JUDICIAL CONFERENCE OF THE UNITED STATES

STATEMENT OF
THE HONORABLE DAVID B. SENTELLE

CHAIR, JUDICIAL SECURITY COMMITTEE
OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

FOR THE
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY
UNITED STATES HOUSE OF REPRESENTATIVES

HEARING ON H.R. 660, THE "COURT SECURITY IMPROVEMENT ACT OF 2007"

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THE JUDICIAL CONFERENCE OF THE UNITED STATES
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Thank you for the opportunity to present the views of the Judicial Conference of the United States on H.R. 660, the "Court Security Improvement Act of 2007." Let me first express appreciation to Chairman Bobby Scott, Ranking Member J. Randy Forbes, and the other members of the subcommittee for taking time to address seriously the security issues facing the federal judiciary.

The murder of Judge Joan Lefkow's husband and mother in her Chicago home in February 2005 sent shockwaves throughout the judicial branch. Following this terrible tragedy, Congress quickly approved funding for home intrusion detection systems which have since been deployed throughout the federal judiciary by the U.S. Marshals Service. These systems are an important improvement in how security, especially off-site security, is provided to federal judges. The current director of the U.S. Marshals Service, John F. Clark, played a key role in making the program operational.

Since that time, numerous other incidents have occurred in places such as Atlanta, Georgia and Reno, Nevada where judges have been seriously threatened due to compromises in their security. While these events occurred in state courts, they highlight security breaches that cause all judges to be concerned for their safety and well-being.

During the 109th Congress, Congressmen Louie Gohmert together with several other members cosponsored H.R. 1751, the "Court Security Improvement Act of 2006," which passed both houses of Congress in differing versions but never went to conference. This bill addressed

several key security issues facing the federal courts. These issues included the authority of the Judicial Conference of the United States to redact sensitive information from judges' financial disclosure forms, the creation of a criminal offense for malicious filing of fictitious liens against federal judges, and a requirement that the U.S. Marshals Service consult with the federal judiciary in the development of judicial security policies. The judicial security issues contained in the Act continue to be critically important to the federal courts, and we are pleased that a comparable bill has been introduced in the 110th Congress. H.R. 660, the "Court Security Improvement Act of 2007," is an extremely important bill. On behalf of the judicial family, I thank the sponsor of the bill, Chairman Conyers, and the bill's cosponsors, Congressmen Gohmert and you, Mr. Chairman. We are also appreciative that the Senate recently passed its version of the "Court Security Improvement Act of 2007," S. 378, that is also pending before the House.

When enacted, this bill will contribute significantly to the security of federal judges and their families. I would like to discuss the provisions of the bill that are of interest to the federal judiciary.

SECTION 101: REQUIREMENT THAT THE UNITED STATES MARSHALS SERVICE CONSULT WITH THE JUDICIAL CONFERENCE OF THE UNITED STATES ON THE SECURITY REQUIREMENTS OF THE JUDICIAL BRANCH

Section 101 of H.R. 660 is a very important change that will formalize the positive relationship between the federal judiciary and the U.S. Marshals Service under the exceptional leadership of Director John Clark. The primary statutory mission of the U.S. Marshals Service is to provide security to the federal courts and we believe this section will contribute to that end. By requiring the U.S. Marshals Service to "consult" with the judiciary, this provision will ensure that the judiciary has greater input into those programs and policies of the U.S. Marshals Service

that pertain to personnel, equipment, and other resources used in performing the important mission of providing security to the federal judiciary. We believe it is important to formalize the relationship between these two institutions and support this section of the bill with two minor changes.

The current language of section 101 in the bill calls for the U.S. Marshals Service to "consult on a continuing basis," with the "Judicial Conference of the United States" on the security requirements of the judicial branch of government. The Administrative Office of the United States Courts already provides direct liaison, on a continuing basis, with the U.S. Marshals Service. Because the Director of the Administrative Office also provides support to the Committee on Judicial Security of the Judicial Conference, it would be more appropriate that the "Director of the Administrative Office of the United States Courts" be substituted for the "Judicial Conference of the United States" in the bill. Such a change would require that the conforming amendment be placed in section 604, "Duties of Director generally," of title 28, United States Code, rather than section 331, "Judicial Conference of the United States," of title 28. These are minor changes but ones that will more accurately reflect the existing relationship between the U.S. Marshals Service and the judiciary and will allow for easier implementation of the legislation.

