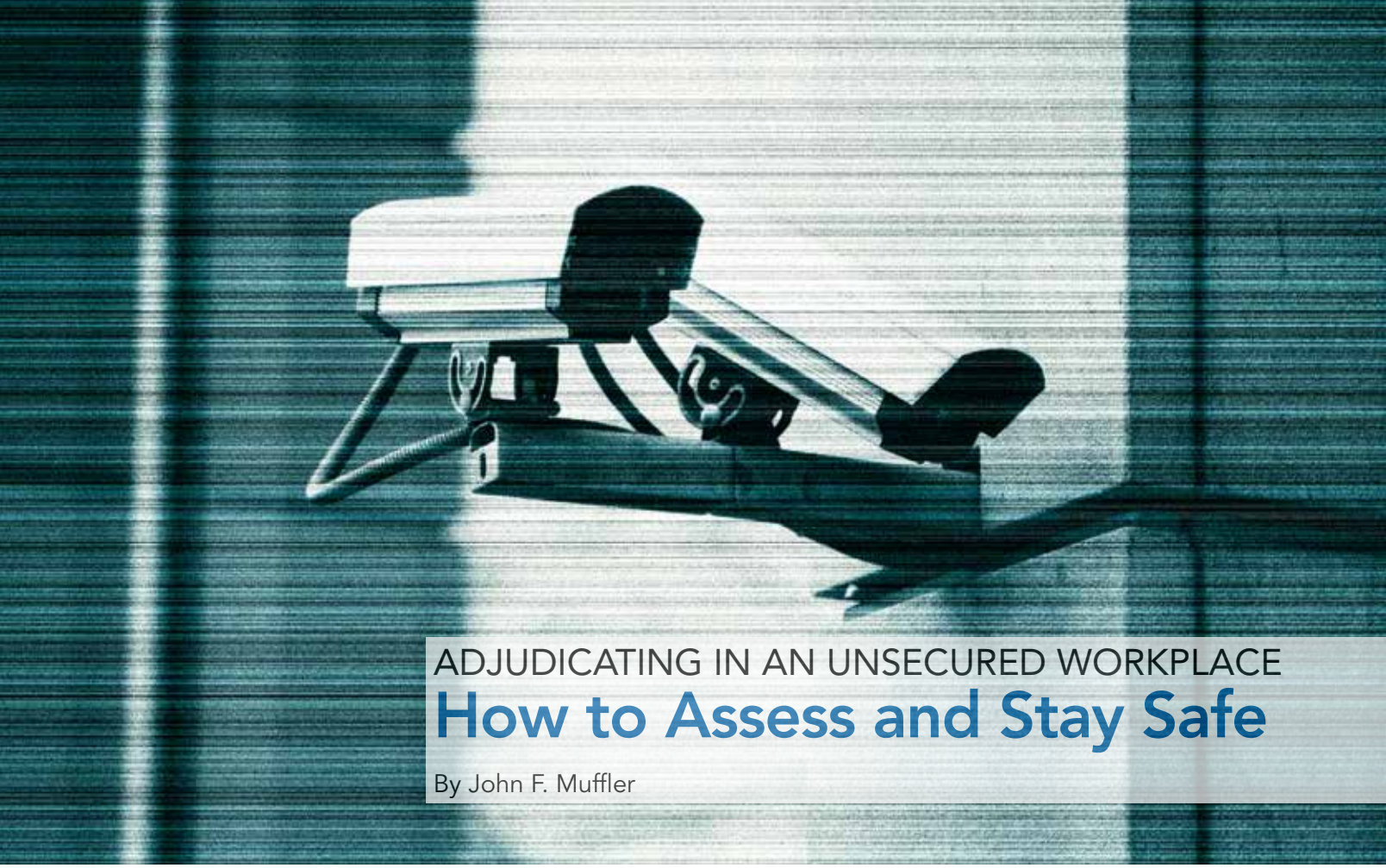

ADJUDICATING IN AN UNSECURED WORKPLACE

How to Assess and Stay Safe

By John F. Muffler

"I don't have any security. I use old phone books stacked under my desk to protect me in case of a shooting in the hearing room."

