

Testimony of

The Honorable Joan H. Lefkow

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.