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3 FORUM EXAMINING THE IMPACT OF THE FEDERAL GOVERNMENT SHUTDOWN
4 AND SEQUESTRATION ON THE PROVISION OF JUSTICE IN THE UNITED
5 STATES

6 Tuesday, October 8, 2013

7 House of Representatives

8 Committee on the Judiciary

9 Washington, D.C.

10 The forum met, pursuant to call, at 2:08 p.m., in Room
11 2237, Rayburn House Office Building, Hon. John Conyers
12 presiding.

13 Present: Representatives Conyers, Nadler, Scott, Watt,
14 Lofgren, Jackson Lee, Cohen, Johnson, Pierluisi, Chu, Deutch,
15 Gutierrez, Bass, Richmond, DelBene, Garcia, and Jeffries.

16 Mr. Conyers. The Forum Examining the Impact of
17 Government Shutdown and Sequestration on the Provision of
18 Justice will come to order. Thank you all for coming.

19 So that we may begin and move as rapidly as possible --
20 I know this is a fantastic panel that we have. We are deeply
21 honored that you are all -- everybody is here. We are going
22 to limit our opening statements to a couple minutes, those
23 that may want to make any, so that we can begin to get your
24 analysis and recommendations right away. We are deeply
25 grateful for the quick response that we got from the
26 distinguished members of the panel.

27 As we meet today, we are staring at both the financial
28 and legal abyss resulting from the overlapping effects of an
29 arbitrary budget sequester, a needless Government shutdown,
30 and a looming financial default. All of these actions can
31 and should have been avoided.

32 The sequester could have been avoided with a common
33 sense, long-term budget agreement, including taxes that
34 should be paid by the very wealthiest among us. The shutdown
35 could be ended in a matter of hours, if the Speaker would
36 simply allow an up-or-down vote on a clean continuing
37 resolution. And as the President of the United States has
38 repeatedly reminded us, the full faith and credit of the
39 United States has no business being used as a political
40 negotiating tool.

41 And so, I close with this observation. The financial
42 impact of these events on the Department of Justice and the
43 Federal courts is grave and growing each day.

44 And so, with that, I will close down my remarks and
45 yield to the former subcommittee chairman of crime, the
46 gentleman from Virginia, Bobby Scott.

47 Mr. Scott. Thank you, Mr. Chairman.

48 And like you, we want to get right to the witnesses. So
49 I will really cut my statement significantly.

50 We know the shutdown is having an effect, and the focus
51 today is the effect it is having on the judicial system --
52 the courts, criminal and civil -- and the operation of the
53 Department of Justice. One of the particular areas is what
54 it is doing to the criminal justice system, how you can
55 operate the courts in the middle of the shutdown, and that is
56 what we are going to hear today, and I thank you for
57 convening the panel.

58 Mr. Conyers. Thank you so much.

59 Hank Johnson, Georgia.

60 Mr. Johnson. Thank you. Thank you, Mr. Chairman, for
61 hosting this gathering today. It is very important.

62 Justice delayed is often justice denied, and with the
63 cuts under sequestration coming on top of other cuts, we are
64 at the point where we are delaying justice. And I am sure
65 that you all on the panel can probably point to many cases

66 where injustice has been documented.

67 But I do want to say that it is ironic that with this
68 Government shutdown and sequestration coming before it, it is
69 ironic that a member of the bar would be part of the problem,
70 a large part of the problem. I want to read to you the first
71 paragraph of the article in the New York Times, dated October
72 the 5th, by Sheryl Gay Stolberg and Mike McIntire.

73 "Shortly after President Obama started his second term,
74 a loose-knit coalition of conservative activists led by
75 former Attorney General Edwin Meese III gathered in the
76 capital to plot strategy. Their push to repeal Mr. Obama's
77 healthcare law was going nowhere, and they desperately needed
78 a new plan."

79 So it is unfortunate that we find ourselves in this
80 position, and with that, I will conclude.

81 Mr. Conyers. Thank you very much.

82 The gentlelady from California, the Honorable Judy Chu.

83 Ms. Chu. Well, I want to thank you for having this
84 very, very important hearing. The Government shutdown is
85 costing the economy \$200 million to \$300 million a day, and
86 it is so important for us to hear about how these cuts are
87 affecting the ability of the Federal courts and the Justice
88 Department to fulfill their responsibilities.

89 I want to hear about how these cuts are affecting
90 domestic violence programs. Domestic violence programs were

91 appropriated nearly \$405 million last year. Nevertheless,
92 after rescission and the sequester cut out more than \$20
93 million, resources were significantly reduced, and I look
94 forward to hearing from you in terms of the real impacts on
95 how these cuts are affecting women, men, and children from
96 being safe from rape and abuse, as well as how it is
97 affecting our domestic violence shelters.

98 And I want to hear about how this is affecting our
99 voting rights laws. There are so many areas where we are
100 trying to ensure that people will be able to exercise their
101 rights as citizens in this country, and yet we do know that
102 these voting rights losses can truly be burdensome and
103 challenging these setbacks that are occurring to our laws.

104 And I want to hear about our Federal court system, which
105 has been subject to unprecedented funding losses. This has
106 resulted in staffing losses and other programmatic cuts, but
107 what I want to hear is about the public defenders who are
108 supposed to provide the counsel to indigent defenders who
109 don't have the resources to hire attorneys. I want to see
110 what the real effects are of that.

111 And so, I look forward to hearing your testimony and
112 hearing what the true effects are of these cuts.

113 Thank you, and I yield back.

114 Mr. Conyers. Thank you.

115 To my friend Mel Watt of North Carolina, we are all

116 taking just a couple minutes as opening statements so we can
117 get directly to these excellent witnesses that have responded
118 so early.

119 The gentleman from North Carolina, subcommittee chairman
120 Mel Watt.

121 Mr. Watt. Thank you, Mr. Chairman.

122 I just want to thank the chair for convening us here,
123 and I think I will yield back my time and listen to the
124 witnesses. Might be better than them listening to me.

125 Mr. Conyers. Thank you. Uncharacteristically brief,
126 but definitely welcome.

127 [Laughter.]

128 Mr. Watt. Characteristically brief.

129 Mr. Conyers. Oh, yes. I meant characteristically
130 brief.

131 Suzan DelBene, distinguished member of the committee
132 from Washington State, is recognized now.

133 Ms. DelBene. Thank you.

134 I also want to thank the chair for calling this hearing
135 together. I really appreciate it and appreciate all of you
136 being here and taking the time today to give us your
137 feedback.

138 And like Congressman Watt, I just want to be brief. I
139 really want to hear from you. So thanks again for being
140 here, and I yield back my time.

141 Mr. Conyers. Thank you very much.

142 And the gentleman from New York, Jerry Nadler, chairman
143 of the -- former chairman of the Constitutional Subcommittee,
144 senior member of the Judiciary Committee in the House.

145 Mr. Nadler. Thank you, Mr. Chairman. Thank you, Mr.
146 Chairman.

147 I, too, will be uncharacteristically brief. I want to
148 thank you for calling this hearing. I want to thank our
149 witnesses.

150 The constitutional duty of providing defense counsel to
151 people who cannot afford it in criminal trials is clear. It
152 is equally clear that even before the sequester and before
153 the shutdown, we were doing a far from adequate -- indeed, I
154 would say unconstitutionally inadequate -- job of doing so.

155 It is clear that the sequester and now the shutdown is
156 making it far worse. And that is not the only impact on the
157 judiciary, but it is the most constitutionally clear
158 violation.

