

will determine our children's and our grandchildren's futures. Our courthouse's public buildings and civic institutions are the tangible representations of our values, institutions, culture and aspirations as a people. They tell many stories about us. Let's hope that they also tell one of bravery. jsj

Prudent Risk Management: A Court Administrator's View

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Justice Oliver Wendell Holmes Jr. once remarked that a word is “the skin of living thought and may vary greatly in color and content according to the circumstances and time in which it is used.” *Towne v. Eisner* (1918). In the formative years of our nation, “security” was a concept invoked to protect the citizenry against actions of the new national government. Among our first Bill of Rights was “the right of the people to be secure in their persons, houses, papers and effects.” Today, security has an expansive meaning that goes well beyond arbitrary government action. Every day we take innumerable security precautions to protect ourselves and those we care for. We try to roughly calculate risk and procure insurance so that the impact of calamity in our lives will be minimized.

The security of our workplace should be no less important. There is no special place of immunity from nature's ferocity or human malevolence. From a court administrator's point of view, the protection of those we serve—and those who serve—must be paramount.

Whether one looks at court security from the perspective of instinctive self-preservation, humanitarian concern, or prudent risk management, the balance must tip in favor of preservation and protection. For those who argue that security measures compromise public access to public spaces, I sincerely disagree. There is no incompatibility between security and public access. In fact, security secures access. However, as those who work in this area know so well, “court security” is a concept of immense complexity, both practical and conceptual. For court administrators and managers, there are certain aspects of critical importance.

Mechanicals. These are the essentials, the so-called nuts and bolts, of a court security program. The national associations of chief justices and court administrators (CCJ and COSCA) in 2005 proposed a skeletal framework of the “essential ten elements” for court security preparedness based on a national survey of court security administrators. The participants of that survey wisely ranked “standard operating procedures” as the critical first element, followed by facility assessments, emergency planning, and disaster recovery.

From a court administrator's perspective, a security administrative infrastructure and unifying standards/protocols, reinforced by ongoing training, are especially important. They should be an integral part of every court's operations. With an infra-

structure—*internally* in the court system and *externally* with law enforcement and other key stakeholders in place—systemic and sustained progress stands a greater chance of success. Standing security committees in each county or judicial district can provide considerable assistance to a presiding judge, court administrator, or security administrator in making sure that easy-to-understand protocols are implemented and enforced.

California, for example, has taken great strides in addressing two significant security management issues—funding and staffing. The attempt has been to create a rational funding formula and recommended ratios for staffing. Such templates and standards promote uniformity, fairness, and efficiency. These types of issues need to be addressed on a national level to assist our courts in their local and state funding efforts. **Funding.** It is time to recognize court security as a distinct and essential aspect of the business of the courts. For budget purposes, courts need to include the costs of security as a necessary operational expense of the enterprise of justice.

There is wisdom in the adage that Rome was not built in a day. Thus, achievement of this fiscal objective at the local and state level must be incremental, that is, slowly but surely. Although it takes little or no money to create security committees or develop protocols or foster a security mind-set, equipment and physical improvements—especially single point-of-entry modifications and personnel for equipment—require capital. The challenge here is for court leadership to educate others about why an investment in the safety of the people's judiciary is prudent risk management. Sustained communication and alliances—with law enforcement and leaders in our sister branches of government—can be persuasive. Sadly, it often takes a tragic incident to convince skeptics of the wisdom of security preparedness. Admittedly, with limited resources and other constraints, persuasion remains a difficult challenge. Recent efforts by the National Center for State Courts to facilitate direct federal funding to the courts for security may eventually provide some relief. But we must realize that court security ultimately remains a local and state responsibility, as well as a potential liability.

Threats and Gaps. At a 2006 meeting with court administrators in New England, Chief Justice Margaret Marshall of Massachusetts acknowledged that one of her greatest fears is to wake up one morning after a tragic incident and realize the “what if” scenario. Those who have experienced security tragedies in their courthouses are painfully aware of the spectral presence of *could've* and *should've*. In this modern age of terror, security planning taxes our abilities to assess risks and effectively respond. Biochemical terrorism, flu pandemic, bigger and more frequent natural disasters, and cyber attacks are no longer alien subjects for court leaders.

