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SEQUESTERING JUSTICE: HOW THE BUDGET CRISIS IS UNDERMINING OUR COURTS

HEARING

BEFORE THE

SUBCOMMITTEE ON BANKRUPTCY AND THE COURTS

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

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SEQUESTERING JUSTICE: HOW THE BUDGET CRISIS IS UNDERMINING OUR COURTS

TUESDAY, JULY 23, 2013

U.S. SENATE,
SUBCOMMITTEE ON BANKRUPTCY AND THE COURTS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 3:09 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Christopher Coons, Chairman of the Subcommittee, presiding.

Present: Senators Coons, Durbin, Whitehouse, Klobuchar, and Sessions.

OPENING STATEMENT OF HON. CHRISTOPHER COONS, A U.S. SENATOR FROM THE STATE OF DELAWARE

Chairman COONS. I call this hearing to order. Welcome to this hearing of the Judiciary Committee's Subcommittee on Bankruptcy and the Courts. I am pleased today to be joined by my Ranking Member, Senator Jeff Sessions. Senator Sessions has either been the Chairman or Ranking Member of this Subcommittee since 2001 with the brief exception of two years in the 111th Congress, during which time he served as Ranking Member of the Full Committee. His experience in overseeing the judiciary to ensure its efficient operation is unequaled, and I look forward to working with him as we continue that work together in this Congress.

Broadly speaking, America's judiciary stands as a shining example of the genius of our founders. Vested with "the judicial power of the United States," our Federal courts act as a check upon executive or legislative overreach and as a neutral arbiter between parties in disputes. The limitations on Government set by our Constitution as well as the liberty interests reserved to the States and the people ultimately rely on our judiciary to enforce them.

When an individual is wronged or a business dispute arises, they can turn to our courts, get a fair hearing and a just resolution, and move forward with their lives. When the Federal Government seeks to deprive any American of life or liberty, it is the courts, and often the Federal public defenders they employ, that make sure the Government is forced to meet its burden of establishing guilt beyond a reasonable doubt.

When the sequester was conceived, the across-the-board Federal budget cut that it causes was thought to be so dangerous, so reckless, that it would force the Congress to responsibly confront our Nation's spiraling deficits. Congress has not, however, acted, and the result has been an erosion of the ability of our Government to

do the people's business. I fear that continued, sustained, and indiscriminate cuts to discretionary Federal spending could push us to a point of crisis.

The judiciary has looked at a variety of measures to address this new budgetary reality, and very few of them come without significant pain to the individuals, the litigants, the businesses, and others who rely on them. One proposal, to simply not schedule civil jury trials in the month of September, would effectively impose a 30-day uncertainty tax on every civil litigant before the Federal courts.

A judge in Nebraska has recently threatened to dismiss all so-called low-priority immigration status crimes because of a lack of capacity.

In New York, deep furlough cuts to the public defender's office caused a delay of the criminal trial for Osama bin Laden's son-in-law and former al Qaeda spokesman, Suleiman Abu Ghaith.

In Delaware, my home State, the sequester has meant lengthy employee furloughs at the clerk's office of our bankruptcy court, resulting in reduced customer service hours and the postponement of infrastructure, of IT upgrades that would aid the efficient resolution of those important cases. The cuts have not been deeper only because that office is already working with 40 percent fewer staff, despite an increasing caseload, including many of the time-intensive mega cases important to our country's recovery.

The Delaware Federal Public Defender's Office has had to furlough its defenders 15 days this year so far, essentially canceling the criminal docket every Friday for the rest of this year. Every day the public defenders are furloughed is another day defendants spend in pretrial incarceration at a cost to taxpayers of more than $100 a day. The defender's office has also had to sharply curtail expenditures for needed investigators and experts, which may be leading to a decrease in the quality of representation, leading to longer prison terms and more avoidable taxpayer expense.

And if we do not act, frankly, the picture looking forward is still bleaker. Next year, the Federal Public Defender's offices nationwide are scheduled to take a 23-percent budget cut. In Delaware, this means a third of the office would be laid off, but even that will not be enough, so the remaining employees would face between 26 and 60 furlough days, and funding for experts and investigation services would not be restored.

Fifty years ago this year, the U.S. Supreme Court gave substance to the Sixth Amendment's right to counsel in criminal cases when in *Gideon* v. *Wainwright* it ruled the Government could not threaten indigent individuals with prison terms unless it also provided them with an attorney. The Federal defenders' services are the embodiment of that vital legacy.

The sequester is slowing the pace, increasing the cost, and potentially eroding the quality of the delivery of justice in our country. Congress' disappointing inability so far to responsibly replace the sequester and save the courts from these Draconian cuts is eroding our constitutional rights.

Individuals depend on the courts to be there when they need them, to seek relief from discrimination, to resolve complicated commercial disputes, and enable parties to stop fighting and get to

work growing our economy. The irony is that cuts to the judicial branch that undermine its ability to do its job do not actually save taxpayers any money. The cases will still be adjudicated, just at a slower pace and higher cost. The Constitution, as we all know, still guarantees the right to effective assistance of counsel, so courts will inevitably have to appoint a greater number of panel attorneys who, studies suggest, do the job for 10 to 30 cents more on the dollar.

Yes, our Nation does find itself in fiscal crisis, and every branch of Government must do its part. No one disputes that. The judiciary need not be exempted and is already working, as we will hear, to reduce expenses by selling or renting excess office space and canceling unnecessary training or conferences.

Any expenses beyond core mission take a second priority and need to be looked at closely all across our Government. That said, we are not going to be able to solve or even noticeably mitigate the national fiscal crisis on the backs of the courts since they spend just 19 cents of every Federal $100 spent. Nineteen cents for one whole branch of our Government strikes me as a pretty good deal, particularly for a branch that does its job so well. In my view, the indiscriminate cuts of the sequester are truly penny wise and pound foolish.

Dr. King once famously said, "Justice too long delayed is justice denied." I worry that by delaying the delivery of justice, the sequester may be denying it to too many Americans.

I look forward to the testimony of our panel today, and I hope you will shed greater light on what the judiciary has done, what it would be forced to do if Congress continues to neglect its duty to responsibly replace the sequester.

With that, I would like to invite an opening comment from my Ranking Member, Senator Sessions. Senator Sessions.

OPENING STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator SESSIONS. Thank you. I appreciate the opportunity to talk about the financial problems that the court is facing as a result of the cuts under the Budget Control Act. If you will recall, we are on an unsustainable debt course, as everyone agrees. In August 2011, a controversy arose over raising the debt ceiling. We had already hit the debt ceiling. And so the agreement was finally reached and passed into law. Both Houses supported it. The President supported it. He suggested, the President did, or his aides, the sequester mechanism. And that passed.

So after it passed, instead of spending going up from the current $37 trillion over 10 years, which would be current law, it was projected to go up to $47 trillion over 10 years. And as the reductions went into place, we would increase spending from $37 to $45 trillion. And, of course, the problem we are facing is that cuts were directed at too many areas, perhaps more heavily than should be, and whole areas were protected from any cuts at all. So cuts were not balanced. We need a balanced approach, colleagues, is what we need—a balanced approach in reduction of spending and tightening of our belt. So the courts are one of the areas that took a substantial reduction in spending.

Well, I do not quite understand how we are having 25-, 30-percent cuts. It is not that much being cut. So somebody somewhere in the agencies and departments or maybe Congress is directing that certain agencies take more reductions than the Administrative Office of the Courts has taken as a whole, number one.

Number two, I think perhaps things are not as bad as feared because it looks to me like the House marked up to the President's request on the AOC, which should avoid some of the problems, and maybe that will help. And I understand you are asking for about $70 million more to finish this year, Judge Gibbons, which is not an unreasonable request—I will say it that way—although if we start making exceptions, we have got a lot of other agencies and departments that would like to have a supplemental too.

So I would just say to you, with regard to the Budget Control Act and the sequester, Congress voted—and the American people seemed quite comfortable with the idea—that we can reduce spending for a little while around here instead of having steady growth. And they are not panicked, and I know we have stories that there is not enough copy paper in a clerk's office somewhere. Well, I would say the clerk—you need a new clerk. It is like those school people that require the students to bring in toilet paper because they cannot find enough money to do that or fix their roof. Now, that is mismanagement to me.

So you have been asked, though, in your defense, to take reductions more rapidly than smart people would ask you to take it. It is sort of an aberrational thing as part of this cut. And I think it has fallen pretty hard, and I am hearing some stories that I am willing to look at.

So I guess just to come back to the fundamentals, from what I am hearing, the courts in many areas are being smart. They are working hard. They are finding ways to save money without impacting the quality of justice in America. And for that you should be saluted. If you cannot maintain spending—if you cannot maintain justice at that level, we hope you will keep us informed, and so maybe Congress, we can do something about it. But I think the title of this—what is it?—"Sequestering Justice," is a bit over the top from my perspective. I think most courts are delivering justice today just as well as they were before these cuts took place. I do not have any doubt of it.

When I became United States Attorney in 1981, the first two or three years under President Reagan we could not hire anybody. There was a total hiring freeze, and other expenditures were cut. And I do not think the Government sank into the ocean. It was still functioning.

Finally, I truly believe with the Chairman that the strength of the American experience is our rule of law, the confidence that Americans have that justice is done, particularly in Federal courts, and that people expect that, and we want to be sure that that is maintained. It requires a certain amount of financial support, and I think that you have every right to come to Congress and express concerns if you think the level of support is so low that you are not able to maintain the minimum—you know, the standards of justice that we believe are necessary.

So, Mr. Chairman, thank you. I think it is good to have this discussion. I am hearing from some of my friends in Alabama that they think cuts of public defenders and all are more than they should be, and so I am anxious to hear some of the details.

Chairman COONS. Thank you, Senator Sessions.

Before we delve into witness testimony, please rise, if you would, while I administer the oath, which is the custom of this Committee. Please raise your right hand and repeat after me: Do you solemnly swear that the testimony you are about to give to this Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Judge GIBBONS. I do.

Mr. ALLEN. I do.

Mr. NACHMANOFF. I do.

Chairman COONS. Thank you, and let the record show the witnesses have answered in the affirmative.

Our first witness today is Judge Julia Gibbons. Judge Gibbons is a judge for the Sixth Circuit Court of Appeals. She was confirmed to that seat unanimously in 2002 after serving 19 years as a district court judge for the Western District of Tennessee. She is also Chair of the Judicial Conference of the United States Committee on the Budget and so is well and deeply versed in the funding issues faced by the courts and can answer, I believe, many of the implicit questions raised in the opening statements from both myself and Senator Sessions.

Judge Gibbons, please proceed.

STATEMENT OF THE HONORABLE JULIA S. GIBBONS, CHAIR, COMMITTEE ON THE BUDGET OF THE JUDICIAL CONFERENCE OF THE UNITED STATES, MEMPHIS, TENNESSEE

Judge GIBBONS. Thank you. Chairman Coons, Senator Sessions, Members of the Subcommittee, I appear before you as Chair of the Judicial Conference Committee on the Budget. The judiciary very much appreciates the invitation to discuss the financial crisis facing the courts.

Senator Coons, I am pleased that judges from your home circuit are here today: Chief Judge Ted McKee, Judge Tom Ambro from your home State. The Third Circuit has felt as much pain as the rest of the judiciary, but it's within-the-circuit coordination, and efforts to address the current crisis have been stellar.

I also would like to recognize Judge John Bates right here behind me, the new Director of the Administrative Office of the U.S. Courts, who comes to the AO after serving on the D.C. Federal District Court.

The $350 million, 5-percent across-the-board sequestration cuts have been devastating to Federal court operations. To address sequestration, the Executive Committee of the Judicial Conference implemented a number of emergency measures for FY 2013. Many of these have been painful and difficult to implement and reflect one-time reductions that cannot be repeated if future funding levels remain flat or decline. We estimate clerks of court and probation and pretrial services offices will downsize by as many as 1,000 staff during 2013 and implement 8,600 furlough days. Courts have already reduced staff by nearly 2,100 employees between July 2011

and the present, a 10-percent staffing loss over this two-year period and additional losses by year end are expected. The staffing losses, we believe, are resulting in the slower processing of civil and bankruptcy cases which will impact individuals, small businesses, and corporations seeking to resolve disputes in the Federal courts.

While it is useful to measure the impact of cuts in terms of employee or program loss, ultimately the primary consequence of sequestration is not internal to the courts. Instead, it is the harm to commerce, orderly and prompt resolution of disputes, public safety, and constitutional rights ranging from effective representation by counsel for criminal defendants to jury trial. Indeed, if funding levels remain flat or decline, the result compromises the constitutional mission of the courts.

I want to discuss in a little more detail two areas—public safety and effective representation by counsel.

The judiciary's nearly 6,000 probation and pretrial services officers play an important role in ensuring public safety. They supervise convicted individuals in the community after they have been released from prison and supervise defendants awaiting trial. Staffing in these offices is down 7 percent since July 2011, meaning less deterrence, detection, and response to possible criminal activity by Federal defendants and offenders in the community.

Particularly troubling are cuts that have been made to drug and mental health testing and treatment services and to electronic and GPS monitoring. These cuts impair our officers' ability to keep the public safe.

Turning to the Defender Services Program, sequestration threatens the judiciary's ability to fulfill a fundamental right guaranteed by the Sixth Amendment: the right to court-appointed counsel for criminal defendants who lack the financial resources to hire an attorney. There are no easy answers when it comes to applying cuts to this program. Cuts to the Federal defenders threaten delays in the progress of cases, which may violate constitutional and statutory speedy trial mandates, and may cause increased panel representations, which drive up costs.

Deferring panel attorney payments pushes obligations that must be paid to appropriations for the following year, a situation not attractive to us or our appropriators. It also may make obtaining attorneys to take appointments difficult.

We have been asked why we cannot transfer funds from other judiciary accounts to help the Federal defenders. While we have the authority to transfer funds, we do not have the funding to do so. We have no available surplus funding.

There has been mention of our supplemental appropriations request. We do ask for $73 million to address critical needs in the courts and the Defender Program. We hope Congress will give strong consideration to this request.

As far as 2014 funding is concerned, Chairman Coons, we received very positive news this morning about the Senate Subcommittee's markup of the bill in which we are funded. You are a Member of that Subcommittee, we know, and we appreciate the Subcommittee's making judiciary funding a priority.

Still, given the sharp disagreements between the White House and the Senate and the House on spending matters, we are very

concerned about future funding. If the funding disputes cannot be resolved and Congress instead chooses to pursue a continuing resolution, we would appreciate this Subcommittee's support of a funding anomaly or exception that would fund us above a hard freeze in 2014. Flat funding at sequestration levels would exacerbate the current situation and irreparably damage the system that is a hallmark of our liberty around the world.

We continue to be good stewards of the taxpayers' dollars and seek ways to reduce costs, as we have done aggressively for the last decade. But no amount of cost containment will offset the major reductions from sequestration. We look to Congress to recognize the Judiciary's critical function in our Government, and its value to the democracy by providing the funding we need to do our work.

Thank you, and I am happy to answer questions.

[The prepared statement of Judge Gibbons appears as a submission for the record.]

Chairman COONS. Thank you, Judge Gibbons.

Before I turn to our next witness, I would like to both join you in welcoming the members of the judiciary, in particular from the Third Circuit, who have joined us and ask consent to enter into a record a letter from the Budget Committee of the Third Circuit Court of Appeals and from the National Association of Assistant United States Attorneys on the damage to the courts and the administration of justice caused by the sequester.

[The letters appear as submissions for the record.]

Chairman COONS. Our next witness is W. West Allen. Mr. Allen served as chair of the Government Relations Committee for the Federal Bar Association. Mr. Allen is a partner in the Las Vegas office of Lewis and Roca and is an IP lawyer who has practiced extensively before U.S. Federal courts and the U.S. PTO. Mr. Allen is a graduate of the John Marshall Law School in Chicago, where he served as executive managing editor for the Journal of Computer and Informational Law.

Mr. Allen, welcome. Please proceed.

STATEMENT OF W. WEST ALLEN, CHAIR, GOVERNMENT RELATIONS COMMITTEE, FEDERAL BAR ASSOCIATION, LAS VEGAS, NEVADA

Mr. ALLEN. Thank you. Mr. Chairman, Ranking Member Sessions, it is an opportunity and privilege to be with you today and give you some testimony.

My assignment here today is really on behalf of not just the 16,000 lawyers who are directly interested in the Federal court system, but really the people and the businesses we represent. My comments, therefore, will be directed as to the people and their right for a strong and independent American judiciary that upholds the rule of law. I know we all share that interest.

It truly is we, the people, both individuals and our businesses, who seek and expect justice in America's Federal courts. It is the ability of our courts to provide fair, prompt, and respected justice. That is one of the hallmarks, the great hallmarks of our Nation. Our Founding Fathers wisely recognized the compelling need for a strong Federal judiciary, established as a separate, co-equal branch of Government, sufficiently independent to assure the rule of law.

But independence and promptness of decision making are imperiled when the Federal judiciary lacks the resources to properly discharge its constitutional responsibilities. Indeed, the long tradition of excellence in the American judiciary is in jeopardy. As an attorney who practices there regularly, I wanted to focus on three points.

The first is that there are true economic and cost implications related to sequestration of the Federal courts that affect our American commerce, American businesses, and individuals.

Second, there are the freedom-related implications of our rights under the Constitution to a safe society, to general welfare, to the Constitution's Sixth Amendment right for the accused to be represented.

And, finally, the crisis really has given rise to a question about our national identity and its respect for the American judiciary, that the people ordained and established as a coordinate branch of Government. They expect and hope that it will be properly funded at all times.

The first point is economic. Quite simply, the sequestration's greatest impact has been, for practicing attorneys and their clients, delays. Delays in judicial proceedings, reduced public access, and fewer operational hours due to budget cuts are having their effect. Reduced hours of staffing, delays in judicial proceedings are commonplace. Indeed, waiting for judicial rulings on relatively simple motions for six months, eight months, even up to a year is not uncommon. It has to be explained to clients all the time.

The ever-expanding jurisdiction of courts only exacerbates the problem. We note that in 2012 there were 1,427 cases per judge in, for example, the Eastern District of California while the recommended number of these cases per judge should be closer to 400.

Immigration prosecutions on our border have increased 52.8 percent over levels just reported five years ago. The Federal judges in those districts are simply absorbing the extra caseload.

There are significant delays, as, Chairman Coons, you understand, in bankruptcy court. Your court is the busiest in the country for Chapter 11 filings. Since 2012, Chapter 11 filings have increased 38 percent, yet the budget has decreased their resources—the budget has cut them 28 percent over the past three years. These changes in bankruptcy court are affecting the livelihoods of debtor companies, employees, as well as property rights of creditors and stakeholders in some of our Nation's most important enterprises that depend on the bankruptcy court's ability to administer justice in a timely fashion.

Mr. Chairman, the increasing delays and uncertainties of our Federal courts are having an economically deleterious effect upon U.S. businesses and individuals. It is simply more expensive when there are delays.

The second point is that the Federal courts' sequestration effects are having true implications for the people's right under the Constitution, both for general welfare, having a safe, secure society that is available, that we do not have to worry about the criminally accused doing things, whether they are in pretrial stages or posttrial stages, that would jeopardize American public safety. And likewise related to that is the constitutional issue of the Sixth

Amendment and our tradition of the Sixth Amendment and looking after the criminally accused and their right to counsel.

As to the issues with safety, there is a concern that probation and pretrial service officers are unable to properly monitor the activities and whereabouts of offenders and convicted felons. We are concerned that increasing numbers of probation officers are encountering a diminished ability to closely supervise offenders and ensure compliance with court orders. Likewise, pretrial services offices are becoming understaffed, undertrained, and underfunded as a result of sequestration.

The Sixth Amendment issue is well understood. I will leave that to Mr. Nachmanoff and others, but the tradition that we have in the United States of America is that, regardless of who you are, your ability to pay, if you are accused of a crime, you have a right to an attorney regardless of your means. And that right is in some instances being jeopardized, at least with delays and the requirements of the Speedy Trial Act.

And, finally, my closing point is that the effects of Federal courts are having a profound implication on our national identity and its long tradition of a strong and independent American judiciary. We note that the excellence of the American judiciary is truly at risk. Justice Kennedy eloquently explained, "If judicial excellence is cast upon a sea of congressional indifference, the rule of law is imperiled."

We have seen that firsthand. We genuinely as litigators, as clients, have seen that when there is inadequate funding, the American judiciary does suffer. The complete independence of courts of justice is peculiarly essential to our Constitution, and it is the express constitutional responsibility of Congress to safeguard this independence by adequately funding our Federal courts. We certainly would exhort the Judiciary Committee and Congress to assure the delivery of sufficient funds that will sustain the people's judiciary, the American judiciary, and its long tradition of excellence.

Thank you for your consideration, and I would be happy to answer any questions.

[The prepared statement of Mr. Allen appears as a submission for the record.]

Chairman COONS. Thank you very much, Mr. Allen, for your testimony.

Next I will turn to Mr. Nachmanoff, if I might. Our final witness, Michael Nachmanoff, has been a Federal Public Defender for the Eastern District of Virginia since 2007 and has been an assistant public defender in that office since 2002. Mr. Nachmanoff successfully argued the case of *Kimbrough* v. *United States*, a case dealing with excessive Sentencing Guidelines ranges for crack cocaine, an issue that has since been addressed legislatively thanks to the leadership of two of my colleagues on this Committee, in particular Senator Sessions and Senator Durbin. Like Judge Gibbons, Mr. Nachmanoff is a graduate of the University of Virginia Law School where he served as notes editor on the Law Review.

Mr. Nachmanoff, please proceed.

STATEMENT OF MICHAEL S. NACHMANOFF, FEDERAL PUBLIC DEFENDER, EASTERN DISTRICT OF VIRGINIA, ALEXANDRIA, VIRGINIA

Mr. NACHMANOFF. Thank you, Mr. Chairman and Senator Sessions. Thank you for holding this hearing and for providing me with the opportunity to speak on behalf of the Federal Public and Community Defenders. I appreciate very much the comments from you, Mr. Chairman, and from Senator Sessions, and also the expressions of support and the recognition of the particular problem that Federal and Community Defenders have and the support from Judge Gibbons and from the Federal Bar Association and Mr. Allen. We appreciate the opportunity to be here.

Mr. Chairman, you made reference to the *Gideon* case, and it is an irony that we are discussing the crisis that faces Federal Defenders exactly 50 years after the *Gideon* case was decided, a decision that really breathed life into the fundamental principle that we all cherish of equal access to justice under the law.

But there is a bigger irony here in some ways—that this funding crisis for Federal Defenders comes at a time when the Government is so focused on making sure that Government services provide cost-efficient and quality services—because we are on the verge of being crippled and we are a model of quality and efficiency, and that by reducing the staffing of Federal Defenders, ultimately the Government will be spending more money. Indigent costs will rise.

"Why is that?" Senator Sessions asked about why we are being hit so hard, and the answer to that is, first, that we are a constitutional mandate. We do not control the cases that we get. We do not control what kinds of cases are brought. Of course, the Department of Justice decides on its priorities, the number of cases, the complexity of those cases, and where those cases are brought. We react to that. And our staffing is extremely lean. Ninety percent of our costs are fixed: salary, benefits, and rent. In the Eastern District of Virginia, my rent over the past 10 years that I have been in the office has almost doubled during that time.

The remaining 10 percent of our expenses are case-related expenses. They are essential services that we provide: experts, investigation, case-related travel. We cannot do 80 percent of the work or even 90 percent of the work for our clients and meet our constitutional obligations. We cannot choose to do less for our clients and spend less money in order to do what the Constitution demands. And for that reason, we have had to furlough employees, to lay off employees, after cutting out every other expense that we could, including new hires, including replacement of needed equipment, including training.

We work with the CJA Panel. The CJA Panel is a critical part of the indigent defense system. Between the two groups, Federal Defenders and CJA lawyers, we represent 90 percent of all criminal defendants in the Federal court. We provide support to the panel through training, through outreach. That saves money for the Government. They are able to do their jobs more efficiently.

As we have been cut as a result of the sequester, we have had to furlough our employees. We have had to eliminate training. We have had to cut ourselves to the bone. Many defenders have al-

ready laid off staff. My colleague from Arizona will be at 25 percent less staffing by October 1st.

But that is not the worst that we face. Federal defenders are confronted—if there is flat funding and we are operating not on the marks from the House and the Senate (which we are very grateful for, both the Senate and the House), but on a continuing resolution—we are facing eliminating up to 35 percent or more of our staffing, and that is because the alternative is to be faced with weeks upon weeks of furloughs. In the Eastern District of Virginia, I would be faced with, if I kept my staff on board, furloughing for 97 days. It is simply untenable. It is untenable as a manager to do that to my employees. It is impossible for our clients who have constitutional rights and speedy trial rights that must be observed. And it is inappropriate for the public.

The Department of Justice was fortunate. They were able to reallocate funds and avoid furloughs. That has created an imbalance. Senator Sessions, as you referenced, balance is critical in the courts. We have faced furloughs and layoffs. They (Department of Justice) have been protected this year. In the coming year, if we face the loss of a third of our staff and the Department of Justice is funded, that imbalance will be greater.

I have been very proud to meet with foreign judges on a regular basis over the last several years with my U.S. Attorney to discuss the rule of law and the rights that we afford defendants in Federal court. We do that for judges who come from parts of the world where the rule of law is weak and the protections afforded criminal defendants are not strong. And I have always been proud to have those discussions and see how those judges from other parts of the world have reacted and been impressed with the degree of professionalism and our fidelity to the Constitution. It will be much harder for me to have that conversation with foreign judges this year as I look at the prospect of having to lay off critical staff, and we ask for your help.

Thank you.

[The prepared statement of Mr. Nachmanoff appears as a submission for the record.]

Chairman COONS. Thank you very much, Mr. Nachmanoff.

We will now proceed with five-minute rounds of questioning, and I will begin, if I might, with Judge Gibbons.

Judge Gibbons, thank you for your testimony today. Just tell me at the beginning, if you might, in your 19 years as a trial court judge, can you speak about the relative importance of Federal Public Defenders in ensuring the quality of justice and the quality of the judging in which you were directly involved?

Judge GIBBONS. I think there is general agreement throughout the judiciary, and particularly from trial judges who do see the work of the Federal defenders up close every day, that the Federal defender organizations do an excellent job of representing criminal defendants in our courts. That is not to say we do not have many excellent panel attorneys, but obviously the contributions of someone who does the work full-time, often makes a career of the job, those sorts of contributions cannot be underestimated. They do extremely good work, and it is valuable work.

Chairman COONS. Well, Judge, thank you for the work that you have done to control costs in other areas that do not affect personnel.

There have been some who have been critical of the judiciary's building of courtroom space, and I would be interested in hearing what you have done to limit the footprint and the cost of court office space, and in particular, whether there are any policies or procedures of the GSA that make it difficult to achieve further savings through reduction of office space.

Judge GIBBONS. I will try to give you the short answer, because we have been working on this problem since 2004, to mention a couple of our earlier efforts and then move pretty quickly to current efforts.

Early on, we imposed kind of our own version of budget caps in each of the areas in our budget, and it was, in a way, a statement about what we were going to do to control the growth in space costs and other areas. That was an important goal for us and one that we were able to meet.

We also had a major rent validation program where we started doing in-house auditing or monitoring of bills that the General Services Administration provided us, and we found many, many errors and many overcharges.

With those efforts plus some other efforts like the revised asset management planning process and others, we were able to, we believe, avoid costs of about $400 million in the rent area. The AMP, or asset management planning process, is what is used now in identifying our courthouse construction needs.

Today our focus has shifted toward attempts to reduce our space footprint. We have a goal of a three-percent reduction by 2018. Obviously anything we could do to accelerate that would be excellent. We are trying to move probation and pretrial services offices and other court offices that are in leased space back into courthouses whenever feasible in order to release space.

Over this whole period of time, we have closed about 18 non-resident facilities. We are looking for other opportunities to close entire facilities and to release space.

Courts are getting pretty creative about it. In my own court, the library is giving up all of its space and moving into clerk's office space that was made available when we went to an automated case filing system and now we have extra space.

Now, problems with the GSA. We have tried to have a constructive relationship with them, and we do, but there are just tensions inherent in the system.

First, we believe that in many cases we are not charged an appropriate market rate for the facilities we rent. When they do construction for us, it seems to be at costs that are not really competitive and that are higher than we should pay. There tend to be construction delays that further drive up the cost.

With respect to this effort to release space, it is a little hard sometimes to get GSA to take the space back in a timely manner. We, of course, have to continue to pay the rent. No discretion about that. Yet rent as a percentage of our budget has not been subject to sequestration or other cuts. So we have to pay that, and that is one of the reasons in accounts like ours that are so heavily people

and rent, that it is very hard when we have no way to quickly reduce our rent costs, that is one the reasons that the burden seems to fall so heavily, so fast on the personnel side of things.

Chairman COONS. Thank you, Your Honor. I am, as a former clerk, loath to ever interrupt a judge, but forgive me, I am out of time for my first round of questioning.

Judge GIBBONS. I am so sorry I took all your time. I warned you there was going to be a lot to say there.

Chairman COONS. We will have several rounds. I have other questions for the other witnesses, but thank you, Your Honor.

Senator Sessions.

Senator SESSIONS. Judge Gibbons, I was just reminded at the time you were appointed to the Sixth Circuit, eight of the 16 seats were unfilled due to basically a systematic filibuster by Democratic colleagues. They have forgotten all that. A lot of these new ones were not here during that time. But it was really an extraordinary thing.

Somehow you guys got by with eight instead of the authorized 16 judges——

Judge GIBBONS. Well, I was not part of that——

Senator SESSIONS [continuing]. But this indicates to me that we have had other shortages around sometimes, and we have had to work our way through it and try to maintain the quality of justice at the same time. Would you agree that sometimes you can work your way through——

Judge GIBBONS. We have worked our way through a lot of those kinds of situations, particularly with judicial vacancies. That is easier than the staffing problems because you can rely on visiting judges. We have inter-circuit assignments. We have a lot of ways to work around that, but fewer ways to work around staffing issues.

Senator SESSIONS. Let me ask you this: I have a little difficult time, Mr. Chairman, of understanding exactly—I should know this—how the sequester works. Looking at the judicial branch total discretionary—total outlays in 2007–2012, it was $6,000,470 million. In 2013, it went up a little to $6,548. And after the sequester, it was supposed to go—it was projected to go to that, I guess, $6,548, and it dropped to $6,241. So that would be about a $200 or $300 million dollar reduction.

Now, is that number the number that goes to the AOC and they distribute it? Or does Congress mandate each one of the sub-accounts and how much goes to each?

Judge GIBBONS. Of course, we have four accounts under sequestration. Each of them had to be cut. As I understand it, the sequester——

Senator SESSIONS. Was that cut by Congress or the——

Judge GIBBONS. It is statutorily mandated that we had to take the cuts in each appropriation account. The five-percent sequestration cut, you will recall, was taken not from a regular-year appropriation but from a continuing resolution, which had already seriously jeopardized funding.

Senator SESSIONS. Which is flat.

Judge GIBBONS. Yes. And then we end up with these—for the judiciary, the total sequester is $350 million. We end up with these

areas of the budget where we cannot take the cuts. Rent would be one of them. Judges' salaries are, frankly, another. You know——

Senator SESSIONS. Constitutionally protected.

Judge GIBBONS. Constitutionally protected. So we end up with this situation where, you know, our workload, the defenders—not just the defenders' workload, but the courts' workload is completely controlled by what comes in our doors. It is not our own choice. We do not have optional programs we can eliminate like many parts of government. Everything we do is constitutionally and statutorily mandated.

Senator SESSIONS. Right. Well, you have got the clerks' offices, which have been exceedingly technologically advanced. People submit briefs by computer now without even coming and filing. And you have an incredibly high percentage of cases decided by pleas, civil and criminal. It is stunning, the percentage. What was it, 97 percent of criminal cases now are disposed of by guilty pleas instead of trials? And likewise in civil cases are very high.

It seems to me that there are opportunities to continue those trends in a more efficient way, and I am sure the clerks hate to lay off people, but as time goes by, if they can get by with fewer people, they need to work in that direction.

Judge GIBBONS. You know, they have been working in that direction.

Senator SESSIONS. I think they have, and I am just raising some of the good news out there. It is not all bad.

Now, Mr. Nachmanoff, I hear, well, it could be 25 percent of our staff next year. I do not see how a five- percent reduction in funding can result in a 25-percent reduction in your staff of an office. It sounded like to me maybe the guys at the top are keeping their money and making all the cuts fall down there on the people who are doing the work. How can this be?

Mr. NACHMANOFF. Well, I am not in a position——

Senator SESSIONS. And do you know—can you tell me what the numbers are, say, before the sequester took place and where you expect it to go in actual outlays for your agency?

Mr. NACHMANOFF. Yes, Senator, I will do my best with the numbers. As a result of the Budget Control Act, in 2013 the Defender Services account was deprived of $52 million. So for our account, that was a very big number. It amounted to almost nine percent. But we were told of that almost halfway through the year. So for us as managers on the ground, we had to implement it in a shorter amount of time.

Senator SESSIONS. It was passed much earlier than that, August 2011, when the bill was passed.

Mr. NACHMANOFF. Yes, Senator——

Senator SESSIONS. Why did they wait—like they did the Defense Department. They told the Defense Department—the President did—not to plan, was not going to happen, do not worry about it, or something. And now they had to do in seven months what should have been done in 12.

Mr. NACHMANOFF. I understand——

Senator SESSIONS. Is that similar to you? Who told you not to plan for it?

Mr. NACHMANOFF. Well, we defenders in the field get guidance with regard to our budgets. We got interim budgets as a result of continuing resolutions, and we represented the clients that we represent. In the Eastern District of Virginia, we accept every case absent a conflict. In the Eastern District of Virginia, that comes out to somewhere around 70 or 75 percent of the cases, as I am sure you are aware. In districts where they bring large multi-defendant cases, the defender can only take one, and so that percentage might be lower, but that is not a function of turning away cases.

And so we represented those clients as we were required to do, and we had to spend our funding in order to defend them.

At a certain point, we were told that we would not have the money that was anticipated and, therefore, had to manage and still maintain our ethical obligations to our clients.

In my district, we are currently in the midst of a multi-month death penalty trial involving alleged Somali pirates. You can imagine how cost-intensive that is for staffing and resources. That left us with no choice (since we were not going to abandon that client, and no one—not the court, nor our client, nor anyone else—would expect us to do) but to make up that shortfall through furloughs and through layoffs.

We know now, going into 2014, that if there is another continuing resolution and there is flat funding, there is going to be more than double that in terms of a shortfall in the Defender Services account. And so we have to manage that (shortfall) and think about how we are going to make up for it.

The question about the degree of separations, I think, is important. We have to pay severance and unemployment potentially and annual leave when an employee leaves. And so if we separate, unfortunately, a needed, valuable member of our team, not because they are not doing a good job, but because we do not have enough money, we may separate them and still be obligated to pay them for four months, six months, maybe even a year, depending on their eligibility for severance and separation costs.

So as we try to make up the shortfall that we are told we may have, if we are not going to furlough employees for weeks or months at a time—which we cannot do; it is not fair and it is not practical—it means we have to lay off people, and we have to do it much sooner.

Senator SESSIONS. Thank you. I wish we had more money. We are in a deep, systemic problem, and we are going to have to deal with entitlements, because that is, with interest, you are pushing about 40 percent of the entire expenditure of the United States, basic entitlement programs plus interest. And there is a limit to what the discretionary accounts can sustain.

Thank you, Mr. Chairman.

Chairman COONS. Thank you, Senator Sessions.

Senator Whitehouse.

Senator WHITEHOUSE. Thank you, Chairman Coons, for hosting this, and thank you to all the witnesses for being here. This is a matter of considerable concern. Our new Public Defender, who had been a Federal Public Defender in Rhode Island, Mary McElroy, has been in touch with me about the importance of what this does to the Federal Public Defender's Office. I believe that a July 22nd

letter from the National Association of Assistant United States Attorneys is in the record. Is that correct?

Chairman COONS. That is correct, Senator.

Senator WHITEHOUSE. OK, good. And that helps explain how this is not a prosecutor versus public defender thing. I was a U.S. Attorney. I was Attorney General of my State. We want a justice system that works, and we want a viable, robust public defender on the other side. That keeps cases moving more quickly. It prevents unnecessary detentions. It is good for the system. And that was the point made by the National Association of Assistant United States Attorneys.

I would also like to put a letter in the record from Attorney General Holder and James Cole, the Deputy Attorney General, stating, among other things—it is a June 12th letter of this year—"We recognize that the court system operates effectively only when all of its functions are adequately funded and fully operational. This includes funding for court employees, probation and pretrial services officers, and Defender Services (which provides defense counsel guaranteed under the Sixth Amendment). An effective court system is one of the foundations of our democratic society and one of our Nation's bedrock institutions."

So I think we have really important calls to try to get this right. We had this exchange earlier in the Budget Committee, Senator Session, and I would respond to what he said by it is not—I know the Senator seeks a balanced approach. It is not a balanced approach if you are not going to raise any new revenues. It is not a balanced approach when you are putting the well-being of billionaires who are paying lower tax rates than brick masons ahead of solving this problem. It is not a balanced approach when a company like CVS in Rhode Island pays a 35-percent tax rate, as the law requires, and Carnival Cruise Lines pays 0.6 percent because they have figured out how to record their profits overseas and hide it from American taxation.

It is not fair when Apple is taking all of its intellectual property and pretending it exists in Ireland and not in the United States and dodging their American taxes that way, too.

There are things that can be done to not raise the tax rates in this country, but to get rid of the loopholes and the special services that have been provided to special interests in the Tax Code for many decades now, and we need to be—I do not think you can have a balanced approach if you are protecting those preserves of special interest benefit. I think you can only have a balanced approach if you are really going at it across the way.

And, yes, there is steady growth in the Federal budget, but there is also steady growth in the U.S. population. There is steady growth in our GDP. There is considerably more than steady growth in our senior population, and seniors take more money than they did when they were younger because they use more health care. There is steady growth in income inequality in our country.

So I think our target really has to be to try to get rid of the sequester in a fair and balanced way, and problems like this, problems like we heard about in the Budget Committee this morning on the defense side, can then be addressed. But it is really asking a lot.

Mr. Nachmanoff, your testimony was terrific, and I appreciate what you said. You do not have the slippages. You are basically an all-personnel outfit, and as a guy who has run government offices before, I know perfectly well that it can be very expensive to let somebody go. You can actually be a money loser in the short run with that proposition. So you could be in a really desperate situation if we do not solve this.

So I hope we can find a way to work together to do this. One of the best ways to do that would be simply to have the House and the Senate appoint conferees on the budgets that we adopted so we could do what the law ordinarily does, which is take the House and the Senate measures and put them in conference so we can work it out. Unfortunately, the House does not want to do that. They do not want anybody to—conferences are public now. There was a time when you went into the back room, and they might have been willing to do that. But they are public now, which means they have got to defend the budget that they have passed in the full light of day. And they do not want to do that because the budget is a really extreme budget.

And so we are stuck. And if we could only get through that, if we could only get conferees appointed, then I think in the regular order of the Senate we could get rid of the sequester, and we could find a reasonable way forward.

So I thank you for holding the hearing and bringing this piece of the problem to everyone's attention, and with five seconds left, I guess I will close. Thanks.

[Laughter.]

Chairman COONS. Thank you, Senator Whitehouse.

And before I turn to Senator Klobuchar, I would just like to ask consent to enter into the record a letter from Mr. Nachmanoff as well as letters from many of the Federal Public Defenders, other colleagues of his throughout the country, including in particular Delaware Federal Public Defender, Edson Bostic, who I would like to specifically welcome to this hearing today. It was his outreach to me that helped inspire me to hold this hearing today.

There are also letters for the record from Federal Public Defenders from each judicial district within the Third Circuit detailing the impact of sequester on their offices.

[The letters appear as submissions for the record.]

Chairman COONS. Now I would like to turn to Senator Klobuchar.

Senator KLOBUCHAR. Thank you very much, Mr. Chairman. I note that we have the two previous Chairmen of this Subcommittee, Senator Whitehouse and myself here, because we really do believe we need functioning courts, and Senator Sessions and I worked together when I chaired this Subcommittee.

I also wanted to thank you for your testimony, Judge Gibbons. I am going to turn to a few other issues on the public safety front and actually the business front about why we need to have functioning courts.

I come from a background as a prosecutor, and I testified and sent letters into the legislature supporting the public defender's budget as a prosecutor in Minnesota because I always believed we were ministers of justice and that we did our job best when we had

worthy opponents, that it was very hard to figure out the facts sometimes unless we had a good defense lawyer on the other side. So we were able to maybe get a better result if we knew every fact, and if there was a trust in someone who could do a good job, we got better results. So I want to thank you for that.

I was curious, Mr. Allen. We are working very hard on patent reform, and actually Senator Lee and I are holding a hearing next week on some further issues that develop with that, and patent trolls and other things. And we are really trying to move these cases through faster. Could you talk about the effect on businesses if you have slowed-down court proceedings when you are trying to get through litigation and things that promote innovative like patents?

Mr. ALLEN. I would be happy to, Senator. There is no question that on the civil side we somewhat take a back seat because the criminal docket has to be heard due to the Speedy Trial Act. For the civil side, we tend to wait patiently. And I can say unequivocally that——

Senator KLOBUCHAR. I do not know if it is always patiently, but go on.

Mr. ALLEN. We do the best we can, but there is no question, especially with patent cases. That is a whole separate issue outside the purview of this Committee. But for patent cases, there are onerous delays on judicial courts, and they take up so much time that they often get pushed to the back burner. When I mentioned there are motions that may be pending for six months, eight months, to a year, those often can tend to be patent cases where the rulings might be 50, 80, 100 pages long.

The dilemma is that, for civil practitioners, we frequently find ourselves discussing with clients, large corporations, why justice in a sense cannot be done. For example, I have right now cases where there are pending motions for injunctive protection, where the Federal court is the right jurisdiction to ask that things be stayed in a certain place, that things not change, that there be an injunction in place to help, whether it is protecting intellectual property, and a decision from the court simply takes time. Whereas, you go in for emergency assistance, you need something before trial for protection, you might not have that assistance for six months or eight months. And it is difficult at times to express to clients what happened to American justice. Why, if we hold a patent, and it is clear infringement, or a domain name has been taken by, in essence, a pirate, why can't we get that back? And the simple answer is because the courts have a tall stack of motions on their desk, and we have to wait our turn. And it is having a real effect on all types of business interests.

I noted that there is a significant difference between the Federal courts and an agency which has, as Senator Sessions noted, its hand out to Congress. But what is so significant here is that unlike other Government agencies scrambling for those scarce Federal dollars, the American judiciary is a coordinate third branch of the people's form of Government.

In fact, Justice Roberts noted that for every taxpayer dollar, there is only two-tenths of one penny that funds one-third of our U.S. Government. That is a staggering statistic. Very efficient, I

might add, that they are able to do that. And that is the reason I am here today, to express that concern. The people instituted a Federal system that has three coordinate branches of Government. The Congress is entrusted with the safekeeping of America's judiciary. And we are at a point where this one-third of the U.S. Government is pleading for assistance so they can do the work of the American people under the Constitution. And businesses and individuals are suffering under the reality that motions may take 6 months, and that honestly justice delayed is indeed justice denied.

Senator KLOBUCHAR. Right. And I just look at this some—my State is second per capita for Fortune 500 companies. We have thriving companies. 3M has as many patents—each employee has a patent, basically. And so I see this not just as a trial lawyer lawsuits, which are important, not just that, but just this natural work of doing business is going to involve from time to time litigation over contract disputes over many things. And we have to make sure it is functioning as we look at the future here for our economy.

And I guess my second question for you, which has been touched on from some of the other Senators, Mr. Nachmanoff, is that perhaps one of the most serious impacts of these cuts on the Federal courts is the delay, which was pointed out by Mr. Allen, in judicial proceedings. An op-ed in the New York Times this weekend highlighted that in April a major terrorism trial in New York City being handled by the Federal defenders was postponed until January after lawyers in that office told the judge that budget cuts had left them short of the resources and staff necessary to effectively litigate the case.

Has your office requested similar postponements? Do you see this going around the country? And specifically, as I talked about, we need this to have the Justice Department function. What will be the effect of losing experienced public defenders due to sequestration cuts?

Mr. NACHMANOFF. Yes, thank you for the question, Senator. I come from the "rocket docket," the Eastern District of Virginia, which prides itself on speed, and so asking for a continuance is usually not looked upon with favor. But there is no doubt that around the country that example from New York is not unique. There are many places where cases have been delayed.

In my district, as a result of the impact of furloughs and layoffs from the sequester, we have had, for the first time, to decline the cases. We have declined five cases. Those cases have all been resource-intensive, serious cases. Those are exactly the sorts of cases that the Federal defender should be taking. We have the expertise to take those matters on—international fraud cases, death-eligible cases, arms export control cases. Those cases still need a lawyer, and those lawyers now will be appointed from the CJA Panel. And I agree with Judge Gibbons that there are many fine CJA lawyers, and Federal defenders play an important role in supporting the CJA lawyers. But the fact of the matter is that we do the work, especially on the big cases, most efficiently and most cost effectively because we have the institutional ability and the expertise to do that.

And so what we see is not just delays in the system already, but we see costs rising. And as things move forward, those costs will

rise dramatically as defenders will be forced to take fewer cases because there simply will be fewer of us.

Senator KLOBUCHAR. Thank you very much, and thank you, Mr. Chairman.

Chairman COONS. Thank you, Senator Klobuchar.

Just a follow-on to that point, I would ask consent to enter into the record a Federal Public Defender's Fact Sheet, which contains, among other things, a study showing that representation by Federal Public Defenders costs about 71 percent as much as comparable representation by an appointed CJA Panel attorney.

[The information appears as a submission for the record.]

Chairman COONS. If I might, Judge Gibbons, just on one other point, the Conference has the authority to reallocate money from one account to another, and the judiciary has, in the past, dealt with fiscal crises by delaying payments to panel attorneys so as not to threaten the functioning of defenders' offices. Do the pending cut to defenders' offices throughout the country justify such action this year, delaying payments to panel attorneys? And would it, in the long term, have a positive or negative impact?

Judge GIBBONS. Well, as you probably know, for 2013 the Executive Committee of the Judicial Conference is the entity within the judiciary that makes the decisions about the spending plan, the financial plan. So that is not a part of our work. But, of course, we are privy to it. We on occasion are asked for input.

This year, after receiving a great deal of input from many different sources throughout the judiciary, the Executive Committee did decide to defer panel payments for 15 days. That same sort of decision will have to be made, how to handle the cuts in the defender services account for 2014, on an interim basis, if there is not a budget in place by October 1. So that decision will have to be made once again.

Some of the things I think the Executive Committee will consider are, of course, the impacts that have already occurred to the Defender Program, the impacts that are likely to occur if deferrals are not made, the undesirability of pushing obligations that must be paid into a new appropriations year. We would like to be able to live within our means for a given year. It is not good from our appropriators' standpoint either.

But then you have the overall interplay between the two parts of that account. As defenders are harder pressed, it is very likely—we are already seeing rises in panel representations. That makes the panel costs very hard to control because you are not operating on historical data anymore. You are operating based on a situation that is occurring right before you.

So it is a very hard decision that the Executive Committee will have to make in terms of what to do to the defender services account. It has considered some other options, things like cutting the vouchers by a certain percent. They have explored whether or not the Judicial Conference has the authority to reduce the hourly rate for panel attorneys. They were very reluctant to do that in the past because we worked so hard to get that rate and it is, frankly, hardly adequate. And so just a lot of complicated considerations. But, yes, everything will be considered, I am sure.

Chairman COONS. Thank you, Your Honor.

Mr. Nachmanoff, if you would, just go into a little more detail about how you have struggled to deal with the mandate to cut costs when, frankly, Federal prosecutors, not defenders, determine your workload and when personnel are such a large driver of your total budget.

Mr. NACHMANOFF. Yes, in this fiscal year, we have undertaken all of the cost-cutting measures that I have talked about previously. Before going to furloughs and before going to layoffs, we tried to eliminate every other area that we could, which is a very narrow band of costs. We went back and renegotiated expert rates. That is in the face of experts that are paid by the Government sometimes twice or three times as much. We are concerned with quality, and my employees understood that one thing we were not going to do was compromise on the representation that we gave to our clients.

And so after cutting training, cutting travel, renegotiating and discounting fees to experts, we were left with still asking people to forgo salary, and that includes me, and it includes every other employee in my office. And that has been true of many other Defenders around the country. But even that was not enough, and we had three people take early retirement who had a combined 80 years of experience of Federal service. We lost tremendous institutional knowledge with their retirements. I laid off an employee, and I had a military reservist who volunteered to go on active duty to assist our office.

We have tremendously dedicated staff, and that is true of Defenders around the country; they will do whatever it takes to defend our clients and protect this program. But they cannot do that if I have to lay off 25, 30, 40 percent of them.

Chairman COONS. Thank you, Mr. Nachmanoff.

Mr. NACHMANOFF. Thank you.

Chairman COONS. Senator Sessions.

Senator SESSIONS. Well, I do not think you should have to lay off that many. If this were a large national private corporation, they would recognize when one of their branches is facing a crisis in the workload with several big cases that demanded more time, and they would reassign somebody to it, I think. I just talked to a person who said their company, a big national company, they said their company—so they are not hiring anybody until the GDP grows faster than two percent and the vacancies are not being filled. Companies are doing this all over the world.

So the Department of Justice and the Administrative Office of the Courts are not above that. We do not have the money to run the Government. And we are not going to just keep raising taxes every time. So that is the problem we have got. It is very serious, and I hope—I want to find out more about the public defenders, because I think your hits have been pretty aggressive, I have heard from a number of sources, and maybe we can deal with that.

Judge Gibbons, in Birmingham, in the Northern District of Alabama, Federal judges somehow manage their own building, rental space, and they are very, very happy with it. And GSA is not in the picture. They believe it saves money and the courts are more happy with it.

Have you discussed that, you and your colleagues?

Judge GIBBONS. We have tried hard to do that whenever we can get in a situation to do it. We even made efforts a number of years ago to extricate ourselves completely from GSA. We were unsuccessful. And so certainly we have looked for every opportunity that we could reasonably pursue to gain independence in managing our own facilities.

Senator SESSIONS. Well, I think——

Judge GIBBONS. And I congratulate the court in Birmingham for having gotten to that point.

Senator SESSIONS. Well, it came to a point of extending it, and there was some concern about it, and I studied it and thought they were exactly correct. We were able to maintain that, and there was no doubt that every judge was absolutely confident it saved money and things ran better.

Judge GIBBONS. Well, we believe that a situation where we were able to manage our own facilities would be very—it would save money. It would promote good government. But we have not been able to get there yet.

[Clerk's Note.—Subsequent to the hearing, Judge Gibbons provided the following information:]

Regarding operating our own courthouses and buildings, at its September 1989 session, the Judicial Conference adopted a policy that the Judiciary should pursue legislation in Congress to allow us to manage and operate our own facilities, independent of GSA. The Judicial Conference reaffirmed this policy in March 2006. While there are certainly merits to this idea, the Judicial Conference has not in recent years aggressively pursued legislation to implement independent real property authority for the Judiciary. There would be significant upfront costs involved, including the hiring of potentially large numbers of staff to manage and maintain federal court facilities around the country, or contracting with a large commercial real estate firm to perform that work. Also, it would constitute a significant responsibility that veers dramatically from our core mission to deliver justice. After these upfront investments are made, we believe there could be cost efficiencies; however, given the austere federal budget environment, we do not believe it is prudent to actively pursue independently real property authority for the Judiciary.

The Judiciary has participated in GSA's building operations delegation program on a limited basis since the Judicial Conference approved a pilot program in March 1988. Under this program, federal agencies receive a delegation from GSA for the daily operation and management of their buildings. Two courts participated in the program but currently only one facility remains—the Hugo L. Black U.S. Courthouse in Birmingham, Alabama. The Judicial Conference terminated the Judiciary's participation in the program in 2005, except for the delegation to the Birmingham courthouse, which is subject to certain limitations. Beginning in FY 2004, GSA instituted changes to the building operations delegation program, the most significant being that GSA shifted the responsibility for all repairs—regardless of cost—to the delegated agencies. These new terms meant that the district court running the building operations in the Hugo L. Black U.S. Courthouse had to begin to budget and plan for projected repairs and maintain a reserve fund for

unforeseen repairs. This added a significant cost liability to the Judiciary's budget in the event the building was damaged due to fire, flood, natural disaster, or some other occurrence.

The Space and Facilities Committee of Judicial Conference periodically reviews the building operations delegation program and looks at the costs and benefits of expanding it. In light of a court's liability for unforeseen repairs, the Space and Facilities Committee has no immediate plans to recommend expansion of the building operations delegation program.

Senator SESSIONS. I do not know where the cases are nationwide. In recent weeks we looked at gun prosecutions. They have been dropping. I looked at the bank fraud cases. They are not up, actually down a little bit over the last number of years. As I said, the number of cases actually going to trial is—of course, that has been going on for a decade or more, but those are remarkably low. You have situations such as here is the D.C. Circuit, which has the lowest caseload in the country, and my colleagues seem determined to fill a vacancy on that circuit when their caseload per judge is less than half of the national average.

So there may be yet some places that we could save some money, while at the same time some district courts and circuit courts may be at the limit.

Judge GIBBONS. If I could just briefly address how we take that into account. We have work measurement formulas that determine or suggest to us—that provide guidance to us on the number of staff that a particular court needs, and they respond to changes in filings. So it is not like we are constantly building up a higher and higher number.

Senator SESSIONS. Well, your staff may be, Judge, but we in Congress set the number of judges, so——

Judge GIBBONS. Oh, that is absolutely true. On the other hand, our recommendations to you are also based on filings and change over time. But for staff within the courts, our clerk's office employees, in district, bankruptcy, and appellate courts, our probation and pretrial services officers, the numbers of those we need are responsive, among other things, to filings and do change as the formulas are repeatedly applied.