159 I look forward to hearing from our witnesses about the
160 impact, and unfortunately, it is pretty clear what we ought
161 to do about it. So we don't really need a lot of advice on
162 what to do. We need to end the shutdown. We need to end the
163 sequester, and we need to give adequate funding.

164 But it is very valuable to highlight just how deep the
165 problem is right now, and I thank all our witnesses. And I

166 thank the chairman, and I yield back.

167 Mr. Conyers. Thank you very much, Jerry.

168 We welcome our panelists who were convened under very
169 tight circumstances. We rarely come together this quickly,
170 and I am indebted to Diane Moyer, Scott Lilly, Nan Aron, Don
171 Saunders, Ron Kengle, A.J. Kramer, Judge Furgeson, and the
172 president of the American Bar, Mr. Silkenat, who I would
173 invite to be the first witness.

174 I wanted to just say that, in addition to being the
175 president of the American Bar Association, he is also a
176 member of the Council on Foreign Relations and the American
177 Law Institute, has served as the chair of the Lawyers'
178 Committee for International Human Rights, was a fellow in the
179 United States Department Scholar Diplomat Program, and is a
180 Juris Doctor graduate from the University of Chicago Law
181 School.

182 Welcome gentlemen, and welcome, Mr. President, and we
183 invite you to begin our discussion here today.

184 STATEMENTS OF JAMES R. SILKENAT, PRESIDENT, AMERICAN BAR
185 ASSOCIATION; HON. W. ROYAL FURGESON, RETIRED FEDERAL DISTRICT
186 JUDGE; A.J. KRAMER, FEDERAL PUBLIC DEFENDER FOR THE DISTRICT
187 OF COLUMBIA; ROBERT KENGLE, CO-DIRECTOR, VOTING RIGHTS
188 PROJECT, LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW; DON
189 SAUNDERS, VICE PRESIDENT OF CIVIL LEGAL SERVICES, NATIONAL
190 LEGAL AID AND DEFENDER ASSOCIATION; NAN ARON, PRESIDENT,
191 ALLIANCE FOR JUSTICE; SCOTT LILLY, SENIOR FELLOW, CENTER FOR
192 AMERICAN PROGRESS; AND DIANE MOYER, BOARD MEMBER, NATIONAL
193 ALLIANCE TO END SEXUAL VIOLENCE AND LEGAL DIRECTOR FOR THE
194 PENNSYLVANIA COALITION AGAINST RAPE

195 STATEMENT OF JAMES R. SILKENAT

196 Mr. Silkenat. Thank you very much.

197 My name is Jim Silkenat. I am a partner in the Sullivan
198 & Worcester law firm office in New York City and am president
199 of the American Bar Association, the voluntary bar
200 association of more than 400,000 members around the country.

201 Thank you for inviting the ABA to participate in this
202 forum to discuss the adverse impacts, effects of the
203 Government shutdown and sequestration on access to justice
204 throughout the Nation. This is a discussion we need to have
205 in public fora like this again and again to be sure that all
206 Americans know what is at stake if Congress fails to provide

207 the Federal judiciary with the funds it needs to fulfill what
208 is at stake -- to fulfill resources for the judiciary, and
209 our concern for the judiciary grows every day.

210 I am going to start with some general comments on the
211 nature of the judicial function, what is at stake here, then
212 address the preeminent issue of the moment, the Government
213 shutdown, and end with a brief comment on sequestration,
214 which we feel is maybe the most important problem involved.

215 Even though the effects of the shutdown require
216 discussion, and I am glad we are doing this, I want to make
217 clear from the start that the ABA believes that the funding
218 cuts mandated by sequestration pose the greatest challenges
219 to the fair administration of justice and the timely
220 resolution of disputes in the United States.

221 The Federal judiciary's annual appropriations really
222 must be sufficient to enable it to carry out the many justice
223 functions assigned to it by Congress and by the Constitution.
224 So, in addition to the actual adjudication of all the cases
225 that come before it, that come before the courts, the Federal
226 judiciary is responsible for a number of other programs --
227 pretrial programs and supervision, defendants awaiting trial,
228 supervising them, providing representation for indigent
229 criminal defendants, securing jurors for jury trials,
230 supervising criminals on post conviction release, and
231 ensuring the safety of all those who work in courts and who

232 attend court functions.

233 These are vast responsibilities that generate workloads
234 over which the judiciary has no real control itself. For
235 example, last year, more than 350,000 cases were filed in
236 district courts and our courts of appeal, and 1,200,000 cases
237 in bankruptcy courts. One hundred thirty-two thousand
238 persons were under post conviction supervision by the courts,
239 and over 137,000 indigent criminal defendants were
240 represented by Federal defenders. That is a very full plate
241 for our court system.

242 For the Federal court system to operate efficiently and
243 effectively, there must be sufficient funding to handle the
244 caseload generated by each of these essential functions.
245 Inadequate funding of any one of the functions will have a
246 negative ripple effect really throughout the system.

247 On the first day of the shutdown, I issued a statement
248 on behalf of the ABA stating that the failure of Congress to
249 compromise on a budget imperils justice in our country and
250 calling on Members of Congress to immediately resolve the
251 problem. The political brinksmanship that brought our
252 Government to a standstill reflects, I think, the same
253 intransigence and unwillingness to compromise that imposed
254 sequestration on Government programs and activities,
255 including all activities of the Federal judiciary.

256 This is not the first time that there has been a lapse

257 in appropriations or a Government shutdown. What
258 distinguishes this one, though, from prior ones is that it
259 comes on the heels of a year of difficult and unprecedented
260 funding cuts and staff reductions mandated by sequestration.

261 The judiciary, unlike most Federal entities, did not
262 have to implement a shutdown plan on October 1st. That is a
263 plus. The Executive Committee of the Judicial Conference of
264 the U.S. Courts authorized the use of funding from filing
265 fees and long-term appropriations to keep the courts in
266 operation.

267 The Administrative Office of Courts estimated that
268 funding from these sources will be sufficient to keep the
269 courts operating and prevent staff furloughs for
270 approximately 10 days, or through October 15th. And if the
271 shutdown continues beyond October 15th, the judiciary will
272 operate under the terms of the Anti-Deficiency Act, which
273 allows essential work, and as a defined term, to continue
274 during a lapse in the appropriations.

275 Essential work in this context means activities
276 necessary to support the exercise of Article III judicial
277 power, resolution of cases in which there is a constitutional
278 or statutory grant of jurisdiction, emergency activities
279 necessary for the safety of human life and protection of
280 property, and activities otherwise authorized by law of
281 judicial salaries and so on.

282 [The statement of Mr. Silkenat follows:]

283 Mr. Conyers. Thank you very, very much. President of
284 the American Bar, James Silkenat.

285 I turn now to the dean of the University of North Texas
286 at Dallas College of Law, himself a recently retired member
287 of the United States District Court for the Northern District
288 of Texas, the Honorable Mr. Royal Furgeson.

289 STATEMENT OF HON. W. ROYAL FURGESON

290 Judge Furgeson. Thank you very much, Mr. Chairman.

291 And thank you for this opportunity to appear here today
292 in order to discuss the challenges facing the Federal
293 judiciary because of sequestration and the Government
294 shutdown.

295 For over 19 years, I was honored to be a United States
296 district judge serving in Texas. I retired on May 31, 2013,
297 and now I am the dean of a new law school.

298 May I begin by sharing two stories in order to give
299 context to my testimony? The first story is about my service
300 as a border trial judge. The second is about my chairmanship
301 of the Judicial Resources Committee of the Judicial
302 Conference.

