

An Ebola Continuity of Operations Plan and the Lessons Learned when a Judiciary in America's Hot Zone Operationalized it for COVID-19



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ABSTRACT

The judiciary has long recognized the need to plan for emergencies to ensure that the court can sustain its operation and serve the public when a crisis occurs. This study evaluated the continuity of operations plan (COOP) of a Northeast court system in the US that was developed during the Ebola epidemic of 2014 and later administered in response to the Coronavirus Disease of 2019 (COVID-19). Court management literature together with contextual healthcare articles were reviewed so that links could be drawn across these research domains to show how the court's operations are affected by a pandemic. Topical trends and capabilities were discovered by the judiciary as it sought to operate various components of the court during the COVID-19 shutdown. A cross-sectional design was employed to collect and analyze the data. Observational data that included meeting notes and minutes together with the resultant policy and procedure were drawn from the selected court during the Ebola epidemic. These annotations were later juxtaposed with information provided by judges and administrators of the select court while the plan was operationalized during COVID-19. Secondary data was analyzed using measurements of central tendency and depicted across a series of distribution charts. The findings brought to bear the disparities that exist between the theory and praxis of the COOP paradigm particularly when such planning efforts are applied specifically to pandemics because it did not fully account for the differences that infectious disease outbreaks have on the system. Conclusions and recommendations centered around the four constructs of communication, collaboration, information technology and infrastructure.

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1. BACKGROUND

This paper provides an historical account of the impact that the 2014 Ebola virus and 2020 COVID-19 pandemic had on the New Jersey (NJ)/New York (NY) metropolitan area of the US and how the judiciary at the epicenter of the crisis responded vis-à-vis its continuity of operations plan (COOP). An overview of the distribution and determinants of the viruses is discussed showing how a crucial feature resulted in vastly different outcomes with respect to prevalence and mortality rates. A conceptual framework of the court's critical functions was developed in response to the Ebola Virus Disease (EVD) outbreak that included essential personnel, materials and alternate locations to plan for circumstances that the judiciary believed at the time was a momentous crisis. In tandem with these efforts, the court also organized training for jurists to review case law relevant to quarantining and isolating inhabitants who were infected or otherwise exposed to the virus, as well as a Differentiated Case Management (DCM) program approach to manage the healthcare-related filings. While the plan was not applied in practice given the pattern that the EVD evidenced, it was subsequently operationalized at the onset of the Coronavirus Disease of 2019 (COVID-19) pandemic. The experience demonstrated that outbreaks do not allow the court to conduct its business as usual by employing simple adjustments to caseload and operational processes.

Planning must be prepared in specific response to pandemics so that it accounts for the precise impacts that these crises have on prioritized areas of communication, collaboration, information technology and infrastructure while concurrently managing potential liabilities, due process issues and procedural values. Although the breadth of a disaster cannot always be anticipated, the best prepared court is the one that develops its strategies in accordance with the threat – conventional, radiological and biological. Aligning the court's emergency planning along this vein ensures that it is at minimum prepared to respond, recover, and mitigate the impact of the crisis to the extent possible. These protocols are mission critical to the judiciary because the public's trust and confidence in the court rests upon its ability to maintain the rule of law notwithstanding circumstances that may preclude the vast majority of other institutions in society from functioning.

2. IN ANTICIPATION OF THE EBOLA PANDEMIC

EVD, also known as Ebola Hemorrhagic Fever, made international news during a relatively severe outbreak of the disease in 2014. The US President at the time, Barack Obama, called the epidemic “not just a threat to regional security...but a potential threat to global security”. EVD is a serious, often fatal, disease in humans and other primates caused by ebolaviruses. Typically, infected individuals begin to show symptoms between 2 and 21 days that include fever, sore throat, muscle discomfort and headaches. Vomiting, diarrhea and rashes usually follow as the virus progresses. At about the two-week mark, some patients will bleed from their orifices – ears, nose and eyes, as well as experience internal bleeding that impairs their liver and kidney function. Because patients can lose up to two and a half gallons of body fluids a day, they experience rapid weight loss and bruising. Patients who do not survive often succumb to coma and shock before dying. **Figure 1** depicts the stages of the EVD.¹

¹ See Centers for Disease Control and Prevention, 4 May 2021. Signs and Symptoms. Retrieval at <https://www.cdc.gov/vhf/ebola/symptoms/index.html>.

