (in almost all legal situations these experiences will be directly related to the case the lawyer is handling); (5) he will exhibit one or more key behavioral warning signs that are considered to be general predictors of violence, such as a history of violent behavior or alcohol and chemical dependency; (6) it is frequently common that the individual will have a history of violent behavior; (7) there will be evidence of psychosis or some other psychological blaming of others, impaired neurological functioning, chronic or severely elevated frustration levels, preoccupation with weapons, and evidence of severe personality disorder.¹¹⁶

2. Signs of Danger Model

Some argue that the ability to predict which individuals will commit violence is little more than a myth which is generally based on a retrospective analysis too broad to be of any value. Profiles also present serious ethical concerns. Whereas training to recognize profiles may not necessarily be effective, training to recognize signs of dangerous stress in workers and clients can be very useful.¹¹⁷

In *The Violence-Prone Workplace: A New Approach to Dealing with Hostile, Threatening, and Uncivil Behavior*, Richard V. Denenberg and Mark Braverman present a list of questions that should be considered when a individual has made a threat.¹¹⁸ Threats can never be treated casually because many are carried out.¹¹⁹ This list can be directly related to the legal profession and lawyers should incorporate these questions into their practice. Based on what is known about the potentially violent individual, one should ask:

- Has an intent to harm or a plan been expressed?
- Does the employee have the means to carry out the threat?
- Has the employee displayed or practiced with a weapon?
- What is the record of discipline for misconduct?
- Are there documented performance deficits?
- Have there been claims for medical disability?
- Is there turmoil in the employee's personal life?
- Has he considered harming himself or attempted to do so?
- Have there been significant changes in the workplace?
- Is there a morale issue or persistent complaints about the work unit?¹²⁰

¹¹⁶ *Id.*, at 12-27.

¹¹⁷ Tia Schneider et al., *Dispute Resolution & Workplace Violence*, 51 J. DISP. RESOL. 6, 14 (1996).

¹¹⁸ RICHARD V. DENENBERG & MARK BRAVERMAN, *THE VIOLENCE-PRONE WORKPLACE: A NEW APPROACH TO DEALING WITH HOSTILE, THREATENING AND UNCIVIL BEHAVIOR* 156 (ILR Press 1999).

¹¹⁹ *Id.* at 156.

¹²⁰ *Id.*

From the answers to these questions, a lawyer may be able to recognize the possibility of violence from a client, and thereafter, determine what steps should be taken to prevent additional threats or to prevent the individual from fulfilling those threats.

3. Avoidance

In an older work on professional violence, Glynis M. Breakwell suggests that if a lawyer decides the risk of continued contact with any individual is too dangerous, strategies should be created to avoid further problems.¹²¹ Two such options may include ending contact entirely or making only indirect contact with the client or party. It is important to remember that, in many cases, lawyers have the option to continue or discontinue to work on a case. If a client is showing signs of potential threat or, perhaps, the other party is showing signs of potential violence, it may be necessary to end representation of the individual. When a lawyer terminates representation, he or she should immediately report the opinion of the risk involved to other responsible individuals in the office. If the risk exists but does not necessarily support the need to end contact, indirect contact can be used to communicate with the client or party in a conflict. This could be done through telephone calls and letters. If meetings are necessary, plan to have other colleagues present as a precaution.¹²² Such advice still rings true today.

C. *A Duty to Others in the Profession*

Lawyers need to be proactive in preventing violence against others, including violence against others in the profession. Lawyers have a duty to inform other attorneys of potential threats coming from their own clients.

1. Threats Against Members of the Profession

Threats are, in fact, a form of violence that need to be taken seriously. Although there are no studies on the subject, it would appear that lawyers who receive threats generally discount them. Members of the legal profession need to recognize that threats against a lawyer can eventually affect the safety of all the employees of a workplace. Workplace violence and harassment directly affects health and productivity.¹²³ When a lawyer does not inform others in the office or in the court of potential violence, whether it is from direct verbal/physical threats or from signs of potential threats, they themselves and others are at risk.

¹²¹ GLYNIS M. BREAKWELL, *PROBLEMS IN PRACTICE: FACING PHYSICAL VIOLENCE* 59 (1989).