303 I was sworn in as a Federal judge on March 31, 1994, and
304 began my service in El Paso and then was transferred to the
305 Midland and Pecos Divisions of the Western District of Texas.
306 The Pecos Division covers 420 miles of border with Mexico and
307 is a far-flung region of open range and small towns. It
308 includes the Big Bend National Park, which is the fourth-
309 largest national park in the lower 48 States.

310 In the first year of my service in Pecos, 1995, there
311 were 17 criminal cases filed involving 20 defendants. By the
312 time the year 2001 rolled around, there had been 424 cases

313 filed in 1 year with 552 defendants, an increase of more than
314 1,000 percent. This occurred because of the Southwest Border
315 Initiative, which doubled the size of the Border Patrol on
316 the Southwest border.

317 During that period of time, during that enormous and
318 amazing increase in docket, all of the members of the court
319 family -- the U.S. marshals, U.S. attorneys, the attorneys
320 receiving appointments -- the court family and the judges
321 were really overrun with cases. It was a time of unremitting
322 stress, and things on the border are, in fact, unfortunately,
323 much the same today.

324 I share this story with you not to impress you with our
325 hard work, but rather to inform you that every one of us --
326 the marshals, attorneys, judges, and court staff -- never
327 wavered in our devotion to our duty, no matter how
328 challenging our days and nights became. And our inspiration
329 was, in fact, the Constitution and our commitment to making
330 it work for all of our citizens, even in a place as remote as
331 the border region of Texas.

332 That is the mentality that continues to drive the
333 Federal judiciary. We are a co-equal branch of the United
334 States Government embodied in Article III of the
335 Constitution, and it is our duty to ensure that the
336 Constitution works for all of our citizens all the time. To
337 do less is simply unacceptable, and yet human effort can only

338 go so far. You can only do so much trying to do more with
339 less until you cannot do so.

340 Like any human institution, the Federal judiciary needs
341 appropriate resources to perform its responsibilities, and
342 now, because of sequestration and the Government shutdown,
343 the men and women of the Federal judiciary face the
344 unthinkable. They no longer have resources necessary to meet
345 their constitutional mission. And if things don't change
346 very soon, they might not be able to adequately do their job.

347 This brings me to my second story. In 2004, the
348 Congress told the Federal judiciary that we needed to do
349 everything possible to contain our costs, and so we set about
350 doing that. I was the chair of the Judicial Resources
351 Committee of the Judicial Conference, and my committee was in
352 charge of people. And since the Federal judiciary is
353 basically people, we set about to meet the requirements of
354 Congress.

355 We have always been good stewards of taxpayer dollars,
356 but we committed to redoubling our efforts in those years of
357 cost containment. And at some sacrifice, we made
358 recommendations that changed our human resources in such a
359 way that \$300 million were saved over the next 10 years in
360 the judiciary.

361 I share this second story just to highlight the
362 stewardship of the Federal judiciary. As you know, recent

363 events have really been difficult for the judiciary. There
364 was a hard freeze in 2012, and then with sequestration, \$350
365 million have been taken from the judiciary's budget. The
366 impact of these cuts really cannot be adequately mitigated.

367 And now we look at a situation where, if the shutdown
368 continues and sequestration continues, there would be a loss
369 of approximately 3,700 positions from the Federal judiciary
370 in 3 years. That would bring our employee count in the
371 Federal judiciary in 2014 to less employees than we had in
372 1999.

373 Of course, I sit next to someone from Defender Services,
374 and the consequences of the shutdown and the sequestration
375 have ravaged our Defender Services, and you will be informed
376 of that.

377 Let me say that probation and pretrial have been
378 impacted. Our clerks offices have been impacted. In fact,
379 in probation and pretrial, there has been a 20 percent
380 reduction in our GPS and electronic monitoring, a 20 percent
381 reduction in funding for drug testing and substance abuse and
382 mental health.

383 While this sequestration and the Government shutdown
384 will not close down the Federal judiciary, it will impact
385 almost all of its operations, with effects being felt
386 unevenly across the country. It is, therefore, a fact that
387 justice, as Congressman Johnson said, will be delayed, and

388 therefore, in many instances, will be denied.

389 For the foreseeable future then, Article III of the
390 Constitution will not work as it must. We know that this is
391 an age of great cynicism. But yet, even in a time like this,
392 I thought it would be inconceivable that the Constitution
393 could be dealt such a crippling blow.

394 The heart of our democracy is the Constitution and the
395 rule of law, and the first thing the Preamble requires is
396 that our more perfect union establish justice. And now,
397 today and tomorrow and tomorrow, the Constitution will be, in
398 many instances, placed on hold. The longer the shutdown
399 goes, the worse it will get.

400 The irony of all of this is that the appropriators from
401 both the House and the Senate, Republicans and Democrats
402 alike, have recommended marks for this fiscal year that will
403 provide the Federal judiciary with sufficient resources to
404 perform its constitutional responsibilities. But as long as
405 the shutdown continues, these most thoughtful proposals
406 remain in abeyance.

407 You asked what my recommendation was. I will tell you
408 what my hope is. My hope is that the shutdown and
409 sequestration will end, and the recommendations of the House
410 and Senate appropriators will be adopted.

411 Thank you for this privilege.

412 [The statement of Judge Furgeson follows:]

413 Mr. Conyers. Thank you so much, Judge Ferguson.

414 Our next witness is the Federal public defender from the
415 District of Columbia, Mr. A.J. Kramer, by way of Stanford
416 University and Boalt Hall School of Law at the University of
417 California.

418 Welcome to the hearing.

419 STATEMENT OF A.J. KRAMER

420 Mr. Kramer. Thank you, Chairman Conyers, and thank you
421 for the invitation. I appreciate it.

422 Thank you again. My name is A.J. Kramer. I am the
423 Federal public defender for the District of Columbia. I
424 opened the office here in the District of Columbia in 1990.
425 So I have been here for 23 years. Prior to that, I was in
426 Federal public defender offices in San Francisco and
427 Sacramento.

428 I have come to appreciate over those years that the
429 Federal Government has many crucial functions, but probably
430 few more important than its justice system. Indeed, it is a
431 separate and co-equal branch of Government.

432 And the criminal justice system in particular, dealing
433 with people's lives and liberties and which is held out to
434 its own citizens, the citizens of the United States, is an
435 example and to the rest of the world is an example of what a
436 system should be and the effects it has on people's lives and
437 liberties, the community of those people, the families and
438 the victims.

439 It is ironic that 50 years ago, the Supreme Court
440 decided the seminal case of Gideon v. Wainwright in which
441 Justice Black wrote the famous words that "lawyers in
442 criminal cases are necessities, not luxuries." He also said,

443 speaking for a unanimous court, "The right of one charged
444 with crime to counsel may not be deemed fundamental and
445 essential to fair trials in some countries, but it is in
446 ours," setting an example for the rest of the world.

447 He also quoted Justice Sutherland's words in the case
448 Alabama v. Powell that even though a defendant "be not
449 guilty, he faces the danger of conviction because he does not
450 know how to establish his innocence." The court went on to
451 note that of the first eight amendments to the Constitution,
452 a number of them dealt with fundamental rights to a fair
453 trial in the United States that the Constitution had provided
454 because of what the colonists had perceived as abuses in the
455 criminal justice system.

456 And I think anyone who has been accused of a crime, or
457 even received a traffic ticket, recognizes the need for an
458 adequate defense when they go to court. If you go to court
459 without a lawyer, the procedures, the language, the way
460 things are done, you are pretty much helpless.

461 You ask any prosecutor, they will say they want a good
462 defense lawyer representing someone so that they know that
463 the conviction, if there is one, or the acquittal, if there
464 is one, was done properly, or whatever the result of the case
465 is. You have judges who I think will tell you that they want
466 a good defense lawyer if they have to impose a substantial
467 sentence, as many sentences are nowadays. They want to know

468 that the person received adequate representation before it
469 came to that point.

