By Judge Lee Sinclair
and Timothy F. Fautsko

"Impossible! No way a weapon gets in this courtroom. Security checks every nook and cranny every day and we keep it locked when not in session. Our security is state of the art. You name it, we have it. Metal detectors, x-ray, closed circuit, well-trained staff—we have it all. All inmates are searched before entering the courtroom. Even law enforcement officers are screened and must be weapon free. So, a weapon in this courtroom—it's just not going to happen!"

Needless to say, the judge was irritated at the mere mention of a weapon in the courtroom. Considerable sums had been spent to beef up security. Policies and procedures had been crafted and implemented. The court took security seriously. Everything the judge said was correct. The security hardware was first rate. They had all the bells and whistles. The staff were well trained. Most other courts paled by comparison. At first blush the courthouse was an extraordinarily difficult place to infiltrate with a weapon. However, the judge was mistaken. A huge security breach existed. It was right in the courtroom. Even worse, it was directly in front of the judge: a weapon undetected and unseen. Yet the judge and security officers failed to see the danger.

Vast funds had been spent as state courts respond to the realities of violence in the courthouse. From magnetometers to x-ray machines to CCTV cameras, all the hardware and technology were in place. These expenditures were money well spent. These major-ticket items are essential cornerstones to a comprehensive security plan. However, such items are not the "be all and end all" for a safe court. The downside of the fancy hardware is an unrealistic belief that new technology equates with a safe and secure court. An overemphasis on technical security fixes ignores the vital role of the many small security measures that must complement the technology. Most of these small measures are no-cost, commonsense things. Frequently called "beer-budget" items, they are crucial to overall security. In fact, the majority of security incidents involve the failure of courts to implement the no-cost small beer-budget items. This article will address a few of these beer-budget items that can be put into place in a courthouse. Each beer-budget item is of no or little cost yet effective in increasing security. Each one is worthy of serious consideration as additions to an overall plan of court security.

So where in the courtroom was this clandestine weapon? How artfully had it been concealed? Perhaps it was a knife smuggled in by a lawyer? No, all lawyers were screened as they entered the courthouse. Perhaps it was a razor blade hidden by a court employee? No, they also were screened every day as they reported for work. Perhaps a stealth gun or a sword cane missed by screening? No, it was none of these. But, yes, it was right before the judge—a major breach of security with a beer-budget fix.

It was the defendant, standing unrestrained directly in front of the judge as he or she was required to do before a sentencing hearing—a human weapon directly aimed at the judge's face. A standing defendant is a direct and immediate threat not just to the judge but to everyone in the courtroom. A standing defendant presents an escape risk as well. A defendant standing at the podium or counsel table is a condition *red*. The defendant standing directly in front of the bench is a condition *double red*. The defendant standing at the bench unrestrained is a *recipe for disaster*. When allowed to stand, the defendant is a mechanized weapon, mobile in an instant, angry, not wanting to be incarcerated, desperate, with not much to lose, short on impulse control, and often mentally ill. Such a defendant, whether in or out of custody, can be ready to explode, a weapon cocked, aimed, and set to fire. The judge is directly in the sights, within arm's reach. One step, and the court reporter is a hostage. Two steps and the judge is a victim. This standing defendant represents as much a danger as any conventional weapon. Even worse, this weapon has a brain and often acts on impulse.

How can this be allowed to happen? To allow a defendant to stand is an obvious breach of security. Yet, daily in every jurisdiction, the judge's decree is "Will the defendant please rise." Standard protocol is to have the defendant rise. The defendant stands to be arraigned, stands to plead guilty, stands to hear a verdict, stands to be sentenced, and stands to address the court. Under the least threatening situation, the defendant stands at counsel table. In many courts, the defendant stands at the bench. To add to the danger, the defendant often stands without restraint right in the judge's face. The scenario is an invitation to an assault or an escape, or both.

So why are defendants still standing? It is tradition—a tradition designed to show respect for the court and for the rule of law. However, it needs to be reexamined in light of the violent potential consequences. In today's courts, it is a tradition without any logical rationale. The concept of showing respect is noble. However, the gravity of the risk overshadows any benefit that remotely exists.