We have a methodology we have been using for determining resource needs in the defender offices, but our Judicial Resources Committee is undertaking a work measurement assessment of the defender offices to try to gain a better handle on where the resources ought to be allocated within those offices. It is going to take a couple of years to get it done, but we are moving in that direction.

Senator SESSIONS. Mr. Chairman, thank you for your courtesy and your excellent leadership. We are glad to have you here to set a good example for us on how we ought to conduct our business.

I will just conclude by saying that when I got elected Attorney General in Alabama in 1994, my predecessor—one reason I won, he had gotten so far behind on his bills that he could not pay the electric bill. And that all came out like in October.

But we had a real crisis when I got elected, and he had hired a large number of people outside the merit system, and it amounted to a third of the office. We were $5 million short on a $15 mil-

lion budget, and so I terminated a third of the office. I did not know what would happen. We reorganized. We closed offsites. We got rid of automobiles. We reorganized in the office. And one senior person said, "I hate to admit it, but I am doing more and enjoying it more." But we put people to work, and they still have not got back to that number today. This was 18 years ago.

So we think sometimes we cannot do things more efficiently and more productively. My experience is sometimes we can surprise ourselves when we have to make fundamental changes and create efficiencies. I do believe that the Chief Justice and most of our judiciary do believe in efficiencies and are working in that regard. It is odd that the Department of Justice, an entirely different agency than the Administrative Office of the Courts, has been able not to cut their personnel, and you are having to cut yours. It is just one of the many inefficiencies sometimes that occur in our Government, and it makes it harder for us to reach the level of efficiency the taxpayers are entitled to.

So thank you all. We have a great court system. It is going to be a tight time, I have got to tell you, for the next several years. But 2015 will be the progress year, on at least the Defense Department budget. I know how that goes. And I think it is the same with you. Next year will be the worst year, and then there is a steady increase in funding for the next eight years or so of the cycle, ultimately depending on Congress. But next year is going to be a tight year, so I am glad to hear your concerns.

Chairman COONS. Thank you, Senator Sessions.

I have one or two more questions that I will go to, and before I return to asking a few questions, I will ask consent to enter into the record a series of articles and letters that I neglected before from media and advocacy groups: a New York Times editorial, from the Atlantic Monthly, from AP, the Hill, and apparently a January article from the Federal Bar Association, as well as a letter delivered today by a group called Justice at Stake.

[The information appears as a submission for the record.]

Chairman COONS. Judge Gibbons, if I could, just one last question for you. When making the decisions about where to cut, how does the Judicial Conference weigh the needs of Article III judges against the needs of Article I judges such as the bankruptcy courts—which, as was noted, play a particularly important role in Delaware—or the Federal Defender Services? How are those weighed?

Judge GIBBONS. Well, no one area receives more weight than another area. I mean, it is very much—our processes of asking for money are highly governed by—or heavily "guided" is a better word—by our ways of assessing our needs, and our process of executing the budget, i.e., allocating the money to the courts, is also governed by various formulas and allotments. But there is nothing in the system that, for example, values the work of an Article III judge more than the work of an Article I judge, nor is there anything that values a clerk's office more than a Federal defender's office. The system is just not set up in that way, and I feel as confident of this decisionmaking process as I do of any decision-making process within the judiciary in terms of its ability to take all the needs, the interests of the courts, the interests of the users of

the courts, the public interest generally, all of those things into account, and do the best job we can of making a fair and equitable and prudent distribution of the limited resources.

You know, we really feel, as I have said before, that we have done a really good job of our management. We have been looking at things afresh all along, as Senator Sessions mentioned. It is true workload fluctuates. Our courts are staffed right now at 1999 levels. There have been fluctuations in filings during that time, but workload overall during that period has increased far more than our staffing has increased when you look at where we are today.

Chairman COONS. Thank you, Your Honor.

If I could, Mr. Allen, just two quick questions. We have heard testimony today that sequestration has limited the judiciary's ability to upgrade and maintain its information technology systems. Senator Sessions referenced the dramatic change in the number of cases that are filed online and the amount of management that is being done online. But it is also an area where there have been reductions.

So just help me understand, if you would, how current deficiencies in the courts' IT systems affect your clients' ability to get swift and reasonable resolution. And, second, if the courts run out of money for civil jury fees next year, what would that mean for your clients and for the reasonable and timely resolution of their cases?

Mr. ALLEN. Thank you, Senator. The first issue, IT, is a significant one. As Senator Sessions noted, there has been progress over the last decade or so to update our system where most filings in Federal court use the PACER system and those pleadings are done electronically.

The problem we have seen already over the first decade or so of the system is that it has quickly become somewhat outdated. There are limitations on how large exhibits can be. There are many courts that require and ask that we still submit actual hard copies of documents. Those issues are, I think, being addressed, but there are some limitations, and there is no plan in place to update or improve the system that we can see from the civil side.

Likewise, in Federal courts, I have seen courtrooms across the country, whether it is sophisticated systems for displaying exhibits or other technological advances, if you will, that are discarded because they simply are not working or there are not the personnel to have the time to fix them for a court proceeding. And what we see is you usually have one or two IT personnel for a courtroom that are overworked and, in fact, I think there is a possible likelihood that we will see a lot of transition in that position, which means you have someone new coming on. I definitely have seen a loss of some of the resources of the courts being made available to civil practitioners.

To the second issue of civil jury fees, if the money is not there and civil juries in essence temporarily go away, that raises the issue we talked about previously, which is justice delayed is justice denied. And for large corporations and other individuals in particular, when you have a dispute that can only be resolved by the Federal court, that is the forum under the U.S. Government to go in and resolve an issue. It is exceedingly difficult to have no time-

frame as to when that dispute will be resolved, whether it is a patent holder who does not know for how long they will have to wait before they get royalties or for how long a case will go, and it is very expensive to finance litigation. That becomes a real economic issue for clients and for personnel. And the idea that civil jury trials may actually go away or at least temporarily go away means further delays.

For example, you may have spent all this money to pay for lawyers and witnesses to be there, and suddenly the courts have to say, "Not this week," "Not next month." And that ongoing delay causes real resources to have to be spent by corporations and they do not have a way of planning. It has become a true crisis.

Chairman COONS. Thank you, Mr. Allen. You know, frankly my concern is that those delays also further drive the acceleration of the use of arbitration rather than Federal courts, which has its own problems, the lack of a development of decisional law, and the sort of privatization of our Federal court system that is happening through an increasing turn to arbitration. I think the longer delays there are, the more that happens. There is a whole range of consequences here—human justice, and systemwide—that we have been discussing.

I would like to welcome Senator Durbin for his round of questions.

Senator DURBIN. Thank you very much, Mr. Chairman. I apologize for being late and will just ask a few questions.

First, by way of introduction, Terence MacCarthy, defender emeritus of the Federal Defender Program for the Northern District of Illinois, has been a close friend for many years, and he has written me a lengthy letter about the impact of sequestration on his program where a third of their 40 attorneys are going to be furloughed in some form and unable to be part of this process, and he asked me to come to this hearing, and it is particularly because of his letter that I wanted to make a point of coming, even at the end of it.

Judge Gibbons, given the fact that U.S. Attorneys already have more resources available to them, is sequestration increasing the gap in resource parity to a point that calls into question whether indigent defendants are getting full due process and an adequate defense under the law? I ask you this I guess on the 50th anniversary of *Gideon*.

Judge GIBBONS. Certainly we are threatening to get to that point, and the problem is made particularly acute—I mean, this year, 2013, has been a very difficult one for the defenders. When you use figures like the one-third, they are having to plan based on the possibility, perhaps some would say even the probability, of flat funding or even declining funding for 2014. They must make their decisions now so they will not be caught, as they were in fiscal year 2013, midway through the year having to make very dramatic adjustments.

So I think when you get to the point when you have a very small staff, as these offices do, where you have attorneys who are a big chunk of the staff, when there are not too many alternative ways for an attorney to do his or her work—I mean, you have to prepare the case, you have to talk to the client, you have to go to court.

I do not know of any other options. I do not know too many courts that have said attendance is optional.

And so when you have that little flexibility, you have constrained funding and you have unpredictability, it is a scenario that can result very quickly in the dismantling of a system that has really been a source of pride for the judicial system.

Senator DURBIN. So, Mr. Nachmanoff, let me ask you, should the defenders' budgets be calibrated to the Department of Justice budget? Is it an increase in funding for DOJ that means more cases are going to be brought in Federal court?

Mr. NACHMANOFF. That is an excellent question, Senator. Thank you. And there is no doubt that the function of Federal Defenders is tied inextricably to the charging decisions and funding of the Department of Justice, and the suffering that we have endured this year and the suffering that we will endure next year has to be seen in the context of what is going to happen with the Department of Justice. The Senate Appropriations Committee last week approved an increase for the Department of Justice, including U.S. Attorneys, our direct counterparts. The approval was for a $2 billion budget, a $79 million increase. And the statement was "for the purpose of bringing more cases."

And so we can expect that the Department of Justice will bring more cases in a place like the Northern District of Illinois. I am humbled to be associated in any way with Mr. MacCarthy, who is a giant and a legend of the Federal Defender Program, and this is an office that goes back to 1965. The notion that that office is facing potentially laying off a third of its staff is unconscionable, and it is directly tied to what will happen in the U.S. Attorney's Office in the Northern District of Illinois where they have 152 Federal prosecutors to 19 Federal defenders.

If Carol Brook is required to lay off staff, that ratio will be even more out of whack. It will be more imbalanced. And we have to ask ourselves, can we have a fair system of justice? It may well be that thinking about the appropriations for the Department of Justice in the context of what the Defender Services accounts needs would be a very wise thing to do.

Senator DURBIN. And obviously it can lead to justice delayed and justice denied, as I see it, in terms of trying to sync up the investment in prosecution resources while we diminish the investment in defender resources.

I might just add, parenthetically, I had breakfast on Saturday morning with the Chairman of the Legal Services Corporation, John Levi. Two million indigent civil defendants appeared in court in the State of New York last year seeking an attorney, and there was no one. They went unrepresented.

Now, I know it is a different standard with *Gideon* and the like, but it calls into question many things: first, our budgeting; and, second, I really believe it is a call to arms for the profession to step up in a lot of areas here, particularly in the legal services side, but even in our conversation.

I would like to ask, if I can, Judge Gibbons, we have got a special challenge in Chicago. Violent crime is on the rise, and I have talked about some legislation to deal with gun tracing and things like that. I am concerned, as I review your testimony, that seques-

tration is forcing reductions in staff and resources in Federal pretrial services and also probation offices. Am I right to be concerned that these reductions may lead to potentially violent individuals walking the street of my city of Chicago without adequate supervision?

Judge GIBBONS. You are quite right to be concerned. You know, the term "probation officer" sounds kind of harmless, but these are law enforcement officers who have come to supervise increasingly dangerous criminal defendants over the years. There are various methodologies for assessing risk factors, and they continue to rise dramatically.

Our officers in 2012 supervised 187,311 defendants. That is expected to rise to 191,000 by 2014. A number of them are extremely violent. We are already down by about seven percent of our staff in those offices.

To the extent that we have to make further cuts, must make cuts in those areas, we have fewer officers to supervise increasingly larger numbers of people. Particularly of concern in that account is we have also had to cut 20 percent of what is called the law enforcement account, which funds drug treatment and testing, mental health treatment, and electronic monitoring, GPS location monitoring.

So we have had to really seriously compromise some of our funds that go toward keeping the folks we supervise out of further trouble to the extent we can. We have had to completely zero out funds for what is called "second-chance" funding, which provides things like transitional housing, assistance with getting jobs. We just cannot do that anymore. Yes, this is a public safety risk throughout the country.

Senator DURBIN. I have just got to close by saying I went to Peoria, Illinois, which is a basic Midwestern mid-sized city where they are dealing with crime by calling in all of those on probation and parole for face-to-face meetings and to say, "We know you are out there. And we are not only telling you we are watching you; We are also telling you here is a person who will help you get the training, education, and job you need, and here is her cell phone number." It really had a dramatic impact.

We are going in the opposite direction here. We are putting fewer people in those capacities to try to find transition life, transition opportunities for people who really need an alternative in their lives at this moment.

So I am troubled by what it means in terms of the crime rates in Illinois and around our Nation. And I thank you all for your testimony. And, Senator Coons, thank you for holding this hearing.

Chairman COONS. Thank you very much, Senator Durbin, for bringing both your broad experience and your personal commitment to this issue and so many others facing us as we wrestle with the budget challenges and the justice challenges that face our country. How we solve our budget challenges has real implications for how we also continue to deliver on our fundamental commitment to justice.

Mr. Nachmanoff, if I might, I just sort of wanted to ask in conclusion, there have been some comments made by Senators here today. They are just incredulous that it is factually possible that

there can be defender offices facing in the coming year a reduction of staff by as much as a third. If I heard correctly, Judge Gibbons at the outset said that there is a roughly 1,000-position reduction in the Defender Service nationwide, some through attrition, some through layoffs. And it seems that there might be a greater reduction going forward.

And I have also either read about or heard today about senior defenders either taking early retirement or in one case, I believe, firing himself in order to avoid more significant cuts for junior staff who were really not in a position to take those cuts. And I believe you testified earlier to a reservist going to active duty.

How does the loss of human capital, of institutional knowledge, of capability affect the ability of the Federal Defender Service to continue its representation? And how is it possible that you, amongst all the different functions that we are talking about here within the courts, could be facing a further cut of 23 percent? Just walk me through that, if you would.

Mr. NACHMANOFF. Sure. I think with regard to the 1,000-person layoff, that was a reference to the court staff in general.

Chairman COONS. Court staff broadly across all——

Judge GIBBONS. Including defenders.

Chairman COONS. OK.

Mr. NACHMANOFF. But Federal Defenders are facing devastation in the coming year, and that is because if we continue with a continuing resolution and flat funding and we have the deferments of panel payments that are due next year, and depending on the decisions about the allocation of resources, Federal Defenders will be bearing the brunt of the shortfall. And because we have so many fixed costs, it is going to result in these massive layoffs. When you add in what I described regarding severance and lump-sum payments for annual leave and unemployment, it is even harder for Defenders to manage those budgets.

So there is no question that the core value of the Federal Defender Program is imperiled in this year, and I appreciated that Senator Sessions mentioned that next year, 2014, will be difficult, and maybe things will get better. For Federal Defenders, it will be impossible to put the system back together again exactly for the reason that you have articulated. Senator Durbin referred to the great Terry MacCarthy, who is now Defender Emeritus; there are many people like him in the system who have years of experience, who are admired by the judges in their courts and by prosecutors and the court personnel for their integrity and their expertise. We have lost several Defenders—Steve Nolder in the Southern District of Ohio did terminate himself in order to preserve staff, and other Defenders have announced early retirement or that they will be leaving.

I have no doubt that that will increase—and it is not just the Defenders, the leaders of the office. It is the rank-and-file, the lawyers who go into court every day. It is the support staff, the investigators, the paralegals, those who allow us to do the job that meet our constitutional requirements. And if we lose, whether it is 25 percent or 35 percent or 40 percent of our staff, with our program, which is very small, that will be a loss that is permanent. And so to rebuild will not involve simply calling them up and asking them

to come back. We will have lost institutional knowledge and expertise that can never be recovered, and that would be a tremendous tragedy, not just for our clients but for the entire court system.

Chairman COONS. Well, thank you. Thank you, Mr. Nachmanoff, thank you, Mr. Allen, and thank you, Your Honor, Judge Gibbons. I am grateful for your testimony here today. If I understand in summary what we have heard, it is that our current trajectory of how the sequester is being implemented in the Federal court system is doing real harm. It is delaying the timely and responsible resolution of civil cases. It is significantly reducing the staff available to both Article III and Article I judges and to the good operation of their courts. And, in particular, it is imposing an unreasonable and a lasting impact on the Federal Public Defender Service. It is penny-wise and pound-foolish because replacing seasoned senior public defenders with CJA Panel attorneys may, in fact, cost us more in the short term. And as you detailed, laying people off actually may cost more in the long term.

So I leave this hearing today deeply concerned about how the sequester is impacting justice in the United States, grateful for the attendance of my colleagues, and hopeful that we can find some resolution, if not to the broader challenges of the budget and replacing sequester, something I really hope we will do, but in a more focused way to dealing with the specific issues of the judiciary and America's system of justice as you have raised it today.

I would also like to thank the many interested stakeholders who have submitted testimony for the record, which I previously referenced, and it is my very real hope that Congress will take to heart the unique role of the judiciary and, within it, of the Federal Public Defenders in our system of Government.

As we look to be careful stewards of taxpayer funds, we have to make sure we provide sufficient funding to enable the judiciary, a separate branch, to fulfill its important constitutional duty.

With that, the record will remain open for a week for any Members who wish to submit additional testimony or questions on this topic, and I am hereby adjourning this hearing. Thank you.

[Whereupon, at 4:46 p.m., the Subcommittee was adjourned.]

APPENDIX

Additional Material Submitted for the Record

Witness List

Hearing before the
Senate Committee on the Judiciary
Subcommittee on Bankruptcy and the Courts

On

"Sequestering Justice: How the Budget Crisis is Undermining Our Courts"

Tuesday, July 23, 2013
Dirksen Senate Office Building, Room 226
3:00 p.m.

The Honorable Julia S. Gibbons
Chair
Committee on the Budget of the Judicial Conference of the United States
Memphis, TN

W. West Allen
Chair, Government Relations Committee
Federal Bar Association
Las Vegas, NV

Michael Nachmanoff
Federal Public Defender
Eastern District of Virginia
Alexandria, VA

PREPARED STATEMENTS OF WITNESSES AND COMMITTEE AND SUBCOMMITTEE CHAIRMEN

STATEMENT OF
HONORABLE JULIA S. GIBBONS, CHAIR
COMMITTEE ON THE BUDGET OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
BEFORE THE SUBCOMMITTEE ON
BANKRUPTCY AND THE COURTS
OF THE
COMMITTEE ON THE JUDICIARY OF THE
UNITED STATES SENATE

July 23, 2013

INTRODUCTION

Chairman Coons, Senator Sessions, and members of the Subcommittee, I am Judge Julia Gibbons of the Sixth Circuit Court of Appeals. Our court sits in Cincinnati, Ohio, and my resident chambers are in Memphis, Tennessee. In addition to my judicial duties I also chair the Judicial Conference Committee on the Budget, and I appreciate your invitation to appear today to discuss the financial crisis facing the federal courts. My testimony today will cover the impact of sequestration on the courts; the Judiciary's FY 2013 supplemental appropriations request that was transmitted to Congress in May; the consequences of flat funding for the Judiciary at sequestration levels in FY 2014; and our ongoing efforts to contain costs. Throughout my testimony, I will itemize the costs and dangers to the public resulting from inadequate Judiciary funding.

THE JUDICIARY'S CONSTITUTIONAL RESPONSIBILITIES

This Committee is uniquely positioned to understand the importance and role of the federal courts in our justice system. The Judiciary's work is a pillar of our democratic system of government. All of our work derives from performing functions assigned to us by the United States Constitution and statutes enacted by Congress. We must adjudicate all cases that are filed with the courts, we must protect the community by supervising defendants awaiting trial and criminals on post-conviction release, we must provide qualified defense counsel for defendants who cannot afford representation, we must pay jurors for costs associated with performing their civic duty, and we must ensure the safety and security of judges, court staff, litigants, and the public in federal court facilities. Our workload does not go away because of budget shortfalls. Deep funding cuts mean that the Judiciary cannot perform adequately its Constitutional and statutory responsibilities.

Our mission is critical to preservation of our democracy. It is carried out by the Judiciary's 35,000 dedicated judges, probation and pretrial services officers, clerks of court staff, federal defenders, law clerks, and other personnel. We look to Congress to recognize the uncontrollable nature of our workload and provide the resources needed to perform this essential work. If sufficient funding is not provided to the courts, we cannot provide the people of the

United States the type of justice system that has been a hallmark of our liberty throughout the nation's history.

IMPACT OF SEQUESTRATION CUTS ON THE FEDERAL COURTS

The sequestration cuts that took effect March 1, 2013, have had a devastating impact on federal court operations nationwide. The 5.0 percent across-the-board sequestration cut resulted in a nearly $350 million reduction in Judiciary funding. To address sequestration, the Executive Committee of the Judicial Conference implemented a number of "emergency measures" for FY 2013. Many of these measures have been painful and difficult to implement and reflect one-time reductions that cannot be repeated if future funding levels remain flat or decline. The Judiciary cannot continue to operate at such drastically reduced funding levels without seriously compromising the Constitutional mission of the federal courts. These emergency measures represent the Judiciary's best effort to minimize the impact of sequestration cuts on the federal courts and the citizens it serves. Let me say at the outset that all aspects of court operations have been severely curtailed, and we do not have the surplus funding available within the Judiciary to transfer funds from one account to another.

As a result of sequestration, funding allocations sent out to nearly 400 court units nationwide were cut 10 percent below the FY 2012 level. We estimate clerks of court and probation and pretrial services offices will downsize by as many as 1,000 staff during FY 2013 due to this reduction in funding. Clerks of court and probation and pretrial services offices have already reduced staffing by nearly 2,100 staff between July 2011 and July 2013, a 10 percent staffing loss over this two year period. The current staffing level of 20,100 personnel in the courts is the lowest since 1999 despite significant workload growth since that time. In addition to downsizing, the courts have already incurred 36,000 furlough hours as of June 2013 and a total of 68,900 furlough hours are projected for FY 2013, which equates to 8,600 furlough days. We are still trying to ascertain the impact of these cuts on court operations, but we believe the staffing losses are resulting in the slower processing of civil and bankruptcy cases which will impact individuals, small businesses, and corporations seeking to resolve disputes in the federal courts.

Security at courthouses has suffered as well. Sequestration has resulted in a 30 percent cut in funding for court security systems and equipment and court security officers are being required to work reduced hours, thus creating security vulnerabilities throughout the federal court system. In addition, funding for the Judiciary's space and facilities program has been cut. Specifically, there will be instances around the country where new judges will not have office chambers due to sequestration, and funds for tenant improvements and cyclical maintenance such as carpet replacement, paint, etc. were zeroed out.

In our grand and petit jurors program, many courts have stopped supplying postage-paid return envelopes for prospective jurors to return their qualification questionnaires, which not only frustrates citizen-jurors, but reduces the response rates. This in turn forces the courts to spend more money mailing additional qualification questionnaires out to obtain sufficient qualified jurors. We know that more aggressive follow-up procedures lead to more diversity in

the qualified jury pools, so reductions in this area are impacting the courts' ability to ensure a fair cross-section of citizens to serve on juries.

While it is useful to measure cuts in terms of employee or program loss, ultimately the primary consequence of sequestration is not internal to the courts. Instead, it is the harm to commerce, orderly and prompt resolution of disputes, public safety, and Constitutional rights ranging from effective representation by counsel for criminal defendants to jury trial. I will now focus on two areas – one that directly affects public safety and one in which funding cuts directly threaten the loss of Constitutional rights.

SEQUESTRATION PUTS PUBLIC SAFETY AT RISK

We are very concerned about the impact of sequestration cuts on the Judiciary's probation and pretrial services program. Many people are unaware that the Judiciary employs nearly 6,000 law enforcement officers – probation and pretrial services officers – who play an important role in ensuring public safety. Our officers supervise individuals in the community after they have been convicted of a crime and subsequently released from prison, as well as supervise defendants awaiting trial. Workload in our probation and pretrial services program continues to grow. The number of convicted offenders under the supervision of federal probation officers hit a record 187,311 in 2012 and is on pace to reach 191,000 by 2014. At a time when workload in our probation and pretrial offices continues to grow, sequestration results in a 10 percent cut in their budget allocations.

Our probation and pretrial services officers do a great job. They are not only dealing with more cases, but they are tasked with supervising offenders who have escalating criminal histories and other criminogenic risk factors. Yet, taking risk level into account, our officers are driving revocation rates down and promoting positive, long-term behavioral change among persons under supervision. Officers accomplish this through a variety of research-proven techniques and strategies aimed at criminal thinking and values. At last measure, 77 percent of offenders remained free from arrest on any felony charge for three years following the start of supervision. Officers have also been instrumental in early detection of resumed criminal activity when it does occur, conducting thousands of field contacts, notifying the court of technical violations such as association with known felons, and, last year, performing more than 900 searches and seizures that resulted in guns, drugs, and other items being taken off the streets.

Due to sequestration and other budget pressures, staffing in probation and pretrial services offices is down nearly 600 staff (7 percent) since July 2011 to the current staffing level of 7,900. Cuts to officer staffing levels mean less deterrence, detection, and response to possible criminal activity by federal defendants and offenders in the community. Particularly troublesome is the 20 percent cut to the allotment category that covers treatment and testing services for offenders, electronic and GPS location monitoring, and reimburses officers for their field work related expenses. Continued underfunding of the probation and pretrial services program will reduce probation officers ability to promote positive behavior change, detect non-compliant behavior and generally protect the community.

The federal probation and pretrial services program is a cost-effective approach to supervising defendants awaiting trial and offenders on post-conviction release, costing less than $10 per day per individual versus $70-$80 per day to house an offender or defendant in federal custody. Further, offenders on supervised release can gain employment to pay fines, restitution, and taxes as well as complete community service requirements.

Fundamental to our system of supervised release is ensuring the safety of the public. Indeed, public safety is our officers' primary responsibility. But sequestration cuts to the Judiciary's probation and pretrial services program put public safety at risk because reduced levels of officer supervision and electronic monitoring will result in an increase in violations and new crimes going undetected. Our probation and pretrial services program can only be effective if there are sufficient resources to ensure proper supervision of offenders and defendants in the community.

DEEP CUTS TO THE JUDICARY'S COURT-APPOINTED COUNSEL PROGRAM

Sequestration threatens the ability of the Judiciary to fulfill a fundamental right guaranteed to all individuals under the Sixth Amendment and the Criminal Justice Act: the right to court-appointed counsel for criminal defendants who lack the financial resources to hire an attorney. Our nation recently celebrated the 50th anniversary of the 1963 landmark Supreme Court decision in *Gideon v. Wainwright*, which guaranteed an individual the right to court-appointed counsel. Approximately 90 percent of federal criminal defendants require court-appointed counsel. Funding cuts are threatening that very right, a right that has been a bedrock principle of our criminal justice system for half a century.

Sequestration cuts in FY 2013 resulted in a $52 million cut to the Defender Services account. The primary options for absorbing the cut are reducing federal defender organization (FDO) staffing levels and/or deferring payments to private panel attorneys. Reducing FDO staff results in appointments being shifted to panel attorneys, thus increasing those costs, and deferring panel attorney payments into FY 2014 only adds to appropriations requirements in that year. The Judiciary's FY 2013 financial plan assumes a suspension of payments to private panel attorneys for the last 15 business days (3 weeks) of the fiscal year and FDO staff reductions and furloughs of employees for a national average of approximately 15 days over the last half of the fiscal year.

The Judiciary has no control over the number and nature of cases in which court-appointed counsel must provide a defense. The caseload is driven entirely by the prosecutorial policies and practices of the U.S. Department of Justice and its 93 United States Attorneys. We are aware that the U.S. Department of Justice is not furloughing staff; in fact it is hiring new staff, so the pace at which criminal cases requiring court-appointed counsel has continued unabated, while resources in the Defender Services program are diminishing. Between October 2012 and June 2013, FDOs downsized by about 160 staff, to 2,670 employees, a 6 percent decline. Since March 2013 other employees were furloughed for over 100,000 hours, which equates to 12,500 furlough days or the loss of another 50 staff. The cuts in this account create another problem as well. We fear that the anticipated suspension of panel attorney payments will

result in panel attorneys declining to accept Criminal Justice Act appointments – just at the time when we may need to make more panel attorney appointments due to FDO cuts. Ultimately, the cuts likely will produce delays in the progress of cases, which may violate Constitutional and statutory speedy trial mandates, potentially resulting in dismissal of criminal cases.

We can already see the impact of FDO staffing reductions on the federal courts. The federal defender office in New York City recently asked the federal district court to postpone the trial of Sulaiman Abu Ghaith (Osama bin Laden's son-in-law) because of staff cutbacks. Federal courts in the District of Columbia, the District of New Mexico, the Western District of Texas, and the Western District of New York have stopped scheduling criminal matters on alternating Fridays because of FDO staffing shortages in those districts. These are just a few examples.

We have been asked by Members of Congress, the press, and others, why the Judiciary cannot transfer funds from other Judiciary accounts to help the Defender Services program. First, the Budget Control Act requires that sequestration cuts apply across-the-board to all non-exempt programs, projects, and activities, so we were forced to apply sequestration cuts to this program. Second, although we have the *authority* to transfer funds, under sequestration we do not have the *funding* to do so. Each Judiciary account, large and small, was hit hard by sequestration. Taking funds from other accounts to help the Defender Services account would further incapacitate the Judiciary in carrying out the essential activities supported by funding for the other accounts. Unlike many Executive Branch entities, we simply do not have surplus funding available within the Judiciary to transfer to Defender Services.

I will close on this topic by reiterating the importance of the Defender Services program in our criminal justice system and ask that Congress provide the funding needed to preserve the Constitutional right to court-appointed counsel.

FY 2013 SUPPLEMENTAL APPROPRIATIONS REQUEST

Subsequent to the implementation of the sequestration cuts, we reached out to Congress for help. On May 14, 2013, Judge Thomas Hogan, then-Director of the Administrative Office, and I transmitted to the Office of Management and Budget (OMB) and Congress a FY 2013 emergency supplemental appropriations request for $72.9 million to address critical funding needs in the courts as a result of sequestration cuts. The President later formally transmitted the supplemental request to Congress as required by statute. We understand from OMB that our supplemental request was the only supplemental transmitted to Congress to address sequestration cuts.

The supplemental includes $31.5 million for the Courts Salaries and Expenses account to avoid furloughs and staffing losses in clerks of court and probation and pretrial services offices during the fourth quarter of FY 2013 ($18.5 million), and to partially restore sequestration cuts for drug testing and mental health treatment services for defendants awaiting trial and offenders released from prison ($13.0 million). The remaining $41.4 million is requested for Defender Services to avoid having to defer panel attorney payments for the last three weeks of the fiscal year ($27.7 million), to avoid furloughs and staffing losses in federal defender organizations

during the fourth quarter of FY 2013 ($8.7 million), and for costs associated with high-threat trials ($5.0 million).

The Judiciary's $72.9 million supplemental request represents only a fraction of the nearly $350 million in sequestration cuts applied to Judiciary accounts on March 1, but to date Congress has taken no action. I urge Congress to give strong consideration to the Judiciary's supplemental appropriations request.

THE CONSEQUENCES OF FLAT FUNDING FOR FY 2014

Given the sharp disagreement between the White House and Senate and the House on federal spending matters in general, and on FY 2014 spending in particular, I am not optimistic at this time regarding FY 2014 funding for the federal courts. We find ourselves in the midst of a funding crisis, yet we are caught in a disagreement between the other two branches. Although we were pleased with the marks in the FY 2014 Financial Services and General Government appropriations bill reported out of the House Appropriations Committee last week, the contentious budget environment in Congress would appear to make a long-term or even full-year CR for FY 2014 a real possibility. Such a scenario would be devastating for the federal courts.

A hard freeze for FY 2014 at current sequestration funding levels would result in funding allocations for clerks of court and probation and pretrial services offices being reduced up to 7 percent below current levels which would result in an estimated loss of 1,800 additional employees through the end of FY 2014. This staffing loss would come on top of the nearly 2,100 staff the courts have already lost since July 2011 due to funding constraints, representing a potential 22 percent loss of on-board probation and pretrial services officers and clerks of court staff over a three year period. A staffing contraction of this magnitude would result in further reductions to supervision, monitoring, and treatment services for offenders released from prison and defendants on pretrial release. There would be a severe backlog in the processing of civil and bankruptcy cases; a drastic reduction in public hours in clerks' offices; and cancellation or significant delays in the implementation of critical information technology applications.

For the Defender Services program, because current FDO staffing levels do not meet workload requirements, and because of the projected deferral of FY 2013 panel attorney payments that must be paid in October 2013, a hard freeze in FY 2014 will necessitate steep cuts to the Judiciary's appointed-counsel program. At a hard freeze, funding for private panel attorneys representing indigent clients would run out the last three months of FY 2014, meaning attorneys would not receive payment for services rendered until the start of FY 2015. If payments to panel attorneys were not halted, steep cuts would instead have to be made to federal defender offices in the form of additional layoffs and furloughs, reducing staffing by as much as one-third below current levels. As I indicated earlier in my testimony, the availability of court-appointed counsel is a Constitutional right and there are no easy answers when it comes to applying cuts to this important program.

Flat funding at sequestration levels would result in a funding shortfall of $45 million in the Court Security account. This would force the Judiciary to propose very difficult cuts to

security provided at courthouses by court security officers and the Federal Protective Service. Such cuts have the potential to put judges, court personnel, and the public who enter courthouses at serious risk. For example, courthouses that currently have security coverage 24 hours a day, seven days a week would have services reduced overnight and on the weekends. This includes many courthouses in large metropolitan cities, several of which regularly handle terrorism cases. In addition, every courthouse across the country would have to reduce security services and funding for security systems and equipment would be far below the level requested by the U.S. Marshals Service as necessary to provide adequate protection for the courts. Simply put, flat funding will force the Judiciary to consider deep cuts to security funding and raise serious concerns that such cuts may compromise the safety and security of the judicial process.

If a long-term or full-year CR for FY 2014 appears likely, the Judiciary will request that Congress provide a funding anomaly (exception) above a hard freeze funding level. While we have made every attempt to minimize the impact of sequestration on federal court operations nationwide, the emergency measures currently in place are not sustainable for another year. We would ask for this Committee's support of a CR funding anomaly for the Judiciary in FY 2014.

COST CONTAINMENT IN THE FEDERAL COURTS

The Judiciary is not a newcomer to cost-containment initiatives. The Judiciary continues to build on the cost-containment efforts we started in 2004. Over the last decade many of the cost-cutting initiatives have been implemented and have helped limit the growth in the Judiciary's budget. In fact, our FY 2014 budget request reflected a 2.6 percent increase, the Judiciary's lowest requested increase ever.

Controlling Space Costs

One of the Judiciary's biggest cost-containment successes to date has been limiting the growth in space rent costs. As a result of cost-containment initiatives over recent years, our FY 2014 budget request for GSA rent reflects a cost avoidance of approximately $400 million below estimates made prior to implementation of our cost-containment initiatives. We have revamped our long-range space planning process to better prioritize space needs with an eye towards cost. With strong controls in place to limit the growth in space rent costs, we are now focusing on reducing the Judiciary's overall space footprint. GSA's cooperation is essential to our ability to reduce space. As the Judiciary's landlord, GSA must work closely with us on space reduction, including taking back excess space from us in a timely manner.

The Judiciary will also continue to look at releasing space in underutilized non-resident facilities based on Judicial Conference approved criteria and upon the recommendation of the appropriate circuit judicial council. A non-resident facility is defined as a facility with a courtroom that does not have a full-time circuit, district, magistrate, or bankruptcy judge in residence. Since 1996 the Judiciary has identified and closed five non-resident facilities. In addition, another 13 court facilities have been vacated for a variety of reasons. The most recent space reductions approved by the Judicial Conference at its September 2012 session will eventually result in the release of 56,000 square feet of space in six additional non-resident facilities with associated annual rent savings of approximately $1.0 million.

We are pursuing other space reduction initiatives as well. The increased use of online legal research by court personnel offers an opportunity to reduce library-related costs in the areas of library staffing, space, and collections. We have also created financial incentives for courts across the country to identify and release excess space.

Cost Containment in Defender Services

The Judiciary continues to make real progress in containing the costs of providing effective representation. Our case budgeting initiative focuses on the 3 percent of panel attorney representations that account, disproportionately, for 30 percent of the total cost of all panel attorney representations. To specifically target these cases, the Judiciary is promoting the use of case budgeting for any non-capital "mega-case" – a representation in which total expenditures exceed $30,000 – and for all federal capital prosecutions and capital post-conviction proceedings. Most importantly, the Defender Services program is funding case-budgeting attorneys in three circuits to work with judges and panel attorneys in developing budgets to ensure that the representation is provided in a cost-effective manner. A 2010 Federal Judicial Center study found that the savings from the three positions more than offset their costs. Additional case-budgeting positions were included in the Judiciary's FY 2013 budget request but were not funded by Congress. The FY 2015 recommendation of the Budget Committee on which the Judicial Conference will act in September 2013 re-request these positions. In this budget environment, funding for these cost-saving positions is in clear jeopardy.

The Judiciary is making major progress in developing an electronic vouchering system, known as eCJA, to replace the current paper-based system for Criminal Justice Act payments to panel attorneys. These attorneys are paid on a per case, per hour basis and currently submit paper vouchers that are entered manually into a system and processed for payment. This is an inefficient process that can result in keying and payment errors. The new system will enable electronic preparation, submission, processing, and ultimately payment of vouchers; reduce voucher processing errors; and expedite voucher processing and payment. It will also provide judges with historical payment information to assist them in evaluating and approving vouchers. Development of this system is still underway.

We are collaborating with the Department of Justice (DOJ) to contain discovery costs in criminal cases (for both the DOJ and the Judiciary) by effectively managing electronically stored information (ESI). In FY 2012, broad national protocols were disseminated that were jointly developed, by the DOJ and the Administrative Office, for the cost-effective and efficient management of ESI in discovery. The Judiciary is optimistic that substantial cost avoidance will result from widespread use of the protocols – to help meet the rapidly changing technological challenges in this high-cost area of discovery – for federal defender and panel attorney cases – and for the DOJ.

We are now using a case weighting system to determine staffing requirements for federal defender organizations. Case weights act as a scientific and empirically-based methodology for determining the complexity of workload in the Defender Services program and allows for a more efficient allocation of limited resources. Case weights provide a fair, objective basis for identifying staffing needs based on disparate case types in federal defender organizations around

the country. Case weights will improve the utilization of resources in the Defender Services program.

Cost Containment Going Forward

While we are proud of our accomplishments to date in containing costs, we recognize that we are in an era of budget constraint. Accordingly, we have embarked on a new round of cost-containment initiatives. Our approach to cost containment is to continuously challenge our ways of doing business and to identify, wherever possible, ways to economize even further. To be candid, this can be a painful process as we are often proposing changes to long-established Judiciary policies and practices. But we are committed to doing everything we can to conserve resources and be good stewards of the taxpayers' money. We continue to take these difficult steps in the belief that they are essential to positioning the Judiciary for the fiscal realities of today and the future.

One of our new cost-containment initiatives is to maximize the implementation of shared administrative services among the courts of appeals, district courts, bankruptcy courts, and probation and pretrial services offices. We believe this will reduce the duplication caused by multiple human resources, procurement, financial management, and information technology staffs in a single judicial district or circuit. This effort will take several years to implement, but it should allow courts to partially absorb budget cuts by reducing administrative staffing and overhead costs and streamlining administrative processes, allowing them to minimize cuts to staff performing core operations.

I close on this topic by emphasizing that while cost containment has been helpful during the last several years of flat budgets, no amount of cost containment will offset the major reductions we face from sequestration. We believe we are doing our part by containing costs and limiting our request, but we have an essential job to perform and we look to the Congress to provide the funding we need to do our work.

CONCLUSION

Chairman Coons and Senator Sessions, I hope that my testimony today provides you with some insight into the impact of sequestration on the federal courts; the importance of Congress funding our supplemental appropriations request; the consequences of flat funding in FY 2014 at sequestration levels and the need for a funding anomaly for the Judiciary; and our ongoing commitment to containing costs.

We appreciate that Congress has difficult decisions to make regarding allocating scarce federal dollars among government agencies. We ask that Congress take into account the Judiciary's unique Constitutional role in our system of government and the importance to our citizenry of an open, accessible, and well-functioning federal court system. We believe, and I hope you agree, that the federal Judiciary is a vital component of what a free society affords its people, and a standard for the world to emulate. Finally, as a co-equal partner in this great democracy, we ask that Congress preserve our federal court system now and in the future by providing sufficient funding for the operation of the federal courts.

Thank you for the opportunity to appear today and for your continued support of the federal Judiciary. I would be happy to answer any questions the Subcommittee may have.

STATEMENT OF W. WEST ALLEN
CHAIR, GOVERNMENT RELATIONS COMMITTEE
FEDERAL BAR ASSOCIATION

BEFORE THE SUBCOMMITTEE ON BANKRUPTCY AND THE COURTS
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

JULY 23, 2013

Good afternoon Mr. Chairman, Ranking Member Sessions, and Members of the Subcommittee:

Thank you, Chairman Coons, for convening this hearing and for your invitation to appear before you this afternoon.

I am West Allen, a federal court litigation partner with Lewis and Roca, LLP, in Las Vegas, Nevada. I serve as chair of the Government Relations Committee of the Federal Bar Association (FBA), whom you have kindly invited to testify.

The Federal Bar Association is the largest national association devoted to federal jurisprudence and the practice of law in our federal courts. I represent not only the 16,000 members of our legal association, but more broadly the collective interests of every individual citizen and business who are represented by lawyers in America's federal courts. My testimony today will therefore focus on The People and their right to a strong, independent American judiciary that upholds the rule of law.

It is we as The People, both individuals and businesses, who seek and expect justice in America's federal courts. Every day thousands of lawyers and clients appear in federal courthouses across the country to resolve disputes, ranging from multi-million dollar contractual claims and conflicts over patents on emerging technologies to the preservation of civil liberties and determinations of guilt or innocence for criminal defendants. These cases are being decided by able judges and juries for the singular and

sacred task of rendering fair, prompt and respected justice. The ability of our courts to discharge this duty is the hallmark of a civilized, orderly society.

Our Founding Fathers wisely recognized the compelling need for a strong Federal Judiciary, established as a separate, co-equal branch of government, sufficiently independent to assure the rule of law. But independence and promptness of decision-making are imperiled when the Federal Judiciary lacks the resources to properly discharge its Constitutional responsibilities.

Lawyers and The People they represent, who turn to our federal courts for justice, fear that the curtailment of court operations and services by the budget cuts of sequestration are diminishing the ability of the courts to timely and effectively render justice. The long tradition of excellence in the American Judiciary is in jeopardy. We believe that Congress must stand ready to fulfill its Constitutional obligation to provide the ready resources to assure that the Third Branch can honor its Constitutional responsibility to The People.

We are aware that the 2011 law establishing sequestration represents a ten-year budget-cutting process. At this point, without a grand bargain reached by the President and the Congress, we see the fault lines of a financial crisis emerging in the federal courts. The crisis has multiple implications. It has freedom-related implications for our rights under the Constitution. It has cost implications for us as taxpayers. And it has profound implications for our nation and its respect for the American Judiciary and the rule of law.

The Impact of Sequestration upon the Federal Courts

Since the automatic budget cuts began in March, the nation collectively has little felt the direct impact of sequestration. That is because the Executive and Legislative Branches have undertaken actions that have tempered the impact of the budget cuts, relying upon budget maneuvering within remaining resources to deter significant cuts in high-profile federal operations and services. In some cases, this has even involved the use

of funds originally intended for future use to satisfy today's needs. Surviving the second year of sequestration, in FY 2014, will be much more difficult across the government, but especially for the federal courts where the citizens of this nation turn for justice.

As Judge Gibbons of the Budget Committee of the Judicial Conference of the United States has noted in her testimony, the federal courts for the last several years have captured the low-lying fruit of budget savings and are already an extraordinarily lean operation. The federal courts have been able to withstand the impact of the sequester in the first year largely because of the remarkable job that judges and court staff have performed by simply working harder and continuing to find further savings and efficiencies.

Those of us who know our way around a federal courthouse have witnessed numerous ways that the courts—including judges, clerk's offices, probation, pretrial services, federal defenders and support services—have worked tirelessly to maintain operations and service levels, despite budget cuts over the last several years. The construction and major renovation of federal courthouses has been considerably scaled back. The number of jobs within the federal court system has been trimmed by over two thousand positions in less than two years. Positions in clerk's offices, pretrial and probationer services, court security, defender services, case management and information technology, and other court operations have been eliminated through attrition and layoffs.

Set against the backdrop of these significant cost-containment efforts came sequestration earlier this spring. Sequestration reduced the Federal Judiciary's FY 2013 funding of $7 billion by $350 million below last year's funding level, about a five percent cut. The results of these cuts have varied from court to court, with furloughs of Federal Public Defender personnel the most prolific and visible consequence. Less visibly, cutbacks in court operations and services have continued and threaten to grow worse.

Lawyers and litigants have witnessed a variety of ways that sequestration has changed the federal courts. We have seen courts with reduced public access and fewer operational hours due to the inability to pay for clerks, or even overtime lighting and air conditioning. In some courts, the availability of court reporters has decreased. Court security personnel have been reduced. Information technology personnel are overworked and less available to assist in courtrooms. Courtroom equipment and technology maintenance has been delayed, and most new equipment purchases have been eliminated altogether. Some courts have simply run out of routine office supplies, such as paper and toner.

We fear that another round of budget cuts in FY 2014 will trigger a crisis in the capacity of the Federal Judiciary, an independent, co-equal branch of our government, to fulfill its Constitutional responsibilities. Remedial options are limited, other than laying off more personnel and reducing court hours and operations. These problems are generated by the relatively small size of the Federal Judiciary's budget and the labor-intensiveness of its operations. These constraints preclude the kinds of mitigating measures used by the Executive Branch in recent months to avoid service shutdowns and employee furloughs. There are no secondary program accounts in the Federal Judiciary's budget that can be tapped to relieve shortfalls. Fund reprogramming is unavailable because surplus funding within the Federal Judiciary is relatively nonexistent.

This means that for some federal court units, particularly in Federal Defender Offices, further layoffs and furloughs already are unavoidable. As Mr. Nachmanoff, the Federal Defender for the Eastern District of Virginia, will more fully discuss today, Federal Defender Offices are now scheduling as many as twenty days of furloughs of their attorneys and staff during the remainder of the fiscal year. Significant layoffs in Fiscal Year 2014, contributing to the further dismantling of Federal Defender operations, are likely without special relief made available by Congress.

The Impact of Budget Cuts upon Individuals and Businesses

For civil litigators and their clients in federal court, sequestration's greatest impact is upon delay in judicial proceedings. As courts reduce their hours and staffing levels, delay in judicial proceedings becomes inevitable, simply because there are limits to how speedily courts can process and decide cases, especially when their caseloads are increasing. Waiting for judicial rulings on relatively simple motions for six months, eight months, even a year is no longer uncommon. Some courts are beginning to become unable to achieve same-day docketing, which has a direct impact on public access to court information and litigants' ability to obtain effective and timely direction from the court. Delay always means added costs for litigants, along with added uncertainty as to the outcome. This brings about costs to commerce and our economy itself.

Some federal litigators are witnessing a new courthouse culture of austerity emerging, one in which court staff have seemingly less time to be helpful to answer questions and be of assistance to litigators and litigants, largely because court staff have more to do than ever. The historically deep and abiding commitment of federal court staff to professionalism and in doing the very best they can to ensure the wheels of justice spin efficiently is the chief reason why the outlines of a financial crisis in the courts have not already grown wider.

However, the system is showing signs of weakness. Many judges already are choosing to forego trained administrative assistants who traditionally help lawyers and litigants, and rely instead on a law clerk primarily to assist with internal legal functions and judicial work. Some court clerks have outdated technology infrastructure and too few IT personnel to service these systems. More recently, lawyers in courts have experienced law clerks and even untrained law school externs performing civil proceeding functions as courts seek to handle their growing case loads.

The ever-expanding jurisdiction and case filings in most federal courts only exacerbates the problem of limited resources. In the Eastern District of California, for example, as of the end of fiscal year 2012, there were 1,427 pending cases per judge.

The recommended number of cases per federal judge is about 400. Along the Southwest border, caseloads are causing federal courts to literally burst at the seams due to the press of historically high criminal immigration filings. Immigration prosecutions in 2013 on average were up 52.8 percent from levels reported just five years ago in 2008. This remarkable increase in case filings is simply being absorbed by current federal judges serving in these U.S. border districts.

The bankruptcy courts are another prime example of the deteriorating impact of sequestration. Mr. Chairman, in your home state, the Bankruptcy Court in Delaware, a unit of the District Court, continues to be the busiest Bankruptcy Court in the United States for Chapter 11 filings. Since January 2012, its Chapter 11 filings have increased 38 percent. Many of these cases are complex cases, requiring considerable numbers of motion filings and hearings. Yet the Bankruptcy Court in Delaware has suffered budget cuts of 28% over the past three years. In the Clerk's Office alone, the hub of the court for filed paperwork and issued decisions, staffing has been reduced by 30 percent in the last 18 months, from 72 to 49 persons. On top of that, the Delaware Bankruptcy Court has furloughed all remaining staff of the Clerk's Office one day, every two weeks, without pay, equating to a 10% decrease in their salaries. Despite the efforts of the remaining court employees to keep up, the challenges are becoming increasingly insurmountable.

In addition, the Bankruptcy Court for the Southern District of New York, which is often the filing venue of choice for extensive and highly complex "mega" and "ultramega" Chapter 11 corporate reorganization cases, has experienced a 30% reduction in staffing over the past two years and has found its ability to provide the needed level of responsiveness to fast-moving business controversies further compromised by sequestration. While the court has historically conducted hearings whenever needed, even late into the night and on weekends, the inability to pay staff overtime now requires that all hearings end at 5:00 p.m. Meanwhile the judges and law clerks work even longer hours to adjudicate the matters brought before them. In addition, the court has closed its Records Department, reducing its ability to provide public access to court records, and is even printing documents on the back of chambers

copies of filings in its efforts to curtail spending and cut back further on operating costs. The livelihoods of debtor companies' employees and retirees, as well as the property and rights of creditors and other stakeholders of some of our nation's most important enterprises, depend on this bankruptcy court's ability to keep up with massive and difficult caseloads, administering justice in a timely fashion. Mr. Chairman, these courts clearly cannot provide the prompt attention that these cases deserve and require without financial resources adequate to meet the demands of their heavy and extraordinarily complex caseloads.

The Impact of Budget Cuts upon Public Safety

Sequestration also threatens to endanger public safety, both in our courthouses and our streets. Our courthouses become unsafe when courts lack sufficient resources to deter and respond to potentially deadly behavior by dangerous criminal defendants awaiting or standing trial. This threatens the safety of all who daily come to our federal courthouses to participate in our judicial processes, whether litigants, witnesses, or members of the public at large.

The safety of our communities is also threatened when federal court personnel—particularly probation and pretrial service officers—are unable to properly monitor the activities and whereabouts of offenders and convicted felons.

We are concerned that an increasing number of probation offices are encountering a diminished ability to closely supervise offenders and ensure compliance with court orders. Fewer officers are available to conduct searches for contraband on offenders, monitor sex offenders' computer use, and handle 24/7 location monitoring of defendants. Recent statistics from the Eastern District of New York, for example, indicate that some probation officers are taking about a month longer to complete presentence investigation reports and are unable to complete the field work necessary to verify all presentence report material. Fewer officers in some offices are available to appear at sentencing hearings and assist judges with sentencing. Further, some probation offices have drastically cut drug and mental health treatment and other services for offenders.

Pretrial services offices similarly are becoming understaffed and underfunded as a result of sequestration. Some have had to switch to less rigorous methods of monitoring defendants placed on house arrest; for example, many defendants once tracked with active GPS technology are now monitored by passive GPS technology or radio frequency technology. Defendant drug testing has also been scaled back. While previous urine drug testing panels tested for up to eleven substances, some testing panels have been reduced to five. Pretrial services staffing and training have been dramatically reduced and essential training programs—such as to certify officers in Internet monitoring for sex offender cases—have been postponed. As a result, there has been a diminished response to criminal activity by defendants and offenders.

Ultimately, there can be no doubt that fewer precautions in guarding public safety will lead to an increase in the crime rate and personal harm, likely including even fatalities. As conditions deteriorate, they will create added costly law enforcement burdens and, most important, erode public confidence in our judicial system.

Criminal Justice Act and Federal Defender Representation

Cost containment requires budget reductions that continue to assure the satisfaction of mission priorities. For the courts, their highest priorities are derived from Constitutional imperatives. The Sixth Amendment requires that criminal defendants have the right to effective representation and a speedy criminal trial.

As noted previously, sequestration has adversely impacted Federal Public Defenders. Sequestration also has adversely affected the work of Criminal Justice Act indigent defense panel ("CJA Panel") attorneys. CJA Panel attorneys are private lawyers appointed and paid by the Court to represent indigent defendants in cases where the Federal Public Defender Office is unable to appear. In the past, this has been limited to cases in which the Federal Public Defender had a conflict of interest. The increasing unavailability of Federal Public Defender services, however, due to the furlough of

Federal Public Defender attorneys and staff, are causing greater assignment of cases to CJA Panel lawyers.

At the same time, budget cuts are already impacting CJA Panel compensation in ways that are discouraging attorneys from making their services available. Courts are beginning or about to begin to limit disbursements to CJA Panel attorneys through a variety of measures, including: delay in court compensation payments to CJA Panel attorneys and ancillary service providers; reductions in compensation for travel; cutbacks in the availability of experts and ancillary service providers. These actions adversely impact the availability and provision of effective defense representation. They also create significant practical and financial hardships on CJA Panel lawyers and ancillary service providers.

It is well-recognized that the cost of funding indigent defense through CJA Panel attorneys is greater than the cost of using Federal Defender attorneys. Downsizing our Federal Defender system is cost-inefficient at the very least, and dishonors the Sixth Amendment guarantee that every person accused of a crime has the right to an attorney for his or her defense, regardless of the ability to pay. Ninety percent of all individual criminal defendants in federal court are indigent.

The Duty of Congress to Address the Funding Needs of the Third Branch

Congress historically has demonstrated a commitment to its Constitutional responsibility to preserve and sustain a strong, independent Federal Judiciary. Adequate funding for the federal courts has been made possible because Congress has recognized its duty to enable the Third Branch to perform its adjudicatory and public safety functions.

