

Statement of
The Honorable Richard J. Durbin

United States Senator
Illinois
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Remarks of Sen. Dick Durbin
Senate Judiciary Committee Hearing
"Judicial Security and Independence"
February 14, 2007

Welcome, Justice Kennedy. Thank you for appearing today before the Senate Judiciary Committee to discuss the important issues of judicial security and independence.

Judicial Security

This month marks the second-year anniversary of the tragic murders of Chicago Federal Judge Joan Lefkow's husband and mother. The killer broke into Judge Lefkow's home to commit these heinous crimes. He was a bitter plaintiff in a medical malpractice lawsuit before Judge Lefkow.

This tragic event in my home state has been a wake-up call for the country about the need for more and better judicial security.

Sadly, threats against our judges are on the rise. The U.S. Marshals Service reports that they investigated over 1,100 judicial threats in 2006. This is more than a 500% increase in threats since 1996, when there were 201 reported threats.

In May 2005, just a few months after her family members were slain, Judge Lefkow bravely came before this committee to testify. She urged us to pass legislation to improve the security of judges and their families.

Congress responded. Senator Obama, Senator Kennedy, and I worked to ensure that \$12 million was appropriated so that every federal judge in America could have a home alarm system.

I have met on several occasions with the U.S. Marshals Service and am pleased with the leadership of its new Director, John Clark. In his statement submitted to this Committee today, Judge Brock Hornby [chair of the Judicial Branch Committee of the Judicial Conference of the United States] said that Mr. Clark has provided "exceptional leadership" and has improved the communications between the Marshals Service and the federal judiciary. I am happy to hear that.

But more work needs to be done. Congress must pass the Court Security Improvement Act, which has strong bipartisan support. I commend Chairman Leahy and Senator Specter for introducing this bill, and I am proud to be an original co-sponsor. This bill passed the Senate late

last year but, regrettably, wasn't taken up in the House of Representatives. I am optimistic the bill will meet a better fate in the 110th Congress.

The Court Security Improvement Act would ban dangerous weapons in our federal courthouses; it would protect judges and their families by prohibiting publication of their personal information; it would provide more funding for the Marshals Service to protect judges and require that office to consult with the federal judiciary regarding security requirements; and it would provide grant money to enhance the security of state courts.

Judicial Independence

We must protect our federal judges not only from physical threats, but also from threats to their judicial function. Verbal attacks, like physical attacks, strike at the heart of judicial independence.

The Constitution makes it clear that there are three independent branches of government. Each has a vital role in the governance of our democracy. The independence of our judiciary has been the envy of the world. But it is under attack today in a way we have not seen in quite some time. There has been an assault on the independence of the judiciary about which every American should be concerned.

Over the past few years, we have heard extreme statements from political ideologues and even attempts by some members of Congress to punish federal judges for their decisions. It is one thing to criticize a judicial opinion with which we disagree, and another thing to threaten judges with impeachment, to try and strip them of their authority to hear certain types of cases, and to subject them to the whims of a politicized inspector general.

Today's witness, Justice Kennedy, has earned a reputation as a thoughtful, non-doctrinaire jurist. But in some quarters, he is vilified for that very quality. For example, at a conference in April 2005, conservative activist Phyllis Schlafly said that Justice Kennedy's opinion banning capital punishment for children "is a good ground of impeachment."

Shortly thereafter, former House Majority Leader Tom DeLay lashed out at Justice Kennedy in an interview on Fox News. Among other criticisms, Tom DeLay said it was "incredibly outrageous" that Justice Kennedy did his own research on the Internet. After hearing Tom DeLay say this, I went to the Senate floor and asked: has the Internet become the devil's workshop? Is it some infernal machine? If so, I think we're all in trouble.

Our federal judges should not be intimidated and bullied by members of Congress or political extremists who see things differently.

Last September, former Supreme Court Justice Sandra Day O'Connor wrote a compelling op-ed in the Wall Street Journal and said the following: "[A]ll of society has a keen interest in countering threats to judicial independence. Judges who are afraid - whether they fear for their jobs or fear for their lives - cannot adequately fulfill the considerable responsibilities that the position demands."

I hope that every member of the Senate shares Justice O'Connor's commitment to protecting the men and women who don these robes for lifetime appointments and have the courage to rule in controversial cases. And I hope that both houses of Congress will quickly pass long overdue legislation to enhance the security and protection of our federal judges.