—Tribal judge at an *Administrative Law: Fair Hearing* class

I am not usually left with a loss of words when I hear personal stories from judges, but that quote was one of those times, and it captures a workplace reality for many of you. This is a far cry from the judge who works in a Fort Knox–type courthouse and hears cases behind a ballistically reinforced bench—a bench, mind you, situated on the other side of a robust security apparatus consisting of physical security screening, cameras, armed guards, duress alarms, safety equipment, and well-rehearsed emergency plans. In this time of threatening, intimidating, and inappropriate behaviors—internal and external workplace threats and active shooters—your legal decision may (and to many of you already has) put you in at-risk situations.

There are many judicial officers hearing cases without any good measure of security in place and left to go it alone where a 911 call is the only security and a response hours away. That is the reality for many traveling, administrative law, justice of the peace, tribal, or rural judges; the same can be said of counsel working with individuals in meeting rooms that become confrontational. This is a vexing and stressful set of circumstances brought to my attention while teaching safety and security courses across the country. I am often asked, "What should I do?"

At judicial security and safety classes nationwide, I like to pose the question, "What can you do to mitigate potentially threatening hearing room behavior?" Class participants are encouraged to share their personal experiences with one another as I guide a healthy discussion. The dialogue then morphs into, "What other measures can you take to reduce your risk?"

I want to share with you their personal experiences, as well as my own, including some professional recommendations.

Listen to Your Instincts

Intuition is an innate, life-saving part of one's DNA. Having the benefit of security is not relevant here as physical security measures can give one a false sense of security, such as, that everything is safe in a secured area. Your intuition will give you the first early warning sign that something is wrong.

Humans tend to silence their inner voice, says Dr. James McGee, author of numerous publications on violent behavior and an expert on threat assessment. We often see people subject themselves and family members to likely violent behavior; for example, the parents who are suspicious of their babysitter and install hidden cameras just to find, upon reviewing those images, that, yes, just what they thought—their child was being abused. Instincts ignored, that act can never be undone. However, there are great security benefits for cameras in the home, and I would highly recommend internal and external placement of them along with the ability to access and manipulate them from your

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phone and digitally save. This technology has been very useful in thwarting criminal activity and in evidence collection.

Another good illustration of where we talk ourselves out of danger is when we get into an elevator—a soundproof metal box—with a complete stranger that gives us pause when, instinctively, that Mother Nature is saying, "Uh-oh, don't step in there." But time after time, we risk it and step in. As Mark Twain lamented, "Denial ain't just a river in Egypt." Do not deny yourself that inner voice—it is talking to you for a reason.

Be Actively Engaged

The parochial mentality of "if they are going to get me, they will get me" will only get you, and your loved ones, hurt. You have to be an active participant in your own safety and security—in and out of court. This is critical in such a unique workplace as a courthouse or hearing room. It is never recommended to rely solely on your bailiff or security provider—if you are lucky to have one. They may not be able to come get you during an emergency. Know where to go by yourself, participate in self-defense scenarios, fire drills, shelter-in-place, and active shooter exercises. In real-life emergencies, you are going to need to rely on your own muscle memory, not on someone else's.

Realistically, you are more likely to be physically assaulted due to the very nature of your position[1] and because you are approachable, according to Gavin de Becker's seminal research, as outlined in the book *Just 2 Seconds: Using Time and Space to Defeat Assassins*.[2] Your close proximity to emotional people, or pursuers generally, puts you in immediate harm's way. In these close-quarter situations, realize your duress alarm and other physical security equipment cannot protect you or stop an immediate threat. If you have security personnel, they can be positioned incorrectly, leaving you to fend for yourself until they get to you. Anticipate the threat, have a plan (please practice it), and act accordingly.

Workplace Violence Intervention

Threats in the judicial workplace do not come just from litigants, criminals, or those affected parties to a case. It is a workplace just like any other and subject to the same workplace violence episodes that have plagued our country. According to the U.S. Bureau of Labor Statistics, "every year, 2 million American workers report having been victims of workplace violence."[3] In 2014, about 16 percent of the 4,821 fatalities were attributed to work-related attacks.

The Honorable Chuck Weller, PhD, states in his dissertation that 90.5 percent of court violence is committed in court facilities (Swenson, 2010).[4] The 2013 National Center for State Courts' study *Status of Court Security in State Courts: A National Perspective* states many courts are ill-prepared and ill-trained to handle a security incident: 44.5 percent of courts said no court security training is provided, 40.4 percent did not know the last time they participated in an evacuation drill, 42.6 percent did not have active court security committees, and 43.6 percent stated that emergency preparedness training was not provided[5]—hence my constant worry of a false sense of security for judicial officers and court staff.