¹²² *Id.*

¹²³ *STATES OF RAGE: EMOTIONAL ERUPTION, VIOLENCE, AND SOCIAL CHANGE* 39 (Renee R. Curry & Terry L. Allison, eds., 1996).

2. The Ethical Duty to Warn

A lawyer has a moral and ethical duty to his client, the profession, and society to disclose a client's possible plans of potential violence. Occasionally, the lawyer recognizes the signs of potential violence or the client even tells the lawyer of his plans for violence. The lawyer should counsel the client of the consequences of his actions. But, in certain cases, this may not be enough. In the case of *State v. Hansen*,¹²⁴ a lawyer successfully prevented his recently discharged client's plan "to get a gun and blow away, the prosecutor, the judge and the public defender."¹²⁵

For years, the issue of whether a lawyer has a duty to disclose a client's intent to harm another has been debated. According to the ABA Model Code, the lawyer can reveal confidential information when a client intends to commit crimes. Model Rule 1.6(b)(1) allows a lawyer to disclose information when it is reasonably believed that it will aid "to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm."¹²⁶ Recognizing and acting upon this ethical duty can substantially reduce violence against lawyers practicing in family law and the legal profession as a whole.

D. Rethinking Security

Another effective method to prevent the possibility of violence in the legal profession is to know how to be reactionary. This method is simply to prevent what has already started. It is natural for lawyers to receive threats of some kind at some point in their career, especially when practicing in the areas of criminal and/or family law. Some firms, and certainly the courts, have adopted security measures to protect its workers and those individuals who enter the workplace. Unfortunately, these security measures are generally adopted following some local or national tragedy. Following the case of the San Francisco firm of Pettit & Martin in 1993, where eight were killed and six injured when a former client turned to violence, there was "an enormous increase in security practices at major California law firms. . . ."¹²⁷ Nationwide, cities and states have adopted their own plans to increase security and training of employers and employees.

In 1993, Ramsey County, including the City of Phoenix, Arizona created its own training and "Workplace Violence Policy." This policy actively took into consideration the opinions of both employers and employees of the county, seeking to answer questions and gain further suggestions. From these meetings, the County Workplace Action Team (WAT) created a countywide commitment to deal with potential violence in a positive way. Finding that violence injured employee's

¹²⁴ 862 P.2d 117 (Wash. 1993).

¹²⁵ *Id.* at 118.

¹²⁶ MODEL RULES OF PROF'L CONDUCT R. 1.6(B)(1) (1983), *reprinted in* Adam M. Dodek, *Comparative Confidentiality: Lessons from Canada*, 20 J. LEGAL PROF. 51, 63 (1995-1996).

¹²⁷ Brady, *supra* note 3, at 24.

work performance, the county sought to do the following: 1) prevent the potential for violence in and around the workplace; 2) reduce the negative consequences for those employees who experience or encounter violence in their personal or work lives, and 3) foster a work environment of respect and healthy conflict resolution.¹²⁸

The City of Phoenix's City Manager's Task Force on Security recommended its own employee training, involving building security, self-protection, and how to deal with angry customers. The Security Task Force created a carefully drawn plan to identify security actions that should be taken when individuals became violent. Training involved education as to why people become victims, how to escape dangerous situations, and different self-protection classes to protect oneself. Within six months (November 1992 to June 1993), some 3,666 individuals attended the classes. The work of the Security Task Force aided in increasing and improving security guards, improving police patrols of the city buildings, and increasing public training. Furthermore, by recognizing the nationwide increase of violence in the courts, the municipal courts received uniformed security guards to prevent potentially violent individuals from entering with weapons.¹²⁹

The actions taken by cities such as Phoenix have helped state agencies, courts, cities, and the legal profession as a whole, by identifying methods to prepare for violence. In developing your own security plan, seek out city, county, court, and state resources to see what suggestions they make. Other helpful resources can be found on-line.

