

**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*			
Year	Commenced	Per Active Judge**	
		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:

$$\text{budget} = (\text{total staff}) \times (\text{the FDO's cost-per-staff factor})$$

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.

<b>Calculation of Base Year (FY 2010) Weighted-Cases-Opened (WCO) Per-attorney and Non-attorney to Attorney Ratios</b>	
SY 2010 WCO	500
SY 2010 Attorney FTE	10
<b>WCO per Attorney</b>	<b>50</b>
SY 2010 Non-Attorney FTE	20
<b>Staff Ratio</b>	<b>2 to 1</b>
<b>Calculation of FY 2013 FTE Ceiling</b>	
SY 2012 WCO	600
<b>WCO per Attorney</b>	<b>50</b>
FY 2013 Attorneys ( $600 \div 50 = 12$ )	12
<b>Staff Ratio</b>	<b>2 to 1</b>
FY 2013 Non-Attorneys ( $12 \times 2 = 24$ )	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 receive 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 policies 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.