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PROTECTING THE JUDICIARY AT HOME AND IN THE COURTHOUSE

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COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

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PROTECTING THE JUDICIARY AT HOME AND IN THE COURTHOUSE

WEDNESDAY, MAY 18, 2005

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The Committee met, pursuant to notice, at 8:32 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Arlen Specter, Chairman of the Committee, presiding.

Present: Senators Specter, Kyl, Leahy, Schumer, and Durbin.

OPENING STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Chairman SPECTER. The Judiciary Committee will now proceed with our hearing on Protecting the Judiciary at Home and in the Courthouse.

On February 28th of this year, an angry litigant—that is the characterization of Judge Joan Humphrey Lefkow—shot and killed Judge Lefkow's husband and aged mother. On March 14th, I wrote to the Director of the U.S. Marshals Service to find out what security measures were in practice and what would be instituted following the terrible tragedy in Chicago. On April 11th, the Department of Justice responded that they were looking at the judicial facilities and off-site security, but nothing more than that.

In the emergency supplemental recently passed, $11.9 million was appropriated for judicial security. On May 6th, I met with Third Circuit Judge Jane Roth, who is Chair of the Committee on Facilities and Security for the Judicial Conference of the United States.

There is no doubt that the rule of law is the backbone of our civilized society. The capability of the judiciary to determine the rule of law without fear or favor is an indispensable prerequisite in our democratic society. Personal security, along with judicial independence, must be safeguarded at all costs.

I intend to be very brief in my opening statement because every day on Capitol Hill is a busy day. This is more so because at 9:30 the Senate will start to consider the nomination of Texas Supreme Court Justice Priscilla Owen for the Court of Appeals for the Fifth Circuit, and it will inevitably implicate the so-called constitutional or nuclear option, so that a number of us will have to excuse ourselves, but the hearing will proceed in full.

Judge Jane Roth was quoted in the Chicago Tribune yesterday with some of the same comments that she made to me when I met with her earlier this month that in contacts with the Department

of Justice on judicial security, Judge Roth said, quote, at least quoted, "I think the Department of Justice feels that it is none of our business."

In conversations with a ranking Department of Justice official, Judge Roth again is quoted, "I told him we needed that information. He said it would be one independent branch meddling with another independent branch—separation of powers." Well, fortunately, there is a third branch. It is called the Congress, and the Congress intends to act.

Without going into a litany of studies which raise serious questions about the adequacy of the Marshals Service—and we have the officials here today, some of them, but this matter will go to the Attorney General ultimately, who has responsibility.

A report issued by the Inspector General of the Department of Justice in March of last year found that the U.S. Marshals Service threat assessments are, quote, "untimely and of questionable validity," and that the U.S. Marshals Service has, quote, "limited capability to collect and share intelligence, and lacks adequate standards for determining appropriate protective measures."

This Committee will act, Judge Lefkow, and I can assure you that the Congress will act. And there will be no talk about separation of powers. We have the authority to provide adequate security for judges and we are determined to do just that.

Let me yield now to my distinguished ranking member, Senator Leahy, unless he wishes to yield to—

Senator LEAHY. Mr. Chairman, I am going to yield to Senator Durbin, who has been also such a leader in this and has expressed, as has Senator Obama, the feeling of his own State on this tragedy, a feeling joined by others. So I just ask consent that my statement be part of the record.

Chairman SPECTER. Your statement will, without objection, be made part of the record.

[The prepared statement of Senator Leahy appears as a submission for the record.]

Chairman SPECTER. I am delighted now to recognize Senator Durbin, who discussed this entire matter with me shortly after February 28th, and we took the initial steps at that time, he and I, to proceed to where we are today with this hearing.

Senator Durbin.

STATEMENT OF HON. RICHARD J. DURBIN, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator DURBIN. Thank you very much, Chairman Specter. On behalf of Senator Obama, who is here today and will speak, and myself, I want to thank you for convening this hearing. I want to commend you for your leadership on this critical issue of judicial security, and I want to thank you as well for helping us secure an appropriation of $12 million to dedicate initially to this issue of judicial security.

The gruesome crimes that were perpetrated against Judge Lefkow's family on February 28th, as well as the crimes against a judge and other court officials in Atlanta a few weeks later, were attacks not only on innocent people, but on the Federal judiciary itself. Three Federal judges have been assassinated since 1978.

Never, never before has a Federal judge's family been a victim of these crimes. We must provide more protection for our judges and their families so that others will be spared the tragedy that Judge Lefkow and her family have been forced to endure.

I am not going to go into detail here because I know we are anxious to hear from the judge. I do believe that we must make substantial changes in the Federal Marshals Service to meet this new challenge, and we will discuss those this morning.

I am pleased that the Congress has accepted the amendment that Senator Obama, Senator Kennedy and I offered to appropriate $12 million for the Marshals Service to improve protection of Federal judges. I also think that we have to be careful in what we say. I know that we believe passionately in free speech in this country, but I believe that many public officials, both elected and otherwise, have made verbal attacks on the Federal judiciary which we should not tolerate. They are reprehensible. I will not list them. You have heard them. Some will be referred to during the course of this hearing.

At this moment, Mr. Chairman, I would like to welcome Judge Lefkow and her daughters to the Judiciary Committee. I want to acknowledge the family of Judge Lefkow's husband, Michael. I know his two sisters and niece are here as well. It is an act of tremendous courage for them to be here.

I know Judge Lefkow has declined many speaking invitations and interviews, but she felt that the U.S. Senate Judiciary Committee was an appropriate forum to discuss her tragedy and to help us find ways to prevent such tragedies from happening again.

A few weeks ago, I met with the judge in my Chicago office and I said to her, Joan, if you don't want to do this for any reason, I fully understand. She said, I want to do this. And I admire your courage so much in making this decision.

I am honored to introduce Judge Lefkow today not only because she is a constituent of mine, but also because I recommended her nomination for the Federal bench five years ago. The last time she was in this hearing room in June 2000, I introduced her to the Committee and said Judge Lefkow has a rare combination of intelligence, professional experience, temperament and devotion to public service. She is going to be an excellent Federal judge.

Well, my prediction turned out to be true. She has served not only with excellence, but with bravery and distinction. Even before the heart-breaking tragedy she recently suffered, she incurred death threats in multiple cases involving high-profile parties. Nevertheless, she has been a noble public servant and she has persevered.

Judge Charles Kocoras, Chief Judge of the U.S. District Court in the Northern District, wrote a letter to me a few weeks and here is what he said about Judge Lefkow, quote, "The sweetest Federal judge I have ever met, and whose own sense of fairness is a model for the world." Boy, that is high praise. We are extremely fortunate to have Judge Lefkow on the Federal bench in Chicago. We are honored to have her with us today.

I know that my colleague, Senator Obama, is here to say a few words, and I would defer to you now, Mr. Chairman.

[The prepared statement of Senator Durbin appears as a submission for the record.]

Chairman SPECTER. Thank you, Senator Durbin.

Senator SCHUMER. Mr. Chairman, I just wanted to say a brief word here.

Chairman SPECTER. Senator Schumer.

STATEMENT OF HON. CHARLES E. SCHUMER, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator SCHUMER. Thank you, Mr. Chairman. I will be brief.

I too want to just thank you, Judge Lefkow, for coming here, for your strength. When we face tragedy, it is easy to just curse the darkness, and you are trying to shed some light and we all very much appreciate that. We have never met before, but the pain and the strength and the sadness on your face, I think, speaks volumes.

I note in your testimony, which I have read, that you talk about all of this debasing of the Federal judiciary in rather nasty terms. We all know that judges have faced threats all along. I mean, we have in New York a unit of the police department which has to often guard judges because of threats, almost all of them in nonpolitical cases, but because it is the criminal justice system. Being a judge is not easy and it is sometimes dangerous.

But when in the public dialogue it becomes acceptable just to debase judges in virulent and nasty terms, it sure doesn't help the independence of the judiciary or the ideals that America stands for. I note in your testimony that you ask that these kinds of things stop and be denounced readily and quickly. If you don't denounce them, they develop into a more virulent form. That has been what history shows us.

I just hope we can begin to see that here in Washington that when people step over the line and talk about judges in ways that you shouldn't talk about any human being, let alone people who are supposed to guard our independence, that united from one end of this town to the other we just say that has no place in our dialogue. That has happened yet. Maybe your being here will importune it to happen.

Chairman SPECTER. Thank you, Senator Schumer.

We now recognize Senator Obama for an introduction of the judge.

STATEMENT OF HON. BARACK OBAMA, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator OBAMA. Thank you very much, Mr. Chairman, Senator Durbin, Senator Schumer. I very much appreciate this opportunity just briefly to introduce Judge Lefkow. Senator Durbin has already given you some sense of her background.

I begin by just, as others have, thanking her for her incredible courage for appearing before the Committee. I know that she is blessed to have her four daughters here, as well as other family members. And I am sure that I speak for the entire Senate when I say that our thoughts and prayers are with you, Judge, during this difficult period.

As an attorney from Chicago, I am also familiar with the work that her husband, Michael, did. He himself was a tireless activist

and advocate on behalf of the less fortunate, as well as a loving father, and so he is missed in the Chicago community.

Your mother, Donna Humphrey, I am sure was extraordinarily proud of you and the family as well.

We do a lot of talking here in Washington, but too often we don't discuss the issues that matter most. Protecting our judges is one of those issues, and so I commend you, Mr. Chairman, for calling this hearing with Senator Durbin.

Judges have an extraordinarily difficult job. Everyday, they walk into that courtroom knowing that a decision they make could not only affect the lives of those appearing them, but the lives of millions who abide by our Nation's laws. Judges are brave public servants who believe that our laws are an expression of our shared responsibility to one another as Americans.

Joan Lefkow epitomizes this commitment to public service ever since she became a magistrate judge in 1982. As Senator Durbin mentioned, even after her life was threatened, she returned to the bench because she believed that the work she did helped to ensure all of us the kind of society that we have come to take for granted.

Unfortunately, no judge should ever worry that upholding the law might endanger them or their family. Senator Durbin and I, as has been noted, recently were able to secure $12 million in next year's budget to keep our judges safe, but more must be done. So I am looking forward to hearing this Committee's ideas and working with this Committee in the future.

My final note, I guess, would be that this hearing hopefully can help us with the political dialogue that has been referred to in recent months and years. All too often, politicians have a tendency to speak about judges not as public servants, but as obstacles who stand between those politicians and their partisan agendas. This is not what our judges are. This is not what Judge Lefkow is.

She is a judge whose chamber was decorated with her children's art work, a mother who prepared four separate meals to suit her daughters' difference tastes, a student who attended an evangelical college to follow in the footsteps of her pastor, and a public servant who has made upholding the law her life's work. We are grateful for that work. We hopefully will honor that work and the work of all Federal judges by the efforts in this Committee.

I thank you so much, Judge, for taking the time to be here. You have my utmost respect and gratitude.

Thank you very much, Mr. Chairman.

Chairman SPECTER. Judge Lefkow, our Committee very much appreciates your presence. It is an enormously serious problem and your focus here will focus a great deal of attention not only on Capitol Hill, but in the country. And to repeat, the Congress will act to provide security for judges.

Judge Lefkow has had a very distinguished career, has been a Federal judicial official since 1982. From 1982 until 1997, she was a U.S. magistrate judge in the Northern District of Illinois. From 1997, she served as a bankruptcy judge until the year 2000, when she was appointed to the United States District Judge for the Northern District of Illinois, where she serves at the present time. She has a bachelor's degree from Wheaton College and a law degree from Northwestern University Law School.

Judge Lefkow, again, thank you for your being here and we look forward to your testimony.

STATEMENT OF JOAN HUMPHREY LEFKOW, UNITED STATES DISTRICT JUDGE, NORTHERN DISTRICT OF ILLINOIS, CHICAGO, ILLINOIS

Judge LEFKOW. Thank you, Mr. Chairman and members of the Committee. Thank you for your invitation to appear here today, and I do want to also thank you, Senator Durbin, for your great compassion that you have expressed to me and my family through this. I also would like to acknowledge the presence of Senator Dan Coates, who is an old friend of mine and was kind enough to come along and give me support today.

I have prepared my statement and, with your indulgence, I will probably be reading quite a bit of it because it is difficult for me to get through this.

I am the fourth judge since 1978 who has been the victim of an assassination as a result of what President Clinton wrote to me, "the madness in the shadows of modern life"; more specifically, as a direct result of a decision made in the course of fulfilling our duties to do justice without fear or favor.

Among more than 1,000 letters of condolence that my family received are approximately 200 from judges, State and Federal, who know—each of them know in their own heart "this could have been me." Five assassinations—that includes two for me—in 25 years tells us that judges are particularly vulnerable. By comparison—I looked into this—the last such tragedy within the Congress was in 1978, and that was on foreign soil. And it tells us that something is wrong in the judicial protection arena.

Let me briefly tell you what this has done not only to me and my children, but to my extended family of brothers and sisters, nieces, nephews and others. As Senator Obama just mentioned, Michael was a man whose excellent character and accomplishments at the bar and as a family man have been described in many recent news reports and I will not attempt to recount them.

On a personal level, however, he was a man who at the age of 64 looked to the future with hopefulness and anticipation. A litigant who was angry with me shot him in the head, and my aged mother, on February 28th of this year, for no reason other than that they were in his way on his road to murder me. He could have easily added my daughter, who is 16 years old and lived in our house, and me.

2/28 is our own personal 9/11. Since 2/28, our family includes a daughter and her husband who have to explain to their young children why their grandfather is now with God and they will never see him again, two daughters who will not have their beaming father to walk them down the aisle at their weddings in the coming year, and two who will not have dad to be there to join the fun at their upcoming graduations from high school and college. From now on, they will have a father's guidance only through the memory of what he was to them.

Michael's family includes, among others, four sisters and brothers, who have now lost their third sibling before the age of 65. An entire family has lost its ability to feel safe when we walk through

the doors of our own homes. Beyond the family, there is a community of clients, friends, fellow church members and neighbors who simply miss this man and woman, who were a significant part of their lives in one way or another.

The father who sent every report card to grandma so she also could rejoice in what the children accomplished is no longer there, and neither is the grandmother who made each of her 20 grandchildren and great grandchildren believe that that grandchild was her special favorite. Indeed, she was my children's only grandparent.

Finally, I am the wife who wakes up in the morning not to a cup of coffee presented by my husband of 30 years to reopen what we called the endless conversation of marriage, but to an open book that I was reading in an effort to banish the memories of 5:30 p.m. on the day our world changed forever.

I say all this not to garner sympathy or pity. We have been overwhelmed by the kindness of others and I could not begin to adequately express our gratitude. Rather, I come to you with a plea that you who have the power continue to make judicial protection a priority, as is reflected in the recent passage of H.R. 1268, which includes $12 million to the Marshals Service for increased security for Federal judges, specifically for home intrusion detection systems, and that you be vigilant in monitoring judicial security so that sympathetic feelings translate into something real for us. And I come to you with a plea that each of you exercise leadership to use your voices to support the vital role of judges in sustaining a society based on the rule of law instead of right being defined by might.

I understand Congress can't eradicate all violence against judges, nor are we exempt from this madness in the shadows of modern life. But as I replay in my mind the events that led to our tragedy, I believe that several things might have prevented it and could prevent it from happening to even one more of our judges.

The first is rapid distribution of the funds for home security systems. We, the judges, are very grateful that this money has been appropriated so rapidly and certainly appreciate it so much. Now, the judiciary, however, is concerned that all or part of this appropriation might be used to meet other needs of the Marshals Service. Obviously, had the Lefkow family had this system in our home, this horror could have been avoided.

I hope that this Committee and the Senate will make it very clear to the Director of the Marshals Service, Mr. Reyna, your intent that this money be distributed to the judges in the field as quickly as the judiciary can make it possible, make the arrangements possible.

As recently as last Friday, which was May 13th, I was spotted and harassed in a restaurant in downtown Chicago. Now, had that harasser come back rather than with a nasty sign and had a gun, obviously I wouldn't be here today to speak with you.

I also urge your support for legislation that prohibits the posting of personal information about judges, as well as other public officials, on the Internet without their written consent. I had in my local court asked that some online research be done about each of the members of the Committee just to try to illustrate to you what

is out there on the Internet free of charge or for a mere $20, and it is really shocking what can be found on the Internet.

As some of you may have heard, during the late fall of 2003 I became aware that I was being vilified on the Internet by a white supremacist organization that had a trademark case before me. As some may be aware, the circumstances resulted in prosecution and conviction of the principal of that group. I was labeled "a probable Jew" with "mixed-race grandchildren," as if those were shameful things.

But eventually my home address and other personal information were posted by this fringe group. The information, true and false, that was posted about me was readily available free of charge on the Internet. A small fee will give anyone who wants it access to Social Security numbers, loans, land transactions, the names of neighbors, and so forth. Although it may never be stopped entirely, this is a brave new world and I hope that something can be done to limit the commercial trafficking in such information which makes it out there for people to find.

The third item for which the judiciary needs your support is adequate funding for adequate staffing of the United States Marshals Service. Others who are more knowledgeable than I, including Judge Roth, will be addressing you on these matters, and I also believe that you have been provided a letter that my Chief Judge, Charles Kocoras, wrote to you, Senator Specter, addressing these issues as well.

This is my personal observation over the 22-plus years that I have worked in the Federal judiciary: There has been a reduction of support for the judges that corresponds with the increase in the demand for transportation of prisoners, apprehension of fugitives and other responsibilities associated with the federalization of criminal law.

Although security is provided at all criminal case hearings, many officers are not trained U.S. Marshals, and on the civil side no security is provided unless the judge specifically requests it from an already strained district office. We need a trained deputy marshal present at all court hearings, criminal and civil, who can be our eyes and ears to identify and follow up on litigants who appear to be dangerous.

How many times have I chastised myself for not recognizing this threat that became a reality? But this is neither my expertise nor do I believe it is appropriate that I should be thinking about whether someone is dangerous when I am trying to decide their case.

In addition, my own experience with my current security detail suggests to me that there is a tremendous need for thinking and planning and training from the top of the Marshals Service. Let me be clear. I do not intend by these remarks to convey any criticism of either Marshal Kim Widup of the Northern District of Illinois, nor any individual deputy whom I have encountered on my protection detail since February 28th.

Starting with the team who swept a shaken, disbelieving family into protective custody on that awful night, these deputies were the knot at the end of our rope for weeks, and not one of them has been anything but compassionate, available and committed beyond

the call of duty. This has been a sacrifice for the entire Service, of course, as districts who have lent deputies for my detail are even more short-handed in their own locales than they were under normal circumstances.

It is easy enough to blame the Service for problems, but the truth is that the Congress has never treated the U.S. Marshals as it has, for example, the Federal Bureau of Investigation, giving it the respect and resources that it needs to fulfill the tremendous responsibilities that it has.

The more that I learn about what is in place for judicial protection in the Marshals Service, the less sanguine I am that judicial security is anything but an ad hoc response to individual requests, and this is very disturbing to me.

Judges do not invite anyone to file a lawsuit. The cases come to us because the prosecutor and individual or corporation is convinced that the court will protect the rights that they believe are granted to them by the Congress and the Constitution. Neither do we choose the issues. I know many judges who welcome the—I am sorry. I will back up here. Let me just start back. I am sorry. I skipped a little bit.

Chairman SPECTER. Judge Lefkow, just take your time. You are fine.

Judge LEFKOW. Okay. My final point—and it really follows directly from the whole issue about the Marshals Service—is that I would ask the members of this Committee who are particularly committed with responsibility for the judiciary to publicly and persistently repudiate gratuitous attacks on the judiciary, such as the recent statement of Pat Robertson on national television, and unfortunately some members of the Congress, albeit in more measured terms. We need your help in tempering the tone of the debates that concern the independence of the judiciary.

I have come to know scores of judges during my 22 years as a magistrate judge, bankruptcy judge and district judge. Whether liberal or conservative, I have never encountered a judge in the Federal judiciary who can remotely be described as posing a threat, as Mr. Robertson said, "probably more serious than a few bearded terrorists who fly into buildings."

In this age of mass communication, harsh rhetoric is truly dangerous. It seems to me that even though we cannot prove a cause-and-effect relationship between rhetorical attacks on judges in general and violent acts of vengeance by a particular litigant, the fostering of disrespect for judges can only encourage those who are on the edge or on the fringe to exact revenge on a judge who displeases them.

As I was saying, we don't invite the cases. The cases come to us. These decisions can be very difficult, decisions such as whether a man's heinous crime was a result of inability to understand the nature of his acts, or whether a decision by the next of kin to remove a feeding tube from a living human being should or should not be honored, or whether termination of a collectively-bargained pension plan is lawful. We call this winning and losing, but the terms are inadequate. This is never a game. These cases entail enormous consequences for the individuals involved and emotions can be powerful in these situations.

I would like to just remind you, although, Senator Specter, you have already said this—and I thank you for your words—my Chief Judge, Charles Kocoras, wrote this: "No principle by which we live as Americans or govern and judge ourselves is worthier of greater respect and fealty than the doctrine of the rule of law. Respect for the rule of law and the civility it affords requires acceptance of the results the law ordains. If it comes to pass that [attacks on judges] are perpetuated because each person feels free in deciding for themselves what is right or just, then chaos and anarchy will not be far behind..."

This very statement has been echoed by dozens of strangers in my mail. These ordinary citizens and voters understand what Judge Kocoras puts eloquently. This is the reason American judges are invited by developing democracies throughout the world to help establish an independent judiciary. Our system is the role model for the world. Without fearless judges, where are we as a Nation?

I have no doubt that each of you is equally committed to this idea, but your voices as elected officials are magnified. Judges, by contrast, speak most often through our decisions. We need your leadership in this area, and the stakes are profound.

Thank you, Mr. Chairman, for the opportunity to appear here today. I know that I speak for all my judicial colleagues throughout the Nation in expressing our appreciation for the time and attention that you are giving to our security needs, and it is very reassuring that you say that Congress will do something. I would be pleased to respond to any questions anyone would have.

[The prepared statement of Judge Lefkow appears as a submission for the record.]

Chairman SPECTER. Well, thank you very much, Judge Lefkow. Just a few questions.

You made a comment about an incident where you were harassed in a public restaurant. What kind of security are you now getting?

Judge LEFKOW. I have a full protection detail and they were present with me, yes.

Chairman SPECTER. You made a comment about an incident involving white supremacists. Had you requested security protection at that time?

Judge LEFKOW. I had security protection for a couple of days about the time that this gentleman was to be arrested and during the court hearings. I did not have protection thereafter, no, and I want to make sure that it is understood that I did not request it or demand it. But if I could use this as an opportunity to say that I think the judges don't really know—it is not our expertise to know when we need protection. That is why I think we need someone in the Marshals Service or we need the Marshals Service to really study and analyze this issue as law enforcement people to help us understand, yes, you need protection.

Chairman SPECTER. Judge Lefkow, my suggestion to you and your fellow judges would be not to be reluctant about requesting protection. It is true that you are not an expert in the field, and it may be that you feel a certain reluctance to have resources attached to your security, leaving it to somebody else. But the squeaky wheel gets the oil and there has been enough experience

so that you are well within your rights and well within your prudence to ask for it.

Tell us just a little bit more about what happened on this white supremacist case, what the circumstances were and what were the indicators that there could have been a problem and why you were only given protection for a couple of days.

Judge LEFKOW. The case was a very non-controversial case. You would never call it a, quote, "heater" case or high-profile case. It was a trademark case. I began to learn about this happening when the opposing party to this supremacist organization was attaching copies of e-mail print-outs in the papers that were sent to me.

By December of 2002, the United States Attorney, Patrick Fitzgerald, came to visit me and told me that there was a threat against my life. And he also told me that there was, shall we say, a mole or an inside informant in the organization.

Chairman SPECTER. A threat against your life?

Judge LEFKOW. Pardon me?

Chairman SPECTER. A threat against your life?

Judge LEFKOW. Yes, yes.

Chairman SPECTER. Well, it seems to me that would require some immediate protection from the Marshals Service. Did you get it?

Judge LEFKOW. He asked me—Mr. Fitzgerald asked me if I wanted protection, and based on what he said to me, I said, well, if they get my home address, let's talk about this again. But as far as I knew, they didn't know where I lived. And, you know, it is difficult for me to talk about this because I can say, you know, if I had done this, if I had done that, this might not have happened.

But I never spoke—well, that is not true. The Marshals Service knew about this and I suppose—I don't know, I don't know. The way it was presented, I don't feel that there was any system in place. It was just very much a local thing, and I knew that our Marshals Service couldn't even get the prisoners to court on time.

Chairman SPECTER. Judge Lefkow, I can fully understand your saying you don't know, but when the U.S. Attorney reports a threat, the U.S. Attorney ought to take the initiative to see that you have protection. And when you say the Marshals Service knew about it, they should take the initiative to give you the protection. A threat against your life is no minor matter and it should not be your burden to have to ask for it or insist on it because of the natural reluctance that someone in your position would have.

There are going to be a lot of people listening to your testimony, Judge Lefkow, and I would conclude—my red light is about to go on—with an urging of Federal judges or anyone who is subject to these kinds of threats not to be reticent.

Senator Durbin.

Senator DURBIN. Thank you, Mr. Chairman.

Judge Lefkow, thank you. I am glad you are here today. I am glad your family is with you to be part of this testimony.

Since the tragedy that you have lived through, I have had conversations with several of your colleagues on the bench. One or two called me and a few others I ran into and talked to, and they were stunned by what happened to you and then stepped back and real-

ized how vulnerable they were. They started looking at the world and their jobs a lot differently.

Without naming names, can you relate some of the conversations that you have had with your colleagues concerning their fears and their concerns?

Judge LEFKOW. Well, one of my colleagues said that they had a home security system installed and they hadn't been entirely vigilant about making sure it was on all the time, but obviously now it is on. I think it was just a tremendous—a wake-up call is not the right word. It was much more than that. It is like being run over by an 18-wheeler when this happens to one of your colleagues.

Judge Kocoras has been very supportive and strong, and he really has come out in favor of having a trained marshal at all court hearings. I think we are all concerned that we—everyone understands you need protection in criminal cases, but the civil cases—and indeed the judges who have been killed, they have all been civil cases where desperate people believe that they will find justice in Federal court.

They have been through the State courts, they have been turned down. They think my civil rights will be protected in Federal court. And then if, as in my case, I dismiss a case for lack of jurisdiction, it is an easy decision for me on that level because it was clear as a matter of law, but for this man it was the end of the road for him in terms of a peaceable solution to his problem.

Senator DURBIN. I might just add, Mr. Chairman, that after the identity of the murderer was disclosed, we realized that he had come to our office with the same file, in desperation. That doesn't happen frequently, but it happens, and I can understand why you stepped back and had to measure is this a real threat or is this what you can expect in the course of business that wouldn't be something of major concern.

So for your life, it has been changed dramatically, but for your colleagues on the bench, do you believe they are prepared to accept the changes that their lives would have to see if they moved forward with more security and more protection for their families?

Judge LEFKOW. I do, I do. They want it. That is what I am hearing. They want it.

Senator DURBIN. And what you said loud and clear was this $12 million that Senator Obama and I worked for—you want to see that money as quickly as possible come through and be made available for home security systems for the judges that want it.

Judge LEFKOW. Yes. As I understand it, though, that money is not necessarily earmarked for this purpose and we are hopeful we can work with the Marshals Service. But I just hope that everyone will understand that that is what the money is needed for now.

Senator DURBIN. And, of course, I think Senator Obama and I both feel that that is what we want done, and we will work with you in that regard.

The last point you went into is a delicate one because of our constitutional protection of free speech. People can say what they want to say and that is part of America. But some of the comments that you referred to from Reverend Robertson and some of the members of Congress clearly went over the line. To say that judges are a greater threat to America than bearded terrorists is sadly an incen-

diary remark which Mr. Robertson should have known better than to make that kind of remark.

I just want to say that he has the right to say what he believes, but you are correct in arguing that all of us, regardless of party, liberal, conservative, should be denouncing these remarks as totally irresponsible.

Judge LEFKOW. I agree with you.

Senator DURBIN. Thank you and your family for being here today.

Chairman SPECTER. Thank you, Senator Durbin.

Senator Obama, would you care to ask a question or make a further comment?

Senator OBAMA. Mr. Chairman, I very much appreciate you just allowing me to hear this testimony. I thought Judge Lefkow was incredibly eloquent under extraordinarily difficult circumstances, and I would just urge that we take this extraordinarily seriously and underscore maybe one point that I heard.

As Senator Durbin indicated, in our interactions with the public oftentimes we have people come in who are in difficult straits, having a difficult time, display erratic behavior. Part of our job as public servants, I think, is to try to treat everybody who comes through our doors with respect.

So I am just very sympathetic to the fact that Judge Lefkow may not be in a position to evaluate threats any more than I would be in these circumstances, and I just want to underscore the point that the initiative is going to need to come from the professionals. Obviously, all of us are now more mindful of the possibilities of these threats and will be on higher alert, but ultimately we have got to set up some systems and some structures whereby these threats are evaluated and appropriate protective steps are taken. My hope is that the Marshals Service, through not only additional money but additional planning and foresight, will be able to put such systems in place.

