



## **State of the Court**

2005 Address of Chief Judge Kocoras



## UNITED STATES DISTRICT COURT

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### **STATE OF THE COURT ADDRESS – MARCH 16, 2005**

**Prepared remarks of Chief Judge Charles P. Kocoras for delivery to the Federal Bar Association at Corboy Hall of the Chicago Bar Association**

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Good afternoon and thank you all for this opportunity to deliver the annual “State of the Court” address on behalf of the United States District Court for the Northern District of Illinois. I want to especially thank Jack Carriglio and everyone involved in the Federal Bar Association for this opportunity to address you. It is the continuation of a tradition which began many years ago.

And what is the state of the court? Directly stated, it is sad, somber, and tinged with anxiety over the future.

The tragedy we were witness to on February 28<sup>th</sup> stunned us all, and its horrible dimensions are not diminished because the apparent killer of two innocent people took his own life. Think of Judge Joan Lefkow, and her future without the love of her life. And imagine having to bury your 89 year old mother—the gentle and kind soul she was, who deserved to leave this earth with the same dignity that she lived her life. Or the life of a father cut short, deprived of his expressed dream of walking each of his daughters down the wedding aisle or those girls, who wanted that dream to come true as much as their father did.

Now turn your attention to the assault on the law we saw. An unsuccessful litigant, unwilling to accept the command of the law, apparently lay in wait to kill the sweetest federal judge I have ever met and whose own sense of fairness is a model for the world. Even as she denied his long since rejected claim, her words bespoke a sympathy and understanding of his plight. Joan will judge again, and rule fairly again, but it may not be as easy as before. Her

sisters and brothers on our court, indeed, all courts, now will also find the job a little more perilous than before. It is no longer going to be enough to determine the correct legal answer to a myriad of disputes; it will often be necessary, especially with pro se litigants, to attempt to divine how they may receive our rulings.

It is too difficult for me to contemplate an effect on the willingness of citizens to serve as jurors. They may logically ask if the family of a judge is not safe because of a decision the judge made, why should they risk their own safety or their family's welfare when they are asked to make hard decisions affecting the liberty or fortunes of others.

Jurors are the bedrock of both our criminal and civil systems of justice and when citizens participate, it makes our form of government all the stronger. We can never lose that as a nation, and we must never allow it to be treacherous to serve.

Time will only tell how much the rest of us have lost because of the death of Michael Lefkow and Donna Humphrey. We already know how much Judge Lefkow and her daughters lost.

Some have said that the evils we have been witness to these past days represent an attack not only on our civil and criminal justice systems, but on the most fundamental way in which our society is ordered. 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. This is more than an empty phrase, and it requires acceptance on everybody's part. Litigants appear before us regularly, and judges understand the gravity and importance to each of them the matters they present to us for resolution.

As judges, we have no vested interest in the cases that we hear; rather, we are obligated to decide cases fairly and objectively.

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 these evils 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. Each act of violence makes the next act of violence easier to commit and more likely to occur.

I am not here to suggest the triumph of evil over good, because for every sick mind full of hate there are thousands whose hearts are brimming with care and love for others. But it falls to us—especially us—lawyers, judges, and governmental officials—to preach the message of respect for others, and especially for the law. If civility and tolerance mean anything at all, then the welfare of society and the common good must prevail over notions of individual action and force and violence.

As for the future, the time has come for a reevaluation of the manner and circumstances in which federal courts operate. The contributions of the judicial branch to the way in which we live and its vital place in our system of government suggests the value it deserves. The obvious necessity for additional safety measures cannot be denied. Every federal court in the land, including my own, is engaged in this process. The good will of our nation, its citizens, and legislative and executive branch officials, will be necessary for all of us to meet the challenges the current times provide. It is only wise and just that it be forthcoming.

As federal judges, we all took oaths upon taking office to make decisions honestly and fairly and without fear or favor to any person or party. Although there should be not the slightest doubt that we will continue to honor that commitment, the “fear” part of the promise will now be a little harder for us to come by. Be assured that we are a hardy breed, however, and we will continue to render decisions based on the merits of the parties’ positions and nothing more. Our citizens deserve no less, and our own devotion to our duties will never be compromised.

