VIOLENCE AGAINST LAWYERS

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I. INTRODUCTION

In recent years, violence against lawyers by their own clients and those in litigation against their clients has been on the increase.¹ In Philadelphia, a lawyer and his assistant were found shot to death in their office.² In New Jersey, a man was charged for assault and attempted murder for allegedly threatening his lawyer with a machete.³ At the offices of Danielson, Clark, Pumpian and Ford, a man entered the office, shot and killed a lawyer, then turned the gun on himself.⁴ Following a non-fatal stabbing by a client’s husband, a Long Island attorney laughed, “If it’s not dipped in garlic [the knife], it doesn’t work . . . .”⁵ But violent attacks against lawyers are no laughing matter. To reduce and prevent violence from clients, the profession needs to examine why it is happening. Are the clients who are suffering from emotional and financial stress while involved in litigation, not finding ways to deal with their problems? Instead, are they violently taking their troubles out on their attorneys? What steps can lawyers take to prevent violence from their current and former clients?

This Article will examine the growing rate of violence against attorneys, opinions as to why clients are increasingly turning to violence

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1. Whereas, there is no system for reported 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. Margret Brady, Lawyers as Victims: While There are no Recorded Statistics, Violence Against the Legal Profession Appears to be on the Upswing, FIN. POST, Jan. 10, 1998, at 24.


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against attorneys, and how the legal profession can actively prevent and thwart potentially violent situations.

II. A PROFILE OF VIOLENCE AGAINST LAWYERS

It was not until 1986 that America became acutely aware of the growing problem of violence in the workplace.6 On August 20, 1986, Patrick Sherrill, a full-time substitute letter carrier, entered the Edmond Post Office and, in ten minutes, killed fourteen of his coworkers and injured another six.7 He then turned the gun on himself.8 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.”9 Since the Edmond Post Office incident, serious incidents of workplace violence have, with some regularity, occurred throughout the United States, touching nearly all professions in one way or another.

A. A Westlaw Search

The legal profession has not gone without its own severe problems of violence. In a simple search of newspaper articles on the Westlaw computer system I was able to find one hundred and four articles involving one hundred and twenty-six attacks on lawyers.

1. Violent Clients.—Lawyers need to recognize the daily risk they take in the profession when they meet with clients and other involved parties. My Westlaw search shows that violence against lawyers can come from their own clients and from the other participants that are involved in a case. Of these reported attacks, seventy-nine incidents were client/case related.

Of the one hundred and four Westlaw articles, twenty-two cases of

7. Id. at 32.
8. Id.
violence were perpetrated against lawyers by their own clients. For example, in Washington, a "disgruntled client" entered her lawyer's office, shot him to death, then committed suicide.\(^{10}\) In California, a murder defendant with a history of violence stabbed his lawyer as they left the courtroom.\(^{11}\) Following "his 'third strike' felony sentence," a client attacked his lawyer, attempting to stab him.\(^{12}\) In Florida, ten years after winning a $75,000 judgment, a Florida man shot his former lawyer, claiming the lawyer "ruined his life."\(^{13}\)

In the same study, eighteen cases of violence were perpetrated against lawyers by the party on the other side. In Fort Lauderdale, a man involved in a lawsuit shot and killed a pregnant lawyer and a witness during a deposition.\(^{14}\) In Indiana, a man was charged with conspiring to kill his lawyer by hiring another man to kill the lawyer involved in bankruptcy proceedings against him.\(^{15}\) In Missouri, a man killed his wife and injured her lawyer.\(^{16}\)

2. Work-Related Violence.—In total, seventy-three percent of the attacks in my Westlaw search were proven to be work-related or resulting from work in the legal profession, and only twelve percent could be proven to be non-work related. The implications are far reaching. Attackers used a variety of weapons, from guns and knives, to the more obscure weapons like a pencil,\(^{17}\) crossbow,\(^{18}\) mail bombs,\(^{19}\) a scythe, razor blade,\(^{20}\) bare hands,\(^{21}\) hammer,\(^{22}\) dynamite,\(^{23}\) and even hiring hit-

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15. Man Accused of Trying to Hire Killer, COURIER-J. (Louisville, Ky.), Oct. 6, 1990, at 12A.
17. Defendant Stabs Lawyer with Pencil, supra note 11, at A3.
men. This points out that the preparation for these attacks ranged from little to extensive.

