



Perspective



Sequestering Justice Is Unjust

BY ROBERT J. ANELLO

Judge Julia S. Gibbons' testimony before the Senate Judiciary Subcommittee on Bankruptcy and the Courts at a hearing entitled "Sequestering Justice: How the Budget Crisis Is Undermining Our Courts" shined a well needed light on the shadow the sequester has already cast on the nation's federal courts and the criminal and civil justice systems.

These effects are of grave concern to those familiar with the important function courts play in administering this nation's laws. As the sequester persists, the pernicious effects will only worsen. The Federal Bar Council, an organization of attorneys who practice before the federal courts of New York, Connecticut, and Vermont, has expressed its concern to the president and Congress about how severely the sequester has compromised and will increasingly compromise both the courts and the Federal Defenders' ability to fulfill their constitutional duties.

In their role of administering justice, the federal courts provide services that are mandated by the U.S. Constitution and protect the fundamental rights of Americans of all backgrounds. These roles cannot unreasonably be 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 enforcement of 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. Although the budget sequester has affected all federal courts, the effects have been particularly acute in New York City, the country's financial capital, where the courts 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 the defense side.

As a result of the sequester, the budget for the Federal Defenders, charged with representing indigent defendants, has been dramatically reduced. This reduction 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.

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The disposition of criminal cases also has been slowed by cuts to these courts' Probation and Pretrial Services departments, which play a crucial role in sentencing defendants, and which protect the public safety by supervising defendants on probation.

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 in federal court in Brooklyn, the court 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 problem cannot be solved by further internal juggling of an already struggling staff. The courthouses' staff and the resources of the Federal Defenders' Office already have been sliced to the bone. In fact, in New York, rent and legal staff comprise 92 percent of the Federal Defenders' annual budget, leaving little fat to be cut beyond lawyers necessary to provide the defense the Supreme Court held 50 years ago in *Gideon v. Wainwright* was an essential part of our criminal legal system. Likewise, the court system in New York already has eaten into its contingency funds and court hours of access have been reduced. In the Clerk's Office for the Southern District of New York—covering notably Manhattan, Bronx, and Westchester—the court system staff has been reduced by 40 positions in the last three years and the court's probation department has been forced to lose 22 probation officer positions.

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 reduced their non-judge staffing by 40 percent over the past two years.

Restoration of budgeting to sustainable levels is essential to the provision of services that the public needs and deserves. The solution here is simple: Congress and the president need to act to ensure that our legal system continues to perform its essential function.

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