

Security in Courts: Issues and Options

Rick Sarre¹

and

Tim Prenzler²

Abstract

This paper looks at two important issues alive in court security today. The first issue is the trend towards security and risk management and the heightened responsibility upon courts to protect those who work or visit there. This trend comes in response to a number of incidents where people have been killed or injured at the hands of offenders in and around court precincts. The second issue is the shift to courts administrators contracting with private security personnel. Over the last quarter century there has been a widespread shifting of security functions from public to private hands. Today, private sector employees are well recognised in Australia as important players in prisoner transport and court security. What might this contracting 'in' of security services mean for the risk management of courts?

Introduction: court precinct dangers

In the last thirty years, courts administrators around Australia and New Zealand have taken extraordinary steps to ensure that those entering our courts pass through a secure point of entry. These initiatives are following similar trends in the USA (e.g. Cooper, 2007). Security systems and tools such as duress alarms, CCTV monitoring, hand held scanners and metal detectors, along with photo identification for court staff are now commonplace. This development has arisen in response to a number of tragic incidents in and around courts. For example, in 1990, a 16 year old took a machete into a New Zealand Children's Court and hit Judge Dame Augusta Wallace in the face (Dominion Post 2008). In 1998, a man stabbed to death his former partner in a waiting room at the Palmerston North Family Court (Dominion Post 2008).

Elsewhere in New Zealand, in 2005, New Zealand lawyer Greg King was hit with a chair when a man rushed from the public gallery of the Porirua District Court to attack a murder accused (Southland Times 2008). And in 2006, an accused jumped the dock to punch Judge Geoff Ellis in the Nelson District Court (Southland Times 2008). In 2007, a man stabbed another in the neck in the foyer of the Wellington District Court (Southland Times 2008) and in February 2010, an offender sliced her arm with a razor blade in the New Plymouth District Court (Taranaki Daily News 2010).

In Australia in 1999, there was a dramatic siege in the South Australian Supreme Court after a

¹ Commerce, University of South Australia, with thanks to Mr Matt Lady for research support with conversations with Graham Sperr (Vic) and Mark Stokes (SA).

² Criminology and Criminal Justice, Griffith University.

former police officer, who had just been sentenced for armed robbery, pulled a knife out in the courtroom, jumped over the dock and held the knife to the throat of a court stenographer, threatening to kill her (ABC, 1999).

Other examples include the August 2008 incident where a social worker was threatened with a knife in the Victorian Children's Court (Herald Sun 2008). In May 2008, in the Federal Court in Sydney, a woman armed with a knife and a pair of scissors threatened to kill herself during the court's proceedings (AAP 2008). In November 2009, a female prosecutor was attacked by a mentally ill offender in the ACT Supreme Court (Canberra Times 2010).³

It is not only in court precincts that dangers lurk. On 23 June 1980, an Australian Family Court judge, Justice David Opas, died from abdominal wounds after being shot by an unknown assailant at his Sydney home. Police investigators believe the assassin was an aggrieved party seeking revenge over an adverse judgement.

Prisoner transport, too, has had its share of incidents. In 2004, in Perth, seven prisoners escaped from court custody by overpowering three unarmed private security guards at the Supreme Court, stealing a key which allowed them to exit the building. The felons then 'carjacked' two vehicles from members of the public outside the court building (Pennells, 2004). All of the men who escaped were classified as 'dangerous' and had long criminal histories. The escape caused public alarm and triggered a massive manhunt by police across Perth's southern suburbs, including a high speed vehicle pursuit and the shutdown of a freeway (Prenzler and Sarre, 2008a).

There are dangers for security staff as well. Indeed, occupational health and safety data show security officers in the top three jobs for work-related homicides, with police and taxi drivers coming in at number one and two (Prenzler and Sarre, 2010).

The consequence of all of this has been a massive (and appropriate) injection of public funding into court security, along with training and infrastructure and research into the science of security. The trend is undeniable.

Risk management

The above list of incidents highlights the danger to court staff, litigants, legal aid officers, court volunteers, the public and those on trial in the event of lax security. There is an undeniable moral duty resting on the state to ensure that state functions are carried out in such a manner as to prevent or forestall harm to anyone. But there is also a legal risk associated with poor security. There are potential civil liabilities attaching to the government if it does not secure accused persons or convicted offenders adequately while these people are in court precincts, hospitals or during transportation. The law in these circumstances is clear. Any action (or inaction) by the state's officers (in this case, court staff or transport officers) that creates, in any way, a dangerous environment for staff, litigants, the public or offenders themselves is potentially a breach of a duty of care. The cases described below look at both the duties owed to staff and the duties owed

³ It has been alleged by the NSW Attorney-General in October 2009 that there are 300 'security incidents' monthly (on average) in NSW courts. That statement did not, however, include a definition of 'incident', but nonetheless it is significant.

to visitors. They do not derive from court settings, but the legal principles flowing therefrom are identical at law.

