

The Evolving Concept of “Court Security”

CAROLINE S. COOPER

Having been providing technical assistance to state and local courts for several decades in a wide range of subject areas, including those relating to “court security,”* it has been fascinating to observe the evolution of the concept that has occurred over the years and, in particular, during the past decade. During the 1970s and 1980s, the term “court security” generally focused on the protection of the courthouse and its occupants, with the components necessary to achieve “court security” generally entailing law-enforcement functions, hardware, and, to a limited extent, facilities design. More recently, however, the concept of “court security” has come to focus as well on the protection of all of the elements of court operations that are fundamental to maintaining the independence and integrity of the judicial process and to ensure its continuity and that of the rule of law. Associated with this expansion of the concept has been a concomitant expansion of the focus and functions entailed.

The concept of “court security” has traditionally involved two essential components: first, the procedures, staffing, physical environment, and related resources necessary to protect the functioning and integrity of the judicial process and, second, measures to ensure the physical safety and freedom from intimidation of courthouse users and occupants. Within this framework, the nature and dimensions of the activities and resources required to provide adequate court security have expanded significantly, as have the measures used to assess the adequacy of court security provided and the range of agencies that need to be involved in its provision.

Historically, the experience of LEAA’s Criminal Courts Technical Assistance Project during the 1970s and early 1980s in providing technical assistance and training in court security, shared by court security programs undertaken through other auspices, focused primarily on protecting common elements of the court facility considered to be directly related to enhancing (or diminishing) the security of court occupants and proceedings. These generally entailed ensuring that points of entry, particularly those for the public, were limited and well monitored; installing weapon-screening mechanisms; and developing circulation patterns for courthouse users, with separated circulation areas for judges and court staff, detained defendants, and the general public.

Frequently, attention to “court security” needs was raised by local county government officials rather than court officials, as a result of issues raised during the expansion or renovation of old county-owned courthouse buildings, which were being called upon to serve an increasing number and diversity of courthouse users and

* Since 1972, the author has been involved with the provision of technical assistance services to courts through the Criminal Courts Technical Assistance Project under the auspices of the Law Enforcement Assistance Administration (LEAA) and the Bureau of Justice Assistance (BJA) and, during 2003-05, directed the Court Emergency Preparedness Planning Project, under State Justice Institute (SJI) sponsorship, which entailed technical assistance services for courts in smaller populated and rural areas in the area of court emergency preparedness.

house an increasing number and range of functions, both judicial and nonjudicial. Common concerns reflected in these technical assistance requests generally centered on the need to limit public access to courtrooms, chambers, and records rooms; these were frequently exacerbated by the multifunctional nature of many courthouse buildings in which nonjudicial functions coexisted with those of the court. Prisoner transport was also a recurring concern, particularly for older courthouses with no secure corridors or entry points that could be dedicated for prisoner use. Responsibility for “court security” was generally considered to be a specialized aspect of court operations of primary concern to court facility designers and sheriff’s department staff. Available resources to address court security deficiencies were usually slim.

Since the mid-1990s, however, a marked shift has developed in both the scope of the concept of court security and in the recognition of the agencies and officials who need to be responsible for its provision. Although much has been written during this period on court security, four developments—most of which occurred in the twenty-first century—appear to have significantly contributed to the expanded definition of our current concept of court security, as it is now being applied by many court managers.

The first is the bombing of the Alfred P. Murrah Courthouse in Oklahoma City in April 1995. This event made it suddenly apparent to court officials throughout the country that “court security” required a focus *outside* of the court building as well as within, and that the court, as both a facility and an institution, was vulnerable to terrorist threats and attacks unrelated to any particular litigation that might be occurring within the courthouse. The reality that a court facility and its occupants could be vulnerable to an attack from outside the facility—in this case, a bomb in a van parked on the street—by a perpetrator who had no direct connection to a particular court proceeding that could be flagged as a potential security threat triggered a major rethinking of the nature and extent of functions necessary to provide adequate court security. Two issues that quickly became of major concern were the nature of restrictions needed on access to parking both within court facilities and in proximity to them, and the nature of protective measures that were needed to protect the courthouse from exterior attack. Many courthouses restricted interior parking to judges, court staff, and other approved personnel working at the facility and eliminated provision for public parking inside or adjacent to the facility. In a number of instances, landscaping plans also were reviewed to eliminate sheltered spots from which incendiary devices might be thrown or shots might be fired into a facility without detection.