SECTION 102. PROTECTION OF FAMILY MEMBERS

This section corrects an omission in the provision of the Ethics in Government Act that authorizes the Judicial Conference to redact sensitive information from financial disclosure reports of judges and judiciary employees (see section 103). As the tragedy involving Judge Joan Lefkow demonstrated, members of a judge's family may be attacked as readily as a judge. The current language of the redaction statute considers only whether the release of the

information would endanger the individual who has filed the report, even though the Ethics in Government Act requires the disclosure of information that creates risks for the safety of family members as well as the filing individual.

Section 102 ensures that members of a filer's family are provided the same protection that the current law provides for the individual who files the report. This modest expansion of the scope of protection is urgently needed to fulfill the purpose of preventing attacks or the threat of attack.

SECTION 103: AUTHORITY TO REDACT SENSITIVE INFORMATION FROM FINANCIAL DISCLOSURE FORMS

Many judges experience a unique security risk in the form of personal contact with violent offenders or other disgruntled litigants every day in which they preside over a trial or sentence a convicted person. This close contact can result in animosity directed toward the judge who is personally identified with the laws being enforced against a particular individual. Congress recognized the distinctive risks faced by judges and amended the Ethics in Government Act in 1998 to authorize the Judicial Conference to redact from a financial disclosure report sensitive information that could endanger the judge. This authority expired on December 31, 2005. The judiciary is thankful that the House and Senate have passed H.R. 1130, which provides redaction authority until December 31, 2009. This bill is awaiting the President's signature. I am hopeful that this Subcommittee and the full Committee will consider amending H.R. 660, and/or S. 378, to provide permanent redaction authority for the judiciary. This change would be consistent with the position of the Judicial Conference of the United States. The permanent authority will provide added security to judges and their families.

Included in H.R. 660, the authority to redact would terminate on December 31, 2009, consistent with H.R. 1130 that is awaiting the President's signature. As a practical matter, however, this expiration date will give the Judicial Conference of the United States authority to redact sensitive information from financial disclosure forms for only two-and-one-half years. If the House and Senate cannot agree to give the judiciary permanent authority, we respectfully request that the sunset on redaction authority be extended permanently or at a minimum to December 31, 2011, thereby giving the Judicial Conference four-and-one-half years to exercise this important authority.

There are several reasons this change is important. Financial disclosure reports reveal several types of information that can endanger the filer or members of the filer's family. Filers are required to enumerate the specific items that they request be redacted from their reports, and those requests are reviewed by the Judicial Conference Committee on Financial Disclosure. In determining whether to redact information from a report, the Committee consults with the U. S. Marshals Service. As required by the statute, the Director of the Administrative Office has provided an annual report on the number of redactions approved by the Committee in the preceding year.

All judges' financial disclosure reports for calendar year 2005 and several previous years are already posted on several Internet websites. Without the permanent authority to redact sensitive information, it will be much harder to maintain the minimal zone of security that has helped in the past to shield judges from personal attacks by disgruntled litigants and anti-government organizations.

SECTION 104: PROTECTION OF UNITED STATES TAX COURT

The intent of this provision is to expand the duties of the U.S. Marshals Service to cover the protection of the U.S. Tax Court, an Article I court that is not a part of the judicial branch. While the judiciary takes no position on whether the U.S. Marshals Service should be required to cover these additional duties, we are concerned that such expansion, without the accompanying necessary funding to provide these new services, will strain the already limited resources of the U.S. Marshals Service and, in turn, hinder its primary statutory mission to protect the federal judiciary. Therefore, we suggest that language be included to require that the U.S. Tax Court reimburse the U.S. Marshals Service for the protection it provides, as is the current practice with regard to funding for protection of the U.S. Tax Court. I would note that the Senate version of this bill, S. 378, was amended to require this reimbursable arrangement.

We would also note that the provision includes the phrase "any other court" to refer to the U.S. Tax Court. This phrase is unnecessarily broad and could be misconstrued to expand the duties of the U.S. Marshals Service beyond the protection of the U.S. Tax Court. If the Committee believes it is necessary to provide expanded protection to the U.S. Tax Court, we respectfully request that the provision be more narrowly tailored, replacing the phrase "any other court" with "U.S. Tax Court," as was done when the Senate amended its version of the bill, S. 378.