Turning our attention from matters of the heart to issues of law and practice, let me discuss some important occurrences that have taken place in the last year. As the criminal practitioners and judges are acutely aware, the Supreme Court of the United States, in the most recent of a series of cases, has changed the landscape of federal sentencing and, in two opinions, allocated and then reallocated the function and power of federal judges.

The first opinion in the Booker/Fanfan cases, holding that any fact, other than a prior conviction, which is necessary to support a sentence exceeding the maximum authorized by the facts established by a plea of guilty or a jury verdict, must be admitted by the defendant or proved to a jury beyond a reasonable doubt, reversed over a hundred years of federal district judges sentencing practices. Prior to that, district judges routinely decided facts having an effect on sentences, sometimes materially so.

The effect of the first opinion lasted all of a few pages. As you all know, the second opinion for the court in Booker/Fanfan effectively negated the effect of the first opinion by holding the guidelines to be advisory only and not mandatory. This holding rendered moot the application of the Sixth Amendment jury findings to sentencing issues. Additionally, appellate courts have now been charged with the responsibility of reviewing challenged sentences using the standard of reasonableness.

Nobody would suggest that the result of Booker/Fanfan positions the law as it existed on 10/31/87. On my court, the Probation Department has been ordered to continue to prepare

the presentence report and guideline calculations in the same way they always have. As district judges, we are still obligated to consult the guidelines and be guided, or advised by them. In their review functions, courts of appeals have the body of work of the Sentencing Commission these last 17 years or so, ready made criteria and standards setting forth what a reasonable sentence might be in today's world.

The future of federal criminal sentencing remains somewhat uncertain. What we do know is the Seventh Circuit holding that Booker/Fanfan is not retroactive. As for cases on appeal in our circuit, district judges will be asked by the Court of Appeals to state whether they would have imposed the same sentences had the guidelines been advisory rather than mandatory when sentences were imposed.

As for the future, district judges who impose sentences different from what the guidelines suggest will not only have to articulate their reasoning fully and carefully, they must also confront the proposition that a group of people—the Sentencing Commission—probably differ with them in a general way. What the court of appeals will say—a court that will not see a defendant in person or witness events first-hand—while performing their review function remains to be seen.

The answers to these questions will be supplied on a case by case basis, as will the congressional response to the Supreme Court's Booker decision. The early report from Judge Ricardo Hinojosa, Chair of the Sentencing Commission, is that sentencing practices have not differed much in the short period Booker has been the law of the land. That should neither be surprising nor unexpected.

At the least, it seems quite clear that everybody will have to work harder in the foreseeable future. Both prosecutors and defense lawyers can no longer rely on guideline calculations to simply trump other considerations, including some subjective ones unique to a particular defendant. Sentencing judges will have more material to review and evaluate, and must carefully justify their actions and non-actions. For appellate judges, a new review function has been mandated. Workloads are sure to increase.

Judge Sim Lake of the Southern District of Texas, Chair of the Judicial Conference Committee on Criminal Law, offered this perspective: "Sentencing decisions by the Supreme Court are often followed by an increase in the number of criminal appeals and collateral review proceedings. The post-Booker era will probably be no exception. As circuit precedent is developed, however, direct appeals and collateral attacks should subside to normal levels." In other words, we will work our way through this situation as well.

Because of Booker and newly enacted class action legislation by Congress, the Administrative Office of the U.S. Courts recently requested a \$101.8 million supplemental appropriations for the current fiscal year. The AO believes both will drive up the workload of the district and appeals courts, the impact of which could not be taken into account in the judiciary's 2005 appropriations by Congress.

Whatever the outcome, the reality is the District Court is under considerable pressure from Washington to restrain if not reduce its budget. We lost a few positions in the office of the Clerk of Court in this year's budget, but unlike other districts we did not have to resort shorter hours of operations, day-long courthouse closings or worker furloughs. However, with new work measurement formulas, a general decline in caseload and other factors, the hunt for further reductions in our court's budget is certain to continue in the year ahead. While only two-tenths of one percent of the entire federal government's budget, the judiciary may be approaching the limit of what can be cut or reduced in its funding and still provide effective administration of justice in our nation.

Budgetary considerations also impacted the District Court's plans for a new courthouse in our Western Division, in Rockford. In September 2004, the Judicial Conference of the United States placed a two-year moratorium on 42 federal courthouse construction projects nationwide. Eight remaining projects, including Rockford, were allowed to proceed with design only after a thorough review. The new Rockford courthouse was found to be on program, appropriately designed for the 30-year needs of the court, and, most significantly, on budget.