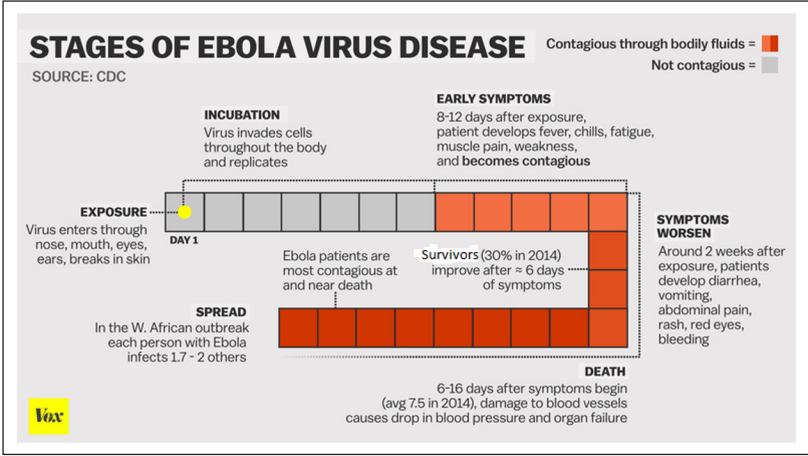


Figure 1 Stages of the Ebola Virus Disease.

The 2014 EVD outbreak lasted approximately two years and was unprecedented given the number of countries that were affected. **Table 1** shows that the Centers for Disease Control and Prevention (CDC) reported 28,652 likely cases between 2014 and 2016 that culminated in a 40 percent mortality rate across the 10 nation-states. The natural reservoir host of the EVD remains unknown, however evidence of similar viruses suggests that it is animal-borne and that bats are the most likely source. Four of the five virus strains occur in an animal host native to Africa. Since being discovered in 1976 during the twin outbreaks in Zaire (present day Democratic Republic of Congo) and South Sudan, there have been 22 outbreaks including the most recent 2021 cases occurring in Zaire and Guinea.

AFFECTED COUNTRY	N CASES*	N DEATHS	% MORTALITY RATE
Sierra Leone	14,124	3,956	28
Liberia	10,678	4,810	45
Guinea	3,814	2,544	67
Nigeria	20	8	40
Mali	8	6	75
United States	4**	1	25
Italy	1	0	0
Senegal	1	0	0
Spain	1	0	0
United Kingdom	1	0	0
Total	28,652	11,325	40%

Outbreaks prior to 2014 usually occurred in isolated, rural areas and culminated rather quickly. The scale of the 2014–16 EVD epidemic, however heightened attention around the globe because of its movement through various populations. The onset began in December when a child in Guéckédou, a rainforest region in southeastern Guinea, was found to have been infected. Given that Guéckédou shares a porous border with Sierra Leone and Liberia, where people migrate back and forth to go to the market and conduct business, the virus spread over a larger geographic area than

Table 1 Mortality Rate of the Ebola Virus Disease by Affected Country.

* CDC noted as suspected, probable, or confirmed cases.

** Eleven patients with EVD in total treated in the United States, only four patients became ill after they arrived in the United States, either after exposure in West Africa or in a healthcare setting. Retrievable at <https://www.cdc.gov/vhf/ebola/history/2014-2016-outbreak/index.html>.

previous outbreaks. Because EVD's symptoms resemble those of other diseases, the international community was slow to respond and bring aid to the region. Five months passed from the time of the initial case before public officials declared a healthcare emergency, which increased the number of exposures and infections.

Public anxiety in the US intensified after a Doctors Without Borders (DWB) doctor returned to NY City from Guinea and tested positive for the virus. Prior to being admitted to an area hospital, he acknowledged that he had not self-quarantined and traveled using public transit, dined out and went bowling in the metropolis. During the same timeline, another case involving a DWB nurse was being kept under mandatory quarantine after having contact with infected patients overseas and landed at Newark Liberty International Airport. Her case, in particular, tested the delicate balance between individual civil rights and the general welfare of the public. When officials in NJ allowed her transfer back to her home state of Maine, authorities there stated they expected the nurse to remain in her residence "until the incubation period for the potentially deadly disease is over, or the state will pursue appropriate authority to ensure a quarantine".²

Following these potential exposures in the NJ/NY area, the Metropolitan Judiciary District (MJD)³ chief judge and executive administrators decided to take immediate steps to develop an action plan to provide guidance regarding the legal authority of the court to require its inhabitants to quarantine or isolate. Although the most pressing issue for the courts at the time involved the legality of separating individuals suspected of having the disease or being exposed to infected persons, the court also sought to revamp its COOP so that it was better prepared for the challenges expected to accompany a closure due to the health-related crisis. The MJD executive administration directed its lead managers to "assume that the virus was already present in the metro region and to proceed with its COOP review and coordination as though the jurisdiction would need to operationalize it over the next 30 days".⁴ Thus, subsequent meetings and COOP action items were bifurcated into first, those matters of law in determining the basis and procedure in curtailing liberties when circumstances warranted and second, the ongoing operation of the courthouse so that judges and staff could continue to administer justice without unnecessary delay.

