
Florida State Courts
Strategy for Pandemic Influenza
Keeping the Courts Open in a Pandemic

**Best Practices from the
Pandemic Influenza COOP Planning in the
Florida State Courts**

Office of the State Courts Administrator
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I. Introduction

The purpose of this best practices document is to advance the preparedness efforts of local courts to ensure they can meet the strategic goals for the Florida State Courts during an influenza pandemic.

The strategic goals are:

1. We must deal with crises in a way that protects the health and safety of everyone at the court facilities; and
2. We must “keep the courts open” to ensure justice for the people.

For more information on these strategic goals and other elements of the *Florida State Courts Strategy for Pandemic Influenza*, please visit http://www.flcourts.org/gen_public/emergency/index.shtml.

The text provided in the sections below was extracted from planning documents submitted by individual local courts. Brief introductions for each section are provided in italic.

II. Legal Issues

The Florida Court Education Council’s Publication Committee has developed the Pandemic Influenza Benchguide. A copy of the Benchguide is available at http://www.flcourts.org/gen_public/courted/bin/pandemic_benchguide.pdf.

III. Technology Plans

Excerpts from the submission from the Fifteenth Circuit regarding technology plans associated with the response to a possible pandemic influenza are provided below. The Circuit’s technology plans are still conceptual and have not reached the level of "Proof of Concept." They continue working with the county and the other constitutional offices to ensure that the concept is do-able and the technology plans will work with other court and county plans.

Also, the ability to conduct remote hearings was addressed by a number of courts. Multiple courts have established plans to hold remote hearings using the reservationless teleconferencing system.

From the Fifteenth Circuit

Providing maximum service and portability is the objective of Court Technology Pandemic Continuity of Operations Plan. Accordingly our response will mirror the escalation rate of the pandemic so as different needs become evident technology will be prepared.

This approach will be handled in a phased approach as follows:

Phase I presumes the continued access to existing Court facilities owned by the county for limited hearings. Hardware for Video conferencing and data access can be moved to designated sites with existing infrastructure i.e. access to the county WAN with data and phone networking.

Phase II integrates a web conference component to allow dynamic decentralized participation by court officers and parties mixed with limited county facility use.

Phase III provides a completely decentralized model, a “Virtual Courtroom” providing a Call-in phone number for parties to be queued and when the time is appropriate be transferred into the virtual courtroom managed by Mediator II Software.

As judicial stakeholders continue to refine COOP plans additional technical solutions will be tested and added. Additionally, further testing and research into similar products will be ongoing to insure redundancy.

1. Phase I 0-30 days

- a. Current facility infrastructure can accommodate voice/data requirements. Limited face to face and use of existing teleconferencing and/or video conferencing technology will be used.

2. Phase II 30-90 days

- a. Use of current facilities and infrastructure with mobile conferencing solution implemented. Judges may begin hearing cases from outside the county network.
- b. As pandemic severity increases reliance on mobile or ‘virtual courtroom’ with web based conferencing solution increases.

3. Phase III 90 + days

- a. Mobile web teleconferencing solution for all statutorily mandated hearings, i.e. 1st Appearances, Domestic Violence injunctions, Juvenile Shelter hearings, etc.
- b. Dual Line Phone System – Parties such as presiding Judge, Clerk, State Attorney, Public Defender, Private Attorney, Court Reporter, translator and citizen are queued until they are transferred into the “Virtual Courtroom” web number.
- c. Designees control attendees in each conference room via a GUI interface
- d. Software allows drop/add and side bar capability
- e. “Go Kits” are being devised for Digital Court Recordings to occur from decentralized locations and transcripts could then be provided on CD/DVD or print.
 - Marantz Mobile Hardware Solution
 - FTR Mobile conference carts converted to ‘Go-kits’

This fluid system approach offers the judiciary and supporting agencies needed flexibility and mobility to maximize use of technology in a 90+ day scenario.

To clarify, the 15th Circuit has and is continuing to meet with local agencies including the Palm Beach County Health Department, Clerk & Comptroller, State Attorney, Public Defender, Palm Beach Sheriff's Office, Palm Beach County ISS for Networking and Communication technology development.

IV. Infection Control Precautions

Building on the template and based on their existing telecommuting program, the submission from the Sixth Circuit is provided below.