These tea leaves tell a very disturbing tale of a lack of emergency preparedness. As Daniil Davydoff, global security manager of AT-RISK International, wrote in his article *Rethinking the Intelligence Cycle for the Private Sector*, "Successful security risk management involves careful planning and preparedness rather than ad-hoc crisis response."[6] It is undeniable, looking at the above percentages, that a great many courts and personnel are unaware and ill-prepared to deal with a crisis in their workplace and will make up their response as they go—this is a very real life-safety concern.

For the private sector, this would certainly lead to lawsuits, lost revenue, and damage to the company brand. For public institutions like a courthouse, this can equate to the same but also a genuine threat to the rule of law. Proactive planning to mitigate this threat, according to Davydoff, "usually consists of six steps: planning and direction; collection; processing; analysis and production; dissemination; and evaluation and feedback."[7] Security personnel, building engineers, court administrators, and judicial leadership must work as a cohesive team long before "bang" happens.

Also, court employees suffer from the same panoply of stressors as any other workplace: relationship issues, poor performance evaluations, health, wellness, and/or financial problems, etc. But the court workplace risk is compounded by the very nature of what transpires within: bankruptcy, child custody, criminal, and civil proceedings. All of these risk factors intertwine within the walls of a courthouse.

With few exceptions, it was never my experience in my career with the U.S. Marshals to know of internal employee conflicts that may escalate and create a workplace violence issue. We were primarily focused on the external threat that targeted the institution, a judge, or a U.S. attorney, not an administrative employee who was being harassed, say, stemming from a domestic violence issue. Courts need to be proactive in this regard. A program that addresses workplace violence intervention such as hiring and firing, counseling assistance, reporting concerning behavior, and handling of joking or suicidal comments covers some areas that can help mitigate a court's risk to its employees, the visiting public, and the community it serves.

A typical courthouse is an environment with separate, or at least controlled, circulation for prisoners, public, and staff. The culture of that work environment would largely be known to those who work there, or come and go regularly, and that helps the overall security paradigm. With many judicial hearings taking place in rented office and hotel space, that familiarity and control are lost. This creates an unknown

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element for those hearing cases alone and in unfamiliar locations and is another reason to be actively involved in assessing your own safety. Traveling and administrative law judges are most susceptible to this unknown dynamic.

Assess Your Environment

Situational awareness is a crucial part of survival. The late Lt. Colonel Jeff Cooper, U.S.M.C., described levels of awareness in his "Color Codes."[8] If you are looking at your cell phone, you are unaware of your surroundings. This is known as being in Condition White. When you look around and are observant of your surroundings, you are at Condition Yellow. When your focus is heightened and you have a specific focal point, you are in Condition Orange. Conditions Yellow and Orange can save you from going into Condition Red: preparing to be, and perhaps being, in a harmful situation. Here, you are mentally prepared to protect yourself, be it fight or flight; you are aware of the potential conflict and thus could physically act if warranted.

In her book *When Heaven and Earth Changed Places*, Le Ly Hayslip states, ". . . lack of awareness breeds surprise, and surprise, panic. And panic is the enemy of survival."[9] While she speaks of survival instincts as a child in war-torn Vietnam, she speaks succinctly of being situationally aware to protect oneself from violence.

Because hearings are scheduled in advance, this makes your presence at a particular location, time, and place predictable.[10] Opposing parties, or those with whom you may be concerned, will know this and can use it to their advantage to intimidate or threaten you. However, there are ways to increase your safety in this type of scenario. Be especially mindful of your location as you approach the building and where you park. Because of the predictability, and therefore risk, protection professionals refer to the arrival and departure locations as the "red zone," as the color is synonymous with danger.

Arrive at the location early and conduct a walkthrough of the building and hearing room site. Find out if there are security guards or security monitoring and if you can use them. Locate and familiarize yourself with the emergency exits in case there is a potential need to vacate the room and/or building. These are all ideas brought to my attention and practiced by Labor Relations Adjudicator/Mediator Christy Yoshitomi during a security class at the National Judicial College (NJC).

> Your intuition will give you the first early warning sign that something is wrong.

