

**CONFERENCE OF CHIEF JUSTICES
CONFERENCE OF STATE COURT ADMINISTRATORS**

WRITTEN TESTIMONY

by

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President
Conference of Chief Justices

On

Improving the Security of Our State Courts

Submitted to the

**JUDICIARY SUBCOMMITTEE on CRIME, TERRORISM, and
HOMELAND SECURITY
UNITED STATES HOUSE OF REPRESENTATIVES**

Subcommittee Hearing
Thursday, May 3, 2007
2237 Rayburn House Office Building
10:00 a.m.

Chairman Scott, Ranking Member Forbes, and Members of the Subcommittee,

On behalf of the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA), it is a privilege to provide testimony for consideration in the Subcommittee's hearing examining judicial security and independence in the Nation's state and federal courts. The Conferences' memberships consist of the highest judicial officers and the state court administrators in each of the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, and the Northern Mariana Islands and the Territories of American Samoa, Guam and the Virgin Islands. The National Center for State Courts (NCSC) serves as the Secretariat for the two Conferences and provides supportive services to state court leaders including original research, consulting services, publications, and national education programs.

We believe that Congress has an opportunity to make an important and tangible difference in improving the safety of our courts and upholding the fundamentals of our democratic society.

INTRODUCTION

This morning thousands of judges, prosecutors, public defenders, lawyers, law enforcement officers, court personnel, court reporters, jurors, witnesses, victims, and members of the general public entered a courthouse. They come for one purpose – to seek justice in a safe and neutral forum. It is vital that we ensure that the public's ability to resolve their disputes, present evidence before a judge or jury, and expect a judge to rule solely based upon the law uninfluenced by intimidation. To accomplish this, we must provide a forum free from fear, threats, and violence. People will be hesitant or refuse to bring their disputes to courts if a likely consequence is intimidation or physical harm. Judges and jurors cannot pursue the truth if they or their families are threatened.

A democracy cannot long endure if those entrusted with resolving disputes are targets of violence and become enmeshed in an environment of fear and intimidation, if officers responsible for security do not have the resources to detect and respond, and if lawyers, parties, and the public must evaluate their own personal safety in deciding whether to participate in the process. Freedom from such an environment and the ability to carry out the judicial responsibilities in an open and accessible manner are fundamental components of the exercise of the rule of law.

We appreciate the problem of violence in the workplace. Indeed, if there is any workplace in America where the potential for violence is great, it is the judicial workplace. With the exception of marriage and adoption ceremonies, people generally are not appearing in court voluntarily, but are appearing because they are legally required to attend court. Jurors are summoned to court. Witnesses are subpoenaed to court.

Defendants are compelled to go to court to face criminal charges or civil actions. People who have given up on resolving their disputes – disputes with their neighbors, disputes with their children, disputes with their families, disputes with their employers – go to court as a last resort. Emotions can run high because these disputes invariably involve human relationships, and human relationships can evoke strong feelings. Also, there is confrontation – the right to confront your accusers. Although most of us spend a lot of time trying to avoid problems, in court a person often must directly confront an adversary.

Consequently, in the judicial workplace, there is confrontation between people under highly charged sets of emotional circumstances regarding disputes that they have been unable to resolve on their own. Also, by the nature of the adversarial process, there are winners and losers in court. Not only is there confrontation and emotion, but at least one of the parties will often leave feeling angry that they have lost – and that they may have lost in some sort of a final, binding way. Despite the fact there is no workplace with greater potential for violence, it is also true that there is no workplace in America where it is more critical that the workplace be free of violence.

Access to peaceful resolution of disputes is fundamental to our system of government. Coupled with the principle of judicial independence these concepts are the envy of the world. Neither access to justice nor judicial independence can exist in an environment of intimidation, fear or violence. Under the rule of law, court proceedings are supposed to be open and public. How long will court proceedings be truly open to the public if members of the public fear that they are going to become embroiled in some sort of a threatening, fearful, or violent situation?

Mr. Chairman, recent incidents of courthouse violence underscore a disturbing pattern of how some people view the security of courthouses and the risks of public service. These attacks and threats towards members of the judiciary are rapidly reaching a crisis point for us. Let me recount just a few recent examples of security threats and incidents that have been provided by our members:

- Alaska - Many judges in this state have received threatening communications with repeated references to the Chicago murders. Last year, a serious communication to one judge required the intervention of the Federal Bureau of Investigation (FBI). Also during this past year, large numbers of weapons have been confiscated as a result of magnetometer screenings.
- Arizona - In the past year, there has been a suicide outside a divorce court, the firebombing of a Justice of the Peace Court, death threats towards judges, a visit by a disturbed litigant to a judge's home, explicit communications with pictures and diagrams to the homes of judges on pending cases, and threats by

constitutionalists to “arrest” and execute a judge. Finally, there was a threat against a judge that mentioned death utilizing a high powered rifle.