So, Judge Lefkow, I just thank you again for your wonderful testimony. It is very much appreciated.

Mr. Chairman, thank you for allowing me to participate.

Chairman SPECTER. Thank you, Senator Obama.

Thank you very much, Judge Lefkow. We appreciate your family coming and we appreciate our former colleague, Senator Dan Coates, being with you as a longstanding friend.

We turn now to the second panel: Judge Jane Roth; U.S. Marshals Services Director Benigno Reyna; the Marshal for the Northern District of Illinois, Kim R. Widup; and Judge Samuel Alba, United States Magistrate Judge for the District of Utah.

Judge Roth is testifying today in her capacity as Chair of the United States Judicial Conference's Committee on Security and Facilities. She has been on the U.S. Court of Appeals for the Third Circuit since July of 1991 and had been a Federal judge in the District of Delaware from November 1985 until her appointment to the Third Circuit. She has a bachelor's degree from Smith College and a law degree from the Harvard Law School.

Regretfully, I am going to have to excuse myself at this point. I will be following the testimony very closely. I have met with Judge Roth, as I stated before when earlier this month she and former

Chief Judge Edward R. Becker and I sat in Philadelphia and talked over these issues.

This hearing started very early, as you all know, because we had expected a mark-up on asbestos at 9:30. On Capitol Hill, one thing consistently trumps something else and the current consideration of Texas Supreme Court Justice Priscilla Owen is the number one item on the agenda because, as I noted earlier, it implicates the potential for the so-called constitutional or nuclear option. I regret that more of our colleagues couldn't be here, but it is a very busy place, and I can assure you that there will be a lot of attention paid to the transcript here.

My distinguished colleague, Senator Sessions, has just arrived without an opportunity for me to ask his favor of presiding at the hearing, but I saw that our two counsel talked to him.

May I now turn the gavel over to you, Senator Sessions?

Senator SESSIONS. Mr. Chairman, I would be honored to do as well as I can in your absence.

Chairman SPECTER. Well, I am sure you will be exemplary, as always. Thank you very much.

Senator SESSIONS [presiding.] Judge Roth, it is an honor to be before you.

STATEMENT OF JANE R. ROTH, JUDGE, UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, PHILADELPHIA, PENNSYLVANIA, AND CHAIR, COMMITTEE ON SECURITY AND FACILITIES, JUDICIAL CONFERENCE OF THE UNITED STATES

Judge ROTH. Well, our paths have crossed many times over the years and it is a great pleasure for me to be here today to testify before you.

As Chair of the Judicial Conference Committee on Security and Facilities, I want to thank you for calling this important hearing. I would particularly like to thank my colleague, Judge Joan Lefkow, for her willingness to be here today and to share with you the personal tragedy which she recently experienced. I also want to thank Magistrate Judge Sam Alba for being here today. The testimony and personal experience of these judges reinforces my view that the manner in which security is provided to the judiciary is unsatisfactory.

Simply put, we have an ongoing crisis in the relationship that exists between the judiciary, the United States Marshals Service and the Department of Justice. In a word, the relationship is dysfunctional. Unfortunately, it affects the security of judges, of their families and of everyone in the courthouse. It is a very serious matter, as Judge Lefkow's presence here today indicates.

I say this in spite of the dedication and hard work of the marshals serving in courthouses throughout the country. The problem is here in Washington, not out in the courts, where marshals work tirelessly to make do with inadequate resources. Despite the fact that judges are subject to an increasingly hostile environment, the judiciary is not able to participate in a meaningful way with the Marshals Service and the Department of Justice to ensure adequate resources for judicial security.

Right now, the judiciary is excluded from three key areas—policy, planning and budget—in the determination of the need for resources. Our requests to examine staffing levels have been denied. Our requests to participate in the determination of adequate staffing levels have not been honored.

Within that context, we need answers to the following questions. What policies are in place that govern how and when protective details will be assigned to judges and their families? What criteria are used in threat assessments? How are decisions about competing resource needs resolved? What is the process that establishes Marshals Service staffing levels for court security? Are these staffing levels being met? How are long-term resource needs determined and planned for?

These processes should be transparent and not exclude the client to whom the services are provided. We need a meaningful place at the table if there is to be any real accountability for judicial security. I believe that legislation is the only acceptable solution to the problem. I say this because of the repeated failure of the Marshals Service and the Department of Justice to respond meaningfully to our requests for answers.

I have provided you and your staff with draft language that is simple and straightforward. The proposed language would require the Marshals Service and the judiciary to jointly submit to Congress 180 days after the date of enactment a report that states what the security needs of the judiciary are and how they are to be addressed. Such a report will greatly assist your Committee in exercising its oversight responsibility over the judiciary's security requirements, and it will serve as a vehicle for bringing the judiciary and the Department of Justice together in a more productive relationship.

I would also like to thank you and the rest of the Senate for providing almost $12 million for judicial security, including home alarm systems for judges. This bill was recently signed into law by President Bush. It is worth noting that this request for home alarm systems came from the judiciary, not from the Marshals Service.

In the bill, this amount specifically included home security systems. The judiciary needs to start planning now with the Marshals Service for its implementation. We are concerned that the Marshals Service is not prepared to do so now. We want to start today.

Today's hearing reflects your appreciation for the seriousness of the issue. We hope you will support our request for legislation that will result in judicial security decisions being made in a more rational, realistic and collaborative fashion.

Thank you. I will be happy to answer any questions that the Committee may have.

[The prepared statement of Judge Roth appears as a submission for the record.]

Senator SESSIONS. Thank you, Judge Roth. We take seriously the comments that you have made.

Our next witness is Mr. Ben Reyna. He was appointed by President George Bush to serve as Director of the United States Marshals Service on October 29, 2001. He began his law enforcement career in 1976 with the Brownsville Police Department in the city

of Brownsville, Texas. During his 25-year career, he rose through the ranks and served six years as chief of police in Brownsville.

In 1997, he was appointed to the Texas Commission on Law Enforcement Officer Standards and Education by then-Governor Bush. He was appointed presiding officer in 2000, where he served until is current position. He has served in various positions for many Federal programs, including from 1998 to 2001 as regional law enforcement technology expert with the Counter-Drug Technology Assessment Center, which is part of the White House Office of National Drug Control Policy, and as law enforcement adviser to the Law Enforcement Coordinating Committee in the United States Attorney's Office for the Southern District of Texas.

He received his bachelor's degree in criminal justice from the University of Texas-Pan American and he is a graduate of the Federal of Bureau of Investigation National Academy in Quantico, Virginia.

Mr. Marshal, we are delighted to have you with us and would be pleased to hear your comments at this time.

STATEMENT OF BENIGNO G. REYNA, DIRECTOR, UNITED STATES MARSHALS SERVICE, DEPARTMENT OF JUSTICE, WASHINGTON, D.C.

Mr. REYNA. Thank you, and good morning, Mr. Chairman. I certainly want to also thank the prior members of the Committee who were here earlier. I want to thank you for the opportunity to appear before you today. I appreciate the support that you have given the United States Marshals Service in the past, and we look forward to working with you in addressing the challenges we face in preserving the integrity of the judicial process.

I am pleased to be joined this morning by the Honorable Jane Roth, Judge of the Third Circuit Court of Appeals; the Honorable Samuel Alba, Magistrate Judge, District of Utah; and United States Marshal of the Northern District of Illinois, the Honorable Kim Widup. I am proud to be here today to represent the thousands of dedicated deputy marshals and law enforcement professionals who make up this country's oldest Federal law enforcement profession.

The protection of the judiciary is one of the most important functions in American Government. If Federal jurists are to preside over cases and render verdicts free from fear of threat and intimidation in a safe environment, then judicial security must continue to be a priority for our Government. A secure judiciary is fundamentally necessary in the preservation of justice, in maintaining the rule of law and in protecting the rights of all citizens.

While the judicial security mission traditionally has been defined as protection of Federal judges and the physical protection of Federal courthouses, the full resources of the Marshals Service are devoted to the protection of the judicial process.

We are an agency steeped in history and service and we stand proud of our record. Each day, the men and women of the Marshals Service place their lives on the line to carry out this agency's primary mission—protecting the integrity of the judicial process of this great Nation. We do this in many ways, many of which the

public will never hear or think about. Please allow me to give you some examples.

Today, somewhere in the Northeast, we will pick up a Federal judge who is under our protection and safely take them to court. Then at the end of the day, we will take him home again, ensuring his safety. Today, in Chicago, deputy United States marshals will produce 18 defendants in front of a judge in is courtroom in the Dirksen Building. Many of these defendants are accused of violent acts, and the safety of the judge on the bench and everyone in that courtroom will be maintained by deputy United States marshals.

Today, we will screen countless visitors in Federal courthouses all across this country, and the safety of judges, lawyers, witnesses, jurors and court personnel will be maintained by deputy United States marshals. As we speak, from Oklahoma City alone, the United States Marshals Service's air fleet is flying more than 400 criminal defendants en route to courtrooms in cities all across this Nation. Both the defendants and judges that they will appear before will be protected by deputy United States marshals.

How do I know this? I know this because in the Marshals Service we do this everyday. We do this while successfully completing the other missions which have been mandated to the Marshals Service by Congress. We investigate inappropriate communications, which include threats to judges, Federal prosecutors, witnesses and jurors. We do this an average of 60 times a month as part of the judicial process.

We continue to protect witnesses from intimidation and from threat of harm as they provide testimony that is critical in high-profile trials as part of the judicial process. We transport prisoners. In the past week, deputy United States marshals safely moved more than 6,000 prisoners all across this country as part of the judicial process.

We arrest violent fugitives. In fact, last week we arrested 638 defendants wanted on felony warrants issued by the court as part of the judicial process. As part of the judicial process, every single defendant in the Federal system goes through the United States Marshals Service, and on any given day we have over 50,000 prisoners in our custody. Most of this work is done with very little fanfare. It is work that doesn't make the news, but it is done with professionalism and it is vital to the judicial process in this country.

Mr. Chairman and members of the Committee, I assure you that the men and women of the United States Marshals Service perform these duties and many others in a safe and secure manner and with the highest level of commitment each day. We appreciate your support in providing resources as we work with the Administrative Office of the United States Courts in enhancing outside security for members of the judiciary.

My written testimony has been submitted to the Committee. I want to thank you again for your invitation and support of the Marshals Service, and I look forward to answering any questions.

[The prepared statement of Mr. Reyna appears as a submission for the record.]

Senator SESSIONS. Thank you, sir.

Next, we will have Mr. Kim Widup, who is the United States Marshal for the Northern District of Illinois, one of our largest U.S.

Marshal districts. Prior to his appointment, he was a supervisory special agent or criminal investigator at the Federal level for 25 years, specializing in public corruption, white-collar crime and complex criminal investigations.

Among his many assignments, he was senior criminal investigator in the Office of the Inspector General's Headquarters Investigation and Protective Operations Division from 1992 to 1994, the lead investigator and supervisor to the Office of Independent Counsel investigating a former Agriculture Secretary, Assistant Special Agent in Charge for the Midwest Region of the Office of Inspector General in Chicago, and Chief of Investigations for the Whitewater investigation under Independent Counsel Robert Ray.

Marshal Widup, we are delighted to have you here and hear your perspective on courthouse security, since where the rubber meets the road, I guess it is your responsibility there in the courthouses of the Northern District of Illinois.

STATEMENT OF KIM RICHARD WIDUP, UNITED STATES MARSHAL, NORTHERN DISTRICT OF ILLINOIS, CHICAGO, ILLINOIS

Mr. WIDUP. Yes, sir, and thank you, Mr. Chairman. Mr. Chairman and members of the Committee, thank you for the opportunity to appear before you today to discuss the role of the United States Marshals Service in protecting the Federal judiciary. It is vital to our democracy that those who work within our judicial system do so without any fear or intimidation.

Recent tragic events in Chicago and Atlanta highlight the need for securing our courts and protecting those who work in them. I am a 26-year veteran of Federal law enforcement and have been the United States Marshal for the Northern District of Illinois since April 2002. I have personal knowledge of the important task of protecting judges and our judicial process, and I was serving as United States Marshal for the Northern District of Illinois when Bart Ross murdered the husband and mother of District Judge Joan Lefkow.

During my law enforcement career, I have received many hours of protective operations training from the Federal Law Enforcement Training Center, the U.S. Secret Service and agency-sponsored courses. I supervised the protective detail of the Secretary of Agriculture and have been involved in the supervision of numerous protective assignments within the Marshals Service for the Northern District of Illinois.

Since my appointment by President Bush to serve as U.S. Marshal, I have witnessed firsthand the vital importance of protecting our Federal judicial process. Just last month, members of my staff provided a safe and secure environment at the United States district courthouse in Chicago as white supremacist Matthew Hale was sentenced for his role in the solicitation of the murder of Judge Lefkow.

We have recently had several violent street gang proceedings, and in the recent past the cases against an Iraqi intelligence officer and Al Qaeda financier Enaam Aranout, both of which required extensive security measures by my staff.

Last year, we had the trial and sentencing of a defendant who was responsible for smuggling a handcuff key to Jeffrey Erickson approximately ten years ago. Erickson, in turn, murdered a deputy United States marshal and a court security officer before being fatally shot by the same court security officer.

Because failure is not an option, our security planning and execution needs to be the very best it can be. I have an excellent relationship with United States Attorney Patrick Fitzgerald, as well as both the Chief Judge of the Northern District of Illinois and the Chief Judge of the Seventh Judicial Circuit. My chief deputy and I meet with them, the clerk of the court and others who have a stake in protecting the judicial process on an as-needed basis.

Additionally, threats against our judges, U.S. Attorneys, Assistant United States Attorneys and others are brought to our attention on a regular basis either as direct threats or inappropriate communications. In the Northern District of Illinois, three deputy Marshals Service marshals are assigned full-time to investigate these potential threats.

In our district, we also enjoy a close working relationship with our colleagues in the Federal Bureau of Investigation, the Joint Terrorism Task Force, the Chicago Police Department, the Cook County Sheriff's office, as well as other State, local and Federal law enforcement agencies. Because of these relationships, once a threat is received, a collaborative effort is undertaken to investigate and resolve the situation, to run every lead possible to get to the source of the situation.

Throughout our 215-year history, the United States Marshals Service has given the highest priority to our judicial security mission and we are proud of our accomplishments. However, we must keep ever vigilant and ready. Judge Lefkow mentioned Friday night in Chicago while she was having dinner under the protection of the U.S. Marshals Service—she had a security detail that evening—an individual came up and slapped an offensive note on the window where she was dining and the person ran.

Our deputies—one of them pursued him. The rest of the deputies stayed to protect the judge. It is a sad situation that people can write such notes, but there were deputies on the scene and they were there to protect the judge, as she has been everyday since February 28th of this year. Again, we must keep ever vigilant and ready. With threats against the judiciary on the rise, it is vitally important that we all work together to maintain a safe and secure environment for our justice system.

I would be pleased to respond to any questions you may have, sir.

[The prepared statement of Mr. Widup appears as a submission for the record.]

Senator SESSIONS. Thank you very much, Marshal.

Judge Samuel Alba has served as a United States Magistrate Judge in the District of Utah since August of 1992 and has been Chief Magistrate Judge since 2003. Prior to his appointment, he was a shareholder in Prince, Yates and Gelzoller from 1987 to 1992, and was first assistant and chief of the criminal section with the United States attorney's office from 1980 to 1987 and worked

on criminal defense matters both at a private firm and at the Federal public defender's office in Phoenix, Arizona, from 1972 to 1980.

I should have asked my colleague—

Senator KYL. Where did he graduate from?

Senator SESSIONS. —where did he graduate from law school. He got his undergraduate degree from Utah State University and his law degree from Arizona State University, Tempe, Arizona.

Senator Kyl, what comments do you have?

Senator KYL. Well, Mr. Chairman, that is not my alma mater, but it is a fine law school. I welcome Sam here today.

Thanks, Sam, for being here.

Senator SESSIONS. Judge Alba.

STATEMENT OF SAMUEL ALBA, CHIEF UNITED STATES MAGISTRATE JUDGE, DISTRICT OF UTAH, SALT LAKE CITY, UTAH

Judge ALBA. Mr. Chairman, Senator Kyl, thank you for the opportunity to appear before this Committee today and offer some comments. I know that my statement pales by comparison with the tragic events of the Lefkow family. I make it, however, to demonstrate how the United States Marshals Service fails to provide adequate resources when situations are presented which impact judicial security at home.

Even with my local Marshals Service marshal's concern, headquarters in Washington was non-responsive or is inconsistent in its response to these requests. It has rigid procedures, some unknown to the judiciary, in place which only exacerbate the situation.

For the last few months, I have been conducting preliminary proceedings in a case involving 12 members of a violent white supremacist criminal organization primarily within the Utah State prison system. Twice in the last few months, I have been notified by members of the United States Marshals Service and FBI representatives that credible threats have been made against the female African American Assistant United States Attorney assisting with the prosecution and another prosecutor.

I have conducted a number of proceedings where I have had these defendants in front of me. The first time, I brought them in in three separate groups—my hearing is quite small and that is all that I could accommodate—to warn them that this would not be tolerated. The second time, I had to borrow Judge Benson's ceremonial courtroom to accommodate all 12 of the defendants in court for this proceeding.

It was at that time that I seated them in what is usually reserved for the press, in the press box, for control purposes. Each of the defendants had two deputy marshals or prison security officers assigned to them, plus a third officer who was stationed nearby. These are violent individuals.

The courtroom was full with many of the defendants' family members and friends seated in the audience. I imposed certain restrictions on them which implicated their ability to continue visits with their families, and it implicated the families as well. After being told of these new restrictions, the defendant seated closest to the bench stood up and shouted objections and obscenities to me.

I ordered the United States deputy marshal who was closest to him to put him down in his seat. This defendant then spit into the face of the deputy marshal who was trying to carry out my order. Almost instantaneously, at least four other handcuffed, shackled defendants leaped to their feet, spewed profanity-laden protests, spat, kicked and scuffled with the United States marshals and other court security officers.

A deputy marshal, fearing for the safety of a female defense attorney who was seated between two of these defendants, lifted the woman over the wall separating the press box from the bench. The scuffle went on for a couple of minutes, until deputy marshals and other security personnel were able to get the defendants under control. I consider this a very serious threat. They were trying to get at where I was on the bench in a direct response and immediate response to my ruling.

As a result of these actions, within the next couple of days I had a meeting with investigators from the United States Marshals office and the judicial security inspector. I advised them of my concern for my safety and for my family's safety. They informed me at the time that both Assistant United States Attorneys who were the subject of these threats were receiving United States Marshal protection details, and both of them, through the Department of Justice, had also had home intrusion security systems installed in their homes.

I requested the inspector to go to my house and speak with my wife. He advised her that the United States Attorney's office had identified between 125 to 150 sympathizers of this criminal organization on the outside and gave several suggestions for protecting our home and our family, including setting up a security system.

Within a couple of days, I made that specific request of the marshal and of my clerk to seek some funding to accomplish that. I was advised that none was available. The marshal had contacted headquarters and they had told him that under the threat matrix, I did not qualify for a detail, and I also did not qualify for any home security system to be provided for me at home. In desperation, my wife and I turned to the local authorities, who expressed greater concern and to this day they send individual patrols into our neighborhood every evening and patrol through our street.

The impact on my family was intense. Within a few days of this incident occurring in court, I had to travel out of State to attend a meeting of the Defender Services Committee. The first night I was gone, my wife and son were alone. Our dog was insistent late in the evening. She went to the back door and let him out. He stayed out for about 30 minutes, barking. Finally, he came back into the house. The rest of the night, my wife was petrified.

We have been to our son's elementary school and notified the principal and the teacher of concerns that we had. They were aware through the newspaper and other media stories of what was going on, and this heightened their concern as well. As a result of these threats, we have had to install a system which cost us in excess of $4,000 in our home.

Unbeknownst to me until this month, a fellow United States magistrate judge in the District of Maryland had received a temporary home security system from his district marshal's office after

the marshals had detected not an overt threat, but a series of signs that he may be targeted. That occurred in the fall of 2004, just a few months before my request for a temporary home alarm system. That request reportedly was approved by the marshals headquarters office that had disapproved the request from my district marshal.

Mr. Chairman, I ask that you help Federal judges be safe and secure both at the courthouse and in our homes by providing oversight so that the Marshals Service will have the resources and staff necessary to fully provide the judicial protection for which they are statutorily responsible.

Thank you for the opportunity to appear before the Committee today.

[The prepared statement of Judge Alba appears as a submission for the record.]

Senator SESSIONS. Thank you, Judge Alba, for those comments that I think do indicate the seriousness of the issue with which we are dealing. It is absolutely critical that our legal system function, and when that system is threatened by groups of people who are willing to utilize violence against the very system itself, the integrity of our Government, our laws and our authorities that enforce the law, then we are confronted with a challenge we cannot fail to meet. We just have to meet it.

I have been in Iraq and talked to judges there, and when you know the daily threat they are under, you know what that kind of violent threat can do to a legal system and how hard it is to conduct one under those threats. We have to do whatever is necessary to protect our people and to prosecute, detain and lock up those who would violate the system. I couldn't be more convinced of that.

I have a statement from Senator Russ Feingold for the record and I will, without objection, make that a part of the record.

Marshal Widup, you are there in the courthouse and you deal with the Federal judges. You indicated that you had a good relationship. It appears that in Utah and in Judge Roth's circuit, they don't feel as comfortable with it. What do you do that works?

When I was United States Attorney, there was a court security committee, and it met and worked, although it wasn't always pleasant. Usually, the judges wanted to do A and the marshal wanted to do B. I took the side of the marshals and it wasn't much longer that I didn't get any notice of the meetings. So the judges and the marshal went at it, presumably, without my moderation of the discussion.

But it would appear to me that there has been some tension for some time, so what have you done in your district to try to alleviate that?

Mr. WIDUP. Thank you for your question, Mr. Chairman. We do still have the court security meetings and those tensions still do exist at different times. There is a balance in Chicago, as in our other courthouses, that we have to strike, which is the public's access to the Federal courts and the security of the facility itself. That causes difficult decisions at different times as far as how do we restrict the public's access in entering the courtroom.

In our particular case, we have a screening point that is set up on the first floor of the building at which individuals entering the

courthouse was be screened. They must be x-rayed and they must show identification to enter the building.

Senator SESSIONS. Could I just interrupt you a little bit?

Mr. WIDUP. Yes.

Senator SESSIONS. Without getting into the details of that system, which I think in the courthouse I used to practice in in Mobile, Alabama, is pretty good, I guess my question is what do you do to communicate with the judges? How does that committee work?

If you get a request as Judge Alba had for security, how do you respond? When do you have to go to Washington and how does it work? Are they happy in the Northern District of Illinois or would your judges like to see more support from the Marshals Service?

Mr. WIDUP. I am sure our judges would like to see more, particularly in light of the recent tragedy involving Judge Lefkow and her family, but we do communicate, as with anything. The chief judge communicates with me directly on a frequent basis. I have a judicial security inspector who meets with all of the judges when they have an issue that they need to speak to him about. I have addressed the judges as a group and individually, both in the district and in the circuit.

We also have a deputy marshal assigned to each judge as a contact person for that judge. In the event that that judge notices anything that occurs in their courtroom that they find to be out of the ordinary, whether a deputy is present or not, that liaison between the deputies and those judges continued everyday and that particular deputy tries to keep the judge informed.

But, Mr. Chairman, we do have the press of a huge prisoner population in our district, as we do in many other districts, and this causes conflict at times with the judiciary in the sense that courts get backed up. And we have a practice in the Northern District of Illinois that we will have one deputy marshal or one of our hired contract guards to each in-custody defendant that we produce in court, plus an additional deputy.

Senator SESSIONS. So that is three for every defendant?

Mr. WIDUP. No. We call it one plus one. If we have five defendants, we will have at least five deputies on the defendants and a sixth deputy in there as well. Now, many times we have more, depending on the severity of the offender, the offense, and frankly the unrest of the crowd.

But when we have these proceedings like this and we get backed up, we communicate to the judges. And, thankfully, in Chicago our judges will work with us and they understand that there may be a delay in the next court proceeding because we have to assign more deputies to an earlier proceeding. But this is again done with constant communication between us and the judges.

But there are breakdowns that occur. Judges get backed up and they get irritated, but fortunately for us we do communicate with them and we try to address each of their issues. And they are not shy at all about picking up the phone and letting me know.

Senator SESSIONS. When you do have a threat that is more unusual, you have advanced notice of that and you staff that courtroom appropriately, do you not?

Mr. WIDUP. Yes, we do.

Senator SESSIONS. I mean, that is the system for doing that.

Marshal Reyna, have you ever dealt with what they call a stun belt? Has that ever been considered in the Marshals Service for a violent criminal?

Mr. REYNA. The answer is yes, and I will let Marshal Widup at the district level explain that.

Senator SESSIONS. All right. Apparently, you can't shackle a prisoner, under the court rulings, in front of the jury except in the most extreme circumstances. And if you know you have a violent person that could be dangerous to the marshals and the judges and everyone, I understand there is a device called a stun belt that could be put on them under their clothes.

Mr. WIDUP. Yes, Mr. Chairman, we do have those in the Marshals Service and we do have them in the Northern District of Illinois.

Senator SESSIONS. Have you used it?

Mr. WIDUP. No, we haven't. It is an involved process, with the final part of it being the defendant has to agree to wear the stun belt in order to use that.

Senator SESSIONS. I thought you might say something like that. The reason I learned this, Senator Kyl, is because in looking at the complaints against Justice Janice Rogers Brown, the California Supreme Court ruled eight to one that a stun belt worn under the clothes, not visible to the public, by a very violent criminal was unconstitutional or something. They reversed the conviction over that defendant having worn it. She dissented it, and they blame her for being an extremist. But I think this was before the killing that we heard about this morning and before the Atlanta killing, and I think maybe we need to review that State court decision because it seems to me that could be a help.

My time is up.

Judge Roth, we are delighted to have you here. I am sorry I didn't get to address any questions to you, but we admire your service very much.

Senator Kyl, thank you for your leadership here. Senator Kyl is a thoroughgoing lawyer and practitioner in courts for many years, including the Supreme Court of the United States, and he cares about these issues very much.

Senator KYL. Well, thank you, Senator Sessions, and let me begin by saying that in the Arizona Federal court system I am aware that there is a very close relationship between the judges and the marshals. They meet together frequently. That is the way it should be. I know they have a lot of confidence in each other. The judges certainly have a lot of confidence in the marshals there. But there are incidents around the country that suggest that all is not well, some of which has been testified to here today.

Mr. Reyna, I would like to give you an opportunity to respond to some of the things that were said after your testimony to advise us what you think the proper response to those points is.

Mr. REYNA. Thank you, Senator Kyl. The Marshals Service conducts many missions that it has been tasked by Congress. There is no doubt that the most important mission is to protect the judicial process. And we say protect the judicial process and the integrity of that process because not only do we have the responsibility

of protecting the over 2,000 Federal judges that we are responsible for, but we also have the responsibility to protect the approximately 5,500 prosecutors in those courts, the jurors, the witnesses and other members of the court family.

So what happens in every district is an extreme amount of coordination on a daily basis, and we appreciate the patience and the hard work that the judges at the district level do each single day so that we are able to adequately address their needs.

One of the things that does occur, as Marshal Widup was pointing out, is that there are some stress factors that the Marshals Service will experience. For instance, any new law enforcement initiative in a certain region of the country will create a different workload within the Marshals Service.

For example, in Arizona we received a letter from the supervisor of ICE indicating that 500 agents would be added to their ranks to support their mission along the southwest border, which is obviously very needed. Well, we certainly appreciated that heads-up, so to speak, but it also indicated to us that it would require, obviously, additional resources to deal with the already difficult situation on the southwest border. So that requires—

Senator KYL. May I just interrupt you? I think that one of the questions here is are you asking for adequate resources. If there are inadequate, whose responsibility is it to ask for more? And, secondly, is there any specific response to what you have heard here today with respect to—and I will be very specific—the criticisms of the Marshals Service?

Mr. REYNA. Senator Kyl, certainly we always request that the Congress support the President's budget. Over the last five fiscal years, the President's budget, had it been fully funded as requested, we would have achieved an additional 462 positions that are vitally needed in every district and in every area of the Marshals Service.

Regarding the criticism and the concern of communication, a lot of the communication, as you indicated from your past experience, happens at the local level through the various committees, through the various meetings that happens sometimes one-on-one with the judges in each individual court and the Marshals Service.

At the national level, we discuss a lot of the issues, some formally through the Security and Facilities Committee, which is responsible and works with us on all issues involving facilities and security in those facilities. In addition to that, there are other discussions that occur on a daily basis between the Administrative Office of the U.S. Courts and many of the other operational matters, including the administrative necessities that have to be undertaken.

We certainly support the issues and the areas that Judge Roth has articulated as far as some of the regulatory changes that need to be made so that we can better protect the judiciary and give us those necessary tools. She has articulated those. We support those.

There are other areas that we also have undertaken to ensure that we timely assess any threats that come into the judiciary, and we assess them pursuant to a process that we have in place and responds to Magistrate Alba's concerns. One of the things that I would like to articulate regarding Magistrate Alba's comments is

that every threat assessment in every district has to be handled by the local marshal. It is handled also in consultation with not only the person that received the threat, but also the Security and Facilities Committee.