All attackers, not just judicial, have predictable patterns and will operate out of view initially. But at some point, they must physically surveil prior to, and, of course, at the moment of, the attack. Your routines and patterns make you predictable, and if practicing good situational awareness, you can detect the pursuer's behavior to prevent an attack or an unwanted approach. For example, when Jefferson County, Ohio, Judge Joseph Bruzzese Jr. was shot walking down "Courthouse Alley" by Nathaniel Richmond, someone he knew from court proceedings, after parking his car in his dedicated parking spot, his colleague Judge Joseph Corabi told the Associated Press, "Everyone knows who parks there. That's why it's not an accident what happened."[11]

There are two constants to a daily routine: your departure (home) and arrival (work) point. Routines, mind you, can be deadly and often are exploited, just as it was in Jefferson County. To avoid the predictability that a routine can create, I recommend these techniques I used while protecting U.S. Supreme Court justices to threatened and high-profile government witnesses: Use simple techniques of route variation, changing time of arrival and departure, making random turns to see if being followed, and calling ahead to be met at the drop-off point. The call ahead is not a likely possibility when arriving home (although good lighting, landscaping, and a security system can lessen the risk) but something that can be practiced when arriving to a dedicated parking spot (not recommended unless the location is secured) with a simple five-minute call ahead to security. But it is at both of these locations that attacks are most successful and why being acutely aware of your surroundings can be life-saving.

The DIY Hearing Room

The "do it yourself" approach to hearing room security is tactically and strategically brilliant. Particularly where no security exists in a building, the arrangement of the hearing room can be critically important. Melissa G. Crowell, Deputy Director and Assistant Chief Administrative Law Judge, California Office of Administrative Hearings, puts herself in a position of advantage by rearranging furniture in the hearing room (before any parties arrive) so that she can be seated nearest the door and can be the first to exit in a potentially violent hearing room encounter. This low-cost–no-cost safety tactic is used often by many adjudicators. If the parties before you are between you and the exit, then you are blocked from exiting—unless under their terms. If possible, change this situation so you can control it. Also, create more space between yourself and parties by adding a counsel table or placing the parties at the far end of the only table you are using.

A subtle tactic that works for deputy sheriffs in a courtroom is having parties use chairs without wheels (it slows their movement toward you). Conversely, it is beneficial to be in a chair with wheels so when you want to push away and move, you can do so quickly. These strategies will

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give you time to move and enough distance from the assailant to escape the room and head to a hallway where you can be helped by others, or to escape to a safe area.

Mitigation Tools

As the Honorable Henry Hudson, Eastern District of Virginia and former Director of the U.S. Marshals, would always say, "There are winners and losers in court, but it's the ones that lose that you really have to look out for." Violence is always situational. Premeditated violence is both predictable and preventable. Pursuers and attackers oft show their hand before an attack, be it planned or spontaneous. These are known as pre-incident indicators, or leakage, as they foreshadow what may come and are recognizable if you are situationally aware (i.e., not in Condition White) and listening to your instincts. Like a simmering pot of water that will pop its lid at some point unless the heat is reduced, people on the pathway to violence will explode, too, unless something, or someone, intervenes while on this continuum.[12]

You don't have to be an expert in threat assessment to know something bad may happen. Have you ever called for a recess because you noticed someone getting agitated during a hearing? If you have, you conducted a threat assessment. It can be that simple.

Here are 12 great tools you also can use, shared by judicial offices during classes at NJC:

- Be courteous.
- Use active listening.
- Use empathetic comments.
- Put whatever physical distance is possible between you and litigants.
- Remove objects that can become weapons in the room (scissors, pens, letter openers).
- Know your escape plan/route.
- Train staff on an emergency plan.
- Pre-program your cell phone to 911 (or building security).
- Call for a recess if you notice an increase in tension.
- Work with local law enforcement regarding any concerns.
- Move the hearing to a secure location.
- Do not rule from the bench if you don't have to.

In Closing

Adjudicating cases without a security apparatus in place during hearings is no easy task. Work-related fears are commonplace among all judges, including judges with the benefit of a secure workplace or hearing room. But these fears are certainly an everyday, very real part of life in court and hearing rooms. Staying aware, enrolling in self-defense classes, listening and acting upon one's intuition, and taking consideration of your colleagues' mitigation techniques are but some ways to reduce your risk and fears while working and adjudicating cases in unsecured workplaces. ■

Endnotes

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