

VIOLENCE IN THE LEGAL PROFESSION: A STUDY OF OUR COLLEAGUES NATIONWIDE

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I. Introduction

Violence is an increasingly concerning issue in our country where even the legal profession has been affected. In 2018 alone, national media groups reported a number of sensational acts of violence against the legal profession. For example, in Alabama, a district attorney was ambushed in his vehicle outside his office and shot in the face. In Nevada, a murder suspect hit his six month pregnant defense counsel in the face while in court. In Georgia, a divorce attorney was shot and killed in his office by the husband of a former client. In Missouri, an attorney was shot and killed on his front porch by the defendant in a personal injury case. In Florida, following a murder conviction, the defendants attacked his attorney. In Arizona, two paralegals were shot to death at the law office where they worked. In Indiana, a public defender was shot and killed outside his home.

Due to the limited number of threats and violence reported by the media against the legal profession one might think that such incidents are unique and extremely rare. However, such examples represent only a minute fraction of reported incidents against the legal profession throughout the 2010's. Moreover, media stories of violence against the legal profession rarely report or take into account the many additional forms in which violence occurs, including threats, vandalism, sabotage, assaults and physical attacks.

Many members of the legal profession, including members of the Utah legal profession, experience threats and actual violence in their practices – some regularly.

II. Studies of Threats and Violence against the Legal Profession

Limited research exists on the subject of violence against the legal profession. However, studies do show that a substantial amount of violence is regularly directed at the legal profession, and may be increasing. For example, decades of statistics gathered on and by the U.S. Marshals Service provide disquieting data regarding violence against federal judicial officials in the United States. During the thirteen fiscal years of 1980 through 1993, there were a total of 3,096 recorded inappropriate communications and threats involving federal judges – an average of **238** per year.¹ In comparison, during the three fiscal years of 2008 through 2010 there were 4,062 inappropriate communications or threats – an estimated average of **1,354** per year.² In fiscal year 2017 alone, the U.S. Marshals Service reported **2,847** “threats and inappropriate communications against protected court members.”³

While there is no national method for reporting threats and violence against the legal profession, analysis shows that threats and violence against the legal profession occur frequently at the state and local court levels. To date, 28 statewide surveys have been conducted by the author, either independently or through state bar associations, regarding threats and violence

against the legal profession. More than 28,000 attorneys have responded to the surveys. The results provide significant insight into the nature and frequency of work-related threats and violence experienced by in-state/active members of the legal profession, the overwhelming majority of which have never been publically reported. The results also show that contrary to public perception, members of the legal profession are not exempt from workplace violence, but in fact, many face danger from their own clients, opposing parties and interested parties, at any place and at any time.

**Table 1:
Statewide Surveys of Violence and Threats of Violence Against Attorneys**

Year	State	In-State Membership	Responses	% In-State Membership	Threats/ Violence	% Respondents
2006	Utah	6,832	904	13.2	417	46.1
2008	Idaho	3,627	780	21.5	319	40.9
2012	Nevada	8,245	1,039	12.6	412	40.0
2012	Wyoming	1,639	467	28.5	211	46.0
2012	Oregon	13,916	1,862	13.4	684	36.7
2013	New Mexico	6,170	919	14.9	369	40.0
2013	Arizona	17,383	1,841	10.6	777	42.2
2013	Iowa	7,329	1,333	18.2	547	41.0
2013	N. Carolina	21,856	2,251	10.3	732	32.5
2013	Kansas	8,177	1,185	14.5	480	40.5
2014	Nebraska	4,937	286	6.8	101	35.3
2014	Michigan	35,824	4,219	11.8	1,529	36.2
2014	Mississippi	7,048	422	6.0	195	46.2
2014	N. Dakota	1,663	243	14.6	113	46.5
2015	Louisiana	22,257	1,577	7.1	576	36.5
2015	Rhode Island	4,454	293	6.6	104	35.5
2015	Hawaii	4,122	356	8.6	134	37.6
2015	Alaska	2,444	471	19.3	195	41.4
2015	Alabama	14,509	1,088	7.5	440	40.4
2015	Washington	25,678	1,720	6.6	756	44.0
2015	Delaware	2,952	225	7.6	87	38.7
2015	Montana	3,247	403	12.4	169	41.9
2016	S. Carolina	12,236	839	6.9	379	45.2
2016	Colorado	21,739	1,255	5.8	589	46.9
2016	Vermont	2,213	240	10.9	106	44.2
2017	S. Dakota	1,968	223	11.3	118	52.9
2017	New Hampshire	3,504	419	12.0	172	41.1
2018	Georgia	24,696	1,670	6.8	709	42.5

Acts of violence reported by attorneys in these state surveys include numerous shootings, stabbings, assaults and batteries, as well as vandalism to businesses and personal property. The numerous threats of violence reported include stalking, phone calls, written letters, emails, texts, on-line posts, verbal threats of physical violence and death threats, and even attempts to hire hit men to kill attorneys and judges. The results of each of these state surveys show that violence and threats of violence against members of the legal profession are much more prevalent than reported by the media or commonly perceived by practitioners.