On 3 June 1998, a gun was held to a bank teller's head during an armed hold-up. It occurred while a security company was delivering large quantities of cash to the bank. The teller suffered severe ongoing psychological trauma, but the New South Wales District Court initially denied her claim. Her appeal in the NSW Court of Appeal succeeded.⁴ Because the bank took receipt of large amounts of money in cash, and placed it in the unprotected custody of the teller, the court concluded they had made her an attractive target for an armed robber. Insufficient protection had been provided. There were no 'anti-jump' barriers, for example. The court said that the scope of a bank's duty clearly extends to protecting employees against robbery and any subsequent harm they might suffer. The risk was foreseeable. The bank had not taken reasonable care for the health and safety of its employees and their breach gave rise to the psychological injury. The court awarded the plaintiff \$104,305 in damages.

Another case involved a patron of Crown Casino, a Mr Hudson, who was attacked while at the casino. He sued the casino operators alleging negligence, arguing that their security had been lax. About 71 seconds had transpired between him being set upon by his assailant and security officers arriving on the scene. The question was whether the cause of the injury was the poor response time, and whether this delay was, in fact, negligent. The casino argued that, while it was under a common law duty of care to take reasonable care to protect people in Mr Hudson's position from illegal conduct, it had not failed in its duty. Mr Hudson nevertheless succeeded. He was awarded \$50,000. The casino operators appealed. The appeal court dismissed the appeal.⁵

The state would also be vicariously liable should a security officer act in a manner unbecoming of his or her office, and an injury occurred.⁶

Poor security practices often give rise to breaches of occupational health and safety laws, and may result in a fine for the relevant office. Two recent cases illustrate this legal concept.

On 17 June 2002, three men jumped the counter of the Brookvale (NSW) branch of the ANZ bank. Two of the three offenders managed to enter the cash handling area on the employee side of the banking counters by scaling a two-metre-high 'anti-jump barrier'. There was a 400 mm gap between the top of the barrier and the ceiling, allowing the offenders to gain access. Because this omission by the bank made its employees more vulnerable to robbery, it was found guilty of contravening section 8(1) of the *Occupational Health and Safety Act 2000* (NSW). Judge Boland in the NSW Industrial Relations Commission noted that the bank had been previously criticised for inadequate security.⁷ The bank was fined \$156,000 for not maintaining a safe workplace and failing to carry out adequate risk assessments.

A robbery occurred at Macquarie University on 15 March 2001. Chubb Securities pleaded guilty to contravening section 16(1) of the *Occupational Health and Safety Act 2000* (NSW) by not providing adequate training to its staff, and hence making them more vulnerable to robbery. The

⁴ *Faucett v St George Bank* [2003] NSWCA 43.

⁵ *Crown Ltd v Hudson* [2002] VSCA 28, Court of Appeal, Supreme Court of Victoria, No 6071 of 2000, March 2002.

⁶ *Trenevski v The Irish Bar & Restaurant Co Pty Ltd* [2006] QDC 007.

⁷ *Derrick v ANZ Banking Group* [2003] NSWIR Comm 406 (21 November 2003).

NSW Industrial Relations Commission fined the company \$100,000 for failing to ensure the safety of two security guards and a cashier.⁸

The courts thus appear to be sympathetic to the claims of victims of assaults and damage where a duty of care is owed and breached, and where losses are foreseeable. Judges tend to award liability against those who should have better sought to secure the safety of staff and the public who become victims if there is evidence that too little was done to provide security in the face of foreseeable harm.

Risk management and private security options

Over the last quarter century there has been a widespread shifting of security functions from public to private hands. Turning to the private sector for risk management and security in the courts, and for prisoner transport, is becoming a popular option for governments in general and sheriffs in particular, and, on the anecdotal evidence available, not unsuccessful. This is part of a wider and broader trend towards privatisation of security functions generally. The commercial demand for private contract security grows steadily upwards, and there is no part of the globe that has not been affected. Paid security providers, in terms of numbers of personnel and annual expenditures at the very least, now dominate the order maintenance landscape of a majority of countries in the world (van Steden and Sarre, 2007).

Private sector security personnel are thus no longer simply watchmen engaged in crime prevention as they may formerly have been regarded. While the modern manifestations were once described as part of a 'quiet revolution' in policing (Stenning and Shearing, 1979-1980), privatisation continues to expand strongly into bastions formerly regarded as 'public' territory.