Lawyers generally are in a profession that requires them to deal with conflict on a daily basis, and for that reason the occurrence of violence is always a possibility. Of the one hundred and four articles from Westlaw, violence resulted from numerous areas in the profession; however, the majority involved family disputes. 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. Horn does not identify the domestic forum as the sole area where lawyers are at risk of violence. Violence is prevalent in employment, civil cases, and criminal law as well.

The collected articles from Westlaw show violence in a wide range of cases. In Milwaukee, a graduate student shot his former wife's divorce lawyer. In a sexual assault case, a defendant attempted to hire someone to kill the victim and his attorney. A party pulled a gun in a law office and began shooting due to his frustration in a bank account and property dispute. In Chicago, a client involved in a worker's compensation case entered a law office, killed a lawyer, and held fourteen people hostage for four hours before killing himself. In another case, a lawyer was shot following an argument over legal billing. A man in bankruptcy pro-

22. Brady, supra note 1, at 24.
24. Man Accused of Trying to Hire Killer, supra note 15, at 12A.
26. Id.
27. Id. at 6.
32. William Recktenwald, Lawyer is Slain in Loop Office: Shooting Follows
ceedings tried to hire a hitman to kill the attorney prosecuting him. Following a child custody case, a lawyer was stabbed in the arm by an angry ex-husband. The wide coverage of these cases suggests that all areas of law can be potentially dangerous to lawyers.

3. Where Attacks Occur.—No area of the lawyer's life is left untouched. In the majority of the attacks on lawyers, violence appears to occur in the courtroom during trials and in legal offices. In California, a defendant, dubbed the "Koreatown Slasher" stabbed his lawyer in front of the jury. In New Jersey, a client entered his lawyer's office and attempted to kill him with a machete. But, violence against lawyers also occurs beyond the workplace. In Tennessee, a lawyer was shot six times on the courthouse lawn on his way to the parking lot. A criminal lawyer was stabbed to death at a bank by someone believed to be a former client. A lawyer was killed during a court deposition in Fort Lauderdale. An Eleventh Circuit Judge was killed by a mail bomb that was delivered to his home.

4. Facing Reality.—Such violence coming from both sides of cases and reaching nearly all aspects of a lawyer's life, raises serious concerns. How can a lawyer prevent violence from the parties involved in litigation? How does one recognize the signs of potential violence? Once potential violence presents itself, what can/should the lawyer do? These questions should be considered by all individuals working in the legal profession.

Recognizing the danger is the first step for lawyers to deal with the problem of violence in the profession. It is easy to think "it won't happen

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*Dispute Over Bill, CHI. TRIB., Apr. 30, 1996, at 1.*

33. *Man Accused of Trying to Hire Killer, supra note 15, at 12A.*


40. *Mail Bomber Convicted, supra note 19, at A21.*
to me," but the reality is that violent crime in the legal profession is on the increase and may happen in your own workplace. "'No law office is immune to what happen[s],"' said Carri Wells, of Heard Goggan Blair and Williams, a San Antonio tax law firm. 41 "We all have potential problems . . . ." It's always a concern—clients acting violently[,]" said one attorney after a shooting/suicide in a Miami office. 42

III. WHY DO CLIENTS RESORT TO VIOLENCE?

Violence and aggression is not anger, but usually accompanies anger. Violence and aggression can take many forms, including physical attack, verbal or ritualistic attacks, and passive aggression. 43 The specific reasons why clients resort to violence against their attorneys are complex. While some in the profession simply consider violence as individual cases where a client "just snapped," or "wanted to get even," the real reasons why clients resort to violence against their attorneys are much more complex.

A. NAMING, BLAMING, AND CLAIMING

To gain an understanding of why clients violently turn against attorneys, 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, 44 the idea of disputes being social constructs is examined. 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." 45 In this theory, a large portion of any dispute exists only in the minds of the disputants. 46 Dis-

42. 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.
45. Id.
46. Id. at 631-632.
putes arise when an individual’s “unperceived injurious experiences” become “perceived injurious experiences.” This perception in the mind of an individual is called “naming.” The next step occurs when the perceived injurious experience is transformed into a grievance, where the injured person feels wronged and believes that something might be done in response to the injury. This is “blaming.” A third transformation, “claiming,” occurs when an individual voices the grievance and asks for a remedy from the party they perceive has injured them. Once this claim is rejected, the claim is transformed into a dispute.