From the Sixth Circuit

- a. The Sixth Judicial Circuit will heed the information from local public health and emergency management officials as well as information coming from the federal and state level.
- b. The nature of an influenza pandemic will likely place extraordinary limits on face-to-face interactions in the Sixth Judicial Circuit. The Sixth Judicial Circuit's Court Technology Continuity and Disaster Recovery Plan will assist in keeping the courts open by conducting hearings and performing the tactical objectives for the Sixth Judicial Circuit by videoconference, telephone/teleconference, or other methods under conditions in which no or limited face-to-face contact is available. By using technology to hold court via videoconference, telephone/teleconference, or other methods, the Sixth Judicial Circuit will be prepared to minimize the need for face-to-face contact while still ensuring the capacity to keep the court open. This reduction in face-to-face contact will serve as the primary infection control precaution for the Sixth Judicial Circuit.
- c. Additionally, the Sixth Judicial Circuit has implemented additional infection control precautions including:
 1. Providing education regarding the importance of proper hand hygiene (regular and thorough hand washing with soap and water or alcohol-based hand rub);
 2. Providing education regarding the importance of proper cough etiquette (cover mouth and nose with a tissue or shirt sleeve, dispose of tissue immediately, and perform hand hygiene);
 3. Planning for adequate social distancing at the work place (keeping three (3) feet distance from other persons), if conditions require;

4. A formal telecommuting (also known as teleworking) policy which has been in effect since January 1, 2006 after a pilot period. The telecommuting policy and related procedures and forms can be found in the Sixth Judicial Circuit's Administrative Staff Personnel Manual.
- d. The use of personal protective equipment (PPE) will also be a part of the infection control precautions for the Sixth Judicial Circuit. Boxes of pandemic supplies that were provided by the state courts have been received and inventoried, and will be securely stored at the following locations: 501 Building, Room 645, St. Petersburg; the Pinellas County Criminal Justice Center, 14250 49th Street North, Clearwater; the Pinellas County Courthouse, 315 Court Street, Clearwater; the West Pasco Judicial Center, 7530 Little Road, New Port Richey; and the Dade City Courthouse, 38053 Live Oak Avenue, Dade City.
- e. Specific federal or state guidance regarding the use of PPE in the Sixth Judicial Circuit is currently not available. However, guidance is currently available for health care facilities and other specific industries and work environments. A list of the available guidance can be found at:

http://www.flcourts.org/gen_public/emergency/ppe.shtml.
- f. The circuit is also planning to contact vendors who supply the PPE equipment, such as the particulate respirators, for possible training opportunities.

V. Jury Management

Following a one-day planning session held in November 2006, the Thirteenth Circuit was able to produce the following submission for the complex issue of restoring jury operations in the aftermath of a pandemic.

From the Thirteenth Circuit

A difficult challenge to keeping the courts open during a pandemic emergency will be a lack of available citizens to serve on jury panels. The current juror response rate is at a low of 21%. The juror response rate could drop into single digits during a community wide pandemic due to illness and fear of exposure to the disease. Two possible solutions to consider are: (1) the reduction of the size of jury panels and (2) the limitation of jury trials. Additional considerations are:

- Increase the number of jurors summoned for service to offset lack of response.
- Return to voter registration or other form of pooling a jury to increase the number of potential jurors.
- Create the ability to establish an “emergency” juror pool established prior to an emergency event based on an established criteria or willingness to serve.

- Reduce the 12 person jury panel requirement to 6 when possible during identified emergency situations.
- Authorize the viewing of trial proceedings by jurors via video conference (defendants could also view jurors).
- Review voir dire procedures and practices.

A way to encourage potential juror response during a pandemic emergency is preparation for their protection from unnecessary exposure to the disease and education of the public about the steps which have been taken. Limitation of exposure to the disease for all individuals involved in the court process is paramount to keeping the courts open. Potential jurors may be one of the larger threats to essential staff responsible for court operations and to each other. Suggestions to limit exposure include:

- Limit the group size panelist called at one time to be interviewed for the selection process
- Provide provisions in all aspects of the process to allow adequate space for a 3 foot radius to reduce potential exposure
- Conduct initial voir dire remotely.
- Provision of Personal Protective Equipment (PPE), sanitizer, gloves, etc. to jurors.
- Implementation of 2 juror check-in times per day and increase the number of days per week jurors report to decrease the number of individuals gathered.
- Use of video, video/teleconferencing and internet whenever possible.

