July 30, 2013

The Honorable Chris Coons, Chair
Subcommittee on Bankruptcy and the Courts
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Coons:

I am writing on behalf of the American Bar Association to thank you for holding a hearing on June 23 highlighting the adverse impact of sequestration on the federal courts and to express our concern with regard to the mounting funding crisis facing the judiciary. We request that this letter be made part of the hearing record.

The federal judiciary’s annual appropriation must be sufficient to enable it to carry out all of the justice functions assigned to it by the Constitution and Congress. In addition to the actual adjudication of all cases filed in federal court, the federal judiciary is responsible for pretrial diversion programs and supervising defendants awaiting trial; providing representation for indigent criminal defendants; securing jurors for jury trials; supervising criminals on post-conviction release; and ensuring the safety of all those who work at or enter federal court facilities. These are vast responsibilities that generate workloads over which the judiciary has no control. For example, last year, over 350,000 cases were filed in the district courts and courts of appeals, and 1,200,000 cases in bankruptcy courts; 109,000 cases were opened in the pretrial services system, and 132,000 persons were under post-conviction supervision; and over 137,000 indigent criminal defendants were represented by federal defenders.

For 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 ABA concurs with your introductory statement that “[t]he sequester is slowing the pace, increasing the cost and potentially eroding the quality and delivery of justice in our country. Congress’ disappointing inability so far to responsibly replace the sequester and save the courts from these draconian cuts is eroding our fundamental constitutional right.”

As Judge Gibbons explained in detail at the hearing, as a result of FY 2013 sequestration cuts, the courts have had to continue to downsize and furlough staff, a process that began in 2011, and
to scale back programs and services that, in the long-run, save the government money. These include pretrial diversion programs; representation of indigent defendants through federal and community defender offices; use of electronic monitoring and other alternatives to incarceration; post-conviction supervision; and court security equipment and services. Funding for programs and services authorized under The Second Chance Act and proven to reduce recidivism has been eliminated entirely.

The adverse impact of sequestration on Defenders Services is particularly pronounced and worrisome. Federal defender offices across the country are downsizing or furloughing staff for 15 days or more this fiscal year. To mitigate the need for additional staffing cuts, payments to CJA panel attorneys will be suspended for the last three weeks of this fiscal year. Understaffed and underfunded, defender organizations are having difficulty keeping up with caseloads and securing the funds to pay for expert witnesses and other costs of representation. Criminal prosecutions have not abated because U.S. attorneys, their counterparts at the Department of Justice, are not facing furloughs. The differential effect of sequestration on prosecutor and defender offices is creating a marked imbalance in our justice system. Continued 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.

We believe the congressional appropriators got it right: both the House and Senate Appropriations Committees recommended a FY 2014 appropriation for the federal judiciary that restores the funding cuts imposed by sequester. We favor the Senate bill, which recommends a FY 2014 appropriation of $6.67 billion for the judiciary -- a 2.2 percent increase over the FY 2013 enacted appropriation -- and hope that it serves as a template for any final judicial funding plan for FY 2014.

The federal judiciary is essential to preserving our constitutional democracy, security, and freedom. Restoration of funding cuts must not be delayed or denied. Regardless of the outcome of current fiscal negotiations or the vehicle used to fund the government in October, we urge Congress to protect the federal judiciary from future deficit reduction and to increase funding for FY 2014 to the Senate Appropriations Committee’s recommended level of $6.67 billion.

Sincerely,

[Signature]

Thomas M. Susman

cc. Members of the Subcommittee