The entire process discussed above is characterized as being subjective, unstable, reactive, complicated, and incomplete. Many factors will also have an effect upon the speed and degree of the transformative process, including the relationship between the parties, experiences of the individuals, current pressures, personalities, etc. So, by the time an attorney is faced with the dispute brought by a client, 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 methods through which the conflict may be resolved. These methods include negotiation, mediation, arbitration, and litigation. “Clients usually have substantial emotional and financial investments in whatever case is going on[,]” 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.” These needs of the client are not just for 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

47. Id.
48. Id. at 634-635.
49. Felstiner, supra note 44, at 636.
50. Id. at 637.
51. Id. at 640.
52. Gerald R. Wiliams, Negotiation as a Healing Process, 1996 J. DISP. RESOL. 1, 8-12.
53. Prentice, supra note 13, at 1B.
54. Felstiner, supra note 44, at 645.
and solutions to the conflict.\textsuperscript{55}

The breakdown in the process occurs when the progressive methods of resolution do not help or appear to be helping the party to achieve a satisfactory outcome. As Carri Wells (a tax 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."\textsuperscript{56} 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 and it does not represent a solution to their needs.\textsuperscript{57} This can happen when lawyers "create" some of the needs they satisfy and create disputes to fit their own interests rather than those of their clients. In such a case,

They [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.\textsuperscript{58}

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

\textbf{C. Dangerous Solutions}

As Gerald R. Williams states in his article entitled \textit{Negotiation as a Healing Process},\textsuperscript{59} aggression from conflict has the potential to escalate from verbal to physical violence between the parties, and in the worst case, this violence takes the form of murder.\textsuperscript{60} Another problem arises when the violence is directed against another, other than the perceived

\textsuperscript{56} Prentice, \textit{supra} note 13, at 1B.
\textsuperscript{57} Bauza, \textit{supra} note 42, at 5B.
\textsuperscript{58} Felstiner, \textit{supra} note 44, at 645-646.
\textsuperscript{60} Id. at 15.
“victimizer.”61 Rene Girald on the subject states, “(w)hen unappeased, violence seeks and always finds a surrogate victim.”62 This displaced violence can be turned against friends, family, children, attorneys, and against the client himself.63

In many cases, lawyers know or recognize the signs that something is wrong with the party prior to violence. “‘He was in an emotional crisis . . . . He lost it[,]’” said O’Rorke [the lawyer] after being stabbed during the finalization of a separation agreement.64 Lawyers need to recognize these signs and take actions that will help avoid violence.

IV. WHAT CAN A LAWYER DO TO PREVENT VIOLENCE?

There are a number of methods in the legal profession to aid in the prevention of violence. 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 looking over your shoulder all the time . . . . If someone wants to shoot you, they’ll shoot you.’”65 The truth is that the profession should be conscious of the potential for violence. Violence against the profession is increasing, and ignoring it will not make it go away. If you as a member of the profession, or someone in your office, has not been a victim yet, it might still happen. There are still a number of methods and steps that might help attorneys feel more secure in their job. But first, lawyers must recognize the signals of violence and know how to deal with it when it occurs. I am not so optimistic as to say that all violence will or can be prevented, but if these different methods of preventing violence are applied properly, there is no doubt in my mind that the number of cases of violence will be

61. Williams, supra note 52, at 13-14.
64. Wasserman, supra note 5, at 6.
65. Prentice, supra note 13, at 1B.
reduced.

A. Healing: A “Client-Centered” Approach

Overall, the best way for a lawyer to prevent the possibility of violence from a client is by learning how to help clients deal with their own problems.66 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 that can be utilized to both prevent violence and at the same time, help the clients find answers to their own problems.67 Other authors also offer methods to better aid in healing clients, and thus avoid violence by emphasizing: 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.68 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. 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. . . .”69 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.”70 He continues by assuring those in the profession that this relationship does not require lawyers to be therapists, but calls for them to actively fulfill their “proper roles as members of a learned profession.”71

By using a “client-centered” approach, one will become a better lawyer by helping the client identify problems from the client’s perspec-