General jury management operational issues include:

- Alternate methods of summons notice due to relocations and mail limitations.
- Hand written warrants for juror payments and available funds.
- Adequate PPE for jurors.
- Need for cross training with individuals outside of the department.
- Emergency “To Go” bags with forms, equipment, procedures and supplies.

VI. Exercising Pandemic Plans

The scenarios developed by the Second Circuit to exercise their pandemic influenza plan are provided below.

From the Second Circuit

2^d Judicial Circuit Pandemic Influenza Table-Top Exercise

These scenarios are based upon information found in the Department of Homeland Security document Pandemic Influenza Preparedness, Response, and Recovery Guide for Critical Infrastructure and Key Resources, 19 Sep 06.

Scenario 1: Immediate Response to Initial Outbreak

Time Frame: D+15 to D+30

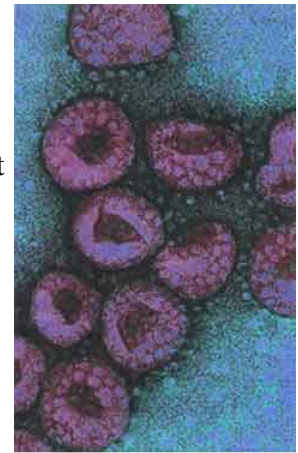
The first consistent and wide-scale outbreak of an avian flu strain by human-to-human transmission occurred in Kuta, on the Island of Bali, in Indonesia. There was initial confusion between the World Health Organization (WHO) and Indonesian public health officials over the facts and means of transmission. Kuta is a very remote location with scant public health resources and poor public hygiene services. As more cases were suspected in that area of Indonesia, American tourists who had potential contact with avian flu victims returned to the United States on D+0 (D= the day avian flu arrived in the United States and the ± number = subsequent days). Most returned to cities on the West Coast of the United States, but one returned to Tallahassee – Amanda Jones. Amanda was a Florida State University student on Winter Break in Indonesia visiting her Dad who worked for Petrobas Oil Company in Jakarta, Indonesia. She was a junior majoring in middle school education and was a student teacher intern at Fairview Middle School in Tallahassee, Florida.



Amanda fell ill on D+2 but went to class anyway, coughing and sneezing and spreading what would later be identified as avian flu. Her condition worsened and her boyfriend took her to the

emergency room late in the night of D+3. Despite extraordinary medical intervention and massive doses of Tamiflu, she passed away on the morning of D+5, and her boyfriend began to have severe flu symptoms later that same day. He followed his girlfriend into death five days later at D+10. Clinical samples sent to the Florida Department of Health lab in Jacksonville indicated that both young people had contracted avian flu. These activities resulted in rumors of bird flu spreading throughout the city and region. Meanwhile, several of Amanda's classmates and her roommates fell ill with flu-like symptoms. Some went to Capital Regional Medical Center or Tallahassee Memorial Hospital to seek treatment, but four were flown home for treatment by concerned parents. Several of these students, in Tallahassee, Miami, and Tampa, died on D+13. Meanwhile, many Fairview Middle School students from Amanda's internship class fell ill, and the first child fatality, Jennifer Weston, only twelve years old, passed away on D+13.

That same day, the CDC, in conjunction with local health officials, confirmed that a strain of avian flu, H5N1, was the cause of the deaths in Tallahassee, almost simultaneously with similar confirmations in Seattle, San Francisco, and San Diego. Public advisories were issued and the Tallahassee Democrat ran a front page story the next day, D+14. Public concern was heightened that evening when WTXL and WCTV reported more deaths on the evening news. The 2^d Judicial Circuit is potentially facing an epidemic of a deadly and virulent new strain of avian flu that can transmit from human-to-human contact.