It is important to note that 'privatisation' of security generally has not occurred in terms of selling off government assets and services, such as has happened in relation to health services, utilities, airlines and banks (Prenzler, 2000, 97-98). It is thus preferable to classify the trend to privatisation of court security as a contracting *in* of specialist services to do the tasks required rather than a contracting *out* of services, which implies that the government need not pay the same amount attention to the issue as before.

Research shows that in many Western nations, private security personnel now outnumber public police. According to Clifford Shearing this represents

a fundamental shift in the location of responsibility for guaranteeing and defining the peace from the state to corporate entities. Together with the state, these corporations constitute a field of interpenetrating and loosely coupled entities that negotiate territories and spheres of autonomy (Shearing, 1992, 425).

By way of illustration, the growth of the security industry is now considered one of the key features of the evolution of the 'policing complex' since the end of World War II. In a recent global review of crime and security, Jan van Dijk (2008, 15) estimated that, in very approximate terms, '[w]orldwide, more people are employed as a private security officer (348 per 100,000) than as a police officer (318 per 100,000).'

⁸ *Robinson v Chubb Securities Australia Pty Ltd* [2003] NSWIR Comm 467 (15 December 2003)

The most recent financial data for the Australian security industry (for 2005-06) show that the private security sector paid salaries and wages of \$1.5 billion and had a gross income of \$4.4 billion, which was 0.2 percent of all industry income reported by the Australian Bureau of Statistics. At the end of the financial year 2006/07 there were 5,523 registered 'security' businesses. 45 percent were sole operator companies. At the same time, about 45 percent of the market was dominated by five large firms (Sarre and Prenzler, 2009). Approximately 92,500 'security' licences issued by Australian security regulatory agencies were held by individuals across Australia in 2007 (Sarre and Prenzler, 2009).

All of this is not particularly surprising, given that the publicly funded agencies of order maintenance that evolved and grew during the nineteenth century development of modern policing never really eradicated the private forms of policing that had preceded them. The upshot of this resurgence is a modern mix of options. As Philip Stenning writes:

it is now almost impossible to identify any function or responsibility of the public police which is not, somewhere and under some circumstances, assumed and performed by private police in democratic societies (Stenning 2000, 328).

As a consequence, according to David Bayley and Clifford Shearing,

[p]olicing has become a responsibility explicitly shared between government and its citizens, sometimes mediated through commercial markets, sometimes arising spontaneously. Policing has become pluralised. Police are no longer the crime-deterrent presence in society; they have been supplanted by more numerous private providers of security (Bayley and Shearing 1996, 588).

The terminology most often used to describe this hybrid landscape of order maintenance officers is 'plural policing' (Stenning, 2009). In the next section we review the arrangements currently in place in some Australian and New Zealand courts for a 'pluralised' approach.

Public/private arrangements

Western Australia

In 2000, the Western Australian Ministry of Justice (now Department of Justice) was the first government department in Australia to introduce, by a 'licence' system, the contracting 'in' of court security services and custodial services, prisoner transport and police 'lock-up' management, with police and private providers sharing jurisdiction in these areas (Harding, 2000; Sarre, 2005). This was done pursuant to the power vested in the Ministry by the *Court Security and Custodial Services Act 1999* (WA). Under a contract signed on January 17, 2000, the provision of security services by a private company, in this case, Australian Integration Management Services (AIMS) Corporation, commenced on July 31, 2000. The powers of authorised contractors in relation to court security services are set out in the schedules to the Regulations, including power in relation to dealing with persons at court premises, power to search persons in custody, power to prevent communication with persons in custody and to refuse entry to, or remove visitors from, lock-ups and court custody centres. In August 2007, AIMS Corporation was taken over by G4S.

South Australia

South Australia was the first Australian jurisdiction to introduce legislation relating to the security of courts with the *Law Courts (Maintenance of Order) Act 1928*.⁹ South Australian courts embraced the private option in relation to prisoner transport four years earlier than WA, in December 1996. The contract for Prisoner Movement and In-Court Management in all courts (except the Supreme Court and District Court in Adelaide) was initially awarded to the private international contractor Group 4. All contracted staff were, and continue to be, appointed as Sheriff's Officers for the purposes of the contract. Thus private security personnel integrate their security transportation duties with courts on a day to day basis. Indeed, in the South Australian Magistrates Courts, the transportation security officers will sit with the prisoner in the dock. Under Part 3 of the *Sheriff's Act 1978* (SA), as amended, the Sheriff can appoint sheriff's officers as security officers, and in South Australian courts these are trained in house and employed in house. Sheriff's security officers thus conduct point of entry searches. They are also rotated through the duties of court orderly, court security and prisoner security. They sit in the Supreme Court and District Court docks with prisoners, rather than the G4S transportation security officers, who come no further than the door of the courtroom.