Healthcare law is a specialized area of practice with few judges having experience in it; therefore, it quickly became clear that they needed to be oriented to rule on these matters. Not unlike election law issues that come before them, preparing jurists for the anticipated pandemic also included the planning and development of a bench manual to help guide them in deciding matters related to healthcare and the potential implications of those rulings on broader society. One key aspect of the training involved differentiating between quarantine and isolation and the associated law and protocols. In accordance with the CDC, quarantine is denoted as the "separation of an individual or group reasonably believed to have been exposed to a quarantinable communicable disease, but who is *not yet* [emphasis added] ill (not presenting signs or symptoms), from others who have not been so exposed, to prevent the possible

² See S. Livio, 29 October 2014. Nurse Quarantined over Ebola Scare in N.J. must Isolate Herself, Maine Officials Say. Retrievable at https://www.nj.com/politics/2014/10/ebola_nurse_quarantined_in_nj_must_isolate_herself_maine_officials_say.html.

³ Pseudonym.

⁴ Personal onsite notes.

spread of the quarantinable communicable disease”.⁵ Isolation, on the other hand, is defined as the “separation of an individual or group who is reasonably believed to be infected with a quarantinable communicable disease from those who are not infected to prevent spread of the quarantinable communicable disease. An individual could be reasonably believed to be infected if he or she displays the signs and symptoms of the quarantinable communicable disease of concern and there is some reason to believe that an exposure had occurred”.⁶ Historically, both levels of restrictions are used to preempt the spread of infectious disease by significantly limiting the mobility of an individual or group. Guidelines further noted that when depriving individuals of those liberties, the state was expected to use the least restrictive alternative that ensured public safety.

In the US, the power to isolate or quarantine ordinarily falls to the state and in most instances, the expectation is that individuals voluntarily restrict themselves pursuant to those mandates. In other instances, when individuals are unwilling to comply or become noncompliant (as was the case with the DWB nurse), the court’s intervention is required. The National Association of County and City Health Officials noted that among other things, due process, the means by which restrictions can be enforced, and the penalties for noncompliance are the most pivotal for the courts to address. Accordingly, the MJD developed a protocol on the use of legal orders on “movement” and designated specific persons with the authority to issue said orders. The MJD also prepared a specific DCM program for managing “restrictive status” cases (quarantine or isolation). The DCM approach specific to health emergency cases was designed so that decisions could be expedited (“fast track”) in similar fashion to how election law matters were managed vis-à-vis their time sensitive nature. The program included public healthcare policies and the relevant case law that cited the following factors the court could consider in its rulings:

- Scientific evidence in support of the issuance of an order
- Accessibility of the scientific evidence to the parties involved
- Appropriate medical facilities where the individual would be confined
- Period of confinement
- Provisions for food, medicine and other necessities during the confinement period
- Care and support of the individual’s dependents while in confinement
- Impact of confinement on the individual’s employment and financial livelihood
- Costs associated with the individual’s confinement and treatment
- Unique cultural or personal circumstances impacted by the confinement
- Instructions including the use of force in implementing and enforcing the confinement

In tandem with instituting a rule of law process that balanced individual freedom and public welfare, the COOP was drafted with an aim for the court to partner with other justice system decisionmakers and the departments of health to ensure its ability to continue daily operations.⁷ The COOP identified each of the critical functions that would require management and oversight by the courts including bail review,

⁵ See Centers for Disease Control and Prevention, 4 May 2021. Interim Guidance on Risk Assessment and Management of Persons with Potential Ebola Virus Exposure Retrievable at <https://www.cdc.gov/quarantine/interim-guidance-risk-assessment-ebola.html>.

⁶ See CDC, supra note 5.

⁷ See A. J. Bernardino, T. G. Dibble, G. M. Fazari, et al. 2006. *Business Continuity Management Guide*. Williamsburg, VA: National Association for Court Management.

detention hearings, initial appearance hearings, civil commitments, property stays and extensions, child support payments, and communications/notifications infrastructure and support. Each of the court's functions were prioritized along a "disruption period" of 1-day, 7-day, 30-day, and 60-day cycle. **Figure 2** depicts an abridged segment of the plan relevant to bail processing for the Central Judicial Processing (CJP) court. The other critical areas together with the prioritized functions followed the same format.

Prioritized Functions	CJP Bail Processing
Critical Personnel	<ul style="list-style-type: none"> • Presiding Judge • Designated Judge(s) (see attached table of organization for designees) • Division Manager • Assistant Division Manager • Select staff (see attached table of organization for designees)
Essential Materials	<ul style="list-style-type: none"> • Telephone and/or mobile phone • Appropriate workstations to support staff • Mainframe computer and printer access • Case files • Clerical supplies • Relevant forms including all "Black Box" materials and forms
Current Location	Main District Courthouse
Alternate 1	Northern District Courthouse
Alternate 2	Southern District Courthouse
Attachments*	Relevant training, policies, procedures noted in the COOP Report Repository

*A COOP Repository that included the applicable forms, training videos, procedures, policies, etc. was developed and made available to select users who were provided with log-in identifications and passwords to access the materials from a judiciary-approved device.

