



## **State of the Court**

2006 Address of Chief Judge Kocoras

## **State of the Court Address - April 4, 2006**

Good afternoon to you all. This is my fourth State of the Court address, and I would like to take this opportunity to thank the President of the Chicago Chapter of the Federal Bar Association, Mary Lisa Sullivan, and the other officers and members, for the invitation to do so. This address represents a long-standing tradition and it characterizes the wonderful relationship between our federal judges and members of the Federal Bar Association.

This past year has been one marked by significant events that have affected us all. The recounting necessarily begins with the horrors which took place in Judge Joan Lefkow's household on February 28, 2005. The story is all too well known, so a recapitulation of details is unnecessary. There are only two matters I wish to speak about. The first is to tell you, from first hand experience, what a remarkable display of courage and grace we were shown by Judge Joan Lefkow. Our contacts were frequent, and I was privy to both her private moments as well as public ones. I came to respect her strength of character in a way unmatched by anything I had witnessed before, as most of us rarely find ourselves in circumstances calling for the utmost in endurance. For all that she is, Joan Lefkow will always have a special place in my heart.

My second observation involves the human capacity for, and necessity of, healing and rebirth. As with her courage and grace, I took my cue from the person who lost the most, and followed Joan's lead in facing the future with hope for a better world rather than the despair that man's capacity for evil can bring.

The year's events brought other experiences to our court, many with actual and potential impact of some consequence. A project worthy of note is the soon to commence construction of a new courthouse in Rockford, site of the Western Division of our court. The plans are complete and funding legislation has been enacted. While most of you practice here in the Eastern Division, it will nevertheless be a significant improvement in the federal facilities in Rockford, in addition to enhancing an important commercial area of the city. Many people are deserving of great credit for the state of the project, but I want to single out Judge Phil Reinhard of Rockford, Mike Dobbins, our Clerk, and David Allen, our own architect, for the countless hours and energy they have devoted to the project.

Staying with the subject of physical plant and improvements, I am sure you all noticed what has been called the curtain wall project at the Dirksen Courthouse involving structural improvements and rehabilitation of the exterior of the building. It has been a major undertaking and is approaching completion. Major improvements to the interior of the building are now in the planning stages.

As some of you may know, the Federal Bureau of Investigation will soon be vacating the Dirksen Courthouse for its own new building on the near southwest side. The FBI's vacated space will be leased out by the GSA, the federal property managers, in due course. The district court now has, for the first time in a long time, a full complement of Article III District Judges, Magistrate Judges, and Bankruptcy Judges. We welcomed Judge Virginia Kendall a couple of months ago, and she followed the somewhat recent appointments of Magistrate Judges Jeff Cole and Maria Valdez. As a

consequence of those appointments, along with the present eligibility of four Eastern Division Article III judges for senior status, the need for additional courtrooms and chambers has manifested itself. In keeping with procedural requirements, requests for one of the floors to be vacated by the FBI have been made to Washington for the construction of additional facilities for senior and other judges.

Apropos of discussions of space and court expansion necessarily leads to a discussion of case filings in our court, as well as the recognition that the trial of cases has diminished greatly in the recent past. Civil case filings in our district held steady for the years 2001, 2002, and 2003, running from 10,340 total civil filings in 2001 to 10,300 in 2003. The years 2004 and 2005 saw a substantial diminution in mortgage foreclosure cases, driving the total of civil filings down to 7,805 total civil cases filed in calendar year 2005. The effect of that decline over the last two calendar years has been a substantial loss of authorized personnel positions in our clerk's office.

Between the loss of those positions and the general budget pressures everyone in the federal government has been facing, we have, nevertheless, managed to avoid forced layoffs of our employees. We know how precious jobs are to our people, and disruptions to our work force have been kept to a minimum. For managing those concerns and for his most effective management of the clerk's office, I wish to recognize Mike Dobbins and his managers for their outstanding work.

The diminution of civil trials is, in my mind, a very troubling trend. There appear to be a variety of reasons behind the trend, including the cost and length of discovery and other pretrial matters, as well as parties' natural

aversion to risk. Some of these features can be improved upon by all of us while some may be beyond our control. The principal reason I find the decrease in civil trials so problematic has to do with the decreasing need for ordinary citizens to participate in the administration of justice in the role of jurors.

The public conduct of trials and the openness of the proceedings are features strongly suggestive of honesty, integrity and faith in the entire judicial procedure. In addition, the opportunity for ordinary citizens to listen to evidence and to use their common sense, wisdom and reason, adds considerably to the integrity of the system and the results it produces. Juries have been the bedrock of both our civil and criminal justice systems since the founding of our nation. Serving as jurors allows our citizens to be participants in our form of government in a unique and important way, and the loss of their involvement portends ill for a system that has served us well for all these years.

Our criminal case filings have held relatively constant over the last five years, and the fluctuations in the number of felony defendants in the system has varied little in the last three years. As you all know, we have a very large U. S. Attorney's office here in Chicago and it is quite active in the criminal realm. Pat Fitzgerald, the U. S. Attorney, thinks a normal workday is not less than 20 hours, so the Executive Committee of my court may have to consider some action in that regard in ordering some constraints.