Depending on the threat level and the type of threat that it is, where it is one that is perhaps very direct, maybe not overt, or no threat at all, is what is going to make the determination. The Marshals Service does not have the funding up until recently to support full-time security alarm systems. We are very pleased that that has occurred because it will allow us to enhance off-site security, which is an issue of the Administrative Office of the U.S. Courts and the entire judiciary.

In the case involving Magistrate Alba, in our conversation when I learned about this matter with Marshal Anderson from the District of Utah, he indicated that the matter had been resolved at the local level and there was no further request of involvement from headquarters on that matter.

One of the things that I want to articulate here today, Senator Sessions and Senator Kyl, is that we certainly encourage all Federal judges to allow us to exercise our ability to protect the judges, to report all type of communications, whether it be perceived inappropriate or any area that they feel uncomfortable with. It is important that we address all the issues. It is important that we review all those potential threats, or perhaps concerns. We would rather address hundreds of concerns that turn out to be nothing than fail to address one that was not brought to our attention.

Senator KYL. Thank you. Mr. Chairman, I would like to ask one follow-up question of Judge Roth. There is a suggestion that legislation may be required to better reflect the views of judges. That is obviously a last resort here. At least it seems to me to be a last resort. We ought to be able to have structures in place in which judges and marshals can visit together and identify the needs and have it properly followed up.

What is your view of that?

Judge ROTH. I agree it is a last resort. I have been Chair of the committee for five-and-a-half years. I have had numerous discussions with the Attorney General and with Mr. Reyna over our need to help determine what is needed for judicial security.

We have no progress to report in this effort. We still don't know how the staffing for judicial security is arrived at. We don't know, that having been determined, whether that is being fulfilled. We do know across the country that marshals from the districts are confidentially reporting to us—they will get fired if they do it publicly, but they are reporting to us what their staffing patterns are, how those staffing patterns are going down in recent years.

I know of one district where, in 2002, there were a number of—in the 60s—deputy marshals that should have been there. There were about eight less that were actually there. They were forecasting for 2005 that there would be in the high 80s needed. In 2005, they have 50-some.

And how is the gap being made up? In two ways. Number one is by contract prison guards, deputy sheriffs, local policemen who are brought in on a daily contract basis to help handle prisoners. The Inspector General of the Department of Justice has just come

out with a report very critical of this program that there is inadequate training and there is inadequate background of these contract guards. We hear reports from local judges that these guards are falling asleep in the courtroom because they have been working all day at their county or State job and then they come in. We find this unacceptable.

Another way that the gap is being filled is by not doing certain requirements that deputy marshals should be doing, such as being present in the courtroom when any defendant, whether that defendant is in custody or not in custody, is in the courtroom. In criminal cases, defendants can be dangerous. When you are sending them to jail, their families can create problems and we need to have at least one deputy United States marshal in the courtroom during a criminal proceeding. Director Reyna is aware of this. He has supported this position, but the Marshals Service is not producing the deputy marshal staffing to fulfill this function.

The courts pay for court security officers. They are supervised by the Marshals Service. We pay for them. We find more and more around the country that these court security officers are being used for functions that are deputy marshal functions, such as prisoner guarding which the court security officers are not trained for.

These are a few particular, specific examples that we see of the results of lack of funding. We feel that we have enough concrete examples that we should be able to participate in determining what is needed for judicial security and whether that standard is actually being met. Having failed to get it from our conversations with the Department of Justice and the Marshals Service, we are turning to you saying please help us.

Senator KYL. I appreciate that. Let me just conclude by saying that throughout the entire criminal justice process at the Federal level, and also at the State level in States like mine, the problem of illegal immigration has put a huge burden on both the Federal and the State government. Nothing is funded adequately. There isn't adequate courtroom space, sufficient judges, clerks, prosecutors, public defenders, marshals, detention space, transportation opportunity, or anything else. The situation is the same in our State court systems, especially in those counties that are along the border.

Ultimately, this is the responsibility of the Congress. And, Mr. Reyna, if you are correct, there would be 462 additional positions had Congress funded pursuant to the President's budget. Then that responsibility lies with the Congress. I think it is important that this Committee document the information that we have received here and before passing legislation that simply puts into practice the custom of getting advice from judges, we ought to look at our appropriations process and short-circuit the whole proposition.

Every one of these areas needs additional funding. Everyone understands that and it is a matter of prioritization. But when we hire an additional 1,000 Border Patrol agents, for example, we are going to get a certain number of additional criminal defendants in court and the tale of that initial commitment is going to be felt throughout the entire system. That is just one of the areas, I appreciate, but at least in my area it is what is driving the need for more resources throughout the entire system. Our area is the fast-

est growing in terms of need, precisely because of that phenomenon.

I am amazed that the Marshals Service is able to do as well as it does, and again I want to express my appreciation, as I know the judges do, too. But we have got to do better and I think this hearing has helped to highlight that.

Senator SESSIONS. Senator Kyl, I am going to offer for the record, if there is no objection, the statements of Senator Durbin, the Inspector General of the Department of Justice, Glenn Fine, and Senator John Cornyn.

I am being called to a mark-up where we need a quorum in the HELP Committee. I would love to turn the chairmanship over to you, and you will do so ably.

Senator KYL. Unless there is anything else from the witnesses, I have nothing else.

Senator SESSIONS. Judge Roth, you noted that there is a crisis and we have a dysfunctional relationship here. I believe, Mr. Reyna, that is something that the courts and you need to work on. We have just got to have that kind of communication. That is important. You need to listen to the requests of the courts, and you may not be able to fulfill them all, but there should be able to be a circumstance in which requests are made clearly and that you respond, recognizing that in the huge system that you have, the whole United States, there will be glitches that don't always go the way you would like.

I will just make this observation which I think is a fact and is a danger for the Treasury of the United States, and that is we cannot, judges or anyone else, U.S. Attorneys, staff the Marshals Service for the five most busy days in a court's life and those personnel are then not utilized for 300 days of the year. They don't really have enough work to do. The stress will be on you, the individual marshals, the head marshal in Washington, to try to be able to draw from other districts.

When we had big cases in my small district of the Southern District of Alabama, deputy marshals came in to help handle those cases and supplement the people there when maybe there was a down time in their district, but stress in our district. It is really hard to do that, but I think if you continue the trend to be flexible to respond to what Judge Alba is talking about—presumably, you eventually did get the alarm system you needed. Is that correct?

Judge ALBA. I did, but I had to pay for it myself.

Senator SESSIONS. And you indicated that the money has been now appropriated for that, Mr. Reyna?

Mr. REYNA. Yes, sir.

Senator SESSIONS. So in the future, a magistrate judge would be able to get that system put in if he had a real threat?

Mr. REYNA. The $12 million has been received. We will be working with the Administrative Office of the U.S. Courts to develop a process by which to address those matters of off-site security, and specifically alarm systems.

Senator SESSIONS. Well, I think when you have got a family and you have got a group of people that actually acted in court as he said they did, that indicates to me that these people are capable of killing somebody and we have to be responsive to that. So it is

a tough business, and I think, as Senator Kyl, we ought to look at the number of people you have, but be lean. We don't have any money to waste, do we, not with the deficit we have got?

So we want you to be effective in utilizing the resources, and I think from what I am hearing from this discussion today we need to make sure that we analyze your next appropriation and see if we can get you some more people.

Judge Roth or anyone else, do you have anything to add before we adjourn?

Judge ROTH. Could I, Mr. Chairman? I would appreciate it. Let me add two things. The shortfall in Marshals Service staffing appropriations reflects what the OMB has presented to the President. It does not necessarily reflect what the Marshals Service at the beginning sad was necessary.

Senator SESSIONS. Right.

Judge ROTH. That figure is often, I think, inevitably cut down by the Department of Justice, and then cut down again by OMB.

Senator SESSIONS. Well, I understood Mr. Reyna to say that the President actually requested more of Congress than we gave him. Is that correct?

Mr. REYNA. That is correct, Senator.

Senator SESSIONS. And that is the third cut.

Judge ROTH. The President requested less of Congress than the Marshals Service really needed, and we want to know what the Marshals Service really needed.

Senator SESSIONS. Or what they wanted.

Judge ROTH. Well, we want to know if they needed it, and from the shortfalls we are seeing, some of it was urgently needed.

We are also concerned about intelligence analysis by the Marshals Service. Are they really assessing threats in the way that threats should be assessed? You need protection in many cases where there is not a direct threat on a judge. In fact, the judges have been assassinated in no case actually received a direct threat, and we feel that the Marshals Service's analysis of intelligence needs to have a more intricate scope in the present day of terrorist threats.

We are concerned that they are operating under the old system. Unless you get a direct threat, you don't get anything, and our concern in Judge Alba's situation was that he fell within that category when I think very definitely he did need protection.

Senator SESSIONS. Well said. Thank you for an excellent discussion. You have raised a very important point. The rule of law is central to American freedom and prosperity, and we cannot allow it to be eroded by violence and threats in the courthouse.

Thank you.

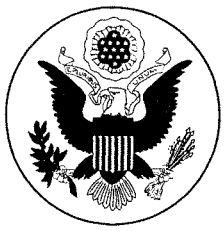
[Whereupon, at 10:19 a.m., the Committee was adjourned.]

[Submissions for the record follow.]

SUBMISSIONS FOR THE RECORD

STATEMENT OF

CHIEF MAGISTRATE JUDGE SAMUEL ALBA
UNITED STATES DISTRICT COURT
DISTRICT OF UTAH



BEFORE

THE COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

ON

"PROTECTING THE JUDICIARY AT HOME AND IN THE COURTHOUSE"

May 18, 2005

STATEMENT OF MAGISTRATE JUDGE SAMUEL ALBA
CHIEF MAGISTRATE JUDGE FOR THE DISTRICT OF UTAH

before the

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
May 18, 2005

Mr. Chairman and Members of the Committee:

My name is Sam Alba. I am the Chief Magistrate Judge for the District of Utah, sitting in Salt Lake City. Currently I am a member of the Judicial Conference Committee on Defender Services, and I also serve as co-chair of the Building Committee for the District of Utah, overseeing the process of designing a new courthouse for our District.

Mr. Chairman, the purpose of this statement is to demonstrate how the United States Marshals Service does not provide adequate resources when situations are presented which impact judicial security at home. Even with the local U.S. Marshal's concern, headquarters in Washington is non-responsive or inconsistent in its response to these requests. It has rigid procedures (unknown to the judiciary) in place which only exacerbate the situation.

One of my principal duties for the court involves conducting preliminary proceedings in criminal cases. In that capacity, I conducted initial appearances on December 10th, 11th, and 12th of 2003, and on January 13th of 2004, for twelve defendants who are charged in an Indictment which had been returned by a federal grand jury on December 4, 2003. The Indictment alleges that all twelve defendants are members and associates of Soldiers of the Aryan Culture (SAC), a criminal organization

whose members and associates engaged in acts of violence, including conspiracy to commit murder, attempted murder, extortion, and conspiracy to distribute narcotics. This organization is alleged to be operating principally in the state of Utah and within Utah correctional institutions.[1]

At each of these initial appearances, the government was represented by two Assistant United States Attorneys, one of whom is a female African-American.

Background

Subsequent to these preliminary proceedings, I was notified by U.S. Marshal and FBI representatives that a credible threat had been made against the female African-American Assistant United States Attorney assisting with the prosecution. On March 22, 2004, I conducted three separate hearings with four defendants at each hearing. Separate hearings were conducted for security reasons. My hearing room is small – less than 1,000 square feet. At the hearings, each defendant in custody was accompanied by at least two Deputy U.S. Marshals and/or Utah State Prison guards. There were also Court Security Officers (CSOs) in the hearing room. The number of people and the size of the room necessitated three separate hearings.

At each of the hearings on that day, I instructed defendants that I had been informed of the threats that had been made against a member of the prosecution team. I also instructed defendants that "This behavior will not be tolerated and is to cease

[1]Attached see copy of Indictment in case 2:03-CR-0933 TS.

immediately." I further put defendants on notice that other consequences would follow if such behavior continued.

In early November 2004, I was again advised by representatives from the USMS and the FBI that a new threat had been made on the lives of two members of the prosecution team. The intercepted correspondence included a description of both prosecutors' homes, their usual driving conduct during the day (to school, work, etc.), and a request of the leader of the SAC organization to give the word so that a "hit" could be carried out on both of the prosecutors.

On November 30, 2004, all 12 defendants appeared before me in the ceremonial courtroom assigned to Chief Judge Dee Benson, which afforded more space for better security. The defendants, along with their counsel, were seated in the press box for control purposes. Two Deputy U.S. Marshals and prison security officers had been assigned to each defendant, with a third officer stationed near each defendant. The courtroom was full with many of the defendants' family members and friends seated in the audience. I advised all of the defendants and their counsel that a new threat had been made on the lives of two members of the prosecution team. I reminded them that they had previously been warned at the March 22nd hearing that consequences would follow if such behavior continued. As a result of the new threats, I imposed the following restrictions on all of the defendants in custody:

(1) no visits were to be allowed for the defendants except for attorneys currently representing each defendant, investigators, and/or paralegals who are members of the defense team;

(2) no phone calls would be allowed for any of the defendants except for legal purposes to attorneys or other representatives of the defense team;

(3) mail, both incoming and outgoing , would be read for threats, conspiracy plots, or other obstruction efforts, although legal mail from attorneys would not be examined; and

(4) no communication between defendants would be allowed, either by mail, phone, visits, or any other means while they remained in custody.[2]

After being told of these new restrictions, the defendant seated closest to the bench stood up and shouted objections and obscenities at me. I ordered a Deputy U.S. Marshal to sit him back in his seat. This defendant then spit into the face of the Deputy Marshal who was trying to carry out my order. Almost instantaneously, at least four other hand-cuffed and shackled defendants leaped to their feet, spewed profanity-laden protests, spat, kicked, and scuffled with United States Marshals and other court security officers. A Deputy Marshal, fearing for the safety of a female defense attorney who was seated between two defendants, lifted the six-foot tall woman over the wall separating the press box from the bench. The scuffle went on for over two minutes, until the Deputy Marshals and security personnel were able to get the defendants under control. These actions by the defendants constituted a very serious threat, and I considered it as such, as did the court reporter and my in-court deputy who were seated at their stations directly below the bench.

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[2]Attached is written Order dated November 30, 2004.

Requests for Assistance

The following day, I received a call from another Assistant United States Attorney involved in the investigation and prosecution of this case who advised me that in his opinion, my order the prior day would in all likelihood result in some sort of retaliation being taken. That same day, I also had a meeting with investigators from the United States Marshal's office and the Judicial Security Inspector. I advised them of my concern and of the telephone call I had received from the Assistant United States Attorney. They informed me that both Assistant United States Attorneys, who were the subjects of these threats, were receiving USMS protection details 24 hours a day, seven days a week.

I requested that the Judicial Security Inspector go to my house and meet with my wife to offer suggestions concerning security in our home. He told my wife that the U.S. Marshal's office had identified 125 to 150 members and sympathizers of the SAC organization outside the prison, but within the state of Utah, and gave several suggestions for protecting our home and family.

Within a couple of days, I made a specific request of our U.S. Marshal for financial assistance in installing a home intrusion detection system. I also asked our clerk of court to contact the Administrative Office of the Courts regarding financial assistance for installation of a security system. The Marshal advised me that no funds were available for a home intrusion detection system, and he told both the clerk and me that he had contacted Marshals Service headquarters which had told him that under

their "threat matrix" I did not qualify for a detail to be assigned to me. He also stated that since I did not qualify for a detail, no home security system would be provided. The clerk of the court advised me that no funds were available for such a system through the Administrative Office of the United States Courts. My wife and I turned to the Salt Lake City Police Department for help. We met with three security specialists who came to our home and gave us additional suggestions concerning security. They told us that contact with their gang unit had confirmed that in fact 125 to 150 members or sympathizers of the SAC organization reside in our community. They expressed great concern for what had happened and, as a result of our conversations, increased patrols down our street during the evenings. They expressed to us that they saw this as a real threat, and provided us a series of phone numbers where we could contact them directly. I have been informed that these increased patrols continue to this day, every evening, in our neighborhood.

Family Impact

Media reports of the incident in my court were widespread, and the day it happened my wife received a telephone call from a friend in Gilbert, Arizona, telling her about the reports in the news and asking if I was all right. At that time, my wife was not even aware of the incident in court, but this precipitated a series of calls to my office to try to get more information. My wife was quite concerned for my safety, our child's safety and her safety.

Within a few days of the incident occurring in my court, I had to travel out of state to attend a meeting of the Defender Services Committee. The first night that I was gone, and my wife and son were home alone, our dog starting barking at our back door. It was approximately 10:45 p.m. and the dog was insistent, so my wife opened the door and allowed the dog to go outside. The dog continued barking outside for 25-30 minutes, refusing to come back into the house. My wife was afraid to go outside to get the dog, but was finally able to lure him back inside. With everything that had been ongoing, my wife was petrified. She called me the following morning, after a sleepless night, to relay this information and express her concerns. This sense of insecurity and vulnerability has continued to the present. Any unfamiliar vehicle that travels into our neighborhood has become the subject of great concern and we have initiated a Neighborhood Watch Program. Our 9-year-old son is now only allowed to play in the backyard.

We went to our son's elementary school and notified the principal and our son's teacher of the concerns that we had. Both of them were aware from newspaper and other media stories of what was going on, and this heightened their concern for our child's safety. This has continued until the present.

As a result of these threats to me and concern for my family, my wife and I have spent approximately $4,000 to have a security system installed in our home. While the United States Marshal for our District and the Judicial Security Inspector tried to be

helpful during this whole process, their headquarters and rigid procedures have not allowed for any financial assistance to effect heightened security.

What is particularly troubling about the Marshals Service headquarters mishandling of my request for a home security alarm system, is that it confirms what the Department of Justice Inspector General reported in March 2004. The Inspector General's report found that the Marshals Service threat assessment process "...cannot ensure that districts consistently apply similar protective measures in response to similar threats." Unbeknownst to me until just this month, a fellow U.S. Magistrate Judge in the District of Maryland, received a temporary home security system from his district U.S. Marshals office, after the Marshals detected not an overt threat, but a series of signs that he might be targeted. This occurred in the fall of 2004 just a few months before my request for a temporary home alarm system. That request reportedly was approved by the same USMS headquarters office that had disapproved the request from my district U.S. Marshal.

I understand that when the Director of the Marshals Service met with the Judicial Conference Committee on Security and Facilities in mid-December 2004, he told them that all the findings of the Department of Justice Inspector General had been "closed or resolved." His statement to that Committee was being made at virtually the same time that his headquarters was denying my request for a temporary home security system. The Director certainly knew about the provision of the temporary security system in the Maryland case, because he was "copied" on letters about the fine work of the district

Marshals on that case. However, he did not ensure that the agency he runs has a system in place to consistently provide similar measures to all districts. I ask that you help federal judges be safe and secure, both at the courthouse and the residence, by providing oversight – so that the Marshals Service will have the resources and staff necessary to fully provide the judicial protection for which they are statutorily responsible.

Mr. Chairman, thank you for the opportunity to appear before your Committee today. These are indeed difficult times for the judiciary. My example is but one of a number of instances that have occurred throughout the country. I will be pleased to answer any questions you or any member of the committee might have.

STATEMENT ON BEHALF OF THE ASSOCIATION OF ADMINISTRATIVE LAW JUDGES

UNITED STATES SENATE

SENATE JUDICIARY COMMITTEE

HEARING ON

PROTECTING THE JUDICIARY AT HOME AND IN THE COURTHOUSE

MAY 18, 2005

Mr. Chairman:

My name is Ronald G. Bernoski. I am an Administrative Law Judge ("ALJ") who has been hearing Social Security disability cases at the Office of Hearings and Appeals ("OHA") of the Social Security Administration ("SSA") in Milwaukee, Wisconsin, for over 23 years.

This statement is presented in my capacity as the President of the Association of Administrative Law Judges ("AALJ"). The AALJ represents the ALJs employed in the Social Security Administration, Office of Hearings and Appeals and the Department of Health and Human Services ("DHHS"). One of the stated purposes of the AALJ is to promote and preserve full due process hearings in compliance with the Administrative Procedure Act for those individuals who seek adjudication of disputes within the jurisdiction of the SSA and DHHS. The AALJ represents about 1200 of the approximate 1400 administrative law judges in the Federal government.

Federal Administrative Law Judges operate as Article I judges in the Executive Branch on behalf of approximately twenty-eight different Federal agencies. They are appointed by the agency under 5 USC 3105, following a competitive qualification process administered by the United States Office of Personnel Management. Hearings are conducted in keeping with the Administrative Procedure Act. After final agency review, appeals from the decisions of administrative law judges go to the Federal courts. Review is limited to whether the decision of the administrative law judge is supported by substantial evidence. As noted, there are approximately 1400 federal administrative law judges, with the largest number of them (approximately 1200) being employed by SSA in 141 home OHA offices across the Nation. These numbers exceed the combined total of all Article III judges. Administrative law judges experience many of the same security issues as the Article III judiciary.

I will direct my remarks primarily to the administrative law judge hearing system existing in the Social Security Administration. In 2004, administrative law judges with SSA

disposed of more than 479,000 cases on the merits, usually after a face-to-face hearing with a claimant in a hearing room that is usually no larger than 15 by 20 feet. The claimant sits no more than ten feet from the judge. There is no railing separating the claimant from the judge and except in extraordinary circumstances there is no guard in the hearing room. On a daily basis our judges must deal with the downtrodden in society. We see claimants with drug and alcohol dependency problems, veterans with post traumatic stress disorder, convicted felons, and persons with mental impairments. Many are desperate to receive benefits. They have exhausted all other avenues of relief of which they are aware. If benefits are denied, or it appears benefits will be denied, they can become emotional or irrational. Because of these factors, social security hearings often involve the types of strong emotional forces usually found in family or criminal courts, which most security experts believe present the greatest risk to judges.

Most of our hearing offices are not in Federal buildings, but instead in commercial leased space. SSA has decided to place one armed guard in each OHA hearing office, however, the agency has not provided the guards with any screening devices, such as walk through magnetometers and hand held wands. The guards are thereby incapable of preventing the introduction weapons into the hearing rooms. We estimate that one of every four persons coming to an OHA hearing office possess an illegal knife or gun. In addition, some OHA offices may have more than eight judges holding hearings at the same time in separate hearing rooms within the office, but there still is only one guard for the entire office.

Even more surprisingly, SSA has not collected any data about how often the security guards observe weapons and prevent them from being brought into a hearing facility. The guards are instructed not to seize any weapon, but merely to prevent the person from coming onto the premises with it. We have further concern, because thirty-seven states now have some form of "concealed carry" legislation that allows persons to carry concealed weapons. Nine more states have a modified form of "concealed carry". Only four states and the District of Columbia totally ban concealed weapons. Many people with gun permits from such a state do not realize that the permit to carry the weapon does not allow them to carry the weapon onto Federal leased space or into Federal buildings.

We also conduct many hearings at remote hearing sites which could simply be a motel conference room or other such facility. In some regions, the agency provides an armed guard at the remote hearing site who sits outside the so-called "hearing room", but once again does not provide them with any security screening device, not even a wand.

Based on cost information that we have received from a private sector vendor, we estimate the agency could install magnetometers and hand-held wands at all 141 OHA offices plus provide hand-held wands at all remote hearing sites for less than $500,000. (Note: Some of the SSA hearing offices are currently located in Federal buildings with adequate entry level security.)

We believe that it is only a matter of time before one of our judges, other OHA employee or an expert witness will be mortally wounded in one of our hearing rooms. It is an unfortunate reflection on present day society that magnetometers are today common place. You can hardly visit a museum without having to pass through one. Within the past several years a claimant returned to the hearing office in Grand Rapids, Michigan and requested to see the judge who had conducted his hearing. When he was told he could not see either the judge or the hearing office manager, he took a gun from his pocket and shot himself in the head. Another claimant shot himself at the site of the entry level magnetometer at a Federal building in Detroit, Michigan. Other judges have been assaulted and seriously injured. One judge was assaulted in the permanent hearing office and another assaulted at a remote hearing site. Probably the most compelling example of the type of potential threat that we face, is a from a person who not long after appearing at a hearing as a claimant before one of our SSA administrative law judges was charged with murdering two Capitol Hill policemen in the summer of 1998. Some of our SSA administrative law judges have feared for their safety and that of their family outside of the hearing offices and in their homes while other judges have had their homes picketed.

Attached is a summary of the latest statistics on actual and potential threats and assaults of administrative law judges in the Social Security Administration (Exhibit A).

Based on our demonstrated need for additional security in our hearing offices, we respectively request that the Committee adopt the following course of action:

a. Recommend that the Commissioner of Social Security provide funding for enhanced entry level security for hearing rooms in the hearing offices in the Social Security Administration Office of Hearings and Appeals and at remote hearing sites;
b. Recommend, in the alternative, an appropriation of funds for enhanced entry level security for hearing rooms in the hearing offices in the Social Security Administration Office of Hearings and Appeals and at remote hearing sites; and
c. Recommend all executive departments and agencies assess the security needs of the administrative adjudication programs within their respective control and take all reasonable steps to ensure the safety of all participants in the adjudication process; and
d. Recommend that legislation be enacted to provide tax credits for Federal administrative law judges who provide security devices for their homes.

Respectfully submitted,
/s/

Ronald G. Bernoski
President

STATEMENT ON BEHALF OF THE
ASSOCIATION OF ADMINISTRATIVE LAW JUDGES

UNITED STATES SENATE
SENATE JUDICIARY COMMITTEE

HEARING ON
PROTECTING THE JUDICIARY AT HOME AND IN THE COURTHOUSE
MAY 18, 2005

EXHIBIT A

Chronological list of Social Security Administration Incident Alerts involving actual or potential threats or assaults against administrative law judges from September 7, 2001 through February 15, 2005. (106 reports)

Fiscal Year 2001

9/7/01 Grand Rapids, MI: A few days after receiving a denial decision from Judge D_____, the claimant came to the office and demanded to see the judge. When told that the judge was not in the office that day, the claimant tried to get the receptionist to come out from behind her window and into the lobby. She refused and called a supervisor, who called the police. The claimant then produced a revolver and shot himself in the head. When police arrived, they discovered the revolver contained only one more bullet. The claimant survived because of the extreme angle with which he pointed the weapon. He has been convicted in State criminal court. It was determined that he had a prior criminal record. According to Judge D_____, the case was presented as claiming disability exclusively on a back pain problem. The medical records contained no hint of emotional problems.

9/25/01 St. Louis, MO. Judge K___. ALJ told claimant he was ordering a psych CE. Claimant, who had a conviction for assault, angrily banged his fist on the table and said: "You do what you've got to do and I'll do what I've got to do".

Fiscal Year 2002

1/8/02 San Bernardino, CA. Judge V___ . At CE, claimant told the CE it would be just as easy to kill the ALJ as accept a denial. The claimant admitted he had a gun. Apparently 10 days later the CE told the Regional Office who contacted the OHA office.

1/18/02 San Bernadino, CA. At a 1/8/02 CE, a claimant told the CE "it would be just as easy to kill the judge as accepting a denial decision". The doctor asked the claimant if he had a plan or intent to do so, and the claimant backed down, although he admitted he had a gun. The CE did not call the police, but at some point (it is unclear when and how) word was gotten to the HOD 10 days later and the HOD contacted FPS. The FPS officer said she would "do some checking on him and get back with me".

2/6/02 --At a remote hearing site in Oklahoma. Apparently a claimant's husband became irate and "violent" (no further description), and someone (a security guard perhaps) was able to twice move the husband out of the hearing room.

3/27/02--West DesMoines, IA: Letter sent to office from claimant with threats that "he hopes judge does the right thing, or I won't go down quietly. My plan will have press, politicians, and public all over SSA to overhaul this sinister process." OIG and Iowa State Patrol arrested him and seized weapons. Judge did an OTR [on the record decision].

4-29-02 Santa Barbara, CA: A woman had worked as a receptionist at the Long Beach OHA office for a relatively short time about a year or so before this. She was rumored to have a drinking problem, and had called ALJs at Long Beach and asked for money. One of the Long Beach judges moved to Santa Barbara and she came there, apparently to ask him for money. He had told her on the phone before he would not give her any money. When she was told to leave, she became disruptive in the receptionist area, to the extent the police eventually had to be called to remove her from the building. This was classified as a "disruptive claimant", although she was not a claimant. No threat was made.

5-8-02 Little Rock, AR: The claimant called to complain about how old his case was, and said he "is getting like Tim McVeigh". The case was assigned to Judge B____.

5-31-02 San Rafel, CA: The claimant called his attorney and said he plans on "killing the judge". The attorney sent a fax to Judge P_____. The hearing had been held in Fresno. FPS was notified (but I can not tell what they did). The judge called the San Rafel police department.