67. Id. at 19-23.
69. Williams, supra note 52, at 23.
70. Id. at 23 (emphasis added).
71. Id. at 24.
tive, 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.\(^\text{72}\)

1. **Identifying Real Issues and Problems.**—It is essential to understand the problems that a client faces. Unfortunately, in the world today where attorneys face an increasing number of clients and cases, the profession has moved to focusing on the litigious problems that they identify from their client's circumstances. When this happens, the lawyer takes the chance that real problems and issues might be overlooked. A way to prevent this from happening is to try to understand the problems and issues of a client from the client's point of view.\(^\text{73}\) Each client 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 acknowledgement, affirmation, a way to say goodbye, etc.\(^\text{74}\) The lawyer should attempt to learn as much as possible about the situation by asking pertinent questions.

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 their complaints and answering (aloud or internally) the litigious solution that comes to mind. In numerous aspects, this is what law school trains individuals to do. A lawyer runs through a checklist of 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 for the client as well as seek the client's opinion on other solutions. Once this is done, the lawyer should "encourage a client to identify the potential nonlegal consequences of each potential solution..."\(^\text{75}\) In doing so, the client and the lawyer become a team. They work together to

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73. *Id.* at 19.
discover their true objectives, evaluate the situation and alternatives, and recognize possible consequences.

3. Encouraging the Client to Make Substantial Decisions.—In the “client-centered” method, the client needs to take an active role in decision-making. 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 nonlegal consequences.

At this point, I find it important to refer to section three of 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. 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. Through the five steps presented above, conflicts become “opportunities to increase in self-knowledge and in an empathetic understanding of the world around us.”

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. The third step, sacrifice, is often referred to as “ritual mortification,” and requires the clients to ponder what steps they are willing to take to aid in achieving a resolution. The lawyer encourages the clients 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. The lawyer does nothing illegal or unethical in presenting this information. As Lois Gold suggests in Influencing Unconscious Influences: The Healing Dimension of Mediation, the lawyer

76. Id. at 16.
77. Id. at 20-21.
78. Williams, supra note 52, at 42.
80. Williams, supra note 52, at 46.
81. Id. at 47.
82. Williams, supra note 52, at 48-49.
83. Id. at 49.
can present indirect suggestions about healing that bring change at an unconscious level.\textsuperscript{84} What the lawyer is doing is informing the client as to what is at stake in the situation, who else is at risk, and possibilities as to how expectations can be met. A sacrifice is not always necessary, but it must be explained that in litigation, parties find themselves in a win-lose situation and it is better if they are willing to find better legal or nonlegal outcomes or are 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."\textsuperscript{85} In such cases, a client might apologize, admit wrong, lower demands, or make reparations.\textsuperscript{86} A "leap of faith" presents a number of potential legal and nonlegal risks for a client.\textsuperscript{87} As before, the lawyer in this stage aids by encouraging the client, but also informs the client as to all possibilities and outcomes. The ultimate goal in these first four steps is to produce a "[r]enewal or [h]ealing."\textsuperscript{88} This transformative process is best expressed as a change of heart and is often compared to something of a spiritual nature.\textsuperscript{89} 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 encouragement is given through the entire process, the lawyer must provide the client with an opinion to the decision the client has made. 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, and provide them with assurance that they have made a good decision. The clients then feel better about themselves and more in control of the situation.\textsuperscript{90}

\textsuperscript{84} Gold, supra note 68, at 258-259.
\textsuperscript{85} Williams, supra note 52, at 51-52.
\textsuperscript{86} Id. at 53.
\textsuperscript{87} Id.
\textsuperscript{88} Id. at 56.
\textsuperscript{89} Id. at 51-56.
\textsuperscript{90} Binder, supra note 66, at 21.
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 resort to violence. Clients need to vent and talk about their feelings. They want to make 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. 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 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 “garnet strength.” The lawyer shows the clients that they are not alone and are not acting alone in the conflict.

6. Repeatedly Conveying a Desire to Help.—The simplest of all the steps is for the lawyer 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 now up to the lawyer to handle. The client needs to feel that he/she is an active part of the case. The lawyer needs to keep the client informed as to the progress of the case and respond quickly to the client’s questions. This can take the form of a weekly call or even a call from a secretary to let the client know that he/she has not been forgotten.