The burning issues in criminal cases, aside from the sheer volume of incarcerated defendants, the cost of housing and transporting them, and the overtaxed

prison and correctional facilities, involves sentencing matters and the myriad issues presented by the war on terrorism.

It has been a little over a year since the U. S. Supreme Court gifted us with their decisions in U. S. v. Booker & U. S. v. Fanfan. While the guidelines are no longer mandatory, they are still the starting point in any sentencing analysis and in the Seventh Circuit, they are presumptively reasonable. The post-Booker experience suggests to federal judges that sentencing practices have not changed substantially, and while some variation exists in some cases and there is some inter-district disparity, the percentage of federal sentences within guideline ranges has remained fairly constant—in the 60% range. Our Judicial Conference representative, Judge Paul G. Cassell of Utah, has argued to the Congress that there is no need for an immediate Booker fix, and that the status quo is quite satisfactory for the foreseeable future.

The Justice Department sees things differently. Espousing the belief that tough and consistent sentences have enhanced the safety of Americans and the fairness of the judicial process, the Justice Department is lobbying for greater fixed punishments for crimes and for minimum and maximum mandatory sentences. The Department has argued that two post Booker trends have emerged — a marked decrease in within — guidelines sentences and increased inter-circuit and inter-district sentencing disparity. The effect of the Justice Department's position, should it carry the day, would be to virtually eliminate judicial discretion in sentencing. You might guess where I stand on the Justice Department's position and view. This battle will necessarily play out in Congress and not in the courts.

Contrary to where the sentencing issues will be decided, many of the terrorism related legal issues will be lodged in the federal judiciary, along with executive and legislative consideration.

Such issues abound, including, among other things, the following:

1. Secrecy of immigration proceedings;
2. Identity of detainees;
3. Access to sealed pleadings;
4. Designating terrorist organizations and punishing assistance;
5. Non-judicially authorized interception of communications;
6. Unlimited detention of detainees;
7. Appropriate forums for adjudication, if any; and if so, whether in Federal Courts, Military Tribunals or other venues;
8. The Meaning and Application of Due Process in various factual settings.

The Supreme Court of the United States took a major step in its decision in Hamdi v. Rumsfeld in trying to balance the tensions posed by the need to secure the nation and the continued enjoyment of personal freedoms. Yaser Esam Hamdi was captured during the fighting in Afghanistan and transferred to the Guantanamo Naval Base in Cuba. When military authorities realized he was an American citizen they transferred him to the Norfolk Naval Base, where he was held without charge or access to counsel, and the President designated him an enemy combatant. In rejecting Hamdi's habeas corpus petition challenging this designation and detention, the Court of Appeals for the Fourth Circuit ruled that despite his citizen status, Hamdi could not challenge the

factual assertions that formed the basis of the Government's contention that Hamdi was an enemy combatant and that warranted his detention.

Although there was no majority opinion for the Supreme Court, the plurality opinion authored by Justice O'Connor held that Hamdi was entitled to a meaningful opportunity to contest the factual basis for that detention before a neutral decisionmaker. Six justices voted to enter a judgment vacating the circuit court's dismissal of Hamdi's habeas petition. Because we are in the midst of extraordinary national and international circumstances presenting a multitude of new and different factual scenarios, the application of fundamental legal principles to these facts will be written on fairly clean slates.

Taking a major step back from the weighty issues to be decided in these criminal and quasi-criminal cases, some other events require mention. Effective April 9, 2006, the fee for filing a civil action will increase to \$350. Because this is neither a small increase nor a small sum, we must exercise vigilance to insure that access to the courthouse is available not only to the poor and to the rich, but to the majority of Americans who reside between those polar opposites.

Another item worthy of mention is the Court's adoption of mandatory electronic filing. The program is known as CM/ECF and, as near as I can tell, the transition from pure paper filing to electronic filing is going reasonably well. Our clerk's office computer section has done a yeoman's job in instituting the changes, promulgating rules and procedures, training the trainers and the masses, and trouble-shooting problems as they arise. They deserve our special mention, and special thanks.

Another entity worthy of recognition is our Bankruptcy Court for the way it has dealt with the consequences of the new bankruptcy legislation. From handling the massive filings as the old act was fading into oblivion to establishing seminars, rules, and procedures in dealing with the new act, it was a particularly outstanding effort. Kudos to all of the judges, the clerk and all of his staff.

And finally, I need to address a matter personal to me. Earlier in this talk, I mentioned to you that four Eastern Division district judges are eligible to take senior status. I am one of those. As you may already know, after long and careful consideration, I have decided to step down as Chief Judge of our Court effective July 1, 2006, and go on senior status at that time. Those who know me well know that this decision is not an easy one. I consider being a United States District Judge the finest position that any lawyer can achieve. Being the Chief Judge of a court I love has been a privilege and an honor for me.

I want to publicly thank each and every judge, court employee, as well as private lawyers and government lawyers for all of your hard work, loyal services, support and friendship these last four years. I especially want to thank the officers and members of the Federal Bar Association for the many kindnesses you have shown to me and the other judges for many many years.

Thank you very much.