At the same time, the Federal Judiciary has demonstrated an earnest, aggressive commitment, especially over the last several years, to contain costs and live within its means. We should remember that despite the Constitutional relevance of our federal courts, funding for the Federal Judiciary represents a "miniscule" portion of the federal

budget—just 0.2 percent of the United States' total federal budget of $3.7 trillion. This means that for every taxpayer dollar, only two-tenths of one penny goes towards funding an entire branch of our federal government. Those fractions of a penny fund an American Judiciary that is the gold standard to the world. Without question, our federal courts are doing more with less, but will be unable to meet the gold standard without relief. Quite simply, the excellence of the federal judiciary is at risk. As Justice Anthony Kennedy so eloquently put it: "If judicial excellence is cast upon a sea of congressional indifference, the rule of law is imperiled."

This is why the Federal Judiciary has requested a $73 million emergency supplemental appropriation to help it squeeze through the remainder of the current fiscal year. Without emergency relief, the courts' remedial options are limited, other than laying off more personnel and further reducing court hours, operations, and a multitude of services.

Restoration of funding for our federal courts to sustainable levels is essential to the provision of services that the public needs and deserves, and to the effective and responsible stewardship of our courts' Constitutional role. We urge the Judiciary Committee and the Congress to assure the delivery of sufficient funds essential to the proper performance of that role.

Conclusion

Members of the Committee, the impact of sequestration on the federal courts has the potential to give rise to a Constitutional crisis. Unlike any other government agency scrambling for scarce federal dollars, the American judiciary is a coordinate, Third Branch of The People's form of government. The complete independence of courts of justice is peculiarly essential under our Constitution. It is the express Constitutional responsibility of Congress to safeguard this independence by adequately funding our federal courts. Thank you for your consideration of my remarks. I would be happy to answer any questions you may have.

Statement of Michael S. Nachmanoff
Federal Public Defender for the Eastern District of Virginia
On Behalf of the Federal Public and Community Defenders
Before the Judiciary Committee
Subcommittee on Bankruptcy and the Courts

Sequestering Justice: How the Budget Crisis is Undermining Our Courts
July 23, 2013 Hearing

Mr. Chairman and Members of the Subcommittee:

Thank you for holding this hearing and for providing me with the opportunity to speak on behalf of the Federal Public and Community Defenders. The Federal Defenders currently have offices in 91 of 94 judicial districts, and we represent thousands of indigent defendants across the country. I am the Federal Public Defender for the Eastern District of Virginia, and my colleagues and I represent the majority of criminal defendants in federal court.

If action is not taken immediately to save the program, the Federal Defender system will be devastated. It is a bitter irony that exactly fifty years after the United States Supreme Court established the right to appointed counsel in the landmark case of *Gideon v. Wainwright*, budget cuts have brought our program—a program regarded as the flagship of indigent defense in this country—to the brink of destruction. It is equally ironic that, in this time of limited resources when everyone agrees that government must be focused on what it can do well, we are crippling a program that serves as a model of quality, efficiency, and cost effectiveness.

As a result of both the sequester and cuts within the Judiciary this year, Federal Defenders have lost more than 200 employees, and by October 1, 2013, we will be operating at staffing levels approximately 10% below what is needed to meet workload demands. Nationwide, defenders have been forced to take up to 20 days (or one month) of furloughs. These furloughs are in addition to cuts in expert, investigative, and travel expenditures that are necessary to resolve cases efficiently.

In the coming months, the severity of the budget cuts will escalate, and our ability to fulfill our mission will be irreparably harmed. If relief is not provided quickly, Federal Defenders will be forced to terminate as many as one-third to one-half of their employees and close branch offices in FY 2014. These massive staffing losses will result in delays of criminal matters and the assignment of a greater number of cases to private attorneys, greatly increasing costs to the taxpayer.

These short-sighted cuts come on the heels of the Senate Appropriations Committee's announcement last week that it has approved an increase of $79 million to the FY 2014 budget for U.S. Attorneys' offices for the express purpose of bringing more criminal cases in federal court.

Our Mission

Providing a competent lawyer to all eligible criminal defendants is a bedrock principle of our criminal justice system. Our work is not a discretionary expenditure—it is a constitutional mandate. The Sixth Amendment requires the government to provide a lawyer to anyone charged with a serious crime who cannot afford to hire one. In federal court, approximately 90% of all criminal defendants qualify for court-appointed counsel. Federal Defenders represent approximately 60% of those defendants, while the remaining 40% are represented by private attorneys paid an hourly rate under the Criminal Justice Act.

Congress created the Federal Defender program more than forty years ago to improve the quality of representation in federal court through the establishment of Federal Defender offices staffed by public servants with expertise in federal criminal law. In accordance with that mission, my colleagues and I provide high-quality, efficient, and cost-effective representation for indigent defendants.

There are now 81 Federal and Community Defender offices around the country that represent indigent defendants in 91 federal judicial districts. We serve the courts by accepting appointment to represent defendants charged with crimes ranging from misdemeanors to death-eligible offenses. We represent clients in the district courts, on appeal to the circuit courts, and before the United States Supreme Court. In my own office, the Supreme Court has accepted four cases for decision in the past ten years, and we have prevailed in three of those cases.

It has been shown repeatedly that Federal Defenders provide representation at a lower cost to the government than private attorneys who are appointed under the Criminal Justice Act. *See Attachment 1.* Federal Defenders in eight districts have undertaken extensive cost studies of their offices versus panel representation. In those districts, Federal Defenders represent clients for roughly 10% to 35% less than the cost of appointed counsel. *See Attachment 2.* My own office handles more than 2,000 criminal cases a year and we do so better, and more cost effectively, than any other alternative.

Our ability to provide efficient representation comes from specialization in federal criminal law and the ability to maximize resources for the benefit of multiple clients. Furthermore, Federal Defenders have always run lean operations. And for the past

several years, we have implemented rigorous cost-containment measures in our offices, which include negotiating discounted expert fees well below market rates, using bilingual staff for interpretation needs, and limiting the replacement of needed equipment, among many other cost-saving initiatives.

In sum, there is no better, more efficient way for the federal government to meet its constitutional responsibility to provide effective assistance of counsel than through the Federal Public Defender program. This is why the impending destruction of this program makes no sense. Yet, absent congressional action, the Federal Defender program will be eviscerated.

FY 2013 Consequences

As a consequence of sequestration, the Defender Services account was cut by $52 million in FY 2013. These funds are a miniscule fraction of the entire federal budget, but the loss of them was devastating to Federal Defenders. The already lean budgets of Federal Defender organizations were cut by more than 9%, and those cuts had to be absorbed over only seven months, almost doubling their effect. Federal Defenders were forced to furlough and lay off staff while cutting necessary expenditures for training, computer equipment, and travel.

Nearly all Federal Defender budgets are comprised of 80% salaries and benefits, 10% rent, and 10% other expenditures such as expert services, investigative costs, and case-related travel. Because rent is a fixed cost and other expenditures already have been slashed in recent years, Federal Defenders had no choice but to cut the people who do the work required by our Constitution.

On a national level, these furloughs and layoffs have created administrative and docket management burdens for federal courts across the country. Federal Defenders have asked to postpone cases because they lack resources to pay necessary expenses and because attorneys and other staff have been furloughed.

The crisis has also created unmanageable workloads for Federal Defender staff—attorneys are struggling to handle their own cases in addition to those of furloughed or laid-off attorneys. Many of these attorneys already have significantly higher caseloads than their DOJ counterparts: in the Southern and Eastern Districts of New York, for example, the ratio of prosecutors to public defenders is more than 7 to 1.

The Office of the Federal Public Defender for the Eastern District of Virginia is no exception. Like many of my colleagues, we have lost 10% of our staff to layoffs, early retirements, and the voluntary activation of a military reservist over the past six months.

We have been forced to decline resource-intensive cases, including those involving extensive discovery or death penalty eligibility, and to eliminate training programs. Over the next few months, I expect to lay off between 30% and 40% of needed staff, approximately 16 to 22 positions, if the anticipated budget cuts are not averted. The program as a whole stands to lose more than 900 employees in FY 2014 and FY 2015. *See Attachments 3 and 4.*

In the Northern District of Illinois, 19 federal defenders handle the majority of indigent defense cases brought by 152 federal prosecutors (an 8 to 1 ratio). In the last year, this district has seen a 50% increase in complex fraud cases, which are often multi-defendant cases with high volumes of electronically-stored discovery. The Illinois Federal Defender has managed budget cuts by forgoing pension contributions, freezing pay, and eliminating the purchase of all equipment, including needed computer upgrades.

The Office of the Federal Public Defender in Arizona has lost 25 staff positions, including 11 attorneys, since February 2013. The reduction in staffing required the office to decline hundreds of cases on the border, which now have been shifted to private attorneys at greater cost.

These examples illustrate the immediate effects of the fiscal crisis on Federal Defender offices. Further cuts in FY 2014 will destroy Federal Defenders' ability to accomplish the mission that Congress envisioned when it created the program.

FY 2014 Consequences

The budget shortfall for FY 2014 is expected to more than double to $127 million. Meanwhile, adequately funding Federal Defender organizations requires less than 0.05% of total federal spending. The $27.6 billion proposed budget of the Justice Department dwarfs the requested $1.068 billion budget for the Federal Defenders and CJA Panel. In other words, cuts to the Federal Defender program amount to a negligible portion of the federal budget, but their impact is huge.

After already losing 9% of their budgets this year, Federal Defender offices throughout the country face additional cuts beginning October 1, 2013. Absent some immediate action, Federal Defenders will have to accelerate the process of eliminating as many as 33% to 50% of their employees because all other available measures to reduce costs have been taken. These layoffs of attorneys and staff will force Federal Defenders to slash the number of cases they handle—cases that will then be assigned to private attorneys at higher costs.

In addition, Federal Defenders in at least 20 districts are making plans to close offices. The offices to be closed are typically in less-populated regions where the assignment of CJA counsel is not only more expensive but sometimes hard to accomplish at all because of a scarcity of qualified attorneys. The inability to appoint Federal Defenders will lengthen the time required to resolve cases.

Federal Defenders will need to withdraw from large resource-intensive cases and will no longer coordinate discovery in multi-defendant cases. This will further increase CJA expenses. We will have to stop participating in re-entry and diversionary courts. Those courts lower recidivism rates, improve public safety, and reduce costs from incarceration. Federal Defenders' role in administering the CJA Panel will shift to the Court and Clerk's office.

Federal Defenders will be unable to respond to large-scale legal events like the Supreme Court's *Booker* decision that mandatory sentencing guidelines are unconstitutional or legislation such as the Fair Sentencing Act that required retroactive changes to racially discriminatory crack sentencing laws.

In sum, impending cuts to the Federal Defender program will irreparably damage the criminal justice system, and paradoxically, increase the cost to taxpayers. Moreover, these cuts threaten to erode our system of justice by diminishing the quality of representation of both innocent and guilty defendants in federal court. The integrity of our adversarial judicial process is undermined by the imbalance between a fully-funded prosecution and a defense crippled by budget cuts.

Providing adequate funding for indigent defense is a necessity, not a luxury—a Sixth Amendment right, not a mere discretionary expenditure. By any measure, the Federal Defender program is a model of efficiency and should receive Congress's full support. The only question is whether the government will dismantle the current system in favor of a less efficient and more costly alternative.

Attachment One

Cost Comparison:
Defender Organizations and CJA Panel

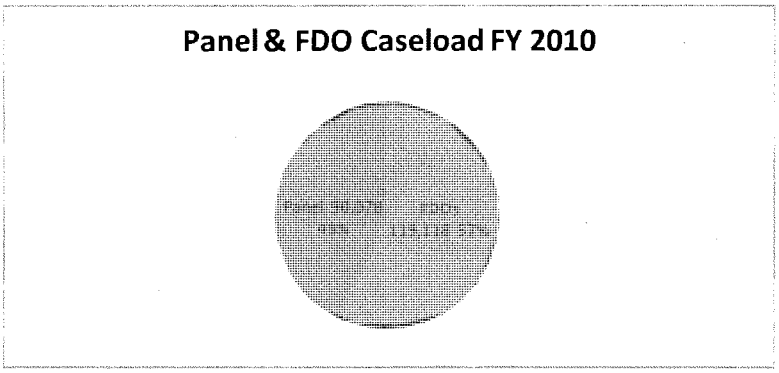
Administrative Office of the United States Courts

Statement of Michael S. Nachmanoff
Federal Public Defender for the Eastern District of Virginia
On Behalf of the Federal Public and Community Defenders
Before the Judiciary Committee
Subcommittee on Bankruptcy and the Courts

Sequestering Justice: How the Budget Crisis is Undermining Our Courts
July 23, 2013 Hearing

CJA Caseload

FDOs have consistently been appointed in about 60 percent of the cases.



Cost per Representation

	FDO	Panel
FY 2010	$ 4,178	$ 4,441
FY 2009	$ 3,794	$ 4,109
FY 2008	$ 3,499	$ 3,646
Excludes Capital Habeas		

These are average amounts. Actual costs per case vary considerably for such reasons as location and distribution of the case mix.

Attachment Two

Cost Comparison:
Defender Organizations and CJA Panel

Federal Defender Costs Fact Sheet

Statement of Michael S. Nachmanoff
Federal Public Defender for the Eastern District of Virginia
On Behalf of the Federal Public and Community Defenders
Before the Judiciary Committee
Subcommittee on Bankruptcy and the Courts

Sequestering Justice: How the Budget Crisis is Undermining Our Courts
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FEDERAL DEFENDER COSTS FACT SHEET

The ultimate irony of cutting Federal Defender budgets is the increase in costs to the taxpayer. In districts across the country, the anticipated cut to Federal Defenders will require thousands of federal criminal cases to be assigned to CJA Panel attorneys. CJA counsel are consistently more expensive than Federal Defenders, and the shift will cause the cost of indigent defense to explode.

A recent analysis confirms this fiscal danger. Defenders in six districts that range in size, type, and geography[1] analyzed the relative costs of Defender organization representation in comparison to the cost of CJA counsel representation. *See Figure 1, CJA vs. FPD Costs Per Case.*[2]

Fig.1 **CJA vs. FPD Costs**

District	3 Yr Average CJA Cost / Case	3 Yr Average FPD Cost / Case	Average FPD Cost as % of CJA Cost (3 year Avg.)	Average Annual Savings from FPD handling cases instead of CJA
D. Az.	$2,194	$1,658	75.6%	$6,245,059.32
ED Cal.	$7,406	$6,531	88.2%	$1,575,436.45
ND Cal.	$13,906	$8,642	62.1%	$7,882,144.79
ED La.	$10,906	$6,265	60.0%	$1,604,130.40
WD Pa.	$8,305	$7,691	92.6%	$561,018.54
ED Wa.	$10,497	$6,954	66.2%	$7,849,917.46
			Average: 71.4%	Average: $3,319,535.86

On average, Defender offices in these six districts defend a federal criminal case for 71.4% of what the Judiciary spends for CJA counsel to defend a case. As illustrated below, the three year average cost for FPD cases in each of these districts is dramatically lower than the cost for CJA representation. *See Figure 2, CJA vs. FPD Costs Per Case.* By representing indigent defendants in their districts, the six Defender offices studied saved the taxpayer over *$3.3 million a year* in the last three fiscal years.[3]

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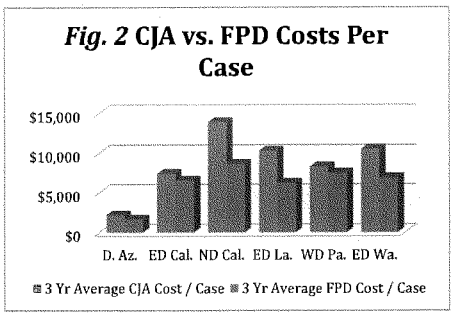
[1] They vary in size from the largest office in the country (District of Arizona), to a comparatively small office (ED Louisiana). The study includes both Federal Public Defender offices and Community Defender offices. Finally, the dockets in these districts vary greatly, from primarily immigration crimes to complex post-SEC white collar fraud offenses. Despite this diversity, the bargain remains a constant: each Defender office in this study costs considerably less than their CJA counterparts.

[2] There is no centralized national database that permits the ready comparison of Federal Defender costs versus costs of the Criminal Justice Act (CJA) panel. Defenders in these six districts accordingly compiled data from in-house paneling of cases, local clerk expenditure records, and other national and local sources. For the methodology used by each district for this study, see Exhibit A.

[3] The assessment builds on earlier studies that reached the same conclusion: providing indigent defense representation through Defender organizations costs less. For example, in the Western District of Michigan the

Together, these Defender offices defend over 10,000 federal criminal cases annually. The anticipated 2014 cuts to the operating budgets of these offices, and the resulting 33 to 50 percent reduction in staff, will require far more cases to be assigned to CJA counsel. As CJA counsel defend a greater percentage of cases (or all of them, in those districts whose Defender office may not survive the cuts), the cost of indigent defense will rise, inexorably and dramatically.



The demonstrable cost differentials revealed in every district studied will be multiplied throughout the country. There are 81 Federal and Community Defender offices nationally. These Defender organizations consistently secure for the Judiciary efficient, skilled and economical defense of indigent cases. The economies arise from volume representation by experienced and trained defense counsel, employed by established institutional actors.

–oOo–

Federal Defender ascertained that CJA counsel costs 37% more than the Defender organization, when expenses for both were examined on a "weighted"-case basis. Similarly, an extensive analysis in the Central District of California revealed that the Federal Defender there defended cases for about half the cost of the Criminal Justice Act panel.

Exhibit A

Methodology, Six-District Study

CASE NUMBER DATA: The data regarding the number of CJA cases represents the best available information about the number of defendants represented by CJA counsel in each of the districts in each of the three fiscal years analyzed. Defender offices that make panel assignments (D. Az, ND Cal., ED La., WD Pa.) were able to review internal appointment records and obtain the number of cases assigned to the panel. In WA-E, the District Court clerk's office was able to provide the number of defendants represented by CJA counsel in each of the fiscal years. The CJA case numbers from the remaining district (ED Cal.) were obtained from DSMIS (Defender Services Management Information System): a national case-management and cost database. Because DSMIS is linked to the existing 6X CJA Panel Attorney Payment System (soon to be replaced by the new eCJA VPS), the CJA case numbers data in DSMIS is not limited to the number of CJA representations. Instead, the number includes the number of all vouchers – those entered at the time of appointment and those entered thereafter for interim payments, experts, and transcripts. As a result, DSMIS over-counts the number of CJA representations in a fiscal year and, consequently, results in a lower CJA cost per case than would be determined if only if the number of defendants represented were included.

The data regarding the number of Defender cases represents the number of cases opened by each office in each of the fiscal years. Because the available data regarding the number of CJA representations does not include appeals appointments, Defender offices also did not include appellate openings.[4] The case numbers (and cost data) for both CJA and Defenders do not include capital habeas representations because, in districts with Capital Habeas Units (CHU), the panel does not handle many, if any, such cases, and in districts without CHUs, the Defenders may not handle many, if any, such cases. As a result, including capital habeas cases in the analysis would hinder the ability to provide a meaningful cost comparison. Finally, in all but one district (ND Cal.), capital trial representations were included in both CJA and Defender data. Because the ND Cal. office did not undertake any capital trial representations during the three-year time period (with the exception of a short period at the end of Fiscal 2012), and the CJA panel did, those cases – and the associated costs – were deducted from CJA totals so as not to unduly inflate the CJA cost-per-case in that district (and survey-wide).

COST DATA: The total annual CJA cost was obtained from DSMIS, and includes the total amount of all vouchers paid to CJA counsel for trial level representation during the fiscal year.

[4] In one district (ED Cal.), it was not possible to remove appellate representations and costs from the panel case numbers, so the Defender case number and cost data for that district also includes appellate openings and related costs.

Also included are Government Travel Account (GTA) expenses, which were obtained from CJA payment summaries provided by District Court clerks' offices.

The total annual cost for Defenders was obtained from regularly-generated financial reports (Financial Accounting System for Tomorrow (FAS4T) and Electronic Status of Funds Reports (ESFRs), and represents the total expenditures made by each of the offices during the fiscal year.

As noted, appellate representations are not included in either CJA or Defender case numbers, and the cost of appellate representation by the CJA panel is not included in the CJA annual cost figure. Accordingly, where able, Defenders removed salary and benefit costs of appeals dedicated staff to allow for a more accurate cost comparison.[5]

Finally, the six-district analysis provides cost per case data for cases initiated in each of the three fiscal years. That is, the case number data reports cases opened in a Defender office, or cases assigned to the CJA during the fiscal year. Cost data for both Defenders and CJA counsel represent the actual amount paid to each during each fiscal year. Some portion of both the amounts paid to CJA counsel and Defender expenditures undoubtedly relate to representations that began in preceding fiscal years and to those that will continue into the next; however, because the cost data for the Defender offices and CJA counsel both include this "carry-over," it does not affect the comparative cost analysis.

[5] This was not possible in one district (ND Cal.), where there is no dedicated appellate staff. As a result, all appeal costs are included in the Defender data for this district -- even though appeal openings are not included -- thereby increasing the relative actual cost per case in that district and survey-wide.

Attachment Three

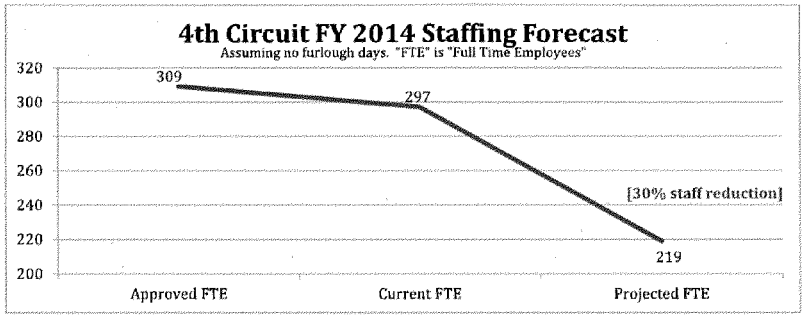
Financial Impact on Defender Organizations

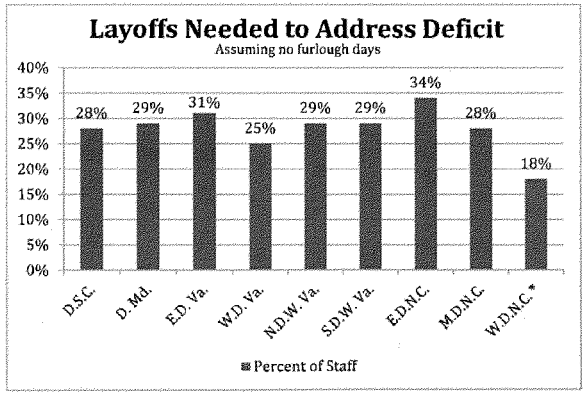
Fourth Circuit

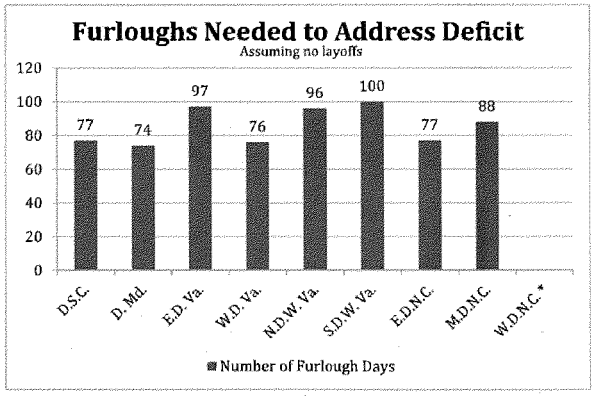
Statement of Michael S. Nachmanoff
Federal Public Defender for the Eastern District of Virginia
On Behalf of the Federal Public and Community Defenders
Before the Judiciary Committee
Subcommittee on Bankruptcy and the Courts

Sequestering Justice: How the Budget Crisis is Undermining Our Courts
July 23, 2013 Hearing

FOURTH CIRCUIT JUDICIAL CONFERENCE
FEDERAL DEFENDER FUNDING CRISIS
(assumes flat funding and no panel attorney shortfalls in FY 2014)







* W.D.N.C. anticipates avoiding furloughs in FY 2014 based on layoffs of seven employees in FY 2013.

Attachment Four

Projected Federal Defender Staffing Levels through September 30, 2015

Administrative Office of the United States Courts

Statement of Michael S. Nachmanoff
Federal Public Defender for the Eastern District of Virginia
On Behalf of the Federal Public and Community Defenders
Before the Judiciary Committee
Subcommittee on Bankruptcy and the Courts

Sequestering Justice: How the Budget Crisis is Undermining Our Courts
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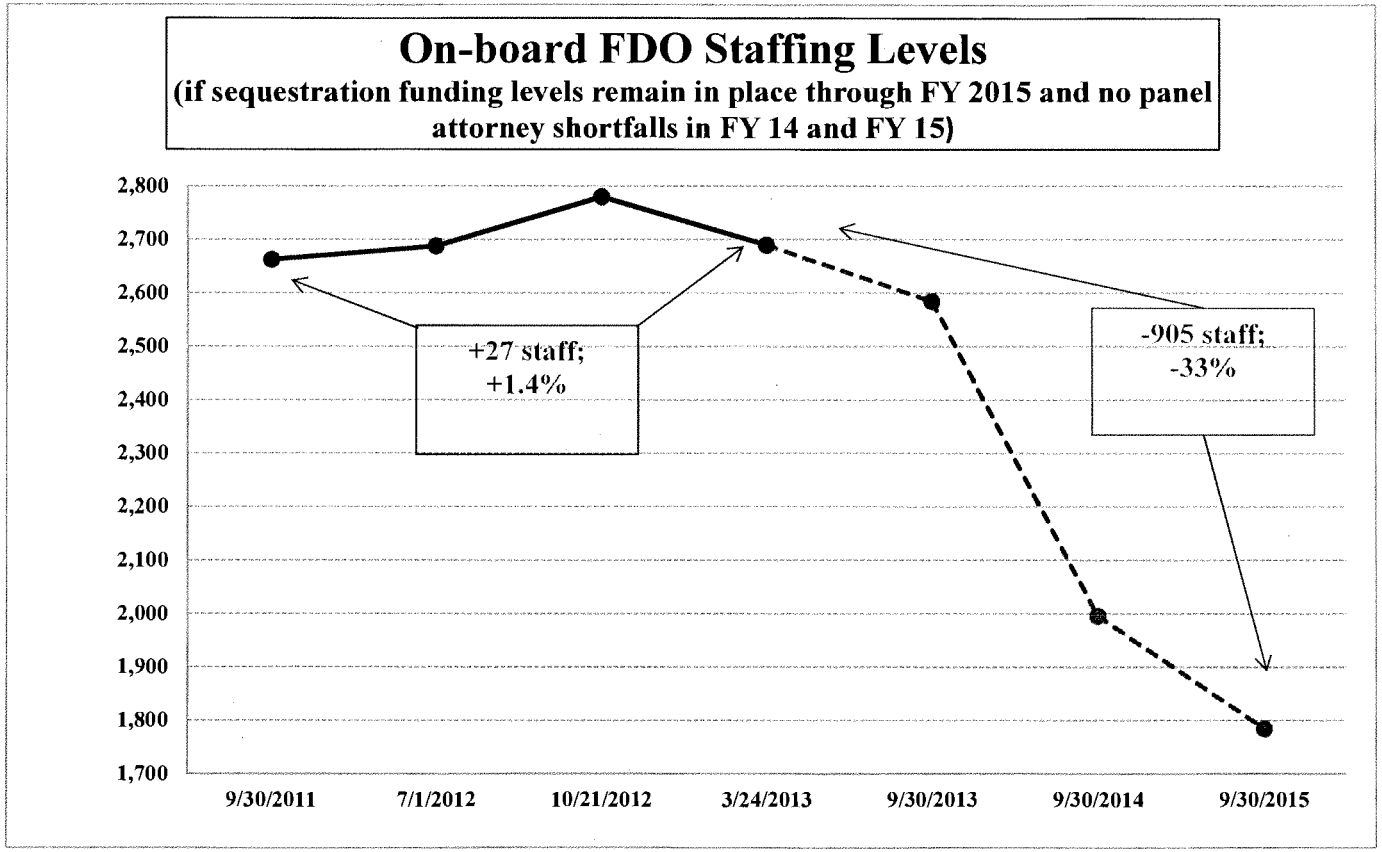
On-board FDO Staffing Levels
(if sequestration funding levels remain in place through FY 2015 and no panel attorney shortfalls in FY 14 and FY 15)
2,800
2,700
2,600
2,500
2,400
2,300
2,200
2,100
2,000
1,900
1,800
1,700
9/30/2011
7/1/2012
10/21/2012
3/24/2013
9/30/2013
9/30/2014
9/30/2015
+27 staff;
+1.4%
-905 staff;
-33%

U.S. SENATE JUDICIARY COMMITTEE
SUBCOMMITTEE *on* BANKRUPTCY *and* THE COURTS

FOR IMMEDIATE RELEASE: July 23, 2013
CONTACT: Ian Koski at 202-224-5042 or Ian_Koski@coons.senate.gov

Opening Statement of Chairman Chris Coons

Senate Judiciary Subcommittee on Bankruptcy and the Courts hearing:
"Sequestering Justice: How the Budget Crisis is Undermining Our Courts"

- As prepared for delivery on July 23, 2013 -

Good afternoon and please come to order. Welcome to this hearing of the Judiciary Committee Subcommittee on Bankruptcy and the Courts. I'm pleased today to be joined by my Ranking Member, Senator Jeff Sessions. Senator Sessions has been either the Chairman or Ranking Member of this subcommittee since 2001, with the brief exception of the two years of the 111th Congress, during which time he served as Ranking Member of the full committee. His experience in overseeing the Judiciary to ensure its effective, efficient operation is unequaled, and I look forward to working with him as we continue that work.

America's judiciary stands as a shining example of the genius of our forefathers. Vested with "the judicial power of the United States," our federal courts act as a check upon executive or legislative overreach and as a neutral arbiter between parties of disputes.

The limitations on government set by the Constitution, as well as the liberty interests reserved to the states and the people, ultimately rely on the judiciary to enforce them. When an individual is wronged or when a business dispute arises, they can turn to the courts, get a fair hearing and a just resolution, and move forward with their lives. When the federal government seeks to deprive any American of life or liberty, it is the courts — and often the federal public defenders that they employ — that make sure the government is forced to meet its burden of establishing guilt beyond a reasonable doubt.

When the sequester was conceived, the across-the-board federal budget cut was thought to be so dangerous, so reckless that it would force Congress to responsibly confront our nation's spiraling deficits. Congress has not acted, however, and the result has been an erosion of the ability of our government to do the people's business. I fear that continued, sustained, indiscriminate cuts could push us to a point of crisis.

The judiciary has looked at a variety of measures to address this new budgetary reality, and very few of them come without significant pain to the individuals and businesses that rely on them. One proposal — to simply not schedule civil jury trials in the month of September — would effectively impose a 30-day uncertainty tax on every civil litigant before the courts. A judge in Nebraska has threatened to dismiss so-called "low priority" immigration-status crimes because of a lack of adequate capacity. In New York, deep furlough cuts to the public defender's office caused the delay of the criminal trial for Osama bin Laden's son-in-law and former al-Qaeda spokesman Sulaiman Abu Ghaith.

In Delaware, the sequester has meant lengthy employee furloughs at the clerk's office of the Bankruptcy court, resulting in reduced customer service hours and the postponement of IT upgrades that would aid the efficient resolution of bankruptcy cases. The cuts have not been deeper only because that office is already working with 40 percent fewer staff despite an increasing caseload, including many time-intensive mega cases, which are so important for the country's economic recovery.

The Delaware federal public defender's office has had to furlough its defenders 15 days this year, essentially cancelling the criminal docket every Friday for the rest of the year. Every day the public defenders are furloughed is another day that criminal defendants spend in pre-trial incarceration, at a cost to the taxpayer of more than $100 per day. The defender's office has also had to sharply curtail expenditures for investigators and experts, which may be leading to a decrease in the quality of representation, leading to longer prison terms, and even more avoidable taxpayer expense.

And if we don't act, the picture looks still bleaker for next year, when Federal Public Defender's offices nationwide are scheduled to take a 23 percent cut. In Delaware, this means one-third of the office will be laid off, but even that won't be enough, so the remaining employees will face between 26 and 60 furlough days, and funding for experts and investigations services will not be restored.

Fifty years ago this year, the Supreme Court gave real substance to the Sixth Amendment's right to counsel in criminal cases when, in *Gideon v. Wainwright*, it ruled that the government could not threaten indigent individuals with prison terms unless it also provided them with an attorney. The Federal Defender Services are the embodiment of that legacy.

The sequester is slowing the pace, increasing the cost, and potentially eroding the quality of the delivery of justice in this country. Congress' disappointing inability to responsibly replace the sequester and save the courts from these draconian cuts is eroding our fundamental constitutional rights. Individuals depend on the courts to be there when they need them, to seek relief from discrimination, to resolve a complicated commercial dispute and enable the parties to stop fighting and get to work growing the economy, or to guarantee them fairness when the government wants to throw them in jail.

The irony is that cuts to the Judicial Branch that undermine its ability to do its job don't actually save taxpayers any money. The cases will still be adjudicated, just at a slower pace and at a higher cost. The Constitution still guarantees the right to effective assistance of counsel, so courts will have to appoint a greater number of panel attorneys, who studies suggest do the job for ten- to 30- cents more on the dollar. Yes, the nation finds itself in a fiscal crisis, and every branch of government must do its part. The judiciary need not be exempted, and is already working to reduce expenses by selling or renting excess office space, or cancelling unnecessary training or conferences. Any expenses beyond its core mission take second priority and need to be looked at closely.

That said, we're not going to be able to solve, or even noticeably mitigate, the national fiscal crisis on the backs of the courts. For every hundred dollars spent by our federal government, just 19 cents goes to the courts. Nineteen cents for one branch of the government is a pretty good deal, if you ask me, particularly for a branch that does its job so well. Indiscriminate cuts truly are penny-wise and pound-foolish.

Dr. King said that, "justice too long delayed is justice denied." I worry that by delaying the delivery of justice, the sequester may be denying justice to too many Americans.

I look forward to the testimony today to shed greater light on what the judiciary has done, and what it would be forced to do, if Congress continues to neglect its duty to responsibly replace the sequester.

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Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
On the Impact of Sequestration on the Federal Justice System
July 23, 2013

Today the Judiciary Committee's Subcommittee on Bankruptcy and the Courts holds its first hearing of 2013, and its focus on the impact of sequestration on our courts and their ability to provide meaningful access to justice could not be timelier. I thank Chairman Coons for holding this important hearing.

In February, even before sequestration had gone into effect, I warned about the harmful effects it could have on our courts and our justice system. Since that time, I have continued to hear from judges and legal professionals around the country who worry about the impact of these senseless budget cuts.

A recent evaluation of sequestration conducted by the Administrative Office of U.S. Courts concluded that "[i]ts impact on the operation of the [F]ederal courts will be devastating and longlasting." Sequestration will exacerbate the delays our courts already face due to persistent understaffing, both for civil and criminal cases. The report warned that "[d]elays in cases will harm individuals, small businesses, and corporations," while "cuts to funding for drug testing, substance abuse and mental health treatment of federal defendants and offenders have also been made, increasing further the risk to public safety."

These harms are not abstract. Chief Justice John Roberts recently noted that sequestration has "hit [the judiciary] particularly hard...When we have sustained cuts that means people have to be furloughed or worse and that has a more direct impact on the services that we can provide." Cuts to services such as Federal public defenders do not just hurt our legal system by causing delays, as the Chief Judge of the Fourth Circuit, William B. Traxler, Jr., has said, they challenge our courts' ability to meet their Constitutional obligations.

Since *Gideon v. Wainwright* was decided over 50 years ago, we have ensured that when a person's liberty is at stake, he is entitled to a lawyer even if he cannot afford one. As a former prosecutor, I know that our justice system yields just results only when both the government and the defendant are ably represented. I was pleased to see that the Senate Appropriations Committee's Subcommittee on Commerce, Justice and Science recently allocated a $38 million increase in funding to the U.S. Attorneys' Office. However, it is troubling, and frankly unacceptable, that our federal public defenders continue to face steep and ongoing cuts due to sequestration. If Congress doesn't act, they will be faced with a possible 23 percent reduction in funding over the next fiscal year.

We rely on our federal public defenders to advocate on behalf of indigent defendants, to prevent the innocent from being wrongfully convicted, and to ensure that before a person is deprived of their freedom, the government has proven guilt beyond a reasonable doubt.

I recently heard from Michael Desautels, the Federal Public Defender in Vermont, who recounted the devastating impact of cuts due to sequestration. Attorneys in his office are foregoing in-person meetings with their clients, instead relying on video conferencing to save gas

money. The office has further cut their use of expert witnesses in complex cases and suspended training programs. They have cut telephone, fax, and internet services at their branch offices and rely on computers so old only refurbished parts can be used for maintenance. If the cuts continue as projected, the Vermont Federal Public Defender's office will be forced to shut down the office one day every week for the next fiscal year. That is a twenty percent cut in time appearing in court, interviewing witnesses, drafting motions, and meeting clients. Stories like this are being repeated at federal public defenders offices throughout the country. And the ironic truth in all of this is that such cuts don't even save the government money.

When public defenders can't do their jobs, cases get delayed, creating huge backlogs in our courts. Defendants remain in jail longer, at significant taxpayer expense. According to the Bureau of Prisons, the average cost of incarcerating a federal prisoner is $28,893.40 per year. It is also far more costly to pay for private attorneys to represent indigent defendants, as the government must do when public defenders are unable to take on more cases.

I look forward to hearing from Judge Gibbons, Chair of the Judicial Conference Committee on the Budget, about why private panel attorneys have been spared from the kind of draconian cuts that have been imposed on our federal public defenders. I am also interested to learn what level of discretion the Judicial Conference has to make cuts outside of these two defense counsel programs. Reducing reimbursement rates for private attorneys carries risk, but I am concerned that the deep cuts currently in place are harmful to every aspect of our justice system, including our bottom line. It is also unclear whether cuts elsewhere to judicial operations would be less devastating to constitutional obligations.

Public defenders have committed themselves nobly to their clients, even when the cases are tough, because that is what the Constitution demands. We must remain committed to ensuring that they have sufficient resources to do their jobs. To do otherwise would only exacerbate our existing fiscal crisis, and is nothing less than a betrayal of our duty to uphold the Constitution.

Over the past several months, I have made statements on the impact of sequestration on public defenders and on the Federal justice system as a whole, and I have placed in the Congressional Record various letters and articles about it. I believe these documents – including an op-ed by two Federal judges, articles in *The New York Times* and *The Atlantic*, a letter from the director of the Administrative Office of U.S. Courts, and a letter from Vermont's Federal Public Defender – would be valuable additions to today's hearing record, and I ask that they be included in the record.

I thank the witnesses for being before the Committee today, and I look forward to their testimony.

# # # # #

QUESTIONS AND ANSWERS

Senate Judiciary Committee Hearing
"Sequestering Justice: How the Budget Crisis is Undermining Our Courts"
Questions for the Record Submitted by Senator Al Franken
For Mr. W. West Allen

Question 1. Do you believe that sequestration could make it more difficult for the judicial system to fulfill its constitutional obligations, including the right to speedy criminal trials, the right to counsel, and the right to jury trials? If so, please explain.

Question 2. I have heard from the Federal Defender in Minnesota, who is concerned that sequestration could decimate her office and the public defender system. I share these concerns, and I think that the Federal Defender put it well when she wrote this: "That these things would happen on the 50th anniversary of the Supreme Court's decision in *Gideon v. Wainright*, the decision that made the Constitution's promise of assistance to counsel real for all Americans, is nothing short of tragic." Could you please share your thoughts on this issue?

Question 3. In your written testimony, you state the following: "Our courthouses become unsafe when courts lack sufficient resources to deter and respond to potentially deadly behavior by dangerous criminal defendants awaiting or standing trial. This threatens the safety of all who daily come to our federal courthouses to participate in our judicial processes, whether litigants, witnesses, or members of the public at large." I agree with this statement, and I believe that your assessment applies to state and local courthouses as well, which is why I have introduced legislation to improve security measures at those facilities. Can you explain why courthouses sometimes are targeted for violent acts and how the judicial system suffers when courthouses are not secure?

Question 4. In your experience, how do delays within the civil justice system affect small businesses?

Senate Judiciary Committee Hearing
"Sequestering Justice: How the Budget Crisis is Undermining Our Courts"
Questions for the Record Submitted by Senator Al Franken
For the Honorable Julia S. Gibbons

Question 1. Do you believe that sequestration could make it more difficult for the judicial system to fulfill its constitutional obligations, including the right to speedy criminal trials, the right to counsel, and the right to jury trials? If so, please explain.

Question 2. I have heard from the Federal Defender in Minnesota, who is concerned that sequestration could decimate her office and the public defender system. I share these concerns, and I think that the Federal Defender put it well when she wrote this: "That these things would happen on the 50th anniversary of the Supreme Court's decision in *Gideon v. Wainright*, the decision that made the Constition's promise of assistance to counsel real for all Americans, is nothing short of tragic." Could you please share your thoughts on this issue?

Question 3. In your written testimony, you say that sequestration has resulted in slower processing of civil and bankruptcy cases. Can you explain how this affects small businesses?

Question 4. It seems that effective probationary and supervisory services can result in lower recidivism rates, which, in turn, reduce overall criminal justice costs. Has this been your experience? And, if so, how does sequestration jeopardize these long-term cost savings?

Question 5. I understand that there are several federal prosecutors for each individual federal public defender and that staffing cuts at the Justice Department have not been as severe as those at the Office of the Federal Public Defender. In your written testimony, you explained that "the pace at which criminal cases requiring court-appointed counsel has continued unabated, while resources in the Defender Services program are diminishing." Do you think that Congress could reduce these disparities by calibrating the Office of the Federal Public Defender's funding with that of the Justice Department?

Senate Judiciary Committee Hearing
"Sequestering Justice: How the Budget Crisis is Undermining Our Courts"
Questions for the Record Submitted by Senator Al Franken
For Mr. Michael Nachmanoff

Question 1. Do you believe that sequestration could make it more difficult for the judicial system to fulfill its constitutional obligations, including the right to speedy criminal trials, the right to counsel, and the right to jury trials? If so, please explain.

Question 2. I have heard from the Federal Defender in Minnesota, who is concerned that sequestration could decimate her office and the public defender system. I share these concerns, and I think that the Federal Defender put it well when she wrote this: "That these things would happen on the 50th anniversary of the Supreme Court's decision in *Gideon v. Wainright*, the decision that made the Constition's promise of assistance to counsel real for all Americans, is nothing short of tragic." Could you please share your thoughts on this issue?

Question 3. In your written testimony, you say that the "integrity of our adversarial judicial process is undermined by the imbalance between a fully-funded prosecution and a defense crippled by budget cuts." Do you think that Congress could reduce this disparity by calibrating the Office of the Federal Public Defender's funding with that of the Justice Department?

Question 4. It seems to me that short-term spending cuts within the Office of the Federal Public Defender will result in long-run expenses. For example, the Office of the Federal Public Defender provides more effective and cost-efficient representation than do available alternatives. Do you agree with this assessment? If so, can you explain why the short-term cuts required by sequestration will actually increase costs to the judicial system in the long run?

Senator Jeff Sessions
Questions for the Record
Judge Julia Gibbons

1. Please provide the Committee with data showing any change in (a) the number of written decisions per active judge on the U.S. Court of Appeals for the D.C. Circuit between 1997 and 2006, and 2006 and 2013; (b) the number of appeals resolved on the merits per active judge on the D.C. Circuit between 1997 and 2006, and 2006 and 2013; and (c) the total appeals filed in the D.C. Circuit between 1997 and 2006, and 2006 and 2013.

2. During your testimony, you noted that despite efforts to have a constructive relationship with the General Services Administration (GSA), projects undertaken by GSA are not always completed in the most effective or efficient manner. You also testified that the Judiciary could run its courthouses and buildings more efficiently. Please take this opportunity to expand on that testimony.

3. Please describe any positive effects and/or efficiencies in the Judiciary's budget that have been brought about by the sequester and that may not have occurred otherwise.

4. You testified that the "Judiciary's fiscal year 2013 financial plan assumes a suspension of payments to private panel attorneys for the last 15 business days (3 weeks) of the fiscal year," until fiscal year 2014. Extending this practice has been suggested by some as a quick fix to the fiscal pressures being experienced by the Judiciary. What is the Executive Committee's plan on how to become current on payments in the future?

5. It is my understanding that the Executive Committee of the Judicial Conference approved emergency measures intended to deal with sequestration for 2013 but that local offices determine how to implement the reductions. How much of the appropriation to the Judiciary goes to headquarters or centralized operations (including rent) and how much is distributed through a formula to local public defender offices? Please also describe the formula used to determine how much funding each public defender office receives.

Senator Jeff Sessions
Questions for the Record
Michael Nachmanoff

1. It is my understanding that the Executive Committee of the Judicial Conference approved emergency measures intended to deal with sequestration for 2013 but that local offices determine how to implement the reductions. How much of the appropriation to the Judiciary goes to headquarters or centralized operations (including rent) and how much is distributed through a formula to local public defender offices?

2. How does your office determine what is classified as a "fixed cost"? Are attorney salaries fixed costs? If labor counts as a fixed cost, does that include hiring to replace those lost to attrition?

3. Has your office offered raises or merit increases since sequester went into effect?

4. What is the annual amount of funds provided for the Public Defender's Office from FY2000 though FY2013, and what are they projected to be through FY2021 assuming the post-sequester levels in the Budget Control Act?

Senate Judiciary Committee Hearing
"Sequestering Justice: How the Budget Crisis is Undermining Our Courts"
Questions for the Record Submitted by Senator Al Franken
For Mr. W. West Allen

Question 1. Do you believe that sequestration could make it more difficult for the judicial system to fulfill its constitutional obligations, including the right to speedy criminal trials, the right to counsel, and the right to jury trials? If so, please explain.

Answer. *Yes, sequestration could make it more difficult for the federal judicial system to fulfill its Constitutional obligations. The Sixth Amendment requires that criminal defendants have the right to effective representation and a speedy criminal trial. These rights are imperiled if representational capacity through court-appointed defenders is depleted due to inadequate funding. This could contribute to delay in assuring that Constitutional and statutory imperatives to the right to counsel and speedy trial are assured. The right to a jury trial similarly would be threatened if resources were not adequate to assure the timely payment of juror fees.*

Question 2. I have heard from the Federal Defender in Minnesota, who is concerned that sequestration could decimate her office and the public defender system. I share these concerns, and I think that the Federal Defender put it well when she wrote this: "That these things would happen on the 50th anniversary of the Supreme Court's decision in *Gideon v. Wainright*, the decision that made the Constitution's promise of assistance to counsel real for all Americans, is nothing short of tragic." Could you please share your thoughts on this issue?

Answer. *The Federal Judiciary is faced with numerous challenges to satisfy the administration of justice. The assurance of the right to effective legal representation in criminal proceedings is one of many priorities the Federal Judiciary must satisfy. Within our adversarial system and its founding principal of equal justice under the law, the defense of the criminally accused is critical. Sequestration and related budget reductions, however, leave this system in peril. Federal Defenders already have reduced staff by about ten percent nationally, and may be required to cut an additional 25 to 40 percent this fall, in addition to lengthy furloughs, if funding relief is not approved. These cuts would materially reduce the ability of federal defenders to adequately represent eligible defendants. Moreover, they would likely increase overall costs as cases shift to private attorneys, increase delays in other criminal and civil matters pending before the federal courts, and structurally alter the Federal Defender program currently in place to accomplish its Constitutionally mandated function. The Federal Bar Association continues to urge Congress to adequately fund this important function of America's federal judiciary.*

Question 3. In your written testimony, you state the following: "Our courthouses become unsafe when courts lack sufficient resources to deter and respond to potentially deadly behavior by dangerous criminal defendants awaiting or standing trial. This threatens the safety of all who daily come to our federal courthouses to participate in our judicial processes, whether litigants, witnesses, or members of the public at large." I agree with this statement, and I believe that your

assessment applies to state and local courthouses as well, which is why I have introduced legislation to improve security measures at those facilities. Can you explain why courthouses sometimes are targeted for violent acts and how the judicial system suffers when courthouses are not secure?

Answer. *Courthouses are icons and instruments of a civil and just society. They are icons in the sense that they have become symbols of an open, transparent and democratic government, available to all. They are instruments in that within our civil society they dispense justice fairly and promptly. At times, violence has been perpetrated against courthouses and judges because of anger and recrimination by those for related and unrelated wrongs. Threats and actual acts of violence against federal judges have escalated significantly over the past decade. In 2010 in my home city of Las Vegas, a gunman, allegedly distraught because of a reduction in his social security benefits, stormed into the Lloyd D. George Federal Courthouse and opened fire, killing 72-year old retired police officer Stanley Cooper. Unfortunately, Federal courthouses often are the most visible symbol of the United States to those who are most dangerous within our society. We therefore must be increasingly vigilant in assuring that adequate measures exist to protect and defend our courthouses, their judiciary employees, and those who dispense and seek justice within them.*

Question 4. In your experience, how do delays within the civil justice system affect small businesses?

Answer. *My testimony spoke to the impact of delay within the judicial system on businesses, large and small. Many small businesses operate on too tight a profit margin to be able to afford the expense and uncertainty of a lawsuit in a commercial dispute, whether they sue or are sued. Federal court lawsuits have become almost prohibitively expensive and prolonged for small businesses. Delay is caused, in part, by growing caseload levels that in many districts are far above recommended levels. When courts are overly busy, the resolution of every motion and matter takes more time. More time requires small businesses to expend more limited resources, including business hours and money, on lawsuits and related losses caused by delayed justice. These delays are affecting small businesses in both U.S. District Courts and U.S. Bankruptcy Courts. Further delays in the hearing of civil lawsuits in our federal courts, spawned by inadequate funding that may require courts to close their doors, would only exacerbate the problem. Congress must help small businesses by avoiding undue delays in the civil justice system and adequately funding our federal courts.*

Senate Judiciary Committee Hearing
"Sequestering Justice: How the Budget Crisis is Undermining Our Courts"

Questions for the Record Submitted by Senator Jeff Sessions

For the Honorable Julia S. Gibbons

1. **Please provide the Committee with data showing any change in (a) the number of written decisions per active judge on the U.S. Court of Appeals for the D.C. Circuit between 1997 and 2006, and 2006 and 2013; (b) the number of appeals resolved on the merits per active judge on the D.C. Circuit between 1997 and 2006, and 2006 and 2013; and (c) the total appeals filed in the D.C. Circuit between 1997 and 2006, and 2006 and 2013.**

Response:

U.S. Court of Appeals for the District of Columbia Circuit
Appeals Commenced, Decided on the Merits, and Written Decisions
During the 12-Month Periods Ending June 30, 1997 Through 2013*

		Per Active Judge**	
Year	Commenced	Merit Terminations	Written Decisions
1997	1,488	231	76
1998	1,543	168	56
1999	1,570	180	59
2000	1,513	188	61
2001	1,408	191	63
2002	1,204	183	62
2003	1,063	180	61
2004	1,358	157	52
2005	1,369	170	57
2006	1,354	165	55
2007	1,286	155	52
2008	1,245	145	48
2009	1,230	158	56
2010	1,094	151	50
2011	1,189	177	59
2012	1,197	216	50
2013*	1,137	190	44

SOURCE: Administrative Office of the U.S. Courts, Washington, DC.
* Data for the 12-month period ending June 30, 2013 reflects preliminary data.
** Includes data for judges active during the entire 12-month period.

2. **During your testimony, you noted that despite efforts to have a constructive relationship with the General Services Administration (GSA), projects undertaken by GSA are not always completed in the most effective or efficient manner. You also testified that the Judiciary could run its courthouses and buildings more efficiently. Please take this opportunity to expand on that testimony.**

Response:

Over the years we have largely had a very constructive working relationship with GSA but that relationship has certainly had its ups and downs. The Judiciary's rent bill from GSA has been a matter of concern to the Judicial Conference for over 20 years and we have implemented a number of space-related cost containment efforts to reduce our rent burden. One initiative was a national rent validation project where we cross-checked our rent charges with space we actually occupy and identified numerous instances of errors and overbillings that resulted in tens of millions of dollars of rent credits to the Judiciary. GSA was cooperative in working with us to correct these overcharges.

There have been challenges as well. There have been instances where GSA has not operated as efficiently as we would have liked in completing work on Judiciary space projects, but we believe that our partnership with GSA has strengthened in recent years. For example, in 2008 we signed a memorandum of agreement with GSA that instituted a policy for GSA to use a return on investment pricing model for calculating rent payments for new courthouses, rather than market based appraisal pricing which we believe results in excessive rent charges. The return on investment methodology will fix rent costs for 20 years with building operating costs being adjusted annually. This methodology is a "win-win" for both the Judiciary and GSA. Additionally, the Judiciary is working hard to improve the quality of services that we get from GSA. In particular, Judiciary and GSA staff are engaged in a series of partnering workshops designed to improve working relationships.

Regarding operating our own courthouses and buildings, at its September 1989 session the Judicial Conference adopted a policy that the Judiciary should pursue legislation in Congress to allow us to manage and operate our own facilities, independent of GSA. The Judicial Conference reaffirmed this policy in March 2006. While there are certainly merits to this idea, the Judicial Conference has not in recent years aggressively pursued legislation to implement independent real property authority for the Judiciary. There would be significant upfront costs involved, including the hiring of potentially large numbers of staff to manage and maintain federal court facilities around the country, or contracting with a large commercial real estate firm to perform that work. Also, it would constitute a significant responsibility that veers dramatically from our core mission to deliver justice. After these upfront investments are made we believe there could be cost efficiencies, however, given the austere federal budget environment, we do not believe it is prudent to actively pursue independently real property authority for the Judiciary.

The Judiciary has participated in GSA's building operations delegation program on a limited basis since the Judicial Conference approved a pilot program in March 1988. Under this

program, federal agencies receive a delegation from GSA for the daily operation and management of their buildings. Two courts participated in the program but currently only one facility remains – the Hugo L. Black U.S. Courthouse in Birmingham, Alabama. The Judicial Conference terminated the Judiciary's participation in the program in 2005, except for the delegation to the Birmingham courthouse, which is subject to certain limitations. Beginning in FY 2004, GSA instituted changes to the building operations delegation program, the most significant being that GSA shifted the responsibility for all repairs – regardless of cost – to the delegated agencies. These new terms meant that the district court running the building operations in the Hugo L. Black U.S. Courthouse had to begin to budget and plan for projected repairs and maintain a reserve fund for unforeseen repairs. This added a significant cost liability to the Judiciary's budget in the event the building was damaged due to fire, flood, natural disaster, or some other occurrence.