By actively focusing on a “client-centered” approach, clients find the aid of the lawyer in containing a potentially dangerous situation and channeling that energy to solving their own problems on a more satisfactory basis. Furthermore, by going through these relatively simple principles of; identifying problems from the client’s perspective, involving the client in the process and exploring new solutions, encouraging a client to

91. Lawyer Shot 6 Times Resumes Work; Man Facing Divorce Held, supra note 37, at B2.
94. ld. at 20.
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, the lawyer will significantly lower the possibility of being attacked by his/her own client. On the other hand, it is up to 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 and the other party's attorney. Thus, the law profession as a whole should seek to apply the "client-centered" approach.

B. Recognizing Signs of Violence and Avoidance

An essential skill for lawyers to develop is that of recognizing signs of potential danger. From my study of the one hundred and four cases found on Westlaw, it appears that in some instances, at least, lawyers saw violence coming, but did not know what to do about it. Once they are capable of recognizing these signs/characteristics, they can then take active steps to avoid future potential violence.95 Although little if any research has been done concerning the characteristics of violent clients, in-depth research has been done into the characteristics of the potentially dangerous employees. These very characteristics can be used by the profession to recognize the warning signs of potential violence.

Many differing models exist to aid in predicting potentially violent individuals. Most of these models include personal as well as workplace factors.

1. The Profile Model.—Profiling is a method used to create a biographical sketch of individuals from their patterns and behavior characteristics. Because little has been done to examine the profiles of individuals that have committed violence against lawyers, it is necessary to look at workplace violence in general and see what information it can provide. In workplace violence, it has been shown that an employee often expresses his violent intentions long before acting on them. Using those studied behavior characteristics from other actual workplace homicides, it is believed that one can then "provide the basis for intervention, staff training, and deterrence."96 However, it must be kept in mind that this type of analysis profiling is not perfect, because it attempts to predict the

96. Kelleher, supra note 6, at 8.
thoughts and plans of another by looking at what has already occurred.97

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, one 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 behavior warning signs of the potentially lethal employee.98 Many of these characteristics may directly apply to the clients and participants involved in the lawyer’s case.

Characteristic or behavioral warning signs of workplace violence from a potentially lethal employee or client will include: (1) An eighty to ninety-seven percent likelihood that the perpetrator will be male; (2) That the age of the potentially lethal individual will most likely be over thirty and less than sixty years; (3) He may be socially isolated, 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 a 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 disorder. Other common behavioral warnings include alcohol or chemical dependency, severe or chronic depression, pathological blaming of others, impaired neurological functioning, chronic or severely elevated frustration levels, preoccupation with weapons, and evidence of severe personality disorder.99

Applying these findings in the legal workplace may aid in recognizing potentially dangerous clients and participants and thus aid the lawyer

97. Id.
98. Kelleher, supra note 6.
99. Id. at 12-27.
and staff to prepare against any future violent act. However, it must be remembered that the area of focus of the lawyer in the legal profession may greatly affect the number of individuals that may fulfill the differing requirements of the profile. Divorce and other areas of law, for example, may have greater numbers of people that meet the profile. Therefore, one should be weary of simply characterizing the clients and participants as meeting the whole of the profile. On the other hand, it is still a good idea to know and recognize the characteristics of a violent individual to prevent potential violence.  

2. Signs of Danger Model.—Some argue that the ability of predicting which individuals will commit violence is little more than a myth which is generally based on a retrospective analysis that is 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.  

In Problems in Practice: Facing Physical Violence, Glynis M. Breakwell provides a “Dangerousness Checklist,” to aid in assessing the risk of violence in a situation (see Appendix B). The author presents a list of questions based on what is known about the potentially violent individual. The more “yes” answers that are given, the greater the risk of violence. This list can be directly related to the legal profession and should be incorporated by lawyers in their practice.

The checklist is broken down into three sections. The first section of questions deals with one’s knowledge of the individual. The subjects of the questions are: stress, alcohol and drugs, history of violence, criminal conviction, psychiatric illness, medical conditions, abuse, perception of threat, expectations, etc. The second section of questions directly applies to the present situation involving a client. A lawyer should ask: (1) Does the client show signs of atypical excitement or passivity?; (2) Are there

100. Another study of workplace violence by Joel B. Bennett and Wayne E.K. Lehman generally supports the argument of Kelleher but is more complicated and specific. See Joel B. Bennett & Wayne E. K. Lehman, Alcohol, Antagonism, and Witnessing Violence in the Workplace: Drinking Climates and Social Alienation-Integration, in VIOLENCE ON THE JOB: IDENTIFYING RISKS AND DEVELOPING SOLUTIONS 105, 134-135 (Gary R. VandenBos and Elizabeth Q Bulatao eds., 1996).