Figure 2 Central Judicial Processing Court Prioritized Functions.

Individuals central to each of the critical functions were identified and trained in accordance with their respective responsibilities. In preparation for coordinating the wide range of responsibilities during the ensuing healthcare crisis, the judiciary established a communication committee that included various stakeholder representatives (judges assigned to 24/7 all-hazards and/or emergency duties, district health office, community care centers and hospitals, emergency medical services, human services, corrections, prosecutor's office, funeral director and law enforcement). Collaborative meetings provided each agency and organization the ability to coordinate intersecting priorities and responsibilities so that their work could be carried out more seamlessly during the emergency.⁸

Planning and instituting a COOP was not a novel concept for the MJD having operationalized it during prior incidents that involved terrorist threats/attacks, weather-related emergencies including Hurricane Sandy of 2012 and infrastructure failures and renovations that required courthouse closures on multiple occasions.⁹ Thus, operational planning for the anticipated Ebola outbreak was coordinated to build upon what was considered (at the time) a comprehensive framework in preparing, responding and recovering from other disasters and emergency circumstances. This included a series of alternate locations – some of which were located in neighboring counties in the event that a complete shutdown of the courthouse complex was necessary. The Ebola COOP served as a pre-planning tool¹⁰ to help initiate assessment

⁸ See CCJ/COSCA. *Court Security Handbook. Ten Essential Elements for Court Security and Emergency Preparedness*. 2012 September. Conference of Chief Justices. Conference of State Court Administrators. Committee on Security and Emergency Preparedness.

⁹ See T. F. Fautsko and G. J. Cowan. 2014. *The Effects of Hurricane Sandy on State Courts in New Jersey, New York, and Pennsylvania – Lessons Learned*. State Justice Institute. National Center for State Courts.

¹⁰ See L. Siegel, C. S. Cooper, and A. L. Hastings. 2005 November. *Planning for Emergencies: Immediate Events and Their Aftermath. A Guideline for Local Courts*. State Justice Institute. American University.

and recovery operations by prioritizing functions around the four key areas of communication, collaboration, information technology and infrastructure. A summary of these points is noted as follows:

- Communication: Notification updates to judges, staff and partnering organizations and agencies were critical in ensuring information being communicated was both timely and accurate. On-site and remote meetings involving the relevant stakeholders were arranged by supplying designated representatives and respective staff with remote access and emergency travel passes enabling them to commute to various locations in the event roadways were restricted.
- Collaboration: Organizing the Ebola COOP included establishing a principal task force together with the relevant sub-committees so that all information among the affected groups was fluid. It also assured that the representatives remained in regular contact with each other as planning efforts were underway. Apart from strengthening the partnership, collaborations addressed the key issues involving personnel, communications, overlapping protocols, policies and procedures and legal issues that would be brought to bear by the unique challenges of the EVD. The COOP specified the number of staff required for priority tasks and included the necessary cross-training to manage those instances when primary point persons were unavailable.
- Information Technology: The capabilities of controlling the network remotely were identified and arranged because, inter alia, it eliminated the need to be on-site in the event of a total shutdown. Protocols were developed to mitigate the need for on-site administration of critical functions. The lead information technology administrators were trained to manage the technical operations of the court from remote locations. Access to the variety of systems using established backup procedures were also tested.
- Infrastructure: Access to the courthouse was devised so that it could be controlled and monitored. Proper planning concerning restricted access was coordinated among the affected stakeholders. The use of “go bags” were considered during planning stages so that the courts could carry out essential functions from residential locations. Recommended contents, stored in electronic and paper format, included the COOP plan, judge and employee database, essential forms, protocols, policies and procedures, directories, maps, reference materials, laptop computer equipped with all the necessary software programs and accessories (portable printer and flash drive), mobile phone and accessories, digital recording devices, court seal/stamp and office supplies, among other critical items.

3. ENTER THE COVID-19 PANDEMIC

China and Italy were to the COVID-19 pandemic of 2020 what Guinea, Sierra Leone and Liberia were to the Ebola epidemic of 2014. As such and in both instances, the courts in the US had the benefit of being alerted to the looming health crisis and afforded time, however brief, to prepare for the operationalization of its COOP. While Ebola is considerably more fatal, individuals at the greatest risk of infection are healthcare workers and those who are caring for the sick at home because the virus does not spread until the victim is showing signs of the disease. The severe symptoms of the virus generally preclude them from being out in public spreading it to others, which also made decisions on who to isolate and quarantine more easily distinguishable.

