

SUFFERING IN SILENCE: THE DARK SIDE OF JUDGING IN 2013

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Immediately the fingers of a man's hand appeared and wrote on the plaster of wall of the king's palace, opposite the lampstand; and the king saw the hand as it wrote. Then the king's color changed, and his thoughts alarmed him; his limbs gave way, and his knees knocked together.¹

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PROLOGUE

This Comment is intended to show the dark side of judging. This paper was written with the intent to provoke discussion about the very important topic of judicial security and internet safety. The purpose of this Comment is to allow the reader to place themselves in the role of a

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* This symbol denotes knowledge obtained by the author through 1 conversations with federal judges and other court employees. In order to protect their privacy, their names will not be mentioned.

1. *Daniel 5:5-6* (Revised Standard Version).

judge who is enduring these threats on a daily basis. I ask the reader to feel what a judge feels and then think about steps that may need to be taken to further protect these judicial officers and public servants. More importantly, what can be done to protect their families? The advent of social media and the internet is allowing judicial predators to post pictures of judges' children and grandchildren online. How would you feel if it was your child or grandchild?

This Comment is not about an analysis of free speech, privacy, or any other law, rule, or procedure. It is simply about determining what is right and what is wrong. Is the risk mentioned in this paper a new part of the job description when a person is appointed to the federal bench? Would you assume this very real risk that could affect the health and safety of your family?

INTRODUCTION

One of the most pressing issues facing federal judges² in 2013 is judicial security and safety. This Comment seeks to spur conversation on the risks associated with serving as a federal judge in an age of online harassment and threats. Part I introduces the reader to a hypothetical involving Judge Solomon. Through the use of a narrative, the story illustrates what current judges and their families endure when a litigant gets angry. Part II discusses the environment of fear that federal judges face each day when there is a host of online information detailing their lives and the lives of their children. This section demonstrates how internet threats against judges are on the rise; and, how the social media footprint of internet threat actors share common characteristics. Part III discusses the collaborative nature of these new electronic threats. Social media enables collaboration like never before, so that angry litigants and other interested parties seeking to intimidate a judge can work together. Blogs, wikis, and social networks help to easily spread intimate personal information about a judge. These collective threats begin to take on a collaborative online mob presence that can be disconcerting. Lastly, there is a discussion of whether the risks and threats associated with judging are trickling down to law clerks. In conclusion, I ask the reader to feel what a judge must feel in 2013. Judges are first and foremost human beings, members of a family, and then a judge. Is it expected that judges assume the risks

2. This Comment does not directly address the security concerns of state court judges. State court judges face the same security challenges as federal judges, but unlike federal judges, they have no law enforcement entity with the specific authority to protect them. Moreover, it is difficult to find aggregated reports on threats to state court judges.

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discussed in this paper as public servants? I hope this Comment provides enough information to spark debate and discussion about this important topic.

I. JUDGING IN THE PAST AND PRESENT

One of the first and most famous court cases involves King Solomon and a mother who was willing to give up her child to protect him from harm. King Solomon was approached by two women who claimed to be the mother of one child. In this case, King Solomon ruled that the baby would be split in half, so that the women could share the child. According to the Bible, King Solomon said:

“[b]ring me a sword.” So a sword was brought before the king. And the king said, “Divide the living child in two, and give half to the one, and half to the other.” Then the woman whose son was alive said to the king, because her heart yearned for her son, “Oh, my lord, give her the living child, and by no means slay it.” But the other said, “It shall be neither mine nor yours; divide it.” Then the king answered and said, “Give the living child to the first woman, and by no means slay it; she is its mother.” And all Israel heard of the judgment which the king had rendered; and they stood in awe of the king, because they perceived that the wisdom of God was in him, to render justice.³

The Bible does not say how King Solomon reached his decision, but he must have known that the true mother would not want any harm to come to her child. We can only imagine the fear and terror that this mother felt when the King commanded this sword test, ordering the child to be split in half. It is that fear and terror that caused the woman, the true mother, to sacrifice her very maternity claim to save her son.

A. Judging in 2013

In 2013, is part of a judge’s job description to accept that same feeling of terror and fear for their families when they preside over a case? For example, what would judging be like for King Solomon if he were a judge today? Let’s look at a hypothetical demonstrating the very personal side of judging.

I ask the reader to imagine, that like King Solomon, today’s Judge Solomon is Jewish and has a family.⁴ He was nominated by President Bill Clinton and confirmed in 1998. Prior to becoming a judge, Solomon was a respected jurist. Appointment to the federal bench was the pinnacle of Judge Solomon’s career. His entire family, including his

3. 1 *Kings* 3:24-28 (Revised Standard Version).

4. While this is a hypothetical, this story is inspired by true events.

wife, children, and his elderly parents, attended his nomination hearing. His mother and father are so proud because they are working class people who sacrificed so much of their time and money to help their son get the best education possible. Newspapers and bar associations wrote articles about Judge Solomon's appointment, illustrating his accomplishments and mentioning his dedication to his family.

