

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.*