6-13-02 Newburgh, NY: On 6-11 a person on benefits for a mental impairment went to the DO to protest the fact he had a representative payee. He threw a chair in the DO lobby and was arrested on a misdemeanor. Two days later, he returned to the DO. Judge B____ was holding hearings on the same floor and opened the door to the hallway to ask if anyone was there for a hearing. This person was in the hall and he punched the judge several times, knocking him to the floor and repeatedly kicked him. Fortunately, the hearing reporter, a large man himself, arrived just then and pulled the assailant off. He was arrested and a state felony charge was issued. (The assailant underwent a competency evaluation. Judge B____ was off work for 2 months, and still has some pains. The RCALJ denied B____'s request for a contract guard at future remote site hearings, saying the requests would be evaluated on an individual basis.)

7-1-02 Evansville, IN: On 6-26-02, Judge L____ issued a denial decision. On 7-1, the claimant's attorney called the OHA office to report his client said: "It is a good thing the judge is in Indiana or I would put a bullet in his head." Pat Carey, as Director of Office of Management, said FPS will go to see the claimant.

7-15-02 Grand Rapids, MI: The claimant's case was to be sent to the Chicago South office for a video hearing the next week, so it had not been assigned to a Grand Rapids judge. The claimant's attorney called OHA to report his client, while at the attorney's office, said he "may get a gun and shoot a judge". It turns out this was his second application, and his first was pending before the US District Court. The FBI got involved as it was unclear if the reference was to the District Court judge or an ALJ. A US Marshall visited the claimant, and they reported he was embarrassed about it, and they concluded it was not an ongoing threat. (It is unclear if the Chicago South judge or the Grand Rapids judge who was eventually assigned the case was ever notified of all of this).

7/29/02--Oakbrook Terrace, IL: Judge denial issued 11/29/01. Letter sent to representative with threats vs. SSA. On 10/22/02, claimant called for the judge. Used very vulgar lanuage. He said he would talk to the judge one way or the other, and if he had to kill the supervisor to do so, he would. He also called his rep and said he would kill the judge before he was done. He had prior arrests for assaults and weapons charges, and his wife had an order of protection against him. FPS called him and he said he had no intent to harm anyone.

8-9-02 Dallas, TX: A claimant called OHA and spoke to a case technician to complain that he had gotten an 8-6 partially favorable decision from a judge. The AOD was in 1988, but he was granted as of 1998. He said to the clerk: "you know how the buildings in New York were blown up?" and "our day was coming". When asked if he was making a threat, he hung up. An FPS agent was to go to the claimant's home, and OHA asked for a photo of the claimant.

8-13-02 Brooklyn, NY: The HOCALJ, Judge V_____, fired a contract hearing reporter for poor performance. The reporter challenged the judge to a fight, and also threatened to shoot the judge.

8-13-02 Las Vegas, NV: Claimant told a clerk at a potential attorney's office that if the ALJ did not pay his case, "he'd put a bullet in him". The Response section said: left message for FPS, told guards to use wand if claimant visits, and to escort the employee at all times if the claimant is present. ALJ to notify the FBI ASAP.

8-19-02 San Bernadino, CA: Claimant expressed homicidal thoughts to her psychiatrist, and the doctor sent a letter to Judge D_____ about it. The doctor was continuing out patient treatment.

8-25-02 Wichita, KS: Claimant walked into a police station and gave desk cop a written note where he threatened to blow up an OHA office and told the police he wanted to kill a federal judge. He also said he was mad at Judge W_____. (This claimant had been denied by W____ several years ago, and the US District Court had just upheld that denial. He was arrested and the State Of Kansas is prosecuting him on a felony. He has not made bond.

9/12/02--San Francisco, CA: Claimant's father called, saying the judge will not know what the father will do if the father finds out what the judge looks like.

Fiscal Year 2003

10/2/02--Dallas, TX: Schizophrenic claimant at remote site without any guard. Hostile. Confronted judge in hall. Had a history of using knives to threaten people and injure animals. He was on no medication.

11/13/02--Columbus, OH: Attorney passed on threats made by the claimant, who had served time for assault.

11/14/02--Buffalo, NY: visiting judge was mugged and robbed on street walking back to his hotel. No reason to believe robber knew he was a judge.

11/19/02--Cleveland, OH: Claimant told attorney he would put a gun in the judge's mouth and pull the trigger. Local police talked to the claimant.

12/27/02--Stockton, CA: Claimant called the DO to threaten the life of the female judge. He was on probation. FPS found him at a drug rehab center on 1/2/03, and he apologized.

12/31/02--Norfolk, VA: After a denial decision, the claimant went to the Child and Family Services office and made statements about retaliation against the judge.

1/8/03--Alexandria, LA: Claimant was upset about the Workers' Compensation Offset to his benefit amount. He wanted to "put the judge in a box and have him carried out." He said this to a secretary at an outside office.

1/23/03--Ft. Worth, TX: Claimant wrote the 5th Circuit Court of Appeals, threatening to kill the judge, and then waiting for the police to come and kill him.

1/23/03 St. Louis, MO: Claimant visited a DO to file a new claim. She said she would kill Judge M_____ if her appeal was assigned to him again.

1/24/03--New Haven, CT: A claimant with psychiatric problems made several calls to the office and talked about the judge and talked about "blood on the floor" and used the word "die" several times.

2/13/03--Savannah, GA: After a denial decision, the claimant wrote a letter to a member of Congress saying he was about to snap and he was going to hurt someone real bad, or worse. "That judge made my life a living hell."

2/28/03--Creve Coeur, MO: After a 2/4/03 hearing, the rep submitted a post hearing brief, and reported that the claimant threatened to kill the judge if he was denied.

3/5/03 Newark, NJ. Judge F_____. After a denial in 1/03, the claimant made threats. According to a letter Mr. Thurmond sent to Judge Bernoski on 5/6/03, the claimant was arrested during the week of 3/24/03.

3/7/03 Evansville, IN. Judge P____. A denied claimant went to a new attorney to get help with a new application, and said he'd like to go to Evansville and knock some sense into the ALJ (who is a female). The attorney called OHA.

3/17/03--Lynchburg, VA: Claimant was to be released that day from an inpatient psychiatric hospital, but 5 days earlier he had threatened to kill the judge. A hospital counselor reported the threat.

3/17/03 Seattle, WA: Judge D____. A claimant called a DO and demanded to talk to the ALJ who denied him. He said he knew how to track him down and he had a gun and that he'd "kill him in a slow and painful death. I'll shoot one finger at a time until I run out and then I'll go to his back". He threatened to kill the judge 5 or 6 times.

3/20/03 Queens, NY: Judge C____. On leaving a hearing, the claimant told the ALJ "I'll never forget your face", and on the way to the elevator, he told the guard "you better be armed today". He called out from the elevator "I'm coming back with a gun". An arrest order was issued for this claimant.

3/28/03 Las Vegas, NV: A representative called OHA to report the claimant's spouse was very upset by the denial his wife got. He claimed the judge had said at the hearing he would grant the claim. He said: "I will make the judge follow through on his promise to my wife".

5/30/03 Alexandria, LA: Judge C_____. A social worker at a mental health clinic called OHA to report a patient made a threat to kill an ALJ. The patient could describe what the judge looked like.

6/9/03 Charleston, WV: Apparently someone tampered with the gas cap on a judge's car, setting off the car alarm.

6/23/03 Springfield, MO: Judge W_____. On 6/16/03 the judge issued a denial decision. Three days later the claimant wrote a letter to the judge saying he was going to cause the judge as many problems as he could, including filling formal complaints with the MO Bar Association and having his daughter, who works for IRS, check on his returns for the last 20 years.

6/23/03 Orlando, FL: Judge C_____. After receiving a denial decision, an extremely angry claimant stormed out of his representative's office stating he was going to "help the judge retire early".

6/24/03 St. Louis, MO: Judge O_____. At a remote hearing site, the claimant arrived with a loaded semi-automatic pistol in her purse.

6/27/03 Jacksonville, FL: Judge R_____. After a denial, the claimant called the Panama City DO (site of the remote hearing) threatening to go to Jacksonville and blow that place up.

7/22/03 St. Louis. MO: Judge _____. Claimant wrote an 8 page letter to the judge, prior to the hearing, containing threats about Satan and demanding his SSI. I know he has been arrested and is being prosecuted for violation of 18 USC 876 about mailing a threatening communication.

7/30/03 Downey, CA: Judge K_____. After a denial on 5/11/03, the claimant wrote a series of 4 letters, each one progressively more threatening and more vulgar.

7/25/03 Charleston, WV: A judge's car was scratched down the passenger side.

8/6/03 Metaire, LA: Judge H____. Claimant called the OHA office the day before his hearing at a remote site, saying he could not make the hearing. He became extremely vulgar and said he could take a gun and kill a bunch of us and then kill himself.

9/4/03 St. Louis, MO: Judge S_____. Claimant was denied on 5/30/03, and the AC affirmation was received on 9/4/03. The claimant called the judge at his home phone, and the judge hung up on him after the claimant identified himself as someone the judge had denied. Judge S_____ denied the claimant (an ex-Marine) after he refused to attend a psychiatric CE, leaving no psychiatric diagnosis in the file. The claimant called the OHA office the next day also complaining about his denial.

9/18/03 Creve Coeur, MO: Judge S_____. On 8/11 at a post hearing CE, the claimant said if he did not get his benefits, he would kill the judge. The CE report said this threat should be taken somewhat seriously. This is the event that has prompted AALJ's push to review all DDS procedures about notifying ALJs immediately of a threat. The ALJ did not learn of the threat until 9/18/03, 38 days after the event.

Fiscal Year 2004

11/5/03-- Madison, WI: Claimant was rude and disruptive at hearing, so ALJ recused himself.

11/7/03-- Detroit, MI: Claimant told his attorney and the guard: "If I appear before ALJ____ again, I'll kill his ass." Claimant later apologized. The guard escorted the ALJ from the building.

11/18/03--Little Rock, AR: On 11/13/03, Claimant's wife told the receptionist that ALJ____ was prejudiced and if she saw him she would "jack" him. She complained the judge paid people who were on drugs, and she complained he had a hearing on one of her friends, and the judge mentioned that the friend had been in trouble with the law.

11/26/03--Stockton, CA: Claimant's attorney attempted to assault the judge on 11/20 at the Bakersfield remote site. The guard intervened.

12/4/03--Columbus, O: Claimant's lawyer sent a letter to the judge saying the claimant had expressed a desire to physically harm the judge who had issued a denial on 10/31/03.

12/9/03--Jacksonville, FL: Claimant called about buying a plot "for his f___ing grave". The hearing had been held in Gainesville, although no threat was made at the hearing.

12/10/03--Indianapolis, IN: At the hearing, the claimant became loud, rude, insolent, and uncooperative. The guard escorted him from the hearing room. He called the judge a name and said he was being discriminated against racially as he was from Puerto Rico.

12/17/03--Birmingham, AL: On 12/16, 2 identical letters were received in the mail with death threats vs. the HOCALJ. A hearing was scheduled for 1/13/04, and the letter said if he did not get benefits, he would "go on a rampage and kill or hurt someone." The US Marshal's Service was contacted, and were providing 24/7 surveillance of the HOCALJ while authorities were trying to locate the claimant.

12/29/03--St. Louis, MO: A letter was received on 12/29 from the same claimant to the same ALJ. He had sent a prior threatening letter to the same judge. He was already in custody, and the FPS picked up the letter as evidence.

1/30/04--Johnstown, PA: The HOD got a call from DDS about a threat against a judge made on 1/28. The claimant had been denied on 10/18/02, and he had filed a new claim. He made threatening remarks against the judge, and he called the judge an asshole and said he will sue the judge or just "beat the shit out of him."

2/11/04--Louisville, KY: On 2/10, the unrepresented claimant told a clerk that if he got denied again, he would just start shooting. FPS was notified and 3 guards responded, with one sitting in the room for the hearing.

2/12/04New York, NY: Claimant sent a certified letter dated 2/4 to the judge threatening legal action against him, his clerk and the Acting HOD.

2/19/04-- Jacksonville, FL: While applying for food stamps, the claimant said he would blow Judge_____ brains out because the judge denied his disability claim.

2/23/04-- Philadelphia, PA: A clerk was trying to repair the machine to record the hearings, and she asked if anyone had a pencil so she could rewind the tape. The claimant produced a spring-loaded knife with a 3 1/2 inch blade.

3/10/04--Seattle, WA: The guard discovered a double blade knife in a CD carrying case. Each blade was 3 inches long. The claimant was cited by FPS for a violation of 18 USC 930.

3/26/04--Minneapolis, MN: on 3/25, the claimant called the office and told the clerk the judge should stay out of Wisconsin. He made verbal threats and was screaming and swearing. He called back a second time, saying someone is looking for that judge.

4/26/04—Denver, CO: On 4/20, DDS received a threat against a judge who issued a denial decision. It had been appealed to the AC. The threat by the brother of the claimant was "he would not be a judge if I saw him again."

4/26/04--St. Louis, MO: On 4/13, the claimant came to the OHA office to get copies of his file. When told we did not have his prior file by a white female clerk, the black claimant stated he did not want any blacks working on his file. In earlier memos to the file, he had called the black female ALJ (R___) to whom the file was assigned, and a Field Office clerk "negro witches". He returned 4/14, complaining that "black negro witches" were selling his records for research. Judge R__ issued an On-the-Record (OTR) on 4/15. On 4/19, he returned, asking for the status of his claim. He was handed a copy of the OTR. On 4/20, he returned and said he did not want to speak to the black female receptionist. He demanded a hearing, and demanded that Judge R___ be removed from the case, as she had denied his prior file and he did not want to hire her friend as his representative. He said: "I'll get her if it is the last thing I do." On 4/21the judge informed the contract guard and FPS.

5/26/04—Pasadena, CA: A social worker called the West Covina police as the claimant said he might take himself out and maybe the judge if he did not get a favorable decision. A denial decision had been issued 4/22/04.

5/26/04—Minneapolis, MN: On 5/19, claimant called in a threat vs. the judge. He had been denied after a 3/04 hearing. He said: "Tell Bird Brain I'll be down there in 1 1/2

hours to kick his ass." An earlier Incident Alert hadbeen filed about a threatening call on 3/25/04.

6/5/04—Spokane, WA: At the 5/24 hearing, claimant told the judge if his situation did not improve, he feared he might "go Columbine". He had PTSD and a history of DA & A. The judge felt it was a probable pay case. The HOCALJ wanted FPS to visit the claimant and assess the threat, and to warn the claimant of the seriousness of the threat.

6/9/04—Spokane, WA: Claimant told his attorney he would "kill the judge" if he did not get a favorable decision. The hearing was set 6/21 in Lewiston, ID.

6/26/04—Fresno, CA (Bakersfield remote site): Claimant called a mental health case worker, who then called the police. He had just gotten the ALJ denial. He was drunk and made death threats vs. Whites/Russians/Christians/British/police. "I have the judge's name on the letter. I know how to find him and I know what I'm going to do to him."

7/3/04--Kansas City, KS: On 6/4, claimant called a contact rep. She wanted to speak to or see the ALJ. The ALJ had retired on 6/1. When told this, she became enraged and wanted the home phone number of the ALJ. She said she would track him down to get answers to his "off the wall decision". She complained she was Bi-Polar, and was very angry. She said the ALJ must have pulled the decision from his ass. She would find him. She had ways of finding people.

7/28/04--Charleston, WV: On a pending AC Remand, the wife called on 7/19 and said she would kill the ALJ if they did not get a decision that week. She also called the FBI and repeated the threat. The FBI met the claimant on 7/20 and "diffused" the situation. The claimant was very apologetic and the FBI scared him.

8/2/04--Fort Smith, AR: On 7/30, claimant called his rep after a denial, saying he might call "to get a piece of the judge." He asked where Area Code 479 was.

8/30/04—Paducah, KY: A letter postmarked 8/20 was mailed by the father with threats. It was sent to the RO who faxed it to OHA. The father threatened the AC judge and the ALJ.

9/3/04 Fresno, CA: Claimant called the SSA 800#, saying if he did not get his SSI soon, he will ge enough money to buy a shotgun and come down and shoot SSA employees, if he is "still alive on 9/7." He lives in a tent, so he is hard to locate. He would come to any SSA or OHA office.

9/13/04 Nashville, TN: Claimant called OHA on 9/9. He wanted Judge _____ fired; wanted his head on a platter; if he ever saw him again, he would kill him and spit in his face. He prayed terrorists would attack Nashville OHA. The ALJ issued a denial on 2/26/04.

Fiscal Year 2005

10/1/04 Denver, CO: On 9/22/04, claimant called for status on his file. When the receptionist said it was in the mail, but did not reveal the results over the phone, he became upset and said he would find out where she lived and hunt her and her kids down and kill them. The I/A says there was no response by FPS.

10/5/04 Miami, FL: The judge got a phone message from the claimant's attorney. When OHA called back, the attorney said the claimant got the denial decision and told the attorney he wanted to kill the judge and himself. FPS advised the judge to depart the office in the daylight hours.

10/18/04 Dayton, OH: Many abusive calls were made to the HOD and HOCALJ. He threatened to beat the HOD and "clean the place up with a ball bat." The file was sent to a Columbus ALJ who set a hearing in Dayton on 10/18. FPS was present and tried to use a hand wand on the claimant. The claimant refused to be wanded, became disruptive and left without a hearing.

10/28/04 Portland, OR: The ALJ had a hearing trip to Salem on 10/22. Claimant's diagnoses were anti-social and explosive personality disorders. In the hearing, he said he was going to kill the judge So the judge called FPS and the guard, and the judge finished the hearing. FPS talked to the US Attorney who will prosecute, once they get a copy of the tape of the hearing.

10/29/04 Charleston, WV: Apparently, a judge from West Virginia held a hearing in Syracuse, NY and issued a denial which the claimant got on 10/29/04. Claimant called the West VA. OHA office and threatened the judge and all employees handling the case. The HOD called FPS, OIG and the Syracuse OHA and Syracuse FO offices.

11/1/04 Houston, TX: On 10/19, claimant called OHA 10 to 12 times in one day, asking for Judge _____ to make a decision on re-opening his claim. But the judge found no grounds to re-open. The claimant had mental impairments. When the HOD called FPS, they instructed the HOD to keep a log of the time and frequency of the calls.

11/2/04 Wichita, KS: The claim was set to be heard on 11/3. On 10/22, the claimant saw her primary care physician and told the doctor she had bought a .22 caliber gun, and if she did not get disability, she would shoot herself and her case-worker. This was apparently a call to the FO who then called OHA. The I/A says FPS was not notified.

11/2/04 Hackensack, NJ: In the reception area, the claimant told another claimant: "If I do not get money, I'll come back with a shotgun." Claimant had a calm hearing, but as he left he said: "It did not go well: the female ALJ is a f___ing ice cube." This case was heard by the White Plains, NY OHA office.

11/5/04 Charlottesville, VA: A hearing was set 11/10 in Lynchburg, but the claimant's request to continue the hearing was denied on 11/5. The claimant called and threatened to put something on the Internet about the ALJ. FPS was not called.

11/9/04 Creve Coeur, MO: On 11/8, a group supervisor got a call from the claimant, who accused the supervisor of lying to him. He called her a bitch and said I'll come to your office and "take care of all of you." On 10/4, he had told a case tech "us black people are coming to get you white people."

11/15/04 Brooklyn, NY: Received in the mail was a letter from the claimant saying things like: "Death to you Gov. Off. U R hurting People Lives. God will judge." Etc, etc. FPS and NYPD were notified.

12/2/04 Birmingham, AL: On 11/24, claimant sent several irate e-mails. On 11/23, he had visited the office of a Member of Congress following his hearing earlier the same day. A post hearing psychiatric Consultative Examination was ordered. To the MOC's office, she complained "that's why people get a gun, because they do not get answers."

12/3/04 Grand Rapids, MI:On 9/30,04 at the Holland F.O., the claimant said on form 3441, if he were denied "something VERY horrible will happen...I will have to end it...this 'former state trooper' will use all his military and police experience to force people to remember what injustice was done to him ... FYI, I am a military Vet , ex-Michigan State Trooper who is a Distinguished Expert with weapons...If I am turned down for disability I will be forced to try drugs that could cause me to lose my grip on reality and I will not remember a thing and I am terrified of this." Hearing is set on 12/14 in Grand Rapids.

12/8/04 Detroit, MI: On 12/7/04, the HOD opened a letter addressed to the OHA office. It said bad things would happen to OHA employees, citing Allah and 9/11. The return address gave a name not in the CPMS data. The contract guard told FPS, and an Inspector, an Officer and a Special Agent came to the office. Agent____ will take the lead on the investigation. He did not photocopy the letter or memorize the text.

12/8/04 St. Louis, MO: Claimant phoned OHA saying we had conspired to cheat him, the hearing tape was edited, the judge said improper things to him, and he was going to "get Judge_____ and he would be sorry for lying about him and erasing his files." Clerk taking the call completed a memc about her insights into the meaning of the call.

12/27/04 Philadelphia, PA: Claimant arrived for hearing and the guard searched her handbag and found a 10 ½ inch blade knife. He confiscated the knife and called FPS, who took the weapon away.

1/3/05 Greensboro, NC: On 12/27/04, claimant phoned OHA twice to complain about the SSI denial decision from Judge _____. Each time he said: "I know where Judge _____ lives and will shoot him." Court Security Offices who secure the building were advised, and FPS Officers interviewed the claimant and issued a "cease and desist" letter, finishing on 12/29.

1/4/05 Birmingham, AL: On 1/4/05, the FO Manager was advised that a claimant with schizophrenia had filed a Request for Hearing on the amount of his past due benefits. He is a chronic letter writer, where he talks about hearing voices and wanting to kill. He

has prepared his Last Will and Testament. He is now fixated on the judge who will hold his hearing. He says he has nothing to lose, and death is his only escape.

1/7/05 Las Vegas, NV: Claimant called OHA and was loud, belligerent, using foul language, calling the ALJ offensive names. He was upset as he found out he had been sending in unneeded items, such as copies of utility bills. Apparently, FPS was never notified.

1/7/05 Nashville, TN: At the request of the RO, on 1/5/05, OHA called the claimant on the status of his AC Remand. Claimant implied he would come to OHA the same day, saying: "I am tired of waiting for my money. If you don't do something, you are asking for another Columbine there. I hav been waiting years for my money and the Judge has had my case twice, and he is biased against me." FPS and local law enforcement were notified, as were the Judge and the decision writer who had the case.

1/19/05 West Des Moines, IA: On 12/23/04, a possible hazardous material leaked from a suspicious letter opened in the mailroom. HAZMAT came and determined that no hazardous material was involved.

1/26/05 Columbia, SC: Judge _____ issued a denial on 1/24/05. The claimant's Representative reported she fears claimant may be a threat to the judge. Apparently, FPS did not respond.

1/28/05 Jacksonville, FL: Claimant arrived one hour late for his hearing. So the Judge had postponed the hearing and the representative had left. The claimant was upset, but left the office. 20 minutes later, an employee from another office in the building reported she overhead someone matching the claimant's description say: "These judges turn people away and don't expect things tc happen. I'll bring an AK 47 in and they will see." FPS was notified, and the guard escorted the judge to his car.

1/31/05 West Des Moines, IA: On 1/29/05, Judge _____ was called at home by the claimant. The judge had issued a denial decision on 1/28/05 on the SSI claim. The Judge told the claimant that he should not be calling the judge at home. OIG and FPS will talk to the claimant.

2/1/05 San Jose, CA: On 1/30/05, claimant called and threatened suicide if not awarded benefits. She also threatened "the wrath of GOD" would "rain down" on Judge_____ if he did not approve her case. She also threatened the District Attorney who "falsely accused her of elder abuse." She referred to Judge _____who took her children away in 1987, and then lost his son in an auto accident. There was no FPS response.

2/1/05 Springfield, MO: The claimant had a Video Hearing set for 2/2 in Joplin, but he requested a continuance. Judge _____ denied the request, and when the scheduler told the claimant, he used foul language. He sent a fax saying he was filing a lawsuit, and he would "legally destroy" the judge. The judge recused herself from the case.

2/15/05 Miami, FL: Claimant called, upset with the wait for a decision, and claiming her T-cell count was 0. She asked: "What do you want me to do? Blow your head off, kidnap you?" FPS will investigate.

U.S. Senator John Cornyn (R-TX), Chairman

"Protecting the Judiciary at Home and in the Courthouse."

Wednesday, May 18, 2005, 8:30 a.m., Dirksen Senate Office Building Room 226

I want to thank Chairman Specter for scheduling this important hearing today. Courthouse security is a topic of great importance to me and to this committee.

I want to express my sincere condolences to Judge Lefkow for her loss and thank her for her appearance here today.

I have the greatest respect for our judiciary and for the men and women who sit on the bench - from the trial courts to the appellate courts, whether State or Federal. Judging cases, whether presiding over jury trials or deciding appeals on difficult issues, is one of the most important tasks embedded within our democracy.

Unfortunately, we have recently seen episodes of courthouse violence in this country, including in my home state of Texas. As a former judge myself for 13 years, who has a number of close personal friends who still serve on the bench today, I am outraged by acts of courthouse violence.

I personally know judges and their families who have been victims of violence, and I have grieved with those families. And during the Easter recess, I met with a leading Federal judge in Texas to make sure that we are doing everything we can to help protect our judges and courthouse personnel from further acts of violence.

Judges are impartial umpires of the law - they simply call the balls and strikes -- and they cannot help but disappoint people. But judges, witnesses, courthouse personnel and law enforcement must not face threats and violence for doing nothing more than simply carrying out their duties.
The protection of the men and women who comprise our judicial system is essential to the proper administration of justice.

The Judicial Conference raises important issues that this Committee should and will explore, including its working relationship with the United States Marshals Service. While the Marshals Service has the extremely difficult task of providing security for the judiciary while also fulfilling other responsibilities such as administering the witness protection program, transporting prisoners, and arresting fugitives, they should willingly coordinate and communicate with the judiciary on security concerns.

I hope to hear about the current working relationship between the Marshals

Service and the Judiciary at today's hearing as well as other concerns the Judiciary may have over security. I also look forward to working with my colleagues to address these issues.

Thank you Mr. Chairman.

RICHARD J. DURBIN
ILLINOIS

COMMITTEE ON APPROPRIATIONS

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Statement of Sen. Richard J. Durbin
Senate Judiciary Committee Hearing
"Protecting the Judiciary at Home and in the Courthouse"
May 18, 2005

Opening Remarks

I would like to thank Chairman Specter for convening today's hearing. I commend him for his leadership on the critical issue of judicial security, and for his leadership of this Committee.

The cold-blooded killings of Judge Lefkow's family on February 28, and of a judge and other court officials in Atlanta a few weeks later, were attacks not only against innocent individuals but on the federal judiciary itself.

Three federal judges have been assassinated since 1978. But never before has a federal judge's family been killed. We must provide more protection for our judges and their families so that others will be spared the tragedy that Judge Lefkow and her family have been forced to endure.

There are at least two main ways in which Congress can achieve this goal.

1. Improving the United States Marshals Service

First, I believe we must try to improve the services offered by the United States Marshals Service. This agency has been underfunded and understaffed for years. There also appear to be management and morale problems at this agency, and they must be addressed.

The Justice Department's Inspector General has submitted written testimony – which I ask unanimous consent to submit for the record – indicating that the Marshals Service still needs to improve its protective and threat assessment capabilities. And just two days ago, the Inspector General issued a report that found significant deficiencies in Marshals Service hiring and use of contract guards.

I look forward to hearing the testimony of Director Reyna and Judge Roth about these issues, and I want to thank them for appearing before this Committee today. We need to have a frank and

open dialogue about how to improve the relationship between the federal judiciary and the Marshals Service. Improving this relationship is essential to improving the protection of judges and their families.

I am pleased that Congress has accepted the amendment that Senator Obama, Senator Kennedy, and I offered to appropriate $12 million for the Marshals Service to improve the protection of federal judges outside the courthouse doors. Congress intended that this funding be used primarily for the installation of home security systems in the homes of federal judges, as quickly as possible.

2. Verbal Attacks on Federal Judges

The second way I believe we can improve judicial security is for public officials to condemn the harsh verbal attacks on federal judges that have been on the rise.

- Rev. Pat Robertson said earlier this month that the threat posed by federal judges is "more serious than a few bearded terrorists who fly into buildings."

- Tony Perkins, president of the Family Research Council, said recently that "There's more than one way to skin a cat, and there's more than one way to take a black robe off the bench."

- Edwin Vieira, a lawyer and author, said last month at a conference of conservative activists that Supreme Court Justice Anthony Kennedy should be impeached and that "Stalin had a slogan, and it worked very well for him, whenever he ran into difficulty: 'no man, no problem.'"

- And even some members of Congress have fueled the fires of these verbal attacks on our judges. After the Terri Schiavo case, House Majority Leader Tom DeLay said: "The time will come for the men responsible for this to answer for their behavior."

These comments are irresponsible and should be condemned by people on both sides of the political aisle. Judicial security should not and cannot be a partisan issue.

All of us disagree from time to time with various decisions handed down by our federal courts. But to suggest retribution against judges is an assault on the independence of the judiciary. When the men and women who don these robes have the courage to rule in controversial cases, they should not feel that they endanger themselves or their families.