By 2013, Judge Solomon has served on the federal bench for fifteen years and he is a dedicated father, family man, and judge. During his fifteen years as a judge, his children have grown up, finished college, and they have given Judge Solomon beautiful grandchildren. His wife encourages him to join Facebook⁵ because she tells him that he can see pictures of the grandchildren. She says, "Honey, this is how our kids communicate. They are all on Facebook." But Judge Solomon wants no part of Facebook because honestly, he doesn't understand it. He feels that judges have no place on social networks because those things are for kids. Even though everyone around him talks about their Facebook accounts, the judge stands firm and refuses to join. On the other hand, Judge Solomon believes he is tech savvy because the court has issued him an iPad⁶ and an iPhone for his work. Surprisingly, he has mastered the art of text messaging on his personal phone because it allows him to communicate with his granddaughter. At family dinners, he and his granddaughter text one another as they hide their phones under the tablecloth, exchanging secret messages. The judge takes great delight in texting his granddaughter so that they can talk about the adventures of her hamster named "Marshmallow."

What happens next is the equivalent of a cyber-horror movie, where an unknown entity or presence is hiding in the shadows of darkness. This new and disturbing presence creates several websites by purchasing URLs or web addresses on GoDaddy.com⁷ or Whois.com.⁸ Suddenly, and without the judge's knowledge, websites start appearing such as JudgeSolomon.com, JudgeSolomonSucks.com, and ImpeachJudgeSolomon.com. These websites display Judge Solomon's personal information, including the judge's home telephone number,

5. FACEBOOK, <https://www.facebook.com/> (last visited Nov. 8, 2012).

6. David Nuffer, *Judge + iPads = Perfect Fit?*, 3 GEEKS AND A LAW BLOG (Jun. 12, 2012, 8:48 AM), <http://www.geeklawblog.com/2012/06/judges-ipads-perfect-fit.html> (noting an unpublished report by the Federal Judicial Center which states that 58% of federal judges use iPads for their work).

7. GODADDY, <http://www.godaddy.com/> (last visited Nov. 7, 2012) (GoDaddy is a domain name registrar and a web hosting service provider).

8. WHOIS, <http://www.whois.com/> (last visited Nov. 7, 2012) (like GoDaddy, Whois is a domain name registrar and a web hosting service provider).

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address, and the home addresses of his children. The websites include satellite images of his home obtained from Google Earth⁹ and Google Street View.¹⁰ One photo on the website is particularly disturbing because of its detail. The photo displays the front of his mother's house, taken from Google Street View. Anyone can zoom in on the photo and see the blue lawn chair on the front porch that his elderly mother sits in each day. Text is posted next to the pictures stating that "this judge and his family deserve to die." A concerned citizen stumbles across these websites. During a brief conversation in the grocery store, the concerned citizen informs a friend who works at Judge Solomon's courthouse. The court employee notifies the judge's judicial assistant. The judicial assistant calls the judge to warn him.

Judge Solomon is very disturbed when he visits the websites while he sits alone in chambers. A chill runs down his spine as he clicks on each website, uncovering pictures of his wife, children, and grandchildren. Many of his family's Facebook profile pictures have been copy and pasted onto the websites that call for his impeachment. Personal family information, such as his son's home address and his unlisted telephone number, are posted next to family pictures. He finds a picture of his daughter and grandson who live in Israel.

Stunned, the judge asks himself, who has this information about his family? How could they find pictures of his daughter who lives in Israel? How did they create these websites? Should he contact the U.S. Marshals Service, the law enforcement agency in charge of protecting judges?¹¹ He knows that the U.S. Marshals Service handles physical threats, but are these websites an actual physical threat? Secretly, Judge Solomon cannot help but fear for the safety of his family.

As social media evolves, new programs are launched and the ominous online presence surrounding Judge Solomon swells. A month later, Judge Solomon revisits the websites just to see if any new information has been posted. He discovers a link to a video on

9. GOOGLE EARTH, <http://www.google.com/earth/index.html> (last visited Nov. 8, 2012); *Overview of Google Earth*, GOOGLE EARTH, <http://support.google.com/earth/bin/answer.py?hl=en&answer=176145&topic=2376010&ctx=topic> (last visited Nov. 8, 2012) (Google Earth allows users to move through a "virtual globe and view satellite imagery, maps, terrain, 3D buildings, and much more.").

10. *Explore the World at Street Level*, STREET VIEW, GOOGLE MAPS, http://maps.google.com/intl/en/help/maps/streetview/#utm_campaign=en&utm_medium=van&utm_source=en-van-na-us-gns-svn (last visited Nov. 8, 2012) ("Google Maps with Street View lets you explore places around the world through 360-degree street-level imagery.").

11. *Judicial Security*, U.S. MARSHALS SERVICE, <http://www.usmarshals.gov/judicial/index.html> (last visited Nov. 8, 2012).

YouTube.¹² The judge clicks on the link and finds many videos about him that were created by a former litigant. Several of the videos are taken from actual clips of Hitler and have added subtitles that display fierce anti-Semitism toward the judge and his family. Other videos simply show this former litigant talking into a webcam, calling for the impeachment of the judge. Judge Solomon is not concerned for himself because he faces many angry litigants each day, but these videos make him think about the safety of his family.

Judge Solomon reads the descriptions of the videos on the YouTube channel and finds a statement urging viewers to visit a Facebook link. Judge Solomon is curious, so he asks his wife to use her account to sign-on to Facebook to visit the link. The judge and his wife are surprised to find the judge's direct office phone number and direct court e-mail address listed on Facebook! The Facebook page references a Twitter¹³ feed that updates Twitter followers on new posts to the YouTube channel and the Facebook page. The judge is confused because he has no idea how Twitter works or who can see the Facebook page. He is focused on his job of judging, and not on how this swirling social media presence is being created around him without his consent.