The Space and Facilities Committee of Judicial Conference periodically reviews the building operations delegation program and looks at the costs and benefits of expanding it. In light of a court's liability for unforeseen repairs, the Space and Facilities Committee has no immediate plans to recommend expansion of the building operations delegation program.

3. **Please describe any positive effects and/or efficiencies in the Judiciary's budget that have been brought about by the sequester and that may not have occurred otherwise.**

Response:

I am not aware of any positive effects that sequestration has had on the federal Judiciary. On the contrary, and as I testified at the hearing, sequestration has had a devastating impact on federal court operations. Clerks of courts offices, probation and pretrial services offices, and federal defender offices have all experienced steep staffing losses and implemented furloughs as a result of sequestration. Court operating budgets have been cut and spending on court security has been slashed.

Sequestration not only creates problems in the current fiscal year, but the cuts preclude us from making investments now that will save money in the future. For example, we are under pressure from Congress to reduce our space footprint and we are looking at ways to accomplish that. One space reduction initiative is to move court employees out of leased space into courthouse space. But there are upfront costs involved – moving costs, space renovation costs, etc. At sequestration funding levels we are unable to cover these upfront costs, even though they will reduce our space needs and rent bill over the longer term. The same is true in our information technology program. We have relied on information technology innovations to improve productivity and implement efficiencies throughout the courts, but under sequestration we have had to slow down a number of IT initiatives that would have generated future savings.

4. **You testified that the "Judiciary's fiscal year 2013 financial plan assumes a suspension of payments to private panel attorneys for the last 15 business days (3 weeks) of the fiscal year," until fiscal year 2014. Extending this practice has been suggested by some as a quick fix to the fiscal pressures being experienced by the Judiciary. What is the Executive Committee's plan on how to become current on payments in the future?**

Response:

The three-week panel attorney payment deferrals in FY 2013 are estimated to total $28 million and these payments will be the first ones made in FY 2014. The House and Senate Appropriations Committees have been advised of this FY 2014 funding need.

There are no easy answers when it comes to applying sequestration cuts to the Defender Services program. In considering a FY 2013 financial plan for Defender Services, the Executive Committee faced difficult choices in applying the $52 million sequestration cut and sought to strike a balance between reductions to federal defender offices and deferring payments to panel attorneys. Although deferring panel attorney payments pushes obligations from one year to the next, a three week deferral was considered appropriate in order to prevent deeper cuts to federal defender organizations that would have resulted in greater staffing losses and furloughs.

5. **It is my understanding that the Executive Committee of the Judicial Conference approved emergency measures intended to deal with sequestration for 2013 but that local offices determine how to implement the reductions. How much of the appropriation to the Judiciary goes to headquarters or centralized operations (including rent) and how much is distributed through a formula to local public defender offices? Please also describe the formula used to determine how much funding each public defender office receives.**

Response:

The Courts Salaries and Expenses account is the funding source for allotments for the regional courts of appeals, district courts, bankruptcy courts, and probation and pretrial services offices. The Defender Services account is the funding source for allotments to federal defender organizations and for making payments to private panel attorneys accepting an appointment under the Criminal Justice Act. I will discuss each separately.

Courts Salaries and Expenses. The Courts Salaries and Expenses account utilizes appropriated funds from Congress and balances from filing fees and other court charges to fund the operations of the regional courts of appeals, district courts, bankruptcy courts, and probation and pretrial services offices. The FY 2013 financial plan for this account totals $5.149 billion in obligations. Funding priorities are divided into "must-pay" and "discretionary" categories. Must-pay items are certain centrally-managed expenses that receive funding priority. The major categories of must-pay expenses include the

compensation and benefits of judges and chambers staff, court staff benefits (retirement, health care, etc.), space rental payments to GSA, national information technology infrastructure costs, and postage and other costs. These must-pay expenses comprise 59 percent ($3.037 billion) of obligations in the Courts Salaries and Expenses account. The remaining 41 percent is for discretionary items such as allotments to the courts (36 percent, $1.876 billion) and for other centrally-managed activities such as information technology projects, space alterations and furniture, and other discretionary costs (5 percent, $236 million).

The Judiciary uses staffing and other formulas to determine funding requirements for each of the nearly 400 court units nationwide. The primary inputs to these formulas are workload factors such as criminal filings, civil filings, bankruptcy filings, the number of people under the supervision of a probation officer, pre-trial reports prepared, etc. Once the formulas are run and staffing and operational requirements are determined, across-the-board cuts are applied to bring requirements in line with available resources. Must-pay expenses typically increase each year due to inflation and other factors (i.e., judges being confirmed) so even at flat funding levels court allotments will decline from the previous year.

Sequestration reduced the Courts Salaries and Expenses account by $239 million. After funding must-pay costs as described above, court allotments had to be cut 10 percent below the FY 2012 allotment level on a national basis in order to balance requirements with available resources. The Administrative Office estimates that at a hard freeze at sequestration funding levels for FY 2014, court allotments would be cut an additional 5 to 7 percent below FY 2013 allotment levels.

Defender Services. Funds appropriated for the Defender Services account support the appointment of counsel as well as costs of expert, investigative, and other services necessary to defend financially eligible persons, which the Judiciary is required to provide by the United States Constitution; the Criminal Justice Act (CJA), 18 U.S.C. § 3006A; and other related statutes. They also provide for the continuing education and training of attorneys providing representational services under the CJA.

The FY 2013 financial plan for Defender Services totals $1.003 billion for three primary activities: federal defender organizations ($575.3 million, 57 percent), panel attorneys ($420.4 million, 42 percent), and program administration ($7.5 million, 1 percent).

- Federal defender organizations (FDOs). There are 81 FDOs that serve 91 of the 94 judicial districts. Of the $575.3 million (57 percent) in the spending plan, $563.4 million (56 percent) is for distribution to the FDOs in the form of allotments. The remaining $11.9 million (1 percent) is centrally held, mostly to pay for information technology related items such as software licenses, computer-assisted legal research, a case management system, and a data network. Eighty percent of the individual FDO budgets is for salary and benefits, and another 10 percent is for space (unlike the courts, FDOs must pay space costs out of their individual allotments). Of the remaining 10 percent, much is non-discretionary, such as expert services needed for ongoing cases,

telecommunications, and equipment lease and maintenance contracts. Because so much of an FDO's budget is essentially uncontrollable, cuts in funding have a disproportionate impact on staff. Between October 2012 and July 2013, the number of defender staff has dropped from 3,540 to 3,342, a reduction of 198. Furthermore, FDOs have furloughed staff for a total of 134,085 hours. The Administrative Office estimates that at a hard freeze at sequestration levels for FY 2014, FDO allotments would be cut 13 percent below FY 2013 allotment levels if FDOs absorbed the entire shortfall. If panel attorney payments are deferred for three weeks, as occurred in FY 2013, FDO allotments would be reduced by 8 percent below FY 2013 levels.

- Panel attorneys. Panel attorneys are private lawyers that serve on a Criminal Justice Act panel maintained by the court and who are appointed by the court on a case-by-case basis. Panel attorneys are paid at an hourly rate, either $125 per hour for non-capital cases, or $178 for capital cases. The FY 2013 financial plan includes $420.4 million (42 percent) for payments to panel attorneys. Courts enter payment information into a system, and the payments are paid centrally at the Administrative Office. Due to sequestration, the Administrative Office projects that payments to panel attorneys will be suspended about three weeks prior to the end of the fiscal year. These deferred payments will increase FY 2014 requirements by approximately $27 million, and since the rate of panel expenditures is expected to be about the same in FY 2014, the panel activity faces a potential $54 million shortfall next fiscal year.

- Program administration: The program administration activity is funding held centrally at the Administrative Office and used for FDO program assessments and training for panel attorneys and federal defenders. The FY 2013 financial plan includes $7.5 million (1 percent) for program administration. Due to sequestration, many training programs were cancelled, and savings were reallocated to FDO allotments.

Description of Funding Formula for Federal Defender Organization Allotments

The federal defender organization (FDO) formula used to determine each FDO's allotment, or budget, is performance based and includes three components: weighted caseload, weighted-cases-opened per attorney ratios, and attorney to non-attorney ratios.

- Weighted Caseload. Weighted caseload is the number of weighted-cases an FDO opened during the 12 month period ending six months prior to the start of the fiscal year (this time period is known as a statistical year - SY). The RAND Corporation developed a relative weight for each case type. The weight of each case type reflects the average time FDO attorneys took to complete the particular case type compared to the average time FDOs took on all cases (all case types). For example, if the average attorney time to complete a case (i.e., the national total attorney hours ÷ the national total number of cases) was 20 hours, and the national average bank robbery case took 40 hours, bank robbery would receive a weight of 2.0, because that case type involved twice the attorney time as the average case.

- Individual FDO Weighted-Cases-Opened Per Attorney Ratio. RAND concluded that case-type was the principle, but not the only, determinant of attorney time required to represent an individual federal criminal defendant. It identified more than 200 "district specific factors" that impact the time an attorney in one district had to spend representing a defendant charged with a particular offense versus an attorney in another district. These differences are reflected in the average number of weighted-cases an attorney can open in a single fiscal year. A weighted-cases-opened per attorney ratio was calculated for each FDO by dividing the number of weighted-cases the FDO opened in SY 2010 by the number of attorneys authorized for that office.

- Individual FDO Attorney/Non-Attorney Staff Ratio. An attorney to non-attorney ratio was established for each office by dividing the number of attorneys in an FDO by the number of non-attorney staff it was authorized to have in FY 2010.

Individual FDO budgets are developed, essentially, by calculating the number of attorneys and non-attorneys an organization requires to meet its weighted caseload.

The number of staff is calculated by the following formulas:

- *attorneys = (weighted-cases-opened) x (weighted-cases-opened per attorney ratio)*
- *non-attorneys = (authorized attorneys) x (attorney/non-attorney staff ratio)*
- *total staff = (authorized attorneys) + (authorized non-attorneys)*

An office's total staff is multiplied by its cost-per-staff factor:

budget = (*total staff*) x (*the FDO's cost-per-staff factor*)

When the FDO requirements exceed available funding, as occurred in FY 2013, an across-the-board percentage reduction is applied to FDO budgets. The percentage reduction is determined by the Executive Committee of the Judicial Conference during the financial plan approval process.

The table on the following page offers an example of how staffing levels are calculated for a hypothetical FDO.

Calculation of Base Year (FY 2010) Weighted-Cases-Opened (WCO) Per-attorney and Non-attorney to Attorney Ratios	
SY 2010 WCO	500
SY 2010 Attorney FTE	10
WCO per Attorney	**50**
SY 2010 Non-Attorney FTE	20
Staff Ratio	**2 to 1**
Calculation of FY 2013 FTE Ceiling	
SY 2012 WCO	600
WCO per Attorney	**50**
FY 2013 Attorneys (600 ÷ 50 = 12)	12
Staff Ratio	**2 to 1**
FY 2013 Non-Attorneys (12 x 2 = 24)	24

Questions for the Record Submitted by Senator Al Franken

For the Honorable Julia S. Gibbons

1. **Do you believe that sequestration could make it more difficult for the judicial system to fulfill its constitutional obligations, including the right to speedy criminal trials, the right to counsel, and the right to jury trials? If so, please explain.**
Response:

Yes, I do believe that sequestration could make it more difficult for the judicial system to fulfill its constitutional obligation. All of our work derives from performing functions assigned to us by the United States Constitution and statutes enacted by Congress. We must adjudicate all cases that are filed with the courts, we must protect the community by supervising defendants awaiting trial and criminals on post-conviction release, we must provide qualified defense counsel for defendants who cannot afford representation, we must pay jurors for costs associated with performing their civic duty, and we must ensure the safety and security of judges, court staff, litigants, and the public in federal court facilities. Our workload does not go away because of budget shortfalls. We do not have programs like the Executive Branch that can be canceled or delayed because of sequestration.

Deep funding cuts mean that the Judiciary cannot perform adequately its constitutional and statutory responsibilities. In response to the nearly $350 million in sequestration cuts, the Executive Committee of the Judicial Conference implemented a number of emergency measures for FY 2013 which have resulted in drastic cutbacks in staffing and services throughout the federal court system. Staffing losses in appellate, district, and bankruptcy clerks' office will cause delays in case docketing, case processing, and availability of court staff to answer questions from the public and assist with case filings. Cuts to probation and pretrial services offices will impact public safety because fewer officers mean less deterrence, detection, and response to possible criminal activity by federal defendants and offenders in the community. We are concerned that cuts to our grand and petit jurors program is impacting courts' ability to ensure a fair cross-section of citizens to serve on juries.

Cuts to the defender services program have resulted in federal defender organizations having to decline cases and payments to private panel attorneys will be delayed for an estimated three weeks at the end of FY 2013. Ultimately, the cuts likely will produce delays in the progress of cases, which may violate constitutional and statutory speedy trial mandates, potentially resulting in dismissal of criminal cases.

The concerns I express here are not the Judiciary's alone. In a letter submitted for the hearing record, the American Bar Association expresses concern about sequestration cuts on the federal courts, saying "[f]or the federal court system to operate efficiently, effectively, and fairly, there must be sufficient funding to handle the caseload generated by each of these essential judicial functions. Inadequate funding of any one function will have a negative ripple effect on the rest of the judicial system, a phenomenon amply demonstrated by the effect that funding cuts to defender services has had on the operation of the courts." The

letter continues, "[c]ontinued funding cuts to defender services likely will exacerbate this effect, increase government costs in the long run, imperil defendants' Sixth Amendment rights to effective assistance of counsel and statutory guarantees of a speedy trial, and challenge our commitment to equal justice under the law."

In a letter submitted for the hearing record from the National Association of Assistant U.S. Attorneys, that organization states, "[t]he widening unavailability of Federal Defender staff to appear in court due to furloughs has begun to cause some federal courts to postpone or delay criminal proceedings. Greater delay will hinder the pursuit of justice, potentially causing the violation of the Speedy Trial Act. Assistant United States Attorneys are powerless to waive those statutory requirements, or to offset the likely delay in the hearing of civil cases in the federal courts that further sequestration will generate."

We look to Congress to recognize the uncontrollable nature of our workload and provide the resources needed to perform this essential work. If sufficient funding is not provided to the courts, we cannot provide the people of the United States the type of justice system that has been a hallmark of our liberty throughout the nation's history.

2. **I have heard from the Federal Defender in Minnesota, who is concerned that sequestration could decimate her office and the public defender system. I share these concerns, and I think that the Federal Defender put it well when she wrote this: "That these things would happen on the 50th anniversary of the Supreme Court's decision in *Gideon v. Wainright*, the decision that made the Constitution's promise of assistance to counsel real for all Americans, is nothing short of tragic." Could you please share your thoughts on this issue?**

Response:

I agree that sequestration threatens the ability of the Judiciary to fulfill a fundamental right guaranteed to all individuals under the Sixth Amendment and the Criminal Justice Act: the right to court-appointed counsel for criminal defendants who lack the financial resources to hire an attorney. Approximately 90 percent of federal criminal defendants require court-appointed counsel. Funding cuts are threatening that very right, a right that has been a bedrock principle of our criminal justice system for half a century.

The Judiciary has no control over the number and nature of cases in which court-appointed counsel must provide a defense. The caseload is driven entirely by the prosecutorial policies and practices of the U.S. Department of Justice and its 93 United States Attorneys. We are aware that the U.S. Department of Justice is not furloughing staff, so the pace at which criminal cases requiring court-appointed counsel has continued unabated, while resources in the Defender Services program are diminishing.

We can already see the impact of FDO staffing reductions on the federal courts. The federal defender office in New York City recently asked the federal district court to postpone the

trial of Sulaiman Abu Ghaith (Osama bin Laden's son-in-law) because of staff cutbacks. Federal courts in the District of Columbia, the District of New Mexico, the Western District of Texas, and the Western District of New York have stopped scheduling criminal matters on alternating Fridays because of FDO staffing shortages in those districts. These are just a few examples.

We remain deeply concerned about the impact of sequestration cuts on the Judiciary's Defender Services program. This program is a vital component of our criminal justice system and we will continue to ask that Congress provide the funding needed to preserve the constitutional right to court-appointed counsel.

3. **In your written testimony, you say that sequestration has resulted in slower processing of civil and bankruptcy cases. Can you explain how this affects small businesses?**

Response:

Small businesses are the backbone of the U.S. economy, and the primary source of jobs in America. The Small Business Administration reports that small businesses employing fewer than 100 workers represent 98.3 percent of all businesses in the United States. About one in three Americans work in firms of this size. Small businesses are both plaintiffs and defendants in civil cases as well as debtors and creditors in bankruptcy cases who seek to have their cases resolved in a timely basis. Sequestration cuts to court personnel and operating costs are creating delays in the judicial process. Delays typically mean added costs for litigants through higher legal fees and added uncertainty as to the resolution of their cases. In civil matters delays can create pressure to settle cases at less than optimal terms. Delays in bankruptcy proceedings create uncertainty for creditors and prevent debtors from clearing or restructuring their debt, creating a situation where some small businesses that may otherwise survive the bankruptcy process will fail while waiting for their cases to be heard. This hurts debtors and creditors alike. These delays in civil and bankruptcy proceedings will mount and continue to impact litigants, including small businesses, if the Judiciary does not received sufficient funding in FY 2014.

4. **It seems that effective probationary and supervisory services can result in lower recidivism rates, which, in turn, reduce overall criminal justice costs. Has this been your experience? And, if so, how does sequestration jeopardize these long-term cost savings?**

Response:

Yes, we have a great deal of empirical data that confirms that effective supervision techniques lower recidivism rates. For example, the Pew Center on the States' Public Safety Performance Project found that strong community supervision programs not only cost significantly less than incarceration, when they are appropriately resourced and managed,

they can also cut crime and recidivism by as much as 30 percent. Probation officers protect the community by detecting and deterring crime, but they also work hard to facilitate successful re-entry of offenders into society, including assisting offenders with employment and housing needs. Successful re-entry into the community improves the likelihood that offenders can gain employment to pay fines, restitution, and taxes as well as complete community service requirements. Officers use a variety of evidence-based interventions in order to bring about a positive change in offenders' conduct and behavior. These techniques seem to be working, although our data reflects pre-sequestration statistics. Despite the fact that persons coming under federal supervision have more extensive criminal records and other criminogenic risk factors as measured by various actuarial assessment devices, revocation rates have actually been declining for supervisees in most risk categories. In addition, at last measure, 77 percent of offenders remained free from arrest on any felony charge for three years following the start of supervision, and 82 percent have no felony re-arrest once they complete supervision and are returned to the community – evidence of the long-term benefit of supervision. Effective supervision yields cost savings across the criminal justice system. For example, supervising defendants awaiting trial and offenders on post-conviction release costs less than $10 per day per individual versus $70-$80 per day to house an offender or defendant in federal custody.

Sequestration jeopardizes long-term cost saving in the criminal justice system because federal probation officers do not have the resources needed to provide the wide range of testing, treatment, and reentry services needed to keep individuals from committing new crimes and returning to prison. In a recent survey of 62 probation and pretrial services offices, 66 percent of the respondents indicated that they would have to reduce expenditures for job-related assistance (e.g., vocational training, interview and resume writing skills); 56 percent would have to reduce expenditures for temporary housing; and 50 percent would have to reduce expenditures for transportation services (e.g., bus fares to attend workforce development programs and job interviews). These are all key elements to effectively supervising offenders in the community.

Sequestration jeopardizes public safety as well. Due to sequestration and other budget pressures, staffing in probation and pretrial services offices is down nearly 600 staff (7 percent) since July 2011 to the current staffing level of 7,900. Cuts to officer staffing levels mean less deterrence, detection, and response to possible criminal activity by federal defendants and offenders in the community. Particularly troublesome is the 20 percent cut to the allotment category that covers testing and treatment services for offenders, electronic and GPS location monitoring, and reimburses officers for their field work related expenses. Officers have also been instrumental in early detection of resumed criminal activity when it does occur, conducting thousands of field contacts, notifying the court of technical violations such as association with known felons, and, last year, performing more than 900 searches and seizures that resulted in guns, drugs, and other items being taken off the streets. Continued underfunding of the probation and pretrial services program will reduce probation officers ability to promote positive behavior change, detect non-compliant behavior and generally protect the community.

5. **I understand that there are several federal prosecutors for each individual federal public defender and that staffing cuts at the Justice Department have not been as severe as those at the Office of the Federal Public Defender. In your written testimony, you explained that "the pace at which criminal cases requiring court-appointed counsel has continued unabated, while resources in the Defender Services program are diminishing." Do you think that Congress could reduce these disparities by calibrating the Office of the Federal Public Defender's funding with that of the Justice Department?**

Response:

It is very useful to compare resource levels between the Judiciary and the Department of Justice (DOJ). DOJ and its sub-agencies have a significant impact on the workload and operations of the federal courts so additional resources for DOJ often result in more work in the courts. The prosecutorial polices of DOJ impact criminal and civil caseloads in the courts. Our probation offices work closely with the Bureau of Prisons regarding individuals being released from prison and required to serve a term of supervised release under one of our probation officers. The U.S. Marshals Service is responsible for security in the federal courts so USMS resource levels have a direct impact on the security of judges, court staff, litigants, and the public in federal courthouses.

It would be difficult to "calibrate" funding for federal defender offices with DOJ funding, or more specifically, with funding for U.S. Attorneys. U.S. Attorneys handle both civil and criminal matters while federal defender offices handle only criminal matters for individuals that are unable to afford counsel. Also, U.S. Attorneys must work with DOJ law enforcement agencies to investigate crimes and secure an indictment, while a federal defender comes to the process after someone has been arrested. That said, it is important that there be a sense of balance between DOJ funding and funding for the federal courts. Sequestration is an example of what happens when this balance becomes skewed. U.S Attorneys offices nationwide did not have to furlough staff under sequestration so their work continued unabated. This is in contrast to the courts and federal defender offices which have experienced steep staffing losses, furloughs, cuts to funding for investigators and experts, and cuts to operating budgets making it difficult to keep up with workload demands.

Federal defender offices typically handle about 60 percent of Criminal Justice Act appointments and private panel attorneys the remaining 40 percent. Federal defenders are often appointed by a court to take the more complex, time and resource intensive cases. Due to staffing shortages, federal defenders are having to decline appointments, resulting in the appointment of private panel attorneys in those cases, often at a higher cost. The Judiciary continuously analyzes costs in the Defender Services program and only requests funding from Congress sufficient to meet caseload demands. It is imperative that Congress provide sufficient funding for both components of the Defender Services program – federal defender organizations and private panel attorneys.

Senate Judiciary Committee Hearing
"Sequestering Justice: How the Budget Crisis is Undermining Our Courts"

Questions for the Record Submitted by Senator Al Franken
For Mr. Michael Nachmanoff

Question 1. Do you believe that sequestration could make it more difficult for the judicial system to fulfill its constitutional obligations, including the right to speedy criminal trials, the right to counsel, and the right to jury trials? If so, please explain.

Response.

Sequestration cuts have created an unprecedented financial crisis adversely affecting the Judiciary's ability to fulfill its constitutional duties, ensure public safety, and maintain the quality of our justice system. Without action from Congress, the impact on the Judiciary's performance of its mission—which has already been severe in FY 2013—will be devastating and long lasting.

Current Judiciary staffing is the lowest it has been in 14 years, while the workload handled by the courts and Defender Services has seen significant growth over the same period of time. As a result of sequestration, Federal Defender offices already have reduced staffing levels by more than 6% and have implemented more than 12,500 furlough days over the past six months. These staffing reductions have resulted in slower processing of both criminal and civil cases. Federal Defenders have been forced to request the postponement of certain resource-intensive cases, causing delays in trials. Such delays require defendants to spend more time in costly pretrial detention facilities, increasing expense to the taxpayer. These are just a few examples of the harm inflicted on our judicial system as a direct result of sequestration. In a recent letter to congressional leaders, 87 chief judges of district courts—representing nearly every federal district in the country—detailed the extent of damage inflicted on the Judiciary by sequestration and flat funding.

If Congress does not restore funding to the Judiciary in FY 2014 through an anomaly or other supplemental funding, federal courts and the Federal Defender community will be unable to perform their constitutional and statutory duties.

Question 2. I have heard from the Federal Defender in Minnesota, who is concerned that sequestration could decimate her office and the public defender system. I share these concerns, and I think that the Federal Defender put it well when she wrote this: "That these things would happen on the 50th anniversary of the Supreme Court's decision in *Gideon v. Wainwright*, the decision that made the Constitution's promise of assistance to counsel real for all Americans, is nothing short of tragic." Could you please share your thoughts on this issue?

Responsc.

I could not agree more with my colleague from Minnesota. The landmark *Gideon* case holds that equal access to justice under the law requires every defendant accused of a crime, whether rich or poor, have access to effective defense counsel. For the past forty years, the Federal Defender system has served this principle by providing high-quality, cost-effective representation for the indigent. Today, cuts are crippling the system that was created by Congress to carry out *Gideon*'s promise. If Congress does not provide the Judiciary with supplemental funding this year, sequestration will eviscerate the right to counsel guaranteed by the Sixth Amendment—and that is indeed a tragedy.

Question 3. In your written testimony, you say that the "integrity of our adversarial judicial process is undermined by the imbalance between a fully-funded prosecution and a defense crippled by budget cuts." Do you think that Congress could reduce this disparity by calibrating the Office of the Federal Public Defender's funding with that of the Justice Department?

Response.

Congress can and should address the disparity in funding between federal prosecutors and federal defenders. The adversarial model at the heart of our judicial system requires a balance of resources. This balance cannot exist, and the process cannot function properly, unless both sides are comparably staffed, resourced, and funded.

Unfortunately, balance does not exist in federal criminal court. The entire Defender Services Account (when fully funded) is just over $1 billion, which is less than 4% of the $27.5 billion allocated to the Department of Justice. At the same time that Federal Defender organizations are suffering furloughs, layoffs, and resource shortages due to sequestration, the Justice Department has avoided furloughs, and maintained or increased its prosecutions.

These funding disparities are especially troublesome because the Justice Department determines Federal Defenders' workload. The Judiciary has no control over the number or nature of cases in which court-appointed counsel are required. As federal prosecutors continue to bring complex, multi-defendant cases, Defenders are constitutionally obligated to spend resources on investigation, travel, expert costs, and other litigation expenses, in order to provide the type of vigorous representation required by our adversarial system. Sequestration cuts threaten the Federal Defenders' ability to accomplish their mission. When the scales of justice are so lopsided, an increase in wrongful convictions and imprisonment of the innocent will likely result. Ironically, these and other mistakes will create greater expenses down the line through retrials, appeals, and unlawful-detention proceedings.

Adequate funding for the Federal Defender community is not a divisive issue. All stakeholders in the criminal justice system—including 87 current chief judges of federal districts, more than 40 former federal judges and prosecutors, the National Association of Assistant U.S. Attorneys, Attorney General Eric Holder, and numerous members of Congress on both sides of the aisle—have expressed their unqualified support for a fully-funded Federal Defender program. It is time for Congress to respond to their concerns by providing adequate funding for the Judiciary this fall through an anomaly or other means.

Question 4. It seems to me that short-term spending cuts within the Office of the Federal Public Defender will result in long-run expenses. For example, the Office of the Federal Public Defender provides more effective and cost-efficient representation than do available alternatives. Do you agree with this assessment? If so, can you explain why the short-term cuts required by sequestration will actually increase costs to the judicial system in the long run?

Response.

Yes. For the past forty years, the Federal Defender program has consistently served as a model for efficiency and cost-effective representation. Unlike other branches of government, the Federal Defender system does not have ancillary projects or programs to cut—only personnel. Consequently, reductions in staffing have resulted in a greater number of cases being assigned to the CJA panel, incurring additional costs. Furloughs and layoffs of federal defenders also have caused delays in hearings and trials. When these delayed proceedings involve a defendant in custody, the taxpayer must foot an additional $2,000-$3,500 per defendant per month for the added costs of pretrial detention. In other words, for one furloughed federal defender who is forced to continue proceedings for 10 detained clients by one month, the government can incur an additional $35,000 in detention costs. Federal courts around the country have experienced these types of delays in FY 2013.

Not only do cuts to the Federal Defenders increase judicial costs, but more importantly, a fully-funded Defender program will in fact save the government money. For example, Federal Defenders routinely participate in re-entry and diversionary courts for criminal defendants; these courts not only lower recidivism rates and improve public safety, they also lower costs associated with incarceration. Federal Defenders also save tremendous amounts of money through effective advocacy that results in lower sentences of imprisonment. Every year of federal incarceration costs the taxpayer at least $25,000 per inmate. Of the roughly 125,000 cases that Federal Defender offices open per year, saving just one month of incarceration per client would yield annual savings of $260 million.

These examples demonstrate that cuts to the Judiciary not only undermine justice, they are bad fiscal policy. Restoring funding to the Federal Defender program is the only financially responsible course of action. My colleagues and I strongly urge Congress to provide supplemental funding to the Judiciary in FY 2014 through an anomaly or some other funding mechanism.

Senate Judiciary Committee Hearing
"Sequestering Justice: How the Budget Crisis is Undermining Our Courts"

Questions for the Record Submitted by Senator Jeff Sessions
For Mr. Michael Nachmanoff

Question 1. It is my understanding that the Executive Committee of the Judicial Conference approved emergency measures intended to deal with sequestration for 2013 but that local offices determine how to implement the reductions. How much of the appropriation to the Judiciary goes to headquarters or centralized operations (including rent) and how much is distributed through a formula to local public defender offices?

Answer: Federal Defender Organizations suffered approximately 10% cuts to their FY 2013 budgets as a result of sequestration. In April, in an effort to mitigate the impact of these cuts, the Executive Committee of the Judicial Conference decided to provide a portion of supplemental funding approved by Congress in March 2013 to those same organizations. The funds were intended to reduce the number of furlough days to no more than 20 for the remainder of FY 2013. Each individual federal defender determined how to handle the shortfall in funding. Many chose a combination of furloughs and staff reductions.[1]

With respect to how the Defender Services Appropriation is apportioned within the Judiciary, approximately 0.7% of the appropriation is managed centrally by the Administrative Office of the U.S. Courts. Federal Defender Organizations receive approximately 60% of the appropriation to pay for employee salaries, benefits and rent, as well as variable costs such as travel and litigation-related expenses. The Administrative Office does not pay rent for Federal Defender offices through centralized funds.

The Administrative Office of the U.S. Courts receives less than 2% of the entire appropriation for the Judiciary. Federal Defender Organizations receive approximately 8.6% of the entire Judiciary Appropriation.

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[1] On August 16, 2013, the Executive Committee announced the adoption of measures to manage the projected shortfall in the Defender Services Account during the anticipated FY 2014 continuing resolution. This action will not affect FY 2013 budgets, but the Executive Committee is committed to providing FY 2014 funding at a level sufficient to maintain on-board staffing nationally, which will be approximately 10% below requirements for the program. In addition to the cuts in federal defender funding, the Executive Committee's decision also included a temporary $15 per hour reduction in rates to CJA attorneys and the deferral of up to four weeks of panel payments in FY 2014. Accordingly, the need for adequate funding from Congress through an anomaly or other funding mechanism is critical to fully fund the Federal Defender Organizations, eliminate potential deferrals of panel payments and bring the panel rates back up.

Question 2. How does your office determine what is classified as a "fixed cost"? Are attorney salaries fixed costs? If labor counts as a fixed cost, does that include hiring to replace those lost to attrition?

Answer: In my office, "fixed costs" are non-discretionary expenditures for employee salaries, benefits, and rent. This amount would include funds for employees hired to replace those who leave the office; however, I have hired only one employee in the last six months, a computer systems administrator ("CSA"), who began work in July 2013, because it is impossible to run the office without such an employee. I have not hired anyone to replace the five other employees who have left the office since January 2013.

Question 3. Has your office offered raises or merit increases since sequester went into effect?

Answer: No. As a consequence of sequestration, we have not provided raises or merit increases to any employee.

Question 4. What is the annual amount of funds provided for the Public Defender's Office from FY2000 though FY2013, and what are they projected to be through FY2021 assuming the post-sequester levels in the Budget Control Act?

Answer: Attached is a chart which lists the annual appropriation for the Defender Services Account from Fiscal Year 2000 through Fiscal Year 2013. The chart also contains projected appropriation amounts through FY 2021, assuming that the appropriation for Defender Services is adjusted at the same rate as discretionary national spending.

Defender Services Funding

FY 2000 to FY 2013 (Actual)

FY 2014 to FY 2021 (Projected under the Budget Control Act)

Fiscal Year	Appropriation from Congress /1	Dollar Change	Percent Change	Total Obligations /1	Dollar Change	Percent Change
FY 2000	$358,848,000			$399,934,000		
FY 2001	$435,000,000	$76,152,000	21.2%	$440,610,000	$40,676,000	10.2%
FY 2002	$500,671,000	$65,671,000	15.1%	$485,895,000	$45,285,000	10.3%
FY 2003	$538,461,000	$37,790,000	7.5%	$565,466,000	$79,571,000	16.4%
FY 2004	$604,477,000	$66,016,000	12.3%	$627,094,000	$61,628,000	10.9%
FY 2005	$676,385,000	$71,908,000	11.9%	$668,834,000	$41,740,000	6.7%
FY 2006	$717,000,000	$40,615,000	6.0%	$722,947,000	$54,113,000	8.1%
FY 2007	$776,283,000	$59,283,000	8.3%	$773,713,000	$50,766,000	7.0%
FY 2008	$835,601,000	$59,318,000	7.6%	$811,310,000	$37,597,000	4.9%
FY 2009	$849,400,000	$13,799,000	1.7%	$896,563,000	$85,253,000	10.5%
FY 2010	$977,748,000	$128,348,000	15.1%	$972,095,000	$75,532,000	8.4%
FY 2011	$1,025,693,000	$47,945,000	4.9%	$1,027,068,000	$54,973,000	5.7%
FY 2012	$1,031,000,000	$5,307,000	0.5%	$1,044,209,000	$17,141,000	1.7%
FY 2013	$986,055,000	-$44,945,000	-4.4%	$1,003,212,000	-$40,997,000	-3.9%

Estimated Appropriations Based on Year-to-Year Changes in the Budget Control Act

Fiscal Year	Projected Appropriation from Congress	Dollar Change	Percent Change /2
FY 2014	$971,092,823	-$14,962,177	-1.5%
FY 2015	$997,961,004	$26,868,181	2.8%
FY 2016	$1,017,152,562	$19,191,558	1.9%
FY 2017	$1,038,263,276	$21,110,714	2.1%
FY 2018	$1,061,293,145	$23,029,869	2.2%
FY 2019	$1,086,242,170	$24,949,025	2.4%
FY 2020	$1,109,272,039	$23,029,869	2.1%
FY 2021	$1,132,301,909	$23,029,869	2.1%

/1 The dollar amounts have not been adjusted for inflation, and include funds for federal defender organizations, panel attorneys and program administration.

/2 The percent change from FY 2015 to FY 2021 assumes appropriations for Defender Services changes at the same rate as discretionary non-security spending.

MISCELLANEOUS SUBMISSIONS FOR THE RECORD

July 23, 2013

Honorable Chris Coons
Chairman
Subcommittee on Bankruptcy and the Courts

Honorable Jeff Sessions
Ranking Member
Subcommittee on Bankruptcy and the Courts

Re: "Sequestering Justice: How the Budget Crisis is Undermining Our Courts"

Dear Chairman Coons and Senator Sessions:

The undersigned organizations are deeply concerned about the devastating impact of sequestration on the federal indigent defense system. Our federal criminal justice system cannot be sustained unless all components – prosecution, judiciary and defense – receive adequate and stable funding. Already this year, deep cuts to the federal public defenders' budget have required significant layoffs, 15-20 day furloughs, and the complete elimination of defender training. Further cuts will necessitate massive layoffs that will almost certainly decimate the federal defender system, degrade the overall quality of federal indigent defense, and undermine the administration of justice. To avert the crisis, Congress must restore funding to the Defenders Services account. First, Congress must pass a supplemental budget to alleviate the immediate crisis. To preserve the program going forward, assuming no appropriations agreement is reached for FY 2014, Congress must approve an anomaly to any continuing resolution that appropriates $1,068,623,000.

While sequester theoretically applies to all agencies and facets of the federal government, the actual impact on federal defenders has been uniquely demonstrable and severe. These offices were already operating quite leanly, having responded to an initial 5 percent cut through various measure including travel restrictions and cutting back on costs for experts, interpreters and transcripts. Sequestration and cuts from within the Judiciary resulted in a $51 million shortfall in FY 2013 for the Defender Services account. In effect, since February 2013 federal defender organizations have lost nearly 10% of their approved budgets.

In FY 2014 federal defenders could suffer a further 14% budget cut. Unlike the Department of Justice or the Judiciary, federal defender budgets are allocated almost entirely to personnel, rent and case-related expenses. After cutting costs as much as possible through various measures, such as negotiating with vendors and eliminating training, no other options remain but layoffs, furloughs and office closures. Without immediate relief, the Federal Defenders will begin laying off between 30% and 50% of their staff and closing branch offices.

Given that an estimated 90 percent of federal defendants qualify for a federal defender or court-appointed counsel, the impact of these cuts will be felt throughout the federal criminal

justice system. Trials have already been delayed in some jurisdictions based on the initial sequester cuts. Delays and other administrative problems will only worsen with time, as the drastic reduction in federal defenders will not staunch the flow of indigent defendants requiring appointed counsel. Federal indigent defense was already under-resourced as compared to the Department of Justice, which has largely avoided the worst effects of the sequester. Federal defenders already carry much heavier caseloads than prosecutors: in New York, for example, the ratio of prosecutors to defenders is 280 to 38 or more than 7 to 1.

As Federal Defenders are required to turn down cases, indigent defense costs will simply be transferred to pay for court-appointed counsel. No savings will be achieved, and in fact some costs will inevitably increase. Every federal defendant without resources to hire an attorney is entitled to government-paid counsel, therefore, the notion that savings can be achieved by reducing the federal public defender budget is specious. The judiciary predicts delays and postponements, which will increase the time that defendants spend in expensive pretrial detention facilities. In addition, many federal defender offices that manage the local panel of court-appointed attorneys will be forced to abdicate that responsibility to the judiciary, resulting in increased administrative costs and diminished efficiency.

As we mark the 50th anniversary of *Gideon v. Wainwright*, it is shameful that the system that has served as a model for 40 years is being weakened and dismantled. Testifying in support of the Criminal Justice Act, Attorney General Robert Kennedy extolled the planned system as "the most comprehensive, yet flexible solution ever devised to meet the representation problem in the federal system." Fifty years later, the future of that system rests in the hands of this Congress. We urge you to work with your colleagues to fully restore funding for our federal indigent defense system and ensure that, in federal court, the scales of justice "measure truth, not legal fees."

Sincerely,

National Association of Criminal Defense Lawyers

The Constitution Project

American Civil Liberties Union

National Legal Aid and Defender Association

American Council of Chief Defenders

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cc: Members of the Senate Committee on the Judiciary

Blogging U.S. Judge Sounds Off on Budget Cuts

Peter Hardin May 21st, 2013 | Category: Access to Justice,Court Funding

U.S. District Judge Richard Kopf of Nebraska is so ticked off about the across-the-board federal budget cuts that he's sounding off in his personal blog.

Take this: "If a banana republic is what members of Congress want," Judge Kopf writes on herculesandtheumpire.com, according to a World-Herald News Service column, "I may help them get it."

And this: Out of a concern to free up the time of 10 federal public defenders, he is "seriously contemplating" whether to drop some criminal cases where an immigrant is charged with being in this country illegally.

Why is Gavel Grab leading readers to the World-Herald News Service column instead of Judge Kopf's own words? Because "The post appears to have been deleted," according to the Blog of Legal Times.

The budget cuts are called "sequestration," and they were triggered March 1. In the column, Erin Grace describes furloughs imposed by Federal Public Defender David Stickman, and the impact on the public:

"[Stickman] laid off four people and furloughed 21 others, including himself, for 11 days beginning April 19 and continuing through Aug. 30. No public defenders on those days mean no trials. You can't have one side show up to court and not the other. It also means that some of the 450 clients the office represents may sit in jail longer, have their cases drag out longer, have their cases dismissed if their attorneys are unable to meet the speedy trial mandate.

"It also means that a greater share of the defense cases could shift to private-practice attorneys, who earn twice the rate of public defenders. And the same government that imposed these cuts pays that bill. What to do?"

- See more at: http://www.gavelgrab.org/?p=57419#sthash.G1TXoFnE.dpuf

The BLT: The Blog of LegalTimes
LAW AND POLITICS IN THE NATION'S CAPITAL

March 29, 2013

Budget Cuts Start to Hurt Courts

The effects of this month's steep federal budget cuts are becoming clearer in court districts across the country, with judges, clerks and legal agencies from California to New York announcing courthouse closings and furloughs.

In Colorado, U.S. Chief District Judge Marcia Krieger ordered an end to hearings and trials in criminal cases on every Friday for five months, from April 26 through September. The federal public defenders, prosecutors and marshals face furloughs, Krieger wrote, and they are "integral to proper adjudication of criminal matters."

As in Colorado, other courts are targeting Fridays for closures because the supporting agencies and their attorneys will take furloughs. The clerk of court in the Central District of California announced it will severely curtail services at its three courthouses on seven Fridays from April through, accepting only mandatory and emergency filings.

A month after the $350 million budget cuts for the courts, part of a mandatory $85 billion government-wide cut called sequestration, many of the consequences are still unknown.

Attorney General Eric Holder Jr. sent a letter to employees Thursday that said he is postponing until mid-April the decision on furloughing Department of Justice employees. "I fully understand you may be anxious about the possibility of furloughs in your component; however, the Department needs more time to determine if we can avoid furloughs this fiscal year," Holder wrote.

Holder has already transferred $150 million from the DOJ to the Bureau of Prisons to avoid furloughs of 3,750 staff each day. And he sent a note to department heads, ordering them "to heighten our scrutiny of all spending and redouble our efforts to reduce expenses."

That includes hiring restrictions, delaying entry into new contracts, and curtailing travel, training, conferences and cash awards. "Please understand that our current funding situation does not mean 'business as usual,'" Holder wrote.

In the nation's federal courts, decisions are starting to be made about the rest of the fiscal year. Utah's federal judges will hear criminal cases every other Friday starting in April, the Salt Lake City Tribune reported.

The Federal Public Defender's Office in western New York now plans 20 unpaid furlough days for its staff, which will end some criminal hearings and trials on Fridays, the Rochester Democrat and Chronicle reported.

At the Federal Defenders of New York, executive director David Patton had to tell the 39 attorneys and 39 staff members who work in the Southern and Eastern districts they each will have to take 27 days of unpaid leave beginning March 25 and ending on September 30.

"It's been devastating—people are, in essence, taking a 20 percent pay cut," Patton said. "Our budget is being cut 10 percent, but since we're half way through the fiscal year, it's really 20 percent of our budget."

St. Louis federal public defender Lee Lawless told American Public Media that he would furlough 26 staff for two days a month, including himself. And in Seattle today, federal public defenders closed offices for unpaid furloughs through September, and federal prosecutors there have been served with notice that up to 14 days of furloughs could begin next month, the Seattle Times reported.

Legal Times affiliate New York Law Journal contributed to this report.

Posted by Todd Ruger on March 29, 2013 at 02:31 PM in Current Affairs, D.C. Courts and Government, Justice Department, Politics and Government | Permalink

Grace: Budget ax falls, and ball is in his court

By Erin Grace / World-Herald columnist

The judge is mad. The judge is frustrated.

The judge is so angry about the federal budget ax known as sequestration that he is not taking the cuts quietly. And he's contemplating an imperfect solution to deal with the layoffs and furloughs borne by the U.S. Public Defender's Office.

U.S. District Judge Richard Kopf said he is "seriously contemplating" whether to drop a number of criminal immigration cases where the crime is being in the U.S. illegally. This, he said, will free up the 10 federal public defenders in Omaha and Lincoln who have a constitutional obligation to defend an accused person who cannot afford to hire counsel.

Kopf wrote this on his blog — yes, he blogs — called "Hercules and the Umpire." It's a look behind the curtain of life as a federal judge. Kopf muses about a number of judicial-related topics, none of them pertaining to current cases.

But on the subject of the sequestration, he is quite pointed. He writes that Congress is "on notice." That its failure to fund the judiciary "may result in the guilty going unpunished."

"If a banana republic is what members of Congress want," Judge Kopf writes on herculesandtheumpire.com, "I may help them get it."

A quick civics lesson: Raise your hand if you know which amendment protects my right to write this and your right to hate it and say so. Good. We all love the First Amendment. Raise your hand if you know which one allows us to bear arms. Right again. We all know the Second Amendment.

But can you say which amendment gives the accused a number of rights, including the right "to have the Assistance of Counsel for his defense"?

This would be the Sixth Amendment, which supports the existence of the U.S. Public Defender's Office.

Said office got a one-two budget punch this year. First came a 5 percent budget cut in February. Then another 5 percent in March when the sequestration, which imposes mandatory budget cuts, went into effect.

Federal Public Defender David Stickman laid off four people and furloughed 21 others, including himself, for 11 days beginning April 19 and continuing through Aug. 30.

No public defenders on those days mean no trials. You can't have one side show up to court and not the other.

It also means that some of the 450 clients the office represents may sit in jail longer, have their cases drag out longer, have their cases dismissed if their attorneys are unable to meet the speedy trial mandate.

It also means that a greater share of the defense cases could shift to private-practice attorneys, who earn twice the rate of public defenders. And the same government that imposed these cuts pays that bill.

What to do?

There's talk of an emergency relief bill to restore funding, but congressional support for it is uncertain.

Stickman said his staff will still provide the best defense it can for its clients.

Kopf, though, says he'll think about clearing the immigration cases. If he did, it would shift the cost of dealing with illegal immigrants to another federal agency, namely Immigration and Customs Enforcement, which would have to take care of detaining and potentially deporting such immigrants.

But U.S. Attorney Deborah Gilg says if Kopf dropped the cases, she would just have to refile the charges, keeping the immigrants on the caseload.

Says Judge Kopf: "I'll just drop them again."

And so it goes.

I'm not sure how the budget cutting here gets us any real savings. And Stickman says it may end up costing the government more. Which is cheaper: a public defender who works for $50 to $75 an hour, or a court-appointed private one for $125 an hour?

Both are a bargain compared with someone like private attorney James Martin Davis, whose hourly rate in federal court is $500 to $600.

Stickman's plan is this: Do the best job he can. Delay what he can until after the new fiscal year in October. Cut everyone's pay some more, if that's what it takes to properly defend clients.

So why do we even need the Sixth Amendment? No right to counsel, no need for the Public Defender's Office. It's only a small piece of a small pie anyway. The federal judiciary comprises less than 1 percent of the whole federal budget.

Who'd miss it?

Well, maybe anyone accused of a federal crime who couldn't afford a James Martin Davis. But they won't scream. It's not like they've got clout or a lobbying arm with the heft of, say, a

National Rifle Association. If they did, we'd know what the Sixth Amendment was as well as we do the Second.

Bad idea, Kopf says.

The beauty of American justice, he told me, relies on the notion of innocent until proven guilty.

"Only until a defendant is tried and convicted are they, in fact, guilty," Kopf said. "That process of trial relies on effective representation.

"It's a hallmark of our American system of justice that an indigent defendant — even if he has been tried and convicted of other crimes — still is entitled to representation."

The other day, Judge Kopf tried to get a lawbreaker placed in a community corrections center. But he could not.

"Damnit. I forgot," he wrote on the blog. "The FPD's office is closed. A furlough day."

Contact the writer: 402-444-1136, erin.grace@owh.com, twitter.com/ErinGraceOWH

THE HILL

THE HILL'S
BLOG BRIEFING ROOM

Chief Justice Roberts: Sequester cuts hitting federal judiciary 'hard'

By Ben German - 06/29/13 01:46 PM ET

Supreme Court Chief Justice John Roberts on Saturday said the sequester is hurting the judicial branch and that he's hopeful Congress will provide flexibility.

Roberts, speaking at a conference in West Virginia, noted that the judicial branch of government overall is less than one percent of the federal budget.

"You get a whole branch of government under the Constitution for relative pennies, and the idea that we have to be swept along because it is good public policy to cut everybody – I am not commenting on that policy at all – but the notion that we should just be swept along with it I think is really unfounded," Roberts said of the across-the-board budget cuts.

"The cuts hit us particularly hard because we are made up of people. That is what the judicial branch is. It is not like we are the Pentagon where you can slow up a particular procurement program or a lot of the other agencies. When we have sustained cuts that mean people have to be furloughed or worse and that has a more direct impact on the services that we can provide," he added, speaking at the Fourth Circuit Judicial Conference.

Roberts said the Administrative Office of the U.S. Courts is working with congressional appropriators "to get them to go to bat for us," and that he's hopeful.

"I hope we are able to make an effective case for why need a little bit more flexibility than others," Roberts said.

And, in a bit of humor, he tried some obvious flattery.

"I just want to say publicly, that I think our appropriators in Congress are the best legislators since Henry Clay and Daniel Webster, and you can quote me on that if you'd like," Roberts said.

In other remarks, Roberts said the Supreme Court justices are asking too many questions from the bench during oral arguments.

"We do overdo it," Roberts said. "The bench has gotten more and more aggressive." He noted that lawyers trying to present their arguments "feel cheated sometimes."

He said that justices do not talk about cases before the arguments. So they use questions as a way to "bring out points that we think our colleagues ought to know about," and debate one another through questions to lawyers making arguments.

But he said, "That is an explanation. It is not meant as an excuse."

"I do think we have gone too far," Roberts said. "It is too much and I think we do need to address it a little bit."

Roberts comments came after a busy week for the court, with justices handing down rulings striking down a key portion of the Voting Rights Act and ruling the Defense of Marriage Act unconstitutional.

Source:
http://thehill.com/blogs/blog-briefing-room/news/308591-chief-justice-roberts-sequester-hits-judiciary-particularly-hard-hopes-for-flexibility

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MEMORANDUM ON

COST SAVINGS INITIATIVES

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF NORTH CAROLINA

MEMORANDUM

To: Chief Judge Randy D. Doub

From: Stephanie J. Edmondson, Clerk of Court

Re: Cost Containment Initiatives in NCEB

Date: June 7, 2013

Since becoming Clerk of Court on February 2, 2009, the Judiciary's budget crisis has required me to look at various means of containing costs within the clerk's office. Over the past 4 ½ years, these containment measures have allowed our court to continue to function without requiring layoffs or furloughs even upon implementation of sequestration this year.

The first initiative I employed upon becoming Clerk was reviewing the organizational chart and begin planning for the impending retirements of several key positions within the court. Since February 2009, our court has reduced its staffing from 46 full time staff members to 39.5 full time staff members, entirely through attrition. By offering buyouts and early outs, as authorized by the Administrative Office of the Courts (AO), I was able to convince very highly paid management level employees to retire, allowing me to either not replace the positions or replace the positions at the lowest entry level resulting in cost savings. For instance, during this time period, two operations managers retired. These positions were replaced by promoting 2 persons from within to the operations managers positions, but at a pay grade 2 steps lower than the original positions. By continuing to promote from within, the positions were eventually replaced by case administrators at grades on average 7 levels lower than the operations managers who retired. Within the administrative realm, the budget analyst and HR specialist both retired. I replaced both positions with one person, an administrative specialist, who earns a quarter of the salaries of the previous two persons combined. The administrative specialist's salary was derived at using the new benchmarks published by the Administrative Office within the past 5 years. Without the buyout and early out authority, I am convinced that some of these retirees would have continued to stay on with the court, drawing salaries that had reached the highest possible for their positions. Instead, the court was able to use the buyout money to achieve the long-term cost savings necessary to sustain our court through the current budget crisis, resulting in a cost savings of approximately $435,000.00 salary dollars per year from the court's high employment rate of 46 in fiscal year 2011 to today's employment rate of 39.5.

In addition to buyouts, the court has achieved cost savings in other areas affecting salaries. In 2012, the court's financial specialist took a position outside the courts, creating a vacancy that was necessary to fill. The court's procurement specialist indicated a desire to move into the financial specialist position, an excellent fit considering this person's organizational skills and attention to detail. During this time, it came to my attention that the Bankruptcy Administrator's office was suffering from severe salary cuts, requiring that office to impose layoffs. I took this opportunity to delve into what is now being referred to as shared administrative services. I initiated conversations with the Bankruptcy Administrator, resulting in the sharing of our current

procurement specialist, formerly the Bankruptcy Administrator's procurement specialist. This person now provides services for our court for 90% of his position and for the Bankruptcy Administrator's office for 10% of his position. This arrangement resulted in a net savings of 1 position for the judiciary.

Another area in which the court has saved salary money is through the use of extensive cross-training. As the court continued to lose positions through attrition and continued to absorb most of those losses without replacement, it became necessary for persons within the court to take on additional roles. As an example, in our court, the role of reviewing orders had always fallen upon the shoulders of case analysts and operations managers. However, upon the retirement of the previous operations managers and their replacement with entry-level rather than high-level positions, it became necessary for others within the court to assist with this role. The court advertised within its office for experienced case administrators who might be interested in assisting with the review of some of the simpler orders received by the court. Two case administrators were chosen to fulfill this role, thereby reducing the workload of those who sustained the increase in duties as a result of the prior retirements. Likewise, our court requires that everyone on our administrative team wear multiple hats. Our financial specialist is the former procurement specialist and is available to backup that role. Our fairly new procurement specialist has been training to backup certain roles within budget and COOP. Our training specialist, who is also our COOP coordinator, is trained as a backup for both procurement and financial. Our administrative specialist oversees budget, HR, travel, and does first-line approval for purchases within the court. The administrative team is required to continue to improve upon their skill set at all times, constantly working together to learn each other's roles so that as the court continues to lose positions due to budget, those roles can be fulfilled with existing staff.