470 And we still hold out our criminal justice system,
471 especially the Federal system, as an example to the rest of
472 the world. Especially in these times when people are being
473 extradited from other countries, we hold out to those other
474 countries that they will receive a fair trial in the United
475 States that they might not receive elsewhere and that one of
476 the hallmarks of that fair trial is the right to have
477 competent and adequate counsel to represent them when they
478 get to the United States.

479 And as the Federal public defender in D.C., which is a
480 unique jurisdiction, we represent many people who have been
481 extradited here where nothing happened in the United States
482 and the immensity of the undertaking of those defenses and
483 the resources required for those are enormous. So I am well
484 aware, firsthand knowledge, of how we hold this example out
485 to the rest of the world and yet what we have to do to ensure
486 that we are setting this example for the rest of the world
487 and continuing to do it.

488 And yet, at the same time we celebrate Gideon v.
489 Wainwright, the cuts to the Federal courts have been -- their
490 being catastrophic I think is an appropriate word, and the
491 Federal public defender system in particular has been
492 decimated, both by cuts, the sequestration, and now the

493 Government shutdown has had a huge effect on us.

494 And the great irony of all this is that the reductions
495 to the Federal public defender system and budgets and the
496 clerks offices, which cause delay, and the probation offices,
497 which mean programs aren't available for our clients, the
498 cuts to all the court system will actually result in higher
499 cost to the Government in the end, to the citizens of the
500 United States.

501 Federal defenders are extremely cost effective. If we
502 cannot handle cases, they go to the Criminal Justice Act
503 attorneys. And while most of them are very good, extremely
504 good attorneys, their cost per case are higher than Federal
505 defender offices.

506 And if it turns out that somebody did not get a
507 competent lawyer, there is a lot of post conviction
508 litigation that can drag on for years at great expense to the
509 system, to victims, to witnesses that can drag on. So that
510 can be an added cost as well and an irony to the cuts into
511 the very effective Federal defender system.

512 This all comes at a time when the Federal prison system
513 has exploded due to mandatory minimum sentences in the
514 sentencing guidelines and at a time with the increasing
515 complexity in Supreme Court rulings in those statutes and
516 laws. And I don't think it matters of your politics. You
517 want to know that under our Constitution, someone only enters

518 the criminal justice system if they are going to get adequate
519 counsel and adequate representation.

520 I can speak personally of our office. We ended up
521 taking 10 days of furlough per person, which had a terrible
522 effect, both on morale, on people's paychecks, and on
523 delaying cases and the representation of people.

524 We have an ethical obligation to our clients under the
525 rules of the bar, obviously, wherever you are admitted.
526 Cases continue on, but they get delayed if people can't be in
527 court on a certain day. They get delayed if people don't
528 have time to file a motion. They get delayed if you can't
529 hire the expert or witness investigator that you need.

530 So while cases -- and while people were on furlough, I
531 can tell you that you could find people at the D.C. jail
532 interviewing their clients on days that they were on
533 furlough. You could find people at home writing motions.
534 They weren't allowed to be in the office, but they were
535 allowed to work at home writing motions, and it has -- it is
536 an incredibly dedicated group of people, and it has an effect
537 on morale. And people get the job done because we have to
538 get the job done.

539 But I will tell you that 94 percent of our budget is
540 personnel and rent. We have to pay our rent to GSA. And so,
541 if we have to cut anything, it is personnel, and we are all
542 personnel. I can't send a computer to court yet, but I have

543 to send a person to court to represent somebody.

544 And we have nothing else really we can cut. There is
545 really very little left in our budget. We don't give grants.
546 We don't have big automation systems. We don't have any
547 kinds of other systems out there that we can cut.

548 So when we cut, it affects the system as a whole. It
549 affects the people in our office. The human costs of this
550 are enormous. The human cost to the defendant, who, because
551 a lawyer might not have caught something, has to spend extra
552 time in jail; the cost to society of that expense, as well as
553 the prolongation of the sentence; the effect on the person's
554 family.

555 You read -- it seems like you read every month, I won't
556 say every day, but every month about somebody who was
557 wrongfully convicted and has been freed and the immense cost
558 to society of that, as well as to the individual and their
559 family, and the technologies that turned out to be bogus and
560 that if there were adequate resources, such as some of the
561 FBI bullet examinations.

562 So, and this is especially unfortunate in my mind
563 because it affects the minorities and the lowest
564 socioeconomic status in this country disproportionately in
565 the Federal criminal justice system. So the effects of the
566 sequester and soon to be -- as you were told by President
567 Silkenat and Judge Furgeson, the courts have enough money to

568 run until next Tuesday.

569 As of next Tuesday or Wednesday, we will also join in
570 the furlough situation, which will make things -- we had cut
571 to the bone. The Federal defender staff has been reduced by
572 8 percent as a result of sequestration. Some incredibly
573 dedicated and some of the best and brightest people have had
574 to leave the system, either by layoffs, retirements, or
575 taking other jobs because of the situation.

576 And the human effect of single parents and people living
577 paycheck to paycheck, we have had employees ask about taking
578 loans from their IRAs and their Thrift Savings and from banks
579 because they won't be getting paychecks. But as I said, the
580 great irony of all of this is that, in the end, it will
581 result in costing the taxpayers more money because of all the
582 problems that arise and the delays that arise as a result of
583 the sequestration and now the shutdown.

584 Thank you very much again.

585 [The statement of Mr. Kramer follows:]

586 Mr. Conyers. Thank you, Federal public defender Kramer.

587 I now call on the co-director of the Voting Rights
588 Project for the Lawyers' Committee for Civil Rights under
589 Law. My first visit in the White House as an attorney was
590 when that committee was formed.

591 And we have Robert Kengle with us, who has won awards
592 from the Civil Rights Division, from the Attorney General's
593 Award for Excellence in Information Technology, an adjunct
594 law professor at Georgetown Law Center, and I am pleased to
595 recognize you at this time.

596 STATEMENT OF ROBERT KENGLE

597 Mr. Kengle. Thank you so much, Mr. Chairman.

598 On behalf of the Lawyers' Committee for Civil Rights --
599 on behalf of the Lawyers' Committee, I am very pleased and
600 honored to be asked to address you today.

601 I guess my role is somewhat as a proxy for the
602 Department of Justice and, more specifically, the Civil
603 Rights Division. I was in the Voting Section of the Civil
604 Rights Division for about 20 years, and I was out on sick
605 leave during the last governmental shutdown. So I am not
606 sure exactly how that was handled, but I can tell you that
607 the Section 5 work was highly prioritized then and that there
608 were essential employees designated to look at Section 5
609 submissions.

610 Now, as I will mention in a few minutes, the picture is
611 a little different. I understand that the Office of
612 Legislative Affairs has provided some information to you
613 about the department as a whole. My sense is that the civil
614 work in the Civil Rights Division has basically been stopped
615 in its tracks as a result of the shutdown, and I will try to
616 be more specific in talking about the voting rights cases
617 that I am familiar with.

618 I attempted to get some additional information from my
619 former colleagues in the Voting Section management, but

620 unfortunately, nobody is answering the phones there. I think
621 that the impact has been very severe in the section and in
622 other branches of the division.

623 My understanding is that approximately 70 percent of the
624 Civil Rights Division is furloughed. Of the employees who
625 are on essential status, I think they are concentrated in the
626 Criminal Section of the division, where they have speedy
627 trial considerations, and it is especially -- all of the
628 divisions are important, obviously, but in the Criminal
629 Section, it is especially important to keep the cases moving
630 to meet the legal requirements.