The central problem with COVID-19, however, was that while it was comparatively far less lethal, individuals could spread it *prior* to showing any sign of being sick; thus, scores of social interactions could continue to be made while unknowingly infecting persons in those circles. As a result, while fatality rates are relatively low, COVID-19 was more widespread which accounts for the considerable difference in the number of total deaths – 11,300 for Ebola and approximately 5 million for COVID-19 at the time of this writing.¹¹

Figure 3 depicts the stages of COVID-19 denoting when symptoms commence and the duration of risk to infecting others. Unlike Ebola, Coronavirus is a droplet infection. Consequently, social distancing is particularly important because of the critical two-day period when individuals can be asymptomatic, yet still infectious. This proved to be the crucial difference between the two viruses and comparative number of deaths. Ultimately, the airborne transmission of the virus is what pivoted the Ebola “concept plan” to being deployed as the COVID-19 “operational plan”.

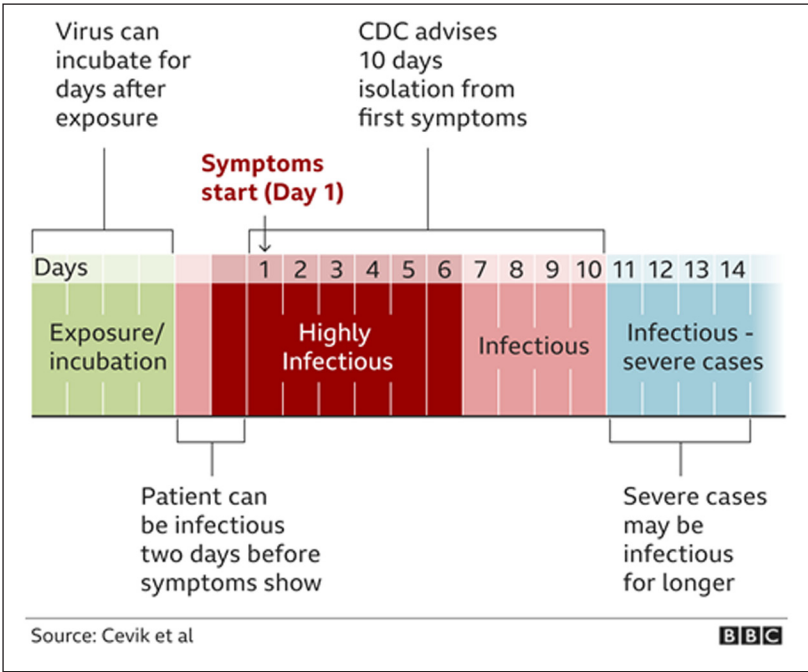


Table 2 shows COVID-19 case peaks in the MJD geographic area. Surges in excess deaths varied across regions of the US, but the Northeastern states of NJ and NY were the first to bear the full impact of the pandemic rapidly becoming its epicenter on the continent. The volume of total cases and deaths in these states continue to be among the highest in the nation more than 20 months following the initial outbreak.¹²

¹¹ See Johns Hopkins University & Medicine, 9 October 2021. Mortality Analyses. Retrievable at <https://coronavirus.jhu.edu/data/mortality>.

¹² See The New York Times, *Coronavirus in the U.S.: Latest Map and Case Count*. Retrievable at <https://www.nytimes.com/interactive/2021/us/covid-cases.html> [accessed 12 September 2021].

	PEAK CASES			PEAK DEATHS		
	DATE	N	7-DAY AVERAGE	DATE	N	7-DAY AVERAGE
United States	1/8/21	300,777	259,616	1/26/21	4,098	3,341
New Jersey	1/10/21	5,646	6,612	4/21/20	376	278
New York	1/13/21	14,704	16,424	4/14/20	1,003	974

Table 3 denotes the ten states in the US most impacted given respective fatality rates at the time of this writing. The total number of deaths in NJ where the MJD court is located is particularly sobering showing that the state has had 313 deaths for every 100K inhabitants. Comparatively, only the countries of Peru, Bosnia and Herzegovina, North Macedonia, Bulgaria, Montenegro, and Hungary, respectively, have had a higher rate of deaths per 100K¹³ than the state of NJ.¹⁴

	TOTAL CASES		TOTAL DEATHS	
	N	PER 100K	N	PER 100K
United States	45,207,116	13,624	731,512	220
New Jersey	1,184,395	13,334	27,783	313
New York	2,517,737	12,942	55,625	286
Florida	3,630,835	16,905	58,143	271
Georgia	1,586,384	14,877	27,255	256
Texas	4,188,539	14,445	69,904	241
Pennsylvania	1,520,815	11,880	30,721	240
Michigan	1,235,506	12,371	23,151	232
Illinois	1,680,930	13,265	28,344	224
Ohio	1,507,676	12,898	23,616	202
California	4,853,378	12,283	71,192	180

Using the generic COOP that was developed during the Ebola epidemic to lead those discussions, the judiciary immediately began to communicate with justice system partners and consult with the department of health and various medical organizations in the region. The COOP was activated in February 2020 – approximately 60 days prior to the peak number of deaths impacted the region. Not unlike prior arrangements, the plan centered on the court’s 19 critical functions bifurcated between judicial and administrative task areas as denoted in **Figure 4**.

