

Pandemics and the Courts:
A Synopsis of the issues facing Court Administration

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A. What is a Pandemic and Why Should We Be Concerned?

In 1918, 1957 and then again in 1968, the world was faced with the destructive forces of a world wide pandemic flu. A pandemic influenza is medically unique in that it is a new strain of a globally virulent flu, which is spread from human to human. Humans have no immunity to this virus and, since it is a new strain, a vaccine is not yet available. In fact, a vaccine will not be available until nearly six months after the virus mutates to the point where it is a human to human virus. A pandemic flu differs from both a seasonal (or common) flu and a bird (or avian) flu. With a seasonal flu, there is a vaccine and there is some immunity in humans.

“The bird flu (Bird flu caused by H5N1 virus) is largely in birds and spread by preparing diseased birds, handling fighting cocks, playing with poultry, consumption of duck’s blood, and eating of undercooked poultry.”¹

It is likely that the H5N1 virus will eventually mutate into a human to human virus and increase to “pandemic flu” proportions.

The World Health Organization (WHO) created and utilizes the

“six phases of pandemic alert as a system for informing the world of the seriousness of the threat and of the need to launch progressively more intense preparedness activities.”²

As of July, 2008, the world is in phase 3.

Table 1: Phases of Pandemic Alert from the World Health Organization³

Inter-pandemic phase	Low risk of human cases	1
New virus found in animals, no human cases	Higher risk of human cases	2
Pandemic alert New virus causes human cases	No or very limited human-to-human transmission	3
	Evidence of increased human-to-human transmission	4
	Evidence of significant human-to-human transmission	5
Pandemic	Evidence of sustained human-to-human transmission	6

The effects of a pandemic can be felt throughout all parts of the world in many different ways. One of the most staggering set of statistics is the review of the death rates through the past three pandemics. The good news is that from the 1918 pandemic to the 1968 pandemic, the death rate has dropped by 95% in the United States and 99% worldwide (see Table 2).

¹ <http://www.crisis.gov.sg/FLU/TypesofFlu/Differencesbetweenflutypes/>, Accessed December 26, 2007, Page 1.

² http://www.who.int/csr/disease/avian_influenza/phase/en/index.html, Accessed December 26, 2007, Page 1.

³ **Loc. Cit.**

Table 2: Pandemic Death Rates ⁴

Pandemic Death Rates

Year	United States	Worldwide
1918	675,000	50,000,000
1957	70,000	2,000,000
1968	34,000	700,000

It should be noted that, as overwhelming as these numbers are,

“every year in the United States, on average ... about 36,000 people die from [seasonal] flu. The effects of a severe pandemic could be much more damaging than those of a regular flu season. It could lead to high levels of illness, death, social disruption, and economic loss. Everyday life could be disrupted because so many people in so many places become seriously ill at the same time. Impacts could range from school and business closings to the interruption of basic services such as public transportation and food delivery.”⁵

Based on this, and other, historical data, assumptions have been written to assist in the planning for a future pandemic. A full report titled “**Court Staff Expectations About Pandemics**” which reviews the historical data, assumptions, court staff expectations survey and results, along with recommendations and conclusions for increasing the probability of staff reporting to work during a pandemic can be found at either the American University Website (www.american.edu/justice) or the National Center for State Courts website (www.ncsconline.org) by clicking on “Education – ICM” (on the left), “CEDP Papers” (on the right). Then click on “2008” and this paper can be found at the bottom of the left hand column. You can also access the paper directly by entering the following address:

http://www.ncsconline.org/D_ICM/programs/cedp/papers/Research_Papers_2008/Graubard_CtStaffExpPandemic.pdf

Since this paper is focused on the expectations of staff and the necessity to have staff present to keep the courts open, only assumptions that help show the importance of the research are listed.

Table 3: Relevant Pandemic Planning Assumptions ⁶

Relevant Pandemic Planning Assumptions	
1.1.3	The clinical disease attack rate will likely be 30% or higher in the overall population during the pandemic. Illness rates will be highest among school-aged children (about 40%) and decline with age. Among working adults, an average of 20% will become ill during a community outbreak.
1.1.6.1	In a severe pandemic, absenteeism attributable to illness and the need to care for ill family members may reach 40% during the peak weeks of a community outbreak.
1.1.6.2	Certain public health measures (closing schools, quarantining household contacts of infected individuals, “snow days”) are likely to increase rates of absenteeism.
1.1.11	Multiple waves (periods during which community outbreaks occur across the country) of illness could occur with each wave lasting 2-3 months.

⁴ **Pandemic Influenza Planning: A Guide for Individuals and Families**, USDOH, May 2006, Page 4.

⁵ **Loc. Cit.**

⁶ <http://www.pandemicflu.gov/plan/pandplan.html>, Accessed December 27, 2007, Page 1.

The following statements help clarify the overall problem:

- 1) Even during a pandemic, based on the constitution, the courts must remain open and able to hold the necessary proceedings to protect citizen's rights, such as first appearance hearings, which average nearly 250 per day, 365 days per year.
- 2) Thorough plans must be written addressing a) coordination with local health officials, b) legal issues, c) technology, d) education, e) communications, f) team coordination, g) court operations, h) jury pool and, i) human resources. The creation of these plans must be a comprehensive effort including all justice partners.
- 3) Staff must be a) cross trained to handle many different jobs, and b) have working knowledge of the pandemic COOP plan.

Legal, operational and quantitative analyses are being completed and documented compiling a various number of plans. Courts across the country are being prompted to create their plans. In some states, judicial committees tasked with creating judicial guides for handling health related issues in court have completed their documentation. But even with the most detailed plans in place, if the staff is not available to carry out the plans, the courts will not be able to function.

B. Issues Directly Facing Court Administration

Preparations for a pandemic are not being considered as seriously as they should be by many courts around the country. This was apparent for several reasons. First is the low response rate from a survey given to some of the largest jurisdictions in the country. Second is that some of the jurisdictions would not allow the survey to go to judicial staff due to it not being considered a "work related" issue. And third is that court staff's knowledge concerning pandemics and how to prepare for a pandemic is lacking.

Court staff must be educated on the effects of a pandemic, how to prepare their home and family for a pandemic and what steps the court is taking to keep them safe at work. Preparations by the court must be done well in advance as there will not be sufficient time if and when this event occurs. Without staff feeling safe at work and knowing that their families and homes are prepared and safe, even without being sick or caring for the sick, they will not report to work. Staff education and preparation is critical to having them report to work during this crisis.

The issues that Court Administration will have to address and the effects of staff not reporting to work are as follows:

- 1) Mandated court functions will not be properly or sufficiently staffed
- 2) Technology will not be supported, therefore, when capabilities fail, they will not get repaired, i.e., internet, telephones, computers, printers, fax machines, copiers, court recording.
- 3) Security will be reduced/eliminated
- 4) Delivery of supplies and correspondence will be infrequent to non-existent
- 5) Justice partners availability will be drastically reduced

Effects of reduced staffing to non-court entities that will greatly affect the courts are as follows:

- 1) Utilities shortages and service interruptions in electricity, water, gas and communications
- 2) All levels of supply shortages