631 This is an especially difficult time for the Voting
632 Section. As you are, I think, all aware, in earlier this
633 year, the U.S. Supreme Court found Section 4(b) of the Voting
634 Rights Act to be unconstitutional. That was the triggering
635 and geographical targeting mechanism for Section 5 coverage.

636 Section 5 was one of the primary responsibilities of the
637 Voting Section. And as I mentioned, the Section 5 work had
638 been considered essential during the last Government
639 shutdown.

640 As a result of the Shelby County decision, Section 5 has
641 now been essentially rendered inoperative, and thousands,
642 maybe more than 10,000 governmental units -- cities,
643 counties, school boards, States -- that were previously
644 covered under Section 5 now no longer have to submit their

645 changes in voting practice for Federal notification or
646 Federal review.

647 And so, the consequence of this is that there is a very,
648 very substantial reallocation of responsibilities and
649 resources within the Voting Section from staff who were
650 focused on Section 5 to reorient them to begin going out and
651 engaging in affirmative investigations and affirmative
652 litigation. That is now what the section has to do. Rather
653 than having issues come to the Voting Section, the Voting
654 Section now has to get out on the ground and go out and find
655 the discriminatory voting changes and then prosecute them.

656 So what does that mean? Well, in one high-profile case
657 that I think, again, you all know about is the U.S. has sued
658 the State of Texas over its photo ID law. And earlier this
659 year, DOJ filed a Section 2 lawsuit against the State of
660 Texas in the Southern District. I will note the Lawyers'
661 Committee is also representing plaintiffs in another lawsuit
662 that has been consolidated with the United States case.

663 Well, DOJ, after the shutdown went into effect, filed a
664 paper with the court moving for a stay of the proceedings,
665 asking that all briefing and responses with respect to their
666 case and, by extension, to all the other parties' cases be
667 put on hold, pending the outcome of the shutdown. And what
668 the department informed the court was that, absent an
669 appropriation, Department of Justice attorneys and employees

670 are prohibited from working even on a voluntary basis, except
671 in very limited circumstances, including emergencies
672 involving the safety of human life or the protection of
673 property.

674 So what this has meant is that the United States case
675 with respect to this photo ID law is now really on hold. My
676 understanding -- I haven't heard it directly. My
677 understanding is that the Deputy Chief who is responsible for
678 supervising the case is limited to about 15 minutes of
679 BlackBerry time a day. And so, you know, that is to say
680 nothing of the line attorneys, who apparently are all
681 furloughed and unable to do anything on the case.

682 I mention just a couple other points. One is that there
683 are, you know, elections going on today. There are elections
684 going on in Albuquerque, New Mexico, and in North Carolina.
685 As you probably know, DOJ has also filed a Section 2 lawsuit
686 against the State of North Carolina with regard to its recent
687 voter law, and normally, in the context of litigation, DOJ
688 would want to have somebody on the ground, watching voting,
689 monitoring voting in person, especially, you know, in a case
690 where there is active litigation involving polling place
691 procedures.

692 But I don't think they are going to have anybody there.
693 I don't know for sure. I think that would be an important
694 question to ask. But I think as a result of the shutdown,

695 they are unable to go out and monitor elections in the way
696 that they would or conduct investigations in the way that
697 they normally would.

698 So I think the impact on voting rights enforcement from
699 DOJ's perspective is, obviously, quite pronounced and severe
700 and is going to continue. It is only going to get worse, I
701 think, until the shutdown has ended.

702 Thank you.

703 [The statement of Mr. Kengle follows:]

704 Mr. Conyers. Thank you, Director Kengle.

705 We turn now to the vice president of the Civil Legal
706 Division of the National Legal Aid and Defender Association,
707 Mr. Donald Saunders, who has been with Legal Aid since 1990.
708 Started at one time as the executive director of the North
709 Carolina Legal Services Resource Center, as well as a staff
710 attorney in Wilmington, Delaware; a graduate of the
711 University of North Carolina School of Law.

712 Welcome.

713 STATEMENT OF DON SAUNDERS

714 Mr. Saunders. Thank you, Chairman Conyers,
715 distinguished members of the Judiciary Committee.

716 I am honored today to speak to you briefly on behalf of
717 the National Legal Aid and Defender Association. NLADA,
718 founded in 1911, is the oldest and largest membership
719 organization in the Nation advocating for equal justice for
720 all people in the both the civil and criminal justice
721 systems, regardless of income.

722 On behalf of my defender colleagues, I want to endorse
723 the comments of Mr. Kramer. On behalf of our CEO, Jo-Ann
724 Wallace, who was a former public defender of the District of
725 Columbia, we certainly understand the crisis in Federal
726 defense, as well as the crisis at the State level.

727 However, today I am here on behalf of the thousands of
728 attorneys and other advocates in the civil justice system
729 dedicated to ensuring our democratic principle of equal
730 justice under the law. My colleagues across the Nation work
731 every day, often at significant personal sacrifice, to make
732 that principle of equal justice a reality for low-income
733 families and communities in every corner of the Nation.

734 I wanted to briefly today discuss two areas of Federal
735 spending in which the impact of sequestration and the
736 Government shutdown might well have a significant impact on

737 the provision of civil legal assistance to people living in
738 poverty in the United States. Those two areas, the first one
739 I want to discuss is funding for the Legal Services
740 Corporation.

741 With respect to LSC, the 134 grantees of LSC's funding
742 represent the Nation's promise of justice to millions of
743 Americans. LSC is one of the most successful public-private
744 partnerships in Government. Federal funding amounts to only
745 40 percent of the operating resources of those programs
746 nationwide.

747 However, given the difficult impact of the recession
748 that has led more people to come to the doors of legal aid
749 programs than ever before, we have also seen the other
750 sources of revenue for legal aid drop precipitously over the
751 last few years. Support from the private bar foundations,
752 interest on lawyers' trust accounts, these are very, very
753 important components of the civil justice system. But
754 without the strong support of the Federal Government and the
755 Legal Services Corporation, that system could not be present
756 in every county in the United States.

757 More than 62 million people, 1 in 5 Americans, including
758 almost 20 million children, qualify for civil legal
759 assistance from LSC grantees. Given that huge population of
760 people in need of assistance, even under current funding,
761 grantees of LSC must turn away a staggering 50 percent of

762 those eligible applicants who seek their assistance.

763 Last year, LSC grantees closed more than 800,000 cases.
764 Due to funding cuts over the past 3 years, however, these
765 numbers have been in steady decline. LSC funding has
766 experienced a precipitous drop of 19 percent over the last 4
767 fiscal years from \$420 million in fiscal year 2010 to \$340
768 million in fiscal year 2013.

769 The 2013 sequester could not have come at a worse time
770 for legal aid programs across the United States. It resulted
771 in an additional 5 percent cut from an already shrinking
772 budget, or over \$16 million in vital support to run the
773 locally led legal aid offices funded by LSC.

774 The most current data indicate that these cuts have led
775 to the total loss of 1,000 personnel in LSC grantee programs
776 across the country, an 11 percent loss in just 2 years.
777 Thirty offices were closed in 2012 as well, making it even
778 more difficult for clients in remote, rural settings to gain
779 access to program services.

780 Their loss has also forced 72 percent of LSC-funded
781 offices to reduce client services, which led to a 10 percent
782 overall decline in cases closed in 2012. The additional cuts
783 resulting from the 5 percent sequester in fiscal year 2013,
784 even though I can't give you very specific information at
785 this point, are clearly going to lead to the loss of hundreds
786 more additional staff, as well as the closing of a

787 significant number of additional branch offices as they are
788 implemented nationwide.

