



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

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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 unequalled, 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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