The security risk is dramatically lessened just by keeping the defendant seated. A seated defendant has no security downside and the upside is huge. But once standing, the defendant has two major tools: leg strength and mobility. Standing, the defendant has all his or her leg strength at the ready. Seated, the defendant has far less power. Standing, a defendant is instantaneously mobile.

Seated, in order to run the defendant must telegraph the move by standing. Standing, the defendant has four immediate weapons: two arms and two legs. Seated, the legs are neutralized. It is such a commonsense, no-cost beer-budget fix that dramatically aids courtroom security. But old traditions die hard.

Some judges are bound and determined to have that "showing of respect." They feel they have adequate security officers to avoid a problem. If the defendant acts, security officers will pounce. But why risk it? Why put deputies or bailiffs at risk when there is no need? A seated defendant is a controllable defendant, with extended reaction time and minimized strength. The bottom line is *keep the defendant seated*. Not only does it lower the number of incidents, but it reduces the seriousness of any incident.

Two concepts explain why this suggestion is effective. The first is physics. The second is attitude. The most powerful muscles are in the upper legs. Think of a baseball player. The power of the home run comes from the legs. The knockout punch of the boxer emanates from the legs. A seated person has no use of this leg power. Only when almost standing does the power of the legs kick into gear. While still seated or starting to stand, the defendant can be controlled and rolled to the floor. In addition, if the defendant even starts to rise, a security officer can react while the strength of the defendant is still minimized. These few extra seconds can be a life saver. One rule is certain. Most courtroom incidents take place unbelievably quickly.[1] Extra seconds mean everything in avoiding a calamity. It is the difference between a gun that must be loaded and a gun that is loaded, cocked, and aimed. However, the defendant's chair cannot be used as a weapon. One cannot throw what holds one's own rear end.

Not only is the seated defendant more controllable, seated defendants just act out less often. It is all about attitude and reaction, not just reaction. When angered, agitated, or scared, the basic human reaction, tied to the fight-or-flight response, is to stand. Once a person is standing, the impulse is to fight or run, escalating the response. So when an angry, agitated, or scared defendant is told to stand, the fight-or-flight response goes off the chart. When seated, the defendant is just not as angry, agitated, or scared and the anger level rises more slowly. The act of staying seated is a defusing mechanism. The victim is just too far away. The door out of the courtroom just looks farther when seated. Even if the defendant acts out, time and control now favor security. This one simple beer-budget technique dramatically improves overall security.

Keeping the defendant seated is a great first step, but it needs a further consideration. Hand in hand with the defendant remaining seated is the use of proper restraints on defendants who are in custody. The policy is straightforward. Unless prohibited by local or state law, an in-custody defendant should be properly restrained in the courtroom at all times when a jury is not present. Proper restraints mean handcuffs, leg restraints, and belly chains. Handcuffs alone is never the best policy and is not recommended because it allows too much movement, making escape possible. At a minimum, hands should be cuffed behind the back. Using only front cuffing is a dangerous practice. Virtually every court appearance should be held with an in-custody defendant restrained. If the defendant needs to write or take notes, simple modifications can be made with the restraint still in place. Even defendants who are not originally in custody should be considered for restraint after a guilty verdict has been accepted. The procedure is to finalize the verdict, revoke any bond, take into custody, and take a break. During the break, additional restraints can be secured. It is a fact of life that it is much easier to secure the defendant before the judge says 10 years! The staying-seated rule never alters even with a restrained defendant. The best practice, unless prohibited, is that in-custody defendants are always seated and properly restrained.

Beer-budget security extends to the courtroom itself. There are weapons of opportunity in every courtroom. A weapon of opportunity is any item that, although not designed as a weapon, can be used as one. Every weapon of opportunity needs to be discovered, secured, or removed. Eliminating these weapons is a simple beer-budget no-cost procedure that takes about an hour. Court staff and security officers walk the courtroom with the mindset of "What can be a weapon?" Think weapons of opportunity. What could be thrown? What could be used to choke? What could be used to stab or cut? Every courtroom has at least a few of these items. Some courtrooms are filled with them. A few examples are full-size metal microphones and metal stands, microphone and electrical cords, anything made of glass including glasses and pitchers, scissors, staplers, letter openers, briefcases, lightweight lecterns, easels, fire extinguishers, name plates, gavels, vases, paperweights, and flagpoles, especially with points.

