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Emergency Planning and the Judiciary

Lessons from September 11

Written by

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Lessons from September 11

Introduction

The September 11, 2001, terrorist attack on New York's World Trade Center¹ was the deadliest and costliest terrorist attack in U.S. history, killing nearly 3,000 people and resulting in more than \$15 billion in property damage. The influence of this event on perceptions and realities of national security, international relations, and the world economy has been well documented. Among the less studied aspects of the September 11 attacks is their impact on the administration of justice both in New York State courts and in the federal judiciary.

The primary impetus for this report is the attack itself, and, in particular, its impact on the dense concentration of courts and related facilities in lower Manhattan (See Map 1). These facilities were directly affected by the World Trade Center disaster, and were in the area of restricted access known as the "frozen zone" in the days after the attacks. Three court officers lost their lives in rescue efforts that day. Many buildings were rendered unusable due to dust and local air quality problems that persisted for some time after the attacks. Indeed, the New York Court of Claims, located in 5 World Trade Center, was destroyed. Clearly, September 11 changed the perception of the risks of calamity and impelled greater efforts toward increasing security. This change of perception led directly to the increased court security efforts led by the New York courts since the September 11 attacks. These efforts included a national 9/11 summit meeting held in New York City in September 2002, organized by the New York State Unified Court System, the National Center for State Courts, and the Center for Court Innovation. This report is a direct outgrowth of the 9/11 summit.

This report is organized into two major parts. The first is an overview of the New York State court system's actions in the immediate hours and days after the terrorist attacks, and a discussion of the immediate policy changes and lessons learned in the context of pre-September 11 emergency planning in the courts. The second part describes in some detail how the New York courts' emergency planning activities relate to the elements of "best practices" in

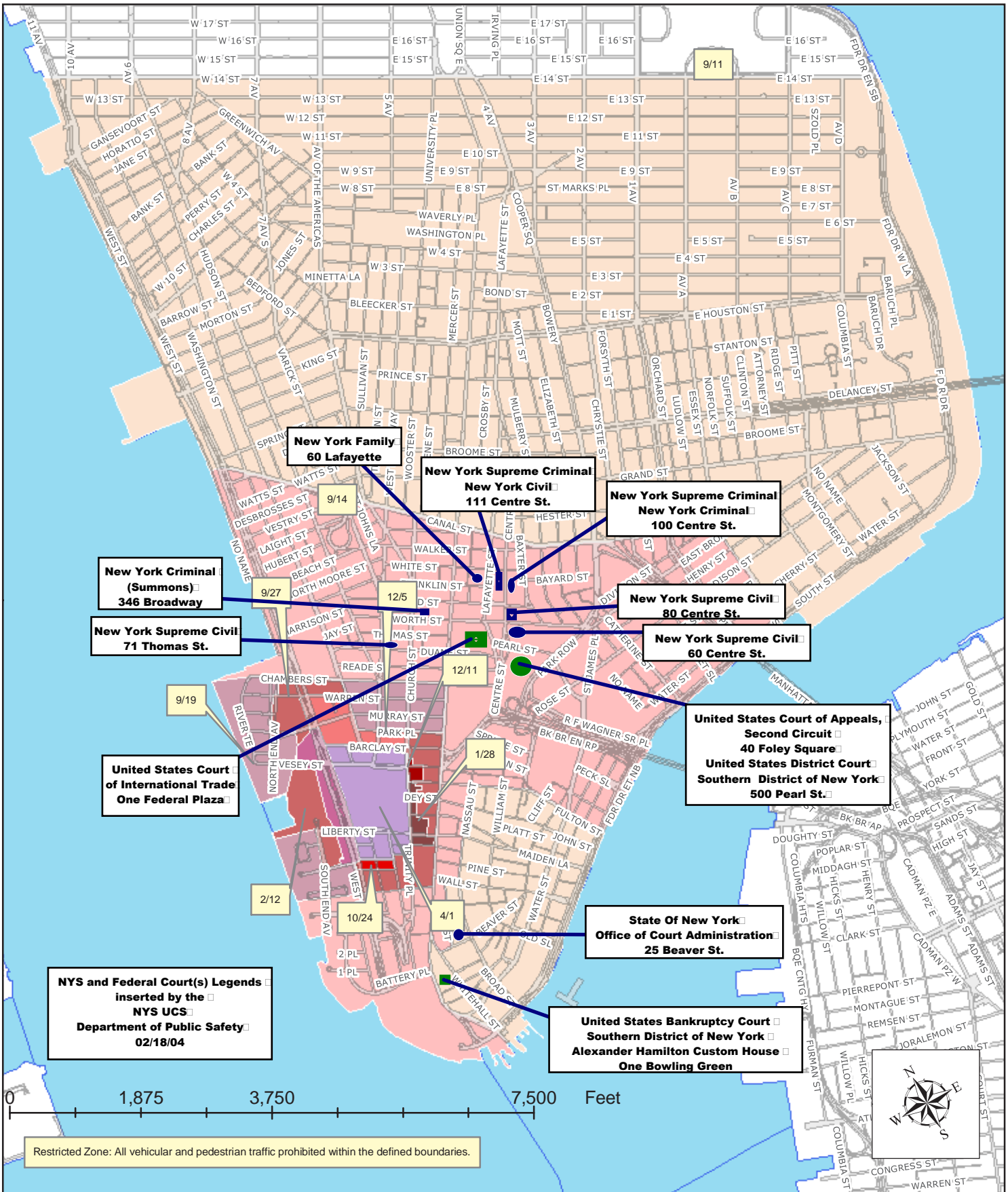
¹ The attack on the Pentagon on the same day was also an important historical event, but the focus of this report is on the destruction of the World Trade Center and its direct influence on the administration of justice in New York City.

Prohibited Zone Shrinkages September 11, 2001 to Present



City of New York
Emergency Mapping Center
Michael R. Bloomberg, Mayor

Map Reviewed
4/9/02



emergency planning and management, as outlined by the National Center for State Courts' (NCSC) Best Practices Institute. The report concludes with a discussion of the ongoing challenges that face the courts in emergency management in the aftermath of the September 11 attacks.

An Overview of Courts' Actions after the Attacks

The World Trade Center was attacked just before and just after 9 a.m. on September 11 by terrorists who purposefully flew fuel-laden aircraft into the “twin towers” of the complex. The evacuation of those who could leave the complex was relatively orderly, but many were trapped above the floors that were struck by the airplanes, and by about 10:30 those in the towers, including more than 350 first responders, and many people on the ground were killed when the buildings collapsed. Among the victims were three court officers who were lost as they sought to aid in the evacuation of 5 World Trade Center, a relatively small building that contained the New York Court of Claims parts (*The Metropolitan Corporate Counsel* 2002). Debris also damaged nearby buildings, including 7 World Trade Center, which housed the Emergency Operations Center (EOC) for the New York City Office of Emergency Management (NYC OEM). This entire structure was evacuated almost immediately after the attacks. This building was not part of the immediate World Trade Center complex, but was set alight by the fire and collapse of the two towers, and the building collapsed later that afternoon. On September 11, the NYC OEM moved its EOC to the Police Academy Library. By September 14 a more suitable EOC was established at Pier 92 on the West Side; the pier was available because it was being set up for a bioterrorism drill just before the attacks.