102. BREAKWELL, supra note 95, at 59, app. B.
weapons or cues of violence in the room?; (3) Is the person showing signs of atypical high arousal?; (4) Is the normal pattern of nonverbal communication breaking down?; (5) Are there signs of rapid mood swings?; (6) Is the client oversensitive? From these questions, the lawyer will recognize the possibility of violence in the situation. The third section deals with the actions an individual should be prepared to take to prevent a violent situation or how to react if a violent situation is unpreventable. The less you are prepared, the greater the risk of danger.  

3. Avoidance.—If a lawyer decides the risk of continued contact with any individual is too dangerous, strategies should be created to avoid further problems. 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 contact with a party or client. When a lawyer ends contact, he/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 a 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 just in case.  

C. A Duty to Others

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

1. Threats Against Members of the Profession.—Threats against a lawyer can eventually affect the safety of all the employees of a workplace. Workplace violence and harassment is shown to be directly linked to affecting health and productivity.  

103. Id. at 59.
104. Breakwell, supra note 95, at 60.
inform others in the office of potential violence, whether it is from direct verbal/physical threats or from signs of potential threats, others in the office are at risk.

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 is even directly told by the client 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*,\(^{106}\) a lawyer successfully prevented his recently discharged client’s plans “to get a gun and blow away, the prosecutor, the judge and the public defender.”\(^{107}\)

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 a crime. 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.”\(^{108}\) Recognizing and acting upon this ethical duty can substantially reduce violence against the legal profession.

**D. Rethinking Security**

Another method to prevent the possibility of violence in the legal profession workplace 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. Some firms, and certainly the courts, have adopted security measures to protect its workers. Unfortunately, in the case of firms and offices, this method is often adopted following an attack on the location. 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

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106. 862 P.2d 117 (Wash. 1993).
107. *Id.* at 118.
"an enormous increase in security practices at major California law firms . . ."\(^{109}\) 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 work performance, the county sought to: 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.\(^{110}\)

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. A carefully drawn plan was created 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 patrols of the city buildings by police, and increasing public training. Furthermore, by recognizing the nationwide increase of violence in the courts the municipal court received modifications, including metal detectors, x-rays machines, and uniformed security guards to prevent potentially violent individuals from entering with weapons.\(^{111}\)

The examples of cities such as Phoenix give the legal profession methods to aid in preparing against violence. Pamela Horn in *Violence Against Lawyers* presents a number of security measures that lawyers from solo practice to large firms should practice to prevent and deal with

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the potential of sudden violence.\textsuperscript{112} 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.\textsuperscript{113}

1. Controlling Access.—First, lawyers should control access to their office/building. They should have control in knowing when an individual enters their office, whether that might be through the use of a buzzer, doorbell, a secretary, and/or security staff. Remember, security might not be enough. Even with building security, some attorneys fear for their safety.\textsuperscript{114} While many courthouses use x-ray machines and metal detectors to screen individuals that enter, legal offices can take precautions of their own. Some 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. The person after entering should not be able to wander about the office, but should be given a place to sit and when they are to enter the office, they should be escorted.\textsuperscript{115}

Most attorneys certainly will consider the above mentioned precautions as “extremes” for legal offices and cannot afford the financial costs of controlling and monitoring access to the extent suggested. Furthermore, it is my opinion that most lawyers would not like to have these kinds of measures for fear of intimidating potential clients. Still, lawyers need to apply those security measures that are practical for their individual circumstances. For example, most offices should at least have a place where a client can sit, separated from the rest of the office, while the lawyer is contacted by a secretary. If the individual is acting oddly, the secretary will have time to recognize these characteristics and warn or contact others.