The COOP repository that was earlier developed and then expanded upon following the Ebola epidemic was operationalized and made available to the appropriate persons, all of whom had a user identification and password to access the assortment of materials to manage respective responsibilities and tasks. Training videos and demonstrations were scheduled for all affected judges, administrators, and staff. The

Table 2 Peak Number of COVID-19 Cases and Deaths in the United States, 2021.

Sources: State and local health agencies (cases, deaths); US Department of Health and Human Services (hospitalizations); Centers for Disease Control and state governments (vaccinations); Census Bureau (population and demographic data).

Retrieval at <https://www.nytimes.com/interactive/2021/us/covid-cases.html>.

Table 3 Rate of COVID-19 Deaths for the Top Ten States in the United States, 2021.

Sources: As of October 21, 2021. State and local health agencies (cases, deaths); US Department of Health and Human Services (hospitalizations); Centers for Disease Control and state governments (vaccinations); Census Bureau (population and demographic data).

Retrieval at <https://www.nytimes.com/interactive/2021/us/covid-cases.html>.

¹³ See Johns Hopkins University & Medicine, *supra* note 11.

¹⁴ See The New York Times, *Coronavirus in the U.S.: Latest Map and Case Count*. Retrieval at <https://www.nytimes.com/interactive/2021/us/covid-cases.html> [accessed 12 September 2021].

Judicial Task Areas	Administrative Task Areas
Emergency applications	ITO data center
Bail review	Notifications and communications
Juvenile detention hearings	IT support
Civil commitments	Child support payment processing
Foreclosure stays or extensions	Mail processing
DYFS removals	Supervision of high-risk offenders
Criminal case first appearance matters	Telecommunications support
Landlord/Tenant stays	Receipt processing
	Video conferencing support
	Interpreting scheduling
	Payroll processing and emergent human resource matters

Figure 4 Metropolitan
Judiciary District Critical
Function Task Areas.

recovery plan included managing the court’s prioritized functions assigned to critical personnel with access to essential materials to accomplish the most pressing needs of the operation. Two alternate locations were previously identified together with the 1-day, 1-week, 30-day, and 30 plus-day disruption schedule. Prior to the pandemic, approximately 3,200 employees of the state’s judiciary had the ability to work remotely. The courts utilized a wide variety of virtual meeting platforms including Zoom, Scopia, Microsoft Office Teams, and Polycom. The benefit of already having this framework in place enabled information technology staff to more than double capacity so that 7,700 employees could work from home within 2 weeks of activating the recovery plan. By the end of March 2020, 95 percent of the judiciary’s workforce had the capability of working from their residence.

While cases involving victims of domestic violence and newly arrested defendants cannot be delayed indefinitely before a judge decides to review and rule on the matter, the same can be argued with respect to civil litigants seeking relief or others pursuing the court’s protection of their constitutional rights. In light of those varying exigencies, first appearance hearings that were held in 21 virtual courtrooms (pre-COVID-19) to support the court’s operations during weekends were expanded to include other case-types and disputes. Incidentally, the computer-generated hearings that began in 2017 as part of a criminal justice reform initiative were repurposed to manage the needs prompted by the pandemic; thus, when the decision was made to eliminate in-person proceedings in early March 2020, the court used the technology already in place to convert 300 courtrooms into a virtual venue. Specific training was provided to judges on how to manage the remote sessions and operate the technology from their residence. Probation and pretrial services officers were instructed in pandemic protocols so that they were able to continue to monitor defendants until their respective sanctions expired. The expanded capacity enabled the courts to handle critical function matters, as well as a host of non-emergency proceedings while live streaming the events to the public. Although not all proceedings could be done remotely, judges were able to decide issues related to motions, appeals and status conferences. Between mid-March and the end of April 2020, the court held approximately 18K events involving more than 130K participants.