Many state and federal court houses in Manhattan are located south of 14th Street, which defined the northern limit of the area of restricted access—the “frozen zone”—that was established in the immediate aftermath of the attacks. This northern limit was moved southward to Canal Street on September 14, but the frozen zone created more operational problems than did communications and information technology problems. The Criminal Term of Supreme Court had working computers and phones on September 12, but their staff and others could not access the building, notwithstanding efforts to open up access to those with court business (Root 2002). This constraint was eased by September 17, when the restricted zone boundary moved further south. The Office of Court Administration (OCA) was also located in this area, as well as the New York County District Attorney's office and the Special Narcotic Prosecutor's office. The federal courts also directly affected included the U.S. Court of Appeals for the Second Circuit, and the U.S. District Court and U.S. Bankruptcy Court for the Southern District of New York, all of which were in the lower Manhattan frozen zone. Of course, commerce and the private bar were greatly affected, including the New York Stock Exchange. Between 14,000 and 17,000 attorneys worked in firms in the original frozen zone south of 14th Street (Root 2002, 9; Wise 2002). At least

1,400 lawyers in and near the World Trade center lost their records when their offices were completely destroyed (Lippman [2002], 12).

Despite these obstacles, New York State Chief Judge Judith S. Kaye and Chief Administrative Judge Jonathan Lippman sought to keep the courts open and to maintain normal business as a symbol of the ability of the judicial system—and of our system of government in general—to continue to function in the face of terrorism. However, by 3 p.m. on September 11, the courts' leaders were forced to close the courts statewide in recognition of the continued hazards to public safety and in the face of incomplete information about the actual threats to the state and nation. Judges Kaye and Lippman also decided that the reopening of the courts must be a top priority. All courts outside the World Trade Center exclusion zone reopened normally on September 12, and the courts in the immediate area of the attacks reopened on September 17 (Lippman [2002], 4). These efforts, placed into context with other key events on and after September 11, are shown in Table 1.

Despite the remarkable efforts of court employees to restore the courts to full operation, other factors influenced the courts' ability to return to normal, such as transportation restrictions in lower Manhattan. There were considerable managerial, physical, and even emotional issues to address and challenges to overcome, including but not limited to:

- Informing the public, members of which are parties to matters before the court, of the status of court operations, including which courts were or were not open;
- Notifying jurors as to whether their service would be needed or delayed;
- Notifying attorneys as to the status of the courts and their cases;
- Working with the bar to help recover records lost by law firms, particularly those whose offices were destroyed (Kaye 2002; *The Metropolitan Corporate Counsel* 2002);
- Securing and moving prisoners between jails and court houses;
- Restoring telephone and data communications within and outside the court houses;
- Ensuring that the court buildings closest to the World Trade Center remained structurally sound;
- Finding resources and personnel to secure courts in a newly appreciated threat environment; and
- Working with and comforting victims and, in particular, the loved ones of those killed in the September 11 attacks. Particularly important was addressing the loss of the three court officers who perished helping others, and comforting court employees who lost loved ones in the attack (*The Metropolitan Corporate Counsel* 2002).

Even a cursory review of the actions taken by the bench and bar suggests that the return to any sort of function soon after September 11 was a remarkable achievement. Within one year, as Judge Lippman noted, the courts were “back at

Table 1: Timeline of key actions on and after September 11

Day	Date	Time	Context	Court actions
Tuesday	9/11/2001	8:45 a.m.	American Airlines 11 from Boston bound for Los Angeles crashes into World Trade Center North Tower.	Chief Administrative Judge Lippman and Chief Judge Kaye are in Albany for a conference when they receive word of the attacks.
Tuesday	9/11/2001	9:03 a.m.	United Airlines Flight 175 from Boston bound for Los Angeles crashes into World Trade Center South Tower.	Judge Lippman is on the phone with the Office of Court Administration offices on Beaver Street when the second crash occurs. Judge Lippman gives orders to immediately evacuate OCA offices, but to keep courts open if possible.
Tuesday	9/11/2001	9:10 a.m.	NYC Office of Emergency Management's Emergency Operations Center in 7 World Trade Center is evacuated—staff moved to Police Academy on the East Side.	
Tuesday	9/11/2001	9:30 a.m.	President Bush, in Sarasota, Florida, makes first public statement about the attack.	
Tuesday	9/11/2001	9:43 a.m.	American Airlines Flight 77 from Washington D.C. (Dulles) bound for Los Angeles crashes into the Pentagon.	
Tuesday	9/11/2001	10:05 a.m.	World Trade Center South Tower, the second structure hit, collapses first.	
Tuesday	9/11/2001	10:28 a.m.	World Trade Center North Tower collapses; this collapse, coupled with that of the South Tower, means that the World Trade Center complex is largely destroyed.	Three court officers are killed during rescue efforts in 5 World Trade Center.
Tuesday	9/11/2001	10:57 a.m.	New York Governor Pataki closes all state offices.	
Tuesday	9/11/2001	11:02 a.m.	CNN: "New York City Mayor Rudolph Giuliani urges New Yorkers to stay at home and orders an evacuation of the area south of Canal Street."	
Tuesday	9/11/2001	2:49 p.m.	Mayor Giuliani reports that bus and subway service is partially restored in NYC, but little service exists south of 14th Street.	
Tuesday	9/11/2001	3:00 p.m.		Judges Kaye and Lippman determine that the courts should be closed at 3 p.m. and that 24-hour security at facilities shall begin.
Tuesday	9/11/2001	5:20 p.m.	7 World Trade Center collapses. This collapse does substantial damage to Verizon telephone equipment	

and destroys a Con Ed electrical substation.

Tuesday	9/11/2001	6:10 p.m.	CNN: "Giuliani urges New Yorkers to stay home Wednesday if they can."
Tuesday	9/11/2001	7:45 p.m.	CNN: "The New York Police Department says that at least 78 officers are missing. The city also says that as many as half of the first 400 firefighters on the scene were killed."
Tuesday	9/11/2001	9:57 p.m.	CNN: "Giuliani says New York City schools will be closed Wednesday and no more volunteers are needed for Tuesday evening's rescue efforts. He says there is hope that there are still people alive in the rubble. He also says that power is out on the west side of Manhattan and that Health Department tests show there are no airborne chemical agents about which to worry."
Wednesday	9/12/2001	9:00 a.m.	Most New York City court houses are closed; courts in the rest of the state are open. Access south of 14th Street is restricted. Efforts begin to restore NYC courts to operations. Arraignments are moved to Midtown Community Court. Civil emergency applications are heard at the Appellate Division on 25th Street. "War room" for emergency management is established in CAJ's chambers in White Plains. All courts in the Ninth Judicial District are open and operational.
Wednesday	9/12/2001	4:50 p.m.	CNN: "The New York Stock Exchange and Nasdaq are not expected to open before Friday. The markets could open as early as Friday but will open no later than Monday, according to market officials."
Thursday	9/13/2001	9:00 a.m.	New York City court houses outside Manhattan reopen. Calls to public information phone numbers are routed to Albany and other locations.
Thursday	9/13/2001	12:00 p.m.	Mayor Giuliani orders EOC to move from Police Academy to Pier 92. Staff from several agencies (mayor's office, FEMA, SEMA, Con Ed, Verizon, NYPD, FDNY, Human Resources Administration [HRA]) have arrived at Pier 92 to begin setting up workstations.
Thursday	9/13/2001	12:01 p.m.	Verizon reports that a generator made available to power up systems was lost in the collapse of 7 World Trade Center.
Thursday	9/13/2001	12:01 p.m.	Most New York City schools reopen.
Thursday	9/13/2001	4:00 p.m.	Work to set up EOC at Pier 92 begins.

