

Testimony of

The Honorable Samuel Alba

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
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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 Marshal 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.

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 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.

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 handcuffed 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.

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 report of the incident in my court was 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 and 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 started 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.