4. LESSONS LEARNED

4.1 COMMUNICATION

Every crisis shows that organizational communication is oftentimes critical to its success or failure and managing the court through a pandemic was not an exception

to this basic tenet. Apart from establishing and maintaining a communication plan so that protocols are adhered to, the operationalization of the Ebola COOP during COVID-19 made clear the importance of identifying the primary (and alternate) persons with the authority to make decisions because of the anxieties and ensuing confusion that will accompany a crisis of this magnitude. Clear determinations must be made on how directions will be conveyed. Informing stakeholders and the public how, when and where regular updates would be provided was pivotal to ensuring among other things, accurate information rebutted messages promulgated from “fake news” outlets. Emergency notifications that included email updates needed to be tailored by specific subject matter experts. In doing so, courts had to take an active effort in partnering with other government branches and agencies to provide the public with those notices.

Each measure that is taken in tandem with the communication plan must be meted out when the chain of transmission is still intact. This will enable the court to remain proactive for as long as practicable. Any gap in communication or more generally, a lack of competency in the leadership component of the court will become more apparent during a crisis. Potential issues must therefore be addressed prior to *any* crisis. Of course, the challenge is that when there is no emergency with which to deal, the issues that are not having an obvious and immediate impact on the court’s day-to-day operations are not a priority focus. The court’s executive component must nonetheless account for what is important even when it is not ostensibly urgent. This requires acknowledging what leaders *should* do and then incorporating it into the organizational culture through measurable performance metrics.¹⁵ One way this is accomplished is through various means of information sharing and an investment in perpetually training essential personnel to ensure that they are fully apprised of their role and how associated tasks are shifted during circumstances involving healthcare emergencies. While it does not provide any guarantee to eliminate it entirely, having an organized approach to communication mediums and designating the appropriate persons to make decisions through such channels can reduce shortfalls in competency levels relative to position and responsibility.

4.2 COLLABORATION

Having a COOP is crucial (even if only conceptual). Not unlike other court systems, the greatest challenge for MJD was that the plan was centered around the availability of alternate locations. In retrospect that is certainly more obvious now, the problem specific to a pandemic of any magnitude is that it severely limits doing the work in a physical location where persons can gather because prevention means avoiding contact particularly as it related to the pattern and transmission of COVID-19. Components of the plan were designed around a general response toward disasters in which circumstances cause one court (or a part of that court) to relocate. Where does one go, however, in an emergency that affects travel and communication for the entire region, state, country, or world? What collaborative efforts must be made with emergency responders in advising when it is safe for the courts’ emergency personnel to assess and strategize a plan to maintain and resume operations? Prior to the pandemic which forced the closure of *all* courthouses, it was inconceivable to shut these facilities for an unspecified period of time. When it comes to planning for

¹⁵ See E. C. Friesen. 2002. Court Leaders: Survivors or Agents of Change? In *The Improvement of the Administration of Justice*, 7th ed., ed. G. M. Griller, E. K. Stott, Jr., and J. Fallahay. 31–47. Chicago, IL: American Bar Association, Judicial Division.

a healthcare crisis, however, COOP strategies must be developed so that each facet of the operation can be done on a semi-permanent basis. The pre and post pandemic procedures must be considered from a longer-term perspective than the archetypal emergency that the courts have prior experience managing. Along this vein, COOP “tabletop exercises” must incorporate the plight that these crises specifically present as a part of the training scenarios to ensure connections among various partnering agencies are bridged ahead of time.

To the extent that MJD was able to navigate the COVID-19 health crisis with a modicum of success was partly due to the court already having an established COOP, however lacking it may have been to address all the instant challenges. The essential components of the concept plan were sufficiently comprehensive to ensure a proactive response. Having a COOP committee that is chaired by a qualified leader, who is responsible for bringing the group together to plan and coordinate action steps before, during and after the crisis must be a requisite part of the court’s operational strategy. The MJD benefited immensely from having such a COOP unit that was responsible for updating actions steps as circumstances dictated.

4.3 INFORMATION TECHNOLOGY

At the outset of the crisis, there was a dearth of information that could be linked to the standard procedures for operating a “virtual courthouse”. Just as the courts establish “best practices” for the variety of areas within their purview, so too must efforts be made for policies and processes related to a pandemic particularly as it relates to the court’s technological infrastructure.¹⁶ Current and future courts will need to contemplate how essential and rudimentary functions can be managed remotely from judge and staff residences. This necessitates regularly reviewing and updating the institution’s technological capacity while evaluating what must be accessible to them from those locations. At the same time, there should be a manual system that can serve as an alternative when technological options are not feasible.

The mental gymnastics involved in the perpetual development of best practices should enable the committee to consider opportunities to permanently shift some of these processes remotely. This can create cost-savings by reducing the staff footprint and impact on facilities. Given the unpredictable fluidity of the court’s resources, MJD was compelled to redress the telework policy and tailor its e-filing system to eliminate the need for an in-person environment for some perfunctory tasks and routine court events. One of the key questions required of judges and administrators was in determining to what extent and for whom this policy should be made optional or mandatory. As courts consider technological solutions to mitigate the long-term scarcity that a pandemic can have on its human capital, leaders will need to explore which long-term investments must be made and how those products and services can be incorporated into the judicial branch.