Introduction of Judge Lefkow

I would now like to welcome Judge Lefkow and her daughters to the Judiciary Committee. I would also like to acknowledge the family of Judge Lefkow's husband Michael – I know his two

sisters and niece are here as well. It is an act of tremendous courage for them to be here today. Judge Lefkow has declined many speaking invitations and interviews, but she felt that the United States Senate Judiciary Committee was an appropriate forum to discuss her tragedy and help us find ways to prevent such tragedies from happening again.

I am honored to introduce Judge Lefkow today not only because she is a constituent, but also because I recommended her nomination for the federal bench five years ago.

The last time Judge Lefkow was in this hearing room, in June 2000, I introduced her to the Judiciary Committee and said: "Judge Lefkow has a rare combination of intelligence, professional experience, temperament, and devotion to public service. She is going to be an excellent federal judge."

Well, Judge Lefkow has served not only with excellence, but also with great bravery and distinction. Even before the heartbreaking tragedy she has recently suffered, she incurred death threats in multiple cases, including the high profile threat from white supremacist Matthew Hale. Nevertheless, she has been a noble public servant and she has persevered.

Judge Charles Kocoras, Chief Judge of the U.S. District Court in the Northern District of Illinois, wrote a letter to me a few weeks ago in which he called Judge Lefkow "the sweetest federal judge I have ever met and whose own sense of fairness is a model for the world."

We are extremely fortunate to have Judge Lefkow on the federal bench in Chicago. And we are honored to have her with us today.

We will now hear from Senator Obama.

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Statement of U.S. Senator Russ Feingold

Senate Committee on the Judiciary Hearing
On "Protecting the Judiciary at Home and in the Courthouse"

May 18, 2005

Mr. Chairman, thank you for holding this hearing and drawing attention to this critical security issue. Judge Lefkow, thank you for coming here today. You and your family have my deepest sympathy for the loss you have suffered. We greatly appreciate your sharing your testimony with us. You are performing an extraordinary service to your fellow judges, and to your country.

The importance of this hearing's topic cannot be overstated. The safety and security of those who undertake the heavy responsibilities set forth in Article III of the U.S. Constitution is our obligation. The courts don't have the power of the purse, we do. As lawmakers, we have a duty to ensure adequate protection of the Judicial Branch, our co-equal partner in the three-branch system that governs this nation. Based on the testimony we have received for this hearing, I fear we have not lived up to that crucial task.

Mr. Chairman, this is obviously not an easy thing to do. Judges, like members of Congress, are public figures. They live in a fishbowl and they make decisions that disappoint, or even anger people. They will always be at some risk. But we need to take steps to protect them because their independence and their willingness to follow the law must never be compromised by fear for their personal safety.

An important book about the security problems faced by federal judges is entitled "Hunters and Howlers," by Frederick Calhoun. Howlers are litigants who display threatening behavior during their court appearances, which allows them to be easily identified as potential problems. But the killers of our judges in recent years don't fit that profile. The vicious criminals who killed Judge Lefkow's husband and mother, Judge John Wood in San Antonio, Judge Richard Duranco in Pelham, NY, and Judge Robert Vance in Atlanta, were hunters. There were no overt signs in the courtroom that these individuals were unstable.

So the Marshals Service has to be proactive in identifying threats. It needs to be able to respond when a judge has a hunch. And we need to at least take basic precautions for judges' safety. We have been told today, for example, that the Judiciary has been requesting home security systems for federal judges for 15 years. Yet this reasonable request remains unfulfilled. I urge the Justice Department and the Marshals Service to use the additional $12 million in funding for court security, provided by the recently enacted emergency supplemental funding bill, to make sure that federal judges get the home security systems they need.

Members of Congress also have a responsibility to be careful in their public statements not to unintentionally encourage acts of violence against members of the judiciary. Those who are confirmed by the U.S. Senate and take the oath of office to become Article III judges deserve our utmost respect, regardless of whether we agree with their decisions. We step over the line any time we even remotely suggest that violence against a member of the judiciary is excusable or understandable or could somehow

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be justified. We have to be very cautious, particularly given the recent events in Chicago and Atlanta. The independence of the judiciary is at stake, and so are the lives of judges and their families.

Thank you Mr. Chairman.

Office of the Inspector General
United States Department of Justice

Statement of Glenn A. Fine
Inspector General, U.S. Department of Justice

before the

Senate Committee on the Judiciary

concerning

The United States Marshals Service
Judicial Security Process

May 18, 2005

Statement of Glenn A. Fine
Inspector General, U.S. Department of Justice,
before the
Senate Committee on the Judiciary
concerning
The United States Marshals Service
Judicial Security Process

Chairman Specter, Senator Durbin, and Members of the Committee on the Judiciary:

I. INTRODUCTION

I appreciate the invitation to testify regarding the work of the Department of Justice Office of the Inspector General (OIG) on issues relating to the security of the federal judiciary. I am sorry that previous commitments prevented me from testifying in person, but I am pleased to be able to provide this written testimony to the Committee.

My testimony will focus on the OIG's March 2004 report on the United States Marshals Service's (USMS or Marshals Service) protection of the federal judiciary, and the USMS's response to that report. I also will briefly discuss a report that the OIG issued earlier this week on the USMS's use of independent contract guards. These guards, who primarily are used to transport federal prisoners to and from court facilities and to guard federal prisoners in courtrooms or cellblocks, also have an impact on courthouse security.

In this testimony, I first will summarize the findings and recommendations contained in the OIG's March 2004 report on Judicial Security. Next, I will discuss what actions the USMS has said it would take and has taken in response to the recommendations in that report. I will also offer my observations regarding further actions needed to improve federal judicial security. Finally, I will summarize the findings of our recent report on independent contract guards.

II. THE UNITED STATES MARSHALS SERVICE'S JUDICIAL SECURITY PROGRAM

The OIG's March 2004 report, entitled "Review of the United States Marshals Service Judicial Security Process," examined the USMS's efforts to improve its protection of the federal judiciary. The review primarily examined the USMS's ability to assess threats and determine appropriate measures to protect members of the federal judiciary during high-threat trials and while they are away from courthouses.

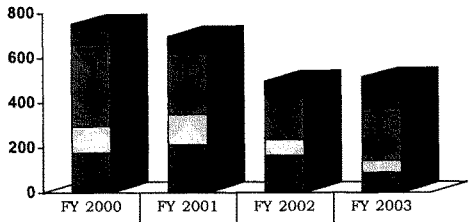
The results of our review were not encouraging. After September 11, 2001, the USMS placed greater emphasis on judicial security by hiring 106 court security inspectors and improving the physical security of courthouses. However, we found that the USMS's threat assessments were often untimely and of questionable validity. Further, we found that the USMS had only a limited capability to collect and share intelligence on potential threats to the judiciary with USMS districts, the Federal Bureau of Investigation's (FBI) Joint Terrorism Task Forces (JTTF), and other law enforcement entities. Moreover, the USMS lacked adequate standards for determining the appropriate protective measures that should be applied to protect the judiciary against identified potential risks during high-threat trials and when they are away from the courthouse. I will discuss each of these findings in more detail.

USMS Threat Assessments. After the assassination of two federal judges, Judge Daronco in 1988 and Judge Vance in 1989, the USMS developed a system to assess the almost 700 threats that are made against members of the federal judiciary each year. Timely threat assessments are essential to alert USMS districts to threats that pose a higher potential for violence so that appropriate protective measures can be implemented. To ensure that threats are assessed rapidly, the USMS established policies and performance standards that require all threats to the judiciary be assessed and the results of the assessments made available to Deputy Marshals in the field within a specified time period.[1]

Using data in the USMS's Warrant Information Network (WIN), we examined the timeliness of the USMS's 2,443 threat assessments completed from fiscal year (FY) 2000 through FY 2003. We found that only 26 percent of the threat assessments (642 of 2,443) were completed within the standard time frame. Moreover, the number of assessments that were completed within the standard time frame fell by almost half from FY 2000 to FY 2003, while the number that were significantly late – meaning they took months to complete – more than quadrupled.

[1] The exact time standards are considered by the USMS to be law enforcement sensitive information, so I do not disclose them in this statement.

2,443 Threat Assessments Completed From FY 2000 Through FY 2003



	FY 2000	FY 2001	FY 2002	FY 2003
Significantly (Months) Late	24	32	41	103
Several Weeks Late	65	43	27	36
Several Days to Weeks Late	365	273	188	229
Late, Within Several Days	119	131	74	51
Within Standard	176	213	163	90

Source: OIG analysis of USMS data.

Additionally, we questioned the validity of the assessments because the database of past threats that the USMS used to conduct comparative analyses on new threats had not been updated, and it contained no information on the more than 4,900 threats made to judges since 1996. The USMS stopped entering information on new threats into the historical threat database because the USMS decided that it would be more cost effective to enter the data into WIN. However, WIN did not have the capability to conduct comparative threat assessments.

We examined the reasons for the USMS's failure to meet established time frames and found that the number of analysts that the USMS had dedicated to assessing threats against judges and other court personnel had decreased since the office was established in 1996. Initially staffed with six analysts, the number of positions was later reduced to five and, when we reviewed the program, only four of the five analyst positions were filled. Moreover, the analysts performed other duties in addition to assessing threats. Because of the short staffing and processing delays, the USMS had implemented a "triage system" in which it ranked threats for assessment. However, we found there were no written criteria for assigning the rankings, and, in any case, the triage system failed to ensure that all threats the USMS identified as being more serious were processed in a timely manner.

USMS Collection and Sharing of Threat Intelligence. In interviews with USMS headquarters and field executives, we found that the USMS had only a limited capability to collect and share intelligence on threats to the federal judiciary among the 94 federal judicial districts. The USMS had eliminated its centralized program to collect, assess, and share intelligence on threats to the judiciary in a 1994 reorganization. After September 11, 2001, internal USMS studies identified the need for a centralized program to collect and share intelligence from the districts and the JTTFs, but no action had been taken to address that need at the time of our review.

We also found that, based on outdated legal opinions, the USMS's internal guidance unnecessarily limited the collection of intelligence in the databases that were used to track and assess threats to the judiciary. Although the USA Patriot Act provided new authority for law enforcement agencies to collect and share intelligence related to terrorism and other threats, and the Attorney General Guidelines had been revised accordingly, the USMS had not revised its internal guidance.

We also found that, as of October 2003, the USMS's District Offices were participating in only 29 the FBI's 56 JTTFs. Further, although the USMS's Memorandum of Understanding with the FBI required that JTTF representatives have Top Secret clearances, about a third of the USMS JTTF representatives did not have the required security clearances and so could not receive or disseminate classified information on potential threats. In addition, as of August 2003, 43 of the 94 USMS districts did not have the secure telecommunication systems necessary to transmit or receive classified intelligence on threats against the judiciary.

The limitations I have described were not just theoretical, but hindered the USMS's ability to provide security for the judiciary. For example, in one high-threat trial of individuals who were providing financial aid to terrorists, the USMS did not receive classified JTTF intelligence that the district considered critical to trial security operations because the district's part-time representative to the JTTF did not have a Top Secret security clearance. In another trial, the USMS was not informed of the imminent arrest of six terrorists identified by a JTTF investigation until just before the arrests. The short notice precluded the USMS from taking the extensive security measures required when detaining a large number of terrorist suspects after their arrest.

Standards for Determining Appropriate Protective Measures. In recent years, the federal judiciary has conducted an increasing number of high-threat trials, such as those involving international and domestic terrorism, international drug trafficking, organized crime, and gang activity. To assess the USMS's standards for protective measures used to guard against identified potential risks (risk-based standards) during high-threat trials and when

judges are away from the courthouse, we compared the guidance to other risk-based models used by the Secret Service and the Capitol Police.

We found that the USMS lacked adequate risk-based standards. For example, the USMS's Policy and Procedures Manual had not been updated in over a decade and contained limited or no standards or other guidance on the use of specific protective measures (such as trace explosive detectors, armored cars, body armor, and enhanced prisoner restraints) for high-threat trials.[2] The information on individual protective measures also was outdated and did not include standards for the use of equipment that has become widely available in recent years, such as perimeter cameras, car alarms, home alarms, and cellular phones.

Without adequate risk-based standards, the USMS could not ensure that the districts' responses to similar threats were consistent. For example, we found that one district used the USMS Special Operations Group (a specially trained and equipped unit deployed in high-risk law enforcement situations) extensively during a high-threat trial, while another district did not use the group at all for a similar high-threat trial.

The lack of risk-based standards also prevented the USMS from effectively managing the limited resources it had to support districts during high-threat trials. In FY 2002, the USMS provided additional funding to districts to support 117 high-threat trials.[3] However, in their responses to our national survey, the districts estimated that about 20 percent of all trials in 2002 involved a "substantial potential for violence." Given that rate, the number of trials with "substantial" risks among the 12,817 trials completed in U.S. District Courts in FY 2002 would have exceeded 2,400 – far more than the 117 instances in which districts received additional resources.[4] Without adequate risk-based standards, the USMS could not ensure that its limited resources were distributed to support the districts facing the greatest risks.

III. OIG RECOMMENDATIONS AND RESPONSE OF THE MARSHALS SERVICE

In our March 2004 report, we made six recommendations for the USMS to address the specific findings detailed in our report. We recommended that the USMS:

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[2] *Marshals Service Policy and Procedures Manual*, Volume X, Judicial and Court Security, July 1, 1993.

[3] We asked the USMS how many funding requests it had rejected, but the USMS Judicial Security Division (JSD) responded that it tracked only approved requests.

[4] *Administrative Office of the United States Courts FY 2002 Annual Report*, Table C-7, U.S. District Courts – Civil and Criminal Trials Completed.

1. Ensure that all threats to the judiciary are assessed within established time frames;
2. Update the historical threat database or develop a new database to perform comparative assessments;
3. Assign full-time representatives to all 56 FBI field office JTTFs and ensure effective USMS liaison with other intelligence agencies;
4. Create a centralized capability to identify, collect, analyze, and share intelligence;
5. Ensure that all Chief Deputy Marshals and all JTTF representatives have Top Secret clearances and ensure that each district has operational secure communication equipment; and
6. Revise USMS guidance to establish risk-based standards and require after-action reports for high-threat trials and protective details.

The USMS concurred with all of our recommendations and, since the report's issuance, has been providing us with information on the status of the corrective actions it has said it would implement. The following is the current status of those actions, as reported by the USMS.

Improving Threat Assessments. In response to our recommendation to ensure that all threats are assessed within established time frames, the USMS agreed to revise its policy and establish criteria for categorizing and completing threat assessments and make adherence to these revised time frames a factor in the staff's annual performance evaluations. The USMS also stated that it planned to review the workload of the threat assessment unit and request additional resources during the FY 2006 budget process, if necessary. The USMS estimated that the new policies would be implemented by the end of August 2004 and later provided draft policies to us for review in September 2004. However, in April 2005 the USMS told us that it was delaying the formalization of the policies pending the establishment of its Office of Protective Intelligence.[5] On April 26, 2005, the USMS testified at a hearing before the House Committee on the Judiciary, that other revisions to threat assessment policies may result from the ongoing Attorney General's review of judicial security. At that hearing, the USMS also reported that it has "instituted rating criteria to identify, assess, and prioritize all inappropriate communications to ensure that all threats to the judiciary are assessed within established timeframes."

[5] The Office of Protective Intelligence has been designated as the entity responsible for the analysis and dissemination of judicial threat information. On February 16, 2005, Congress approved the USMS's proposed realignment to formally establish the Office of Protective Intelligence.

As described to OIG staff by the USMS on May 13, 2005, the USMS has modified the triage system it uses to rank threats for assessment. When threats are received at headquarters for assessment, they are divided into two categories, "expedited" and "standard." The "expedited" threats, which are those deemed to be more serious, are processed first. According to the USMS, until March 2005, it continued to receive threats at its historical rate of 50 to 60 threats a month. USMS data indicated that, under the new system, about three to five threats a month received an "expedited" rating and all them were processed within the new time frame for expedited threats.

However, in March and April 2005, after the attacks on the family of Judge Joan Henry Lefkow in Chicago, Illinois, and on Judge Rowland Barnes and others in Atlanta, Georgia, the number of reported threats increased. There were 136 threats reported in March and 83 threats reported in April. Because of the spike in reported threats, the USMS told us that it has not been able to process all "standard" threats within the established time frame, but it is working to reduce the backlog.

Updating Historical Threat Database. In response to our recommendation that the USMS update or develop a new historical threat database to perform comparative assessments, the USMS prepared an analysis of the functional requirements for the database and the cost and time to complete the project. The requirements analysis, completed in March 2004, proposed incorporating the historical threat database into the USMS's Justice Detainee Information System (which includes the WIN database) and developing new programs to allow the comparative analyses to be conducted within that environment. According to the USMS, incorporating the historical threat database into Justice Detainee Information System would (1) allow additional data from closed cases with known outcomes to be utilized in the comparative analysis, (2) allow the program to be used with greater ease by the analysts, and (3) improve the accuracy of the comparative analysis process.

On September 30, 2004, the USMS informed us that the historical threat database had been merged into the Justice Detainee Information System and later informed us that the additional software to support comparative analyses was tested and released USMS-wide at the end of October 2004. On May 13, 2005, we met with USMS staff responsible for managing the system so that we could observe the system in operation. The historical threat database has been merged into the Justice Detainee Information System. To merge the databases, fields were added to the Justice Detainee Information System database so that it includes variables used for the comparative assessments. The implementation also included technical improvements such as the use of drop-down windows to speed data entry. The data from the old database was transferred to the new system, and data on the approximately 4,900 threats that had not been entered into the previous threat database have been entered

into the new system. The database now includes data on about 7,000 threats from 1980 to the present that are used for the comparisons with new threats.[6]

Representation on JTTFs. The USMS indicated in its response to our recommendation that it would assign representatives to all 56 FBI field office Joint Terrorism Task Forces and ensure effective liaison with intelligence agencies.[7] The USMS stated it would seek additional positions in the FY 2006 budget to assign at least 1 full-time employee to each of the 56 JTTFs. We asked the USMS for quarterly rosters of all full-time and part-time representatives on the JTTFs to monitor the progress made toward attaining full-time representation on all 56 Task Forces.

Unfortunately, it appears that the USMS has reduced rather than increased its representation on the JTTFs. When our report was issued in March 2004, the USMS had 50 representatives assigned to the JTTFs, 25 of whom were full-time and 25 who were part-time. In its April 26, 2005, testimony before the House of Representatives' Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security, the USMS testified it now has 51 representatives assigned to the JTTFs, but only 18 are full-time and 33 are part-time.

The USMS also told us that it still is evaluating its staffing needs in connection with our recommendation and direction from Congress.[8] In its most recent response to our report on April 4, 2005, the USMS stated that it is currently evaluating its staffing needs USMS-wide to determine what segment of this increase can be directed to increasing participation in the JTTFs.

Centralized Intelligence Analysis Capability. In response to the OIG report's recommendation that it create a centralized capability to identify, collect, analyze, and share intelligence, the USMS responded that it would seek the resources needed to fully staff an Office of Intelligence as part of the FY 2006 budget process. According to information provided by the USMS on May 14, 2004, the Office of Protective Intelligence would be placed within the

[6] There are about 8,400 threats in the database, but about 1,400 of the threats do not include outcomes or other information needed for the comparative assessment.

[7] Examples of intelligence agencies included in the recommendation were the U.S. Secret Service National Threat Assessment Center, the Central Intelligence Agency, and the National Security Agency. The USMS recently testified that it has assigned criminal investigators to the National Counterterrorism Center, the FBI's National Joint Terrorism Task Force, and the Department of Homeland Security.

[8] In the FY 2005 appropriation, Congress provided the USMS with 94 new Deputy Marshals to enhance the protection of the judiciary. The Conference Report stated that when determining resource allocations, the USMS should be mindful of the recent recommendations of the report from the OIG.

Judicial Security Division and it would be responsible for the collection, analysis, and dissemination of all intelligence relating to the safety of USMS protectees, employees, facilities, and missions. The USMS reported that the office was established on June 1, 2004, with a staff consisting of a Chief, three Criminal Investigators, and one Intelligence Analyst. In addition, the USMS stated that "a number of analysts from the Analytical Support Unit" would be reassigned to the office shortly thereafter. The USMS also reported that the Office of Protective Intelligence implementation priorities were to (1) immediately develop a plan to transfer all threat analysis responsibilities from the Analytical Support Unit to the Office of Protective Intelligence, (2) prepare and propose an organizational and staffing plan, and (3) assist the Management and Budget Division in preparing a submission for the FY 2006 budget supporting the creation and continuity of the Office of Protective Intelligence. Congress approved the establishment of the Office in February 2005. On April 26, 2005, the USMS testified that it had established the Office of Protective Intelligence, but added the caveat that "the availability of resources will determine the rate of progress with regard to staffing the office."

On May 13, 2005, we met with the Chief of the Office of Protective Intelligence to discuss the staffing and implementation of that office. We found that the assigned staffing still is only the five positions that were transferred to create the office in June 2004. The Chief of the Office said the current plan is for the analysts from the Analytical Support Unit to be moved into the Office of Protective Intelligence, but no timetable has been established for the transfer.

We were informed that the Office of Protective Intelligence receives all threats and researches them using the National Crime Information Center, the Warrant Information Network, and other information sources before forwarding the threats to the Analytical Support Unit for the threat assessment.

Security Clearances and Secure Communication Equipment. In response to our recommendation that all Chief Deputy Marshals and representatives to JTTFs have Top Secret clearances and that each district has secure communications equipment, the USMS stated that all Chief Deputy Marshals and JTTF representatives would have Top Secret clearances within 30 days after their background investigations were completed. In addition, the USMS told us that all newly appointed Chief Deputy Marshals and JTTF representatives would have background investigations initiated within 15 days of appointment and Interim Top Secret clearances within 30 days of appointment.

We asked for a copy of the new USMS policy for issuance of security clearances, quarterly reports on clearance information for each Chief Deputy Marshal and JTTF representatives, and status reports on the progress of the installation of secure telephone communications equipment in each of the 94 districts. Subsequently, the USMS told us that its revised personnel security

policy would have to undergo review and approval by the Department's Security Officer. USMS officials later told the OIG that they had undertaken a new initiative to rewrite all existing security program policies. On April 26, 2005, the USMS reported at a Congressional hearing that all 94 Chief Deputy Marshals now have Top Secret clearances, but we have received no documentation from the USMS to confirm that statement.

Regarding the secure communications equipment, in its most recent response to the OIG on April 4, 2005, the USMS told us that all USMS district offices now have operational secure communications equipment.

Risk-Based Standards. In our recommendation regarding risk-based standards, we stated that the USMS should revise its *1993 Judicial and Court Security Manual* and its *1999 Offsite Security Booklet for Judicial Officers* to establish risk-based standards and require after-action reports for high-threat trials and protective details. The USMS concurred and convened a working group comprised of Chief Deputy U.S. Marshals and Senior Inspectors from throughout the USMS to analyze and respond to the specific policy issues and concerns we raised. This action is partially completed. The USMS has reported to us that it completed a new protocol for conducting judicial threat assessments and provided a copy of risk-based criteria it developed and posted on its intranet for planning high-risk trials, protective details, and threat investigations.[9] The USMS also provided a copy of the updated publication, the *1999 Offsite Security Booklet for Judicial Officers* that was distributed in September 2004 to all U.S. Marshals and Chief Deputy Marshals for dissemination to judges in their districts. However, in its April 4, 2005, update to us the USMS indicated that draft policies that the working group prepared will not be finalized until the USMS receives and incorporates any recommendations made by the ongoing Attorney General's judicial security working group.

IV. FURTHER ACTIONS TO PROTECT THE FEDERAL JUDICIARY

The recent events involving the family of Judge Lefkow in Chicago and Judge Barnes and others in Atlanta serve as tragic reminders of the dangers facing members of the judiciary. Protecting the judiciary requires effective intelligence to identify potential threats, timely and accurate threat assessments, and implementation of appropriate protective measures to thwart attempts to harm judges or other members of the federal judiciary. The USMS has begun to address the shortcomings in its judicial security process that we

[9] The USMS stated that the 1993 *Judicial and Court Security Manual* became obsolete on October 20, 2003, with the institution of a web-based directives system. The web-based system consolidates various directives, policies, and instruction documents and provides USMS employees ready access to current policies, as well as the ability to generate paper copies.

identified in March 2004, but that work has not been completed. There are several areas where we believe more attention is urgently needed.

First, we believe it is essential that the USMS Office of Protective Intelligence be staffed appropriately to effectively carry out its critical mission of collecting, analyzing, and disseminating intelligence related to the safety and security of the federal judiciary. The initial staffing plan reported to us by the USMS on May 14, 2004, has still not been fully implemented. The analysts from the Analytical Support Unit have not been moved to the Office of Protective Intelligence, and the total staffing remains the five individuals who were initially transferred to create the office.

We also believe that it is essential for the USMS to be represented on the 56 JTTFs. We previously have expressed our concern about the lack of USMS representation on the JTTFs, and we remain concerned because the number of full-time USMS representatives has actually decreased since our March 2004 report. We believe that the lack of representation on the JTTFs presents a potential intelligence vulnerability, not only to the judicial security mission, but to all USMS missions.

The delay in staffing and implementing the Office of Protective Intelligence and achieving full USMS representation on JTTFs is especially troubling because Congress provided an additional $8.9 million and 94 positions to the USMS in the FY 2005 Consolidated Appropriations Act specifically to enhance the protection of the federal judiciary. The USMS also has requested funding for an additional 65 Deputy Marshals for judicial security in FY 2006. However, the USMS has not yet indicated how it intends to use these additional resources to address the shortcomings we identified.

The USMS also needs to move forward with guidance on risk-based standards and threat assessments. The USMS has told us, and indicated in testimony, that it is delaying issuing the guidance it has drafted on these issues pending completion of the Attorney General's judicial security working group, so that any recommendations resulting from that effort may be incorporated in the guidance prior to issuance. We have met with representatives from the Attorney General's working group, and we are providing it with information to support its effort. While the Attorney General's working group may issue recommendations that should be reflected in USMS directives, I believe that the USMS should move forward and issue its guidance. It has been over a year since our report was issued and the interim guidance on risk-based standards and threat assessments that were developed in response to our recommendations are still undergoing review and approval. Final guidance that will help ensure the consistent and effective protection of the judiciary should not be continually delayed, even though some portion of the guidance may be revised in the future.

V. OIG REVIEW OF UNITED STATES MARSHALS SERVICE'S USE OF INDEPENDENT CONTRACT GUARDS

Finally, I want to briefly summarize a report that the OIG issued this week that examined the USMS's use of independent contractors hired as guards. The USMS hires more than 2,700 independent contract guards annually and uses them primarily to transport federal prisoners to and from court facilities and guard federal prisoners in courtrooms or cellblocks.[10]

The OIG audit assessed the USMS's controls over the hiring of independent contractor guards, whether the USMS was adequately monitoring the performance and duties of the guards, whether the guards met the USMS experience and fitness for duty requirements, and whether the initial training for such guards was adequate. The audit found significant deficiencies in the Marshals Service's hiring and use of the independent contract guards. Some of these deficiencies concerned problems in the contracting with these guards, including disparities in wage rates and lack of controls over the procurement process. However, other problems relate to the training, experience, use, and monitoring of independent contract guards, all of which could have security implications for judges at courthouses.

For example, the OIG found that some of the independent contract guards hired by the USMS lacked the experience required to qualify as contract guards. The OIG audit also found that 30 percent of the armed contract guards did not receive their firearms refresher training every 6 months, as required by USMS policy. We found that 13 percent of the armed independent contractors had gone a year or longer without re-qualifying with their firearms. Also, due to a lack of documentation in USMS files, we could not verify that applicable background investigations were performed on all contract guards prior to their employment. We also could not verify from USMS records that all independent contractors had been medically certified as fit for duty. In addition, the USMS lacks a reliable system to record and maintain contract documentation relating to hiring, training, and evaluating independent contractors.

The OIG made seven recommendations to help the USMS better manage its independent contractor guard force, including revising fitness-for-duty requirements, instituting a formal evaluation process of independent contract guards on an annual basis, tracking and documenting contractor training, and ensuring timely firearm qualifications. The USMS concurred with the recommendations and stated that it would implement corrective action.

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[10] In addition, the USMS has entered into 12 separate contracts with regional guard companies for 4,500 contract guards to provide security at about 400 federal court facilities nationwide.

VI. CONCLUSION

The OIG reports discussed in my statement identified significant deficiencies in the United States Marshals Service's effort to ensure the security of federal judges and federal courthouses. We believe that it, and the Department of Justice, must take action to address these issues. While the USMS has begun to take some steps to respond to our recommendations, more action is needed, on an expedited basis, to ensure the safety and security of judges and courthouses throughout the country.

from the office of

Senator Edward M. Kennedy

of Massachusetts

FOR IMMEDIATE RELEASE
May 18, 2005

CONTACT: Laura Capps/Melissa Wagoner
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STATEMENT BY SENATOR EDWARD M. KENNEDY ON COURTHOUSE SECURITY

(As Prepared for Delivery)

Congress recently provided nearly 12 million dollars to remedy a crisis in off-site judicial security for our federal judges. The bill was a small, but necessary step toward increasing security for the distinguished men and women of our country who have been appointed to the courts. In the wake of the recent murder of a husband and mother of a federal judge at her home in Chicago, and the courtroom killings in Atlanta, it is clear we must do more to protect our judges as a matter of the highest urgency.