Two seemingly innocuous weapons of opportunity are paper clips and writing instruments that are hard and encased. A typical ball point pen is a potential lethal weapon. Soft, flexible pens easily found on the Internet cannot be used to stab someone. Defendants should always use these security safety pens. Counsel should

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account for their pens at all times, and security officers should monitor to be sure no pens are left behind or unaccounted for. Paper clips and even staples are potential weapons. Often they are used by defendants to injure themselves by slitting wrists or swallowing. Reading materials provided to the defendant should have these items removed and should be monitored by security officers. This precaution seems trivial until the defendant slits a wrist in front of the jury.

The next beer-budget consideration is the defensive use of furniture. The defensive placement of furniture costs nothing except the time to study the courtroom and some physical exertion to arrange the courtroom. This same procedure is a wise practice for the private chambers of the judge. The layout of the courtroom and chambers and the placement of furniture and people can significantly increase safety. The defensive use of furniture also reduces the risk of escape. The technique is to place heavy items in strategic positions to provide distance and obstructions between the defendant and the bench, or the defendant and spectators, or even the spectators and the bench. As an example, any "clear run" at the judge by a defendant or a spectator should be impeded. Defensive furniture can include anything that cannot be thrown, such as desks, tables, benches, heavy lecterns, and railings. The goal is to obstruct and slow an assailant or escapee that provides extra reaction time for court staff and security officers to react. The correct placement of furniture provides a psychological hindrance as well. A spectator is less likely to rush a defendant if a railing separates them. The rail is not only a physical obstacle, but it also defuses the urge to rush the bench and makes the space on the other side less inviting.

Similar beer-budget security techniques deal with placement of people and objects. The defendant should never be seated in close proximity to the jury, the court reporter, or an exit. In a small courtroom, use tables as a railing, if physical space is limited. Security officers must be positioned in close proximity to the defendant with no obstructions before them. Exit strategies should be considered for the judge, jury, court reporter, and court staff. All outside windows need to be assessed as to whether they present lines of fire from outside the courtroom. Simply drawing or properly tilting window blinds during a court session can increase the safety of everyone. All of these issues apply equally to the judge's private chambers.

Chairs in a courtroom can become a security nightmare. A chair is perhaps the number one weapon used by spectators and often by defendants. When feasible, all chairs need to be secured to the floor, including those for spectators. The use of benches is much preferred because they are heavier and more difficult to throw. An even better option is to secure all benches and chairs in groups with handcuff ties. The ties are placed on the arms and legs, making each group too heavy and awkward to throw. Handcuff ties are much superior to cable ties, which snap easily. While not foolproof, heavier handcuff ties take time and effort to break, providing crucial seconds for security officers to respond.

Railings are a major component in planning the defensive use of furniture. Every courtroom needs a railing between the spectators and the participants in the well. This line of demarcation is vital both as a physical barrier as well as a psychological barrier. Some courtrooms have no built-in railing. High-profile trials could use a second backup railing as an extra border. Railings are simple to create, such as a line of chairs placed in the first row of the gallery. The chairs are handcuff tied together into a rail. A sign is posted that no seating is permitted in this first row, and a railing has been created at virtually no cost.

While spectators are often a security afterthought, spectators are the primary cause of a large percentage of in-court incidents. In dealing with spectators, nothing, but nothing, is a substitute for adequate well-placed security officers. Simply placing "badges" in court is the only real solution. The best practice is always to err on the side of caution. If you have a volatile defendant or crowd in a criminal or high-visibility trial or hearing, wait until you can get adequate security. Do not chance it. There is no margin for error. Take a continuance and call in enough security. Again, nothing replaces adequate forces to control spectators like the sight of uniforms.

Once adequate security is in place, there is another great beer-budget tool that enhances spectator control. It is the decorum order, which is a detailed set of rules and requirements for conduct controlling every aspect of courtroom proceedings. It is designed to put everyone on advance notice of what is expected prior to the start of the proceedings. The order can address everything from seating and court hours, to conduct of lawyers and the press, and in particular the conduct of spectators. It can be customized for any specific need. For attendance by antagonistic families, the order sets up assigned seating areas in the courtroom. It also establishes a no-contact rule anywhere on court property. The order may control when sides may exit and enter the courthouse and which doors they may use. The defendant and the public have a right to an open trial. However, the court has wide discretion to set the rules and to control the proceedings. Open and accessible means open and accessible for those who follow the rules.