After clicking on the Facebook page, the judge and his wife uncover a collection of social media pages dedicated to posting his personal information and intimate family details. Links to Meetup.com¹⁴ pages display where groups of people get together and discuss the judge's rulings in controversial cases. Judge Solomon assures his wife that this is part of a federal judge's job, but secretly, he worries about the safety of his family. Judge Solomon wonders whether he should contact the U.S. Marshals Service. In the past, he received death threats in letters and phone calls, but this was something different because these posts and pages were dispersed throughout the internet.

Judge Solomon reaches out to his young law clerk to help him monitor this dark online presence that keeps expanding. The judge knows that his law clerk is a digital native,¹⁵ who understands how to maneuver through this digital quagmire. The law clerk immediately types the judge's name into the Google¹⁶ search box to locate any new

12. YOUTUBE, <http://www.youtube.com/> (last visited Nov. 8, 2012).

13. TWITTER, <http://twitter.com/> (last visited Nov. 8, 2012).

14. MEETUP, <http://meetup.com/> (last visited Nov. 8, 2012).

15. A digital native is "a person who has grown up in a world with digital technology such as the Internet and mobile phones." Digital Native, BuzzWord, Macmillan Dictionary, <http://www.macmillandictionary.com/buzzword/entries/digital-native.html> (last visited Nov. 8, 2012).

16. GOOGLE, <http://www.google.com/> (last visited Nov. 8, 2012).

information. The law clerk finds that the three websites: JudgeSolomon.com, JudgeSolomonSucks.com, and ImpeachJudgeSolomon.com, show up first on the Google search result page. The judge has a stellar career and cannot understand why the first results to show up on Google are these targeted websites. The law clerk concludes, after researching the issue, that the judge has been hit by a “Google bomb.”¹⁷

The judge immediately reports this situation to the U.S. Marshals Service because he feels he can no longer ignore the increasing amount of personal information, images, and posts about him on the internet. The U.S. Marshals Service meets with the judge to determine whether they have the authority to take action. However, this is not an overt physical threat. The U.S. Marshals Service does not have the responsibility of handling the Google bomb, nor can they take down a website for simply posting pictures of the judge’s family, but the Marshals assure him that they will monitor the situation.¹⁸ The judge tells himself that he is thick-skinned and suffers in silence.

Judge Solomon reaches out to other judges around the country to find out if anyone is having similar experiences. He finds that many judges are haunted by former litigants or special interest groups that have posted similar materials online. One judge, Hillary Olson, sought the help of her family members. Judge Olson’s daughter and son-in-law purchased a couple of URL’s on GoDaddy.com for the judge (JudgeHillaryOlson.com, JudgeHillaryOlson.net). Next, Judge Olson’s son-in-law added content to the websites, such as federal court and professional information. The family, as a unit, combated the Google bomb of negative websites with their own positive websites. Judge

17. Marja Mills, *Googlespeak for Googlers and Googlewhackers*, Chi. Trib., Apr. 29, 2003, http://articles.chicagotribune.com/2003-04-29/features/0304290038_1_googlers-google-search-googlewhacking (“Google bombers seek to push a Web site high in a list of Google search results. The search engine is designed to find the most pertinent results to a query and list them in that order. The number of links to a given Web site is a factor, so [G]oogle bombers create lots of Web pages with links to a particular site so it will rise to the top of search results. The goal? Google juice, the online visibility and momentum that comes with a greater presence on Google.”).

18. See *Ensuring Safety and Security: An Interview with the Director of the U.S. Marshals Service The Third Branch, March 2011*, UNITED STATES COURTS, http://www.uscourts.gov/News/TheThirdBranch/11-03-01/Ensuring_Safety_and_Security_An_Interview_with_the_Director_of_the_U_S_Marshals_Service.aspx (last visited Dec. 3, 2012) (“Judges and staff should take all inappropriate communications seriously, and should report all threats and inappropriate communications to the Marshals Service in a timely manner. All negative, persistent, prolific communications, as well as those with an unusual direction of interest should be reported. Even if not actionable, this behavior is part of pattern [sic] that is valuable for an evaluation or assessment of a subject.”).

Olson explained to Judge Solomon that he could do the same because her websites are the first to appear on a Google search of her name. Judge Solomon listened to Judge Olson carefully, but he did not want to admit that the idea that he had to figure out how to combat a Google bomb confused him. Judge Solomon assured himself that he could handle this dark side of judging. Privately, Judge Solomon is worried about his family, but he suffers in silence.

After several months of ignoring the websites and social media pages, Judge Solomon, alone in chambers, decides to visit the websites that have secretly troubled him over the past year. He clicks on the link to JudgeSolomonSucks.com and his heart begins to beat rapidly. Judge Solomon furrows his brow and sits stunned as he views one solitary picture of his granddaughter's hamster "Marshmallow." He already knows that merely posting a picture is not a threat, but he can only feel fear and terror. How did they know that his granddaughter had a hamster? He knows that his children are on Facebook and they post family pictures all of the time, but Judge Solomon doesn't understand how the whole "friending"¹⁹ thing works. All the judge knows is that someone who is angry, someone who wants to send him a message, found the way to his fear. The judge, sitting alone in his chambers, suffers in silence.