Although the saving of salary money provides the biggest bang for the buck, the court has looked at all avenues of saving money in order to operate as efficiently as possible. One of the biggest efficiencies implemented by the court is the use of Case Management Assist (CMA), a program designed by Oklahoma Western Bankruptcy Court. This program is a work management tool used by our operations staff. The program assigns work in an easy to implement order of priority, displaying this list electronically for the staff. Prior to the implementation of CMA, our operations staff started each morning by generating and printing voluminous reports to work through each day. Not only has CMA reduced the amount of time it takes for our staff to get through their work each day, allowing us to do more work with less people, it has saved the court money by reducing the amount of paper and toner necessary to be purchased.

In addition to the savings of paper and toner created by CMA, the court some time ago began requiring everyone in the court to use both the front and back side of paper and to print in black and white only. We also began buying cheaper toner rather than the namebrand toner that had been purchased in the past. These small measures have resulted in noticeable savings in paper and toner costs of over $10,000.00 per year compared to fiscal year 2010.

This year, the court has begun focusing on in-district travel as a means of savings. The court currently has two offices, the headquarters office in Wilson and the divisional office in Raleigh. Prior to this year, it was not unusual for employees to travel fairly freely between offices as necessary to perform their work. However, this year, the chief deputy and I made the decision to

limit travel between the offices to only necessary travel approved by one of us in advance of the travel. With today's technology - telephone conferences, video conferences, Facetime, etc - it is not necessary for persons to be in the same physical space in order to have discussions and coordinate their efforts. In fact, the court holds a monthly staff meeting with all staff via video conference so that both offices can participate together. The court has also been encouraging the use of online training through resources offered and supported by the AO as opposed to staff members attending training in locations that would require funding. Through these efforts the court has reduced travel costs by approximately 30%.

The court has also considered cost savings when considering purchases of equipment. In 2012, the court began using stamps.com as an alternative to maintaining a postage machine on site. The annual savings for this change is a little over $1,000.00. The court also purchased new copiers in 2012 to replace copiers that were due for cyclical replacement. The court was able to purchase copiers with a lifetime service contract. The copiers the court previously used required the court to pay monthly maintenance costs of over $850.00 per month. During fiscal year 2013, the court has paid only $1,980.00 in maintenance costs for two copiers that have not reached their replacement age. This annual savings in maintenance fees is over $8,000.00.

In the IT realm, the court is now using virtual servers and has begun the rollout of thin clients. Thin clients cost a fraction of the amount of laptops and have twice the lifespan. The total savings seen by converting to this virtual environment will be approximately $40,000.00 per year. The court is also considering the cost savings that would be seen by using centralized hosting of servers, as is now being offered by the Administrative Office as a cost savings measure.

The court recently converted to the AO-supported VOIP telephone system. This digital telephone system allowed the court to all but eliminate its telephone land lines, reducing the court's telephone budget by over $15,000.00 per year.

In 2009, our court began a review of our physical office locations and evaluated where our court should be situated with an eye toward a 20 year vision. As a result, our court made a decision to move our headquarters and main clerk's office to Raleigh, N. C.; and to request replacement space for a courtroom and judge's chambers in Greenville, N. C. Our lease in Wilson provided for a termination date of December, 2013. The District Judges and the Fourth Circuit approved our relocation plans. As a result, we are reducing our total square footage requirements. The main Clerk's office will be located at Century Station in Raleigh at a reduced rental rate than we pay now for the Wilson space. The Greenville building, which will open in December, 2013, after payment of tenant improvements, will begin costing less than our Wilson facility in the eleventh year after our move. The Fourth Circuit estimates that over a twenty year term, in current dollars, our relocation efforts will save the rental budget some $1,031,047.00. Total actual dollar cost savings over the twenty year period is approximately $2.915 million, of which the present value in today's dollars is $1,031,047.

As you can see, great efforts have been made by our court to cut costs in every area possible. We continue to look for additional ways of saving money whenever and wherever possible. I encourage my staff to share ways that they feel efficiencies could be encouraged within the court. As the budget crisis continues, I will strive to do all within my power to provide the excellent service that our court has always provided at the least expense possible.

EXECUTIVE SUMMARY OF APPROXIMATE COST SAVINGS

Reorganization of Clerk's Office/Succession Planning - $435,000.00/year

Shared Services of Procurement Specialist - $6,000.00/year

Cross training - Efficiency and productivity of employees, thus eliminating necessity for additional hires

Case Management Assist - Efficiency and productivity of employees, thus eliminating necessity for additional hires

Printing and paper recycling policies - $10,000/year

Travel restrictions and use of videoconferencing - $8,000/year

Equipment purchases and new service contracts - $9,000/year

Use of virtualized servers and thin clients - $40,000/year

VOIP telephone system implementation - $15,000/year

20 Year Vision, Relocation from Wilson to Raleigh and Greenville, Circuit Rental Budget Savings over 20 years in current dollars is $1,031,047.

Bloomberg

Courthouse Safety Harmed by Sequestration, Bar Group Says

The U.S. government spending cuts known as sequestration are compromising courthouse safety, a lawyers group said in a letter to President Barack Obama and 47 members of Congress.

Robert Anello, president of the Federal Bar Council, an organization of attorneys who practice before the federal courts in New York, Connecticut and Vermont, said in the letter that it's "imperative" the president and lawmakers reach an agreement to restore funding to the courts.

"The courts in this circuit have been compromised by cuts to their security and physical maintenance budgets, reduced job security for personnel in all departments, and reduced hours for bankruptcy proceedings," Anello said in the letter yesterday.

A $50 million shortfall in the account for judicial security nationwide has prevented New York federal courts from making needed upgrades to security cameras and computer systems, Anello said. The courts are considering firing security staff and limiting access to courthouses, he said.

"The sequester has thus compromised the personal safety of the judges and other public servants who administer our court system, and has also compromised the ability of American citizens to observe court proceedings in a secure setting," Anello said in the letter.

The courts in New York and Brooklyn have reduced non-judicial staffing by 40 percent in the past two years, causing "disruptions and delays," according to Anello.

The cuts have also resulted in a 20 percent reduction in the budget for the Federal Defender's office, which represents 40 percent of criminal defendants in the federal districts that cover New York City and surrounding counties, Anello said.

To contact the reporter on this story: Bob Van Voris in Manhattan federal court at rvanvoris@bloomberg.net

To contact the editor responsible for this story: Michael Hytha at mhytha@bloomberg.net

United States District Court
District of Nebraska
Roman L. Hruska U.S. Courthouse
111 South 18th Plaza, Suite 3210
Omaha, Nebraska 68102-1322

LAURIE SMITH CAMP
Chief United States District Judge

Phone: (402) 661-7323
FAX: (402) 661-7326

July 1, 2013

The Honorable Robert S. Lasnik
United States District Court
United States Courthouse
700 Stewart Street, Room 15128
Seattle, WA 98101-1271

The Honorable Rodney W. Sippel
United States District Court
Thomas F. Eagleton
United States Courthouse
111 South Tenth Street, Room 16S
St. Louis, MO 63102-1116

RE: Federal Public Defenders Office For the District of Nebraska: Budget Allocations for Defender Services

Dear Judges Lasnik and Sippel,

Our court recently received a letter from our Federal Public Defender David Stickman concerning the fiscal issues facing his office. We understand that you have been tasked by the Executive Committee to make recommendations concerning Defender Services' budget allocations. We want to share our concerns about our Federal Defender Office here in Nebraska.

The Nebraska Defender Office has the twelfth heaviest per-attorney weighted caseload in the country. Based on 2012 statistics, it handles at least 120 weighted cases per defender. It also appears that this office disposes of cases at a lower cost than Nebraska CJA counsel.

Members of our court recall the difficult times we had managing the criminal docket before we had a Federal Defender Office. We are concerned that further staffing reductions in the Nebraska office will adversely affect our capacity to manage the criminal docket efficiently in the face of our own budget cuts. Shifting caseload to panel attorneys would also reduce the cost-effective disposition of approximately 540 (weighted) cases filed annually in our district.

We understand the hard choices the Executive Committee and the Judicial Conference must make when allocating limited resources. We also understand that all court units, including Defenders, must operate more efficiently and make do with less. We simply want you to understand how important our Defender Office is to this court's efficient operation. We believe that deferral of a portion of CJA payments would be justified in order to preserve cost-efficient Defender Offices such as Nebraska's.

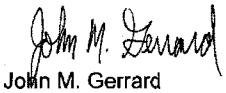
Thank you for your efforts to provide continued representation for indigent defendants in these trying economic times.

If there is any information relating to our district that you may find helpful, please do not hesitate to contact us.

Sincerely,

Laurie Smith Camp
Chief United States District Judge

Joseph F. Bataillon
United States District Judge



John M. Gerrard
United States District Judge

LSC/jlb

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FEDERAL PUBLIC DEFENDER

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CHESTER M. KELLER
FIRST ASSISTANT

June 20, 2013

Honorable Jerome B. Simandle
Chief, United States District Judge
Mitchell H. Cohen Federal Building
One John F. Gerry Plaza
Fourth and Cooper Streets
Camden, New Jersey 08102

Dear Chief Judge Simandle:

As my office continues to manage, with the Court's considerable indulgence, the effect of budget cuts occasioned by the sequester, a considerably larger and far more disruptive problem looms on the horizon. Given the likely effect upon the Court, I feel it is imperative that you understand the nature and dimension of the problem.

Background

The sequester, in combination with an initial appropriation that was itself inadequate, has had a disproportionate impact on Defender Offices in part because of decisions within the Administrative Office of the United States Courts (AO) regarding the allocation of money appropriated under the Criminal Justice Act. The primary cause was the decision to limit the *suspension* of panel attorney payments to no more than three weeks, and to require Defenders to carry the rest of the sequester burden. Nationally, panel payments average about $1.8 million per day, so approximately $27 million that would have been paid this fiscal year will be delayed until after September 30, 2013.

The Defender side of the appropriation, in contrast, sustained cuts of several million dollars. The funding for my Office, for example, was reduced by $723,000 – from approximately $8.9 million to $8,177,000. The cuts were imposed with only six

months remaining in the fiscal year, and because we already operated close to our budget line, and because rent and other fixed costs could not be avoided, and funding for experts and other case-related expenses cannot be neglected, the only source of money after cutting everything else that could be cut, was salaries and benefits. To date, those cuts have been managed with furloughs and buy-outs.

The severity of the situation could have been ameliorated to some extent had the AO acceded to requests to lengthen the period of suspension of panel payments. While I recognize the important role played by panel attorneys, and believe the current reimbursement rate – which was achieved after years of struggle – should be maintained, it does strike me as unfair that one side of the equation is bearing a much heavier burden than the other. In real terms, the defenders are actually bearing *all* the burden, because the panel attorneys will be paid in full, while my staff will not.

Fiscal Year 2014

The projections for next fiscal year are far more grievous. I was recently advised that we face budget cuts that will reduce our already-too-low projected budget by more than $2 million – from $8,834,600 to $6,802,642. The result for my Office will be either staff reductions of 20 to 30 percent, or massive, prolonged furloughs in combination with a smaller reduction in staff. Furloughs alone are not an option, as even if all "discretionary" spending, *e.g.* experts, transcripts, etc., were reduced significantly and the money that was saved was reallocated to salaries and benefits, it would require approximately 90 furlough days per employee to make up the shortfall. For my Office to manage the budget cuts in a way that allows the Office - or what will be left of it - to function in a manner that serves our clients and the Court, the only realistic option, therefore, is to reduce staff from 45 to perhaps as few as 30. A good portion of those layoffs will necessarily include many of the 21 Assistant Federal Defenders, and probably a temporary closing of our Office in Trenton. The lease for that space allows us to terminate the contract with four months notice, and its central location allows for more court coverage options than either Newark or Camden.

In the past, the practice in this District has been to assign the Federal Defender Office in all cases in which we had no conflict. This practice resulted in our receiving 65 to 75 percent of the appointed cases in a given year; the cumulative 10-year distribution of cases has been 71.32% Defender, and 28.68% Panel. Should the projected cuts occur, there is simply no way that we could continue to accept that volume of cases. Workload statistics from the AO show that attorneys in my Office already work hours that far

exceed the normal federal work week – and they do so as a matter of course. Everyone understands that our ethical and professional obligation to do our best to represent our clients requires that we do no less. So the point is not that Assistant Defenders would be unwilling to take the cases because additional work would be required, but rather that because everyone is already working additional hours, there is simply nothing left to give.

The effect, of course, will be that many more cases will be assigned to the panel. Clients will be represented, but the cost to the government will almost certainly increase. Although it is difficult to compare the relative costs of Defender and Panel representation because of differences in the way Panel and Defender case statistics are maintained, I do not believe there can be any question that my Office provides representation at a rate that is far below what panel attorneys receive. In FY 2012 for example, payments to panel attorneys in New Jersey were $4,986,600, in connection with 531 representations. In contrast, our FY 2012 budget was approximately $8.9 million, and we opened 1,164[1] cases, and served 1,816 clients. Whether one uses the more conservative cases-opened figure, or the clients- served figure – which I believe is more comparable to the CJA panel attorney representations – Defender representation in this District is less expensive:

CJA Panel Attorneys = $9,390 per case
AFPD = $7,692 (cases opened) or $4,900 (clients served) per case

And the 2012 figures are not an aberration. Since FY 2003 through May 2013, the Panel has received roughly 35% of every dollar allocated to the District under the CJA, while taking 28% of the cases. Put another way, for the last 11 years, for every $100 that was either appropriated to my Office or paid to DNJ Panel attorneys in a given year, $35 went to the Panel and $65 was appropriated to my Office. At the same time, for every 100 clients who qualified for appointment of counsel, 28 went to the Panel, at a 10-year average of $8456 per case, while 72 were assigned to my Office, at a conservative average of $6452 per case. And the budget numbers for my Office are inflated somewhat because during much of this period, my Office hosted one and at times two national positions, neither of whom worked on our cases, though their salary and benefits were included in our budget.

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[1]All the workload and budget numbers were obtained from the Defender Services Information System (DSMIS). The case numbers are not "weighted."

Again, the point is not to suggest that panel attorney payments should be reduced. Rather my intent is simply to illustrate the absurd result that will be generated if the cuts materialize: the cost to the government will increase, with no discernable benefit to those being represented. It is with some irony, therefore, that the only practical step I can recommend to the Court to address our inability to continue to take the same volume of cases is, to paraphrase Chief Brody from the movie *Jaws*, "You're gonna need a bigger panel"– that is, the Court should consider expanding the panel from the current limit of 100, to perhaps 120, so that a sufficient number of attorneys will be available to provide representation. All panel attorneys will likely be required to shoulder much more work without receiving regular assistance and training from attorneys in my Office, because there will not be enough time or staff to provide that service - which was the equivalent of at least six weeks of attorney time in FY 2012.

The Court should also be aware that in addition to focusing on cost containment within our Offices, the Defenders in the Third Circuit recently worked with the Third Circuit Court of Appeals to establish a mechanism to achieve real savings in connection with CJA appeals. Notwithstanding the staff reductions and furlough days, we initiated a program in the Circuit which will result in a significant increase in the number of appeals assigned to the Office. In the past, when a private or panel attorney was forced or allowed to withdraw from an appeal, the Circuit appointed another panel attorney to do the appeal. This often led to delays due to the difficulty associated with finding competent appellate counsel, and certainly increased costs to the Court.

Starting in late March, at the suggestion of the Defenders, the Circuit adopted a new procedure. Instead of seeking a panel attorney, the appeals are made available to the Defender Office in the district where the case originated. If that Defender Office is unable to accept an appeal due to a conflict or case load, the appeal is made available to each of the other Offices in the Circuit on a rotating basis. During the first three months of the program, my Office has accepted 12 appellate cases that would otherwise have been assigned to and billed by a Panel attorney.

Conclusion

Federal Defenders do not have a voice who represents our interests before Congress. We rely upon the AO and its various Offices to speak on our behalf. In recent years, as the budget noose has tightened, there has been a growing concern among Defenders that our message was not being heard or accurately presented, and that our program had become a target for unwarranted or uninformed budget attacks. Some of

the blame for the perception that has given rise to those critiques no doubt lies with the Defenders. Regardless of the reasons for that perception, at this point, there can be no question that the Defender budgets have been stretched to the breaking point. The cuts that are projected will decimate Defender Offices and drastically alter the balance that had been struck between Defender and panel appointments.

The only solution that has been identified is a longer suspension of panel payments commencing October 1, 2013, combined with a more realistic supplemental appropriation. The timely declaration of a suspension of Panel payments is an essential predicate, however, because we have been advised that any hope for budget relief before December is unlikely. Consequently, if there is no suspension of payments, Defenders will have no choice other than to significantly reduce staff to address the projected shortfall. The authority to formulate or to at least advocate to Congress for any solution resides solely with the Judges and the Administrative Office of the United States Courts.

Thank you for your continued understanding and patience.

Respectfully,

RICHARD COUGHLIN
Federal Public Defender

cc: Theodore A. McKee, Chief Judge, United States Court of Appeals for the Third Circuit
Paul J. Fishman, United States Attorney
Jerome A. Balloratto, Esquire, National CJA Panel Representative, DNJ
FPD Staff

Federal Bar Association
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January-February 2013: Federal Courts Brace for Budget Cuts

Washington Watch | January/February 2013
By Bruce Moyer

Federal court chief judges and administrators across the country are putting contingency plans in place should the U.S. Congress fail to derail the deep, government-wide budget cuts due to take effect in January 2013, as part of a budget process called "sequestration." Those cuts, amounting to roughly 8 percent of the federal courts' overall budget, could considerably cripple court operations in a number of ways.

Over the past several months, the FBA has been warning Congress, the public and the legal community about the danger of these automatic budget cuts and urging Congress to adopt a comprehensive deficit-reduction package. FBA leaders at the national, chapter, and section levels, through a coordinated grassroots advocacy campaign, have been contacting their Senate and House lawmakers to highlight the danger of sequestration upon the federal courts, pointing to the numerous impacts. It's one more way that FBA continues to serve its important role as the foremost constituency of the federal courts.

Congress, during its postelection lame-duck session between Thanksgiving and the holidays will have the chance to avoid those cuts through adoption of a thus-far elusive deficit-reduction package. The chances of Congress reaching a major budget deal during the lameduck session are slight, given the shortness of the session. Instead, Congress is more likely to adopt a "framework" for reaching a comprehensive spending and revenues package in 2013. Reaching agreement on even a framework during the lame-duck session will not be easy, assuming compromises on both spending and taxes are involved. Political control coming out of the November elections will influence the dynamic and content of how that evolves.

For the average person outside of Washington, D.C., it is hard to believe that Congress would ever allow sequestration to happen. Economists warn that the overall decrease in public spending caused by sequestration, along with the expiration of the Bush-era tax cuts, will throw the nation off the "fiscal cliff" and into another deep recession.

Ironically, Congress never fully intended sequestration to happen. The automatic cuts, scheduled to begin in January 2013, were included in the debt ceiling agreement of 2011 as a deterrent to motivate congressional adoption of a comprehensive deficit-reduction plan. But that hasn't happened. It now remains for Congress to avert sequestration during the postelection session—or sequestration will proceed.

For the federal courts, the direct consequences of sequestration will be deadly, with cutbacks in court personnel and court operations that will vary from court to court. Because so much of court spending involves personnel costs, sequestration would force the judiciary to reduce its overall workforce by 5,400 court staff—roughly one-quarter of its total workforce—through layoffs and/or furloughs. That would come on top of 1,100 positions already eliminated over the past year due to prior funding cuts.

The budget for the federal judiciary is about $7 billion a year, a figure that has remained relatively constant for the last three years, even as the caseload of the federal courts has increased. Under the sequester, the federal judiciary's budget would be cut by $555 million, or roughly 8 percent, in fiscal 2013. A cut of that magnitude would bring court spending down to what it was in fiscal 2009, according to the Administrative Office of the U.S. Courts.

In some courts, sequestration could reduce the hours of operation in their clerk of court offices, and some courts may even be forced to close for one or two days each week. This could lead to delays in court proceedings, particularly in civil and bankruptcy cases.

Public safety also could be endangered. "The federal courts would be unable to properly supervise thousands of persons under pretrial release and convicted felons released from federal prisons, thus compromising public safety in the community," predicted Rep. Norman Dicks (D-Wash.), U.S. House of Representatives' Appropriations Committee ranking member, in an October letter to lawmakers. In addition, the cuts could translate into staffing cuts for U.S. marshals and court security officers, potentially creating security vulnerabilities and requiring new limits on public entrance into courthouses.

As a last resort, the courts could be forced to suspend civil jury trials because of insufficient money to pay jurors. In criminal cases, payments to private panel attorneys in Criminal Justice Act cases could be suspended and federal defender organization staff furloughed. This would severely disrupt the provision of constitutionally mandated representation and the ability of the federal courts to resolve criminal matters in a just, expeditious manner. And because many criminal defendants are detained, this would result in extended pretrial detention, creating additional costs. The suspension of civil jury trials, however, would not come about until later this summer. By then, Congress hopefully will have scaled the fiscal cliff.

Bruce Moyer is government relations counsel for the FBA. © 2013 Bruce Moyer. All rights reserved

FEDERAL DEFENDER FACT SHEET
JULY 16, 2013

Federal Defender offices throughout the country were recently informed that their budgets for Fiscal Year 2014 will be cut by as much as 23 percent. **Absent some immediate action, Federal Defenders will begin the process this summer of laying off between a third and half of their staff.** They will also begin closing many branch offices. The cuts will result in irreparable damage to the criminal justice system, and paradoxically, greater expense to the taxpayer as indigent defendants are increasingly assigned private counsel from the Criminal Justice Act (CJA) Panel.

The cuts to Federal Defender offices and the catastrophic consequences that would attend them are avoidable -- even accepting congressional budget cuts mandated by sequestration. Currently, the Judiciary's Office of Finance and Budget is predicting a $100 million shortfall in the Defender Services account for Fiscal Year 2014 -- roughly 10 percent of the Defender Services budget. The Defender Services budget is divided between the CJA Panel, Federal Defenders, and Administrative expenses. The Federal Defender allotment is usually just over half of the budget. In years past, any shortfall in the Defender Services appropriation was managed by delaying CJA Panel payments. But this year, the Budget and Executive Committees of the Judiciary plan to allocate all of the Defender Services cuts to Federal Defenders, leaving the budget for privately assigned counsel (the "CJA Panel") unaffected. It amounts to a "double sequestration" for Federal Defenders.

If the Judicial Conference instead chose to budget for the deferral of payments to the CJA Panel, as it has in years past and as the CJA Panel representatives themselves have endorsed, the catastrophe could be mitigated. The deferral of payments in FY 14 would only come at the end of Fiscal Year 2014 if Congress did not act to prevent them. Budgeting for deferrals would provide much needed time to prevent Federal Defenders from having to act precipitously this summer. And even if the deferrals come to pass, CJA counsel would ultimately still be paid; their payments would only be delayed until FY 15. Budgeting for a deferral of nine weeks would solve the crisis.

Below are the essential facts about Federal Defenders and cost containment. Those facts demonstrate that Federal Defender offices have been models of efficiency and quality. Rather than subjecting them to unsustainable cuts, they should be held up as exemplars for government services.

The Consequences of the Cuts

Because Federal Defender offices must begin cutting in advance of the new fiscal year beginning on October 1, the following actions will take place this summer:

- Federal Defenders will begin laying off between a third and half of their staff, including attorneys, investigators, and paralegals.

- With reduced staff, Federal Defenders will begin to decline large numbers of cases. Those cases will then be assigned to CJA Panel attorneys at higher costs.
- Federal Defenders in over 20 states are already making plans to close branch offices. The offices to be closed are typically in smaller locations where the assignment of CJA counsel is not only more expensive but sometimes hard to accomplish at all because of a scarcity of qualified counsel.
- Federal Defenders will seek to be relieved in resource-intensive cases and will no longer act as discovery coordinators in multi-defendant cases, further exploding costs by increasing CJA expenses.
- Federal Defenders will cease participation in re-entry and diversionary courts. Those courts lower recidivism rates, improve public safety, and reduce costs associated with incarceration.
- Federal Defenders have already ceased most training programs for their attorneys and for the CJA Panel, reducing the quality of representation.
- Federal Defenders' role in administering the Panel will shift to the Court and clerks.
- Federal Defenders' will be unable to respond to large-scale legal events like U.S. v. Booker and the massive numbers of crack re-sentencings.
- Costs, both human and fiscal, from mistakes and delays will increase.

Federal Defender Cost Comparison

The ultimate irony of cutting Federal Defender budgets is the increase in costs to the taxpayer. In districts across the country, the 23 percent cut to Federal Defenders will require thousands of federal criminal cases to be assigned to CJA Panel attorneys. CJA counsel are consistently more expensive than Federal Defenders, and the shift will cause the cost of indigent defense to explode.

A recent analysis confirms this fiscal danger. Defenders in six districts that range in size, type, and geography[1] analyzed the relative costs of Defender organization representation in comparison to the cost of CJA counsel representation. *See Figure 1, CJA vs. FPD Costs Per Case.*[2]

[1] They vary in size from the largest office in the country (District of Arizona), to a comparatively small office (ED Louisiana). The study includes both Federal Public Defender offices and Community Defender offices. Finally, the dockets in these districts vary greatly, from primarily immigration crimes to complex post-SEC white collar fraud offenses. Despite this diversity, the bargain remains a constant: each Defender office in this study costs considerably less than their CJA counterparts.

[2] There is no centralized national database that permits the ready comparison of Federal Defender costs versus costs of the Criminal Justice Act (CJA) panel. Defenders in these six districts accordingly compiled data from in-house paneling of cases, local clerk expenditure records, and other national and local sources. For the methodology used by each district for this study, see Exhibit B.

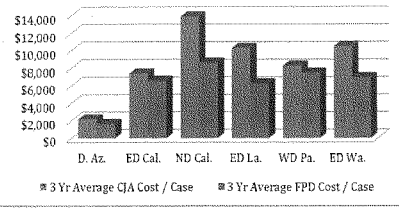
Fig.1 CJA vs. FPD Costs

District	3 Yr Average CJA Cost / Case	3 Yr Average FPD Cost / Case	Average FPD Cost as % of CJA Cost (3 year Avg.)	Average Annual savings from FPD handling cases instead of CJA
D. Az.	$2,194	$1,658	**75.6%**	$6,245,059.32
ED Cal.	$7,406	$6,558	**88.6%**	$1,575,436.65
ND Cal.	$13,906	$8,642	**62.1%**	$7,082,144.79
ED La.	$10,306	$6,265	**60.8%**	$1,604,128.40
WD Pa.	$8,305	$7,491	**90.2%**	$561,098.54
ED Wa.	$10,497	$6,944	**66.2%**	$2,849,347.46
			Average:	**Average:**
			71.4%	$3,319,535.86

On average, Defender offices in these six districts defend a federal criminal case for 71.4% of what the Judiciary spends for CJA counsel to defend a case. As illustrated below, the three year average cost for FPD cases in each of these districts is dramatically lower than the cost for CJA representation. *See Figure 2, CJA vs. FPD Costs Per Case.* By representing indigent defendants in their districts, the six Defender offices studied saved the taxpayer over *$3.3 million a year* in the last three fiscal years.[3]

Together, these Defender offices defend over 10,000 federal criminal cases annually. Twenty-three percent cuts to the operating budgets of these offices, and the resulting 33 to 50 percent reduction in staff, will require far more cases to be assigned to CJA counsel. As CJA counsel defend a greater percentage of cases (or all of them, in those districts whose

Fig. 2 **CJA vs. FPD Costs Per Case**



[3] The assessment builds on earlier studies that reached the same conclusion: providing indigent defense representation through Defender organizations costs less. For example, in the Western District of Michigan the Federal Defender ascertained that CJA counsel costs 37% more than the Defender organization, when expenses for both were examined on a "weighted"-case basis. Similarly, an extensive analysis in the Central District of California revealed that the Federal Defender there defended cases for about half the cost of the Criminal Justice Act panel.

Defender office may not survive the cuts), the cost of indigent defense will rise, inexorably and dramatically.

The demonstrable cost differentials revealed in every district studied will be multiplied throughout the country. There are 81 Federal and Community Defender offices nationally. These Defender organizations consistently secure for the Judiciary efficient, skilled and economical defense of indigent cases. The economies arise from volume representation by experienced and trained defense counsel, employed by established institutional actors.

Federal Defender Cost Containment

For years, the understandable mantra from the Administrative Office of the U.S. Courts has been cost containment. By any measure, Federal Defenders have done a remarkable job of containing costs.

Nearly all Federal Defender office budgets break down roughly as follows: 80 percent salaries and benefits; 10 percent rent; and 10 percent for everything else, including interpreters, experts, investigatory expenses, information technology, and basic office equipment.

Rent is a fixed cost, and the amount of space Defenders use is tightly regulated hy AO policy. The 10 percent "for everything else" has been cut to the bone in recent years, with Defenders taking such steps as negotiating heavily reduced rates from experts and eliminating travel and training expenses. There is nothing left to cut that is not absolutely required to provide effective assistance of counsel.

This means that the only place for Federal Defenders to cut is personnel. The number of personnel in any given office is subject to rigorous oversight. The Federal Defender program has many layers of oversight by the Defender Services Committee (DSC), the Office of Defender Services (ODS) and our Circuit Courts. Each office's budget and staffing levels is set annually by the DSC. Defenders may not add Assistant Federal Defender positions without DSC and ODS approval; FPDOs also need Circuit approval before any new AFPD will be funded. Non-attorney staff must be approved by ODS before a position can be posted and filled. Defender offices are required to file multiple monthly reports, detailing spending, change in caseload and current staffing levels. We file an Annual Report of Operations, which is shared with our Chief Circuit Judges and, in many districts, our Chief District Judges. ODS conducts management assessments of each Defender office every four years. A financial audit for Community Defenders by an outside audit team is conducted every year. FPDOs are audited every four years and conduct an internal controls audit annually.

It must also be noted that when it comes to cost containment, it is inappropriate to compare Federal Defenders to other agencies within the Judiciary. Whereas other departments such as Pretrial Services and Probation may cut back on services such as mental health

counseling, substance abuse treatment, and field supervision (which they are currently doing), Federal Defenders cannot simply choose to partially represent a client. They cannot cut back on necessary investigations, legal research, motions practice or the myriad other activities that are necessary to carry out their constitutional obligation. Instead, their only recourse is to take fewer cases with the resulting higher costs described above.

The "Downstream"Costs

Federal Defenders also mitigate the costs associated with unnecessary incarceration and pretrial detention. High quality representation means that fewer defendants are unnecessarily incarcerated for longer than sufficient to achieve the goals of retribution, public safety, and rehabilitation. Every year of federal incarceration costs the taxpayer at least $25,000 per inmate. Quality advocacy that brings to light circumstances of the defendant's offense or background demonstrating a justification for even a slight reduction in sentence can save enormous amounts of money. Federal Defender Offices throughout the country routinely open approximately 125,000 cases per year, including felonies, misdemeanors, supervised release violations, and appeals. **If Federal Defenders save an average of just one month of incarceration per client, the annual savings amount to $260 million.** That staggering amount is more than double the amount being cut from the entire Defender Services account in 2014.

In addition, when Defender attorneys are furloughed or laid off, hearings and trials necessarily must be continued either because of the attorney's temporary absence or the time associated with transferring a case. When hearings are continued for defendants in custody, the taxpayer must foot an additional $2,221.22 (Bureau of Prisons facilities) to $3,500 (private prisons) per defendant per month for the added costs of pretrial detention. Even if a defendant is not in custody, Pretrial Supervision spends $220.29 per each out-of-custody defendant per month.

This means that if one FPD Office has 10 in-custody clients whose hearings are continued just one month due to furloughs or layoffs, the taxpayer ends up spending $22,000 - $35,000 per month it otherwise should not have to spend.

The Legacy of Federal Defenders

Cuts of the magnitude planned for this year will have long-lasting impacts on the federal criminal justice system. The Federal Defender program was established in 1970 in order to establish a much needed "counterpart to federal prosecutors in U.S. Attorney's Offices and an institutional resource for providing defense counsel in those districts (or combination of adjacent districts) where at least 200 persons annually require appointment of counsel." *See* Administrative Office of the U.S. Courts, *Appointment of Counsel*, found at http://www.uscourts.gov/FederalCourts/AppointmentOfCounsel.aspx.

Since that time Federal Defenders have been models of quality and efficiency. Federal judges, the General Accounting Office, and studies by the Rand Corporation all confirm that Federal Defender organizations provide high quality representation that allows the courts to operate efficiently while saving the taxpayer money. *See* Rand Corporation, "Case Weights for Federal Defender Organizations" (2011).

A survey of federal judges conducted by Seventh Circuit Judge Richard Posner and Professor Albert Yoon published in the Stanford Law Review two years ago showed that of all types of attorneys, civil and criminal, federal judges ranked federal public defenders the highest, slightly above federal prosecutors and well above private counsel. *See* Richard A. Posner & Albert H. Yoon, *What Judges Think of the Quality of Legal Representation*, 63 STAN. L. REV. 317, 325 (2011).

Federal Defenders have been able to handle their heavy workload at such a low cost because they have been fortunate to recruit outstanding talent, including numerous former judicial law clerks from the United States Supreme Court, federal Courts of Appeals and District Courts, a host of former top state public defenders, and law firm associates who distinguished themselves in their practices before joining the Federal Defenders. They have all chosen to work for Federal Defenders for a fraction of what they could earn in the private sector because they are dedicated to their work on behalf of the indigent.

The talent drain this year and for years to come will be devastating. It will be a lasting stain on the Judiciary's commitment to equal justice. And it will be done in the name of cost cutting, when in fact, costs will rise.

–oOo–

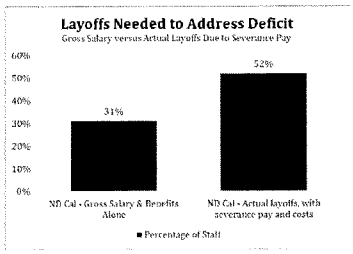
Exhibit A

Severance and Notice Costs Amplify Defender Reductions

The projected twenty-three percent budget cuts will have a particularly devastating impact because unavoidable severance costs amplify the number of staff that must be terminated, and notice requirements to GSA.

Defenders must absorb three mandatory costs[4] when laying-off staff:

1. Severance pay;
2. Vacation hour lump-sum payoff;
3. Unemployment claims.



One Defender's recent calculations well-illustrate this problem. The Defender for the Northern District of California has identified each staff member to be laid off to meet the 23% budget cut, and has calculated their precise severance pay, vacation lump-sum payoffs, and anticipated unemployment insurance claims.

Without those severance costs, that Defender would have to lay-off 31% of his staff to absorb a 23% cut. *With* these mandatory severance costs, he will be forced to lay off **52% of his staff** – more than half his office.

Put differently, the unavoidable costs of layoffs – severance pay, lump-sum vacation payoffs, and unemployment claims – mean that this Defender will be required to lay-off an additional 20% of his staff over the percentage required if a lay-off simply recouped all salary and benefits. Other Defenders who have done these calculations, or have laid-off staff in Fiscal 2013, report similar costs associated with severance.

Other cost-containment measures have similar limitations. For example, many Defenders will be forced to completely close-down branch offices if the 23% cuts take place. Unfortunately, many Operating Agreements (leases) with GSA contain four-month notice provisions. Therefore,

[4] Very new employees do not receive severance pay. Because of years of hiring freezes and layoffs in Fiscal 2013, however, new employees are a very small proportion of most Defender's staff.

if a Defender gives notice on October 1, 2013[5] that Defender will still be obligated to pay rent (for empty office space) until February 1, 2014. As a result, the Defender will only save 75% of the rent funds for that property next fiscal year.

Twenty-three percent cuts forced into one Fiscal Year will devastate the Defender program, because the severance and notice costs required for layoffs and abandoning property will dramatically amplify the overall reduction of staff and office space. This will force a commensurate reduction of service, and necessarily require that a far greater proportion of indigent defense in districts be undertaken by (comparatively-expensive) Criminal Justice Act panel attorneys.

[5] October 1, 2013, is the first day of Fiscal Year 2014.

Exhibit B

Methodology, Six-District Study

CASE NUMBER DATA: The data regarding the number of CJA cases represents the best available information about the number of defendants represented by CJA counsel in each of the districts in each of the three fiscal years analyzed. Defender offices that make panel assignments (D. Az, ND Cal., ED La., WD Pa.) were able to review internal appointment records and obtain the number of cases assigned to the panel. In WA-E, the District Court clerk's office was able to provide the number of defendants represented by CJA counsel in each of the fiscal years. The CJA case numbers from the remaining district (ED Cal.) were obtained from DSMIS (Defender Services Management Information System): a national case-management and cost database. Because DSMIS is linked to the existing 6X CJA Panel Attorney Payment System (soon to be replaced by the new eCJA VPS), the CJA case numbers data in DSMIS is not limited to the number of CJA representations. Instead, the number includes the number of all vouchers – those entered at the time of appointment and those entered thereafter for interim payments, experts, and transcripts. As a result, DSMIS over-counts the number of CJA representations in a fiscal year and, consequently, results in a lower CJA cost per case than would be determined if only if the number of defendants represented were included.

The data regarding the number of Defender cases represents the number of cases opened by each office in each of the fiscal years. Because the available data regarding the number of CJA representations does not include appeals appointments, Defender offices also did not include appellate openings.[6] The case numbers (and cost data) for both CJA and Defenders do not include capital habeas representations because, in districts with Capital Habeas Units (CHU), the panel does not handle many, if any, such cases, and in districts without CHUs, the Defenders may not handle many, if any, such cases. As a result, including capital habeas cases in the analysis would hinder the ability to provide a meaningful cost comparison. Finally, in all but one district (ND Cal.), capital trial representations were included in both CJA and Defender data. Because the ND Cal. office did not undertake any capital trial representations during the three-year time period (with the exception of a short period at the end of Fiscal 2012), and the CJA panel did, those cases – and the associated costs – were deducted from CJA totals so as not to unduly inflate the CJA cost-per-case in that district (and survey-wide).

COST DATA: The total annual CJA cost was obtained from DSMIS, and includes the total amount of all vouchers paid to CJA counsel for trial level representation during the fiscal year.

[6] In one district (ED Cal.), it was not possible to remove appellate representations and costs from the panel case numbers, so the Defender case number and cost data for that district also includes appellate openings and related costs.

Also included are Government Travel Account (GTA) expenses, which were obtained from CJA payment summaries provided by District Court clerks' offices.

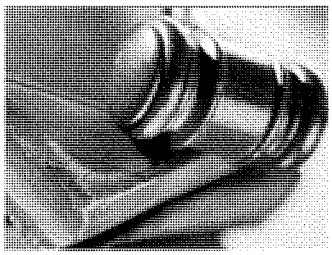
The total annual cost for Defenders was obtained from regularly-generated financial reports (Financial Accounting System for Tomorrow (FAS4T) and Electronic Status of Funds Reports (ESFRs), and represents the total expenditures made by each of the offices during the fiscal year.

As noted, appellate representations are not included in either CJA or Defender case numbers, and the cost of appellate representation by the CJA panel is not included in the CJA annual cost figure. Accordingly, where able, Defenders removed salary and benefit costs of appeals dedicated staff to allow for a more accurate cost comparison.[7]

Finally, the six-district analysis provides cost per case data for cases initiated in each of the three fiscal years. That is, the case number data reports cases opened in a Defender office, or cases assigned to the CJA during the fiscal year. Cost data for both Defenders and CJA counsel represent the actual amount paid to each during each fiscal year. Some portion of both the amounts paid to CJA counsel and Defender expenditures undoubtedly relate to representations that began in preceding fiscal years and to those that will continue into the next; however, because the cost data for the Defender offices and CJA counsel both include this "carry-over," it does not affect the comparative cost analysis.

[7] This was not possible in one district (ND Cal.), where there is no dedicated appellate staff. As a result, all appeal costs are included in the Defender data for this district -- even though appeal openings are not included -- thereby increasing the relative actual cost per case in that district and survey-wide.

Thursday, March 14, 2013 - 12:18pm
Federal court in Del. affected by sequester
By The Associated Press



Most criminal proceedings in Delaware's U.S. District Court will be canceled on Fridays starting in May because of federal spending cuts.

The News Journal reports that because of across-the-board spending cuts that took effect earlier this month, the U.S. District Court will hear only critical criminal cases on Fridays.

Chief U.S. District Judge Gregory Sleet says he hopes the change, scheduled to take effect in May and run through September 20, will make it easier for government agencies affected by the cuts to schedule mandatory furlough days for their employees.

Delaware Federal Defender Edson Bostic says the near-shutdown of criminal court might slow down the criminal justice system, but clients will still be represented.

The change is not expected to have an impact on civil proceedings.

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OFFICE OF THE FEDERAL PUBLIC DEFENDER
FOR THE DISTRICT OF DELAWARE

EDSON A. BOSTIC
FEDERAL PUBLIC DEFENDER

July 15, 2013

VIA ELECTRONIC MAIL

Honorable Gregory M. Sleet
Chief Judge
United States District Court
844 N. King Street
Room 4324
Unit 19
Wilmington, DE 19801

Dear Chief Judge Sleet:

As you are aware, Your Honor and I have discussed on a number of occasions the severe impact of budget cuts and sequestration on the FPDO of Delaware. Indeed my office is facing a continued dire financial situation as a result of budget reductions in fiscal year (FY) 2013 and an anticipated 23% reduction of the preliminary FY2014 Defender Services Committee approved budget due to sequestration. I thank the Court, and you specifically, for helping my office to share information about our present circumstances with others, including Senator Coons, who may be able to help alleviate the situation. However, I am calling upon the Court again to assist us in bringing the devastating impact of a 23% reduction in funding on my office to the attention of the Executive Committee for the Administrative Office of the Courts.

Currently, the Office of Finance and Budget (OFB) for the Administrative Office of the Courts is predicting an estimated budget shortfall of $100,000,000 in the FY2014 Defender Services account. This account, as you are aware, funds Criminal Justice Act (CJA) Panel payments, Federal Defender Program budgets and Administrative expenses. Federal Defender Program funds represent approximately 50% of the full Defender Services account.

OFFICE OF THE FEDERAL PUBLIC DEFENDER DISTRICT OF DELAWARE
800 KING STREET SUITE 200 WILMINGTON, DE 19801 P 302 573 6010 F 302 573 6041 TOLL FREE 1 877 444 8244 http://de.fd.org/

Federal Defender Programs throughout the country have been instructed by the Office of Defender Services (ODS) to prepare for a 23% reduction to the preliminary FY2014 Defender Services Committee approved budget. While I, along with my counterparts nationwide, prepare for furlough days, reduced schedules and layoffs to manage this impact, we bear the full burden of the cuts to the Defender Services Account. The CJA portion of the Defender Services Account remains free from reduction.

My office is currently facing a shortfall for FY2014 of approximately $630,000 in its entire budget, both the Traditional Unit and the Capital Habeas Unit. There are some costs that cannot be cut. Rent is a fixed cost by contract and cannot be reduced. Other operating expense levels, such as expert fees, investigations and interpreters have already been drastically reduced. These expenses, however, cannot be cut completely without jeopardizing the competent representation of our clients. (I have previously provided the Court with a list of many of the cost reduction efforts that we have made, dating back to FY2012.) Even so, the current situation reduces funding to a point far beyond any savings that could be realized simply through cost reduction strategies. Thus, the overwhelming majority of the impact falls squarely within the category of salaries and benefits, requiring close to a 25% reduction in staff (Exhibits 1 and 2), or about 106 furlough days per employee for the entirety of FY2014. This number of furloughs translates into four days per pay period per employee for the entire year; essentially placing all employees on part time status. This is something to which I cannot ascribe.

Therefore, in developing a plan for the projected 23% reduction to my budget, it is with a heavy heart that I must eliminate two positions held by hard working, skilled professionals, in combination with reduced schedules and furloughs. (Since March, this office lost two positions to attrition, one AFPD in the Traditional Unit and a CHU Paralegal. In order to alleviate the effects of sequestration, those positions have not been replaced.) In addition, I have created a tiered system of three groups to which each office employee is assigned. In addition to the layoffs of two current employees beginning September 15, each tiered group will face from 26 to 60 furlough days, many facing a permanent reduction in hours by as much as 40%. Put another

way, each remaining employee, after layoffs, will face a 10% to 40% reduction in work hours and pay for the entirety of FY2014.

I foresee that there will come a point in time that our unavailability of staff will negatively impact the efficient administration of justice in a courthouse that is already heavily burdened. While my staff and I will continue to do everything in our power to readily and speedily respond to the needs of our clients and the Court, there is only so much that we can humanly do with such a large reduction in staff/work hours. It is a harsh reality that calls for decisions based on maintaining our high quality representation of clients, by keeping in place a core team of professionals with the skills, versatility and resilience to remain steadfast to the mission. As I review a myriad of options, the ever present focus is on this office's Constitutional obligation to our clients as the Court demands and requires.

When budget crises of this nature have occurred in the past, CJA payments have been deferred for a finite period of time in order to maintain a viable Federal Defender Program, CJA Panel Program, and the Sixth Amendment right to representation for all indigent defendants. Delaying CJA payments in this instance would keep the Federal Defender Program viable. On the other hand, failure to delay payment will be catastrophic to my office and Federal Defender Programs nationwide.

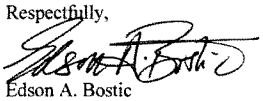
Defenders nationwide are working tirelessly to bring this desperate situation to the attention of the Judicial Conference, Executive Committee and Congress. We are seeking a temporary suspension/deferral by the Executive Committee of panel attorney payments as a budgetary tool for FY2014. Such suspension would create an opportunity for Defender offices to continue to meet the Constitutional mandate of effective representation, while we wait to see if there will be relief from Congress. While the status quo of 23% potential reductions for FY2014 continues, we cannot afford to relax our efforts. Without such a step towards maintaining the integrity of Defender offices, the entire Defender system will inevitably crumble.

OFFICE OF THE FEDERAL PUBLIC DEFENDER
FOR THE DISTRICT OF DELAWARE

Thus again, I seek your support and help in reaching out to the Executive Committee about our current funding problem. Any information that you can share with them about our program and the beneficial effect that a deferment of CJA payments will make on our current financial conditions would be greatly appreciated.

Again, I appreciate your support. I will make myself available at a time that meets your scheduling needs to discuss any questions you have regarding this update and request for assistance.

Respectfully,



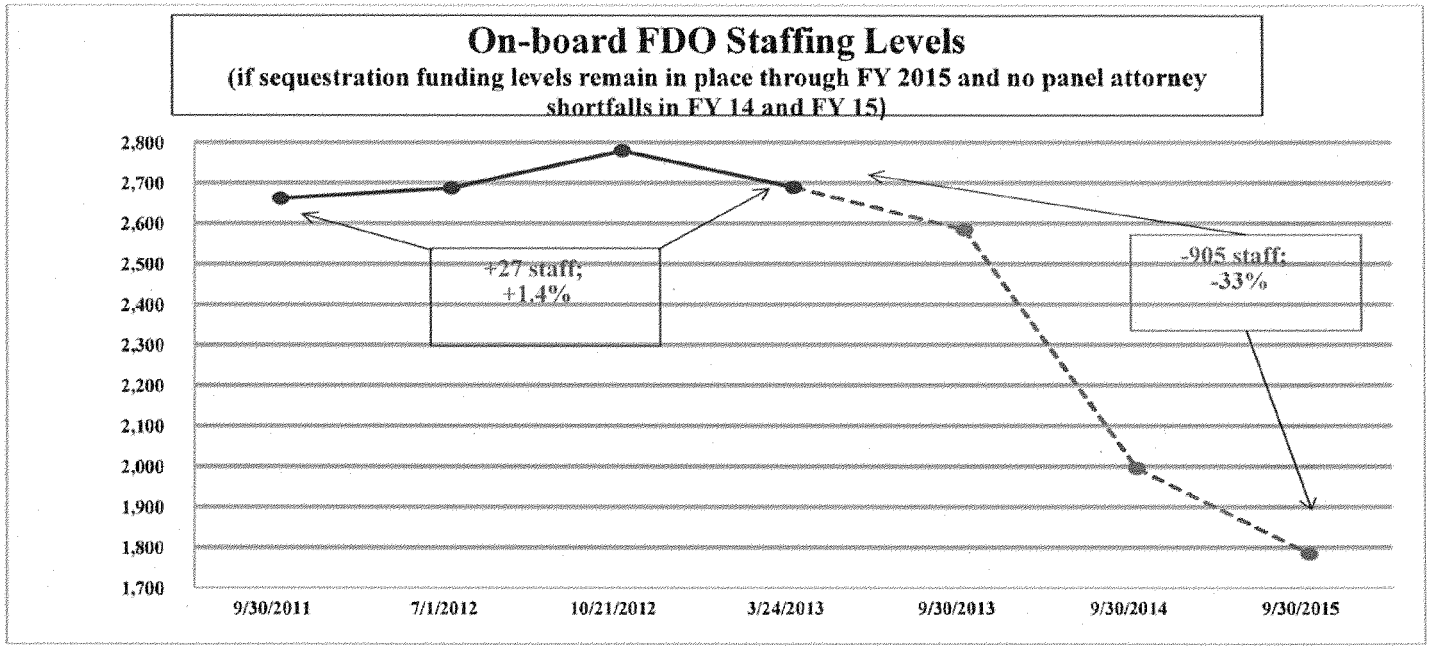
Edson A. Bostic
FEDERAL PUBLIC DEFENDER

Cc: The Honorable Theodore A. McKee, Chief Judge,
Court of Appeals for the Third Circuit
Charles Oberly, United States Attorney - District of Delaware
Ray Rudalski, CJA Panel Representative - District of Delaware

Enclosures

Furloughs and Salary Cuts with -23% Budget Reduction Entire Office

Projected FY '14 Budget from ODS:	**$3,375,200**	*(Plug this # in)*
ODS predicts cuts to FY '14 budget of:	**23.00%**	
This will mean funds cut from FY '14 will be:	$776,296	
Producing post-cut FY '14 budget, with -23% reduction:	**$2,598,904**	
Your rough estimate of $ (salary + benefits) saved per furlough day (from your FY '13 experience):	$7,214	*(Plug this # in)*
Furlough days required to offset the -23% cut, at FY '13 Staffing:	108	
Salary that must be cut, to get down to **20 furlough days** in FY '14 and to offset -23% shortfall:	$632,016	
Number of Employees to lay-off to get to 20 furlough days and offset -23% shortfall, average salary & benefits	5	
Number of Employees to cut to completely avoid furloughs and offset -23% cut, average salary & benefits	6.12	


On-board FDO Staffing Levels
(if sequestration funding levels remain in place through FY 2015 and no panel attorney shortfalls in FY 14 and FY 15)
2,800
2,700
2,600
2,500
2,400
2,300
2,200
2,100
2,000
1,900
1,800
1,700
+27 staff;
+1.4%
-905 staff;
-33%
9/30/2011
7/1/2012
10/21/2012
3/24/2013
9/30/2013
9/30/2014
9/30/2015

FEDERAL
DEFENDERS
OF
SAN DIEGO,
INC.

The Federal Community
Defender Organization
for the Southern
District of California

NBC Building
225 Broadway
Suite 900
San Diego,
California
92101-5030
(619) 234-8467
FAX (619) 687-2666

June 14, 2013

Hon. Barry Ted Moskowitz
Chief Judge
United States District Court
333 West Broadway
San Diego, CA 92101

Dear Judge Moskowitz,

I write to amplify the remarks I made at this year's District Conference regarding Federal Defenders of San Diego and the budget outlook for FY 2014.

FDSDI began FY 2013 with a Defender Services Committee Approved Budget of $ 20,152,700 and authorization for 67 attorneys and 75.71 non-attorney employees. In February, our budget was cut by 10.47% reflecting the inadequacy of funding under the continuing resolution and the further impact of sequestration.

To deal with the reduction of our budget, we reduced staff to 60 attorneys and 69 non-attorneys, or 11% below our authorized staffing level. (That staffing level is determined by a weighted caseload formula that was developed by the Rand Corporation after extensive study.) Those cuts left us short-staffed but were insufficient to close our budget deficit. To do so, the office cancelled contributions to employee pensions and increased the employee contribution required for health insurance. These actions allowed us to avoid further layoffs this fiscal year. Because these actions amount to a significant pay cut, they are not viable long term solutions to our fiscal problems. In any case, these actions are insufficient to address the impending crisis.

The Administrative Office of the Courts has instructed that we should expect to be funded for the next year at 77% of our 2014 requirements. If we are subject to this further 23% cut, FDSDI will begin FY '14 with a budget of $ 16,202,263. To maintain staff on board, we require funding in the amount of $ 19,551,077. Thus, we would start the year with a deficit of $ 3,348,818. Ninety percent of our budget is taken up by rent and personnel costs. The remainder is taken up by transcript, expert, and case-related travel costs. Rent is fixed by long term contracts. Transcript, expert, and travel costs are dictated by the requirements of constitutionally adequate representation. Thus, the only area where I can achieve significant savings is personnel.

One approach to reduce those costs would be furloughs. But to close a $ 3.35 million gap would require 67 days or 13.5 weeks of furlough. In other words, the office could stay within budget by closing its doors from July 1 through October 1. I don't see this as a workable alternative. Furloughs, like other forms of pay cuts, eat away at the morale of staff. While people come to this office because of their commitment to its mission,

they still have student loan, car, and house payments they must make. Taking this approach would inevitably result in the loss of my best, most talented staff. It would also irrevocably harm both clients and the Court.

Alternatively, I can reduce staff. Because we are a Community Defender Office (not a government agency as Federal Public Defenders are) we pay benefits for our employees directly. Our benefit to salary ratio is roughly 30%, so we would need to reduce salary by roughly $ 2.6 million to stay within budget. To do this, I would need to terminate 25 to 30 employees. Because of the pace of work in my district, many employees have not taken leave and have substantial amounts accrued. Thus, to achieve the full savings needed from layoffs, actual terminations would need to occur six weeks prior to the start of the fiscal year. Otherwise, I would need to terminate a higher number of employees. Assuming termination of 30 employees, staff would number 99 or 69.3% of the staffing level justified by our weighted caseload.

