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Fortress or Foyer?

On Law Firm Security

A tragedy in St. Paul is prompting renewed reflection about the physical security of Minnesota lawyers and law firms.

The April murder of a law firm staffer in St. Paul shocked the Minnesota legal community—and reminded lawyers everywhere that physical security is not something they can afford to take for granted. In this article the VP of risk management at Minnesota Lawyers Mutual Insurance offers valuable advice about assessing potentially dangerous clients and improving physical security at law offices.

By Todd C. Scott

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On April 7, 2016 a tragedy occurred in a St. Paul law firm that deeply affected lawyers, paralegals, firm staff and law students throughout Minnesota. Chase Passauer, a staff member at the firm of North Star Criminal Defense, was working in the firm's second floor offices of the Dacotah building in the historic Cathedral Hill district of St. Paul when he was attacked by a client of the firm and killed.

Passauer was working at his desk when the client, Ryan D. Peterson of St. Paul, allegedly entered the office around 4 p.m. and fired six bullets into the 23-year-old clerk. It is unclear exactly what was said between Peterson and Passauer or whether Peterson even knew who he was shooting. According to published reports, Peterson texted a friend less than an hour later, mistakenly claiming "I just shot my lawyer."

Passauer was not Peterson's lawyer. Nor was he a law student. But by all accounts he was a talented employee with an engaging personality and a promising future in the Minnesota legal community. In his LinkedIn profile he described his job duties: "I draft all attorney correspondence, research complex legal issues, draft legal memorandums, draft motions and other trial documents. I am in charge of scheduling for all attorneys and maintaining positive relationships with our clientele."

Passauer's body was discovered soon after the shooting by his employers, attorneys James Gempeler and Dan Adkins. He was pronounced dead by emergency workers at 4:30 p.m. Peterson, who was angry and upset earlier that day, had been texting Adkins and was immediately a suspect. Relying on cellular and GPS technology to track the movement of his phone, authorities located Peterson in Stillwater and eventually arrested him after a 25-mile pursuit through Washington County.

According to the criminal complaint, Peterson had retained Adkins to represent him in at least one matter in Washington County and became upset with Adkins when he believed that his lawyer was ignoring his messages. The complaint also states that just prior to the shooting in Cathedral Hill, Peterson fired Adkins via text message and demanded his money back.

A Troubling History

The events in Cathedral Hill, tragic as they were, have become increasingly familiar to observers concerned with violence in the legal workplace. Minnesota has seen its share of violent assaults on lawyers just trying to do their jobs in difficult situations:

SEPTEMBER 2003: Osseo attorney Rick Hendrickson and his client Shelley Joseph-Kordell were shot in the upper levels of the Hennepin County Government Center by Kordell's cousin, a pro se litigant who had been harassing the attorney and his client throughout a protracted guardianship matter involving the shooter's father. Although he was shot in his neck at close range, Hendrickson survived the assault. His client died from her wounds.

JUNE 2010: An enraged party to a custody dispute walked in to the office of Fridley attorney Terri Melcher, who had been representing the attacker's former spouse. Melcher was stabbed over a dozen times in her head, upper body and throat, requiring 137 stitches. Melcher survived the attack, but as noted during the sentencing hearing, the reason she survived is that the knife broke when it came in contact with her skull early on during the assault.

DECEMBER 2011: Three people, including Cook County Attorney Timothy Scannell, were shot in the Cook County Courthouse in Grand Marais by a defendant who had recently been convicted of third-degree criminal sexual assault. The defendant and his mother were in a courthouse conference room discussing possible sentences when the defendant walked out to his car and returned with a gun.

JULY 2015: Ramsey County Public Defender Susan Scarborough was hospitalized with a traumatic brain injury after a teenage client she was representing beat her to the point of unconsciousness in a conference room where the two were meeting.

But despite the harrowing violence directed at Minnesota attorneys in recent years, the shooting of Chase Passauer felt different. Passauer's death was a grim reminder to Minnesota lawyers that our staffs—the people we depend on to keep the firm operating smoothly, and to whom we become so close that we consider them "family"—are dangerously exposed when violence enters the firm.