The Courts are facing significant challenges during this initial phase of a limited outbreak:

Court Employees - Our new Teen Court Education Coordinator has fallen ill with flu-like symptoms. He had made a presentation at Fairview Middle School last week, but no one is sure if it's just the regular flu or avian flu. Four other employees have said they feel tired, have aches, and feel a flu coming on. Their morale is low and they are very worried. The Trial Court Administrator and the Juvenile Alternative Sanctions Coordinator have been activated for military duty as part of Operation American Safeguard. They do not know when they will return. Two employees have asked for extended leave because their children attend Fairview Middle School and they wish to pull their kids out and stay at home with them. One offers to work from home a few hours a day, while the other will split babysitting duties with her ex-husband and come to work halftime. Another employee has requested an extended leave of absence to go with

“The strategic goals [for the Florida State Courts System] are:

- We must deal with crises in a way that protects the health and safety of everyone at the court facilities; and*
- We must “keep the courts open” to ensure justice for the people,”*

- Florida State Courts Strategy for Pandemic Influenza, 29 Mar 06

her family to their vacation home in the mountains for the next month. She feels it would be safer to get out of town.

Productivity of other employees has been significantly lessened as they have become more and more obsessed with pandemic flu and with discussing the latest news. The Clerk of Court's employees, bailiffs, Public Defender & State Attorney's staff, and court-related state agency employees are facing the same problems with absences and low morale.

Court Cases – There are many new court cases, most of first instance, resulting from the initial stages of pandemic influenza. There has been one arrest for failure to maintain quarantine. This was an FSU student who went to Bullwinkle's Lounge on Sunday night and was turned into TPD's "Party Patrol" by some acquaintances who knew he was a friend of Amanda Jones and under quarantine. His first appearance is scheduled for today. There have been numerous requests for bond reduction hearings or electronic monitoring by counsel for Leon County Jail inmates in the Felony & Misdemeanor Divisions. These inmates are concerned that pandemic flu will spread quickly in the jail. Similar motions for hearings are pending today in most of the counties of the 2^d Judicial Circuit, including Gadsden, Liberty, and Wakulla Counties. A Writ of Mandamus to close the public schools has been filed before the Civil Division in Leon County and the Circuit Judge in Wakulla County. The parents of three FSU students, currently under quarantine at an outpatient clinic at Capital Regional Medical Center, have filed a petition for injunction. They want to quarantine their children in their homes in various cities throughout Florida, and not take the chance of leaving them in Tallahassee.

Court Operations – Court staff are doubly concerned today, as there are jurors summoned in three counties, Franklin, Leon, and Wakulla Counties. The expectation is that the summoning yield will be very low, with perhaps not enough jurors to select juries in multiple cases. There is also concern that jurors who do show up will request to be excused because it might be too dangerous to be isolated in close quarters with numerous other jurors. Further, numerous requests for continuance are being filed at the Clerk's counters throughout the circuit, as litigants and counsel want to make personal preparations instead of attend their court date, or are having difficulty confirming the attendance of witnesses and clients. Today should be a very interesting day on the bench.

"Keep the Courts open."

- Direction from then Chief Justice Charles T. Wells, soon after 11 Sep 01

It is now D+15, Monday morning at the Leon County Courthouse. What will the Courts do?

Questions:

1. How do we protect our employees and maintain a calm and productive work environment?
2. How will the Courts ensure that we have enough employees to conduct operations?
3. How will employees be dealt with if they:

- Want to telecommute?
- Are sick and stay home?
- Think they are sick, but are not, and want to stay home?
- Are sick and come to work?
- Have family members who are sick?
- Have a child whose school is closed and they have no child care arrangements?
- Are quarantined by the Health Department?
- Self-quarantine?
- Want an extended leave of absence without pay?
- Want access to a sick leave pool?
- Threaten to file an OSHA complaint?

4. How will the Courts ensure adequate precautions are taken to limit the spread of avian flu within their courthouses?

5. How will the Courts administratively and operationally respond to cases of first instance?

6. How will the Courts legally respond to cases of first instance, especially within the emergency time frames necessary or requested?

7. How will the Courts respond to disruptions in scheduled court events, a lower summoning yield for jurors, and the failure to appear by witnesses, parties, experts, and independent contractors (foreign language interpreters, mediators, etc.)?

8. How will the Courts get its message that “we’re open” or “we’re safe” out to the public?

9. How will the Courts deal with rumors within the branch?

Scenario 2: Short-Term Response to Severe Outbreak

Time Frame: D+31 to D+89

It is now sixteen days later. Within the next fifty-eight days a severe pandemic influenza wave will pass through the 2^d Judicial Circuit. Dramatic worker

“The avian flu bears the potential for societal disruption of unprecedented proportion. Strong partnerships and smart planning will be our best protection against the threat.”