E. *Suggested Security Measures*

Pamela Horn in *Violence Against Lawyers* presents a number of security measures that lawyers in solo practices and in large firms should implement to prevent and deal with the potential of sudden violence.¹³⁰ These measures include: 1) controlling access and monitoring people that enter your office/building; 2) development of notification procedures to summon assistance; and 3) development of a personal action plan for dealing with an unexpected threat of violence.¹³¹

1. Controlling Access

First, lawyers should control access to their office/building. They should have control of when and which individuals enter their offices, whether through the use of a buzzer, doorbell, a secretary, and/or security staff. Remember, security alone might not be enough. Even with building security, some attorneys fear for their

¹²⁸ *Ramsey County Workplace Violence Policy: the Initiative for Violence-Free Families and Communities in Ramsey County* (Unpublished).

¹²⁹ Phoenix, AZ Council Report (Policy Agenda): Security Task Force Recommendations (Sept 11, 1992) (Unpublished).

¹³⁰ Horn, *supra* note 35, at 6-7.

¹³¹ *Id.* at 6.

safety.¹³² While many courthouses use x-ray machines and metal detectors to screen individuals that enter, some legal offices use swipe cards, electronic combination locks, and video cameras. These measures give those in the office the opportunity to assess the situation before allowing access to individuals. After the person enters, he or she should not be able to wander about the office, but should be given a place to sit; when they are to enter the office, they should be escorted.¹³³

2. Notification Procedures

Once a person has gained access to the office or building and becomes threatening, one should immediately summon assistance before violence occurs. Methods to do this might be to have “panic buttons” hidden within the office/building that are close at hand for emergencies.¹³⁴ Many state courts have “panic buttons” installed in the courtrooms. Another device is the use of “code words” or phrases that co-workers and staff can easily identify when needed. A lawyer and office staff should observe an individual’s dress and demeanor and not ignore their instincts. Try to keep someone with you in these situations and immediately ask for help from security or the police.¹³⁵

Although the law offices do not have, cannot afford, or simply do not want security personnel for fear of scaring potential clients, the use of “code words” and phrases is a very practical way to warn others of potential violence. Staff should be able to easily and quickly call the police if signs of violence arise. This can be accomplished in any law office through the suggested buzzer or to simply have a number for the police programmed into the telephone.

3. Personal Action Plan

Develop a personal plan of actions and implement strategies on the basis of available information, so when a situation arises you can act immediately and protect yourself from a potentially violent incident.¹³⁶ Discuss and consider various situations and actions that can be taken. What can you do? Where can you go? How do you escape? Be realistic with possible situations and your own abilities. Assess your current situation and office. How are your verbal communication skills to listen and attempt to calm the person? What physical shape are you in? Do you have a weapon? Do not try anything that you realistically cannot do or might put you in more danger. My on-line search concerning violence against the legal profession has revealed that, in many cases, lawyers simply did not know what to do when a violent situation arose. By thinking about and discussing these

¹³² Bauza, *supra* note 56, at 5B

¹³³ Horn, *supra* note 35, at 6.

¹³⁴ *Id.* at 7.

¹³⁵ *Id.*

¹³⁶ *Preventing Homicide in the Workplace*, NIOSH ALERT, No. 93-109 (May 1995) at <http://www.cdc.gov/niosh/homicide.html> (last visited Nov. 17, 2000).

matters with your staff, you will be more prepared for dealing with the possibility of violence.¹³⁷

The personal action plan should do more than simply focus on what takes place in the office. As was discussed earlier in this article, violence can occur in many other places. Parking lots and areas around courthouses are common places of attack. Such attacks usually occur prior to and following legal decisions and/or confrontations in the office and courtroom. In Tennessee, a man stalked the courthouse all day until the lawyer, who was handling a property case between he and his wife, came out. He then shot the lawyer six times in the stomach.¹³⁸

Lawyers need to plan what to do to protect themselves and clients when they have recognized the characteristics or signs of violence. For example, if a lawyer is worried about the potential of violence while in court, he or she should quietly inform court security about the concerns. Court security is grateful for such information. Lawyers might also advise their clients not to leave the courthouse without an escort. There is safety in numbers. It appears that having a lawyer in the presence of the client is not enough to prevent violence. If a lawyer and/or client leaves the courthouse or office and sees an adversary party waiting, they should turn around and re-enter the building where there is greater protection.