Prior to the commencement of the proceedings, the decorum order is filed with the clerk of court and posted in an obvious area like the entry door to the courtroom. It is even better to hand out and recycle copies to spectators prior to opening court. Court staff should inform spectators they are to read the order and return it prior to the opening of court. Doing so has amazing results because the process looks both important and serious and sets the tone for the judge to control the proceedings. Immediately on taking the bench, the first item of business is for the judge to cover each aspect of the order. At each recess on the record, the judge will remind all in attendance that the order is in place. At the conclusion of the initial review, the judge takes a moment to drive home the order:

> This is a very important matter. It is important to each of you or you would not be here. My job is to provide a fair trial to everyone involved: a fair trial to the defendant, a fair

trial to any victim, a fair trial to all. The law requires me to do these things. I will do my job fairly, which is what each of you wants me to do. The orders I have just reviewed with you are all designed so we will have a fair trial. As the judge I want each of you to be able to watch this matter. You are all welcome here. However, to stay in this courtroom, you must follow all of the orders and rules I have provided. All of these rules and orders will be in effect until this matter is completely over and finished. The rules and orders apply during all breaks and at any time you are on the courthouse property. The rules and orders apply to each of you and to all who enter this court. The rules will be strictly enforced and will be equally applied to every person. If you violate any of the rules or orders or if your behavior is not proper in any way, you will be removed from the courthouse property until this matter is completely finished. You may also be subject to arrest and to contempt of court or to criminal charges. Let me, so there is no doubt, make one thing clear. There will be no second bites at the apple. There will be no second chances. If you are removed, you will be out period. If your emotions start to bother you, leave at once until you can calm down and we take a break. I do not want to remove any of you, but I will do my job. Again I repeat, there will be no second bites at the apple.

Topics for the decorum order are endless. Certain areas are common for consideration.[2]

- Prohibiting all talking during sessions; no gestures, sighs, head nods, comments, and hand gestures.
- Prohibiting any conduct or contact with witnesses, jurors, or being in proximity of jurors and witnesses.
- Setting session times, requiring being seated before session begins, no reentry until court breaks, no late entry, and no standing unless leaving.
- Banning cell phones, cameras, recording devices, computers, etc.; provide adequate press access but control if needed, such as one pooled video feed.
- Setting dress codes to prohibit gang colors, shirts with photos, and message shirts or any other inappropriate dress. For instance, require shirts with collars and no pictures or print on the shirt.
- Establishing required seating areas and requiring sides to remain apart and to have no contact of any type within the entire courthouse and on the property. Design the orders to meet the facts.
- Always include the explicit "no second bite at the apple" language. Explicitly state that any violations will be handled swiftly and decisively. The minimum penalty needs to be total expulsion from the property for the balance of the proceedings.

The properly crafted decorum order, coupled with adequate security, acts as a huge deterrent to a spectator incident. Everyone is on his or her best behavior because nobody wants to be removed. Violations become the exception, not the rule. Dealing with problem conduct is straightforward. Have a short rope and a quick trigger. The first violator is ordered out of court in a very visible act by the judge. Make an example of that person. Be stern. It is extremely rare to ever remove a second person. Nobody wants to be the next to go!

This article has highlighted just a sample of the beer-budget techniques in court that add to and supplement a well-rounded security plan. The big-ticket hardware items do matter, but they alone do not make for a safe court. The little things may matter more. Astute judges know that good court security matters. They never think it will not happen here. The National Center for State Courts recently published a landmark study involving courts that had experienced tragic violent incidents.[3] The courts that lived through these events had a uniform and resounding message to every court in the country: "Don't think these types of incidents won't happen in your courthouse. It's not a matter of IF. It's a matter of WHEN!" This is sage advice from those who felt it would never happen to them. Heed their warning. Be safe. ■

Endnotes

1. Timothy F. Fautsko & Steven V. Berson, Nat'l Ctr. for State Courts, Courthouse Violence in 2010–2012: Lessons Learned 3 (Lesson One).

2. V. Lee Sinclair, Courthouse Security Handbook (Nat'l Judicial Coll. 2003).

3. Fautsko & Berson, *supra* note 1.