789 The other source I wanted to briefly touch on is the
790 wide array of other Federal programs that use the LSC
791 infrastructure across the country to address problems of
792 people in poverty. As Ms. Chu was suggesting, victims of
793 domestic violence are a key component of the legal services
794 client population.

795 An important study by Colgate and the University of
796 Arkansas indicated that legal assistance can be the single
797 most effective intervention in a case of domestic violence.
798 The Legal Assistance to Victims program, funds lawyers across
799 the country to be part of an interlocking network with other
800 domestic violence providers to provide legal assistance when
801 that is needed in a case of domestic abuse. We have seen
802 funding for the Legal Assistance to Victims program drop from
803 \$41 million last year to \$38.32 million in the current fiscal
804 year.

805 Another area in which civil legal aid programs are
806 providing key representation is through the Supportive
807 Services to Veterans Families program. We have been working
808 in North Carolina with a series of private lawyers, corporate
809 lawyers, and legal aid programs to address some of the needs
810 of returning veterans in a statewide basis. Legal aid
811 programs across the country likewise are stepping up to

812 address the needs of our returning men and women in the
813 military.

814 Again, a survey of social services providers, as well as
815 veterans, indicated that 3 of the 10 problems that most
816 affect returning veterans and homeless veterans were legal in
817 nature. And through the good work of the VA and Health and
818 Human Services, we have seen a real increase in the number of
819 lawyers that are made available to help these veterans
820 address those problems.

821 We are not able across -- there are many, many other
822 programs within HUD, within HHS, programs for the elderly.
823 But we can't really give you a specific impact on each of
824 those programs, but obviously, a 7 percent or upward
825 sequestration is going to have a demonstrable effect in
826 reducing the availability of civil legal assistance to a
827 whole host of people in tremendous need.

828 We have heard that the -- I am sure Ms. Moyer will speak
829 more about the Office on Violence Against Women. We did
830 understand it was going to cease operations today under the
831 shutdown.

832 From what we hear from our members across the country,
833 it is just almost chaotic trying to get information from HUD
834 or from the IRS for a low-income taxpayer clinic that many of
835 them run. That the impact so far of this shutdown really has
836 been a lack of continuity in these programs, a lack of the

837 ability to get information, and the longer it goes on, the
838 more chaotic that situation will become.

839 Thank you very much.

840 [The statement of Mr. Saunders follows:]

841 Mr. Conyers. Thank you very much.

842 The Rayburn cafeteria isn't doing too well either, sir,
843 I want you to know.

844 Don, we remember you when you attended another forum
845 only 2 years ago, and your testimony was very important then.

846 We turn now to the president of two organizations, the
847 Alliance -- Nan Aron, president of the Alliance for Justice
848 and the Judicial Selection Project. She has worked with the
849 ACLU's National Prison Project, trial attorney for the Equal
850 Employment Opportunity Commission, litigating race and sex
851 discrimination cases.

852 We welcome you to this forum.

853 STATEMENT OF NAN ARON

854 Ms. Aron. Thank you very much, Mr. Conyers,
855 distinguished members of Judiciary Committee. Thank you,
856 gentlemen.

857 Thanks for inviting me to join this important
858 conversation on sequester, shutdown, and access to justice.

859 As president of Alliance for Justice, I am proud to
860 speak on behalf of 100 member organizations, all of which are
861 committed to a justice system that truly serves all
862 Americans. Yet today, we see the even-handed administration
863 of justice being threatened at every turn.

864 Even before the shutdown, even before the sequester, our
865 justice system was in crisis. The reason will be familiar to
866 everyone in this room -- politically motivated obstruction.
867 Today's budget crisis is appalling. But it is important to
868 understand that it is just one more manifestation of the
869 relentless attacks on the courts and their ability to
870 effectively and efficiently dispense justice that have
871 characterized the last 5 years.

872 As of today, more than 90 Federal court judgeships sit
873 vacant. That is more than 1 in 10 judgeships, Federal
874 judgeships across the country. The Administrative Office of
875 the U.S. Courts has deemed 39 of those vacancies judicial
876 emergencies, meaning there aren't simply enough judges to

877 hold caseloads -- to hear those caseloads in those courts.

878 When there are too few judges, the wait for justice can
879 be unbearable. Individuals and businesses often have to wait
880 months and even years to stand up for their rights. Memories
881 may fade. Witnesses may die. Financial and personal
882 calamities may be compounded.

883 For example, in the Eastern District of California,
884 which was home to two judicial emergencies until one was
885 recently filled in March, it took nearly 4 years for a civil
886 case to get to trial. With waits like those, victims too
887 often give up on ever seeing justice served.

888 Obstruction at every step of the judicial selection
889 process is to blame. The obstruction takes many forms.
890 Republican Senators refuse to work with the President to
891 recommend nominees for vacancies in their States. Some
892 refuse to return blue slips for nominees they previously
893 supported, as we have recently seen in Florida.

894 Votes are delayed for months even on noncontroversial
895 nominees, while huge numbers of nominees are filibustered.
896 The games being played with the budget will do enormous
897 damage to our system of justice, but those problems are being
898 piled on top of a mountain of dysfunction that already
899 exists.

900 In Texas, for instance, there are currently nine, nine
901 Federal judicial vacancies without nominees, six of which are

902 judicial emergencies. One of those judicial emergencies is
903 Judge Furgeson's seat, which he vacated nearly 5 years ago.

904 If you add up the time those nine seats have been
905 vacated, it amounts to more than 15 years. Each day, each
906 month, each year without a judge mean justice is being denied
907 to the people of Texas, and yet the Texas Senators are all
908 too happy to see these benches empty. The Judicial Selection
909 Commission they set up to recommend nominees for the vacant
910 district court seats have not yet even started interviewing
911 candidates.

912 And now we have added the sequester and the shutdown to
913 this already untenable situation. The upshot is the
914 plaintiff seeking to vindicate civil rights, collect
915 disability benefits, resolve business disputes, recover lost
916 wages, or prevent some imminent environmental harm will be
917 stuck in a holding pattern.

918 A.J. Kramer eloquently talked about the impact of
919 sequester on criminal justice system. In August, former Ohio
920 Federal public defender Steven Nolder wrote on an Alliance
921 for Justice Watch blog about why he fired himself rather than
922 to sacrifice his staff lawyers to the sequester. As Nolder
923 wrote, "If the intention is to dismantle the gold standard of
924 our Nation's public defense systems, our lawmakers are
925 succeeding. In fact, the status of the entire justice system
926 as the world's gold standard is at risk.

927 "When the courts and the entire judicial system are
928 starved for funds, justice is weakened. But when that harsh
929 reality is combined with a court system already reeling from
930 the effects of political gamesmanship and endless
931 obstruction, we jeopardize not just the ability of courts to
932 resolve disputes and dispense justice, but faith in the
933 democratic system itself.

934 "If we are to be a beacon for all people all over the
935 world who long for justice, the obstruction must end."

936 Thank you very much.

937 [The statement of Ms. Aron follows:]

938 Mr. Conyers. Thank you, Attorney Aron.

939 Judge Furgeson. Can I make a mention? Ms. Aron has
940 corrected. My spot has been vacant for 5 years. I just
941 retired, but I took senior status 5 years ago, which opened
942 my spot to an appointment. So that is why I retired just in
943 the last couple of months, but my spot has been open because
944 of senior status for 5 years.

945 Mr. Conyers. Sure. Thank you very much.

946 Scott Lilly is a senior fellow at the Center for
947 American Progress. He has worked here in the House, known to
948 all of us as the director of the House Appropriations
949 Committee, very important spot to be in, executive director
950 of the Joint Economic Committee, and former chief of staff of
951 former Congressman David Obey.