Design work is nearly complete for the new 208,000 square foot courthouse. The building will occupy a two-block, landscaped site in the heart of downtown, with 75 percent of the site devoted to open green space for public use and enjoyment. Three district and two bankruptcy courtrooms will be provided, along with space for the Clerk of Court, Pretrial Services, Probation, the U.S. Marshal Service, and the U.S. Attorney's office.

The building has been designed to maximize interior daylighting and views of the Rock River for both the building occupants and visitors, while providing efficient and flexible space to serve the needs of the judiciary for many years to come. The new courthouse will also be the first federal building in the Midwest, and one of only a few nationally, to achieve a "Certified Silver" rating under the U.S. Green Building Council's *Leadership in Energy and Environmental Design*, or LEED, program.

The project is now proceeding with the completion of construction documents, based upon the original program and design. This is a testament to the terrific stewardship of the

project by Judge Philip Reinhard and the project design team. We are hopeful that construction funding will be authorized at the conclusion of the judiciary's construction moratorium.

From brick and mortar we move to electronic digits. In mid-January the court made the transition to a new docketing and filing system. This system, called Case Management/Electronic Case Filing, or CM/ECF, is designed to allow documents to be filed with the court electronically via the Internet. As you may know, this system is being introduced in all federal courts. It is already being used in all Seventh Circuit district and bankruptcy courts, for example.

Initially, we have been using the new system internally, on the assumption that it would be important to work out any bugs we might encounter before we open the door to e-filing by attorneys. In early March, we assembled a pilot group with representatives from fifteen law firms and the U.S. Attorney's office. We expect that the first e-filing by attorneys from this pilot group should begin any day.

By early April, attorneys will be able to go to the court's web site and register for training in how to e-file. You can also get information there on how to set up your own e-filing account.

The procedures approved by the court for electronic filing indicate that e-filing by attorneys will be carried out on a voluntary basis at first. However, all other districts that have previously implemented this system have made e-filing mandatory for attorneys. Our court will soon be considering the same issue.

Regardless of buildings or computers, people still make the court work. In 2004, we added one district judge and faced three vacancies—one district and two magistrate judgeships. Judge Mark Filip joined the bench in February after Harry Leinenweber took senior status in 2003. Mark's superior intellect and youthful good looks should serve the court well. Judge Suzanne Conlon also went senior in April of 2004, while Magistrate Judge Edward Bobrick retired in June of last year. The District Court also received authorization for an eleventh magistrate judge in Chicago. The two magistrate judgeships were filled last month with the selection of Maria Valdez and Jeffrey Cole by the District Court judges. They will likely assume their posts in the late spring. Both bring outstanding backgrounds and experience to the court, and I am confident they will make considerable contributions. A special thanks must be extended to the 15-member merit selection panel, chaired by Michael Demetrio, that assisted filling these vacancies.

That leaves Suzanne's seat. The court is confident that Illinois' two Democratic senators, Richard Durbin and Barack Obama, will work together with Republican Speaker of the House, U.S. Rep. Dennis Hastert, to make sure this seat is promptly filled.

Another change took place in the Dirksen Courthouse lobby. As many of you have seen, a roped off area has been created for television and newspaper cameras and their operators. I am acutely aware of the important role the media play in keeping citizenry informed about the work of our court. Access to the lobby, however, is not a license to endanger others through reckless chases when news makers walk through the lobby. The court will continue a dialogue with the media about this situation in an attempt to meet both the needs of the press and the safety of everyone coming and going in the building.

And briefly, a word on statistics. Handouts featuring charts and graphics are available that detail the workload of our court this past year. While not included in that information, but of special note, is the nature of the criminal filings. Of the 1,362 felony defendants commenced during 2004, 35 percent involved drugs, 22 percent fraud, 11 percent firearms/explosives, 4 percent robbery and 28 percent all other kinds of crime. This continues a trend of drug cases consuming the lion's share of the court's criminal justice resources.

Finally, much of what goes on in our court cannot be accomplished without the active support of the lawyers who practice in the Northern District. I welcome your comments. On behalf of all the judges of the Northern District of Illinois, I thank you for your support in 2004 and ask for your continued input in 2005.

Thank you very much for coming.