The events also seem to have prompted a period of reflection throughout the state, as lawyers who were moved by the sad and terrible events in Cathedral Hill

contemplate the current—and often inadequate—security plans they have for their offices. Most people would likely assume that top-level security restrictions such as metal detectors, ballistic and bullet proof glass, and armed security personnel were installed in the Hennepin County Government Center (HCGC) after 9/11. But in fact, such security measures weren't implemented at HCGC until after the 2003 attack on Rick Hendrickson and his client on the 17th floor of the A tower. Sadly, when it comes to office security, it seems to take a violent incident to cause lawyers and government officials to contemplate change.

What remains largely unspoken is a more complex issue that lawyers wrestle with all the time: At what point do we sound the alarm bell if we believe our client is a seriously violent person? If a client with a violent past uses innuendo, body language, and vague statements to convey their anger at an attorney or other participants in their legal matter, what should a lawyer do? Making the right choice can be difficult and replete with consequences.

Is Violence Imminent?

Christine J. Cassellius grew accustomed to encountering potentially dangerous people while working as a family law attorney and assistant city attorney in Apple Valley. Her work—which involved custody, child support, and spousal maintenance proceedings, along with her weekly duties in criminal court—exposed her to all the personalities that she had studied as a criminology/sociology major at the University of Minnesota in Duluth. But on June 11, 2010, certain comments made by her client in a child custody dispute struck fear in her—not only for her own safety, but also the safety of opposing counsel in the matter, Fridley attorney Terri Melcher.

As a licensed Minnesota attorney, Cassellius was well aware of her ethical obligations to the client: A lawyer must not reveal privileged information relating to the representation. In particular, if she were to reveal information about her client that could portray him as a violent person, such a revelation could have damaging and long-lasting effects on the client's child custody status. But on this day, the comments made by her client challenged her sense of strict confidentiality and she decided to consult with a colleague.

"There was another attorney in my office, so I asked that person, what should I do?" says Cassellius. "Their reply was, 'What kind of person do you want to be?'"

The advice from Cassellius' colleague struck home. Although a strict sense of loyalty to the client and a commitment to confidentiality were deeply ingrained in her, at some point the threat of imminent violence and concern for the safety of others trumps all.

"I thought to myself, 'Are you going to do the right thing, or are you going to worry about your license?'" said Cassellius. And that's when the attorney picked up the phone to warn Melcher. Cassellius was not able to reach Melcher, so she left a voice mail at the Fridley attorney's office with information about her concerns. What Cassellius didn't know was that, at the time she was leaving the voice message, her client's plan of attack had already begun. It wasn't until the violent struggle between Melcher and the client was over that Melcher learned of Cassellius' voice mail.

"Christine called and left a voice mail that said, 'If you are still in your office, lock your door. If you are out of your office, be very aware of your surroundings,'" according to Melcher.

In an emergency every second matters, and both attorneys realize that the attack on Terri Melcher may have had a different outcome if Melcher had received the warnings sooner, but Melcher is sympathetic to Cassellius and the difficulty of her dilemma.

"She didn't have a duty to me. The rule [on confidentiality] includes the word 'may' and not the word 'shall,'" says Melcher, referring to exceptions in MRPC 1.6 Confidentiality of Information. "It was her client that was crazy, not her."

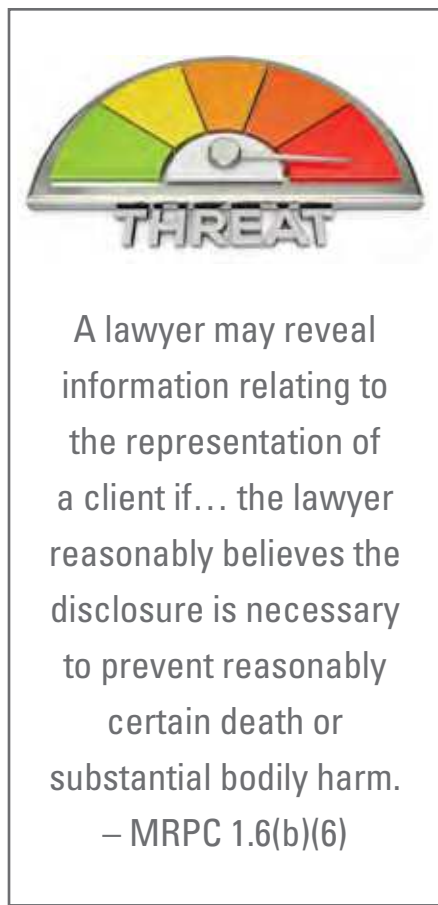
Eric T. Cooperstein of Minneapolis, one of Minnesota's best-known experts on attorney ethics, sympathizes with the struggle attorneys experience when contemplating whether they should reveal information about a client.

