Testimony of

The Honorable Jane Roth

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
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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. 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.

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. 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."

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.

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 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.