952 Welcome here again.

953 STATEMENT OF SCOTT LILLY

954 Mr. Lilly. Thank you very much, and it is good to be
955 here.

956 I am not going to talk about the judiciary, but I would
957 like to associate myself with the remarks of the other
958 panelists on it. I think the judiciary has really been
959 hammered. The constitutional prohibition against reducing a
960 judge salary means that a big part of their workforce can't
961 be touched through sequestration, which means the rest of the
962 workforce takes a disproportionate blow.

963 I am also not going to talk about the shutdown with
964 respect to the Justice Department, not because there aren't
965 big problems there. Even though only 15 percent of the
966 workforce is furloughed right now, there is a lot of chaos
967 being generated.

968 But the problems from the shutdown are quite different
969 from the problems of sequestration, and I think that there
970 are implications for the Justice Department with respect to
971 sequestration that are different from any other department in
972 the Government and need to be more clearly understood. And
973 so, I am going to focus on those today.

974 The Department of Justice has a budget of about \$24
975 billion. It has 124,000 employees. That is about 20 percent
976 of the nondefense workforce of the Federal Government. So it

977 is a huge piece of the pie.

978 Sequestration in 2013 took about \$1.3 billion out of
979 that budget, which created a lot of the problems that we are
980 hearing about. But there was one aspect to the Justice
981 Department budget that is not well understood, but it had a
982 big impact on what happened at Justice last year.

983 There is something called the Working Capital Fund, and
984 there is an authority that was granted to the Attorney
985 General back in 1975 to allow him to take money out of other
986 -- out of the agencies within the department, move it into
987 the Working Capital Fund, and as a result, he was able to
988 take budget authority that had not been obligated, had
989 lapsed, was just basically sitting ready to go back into the
990 Treasury. And he was able to move close to half a billion
991 dollars into the department.

992 That allowed the Department of Justice to be able to
993 avoid furloughs, and that is the good news. It avoided
994 furloughs in part because it had a complete freeze on all new
995 hires, which was very problematic. And it also pretty
996 dramatically cut back operations funds, which made up the
997 other -- those two things made up the other \$800 million that
998 Justice had to do.

999 What that means, however, is that while most agencies
1000 and departments of the Federal Government will have basically
1001 the same amount of money to operate on under the 2014

1002 sequestration level that they had in 2013, the Justice
1003 Department will have about \$400 million to \$500 million less,
1004 and I think that is going to create some surprising
1005 situations, some real chaos in a lot of important programs.

1006 And I think the thing that you have to remember about
1007 2013 and why we got through as well as we did was that we had
1008 a little wrinkle in the budget that isn't there. That rabbit
1009 can't be pulled out of the hat again, and so we face some
1010 real difficulty.

1011 I would particularly urge people to look at the budget
1012 of the Bureau of Prisons. I think the Bureau of Prisons has
1013 been stretched beyond the limit with growing number of
1014 inmates every year and a relatively static number of prison
1015 personnel to deal with that. All indications are they are at
1016 the breaking liming in terms of being able to provide for the
1017 safety of both prison personnel and the inmates and perhaps
1018 even the public at large.

1019 But I would like to focus mostly on the Federal Bureau
1020 of Investigation. It is the largest agency within the
1021 department, and I think some very unpleasant things are going
1022 to be happening there.

1023 Their budget request this year was for \$8.2 billion.
1024 Under sequestration, they will get at a continuing resolution
1025 rate \$7.3 billion. After they move some money around, they
1026 are going to have to operate on basically \$700 million less

1027 than they had.

1028 Sixty-one percent of the bureau's budget is personnel,
1029 and the other 39 percent is operations. They are going to
1030 try to split that cut between the two. That means that they
1031 are going to have to continue with the freeze on personnel,
1032 which, by next March, will mean 3,500 fewer people will be
1033 working for the FBI than did a year and a half ago.

1034 In addition to that, the FBI will now this year, and
1035 unlike last year, they will have to have 8 to 13 furlough
1036 days for each agent, each analyst, each employee of the
1037 Federal Bureau. And that means when you add that to what has
1038 already happened, you are going to have a workforce that is
1039 about 13 percent smaller than it was a year ago.

1040 That has real implications, I think, across the board.
1041 If you look at the range of activities from terrorism, and I
1042 think what happened in Nairobi shows that we still need to be
1043 mindful of that, the expanding foreign intelligence threat to
1044 the United States, both governments and corporations, the
1045 expanding use of the Internet for fraudulent purposes, the
1046 continuing problem with white collar crime and particularly
1047 with corporate securities, gang violence, expansion of
1048 criminal syndicates around the world, all of these things are
1049 growing problems that the FBI has to deal with, with a
1050 shrinking workforce.

1051 One agent recently stated in a publication made by the

1052 FBI Agents Association, "The hiring freeze has prohibited our
1053 team from adding new agents to combat the significant surge
1054 in investment fraud and mortgage modification fraud.
1055 Resources are stretched.

1056 "This past week, four known fraudsters were advertising
1057 in classified ads for employees to expand their fraudulent
1058 schemes. However, with our lack of resources and now the
1059 additional cuts and furloughs, we are not able to address
1060 these progressing schemes."

1061 So that is what is happening with the lack of personnel.
1062 The other big problem is there is going to have to be about
1063 \$350 million cut out of operations resources. These
1064 basically are things like gasoline, automobiles, listening
1065 devices, payments to informers. That is going to be about an
1066 18 percent cut in those resources, which is going to greatly
1067 inhibit the ability of the FBI to do the job that we have
1068 given to them.

1069 Thank you.

1070 [The statement of Mr. Lilly follows:]

1071 Mr. Conyers. Thank you very much.

1072 Not least is our next presenter, the legal director for
1073 the Pennsylvania Coalition Against Rape, Diane Moyer, who has
1074 worked tirelessly to ensure that Federal legislation
1075 addresses civil legal needs of victims of sexual assault, as
1076 well as to ensure parity in funding for service providers in
1077 rape crisis programs. She has received numerous awards in
1078 this area and appears almost regularly on PBS stations.

1079 Welcome.

1080 STATEMENT OF DIANE MOYER

1081 Ms. Moyer. Thank you, Mr. Chairman. And I think we
1082 could have ended this hearing with what you so remarkably
1083 said was why aren't we voting right now? And that is what I
1084 wish you were all rushing off to do.

1085 I am a lawyer, but I probably won't sound like the other
1086 guys. I am at heart a victim advocate. And recently, in one
1087 of our programs, there was a 6-year-old girl. She was
1088 tortured, raped, and beaten for 5 hours. Now she is in
1089 counseling.

1090 What am I supposed to tell that little girl when she
1091 comes to the rape crisis center program for services?
1092 Congress can't get along? We can't pass a CR. I am sorry,
1093 little girl.

1094 We just had the Violence Against Women Act fight. As
1095 Mr. Conyers well knows, over these many years for some
1096 reason, this seems to be an issue as well, and it was a hard-
1097 fought fight this time. And now we find ourselves in the
1098 inexplicable Daliesque -- Mr. Boehner, the clock is melting.
1099 We need to vote because these programs need to be funded.

1100 You all said that these programs for rape victims, for
1101 domestic violence victims were important. Thirteen hundred
1102 rape crisis centers across this Nation, and they may face
1103 shutdowns in a matter of weeks, if not months. Our sisters

1104 in the domestic violence movement and our brothers in the
1105 domestic violence movement because, believe me, violence,
1106 domestic violence, sexual assault, stalking, and dating
1107 violence does not end because women want it to. It ends
1108 because men and women want it to.