Friday	9/14/2001	6:00 a.m.	Pier 92 computer network (LAN) is complete—300 workstations, 400 phones, nine servers, and a PBX.	
Saturday	9/15/2001			Judges Kaye and Lippman visit the seven Manhattan court houses. Air quality is poor, but staff are working to restore the courts for a Monday reopening.
Monday	9/17/2001	9:30 a.m.	The New York Stock Exchange reopens after the attack; stocks drop sharply in trading.	Courts in Manhattan reopen. Counseling is available for staff.
Tuesday	9/18/2001			Judges Kaye and Lippman visit 5 World Trade Center, where court officers were killed aiding rescue efforts.
	Sept–Oct 2001			Bomb and anthrax scares prove disruptive and challenging for managers.
	Apr 2002			Secure pass program implemented for access to courts.
Wednesday	9/11/2002			Courts announce that they have returned to their pre-September 11 capacity..
	9/25 - 9/27/2002			9/11 Summit held in New York City, organized by the New York State Unified Court System, the National Center for State Courts, and the Center for Court Innovation.

100 percent and strengthened because we've lived through inconceivable adversity" (Wise 2002). Indeed, the September 11 story is not one of a failure of response; while there is a widespread sense in the emergency management community that various aspects of the response could have been handled better, overall, the response at the federal, state, and local levels was remarkably good given the scale and scope of this unprecedented attack on the nation in general, and on downtown Manhattan particularly. Furthermore, the attacks were so destructive and shocking that they provided numerous lessons and experiences that validated prior planning efforts while exposing important gaps in emergency preparedness and response.

Emergency Management before September 11

Perhaps the most important lesson of the September 11 attacks is that emergency management is a central aspect of court administration (Leibowitz 2001). As reflected in a 1998 issue of *Judges' Journal* that described emergency planning and management broadly (Birkland 1998; Boyum 1998; Wasby 1998b) and in several jurisdictions, including Florida (Salokar 1998), the U.S. Court of Appeals for the Ninth Circuit (Wasby 1998a), and North Dakota (Pedeliski 1998), such planning, often triggered by a disaster, does occur in select courts nationwide. News media accounts of violent acts in courtrooms highlighted these issues in many jurisdictions, and were the impetus for initial safety and security efforts. Before September 11, emergency management had begun to emerge as an important area of court management because of the accumulation of experience with a range of natural and humanly caused hazards, as summarized in Table 2.

This table suggests that terrorism is one of a number of hazards that courts face today. Before September 11, natural hazards and crime were recognized as the most likely security problems in any jurisdiction. Jurisdictions have pondered, and quite often responded to, the threats posed by violent crime in the court house grounds. The possibility or reality of such crime often creates demands from court personnel for more officers and security equipment, leading to tensions between court administrators and other units of government that fund security and own and operate the facilities in which courts are located.

New York's courts, particularly those in New York City, are also nearly unique in the volume of high-profile legal matters they handle. These high-profile cases gain considerable national and world attention, resulting in attendant concerns over protest activity and crowd control. Due to the nature and volume of cases handled by the New York courts, the importance of many of these cases in the financial, cultural, and media communities, and their place on the world stage, and because of the very nature of the city of New York, the courts in New York had already amassed and implemented considerable emergency management experience.

This experience was gained through managing not only high-profile cases but also severe weather and, in particular, through planning for the problems surrounding the so-called "year 2000" or "Y2K" problem, which involved ensuring

Table 2: Potential disasters and their implications

	Implications and challenges	Case studies and key sources
Natural hazards		
Earthquakes	During shaking, injuries or fatalities can be caused by structural failures, falling parts of buildings (such as parapets brick façades) or through failing furnishings such as shelves or light fixtures. After shaking, court houses may be unusable due to structural damage. Accessibility to records may be lost if building is condemned, or if records management systems are damaged. Parties to matters before the court are affected; staff, jurors and others cannot reach court house due to transportation problems.	California (Loma Prieta and Northridge earthquakes); federal (U.S. Court of Appeals for the Ninth Circuit) (Federal Emergency Management Agency 2002; Wasby 1998a)
Floods and hurricanes	Inundation of structure renders it unusable, and can so damage building that it needs to be replaced. Even when court house is not flooded, nearby roads may be impassible, preventing access to the court. Inundation can lead to destruction of records stored on lower floors. Prisoners may need to be moved to other facilities, making trials more difficult to hold. Hurricanes can cause structural damage due to high winds. Electrical power and other utilities can be out for days.	North Dakota (1997 Red River floods) (Pedeliski 1998); Iowa, Missouri, and others (1993 Midwest floods); Florida (Hurricanes) (Salokar 1998; Florida Supreme Court 2002); see also Federal Emergency Management Agency 2001.
Winter and other severe weather	Power outages, impassable roads, hazards to people seeking to use the court house.	Courts in upstate New York and other winter climates address these issues yearly.

Unintentional humanly caused emergencies		
Structural problems: Burst pipes, electrical fires, sprinkler activation, and similar building problems	Can render the court house unusable and destroy records or prevent access to them. Large fires pose health and safety challenges during and after the fire. Water damage ruins records and requires time to clean up. Soot from fires can foul equipment and pose health dangers.	Jasper, Texas (Newton County) court house (Lewis 2000); Brooklyn, New York (120 Schermerhorn Street) (New York Law Journal 2002)
High-profile cases with extreme levels of media coverage	Creates a more chaotic security situation for parties to cases (both the high-profile case and other cases before the court). Crowd control becomes more challenging. Increased levels of activity around the court house may discourage the public from doing routine business in the court house.	Such cases are often perceived as economic opportunities in smaller communities where trials are held due to a change in venue (Dillon 2004) but can pose challenges for crowd control and security (Caher 1999). Courts in jurisdictions that allow TV cameras in courtrooms face different challenges than courts that bar cameras (Gibbons 1997).
Power failures	Stalls or delays work due to lack of lighting, HVAC, communications, and, in particular, lack of power to computers and information systems.	The August 2003 blackout of the Northeastern United States and Ontario, Canada, disrupted business but tested, often successfully, the bench's and the bar's emergency planning (Lin and Perrotta 2003).
Intentionally triggered emergencies		
Bombing and bomb threats	Bomb threats disrupt court business, and can yield harmful psychological effects. Actual bombs can kill or wound people, destroy property and records, and make the court house unusable for periods spanning days to months. Flying glass can be particularly hazardous in bombing.	Las Vegas court house improvements (Daniels 2002). "From 1991 to 1995, the Bureau of Alcohol, Tobacco and Firearms (1997, 21) reported 207 bombings of state and local government buildings... Although court houses were not separately identified, many are known to have been targets..." (Hardenbaugh and Weiner (2001, 15). See also the United States General Services Administration's bomb threat checklist at : http://www.9-11summit.org/materials9-11/911/acrobat/27/P3%26C10EmergencyPreparednessPlans/GSABombCheckList.pdf

<p>Violence in the courtroom—shootings, assaults, and the like</p>	<p>Violence disrupts the judicial process, and can intimidate judges, lawyers, jurors, witnesses, and any others with business in the court.</p>	<p>See the articles that comprise the special issue on courtroom security in volume 576 of the <i>Annals of the American Academy of Political and Social Science</i> (2001). In particular, see the cases listed in Hardenbaugh and Weiner (2001).</p>
<p>Terrorist attacks</p>	<p>Terrorism is designed to cause political and social change through intimidating citizens and officials, while gaining considerable attention to the terrorists' cause. Disruption of the courts' business may be a direct goal of such intimidation. Terror attacks can damage or destroy buildings, kill, injure, or sicken court personnel and all others in the court house, and can delay the administration of justice.</p>	<p>This report and the materials cited herein; www.911summit.org</p>

that critical computer systems that stored years as a two-digit number instead of with the full four digits continued to function properly on and beyond January 1, 2000. While the anticipated problems of Y2K were largely averted, the planning efforts in New York City highlighted a problem long-recognized by many in the courts—the court system generally did not participate with other agencies in such planning. In the Y2K case, the Mayor’s Criminal Justice Coordinator invited the Office of Court Administration to participate. This proved invaluable in getting the OCA “a seat at the table” in emergency management in New York City (Root 2002, 10).