III. Threats and Violence against the Utah Legal Profession

In December 2000, the author conducted a survey of its 161 members of the Davis County Bar Association.⁴ In total, 130 members, representing 81 percent of the county bar, responded to the survey. Of the respondents, 13 percent reported that they had been physically assaulted at least once. Moreover, 59 percent reported having been threatened at least once by a client, the opposing party or other interested persons in a legal action. Of 94 incidents of violence reported by members of the Davis County Bar Association, 12 incidents were perpetrated against lawyers by their own clients, and 69 incidents of violence were perpetrated by the opposing party in a case.⁵ These surprising statistics showed that violence against the Utah legal profession was not as uncommon as generally believed and provided grounds for additional study.

From January 17th through February 17th, 2006, the Utah Bar Association conducted the first statewide survey of violence against the legal profession in the United States.⁶ At that time, the Utah Bar Association consisted of 8,745 members, including 6770 active and 1975 inactive members. The results of the Survey presented a surprising picture of the level and kinds of violence experienced by members of the Utah Bar. The Survey received a total of 984 responses out of the then 8,745 members of the Utah Bar, which represented 11.25 percent of its total membership (904 responses from 6832 active members, representing 13.2 percent).⁷

The Survey's principle question, and its primary focus, asked members of the Utah legal profession to identify whether they had ever been the recipient of threats and/or acts of violence. Of the **984** responses to this question, **452** or **45.9** percent of the total respondents reported that they had been threatened and/or physically assaulted at least once.⁸ Respondents to the survey identified over three hundred examples of threats and/or acts of violence perpetrated against them in response to two open-ended responses in the Survey. Although there are far too many examples to list in this article, a few are provided to provide a sense of the kinds of violence attorneys in Utah reported:

- Over the years various telephone threats of bodily harm; vulgar notes, signed and unsigned;
- Numerous incidents of vandalism of my house and car, all by husbands who didn't like me representing abused spouses in divorces;
- I was told by gang detectives after visiting the prison that two gangs had placed a hit out for me;
- Struck by the brief case of opposing counsel who was attempting to remove confidential documents from my office;
- Individual ran me off the road after court. Did not actually hurt me but made threats and really scared me;
- [A] defendant post[ed] a statement on his web site that he intended to kill me and my family;

- Night before trial, [client's] motel window was shot out with a bb gun. I was sitting at my desk the same evening preparing for trial and a bb shot went through my window whizzing past my ear;
- Pro se opposing party who called to tell me he was on his way to my office with a gun to kill us all;
- Client threatened to have me killed because she was not happy with the outcome of her auto/PI case;
- As I was going back into the courtroom I was 'body slammed' against the wall by the defendant's brother;
- A fake bomb placed in my mail box;
- I was meeting with this client who became upset and slugged me in the chin;
- Telephone messages left with details of my movements and places and times that I could be vulnerable to attack with threats of violence if I didn't change my position on a case;
- During recess from a custody trial – Woman I was examining threatened to kill me and was later arrested trying to smuggle a gun into the courtroom.

These examples represent only the tip of iceberg. A total of 57 incidents of subsequent physical assaults were reported, and respondents reported an additional 6 incidents where they were unsure if the threats and subsequent assaults were related.

Even more concerning was that 27 incidents of threats and/or violence came from opposing counsel. Some reported examples included:

- Hit by opposing counsel in a deposition, required a hospital visit.
- In the heat of the moment after a hearing where opposing counsel lost, [he] grabbed me by the tie and tried to drag me out of [the] courtroom to discuss the matter further.
- Opposing counsel suggested we step out into the parking lot to settle the matter at issue.
- In the federal court house . . . I was threatened by oppos[ing] counsel in an elevator with a weapon.
- Opposing counsel chest-bumped and threatened to "deck" me.
- Opposing counsel made threats against counsel and client suggesting damage to property and person . . . attorney subsequently disbarred.
- On one occasion I was physically assaulted by another attorney outside my office.
- During settlement negotiations in a business fraud case, opposing counsel (a large male) shoved everything off the conference table, raised his fist, and began threatening myself and my colleague (a petite woman) from about six inches away.