My attorneys regularly work fifty and sixty hour weeks. My non-attorney staff is governed by California labor laws, and I am required to pay overtime if they work more than 40 hours in a week. Consequently, with this level of staffing, we would have to reduce substantially our workload. FDSDI plays a large role in the functioning of this district, so any reduction in workload would have broad ramifications. The office accepts appointment in 50% of the district's cases. We also represent every indigent defendant before the Magistrate Court for purposes of initial appearance, appointment of counsel, and bond determination. This role has been critical to the functioning of this busy district because setting multiple hearings to accomplish these purposes, as would otherwise be required, would necessarily limit the number of prosecutions the district could manage. The office handles these same tasks for all indigent defendants arrested in the Imperial Valley through its El Centro branch office.

Regrettably, it seems to me that one of more of these roles would need to be sacrificed. The most logical course, in my view, would be to first close the El Centro office. Closing that office would not only reduce our workload but would also reduce overhead expenses such as rent. However, closing this office alone would not be sufficient to bring workload to a level that could be managed by a greatly reduced staff. That would require further reductions in case assignments. Second, I believe the office would need to end its role in handling new complaints in San Diego from initial appearance through bond determination. The office would instead accept appointments in the same manner as private attorneys appointed under the Criminal Justice Act. I suggest this because our role in handling new complaints is particularly demanding of the time of attorneys, investigators, and interpreters. Freeing the office from this work would minimize the need to reduce our regular appointed caseload and thus the expense of appointing private attorneys in those cases we could not handle. Alternatively, we might consider requesting that we be excused from case assignments one week out of each month. Any of these possible adjustments would create difficulties for the Court and would involve the shifting of cases to the panel with attendant expense. However, maintaining the status quo with a staffed reduced by 30% is simply not a realistic possibility.

Finally, our office provides extensive support to the panel. This takes many forms. Most prominent is education. Our office puts on a yearly Criminal Justice Act seminar focused on substantive federal criminal law. Attendance at the seminar is a requirement for admission to the panel. In the spring, our

office sponsors a series of Saturday training sessions focused on the nuts and bolts of trial practice. Throughout the year, the office puts on a series of brown bag education sessions devoted to topics relevant to this district including litigation of 1326(d) motions, claims of derivative citizenship as a defense to immigration offenses, cell tower data analysis, and other such issues. Because the office is an approved MCLE multiple activity provider, Continuing Legal Education credit is offered without charge for most of these training activities. The office also maintains brief and motions banks and is available to moot attorneys with oral arguments scheduled before the Ninth Circuit. Duty attorneys answer help calls from the panel. It is difficult to see how the office could continue to support the panel in this manner were its staff reduced so drastically.

I recognize that these are all unpalatable alternatives. I recognize as well that none will actually save money. The Sixth Amendment requires that indigent individuals receive appointed counsel and that those counsel provide constitutionally mandated representation. If we do not do this work, it must be done by private attorneys at greater cost. Moreover, there is no doubt the efficiency of those private lawyers will be reduced, and the cost of employing them will be increased, if this office does not play its historical role in supporting the CJA panel.

Of course, it is within the power of the Judicial Conference and its Executive Committee together with Congress to solve this problem. I have spent a good deal of time over the past several months speaking with congressional staff, both appropriations committee staff and others. On both sides of the aisle, there seems to be a recognition that the Federal Defender program is efficient and cost-effective and that shifting work to panel lawyers will cost taxpayers more money while harming our system of justice. Staffers have expressed a willingness to advocate funding for our program. But those same staffers have advised that there is no likelihood of an appropriation for the Judiciary before October 1. So, through the first part of the fiscal year, we will be funded by a continuing resolution. Moreover, these same staffers have advised that there is no real possibility of an anomaly providing a higher level of funding before December or January. By then Defenders, including me, will have laid off a third of our staff.

In years past, the Judiciary has dealt with shortfalls in the Defender Services Account by delaying payments to the panel so that Defenders could maintain staff and do the work required of them. For some reason, the Executive and Budget Committees of the Conference have reversed course this year, prioritizing the prompt payment of private attorneys over the preservation of Defender offices. Were this shortsighted policy reversed, it would give Congress time to act to preserve this program to the benefit of all. To the extent our Court, speaking through you, can affect the Judicial Conference's new policy, I ask it to do so.

Sincerely,

REUBEN CAMPER CAHN
Executive Director

cc: District Judges and Magistrate Judges

FEDERAL PUBLIC DEFENDER
Western District of Washington

Thomas W. Hillier, II
Federal Public Defender

June 17, 2013

Sent by Email

Honorable Marsha J. Pechman
Chief United States District Judge
United States District Court
700 Stewart Street
Seattle, WA 98101

Dear Chief Judge Pechman:

I am writing to ask for your help in preventing a funding crisis that will substantially damage the Federal Public Defender program nationally and will reduce the type, range, and quality of services my office has historically provided this Court. All court units are facing future financial uncertainty but federal defenders, absent corrective action by the Judicial Conference, will suffer especially harmful consequences in fiscal year 2014 (FY14).

There is a lot of history and complexity surrounding the current crisis, but the nub of our problem is fairly easily summarized. I will use gross figures for the sake of simplicity.

Within the Judiciary's budget is an appropriation dedicated to funding Criminal Justice Act (CJA) services. The amount is approximately $1 billion. The money is used to fund both defender offices and panel lawyers. Defenders provide representation in approximately 60% of CJA representations, but the money is split almost evenly between the two programs. Historically, the Defender Services Committee (DSC) of the Judicial Conference has decided how to divide the money. Because defender offices function efficiently, effectively, and play a central role in the management and training of CJA panels, DSC spending plans, through the years, have favored full funding of defender offices. Usually, the appropriation is sufficient to cover panel payments too. But on a number of occasions the money has run out before the end of the fiscal year and panel payments have been delayed for several weeks or more, until the next funding cycle.

Sequestration brought funding reductions of an unprecedented sort. In the midst of this emerging crisis, the DSC was stripped of its authority to develop the spending plan for CJA expenditures. That authority was transferred to the Executive Committee (EC) of the Judicial Conference.

1601 Fifth Avenue, Room 700, Seattle, Washington 98101 – Telephone (206) 553-1100 – Fax (206) 553-0120

When the full impact of sequestration was finally realized this spring, the CJA appropriation had shrunk, in effect, by ten percent. The EC decided that the shortfall would be shouldered primarily by defender offices, favoring prompt payment of private attorneys over preservation of defender offices.

You are generally aware of the impact of the EC's decision on my office. My office began FY13 with a Defender Services Committee approved budget of just over $10.1 million. In February our budget was reduced to $9.321 million to reflect the impact of sequestration. In order to manage the shortfall, I did not fill two funded and vacant (due to relocation) AFPD positions and closed the office every other Friday thereby enforcing a 10% pay cut for everyone save a few lower paid staff. It has been a horribly demeaning and demoralizing experience, especially as we watch the USAO add lawyer positions and work full time. Other defender offices took harder hits, but for all of us, the worst is yet to come. FY14 will be a disaster unless the EC alters its spending plan.

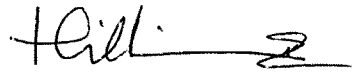
The attached email from Cait Clarke, the new director of the Office of Defender Services, describes the cuts we face in FY14 if the spending plan does not change and Congress does not provide more money. More money from Congress is a long shot, but if the EC changes its spending plan, requiring the panel to help shoulder some of the reduction in funds through a suspension of payments lasting nine weeks, our offices will survive. If not, my already sequester-slashed budget will be reduced by an additional 14% to $8.016 million, just 76-77% of my approved, case-weighted FY14 budget. To meet these reductions through furloughs, everyone on staff will have to take 46 days of leave without pay. Alternatively, I will have to lay off an additional nine employees. These drastic measures are required because my operating costs (transcripts, office equipment, experts, postage, etc.) are minimal – only about 8% of my budget – and have been reduced as far as possible.

What can you do? As you know, we are fortunate in that Judge Lasnik is a member of the EC and is open to conversation and change. Also, Judge Margaret McKeown is the new president of the Federal Judges Association and is committed to helping defenders. I respectfully urge the Court, speaking through you or individually, to reach out to Judges McKeown and Lasnik in support of a change in the current CJA spending plan.

This is only a first step, but a critical one. If the FY14 funding cuts are shared equitably, our offices will not have to take dramatic, damaging actions and we will survive to fight in Congress for full funding for the entire Judiciary in FY15, and forward.

I am happy to meet with you and members of the Court anytime to detail issues and efforts ongoing behind the scenes. Thank you for your time, consideration, and commitment to equal justice.

Very truly yours,



Thomas W. Hillier, II
Federal Public Defender

TWH/ss
Attachments

cc: Hon. Margaret McKeown, Circuit Court of Appeals
District Judges and Magistrate Judges
Bill McCool

FEDERAL PUBLIC DEFENDER
NORTHERN DISTRICT OF CALIFORNIA
19TH FLOOR FEDERAL BUILDING - BOX 36106
450 GOLDEN GATE AVENUE
SAN FRANCISCO, CA 94102

STEVEN G. KALAR
Federal Public Defender

Telephone: (415) 436-7700
Fax: (415) 436-7706
E-mail: Steven_Kalar@fd.org

The Honorable Claudia Wilken
Chief District Judge, Northern District of California
Federal Building, 19th Floor
450 Golden Gate Ave.
San Francisco, CA 94102

Friday, June 7, 2013

RE: ***Reduction of Services by the Federal Public Defender, Northern District of California***

Your Honor:

I am writing to alert the Court that deep cuts to my operating budget this Fiscal Year and in Fiscal 2014 will require the Federal Public Defender's Office to significantly curtail the services it provides, effective immediately. Because our reduction in staffing, including possible closure of a branch office, has obvious financial and resource ramifications for the Criminal Justice Act panel and the Court, I am describing my planned actions in some detail.[1]

Background

The Office of the Federal Public Defender, Northern District of California

The Federal Public Defender's Office for the Northern District of California is one of the oldest Defender offices in the country. It has long enjoyed a reputation for excellence, and has maintained a close and supportive relationship with the district court. Our office has traditionally handled well over 65% of the indigent cases in the district, and the percentage of those appointments has been rising. For example, in Fiscal Year 2012 the Defender's office was counsel in 71.3% of all indigent cases in the district – likely the highest percentage of Defender representation in the office's history. I predict the percentage will be even higher at the close of Fiscal 2013.

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[1] I have met with the employees in each of our three offices to describe this financial situation and the different scenarios for Fiscal 2014.

In addition, our annual CJA seminar will be held tomorrow, June 8. At this seminar I will describe the various scenarios described in this letter and will prepare the panel for the assignment of cases in the event of the closure of a branch office.

The Federal Defender staffs three offices, serving in each of the Court's three venues. San Francisco is the largest of our three offices, followed by Oakland and San Jose.[2] Because Your Honor's courtroom is in the Oakland division, you know the important role that the Oakland branch office serves in defending the serious RICO, firearm, and drug cases that make up much of that venue's docket. The San Jose branch office serves an equally vital role, anchoring a CJA Panel that is considerably smaller and, on average, less experienced than the San Francisco / Oakland CJA Panel.

The Fiscal 2013 Sequestration Cuts

Like all federal agencies, the Federal Defender Program nationwide suffered significant cuts due to sequestration in Fiscal 2013. Unlike other federal agencies, however, cuts to the Federal Defender budgets were *doubled*. As a result, the Fiscal 2013 operating budget for the Federal Public Defender's Office, Northern District of California, was cut by over 10%. This has required nine days of furloughs for every employee during the last half of this fiscal year. We have also slashed expert budgets, vacated useful rented office and storage space, and entirely eliminated our training program.

The Federal Defender Program bore these doubled cuts because the other half of the Defender Services budget – CJA Panel reimbursements – suffered no sequestration reductions. Like all other Defenders, I strongly support the CJA Panel and would emphasize that the panel serves an essential role in the defense of indigent federal clients. Nonetheless, it remains a fiscal reality that the Federal Defenders nationally are shouldering a doubled sequestration cut because no reduction has been levied on CJA expenses. The consequence of this policy decision will not only be to increase the overall burden on the CJA budget, but also to sacrifice the comparative efficiencies of scale that adequately-funded Defender Offices provide. That fiscal reality will continue into Fiscal 2014.

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[2] The San Francisco office has thirty employees, including nine Assistant Federal Public Defenders and myself.

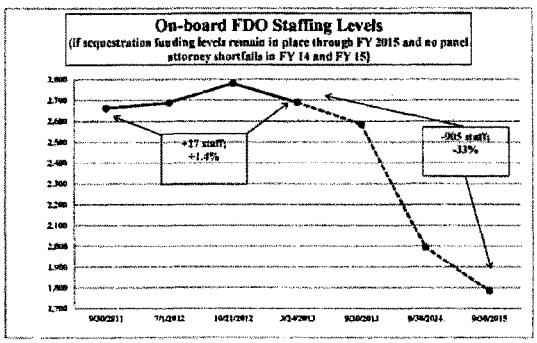
The Oakland office has seventeen employees, including six Assistant Federal Public Defenders.

The San Jose office has thirteen employees. As of today's date, this includes five Assistant Federal Public Defenders. Two of these attorneys, however, will be leaving by July 8. Because of cuts to our budget they cannot be replaced.

As of today's date, there are sixty employees in the Northern District's Federal Defender's office. By October 1, 2013 (the beginning of Fiscal Year 2014), I anticipate that I will reduce the office's work force by roughly 10%.

Fiscal 2014: 23% Budget Cuts, 33% Reduction in Staff

Federal Defenders have recently learned that 23% cuts await our program in Fiscal Year 2014. This is over double the cuts that we endured in Fiscal 2013.



These 23% cuts will require one-third of Defender staff nationally to be laid-off by September 2015.

Specifically, the Office of Finance and Budget (OFB) of the Administrative Office has advised the Budget Advisory Committee that a 33% reduction of staff in the Federal Defender system nationally will be required in the next fifteen months. The OFB chart above predicts the loss of over 900 staff members from the national Defender program by September of 2015.

These cuts will profoundly change our office and the defense of indigent clients in the Northern District. The Northern District Defender's office has always been a good fiscal steward, financially prudent, and cost-effective.[3] In response to sequestration, however, we have embarked on a particularly harsh austerity program. As noted above, we have downsized our physical space requirements with record speed. All training has been eliminated. Expert expenses have been slashed and rates negotiated down. Most significantly, staff reductions are already well underway: I anticipate a 10% reduction in our staffing between now and October 1.

No amount of austerity, however, will permit our present program to absorb a 23% budget cut in Fiscal 2014.

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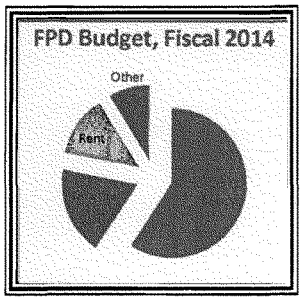
[3] For example, in Fiscal Year 2012 we accepted appointment in over 70% of the indigent cases in the district. AFPDs in our office are trained to seek appointment of the "heaviest" defendant in the case, and in complex and multi-defendant cases we take a leadership role in discovery management, technical and forensic support, and in the drafting of complex motions.

The chart below illustrates our budget reality. The Defender's budget for Fiscal 2014 is roughly twelve million dollars.[4] Three obligations – salaries, benefits, and rent – alone make up over 91% of our projected operating budget.



A 23% reduction in Fiscal 2014 will cut our funds by 2.84 million dollars, out of a twelve million dollar budget. A 23% reduction in our budget cannot be accomplished without severe cuts to salaries, benefits, and rent. That reduction can only be accomplished by closing one of the three branch offices.

Projected Impact on the District Court and Criminal Justice Act Panel

Both the District Court and the CJA Panel will be severely impacted by the anticipated reduction of Defender services in Fiscal 2014.

If our Fiscal 2014 budget is cut by 23%, the Federal Public Defender's Office will of necessity:

- Close at least one of its branch offices, with all cases in that venue going to the CJA panel;[5]

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[4] Our initial projected annual budget for Fiscal Year 2014 is $12,367,100. Salary is $7,320,400 of that sum, $2,335,000 benefits, and $1,640,300 is rent owed for office space. The total for those three expenses – salary, benefits, and rent – is $11,295,700. Those three categories are over 91% of our operating budget.

A 23% reduction to our Fiscal 2014 operating budget would mean $2.84 million will be cut from our $12.36 million budget.

[5] In Fiscal 2012, the Oakland office of the Federal Public Defender was appointed on 308 cases. In the same twelve months, the San Jose office was appointed on 298 cases.

If either (or both) of those offices are closed, all of the cases in that venue will need to be assigned to the panel. Our budget shortfall will prevent the remaining Assistant Federal Public from making appearances in those venues, or accepting appointments in those courts.

- Cease management of the San Francisco / Oakland Trial CJA panel, the San Jose Trial CJA panel, the district's appellate panel, and the federal capital habeas panel, and turn that responsibility over to the Court;[6]

- No longer staff remote misdemeanor or petty offense courts, such as those in Salinas, Monterey, Eureka, or Hopland;

- Decline all appointments in complex cases involving above-average expert expenses or extensive travel requirements, such as capital cases or post-SEC fraud investigations;

- No longer serve as discovery coordinators in complex fraud, wiretap, and RICO cases;

- Reduce or eliminate technological and computer forensic support of the panel;

- Decline all appointments in direct federal habeas litigation, and decline all direct and habeas appeals referred by the Ninth Circuit;

- Cease participation in the Reentry Courts;

- Cease participation in the CJA Mentorship and CJA Attorney Development Programs.

My predecessor, Barry Portman, strongly believed that our office serves a central role in indigent defense in the district. He trained his assistants to seek appointment for the most-culpable defendant, to volunteer for leadership roles in multi-defendant cases, and to save CJA resources by offering our office's institutional knowledge and expertise to help panel attorneys. I am proud to have inherited Mr. Portman's philosophy, and share it. It is therefore with profound regret that I must report the reduction of services described above. These reductions are, however, the unavoidable consequences of the budget shortfalls now being projected.

One recent example well-illustrates the impact of the reduction of Defender services. On June 4th, AFPD Diana Garrido gave notice that she is leaving our San Jose office. Ms. Garrido was hired last summer, and is the first Latina AFPD in the office's history. She is a remarkably talented attorney who earned her considerable trial experience during years of service at the

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[6] We currently have one full-time employee devoted to management of the panel, and the equivalent of a half-time employee in the branch offices providing assistance and back-up. In addition, much of my time as Defender is devoted to panel-related matters. I would suggest the Court anticipate assigning two senior and experienced clerks to assume full-time panel-management responsibilities, and that one-half of a supervisor's responsibilities be devoted to panel management.

Contra Costa Public Defender's office. Ms. Garrido explained that although she loves the work at the Federal Defender's office, the uncertainty due to sequestration, furloughs, and lay-offs compelled her to return to her previous job at the county Public Defender's office.

Because of our budget cuts, I cannot replace Ms. Garrido.

I am also simultaneously losing to retirement AFPD Manuel Araujo, a veteran attorney in our San Jose office.

Because of our budget cuts, I cannot replace Mr. Araujo.

The remaining three AFPDs of San Jose office cannot absorb the caseloads of these two departing attorneys. I therefore have no choice but to immediately panel all of Mr. Araujo's and Ms. Garrido's cases. As the Defender's office is forced to curtail the breadth and complexity of cases it can defend, while requiring its attorneys to carry ever-increasing case loads, I fear that other talented attorneys will feel compelled to seek opportunities elsewhere. Because there is a hiring freeze in the Defender system, this will only deepen the crisis in indigent defense.

Conclusion

It is an unfortunate irony that our anticipated budget cuts will dramatically increase costs to the taxpayer. In our district on average CJA representation costs 60% more per case than our office.[7] If our Oakland or San Jose offices close, the hundreds of additional appointments heading towards our CJA panel will cause the cost of indigent defense to skyrocket.

This local phenomenon will be amplified across the country in the upcoming fiscal year. Nationally, CJA costs are currently $1.8 million *a day*. When the CJA docket of appointed cases doubles or trebles as Defender offices shrink, these CJA costs will grow exponentially.

Moreover, the many administrative responsibilities that will be shifted from my office to the Clerk of the Northern District will strain this Court's already-stretched budget. My office is efficient and experienced in panel administration, with specialized software, complex administrative systems, and extensive training gained from years of handling this daunting task. I anticipate that it will cost the Clerk's office far more to handle panel administration, because it does not have the Defender's decades of experience in the area.

I can assure you that Federal Defenders nationally are doing everything possible to avoid

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[7] Based on an analysis of Fiscal 2012 appointments for our office and the CJA Trial Panels, and the total gross expenditures for our office and the panel, the FPD cost per case is 40% of the CJA cost per case.

this looming crisis and to secure funding for our program. On May 29th over fifty Defenders flew to Atlanta to meet and coordinate our education efforts.[8] Since our Atlanta meeting, the Defenders have identified two opportunities for the Judiciary to avoid these severe cuts and save the Federal Defender program.[9]

Suspension of Panel Payments Beginning October 1, 2013 (Fiscal 2014)

In the short term, temporary suspension of panel payments would permit us to maintain current staffing levels.

Specifically, if panel payments were suspended for nine weeks, beginning on October 1, 2013 (the beginning of Fiscal 2014), Federal Defenders nationally could maintain current staff levels through the fall. This interim solution would permit Defenders to continue to provide services at current levels, until the issue of restored funding is before Congress next December or January.

Note that this interim proposal is only a *suspension* of CJA payments: panel counsel would still ultimately be reimbursed. If the Executive Committee of the Judiciary supported suspension of panel payments at the beginning of Fiscal 2014, many or all of the crises I have described above would be averted.

A Winter Anomaly

In the longer term, we predict that an anomaly to an anticipated Continuing Resolution will be necessary in December 2013 or January 2014. If the Budget and Executive Committees of the Judiciary strongly supported a funding anomaly, the Defender program could be saved.

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[8] The Federal Defenders used vacation and furlough days to attend this meeting. We were not paid while we attended this meeting, and all flight, hotel, and travel costs were at our own personal expense. The Atlanta meeting was not coordinated by the Administrative Office or the Office of Defender Services.

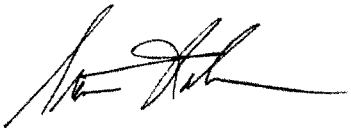
[9] A proposed supplement to Judicial and Federal Defender funding has been submitted by the Judiciary to the White House. *See generally, "Courts seek $73M in emergency funding,"* at http://www.federaltimes.com/article/20130515/PERSONNEL03/305150010/Courts-seek-73M-emergency-funding (visited June 7, 2013).

Even if this supplement is ultimately adopted by Congress, however, it will fall far short of the funds necessary to avoid the scenarios I describe above.

I deeply regret that I am bearing the news of the effective demise of a valued and respected member of the Court family. I would welcome an opportunity to meet with you and discuss these matters in greater depth.

Sincerely,

STEVEN G. KALAR
Federal Public Defender



Northern District of California

cc: The Honorable Jeffrey S. White, Chair, Criminal Justice Act Committee
Richard W. Wieking, Clerk of Court
Ms. Cari Waters, Supervisory Attorney Northern District of California
Ms. Mary McNamara, CJA Liaison Attorney, Northern District of California

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May 22, 2013

Honorable George H. King
Chief Judge
Edward R. Roybal Federal Building
255 E. Temple Street, Room 650
Los Angeles, CA 90012-3332

Re: **Federal Public Defender Furloughs**

Dear Chief Judge King,

Due to the sequester, the budget of the Federal Public Defenders Office (FPDO) was cut $3.5 million dollars and the Administrative Office of the United States Courts has recommended all FPDO employees be furloughed twenty-seven days. Through internal cost-cutting, attrition and terminations, we have reduced the furlough estimate to fifteen days. We don't have surplus funds in other accounts and therefore can't move money between accounts to cover salaries, as DOJ did.

All political and litigation efforts to partially restore our funding have been fruitless. The Executive Committee of the United States Judicial Conference has prioritized paying CJA panel vouchers over defender salaries, resulting in inadequate funding for the FPDO to operate until the end of the fiscal year.

AO General Counsel in a memo circulated to the Court recently opined that, contrary to Executive Branch employees, furloughed public defenders may "volunteer" to represent defendants to meet their ethical and constitutional duties to clients. The memo ignores the CJA requirement of parity between the defense and prosecution. 18 U.S.C. § 3006A(g)(2)(A) (requiring "compensation paid" to DFPDs "of similar qualifications and experience" as an AUSA be the same); *cf. Ten Principles of a Public Defense Delivery System*, Principle 8 (ABA 2002) ("There should be parity of workload, salaries, and other resources . . . between prosecution and public defense.").

More importantly, the failure to adequately fund the FPDO, the primary provider of indigent defense services in this District, raises constitutional concerns. *See* ABA Standing Committee on Legal Aid and Indigent Defendants, *Gideon's Broken Promise: America's Continuing Quest for Equal Justice* (2004) (discussing relative disparities in funding between the prosecution and defense and opining the failure to address such disparities may lead to violations of Due Process and the Sixth Amendment); The Constitution Project, *Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel* (2009) (same). The Supreme Court in interpreting the Sixth Amendment has stressed that "society's goal should be that the system for providing counsel and facilities for the defense be as good as the system for which society provides for the prosecution." *Argersinger v. Hamlin*, 407 U.S. 25, 43 (1972) (Burger, C.J., concurring). The recommendation that public defenders work for free while law enforcement and prosecutors are paid cannot be reconciled with *Argersinger*'s warning that both sides of the criminal justice system must be treated equally in order to effectuate the Sixth Amendment right to a fair and impartial trial.

By this letter, I am giving notice to the Court that the FPDO will close from Monday, September 9, through Friday, September 27, 2013. None of our offices will accept appointments during the closure. I am requesting FPDO employees, absent exceptional circumstances, stay home during furloughs and I am directing them to seek continuances of court appearances scheduled during the furlough period unless such a continuance would unduly prejudice a client's rights. I had a difficult time making this decision, as the FPDO in its forty-one-year history has never closed for more than a day or two.

I apologize for any inconvenience my decision to close the FPDO for three weeks causes the judges and other agencies of our District. I will be in the office during furlough to answer calls and troubleshoot any problems caused by our unavailability. In the unlikely event we receive additional funds, I will reevaluate the length of the closure of the office and notify the Court of any reduction of furlough days in September.

If your Honor has any questions about the possible furloughs in September, just let me know. I am happy to speak with any member of the Court about the implementation of furloughs.

Respectfully,

SEAN K. KENNEDY
Federal Public Defender

SKK:srt

cc: Terry Nafisi, Clerk of the Court

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Michael S. Nachmanoff, Esquire
Federal Public Defender
Direct Dial (703) 600-0860

June 3, 2013

The Honorable Eric H. Holder, Jr.
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Re: *Federal Public Defender Funding Crisis*

Dear Attorney General Holder:

Aware of your long-standing commitment to the Sixth Amendment, we write on behalf of all the nation's Federal Defender offices to ask your help in addressing the funding crisis the program now faces. The sequester, and budget cuts within the Judiciary, have impaired the Defender program and with it the integrity of our criminal justice system. Additional cuts scheduled to occur next year under the Budget Control Act would devastate Federal Defender Organizations. If funding is not restored in FY 2014, this program, which has been a model for indigent defense both in our country and around the world, will become unrecognizable. This funding crisis not only undermines the commitment to fairness that defines our system of justice, it is also fiscally irresponsible.

We were certainly encouraged that the Department of Justice was permitted to avoid furloughing employees for the remainder of this fiscal year through the reallocation of funds. The recognition by Congress of the critical role played by the Department of Justice is clearly appropriate. Our system of justice cannot function properly, however, unless there is also adequate funding for the defense. As you know, the Constitution requires the government to provide a lawyer to anyone charged with a serious crime who cannot afford to hire one. As the Supreme Court held fifty years ago in *Gideon v. Wainwright,* this is not a discretionary expenditure — it is a constitutional mandate. Ninety percent of defendants charged in federal courts around the country qualify for court-appointed counsel, and the majority of those indigent defendants are represented by Federal Defenders.

Unfortunately, unlike U.S. Attorneys, Federal Defenders remain subject to draconian reductions in their previously-authorized allotments. In February and March, the already lean budgets of Federal Defender offices were cut by more than 10%. Because Defender budgets are

made up almost entirely of personnel, rent, expert, travel, and other case-related expenditures, Defenders were forced to lay off and furlough employees and cut case-related expenses that are necessary to bring federal criminal cases to swift conclusion. Even after a small restoration of funds by Congress and the discharge of many essential employees, Federal Defenders face furloughs of up to 15 days.

If nothing is done, in FY 2014 Federal Defenders will lose as much as an additional 14% of the funding they need. Operating with only 78% of the funds budgeted for this year and saddled with fixed expenses like rent that cannot be immediately reduced, Federal Defenders will be forced to terminate up to 30% of their staff. Dedicated and experienced lawyers who can earn far more in the private sector will undoubtedly abandon the program. As Federal Defenders lose staff and lack sufficient resources to adequately represent clients, they will handle fewer cases. More cases will be turned over to CJA panel attorneys, at greater expense to the taxpayer.

We realize that, in the past, your advocacy for the provision of quality indigent defense has focused on state public defenders. Far too many of our state counterparts remain grossly underfunded, and struggle to provide any semblance of the effective legal assistance that the Sixth Amendment guarantees. We seek your aid because, now, the impending crisis risks turning the Federal Defender program into a hollow promise of constitutionally adequate representation in the federal courts.

When Congress amended the Criminal Justice Act in 1970 to provide for Federal Defenders, it did so precisely because it recognized that our system of justice would benefit from the creation of institutions adequately equipped with resources to provide a competent defense to the sophisticated prosecutions brought by the Department of Justice. We appreciate that your mission, as Justice Sutherland wrote for the Court, is not to secure criminal convictions but to ensure "that justice shall be done." In our adversary system, justice can be done only when both sides are competently represented. For this reason, we respectfully request that you do whatever is within your power to support funding to the Federal Public Defender program, including advocating for emergency supplemental funding as well as adequate funding in FY 2014, so that our current system of criminal defense for the indigent in federal court is not dismantled in favor of a less efficient and more costly alternative.

Sincerely,

Michael S. Nachmanoff Federal Public Defender Eastern District of Virginia	Jon M. Sands Federal Public Defender District of Arizona	Reuben C. Cahn Executive Director Federal Defenders of San Diego, Inc.

Gavel Grab

- About Justice at Stake
- Comment Policy
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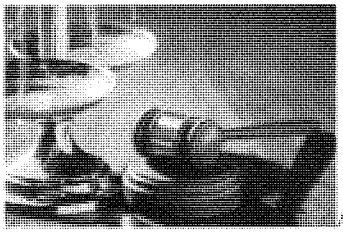
Budget Cuts Cause Delays, Limit Access to Justice

Lauren Ketchum April 29th, 2013 | Category: Court Funding,Federal Courts

 across-the-board federal budget cuts, known as sequestration, are causing delays in court cases and depleting the resources of federal public defenders.

The Boston Marathon bombing suspect's trial may be delayed due to staff furloughs at the federal public defender's office that has agreed to represent him, reports the Associated Press.

On Thursday, members of the Federal Bar Association met with members of the House and Senate on Capitol Hill to appeal for adequate funding of federal public defenders' offices.

"The federal defenders are the front bumper of this fiscal crunch, getting hit first and hardest. But behind it is the third branch of government as a whole. The message is, this is having real effects on the federal courts and the rule of law," said Geoff Cheshire, an assistant federal public defender from Arizona.

Federal courthouses across the country are having to close their doors, or reduce services available to the public (see Gavel Grab). The article notes that a senior federal judge in Nebraska is "seriously contemplating" dismissing some criminal cases.

In a statement last week, printed by PR Newswire, Rep. Chaka Fattah (D-PA) declared he was "alarmed about the impact sequestration is having on our nation."

The $350 million cut to the Judiciary's budget endangers the "safety of the American people," Fattah said. Many court employees will face furloughs or layoffs by the end of September under the budget cuts.

"America's already vulnerable economic recovery is in jeopardy because of delays in the processing of civil and bankruptcy cases," he said, and urges congressmen "on both sides of the aisle to act now to end sequestration."

GAVEL GRAB

Impact of Sequestration Felt in Public Defender's Office

Laura Beth Hooper July 11th, 2013 | Category: Court Funding

Across the nation, every branch of government is feeling the impact of the automatic, across-the-board government spending cuts known as sequestration. However, the judicial system is being hit particularly hard.

In an interview for the Texas Public Radio program The Source, federal public defender Maureen Franco describes how budget cuts are impacting Texas's western district. The picture that she paints is a dismal one. In February, the public defender's office faced a 9% budget cut, which Franco said the court was able to sustain because it had been so scrupulously conservative in its spending.

However, in March the office was notified that it would have to cut its spending by an additional 14% for the next fiscal year to comply with sequestration. The result is a sobering combination of layoffs for 33% of the office's public defenders, extended case delays, nineteen furlough days, and a 10% salary reduction for all staff.

In the meantime, the number of cases coming before the public defender's office is actually on the rise. The public defender's office for the Western District of Texas is projected to represent 13,000 indigent individuals this year which is already above the number of cases provided for by the court's budget.

"It's not sustainable," Franco said about the cuts to the public defenders' office . "At some point we're going to have to begin denying representation… because the resources are too limited for us to be able to continue."

Budget cuts to the federal defender's office have a widespread impact. With sequestration, defendants often have to wait over six months for their case to be heard. Delays not only raise jail costs, but raise questions concerning people's Constitutional right to a speedy trial.

In some ways, the budgetary issues faced by Franco's office are representative of widespread under-funding of the judicial branch.

And yet, Franco and her colleagues remain committed to their mission of providing fair trial to everyone in their district. "Just because you don't have the money to hire a private attorney doesn't mean the quality should suffer," Franco said. "The lawyers in our office are known throughout their communities as the best criminal defense lawyers in town. They could easily work for the private sector or could be hired on by bigger firms but they have chosen to sacrifice and work for the government because they believe in the mission of our office."

- See more at: http://www.gavelgrab.org/?p=60161#sthash.mlcWA7Wo.dpuf

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How the Sequester Is Holding Up Our Legal System

By Andrew Cohen

Underfunding means more empty courts across the nation this summer. (Chip East/Reuters)

It has been 134 days now -- roughly one-third of a year -- since the federal budget "sequester" formally took hold. And while members of Congress rushed a few months ago to ease the sequester's impact upon air traffic control -- that is, rushed to make sure their planes would take off on time as they got out of Washington for their long weekends -- there has been no such rush to protect the nation's legal system from the grim impact of the budget cuts. Our federal trials can be delayed at great cost to litigants, our nation's third branch may slide into third-world practices, but God forbid our planes should be late.

It would be one thing if the federal judiciary's budget were bloated. But clearly it is not. "For every one thousand dollars ($1000) of federal spending, the Judicial Branch uses one dollar and eighty-nine cents ($1.89)," U.S. District Judge Fred Biery wrote last week in an open letter to members of the Texas

delegation to Congress. "Of that amount," the judge added, "the Western District of Texas uses three pennies." The sequester, in West Texas and everywhere else in the United States, is about the willingness of Congress and the White House to hinder justice by squeezing pennies out of the nation's already-underfunded courts.

Few outside of legal circles want to talk about the impact of the cuts upon the administration of justice. It rarely makes news -- and certainly not television news since there are few images to broadcast. But the sequester's impact upon the federal courts is bad, and getting worse, and will reach constitutional crisis next year around this time if the budget cuts reach into the next fiscal year. In the past few days, I've rounded up a sampling of views from some federal trial judges on what this means for federal litigants today and what it portends for future litigants if Congress continues to fail or refuse to adequately fund the federal court system. Read this cogent "fact sheet" from the Federal Defenders Office if you want details.

Included below are the comments of several sitting federal trial judges who expressed concern to me not just about the cost-cutting that impacts their courtrooms now but also about the profound separation-of-powers principles implicated by the lingering political deadlock in Washington. The sequester, in other words, represents an assault by the legislative and executive branches upon core judicial functions. And if it lasts much longer, if the next fiscal budget is impacted, the sequester will strip Americans of their right to both serve upon and to be served by juries.

The Administrative Office of the United States already has indicated that it may be forced to eliminate civil jury trials in the month of September -- a whole month without federal civil trials anywhere in America! "If sufficient funding is not provided to the courts," 6th U.S. Circuit Court of Appeals Judge Julia Gibbons bluntly told lawmakers in March, "we cannot provide the people of the United States the type of justice system that has been a hallmark of our liberty throughout our nation's history." The sad truth is, however; few of the nation's political leaders, including the former constitutional scholar who now inhabits the White House, seem to care.

The view from the bench

Pennsylvania

I asked U.S. District Judge John E. Jones, of the Middle District of Pennsylvania, an appointee of George W. Bush, for his views on the sequester's impact upon his courtroom and courthouse. Judge Jones told me Thursday morning:

> To us, it's a gathering storm. We are seeing presently the effect of furloughs in our federal defenders office. So we are ending up not being able to schedule criminal cases on particular days because of the unavailability of federal defenders. As we look ahead, we have been forewarned... that there are enormously impactful cuts [coming]. The sort of rolling effect of the sequester is evident and it gets really worse by the month for the federal courts.
>
> I wouldn't say that it's impacted issuing decisions at present but for example there are fewer people in the clerks office -- which means we are in a clerk sharing situation. All of us are concerned because as you know there is a speedy trial rule in the federal courts and the unavailability of defenders who are constitutionally mandated is something that I think concerns

> every federal judge. I think the criminal side, at least here, is where we have concern.
>
> We felt we were running lean before the sequester. As we progress, if there is not a fix by the Congress it's highly likely in my view that there are just going to be certain days where we are not going to be able to conduct trials. It's that simple and that's justice delayed, obviously, where we are going to be not staffed. I don't think that's too far ahead. I can foresee that looming ahead, absolutely, because you don't have an available courtroom deputy, you don't have a defense counsel available, it impacts resources that we use to pay jurors, it cuts across everything that we do...
>
> This is so difficult because the average guy on the street doesn't particularly have sympathy for the federal judiciary. I think it's abstract for people... They think we ought to do with less except that we are operating under as I said earlier constitutional mandates. If you have a case pending, if you want access to the federal courts, you ought to be concerned about this... Maybe the public doesn't care about it but I would suggest that they should care about justice in America. I wish there was the will to be smart to fix this but I'm not perceiving it.

The view from Massachusetts

U.S. District Judge William Young, sitting in Massachusetts, an appointee of President Ronald Reagan, told me Thursday morning that the sequester will generate a full-blown constitutional crisis by next summer if Congress doesn't act to restore adequate funding for the judiciary. He also echoed his colleague's concerns about a lack of public consciousness about the impact of the sequester. Judge Young told me:

> I don't see any particularly public consciousness. The media, not just you but *Washington Post* and *The New York Times*, they have made comments, especially about the defenders but it's all ho-hum. There is not much lobby for defending the rights of people accused of crime. I am going to approach it from a slightly different tack. It is believed that the second wave of the sequester will going into effect at the next fiscal year; that there won't be a major debate about that, and that it will go into effect.
>
> When that happens, within the judiciary, you are going to find serious questions about separations of powers -- questions of genuine constitutional magnitude. And I start with the jury. This fiscal year we have squeaked by, we are going to squeak by as far as I can see, with sufficient funds to pay for civil juries. Civil juries are like the canary in the mine. Our budgeting for civil juries is extraordinarily accurate -- I have nothing to do with it -- we can tell within about a week to two weeks when we will run out of money for civil juries. This year, this fiscal year, we won't run out.
>
> Next year, with additional sequester cuts, I predict (but I'm not positive) that we will run out of money for civil juries before the end of the fiscal year. July, August, I'm not sure when but we will run out. Now, on that day, the Congress will be engaged in a direct attack on the constitutional rights of all American citizens. Because it is a constitutional right to sit on the nation's juries. And it is not an answer to say "Oh no, Heavens no, all we are doing is delaying it. It's just delay. There will be more money in the next fiscal year."

> That's not so -- not so in this sense. Every day when we do not sit with juries, civil or criminal, a certain percentage of citizens who otherwise would have had the chance to exercise their right to sit on the nation's juries lose that right. If you delay it, simply by a day, you are in total going to call fewer jurors than you would call if you were running on every business day. A furlough day for juries doesn't mean that you will just be able to go on. It means that all the people who would have been called for service that day will never be called, never be able to exercise their right, and it is a right, a constitutional right, to sit on the nation's juries.

Judge Young then recounted what happened the last few times the federal judiciary has (inadvertently) run out of money to pay for civil jurors -- and how that contrasts with legislative indifference this time around. Last time, he told me, Congress as an institution was mortified and quickly, and quietly, found the necessary additional funding. "Scrambled" to fix the problem is the word Judge Young used. This time, however, he says he's seen no "particular concern about the fact that we will run out of money to serve as jurors." And he also wanted to be clear about the critical distinction between judicial and legislative power.

> I am a judge of the United States. I occupy a position that Congress has authorized. They could turn my permanent judgeship into a temporary judgeship -- no doubt they could do that -- they could extinguish this court. But those are discrete Congressional legislation. The point is that it is a violation of the separation of powers by a sweeping budget resolution to take away the core judicial function.
>
> They authorized my position. The president appointed me to it. The Senate confirmed me in it. Within the bounds of judicial authority, I am expected to exercise the judicial power of the United States, insofar as a district judge does it. One of those things is I have the power to summon jurors. I have the power to adjudicate the nation's business. That's the best argument [against the sequester] under the separation of powers.

The view from Colorado

U.S. District Judge John L. Kane, sitting in senior status in Colorado, an appointee of President Jimmy Carter, chose an altogether different approaeh to the question. He told me Thursday that he believes the judiciary itself could also do a better job of allocating scarce resources. Echoing concerns raised by Republican lawmakers about Justice Department expenses, Judge Kane told me:

> I am very distressed with efforts to cut the budgets and staff of the federal public defenders and possibly delay payments to lawyers for investigative costs, travel, experts and time while at the same time the Third Branch spends enormous sums on judicial conferences, non-case related travel and seminars. Further cuts to district court staff, already in dire straits is causing delays, mistakes and scheduling problems with both civil and criminal cases.
>
> Article III of the Constitution requires us to administer justice and in tight financial times, all other activities should be "sequestered" rather than those for the fundamental justification for our existence. Do we really need conferences at expensive resort hotels in this age when all information can be distributed electronically? I am in the final stages of preparation for a death penalty murder trial scheduled to take eight to ten weeks. Why complicate enormous efforts

> with concerns about whether funds to pay defense counsel and other costs will be exhausted. If so, what then? Declare a mistrial?

Washington would do well to listen to these voices and promptly end the sequester's impact upon the judiciary. These are not political figures. These are not partisans. These are not budget-busting bureaucrats. These are three men, representing hundreds of other federal judges and thousands of other federal court officials, who simply want to be able to do their job, to fairly and justly administer justice, according to their constitutional duties. Today, in the name of partisan obstructionism, Congress is precluding them from doing so. That's a far bigger scandal, I think, then a few planes running late into and out of National Airport.

This article available online at:

http://www.theatlantic.com/national/archive/2013/07/how-the-sequester-is-holding-up-our-legal-system/277704/

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March 19, 2013

The Honorable Harry Reid
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Mitch McConnell
Republican Leader
United States Senate
Washington, DC 20510

The Honorable John Boehner
Speaker
U.S. House of Representatives
H-232, U.S. Capitol
Washington, DC 20515

The Honorable Nancy Pelosi
Democratic Leader
U.S. House of Representatives
H-204, U.S. Capitol
Washington, DC 20515

Dear Majority Leader Reid, Republican Leader McConnell, Speaker Boehner, and Democratic Leader Pelosi:

On behalf of Justice at Stake (JAS), a nonpartisan, national partnership[1] of more than fifty organizations dedicated to keeping our courts fair and impartial, I write to urge decisive action to identify a bipartisan solution to allay the damage that sequestration is beginning to cause. In a November 8, 2012 letter to you, JAS expressed hope that congressional action would prevent sequestration; now, with sequestration in effect, we write hoping that a quick resolution will function to stem imminent harms. While JAS appreciates the many complicated issues that factor into deficit reduction negotiations, we cannot emphasize enough the stakes for the judiciary.

Sequestration has meant a reduction of roughly 5% in appropriations for the federal judiciary. According to the Administrative Office of the United States Courts, this translates into a budget cut of $350 million for the federal courts. To make matters worse, this budgetary slashing follows on the heels of years of woeful underfunding of the courts. The Judicial Conference of the United States has estimated that these cuts would likely involve thousands of lay-offs, cuts to court security programs, and the suspension of jury trials during parts of the year. More fundamentally, these cuts threaten to erode several core constitutional values, including the right to a jury trial and due process.

Conversations about the harms of such cuts are no longer academic. In Kansas, it is predicted that some criminal cases won't be prosecuted due to the cuts and that individuals facing federal charges will wait longer to see court-appointed counsel; at least 1000 criminal cases will not be prosecuted and 1600 civil cases will not proceed.[2] In Delaware, most criminal proceedings will be cancelled on

[1] As with any diverse partnership, the views stated in this Justice at Stake letter do not necessarily reflect the positions of every JAS partner organization or board member.
[2] *See* Ian Cummings, *Federal Budget Cuts Cost Kansas Federal Courthouses, Prosecutors, Defenders More than $750,000*, LAWRENCE (KANSAS) JOURNAL-WORLD, March 15, 2013.

Fridays.[3] Judges across the spectrum have registered their concern, whether it be through the testimony of Supreme Court Justices Stephen Breyer and Anthony Kennedy at a March 14th House hearing or through op-eds, such as the recent US NEWS & WORLD REPORT piece **(attached)** by Judges Charles Clevert and Joseph Rodriguez.[4] Notably, Justices Breyer and Kennedy, as well as Judges Clevert and Rodriguez, were nominated to the bench by presidents of different political parties, underscoring the non-partisan nature of the deep concern for the judiciary.

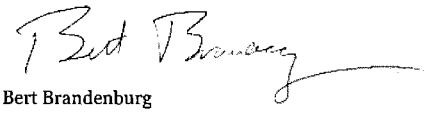
The courts are critical for ensuring that our nation's constitutional promises are kept; they are also inextricably tied to our nation's economic health. As one of JAS's partner groups, the American Judicature Society, explained in a recent editorial:

> [I]t is important to note that courts are needed most when economic conditions are worst—in other words, at the precise time that government faces the most severe budget pressures. It is during such times that delays in the resolutions of bankruptcies, for example, have their most acute effects both on those seeking to get back on their feet and on the economic recovery in general.[5]

JAS renews its calls to congressional leaders from both sides of the aisle to work together to solve this problem. If a sound solution is not identified, the losers will be the American people, who depend upon judges for the adjudication and protection of their rights, and American businesses that rely on the courts for the structural certainty necessary for economic growth.

JAS expresses its gratitude to you and your staff for your tireless efforts on behalf of the American public. If you have any questions or want any additional information on this matter, please contact Praveen Fernandes, Director of Federal Affairs & Diversity Initiatives, at pfernandes@justiceatstake.org. Thank you for your time and consideration.

Respectfully,



Bert Brandenburg
Executive Director

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[3] *See Federal Court in Delaware Affected by Sequester*, ASSOCIATED PRESS, March 14, 2013.
[4] *See* Charles N. Clevert and Joseph H. Rodriguez, Op-Ed, *Sequestration Threatens American Justice*, U.S. NEWS & WORLD REPORT, February 27, 2013.
[5] *Federal Courts Peering Over the Fiscal Cliff: Sequestration Threatens Drastic Budget Cuts*, JUDICATURE, Volume 96, No. 2 (September/October 2012) at 58.

November 8, 2012

The Honorable Harry Reid
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Mitch McConnell
Republican Leader
United States Senate
Washington, DC 20510

The Honorable John Boehner
Speaker
U.S. House of Representatives
H-232, U.S. Capitol
Washington, DC 20515

The Honorable Nancy Pelosi
Democratic Leader
U.S. House of Representatives
H-204, U.S. Capitol
Washington, DC 20515

Dear Majority Leader Reid, Republican Leader McConnell,
Speaker Boehner, and Democratic Leader Pelosi:

On behalf of Justice at Stake (JAS), a nonpartisan, national partnership[1] of more than fifty organizations dedicated to keeping our courts fair and impartial, I write to urge decisive action to identify a bipartisan solution to avoid the severe damage that would result from sequestration. While JAS appreciates the many complicated issues that factor into the formation of a deficit reduction package, we cannot emphasize enough the stakes of this negotiation for the judiciary.

As you well know, if no deal is struck to reduce the national debt, the Budget Control Act of 2011 requires automatic funding cuts to go into effect in January 2013. These cuts (referred to as "sequestration") would entail an automatic 8.2% across-the-board reduction in non-defense discretionary appropriations, a category that includes funding for the federal judiciary. Such a budgetary slashing would be disastrous for a branch of government that has already been woefully underfunded. The Judicial Conference of the United States estimates that these cuts would likely involve: a 5,400-person reduction in staff, cuts to court security programs, and the suspension of jury trials

[1] As with any diverse partnership, the views stated in this Justice at Stake letter do not necessarily reflect the positions of every JAS partner organization or board member.

during parts of the year. More fundamentally, these cuts threaten to erode several core constitutional values, including the right to a jury trial and due process.

While the courts are critical for ensuring that our nation's constitutional promises are kept, they are also inextricably tied to our nation's economic health. As one of JAS's partner groups, the American Judicature Society, explained in a recent editorial:

> [I]t is important to note that courts are needed most when economic conditions are worst—in other words, at the precise time that government faces the most severe budget pressures. It is during such times that delays in the resolutions of bankruptcies, for example, have their most acute effects both on those seeking to get back on their feet and on the economic recovery in general.[2]

As Congress returns from its election recess, we hope that leadership from both sides of the aisle and in both houses will work together to prevent sequestration. If a sound solution is not identified, the losers will be the American people, who depend upon judges for the adjudication and protection of their rights, and American businesses that rely on the courts for the structural certainty necessary for economy growth.

JAS expresses its gratitude to you and your staff for your tireless efforts on behalf of the American public. If you have any questions or want any additional information on this matter, please contact Praveen Fernandes, Director of Federal Affairs & Diversity Initiatives, at pfernandes@justiceatstake.org. Thank you for your time and consideration.

Respectfully,

Bert Brandenburg
Executive Director

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[2] *Federal Courts Peering Over the Fiscal Cliff: Sequestration Threatens Drastic Budget Cuts*, JUDICATURE, Volume 96, No. 2 (September/October 2012) at 58.

May 28, 2013

The Honorable Patrick Leahy
Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Lamar Smith
Chairman
House Judiciary Committee
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable John Conyers, Jr.
Ranking Member
House Judiciary Committee
2142 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Leahy, Ranking Member Grassley, Chairman Smith, and Ranking Member Conyers:

On behalf of Justice at Stake (JAS), a nonpartisan, national partnership[1] of more than fifty organizations dedicated to keeping our courts fair and impartial, I write to express support for the request by the Judicial Conference of the United States for $72.9 million in supplemental appropriations for FY 2013. This supplemental is essential to mitigate the harms of sequestration and to ensure that the judiciary is able to provide access to justice for the people of this nation.

Sequestration has meant a reduction of roughly 5% in appropriations for the federal judiciary. According to the Administrative Office of the United States Courts, this translates into a budget cut of $350 million for the federal courts. To make matters worse, this budgetary slashing follows on the heels of years of woeful underfunding of the courts. These cuts have involved countless lay-offs, cuts to court security programs, and the suspension of jury trials during parts of the year. The budget cuts are influencing prosecution decisions, causing delays in trials, and forcing the furloughs of public defenders. More fundamentally, these cuts threaten to erode several core constitutional values, including the right to a jury trial and due process.

[1] As with any diverse partnership, the views stated in this Justice at Stake letter do not necessarily reflect the positions of every JAS partner organization or board member.

While JAS is writing today in support of the requested emergency supplemental, JAS also renews its calls to congressional leaders from both sides of the aisle to work together to find a broader solution to sequestration. If a sound solution is not identified, the losers will be the American people, who depend upon judges for the adjudication and protection of their rights, and American businesses that rely on the courts for the structural certainty necessary for economic growth.

JAS expresses its gratitude to you and your staff for your tireless efforts on behalf of the American public. If the members of your staff have any questions or want any additional information on this matter, please contact Praveen Fernandes, Director of Federal Affairs & Diversity Initiatives, at pfernandes@justiceatstake.org. Thank you for your time and consideration.

Respectfully,

Bert Brandenburg

Executive Director

JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

HONORABLE THOMAS F. HOGAN
Secretary

May 14, 2013

Honorable Sylvia Mathews Burwell
Director
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Director Burwell:

We write on behalf of the Judicial Conference of the United States to inform the Administration of the Judiciary's decision to seek $72.9 million in fiscal year 2013 emergency supplemental appropriations to address critical needs resulting from sequestration cuts. The supplemental request includes $31.5 million for the Courts Salaries and Expenses account, and $41.4 million for the Defender Services account. In accordance with 31 U.S.C. 1107, we respectfully request that the President transmit the Judiciary's supplemental requirements to Congress promptly and without change. A detailed summary of this supplemental request is included in Enclosure 1. A funding table and the proposed legislative language are included in Enclosure 2.

Final enacted appropriations for fiscal year 2013, after sequestration cuts are applied, reduce Judiciary funding overall by nearly $350 million below fiscal year 2012 discretionary appropriations. Emergency measures have been implemented throughout the federal court system to address the drastically reduced funding levels under sequestration, but the federal courts do not have the flexibility to absorb such a large cut. The impacts of sequestration are compounded by the fact that 100 percent of the cuts must be absorbed with only six months remaining in the fiscal year. Unlike some Executive Branch entities, the Judiciary has little flexibility to move funds between appropriation accounts to lessen the effects of sequestration. There are no lower-priority programs to reduce in order to transfer funds to other Judiciary accounts.

Section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 allows for statutory spending caps to be exceeded under certain conditions, including if Congress and the President designate funding as an emergency requirement. The Judiciary is confronting

an unprecedented fiscal crisis that could seriously compromise the Constitutional mission of the United States courts. We believe our supplemental request meets the threshold for receiving an emergency designation.

