

# **Physical Security and Elected Officials**

## **PHYSICAL SECURITY AND ELECTED OFFICIALS**

### *Introduction*

Physical security is the most topical of topics today. From the global concern of the War on Terrorism to the corner mini-mart's costs of shoplifting, security is on the minds of elected officials at all levels of government. City, County and School District elected officials are finding themselves deeply involved in security issues ranging from public safety at community and sporting events, to workplace violence issues among agency employees, to school safety and security, to violence in courthouses. Determining the appropriate level of security and funding for security for members of the public and employees at city facilities and events seems to require more and more time and attention from elected officials.

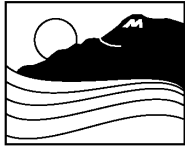
But security also has an even more direct and personal face for local elected officials:

- In November of 1978, Dan White, a former San Francisco County Supervisor, climbed through a basement window at San Francisco's City Hall, worked his way upstairs, walked into the office of Mayor George Moscone and shot him to death. He then went to the office of Supervisor Harvey Milk and killed him.
- On December 10, 1986, the Mt. Pleasant, Iowa, City Council met in a regular, open session in its chambers. A disgruntled citizen who had handed sewer bills to the council at prior meetings as a protest, approached Councilman Ronald Dupree, reached into his pocket, pulled out a revolver and opened fire, wounding Dupree and Councilwoman Joann Sankey and killing Mayor Edd King.
- In October of 1998, a disgruntled local citizen, upset about perceived wrongs in city recreation programs, walked into a conference room at Riverside City Hall, pulled out a gun and fired numerous shots, wounding several people including Mayor Ron Loveridge, Councilwoman Laura Pearson, Councilman Chuck Beatty and police sergeant Wally Rice.

Within the last few years, we have seen news accounts of physical attacks on candidates and incumbent local officials. Homes of officials have been burned, bombed, shot at or vandalized in several jurisdictions in California, and in other states. Confrontations with members of the public in council meetings, city hall parking lots and at the elected officials' homes are not unheard of. Threatening phone calls are becoming a fairly common occurrence at city halls.

In light of all of these manifestations of danger to elected officials, there is an increasing emphasis on security measures to keep elected officials safe. This paper will briefly discuss the types of security techniques cities have used and the legal issues they raise, summarize case law related to city hall security, provide examples of formal and informal security plans, and provide a list of resources for security planning.

In the wake of the 1998 Riverside City Hall shootings, many cities went through an examination of security measures at city hall facilities and other public buildings. The City of Riverside adopted a comprehensive security plan, including the installation of metal detectors, restrictions on public access in public buildings and other features designed to protect both elected officials and employees. A copy of that adopted plan is attached to this paper as Attachment A. Other cities implemented security measures without formally adopting a written plan. A summary of Moreno Valley's informal plan is included as Attachment B.



### *Summary of Security Techniques and Applicable Legal Issues*

1. "hardening" of facilities
  - includes such things as installing bullet-proof glass, bullet resistant armoring, securing utility panels, and posting security guards or police officers
  - legal issues – dangerous condition of public property
2. surveillance and monitoring of persons and places
  - includes video surveillance, magnetometers (metal detectors), x-ray machines, hand searches of persons and belongings, etc.
  - legal issues – Fourth Amendment reasonable search issues, State right of privacy, union agreements. The key legal doctrine here for monitoring of persons and there belongings is the Administrative Search exception to the warrant requirement for searches under the Fourth Amendment.
3. restricting access to, and information about, officials and facilities
  - includes providing separate facilities (like restrooms) for the officials rather than sharing with the public, emphasizing confidentiality of information about calendars, meetings, etc., changing behaviors of individuals through training, policy and regulations
  - legal issues – Public Records Act, Brown Act, First Amendment relating to access to traditional public fora (streets, sidewalks, parks, etc.)

### *Other Considerations*

Most security measures engender arguments over public perceptions. Some elected officials fear that posting guards, building barriers and screening persons and property generates an "unfriendly" feeling about public facilities, or implies to visitors that the city is crime ridden and dangerous. In some cases, community groups have complained that such measures are "intimidating" or "discouraging public participation." One city was accused of racism for posting two white police officers with shaved heads in front of City Hall during angry and noisy demonstrations over the shooting of a black suspect by a white police officer. Finally, security measures can bring accusations towards public officials that they are setting themselves "above" the public and provide an aristocratic or "royal" atmosphere.

### *A Few Interesting and Relevant Cases*

#### Video Surveillance

*Vega-Rodriguez v. Puerto Rico Telephone Company*, 110 F.3d 174 (1<sup>st</sup> Cir. 1997) – video surveillance in open work areas by quasi-public corporation qualifying as a "government actor" does not violate Fourth Amendment where the surveillance is open and the employees were notified in advance of the scope of the monitoring. No reasonable expectation of privacy in open work areas even though electronic surveillance is not subject to the limitations of fatigue, etc. that limit supervisors' abilities to monitor work activity.