I ask the reader of this scenario to imagine yourself as Judge Solomon, facing a host of online communications filled with personal information about your family. As a judge, you cannot stop being a parent, a wife, a husband, a grandmother or a grandfather, or a daughter or a son. How would you feel if you were the judge? Are these new and increasing types of threats just a part of the job in 2013?

II. TODAY'S JUDGES MUST PAY ATTENTION

In 2013, federal judges are forced to pay attention to the impact of social media and the dark side of judging. Federal judges are at the height of their professions. They are some of the most respected individuals in the legal community, but they are human. Like the mother in the story of King Solomon, judges are parents and will be forever concerned about their children's safety.

19. *Glossary of Terms*, FACEBOOK, <http://www.facebook.com/help/255620881144653/#!/help/219443701509174/> (last visited Nov. 8, 2012) ("Friends are people you connect and share with on Facebook.").

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A. Living in an Environment of Fear

Many federal judges are living in an environment of fear due to their jobs. A recent article by federal Judge Frederic Block provides insight into a conversation that the judge had with a Federal Bureau of Investigation (“F.B.I.”) agent after he was the target of a threat.²⁰ In Judge Block’s book, *Disrobed: An Inside Look at the Life and Work of a Federal Trial Judge*, Judge Block explains how the F.B.I. agent briefed him on the extent of threats against federal judges.²¹ Judge Block, taking an excerpt from his book, explains:

[the F.B.I. agent] went right to the point. He told me that the F.B.I. and the Marshal’s Service annually investigate over 300 threats against Article III federal judges. This meant that about one-third of the circuit and district court judges were yearly at risk of bodily harm and death. I told him that when I took the job I had no idea that the risk level would be so high.²²

Most judges cannot imagine the risk associated with an appointment to the federal bench until they are actually on the job.

Once appointed, judges become more and more accustomed to personal threats and threats against their families. For example, in February 2005, Judge Joan Lefkow found her mother and husband shot to death in her home.²³ Sadly, she mentioned that prior to their deaths “her family had grown accustomed to the notion that someone wanted her dead.”²⁴ According to the *Chicago Tribune*, the person who wanted her dead was

Matthew Hale, the so-called Pontifex Maximus of a racist so-called church he ran from a bedroom in his father’s house in East Peoria. He was engaged in a trademark dispute with a New Age group in Oregon. Lefkow initially ruled in Hale’s favor but when an appeals court overturned her, she ordered his church to give up its name.

Out on the Internet, Hale and his followers took to vilifying her as a Jew judge, though she’s Episcopalian, and as the grandmother of biracial children, children she loved but was related to only through marriage to Michael. The haters posted her address.²⁵

20. Judge Frederic Block, *Risk and Reward: Inside the Life of a Federal Judge*, HUFFINGTON POST BLOG (Nov. 28, 2012, 11:34 AM), http://www.huffingtonpost.com/judge-frederic-block/federal-judge-risk_b_2204817.html?utm_hp_ref=email_share.

21. *See id.*

22. *Id.*

23. Mary Schmich, *The Journey of Judge Joan Lefkow*, CHI. TRIB., Nov. 20, 2005, <http://www.chicagotribune.com/news/columnists/chi-0511190288nov20,0,5660156.column>.

24. *Id.*

25. *Id.*

Unlike the hypothetical Judge Solomon, Judge Lefkow suffered when threat became reality, ending in the death of her mother and husband. However, Matthew Hale, the assumed gunman, is not the litigant who murdered Judge Lefkow's mother and husband.²⁶ Bart Ross, another former litigant that appeared before Judge Lefkow, shot himself at a traffic stop where police found a suicide note connecting him to the murders.²⁷ The police linked Ross's DNA to a cigarette butt found in the kitchen sink at the Lefkow home.²⁸ Judge Lefkow noted, "I guess on one level I'm relieved that it didn't have anything to do with the white supremacy movement, because I feel my children are going to be safer."²⁹

What happened to Judge Lefkow is a parent's worst nightmare, a storyline fit for any horror film. Based on Judge Lefkow's comments after the shooting regarding the safety of her children and the recent heart wrenching sadness described by parents who lost their children in the Newtown, Connecticut elementary school shooting,³⁰ we can only imagine how the judge felt when being threatened repeatedly online, facing an unknown bogeyman that could be hiding anywhere in the darkness. Judge Lefkow knew that there were threats against her.³¹

Through media reports, we can envision what she may have felt as she dealt with threats from former litigants. She had to live each day knowing that somewhere out there a judicial predator was lurking. One day, she arrives home to find her mother and husband murdered. The police are called and sirens are flashing outside of her house. She was probably in a state of inconsolable shock. In the midst of this tragedy, her only solace is that her children are still alive and safe. She may be a federal judge, but first and foremost, her instinct as a mother, to protect her children, is paramount. It is the instinct that the mother in King Solomon's story demonstrated when her child was faced with pending death from the sword—that same instinct is what Judge Lefkow felt when her children were spared from the angry litigant's bullets thousands of years later.

26. Jeff Coen & David Heinzmann, *Police: DNA Matches, The Lefkow Murders: The Suicide Scene*, CHI. TRIB., Mar. 11, 2005, <http://www.chicagotribune.com/news/nationworld/chi-0503110284mar11,0,1435955.story>.