Post September 11 Changes

The September 11 attacks led to immediate tactical changes in court security management. Immediately following the attacks, the courts’ Department of Public Safety began round-the-clock security coverage for all courts in Manhattan. Over the night of September 11-12, the Ninth Judicial District provided 24-hour security in all facilities except the New York City Courts, which are located within local police department headquarters. In February 2002, the New York City courts acquired and deployed marked cars to patrol court facilities, thereby making its security presence more visible. At the same time, the courts acquired radios that allowed communication between court officers at the various facilities; before September 11, all officers did not have access to radios. These radios can also communicate with the New York City Police Department (NYPD), further improving communication among law enforcement agencies.

These security improvements have come at some cost, however. Resources for court security must compete with other needs, and resources are clearly limited. The move to 24-hour security has required changes in personnel assignments and absorbed a great deal of overtime resources. Changes to building security policies required more people to pass through security checkpoints, magnetometers, and x-ray equipment, which were not originally provided for in the budget (Lippman [2002]).

These multiple tactical changes undertaken by the courts have been accompanied by broader strategic changes designed to secure the courts in the face of new threats. It is clear that a major shift in thinking was triggered by the September 11 attacks, which taken together constitute what political scientists call a “focusing event” that serves as a spur for policy change (Birkland 1997; Kingdon 1995). This has clearly happened at the national level with the creation of the Office of Homeland Security in the White House, (succeeded by the Department of Homeland Security) and the enactment of new legal authorities designed to address terrorism, such as the USA Patriot Act. After the September 11 attacks, the October 2001 incidents in which letters containing anthrax spores were sent to members of Congress and news media personnel transformed bioterrorism from a rather abstract scenario into a real security problem for all public institutions to address.

The courts are in a unique and challenging position with respect to emergency management, because the judiciary is often thought of by the public and managers in other branches in narrow terms, based on application of judicial power rather than as an organization that serves a range of community needs. A key outcome of this event, then, is the realization that the courts are both an independent branch of government and an organization that requires leadership and management.

A key lesson of the September 11 experience was the importance of integrating the courts into emergency command systems, even as top emergency managers may perceive the courts as just one among many different organizations and institutions in government, business, and the nonprofit sector. This perception is due perhaps to the fact that emergency managers don't understand the immediate and ongoing value of the courts, even during emergencies. It also suggests the need for court administrators to proactively communicate with emergency managers to explain why the courts should be part of the broader emergency management system. During the September 11 crisis, court managers approached the NYC Office of Emergency Management and gained a seat at the table at the city's Emergency Operations Center. This enabled the courts to coordinate with relevant agencies to disseminate consistent information (Root 2002, 10). By participating in the immediate efforts to mitigate the attacks' damage, all parties learned of the courts' needs—and how the courts could aid the overall crisis response.

Since 2001 the courts' Department of Public Safety has actively begun coordinating efforts with and seeking advice from several state agencies, including the NYC OEM, the New York State Emergency Management Office (SEMO), the New York City Fire Department (FDNY), and the NYPD. Indeed, the courts, in a clear signal of their commitment to emergency management, have hired a full-time Emergency Preparedness Coordinator who reports directly to the Chief of Public Safety. In a future disaster of the size and scope of the September 11 attacks, coordination between the courts and these agencies, and with the entire emergency management process, will be substantially improved because of this new Emergency Coordinator's expertise and because of the experience gained by all members of court management in recent years. Future planning for emergencies requires considerable cooperation with executive branch agencies to ensure responsiveness. Such efforts are less about inducing other agencies to help as they are about the courts reaching out to agencies with emergency planning and response experience. As a committee appointed by the Florida Supreme Court found, one "key to success in preparing for emergencies is the idea that there are many who will support us and help us if we ask" (Florida Supreme Court 2002, 6). Furthermore, the federal courts have found FEMA to be very helpful in planning for the continuation of the courts' work in emergencies (*The Third Branch* 2001), much as New York's courts have been aided by, in particular, the NYC OEM and, in Westchester County, SEMO.

Best Practices

Before September 11, 2001, emergency planners contemplated the possibility of a terrorist event along with other security threats, such as violence committed by parties to matters before the court. Natural hazards, such as earthquakes, hurricanes, and floods, also entered into court security planning. In New York State, courts were particularly interested in planning for quick recovery from winter weather, including snow and ice. In a survey of the participants at the 9/11 Summit, 53 percent of the respondents cited “disabling winter weather” as the hazard with which they were most concerned. Terrorism, or the fear of it, was cited by 66 percent (multiple responses were allowed).

The idea that highly visible events yield policy changes is well known to students of policy making (Birkland 1997; Cobb and Elder 1983; Kingdon 1995). These rough survey figures suggest that the September 11 attacks served as a “wake-up call” to a broad range of court officials and their emergency managers (National Center for State Courts 2002). Terrorism in all its forms—from bombings, to the release of anthrax and other bioweapons, to the use of weapons of mass destruction—moved to the top of the security agenda, in large part because the nature of the threat and the scope of its consequences were not broadly appreciated until September 11, 2001. As a result, a major conference—the 9/11 Summit—on emergency management in the judicial branch was held, and the Conference of State Court Administrators (COSCA) and the Council of Chief Justices (CCJ) have begun to address these issues. Additionally, most states have begun to at least consider these issues; however, New York State leads the nation in actual preparedness for these rare but very dangerous events.

To assess what was learned after September 11 and how the New York courts have applied these lessons, this report addresses these actions through a best practices framework developed by the Best Practices Institute of the National Center for State Courts (2002). The following broad aspects of emergency management for the court were all addressed in various ways both during and after the attacks. Added to the aspects outlined by the NCSC is a discussion of continuity of operations (COOP) planning.

Ensure Visible Court Leadership

The success of any organization is often a function of the quality and commitment of its leadership: “the court’s leaders set the tone for effective emergency management” (National Center for State Courts 2002). As Root notes in greater detail, “[I]n any crisis there must be leaders who make decisions, resolve disputes, and generally set the tone for handling the emergency. The type of leadership structure in place at the time of a crisis can influence the performance of an organization during a period when its regular mode of operation is disrupted” (Root 2002, 4).

Unique organizational features of New York’s unified administrative system helped the courts manage the September 11 emergency in ways that some other state courts might not be able to implement. While many states’ courts are managed at the county level, with limited oversight at the state level, the New York

courts are centrally administered by the state’s Office of Court Administration (OCA), which is constitutionally and statutorily charged with administration of the Unified Court System, as provided for in Article VI of the state’s constitution. The state legislature also funds the courts, in contrast with states like Ohio, which rely on county funding of the trial courts. Emergency management is a key feature of the OCA’s responsibilities, which means that the Chief Administrative Judge is able, with local Administrative Judges under his or her supervision, to compel compliance with emergency planning and emergency management plans and functions (Lippman [2002], 1).