- DHS Secretary Michael Chertoff, 5 Dec 05

absenteeism (40 percent or more) will occur at all levels due to illness, family member care, death, childcare, and those who are “worried well.” The spread of avian flu will be rapid and unpredictable, quickly enveloping all of the 2^d Judicial Circuit and precluding any safe havens. Movement restrictions into some counties, the subject of lawsuits as yet unresolved, will restrict the delivery of many goods and services. The price of gasoline will rise to \$5.00 a gallon because of disruptions to the supply chain, while the cost of food will likewise increase. Many small businesses will have to close as sales will plummet and workers will not be available. Many students will drop out of FSU and FAMU because of concerns about avian flu, causing severe strain to the local economy.

Disruptions to the first responder work force, including essential police, fire, and emergency medical services will place every resident at significantly greater risk. Avian flu will hit the Tallahassee Police Department particularly hard because of their greater exposure to a larger number of victims, requiring the Leon County Sheriff’s Office to regularly patrol areas and respond to 911 calls within the city limits. Other law enforcement agencies throughout the 2^d Judicial Circuit will experience similar problems, perhaps even exacerbated by the smaller size of their agencies.

City and County Commission directives in several counties will close movie theaters, schools, the area malls, and nightclubs until this wave of avian flu passes. Some will not allow public funerals. The 900 available hospital beds in the 2^d Judicial Circuit will be overwhelmed by the sheer volume of new patients, even with a ban on elective or non-essential surgery. Because of this shortage, the Leon County Civic Center will be established as a mass quarantine center for those who cannot be quarantined at home. Unfortunately, physicians, medical staff, and equipment will be unavailable to adequately staff the Civic Center, resulting in a death rate higher for these patients than the mean throughout the 2^d Judicial Circuit. The death rate in the local jails, homeless shelters, and other areas of mass housing will also be higher than average.



The following casualties will occur within the 2^d Judicial Circuit:

- Franklin County: 2,765 sick, 553 fatalities, and 1,659 cannot or will not work
- Gadsden County: 11,916 sick, 2,383 fatalities, and 7,149 cannot or will not work
- Jefferson County: 3,542 sick, 708 fatalities, and 2,125 cannot or will not work
- Leon County: 67,975 sick, 13,595 fatalities, and 40,785 cannot or will not work
- Liberty County: 1,868 sick, 373 fatalities, and 1,121 cannot or will not work
- Wakulla County: 6,855 sick, 1,371 fatalities, and 4,113 cannot or will not work

The Courts will have a particularly difficult time. Five percent (5%) of Court employees will die (6 individuals), an additional twenty-five percent (25% or 24 individuals) will fall ill with avian flu but recover, and fifteen percent (15% or 18 individuals) refuse to, or cannot, come to work. Similar percentages of officers of the court, Clerk's employees, and court-related agency staff will be affected. These percentages will include our judges, general magistrates, and hearing officers in equal proportion.

A plan to limit hearings to only essential events will be implemented. These essential court events will include:

- First appearance
- Criminal arraignments
- Juvenile dependency shelter hearings
- Juvenile delinquency detention hearings
- Domestic violence injunctions
- Select mental health cases
- Avian flu-related cases
- Extraordinary writs

Most of these court events will be conducted by video using the video equipment in the new and old first appearance rooms at the Leon County Courthouse and Leon County Jail, video teleconferencing equipment rapidly moved to the Gadsden and Wakulla County Courthouses, the Beamers used for weekend and holiday first appearance throughout the 2^d Judicial Circuit, and finally telephone hearings as a back-up. Juvenile detention hearings will still be conducted in person until the Supreme Court passes emergency rules allowing video detention hearings on D+45. New rules to streamline electronic filing by fax and e-mail will be rapidly introduced. The Supreme Court will also issue tolling orders for days when the 2^d Judicial Circuit courts are closed.

Many judges will work from home using Beamer videophones and court files transported by court staff acting as couriers. Smaller case files will be scanned and e-mailed to judges. However, temporary disruptions to the World Wide Web and locally to Internet Service Providers (ISP) will result in reduced dependence on scanned files.