27. *Id.*

28. *Id.*

29. *Id.* (internal quotation marks omitted).

30. Tracy Connor et al., *'We're Broken': Newtown Begins Burying Its Littlest Victims*, NBC NEWS (Dec. 17, 2012), http://usnews.nbcnews.com/_news/2012/12/17/15966374-were-broken-newtown-begins-burying-its-littlest-victims?lite.

31. Schmich, *supra* note 23.

B. Threats Against Judges Are on the Rise

Threats against federal judges and prosecutors are at an all-time high according to a recent report by the U.S. Justice Department Inspector General.³² The numbers are growing “from 592 in fiscal year (FY) 2003 to 1,278 in FY 2008.”³³ The Inspector General’s report mentions that the number of threats have risen,³⁴ but there is no way for federal judges or the public to easily view if these threats were made electronically, over the phone, or through the mail, because much of this information is confidential. It is also worth noting that there are no reports updating the current number of threats. However, the increasing number of electronic threats made against judges via the internet is evidenced by a number of news reports detailing such occurrences, many cases have been reported recently:

- In a Slate.com article, the author made the assertion that it is “not wrong for the judiciary to be anxious about threats against judges. . . . [I]n December 2008, a man was sentenced to seven life terms for shooting and killing a Georgia superior court judge and other personnel in an Atlanta courthouse.”³⁵
- “In April 2008, an Ohio resident was indicted for threatening to bomb the United States Supreme Court building, and for threatening to attack Supreme Court Justice Clarence Thomas. Supreme Court Justice Ruth Bader Ginsburg, and retired Justice Sandra Day O’Connor, have also been the targets of death threats.”³⁶
- In 2009, blogger Hal Turner was arrested after he made threats against three Seventh Circuit Court of Appeals judges.³⁷ He posted: “[t]hese Judges deserve to be killed.”³⁸ The blogger

32. OFFICE OF THE INSPECTOR GEN., U.S. DEP’T OF JUSTICE, REVIEW OF THE PROTECTION OF THE JUDICIARY AND U.S. ATTORNEYS (Dec. 2009), *available at* <http://www.justice.gov/oig/reports/plus/e1002r.pdf>.

33. *Id.*

34. *Id.*

35. Dahlia Lithwick, *Deadly Justice: How Can Judges Decide When Threats Against Judges are Protected by the First Amendment?*, SLATE (Apr. 22, 2011, 6:36 PM), http://www.slate.com/articles/news_and_politics/jurisprudence/2011/04/deadly_justice.2.html.

36. *Id.*

37. *Hal Turner Guilty: Blogger Convicted After Threatening Judges Over Chicago Gun Ban*, HUFFINGTON POST, May 25, 2011, http://www.huffingtonpost.com/2010/08/13/hal-turner-guilty-blogger_n_681881.html [hereinafter *Hal Turner Guilty*].

38. *Id.*; Andrew Greiner, *Chicago Judges Testify Against Shock Jock*, NBC CHI. (Mar. 3, 2010, 1:45 PM), <http://www.nbcchicago.com/news/local/Chicago-Judges-Testify-Against-Hal-Turner-86255697.html>.

wrote, “their blood will replenish the tree of liberty. A small price to pay to assure freedom for millions.”³⁹ The F.B.I. reported that the blogger “also included photographs, phone numbers, work addresses and room numbers of the judges, along with a photo of the building in which they work and a map of its location.”⁴⁰ At trial, the judges each were asked how they felt about Turner’s postings.⁴¹ “[E]ach judge testified that they felt genuinely threatened. Easterbrook told the jury last August that upon reading Turner’s posts, his ‘principal concern was that somebody would try to come kill me or shoot me or blow me up.’”⁴²

- In July 2010, criminal charges were brought against a disgruntled litigant by the U.S. Marshals Service involving threats made against a federal judge on two websites.⁴³
- In June 2011, a man was arrested for sending graphic death threats to a Senior U.S. District Judge in New Mexico.⁴⁴
- In February 2012, another angry litigant posted threats on Facebook against a Florida Circuit Judge.⁴⁵ The individual posted, “[t]ime to go get my guns out of storage and even the score today people, it [sic] been fun see you in the next world!”⁴⁶
- In the same month, a New Jersey man, in a Facebook threat, said that he would kill a New Jersey Superior Court Judge and “use her blood to paint an upside-down cross on her forehead.”⁴⁷

39. Lithwick, *supra* note 35.

40. *Hal Turner Guilty*, *supra* note 37.

41. Lithwick, *supra* note 35.

42. *Id.*

43. See *Marshals v. ahowardmatz.com*, CITIZENS MEDIA LAW PROJECT (Nov. 18, 2010), <http://www.citmedialaw.org/threats/marshals-v-ahowardmatzcom#description>.

44. Alex Tomlin, *Marshal: Man Sent Death Threat to Judge*, KRQE (June 17, 2011, 2:16 PM), <http://www.krqe.com/dpp/news/crime/marshal%3A-man-sent-death-threat-to-judge>.

45. Barbara Hijek, *Report: Man Threatened Judge; Deputy’s Family on Facebook*, SUN SENTINEL BLOG (Feb. 25, 2012, 8:28 AM), http://weblogs.sun-sentinel.com/news/specials/weirdflorida/blog/2012/02/report_man_threatened_to_judge.html.