"The hard part with these cases is that usually the threat is not explicit," says Cooperstein. "If the client is just using innuendo, that's a more difficult case. And there is not a lot of law on what's a reasonable belief of substantial bodily harm."

One of the exceptions to the Minnesota rule that a lawyer must not knowingly reveal information relating to the representation of a client involves situations where violence may occur. Specifically, MRPC 1.6(b)(6) states:

"A lawyer may reveal information relating to the representation of a client if... the lawyer reasonably believes the disclosure is necessary to prevent reasonably certain death or substantial bodily harm."

Cooperstein reports that he occasionally gets calls from attorneys wondering whether they should disclose potentially threatening conduct on the part of their client. He believes that it is reasonable to take threats at face value. And when advising lawyers about whether to report the conduct, he is more willing to err on the side of caution.



"In my younger days I may have been more skeptical about the client's statements," says Cooperstein. "But I am definitely affected by the frequency of the incidents. I take those statements very seriously."

When advising lawyers contacting him for advice about a client threat, Cooperstein reminds them that they have some options, and they may have an obligation to push back on the client.

"The lawyer has a choice to talk to the client first before going anywhere with the information. Tell the client, 'You make threats like that, I'm going to have to warn people,'" says Cooperstein.

When contemplating whether the client is likely to act on the threat, Cooperstein will often assist the attorney by examining the language used in the threat, whether any similar threats have been made in the past, and whether the client is reported to have any mental health issues. The lawyer must balance the infor-

mation about the threat with the knowledge that revealing information about the client may detrimentally and permanently affect the outcome of their case. That can be a tough pill to swallow if the client is full of bluster but never had any intention of acting on the threat.

Cooperstein believes that lawyers who find themselves in situations where they may have to reveal a threat made by their clients would benefit by seeking advice from counsel. Although it may not be a complete defense to a claim asserted against the attorney by the client for a violation of ethics rules, the lawyer could say that they revealed the threat after relying on the advice of counsel, thus making it more reasonable to disclose the client's threatening behavior.

Security for the Premises

Regarding the physical layout of a law firm and the security plan put in place, it is difficult for any organization to set up security barriers that would prevent a death like that of Chase Passauer, involving a crazed person with a loaded gun. However, experts agree that certain security precautions involving the premises of the firm can increase the chances of survival for anyone onsite when mayhem occurs.

The majestic Dacotah building where Passauer worked, built in 1889 in the Richardsonian Romanesque style, is best known as the location of W. A. Frost & Company, a restaurant and bar that continues to represent the '70s rebirth of the historic grandeur of Cathedral Hill. With its arched windows and doorways, copper cornices, bays, fanciful brickwork, and thick, dark bannisters, the building is an enviable home for any law firm. Visitors to the site feel a sense of high society and privilege, not hazard or endangerment, when entering the building.

The beauty and elegance of the Dacotah building underscores the quandary lawyers experience when they balance the comfort and accessibility they desire for their clients with the safety and security that is vital for their staff. No one wants to adorn their law firm with the thick Plexiglas barriers that would normally be found in the lobby of a 24-hour check-cashing joint.

Tenants of large, Class A and B type buildings such as those in the downtown Minneapolis and St. Paul may not often realize it, but with their high-priced rent they are also receiving high-level security. An intruder to an office suite in a secured building will likely have to walk past security personnel who have been trained to recognize the demeanor of a person intent on committing an act of

violence. By approaching the intruder and asking them seemingly innocuous questions, security officers can assess the disposition of the visitor, learn about why they are onsite, and in some cases, disrupt the intruder's plan of attack.