- California - Various bomb threats have been received in the past 2 years, including an incident in which law enforcement was able to arrest the perpetrator before he was able to carry out the actual bombing, an incident in which a firebomb was discovered in a courthouse before it went off, and an incident in which a litigant came into a clerk’s office with a small home-made bomb. Explicit threats have been made against judges to carry out violence against them. Graffiti has been painted on underpasses and buildings detailing threats against the court system. A court received correspondence that contained a vial of blood that tested positive for HIV and Hepatitis C. A wallet was found in a courtroom with a description of a judge’s car and license plate number. An individual with a pending court case was recently arrested videotaping the judges’ parking lot.
- Maryland - Several threats against judges have been received in the past year. Several of these have required additional home protection patrols to be done on our judges. In addition, there have been attacks on hearing officers, especially on those officers assigned in juvenile courts. Finally, bomb threats are a constant problem requiring local law enforcement to assist in building evacuations and implementation of prevention measures.
- Mississippi - Death threats have been made against several trial courts judges. Threats of destruction of property (buildings) and physical attacks on justices of the Supreme Court have been made.
- New Hampshire - There was a recent incident where an individual entered a courthouse and attempted to assault a court security officer during the screening process. A recent threat to “shoot up” one of the courthouses was also made.
- Pennsylvania - Several serious threats against judges, and court officers were reported. Numerous confiscations of weapons from individuals attempting to bring them into the courthouse were catalogued. Finally, Molotov cocktails were thrown at a magisterial judge’s office that, thankfully, did not start a fire. Both the FBI and the federal ATF helped us investigate this incident.
- New York - The New York State court system receives approximately 140 death threats against judges a year.

Even though we do not have quantitative data, it is the perception of the state court leadership that the number and severity of these threats and security incidents have been

increasing in recent years. Furthermore, given that the state courts try approximately 96 million cases per year, the opportunities for incidents and the magnitude of the problem cannot be overstated. Also, let me emphasize that while judges and court personnel are seriously at risk during any incident, the risk to the public is also significant.

THREATS AGAINST JUDGES

Since the Fulton County (Atlanta), Georgia incident and the murders of U.S. District Judge Lefkow's husband and mother, we have been inundated with requests for information about threats that state court judges receive on the job. The simple fact of the matter is that, because of the cost of compiling such a large amount of data, we do not know the full extent of the problem.

In a survey by the family law section of the American Bar Association, 60 percent of respondents indicated that an opposing party in a case had threatened them. From the U.S. Marshals Service, we know that they record an average of 700 inappropriate communications and threats each year against federal judicial officials. This is a marked increase from the 1980s when the average was closer to 240 per year. If you compare the number of federal judges to the approximately 32,000 state court judges, there is the possibility that we may find a large number of judges that face or have faced some sort of physical threat.

Naturally, we must always remember that the potential for violent attacks on judges is not limited to the courtroom. An aggressor who targets a specific judge may attack the weakest security link in that judge's world – most likely the home. While more difficult, this area of protection cannot be overlooked.

FUNDING CHALLENGES

Perhaps the greatest challenge facing state courts wishing to implement enhanced security measures is the issue of resources. The majority of courts depend on local law enforcement for the personnel to operate the equipment, provide adequate response, and run security operations in a courthouse. As you know, most local governments struggle to meet day-to-day operations of running their governments and have little options to improve or implement new security measures in courthouses. Because there is no adequate funding source, many courts report that they have no formal security plan.

CCJ, COSCA, and NCSC have been disseminating promising practices for court security. Our efforts in this area have been well received. For example, we developed and have circulated the "Ten Essential Elements for Courtroom Safety and Security." NCSC also has compiled a wealth of information for state courts looking to upgrade their court security. Materials range from sample local court security plans to specific

recommendations in courthouse architectural design, computer disaster recovery, and equipment.

While we have made progress, I must caution you that there is only so much that can be achieved by streamlining and refocusing present resources. State courts need resources to fund enhanced security measures. We hope that you will favorably consider our recommendations to allow state courts greater access to federal funds for much needed security improvements.

THE NEW DIMENSION - COURTHOUSE TERRORISM

On September 11, 2001, terrorist attacks threw New York City's court system into disarray because many court buildings and other criminal justice offices were located near the site of the World Trade Center. Three court security officers perished when they tried to assist in the rescue efforts. The Court of Claims Courthouse, located at Five World Trade Center was destroyed. Other courthouses were deep within the so-called "frozen zone", an area that city officials ordered off-limits to all but essential personnel.

The New York state court leadership, however, moved quickly to ensure that the disruption did not last more than one day. Under the leadership of New York State Chief Judge Judith Kaye, the focus of the hours following the attacks was to do everything possible to reopen all the courts.

The threat of terrorism has created a new dimension in courthouse security. The courthouse is a visible, tangible symbol of government. The September 11th attacks painfully showed that government and other prominent buildings are targets. Thus courts, being a core function of American government, now suffer increased exposure to attacks from those external to the court process. They must be provided the same protection that is being provided to other government institutions in order to keep state courts open, accessible, and safe for the public. The state courts are dealing with the threats posed by terrorism. We, however, need more assistance from the federal government. This is no longer an issue that states can cope with alone, but is an issue that requires state and federal collaboration and cooperation. The needs of state courts must be considered in the plans for distributing federal funds.

