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Writing About Lawsuits for Press and Clients

By Steven A. Meyerowitz

One of the keys to effective communications is to "know your audience." Different audiences require different styles and different techniques. Consider how lawyers should write a press release, a memorandum to clients, and an article dealing with a court decision in which they were involved. For purposes of this column, we will use an actual case recently decided by the First Department — *Todorovich v. Columbia University*, 665 NYS2d 77 (1st Dept. 1997).

Press Release

A press release must be newsworthy. It has to be short, yet full of enough interesting information to catch the eye of the editor or reporter to whom it will go. It can mention lawyers' names and attribute worthwhile quotations. Here is a portion of a press release that the victorious lawyers in *Todorovich* could have prepared:

Columbia University may not be held liable to a tenant assaulted in the vestibule of an apartment building owned and operated by the school, a New York appellate court has ruled.

In its decision, the court emphasized that Columbia's building had an "enviable security record" and that the assault was not attributable to any deficiency in the building's basic security systems. Without prior notice of any criminal incidents in the building, the court concluded, the university was not responsible for the harm suffered by the tenant.

According to Columbia's attorney, the decision "demonstrates that a landlord is not an insurer and makes it clear that a property owner's duty to offer protection against criminality on his or her premises arises only when the risk of such criminality is foreseeable."

Note that the opening words of the mock press release mention the client's name — Columbia University, an especially newsworthy entity. The release also is written from that client's perspective, beginning that it was held "not liable" rather than that the tenant's complaint was dismissed. The quotation talks about the practical significance of the decision for landlords — a whole class of potential clients — and restates the holding in a brief yet understandable fashion.

Memo To Clients

A memorandum to clients can be longer than a press release. It can contain more substantive material and make more effective use of headlines and subheads. A portion of such a memo could read:

Columbia University May Not Be Held Liable To Tenant Assaulted In Its Building, Appellate Court Says

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Decision Reaffirms That Prior Notice Of Criminal Incidents Is Required To Find Landlord Responsible For Tenant's Harm

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A lawsuit brought by a tenant of an apartment building owned and operated by Columbia University for injuries he suffered when he was assaulted in the building's vestibule must be dismissed, a New York appellate court has ruled.

Emphasizing that there had been no prior criminal activity in the building, the appellate panel rejected the tenant's claim that criminal activity in the neighborhood required that Columbia take more security steps at the building.

The decision makes it clear that, under New York law, a landlord is not an insurer of its tenants' safety and that a property owner's duty to offer protection against criminality on its property arises only when the risk of such criminality is foreseeable.

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At this point, the memo could begin a more detailed discussion of the facts of the case and the court's holding. For instance, after a subheading such as "Tenant Injured," the memorandum could say:

The case began after a tenant in one of Columbia's buildings was attacked on a public sidewalk and robbed of her house keys and identification. When advised of the theft, the university changed the lock on the inner entrance door to the building, alerted residents to obtain new keys, and for several days posted a special security guard at the door after the regular doorman's shift ended in the early morning hours.

Miroslav Todorovich, another tenant in the building, had been on vacation while these events took place. He returned to his apartment at about 2:30 a.m. on the day after the special security guard had been discontinued. When he attempted to enter the building without a key to the new lock, he was attacked in the vestibule by an armed assailant. Todorovich then began a lawsuit against Columbia, alleging that it had breached the duty of care it owed to its tenants by changing the front door lock without notifying him or providing him with a new key, and that this breach caused the harm he had suffered.

Columbia filed a summary judgment motion, but the trial court denied it. Columbia appealed.

The memo could continue with a discussion of the court's holding and rationale. It should conclude by noting that the firm represented Columbia in the lawsuit, explaining its real estate litigation experience, and providing contact information.

Bylined Article

It would be more appropriate for a lawyer to write a bylined article focusing on premises liability in general than on the *Todorovich* case exclusively. That is because a bylined article is very different from a press release or client memo. For one thing, an article typically could not be published for quite some time after the case was decided; by that point, the case might no longer be "news."

In addition, editors typically are uncomfortable having lawyers highlight their own cases and clients in an article. They fear that the discussion may be one-sided or incomplete. Editors also do not want to appear to be promoting a particular law firm's practice or to make it seem as if they have not exercised their editorial judgment in selecting contributors or articles to publish.

With this in mind, an article on *Todorovich* could begin as follows:

Under New York law, a landlord has a duty to exercise reasonable care to maintain its property in a safe condition. One aspect of this duty obligates a landlord to take certain precautions to protect those on the premises from the criminal acts of third parties. Courts recognize that a landlord is not an insurer, however, and they rule that a landlord's duty to offer protection against criminality on its property arises only when the risk of such criminality is foreseeable.

"Foreseeability" in this context has generally been equated with the degree to which a landlord has been apprised of the incidence of criminal activity within a particular building. Where there has been little evidence of prior crime in the building, a landlord cannot be held liable to a tenant injured there as a result of a criminal act.

In one case, for example, a tenant alleged that the landlord's failure to maintain a front door lock had rendered the plaintiff vulnerable to the local criminal element while she attempted unsuccessfully to extract her key from the faulty lock. The court dismissed the complaint, noting that the tenant's assertion that the landlord had notice of the "ambient criminal threat" present in Flushing, N.Y., was patently insufficient to raise a triable issue of fact as to whether the assault was foreseeable.

In another case, a court held that a plaintiff's submissions only tended to establish that there had been prior incidents of criminal activity in the Brooklyn neighborhood surrounding the tenant's building. The court concluded that because the tenant had made only "cursory reference" to prior criminal acts on the premises over which the landlord exercised control, the tenant was not even entitled to a trial on the question of whether the landlord had such notice of prior criminal activity so as to make the assault foreseeable.

If permitted by the editor's guidelines, the lawyer then could begin to discuss the *Todorovich* case. The lawyer could note that this was a recent decision that continued the trend under prior law, describe the facts, and conclude with a brief explanation of the opinion's significance. The article also could point out a number of steps that landlords could take to limit their risk of being held liable for criminal attacks on their tenants. The brief biography of the lawyer at the end of the article should mention the lawyer's firm affiliation and location and that the lawyer represented Columbia in the case discussed in the article.

Notice that a case citation for *Todorovich*, string cites, statutory references, or the like need not be included in the press release, memo to clients, or article (unless the editorial guidelines for the article so provide). Any reader who wants that information can call the lawyer/author. Trying to generate those kinds of calls and that kind of interest is, after all, one of the principal purposes of preparing these materials in the first place.