IV. Preventive Strategies

Taking steps to protect oneself in the event of potential violence is just as important as recognizing the threat of potential violence. Failing to take steps to prevent violence can have dire consequences, including injury, stress, and deterioration of work performance, morale and

general wellness. Taking proactive steps to prevent violence can avoid potential long-lasting effects.

Whether one works in a large firm, government office, or in a private office, attorneys can implement relatively cheap and simple measures to anticipate and prevent potentially violent situations. These should include: (1) recognizing/assessing potential threats and threatening behavior; (2) preparing and actively reviewing action plans; (3) controlling access to the work environment; (4) developing notification procedures in case of a violent situation; (5) knowing how to defuse a potentially violent situation, and (6) recognizing the exceptional times when physical action may be a necessary solution.

A. Recognize the Signs of Potential Threats and Violence.

When members of the legal profession become the focus of violence, they can potentially become victims at any place and time. However, methods exist to assess and prevent potential violence from clients, opposing parties, non-parties, and even from other attorneys. Tailoring these methods to the needs, resources and circumstances, and properly application, can help reduce the potential of violence and help prevent acts of violence from occurring.

1. Identifying risk factors.

The identification of risk factors associated with violent behavior is rooted in a large body of research and can alert an attorney of potential threats.⁹ In general, characteristics or behavioral warning signs of workplace violence from a potentially lethal individual include: (1) an 80-97 percent likelihood that the perpetrator will be male; (2) most likely over the age of 30 and less than 60 years of age; (3) the individual is socially isolated or a “loner,” living alone for many years, or recently having changed job locations; (4) suffering severe financial problems or domestic turmoil (especially of long-standing duration); (5) having 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 attorney is involved in); (6) continually blames others for problems and is unwilling to take responsibility for one’s own actions; (7) has a history of violent behavior; (8) exhibits 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; (9) has a preoccupation with weapons; (10) seeks to intimidate others; and (11) makes threats.¹⁰

Admittedly, recognizing many of these risk factors depends on the amount of contact with a particular individual, and the less time spent with a person, the more difficult it may be to recognize warning signs. However, during interactions, attorneys should be alert and watchful for such characteristics, and seek to recognize the signs of potential violence.

2. The “Intimacy Effect”.

An “Intimacy Effect” has been advanced, arguing that direct threats are more predictive of violence when the relationship between the threatener and threatened is more intimate. For example, a direct threat in a domestic violence case is more likely to acted upon than a threat

from a constituent against a congressperson.¹¹ Third parties closely linked or perceived as allied with the primary focus of violence are also at risk. When an emotionally-charged party is unsatisfied with the legal process or outcome in a dispute, blame is often re-directed to others: the opposing party; family members, the court system; the judge; the attorney who opposed or prosecuted the individual; or even their own attorney. While it is commonly recognized that attorneys play a necessary and vital role in our society by advocating their clients' legal positions, many in the general public perceive attorneys as money-grubbing, arrogant, overbearing, and indifferent to injustice. The perception of an attorney being the cause or continuation of a perceived harm or unfair court treatment makes him or her easy to blame and justifies marking the attorney as an enemy deserving of revenge.

3. Eight warning behaviors.

A recent model identifies eight warning behaviors of targeted violence.¹² These warning behaviors include:

1. Pathway Behavior. This warning sign is based on a progression of steps from a conflict through an attack.
 - Grievance. An individual has a sense of loss, revenge, believes there is a personal destiny or mission to be acted upon.
 - Ideation. The individual forms mental justification, considers alternatives to respond to grievance, consequences, and ability to commit violence.
 - Research and planning. The individual gathers information on a potential victim, including stalking, suspicious inquiries, and targeted research.
 - Preparation. The individual acquires weapons, assembles equipment, and makes arrangements in preparation of the final act.
 - Breach. The individual probes security and makes secret and lethal approaches.
 - Attack.
2. Fixation. An increasing pathological preoccupation with a person or a cause.
3. Identification. A psychological desire to be a "pseudo-commando," have a "warrior mentality," closely associate with weapons or other military or law enforcement paraphernalia.
4. Novel Aggression. An act of violence that appears unrelated to any targeted violence pathway behavior that is committed for the first time.
5. Energy Burst. An increase in frequency or variety of any noted activities related to the target.
6. Leakage. The communication to a third party of an intent to do harm to a target through an attack.
7. Last Resort. Evidence of a violent "action/time imperative" (wills, giving away possessions).
8. Directly Communicated Threat. The communication of a direct threat to the target or to law enforcement before an attack.