The second development was the 1995 publication by the National Association for Court Management (NACM) of the first comprehensive guideline on court security. Although, in retrospect, the 1995 *Court Security Guide* was limited in focus and scope, it was the first national-scope report to focus attention on *court managers*, rather than solely sheriffs and other law-enforcement staff, as officials responsible for court security. By making court security a priority responsibility for court managers, the 1995 NACM *Guide* stimulated awareness among court administrators—and judges—that court security was their responsibility as well as that of sheriffs and required the devel-

opment of policies, procedures, and staff-training programs for court personnel in addition to those undertaken by sheriffs and other law-enforcement agencies.

The 2005 revision of the NACM *Court Security Guide* incorporates both the potential impact of international terrorism and a range of operational issues relevant to the security of court functions and the protection of courthouse users. In addition to traditional court security topics, such as auditing public and staff space, the *Guide* addresses such new topics as workplace violence and the implications of high-profile cases on the court's security. Published on the heels of the Atlanta courthouse shootings, and quickly followed by the disastrous repercussions of Hurricane Katrina on the integrity of the judicial process in New Orleans, the 2005 NACM *Guide* provides a framework for exploring the concept of court security in a much broader context than previously existed.

The third development was the September 2002 *Nine Eleven Summit: Courts in the Aftermath of September 11th*. This conference brought together diverse jurists, administrators, and other professionals from multiple disciplines throughout the country to address both the specific impact of September 11 on the New York courts and a number of issues that had not previously been considered part of the concept of court security. Among these were the court's capability to take necessary actions to protect the integrity of the judicial process and to ensure the continuity of court operations in the event of disaster. These included the need to assure the public that the rule of law is preserved; the urgency for developing strategies for safeguarding court records and automated data; the importance of having alternative communication mechanisms in place; the need for courts to guard against "new" threats, including those of bioterrorism and cyber terrorism; and the importance of close collaboration and communication among leaders and policymakers in all branches of government, law enforcement, and the business community (Kaye and Lippman, 2002). The multidisciplinary discussions and proceedings of the Nine Eleven Summit expanded the traditional concept of court security as well as the range of requisite agencies, resources, and court functions that needed to be involved, making it synonymous with *court emergency preparedness* generally.

The fourth development was the 2005 shootings in the Fulton County Courthouse in Atlanta and the killings of family members of a federal judge in Chicago. These incidents, involving defendants in very different situations—one a litigant in a civil matter and the other in a criminal proceeding—whose propensity for the violent acts they committed, had not, in retrospect, been fully acknowledged, highlighted the significant vulnerability of judges and their families as well as court staff and of the general public to acts of violence despite decades of efforts to enhance "court security" at both the federal and state levels. This is not to say that judges and their families had not been the target of threats or acts of violence in the past, but the circumstances of the Fulton County and Chicago killings, occurring at a time when significant training and other resources had been devoted to court security, reinforced the critical and ongoing need to make this issue a continuing priority.

In August 2005, the Conference of Chief Justices and the Conference of State Court Administrators adopted “Resolution 17: In Support of the Importance of Court Security,” which underscored the critical nexus between “court security” and the preservation of the rule of law. In pertinent part, it provided:

WHEREAS, open access to secure, safe courts promotes a sense of confidence in the stability of civil government; and . . .

WHEREAS, under Standard 1.2 (“Access to Justice”) of the Court Performance Standards a court is required to make its facilities safe, accessible and convenient; and

WHEREAS, it is vital that citizens feel confident and safe in seeking access to their courts and that court personnel feel safe in the performance of their duties. . . .

NOW, THEREFORE BE IT RESOLVED, that the Conference of Chief Justices and Conference of State Court Administrators:

- Agree to take those actions necessary to raise the visibility of the vital importance of court security needs with the public, the court community, and our intergovernmental partners.

In addition to urging adequate attention and funding for the court security needs of state and local courts, as well as the federal courts already receiving attention, the resolution urged each chief justice and state court administrator to “conduct assessments of their courts to determine their vulnerability to natural or man-made disasters” and to participate in a national system for systematically reporting court security incidents to the National Center for State Courts to provide a foundation for analysis and future preparedness efforts (CCJ/COSCA, 2005).