There are two fears that generate concern for me—communication breakdowns and continuity gaps. In the absence of communication, there can be no coordination between command and control. The prospect of isolation in a crisis is absolutely frightening. Communication capabilities in an emergency must be multifaceted. Telecommunications (land lines, cell, satellite) and information technology (espe-

cially remote-access capabilities) become our lifelines to sustain us in a crisis. We need to make sure that our communications systems will not fail us. Similarly, with the specter of a flu pandemic or other widespread incident, deeply layered succession planning is indispensable to continuity planning and survival.

Collaboration. Communication is the stepping-stone to collaboration. Court security is a collaborative enterprise. In my view, collaboration remains the Achilles heel of security. It is difficult to pinpoint exactly why this is so. Perhaps it's the complexity or multitude of security issues, the myopic sense of self-sufficiency, the hypothetical and unpredictable nature of security risk planning, the failure to appreciate the practical value of engagement, or simply inertia. One need only engage in a mock exercise of a security incident to realize how interdependent we are. Better yet, simply look at the horrific experiences in other jurisdictions since 1995—in Oklahoma, New York, Georgia, Louisiana, Mississippi, Florida, Alabama, Texas, and Toronto, to name some prominent examples.

We need to build a culture of collaboration that will create a mutually supportive network of information and assistance. From my vantage point, collaboration needs to take place on many levels:

- local (within the facility itself, with broadly representative standing committees on security, and with law-enforcement, executive, and legislative leaders)
- regional (with colleagues and partners who can provide guidance on common issues or support in the event of a debilitating incident)
- state (with court leadership, executive-level committees on security and disaster planning, the legislature, and state police)
- national (with the Department of Homeland Security, Congress, and various associations and organizations, such as the National Sheriffs' Association and National Center for State Courts)

On the plus side, there has been some good work. The National Center for State Courts has served as an increasingly valuable resource center and catalyst for collaboration through its security summits and programs. The joint security committee of chief justices and court administrators has identified the essential ten elements of a court security program and offered a template of standard operating procedures based on the best practices of many states. At the regional level, for example, court administrators in New England have engaged in a meaningful dialogue to address particular problems of court security. And in some states, such as Pennsylvania, the courts have been invited by the executive branch to participate in pandemic-flu planning. However, for many states, there remains a severe disconnect between the executive and judicial branches in emergency planning and communication. This is an ominous gap that poses significant dangers. Courts must be persistent in their efforts to be a meaningful participant in state and local emergency-planning processes.

Leadership. This last item, of course, should be first. The security of our courts will be a frustratingly elusive or impossible goal without visible and sustained commitment of leadership at all levels—chief justices, presiding judges, court administrators, executive and legislative leaders, law enforcement, and national organizations such as the National Center for State Courts, National Association for Court Management, and National Sheriffs' Association.

The leadership component is critical in persuading others about the importance of the security challenge, in ensuring compliance with security protocols, and in fostering a security-minded culture. Even before the tragic events of September 11, 2001, there were state court systems such as Ohio, Tennessee, Washington, and Alabama that demonstrated active leadership in promoting the security of the judicial branch through clear protocols, administrative support, and fiscal sustenance. They were able to move past obstacles and resistance. They overcame the insidious forces of complacency and presumption.

We cannot foresee what will happen in the future. Nor can we guarantee that our efforts will prevent tragedy. But leaders can take steps to minimize risk. If we truly value the welfare of those we serve and those who serve, we will realize that court security is essential and prudent.

Beyond the immeasurable and unpredictable human and psychological costs of a security failure, there is an overarching consideration for court leaders. As Chief Justice Ronald George of California noted in a recent interview, "The dispensation of justice is one of the most—if not the most—significant services provided by governments" (Eegelko, 2006). Despite the fact that state court systems receive only a small percentage—often 1 to 2 percent—of their states' total budgets and are often viewed and treated as simply another governmental agency, court leaders must be steadfast advocates for safety and security. As servants and guardians of the third branch, we must never lose sight of the importance and survival of our mission in our democracy. **jsj**

REFERENCES

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