46. *Id.*

47. Sarah Wojcik, *Threats to Judges Taken Seriously in Age of Facebook and Twitter, Authorities Say*, EXPRESS-TIMES (Easton, Pa.), Feb 24, 2012, http://www.lehighvalleylive.com/warren-county/express-times/index.ssf/2012/02/threats_to_judges_taken_seriou.html (internal quotation marks omitted).

- Also in February 2012, a judge in a small county in Pennsylvania recused himself because a litigant in a trial he was presiding over posted comments online stating that the judge “needs to get clipped one night outside the courthouse.”⁴⁸
- In April 2012, a disgruntled litigant posted a YouTube video threatening federal Judge Denise Jefferson Casper.⁴⁹
- And, in yet another incident in April 2012, an individual writing on Twitter said, “Zimmerman released from jail someone kill the judge!!!!”⁵⁰ According to the article, “[twenty-five] other people retweeted this call for [the] murder” of the judge in the George Zimmerman case.⁵¹
- In May 2012, an angry litigant in Houston, Texas, threatened a family court judge, writing on his Facebook page, “[g]ot my ninjas . . . so heads are going to roll started with that punk ass judge [sic].”⁵²
- In June 2012, threats were posted about family members of a Florida State Attorney and a Florida circuit court Judge on a variety of websites.⁵³ The threats included posts such as

[w]e are at your houses, we are at your kids houses we are your grandkids houses and we are sitting outside their schools,’ it reads in part. ‘Don’t believe me? Here you are pigs, here you are: . . . we are going to CUT THEIR . . . HEADS OFF and leave them in A COOLER OUTSIDE YOUR OFFICE [sic].’⁵⁴
- In July 2012, a seventeen-year-old was accused of asking his Twitter followers to kill a Prince George’s County, Maryland

48. Tom Shortell, *Northampton County Judge Michael Koury Recuses Himself from Stephen Sullivan Case*, EXPRESS-TIMES (Easton, Pa.), Feb 14, 2012, http://www.lehighvalleylive.com/northampton-county/index.ssf/2012/02/northampton_county_judge_micha_1.html.

49. Susan Petroni, *Framingham Woman Accused of Threatening Federal Judge*, FRAMINGHAM PATCH, Apr. 10, 2012, <http://framingham.patch.com/articles/framingham-woman-accused-of-threatening-federal-judge>.

50. Daniel Halper, *Someone Kill the Judge*, WKLY. STANDARD BLOG (Apr. 23, 2012, 11:38 AM), http://www.weeklystandard.com/blogs/someone-kill-judge_640598.html.

51. *Id.*

52. Cameron Langford, *Assault Charges Follows Facebook Threats to Judge*, COURTHOUSE NEWS SERVICE (May 22, 2012, 10:32 AM), <http://www.courthousenews.com/2012/05/22/46724.htm>.

53. Henry Pierson Curtis, *White Supremacists Threaten State Attorney, Judge, Agent*, ORLANDO SENTINEL, June 8, 2012, http://articles.orlandosentinel.com/2012-06-08/news/os-american-front-death-threats-20120608_1_death-threats-american-front-domestic-terrorism-cases.

54. *Id.*

judge for \$1,000.00.⁵⁵

- In August 2012, “[a] federal appeals court . . . upheld the conviction of a Tennessee man who appeared in a YouTube video singing a menacing song about a Knox County judge who was handling his child-custody case.”⁵⁶

C. *The Late Judge John M. Roll*

It should be mentioned that while electronic threats and mail can be unnerving, phone calls to the home of a judge can be just as distressing. The late U.S. District Judge John M. Roll, who was shot and killed when he was an innocent bystander in the Tucson shooting of Congresswoman Gabrielle Giffords, was no stranger to threats.⁵⁷ *Time* magazine noted that

[i]n 2009, Roll had come under threats severe enough that he and his family were placed under [twenty-four]-hour protection by the U.S. Marshals Service. After he ruled that a high-profile suit brought by a group of Mexican immigrants could proceed, his phone lines were deluged with angry callers—including at least four that threatened violence.⁵⁸

In fact, “the U.S. Marshal for Arizona told the *Arizona Republic* that the threats had been egged on by radio talk-show hosts critical of Roll's decision. Critics began sharing his personal information on Web sites”⁵⁹

Two years later, Judge Roll was among the innocent victims killed by Jared Lee Loughner who, like the litigants that have threatened judges, left a social media footprint of eerie, jumbled, antigovernment ramblings on YouTube and MySpace.⁶⁰ Judge Roll's experience as a

55. Alex Mikoulianitch, *Teen Accused of Twitter Death Threats Against Judge Headed to Juvenile Court*, BUS. INSIDER (July 17, 2012), <http://www.businessinsider.com/maryland-teen-tied-to-twitter-threats-headed-to-juvenile-court-2012-7>.

56. ASSOCIATED PRESS, *6th Circuit Upholds Conviction for YouTube Threat Against Judge*, FIRST AMENDMENT CENTER (Aug. 28, 2012), <http://www.firstamendmentcenter.org/6th-circuit-upholds-conviction-for-youtube-threat-against-judge>.

57. See Michael A. Lindenburger, *How the Tucson Massacre Rattled U.S. Judges*, TIME, Jan. 9, 2011, <http://www.time.com/time/nation/article/0,8599,2041435,00.html>.

