

**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.

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