These tragic recent deaths demonstrate that judges may be safe inside the walls of our well-guarded courthouses, but they are vulnerable to disgruntled litigants in other places, even in their own homes. In fact, security in the homes of judges has long been a concern of the Judicial Conference, the principal decision-making group for the federal courts. Sadly, three judges had previously been killed at in their homes: one in Texas in 1979; one in New York in 1988; and one in Alabama in 1989.

The vast majority of threats are made by people angry about the outcome of a case in court. In the ten years since the first world trade center bombing, the federal judiciary has handled an increasing number of high threat matters.

Judge Lefkow was the victim of an act of domestic terrorism arising from what should have been a routine civil matter. The leader of a White Supremacist group known as the World Church of the Creator, was convicted in April 2004 of soliciting an undercover FBI informant to murder the judge in retaliation for her decision against him in a trademark dispute. This brutal crime demonstrates the unstable environment in which our federal judges decide cases everyday.

Shockingly, the risks faced by the honorable men and women who fill our independent judiciary have dramatically increased in the past two months. The source of that increased risk has not been Al Qaeda, White Supremacists, drug gangs, or mentally ill litigants. Instead, judges are at greater risk of being victimized today than four weeks

ago due to venomous incitement from Republican members of Congress and their right wing, extremist surrogates.

The comments are deplorable. House Republican Leader Tom DeLay has threatened the judges who participated in the Terri Schiavo proceedings, saying: the time will come for the men responsible for this to answer for their behavior." His colleague, Republican Congressman Steve King said that he intends to introduce legislation to bring the courts back to heel, "maybe by removing their feeding tubes" – a grisly reference to the death of Terri Schiavo.

A recent conference, "Confronting the Judicial War on Faith," was attended by leaders of the Republican Party. Ominously, one of the speakers, Edwin Vieira, said that his bottom line for dealing with the Supreme Court comes from Joseph Stalin. Vieira said: "He had a slogan, and it worked very well for him, whenever he ran into difficulty: 'no man, no problem.' Of course, Stalin's full comment, which Vieira undoubtedly knew, was "Death solves all problems: no man, no problem." Vieira's comments were made in reference to Reagan appointee Justice Anthony Kennedy.

Reckless, irresponsible comments like these create a culture where threats of violence become acceptable. It is not merely a coarsening of discourse; it is a numbing of sensibility. The attacks on the judiciary and the veiled threats of violence can easily lead to further tragedy, and we need to do all we can to prevent it.

Federal judges deserve to be secure in their homes. They need to know that concrete steps are being taken immediately to reduce the risk of violence to them and their families. We need to stand up for our independent judiciary and do a better job of providing for their security.

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U.S. SENATOR PATRICK LEAHY

CONTACT: David Carle, 202-224-3693 VERMONT

Statement Of Senator Patrick Leahy
Hearing On
"Protecting The Judiciary At Home And In The Courthouse"
May 18, 2005

I want to thank Judge Lefkow for her strength and courage in coming here today to speak with us about the tragedy that has reached so suddenly and wrenchingly into her life, and which has shocked the entire nation. While no condolences can repair the terrible damage, she and her family have our deepest sympathy.

There is no justification for threats against, let alone violence against, judges and their families. It is in the vital interests of the Nation that we defend the bright line that protects judges from threats. Crossing that line can never be justified or excused or explained away.

I say this because this tragedy has not only left personal wounds, but has also dealt a blow to the federal judiciary. Chief Justice Rehnquist is right to refer to the federal judiciary as the crown jewel of our system of government. It is the envy of the rest of the world. It is an essential check and balance and a critical source of protection of the rights of all Americans. Violence and threats of violence against judges and their families place at risk the judicial independence that is a cornerstone of our democracy and a model for the world.

It is an abomination that some in this country have chosen to use dangerous and irresponsible rhetoric when talking about judges, comparing judges to terrorists and threatening judges with punishment for decisions they do not like. This provocative rhetoric must stop, for the sake of our judges and the independence of the judiciary. Judicial fairness and independence are essential if we are to maintain our freedoms.

It is unfortunate that it takes acts of horrific violence to put a human face on the federal judiciary, law enforcement officers or U.S. officials, to remind everyone that these are our brothers and sisters and fellow Americans – hard-working people with children and parents and friends. The tragedy that has befallen Judge Lefkow and her family is the act of a deranged man. Another has been convicted of crimes for seeking to threaten her.

When I chaired the Judiciary Committee recently, one of the first things I did was push for passage of the Judicial Protection Act of 2001, which I sponsored with Senator Gordon Smith. It toughened criminal penalties for assaults against judges and their families. We enacted it. We were right to do so. Protecting our judges and federal law

enforcement officers should always be a top priority for us.

We must better protect the dedicated women and men throughout the federal judiciary and federal government across this country who do a tremendous job under challenging circumstances. They are examples of the hard-working public servants who make up the federal government, who are too often maligned and disparaged. We owe it to them and to our democracy to find ways to make sure that this tragedy is not repeated and to ensure that judges and their families have the peace of mind necessary to do their vital and difficult jobs.

We must also recognize the tremendous challenges facing the men and women of the United States Marshals Service, who are charged with the essential job of keeping our judges, our courts and the rest of the federal judiciary safe. It is a difficult job and they do it well, with compassion and commitment. Like all law enforcement, the Marshals stand with the women and men of the judiciary on the front lines of a battle for security against ever-changing threats. We must give the Marshals Service the resources it needs to fulfill its mission of keeping the judiciary safe and secure.

This country's federal judges deserve our respect and our protection, and we will do everything in our power to work with law enforcement officials to keep them safe and to protect the independence of the federal judiciary.

I thank all our witnesses for their constructive testimony. I especially again want to thank Judge Lefkow and her family for traveling all this way to be with us, at such a painful period in your lives, to share your experience and its lessons for us, and for your suggestions.

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STATEMENT OF

JUDGE JOAN HUMPHREY LEFKOW
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

BEFORE

THE COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

ON

"PROTECTING THE JUDICIARY AT HOME AND IN THE COURTHOUSE"

May 18, 2005

TESTIMONY OF JOAN HUMPHREY LEFKOW
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF ILLINOIS
BEFORE THE
JUDICIARY COMMITTEE OF THE UNITED STATES SENATE
MAY 18, 2005

Mr. Chairman and Members of the Committee:

Good morning, Chairman Specter, Senator Leahy, members of the Judiciary Committee. Thank you, Senator Specter, for your invitation to appear here today. And I wish to thank you Senator Durbin for the compassion and concern that you have expressed to me and my family.

Although I have to this date refused all invitations–of which there have been many--to speak publicly on my situation or matters of judicial security in general, I am here today because I believe it important to speak to this body which has the power to effect much needed changes in the manner in which the federal judiciary is protected from assassination and lesser attacks. My family is here because they hope that their presence will reinforce my words.

I am the fourth judge since 1978 who has been the victim of assassination as a result of "the madness in the shadows of modern life." (I borrow that phrase from the note former President Clinton wrote to me)–more specifically, as a direct result of a decision made in the course of fulfilling the judge's oath to do justice "without fear or favor." Among more than 1,000 letters of condolence my family has received are approximately 200 from judges, state and federal, each of whom knows in their heart, "This could have been me." Five assassinations (that includes 2 for me) in 25 years tells us that judges are particularly vulnerable. (For example, the last such tragedy within the Congress was in 1978 and on foreign soil) and that something is wrong in the judicial protection arena. (These numbers do not include attempts, such as the poisoning of a judge's wife.)

Let me briefly tell you what this has done not only to me and my children, but to my extended family of brothers and sisters, nieces and nephews and others. Michael was a man whose excellent character and accomplishments at the bar and as a family man have been described in recent news reports and I will not attempt to recount them. On a personal level, however, he was a man who, at the age of 64, looked to the future with hopefulness and anticipation. A litigant who was angry with me shot him in the head, and shot my aged mother, on February 28, 2005, for no reason other than that they were in his way on his road to murder me. He could have easily added my 16-year-old daughter and me.

2-28 is our own personal 9-11. Since 2-28, our family includes a daughter and her husband who have to explain to their young children why their grandfather is now with God and they will not see him again; two daughters who will not have their beaming father to walk them down the aisle at their weddings; and two who will not have Dad to join the fun at high school and college

graduations. From now on, they will have a father's guidance only through their memories. Michael's family includes, among others, four sisters and brothers who have now lost their third sibling before age 65. An entire family has lost its ability to assume that when we walk through the door of our own homes, we will be safe there. Beyond the family, there is a community of clients, friends, fellow church members, and neighbors who simply miss this man who was a significant part of their lives in one way or another.

The father who sent every report card to Grandma, so she also could rejoice in what the children accomplished, is no longer there, and neither is the grandmother, who made each of her 20 grandchildren and great-grandchildren believe that that grandchild was her special favorite. Finally, I am the wife who wakes up in the morning, not to a cup of coffee presented by my husband of 30 years to reopen what has been called "the endless conversation of marriage," but to an open book that I was reading in an effort to banish the memories of 5:30 p.m. on the day our world changed forever.

I say all of this not to garner pity or sympathy. We have been overwhelmed by the kindness of others and can never adequately express our gratitude. Rather, I come to you with a plea that you, who have the power, continue to make judicial protection a priority as is reflected in the recent passage of H.R. 1268 which includes $12 million to the Marshals Service for increased security for federal judges, particularly for home intrusion detection systems, and that you be vigilant with us in monitoring judicial security so that sympathetic feelings translate into real protection. And I come to you with a plea that each of you exercise leadership to use your voice in support of the vital role of judges in sustaining a society based on the rule of law instead of right being defined by might.

First, may I speak of prevention. I understand that the Congress cannot eradicate violence against judges, nor are judges exempt from the madness in the shadows. But as I replay in my mind the events that led to our tragedy, I believe that several things might have prevented it and could prevent it from happening to even one more of our judges.

- **The first is rapid distribution of the funds for home security systems.** Obviously, had the Lefkow family had such a system at home, this horror could have been avoided. We judges are grateful beyond words to this Committee and the Congress for authorizing this appropriation so quickly after this latest tragedy. Now that the funds are there, I ask that members of this committee make clear to the Director of the Marshals Service its intent that this money be distributed to the judges in the field as quickly as the judges can make arrangements for installation. As recently as last Friday, May 13, I was spotted and harassed in a restaurant in downtown Chicago. Had that harasser had a gun, I would be dead today. There is no time for bureaucratic delay.

- **I urge your support for legislation that prohibits the posting of personal information about judges and other public officials on the Internet without written consent.** I believe that the Internet is a brave new world in the matter of judicial security. During the late fall of 2003 I became aware that I was being villified on the Internet by a white

supremacist organization that had a trademark case before me. (As some of you are aware, the circumstances resulted in the prosecution and conviction of the principal of that group.) Not only was I labeled as "a probable Jew" with "mixed race grandchildren," as if those were shameful things, but eventually my home address and other personal information were posted by this fringe group. The information, true and false, that was posted about me was readily available free of charge on the Internet. As a matter of fact, our home address was posted by the State board of elections in connection with my husband's candidacy for a local judgeship. A small fee of $20 will give anyone who wants it access to social security numbers, loans, land transactions, the names of neighbors, and so forth. Although it may never be stopped entirely, limits on commercial trafficking in such information is, I believe, feasible and essential.

- **The third item for which the judiciary needs your support is adequate funding for adequate staffing, and pay equity (with other federal law enforcement agencies such as FBI) for the United States Marshals Service.** Others who are more knowledgeable than I, including Circuit Judge Jane Roth, will be addressing you on these matters. I also call your attention to the letter my Chief Judge, Charles Kocoras, wrote to you, Senator Specter, addressing these issues as well. This is my personal observation over the 22-plus years I have worked in the federal judiciary: there has been a diminution of support for the judges that corresponds with the increase in demand for transportation of prisoners, apprehension of fugitives, and other responsibilities associated with the federalization of criminal law. Although security is provided at all criminal case hearings, many officers are not trained U.S. Marshals, and on the civil side, no security is provided unless the judge specifically requests it from an already strained district office. We need a trained deputy marshal present at all court hearings, criminal and civil, who can be our eyes and ears to identify and follow up on litigants who appear to be dangerous. (How many times have I chastised myself for not recognizing the threat that became a reality, but this is neither my expertise nor is it appropriate that I focus on such a matter when I am handling a case.) In addition, my own experience with my current security detail suggests to me that planning and training need analysis at the top.

  Let me be clear. I do not intend by these remarks to convey any criticism of either Marshal Kim Widup of the Northern District of Illinois nor any individual deputy whom I have encountered on my protection detail since 2-28. Starting with the team who swept a shaken, disbelieving family into protective custody on that awful night, these deputies were the knot at the end of our rope for weeks, and not one of them has been anything but compassionate, available and committed beyond the call of duty. This has been a sacrifice for the entire Service, of course, as districts who have lent deputies for my detail are even more shorthanded in their own locales than they were under normal circumstances.

- **Finally, I ask you to publicly and persistently repudiate gratuitous attacks on the judiciary** such as the recent statement of Pat Robertson on national television and, unfortunately, of some members of the Congress, albeit in more measured terms. We need

> your help in tempering the tone of the debates that concern the independence of the judiciary. I have come to know scores of judges during my 22 years as a magistrate judge, bankruptcy judge, and district judge. Whether liberal or conservative, I have never encountered a judge in the federal judiciary who can remotely be described as posing a threat "probably more serious than a few bearded terrorists who fly into buildings." In this age of mass communication, harsh rhetoric is truly dangerous. It seems to me that even though we cannot prove a cause and effect relationship between rhetorical attacks on judges and violent acts of vengeance by a particular litigant, fostering disrespect for judges can only encourage those that are on the edge, or the fringe, to exact revenge on a judge who ruled against them.
>
> Judges do not invite anyone to file a law suit. The cases come to us because the prosecutor, an individual, or a corporation is convinced that the court will protect the rights they believe are granted to them by the Congress and the Constitution. Neither do we choose the issues. I know many judges but I don't know one who welcomes the responsibility to decide whether a man's heinous crime was a result of inability to understand the nature of his acts, or whether a decision by the next of kin to remove a feeding tube from a living human being should or should not be honored, or whether termination of a collectively bargained pension plan is lawful. We call this winning and losing, but those terms are inadequate. This is never a game. Rather, cases such as these entail enormous consequences for the individuals involved. Emotions can be powerful in these situations.

As Chief Judge Kocoras of my court wrote in his letter to Senator Specter:

> . . . No principle by which we live as Americans or govern and judge ourselves is worthier of greater respect and fealty than the doctrine of the rule of law. Respect for the rule of law and the civility it affords requires acceptance of the results the law ordains. If it comes to pass that [attacks on judges] are perpetuated because each person feels free in deciding for themselves what is right or just, then chaos and anarchy will not be far behind. . . .

This very statement has been echoed by dozens of strangers in my mail. These ordinary citizens and voters understand what Judge Kocoras puts eloquently. This is the reason American judges are invited by developing democracies throughout the world to help establish an independent judiciary. Our system is the role model for the world. Without fearless judges, where are we as a nation? I have no doubt that each of you is equally committed to this idea. Your voices as elected officials are magnified. Judges, by contrast, speak most often through their decisions. We need your leadership in this area, and the stakes are profound.

Thank you, Mr. Chairman, for the opportunity to appear here today. I am confident that I speak for all my judicial colleagues throughout the nation in expressing our appreciation for the attention and time you are giving to our security needs. I would be pleased to respond to any questions you may have.

CONFERENCE OF CHIEF JUSTICES
CONFERENCE OF STATE COURT ADMINISTRATORS

WRITTEN TESTIMONY

by

Mary McQueen
President
National Center for State Courts

On

Improving the Security of Our State Courts

Submitted to the

COMMITTEE OF THE JUDICIARY
UNITED STATES SENATE

Committee Hearing
Wednesday, May 18, 2005
226 Dirksen Senate Office Building
8:30 a.m.

National Center for State Courts
Government Relations Office
2425 Wilson Boulevard, Suite 350
Arlington, Virginia 22201
Tel: (703) 841-0200 Fax: (703) 841-0206

Chairman Specter, Ranking Member Leahy, and Members of the Committee,

On behalf of the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA), it is a privilege to provide testimony for consideration in the Subcommittee's hearing examining the security of the Nation's state and federal courts. The Conferences' memberships consist of the highest judicial officers and the state court administrators in each of the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, and the Northern Mariana Islands and the Territories of American Samoa, Guam and the Virgin Islands. The National Center for State Courts (NCSC) serves as the Secretariat for the two Conferences and provides supportive services to state court leaders including original research, consulting services, publications, and national education programs.

We believe that Congress has an opportunity to make an important and tangible difference in improving the safety of our courts and upholding the fundamentals of our democratic society.

INTRODUCTION

This morning thousands of judges, prosecutors, public defenders, lawyers, law enforcement officers, court personnel, court reporters, jurors, witnesses, victims, and members of the general public entered a courthouse. They come for one purpose – seeking justice in a safe, neutral forum. What ensures that people can resolve their disputes, present evidence before a judge or jury and expect a judge to rule solely based upon the law, uninfluenced by intimidation? A forum free from fear, free from threats, and free from violence. People will not bring their disputes to courts if the likely consequence is intimidation or physical harm. Judges and jurors cannot pursue the truth if they or their families are threatened.

A democracy cannot long endure if those entrusted with resolving disputes are targets of violence and become enmeshed in an environment of fear and intimidation, if officers responsible for security do not have the resources to detect and respond, and if lawyers, parties and the public must evaluate their own personal safety in deciding whether to participate in the process. Freedom from such an environment and the ability to carry out the judicial responsibilities in an open and accessible manner are fundamental components of the exercise of the rule of law.

We appreciate the problems of violence in the workplace. Indeed, if there is any workplace in America where the potential for violence is great, it is the judicial workplace. People do not go to court for learning or education, entertainment or fun. People are often legally required to attend court. Jurors are summoned to court. Witnesses are subpoenaed to court. Defendants are compelled to go to court to face

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criminal charges or civil prosecution. Folks who have given up on resolving their disputes peaceably – disputes with their neighbors, disputes with their children, disputes with their families, disputes with their employers – go to court as their last resort. Emotions run high because these disputes invariably involve human relationships, and people's relationships evoke strong feelings. Also, there is the confrontation clause – the right to confront your accusers. Although most of us spend a lot of time trying to avoid problems or sweep them under the rug, in court you often directly confront your adversary.

Consequently, in the judicial workplace, there is confrontation between people under highly charged sets of emotional circumstances regarding disputes that they have been unable to peacefully resolve. There are winners and losers in court. Not only is there confrontation and emotion, but at least one of the parties will often leave feeling disappointed or angry that they have lost – and they have lost in some sort of a final, binding way. Frequently, both sides leave feeling that they have lost because of either the process or the court's ruling. Despite the fact there is no workplace with greater potential for violence it is also true that there is no workplace in America where it is more critical that the workplace be free of violence.

Access to peaceful resolution of disputes is fundamental to our system of government. Coupled with the principle of judicial independence these concepts are the envy of the world. Neither access to justice nor judicial independence can exist in an environment of intimidation, fear or violence. Under the rule of law, court proceedings are supposed to be open and public. How long will the proceedings be open to the public if members of the public, although invited to the courthouse, fear that they are going to become embroiled in some sort of a threatening, fearful, or violent situation?

Mr. Chairman, the recent events in Atlanta and Illinois show a disturbing pattern with regards to how some people view the judiciary as an institution. These attacks and threats towards members of the judicial branch are rapidly reaching a crisis point for us. Let me recount some recent examples that we were able to get from our members:

- Alaska. Most of the judges in this state have recently received threatening communications with repeated references to the Chicago murders. Last year, a serious communication to one judge required the intervention of the FBI last year. Also during this past year, large numbers of weapons have been confiscated as a result of magnetometer screenings.
- Arizona. In the past year, there has been a suicide outside a divorce court, a firebomb of a Justice of the Peace Court, death threats towards judges, a visit by a disturbed litigant to a judge's home, explicit communications with pictures and diagrams to judges on pending cases, and threats by constitutionalists to "arrest" and execute a judge.

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- California. Various bomb threats have been received this past year, including an incident in which law enforcement was able to arrest the perpetrator before he was able to carry out the actual bombing, an incident in which a firebomb was discovered in a courthouse before it was able to go off, and an incident in which a litigant came into a clerk's office with a small home-made bomb. Explicit threats have been made against judges to carry out violence against them. Graffiti has been painted detailing threats against the court system. A court received correspondence that contained a vial of blood that tested positive for HIV and Hepatitis C. A wallet found in a courtroom with a description of a judge's car and license plate number. An individual with a pending court case was recently arrested videotaping the judges parking lot.
- Mississippi. Death threats have been made against several trial courts judges. Threats of destruction of property (buildings) and physical attacks on Justices of the Supreme Court have been made.
- New Hampshire. There was a recent incident where an individual entered a courthouse and attempted to assault a Court Security Officer during the screening process. A recent threat to "shoot up" one of the courthouses was also made.
- New York. The New York State court system receives approximately 140 death threats against judges a year.

Even though we do not have quantitative data to back this up, it is the impression of the state court leadership that the number and severity of these threats have been rising in recent years. Furthermore, given that the state courts try approximately 96 million cases per year, the opportunities for incidents and the magnitude of the problem cannot be overstated. Also, let me emphasize that while judges and court personnel are seriously at risk during any incident, the risk to the public is also significant.

THREATS AGAINST JUDGES

Since the Fulton County incident and the murders of U.S. District Judge Lefkow's husband and mother, we have been inundated with requests for information about threats that state court judges receive on the job. The simple fact of the matter is that, because of the cost of compiling such a large amount of data, we do not know the full extent of the problem.

In a survey by the family law section of the ABA, 60 percent of respondents indicated that an opposing party in a case had threatened them. From the federal Marshall's Service, we know that they record an average of 700 inappropriate communications and threats a year against federal judicial officials. This is a marked increase from the 1980s when the average was closer to 240 per year. If you compare the number of federal judges to the approximately 32,000 state court judges, there is the

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possibility that we may find a large number of judges that face or have faced some sort of physical threat.

Naturally we must always remember that the potential for violent attacks on judges is not limited to the courtroom. An aggressor who targets a specific judge may attack the weakest security link in that judge's world – most likely the home. While more difficult, this area of protection cannot be overlooked.

In order to better position courts and judges to deal with these threats we are proposing the following:

- **To Establish a Repository for a New Threat Assessment Database.** - Each state would establish a web-based site where threats could be reported and local action taken. Federal dollars could support each state in establishing these web-based sites. This coordinated effort would result in: 1) establishing and defining a core set of data elements used by each state and 2) obtaining data from states for analysis of trends and patterns. This information could then be used to assist states in preventing acts of domestic terrorism and crime and in enhancing their security procedures. By having the information from this threat database, we can target our resources where they will be most needed. Under the current system, most courts are taking an all or nothing approach with virtually no information to guide them in overall security planning.

- **To Establish a Tax Credit for Personal Security Systems for Public Officials that Receive Threats as a Result of Performing Their Public Duties** – Public officials, in order to protect themselves and their families, have had to purchase personal security systems as a result of threats and assaults. A tax credit is an appropriate way in which to offset these expenses.

Even though the second item may not be within the purview of this committee, we hope to count on your support as we forward it to the tax-writing committees.

FUNDING CHALLENGES

Perhaps the greatest challenge facing state courts wishing to implement enhanced security measures is the issue of resources. The majority of limited jurisdiction courts depend on local law enforcement for the personnel to operate the equipment, provide adequate response or run security operations in a courthouse. As you know, most local governments struggle to meet day-to-day operations of running their governments and have little options to improve or implement new security measures in courthouses. Because there is no adequate funding source, many courts report that they have no formal security plan.

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CCJ/COSCA and the National Center for State Courts have been disseminating promising practices in the courthouse security area. Our efforts in this area have been well received. For example, we have circulated the "Ten Essential Elements for Courtroom Safety and Security." The National Center also has compiled a wealth of information for state courts looking to upgrade their court security. Materials range from sample local court security plans to specific recommendations in courthouse architectural design, computer disaster recovery, and equipment.

I must caution you that there is only so much that we can get out of streamlining and making better use of present resources. Sooner or later courts will need to find a way to pay for enhanced security measures. We hope that you will favorably consider our recommendations to allow state courts greater access to federal funds for much needed security improvements.

THE NEW DIMENSION - COURTHOUSE TERRORISM

On September 11, terrorist attacks threw New York City's court system in disarray because many court buildings and other criminal justice offices were located near the site of the World Trade Center. Three court security officers perished when they tried to assist in the rescue efforts. The Court of Claims Courthouse, located at Five World Trade Center was destroyed. Other courthouses were deep within the so-called 'frozen zone,' an area that city officials ordered off-limits to all but essential personnel.

The New York state court leadership, however, moved quickly to ensure that the disruption did not last more than one day. Under the leadership of New York State Chief Judge Judith Kaye, the focus of the hours following the attacks was to do everything possible to open all the courts.

The threat of terrorism has created a new dimension in courthouse security. The courthouse is a visible, tangible symbol of government. The September 11, 2001 attacks showed painfully the targets governments and other prominent buildings present. Thus courts, being a core function of American government, now suffer increased exposure to attacks from those external to the court process. They must be provided the same protection that is being provided to other government institutions in order to keep them open and accessible. The state courts are dealing with the threats posed by terrorism. We, however, need more assistance from the federal government as the large focus shifts to protecting the homeland. This is how you can help us.

As you know, there will be approximately $2.5 billion in federal funding for homeland security awarded in FY2005. As you may not know, very little of this money will go to state courts for dealing with the various terrorism-related threats. In a recent

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survey of COSCA members, 76% of the respondents reported that the court system had not received any Homeland Security funds. We need to be a part of this funding because terrorists often target the positive symbols of the American way of life like courts and the law. To improve on this, here are some concepts that we forward for your consideration:

- **To Create a New Federal Grant Program Specifically Targeted at Assessing and Enhancing State Court Security to Combat International and Domestic Terrorism** – This program would address the 10 Essential Elements for Courtroom Safety and Security as developed by CCJ/COSCA. The program would be modeled after the Court Improvement Program (CIP), the successful federal/state court program that has assisted us in handling child abuse and neglect cases.

- **To Ensure that State Courts Are Eligible to Apply Directly for Federal Funding** - State and local courts have not been able to apply directly for some Department of Justice (DOJ) administered programs because of the definition of "unit of local government" that has been included in the enabling legislation for the various programs. The result of this language is that state and local courts are not able to apply directly for these funds, but must ask an executive agency to submit an application on their behalf. As part of the DOJ reauthorization and as new grant programs are created, we ask that the definition of eligible entities is broadened so that state and local courts can apply directly for federal grant funds. As an example, when the Violence Against Women Act (VAWA) was reauthorized in 2001, the reauthorization legislation contained specific language authorizing, "State and local courts (including juvenile courts) ..." to apply directly for VAWA funds.

- **To Ensure that State Courts Are Included in the Planning for Disbursement of Federal Funding Administered by State Executive Agencies** – Statutory language for grant programs that impact the justice system should include specific language requiring consultation and consideration of state court needs. The language that we have suggested is as follows:

  > "An assurance that, in the development of the grant application, the States and units of local governments took into consideration the needs of the state judicial branch in strengthening the administration of justice systems and specifically sought the advice of the chief of the highest court of the State and, where appropriate, the chief judge of the local court, with respect to the application."

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NATIONAL SUMMIT ON COURT SECURITY

Shortly after the Atlanta and Chicago tragedies, with the Office of Justice Programs of the Department of Justice, the Conference of Chief Justices, the Conference of State Court Administrators, the American Judges Association, the National Association for Court Management, and the National Sheriffs Association as sponsors, we held a National Summit on Court Security on April 21, 2005. The Summit brought together all members of the court community to review current safety and security practices and needs in the courts. The discussions that occurred in the summit refined and reinforced the action items we are requesting in this testimony. We commend those who participated in the Summit. We are particularly grateful to Attorney General Gonzales and the Department of Justice's Office of Justice Programs for their leadership in embracing this priority and which provided the resources to hold the Summit.

CONCLUSION

The state courts of this country welcome the Judiciary Committee's interest in courthouse security. We look forward to working with the Committee to develop legislation that addresses courthouse security needs and takes into account the varied needs of the state courts of this country. We commend the Subcommittee for holding this hearing and recognizing the national interest in ensuring that our judiciary and courts must operate in a safe and secure environment.

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ABOUT CCJ

The Conference of Chief Justices (CCJ) was organized in 1949 and its membership consists of the highest judicial officer in each of the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the Territories of American Samoa, Guam, and the Virgin Islands. The purpose of the Conference is to provide an opportunity for consultation among the highest judicial officers of the several states, commonwealths, and territories, concerning matters of importance in improving the administration of justice, rules and methods of procedure, and the organization and operation of state courts and judicial systems, and to make recommendations and bring about improvements on these matters.