58. *Id.*

59. *Id.*

60. Michael Serazio, *Jared Lee Loughner and the Rise of Anti-Social Media*, ATLANTIC, Jan. 11, 2011, <http://www.theatlantic.com/politics/archive/2011/01/jared-lee-loughner-and-the-rise-of-anti-social-media/69315/#> (The author describes the social media postings of Loughner prior to the shooting that foreshadowed what was to come. The author states “[i]n the aftermath of this tragedy, we need to understand how hatred can fester in the

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federal judge and a citizen demonstrates that today's threat environment has grown tentacles that include threats via phone calls, letters, and social media postings. Although Judge Roll was not Loughner's intended target, he was killed by a threat actor that developed a social media footprint. An article describes one of Loughner's last postings on his MySpace: "I'll see you on National T.v.! This is foreshadow . . . [sic]."⁶¹

III. THE NATURE OF SOCIAL MEDIA

Due to the nature of social media, threats are interactive, collaborative, and viewed by many. According to U.S. District Judge and current Chair of the Judicial Conference Committee on Judicial Security, Nancy Atlas, "[t]he [i]nternet and social media are having a profound impact" on judges' personal security.⁶² Judge Atlas further notes that

[p]rior to the advent of the internet and social media, threats to judges were in writing and sent through the mail, or were stated orally in court or telephone calls. Today, judges may receive threats by e-mail. More worrisome, however, are threats made in on-line blog posts or other electronic conversations through the Internet. Many of these threats are not communicated directly to the judge.⁶³

Unlike a letter, opened only by the person receiving the threat, social media threats take on a collective threatening presence because others can join in the conversation and add comments. A recent article noted that in cases involving three litigants who were each charged with threatening federal judges on blogs and websites, "the specter of Lefkow's dead family members was invoked in each one."⁶⁴ Therefore, each of these defendants shared similar electronic information about the Lefkow case.

Similarly minded individuals can find one another easily with a simple Google search. In 2013, the posting of a judge's personal information can be shared and linked, bringing disgruntled litigants together as demonstrated above.* In a story shared with me in confidence, a federal judge had a litigant that created several websites, posting pictures of the judge and his family.* The websites had strange

anonymized 'information cocoons' of today's Internet.").

61. *Id.*

62. *Committee Works to Increase Security Awareness, Interview with Judge Nancy Atlas*, UNITED STATES COURTS, http://www.uscourts.gov/News/TheThirdBranch/12-02-01/Committee_Works_to_Increase_Security_Awareness.aspx (last visited Dec. 3, 2012).

63. *Id.*

64. Lithwick, *supra* note 35.

rantings about the judge and cryptic statements regarding how the judge needed to be punished.* Another angry litigant, whose case the judge dismissed, created a website as well.* Each litigant added links to the other's websites and they even began to attend their court hearings before the judge together.* The internet brought these two together and allowed them to connect with other individuals that supported their cause against the judge.*

"In an interview [in May 2010] with Ryan J. Reilly of mainjustice.com, the director of the U.S. Marshals Service, John Clark, said threats against judges are on the rise."⁶⁵ Clark further stated:

in today's world there are more individuals who are more prone to threatening judges. I think a lot of it has to do with the availability of information with the use of technology and the Internet. Individuals can find out more about particular cases and judges [sic] decisions. They can use Internet sources to find out more about the judge.⁶⁶

It would appear as though social media and the internet are providing a type of online mob threat. In an article, Professor Aman McLeod of Rutgers University said:

judges are usually well aware of the sacrifices they make in their personal lives and potential risks when they take the bench "Judges do their business in the open It is something where you do lose a modicum of your privacy, your anonymity. And also you're putting yourself at risk."⁶⁷

Professor McLeod makes a good point by noting that judges must accept the risk and loss of privacy, but is it reasonable to assume that a judge appointed in 1996 could have understood or conceived of the threats and risks experienced by judges in 2013? Professor McLeod further states, after review of the recent increase in threats against federal judges, that "this stuff is a serious problem."⁶⁸ Moreover, as previously mentioned, Judge Block, who was appointed to the federal bench in 1994, has stated: "when I took the job I had no idea that the risk level would be so high."⁶⁹ Judges may understand that there is a level of risk associated with judging, but are the risks faced by judges today reasonable or is it something more?

65. Lindenburger, *supra* note 57.

66. Ryan J. Reilly, *U.S. Marshals Service Director John Clark Q & A*, MAINJUSTICE (May 2, 2010, 8:00 AM), <http://www.mainjustice.com/2010/05/12/u-s-marshals-service-director-john-clark-q-a/>.