4.4 INFRASTRUCTURE

The pandemic showed that alternative processes (rather than alternate locations) to manage traditional in-person proceedings must be a clear focus. By and large accessibility to the courts was provided or otherwise maintained, but only through

¹⁶ See T. F. Fautsko, S. V. Berson, J. F. O’Neil, and K. W. Sheehan. 2013. *Steps to Best Practices for Court Building Security*. National Center for State Courts.

remote channels. Decisions on how to address the assortment of questions that inevitably arise by virtue of the court shifting to a virtual venue were framed around ensuring due process; that is, the eight purposes and responsibilities of the institution remained central to whatever strategy was deployed.¹⁷ Bearing all this in mind may require that the court extend or modify filing deadlines, suspend the statute of limitations and create templates for special session orders for emergency closures that allow for more flexibility in how litigants can file a wide range of cases including restraining orders, unemployment and tenancy applications.

The easing of restrictions demonstrated that the return to the courthouse has been an incremental process wherein a “new normal” is emerging. This is yet another aspect of a pandemic that sets it apart from managing other types of crises because under those circumstances, day-to-day processes fully resume once the emergency passes. Instead, the changes perpetuated by the pandemic has transformed the institution’s infrastructure beyond the technology context and reoriented its internal stakeholders. For instance, modifications to the physical courthouse such as plexiglass barriers, social distancing signage, housekeeping procedures, hand sanitizer dispensers, on-site temperature and security screenings and the availability and distribution of masks are but a few of the added measures the courts instituted prior to allowing in-person sessions. How the court recommenced operations in its corporeal setting also required a thorough review of impacted policies and procedures including assigning and approval of overtime/compensatory time for managing backlog accrued during the health crisis, indoor mask policy and revised sick policy that incorporated exposure and/or infection by virus variants.

5. CONCLUSION

This paper reviewed the key areas of communication, collaboration, information technology and infrastructure that the courts should focus on as a part of their COOP development and implementation for pandemics. The manner and extent to which the judiciary effectively manages these four constructs were paramount to maintaining various segments of its operation, reintegrating judges, staff and the public into the courthouse and mitigating potential exposures and infections. Central to those procedures was establishing communication channels and protocols. The judiciary’s partnerships with other agencies at all levels of government was essential to avoid silo-thinking. Those collaborative efforts provided greater assurances that the administration of justice could continue seamlessly albeit at a slower pace. Much of what the courts were able to accomplish over the course of the healthcare crisis was due to the burgeoning of technology of the past generation. Leaders utilized these tools to reconceptualize how to manage the court’s business and reengineer those processes through a variety of modalities to address the specific challenges presented by COVID-19. This pandemic – the likes of which have not been experienced in more than a century – continues to have a profound affect across the judiciary’s operational areas. The impact of these new realities has compelled the courts to reconsider how it must organize and assemble its work environments for both internal and external stakeholders into the foreseeable future.

¹⁷ See National Association for Court Management, *Core Competency Curriculum Guidelines: What Court Leaders Need to Know and Be Able to Do*. Williamsburg, VA: Author, 2004.

The pandemic is an inimitable crisis requiring the courts to manage it through a series of phases that include setbacks when infections peak and variants manifest. Contrary to other types of crises where there is clear beginning, middle and end to the event, a healthcare emergency vacillates in the scope of its danger; as such, it requires court leadership to be nimble in the short-term, as well as taking on a revolutionary approach to getting the work of the courts done because of the longer-term changes the disaster impels. Courts should not become complacent in believing that a similar or even worse pandemic will not occur in the near future. In fact, the effects of climate change may increase the degree and frequency of outbreaks that institutional leaders will need to confront. Bleak as it may be, climatologists portend epidemics to be an ongoing problem requiring governments to devise short and long-term solutions.¹⁸ Not unlike the 1918 Great Influenza, the COVID-19 pandemic was shown to be a kind of crisis where most people will not volunteer to assist in the aid of others. There are too many unknowns when it comes to a pandemic that the priority for the vast majority of the public becomes personal survival. Overcoming the pernicious nature of a virus of this scale has always relied on the goodwill of the system's first responders. Whether it was realized beforehand or not, the courts by virtue of the important role it serves in ensuring a semblance of societal order in the face of extraordinary peril are expected to demonstrate that beneficence. Regardless if it has all the answers (it will not), the judiciary is obligated to prepare for it.

COMPETING INTERESTS

The author has no competing interests to declare.

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