Leadership is also important after a crisis, regardless of the courts’ organization. Chief Judges Kaye and Lippman immediately took action after the September 11 attacks, leading the effort to restore the downtown Manhattan courts’ ability to function. Their determination to reopen the courts was very similar to Federal Chief Judge David Russell’s commitment to reopening the federal courts in Oklahoma City after the 1995 bombing of that city’s Alfred P. Murrah federal building (National Center for State Courts 2002). In both cases, court leadership inspired all members of the court community to work together to reopen the courts.

Perhaps one fortunate coincidence on September 11 helped the courts statewide to respond to the attacks. Chief Judges Kaye and Lippman and a vast majority of regional administrative judges and others were in Albany that morning for a conference. It was therefore possible to convene a meeting of the administrative judges to address the crisis (Lippman [2002]). However, from a managerial perspective, being in Albany hindered the judges’ abilities to fully and properly assess the situation in Manhattan.

Since September 11, the OCA continues to send clear messages that court security is important and is a key duty of court administrators and all court employees. Chief Judge Kaye’s highly visible presence at the 9/11 Summit signaled the seriousness with which senior court managers continue to address this problem. All the planning and response aspects discussed below would not be possible without the continued commitment of senior management. The courts in New York appreciate that safety and security are not transient issues.

Prioritize Emergency Management Needs

The National Center for State Courts notes that, given the public nature of court buildings, it is important to strike a balance “between ensuring public access and providing a safe and secure environment” for all members of the court community. Of course, the obvious challenge is in finding a balance that maximizes public safety while keeping public inconvenience to a minimum. This has always been a particularly challenging feature of court security, but never more so than after September 11.

While much of the planning focus since September 11 has been on terrorism, the September 11 events, as well as recent experiences with natural disasters and crime in and near court houses, has directed attention to emergency planning

across a wide range of hazards. All preparedness and planning measures share a crucial feature: they are beginning to shift away from merely protecting the physical integrity of court structures and the safety of personnel, toward protecting the functioning of the judicial institution as a whole by incorporating life safety, building safety, and continuity of operations planning. The September 11 attacks starkly illustrated how determined attackers can level very large buildings and render other buildings useless. Experience with floods and earthquakes also shows that buildings can be taken out of use for a considerable amount of time, as the U.S. Court of Appeals for the Ninth Circuit learned in the aftermath of the Loma Prieta earthquake in 1989 (Wasby 1998b).

Court managers' primary emergency management challenge is to preserve the courts' ability to function as an independent branch of government and to continue to serve as a key institution in the promotion and advancement of the rule of law. This function is not solely or even primarily about buildings. It is about people, processes, and records. It is about the important symbolic value of the courts. When courts are open, people are reassured that the rule of law will endure as a democratic institution. But the courts' ability to remain open—whether in their own facilities or in temporary facilities—rests on the quality of planning, and the execution of that plan, to restore records, find facilities, and return to business as quickly as safely practicable.

Given limited resources, the courts and their managers cannot possibly plan for every possible threat. The courts must prioritize their emergency management needs based on 12 the most likely and the most injurious events that could influence the administration of justice. There are at least two reasons why balancing options and making choices are necessary features of emergency management. First, as *The National Strategy for Homeland Security* notes, “[B]ecause we must not permit the threat of terrorism to alter the American way of life, we have to accept some level of terrorist risk as a permanent condition. We must constantly balance the benefits of mitigating this risk against the economic costs and infringements on individual liberty that this mitigation entails” (Office of Homeland Security 2002, 2).

Second, as suggested by *The National Strategy for Homeland Security*, cost and efficiency considerations require that actual risk assessments be undertaken to ensure that scarce security resources are deployed in ways that would create the greatest possible degree of security. Notions of risk combine the consequences of a hazard and the likelihood of its occurrence. For example, winter weather will likely disrupt regular business in cities and towns, particularly in upstate New York. The probability of such an event is high, but the consequences of snow and ice storms—short- to medium-term inconvenience, the potential postponement of some matters due to transportation or utility problems, and the like—are not particularly grave. Furthermore, the likelihood of injuries, fatalities, or the destruction of court facilities is rather low, and the courts' business can usually be restored in days. Thus, the *risks* posed by winter weather are rather low, and

contingency plans are relatively easily developed and implemented. On the other hand, a major fire can put many lives at risk, destroy court facilities, and cause records to be lost. The risk of such fires may be relatively low, particularly considering modern building codes, but the *consequences* of such events are sufficiently important that more advanced training, planning, and drilling are necessary. As was learned after the September 11 attacks, the consequences of terrorist attacks are so profound as to require serious attention to this hazard in courts near attractive terrorist targets, regardless of the relatively low likelihood that they will occur.

Jurisdictions in rural areas, which are likely to be located far away from high-profile terror targets, may weigh their risks and decide that they should plan for inclement weather and, perhaps, for the occasional violent crime in the court house. In such situations, members of the local emergency management or law enforcement communities may already have plans in place for addressing such problems, so the courts may wish to connect with local agencies and groups who address weather and similar emergencies at the community level. On the other hand, urban courts are likely to face these problems and the additional challenges of preparing for emergencies in densely populated cities that present attractive terrorist targets. Thus, some flexibility is necessary to ensure that the right levels of attention and resources are applied to the highest- and lowest-risk courts, thereby enhancing the efficiency and effectiveness of court emergency response activities. This is not to say that security is a strictly urban problem. As Judge Lawrence D. Cohen, Chair of the Minnesota Conference of Chief Justices Court house Security Committee, notes in his state's emergency planning manual, "These incidents are not just the products of urban areas. They are happening in small jurisdictions as well as in large population areas" (Minnesota Conference of Chief Justices, n.d., ii).

Create and Practice an Emergency Response Plan

Perhaps the keystone of emergency planning and management for courts, regardless of the hazards they face, is the emergency response plan. A common question that arises in emergency planning relates to whether it is desirable or important to have a written plan in place. After all, if people are trained and everyone knows their role in an emergency, one presumably would not need something as formal as a plan, particularly if that plan simply sits on a shelf, only to be consulted in the heat of an emergency. Nevertheless, formal written plans, if accompanied by proper training and practice, can serve as the foundation of an effective emergency plan, giving key personnel the tools they need to be effective.

Since September 11, the threats facing the courts may not have changed substantially, but the perception of the threat certainly has changed. Courts, along with all institutions, have since included in their planning ways to deal with ongoing threats, such as natural disasters and crowd control, as well as emerging threats, such as bombs, biological terrorism, and weapons of mass destruction.

The September 11 attacks led the courts' Office of Public Safety to create a central guidance document for emergency planning and management in New York State. This document, known as the *Emergency Preparedness and Response Planning Manual* (hereinafter the *Manual*), includes 20 main pages and a 70-page appendix containing sample documents and forms, such as the building evacuation plan. The documents are designed to provide immediate, clear, and useful guidance during an emergency.

The *Manual* includes the following elements:

Building safety and life safety This element includes detailed guidance on the development of evacuation plans and procedures. The key to a successful evacuation is the designation of assembly areas where court staff must gather after a building is evacuated. This is important so that managers can take roll and determine whether there may be persons remaining in the building. As emergencies often occur without warning, every employee should be issued an emergency contact card listing the designated assembly area for the facility (and, if there is more than one, the area for that employee's work unit) and relevant contact information. Evacuation checklists should be prominently displayed at each court facility, and include the location of the assembly area. Fire wardens should be assigned and trained for each floor of each facility.