Moreover, the security teams at the largest office buildings communicate with each other about suspicious activities—thus providing a security network that extends well beyond the building where the immediate threat lies. In Minneapolis, the RadioLINK Security Communication Network established by the Minneapolis Downtown Improvement District (DID) currently links the private security teams of over 60 downtown buildings, businesses and venues with each other and with the Minneapolis Police Department (MPD) via a common radio channel. Information about suspicious persons is often relayed to other nearby security teams to let them know what might be coming their way. Whenever an alert is sent via the RadioLINK network involving potentially violent activity, the Minneapolis Police Department responds to the call.

There are other tools that enhance the security effectiveness in large downtown locations. In 2014, Minneapolis also launched the Downtown Camera Registry, a tool that connects public and private security cameras throughout the downtown area. With more than 300 cameras on the registry, the Minneapolis Police Department has a tool that connects private security cameras to help with crime prevention, citizen engagement, and law enforcement.

Personal security training is also an important means of improving the likelihood that a member of the staff will make the right decisions when a security event occurs. The Minneapolis DID and the MPD also work closely together to facilitate safety workshops aimed at helping businesses, employees and residents of the downtown area learn about trends, prevention tips, and safety resources. These workshops are for tenants in downtown Minneapolis buildings, but similar workshops are offered by law enforcement agencies throughout Minnesota.

If an intruder were to make it to an office suite of a large building, the security teams would hope that the firm has taken the time to train the office staff about the best way to communicate security concerns to the security officers. Typically, a security team will have established code words that, if uttered during a phone call, will alert the team that the potential for danger is imminent and the person mak-

ing the call is not in a position to describe what is happening.

A security team that has received a coded alert will usually contact the police and then proceed with caution toward the office suite that triggered the alert. Since the responding security officers are unaware whether the intruder



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is armed or has threatened the staff, they are trained to quietly respond to the alert and not run into the situation. By using all the tools at their disposal (including cameras, silent alarms, and phone calls to other tenants in the office suite) the security teams will assess the alert situation as quickly as possible in order to provide the most appropriate response.

For offices that don't have the benefit of a security team on site, security personnel recommend that firms adopt many of the same policies and procedures that have been put into place in larger buildings. Firm staff should be trained on how to recognize threatening behavior, and how to quietly alert the police that they are needed on site. If a phone call can't be made at the time of the intrusion, any security system that is connected to a 24-hour monitoring database will have the option of installing silent panic alarms to alert local law enforcement officers at the push of a button.

For buildings big and small, security professionals recommend that tenants take advantage of criminal trespass statutes that will allow a police officer to arrest a person if they are found to violate the conditions of entry onto the property. The key to using trespass statutes as a tool to keeping potentially violent people offsite is that a representative of the property owner with the authority to control the conditions of entry onto the property must have warned the individual that they have violated the conditions of entry and any future violations may result in an arrest. Once someone has been warned they have violated those conditions, the warning does not expire. But for the trespass violation to be effective, the property owner must cooperate in the prosecution of the criminal trespass case.

Most importantly, firms should have an open and ongoing dialogue with their staff about security concerns and any plans that will best serve the employees when safety is critical. Safety discussions should include information such as the escape path from the firm, a plan as to where visitors to the firm without appointments should be seated, how to discuss concerns with an upset client, and how security or law enforcement officers can be alerted when something erupts. Firm staff should be reminded that all threats by clients or visitors to the firm should be reported to the individuals managing the practice and that no threat or behavior is insignificant if it makes the employee feel uncomfortable. ▲

TODD C. SCOTT serves as VP of Risk Management for Minnesota Lawyers Mutual Insurance Company (MLM), a professional liability insurer serving the needs of lawyers for over 30 years. For any questions regarding law office security, or any other practice management, ethics, or legal technology matter, Todd can be reached at the address listed below or via MLM's website: www.mlmlins.com.
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