The Judiciary's emergency actions to date do not constitute a solution to the budget crisis facing the federal courts as a result of sequestration. Instead, these actions represent a conscientious effort to mitigate the adverse impact of sequestration on court operations in an attempt to ensure continued access to justice for the citizens of this country. However, sequestration cuts have created an unprecedented financial crisis that is impacting all facets of federal court operations.

Finally, we note that Executive Branch agencies with criminal justice responsibilities have had the flexibility and resources to address their fiscal year 2013 sequestration cuts. As a result, these agencies – which directly impact the workload of the Judiciary – have been able to avoid furloughs. While the Judiciary has the authority to transfer funds between appropriation accounts, it does not have the available funding flexibility needed to do so. Instead, we must ask Congress to approve a supplemental appropriation.

Please feel free to contact us if you have any questions regarding this supplemental appropriations request.

Sincerely,

Julia S. Gibbons

Julia S. Gibbons
Chair, Judicial Conference
Committee on the Budget

Thomas F. Hogan

Thomas F. Hogan
Secretary, Judicial Conference
of the United States

2 Enclosures

Enclosure 1

SUMMARY OF JUDICIARY FISCAL YEAR 2013 EMERGENCY SUPPLEMENTAL REQUEST

COURTS SALARIES AND EXPENSES

The Courts Salaries and Expenses account funds the bulk of federal court operations including the operations of the appellate, district, and bankruptcy courts, and probation and pretrial services offices. This account was cut $239 million below fiscal year 2012 levels under sequestration. Given the decentralized nature of the federal court system, individual courts will decide how to absorb the majority of cuts required by sequestration. To mitigate the impact of sequestration on employees, the courts have slashed non-salary budgets but even with these reductions, on a national level, up to 1,000 court employees could be laid off over the remainder of the fiscal year and thousands of employees face furloughs. These staffing losses will come on top of the nearly 2,200 probation and pretrial services officers and clerks' office staff the courts have already lost since the end of July 2011, a 10 percent loss of staff. Cuts to clerks' office staffing will result in the slower processing of civil and bankruptcy cases which will impact individuals, small businesses, and corporations seeking to resolve disputes in the federal courts.

Sequestration cuts will also impact public safety. Our probation and pretrial services officers are federal law enforcement officers that supervise defendants awaiting trial and offenders on post-conviction release. Cuts to officer staffing levels mean less deterrence, detection, and response to possible resumed criminal activity by federal defendants and offenders in the community. In addition, funding to support GPS and other electronic monitoring of potentially dangerous defendants and offenders has been cut 20 percent. Equivalent cuts to funding for drug testing, substance abuse and mental health treatment of federal defendants and offenders have also been made, increasing further the risk to public safety.

Of the $31.5 million in fiscal year 2013 supplemental funding requested for Courts Salaries and Expenses, $18.5 million will be used to avoid further staffing cuts and furloughs in clerks of court and probation and pretrial services offices during the fourth quarter of fiscal year 2013. This funding will save the jobs of approximately 500 court employees and avoid 14,400 planned furlough days for 3,300 court employees. The remaining $13.0 million will restore half of the sequestration cuts to drug testing, substance abuse, and mental health treatment services for defendants awaiting trial and offenders released from prison. Timely diagnosis and treatment of drug and mental health conditions is critical to defendants/offenders successfully completing their terms of release and ensuring community safety.

DEFENDER SERVICES

The Judiciary's Defender Services program provides financially eligible federal defendants with defense counsel and related services that, under the Sixth Amendment and the Criminal Justice Act, the government must fund in order to prosecute cases. Program costs are essentially comprised of compensation to federal defender organization (FDO) staff, payments to private "panel" attorneys, case related expenses (expert witnesses, interpreters, investigations, etc.), space rent, and other fixed costs. Consequently, the primary options for absorbing the $52 million sequestration cut are reducing FDO staffing levels and/or deferring payments to private panel attorneys. Reducing FDO staff results in appointments being shifted to panel attorneys thus increasing those costs, and deferring panel attorney payments into fiscal year 2014 only adds to fiscal year 2014 appropriations requirements. Absent supplemental funding, the Judiciary will need to suspend payments to private panel attorneys for the last 15 business days (3 weeks) of the fiscal year, and FDOs will need to further reduce costs through staffing cuts and by furloughing employees for a national average of approximately 15 days for the remainder of the fiscal year.

We are aware that the U.S. Department of Justice is not furloughing staff so we anticipate the pace at which criminal cases requiring appointment of defense counsel will continue unabated, while resources in the Defender Services program are diminishing. Between October 2012 and April 2013, FDOs downsized by 113 employees and other employees were furloughed. Further FDO cuts and the anticipated suspension of panel attorney payments will create the real possibility that panel attorneys may decline to accept Criminal Justice Act appointments in cases that otherwise would have been represented by FDOs. Delays in the cases moving forward may result in violations of constitutional and statutory speedy trial mandates resulting in criminal cases being dismissed.

Of the $41.4 million in supplemental funding requested for Defender Services, $27.7 million is required to avoid deferring payments to private attorneys for the last 15 business days (3 weeks) of the fiscal year. To address staffing losses, $8.7 million is needed to avoid further staffing cuts and furloughs in FDOs during the fourth quarter of fiscal year 2013. This funding will save the jobs of approximately 50 employees and avoid 9,600 planned furlough days for 1,700 FDO employees. The remaining $5.0 million is for projected defense representation and related expert costs for high-threat trials, including high-threat cases in New York and Boston that, absent sequestration, the Defender Services program would have been able to absorb without the need for supplemental funding.

Enclosure 2

Federal Judiciary

FY 2013 Supplemental Appropriations Request

($000)

Appropriation Account	FY 2012 Enacted Approp.	FY 2013 Full Year CR (P.L. 113-6)[1]	FY 2013 Sequestration Cut[2]	FY 2013 Available Appropriation	FY 2013 Supplemental Request	FY 2013 Revised Appropriation
U.S. Supreme Court						
Salaries & Expenses	74,819	74,684	(3,653)	71,030	-	71,030
Care of Building and Grounds	8,159	8,143	(410)	7,732	-	7,732
U. S. Court of Appeals for the Federal Circuit	32,511	32,462	(1,509)	30,953	-	30,953
U. S. Court of International Trade	21,447	21,405	(992)	20,412	-	20,412
Courts of Appeals, District Courts & Other Judicial Services (CADCOJS)						
Salaries & Expenses						
Direct	5,015,000	5,015,955	(239,114)	4,776,841	31,500	4,808,341
Vaccine Injury Fund	5,000	4,990	-	4,990	-	4,990
Total	5,020,000	5,020,945	(239,114)	4,781,831	31,500	4,813,331
Defender Services	1,031,000	1,037,920	(51,865)	986,055	41,400	1,027,455
Fees of Jurors & Commissioners	51,908	51,804	(2,611)	49,193	-	49,193
Court Security	500,000	499,000	(25,153)	473,847	-	473,847
Subtotal, CADCOJS	*6,602,908*	*6,609,670*	*(318,744)*	*6,290,926*	*72,900*	*6,363,826*
Administrative Office	82,909	82,743	(4,171)	78,572	-	78,572
Federal Judicial Center	27,000	26,946	(1,358)	25,588	-	25,588
Judicial Retirement Funds (mandatory)	103,768	125,464	-	125,464	-	125,464
U.S. Sentencing Commission	16,500	16,467	(830)	15,637	-	15,637
Total, The Judiciary	6,970,021	6,997,983	(331,668)	6,666,314	72,900	6,739,214

Sequestration to Judiciary Fees: (13,974)

Total Judiciary Sequestration: (345,642)

[1] Reflects Judiciary appropriations included in the FY 2013 full year CR (P.L. 113-6) as well as the reduction associated with the 0.2 percent across-the-board rescission.

[2] Reflects sequestration cuts calculated by the Office of Management and Budget on March 1, 2013.

FEDERAL JUDICIARY
FY 2013 SUPPLEMENTAL APPROPRIATIONS REQUEST

COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES

SALARIES AND EXPENSES

Bill Language

For an additional amount for 'Courts of Appeals, District Courts, and Other Judicial Services, Salaries and Expenses,' $31,500,000, for emergency expenses of the courts for the fiscal year ending September 30, 2013, including amounts necessary to minimize staffing reductions and furloughs, and for drug testing, drug treatment, and mental health treatment services of offenders and defendants in the probation and pretrial services program. Provided, That the amount provided herein is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

Justification

- $18.5 million will be used to avoid further staffing cuts and furloughs in clerks of court and probation and pretrial services offices during the fourth quarter of fiscal year 2013. This funding will save the jobs of approximately 500 court employees and avoid 14,400 planned furlough days for 3,300 court employees.

- $13.0 million will restore half of the sequestration cuts to drug testing, substance abuse, and mental health treatment services for defendants awaiting trial and offenders released from prison. Timely diagnosis and treatment of drug and mental health conditions is critical to defendants/offenders successfully completing their terms of release and ensuring community safety.

DEFENDER SERVICES

Bill Language

For an additional amount for 'Courts of Appeals, District Courts, and Other Judicial Services, Defender Services,' $41,400,000, for emergency expenses related to the representation of defendants under the Criminal Justice Act for the fiscal year ending September 30, 2013, including amounts necessary to minimize staffing reductions and furloughs in federal defender organizations, for the compensation and reimbursement of panel attorneys and experts, and for representation costs associated with high-threat trials. Provided, That the amount provided herein is designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

Justification

- $27.7 million is required to avoid deferring payments to private attorneys representing indigent defendants under the Criminal Justice Act for the last 15 business days (3 weeks) of the fiscal year. Without additional funding, sequestration cuts will necessitate that these expenses shift to fiscal year 2014. These costs were not included in the Judiciary's fiscal year 2014 budget request to Congress.

- $8.7 million will avoid further staffing cuts through layoffs, buyouts and early outs, and furloughs in federal defender organizations during the fourth quarter of fiscal year 2013. This funding will save the jobs of approximately 50 employees and avoid 9,600 planned furlough days for 1,700 federal defender organization employees.

- The remaining $5.0 million is for projected defense representation and related expert costs for high-threat trials, including high-threat cases in New York and Boston that, absent sequestration, the Defender Services program would have been able to absorb without the need for supplemental funding.

Board of Directors
Mark Harrison, Chair
Partner, Osborn Maledon, P.A.

James Alfini
Professor of Law and Dean Emeritus
South Texas College of Law

The Honorable Charles Clevert
Federal District Judge of Eastern Wisconsin

Lorraine Cortés-Vázquez
Executive Vice President for
Multicultural Markets & Engagement, AARP

Tom Gottschalk
Of Counsel, Kirkland and Ellis LLP

The Honorable Eileen Kato
Judge, King County District Court Washington

The Honorable Ruth McGregor
Chief Justice (retired)
Arizona Supreme Court

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Jim Reed
Director of Governmental Relations
Illinois Education Association

[illegible]
Director and Chairman Emeritus
Janus Capital Group

Randall T. Shepard
Chief Justice (retired)
Indiana Supreme Court

Ricki Seidman
Senior Principal
TSD Strategies

The Honorable Roger Warren
Former President
National Center for State Courts

July 23, 2013

The Honorable Christopher Coons
Chairman
Senate Judiciary Committee, Subcommittee on Bankruptcy & the Courts
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Jefferson Sessions III
Ranking Member
Senate Judiciary Committee, Subcommittee on Bankruptcy & the Courts
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Coons and Ranking Member Sessions:

On behalf of Justice at Stake (JAS), a nonpartisan, national partnership[1] of more than fifty organizations dedicated to keeping our courts fair and impartial, I write to thank you for your attention to the issue of sequestration's effects on the federal courts. Your hearing, "Sequestering Justice: How the Budget Crisis Is Undermining Our Courts," raises important issues at a critical time for our courts and for the Americans who depend upon them.

Sequestration has meant a reduction of roughly 5% in appropriations for the federal judiciary. According to the Administrative Office of the United States Courts, sequestration has translated into a budget cut of $350 million for the federal courts. To make matters worse, this budgetary slashing follows on the heels of years of woeful underfunding of the courts. These fiscal reductions have involved countless layoffs, cuts to court security programs, and the suspension of jury trials during parts of the year. The budget cuts are influencing prosecution decisions, causing delays in trials, and forcing furloughs of public defenders.[2] More fundamentally, these cuts threaten to erode several core constitutional values, including the right to a jury trial and due process.

[1] As with any diverse partnership, the views stated in this Justice at Stake letter do not necessarily reflect the positions of every JAS partner organization or board member.

[2] Indeed, it appears that some segments of the judiciary have been disproportionately harmed. It has been reported that the national network of public defenders has been cut by 8 percent, and the remaining public defenders have faced furloughs of up to 20 unpaid days. Editorial, *Justice Sequestered*, N.Y. TIMES, July 20, 2013.

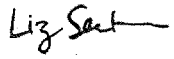
717 D Street, NW, Suite 203, Washington, DC 20004 * phone: 202-588-9700 fax: 202-588-9485

There are some who question whether the nation can afford to increase funding for the courts at a time of economic uncertainty, but the better question is whether the nation can afford *not* to increase funding for the courts. American businesses, both large and small, rely on the judiciary, and a well-funded, efficient judiciary is essential to economic growth.[3] Here, looking at the state experience is instructive, as cuts to state court budgets have vividly demonstrated that underfunding the judiciary can hinder economic activity and hurt businesses.[4] State court budget shortfalls have increased the amount of time it takes for businesses and civil litigants to resolve disputes. Unnecessary court delays have led to a climate of uncertainty for businesses, which are forced to hold resources in reserve pending the outcome of litigation. It has been estimated that these delays have cost businesses and other civil litigants approximately $52.2 billion between 2009 and 2013,[5] with the overall cost to the American economy being even greater.[6] American businesses, already dealing with the fallout from state court underfunding, simply cannot afford delays at the federal level as well.

Earlier this year, JAS supported a request by the Judicial Conference of the United States for $72.9 million in supplemental appropriations for FY 2013. The additional funding was requested to mitigate the harms of sequestration and to ensure that the judiciary is able to provide Americans with timely access to justice. That supplemental request has yet to be acted upon by Congress, even as FY 2013 begins to wind down. As the budget for FY 2014 is being considered, JAS renews its calls to congressional leaders from both sides of the aisle to work together to increase funding for the courts. If court funding continues to be held hostage to political games, the losers will not be one political party or the other; the losers will be the American people, who depend upon judges for the adjudication and protection of their rights, and American businesses that rely on the courts for the structural certainty necessary for economic growth.

JAS expresses its gratitude to you and your staff members for today's hearing and for your tireless efforts on behalf of the American public. If the members of your staff have any questions or want any additional information on this matter, please contact Praveen Fernandes, Director of Federal Affairs & Diversity Initiatives, at pfernandes@justiceatstake.org. Thank you for your time and consideration.

Respectfully,



Liz Seaton
Acting Executive Director

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[3] *See* NELS PEARSALL, BO SHIPPEN & ROY WEINSTEIN, ECONOMIC IMPACT OF REDUCED JUDICIARY FUNDING AND RESULTING DELAYS IN STATE CIVIL LITIGATION 18-19 (Mar. 2012).

[4] *See* ROY WEINSTEIN & STEVAN PORTER, ECONOMIC IMPACT ON THE COUNTY OF LOS ANGELES AND THE STATE OF CALIFORNIA OF FUNDING CUTBACKS AFFECTING THE LOS ANGELES SUPERIOR COURT 1 (Dec. 2009) (estimating more than $28 billion in economic output losses and 150,000 lost jobs in California due to state court funding shortfalls); WASHINGTON ECONOMICS GROUP, THE ECONOMIC IMPACTS OF DELAYS IN CIVIL TRIALS IN FLORIDA'S STATE COURTS DUE TO UNDER-FUNDING 16 (Feb. 2009) (estimating more than $9 billion in GDP losses and $6,138 direct job losses in Florida due to state court funding shortfalls).

[5] NELS PEARSALL, BO SHIPPEN & ROY WEINSTEIN, ECONOMIC IMPACT OF REDUCED JUDICIARY FUNDING AND RESULTING DELAYS IN STATE CIVIL LITIGATION 2 (Mar. 2012).

[6] *Id.* at 22 (noting that the $52.2 billion figure is only an estimate of lost investment income and does not include other economic losses, such as declining employment).

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LEGAL NEWSLINE
Legal Newsline Legal Journal
Thursday, July 25, 2013 Last Update: 07/24/13 09:36 pm

Justice group supports Judiciary's request for $73M in emergency funds

May 29, 2013 2:00 PM
By JESSICA M. KARMASEK

WASHINGTON (Legal Newsline) — Justice at Stake, in a letter to congressional leaders this week, voiced its support for a recent request by the federal courts for an emergency infusion of $73 million, including $41 million for federal public defenders.

JAS Executive Director Bert Brandenburg sent a two-page letter to U.S. Sens. Patrick Leahy and Chuck Grassley and U.S. Reps. Lamar Smith and John Conyers Jr. Tuesday.

Leahy and Grassley serve on the Senate Judiciary Committee. Leahy is the chairman, Grassley the ranking member. Smith and Conyers serve on the House committee. Smith is the chairman, Conyers the ranking member.

"This supplemental is essential to mitigate the harms of sequestration and to ensure that the judiciary is able to provide access to justice for the people of this nation," Brandenburg wrote.

Sequestration refers to a set of automatic federal spending cuts put into law by the Budget Control Act, signed by President Barack Obama in August 2011. The legislation raised the debt ceiling and was intended to put pressure on Congress to come up with a longer term plan for deficit reduction.

The $1.2 trillion in budget cuts, which were triggered March 1, will be spread over nine years and are equally divided between domestic and defense-related spending. The cuts are set to end in 2021.

For the remaining fiscal year 2013, the spending reductions are about $85 billion alone.

Earlier this month, the U.S. Judicial Conference asked the White House for $73 million in emergency funding to address what it calls "critical needs" resulting from the cuts.

The emergency funding would replace only a small portion of the $350 million in funding reductions imposed upon the courts by sequestration.

"The Judiciary is confronting an unprecedented fiscal crisis that could seriously compromise the Constitutional mission of the United States courts," Julia S. Gibbons, chair of the U.S. Judicial Conference Committee on the Budget, wrote in a May 14 letter to the White House Office of Management and Budget.

Gibbons said the courts need an emergency appropriation of $72.9 million — $31.5 million for the Courts Salaries and Expenses account and $41.4 million for the Defender Services account.

The money would save the jobs of hundreds of court employees and avoid more than 10,000 planned furlough days for more than 3,000 court employees.

The funds also would cover millions in projected representation costs for high-threat trials, including cases in New York and

Boston, according to the letter.

"The impacts of sequestration are compounded by the fact that 100 percent of the cuts must be absorbed with only six months remaining in the fiscal year," Gibbons wrote.

"Unlike some Executive Branch entities, the Judiciary has little flexibility to move funds between appropriation accounts to lessen the effects of sequestration. There are no lower-priority programs to reduce in order to transfer funds to other Judiciary accounts."

DRI — The Voice of the Defense Bar, a group of more than 20,000 defense lawyers, has already come out in support of the Judicial Conference's request.

Now, JAS is lending its support.

Brandenburg, in his letter to Leahy, Grassley, Smith and Conyers, argues that the budget cuts are influencing prosecution decisions, causing delays in trials and forcing the furloughs of public defenders.

"More fundamentally, these cuts threaten to erode several core constitutional values, including the right to a jury trial and due process," he wrote.

JAS describes itself as a nonpartisan, nonprofit campaign working to keep America's courts fair and impartial.

From Legal Newsline: Reach Jessica Karmasek by email at jessica@legalnewsline.com.

This entry was posted in Federal Government, Hot Topics, News, U.S. Circuit Court of Appeals, U.S. District Court and tagged Barack Obama, Bert Brandenburg, Chuck Grassley, DRI: The Voice of the Defense Bar, John Conyers Jr., Julia S. Gibbons, Justice At Stake, Lamar Smith, Patrick Leahy, sequestration, U.S. Judicial Conference. Bookmark the permalink.

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The New York Times

July 20, 2013

Justice Sequestered

By THE EDITORIAL BOARD

The madness of Washington's across-the-board budget cuts known as sequestration is causing real damage to the American justice system — undermining the sound functioning of the courts and particularly imperiling the delivery of effective legal representation to poor people accused of federal crimes.

The $350 million reduction in the federal judiciary's budget for fiscal 2013 has resulted in a roughly 8 percent cut to the network of high-quality federal defender offices across the country. It has forced the layoffs of many experienced lawyers who have devoted their professional careers to the underappreciated and underpaid work of representing indigent federal defendants. And it has inflicted a pay cut on the defenders who remain on staff in the form of up to 20 unpaid furlough days.

These hits to the core legal staff have been accompanied by other blows, including reductions in lawyer training, research, investigation of cases and expert help, including interpreters. The cuts have also meant crippling reductions to federal probation and pretrial services, including mental health treatment, drug treatment and testing, and court supervision — all with disquieting implications for people's rights and public safety.

In April, a major terrorism trial in New York City being handled by Federal Defenders of New York was postponed until January after lawyers in that office told the judge that budget cuts had left them short of resources and staff. The defendant's family has since hired a lawyer on its own. Many courts no longer conduct trials on some or all Fridays to accommodate the furloughs of federal defenders and strains in other areas, like courthouse security and the availability of federal marshals.

Judges in certain jurisdictions have warned that they may have to suspend civil jury trials if financing is not restored. All this comes on top of the budget-driven problems plaguing state courts, where representation of impoverished defendants is also grossly underfinanced.

The cuts for federal defenders may actually end up costing taxpayers more. Because indigent defendants still have a right to counsel, new cases that would ordinarily be handled by a federal

defender will inevitably be taken up by court-appointed private lawyers. That will lead to worse results at a higher cost, according to academic studies.

That things have reached this point is a deep embarrassment for a nation grounded on the rule of law. Yet it appears that the situation is about to get much worse. Federal defender offices have been told to prepare for another round of cuts of roughly 14 percent for the 2014 fiscal year that begins Oct. 1.

The executive committee of the Judicial Conference of the United States, which sets policy for the federal judiciary, should seek ways to minimize the damage. For instance, it might reallocate funds from less critical administrative areas, spreading the pain of new furloughs across the judiciary staff (except judges). Or it could budget for a delay in fees to court-appointed private lawyers, thus lessening the need for immediate deductions.

But there are really no good alternatives here, given the continuing partisan standoff in Congress as well as lawmakers' unwillingness to provide the emergency supplementary financing the courts have asked for. Reducing the hourly rates private lawyers are paid, as some have proposed, would simply compound the existing problem of finding capable private lawyers who will fully defend indigent clients.

One thing that might help is a louder and more forceful declaration from Chief Justice John Roberts Jr. about the damage the sequester is doing to America's courts — the subject of a much-needed Senate Judiciary subcommittee hearing scheduled for Tuesday by Senator Christopher Coons, a Delaware Democrat. If nothing else, drawing attention to the plight of federal defenders should make it harder for anyone to claim that the sequester's impact is no big deal.

Meet The New York Times's Editorial Board »

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

CHAMBERS OF
JAMES K. BREDAR
UNITED STATES DISTRICT JUDGE
MDD_JKBChambers@mdd.uscourts.gov

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BALTIMORE, MARYLAND 21201
(410) 962-0950 OFFICE
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July 3, 2013

Honorable William B. Traxler, Jr.
Chair, Executive Committee of the
Judicial Conference of the United States
300 East Washington Street
Suite 222
Greenville, SC 29601

Re: Sequestration and the Federal Defender Program

Dear Chief Judge Traxler:

We are former federal public defenders. We write as such and also as judges to express our concern about the federal defender funding crisis which we perceive to now threaten the adversary process that is at the heart of the American criminal justice system.

We are deeply worried that the Judicial Conference is contemplating an additional response to sequestration that would have grave consequences for both the Federal Defender Program and our system of justice. We understand that as the Conference continues to confront the extreme budget situation, it is considering imposing further, deeper cuts in the funding of federal defender offices, forcing those offices to lay off more talented, key staff members. We are concerned that additional cuts will result in muscle and bone being cut out of this vital program such that defenders will no longer be able to adequately perform their role in our adversary process.

We acknowledge the terribly difficult fiscal situation confronting the Conference. But we believe there is a reasonable and appropriate alternative to the further reduction of defender office budgets at this time. We urge the Conference to continue funding defender offices at their current, already-reduced levels, and to address the coming shortfall by postponing the payment of Criminal Justice Act (CJA) panel attorneys at the end of successive fiscal years for ever-increasing periods (e.g., 4 weeks in FY 13, 8 weeks in FY 14, etc.) until the issue is resolved by Congress with supplemental funding. This is how the issue was addressed in the 1990's when similar, although less severe, financial circumstances befell the Defender Program. We note that cutting the heart out of defender offices will not solve the fiscal problem - - with reduced staff these offices will be compelled to reduce the number of cases that they accept, and panel appointments will then necessarily increase in response. There will be no net savings, and the Conference will have to suspend CJA payments at the end of the respective fiscal years regardless of the harsh, irreversible measures imposed upon the Defenders.

There is only one meaningful way to reduce the costs of the Federal Defender/CJA Program, and that is to reduce the total number of persons represented by defenders and panel attorneys. Given the rights of the indigent criminally accused to representation under the Sixth Amendment, a reduction in the number of persons represented cannot occur unless the Department of Justice prosecutes fewer cases. Of course, neither the defenders nor the Courts control that factor.

Additional reductions in defender budgets will save little (if any) money as panel costs will simply increase proportionally. But such cuts will risk permanent harm to the defense function because when critical defender office staff are lost, with them goes the institutional knowledge, experience and memory that make the defenders credible counterweights to the U.S. Attorney's offices in their respective districts. The adversary process is fundamental to our justice system, but of course it only works if both sides have the resources and talent to successfully perform their respective roles.

As former federal public defenders we are uniquely positioned to address this issue. We know from personal experience what has been required to develop the Federal Defender Program into the superb institution that it is today. We know how critical it is that this institution perform at a high level as each of us has confronted the awesome prosecutorial capacity of the Department of Justice. We feel it is our responsibility -- as it is the responsibility of all judges -- to protect the adversary process when it is threatened as it is now.

Each of us is convinced that further cuts in the budgets of federal defender offices will compromise the adversary process. Thank you for considering our views.

Sincerely,

Hon. James K. Bredar
District of Maryland

Hon. Kathleen M. Williams
Southern District of Florida

Hon. Jeffrey Viken
District of South Dakota

Hon. Paul D. Borman
Eastern District of Michigan

Hon. Raymond P. Moore
District of Colorado

Federal Bar Council

Serving the courts and legal community of the Second Circuit since 1932

FOR IMMEDIATE RELEASE
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CONTACT
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President, Federal Bar Council
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THE FEDERAL BAR COUNCIL ADDRESSES PRESIDENT AND VARIOUS MEMBERS OF CONGRESS REGARDING ADVERSE EFFECTS OF THE SEQUESTER ON FEDERAL COURTS IN SECOND CIRCUIT

New York, June 27, 2013 - The Federal Bar Council, a premier bar organization of attorneys who practice before the federal courts of New York, Connecticut, and Vermont, today issued a letter to President Obama and 47 members of Congress expressing its concern about the adverse effects of the sequester on the federal courts and the criminal justice system in the Second Circuit.

The letter, signed by the Council's president, Robert J. Anello, expressed the Council's grave concern about the adverse effects that the sequester already has had on the federal courts and their important function of administering this Nation's laws. Mr. Anello noted that the sequester's impact on the Federal Defenders' office is "particularly egregious" and will "actually cost taxpayers more in the long run."

Among the specific areas the Council warned were likely to be adversely impacted by the cuts include the many high-profile prosecutions that occur in the federal courts of New York City. New York has been the forum for several recent high-profile terror prosecutions, including those of Faisal Shahzad, who was convicted in 2010 of attempting to detonate a car bomb in Times Square; and of James Cromitie, who was convicted in 2011 of attempting to detonate explosives at two synagogues in the Bronx. Noting that the expense associated with such cases might not be able to be borne in the future as a result of the sequester, Mr. Anello wrote, "the visibility of these trials makes these courtrooms tempting targets for terrorists and their campaigns of fear and

intimidation. Indeed, the Eastern District courthouse was recently the target of an anthrax scare and has received other hazardous mailings in the past."

Today's letter is consistent with the Council's mission of promoting excellence in federal practice and supporting the administration of justice in the federal courts. The Council is hopeful the President and Congress will carefully consider the issues it has raised and reach a speedy resolution to this escalating crisis. To read a copy of the letter sent to President Barack Obama, click here.

About the Federal Bar Council:

The Federal Bar Council is an organization of lawyers who practice in federal courts within the Second Circuit. It is dedicated to promoting excellence in federal practice and fellowship among federal practitioners.

The Federal Bar Council began its existence in 1928 as a chapter of a national association of attorneys employed by the federal government. Because the national organization refused to admit minorities, the group broke with the national organization. It was created as a separate organization by act of the New York State Legislature, and signed into law by then Governor Franklin D. Roosevelt, effective April 1, 1932.

In 1968, the organization adopted its current name the Federal Bar Council and made the courts of the Second Circuit its primary focus. The name "Council" was adopted because it reflected the advisory role to the courts which it had historically played, much like the Law Council of Inns of Court in England. Today, the Federal Bar Council has approximately 3,700 members.

For more information about the Federal Bar Council, please visit http://www.federalbarcouncil.org.

Serving the courts and legal community
of the Second Circuit since 1932

Federal Bar Council

June 27, 2013

The President
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear Mr. President:

I write on behalf of the membership of the Federal Bar Council. The FBC is a premier bar organization of attorneys who practice before courts of the Second Circuit. The organization was founded in 1932, and has approximately 3,700 members. Two committees of the FBC – the Public Service Committee, which explores ways in which the legal profession can contribute to the public good; and the Second Circuit Courts Committee, which, among other things, tracks and recommends changes to the procedures of the Second Circuit courts – have been closely following the effects of the budget sequester on the Second Circuit.

My fellow attorneys and I are gravely concerned about the adverse effects that the sequester already has had on the federal courts in this Circuit and their important function of administering this Nation's laws. Further, as the sequester persists, those effects will only worsen. It is imperative that Congress and the President reach an agreement to restore funding of the federal courts at least to pre-sequester levels.

The importance of federal courts to our democratic system cannot be overstated. In their role of administering justice, the federal courts provide services that are mandated by the Constitution and protect the fundamental rights of Americans of all backgrounds. These roles cannot be unreasonably curtailed in the face of budgetary constraints without doing violence to our system. The federal courts are essential to, among other things, protecting the public safety through the criminal law; promoting the orderly transaction of business through the commercial law; protecting consumers and investors through the antitrust and securities laws; and redressing discrimination in statutory and constitutional civil rights cases. The federal judges of the Second Circuit are superlative public servants who forgo lucrative private-sector careers and work long hours to decide their cases fairly and in strict adherence to the rule of law. Moreover, although the budget sequester has affected all federal courts, the effects have been particularly acute in the Second Circuit because New York City is the country's financial capital and one of its chief gateways for immigrants. As a result, courts in the Second Circuit bear a heavy caseload and have a high concentration of complex and high-profile cases.

The sequester already has severely compromised the courts' ability to fulfill their constitutional duties, and will do so even more if the situation is not resolved quickly. For example, the effective enforcement of the federal criminal laws is essential to a secure society. But those laws cannot be enforced, and certainly cannot be enforced efficiently and fairly without funding to those charged with the administration of the federal criminal justice system, both on the prosecution and on the defense side. As a result of the sequester, the budget for the Federal Defenders has been dramatically reduced, a reduction that is penny-wise and pound-foolish both because it has slowed

the enforcement of the criminal laws and because it has required indigent defendants to be represented, at taxpayers' expense, by more costly private attorneys. The disposition of criminal cases also has been slowed by cuts to these courts' Probation and Pre-Trial Services Departments, which play a crucial role in sentencing defendants, and which protect the public safety by supervising defendants on probation.

More generally, the courts in this Circuit have been compromised by cuts to their security and physical maintenance budgets, reduced job security for personnel in all departments, and reduced hours for bankruptcy proceedings.

Below, I provide a summary – though not a comprehensive list – of the ways in which the sequester has devastated the courts throughout this Circuit.

Federal Criminal Justice System

The sequester has hindered the Second Circuit courts' ability to efficiently process criminal cases. This is attributable in large part to cuts in the budget of the Federal Defenders of New York, the office that represents approximately 40 percent of all criminal defendants in the Eastern and Southern Districts of New York. The Federal Defenders' office has seen its already-modest budget reduced by 20 percent, leaving the office no choice but to implement furloughs of its attorneys. Every employee of the office is expected to be furloughed for approximately 20 days between March and September 2013 – a reduction in service of approximately 15%. Furthermore, the office is anticipating an additional 14% reduction in FY 2014, at which point it will no longer be able to absorb the shortfall through furloughs, and will be forced to lay off attorneys.

As a result of these budget cuts, the Federal Defenders' office has sought to be relieved from representation of some defendants, despite its historical practice of accepting all criminal cases in which it does not have a conflict. The office does not have sufficient funds for its attorneys to retain expert witnesses or travel to visit clients, and furloughed attorneys have been forced to seek adjournments of proceedings – such as sentencings, plea allocutions, and suppression hearings – in criminal cases. A several-month lag time can also occur between the conclusion of a trial and the filing of the defendant's motion for judgment notwithstanding the verdict. In the Southern and Eastern Districts, these delays already have hampered the efficient resolution of criminal cases. The budgetary strain has had a similar effect on the Federal Defenders' office in the District of Connecticut, which also has discontinued its traditional practice of taking on all criminal cases in which it does not have a conflict. The effect of delays is unfair to defendants, particularly those being detained before trial at public expense. Delays in the administration of justice also diminish the deterrent effect of our nation's criminal laws.

The Federal Defenders' situation is particularly egregious because the cuts to the Federal Defenders not only fail to save money, but actually cost taxpayers more in the long run. Because free representation for indigent criminal defendants is mandated by the Constitution, all indigent defendants who are not represented by the Federal Defenders must be represented – at federal expense – by attorneys in private practice who are members of the Criminal Justice Act (CJA) Panel, and whose services are more expensive than is representation by the Federal Defenders. Over the past few months, the courts have absorbed the Federal Defender shortages by relying on CJA attorneys and deferring payment to those attorneys. This approach is nonsensical: it is less cost-

effective than simply relying on the Federal Defenders in the first instance; it places an unfair burden on CJA attorneys who must work without prompt compensation; and it is expected to cause a huge hole in the CJA budget at the beginning of FY 2014. It would therefore both serve the interests of justice and save taxpayers money if, irrespective of the fate of other aspects of the sequester, the Federal Defenders' office promptly were restored to its full funding levels.

The sequester also has necessitated cuts to Probation Departments within the Second Circuit. For example, in the Eastern District of New York, Probation Department employees are expected to be furloughed for approximately one week each in FY 2013, and Probation Department ranks have already been reduced over the past two years as new positions have not been filled. Like the cuts to the Federal Defenders, these cuts have slowed the resolution of criminal cases.

Under Federal Rule of Criminal Procedure 32(c)(1), the Probation Department is responsible for preparing a detailed report on each criminal defendant's personal and criminal background, the circumstances of his or her offense, and the Sentencing Guidelines recommendation for his or her sentence. Judges rely heavily on these pre-sentence reports when preparing for sentencings. Furthermore, because of the nature of the crimes prosecuted in New York – which include complex financial crimes and crimes related to terrorism – these reports are frequently highly sophisticated. Yet because the Probation Department has been stretched so thin by budget limitations, judges often have to wait for four months or more for the pre-sentence reports; one Southern District judge described the Probation Department situation as being at "crisis level." Such unseemly delays in imposing sentences upon convicted offenders can only serve to undermine public faith in our criminal justice system.

The cuts to the Probation Department also have disturbing implications for public safety. The Probation Department is responsible for a number of surveillance and monitoring activities of criminal defendants, such as drug testing, mental health services, GPS monitoring of dangerous defendants, and in-person and internet monitoring of sex offenders. Probation Departments in the Second Circuit – including the Eastern and Southern Districts of New York and the District of Connecticut – have had to reduce all of these activities as a result of these staffing cuts. In particular, the Probation Departments have cut back on mental health treatment programs that are essential to the safe re-integration of criminal defendants into the community. Moreover, in the Southern District, the Probation Department also has cut back on surprise "premises searches" of homes occupied by supervisees on probation. In the past, these "premises searches" have yielded drugs, illegal firearms, and illegal pornography, and have enabled law enforcement to confiscate those items. Cuts to the Probation Department mean that more contraband in those categories remains at large in the community. Similar limitations have affected the courts' Pre-Trial Services Departments, which supervise defendants before trial and assist judges in determining appropriate bail.

Courthouse Security and Physical Facilities

Many high-profile prosecutions occur in the Second Circuit, and in particular in the federal courts of New York City. The Southern District has been the forum for several recent high-profile terror prosecutions, including those of Faisal Shahzad, who was convicted in 2010 of attempting to detonate a car bomb in Times Square; and of James Cromitie, who was convicted in 2011 of attempting to detonate explosives at two synagogues in the Bronx. Similarly, no fewer than eleven terror prosecutions have occurred in the Eastern District over the past two and a half years. Among

these was the prosecution of Quazi Mohammed Razwanul Ahsan Nafis, who has pleaded guilty to attempting to drive a vehicle containing an explosive device into the New York Federal Reserve Bank in Manhattan. The visibility of these trials makes these courthouses tempting targets for terrorists and their campaigns of fear and intimidation. Indeed, the Eastern District courthouse was recently the target of an anthrax scare and has received other hazardous mailings in the past.

In the face of these dangers, the safety of our federal court buildings is of paramount and urgent importance. Yet, because of a $50 million shortfall nationwide in the judicial security account, neither the Southern District nor the Eastern District has been able to make needed upgrades to security cameras and corresponding computer systems, and the Eastern District has had to reduce United States Marshal staffing in its courthouse. Both courts are considering ending 24/7 access to the courthouse by laying off the security staff who work the evening shift, a move that will limit judges' and court personnel's ability to work into the evening unless significant additional expenditures are made on technology to install an electronic access system. The courts have also cut back on opening their courthouses for educational programs, and may soon eliminate those programs entirely. The sequester has thus compromised the personal safety of the judges and other public servants who administer our court system, and has also compromised the ability of American citizens to observe court proceedings in a secure setting.

The sequester also has led to neglect of essential physical maintenance of the courthouses. The court system derives considerable power from the impressive edifices in which it is housed, but because of the sequester, the courthouses within the Second Circuit are not receiving even basic maintenance and are, in some instances, simply running out of space. The Circuit Executive for the United States Court of Appeals for the Second Circuit has been able to stave off layoffs only by reducing the court's "operations budget" – which encompasses such essential costs as maintaining the climate control of the building, maintaining the IT systems, and replacing decrepit furniture – to virtually nothing. This means that the federal courts' computer systems are not being properly maintained and are rapidly becoming obsolete, which severely compromises the ability of court employees to do their jobs and serve the public. Moreover, if the sequester persists, the Second Circuit courts expect to be unable to pay their overtime utility bills, which poses yet another threat to the current practice of 24/7 access to the buildings.

In addition, space is limited throughout the Circuit: for example, in the Eastern District, Probation and Pre-Trial Services have historically been dispersed throughout the district in satellite offices, but are now being concentrated into the Brooklyn courthouse, making it more difficult for employees of these departments to perform their duties in other counties. Furthermore, several judges in the District of Connecticut are expected to take senior status in the next two years, and there is no money to acquire chambers space for those judges' successors. It is regrettable that federal judges and other court employees who have already made significant financial sacrifices to work as public servants must now also do without such basic necessities as proper climate control, functional computer systems, and adequate office space.

Bankruptcy Court

The bankruptcy courts for the Southern and Eastern Districts of New York, which serve as the venue for resolving many of the nation's largest and most complex restructurings, have also suffered as a result of budget limitations. Both courts have reduced their non-judge staffing by 40 percent

over the past two years, leading to disruptions and delays in those courts' essential services. Historically, it has not been uncommon for bankruptcy proceedings to go late into the night in order to protect the interests of creditors and the public where time is of the essence. This includes critical relief necessary to preserve value for creditors and taxpayers – such as enabling a business to make payments to continue operating, to obtain financing, or to sell its assets where they represent a melting ice cube. For example, through nearly round-the-clock efforts, bankruptcy courts in the Southern District were able to oversee and approve expedited asset sales in cases such as General Motors and Lehman Brothers, preserving billions of dollars in value and untold scores of jobs and communities. Now, because of the staffing shortfalls, the Southern and Eastern District bankruptcy courts must conclude proceedings promptly at 5:00 p.m. because the buildings are not staffed after that time. This can cause bankruptcy proceedings that could have been resolved in one day to drag on over a period of days or, depending on the other constraints on the bankruptcy judge's schedule, even weeks.

In addition, the Southern District bankruptcy court has lost one judgeship already due to budget cuts. This problem, like others in the Second Circuit, is compounded by the complexity of the bankruptcies handled in New York. Moreover, the slowdowns in services of the bankruptcy court could result in the loss of private-sector jobs and destruction of value for creditors and taxpayers, because the maintenance of jobs at debtor companies often depends on the swift resolution of bankruptcy proceedings.

Potential Future Cuts

Although the Second Circuit courts' budgetary situation is already desperate, it will become even more so if the effects of the sequester persist into FY 2014. For example, although headcount in the Clerk of Court's Offices for the Southern and Eastern Districts has declined over the past few years because departing personnel have not been replaced, all of the courts have – through the austerity measures mentioned in this letter – avoided layoffs to their respective Clerk's Offices thus far. However, in FY 2014, the SDNY Clerk's Office faces a $1.5 million budget shortfall that cannot be absorbed without laying off staff, and layoffs are also likely in the EDNY Clerk's Office. If layoffs occur in the Clerk's Offices for the Southern and Eastern Districts, it will become impossible for judgments to be docketed the same day that they are entered – a lag that can result in dissipation of assets before satisfaction of the judgment. Still more disturbingly, if Clerk's Office layoffs occur, the courts may have to limit the days on which they have court proceedings, or even suspend civil trials altogether. Furthermore, in both New York and Connecticut, the strongest court employees have been the first to leave in the face of declining job security. Persistence of the sequester into FY 2014 could even affect budgets for chambers staff, forcing judges to complete their heavy workloads with the assistance of fewer law clerks and/ or courtroom deputies.

Unlike executive agencies, the courts are stymied in their budgetary planning by the utter unpredictability of their needs. In a recent high-profile death penalty case, the Eastern District had to summon a large number of potential jurors; if a case like that were to recur in 2014, the court simply would not have the necessary funds to summon and pay the prospective jurors. The Circuit Executive for the Second Circuit has likewise noted that if one of the courts in the Circuit has a large case go to trial that requires extensive jury costs, Clerk's Office layoffs could even be necessary within this fiscal year.

* * * *

In these and other ways, the federal courts of the Second Circuit have suffered severe consequences during the few short months that the sequester has been in effect. The failure of Congress and the President to reach an agreement to address this situation is irresponsible, and the failure properly to fund the Federal Defenders is shortsighted given that it leads to higher taxpayer costs in the long run. This is particularly true because the federal courts' budget is marginal relative to the federal budget as a whole: even prior to the sequester, the budget for the entire federal court system was less than one percent of the overall federal budget.

On behalf of our membership and the citizens who rely on the most open and effective national judiciary in the world, we urge you to take all necessary steps to ensure that the federal court system has adequate funding and can continue to perform its vital functions.

We are also sending this letter to the officials listed below.

Sincerely,

Robert J. Anello
President

Letter Recipients:

The Honorable John Boehner, The Honorable Eric Cantor, The Honorable Nancy Pelosi, The Honorable Harry Reid, The Honorable Mitchell McConnell, The Honorable Charles Schumer, The Honorable Kirsten Gillibrand, The Honorable Richard Blumenthal, The Honorable Christopher Murphy, The Honorable Bernard Sanders, The Honorable Barbara Mikulski, The Honorable Patrick Leahy, The Honorable Harold Rogers, The Honorable Robert Goodlatte, The Honorable Timothy Bishop, The Honorable Peter King, The Honorable Steven Israel, The Honorable Carolyn McCarthy, The Honorable Gregory Meeks, The Honorable Grace Meng, The Honorable Nydia Velázquez, The Honorable Hakeem Jeffries, The Honorable Yvette Clarke, The Honorable Jerrold Nadler, The Honorable Michael Grimm, The Honorable Carolyn Maloney, The Honorable Charles Rangel, The Honorable Joseph Crowley, The Honorable José Serrano, The Honorable Eliot Engel, The Honorable Nita Lowey, The Honorable Sean Patrick Maloney, The Honorable Christopher Gibson, The Honorable Paul Tonko, The Honorable William Owens, The Honorable Richard Hanna, The Honorable Thomas Reed, The Honorable Daniel Maffei, The Honorable Louise Slaughter, The Honorable Brian Higgins, The Honorable Christopher Collins, The Honorable John Larson, The Honorable Joseph Courtney, The Honorable Rosa DeLauro, The Honorable James Himes, The Honorable Elizabeth Esty, The Honorable Peter Welch

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JAMES V. WADE

ASSISTANT FEDERAL DEFENDERS
LORI J. ULRICH
THOMAS A. THORNTON
RONALD A. KRAUSS
FREDERICK W. ULRICH
HEIDI R. FREESE

July 5, 2013

Via Electronic Mail

Honorable Yvette Kane
Chief Judge
United States District Court
Ronald Reagan Federal Building
228 Walnut Street, Room 830
Harrisburg, PA 17108-9998

Dear Chief Judge Kane:

I write to update the Court on the projected effects of the budget crisis on my office in FY2014. The Defenders face a sequestration plus scenario.

The Office of Finance and Budget (OFB) of the Administrative Office is predicting a 100 million-dollar shortfall in the Defender Services account for FY2014. The account is divided between Criminal Justice Act (CJA) Panel payments, Defender budgets and Administrative expenses. The Defender portion is approximately one-half of the account. In the past, a shortfall in the account was managed by delaying panel payments. The Budget and Executive Committees of the Judicial Conference are considering whether panel payments should be deferred in FY2014. There is an indication that delayed payments are disfavored.

Failure to delay payments would be catastrophic for Defenders nationwide. Such a decision would visit the entire 100 million dollar shortfall on Defenders. Even though Defenders receive approximately one-half of the CJA appropriation, the entire sequester cut for the appropriation is borne by the Defenders. There has been no reduction of panel payments occasioned by the sequester. I have attached a graph from OFB detailing the nationwide impact. All Defenders have been told to prepare for a 23% reduction from their preliminary FY2014 Defender Services Committee approved budget.

My office will begin the next fiscal year with a shortfall of 1.4 million dollars. My traditional unit's preliminary budget is approximately 4.0 million dollars. A 23% reduction to the traditional unit's budget amounts to approximately $930,000. The capital habeas unit's preliminary budget is approximately 2.1 million dollars. A 23% reduction in the capital habeas unit's budget amounts to approximately $470,000. Because rent is fixed by contract, and travel and expert witnesses are driven by the need to provide competent representation, the only immediate area for savings is personnel.

I have attached an e-mail that I sent my staff today. The e-mail outlines my plan to handle the 23% cut. The plan for now is furloughs and layoffs. At this time I have a plan to lay off six (6) employees (4 TRAD 2 CHU) in two stages if defenders get no relief. The layoffs are to occur October 1, 2013 and March 1, 2014. It is possible I may have to layoff additional staff in March based upon the fiscal reality at that time.

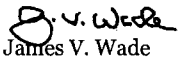
If I am required to make these significant staff cuts, I will have to consider other radical adjustments. Closure of my Williamsport branch, reduction in the percentage of cases we take, elimination of our role in certain classes of cases and participation in our re-entry program are under consideration. There may be other options, but maintaining the status quo will not be among them. I will not take these other actions without consultation with the Court. I am committed to maintaining the high quality of representation for our clients the Court expects and the Constitution demands. Nevertheless, it will be necessary to select the least harmful number of very bad options.

Defenders nationwide have been working to bring our desperate situation to the attention of the Judicial Conference, Executive Committee, and Congress. Defenders are seeking the Executive Committee to approve a suspension/deferral of panel attorney payments as a budgetary tool for FY2014. Such a suspension would allow us breathing space. It would allow us to see if there will be relief from Congress in the form of a supplement or an anomaly.

I hope you will express your concerns to the Executive Committee. Only by hearing from you and other Chief Judges, will the Executive Committee recognize this serious situation. The hard choices in allocating resources are difficult. The Executive Committee, however, should also understand the importance of Defender Offices to the smooth and efficient operation of the Court. In my opinion, the deferral of a portion of the Criminal Justice Act payments would be justified in order to preserve Defender Offices. This is not a case of stalling or trimming– we are facing the unwinding of the Defender System as if we were some bad investment. The fact that this is happening on the 50th Anniversary of *Gideon* is all the more tragic and should signal a call for action.

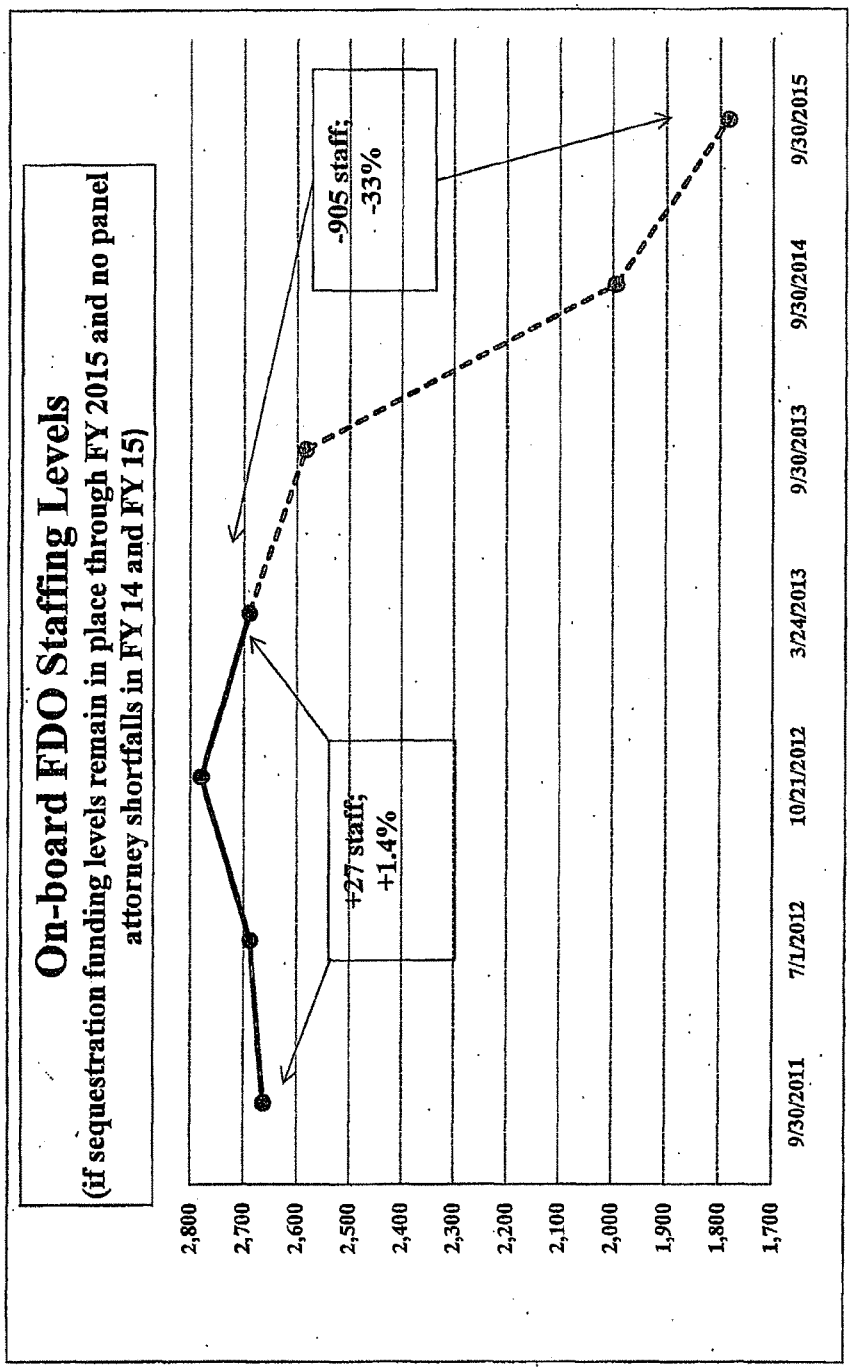
I will be available to answer any questions that you may have or to meet with you to discuss this further.

Respectfully,



James V. Wade
Federal Public Defender

JVW:lcs
Enclosures
cc: Honorable Theodore A. McKee, Chief Circuit Judge
Ann Ariano, District CJA Panel Representative


On-board FDO Staffing Levels
(if sequestration funding levels remain in place through FY 2015 and no panel attorney shortfalls in FY 14 and FY 15)
+27 staff;
+1.4%
-905 staff;
-33%
2,800
2,700
2,600
2,500
2,400
2,300
2,200
2,100
2,000
1,900
1,800
1,700
9/30/2011
7/1/2012
10/21/2012
3/24/2013
9/30/2013
9/30/2014
9/30/2015

Fiscal Year 2014
James Wade to: zzPAMml_AllStaff 07/05/2013 10:36 AM
Cc: "The Ariano's"

Colleagues,

On Wednesday Melinda, Anne, Lisa and I met to discuss FY 2014. Formulating a plan based on a worst case scenario is a necessary evil. The options in such a case are limited and not happy ones. Our scrubbing of the numbers, however, revealed a slightly better case than presented at our office wide meeting on Friday June 28. The office has been asked to shed 1.4 million dollars ($930,000 TRAD and $470,000 CHU) off of a preliminary budget of 6.1 million. To give some perspective to that number you can look at the current fiscal year. FY 2013 has been a year of belt tightening, staff attrition and furloughs and that was with 6.4 million dollars to fund our units. The 4.7 million dollars we have been told to work with in FY 2014 is sobering. Expressing the 1.4 million reduction solely in terms of furloughs reveals 78 days for the TRAD and 50 days for the CHU. The combine furlough days if allowed to equalize would be 70.