Applying these methods to assess and recognize the possibility of violence from an individual can assist to determine what steps should reasonably be taken to prevent additional threats or to prevent the individual from fulfilling the threat.

B. Preparation and Training.

Every attorney's office, large or small, should have a written workplace violence policy statement setting forth preventive practices, or a personal action plan to deal with violence. The action plan should establish strategies to deal with potential violence and identify what kinds of acts will not be tolerated. Legal professionals and their staff should develop a plan to recognize early warning signs of potential violence and the proper methods to address or defuse them. The action plan should do more than simply focus on what takes place inside the office, but should also address what to do when potentially violent situations occur outside the office.

C. Control Access.

Take steps to ensure that access to offices and buildings are secure. Many large firms across the country have adopted security measures to prevent individuals from accessing their offices except through a main entrance, which allows for screening of individuals in case of danger. Similar measures can be accomplished in any small office. Keep staff informed about perceived threats and those individuals who are not to be admitted into the office. Once an individual enters the office, he or she should not be allowed to wander about unescorted, and if an individual begins to do so, staff should be immediately notified.

D. Notification and Assistance.

If an individual becomes threatening, whether in the attorney's office or in the courthouse, they should not hesitate to summon assistance before the threats can escalate into violence. Offices can use code words or phrases to summon help, and legal professionals and staff should be able to quickly react to potentially violent situations by having emergency numbers programmed into their phones. While many courthouses have panic buttons or security staff who can call for immediate assistance, attorneys and their staff can create a simple notification system of their own in case of imminent threats or potential violence. Many respondents to the statewide surveys regarding threats and violence have identified incidents where code words enabled attorneys and staff to avoid a violent individual and contact authorities before violence occurs.

Be proactive in preventing violence against others, including others in the profession. When an attorney does not inform others about potential violence, whether it is from direct verbal or physical threats, or from other signs of potential threats, that attorney places himself and others at risk. Many respondents to the statewide surveys reported incidents where opposing counsel prevented serious harm and tragedies by calling and warning authorities and/or opposing counsel of known, imminent threats of violence.

A commonly reported time and location that threats and violence occur against members of the legal profession is following contentious court hearings when attorneys and their clients have left the courtroom or courthouse. If there is reason to believe that there is a potential threat

of violence, notify court personnel and security, ask for an escort to vehicles, and/or wait in a safe location until it is verified that the potential perpetrator has left.

E. Don't Be an Easy Target.

It might appear obvious that one should avoid potential violence. However, legal professionals, especially those involved in criminal and domestic proceedings on a daily basis, regularly interact with individuals whose history and presentation indicate a likelihood of potential violence. They can become accustomed to the presence of hostile individuals and ignore, or fail to recognize, potentially dangerous situations while in more vulnerable locations or circumstances. If one leaves a secure location and finds an adversarial party or known troubled individual waiting for them, don't approach the individual. Attempt to avoid a confrontation and return to the secure location where there is greater safety. Once in a safe location, assess the situation and take steps to warn others, and inform the proper authorities.

Attorneys, like many people, are often prone to following set schedules and habits. They routinely leave and return home at set times, they drive the same route to and from work, arrive and leave work at a set time, park in the same spots at work or at the courthouse, etc. Many attorneys have reported in response to the statewide surveys that incidents of threats and violence involve circumstances where perpetrators appeared to know their victim's daily routine and were lying in wait for them along the way. Attorneys who work in contentious areas of practice, receive threats, or are aware of a potential threat or violence, should consider breaking up the routine.

F. Defuse the Situation.

If trapped in a potentially violent situation, it is essential to remember that it is better to attempt to defuse a situation than to allow it to escalate. To do so, stay calm; speak gently; slowly and clearly; do not be enticed into an argument; do not hide behind your authority; try to talk things through as reasonable adults; avoid an aggressive stance; keep your distance and avoid looking or speaking down to the aggressor; and do not touch the person.¹³ Attempt to escape the dangerous environment by encouraging the potentially dangerous individual to move aside; keep your eye on potential escape routes; and never turn your back—move backwards gradually to leave.¹⁴

Responding to a potentially violence situation with a calming presence is more effective than responding with aggression. Responding with aggression, raised voice or argumentative positions, emotionally increases the perceived conflict, anger, and desire to harm or punish, and increases the potential of immediate or delayed violence.