The Conference accomplishes its mission by the mobilization of the collective resources of the highest judicial officers of the states, commonwealths and territories to:

- Develop, exchange, and disseminate information and knowledge of value to state judicial systems;
- Educate, train and develop leaders to become effective managers of state judicial systems;
- Promote the vitality, independence and effectiveness of state judicial systems;
- Develop and advance policies in support of common interests and shared values of state judicial systems; and
- Support adequate funding and resources for the operations of the state courts.

ABOUT COSCA

The Conference of State Court Administrators (COSCA) was organized in 1953 and is dedicated to the improvement of state court systems. Its membership consists of the principal court administrative officer in each of the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the Territories of American Samoa, Guam, and the Virgin Islands. A state court administrator implements policy and programs for a statewide judicial system. COSCA is a nonprofit corporation endeavoring to increase the efficiency and fairness of the nation's state court systems. As you know, state courts handle 97% of all judicial proceedings in the country. The purposes of COSCA are:

- To encourage the formulation of fundamental policies, principles, and standards for state court administration;
- To facilitate cooperation, consultation, and exchange of information by and among national, state, and local offices and organizations directly concerned with court administration;
- To foster the utilization of the principles and techniques of modern management in the field of judicial administration; and
- To improve administrative practices and procedures and to increase the efficiency and effectiveness of all courts.

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Department of Justice

STATEMENT

OF

BENIGNO REYNA
DIRECTOR
UNITED STATES MARSHALS SERVICE
DEPARTMENT OF JUSTICE

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

CONCERNING

PROTECTING THE JUDICIARY AT HOME AND IN THE COURTHOUSE

PRESENTED ON

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Mr. Chairman, Ranking Member Leahy, and Members of the Committee, thank you for the opportunity to appear before you today. I appreciate the support that you have given the United States Marshals Service in the past, and we look forward to working with you in addressing the challenges we face in preserving the integrity of the judicial process.

Since our founding in 1789, the primary mission of the United States Marshals Service (USMS) has been the protection of the federal judicial process. Each day – in all 94 Marshals Service districts – our resources are fully dedicated to fulfilling this mission.

The protection of the judiciary is one of the most important, and perhaps least recognized, functions in American government. If federal jurists are to preside over cases and render verdicts free from fear of threat and intimidation in a safe environment, then Judicial Security must continue to be a priority in our government. A secure

judiciary is fundamentally necessary in the preservation of justice, in maintaining the rule of law, and in protecting the rights of all citizens.

While the "judicial security" mission traditionally has been defined as protection of federal judges and the physical protection of federal courthouses, the full resources of the Marshals Service are devoted to the protection of the judicial process, in one or more of the following aspects:

- by providing a secure courtroom environment not only for the judiciary, but for all trial participants, including court employees, prosecutors, federal public defenders, jurors, witnesses, private attorneys, and all who attend federal trials and court proceedings;
- when necessary, by providing for the personal protection of members of the judiciary and their families, so that judges can carry out their official duties without fear of threat, intimidation, or retaliation;
- by applying complex, technical security systems to make the nation's federal courthouses safe from external threats;
- by contracting and deploying thousands of experienced, well-trained Court Security Officers (CSOs) to screen the daily complement of visitors to our nation's federal courts;
- by designing and constructing secure facilities for the detention and movement of federal prisoners and creating secured passageways for the judiciary;
- by safely transporting thousands of federal prisoners to court appearances;

- by providing safe environments for thousands of federally-protected witnesses and their families; and,
- by executing warrants and arresting dangerous fugitives from justice and returning them to custody for proper adjudication of their criminal cases.

The tragic deaths of the husband and mother of Judge Joan Humphrey Lefkow in Chicago, and of Judge Rowland Barnes and his court colleagues in Atlanta, have brought national attention to the issue of judicial protection. This is the Marshals Service's highest priority. The Fiscal Year (FY) 2005 Budget provides the USMS with $552 million for judicial protection activities, which is an increase of five percent (5%) over FY 2004 spending levels. This includes funding for 94 new Deputy U.S. Marshals for judicial security. The FY 2006 President's Budget requests $586 million for USMS judicial protection activities, which is a six percent (6%) increase over FY 2005. These funds will support 65 additional Deputy U.S. Marshals assigned to judicial security, bringing the total to 2,542.

Each day, Deputy U.S. Marshals transport thousands of federal prisoners – some of whom are extremely violent – to their court appearances without major incident. Likewise, the Marshals Service currently manages more than 17,000 witnesses and their families in the Witness Protection Program. Since the inception of the program over thirty years ago, no federally-protected witness who has followed the program's rules has been harmed. In the 215 years since the USMS was founded, no federal judge has been murdered in a courtroom or courthouse. However, the ever changing threat environment requires a continual evaluation and assessment focused on meeting the emerging challenges and improving our judicial protective measures.

The Judicial Conference's Committee on Security and Facilities has stated previously that the Marshals Service "never gets the resources it needs to get the job done." It is true that, in past fiscal years, the President's Budget Requests for USMS positions dedicated to judicial security and protection have not been fully funded. Specifically, for Fiscal Years 2001 through 2005, the President's budget requested a total increase of 993 positions for the USMS. Only 393 of those additional requested positions were enacted in the FY 2001-2005 appropriations bills. Another 138 positions were enacted as part of two subsequent supplemental appropriations bills. The USMS would have benefited greatly from the President's budget requests being fully funded.

Protection and Security Services Provided to Federal Judges

The Marshals Service's attention to the personal security of a judge begins soon after a judicial candidate is nominated. Shortly after being nominated, the USMS provides nominees with a comprehensive briefing regarding their personal security and the range of security services offered by the USMS, both inside the courthouse and away from judicial facilities. These briefings are conducted at the highest level, generally by the USMS Assistant Director for Judicial Security.

Orientation topics for new judges include a variety of issues, such as: personal and residential security, both inside and away from judicial facilities; ensuring that personal information is removed from the public arena, such as telephone directories and Internet sites; vehicle and air travel safety; and changes in landscape designs around the home. Judicial Security Inspectors also offer to undertake a residential security survey of a judge's home to assess a wide range of security issues.

Throughout a judge's career, the USMS continues to provide security briefings in various situations and formats, including specialized publications and personal meetings between judges and experienced Deputy U.S. Marshals who are trained as Judicial Security Inspectors. If a judge is threatened, the Marshals Service provides immediate and appropriate protection – in their chambers, at their homes with their families, to include transportation, as necessary, to and from work or while on travel. The importance that the Marshals Service places on this mission cannot be overemphasized.

Threat Assessments and Investigations Against the Judicial Family

The USMS is responsible for the safety and security of more than 2,200 federal judges and 5,500 Assistant U.S. Attorneys. In recent years, there has been an increase in the number of threats against members of the judiciary, U.S. Attorneys, and other federal court officers. One of the key functions of the USMS Judicial Security Division (JSD) is to review, assess, and investigate inappropriate communications or threats made against members of the federal judiciary, U.S Attorneys and other court participants. Inappropriate communications can be made in writing, by telephone, verbally, through a third party, or by some suspicious activity that threaten, harass, or make ominous or unsettling overtures of an improper nature. The USMS considers all threats to be inappropriate communications, but not all inappropriate communications necessarily are threats. When appropriate, the Marshals Service coordinates its investigations with local and state police departments and the FBI.

The USMS provides guidance to the judiciary on addressing inappropriate communications. A primary factor considered by the Marshals Service is the assessment of whether or not the person making the threat has the means to carry out the threat. The

ability of the USMS to assess and abate threats against the judiciary is directly related to its immediate capacity to obtain information and the identity of those who issue threats to the judiciary using the Internet and other means.

Each determination related to providing increased levels of security to a court officer is assessed on a case-by-case basis, and decisions regarding security are discussed with the individual who is at risk. Protective details are provided both as a precautionary measure and when a determination of a credible threat has been made. When a credible threat is received, an immediate response is the establishment of a protective detail, as well as notification to the FBI and the concurrent initiation of a protective investigation. Predicated on the findings of that investigation, the USMS will adjust the scope of the protective detail according to the nature of the threat in terms of human resources, deployment of technologies, duration, and scope. Any decision to modify security measures, once implemented, is discussed with the protectee.

In fiscal year 2004, the Marshals Service monitored and managed 39 protective details for federal judges and prosecutors as a result of inappropriate communications or potential threats. The majority of these protective details were placed on United States Attorneys and/or Assistant U.S. Attorneys. Additionally, the Marshals Service reviewed and assessed more than 700 inappropriate communications.

Courthouse and Courtroom Security

The USMS deploys more than 4,500 full- and part-time contracted CSOs, all with certified law enforcement experience, to more than 400 court facilities in the United States and its territories. The CSOs screen visitors, packages and mail for weapons, explosives, and other prohibited hazardous items. In addition, these security personnel

operate perimeter security barriers that are designed to protect the facility from external vehicular threats.

The USMS coordinates the planning, and designing of the construction or renovation of federal courthouses with the Administrative Office of the United States Courts (AOUSC), the General Services Administration (GSA), and the Department of Homeland Security's Federal Protective Service (FPS). These activities include the acquisition and installation of electronic security systems (such as perimeter security barriers and systems, access control systems, closed circuit television surveillance, and alarm reporting systems), and the analysis and design of secured passageways for the judiciary, prisoner movements and detention facilities.

There are times when the USMS must develop special security plans for judicial proceedings that are categorized as high-risk. These proceedings may involve international or domestic terrorists, drug kingpins, violent gang members, organized crime figures, or civil matters that have garnered a high degree of notoriety. In such high-risk cases, the USMS may deploy members of its Special Operations Group (SOG) or Hazardous Response Unit (HRU), both of which are specially trained to transport high-risk prisoners and protected witnesses.

Coordination with the Administrative Office of the United States Courts

The USMS works closely on a day-to-day basis with the AOUSC's Office of Court Security and the Office of Facilities and Security. In addition, the USMS regularly meets with the Judicial Conference Committee on Security and Facilities. Coordination,

cooperation, and consultation occur on the national level, and on a nation-wide basis at the district level.

With regard to coordination with the AOUSC on a national level, the USMS frequently participates in meetings and working sessions in preparation for quarterly reviews led by the AOUSC's associate director. In these meetings, a wide variety of issues are discussed, such as the purchase and installation of security systems, X-ray machines, magnetometers, entry security packages for judicial chambers, CSO staffing, procurement and budget issues and labor matters.

USMS senior managers attend every semi-annual meeting of the Judicial Conference Committee on Security and Facilities. Presentations regarding USMS budget issues are formally made to the committee, legal issues are discussed, and any security concern that the committee presents is discussed and becomes part of the agenda. For example, working with the judiciary's CSO and systems annual budget of approximately $300 million, the Marshals Service formulates the national budget to determine the number of CSOs and the types and amount of security systems that are needed to protect judicial facilities. The results of the budget formulation process are presented to the judiciary, which in turns finalizes the budget request to Congress. The USMS works continuously with AOUSC and the committee throughout the year in addressing issues not resolved during a meeting.

At the local level, U.S. Marshals routinely attend scheduled Court Security Committee meetings chaired by the Chief Judge of the District. The U.S. Marshal is the principal coordinator of the committee, which also includes representatives from the magistrate, district, and bankruptcy courts, and also may include circuit judges and U.S.

Attorneys. District-wide security issues are discussed, security plans are reviewed and implemented, and local security issues are identified and solutions are recommended. Issues not addressed locally are forwarded to the AOUSC's Office of Court Security and the U.S. Marshals Service headquarters for the determination of a coordinated resolution. Such issues may include additional CSO staffing, the need for additional security equipment between budget cycles, or legal issues affecting security.

Technical Support and Capabilities

In many cases, the USMS deploys technical countermeasures to protect persons and environments from electronic interception of official communications. Such technologies may involve, but are not limited to, conducting electronic security sweeps of federal court facilities, judicial officials' chambers, jury rooms and, in some cases, the residences of judicial officials. Also, the USMS will install electronic security systems and equipment in the residences of protectees in direct support of a protective detail.

Response to the Department of Justice Office of Inspector General Audit

In March 2004, the Department of Justice Office of Inspector General (OIG) issued a report entitled "Review of the United States Marshals Service Judicial Security Process." In that report, the OIG made six recommendations to the USMS. Two of those recommendations have been closed; that is, the OIG and USMS have agreed on a resolution and the resolution has been implemented. The OIG and USMS have agreed on a resolution for the remaining four recommendations; however full implementation has not been completed. None of the findings of the OIG report found any instances wherein the USMS failed to provide adequate security for the judiciary. The USMS has

implemented most of the OIG's recommendations as contained in the March 2004 report. More specifically, the OIG recommendations and the implementation status are as follows:

- **Recommendation 1: Ensure that all threats to the judiciary are assessed within established timeframes.**

  USMS Implementation: To ensure that all threats to the judiciary are assessed within established time frames, the USMS has instituted rating criteria to identify, assess, and prioritize all inappropriate communications. Other policy revisions may result from the Attorney General's Judicial Security Working Group recommendations and comprehensive review of USMS judicial security procedures.

- **Recommendation 2: Update the historical threat database or develop a new database to perform comparative assessments.**

  USMS Implementation: To perform comparative assessments of threat information, the USMS merged its historical threat database with the Justice Detainee Information System (JDIS). JDIS includes warrant information and all 94 district offices have electronic access to this information. (Closed)

- **Recommendation 3: Assign full-time representatives to all 56 FBI field office Joint Terrorism Task Forces (JTTFs) and ensure effective USMS liaison with intelligence agencies.**

  USMS Implementation: To ensure the USMS has effective liaison relationships with intelligence agencies, the USMS is increasing its participation on the FBI's JTTFs. JTTF workload has been taken into account when new positions are allocated to the districts. There are currently 18 Deputy U.S. Marshals working full-time on the FBI's JTTFs. Another 33 Deputy U.S. Marshals work part-time on the JTTFs. Together, 34 of the FBI's main offices have a Deputy U.S. Marshal presence.

- **Recommendation 4: Create a centralized capability to identify, collect, analyze, and share intelligence with USMS districts, as well as with the USMS JTTF representatives and other intelligence liaisons.**

  USMS Implementation: In February, we established an Office of Protective Intelligence (OPI) to analyze and disseminate protective intelligence related to the safety and security of the judiciary. We have six

Deputy U.S. Marshals and one administrative position assigned to this office. Five of these Deputy U.S. Marshals are working on a daily basis with other intelligence units, including the FBI Washington Field Office, the Sacramento Intelligence Unit, the National Counter Terrorism Center, the Defense Intelligence Agency, and Metropolitan Police Department's Joint Operations Center. We hope to use a portion of the supplemental appropriation to increase our analytical capability so that we have the necessary staff and equipment to make this unit flourish. (Closed)

- **Recommendation 5: Require that Chief Deputy U.S. Marshals and USMS JTTF representatives have Top Secret clearances, and ensure that each district has secure communication equipment.**

  USMS Implementation: To safeguard intelligence information, all Chief Deputy U.S. Marshals have updated Top Secret clearances and all 94 district offices have secure communications equipment. Furthermore, the USMS created the Office of Protective Intelligence (OPI) to analyze and disseminate protective intelligence related to the safety and security of the judiciary.

- **Recommendation 6: Revise the 1993 *Judicial and Court Security Manual* and the 1999 *Offsite Security Booklet for Judicial Officers* to establish risk-based standards and require after-action reports for high-threat trials and protective details.**

  USMS Implementation: To educate USMS personnel and members of the federal judiciary, the USMS revised and distributed two publications to all 94 districts: *Offsite Security for United States Judges* (September 2004) and *Personal Security Handbook: How You and Your Family Can Minimize Risks to Personal Safety* (September 2003). In addition, USMS Judicial Security personnel offer to provide judges with security surveys of their personal residences as well as additional counseling on how to enhance their personal security.

The USMS Fugitive Apprehension Mission and Its Impact on Judicial Security

While Deputy U.S. Marshals have been arresting criminals since the Service was established in 1789, the fugitive apprehension mission was formalized in the early 1970's. Since that time, deputies have been executing arrest warrants issued by federal courts throughout the U.S. The fugitive apprehension mission is directly related to the successful operation of the court in the administration of justice. Deputies assigned the

duties of warrant execution are not taken away from court security responsibilities. In many districts, deputies are specifically assigned the fugitive warrant execution function. Many fugitive apprehensions are conducted before and after courtroom proceedings and/or on weekends.

The Chicago and Atlanta Incidents

The USMS responded immediately to the tragic events surrounding the murder of the mother and husband of Judge Lefkow, and to the equally disturbing courtroom murder and attacks of Judge Barnes and other court officers. In Chicago, the USMS responded within hours by providing a protective detail for Judge Lefkow and her family. Additionally, the Marshals Service established four other protective details on three circuit court judges and one district court judge. Concurrent with the establishment of these protective details, the USMS Great Lakes Regional Fugitive Task Force assisted the Chicago Police Department and the FBI in their investigation. Similar to the USMS contributions in and around Chicago, the Marshals Service's Southeast Regional Fugitive Task Force assisted local law enforcement in its investigation within hours of the courtroom attack in Atlanta.

Judicial Security Review Working Group

Following the murders of Judge Lefkow's husband and mother and the shooting in the Fulton County, Georgia, courthouse, the Attorney General established a Judicial Security Review Working Group within the Department of Justice. The review group's membership includes representatives from the Marshals Service, the Bureau of Prisons,

the FBI, a United States Attorney, and the Department's Criminal Division, Office of Legal Policy, Office of Legislative Affairs, and Office of the Deputy Attorney General.

While the review group is composed of Justice Department components, we recognize that it must work closely with the judiciary on issues of judicial security. Further, we understand that the review group's chairman has met with representatives of the Judicial Conference and the AOUSC, and that the initial meeting (after its organizational meeting) of the full review group was with representatives of both entities. While the work of the review group is ongoing, the expectation is that it will conclude its discussion and report back to the Attorney General within the established time frame.

In addition to the Attorney General's creation of the internal review group, the Office of Justice Programs has provided funding of $100,000 to the National Center for State Courts, which is leading a study of judicial security in state and local courts. Together, the Department expects that these two initiatives will result in improved judicial security at the federal, state, and local levels.

Conclusion

In summary, Mr. Chairman and members of the Committee, the Marshals Service is committed to maintaining the security of the judiciary as its highest priority. Moreover, we will continue to focus on enhancing our protective operations and working with the members of the judiciary and the Administrative Office of the U.S. Courts in meeting emerging security challenges.

JUDICIAL CONFERENCE OF THE UNITED STATES

STATEMENT OF

JUDGE JANE R. ROTH
U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT
CHAIR, JUDICIAL CONFERENCE COMMITTEE
ON SECURITY AND FACILITIES

BEFORE

THE COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

ON

"PROTECTING THE JUDICIARY AT HOME AND IN THE COURTHOUSE"

May 18, 2005

STATEMENT OF JUDGE JANE R. ROTH
CHAIR
COMMITTEE ON SECURITY AND FACILITIES
JUDICIAL CONFERENCE OF THE UNITED STATES
before the
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
MAY 18, 2005

Mr. Chairman and Members of the Committee:

My name is Jane R. Roth. I sit on the Third Circuit Court of Appeals and serve as the Chair of the Committee on Security and Facilities of the Judicial Conference of the United States.[1] This hearing presents an opportunity for all of us to heighten awareness of the current state of judicial security, which, by statute, is provided by the United States Marshals Service, an agency that is part of the Executive Branch's Department of Justice. (See 28 U.S.C. § 566 (a)).

Mr. Chairman, I am sure that you and the members of the Committee were horrified when you learned of the murders of United States District Judge Joan Lefkow's husband and mother in her home in Chicago. Subsequent events in a county courthouse in Atlanta serve as a vivid reminder of the potential dangers that participants in the judicial process face in this country every day. At its March 15, 2005, session the Judicial Conference approved a resolution which calls upon the leaders of the Department of Justice and U.S. Marshals Service "to review fully and expeditiously all aspects of judicial security, and in particular security at judges' homes and other locations away from the courthouse." The resolution also calls for "adequate funding for this essential function." A copy of the resolution is attached to this Statement at Appendix A.

Today I hope to describe for you the systemic problems the judiciary faces in dealing with the Marshals Service, and to provide a legislative proposal that will assist us in making some headway in solving long-standing problems.

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[1] The Judicial Conference of the United States is the judiciary's policy-making body.

Staffing Shortages a Major Concern

The primary statutory duty of the Marshals Service is the protection of the judiciary. The Marshals Service acknowledges its duty to fulfill this role. Yet, time and time again we have found that the Service does not have the resources necessary to fulfill this obligation. When we have repeatedly expressed our concern to the Marshals Service and the Attorney General about Marshals Service staffing levels, we have been assured that the judiciary will be protected. Our requests to examine staffing levels have not, however, been honored. Our requests to participate in the determination of adequate staffing levels have been denied.

For years, the Marshals Service has experienced significant staffing shortages. Although we have not been privy to actual staffing allocations by judicial district, many U.S. Marshals report to us that their staffing levels have been significantly reduced. Some Marshals tell us that the districts are operating up to 30 percent below the number of deputy marshals needed to perform all of the local Marshal's responsibilities adequately.

There are examples of Marshals Service staffing shortages across the country, particularly along the southern and southwestern borders. Several years ago the chief district judge in the Southern District of Florida had to make an urgent plea for staffing to the Congress on behalf of his local Marshal. Of particular concern to some judges is the use of contract employees, usually off-duty local law enforcement officers, to transport prisoners. Significant resources have been provided by Congress to the Marshals Service in recent years because the judiciary has requested funding that augments the funds requested by the Justice Department for the Marshals Service. In virtually every instance, it is because of the judiciary, not the Executive Branch, that significant levels of additional financial resources have been provided to the Marshals Service. Notwithstanding our efforts, the Marshals Service is still experiencing budget problems.

At this point, the judiciary cannot tell the Congress or any other interested party whether the local Marshals have enough resources and staff. Furthermore, the Department refuses to share any information about Marshals Service staffing levels and formulas or to consider suggestions for change with us. The Judicial Conference's Executive Committee meets twice a year with the Attorney General to discuss security matters. Typically I attend that meeting. At the meeting last March, I expressed my concern to the Attorney General about leadership at the Marshals Service, the vacancies in several critical positions of great importance to the judiciary at the Marshals Service, the need for detailed information about Marshals Service staffing levels, and the need for courtroom security by deputy marshals in all criminal proceedings in which a defendant is present, i.e., not only when a defendant is in custody. None of my concerns, to date, have been addressed.

Competing Interests Affect Resource Availability

The problem of available resources is endemic in the system. The federal courts have expressed strong concerns about judicial protection for several decades. In fact, in 1982, the General Accounting Office (now the Government Accountability Office) issued a report about the dilemma faced by the United States Marshals Service because its mission is not solely dedicated to the protection of the judicial branch.[2] In that report, it was noted that "U.S. Marshals are responsible . . . for accomplishing missions and objectives of both the executive and judicial branches of the Government." The GAO also noted at the time that it believes ". . . this is a difficult and unworkable management condition" and that the Director of the Marshals Service ". . . cannot properly manage law enforcement responsibilities assigned by the Attorney General, and the operation of the Federal judicial process suffers."

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[2] *U.S. Marshals' Dilemma: Serving Two Branches of Government*, GGD-82-3, April 19, 1982.

Mr. Chairman, I recognize that this report is almost 25 years old. But as I re-read it in preparation for this hearing, it became clear to me that the concerns outlined in the report are as relevant today as they were when the report was first released. The fact is that the Marshals Service is forced to serve two masters and that there is constant tension and competition between the Marshals' law enforcement responsibilities, which, of course, include fugitive apprehension, asset forfeiture, and witness protection, and its primary statutory mission of security for the judicial branch. The Marshals Service's judicial security program also has experienced significant budgetary problems because, in the view of the Committee on Security and Facilities, its law enforcement responsibilities have higher visibility than prisoner transportation, courtroom and off-site security and threat assessment for judges and their families.

It seems to my Committee that the Marshals Service never gets the resources it needs to get the job done. The Executive Branch consistently recommends slashing funds before the requests even make their way to Congress. In an op-ed piece that I penned for the April 9, 2005, edition of *The Washington Post*, I called upon key decision makers to help us. Some people believe that the Department of Justice will never support full resource levels for the Marshals Service, in spite of any Department of Justice statements to the contrary. Therefore, I am seeking your assistance in helping to protect the federal judiciary in several ways.

Off-Site Security

In February of 1990, after the December 1989 assassination of Judge Robert Vance at his home in Birmingham, Alabama, by an explosive device sent by a disgruntled litigant, the judiciary called upon the Justice Department to implement a program of off-site security for judges. This incident was the third assassination of a judge in recent history. All of these murders occurred away from the courthouse.

The judiciary certainly did not ask for a protective detail for every judge in response to Judge Vance's death, as this was fiscally unfeasible. Our request was, in retrospect, a modest one – an education program for judges, their families and court employees about security precautions that should be taken when they are not in the courthouse, and a package of security equipment for every federal judicial officer, including a home intrusion detection system. Although the Department and the Marshals Service initially supported this approach, the Department abruptly withdrew its support for funding such an initiative in November of 1990, just 11 months after Judge Vance's death. In 1994, GAO issued another report on judicial security that found that the Department of Justice should incorporate consideration of off-site security needs into district security surveys and plans, using risk-management principles to identify, evaluate, and prioritize such needs. After four and a half years, in December 1998, an off-site security policy was ultimately issued by the Marshals Service. The judiciary does not know how effectively the policy has been implemented because it is not privy to any internal policy or program reviews conducted by the Department of Justice or the Marshals Service. Furthermore, it was the judiciary, not the Department of Justice, which initiated the development of a training video and other materials used to educate members of the judiciary about off-site security precautions.

In March of 2004, concerns were expressed by the Department of Justice's Inspector General about the Marshals Service's ability to assess threats, a matter directly related to off-site security. In December 2004, the Director of the Marshals Service reported that progress had been made with addressing the problems outlined in that IG report. But because the Marshals Service and the Department will only share limited amounts of information about how Marshals Service resources are deployed, it's anyone's guess as to whether threats against the judiciary are being handled appropriately. Based on what little we do know, only a few people are tasked at

Marshals Service headquarters with staffing the Office of Protective Intelligence as a primary responsibility. At one point, these staff members did not even report to the individual responsible for judicial security within the Marshals Service. Threat assessment cannot be a collateral duty. A focused, coordinated program with adequately trained personnel needs to be a priority. [3]

Communications Strategy

I have tried on numerous occasions to establish a working group with the Department that could address both on- and off-site security needs of the judicial branch. One attempt at establishing such a group took place about four years ago – and failed. We had hoped that senior political and career officials would have engaged in this effort. Quite frankly, both the Marshals Service and the Department have refused to participate in a formal standing group that would be charged with assessing security needs for the judicial branch on an ongoing basis. The Committee on Security and Facilities believes that had the group been established, the Marshals Service and the judiciary would have been the obvious beneficiaries and that precious time would not have been lost. After the Department's Inspector General issued its critical report of the Marshals Service in March 2004, I again attempted to create a working group on judicial security. Again, the Department did not engage with us in this effort.

The new Attorney General has established a working group within the Department of Justice to make recommendations on judicial security within sixty days. We greatly appreciate the Attorney General's efforts. Although actions have been taken to obtain input from the judiciary by this group, the judiciary is not a standing member of the group and the group is not specifically focused on security for judges and their families. Based on the past history I have enumerated, I

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[3]It should also be noted that there is presently no permanent head of the Division within the Marshals Service who is responsible for judicial security. An individual has been acting in that position for almost 12 months.

am hopeful, but not confident, that this working group will provide useful advice to the Department of Justice and the Marshals Service. Unfortunately, it is almost two months since the tragic deaths of Judge Lefkow's family members, and the judiciary still does not know what specific plans the Marshals Service and the Department have for addressing our concerns.

What Actions Can Be Taken to Assist the Judiciary?

First, the judiciary greatly appreciates your support of our request for $12 million that was appropriated as part of the FY 2005 Iraqi War and Tsunami Relief Emergency Supplemental. Both the bill and accompanying report state that the funding is to be used for off-site security enhancements, such as home intrusion detection systems for federal judges and directs the U.S. Marshals Service to coordinate with the Administrative Office on how the money is to be spent. The judiciary fears, however, that the Marshals Service will not use this $12 million for the purpose of providing home alarm systems for judges, but for another USMS headquarters priority.

In addition, this Committee can help the judicial branch in a number of ways at this time by:

(1) Supporting a legislative proposal that would require consultation and coordination by both the Director of the Administrative Office of the United States Courts and the Director of the United States Marshals Service regarding security requirements for the judicial branch of government. As described throughout this statement, efforts have been made for decades to obtain information from the Department and the Marshals Service about our security needs. The 1982 GAO report included a recommendation that would require the Director of the Administrative Office of the United States Courts to cooperate with and assist the Attorney General in defining and obtaining pertinent information needed to determine each district court's

base-level resource needs for Marshals Service personnel, and apprise Congress during the appropriation and authorization process, about the nature and status of any problems related to the use of Marshals' resources and actions taken to resolve these problems.