Court employees available to work will be scheduled to work, allowed to telecommute, or sent home for their own safety. Particularly critical to conducting operations will be the technology staff of

“The number one priority, certainly, is to keep our court system open and operational in the face of whatever may arise.” As for the bird flu, Lewis said, “The numbers are already starting in Indonesia. They expect this to keep mutating. ... If there’s a vaccine, it’s not going to be prepared until at least six months into this. So we’re talking about a long period of time. Our generation hasn’t faced something like this. ... So that’s a concern to me. ... Justice doesn’t just happen. We have to plan for this and we have to have priorities, so we are not caught unprepared.”

- Chief Justice R. Fred Lewis to The Florida Bar Journal, Oct 06

the Courts, the six counties, and the Clerks of Court. Despite their small numbers, they are responsible for maintaining all court communications throughout the 2^d Judicial Circuit. Personal protective equipment for employees is severely limited throughout the United States. The pre-positioned pandemic influenza supplies (surgical masks, hand sanitizer, gloves, and waste bags) purchased by the 2^d Judicial Circuit in August 2006 will rapidly be used up. Supreme Court of Florida supplies to augment our cache will be exhausted.

It is now D+60. What have the Courts and related organizations done in the short-term to respond to avian flu? What can they do in the next thirty days to better respond to the issues and problems created by avian flu?

Questions:

1. How will the Courts conduct operations with a reduced number of staff?
2. What are essential court events that will need to be heard in this time frame?
3. What about other legal requirements, such as speedy trial rules or face-to-face requirements in juvenile delinquency hearings?
4. How will the Courts ensure adequate security with a reduced number of bailiffs?
5. How will the Courts transmit information to the judges, officers of the court, litigants, and court staff? What about thick case files or emergency pleadings?
6. What if the Internet, local ISPs, or phone systems fail?
7. What if essential supplies become unavailable, for example, gasoline for couriers, light bulbs, toner cartridges, paper, surgical masks, gloves, hand sanitizer, etc.?
8. What barriers or protections for the public and employees can be put into place within the 31 to 89 day time frame?
9. How can the Courts communicate operational and administrative requirements and procedures to officers of the court, litigants, including pro se litigants, and the public?

Scenario 3: Long-Term Response to Severe Outbreak

Time Frame: ≥ D+90, and continues until transition to recovery phase

It has now been ninety days since the first spread of avian flu in the United States. Pandemic influenza has moved beyond the 2^d Judicial Circuit, as the number of new illnesses and subsequent fatalities in our area has dropped dramatically in the last one to two weeks. The dead have been buried and mourned, and our society, although somewhat humbled, is once again optimistic about future prospects. It appears that the worst is over for now. Unfortunately, local health officials must remind us that pandemic influenza has historically occurred in multiple waves. Another wave is expected within the next few months.

“Some will say this discussion of avian flu is an overreaction. Some may say, ‘Did we cry wolf?’ The reality is that if the H5N1 virus does not trigger pandemic flu, there will be another virus that will.”

- HHS Secretary Mike Leavitt, 2 Nov 05

With the worst over for now, the Courts are beginning to implement plans to provide the full services and hearings as required by law. The first jury trials since D+15 have been scheduled and jurors summoned, as are non-emergency civil and probate hearings, motion hearings, and other routine court events. Many hearings were legally deferred, and filing deadlines tolled, by numerous orders of the Supreme Court of Florida over the prior two and a half months. The extensive use of technology and teleconferencing has resulted in safer hearings for both the public and court employees, but disruptions to the Internet and phone communications proved worrisome at times. As the Court moves back to normalcy, it also prepares for the next wave of avian flu to strike the 2^d Judicial Circuit.

Questions:

1. In hindsight, what should the Courts have done prior to a severe outbreak of avian flu when they had the luxury of time, full staffing, and available resources?
2. How can we better engage state and local health officials in advance of pandemic?
3. How can we better prepare for legal considerations in advance of pandemic?
4. What technological innovations are available to implement now or should be studied to provide infrastructure solutions in response to pandemic?
5. What education and training efforts should be initiated to prepare employees for a pandemic?

6. How can we improve communications and ensure redundancy in advance of a pandemic?
7. How we can we better utilize the Court Emergency Management Groups (CEMG) or other local planning & coordination organizations to prepare for a pandemic?
8. What additional emergency supplies in general, and for pandemic influenza in particular, should be purchased by the 2^d Judicial Circuit?
9. Should we hold a pandemic influenza practical exercise, similar in scope and effort to the Gadsden County Courthouse Security Exercise?

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