G. Physical Response—The Last Resort.

Escape should always be the primary goal in a violent situation, and physically responding to violence should be the very last resort. Confronting violence with a physical response puts the attorney in direct danger and is not recommended unless it is necessary. While self-defense training is always a good idea, it is unrealistic to assume that legal professionals will seek such training or be proficient enough to be effective. However, if there is no other choice

but to respond to an attack, an attorney should act to defend himself/herself. Physically restraining the individual is the recommended solution where possible and if it can be safely accomplished.

V. Conclusion

Members of the Utah legal profession need to recognize that threats and violence are genuine issue in the practice of law. They should recognize that regardless of one's area of practice, work-related threats and violence can come from any side of a given dispute and can occur beyond the courthouse and office. The benefits of knowledge and preparation vastly outweigh the potential costs. Applying relatively simple and feasible preventative methods can make the difference to assess, recognize, actively avoid, and prevent threatening and violent situations before they occur.

¹ FREDERICK S. CALHOUN, HUNTERS AND HOWLERS: THREATS AND VIOLENCE AGAINST FEDERAL JUDICIAL OFFICIALS IN THE UNITED STATES, 1789-1993, 51 (U.S. Marshals Service, 1998).

² See Alan Silverleib, *Report: Threats Against Federal Judges, Prosecutors Rise Sharply*, CNN .COM, Jan. 4, 2010, available at http://articles.cnn.com/2010-01-04/justice/judges.threats_marshall-service-federal-judges-report?_s=PM:CRIME; U.S. Marshals Service, Judicial Security (2009), available at <http://www.justice.gov/marshals/judicial/>; *The Third Branch: Ensuring Safety and Security: An Interview with the Director of the U.S. Marshals Service*, March 2011, available at <http://www.uscourts.gov/news/>; The Third Branch/11-03-01/Ensuring_Safety_and_Security_An_Interview_with_the_Director_of_the_U_S_Marshals_Service.asp; U.S. Judicial Security, Judicial Security (2011), available at <http://usmarshals.gov/judicial/index.html>.

³ See OFFICE OF PUBLIC AFFAIRS, U.S. MARSHALS SERVICE, FACT SHEET: JUDICIAL SECURITY (2018), available at <https://www.usmarshals.gov/duties/factsheets/facts.pdf>.

⁴ Stephen Kelson, *An Increasingly Violent Profession*, 14 UTAH BAR J. 13, March 2001, at 9.

⁵ *Id.*

⁶ Stephen Kelson, *Violence Against the Utah Legal Profession – a Statewide Survey*, 19 UTAH BAR J. 4, July/Aug 2006, at 8.

⁷ *Id.*

⁸ *Id.*

⁹ CHRISTINA E. NEWHILL, CLIENT VIOLENCE IN SOCIAL WORK PRACTICE: PREVENTION, INTERVENTION, AND RESEARCH 116 (2003).

¹⁰ MICHAEL D. KELLEHER, PROFILING THE LETHAL EMPLOYEE: CASE STUDIES OF VIOLENCE IN THE WORKPLACE 31 (1997); see also DAYA SANDHU, FACES OF VIOLENCE: PSYCHOLOGICAL CORRELATES, CONCEPTS AND INTERVENTION STRATEGIES 10-11 (2001).

¹¹ F.S. CALHOUN & S.W. WESTON, CONTEMPORARY THREAT MANAGEMENT: A GUIDE FOR IDENTIFYING, ASSESSING, AND MANAGING INDIVIDUALS OF VIOLENT INTENT (Specialized Training Services 2003).

¹² J. Reid Meloy et al., *Concept of Identification in Threat Assessment, Behavioral Sciences and the Law*, available at http://drreidmeloycom/wp-content/uploads/2015/12/2015_ConceptIdentificatio.pdf; see also J. Reid Meloy et al., *The Role*

of Warning Behaviors in Threat Assessment, Behav. Sci. Law 30: 256-279, available at http://drreidmelo.com/wp-content/uploads/2015/12/2012_WarningBehavio.pdf.

¹³ DUNCAN CHAPPELL AND VITTORIO DI MARINI, VIOLENCE AT WORK 118-119 (2000).

¹⁴ *Id.* at 119.