67. Wojcik, *supra* note 47.

68. *Id.*

69. Block, *supra* note 20.

A. Collaborative Threats

One chilling case demonstrates how the advent of social media and its collaborative nature brings together readers of blogs in ways that judges could never imagine. In this example, a local Orange County newspaper publicized a post by a reader of a blog that discussed the controversial case *Taitz v. Obama*.⁷⁰ In this case, a suit was filed with the District Court of Washington, D.C., disputing the citizenship of President Obama.⁷¹ This was one of many cases filed around the country seeking “to prove that President Obama is not a natural born citizen as required by Constitution.”⁷² Dr. Orly Taitz, a dentist and lawyer from California, is considered the leader of the Birther Movement.⁷³ The Birther Movement is a “group of Americans” that believes that President Obama “was not born in the United States,” therefore he is not the “legitimate President.”⁷⁴ Taitz maintains a website⁷⁵ and a blog that supports the ideas of the movement.⁷⁶ After one of her blog entries, an individual posted a comment regarding the Washington, D.C. federal judge handling the case:

[e]ven Patriots, Constitutionalists, and Marines are open to persuasion concerning their own enlightened self-interest. A few closeup pictures of the honorable judge’s grandchildren at the playground, a few pictures of decapitated and disemboweled victims with “MS-13” carved into their flesh, all slathered with HIV-tainted blood and stuffed into the judge’s mailbox . . . yeah, that should do it.⁷⁷

After reading this eerie blog comment, the prophetic statement of the witch in *Macbeth* comes to mind: “[b]y the pricking of my thumbs, [s]omething wicked this way comes.”⁷⁸ In *Macbeth*, this statement is “alluding to the unnatural certainty with which she . . . could sense the arrival of impending evil before it got there.”⁷⁹ Similar to the feeling

70. Spencer Kornhaber, *Orly Taitz Approves Threats Against Judge’s Grandchildren; Accuses the Weekly of Hate Crimes, Dunn of Lying*, OC WKLY. (Mar. 3, 2010, 3:10 PM) http://blogs.ocweekly.com/navelgazing/2010/03/orly_taitz_approves_threats_aga.php.

71. See generally *Taitz v. Obama*, 707 F. Supp. 2d 1 (D.D.C. 2010).

72. *Id.* at 3.

73. John Celock, *Orly Taitz, Birther, Sues to Remove Obama from Kansas Ballot*, HUFFINGTON POST, Sept. 21, 2012, http://www.huffingtonpost.com/2012/09/21/orly-taitz-birther-sues-kansas_n_1902366.html.

74. Jaclyn Howell, *Not Just Crazy: An Explanation for the Resonance of the Birther Narrative*, 79 COMM. MONOGRAPHS, no. 4, 428, 429 (Dec. 2012).

75. *Id.*

76. Kornhaber, *supra* note 70.

77. *Id.*

78. WILLIAM SHAKESPEARE, *MACBETH*, act 4, sc. 1.

79. Philip M. Bromberg, Ph.D., *Something Wicked This Way Comes, Trauma*,

alluded to in Macbeth, the hope is that in future conversations about this topic, readers of this Comment will determine who or what is the “something” facing judges today.

B. Law Clerks as Victims

Court employees have faced similar instances of fear that have brought tremendous insight to internet safety issues facing today’s judges and their law clerks. These fears have stemmed from the posting of unauthorized information to social media websites by unsuspecting court employees.* For example, in 2010, a federal judge was hearing a very controversial case that had a tremendous amount of media attention.* As with most controversial court cases, special interest groups and interested individuals were scouring the internet for information.* Someone had created a Wikipedia page about the judge handling the case.* Neither the judge nor the court endorsed, maintained, or developed the page.* Included on the page were the names of the judge’s present and former law clerks.* Since it is easy to search for information about anyone on the internet, these interest groups found that one of the judge’s present law clerks had distant connections to someone who had worked for the defendant.* The groups posted this information on numerous blogs and argued that the law clerk would inevitably make the judge biased in the case because of her distant connections to the defendant.*

Many of these extremist groups went a step further and posted the law clerk’s Facebook profile picture and personal information on numerous public blogs.* Furthermore, they posted the home addresses and social security numbers of the law clerk’s family members.* In this case, the bloggers posted no threats, just personal information.* It was overwhelming and disturbing for the law clerk and her family.* Upon further investigation, it was found that a court employee, in his personal time, carelessly added the law clerks’ names to the judge’s Wikipedia page.* The court employee disclosed that he simply wanted to make the judge’s Wikipedia page as comprehensive as possible because he had enormous respect for the judge presiding over the case.* The careless mistake of listing court information, the judge’s law clerk’s name, was the beginning of a nightmare for the young law clerk.*

This mistake provided a lesson in judicial security and internet safety that is being taught in training sessions across the country. Court employees are made aware of the physical security and electronic

Dissociation, and Conflict: The Space Where Psychoanalysis, Cognitive Science, and Neuroscience Overlap, 20 PSYCHOANALYTIC PSYCOL., no. 3, 558, 560 (2003).

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security implications involved in high profile trials. It is not enough to protect the physical structure of the court, everyone involved must be aware of their electronic presence due to the nature of today's threats against judges and court employees. Court employees are discouraged from adding information to Wikipedia, Facebook, or any other website if it is not authorized by the Clerk of the Court or the judge. As a best practice, court employees learn that if the content is not listed on the official court website, then it is not the court employee's responsibility to add it to public or private social media pages and websites.

A question for the reader to ponder is what happens if law clerks begin to assume many of the same risks that judges and their families struggle with because of the very nature of their work? Do law clerks know that they may be assuming many of the risks that judges must assume in 2013 due to the nature of social media and the increased availability of personal information on the internet?

CONCLUSION

As demonstrated by this Comment, the impact of social media for judges is evolving to include entire social media threat packages determined to alter their confidence in their personal well-being, the safety of their families, and the way they hear cases. Perhaps, someone will read this Comment and interpret the writing on the wall