SECTION 105: ADDITIONAL AMOUNTS FOR UNITED STATES MARSHALS SERVICE TO PROTECT THE JUDICIARY

Section 105 would authorize the appropriation of $20 million for fiscal years 2007 through 2011 to allow the U.S. Marshals Service to hire additional deputy marshals and additional personnel for its Office of Protective Intelligence. Although the judiciary fully

supports this provision and is grateful to the bill's sponsors for including it, the Committee might wish to consider authorizing additional funds to ensure that the U.S. Marshals Service has adequate and appropriate resources to fulfill its statutory mandate to protect the federal judiciary. We certainly appreciate any support that the Committee might give to ensure that the authorization is fully funded. We suggest that the Committee consult with the U.S. Marshals Service about an appropriate dollar amount.

SECTION 201: PROTECTION AGAINST MALICIOUS RECORDING OF FICTITIOUS LIENS AGAINST JUDGES AND FEDERAL LAW ENFORCEMENT OFFICIALS

This provision would create a criminal offense for the recording of malicious liens against federal judges. In recent years, members of the federal judiciary have been victimized by persons seeking to harass or intimidate them by the filing of false liens against the judge's real or personal property. These liens are usually filed to harass a judge who has presided over a criminal or civil case involving 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 filing of such liens has occurred in all regions of the country, they are most prevalent in the state of Washington and other western states.

SECTION 502: BANKRUPTCY, MAGISTRATE, AND TERRITORIAL JUDGES' LIFE INSURANCE

The Judicial Conference supports section 502 that would address certain inequities in the way that Federal Employees' Group Life Insurance (FEGLI) is made available to bankruptcy, magistrate, and territorial judges.

In 1998, the Office of Personnel Management (OPM) launched an effort to increase premium rates significantly for Federal Employees' Group Life Insurance (FEGLI) for employees over age 65, including federal judges. Previously, Article III judges were authorized to carry full FEGLI coverage into retirement by continuing to pay the premium in effect when they turned age 60, in recognition of their life tenure. On April 24, 1999, OPM put into place the higher premium rates, which would have been applicable to federal judges. These changes threatened the financial stability and estate plans of judges. Congress responded by enacting a law, Pub. L. No. 106-113, to authorize the Director of the Administrative Office, pursuant to the direction of the Judicial Conference, to pay the increases in the cost of the premiums imposed after April 24, 1999, for Article III judges. In addition to Article III judges, Congress established similar authority in 2000 to cover increases in FEGLI premiums for judges of the U.S. Court of Federal Claims, who are appointed for 15-year terms, and, in 2006, for U.S. Tax Court judges, who also are appointed for 15-year terms. Extending these payments to bankruptcy, magistrate, and territorial judges would address an inequity in the costs of FEGLI coverage between them and Article III judges and these other fixed-term judges.

The Senate amended the language of this provision in its bill, S. 378, to correct the inequities in the costs of FEGLI coverage among federal judges more effectively than the bill's original language. The Judicial Conference prefers the language adopted by the Senate, and respectfully requests that the House adopt the language that passed the Senate.

SECTIONS 503 AND 504: ASSIGNMENT OF JUDGES AND SENIOR JUDGE PARTICIPATION IN THE SELECTION OF MAGISTRATE JUDGES

Section 503 of H.R. 660 would create a statutory right for senior district judges to participate in the appointment of court officers and magistrate judges, rulemaking, governance,

and administrative matters in their respective district courts. Section 504 would amend the Federal Magistrates Act specifically to mandate that senior judges have the right to vote on candidates for magistrate judge positions, along with the active district judges of the court.

The judiciary is deeply grateful to the judges who choose to extend their judicial service beyond retirement by taking senior status. Unquestionably, these judges should be recognized for the significant and valuable work they do in the district courts, on a voluntary basis. The statutes governing court administration, however, place the responsibility for appointments of court officials and other administrative matters on the active district judges of the court and do not appear to give automatic voting rights to senior judges in these matters. Similarly, the Federal Magistrates Act, at section 631(a) of title 28, has been construed as giving voting rights on the selection and appointment of magistrate judges solely to the active judges of the district court. The Judicial Conference has taken the position since 1959 that a district court, for purposes of appointing court officials, should be defined as consisting of only active judges and not senior judges. At its September 2006 session, the Judicial Conference considered the same amendment to the Federal Magistrates Act as that presented in section 504 of H.R. 660, and voted to oppose the amendment, noting that the current method of appointing magistrate judges is effective. At the same time, while senior judges do not have a statutory right to vote on these matters, some district courts follow a local custom of allowing senior judges to participate in these decisions. The current arrangement functions effectively and permits local variations that reflect differing conditions around the country. It appears that the proposed changes in the law to create statutory rights for senior judges to participate in court administrative decisions may unduly restrict the flexibility of district courts in this area. The Conference opposes section 504.