Less than one month after Resolution 17 was adopted, Hurricane Katrina struck the Gulf Coast area of the country. While perhaps not considered a “security” event in itself, the ramifications of this natural disaster on the capability of court systems to protect the functioning and integrity of the judicial process underscored the vulnerability of court functions and processes in the wake of sudden disaster. Katrina, perhaps more than any other natural disaster, has triggered a major focus on disaster-preparedness planning in court systems throughout the country—efforts that have come to be termed “COOP” (continuity of operations planning). COOP plans focus upon the activities, resources, training, relationships, and other planning that is needed to ensure the continuity of court operations in the event of disaster. COOP plans must, therefore, focus upon both the immediate post-disaster period as well as a more prolonged period necessary to ensure the full restoration of court processes.

Developing COOP plans for courts has taken the concept of court security to a new level. Most COOP plans focus on the “essential functions” the courts must perform within varying timeframes following an emergency (24 hours, 48 hours, 7 days) and pro-

vide for the policies and procedures that will be applied to these functions in the event of an emergency. COOP plans also provide for the potential establishment of alternative court facilities as well as alternative facilities for other justice system agencies, depending upon the nature of the emergency that has occurred. Under a COOP plan, provisions for court security must go beyond an existing court facility and contemplate a range of different facilities that may be involved in performing judicial functions.

The issue of court security has continued to attract the attention of the state judiciary at its highest levels. Within the past several months, three chief justices have publicly declared court security to be a priority issue. In February 2006 Chief Justice William Hill of Wyoming stated that courthouse security was a topic being closely monitored by the judicial branch (Hill, 2006). On March 1, 2006, Chief Justice Jean Hoefer Toal of South Carolina reported that she had been working to assemble a state courthouse security task force that, in addition to conducting security surveys in every state and local courthouse, would develop standard operating procedures applicable to judges and court staff, which local courts could use to develop their own security plans (Toal, 2006). On that same day, Chief Justice Ronald M. George of California delivered his "State of the Judiciary" address, calling for courthouses to be places "of safety and reason," recounting various incidents of courthouse violence that had occurred in the state, and advancing a broad definition of "court security" in terms of the physical building (George, 2006). Chief Justice George called for all courthouse facilities in the state to provide protection for courthouse users against violent acts, as well as to be free of "seismic deficien[cies], so as to be capable of withstanding earthquakes; to be free of toxic mold; to meet basic fire and safety standards; and to be accessible to persons with physical disabilities." Expanding on this, Chief Justice George found:

Providing safe and secure facilities in which judicial proceedings take place is a matter of great urgency for all of us. Courthouses serve as cornerstones of our society and are where individuals have the most direct contact with government. . . . The existence of a secure, accessible facility in which the rule of law guides the resolution of disputes is not a luxury (George, 2006).

During 2006, an additional element has been added to the concept of court security—pandemic-influenza-preparedness planning. *The National Strategy for Pandemic Influenza Implementation Plan* requires that the U.S. Department of Justice "ensure that appropriate Federal and State Court personnel are provided the information necessary to enable them to plan for the continuity of critical judicial functions during a pandemic." The tasks mandated by the *Implementation Plan* include development of multipronged protocols for protecting the health of judicial (and other justice system) personnel, implementation of strategies to reduce close human-to-human contact; recommended personal-hygiene practices; and cross-training of personnel to address significant potential workforce disability.

In conclusion, the events of the past ten years have shaped a wider appreciation of what "court security" entails and who must be involved in its provision. The earli-

er focus on law-enforcement functions, hardware-screening mechanisms, and some facility design considerations has been significantly expanded to include a much broader concept of protecting the health and safety of both the users and occupants of the courthouse as well as safeguarding the full range of resources and judicial system activities necessary to sustain the functioning of the court system and the integrity of the judicial process.

This expanded definition of court security has also been accompanied by an expanded concept of the officials and agencies responsible. No longer is “court security” a function to be delegated primarily to the sheriff’s department or other law-enforcement agency, but it is rather a critical responsibility of judges and court administrative staff, who must work in partnership with law-enforcement and other professionals to ensure the safety, security, and integrity of the judicial process and the full range of personnel, facilities, systems, and other components upon which it relies. The implications of this shift in definition for judicial administration are also significant. Court security is now an integral part of the responsibilities of court administration, reflecting the increasing recognition that the issue of “court security” and the responsibility for ensuring “continuity of court operations” are inextricably intertwined (NSPI, 2006). **jsj**

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