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*Cramer v. Consolidated Freightways, Inc.* 209 F.3d 1122 (9<sup>th</sup> Cir. 2000) – employer not liable to employees on theory of violation of state privacy rights for surreptitiously videotaping restrooms through two-way mirrors despite the fact that such activity violated at least four criminal statutes. “Employer’s conduct is not outrageous just because a statutory prohibition may have been violated, rather it depends on the relationship of the parties. Privacy laws were found to be preempted by the Labor Management Relations Act because video surveillance was addressed in the labor agreement.

### Metal Detectors, Bag Screening and Secondary Searches

*McMorris v. Alioto*, 567 F2d 897 (9<sup>th</sup> Cir. 1978) – use of metal detectors and inspection of briefcases etc. permissible administrative searches if clearly necessary to secure a vital governmental interest such as protecting facilities from “real” danger of violence, limited and no more intrusive than necessary to protect against the danger to be avoided, reasonably effective to discover the materials sought, and used for a purpose other than the gathering of evidence for criminal prosecution.

*Zelig v. County of Los Angeles*, 27 Cal. 4<sup>th</sup> 1112 (2002) – County not liable in damages for failing to provide metal detectors and other security measures at a courthouse where no special duty of protective care had arisen. No such duty arises by reason of the need to conduct legal business that can only be done at the courthouse, nor by a bailiff being told that a woman’s ex-husband had threatened her. Government Code Section 845 provides immunity for liability based on decisions about deploying police resources.

*Klarfeld v. United States*, 944 F2d 583 (9<sup>th</sup> Cir. 1991) – attorney sued because he was required to remove his shoes and walk “several feet” across a dirty floor when he repeatedly set off a metal detector (steel shank shoes). Ninth Circuit rejected claim of discrimination against attorneys as a group, but held that a search may be unreasonable if it is unnecessarily more intrusive than it could have been to achieve the legitimate purpose. See, Kozinski dissent based on the “right to haggle” about the method of search.

*Opinion No. 92-201, Opinions of the Attorney General*, schools’ use of metal detectors to deter presence of weapons permissible both as “reasonable under all the circumstances” and under the administrative search doctrine.

*Estes v. Rowland*, 14 Cal. App. 4<sup>th</sup> 508 (1<sup>st</sup> Dist. 1993) – searches incident to prison visitation. Contains lengthy discussion of the administrative search doctrine and its applications.

### Liability to Elected Officials

*Sankey v. Richenberger*, 456 N.W.2d 206 (Supreme Court of Iowa 1990) – police chief not liable to elected officials and their survivors for failure to prevent gunman from shooting them at a city council meeting. Discussion of the issue of duty to protect. (See, actions of Police Chief v. actions of City Attorney!)



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## Summary of the Moreno Valley Informal Security Plan

In response to the Riverside City Hall shootings, threatening phone calls from disgruntled ex-employees, and the aftermath of September 11, the City of Moreno Valley has instituted a security plan with the following features:

1. Plan put in place without public debate by largely by administrative action within the City Manager's budget discretion and by including security measures in the budget for affected departments in the regular budget cycle.
2. Comprehensive security review both by staff and by the police department.
3. Bullet-proofing was installed in the Council Chambers, including the City Council dais.
4. Altered and expanded the role of the bailiff at city council meetings.
5. Provided an escape door behind the council dais to a secure area of city hall.
6. Silent alarm "panic" buttons were installed in various locations in City Hall.
7. Security guard coverage was extended to daylight hours as well as evening hours. Guards were given additional instruction on specific types of threats to look for in specific places.
8. Better audit procedures for key card locks throughout city hall.
9. Placed rope barriers in various places in city hall to channel foot traffic
10. Secured sensitive locations in city hall, such as utility panels, file rooms, outside doors, etc.
11. The city now provides parking lot security at the beginning and end of the workday and after council meetings.
12. Non-security employees are regularly trained in threat recognition and response, including both evaluation of emotionally unstable individuals and criminal and terrorist threats. Also includes emergency response training to security threats and potential terrorist attacks.
13. Photo ID security badges were considered and are currently being implemented after a long study period.
14. Regular reviews and updates of security procedures.
15. Security reviews and briefings prior to city events, such as Fourth of July Celebration, sports tournaments, etc.

The city considered and rejected other proposed security measures. Specifically:

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1. Building walls to limit access points to an open city hall floor plan was rejected because it would have required installation of a completely different heating and cooling system at a very high cost, and would project an unfriendly image to the citizens of the community.
2. Metal detectors were rejected because of public perception issues.
3. A low barrier of planters and artificial plants between the council dais and the audience in the council chambers to discourage the public from approaching the council during breaks, etc. was tried and then removed because "it looked stupid."