The plan for now is to start with furloughs on October 1. One day per pay period. This obviously can not be a final solution. Seventy furlough days is unworkable. Layoffs , closing the Williamsport branch office and determining whether there is any office space to give up are all on the table. Closing an office and giving up office space takes time. Because of that the impact of these actions would only partially be felt in FY 2014. The greatest impact would likely be felt in FY 2015. In the case of giving up space some of the cost savings in the first year are eaten up by costs associated with a move and /or alterations that may be necessary - think redesign, walls and cables. Layoffs are quicker but they are not a first choice option. This is particularly true when there is so much uncertainty. Furloughs are the default. They reduce costs in a very certain way and they do so immediately. Furloughs would be taken on Mondays or Fridays. We would do our best to divide staff as equally as possible on the 2 Mondays and 2 Fridays in every pay period.

As most of you are aware defenders around the country face a budgetary contraction that will require layoffs in the neighborhood of between 20 and 30%. We are no different. The decisions I make here will be based on how to preserve the core mission of our office in the face of devastating cuts to our funding. All of our employees are vital to the mission of our office. As painful as it is, it appears likely I am going to have to lay off dedicated, hardworking, and productive employees. I am committed to making this process as transparent as possible, because I believe it makes sense for all of you to understand our fiscal outlook and prepare as much as possible for the future.

I expect that by late September / early October the Executive Committee (EC) will make public their decision on deferring panel attorney payments. I believe currently the Executive Committee is taking the position that deferrals are not good. Our position and those of some Judges who have voiced their concern believe deferrals are good because they keep us afloat, keep the panel attorneys adequately compensated even if a bit tardy

and causes our plight to remain front and center until Congress can deal with it in a reasonable way.

If the EC decides to defer, then the next step, layoffs and more furlough days, may be avoided. If the EC does not defer some layoffs will occur. To start with 2 in the TRAD and 1 in the CHU. By August 1, I intend to meet with those staff members to give notice that they are being considered for layoffs as of October 1.

Congressional action is also possible. The prediction is that such action will not occur until early December or late January. Should favorable action occur from that quarter then a second round of layoffs could be avoided. If the status quo stands (a 23% cut from our preliminary budget, no new funds and sequester continues) then a second round of layoffs would likely occur. It appears that at least 2 from the TRAD and 1 from the CHU would be necessary in the second round. A close look at where we are and how much further we need to go would be made at that time to get down to the precise number of layoffs. I feel I must make a decision no later than Jan 29 so that the layoffs could be implemented by March 1.

I will end with a bit of good news. It appears that due to belt tightening and some good fortune we will not have to take any furlough days in August. We may also avoid furloughs in September but it is too close to call with about 80 days to go. If furloughs are necessary in September I expect it to be no more than 1 day unless something extraordinary were to happen.

I appreciate how difficult it is to live with this uncertainty. I will keep you informed as quickly as I can. I appreciate the service that each and every one of you provides to our office. I am deeply sorry for the anxiety everyone is going through.

Jim

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July 22, 2013

The Honorable Chris Coons
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: July 23, 2013 Hearing: Sequestering Justice - How the Budget Crisis Is Undermining Our Courts

Dear Chairman Coons and Ranking Member Sessions:

I write on behalf of the National Association of Assistant United States Attorneys to express our concern about the impact that sequestration is imposing upon the operations of the federal court system. I request that these comments be included in the record of your July 23 hearing on the impact of sequestration upon the federal courts.

The National Association of Assistant United States Attorneys represents the interests of the 5,600 Assistant United States Attorneys who daily appear on behalf of the United States in civil and criminal court proceedings in federal courts across the country. The work of Assistant United States Attorneys and the pursuit of justice on behalf of the United States relies upon the daily, continuous accessibility of the federal courts, their judges and juries, and court personnel.

Sequestration is clearly bringing about a reduction in court operations and services in an increasing number of courts. The furlough and layoff of court personnel is especially troubling. We are concerned about the impact these developments will have upon the speed of criminal court proceedings and the potential for delay. True justice is swift justice. Public safety also is eroded when cutbacks in pretrial and probationary services personnel diminish the supervision and monitoring of defendants awaiting trial and offenders released from incarceration.

The budget crisis afflicting the federal courts is most pronounced in the offices of Federal Public Defenders around the country. As you know, the Department of Justice, including United States Attorney Offices, possessed the flexibility and resources to mitigate the sequester and avoid furloughs for the remainder of the 2013 Fiscal Year. On the other hand, Federal Defender Offices,

President
Robert G. Guthrie
ED of Oklahoma

Vice President for Policy
John E. Nordin II
CD of California

Vice President for Operations and Membership
Lawrence J. Leiser
ED of Virginia

Treasurer
Daniel A. Brown
SD of Ohio

Secretary
Leah Bynon Farrell
New Jersey

whose attorneys are appointed by federal courts to represent indigent defendants, face up to 20 days of furloughs before the end of the fiscal year. The widening unavailability of Federal Defender staff to appear in court due to furloughs has begun to cause some federal courts to postpone or delay criminal proceedings. Greater delay will hinder the pursuit of justice, potentially causing the violation of the Speedy Trial Act. Assistant United States Attorneys are powerless to waive those statutory requirements, or to offset the likely delay in the hearing of civil cases in the federal courts that further sequestration will generate.

The Federal Judiciary has requested a $73 million emergency supplemental appropriation from Congress to assure the federal courts can operate through the remainder of the fiscal year. More than half of the Federal Judiciary's request would provide supplemental funding for Federal Defender Services. The emergency request of the Federal Judiciary is a miniscule expenditure of federal funds to assure justice and preserve the rule of law. The federal courts' entire budget nationwide comprises only 0.2 percent, or about $7 billion, of the $3.7 trillion federal budget; the emergency request comprises less than one percent of the federal courts' entire budget.

While Federal Prosecutors and Federal Defenders are adversaries in federal criminal proceedings because of their competing representational responsibilities, we are united in our support for adequate resources for the federal courts to assure the promise of equal justice under the law.

Thank you for your continued leadership and your attention to these concerns.

Sincerely,

Robert Gay Guthrie
President

DAVID M. SCHRAVER
President, New York State Bar Association

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July 23, 2013

Hon. Christopher Coons
127A Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Coons:

The New York State Bar Association and its 76,000 members wish to add their full and complete support to the efforts of Hon. Julia Gibbons, who will be testifying at today's hearing, to assure that the federal court system is adequately funded.

During the last year, the State Bar Association has been repeatedly calling on Congress to protect the federal courts from the sequester. We wrote op-eds, issued press releases, visited our Congressional delegation and made many efforts to point out the consequences to the federal court system should Congress fail to avoid the sequester. In our efforts, we have consistently endorsed the positions expressed in testimony and in other statements by Judge Gibbons and the Judicial Conference. Now that sequestration has been implemented, we can see the results. The courts are facing a crisis, and it is going to become far worse unless Congress takes action.

As Chief Justice Roberts said in his 2012 year-end report, "A significant and prolonged shortfall in judicial funding would inevitably result in the delay or denial of justice for the people the courts serve."

The failure of the courts to be able to effectively function due to lack of funding will seriously affect the ability of our criminal justice system to function. We have already seen how cases are being delayed. Defendants could go free because of the speedy trial rule. Furthermore, supervision of those on probation will be severely limited. Security, which is essential for the courts to function, will be cut back, thereby limiting the time that courthouses can be open.

On the civil side, our clients will find the courts unreliable in terms of their ability to serve as a forum for resolving differences. Business and commerce will be affected by the inability of the courts to decide cases within a reasonable period of time. Eventually, there could be an inability to try civil cases.

As you know, the current crisis, which has caused Judge Gibbons to ask for an emergency appropriation of $72.9 million, will become far worse unless Congress acts not only to avoid further implementation of the sequester, but to assure adequate funding of the courts.

As we have said so often during the last year, the New York State Bar Association urges Congress to act to prevent a totally avoidable deterioration in the functioning of the federal court system.

Sincerely,

David M. Schraver

David M. Schraver

Statement of Former Federal Judges and Prosecutors

Submitted to the Subcommittee on Bankruptcy and the Court of the Senate Judiciary Committee for the Hearing "Sequestering Justice: How the Budget Crisis is Undermining Our Courts" July 23, 2013

We, the undersigned, are former federal prosecutors and judges deeply troubled by the devastating budget cuts facing the Federal Defender Services account and the threat these cuts pose to the proper functioning of the federal criminal justice system. These ill-conceived measures undermine not only the Federal Defender system, but the entire federal judiciary, without achieving any real cost savings.

Federal Defenders Play a Vital Role in the U.S. Justice System

Fifty years ago, the U.S. Supreme Court affirmed in *Gideon v. Wainwright* that every person, rich or poor, has a constitutional right to be represented in criminal proceedings by a capable, effective lawyer. Writing for the majority, Justice Hugo Black noted, "The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours." This right is fundamental to the character of our nation, defining America as a country dedicated to the rule of law above all else. The function that Federal Defenders serve is therefore not a mere policy preference—it is a constitutional mandate. The future of the Federal Defender program is inextricably tied to the constitutional rights of American citizens.

The Federal Defender program is the realization of *Gideon*'s promise and a model in providing high-quality, cost-effective indigent defense, serving as an example to underperforming state and local systems. Historically, the Federal Defenders have received adequate funding from Congress, and have, therefore, been able to set the national standard for indigent defense services. The possible budget cuts to the Defender Services account in fiscal year (FY) 2014, on top of the already devastating FY 2013 budget cuts, will undermine the Federal Defender program's ability to maintain the high standard of representation for which it has become known, will have a rippling effect on the efficiency of the larger federal judicial system, and will undermine the Court's constitutional mandate in *Gideon*.

Severe cuts to the Defender Services account have already significantly affected federal public defender offices and their ability to take on cases. Since February 2013 Federal Defender offices have lost nearly 10% of their approved budgets because of sequestration and cuts from within the judiciary. The resulting $51 million shortfall in FY 2013 for the Defender Services account, while a miniscule portion of the overall federal budget, is devastating for the Federal Defenders, and for the efficient and effective administration of our justice system. Federal Defenders across the country are already being forced to take up to 20 furlough days each before the end of the fiscal year on September 30. Paired with an anticipated 14% cut in FY 2014, which could result in staff reductions of up to 50% in some Federal Defender offices and complete closure of some smaller offices, it becomes clear that we are facing the decimation of the Federal Defender program as we have known it for nearly 50 years.

Cuts to the Federal Defenders Will Undermine the Justice System as a Whole

Cuts to the Federal Defender program will not only affect the Federal Defenders and their clients. Because Federal Defenders are an integral piece of the criminal justice system, these budget cuts will affect the operation of the American justice system as a whole. In our experience, qualified, adequately-

resourced defense counsel are a vital component of the federal criminal justice system. Federal Defenders serve, along with prosecutors and judges, as an essential "leg" of the three-legged criminal justice stool.

Already judges are seeing their dockets affected by the funding cuts. In New York, Federal Defenders were forced to ask the judge to delay the trial of Osama Bin Laden's son-in-law, due to the burdensome furlough schedule they faced. Here in Washington D.C., the D.C. Superior Court, where Federal Defenders represent criminal defendants, has stopped scheduling criminal matters on alternating Fridays, and ongoing criminal trials will be recessed. The Federal Defender Office in the Central District of California will simply close for three weeks in September. In states like Texas and Rhode Island, where Defenders will be taking extended furloughs, hearings and trials will be delayed.

Cuts to Federal Defenders will also result in increased administrative burdens on district courts. In many districts, the Federal Defender Office administers the district's trial, appellate, and *habeas* Criminal Justice Act ("CJA") attorney program and provides support and training to panel attorneys. Additionally Federal Defenders may no longer be able to act as discovery coordinators in multi-defendant cases, further exploding costs by increasing CJA expenses. Furthermore, the administrative burden will increase substantially in districts where the court already administers the CJA panels, due to increased reliance on those panels as a result of Federal Defenders inability to take on additional cases.

Some Federal Defenders will also be forced to limit their roles in other cost saving programs. Federal Defenders may cease participation in re-entry and diversionary courts. Those courts lower recidivism rates, improve public safety, and reduce costs associated with incarceration.

Moreover, continued and chronic delays will inevitably undermine confidence in trial verdicts. Questions will certainly be raised on appeal about whether defendants' Sixth Amendment rights to a speedy trial have been infringed, due to extended pre-trial detention times. Individuals represented by overworked and underpaid Federal Defenders will likely file more ineffective assistance of counsel claims. This added procedural burden will only increase the cost of justice in the long run. As Supreme Court Justice Stephen Breyer has noted, it is "cheaper to have a decent lawyer in the first place."

As former prosecutors and judges, we adamantly support providing federal prosecutors the resources they need to maintain public safety. We urge Congress to assure that the Department of Justice has sufficient funding to enable federal prosecutors and law enforcement to continue their work. We are equally adamant, however, in urging that Federal Defenders be adequately staffed, paid and provided the necessary resources to assure effective assistance of counsel for their clients. Permitting the Federal Defender budget shortfall to double to $102 million in FY 2014 is virtually certain to do serious harm to Defender offices and their ability to provide effective counsel for a substantial number of indigent defendants. It is also virtually certain to make it difficult for federal district courts to handle their criminal caseloads and to assure that public safety and constitutional rights are not victims of the underfunding of Federal Defenders.

Finally, the system will face long-term structural problems as a result of these devastating cuts. Because Federal Defenders will be largely unable to hire new attorneys, the number of qualified attorneys trained and experienced as criminal defenders will decline—leading to a long-term decrease in the quality of federal public defense as a whole. And while offices are unable to hire new attorneys, their brightest and most talented Defenders may be looking elsewhere, to firms or organizations with more stability and a living wage—or any wage at all. In a system where judges and prosecutors rely on defense

counsel to help ensure the fair and efficient functioning of the criminal justice system, this state of affairs is simply untenable.

Federal Defenders Must Be Fully Funded by Congress

The only way to save the Federal Defender program is to ensure that it receives adequate funding in FY 2014. We urge the members of this subcommittee to work with your colleagues, whether through the appropriations process or through a continuing resolution, to ensure that the Federal Defender program is provided with the resources it needs to continue its mission. Failure to provide the necessary funding will have consequences far beyond the Federal Defender program, increasing costs for the federal judicial and penal systems.

As former federal prosecutors and judges, we understand the important role that the Federal Defender program plays in our efforts to achieve a fair and cost-efficient criminal justice system. It is for these reasons that we feel compelled to call for adequate funding for Federal Defenders, and exemption from sequestration, even in these times of budget austerity.

Signatories as of July 23, 2013:

Lee Altschuler
Chief Assistant United States Attorney, Silicon Valley Division, Northern District of California (1993-1998); Assistant United States Attorney, Northern District of California (1983-1993).

William G. Bassler
Judge, United States District Court, District of New Jersey (1991-2006).

Rebecca A. Betts
United States Attorney, Southern District of West Virginia (1994-2001); Assistant United States Attorney, Southern District of West Virginia (1977-1994).

Frank O. Bowman III
Assistant United States Attorney, Southern District of Florida (1989-1996); Special Counsel to the United States Sentencing Commission (1995-1996); Trial Attorney, United States Department of Justice, Criminal Division (1979-1982).

James S. Brady
United States Attorney, Western District of Michigan, (1977-1981).

Michael R. Bromwich
Inspector General, United States Department of Justice (1994-1999); Associate Counsel, Office of Independent Counsel for Iran/Contra (1987-1989); Assistant United States Attorney, Southern District of New York (1983-1987).

David Bukey
Assistant United States Attorney: Eastern District of Wisconsin, 1971-1977; Western District of Washington, 1977-1979; Court Appointed United States Attorney, Eastern District of Wisconsin, 1973-1974.

Robert C. Bundy
United States Attorney, District of Alaska (1994-2001).

Arthur L. Burnett, Sr.
Magistrate Judge, United States District Court, District of Columbia (1969-1975 and 1980-1987); Assistant United States Attorney, District of Columbia (1965-1969); Trial Attorney, United States Department of Justice, Criminal Division (1958-1965).

A. Bates Butler III
United States Attorney, District of Arizona (1980-1981); First Assistant United States Attorney, District of Arizona (1977-1980).

Zachary W. Carter
United States Attorney, Eastern District of New York (1993-1999).

Robert J. Del Tufo
United States Attorney, District of New Jersey (1977-1980).

W. Thomas Dillard
United States Attorney, Northern District of Florida (1983-1987); Assistant United States Attorney, Eastern District of Tennessee (1967-1976 and 1978-1983); Magistrate Judge, United States District Court, Eastern District of Tennessee (1976-1978).

Donnie Dixon
United States Attorney, Southern District of Georgia (1994-2001).

Edward L. Dowd, Jr.
United States Attorney, Eastern District of Missouri (1993-1999); Assistant United States Attorney, Eastern District of Missouri (1979 -1984).

Thomas Durkin
Assistant United States Attorney, Northern District of Illinois (1978-1984).

Larry Eastepp
Assistant United States Attorney, Southern District of Texas (1991-2011), Eastern District of Texas (1989-1991).

Thomas Farrell
Assistant United States Attorney, Western District of Pennsylvania (1995-2000).

John Flannery
Assistant United States Attorney, Southern District of New York (1974-1979).

Rodger Heaton
United States Attorney, Central District of Illinois (2005-2009).

Donald Heller
United States Attorney, Central District of Illinois (2005-2009).

Tim Johnson
United States, Attorney for the Southern District of Texas (2008-2010).

G. Douglas Jones
United States Attorney, Northern District of Alabama (1997-2001).

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United States Attorney, Northern District of Illinois (1997-2001).

Laurie L. Levenson
Assistant United States Attorney, Central District of California (1981-1989).

David F. Levi
United States District Judge, Eastern District of California (1990-2003), Chief Judge (2003-2007); United States Attorney, Eastern District of California (1986-1990); Assistant United States Attorney, Eastern District of California (1983-1986).

Ronald Levine
Assistant United States Attorney, Eastern District of Pennsylvania (1985-2002) (Criminal Division Chief (1998-2002)

John Martin
United States District Judge, Southern District of New York (1990-2003); United States Attorney, Southern District of New York (1980-1983).

Thomas McQueen
Assistant United States Attorney, Northern District of Illinois (1974-1979).

A. Melivin McDonald
United States Attorney, District of Arizona (1981-1985).

Kirk Obear
Former Assistant United States Attorney, Northern District of Illinois.

Stephen M. Orlofsky
Judge, United States District Court for the District of New Jersey (1996-2003); Magistrate Judge, United States District Court for the District of New Jersey (1976-1980).

Richard Rossman
United States Attorney, Eastern District of Michigan (1980-1981).

Stephen H. Sachs
United States Attorney, District of Maryland (1967-1970); Assistant United States Attorney, District of Maryland (1961-1964).

Charles Sklarsky
United States Attorney, Northern District of Illinois (1978-1986).

Stephen A. Saltzburg
Attorney General's ex-officio Representative, United States Sentencing Commission (1989-1990); Deputy Assistant Attorney General, United States Department of Justice, Criminal Division (1988-1989).

Kurt L. Schmoke
Assistant United States Attorney, District of Maryland (1978).

Earl Silbert
United States Attorney, District of Columbia (1974-1979).

Neal R. Sonnett
Assistant United States Attorney, Chief of Criminal Division, Southern District of Florida (1967-1972).

Larry D. Thompson
Deputy Attorney General of the United States (2001-2003); United States Attorney, Northern District of Georgia (1982-1986)

Stanley A. Twardy, Jr.
United States Attorney, District of Connecticut (1985-1991).

James J. West
United States Attorney, Middle District of Pennsylvania (1985-1993).

Francis M. Wikstrom
United States Attorney, District of Utah (1981).

FY 2013 SEQUESTRATION IMPACTS ON THE FEDERAL JUDICIARY

Sequestration and the Federal Judiciary

- On March 26, 2013, the President signed Public Law 113-6, the Consolidated and Further Continuing Appropriations Act of 2013, which provides full-year FY 2013 funding for the federal government, including the Judiciary. The bill leaves in place the government-wide sequestration cuts mandated under the Budget Control Act of 2011.

- Sequestration reduces Judiciary funding overall by nearly $350 million below the FY 2012 discretionary funding. The impact of sequestration on the Judiciary is compounded by the fact that the Judiciary has no control over its workload - the courts must react to the cases which it receives from the Executive Branch, individuals and businesses - overall, that workload has not declined. In addition, unlike most Executive Branch entities, the Judiciary has little flexibility to move funds between appropriations accounts to lessen the effects of sequestration. There are no lower-priority programs to reduce to transfer to other accounts.

Impact of Sequestration on the Courts

- Sequestration places unprecedented pressure on the federal Judiciary's administration of justice. Its impact on the operation of the federal courts will be devastating and longlasting.

- To mitigate the impact of sequestration on employees, the courts have slashed non-salary budgets (training, information technology, supplies and equipment), which is possible for one fiscal year, but cannot be sustained into future years. Even with these reductions, on a national level, up to 1,000 court employees could be laid off, or thousands of employees could face furloughs before the end of the year. These staffing losses will come on top of the nearly 2,200 probation officers and clerks office staff the courts have already lost since the end of July 2011.

- Cuts in staffing will result in the slower processing of civil and bankruptcy cases. Delays in cases will harm individuals, small businesses, and corporations.

- Sequestration has also reduced funding for probation and pretrial officer staffing throughout the courts, which means less deterrence, detection, and response to possible resumed criminal activity by federal defendants and offenders in the community. In addition, law enforcement funding to support GPS and other electronic monitoring of potentially dangerous defendants and offenders has been cut 20%. Equivalent cuts to funding for drug testing, substance abuse and mental health treatment of federal defendants and offenders have also been made, increasing further the risk to public safety.

- Security systems and equipment in our Court Security program have been cut 25% and court security officers' hours have been reduced. These reductions come at a time of heightened security resulting from the prosecutor murders in Texas and the Boston bombings. A high level of security of judges, prosecutors, defense counsel, jurors and litigants entering our courthouses must be maintained.

Impact of Sequestration on Representation of Indigent Offenders

- For Defender Services, incorporating enacted appropriations, offset by sequestration, results in a $51 million shortfall in funding below minimum requirements. This program has no flexibility to absorb such large cuts. It is almost totally comprised of compensation to federal defenders, rent, case related expenses (expert witnesses, interpreters, etc.), and payments to private panel attorneys. The only way to absorb the $51 million shortfall is to reduce staffing or defer payments to private panel attorneys.

- The Executive Committee examined all aspects of the account, scrubbed expenses where possible, and approved a spending plan that will result in federal defender offices having to cut staff and furlough employees an average of approximately 15 days. The approved spending plan will also halt payments to private panel attorneys for the last 15 business days of the fiscal year. This will shift these expenses to FY 2014, which were not considered as part of the Judiciary's FY 2014 budget request to Congress, and add to FY 2014 appropriation requirements.

- The uncertainty of the availability of federal defender attorneys and the anticipated suspension of panel attorney payments will create the real possibility that panel attorneys may decline to accept Criminal Justice Act appointments in cases that otherwise would have been represented by FDOs. Delays in the cases moving forward may result in violations of constitutional and statutory speedy trial mandates resulting in criminal cases being dismissed.

- Since all non-case related expenses in this account have already been reduced, the only solution to avoiding these impacts is for Congress to provide additional funds.

Supplemental Appropriations

- The Judiciary transmitted to the Office of Management and Budget and the Congress an FY 2013 emergency supplemental request that seeks $72.9 million to mitigate the devastating impact of sequestration on defender services, probation and pretrial services offices, court staffing, and court security. The request includes $31.5 million for the Courts' Salaries and Expenses account, and $41.4 million for the Defender Services account.

Courts' Salaries and Expenses:

  - $18.5 million will be used to avoid further staffing cuts and furloughs in clerks of court and probation and pretrial services offices during the fourth quarter of FY 2013. This funding will save the jobs of approximately 500 court employees and avoid 14,400 planned furlough days for 3,300 court employees.

  - $13.0 million will restore half of the sequestration cuts to drug testing and substance abuse and mental health treatment services for defendants awaiting trial and offenders released from prison.

Defender Services:

- $27.7 million is required to avoid deferring payments to private attorneys for the last 15 business days (3 weeks) of the fiscal year.

- $8.7 million is needed to avoid further staffing cuts and furloughs in federal defender organizations during the fourth quarter of FY 2013. This funding will save the jobs of approximately 50 employees and avoid 9,600 planned furlough days for 1,700 federal defender organization employees.

- $5.0 million is for projected defense representation and related expert costs for high-threat trials, including high-threat cases in New York and Boston that, absent sequestration, the Defender Services program would have been able to absorb.

- Executive branch agencies with criminal justice responsibilities have had the flexibility and resources to address their FY 2013 post-sequestration requirements. As a result, these agencies – which directly impact the workload of the Judiciary – have been able to avoid furloughs. The Judiciary has no such flexibility and instead must ask Congress to approve a supplemental appropriation.

Cost Containment in the Judiciary

- Cost containment is not new to the Judiciary. In 2004, as a result of an unexpected shortfall in funding, the Judicial Conference endorsed a cost containment strategy that called for examining more than 50 court operations for reducing expenses. Since then, the Judiciary has focused on three that have the greatest potential for significant long-term savings: rent, personnel expenses, and information technology. To date, the Judiciary has cut costs by $1.1 billion.

- The Judiciary's approach to cost containment is to continuously challenge our ways of doing business and to identify, wherever possible, ways to economize even further. This can be a painful process as we are often proposing changes to long established Judiciary customs and practices and we sometimes face opposition from within. But we are committed to doing everything we can to conserve resources and be good stewards of the taxpayers' money.

- While cost containment has been helpful during the last several years of flat budgets, it will not come close to offsetting the major reductions we face from sequestration.

MEMORANDUM ON

EFFECTS OF SEQUESTRATION ON

LOCAL SALARY FUNDING IN THE

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF NORTH CAROLINA

MEMORANDUM

To: Chief Judge Randy D. Doub, U.S. Bankruptcy Court, Eastern District of North Carolina

From: Stephanie J. Edmondson, Clerk of Court

Re: Effects of Sequestration on Local Salary Funding

Date: June 11, 2013

During FY2013, the sequestration provided for in the Budget Control Act of 2011 was implemented. This sequestration has had a devastating effect on the Judiciary as a whole because of the cost containment initiatives that had already been undertaken by the Judiciary prior to its implementation, and more specifically to bankruptcy clerks' offices which also suffered severe cuts because of a new work measurement formula which was designed to reduce salary funding and also affected salary allotments during FY2013.

Prior to the implementation of sequestration, our court's salary allotments were reduced by 8% due to initial budget cuts imposed on the Judiciary. Other court agencies incurred a 10.2% reduction to all funding. However, bankruptcy courts opted to take an 8% reduction to salaries and a 34% reduction to non-salary allotments in order to allow for a softer landing because of the already distressing effect of the new work measurement formula. This budget cut, along with the imposition of the new work measurement formula, resulted in our court receiving a salary allotment of $2,891,810.00 for FY13, which was an 8 % reduction from the $3,143,222.00 received in FY12. This is the amount the court anticipated it would receive prior to sequestration.

Once sequestration was implemented, the salary allotments were cut by an additional 4%, resulting in a total cut of 12% for our court this fiscal year. The final salary allotment received by the court for FY2013 was $2,776.773.00, resulting in a projected salary shortfall of $21,363.00.

Assuming, as we have been instructed to do, that the courts will sustain an additional 8 - 12% cut each year for the next two fiscal years, the effects on salaries will be compounded. Using an average cut of 10%, our court can expect to receive $2,634,836.00 next fiscal year (FY14), resulting in a shortfall of $159,764.00 based upon current onboard staff. Applying an additional 10% cut to FY15 will result in a salary allotment of $2,555,776.00 and a salary shortfall of $271,501.00. Shortfalls of this amount would result in significant furloughs and/or layoffs, which could result in the court closing a day or two per week.

In addition to these cuts, the court also anticipates receiving a cut for mandatory shared administrative services being imposed by the Administrative Office. These cuts would begin in FY14 with an approximately 3% cut to salaries in addition to across-the-board cuts, and would continue to increase over the next several fiscal years until it eventually reaches approximately 9%.

This court continues to make strategic decisions aimed at softening the impact of these continued budget, sequestration, and shared administrative services cuts, as discussed in my Memorandum on Cost Savings Initiatives submitted to you in conjunction with this memorandum. However, within the next year or two, the services that the court, and the Judiciary as a whole, will be able to provide will suffer significantly.

The New York Times

April 11, 2013

Sequestration of Justice

By EDITORIAL BOARD

Sulaiman Abu Ghaith is a son-in-law of Osama bin Laden and a former spokesman for Al Qaeda. He is accused of providing material support for terrorism, and, as the federal indictment against him charges, conspiring to "murder United States nationals anywhere in the world."

But Mr. Abu Ghaith is also an indigent defendant with a right to free counsel and is represented in his case by the Federal Defenders of New York. Lawyers in that office have now asked Judge Lewis Kaplan in Federal District Court to postpone the trial because the automatic federal budget cuts known as sequestration are leaving them short of resources and staff. The cuts amount to one-fifth of the office's budget between now and the end of September and will require furloughing 30 trial lawyers for five and a half weeks each during that time.

The judge said he found the prospect of a postponement in a case of this magnitude "extremely troublesome" and "stunning." That is how everyone should respond to the effects on justice of the budget cuts, which severely constrain the ability of the New York office to defend its clients fully, especially in complicated cases like Mr. Abu Ghaith's. The office represents about 40 percent of defendants in federal cases in New York's Eastern and Southern Districts. Another 40 percent are represented by court-appointed lawyers, while 20 percent pay their lawyers.

Sequestration cannot do away with the right to counsel for indigent defendants, so the hundred or more defendants who ordinarily would be represented by a federal defender in new cases between now and September will likely end up with court-appointed private lawyers. According to academic studies, such lawyers often achieve worse results at a higher cost.

The right to counsel is already badly battered in state courts, largely because most states grossly underfinance the representation of impoverished defendants. Indigent defense in federal criminal cases has served as an admirable contrast because of the high quality and availability of federal defenders. Now this system is in peril. Federal defenders will not be able to take the time to visit clients in prison or search for facts that could raise doubts about clients' guilt. All of this is yet another rebuke to the partisan standoff that prevents sensible budgeting.

Meet The New York Times's Editorial Board »

United States Bankruptcy Court
District of Delaware

Judge Kevin Gross
824 N. Market Street
Wilmington, DE 19801
(302)252-3664

SENATE JUDICIARY COMMITTEE
SUBCOMMITTEE ON BANKRUPTCY AND THE COURTS

Tuesday, July 23, 2013
3:00 P.M.

SEQUESTERING JUSTICE: HOW THE BUDGET CRISIS IS UNDERMINING OUR COURTS

TESTIMONY

Submitted for the Record
by Judge Kevin Gross, Chief Judge
United States Bankruptcy Court for the District of Delaware

I am submitting this statement on behalf of the Bankruptcy Courts from the Third Judicial Circuit (the "Bankruptcy Courts") and my own court from the District of Delaware, and I will attempt not to repeat the testimony provided by others. A statement which an executive from the Administrative Office of the Courts made in my presence in May 2011 defines the problem which the bankruptcy courts are encountering: "Our goal is to take the bankruptcy courts to just above the point of failure."

The goal has been reached, except that with the additional projected cuts in financing for bankruptcy courts, there is the risk of actual failure. To date, the Bankruptcy Courts have suffered a 28% reduction in funding and face additional cuts of 10 to 12% for the fiscal year ending in 2014. The Bankruptcy Courts have lost as much as one-third of their staffing, are sharing services, have failing technologies, are unable to replace and even maintain those technologies, and are abandoning space. The Bankruptcy Courts have furloughed staff with obvious economic hardships to employees and the necessity of limiting services and having to

forego hearing dates. All of these measures have been and are aimed at courts which generate a substantial percentage of the revenues of the federal courts.

It is important that the Subcommittee appreciate, as I am confident its members already do, that bankruptcy courts are unique in the judiciary and are also most susceptible to harm from reductions in funding. Unlike other courts (with the possible exception, to a lesser degree, of the district courts' criminal dockets), bankruptcy courts are not fully in control of their case scheduling. When a debtor files a bankruptcy case, it must be heard as soon as possible. Once a case is filed, the debtor is not able to continue its business without a bankruptcy court's supervision and authority. Staff are instrumental in enabling the judges to hear cases promptly. Therefore, reductions in staffing place great pressure on not only the bankruptcy courts but, as well, the nation's financial system which depends on the responsiveness and efficiency of the bankruptcy courts. Just as importantly, individuals who seek bankruptcy protection communicate directly with bankruptcy court staffs and utilize their assistance. Staff reductions significantly place debtors at risk. Also, the Bankruptcy Courts rely heavily on technology for filings, research, communications, and hearings. Although the Bankruptcy Courts are well equipped, maintenance and updates are critically important and expensive.

The Delaware Bankruptcy Court is also in an anomalous situation. While nationwide, bankruptcy filings have decreased by approximately 14%, the filings in Delaware have risen by approximately 30%. The great majority of these cases are large Chapter 11 cases. Such cases require extensive judicial resources. The cases involve many docket entries (usually numbering in the thousands), many emergency hearings, lengthy hearings, and extremely complicated issues involving armies of lawyers. Such matters place a great strain on the Court's resources -- resources which have been reduced by the budget reductions. The staff in the clerk's office has ben reduced from 72 to 44; funds are being reallocated from technology to maintain staffing; old equipment is being used for parts; the Court is sharing employees with other courts; and travel and training have been severely curtailed.

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July 18, 2013

Honorable Theodore A. McKee, Chief Judge
United States Court of Appeals
for the Third Circuit
22614 United States Courthouse
601 Market Street
Philadelphia, PA 19106-1790

Your Honor:

I know you are familiar with the history and complexity of the current crisis, and that you and your colleagues have been working diligently to help prevent a financial crisis that will substantially damage the Federal Defender program nationally and reduce the type, range and quality of services my office historically has provided to the Court and indigent defendants in the Western District of Pennsylvania. I understand that all court units are facing future financial uncertainty, but federal defenders, absent corrective action by the Judicial Conference, will suffer especially harmful and immediate consequences in fiscal year 2014 (FY14).

As you know, within the Judiciary's budget is an appropriation dedicated to funding Criminal Justice Act (CJA) services. The amount is approximately $1 billion. The money is used to fund both defender offices and CJA panel lawyers. Usually, the appropriation is sufficient to provide for full funding of defender offices and cover payments to panel lawyers. In the past, when it looked like the money would run short, panel payments were deferred for several weeks or more until the next funding cycle. In some instances, supplemental funds were sought and secured, which enabled the Judiciary to cancel planned deferrals.

Sequestration caused shortfalls of an unprecedented sort and, when the full impact of sequestration was realized in the spring, the Executive Committee decided that the shortfall would be shouldered primarily by defender offices, favoring the prompt payment of CJA attorneys over the preservation of our offices.

The impact of this decision resulted in a $684,000 deficit. Because close to 90 percent of my budget goes to salary and benefits, my options were extremely limited. After one layoff, one voluntary departure, one employee who volunteered to reduce her hours by 35 percent, and additional funds from the anomaly, we still had 25 furlough days per person over 14 pay

periods. Even if I had eliminated all remaining discretionary spending, the number of required furlough days would not have changed.

The losses and the furloughs have significantly and negatively impacted the already understaffed capital habeas unit's ability to handle its caseload. The loss of our Case Management Administrator, who, alone, managed CJA Panel appointments, means that my already overtaxed Administrative Officer has had to take on a second job to fill this void. We have not stopped taking cases, which has meant full caseloads on reduced schedules for all. I asked all of the lawyers to review their case lists and determine which cases needed to be expeditiously moved along and which did not. There have been postponements in nearly every case where a delay would not detrimentally affect the client.

Before getting to the devastation that lies ahead absent some action by the Judicial Conference, I think it is important to note that my office has always aggressively pursued cost containment. Over the last several years, we've trimmed library costs to the bone. We've reduced travel costs even though, during the same time period, our clients detained pretrial were moved to a remote location. We've sought and received 10-25 percent fee reductions from experts, and engaged a local university professor to provide computer forensics expertise free of charge. We've nearly eliminated travel for training, and limited the reimbursement for mileage to a rate commensurate with the lowest available cost of a rental car if a personal vehicle is used by choice. Our bilingual staff investigator is used for nearly all Spanish interpretation, eliminating almost all Spanish interpretation costs. We've re-negotiated maintenance and telephone contracts, negotiated discounts and fee waivers on medical and other records, and utilized excess property lists to obtain furniture, computers, and other equipment. We've eliminated cyclical computer replacements, except in the most dire circumstances.

Where training and/or case-related travel has been approved, my staff have stayed with family or friends instead of at hotels, and have agreed not to seek reimbursement for mileage or food. Some have taken voluntary leave without pay (pre-furlough) in an effort to help us keep costs down and preserve as much funding as possible for case-related costs. My Administrative Officer proudly keeps a running tab of our cost savings on her office door, and my staff takes savings seriously.

Despite the savings we've secured and the sacrifices already made, we've been told by the Office of Defender Services to prepare for additional substantial cuts to our funding in FY 14. Unless the Judicial Conference acts, I will lose 23 percent of the FY 14 preliminary budget, which roughly equates to the FY 2013 sequester budget minus an additional 14 percent. The Office of Management and Budget (OMB) advises that the additional cuts will result in a 33 percent reduction of staff in the Federal Defender system nationally. I know you have seen the OMB chart which predicts the loss of over 900, out of roughly 2,800, employees from the national Defender system by September 2015.

Those figures, while shocking, appear conservative. In the Western District of Pennsylvania, a 23 percent cut will result in a $1,740,502 deficit. To recoup that amount, I would have to layoff *at least* 15 of my 43 employees, or 35 percent of my staff. I emphasize *at least* because the number required will grow exponentially when the costs of separation – severance, lump sum leave payments, and unemployment – are calculated. For some long-term, but not retirement-eligible employees, separation costs could eclipse the cost of salaries and benefits – meaning the office will suffer the loss of needed staff without realizing any savings until FY 2015. Even if I resort to a combination of layoffs and furloughs, I still stand to lose at least 11 employees, or 26 percent of my staff.

If I am required to further reduce my relatively small and very lean staff, I would likely stop taking cases and release office space in the Johnstown division, where we have an un-staffed branch. I have also spoken to Chief Judge McLaughlin, who sits in the Erie division, about the possibility of closing our three-person staffed branch in Erie. There are only four local CJA attorneys on the Johnstown division panel, and only five local CJA attorneys on the Erie division panel. Because of the mix of cases in these divisions, and infrequent conflicts, we currently handle most of the approximately 200 cases from these divisions each year. Absent our presence, I would expect the cost of representation in each of these divisions to rise substantially because out-of-town CJA counsel necessarily would be more heavily relied upon to handle the cases. Pittsburgh division CJA counsel would travel 2 hours each way to either Johnstown or Erie for court and to visit clients in outlying county jails.

We would also be required to significantly reduce the number of cases we accept. (We currently take nearly all cases where there is no conflict.) In the cases we do take, I would expect more significant delays due to funding and staffing limitations. We would not have the lawyers, investigators or support staff to do the volume of work we do now. We've discussed refusing multi-defendant wiretap cases because of the time involved in reviewing the evidence. In these and other multi-defendant cases, we regularly represent the most culpable defendant and often serve as lead or coordinating counsel. We would likely also have to decline cases that might be too costly - among them large white collar cases and child pornography cases. Though our office is best situated to handle the challenges these cases present, it would be difficult to continue to accept appointments in cases we know are so time and resource intensive.

If the cuts envisioned come to fruition, the district court clerk's office would likely have to take responsibility for making CJA appointments, as we already are having difficulty managing appointments with the loss of our Case Management Administrator. Under our local rules, defendants are entitled to have counsel present at initial appearances and during pretrial services interviews. We cover most proceedings and ensure that CJA counsel is secured, sometimes on very short notice and often after work hours, for defendants in cases where we have a conflict. Our ability to support the panel - whether it be training, responding to daily inquiries or helping them arrange to get computers into local jails for clients to review discovery

- would be very limited. We postponed our annual CJA training this year because of lengthy furloughs and the additional case-related pressures they've caused. It is difficult to imagine that, operating with a significantly reduced staff, we would be able to assist the panel in the many ways we currently do. As the WDPA CJA Panel representative recently explained in a letter to Chief Judge McLaughlin, we "enhance private advocacy across the board by coordinating training . . . keeping the panel abreast of legal developments in the law and in practice, and by being available, when ethically appropriate and often on short notice, as a sounding board to panel lawyers litigating difficult cases."

In anticipation of the cuts, I am also consulting with the Assistant Federal Public Defender and investigator who staff the district's reentry court about ceasing our participation in that program. It is a troubling thought, though, because the reentry court participants often require our services outside of regular court meetings, and it is difficult to see how a private attorney could provide the kind of access and assistance that an institutional office does.

In every respect, shifting cases from the Defender office to the CJA panel is nonsensical and will only increase the cost of indigent defense. As a "cost-containment" effort, additional cuts to my office will fail miserably, as we already provide and best and most cost efficient defense available in federal court. Indeed, I recently completed a three-year cost analysis of cases handled by my office and the CJA panel, and found that, in each of the three years, our cost per case fell below that of the panel. Over the three-year period, we saved the judiciary, on average, more than $500,000 a year, while at the same time serving the court ably by providing high-quality representation to the federal court system's most vulnerable litigants.

If the 23 percent cuts are imposed, and I am required to lay off the number of staff outlined above, I expect other talented lawyers and staff will flee the office - either because they would certainly understand that their jobs would be no more secure come FY 15, or because they would not want to work in an environment where they could no longer provide the level of representation our clients deserve. It would be demoralizing, to say the least, to work in a system that sees neither a moral nor constitutional problem when the prosecution is funded and operating at full strength and the defense is crippled by budget cuts that could be averted.

I became Acting Defender almost 10 years ago. Over the last decade, either a member of my staff or I have served on every committee formed by the Court - to amend the local rules, review and propose model jury instructions, select or consider the reappointment of magistrate judges, among others. We also serve as *ex officio* members of bar association committees related to the federal courts and federal criminal practice, and are looked to by the court, the bar and our clients for information, support and assistance. We took on the extremely labor-intensive job of identifying over 500 defendants eligible for relief under both retroactive crack amendments after determining that neither the district courts filing system nor the probation office's records identified drug cases by the type of drug involved. We ensured that those eligible for relief under

United States v. Booker, the Fair Sentencing Act and *Dorsey v. United States* were identified and represented. Just recently, we assisted 70 juvenile offenders, sentenced to unconstitutional mandatory life sentences, file petitions for writs of habeas corpus and applications to file successive petitions under *Miller v. Alabama*. I receive hundreds of letters every year from prisoners and others seeking assistance. Though I am able to help very few, our office is viewed, as it should be, as a source of information and assistance for those seeking access to the courts. We play a vital institutional role that cannot be replaced by individual, private counsel. If the office is reduced to a shell of its former self, as it will be if the planned cuts take effect, we would no longer be able to play an institutional role, as we would no longer be able to handle the majority of cases in the district, maintain institutional knowledge or provide any institutional support to the court, the legal community or the public.

The Judicial Conference must act to avoid the devastating consequences of its present course. As you know, we need the Conference to agree on a spending plan that will allow the Federal Defender program to remain at current, through already substantially reduced, staffing levels. Deferring CJA panel payments is a tool the Judicial Conference has employed before, and I know you will implore your colleagues on the Budget and Executive Committees to employ it here to save the Federal Defender program.

In closing, I thank you again for your steadfast support for my office and the Federal Defender program. We very much appreciate your efforts on our behalf.

Very truly yours,

Lisa B. Freeland
Federal Public Defender

cc: Chief Judge Sean McLaughlin
United States District Court for the Western District of Pennsylvania

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REGGIE ALIGADA
*DOUGLAS OLSON
JAMES BECKER
SHANNON ELKINS
Assistant Defenders

TIM TREBIL
CHAD SPAHN
JOHN CICH
Investigators

19 July 2013

Senator Al Franken
309 Hart Senate Office Building
Washington, DC 20510

Re: Judiciary Committee Hearing - Sequestering Justice
July 23, 2013

Dear Senator Franken:

I write concerning the budget cuts that are looming over the Federal Defender offices, and next week's hearing of the Subcommittee on Bankruptcy and the Courts. The hearing, "Sequestering Justice: How the Budget Crisis is Undermining Our Courts," will highlight the devastating impact that the projected cuts will have on the courts in general, and on the Federal Defender system in particular. Put simply, the cuts will decimate the Federal Defender system, in Minnesota and nationally. I ask for your participation and your support.

The current figures involve a cut to the budgets of Federal Defender Offices of as much as 23 percent for fiscal year 2014. Consistent with offices around the country, the proposed reduction will cut this office to one half of what it was and where it should be, based on our caseload. We were already lean, by any measure. Already down one lawyer and one paralegal, this office consists of eighteen people: the defender, seven additional lawyers, three investigators, and seven other support staff. The cuts will require either that we eliminate an additional seven people, three lawyers and four support staff, that the office furlough all of its personnel for fifteen weeks, or some combination of the two. Once an office of twenty, with nine lawyers, we may become an office of ten. These outcomes are as untenable as they are inescapable, and the will be replicated in every District of every state.

Paradoxically, these cuts will increase the cost of indigent defense to the American taxpayer. There are forty-six AUSAs assigned to the criminal division of the Minnesota U.S. Attorneys Office. The eight lawyers currently in this office handle 75% of the criminal appointments in the District of Minnesota. With this level of staffing reduction, we will have to substantially reduce our workload. Of necessity, the remaining caseload will be shifted to the District's Criminal Justice Act (CJA) Panel. Because CJA representation is more expensive than representation by Federal Defenders, this shift will increase the cost of federal indigent defense.

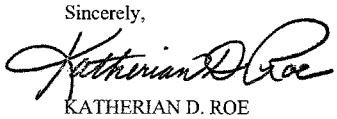
On average, a case handled by an Assistant Federal Defender in Minnesota costs only 70% of what representation by the CJA Panel costs. During the past three years, assigning cases to this office saved the taxpayer $ 4.1 million. These cost savings come both from the efficiencies and economies of scale available to centralized defender offices, and from the experience brought to each case by the attorneys from the Federal Defenders Office. The CJA Panel fully supports this office and whatever steps are necessary to secure adequate funding.

The lifeless statistics of these cuts fail to portray the human reality that lies underneath. If nothing is done, costs will rise, and the quality of representation that the poorest and neediest among us will receive will fall. Committed, experienced personnel will loose their jobs. A model and a system that has served this nation well for decades will suffer irrevocable harm, harm that no future restoration of funding will cure, even if such an outcome were possible. That these things would happen on the 50th anniversary of the Supreme Court's decision in Gideon v. Wainright, the decision that made the Constitution's promise of the assistance of counsel real for all Americans, is nothing short of tragic.

This is the situation we face in Minnesota, and it is also the situation facing defender offices nationwide. At the hearing, information concerning the national picture will be presented. I am grateful for the Subcommittee's attention to these issues, and hope for your participation in the process and your support of the Federal Defender system.

I attach a letter from Chief Judge Davis to the Executive Committee of the Judicial Conference concerning the state of affairs in Minnesota, and Fact Sheets that provide more information about the national situation. If additional information or input would be helpful, I would welcome the opportunity to provide it.

Sincerely,



KATHERIAN D. ROE
Federal Defender

KDR/ahm

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

CHAMBERS OF
MICHAEL J. DAVIS
CHIEF JUDGE
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July 15, 2013

Honorable William B. Traxler, Jr.
Chief Judge
United States Court of Appeals for the Fourth Circuit
C. F. Haynsworth Federal Building and
United States Courthouse
300 East Washington Street, Room 222
Greenville, SC 29601

Dear Chief Judge Traxler:

As Chief Judge of the District of Minnesota, I write to you today on behalf of all of the judges in my district to express our deep concern about the fiscal crisis that is threatening to decimate the Office of the Federal Defender in Minnesota.

Our Federal Defender's Office is a small office, with only eight attorneys and ten support staff. Despite the extremely lean staff, the Federal Defender represents 71% of indigent defendants charged with federal crimes in Minnesota (89% of single defendant cases), and over the past five years, the attorneys each averaged 85 weighted cases annually. If the looming budget cuts are implemented, the Federal Defender will have to eliminate two to three attorney positions and at least four support staff, effectively one-third or more of the remaining staff. In addition to the obvious negative impact on morale, the remaining attorneys and staff will be unable to maintain the existing caseload. As a result, many cases will have to shift to the Criminal Justice Act (CJA) Panel.

In these difficult financial times, we understand that funds are limited and recognize that some programs and positions within the judiciary may be eliminated or seriously cut. The Executive Committee of the Judicial Conference is faced with difficult decisions in reducing spending. Recognizing that, we still feel compelled to urge your Committee to reconsider how to distribute the cuts to the Defender Services budget. If the Federal Defender Program is required to shoulder the entire burden of cuts to Defender Services, it will no longer be the model it once was for indigent defense

representation. This is especially troubling as we celebrate the 50th anniversary of the Supreme Court's opinion in *Gideon v. Wainwright.*

In our district there are three different factors which make the continuing vitality of this program essential to the administration of justice in our court.

First, the Federal Defender reduces costs to the court and, ultimately, to the American taxpayer. On average, a case handled by an Assistant Federal Defender in Minnesota costs only 70% of what a private attorney would cost, who is appointed through the CJA Panel. The results of an analysis of the past three years of representations in the District of Minnesota, comparing costs of Federal Defender representation to CJA Panel representation, indicate that, during that three year period, assigning cases to the Federal Defender saved the taxpayer 4.1 million dollars. These cost savings come both from the efficiencies and economies of scale created by centralized defender offices, and from the experience brought to each case by the attorneys from the Federal Defender's Office. Their backgrounds and knowledge enable them to efficiently and effectively represent individual clients, learning the necessary skills and relevant case law and applying them to many cases.

Second, the quality of representation provided by the Office of the Federal Defender in our district is, simply put, exceptional. Consistently, these attorneys are skilled practitioners who are well prepared and knowledgeable about federal criminal law. They are dedicated and completely committed to the work they do. While many talented attorneys are among the ranks of our CJA Panel attorneys, in general the most consistent, high-quality representation has been provided by the Office of the Federal Defender.

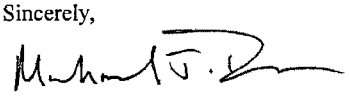
Third, the Office of the Federal Defender provides countless services to the Court that could not be replicated in their absence. For example, when the sentencing guidelines applicable to crack cocaine cases were reduced and made retroactive twice in the last five years, our Federal Defender's Office stepped in to help immediately. The staff and attorneys reviewed over seven hundred files to identify persons who might qualify for sentencing reductions, and then effectively represented the defendants who were eligible for relief. Beyond responding to major events such as retroactive changes in the guidelines, the Office of the Federal Defender also administers our CJA Panel. The Office conducts specialized training seminars that greatly improve the quality of representation the Panel attorneys are able to provide. Panel attorneys also benefit from being able to use the Federal Defenders as a resource for their cases and as a resource for keeping current with developing law. The Office has also created a Mentor Program,

which provides one-on-one training and mentoring designed to further improve the quality of future Panel members.

In addition, attorneys from the Office of the Federal Defender are always available to assist the Court when unexpected and critical issues arise. Whether they are asked to come immediately to the courtroom of a trial in progress to represent a witness for whom a Fifth Amendment concern has arisen, or asked to address visiting dignitaries from another country who want to learn about our justice system, or to participate in community outreach programs that are promoted by the Court, we can always count on the attorneys from the Office of the Federal Defender to assist. The Federal Defender is also frequently called upon to mediate between disgruntled clients and their Panel attorneys, often saving the Court the cost of a second attorney and a delay in the proceedings. It is difficult to imagine who would perform these challenging but essential functions if the Office of the Federal Defender is forced to reduce its staff even further.

The close attention brought to the defender system may ultimately identify national reforms that need to be made in staffing and funding in order to bring more uniformity and fairness to the distribution of resources. Perhaps that may benefit our district someday. For now, we are concerned with the negative impact that reducing the size of our Federal Defender's Office would have on the efficient and fair administration of justice in Minnesota and the quality of representation for indigent defendants, who are the least powerful and most needy amongst us. We urge the members of the Executive Committee to fund the federal defender offices by suspending panel payments for the period of time necessary to avoid further cuts to the defender budgets.

Sincerely,



Michael J. Davis
Chief Judge
United States District Court

cc: The Honorable William Jay Riley
The Honorable Rodney W. Sippel

Bcc: Katherian Roe

Office of the Attorney General
Washington, D.C. 20530

June 12, 2013

The Honorable Thomas F. Hogan
Secretary
Judicial Conference of the United States
One Columbus Circle, N.E.
Washington, D.C. 20544

Dear Judge Hogan:

We are writing to follow up on our recent conversations with members of the judiciary about the FY 2013 funding situation facing the Courts. As you know, we firmly believe that the Courts are absolutely essential to maintaining public safety and the integrity of the criminal justice system. It is imperative that we have a strong and effective judicial system in order to process criminal and civil cases, assure adequate representation and legal assistance to those in need, and to effectively assess those convicted of crimes for alternatives to incarceration, probation, and sentencing.

We recognize that the Court system operates effectively only when all of its functions are adequately funded and fully operational. This includes funding for court employees, probation pretrial services offices, and defender services (which provides defense counsel guaranteed under the Sixth Amendment). An effective court system is one of the foundations of our democratic society, and one of the Nation's bedrock institutions.

The furloughs and disruptions already seen within Court operations and the public defenders offices, as well as similar situations resulting in furloughs in other parts of the federal government, clearly demonstrate that sequestration is poor public policy that impairs a number of vital public services. For this reason, we fully support the effort to fix the sequester in a comprehensive way, so that the current problems facing our justice system, and the many other vital elements of our federal government as a whole, are resolved.

Sincerely,

Eric H. Holder Jr.
Attorney General

James M. Cole
Deputy Attorney General