4. Training

Security, in whatever form it may take, is not as effective if employees themselves do not know how to deal with potentially dangerous situations. Studies have shown that warning signs foreshadowed 85 percent of all workplace violence.¹³⁹ Training employees improves productivity, enhances job satisfaction and helps strengthen a safe workplace environment for everyone.¹⁴⁰ Horn suggests that preparation is the key. Acknowledge the risks involved in the legal profession and the field within which you work. Establish and periodically review security procedures in the office. Take all threats seriously. Be observant of people entering your office. Create a personal plan to deal with potentially violent situations.

If you are ever in a crisis, keep calm, breath deeply, and never give up.¹⁴¹ Remember, “[d]isplays of anger, fear or anxiety are like blood in the water to a potentially violent person.”¹⁴² Other useful strategies to use when confronted with

¹³⁷ *Id.*

¹³⁸ *Lawyer Shot 6 Times Resumes Work; Man Facing Divorce Held, supra* note 109, at B2.

¹³⁹ Grauberger, *supra* note 112, at 4.

¹⁴⁰ Jurg W. Mattman, *What's Growing in the Corporate Culture*, Workplace Violence Research Institute 1, ¶ 7 (1998) at http://www.noworkviolence.com/articles/corporate_culture.html.

¹⁴¹ Horn, *supra* note 36, at 48.

¹⁴² Bob Rosen, *How do you Deal with a Potentially Violent Coworker?*, GLOBE AND MAIL: WORKING WOUNDED at http://members.aol.com/_ht_a/endwpu/globeandmail.html (last visited Nov. 27, 2000).

violence include the following: establishing an atmosphere of cooperation; talking in a calm voice; being absolutely truthful to retain credibility; listening to the aggrieved party without comment or judgment; maintaining eye contact; allowing the aggrieved party to suggest a solution; and moving toward a win-win solution.¹⁴³ If you talk at all, ask questions that call for long, narrative answers to assure the individual you are listening and to assist in defusing the situation.¹⁴⁴ If the assailant asks, "What have you done for me?", tell him, "I have preserved your dignity and respect and I want to see a resolution that benefits us all."¹⁴⁵ Furthermore, prepare an escape route, maintain distance from the assailant, remove potential weapons from view if possible, specifically ask for assistance from bystanders, remove individuals who are inciting the assailant, and use nonverbal communication to calm the situation.¹⁴⁶

F. *Returning Violence*

The last resort to preventing violence is for the attorney to use force when threatened. Although escape is generally the goal of the potential victim, there are situations where no other action will prevent violence. You might consider professional self-defense training for you and/or your staff. When you have no choice but to respond to an attack, physically restraining the individual is the common recommendation. Hold the person near a major joint and avoiding the throat, neck, chest, abdomen or fingers can be the most effective response. Remember, your own safety comes first. Only use the minimum reasonable force that will stop the assailant's attack and protect yourself from harm. Obtain help from others, avoid involving other clients and phone the police. Then, remove the assailant from the place where the violence occurred and isolate him.¹⁴⁷

V. CONCLUSION

The purpose of these suggestions is not to cause lawyers to live in fear. Instead, the purpose is to help them to recognize that the potential of violence is regularly present and that there are simple and feasible methods they can apply to protect themselves. You should not walk around looking over your shoulder, paranoid and in fear, but you should take actions that can actively avoid and prevent violent situations before they start. Whether in the office, in the courts, or on the street, lawyers should apply methods to recognize and prevent potential attackers from fulfilling their plans. Once a violent situation presents itself, those involved in the

¹⁴³ Bob Rosen, *Defuse Impending Violence* (Taken from scenario #1 of course entitled: "Workplace Violence Awareness for Managers and Supervisors," by Larry J. Chavez) at <http://members.aol.com/hrtrainer/defuse.html> (last visited Nov. 16, 2000).

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ BREAKWELL, *supra* note 121, at 66-67.

¹⁴⁷ *Id.* at 69-71.

profession need to know what they can and should do to come away unharmed. Knowledge and preparation appear to be the only ways to stem violence in the legal profession at this time. Members of the legal profession should not assume violence will never happen to them. Just because it has not happened yet, it does not mean it will not happen in the future. Violence against lawyers is still increasing nationwide and you should be prepared for it.