After the October 2001 anthrax attacks, the plan was revised to include mail handling protocols that include directions on how to detect potentially dangerous items and, in some jurisdictions, systems to discourage employees from having personal packages delivered to the office facility. Another useful trend that will reduce the volume of incoming mail is the greater reliance on electronic document delivery for the courts, as the federal Second Circuit has begun to implement. This effort may also result in cost savings in postage and duplication (*The Third Branch* 2001). Of course, the continued and growing reliance on networked computers carries with it the risk of malicious attacks on computer and networking infrastructures (Florida Supreme Court 2002, 9).

Mail is not the only way that biological or chemical weapons can be released in buildings. The *Manual* contains procedures for securing air intakes for building HVAC systems. Even with these precautions, many older facilities must consider ways to secure easily accessible intake systems that could be accessed at ground level.

Facilities A critical element of effective management of emergencies is the facility profile, which includes the number of personnel on a floor or in an office, contact information for supervisors, and local emergency numbers. Elements of the facility profile, and other practices that ensure building safety, have included these activities:

- “Buddy systems” have been implemented to aid disabled personnel in evacuations, as well as to provide first responders with the work locations of disabled personnel who may require rescue assistance.
- Managers collect floor plans for the facility, either in computer graphics formats or on paper. Floor plans are very important for helping emergency services to locate key personnel who may be trapped, and for helping first responders to find their way through buildings that may be dark, smoky, or damaged. For this reason, such floor plans should include the locations of elevators, stairwells, water lines, electric and telecommunications lines, equipment closets, exits, and other features of the facility.
- The courts have purchased explosives detection equipment similar to that used in airports, and are screening for explosives in the New York City courts.
- The courts’ secure pass program is critical to ensuring that visitors to the court house do not pose a safety hazard to the building, its contents, or its occupants. A secure pass program is designed to pre-clear frequent visitors to the courthouse— staff, judges, counsel, and the like—so that they need not wait in a security line; this is particularly important when these regular users of the court may come and go several times a day. Thus, a secure pass allows security staff to focus more attention on unknown, occasional visitors who may present a greater risk to the facility. In light of the recent tragic shooting at the New York City Council, it is important that all personnel who do not have proper identification be screened, even if they are guests of and vouched for by an individual who holds a secure pass. The courts have been active in developing and implementing both entry security and secure pass procedures for attorneys and court employees.

The Unified Court System’s Department of Public Safety (DPS) has made two key changes in its practices since the attacks. First, the DPS stresses the importance of evacuation drills to a greater extent. All members of the court community have begun to understand the importance of this aspect of emergency management, and drills have been taken much more seriously by all those involved. This preparation paid off in August 2003 during the blackout in the Northeast, during which employees calmly evacuated buildings in an orderly manner (see Lin and Perrotta 2003). Second, the DPS is requiring all courts in the state to do effective emergency response planning, including drills and formal evaluations. This is an ongoing process and recognizes the differences between various court facilities in New York, while ensuring that all court administrators and members of the court community understand the importance of planning and practice and adhere to a largely uniform model.

These final points deserve particular attention. Several participants at the September 2002 9/11 Summit in New York noted that planning and the development of written plans are very important, and that organizations without written plans are likely to find emergency response and recovery to be very difficult. But these experts also noted that each plan must be a living, constantly updated document and set of practices. Drilling and evaluation of performance are therefore ongoing activities, and plans cannot be allowed to languish on a shelf, unused for years.

Prepare Communication Systems

The *Manual* is clear that courts should consider both internal and external communications matters. The *Manual* specifically concentrates on two aspects of communication: communication technology and the development of contact lists of key personnel.

Backup communications The *Manual* calls for providing key personnel with backup communications equipment, such as cellular phones, handheld radios, and voice-over-Internet protocol (VoIP) telephones. However, as the September 11 attacks showed, these technologies have particular shortcomings, so each court should consider the possible ways that these systems could fail in an emergency. For example, telephone service in downtown Manhattan was disrupted because of the loss of telephone switching equipment in and near the World Trade Center site. Loss of landline telephones caused many people to switch to cell phones, but this technology often failed both because critical cell antennae were lost when the towers collapsed, and because of the general overload of the cell phone network as the emergency unfolded.

In general, one cannot rely on cell phones as the sole backup communications system. Radios are one additional option; they are not based on the local towers used by cell phones, so they do not depend on the towers or their interconnections to the telecommunications system. However, emergency managers need to be aware that signal range and power problems may also arise, radio traffic can become congested in emergencies, and many radios may not be able to communicate with local first responders. The OCA has addressed this by acquiring radios that allow communications with the FDNY and the state police.

VoIP is a very promising technology for containing telecommunications costs. Unlike regular telephone systems, which route calls through the standard phone network, VoIP calls route phone calls through the Internet by changing analog voice signals into digital data packets that can be sent through the Internet Protocol (IP) network. These signals are then converted to analog signals near the receiver's location, and routed back into the telephone network. The advantage to VoIP is that it is often less expensive than the regular phone system, and the system may be more robust because of the redundant design of the Internet. However, VoIP is more likely to fail during power outages, which disable all data network elements such as routers, switches, and servers. VoIP phones were

unavailable during the August 2003 blackouts, even while some regular land-line phones worked, because an area's or building's internet and regular telephone systems are often on different power circuits.

Employee call-in system Such systems allow employees to call in and get the latest information about their court's status, since statewide toll-free numbers may not have the capacity to disseminate information on local courts. Using local numbers also allows for specific information to be conveyed to those in local areas: clearly, the information needed by downstate and New York City court employees in the immediate aftermath of September 11 was different than the information needed by personnel in upstate or western New York.

Data systems security The *Manual* requires that local courts implement the CourtNet security policy. Every jurisdiction should have in place systems and protocols to protect access to networked data systems, particularly if buildings are to be evacuated. Protocols also should be developed to respond to "hacker" attacks on court systems. These attacks can range from the actions of individuals who simply hack networks as a form of entertainment, to more purposeful attacks that aim to shut down systems and disrupt the nation's information infrastructure. A terrorist attack on physical targets will have a greater influence on connectivity than on data security. Of course, data backups are essential for business continuity if the primary work site's computers are damaged, destroyed, or inaccessible after any natural or humanly caused disaster.

Contact lists Contact lists, described above, should be distributed to appropriate personnel. All contact lists should include landline, cell phone, and pager numbers. All numbers are necessary because, in an emergency, at least one of these systems may fail.

The plan requires the listing of key management personnel, including administrative judges, the court's public safety officials, key communications and technology officers, and first responders, among others. A key feature of the list, however, should be vendors of critical services and equipment. During the days and weeks following the attacks, public and private organizations learned the value of expert assistance in regaining control over key systems. In particular, Verizon and Consolidated Edison were praised for their efforts to return telecommunications and power systems to functionality, if not full normalcy. Of course, these lists should be kept in multiple places, including at home or other alternate sites, not just at the workplace.

Plan for Continuity of Operations

The NCSC's Best Practices Institute lists continuity of operations, also known as business continuity, as a separate planning category. This is useful, because continuity of operations plans (COOPs) are key parts of court management that should be implemented as a stand-alone element of emergency planning,

However, as this discussion shows, business continuity planning and management also suffuses all aspects of court management.