In order to better position state courts and judges to address and respond to security threats and incidents, we ask your consideration of the following provisions. The first three items were included in HR 1751, which was approved by the House of Representatives in the 109th Congress.

- **Establish a Critical Incident Reporting and Threat Assessment Databases -**
Establish a web-based site where critical incidents can be reported and local

action taken in each state. Federal dollars would support each state in establishing web-based sites. This coordinated effort would result in: 1) establishing and defining a core set of data elements used by each state and 2) obtaining data from states for analysis of trends and patterns. This information could then be used to assist states in preventing acts of domestic terrorism and crime and in enhancing their security procedures. By having the information from this critical incident reporting database, we can target our resources where they will be most needed. Under the current system, most courts are taking an all or nothing approach with virtually no information to guide them in overall security planning.

- **Create a New Federal Grant Program Specifically Targeted to Assess and Enhance State Court Security** – This program would assist states to conduct assessments and implement court security improvements deemed necessary based on the assessments. We ask that the highest state court in each state or territory be eligible to apply for the funds. Federal funds would provide valuable seed money for state courts.

- **Ensure that State and Local Courts Are Eligible to Apply Directly for Discretionary Federal Funding** - State and local courts have not been able to apply directly for some Department of Justice (DOJ) administered programs because of the definition of “unit of local government” that has been included in the enabling legislation for the various programs. The result of this language is that state and local courts are not able to apply directly for these discretionary funds, but must ask an executive agency to submit an application on their behalf. As you provide oversight role to the DOJ and as grant programs are revisited, we ask that the definition of eligible entities be broadened so that state and local courts can apply directly for discretionary federal grant funds.
 - As an example, when the Violence Against Women Act (VAWA) was reauthorized in 2001, the reauthorization legislation contained specific language authorizing, “State and local courts (including juvenile courts) ...” to apply directly for VAWA funds.

 - Clarification is particularly needed in relation to the Omnibus Crime Control and Safe Streets Act of 1968, the Edward Byrne grants, Armored Vests grants, and the Child Abuse and Prevention and Treatment Act (CAPTA).

- **Ensure that State Courts Are Included in the Planning for Disbursement of Federal Funding Administered by State Executive Agencies** – Statutory language for grant programs that impact the justice system should include specific

language requiring consultation and consideration of state court needs. The language that we have suggested is as follows:

“An assurance that, in the development of the grant application, the States and units of local governments took into consideration the needs of the state judicial branch in strengthening the administration of justice systems and specifically sought the advice of the chief of the highest court of the State and, where appropriate, the chief judge of the local court, with respect to the application.”

CONCLUSION

The state courts of this country welcome the Subcommittee’s interest in the security of courts. We look forward to working with the Subcommittee to develop legislation that addresses state court security needs and takes into account the varied needs of the state courts of this country. We commend the Subcommittee for holding this hearing and recognizing the national interest in ensuring that our judiciary and courts must operate in a safe and secure environment.

ABOUT CCJ

The Conference of Chief Justices (CCJ) was organized in 1949 and its membership consists of the highest judicial officer in each of the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the Territories of American Samoa, Guam, and the Virgin Islands. The purpose of the Conference is to provide an opportunity for consultation among the highest judicial officers of the several states, commonwealths, and territories, concerning matters of importance in improving the administration of justice, rules and methods of procedure, and the organization and operation of state courts and judicial systems, and to make recommendations and bring about improvements on these matters.

The Conference accomplishes its mission by the mobilization of the collective resources of the highest judicial officers of the states, commonwealths and territories to:

- Develop, exchange, and disseminate information and knowledge of value to state judicial systems;
- Educate, train, and develop leaders to become effective managers of state judicial systems;
- Promote the vitality, independence, and effectiveness of state judicial systems;
- Develop and advance policies in support of common interests and shared values of state judicial systems; and
- Support adequate funding and resources for the operations of the state courts.

ABOUT COSCA

The Conference of State Court Administrators (COSCA) was organized in 1955 and is dedicated to the improvement of state court systems. Its membership consists of the principal court administrative officer in each of the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the Territories of American Samoa, Guam, and the Virgin Islands. A state court administrator implements policy and programs for a statewide judicial system. COSCA is a nonprofit corporation endeavoring to increase the efficiency and fairness of the nation's state court systems. State courts handle 98% of all judicial proceedings in the country. The purposes of COSCA are:

- To encourage the formulation of fundamental policies, principles, and standards for state court administration;
- To facilitate cooperation, consultation, and exchange of information by and among national, state, and local offices and organizations directly concerned with court administration;
- To foster the utilization of the principles and techniques of modern management in the field of judicial administration; and
- To improve administrative practices and procedures and to increase the efficiency and effectiveness of all courts.