Notwithstanding our best efforts, no information has been provided by the Department that can help us to evaluate whether we are being provided with adequate protection. Therefore, a statutory change is needed to ensure that the judiciary obtains the information it needs to make recommendations about judicial security to key decision makers. We propose that the statutory change include a provision that requires the judiciary and the Marshals Service to submit jointly a report to the Congress delineating the security needs of the federal judiciary and the process by which those needs would be addressed. As the primary user of Marshals' services, enactment of this legislative change will help the judiciary to assess its security needs.

(2) Supporting legislation that would establish significantly greater penalties for the recording of malicious liens against federal judges. In recent years, members of the federal judiciary have been victimized by persons seeking to intimidate or harass them by the filing of false liens against the judge's real or personal property. These liens are usually filed in an effort to harass a judge who has presided over a criminal or civil case involving the filer, or who has otherwise acted against the interests or perceived interests of the filer, his family, or his acquaintances. These liens are also filed to harass a judge against whom a civil action has been initiated by the individual who has filed the lien. Often, such liens are placed on the property of judges based on the allegation that the property is at issue in the lawsuit. While the incidences of filing such liens have occurred in all regions of the country, they are most prevalent in Washington and other western states.

(3) Supporting firearms training for judges. Threats against federal judges continue at a disturbing rate. Security of judges is oftentimes a personal matter. For that reason, the Judicial Conference supports a proposal to allow judges to carry firearms from state-to-state. The Judicial Conference does not believe it is prudent for judges who carry firearms to do so without effective professional training, or without regular certification of proficiency as a condition precedent for carrying a weapon. All state and federal law enforcement officers receive such training and certification. Federal judges should be required to do so as well. A statutory change would require, as a legal condition precedent to carrying a firearm, that judges be trained and certified in a firearms use and safety program provided by the U.S. Marshals Service with the cooperation of the Judicial Conference. The Department of Justice and the Marshals Service do not oppose this initiative.

(4) Supporting legislation that would provide emergency authority to conduct court proceedings outside the territorial jurisdiction of a court. The need for this legislation has become apparent following the terrorist attacks of September 11, 2001, and the impact of these disasters on court operations, in particular, in New York City. In emergency conditions, a federal court facility in an adjoining district (or circuit) might be more readily and safely available to court personnel, litigants, jurors and the public than a facility at a place of holding court within the district. This is particularly true in major metropolitan areas such as New York, Washington, D.C., Dallas and Kansas City, where the metropolitan area includes parts of more than one judicial district. The advent of electronic court records systems will facilitate implementation of this authority by providing judges, court staff and attorneys with remote access to case documents.

(5) Supporting legislation that would provide permanent authorization to redact information from financial disclosure reports that could endanger the filer. It is important for Congress to act soon to repeal section 105(b)(3)(E) of the Ethics in Government Act of 1978 (5 U.S.C. App) because this essential security measure for federal judges, employees, and their families will expire on December 31, 2005.

In 1998, Congress amended the Ethics in Government Act to provide the judiciary with authority to redact financial disclosure reports before they are released to the public. Congress recognized that the judiciary faced security risks greater than those of 25 years earlier when the Ethics in Government Act first became law. Congress established a process by which the judiciary would consult with the United States Marshals Service to determine whether information on a financial disclosure report should be redacted because its release could jeopardize the life or safety of a judge or judiciary employee.

Not a day goes by without some unauthorized incursion into an information database containing personal information. These incursions, when coupled with other personal information already available on the Internet, give wrongdoers the capability to cause harm as never before. Were the redaction authority to be removed from the Act, certain personal information in the financial disclosure reports, not otherwise widely available, such as the unsecured location where a spouse works or a child attends school, may be widely publicized through the Internet and other information outlets. It will become that much harder to maintain the anonymity that has helped in the past to shield judges from personal attacks by disgruntled litigants and anti-government organizations.

We believe that making the redaction authority permanent by removing the sunset provision from section 105(b)(3)(E) of the Act can be done without diminishing the basic purpose

of the Act – to allow members of the public to form independent opinions as to the integrity of government officials. The judiciary recognizes the value of providing the public with a way to independently judge the conduct of government officials. The regulations adopted by the Judicial Conference carefully balance judges' security concerns with the public's right to view the information contained in financial disclosure reports. The judiciary has made a concerted effort to ensure that the authority conferred by section 105(b)(3) is exercised in a consistent and prudent manner.

I have attached legislative language and a section-by-section analysis for each of these provisions as Appendix B to my Statement and ask for the support of your Committee for these provisions.

Mr. Chairman, thank you for the opportunity to appear before your Committee today. Federal judges from throughout the country join me in expressing our appreciation for the time and attention you and the Committee's staff have given to our security needs during these difficult times. We hope that action on the initial steps described above will help facilitate better communication between the judicial and executive branches and ultimately lead to an upgraded and improved United States Marshals Service. I would be pleased to answer any questions you might have.

Appendix A

JUDICIAL CONFERENCE OF THE UNITED STATES
RESOLUTION ON JUDICIAL SECURITY
ADOPTED MARCH 15, 2005

The brutal murders of the husband and mother of United States Judge Joan Humphrey Lefkow of the Northern District of Illinois on February 28, 2005, are an attack against the rule of law in the United States. This tragedy suffered by a member of our judicial family, as well as the horrific events that occurred on March 11, 2005, in the courthouse in Fulton County, Georgia, strike at the core of our system of government. A fair and impartial judiciary is the backbone of a democracy. These tragic events cannot and will not undermine the judiciary's essential role in our society.

We, the members of the Judicial Conference, call upon leaders of the United States Department of Justice and of the United States Marshals Service (whose primary responsibility is the security of members of the federal judiciary and their families) to review fully and expeditiously all aspects of judicial security and, in particular, security at judges' homes and other locations away from the courthouse. We also call upon both the legislative and executive branches to provide adequate funding for this essential function.

Accordingly, the Judicial Conference of the United States declares that (1) the crisis in off-site judicial security evidenced in part by the recent deaths of Judge Lefkow's husband and mother is of the gravest concern to the federal judiciary, and (2) addressing this matter is of the highest urgency to the Conference and will be the top priority in the judiciary's discussions with the Attorney General of the United States and other Justice Department representatives, including the Director of the United States Marshals Service.

Appendix B

Legislative Provisions Improving the Security of the Federal Courts and Federal Judicial Personnel

SEC. 1. JUDICIAL BRANCH SECURITY REQUIREMENTS.

(a) Ensuring consultation and coordination with the Administrative Office of the United States Courts.—Section 566 of title 28, United States Code, is amended by adding at the end the following:

"(i) The United States Marshals Service shall consult and coordinate with the Administrative Office of the United States Courts on a continuing basis regarding the security requirements for the Judicial Branch and shall, 180 days after the day of enactment, jointly submit to the Judiciary Committees of Congress a report delineating the security needs of the federal judiciary and the process by which those needs shall be addressed."

(B) Conforming Amendment.—Section 604(a) of title 28, United States Code, is amended—

(1) by redesignating existing paragraph (24) as paragraph (25);

(2) by striking "and" at the end of paragraph (23); and

(3) by inserting after paragraph (23) the following:

(24) Consult and coordinate with the United States Marshals Service on a continuing basis regarding the security requirements for the Judicial Branch; and shall, 180 days after the day of enactment, jointly submit to the Judiciary Committee of Congress a report delineating the security needs of the federal judiciary and the process by which those needs shall be addressed.

SEC. 2. PROTECTION AGAINST MALICIOUS RECORDING OF FICTITIOUS LIENS AGAINST FEDERAL JUDGES.

(a) In General. —Chapter 73 of title 18, United States Code, is amended by adding at the end thereof the following:

"§ 1521. Retaliating against a federal judge by false claim or slander of title

"(a) Whoever files or attempts to file, in any public record or in any private record which is generally available to the public, any false lien or encumbrance against the real or personal property of a Federal Judge, knowing or having reason to know that such lien or encumbrance is false or contains any materially false, fictitious or fraudulent statement or representation, shall be fined under this title or imprisoned for not more than five years, or both. In the case of an offense under this subsection which was committed after the defendant had previously been convicted of an earlier offense under this subsection, the defendant shall be fined under this title or imprisoned for not more than ten years, or both.

(b) As used in this section, the term "Federal Judge" means a justice or judge of the United States as defined in 28 U.S.C. §451, a judge of the United States Court of Federal Claims, a United States bankruptcy judge, a United States magistrate judge, and a judge of the United States Court of Appeals for the Armed Forces, United States Court of Appeals for Veterans Claims, United States Tax Court, District Court of Guam, District Court of the Northern Mariana Islands, or District Court of the Virgin Islands.".

(c) CLERICAL AMENDMENT. —The table of sections at the beginning of chapter 73 of title 18, United States Code, is amended by adding at the end the following new item:

"1521. Retaliating against a federal judge by false claim or slander of title.".

SEC. 3. JUDGES FIREARMS TRAINING.

(a) IN GENERAL. — Chapter 21 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 464. Carrying of firearms by judicial officers

"(a) A judicial officer of the United States is authorized to carry a firearm, whether concealed or not, under regulations promulgated by the Judicial Conference of the United States. The authority granted by this section shall extend only to (1) those states in which the carrying of firearms by judicial officers of the state is permitted by state law, or (2) regardless of state law, to any place where the judicial officer of the United States sits, resides, or is present on official travel status.

"(b) IMPLEMENTATION

"(1) The regulations promulgated by the Judicial Conference under subsection (a) shall—

"(A) require a demonstration of a judicial officer's proficiency in the use and safety of firearms as a prerequisite to the carrying of firearms under the authority of this section; and

"(B) ensure that the carrying of a firearm by a judicial officer under the protection of the United States Marshals Service while away from United States courthouses is consistent with Marshals Service policy on the carrying of firearms by persons receiving such protection.

"(2) ASSISTANCE BY OTHER AGENCIES.—At the request of the Judicial Conference, the Department of Justice and appropriate law enforcement components of the Department shall assist the Judicial Conference in developing and providing training to assist judicial officers in securing the proficiency referred to in subsection (b)(1).

"(c) DEFINITION. — For purposes of this section, the term "judicial officer of the United States" means—

"(1) a justice or judge of the United States as defined in section 451 of this title in regular active service or retired from regular active service;

"(2) a justice or judge of the United States who has retired from the judicial office under section 371(a) of this title for—

"(A) a 1-year period following such justice's or judge's retirement; or

"(B) a longer period of time if approved by the Judicial Conference of the United States when exceptional circumstances warrant;

"(3) a United States bankruptcy judge;

"(4) a full-time or part-time United States magistrate judge;

"(5) a judge of the United States Court of Federal Claims;

"(6) a judge of the United States District Court of Guam;

"(7) a judge of the United States District Court for the Northern Mariana Islands;

"(8) a judge of the United States District Court of the Virgin Islands; or

"(9) an individual who is retired from one of the judicial positions described under paragraphs (3) through (8) to the extent provided for in regulations of the Judicial Conference of the United States.

"(d) EXCEPTION. — Notwithstanding section 46303(c)(1) of title 49, nothing in this section authorizes a judicial officer of the United States to carry a dangerous weapon on an aircraft or other common carrier.".

"(e) TECHNICAL AND CONFORMING AMENDMENT. — The table of sections for chapter 21 of title 28, United States Code, is amended by adding at the end thereof the following: "464. Carrying of firearms by judicial officers.".

"(f) EFFECTIVE DATE. — The amendments made by this section shall take effect upon the earlier of the promulgation of regulations by the Judicial Conference under this section or one year after the date of the enactment of this Act.".

SEC. 4. EMERGENCY AUTHORITY TO CONDUCT COURT PROCEEDINGS OUTSIDE THE TERRITORIAL JURISDICTION OF THE COURT.

(a) CIRCUIT COURTS– Section 48 of title 28, United States Code, is amended by adding at the end the following new section:

"(e) Each court of appeals may hold special sessions at any place outside the circuit as the nature of the business may require and upon such notice as the court orders, upon a finding by either the chief judge of the court of appeals (or, if the chief judge is unavailable, the most senior available active judge of the court of appeals) or the judicial council of the circuit that, because of emergency conditions, no location within the circuit is reasonably available where such special sessions could he held. The court may transact any business at a special session outside the circuit which it might transact at a regular session."

(b) DISTRICT COURTS– Section 141 of title 28, United States Code, is amended -----

(1) by re-designating the section as section 141(a), and

(2) by adding the following as section 141(b):

"Special sessions of the district court may be held at such places outside the district as the nature of the business may require and upon such notice as the court orders, upon a finding by

either the chief judge of the district court (or, if the chief judge is unavailable, the most senior available active judge of the district court) or the judicial council of the circuit that, because of emergency conditions, no location within the district is reasonably available where such special sessions could be held. Any business may be transacted at a special session outside the district which might be transacted at a regular session. The district court may summon jurors from within the district to serve in any case in which special sessions are conducted outside the district pursuant to the provisions of this section."

(c) BANKRUPTCY COURTS– Section 152(c) of title 28, United States Code, is amended ----

(1) by re-designating the section as 152(c)(1), and

(2) by adding the following as section 152(c)(2):

"Bankruptcy judges may hold court at such places outside the judicial district as the nature of the business of the court may require, and upon such notice as the court orders, upon a finding by either the chief judge of the bankruptcy court (or, if the chief judge is unavailable, the most senior available bankruptcy judge) or by the judicial council of the circuit that, because of emergency conditions, no location within the district is reasonably available where the bankruptcy judges could hold court. Bankruptcy judges may transact any business at special sessions of court held outside the district that might be transacted at a regular session."

SEC. 5. REPEAL OF SUNSET CLAUSE.

Section 105(b)(3)(E) of the Ethics in Government Act of 1978 (5 U.S.C. App.) is repealed.

Section-by-Section Analysis

SEC. 1. JUDICIAL BRANCH SECURITY REQUIREMENTS.

This section would enhance the ability of the Judicial Conference to determine the security required for the protection of judges, court employees, law enforcement officers, jurors and other members of the public who are regularly in federal courthouses and other buildings used by the Judicial Branch. The judiciary has the ability to make a determination of its requirements in all other areas of operations. Only in security, perhaps the most critical area, does the judiciary lack the authority to determine basic requirements.

Currently, the U.S. Marshals Service (USMS) and the Department of Homeland Security (DHS) have the responsibility for judiciary security. In recent years, the judiciary has been transferring to the USMS increasing amounts of funding for court security officers and courthouse security equipment from the judiciary court security appropriation. Yet, the Judicial Conference currently lacks sufficient information from the USMS to fully participate in assessing the effectiveness of the overall security program upon which the judiciary so heavily depends.

The judiciary seeks to work cooperatively with the USMS in setting security requirements, as required by statute. In order for the judiciary to participate in the determination of security requirements, the judiciary will need information from the USMS including, for example, the current security standards, the allocation of personnel, analyses regarding equipment, and resource needs. This information is necessary to help the judiciary determine weaknesses and potential improvements in its security. It will also help the judiciary to provide support for the USMS budget throughout each funding cycle.

This section would not alter the responsibility of the USMS for protection of the judiciary in buildings occupied by the courts, pursuant to a 2004 memorandum of understanding between DHS, the Department of Justice, and the Administrative Office of the U.S. Courts, under which authority has been delegated to the USMS for the security of federal courthouses. The USMS would still be responsible for the security of the judges and the court facilities. Examples of security requirements which the judiciary could determine include the need for deputy marshals in certain proceedings and whether electronic devices should be allowed into courthouses.

This section includes a provision which requires the judiciary and the USMS to jointly submit a report to the Judiciary Committees of Congress that sets out the security needs of the federal courts and the process by which they will be addressed. This report shall be submitted 180 days after the date of enactment and its intended purpose is to assist the Congress in providing the necessary oversight needed to ensure that judicial security requirements are being met.

SEC. 2. PROTECTION AGAINST MALICIOUS RECORDING OF FICTITIOUS LIENS AGAINST FEDERAL JUDGES.

In recent years, members of the federal judiciary have been victimized by persons seeking to intimidate or harass them by the filing of false liens against the judge's real or personal property. These liens are usually filed in an effort to harass a judge who has presided over a criminal or civil case involving the filer, or who has otherwise acted against the interests or perceived interests of the filer, his family, or his acquaintances. These liens are also filed to harass a judge against whom a civil action has been initiated by the individual who has filed the lien. Often, such liens are placed on the property of judges based on the allegation that the property is at issue in the lawsuit. While the incidences of filing such liens have occurred in all regions of the country, they are most prevalent in Washington and other western states.

The responsibility to initiate legal action to remove these liens typically falls upon Assistant United States Attorneys ("AUSA"), who represent the judges. The forms of response vary according to the state law and the circumstances. It is sometimes necessary for the AUSA to bring action in state court for the removal of liens. In some circumstances, an action to remove the liens may be brought in federal court, and in others, state court proceedings are commenced and removed to federal court under the provisions of 28 U.S.C. § 1452. In some cases, the AUSA may seek an injunction against further filing of liens by the litigant. All of these methods are difficult and time consuming.

The pendency of these liens prior to their removal has caused some judges great inconvenience and personal financial difficulty. There is no current federal statute under which persons engaging in this tactic may be prosecuted. Thus, a new federal criminal sanction is needed to deter the practice. This proposal would create a new provision in the federal criminal code, punishing any person who files a false lien or encumbrance against the property of any federal judge. The new statute would provide a maximum sentence on the first offense of up to five years.

SEC. 3. JUDGES FIREARMS TRAINING.

Threats against federal judges continue at a disturbing rate. The U.S. Marshals Service provides security for judges inside all U.S. courthouses, and personal 24 hour guard details for judges in certain circumstances. However, these two circumstances aside, security of judges is a personal matter. For that reason, many judges carry concealed firearms. The laws of forty-two states permit this.

The Judicial Conference does not believe it is prudent for judges who carry firearms to do so without effective professional training, or without regular certification of proficiency as a condition precedent for carrying a weapon. All state and federal law enforcement officers receive such training and certification. Federal judges should be required to do so as well.

This section would require, as a legal condition precedent to carrying a firearm, that judges be trained and certified in a firearms use and safety program provided by the U.S. Marshals' Service with the cooperation of the Judicial Conference. The Department of Justice and the Marshals' Service support the enactment of this section.

The proposal in this section would only preempt state firearms laws, as a practical matter, in rare circumstances. Currently, federal judges are carrying firearms pursuant to the state laws where they reside and sit. If this section is enacted, those judges would be carrying firearms pursuant to federal law, but there would be little else affected in these cases as a result of this proposal. The actual, practical effects of the proposal are limited. First, it would be lawful for a judge who is in official travel status to carry a concealed weapon in a state where the judge is not licensed to do so. Interstate official travel by judges is rare, except in the case of a very small number of appeals court judges. The section specifies that judges are not authorized to carry firearms on aircraft or other common carriers. A second change would be that judges, like federal law enforcement officers, could carry firearms in the eight states without statutes allowing this activity, if the judge sits, resides, or present in that state on official travel status.

SEC. 4. EMERGENCY AUTHORITY TO CONDUCT COURT PROCEEDINGS OUTSIDE THE TERRITORIAL JURISDICTION OF THE COURT.

This section would authorize circuit, district and bankruptcy courts to conduct special sessions outside their respective geographic boundaries upon a finding by the respective chief judge (or, if unavailable, the most senior active judge who is available) or the judicial council of the circuit, that, because of emergency conditions, no location within these boundaries is reasonably available where such special sessions could be held.

The need for this legislation has become apparent following the terrorist attacks of September 11, 2001, and the impact of these disasters on court operations, in particular in New York City. In emergency conditions, a federal court facility in an adjoining district (or circuit) might be more readily and safely available to court personnel, litigants, jurors and the public than a facility at a place of holding court within the district. This is particularly true in major metropolitan areas such as New York, Washington, D.C., Dallas and Kansas City, where the metropolitan area includes parts of more than one judicial district. The advent of electronic court records systems will facilitate implementation of this authority by providing judges, court staff and attorneys with remote access to case documents.

SEC. 5. REPEAL OF SUNSET CLAUSE.

Section 5 repeals the "sunset clause" in section 105(b)(3)(E) authorizing the Judicial Conference to redact information from a filer's report in circumstances where it is determined that the release of the information could endanger the filer.

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May 11, 2005

The Honorable Arlen Specter
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Patrick Leahy
Ranking Minority Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: Security Improvements to Ensure the Safety of the Federal Judiciary

Dear Chairman Specter and Senator Leahy:

Thank you for your interest in the improvement of security measures to ensure the safety of the federal judiciary, their families and others and for your scheduling of a Committee hearing to examine these matters on May 18. I write behalf of the Federal Bar Association to bring to the Committee's attention matters relevant to the Committee's inquiry into this important issue and ask that this correspondence be included in the record of the hearing.

Some of these issues addressed in this letter are the subject of H.R. 1751, "The Secure Access to Justice and Court Protection Act of 2005," which we have separately addressed to the House Subcommittee on Crime, Terrorism and Homeland Security. However, there are additional security concerns which we believe your Committee should address.

DOJ Inspector General's Report. The FBA has recommended to the Department of Justice that to the extent that the recommendations contained in the DOJ Inspector General's March, 2004 report on the United States Marshals Service's judicial security process have not been implemented, the IG immediately review their status with the USMS and the USMS be required to provide the Attorney General with a timeframe within which each of the open items will be addressed. We commend the Senate for including $11.9 million in the FY 2005 Iraqi War and Tsunami Relief Emergency Supplemental Appropriations Bill for increased judicial security outside of courthouse facilities, including priority consideration of intrusion detection systems in the homes of federal judges. We suggest that the necessary portion of that funding be earmarked so that the USMS can resolve these open issues.

Inter-Agency Cooperation. We applaud the provision in H.R. 1751 which calls for the USMS to consult and coordinate with the Administrative Office of the United States Courts on a continuing basis regarding the security requirements for the Judicial Branch. We believe that the Senate should take this approach as well. Federal judicial security in this country is an underappreciated step-child, in part

because responsibility for the administration of the courts lies with the AO while responsibility for the administration of court security falls to the USMS, which is tasked with multiple missions of which court security is frequently not the first priority. Greater collaboration between the USMS and the AO on security issues, including administration and resources, is desirable.

Security Intelligence. Based on the incident involving Judge Lefkow's family in Chicago and others, we believe that the USMS should consider sharing its threat assessments among the various federal districts and with state courts, as well as with state law enforcement agencies. This may be especially important in the case of a threat originating with a civil litigant who has a history with other federal and state courts. Adequate funding should be made available to perform this critical security intelligence task.

Technology. The USMS presently offers household security assessment services for federal judges at no cost to the judges. The FBA believes that circumstances warrant a more proactive approach to security issues. We recommend that Congress ensure a reasonable minimum level of home security for Article III judges and the members of their immediate families, either fully or partially funded or defrayed with tax incentives. Such security should be intended to alert the occupants and a remote monitoring service of an intrusion. We recommend that funding also be made available for remote car starters and equipping judges' vehicles with global positioning devices to allow them to alert a monitoring service of a threat and pinpoint the location of the vehicle so that law enforcement can respond in the event of a threat. Judges and members of their immediate families should also be provided with personal pagers which when activated could notify a monitoring service of a problem and provide the location of the wearer. An integrated security system using GPS technology could be developed on a sole-source basis so that alarms are received at one or more secure locations and transmitted simultaneously to the USMS and local law enforcement. The object such a system should be to provide a reasonable level of security for judges and members of their immediate families when they are not in secure locations such as courthouses.

Training. We have recommended to the Department of Justice that the USMS consider training federal judges and their staff members, as well as family members as appropriate, to identify threatening or suspicious behavior outside of protected areas and to deal with it in the absence of protective details. We have also recommended that the USMS offer training to judges' families on how to identify and deal with suspicious mail and deliveries to the judges' homes. In addition, we believe that judicial personnel who review pleadings and correspondence addressed to judges should be trained to identify items that warrant referral to the USMS for investigation. This is especially important when the warning signs appear in disparate filings made before a number of different judges in different cases (both federal and state) over an extended period of time, requiring correlation to identify a potential threat. We recommend that funding be provided for such training.

Legislation. On March 16, 2005, the AO announced that it was directing West and LexisNexis immediately to remove personal information regarding federal judges from all databases from which such information can be removed. The FBA recommends that Congress act to protect personal information about judges and members of their immediate families, including financial information, in which there is no legitimate public interest.

We support the repeal of the sunset provision of the 1998 amendment to the Ethics in Government Act of 1978, 5 U.S.C. App. 4 § 105(b)(3), which exempts reports filed by federal judges and judicial employees from public availability, as proposed by H.R. 1751.

We recommend that legislation be drafted to restrict the publication of personal information about federal judges and their employees such as social security numbers, home addresses, financial information, directions to their homes, site plans of their property and similar information in which the public has no legitimate interest. Any such legislation should also restrict the distribution of personal information about federal judges through the internet and websites.

A more difficult issue is the surveilling of federal judges for the purported purpose of monitoring work habits, etc. Currently, 18 U.S.C. § 115 concerns crimes committed against members of the immediate family of a United States judge with the intent to impede, intimidate, or interfere with the judge or retaliate against the judge; 18 U.S.C. § 876(c) concerns threats by means of the United States mail; 18 U.S.C. § 1503 prohibits influencing, intimidating, or impeding a judicial officer; and 18 U.S.C. § 2261(A), although not specific to federal judges, concerns interstate stalking. We recommend that these statutes be reviewed for their adequacy to protect federal judges and members of their immediate families from harassment that does not rise to the level of threatening behavior but may nonetheless constitute intimidation or retaliation. There are important First Amendment issues involved in any such undertaking, but it is equally important that our country be able to assure present and prospective federal judicial officers that they do not have to surrender their personal security and privacy in order to enter public service.

Thank you for your consideration of these suggestions. The Federal Bar Association is committed to assuring that federal judges and other Judicial Branch officials are able to perform their duties in safety, which is critical to the rule of law in our country. If we can be of further assistance, please do not hesitate to contact us.

Very truly yours,

Thomas R. Schuck

Department of Justice

STATEMENT

OF

KIM RICHARD WIDUP
UNITED STATES MARSHAL
NORTHERN DISTRICT OF ILLINOIS
DEPARTMENT OF JUSTICE

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

CONCERNING

PROTECTING THE JUDICIARY AT HOME AND IN THE COURTHOUSE

PRESENTED ON

MAY 18, 2005

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Mr. Chairman, Senator Leahy, and Members of the Committee, thank you for the opportunity to appear before you today to discuss the role of the United States Marshals Service (USMS) in protecting the federal judiciary. It is vital to our democracy that those who work within our judicial system do so without any fear or intimidation. Recent tragic events in Chicago and Atlanta highlight the need for securing our courts and protecting those who work in them.

I am a 26-year veteran of federal law enforcement and have been the United States Marshal for the Northern District of Illinois since April 2002. I have personal knowledge of the important task of protecting judges and our judicial process, and I was serving as United States Marshal for the Northern District of Illinois when Bart Ross murdered the husband and mother of District Judge Joan Lefkow.

During my law enforcement career, I have received many hours of protective operations training, from the Federal Law Enforcement Training Center, the United States Secret Service Protective Training, and agency-sponsored courses. I supervised the protective detail of the Secretary of Agriculture and have been involved in the supervision of numerous protective assignments with the United States Marshals Service for the Northern District of Illinois.

Since my appointment by President Bush to serve as Marshal, I have witnessed first-hand the vital importance of protecting our federal judicial process. Just last month, members of my staff provided a safe and secure environment at the United States District Courthouse in Chicago as white supremacist Matthew Hale was sentenced for his role in the solicitation of the murder of Judge Lefkow. We have recently had several violent street gang proceedings, and in the recent past, the cases against an Iraqi intelligence officer and Al Qaeda financier Enaam Aranout, both of which required extensive security measures by my staff. Last year, we had the trial and sentencing of a defendant who was responsible for smuggling a handcuff key to Jeffrey Erickson approximately 10 years ago. Erickson in turn murdered a Deputy U.S. Marshal and Court Security Officer before being fatally shot by the same CSO.

Because failure is not an option, our security planning and execution needs to be the very best it can be. I have an excellent relationship with United States Attorney Patrick Fitzgerald, as well as with both the Chief Judge of the

Northern District of Illinois and the Chief Judge of the Seventh Judicial Circuit. My Chief Deputy and I meet with them, the Clerk of the Court, and others who have a stake in protecting the judicial process on an as-needed basis.

Additionally, threats against our judges, U.S. Attorneys, Assistant U.S. Attorneys, and others are brought to our attention on a regular basis either as direct threats or inappropriate communications. In the Northern District of Illinois, three Deputy U.S. Marshals are assigned full-time to investigate these potential threats. In our District, we also enjoy a close working relationship with our colleagues in the FBI, JTTF, Chicago Police Department, Cook County Sheriff's Office, as well as other state and local law enforcement agencies. Because of these relationships, once a threat is received, a collaborative effort is undertaken to investigate and resolve the situation.

Throughout our 215 year history, the United States Marshals Service has given the highest priority to our judicial security mission and we are proud of our accomplishments. However, we must keep ever vigilant and ready. With threats against the judiciary on the rise, it is vitally important that we all work together to maintain a safe and secure environment for our justice system.

I would be happy to respond to any questions you may have.