The reasons for this overlap are obvious: business continuity planning is critical to an organization seeking to recover quickly from an emergency and to continue normal functions. Continuity of operations is an important aspect of management in all levels of government (Federal Emergency Management Agency 1999; Peterson 2003a; Peterson 2003b; Verton 2002), including the judiciary (Peterson 2003c) and the private sector. It is particularly relevant to large firms in sectors such as finance, which learned years ago that a COOP is important when disaster threatens to slow or entirely halt business. However, this interest in and implementation of business continuity planning and operations in the private sector is uneven, as firms confront the same resistance, uncertainties, and resource constraints as in the public sector (Harris 2003; Kotheimer and Coffin 2003; Stahl 2001).

The emergency plan is an important part of a COOP because it creates the conditions for an orderly response to a disaster, resulting in a more orderly recovery. The *Manual* requires that New York City courts file their COOP with the Deputy Chief Administrative Judge (DCAJ) for the New York City Courts and the Chief of Public Safety. The activation of a COOP must be coordinated among all these actors because of the possibility that the court's work may have to move to a predetermined alternative work site. Elements of the model COOP enunciated in the *Manual* include the following.

Coordination of response Uncoordinated responses can be at best inefficient and at worst dangerous. The *Manual* clearly states that the DCAJ for the New York City Courts must be consulted before actions are taken, and that the DCAJ will consult with the Chief Administrator of the Courts and the Chief of the Department of Public Safety. This protocol ensures top management coordination without involving an undue number of managers.

Organizations outside the Unified Court System are also involved and are consulted as needed, depending on the nature and scope of the problem. Emergencies can involve the movement of prisoners under the Department of Correctional Services, and major emergencies will by their very nature involve the Police and Fire Departments.

Establishment of clear decision making authority A clear line of succession of authority is contained in the *Manual*, and each member of that chain of command is responsible for maintaining contact lists of their own staffs and the reporting structure for which they are responsible.

Planning for the use of alternative work sites Alternative work sites are specified well in advance of an emergency, and are identified as being suitable for various lengths of time, from one day to more than five days. The successful return

to operations is clearly related to the quality of pre-emergency planning for alternative work sites. In rural areas, this may be more challenging because alternative work sites may be several miles distant and are often in other counties. Regardless, the Department of Public Safety stresses the importance of such planning and requires that courts identify two alternative work sites. While some courts may deem this needlessly redundant, experience has shown that natural hazards, in particular, can affect broad areas, so distance from the usual court facility, while inconvenient, often ensures that an alternative work site is available.

Creation of a “drive-away kit.” A drive-away kit is a small package of important materials that can easily be taken from the facility to an assembly area or alternative work area. The kit contains the information that is needed to manage the emergency and recovery operations. The manual suggests that two such kits be available, one maintained in the office and one at home. Indeed, this is a sound principle for maintaining any such information, particularly if an emergency occurs outside business hours. Among the items that may be included in the kit, the *Manual* lists forms, contact lists, facility profiles prepared under the *Manual*, a laptop computer with software, backup databases, and the like. Given the state of information technology, nearly all of this information can be digitized and placed on a laptop computer, but if a court chooses this method it should still have key information on paper, in case of computer failure or a power failure that makes it impossible to charge the computer’s batteries. In any case, the kit should be compact, portable, easily found, and quickly retrievable. Moreover, the kit must be updated continually in order to make it a useful recovery tool. Failing to do so may render the drive-away kit worse than useless, as outdated or inaccurate information could place employees’ and first responders’ lives at risk while providing little useful information for post-disaster management.

Recovery and restoration Traditionally, recovery is often thought of as a facilities question: are the court house and its related infrastructure (phone, data, power, and the like) safe and sufficient for the restoration of normal business? Clearly, this is an important question. After the September 11 attacks, court facilities in lower Manhattan had to be concerned with these and other considerations, including public health matters and the structural soundness of their facilities. This latter consideration is often a major part of recovery after natural disasters, as experienced by the North Dakota courts after the 1997 floods (Pedeliski 1998) and by the U.S. Court of Appeals for the Ninth Circuit in San Francisco, which was displaced for nearly a year after the 1989 Loma Prieta earthquake (Wasby 1998a).

If people cannot return to the original court building to work, the court will need access to data and records upon its relocation to an alternative work site. This means that any alternative work site must have ample power, data, and

phone systems. There may well be ways to overcome shortcomings in any one of those areas; for example, a facility with few phones but good data networks can be equipped with VoIP phones, as was done following the September 11 attacks (Lippman [2002],11–12; Root 2002, 11). Facilities with good phones but poor data access can sometimes turn to other agencies for assistance, or work with the private sector to ensure network access via TV cable systems, wireless networking, or satellite.

None of these measures, however, would be worthwhile if the networked data are unavailable. Numerous experiences with natural and other disasters (on fires, see Lewis 2000) suggest that the courts' data should be maintained not just in one site but in at least one backup site as well, in an area somewhat distant from the main facility. These can be either "hot" backup sites, which would make data immediately available, or "cold" sites, at which restoring access might take some time, but which cost less than hot backup sites. For example, New York's Ninth Judicial District maintains two hot backup sites in Westchester County and one outside of Westchester.

Considerable experience with these matters has been amassed in the private sector, and this experience was successfully employed by major financial institutions, including banks, brokerages, and stock exchanges, after September 11. Since then, the bar has become interested in its own business continuity planning, in large part because many of its members found that their records were destroyed in the fire and collapse of the World Trade Center. Where records could not be accessed because they were destroyed or inaccessible in the frozen zone, the New York courts were able to aid attorneys by providing copies of materials already maintained in the courts' systems. This assistance was helpful to the attorneys but also, more to the point, made it possible for the courts to avoid issuing blanket postponements of cases, which would have eventually led to further case backlogs. As it turned out, postponements were handled on a case-by-case basis, which significantly reduced the future backlog and preserved fundamental rights (Kaye 2002; *The Metropolitan Corporate Counsel* 2002).

Emotional costs of disaster Finally, it is important that managers consider the emotional toll that disasters can take on staff. Counseling and other support services should be made available to employees, either through regular employee assistance programs or through special programs that respond to particular emergencies. Time off should be allowed to staff who were victims of the event, whose loved ones were victimized, or who need time to heal from the trauma that these events can generate. Staff effectiveness and productivity can often suffer if emotional problems are left unacknowledged and untreated; conversely, compassionate treatment of employees yields increased performance and loyalty to the organization.

Get a Seat at the Table

The Best Practices Institute at the NCSC notes that courts should “make sure that the court or court system has a representative present in city, county, or state emergency management meetings.” This recommendation is a result of several years’ experience with interactions between courts and emergency management agencies, which oftentimes have been unsuccessful because neither the courts nor the emergency management community perceived each other’s missions and needs.

In the wake of the September 11 terrorist attacks, the courts in New York City have had a seat at the table by becoming integrated with planning and preparation activities led by the NYC OEM. Indeed, the New York courts have a full-time court officer assigned to the OEM, allowing for better training and information sharing. Other jurisdictions have also developed relationships with emergency management agencies to respond to their most likely emergency management problems. The NCSC notes that both the District Court for the Northern District of Virginia and the Florida state courts have found emergency officials to be particularly helpful in integrating their emergency planning efforts. There is little reason to believe that other jurisdictions would encounter resistance to court participation in planning and drilling, since the emergency management agencies’ missions are inherently compatible with the courts’ goals in protecting lives and restoring operations.

Develop a Plan to Communicate Internally

This seemingly simple aspect of emergency management requires consistent managerial commitment to both developing protocols for “maintaining and constantly updating contact lists...and ensuring that they will be available to all who need them during an emergency” (Root 2002). As noted above, the *Manual* requires such contact lists.