Victoria

The *Court Security Act 1980* (Vic) established a scheme of 'authorised officers' for their court security. These include police officers or people appointed as authorised officers by the chief executive officer of a court. The Act also allows for security services to be contracted out. The Victorian Supreme Court, County Court and Magistrates Courts have all embraced the private sector, with contracts in existence with G4S, ISS, Wilsons, Liberty Group and Chubb. Indeed, there is now a 'pre-qualified' panel of these five security service companies from which agencies may draw and with whom they may contract, thus avoiding repeating the public tender process every time a new contract needs to be drawn.

Australian Capital Territory

In the ACT, Metropolitan Security Services (MSS) provides court security for both Supreme Court and Magistrates Courts.

Northern Territory

By virtue of the powers under the *Court Security Act 1998*, the courts have contracted in a range of private providers. In the Supreme Court, MSS is used for custodial transport, Independent Security Services (ISS) is used for access and premises security, while Protective Security Officers (PSOs) are used for in-court security.

New South Wales

In New South Wales private security providers have been scorned by the state's courts administrators.

⁹ This Act was replaced in 2000 when a new Part 3 was added to the *Sheriff's Act 1978*.

Queensland

All court security is undertaken by government employed Protective Security Officers empowered under the *State Buildings Protective Security Act 1983* (Qld).

Tasmania

The *Admission to Courts Act 1916* (Tas) was designed to limit the common law principle of open courts by allowing admission to be regulated in the interests of public order, safety, public morals and decency. The Act allows for the appointment of authorised officers and allows regulations to be made in relation to admission to courts, conduct and control of people in a court and other matters relating to public order or safety (Law Link NSW, n.d.). In Tasmania's Supreme Court, security is undertaken by government employed officers, although in the Magistrates Courts private providers have now been contracted in.

Federal Courts

The security of Commonwealth courts is guided by the *Public Order (Protection of Persons and Property) Act 1971* (Cth). In all Federal Court precincts around Australia (High Court, Family Court, Federal Court, Federal Magistrates Court) security is now managed by Wilson Security, a private operator.

New Zealand

The New Zealand *Court Security Act 1999* allows the chief executive to employ or contract for court security officers.

Table 1 about here

Table 1. Court Security Services Matrix

Jurisdiction	Courts/Contacts	Private Security? Y/N	Provider
Federal	Commonwealth Courts	Y	Wilson Security
ACT	Supreme Court and Magistrates Court	Y	Metropolitan Security Services (MSS)
NSW	All courts	N	Sheriff's Officers
Northern Territory	Supreme Court	Y	MSS (custodial); Independent Security Services (ISS) (access, premises, etc.); PSOs used for in-court security
	Magistrates Court	N	Sheriff's Officers
Queensland	All courts	N	Government Protective Security Officers (PSOs)
South Australia	Supreme Court and District Court	N	Sheriff's Officers
	Magistrates Court	Y	G4S used for transportation & court security
Tasmania	Supreme Court	N	Government
	Magistrates Courts	Y	Dyson Security
Victoria	Supreme Court	Y	ISS; Wilson Security; Chubb; G4S
	County Court	Y	G4S + Liberty Group
	Magistrates Court	Y	G4S
Western Australia	All courts	Y	G4S
New Zealand	All courts	N	Court Security Officers

Accountability

The handing over to the private sector of such an important part of governmental services does come at some risk. Can we ensure that those who are employed to undertake such tasks do so with the responsibility that befits the role? To answer that question, each jurisdiction in Australia has introduced new licensing conditions and tougher screening tests than would have been the case in the past. They have enlarged and expanded training requirements consistent with international models of best practice regulation which are emerging regularly (Button and

George, 2006). They have tightened entry requirements. Generally speaking, there has been a commitment by governments to performance measurement and evaluation with a view to continuous improvement of the security industry, although we have not yet reached the stage where the system is beyond reproach (Prenzler and Sarre, 1999; 2008b).

There is also some uncertainty regarding the powers wielded by private security officers vis-à-vis Sheriff's Officers. The powers and immunities of private security personnel are, generally speaking, unclear and inconsistent, dependent upon fine distinctions and differ markedly from those of the publicly appointed security staff, even though they are often carrying out many of the same tasks (Sarre and Prenzler, 2009). This is a concern for future legal policy-making consideration.