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

\textsuperscript{112} Horn, supra note 25, at 6-7.
\textsuperscript{113} Id. at 6.
\textsuperscript{114} Bauza, supra note 42, at 5B.
\textsuperscript{115} Horn, supra note 25, at 6.
hand for emergencies and "code words" or phrases which can be easily identified by coworkers and secretaries when needed. A lawyer and office staff should be observant of an individual's dress and demeanor and not ignore one's instincts. Try to keep someone with you in these situations and immediately ask for help from security or the police.\footnote{116}

Although most law offices do not have security and may not want to have 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 could be accomplished in any law office through the suggested buzzer or to simply have the number for the police programmed into the telephone.

3. Personal Action Plan.—Thirdly, develop a personal plan of action, so when a situation arises you can act immediately and protect yourself in a potentially violent incident. 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 potential danger.

In my study of the one hundred and four Westlaw articles, it appears that in many cases lawyers simply did not know what to do when a violent situation arose. By thinking and discussing these matters, you will be more prepared for dealing with the possibility of violence.\footnote{117} Other authors, like Stephenie Overman, suggest examining the size of the firm/office, the type of product or service provided, and the amount of contact one has with the outside world in determining what kind of training and action plan is best for your own office.\footnote{118}

The personal action plan should include more than simply focusing on what takes place in the office. As was discussed earlier in this Article, violence can occur in many other places. From my study, it appears that parking lots are a common place of attack. These attacks usually occur

\footnote{116. \em Id. at 7.}
\footnote{117. \em Id. at 6-7.}
\footnote{118. Stephenie Overman, \em Be Prepared Should Be Your Motto, HR MAGAZINE, Jul. 1993, at 46.}
prior and following legal decisions and/or confrontations in the office and courtroom. In Tennessee, a man stalked the courthouse all day until the lawyer, handling a property case between he and his wife, came out. He then shot him six times in the stomach.\textsuperscript{119}

Lawyers need to plan what to do to protect themselves and clients when they have recognized the characteristics or signs of violence. For example, lawyers might advise their clients not to leave the courthouse without themselves and others. There is safety in numbers. It appears that having a client with a lawyer is not enough to prevent violence. If a lawyer and/or client leaves the courthouse or the office and sees the other party, they should be directed to turn around and re-enter the building where there is greater protection.

4. Training.—Security, whatever form it may take, is not as effective if employees themselves do not know how to deal with concerning situations. Training employees helps strengthen a safe workplace environment for everyone by aiding those that work with one another to all know how to recognize strangers that gain access to the building and how to react.\textsuperscript{120} 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.\textsuperscript{121} Other useful strategies to use when confronted with violence include: remaining confident; continuing to talk in a normal tone of voice (mood matching is sometimes useful); using diversionary tactics (say you are hungry, make jokes, act worried about something outside the room); feigning submission; using talk to redirect attention; preparing an escape route; maintaining distance from the assailant; removing potential weapons from view if possible; specifically asking for assistance from bystanders; removing individuals inciting the assailant; and using nonverbal communication to calm the situation.\textsuperscript{122}

\textsuperscript{119} Lawyer Shot 6 Times Resumes Work; Man Facing Divorce Held, supra note 37, at B2.
\textsuperscript{120} Overman, supra note 118, at 48.
\textsuperscript{121} Horn, supra note 25, at 7.
\textsuperscript{122} BREAKWELL, supra note 95, at 66-67.
E. Returning Violence

The last resort to prevent violence is for the lawyer 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. Physically restraining the individual is the common recommendation. This can most effectively be done by holding the person near a major joint and avoiding the throat, neck, chest, abdomen or fingers. 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. It is suggested that the assailant then be removed from the place where the violence occurred and isolated.\(^{123}\)

V. CONCLUSION

The purpose of these suggestions is not to cause lawyers to live in fear. Instead, the purpose is to help members of the profession to recognize that potential violence is present in their area of practice and that there are simple and feasible methods that can be applied to protect themselves. As mentioned earlier in this Article, you do not have to walk around looking over your shoulder, paranoid and in fear, but one should take actions that can actively avoid and prevent violent situations before they start. Lawyers in the office and the courthouse should apply methods to recognize and prevent potential attackers from fulfilling their plans. Once a violent situation presents itself, those involved in the legal profession need to know what they can and should do to come away without harm. The benefits of knowledge and preparation vastly outweigh the potential costs and currently appear to be the only ways to stem violence in the legal profession.

\(^{123}\) *Id.* at 69-71.