This element of emergency planning has been made more challenging by the proliferation of communications technologies that allow supervisors to communicate with their staffs. Faxes, cell phones, pagers, computers, and other devices have supplemented regular telephones. While maintaining contact information for all these communications modes may be time consuming, these systems also provide a level of redundancy that might improve the probability of messages reaching recipients, particularly when at least one of these modes of communication has failed.

Any internal communication plan needs to take into account what will be communicated and to whom. The former category includes information such as court closing and opening information, instructions on whether or how to work from home, instructions on reporting to alternative work sites, and the like. The decision about whether to post this information on a web site, or to make it available via a call-in phone number, will hinge on how important it is for each individual to receive these messages, and the sensitivity of the information being communicated. More timely communication may be unable to wait until a staff member is able to log in or call in. However, not all staff members will need the same information or the most critical, time-sensitive information. Planning must

balance the costs of information dissemination against the need for information to be quickly communicated and immediately acted upon (Root 2002, 25).

Develop a Plan to Communicate Externally

Because the courts are a vitally important government and social institution, emergency managers must be prepared to communicate key information to the public and to those having business with the courts; in public management terms, the task is to communicate with the various “stakeholders” in the process, such as the general public, the bar, judges, witnesses, jurors, or anyone with business in the court house. Each stakeholder group requires a different communication strategy. Most members of the general public, for example, do not have an ongoing relationship with the courts, and therefore must be reached through the mass media. The court’s chief information officer or equivalent should be prepared to provide the mass media with information about court closings, alternative locations, changes in hours, and the like.

Stakeholder groups with an established relationship with the court may be more easily identified, and channels of communication more easily opened and maintained. Attorneys, for example, can be notified of issues relating to practice through the courts and in conjunction with the local bar association. Attorneys, in turn, will notify litigants of changes in their cases’ status and schedule. The specialized media serving the bar are particularly important channels for disseminating information on the courts’ status, changes in court procedures, and other information that helped the bar understand the courts’ efforts to remain in business. After the September 11 attacks, *New York Law Journal*, a daily newspaper, was central to this information dissemination effort.

Jurors are a particularly important group with which open communication must be maintained. During the September 11 attacks, impaneled and potential jurors made extraordinary efforts to appear at court houses to discharge their duties (Root 2002, 3). This tendency may reflect the belief, deeply held on the part of most Americans, that the jury system is a pillar of American civil society. Given jurors’ efforts in this regard, it is important that courts quickly and efficiently let jurors and potential jurors know whether their service will be required, when they may return to service, and where they should go if an alternate court site is established.

The needs of witnesses must also be addressed in a manner similar to communication with jurors. Witnesses will seek information about whether the court is open on a given day, and if not, when their appearance in court will be required. Other stakeholders, such as the family and friends of defendants or victims in criminal case, or of the contesting parties in civil matters, will also need to know when the courts will hear their case. Of course, this suggests that a major stakeholder in the reopening of the courts is the public at large, some of whom come to court actively interested in particular matters. For the most part, the public wants to know that its courts are opening, functioning, and open to 25

all comers, as part of the open and transparent system of justice on which the nation’s democratic institutions depend.

Don’t Let the Reality of Limited Resources Prevent Planning

A common feature of many organizations is the belief that the organization’s resources are insufficient to allow for effective emergency planning and, ultimately, implementation of the plan when it is required. Resource issues arose after the September 11 attacks, which both highlighted the need for improved security while simultaneously severely damaging the New York economy. This, in turn, led to substantial revenue shortfalls and, ultimately, an “austere” court budget. But the courts in New York were able to capitalize on existing resources to improve security. The courts already had a Chief of Security, later titled the Chief of Public Safety to more accurately reflect that position’s responsibilities. The chief commands the nation’s largest body of court officers who could be mobilized, by using overtime and other methods, to provide security. Many court officials both in New York and elsewhere have noted that resources can be leveraged by working with other agencies with common interests in emergency management and business continuity. In New York, such agencies include the NYC OEM, SEMO, NYPD, FDNY, and FEMA. In particular, the OCA has worked with NYC OEM and SEMO to develop plans for the courts in various judicial districts in New York City and outside the city, respectively.

As noted earlier in this report, no organization can afford to do everything to prepare for, prevent, or respond to every threat. But many of the activities described in this report—creating and practicing emergency plans and evacuation drills, creating a driveaway kit, developing phone lists, determining assembly areas and alternative work areas—are relatively low-cost measures that are contained within the broader duties of any manager. Moreover, serious efforts to improve preparedness and security can help courts arguing for state or federal aid to obtain additional equipment and support needed to effectively protect their facilities against the most likely threats.

Conclusion: Progress and Post-September 11 Challenges

It is well known that the courts constitute one of the three independent branches of government into which our national and state governments are structured. Their mission²⁶ is derived from the state and federal constitutions, as enacted by relevant statutes. The constitutions are themselves expressions of the central tenet of our democratic system of government: that the people are sovereign, and that government exists for the benefit of the public.

For the founders’ vision of our governmental system to work, the three branches of government must be equal branches—not entirely separate, to be sure, but equally able to discharge their responsibilities under the constitution and laws. For the judiciary to be able to discharge its duties, it must maintain independence on two levels. Adjudicatory independence is the most familiar form, in which the decisions of the court are made not as the result of pressure from the other branches, but on the basis of law. Administrative independence,

however, is equally important: the courts must have the ability to manage their own business. Certainly, the courts can and should seek help where possible from other agencies, particularly in the executive branch. This report stresses the importance of working with all branches and multiple levels of government to maximize the capacity of the courts to continue operations and return to normal business after a disaster. But, in order to maintain the proper constitutional separation of powers, court leaders must be ultimately responsible for the courts' management and operation. In simplest terms, court leaders must lead the courts' planning for and response to disasters, lest control over key administrative functions be yielded, even temporarily, to another branch of government. The relationship between courts and other actors in emergency planning should be collaborative and cooperative, but not subordinate.

The September 11 attacks revealed to all elements of society and government that new and much more dangerous threats to our system of government and our way of life exist, and that the damage that terrorists can do could substantially diminish both the adjudicatory and the administrative independence of the courts. These new threats will continue to challenge all managers in the years to come. Specifically, court managers must consider a range of complex issues, from the physical design of court houses to the structure of data and communications systems that balance public access against security. Planning and training needs will become more urgent and more specialized. And, as time passes since the September 11 attacks, perceptions of the threat—and the need to be ready for such threats—may fade as other needs become more pressing.

The experience gained on September 11, 2001, and in the following months has been used to good effect by the judiciary in New York and other states. Training and planning efforts have substantially improved both qualitatively and quantitatively. Court staff are now more familiar with emergency procedures than ever before. The August 2003 power blackouts, while remarkably disruptive and even frightening in these tense times, provided a natural test of the new procedures which suggests that the substantial improvement in planning and drilling is paying off, at least in New York (Lin and Perrotta 2003). Evacuations from court facilities during the blackout were orderly, and the management of the emergency was widely viewed as exemplary. Of course, a blackout is different than a terrorist attack, but the lessons learned from all kinds of emergencies have been and will continue to be incorporated into sound planning and management. As long as senior court management remains committed to excellent planning, practice, and evaluation, each new emergency will add to the managers' skills and competence, and will build capacity for addressing the truly large emergencies that may confront the courts in the years to come.

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