A final crucial issue that needs the attention of policy-makers is the security arrangements that should be in place for non-court precincts where, arguably, emotions run just as high, such as neighbourhood justice centres and family relationship centres.

Conclusion

In the last few decades there has been a heightened awareness of the risks in and around court precincts and security has been stepped up accordingly. The risks are not only to litigants and court staff in terms of injuries and death, but also to the taxpayer in terms of potential legal liabilities for damages in the event that a foreseeable injury occurs because of lax security. In order to manage these risks within budgets that can be well accommodated, courts management has been turning to the private sector. The experiment that began a decade ago appears to have worked well, but vigilance is required to ensure that appropriate entry standards, training requirements and licensing regimes remain at a standard that matches the risks at stake. By the same token, the security arrangements that are put in place should not threaten nor jeopardise the openness of the courts which is a hallmark of our legal tradition.

References

- AAP (2008). 'Federal Court Security Breached in NSW' AAP Bulletins, 29 May 2008.
- ABC (1999). World Today s50568 September 1999
- Bayley, D and Shearing, C (1996). 'The Future of Policing', *Law and Society Review*, 30(3), 585-606.
- Button, M. and George, B. (2006). Regulation of private security: models for analysis. In M. Gill (Ed.), *The Handbook of Security* (pp. 563-585). Houndmills, Hampshire: Palgrave Macmillan.
- Canberra Times (2010). 'WorkCover presses panic button over court security' by Noel Towell, 31 March 2010.
- Cooper, C. (2007). 'The Evolving Concept of "Court Security"', *Justice System Journal*, 28(1), pp 16-78.

- Dominion Post (2008). 'Keeping Safe in Our Courts' by Wendy Murdoch, 30 January 2008.
- Harding, R. (2000). Privatising Justice Support and Prison Administration Functions: A WA Exemplar of Effective Regulation and Accountability. *Western Australian Law Review*. Vol. 29, pp 233-250.
- Herald Sun (2008). 'Knife Threat in Children's Court' by James Campbell, Sunday Herald Sun, 17 August 2008.
- Law Link (NSW) n.d. Review of the Sheriff's Act 1900, discussion paper, <http://www.lawlink.nsw.gov.au/>
- Pennells, S. (2004). 'Sorry they got away, says AIMS.' *West Australian*, July 23, 2004, p. 4.
- Prenzler, T (2000), 'The Privatisation of Policing', in Sarre, R and Tomaino, J (eds), *Considering Crime and Justice: Realities and Responses*, Adelaide: Crawford House Publishing.
- Prenzler, T. and Sarre, R. (1999). A survey of security legislation and regulatory strategies in Australia. *Security Journal*, 11(2), pp. 7-17.
- Prenzler, T. and Sarre, R. (2008a). 'Protective security in Australia: Scandal, Media Images and Reform.' *Journal of Policing, Intelligence and Counter Terrorism*. 3(2), 23-37.
- Prenzler, T. and Sarre, R. (2008b). Developing a risk profile and model regulatory system for the security industry. *Security Journal*, 21(4), 264-277.
- Prenzler, T. and Sarre, R. (2010) *An Overview of Security Industry OH&S in Australia*. Sydney: Report to the Australian Security Industry Association Limited, forthcoming.
- Sarre, R. (2005) 'Researching Private Policing: challenges and agendas for researchers', *Security Journal*, 18(3), 57-70.
- Sarre, R. and Prenzler, T. (2009). *The Law of Private Security in Australia*. 2nd edition, Sydney: Thomson Reuters.
- Shearing, C. (1992). 'The Relation Between Public and Private Policing', in Tonry, M. and Morris, N. (eds), *Modern Policing: An Annual Review of Research*, Chicago: University of Chicago Press, Vol 15, 399-434.
- Southland Times (2008). 'Court Security Incidents' reported on line, 9 August 2008.
- Stenning, P. (2000). Powers and Accountability of Private Police, *European Journal on Criminal Policy and Research*, 8(3), 325-352.
- Stenning, P. (2009). Governance and Accountability in a Plural Policing Environment – The Story So Far', *Policing – A Journal of Policy and Practice* 3(1): 22-33.
- Stenning, P. and Shearing, C. (1979-1980). 'The Quiet Revolution: The nature, development and general legal implications of private security in Canada', *Criminal Law Quarterly*, 22, 220-

248.

Taranaki Daily News (2010). 'Accused Cuts Arm in Court' by Lyn Humphreys, 19 February 2010.

van Dijk, J. (2008). *The World of Crime*. Los Angeles: SAGE.

van Steden, R. and Sarre, R. (2007). The growth of private security: Trends in the European Union. *Security Journal*, 20(4), pp. 222-235.