1109 And what kind of a message are we sending to victims
1110 when we say the organizations that we have told you, promised
1111 you we would be there 24 hours a day, 365 days a year, free
1112 and confidential, we are telling you we can't get along. We
1113 can't pass a CR. We can't agree amongst ourselves. So you
1114 are just going to have to wait to have your trauma. I don't
1115 want to be the one to tell that to a victim.

1116 I would like for Health and Human Services to have a
1117 hearing like this because FVPSA money, RPE money is just as
1118 important to programs as the Department of Justice programs,
1119 which, by the way, Legal Assistance for Victims does include
1120 victims of sexual assault. I am always known as the "and
1121 sexual assault girl."

1122 So thank you very much, but please, I know the people
1123 here in this room get what I am talking about, and you have
1124 our remarks, and you have the handouts. And interns that are
1125 here, please go back to your Members and say pass this budget
1126 now.

1127 [The statement of Ms. Moyer follows:]

1128 Mr. Conyers. Thank you very much.

1129 We are going to start off, and I thank everyone, all
1130 eight of you. The response was so quick and so thorough.
1131 But we want to get straight to our questions and comments,
1132 and we will start off with Jerry Nadler of New York.

1133 Mr. Nadler. Thank you, Mr. Chairman.

1134 Essentially, every single one of our witnesses has said
1135 that the sequestration, to a great extent, and the shutdown,
1136 to a greater extent, inhibits or destroys our ability to
1137 provide justice, to provide constitutional rights, to protect
1138 the people, to protect victims of domestic violence, to do
1139 everything that the Justice Department and the court system
1140 is supposed to do.

1141 I have a lot of questions here prepared by staff, most
1142 of which ask for elaboration on that. You know, how is this
1143 affected and et cetera. But you essentially covered the
1144 field.

1145 But let me ask one specific question. I am not sure
1146 whether I should ask Mr. Silkenat or perhaps Mr. Saunders.
1147 In particular, when we are talking about defense of --
1148 providing defense counsel. Providing defense counsel in
1149 criminal trials, that is a constitutional right. Both the
1150 sequestration and the shutdown have inhibited our ability to
1151 do so.

1152 In the shutdown, we have basically said the guidelines

1153 we have are that people who provide constitutional services,
1154 that that money continues. Why isn't that continuing, given
1155 that defense counsel is a constitutionally required service?
1156 Why is the shutdown not exempting that, as it is for other
1157 people in the Government who provide constitutionally
1158 necessary services?

1159 Mr. Kramer. I am sorry. I guess I have been looked at
1160 to also provide an answer, Congressman. Thank you for the
1161 question.

1162 We have been told that, yes, Federal public defender --
1163 Federal defender offices, it will be up to the head of each
1164 office who to declare essential, but that because the courts
1165 will continue, to whatever extent they will, to process
1166 criminal cases that our -- obviously some of our offices or
1167 all of our offices, which have been cut to the bone already,
1168 will be deemed essential by the head of the office because
1169 the cases can't be processed by the court without defense
1170 counsel.

1171 So I think that most Federal defender offices around the
1172 country will be deemed essential services as part of the
1173 courts deeming that criminal cases will be carried on.

1174 Mr. Nadler. But nonetheless, because of the
1175 sequestration, there is simply not -- and there is simply not
1176 enough defense counsel to do the job?

1177 Mr. Kramer. As we have already been cut and cut more,

1178 there is not only not enough defense counsel, and CJA lawyers
1179 who handle conflicts cases will not be paid, except somewhere
1180 down the road. And we also don't have the resources for --
1181 we have a large number of clients who speak -- do not speak
1182 English. So we need funds for interpreters. We need funds
1183 for experts and other investigation, and that has also been
1184 severely cut and hampers the handling of cases.

1185 So it is not just -- it is people as well and the
1186 nonpayment of the CJA lawyers, and it is also the lack of
1187 resources to properly represent someone accused of a crime.

1188 Mr. Nadler. Thank you.

1189 Mr. Krengele -- Kengle, I am sorry. Mr. Kengle, you
1190 stated that 75 percent of the employees in the Civil Rights
1191 Division have been furloughed, and you said or my notes say
1192 all cases are on hold. Maybe it was many cases are on hold.
1193 Attorneys are prohibited from working.

1194 What is the effect of this on letting go into effect
1195 practices which may, in fact, be unconstitutional, which the
1196 Justice Department was challenging, such as new voting laws
1197 in various States designed to inhibit -- designed to suppress
1198 voting rights?

1199 Mr. Kengle. Well, that is, Mr. Nadler, one of the big
1200 challenges after the Shelby County decision that I had
1201 mentioned previously. That under Section 5 of the Voting
1202 Rights Act, discriminatory voting changes were prevented from

1203 going into effect, pending Federal review and preclearance.

1204 Now the department, together with private citizens or
1205 groups, have to be detecting those things, and so having a
1206 day-to-day presence is especially important. And once a
1207 discriminatory change goes into effect, it can be more
1208 difficult to undo. And in some cases, the loss of the
1209 constitutional rights cannot be undone by a later judicial --

1210 Mr. Nadler. I am focusing specifically on a number of
1211 States -- North Carolina, Texas, maybe others. Challenges
1212 have been made to their new voter suppression laws.

1213 Presumably, those challenges should be resolved in time to
1214 block the unconstitutional measures, if any are found
1215 unconstitutional or illegal, before the 2014 election.

1216 Will this shutdown change the ability to do that?

1217 Mr. Kengle. Potentially. Potentially yes. I think the
1218 scheduling of the cases is something that the -- in the Texas
1219 case that is being considered, but given the nature of the
1220 case that involves a lot of expert witness discovery and
1221 production of databases and, you know --

1222 Mr. Nadler. So this may make a difference between
1223 enforcing the law in time for 2014 or not?

1224 Mr. Kengle. It potentially could influence whether
1225 there is -- whether there is a basis to block the law for the
1226 2014 elections, yes.

1227 Mr. Nadler. It could affect whether determination on

1228 that is made in time?

1229 Mr. Kengle. Yes. There would be the question of
1230 whether -- of whether the case would go to trial for a
1231 decision, you know, a final decision on the merits, but also
1232 whether there is sufficient information for the court to
1233 issue a preliminary injunction potentially.

1234 And the extent of the information and the discovery that
1235 goes on in the case, you know, really has a very decisive
1236 influence on whether plaintiffs can go forward and try to
1237 make that type of a showing.

1238 Mr. Nadler. I see. Thank you very much. My time has
1239 expired. I yield back.

1240 Mr. Conyers. Thank you, Mr. Nadler.

1241 The distinguished gentleman from Virginia, Bobby Scott.

1242 Mr. Scott. Thank you, Mr. Chairman.

1243 Mr. Furgeson, did I understand that you were a judge
1244 starting in 1994?

1245 Judge Furgeson. Yes, sir. That is correct.

1246 Mr. Scott. Then you were sitting as a judge during the
1247 last shutdown in '95, '96?

1248 Judge Furgeson. Yes, sir. That is correct.

1249 Mr. Scott. Can you give us a little taste of what the
1250 shutdown did to the courts in terms of working with juries,
1251 setting civil cases as well as criminal cases, the
1252 availability of evidence, particularly expert witnesses?

1253 Judge Furgeson. It had, again, a slowing effect on the
1254 ability of the courts to get cases to trial, to call jurors
1255 in for trial. Of course, criminal cases take precedent. So
1256 civil cases were delayed or postponed.

1257 Mr. Scott. About how long -- how much longer did it
1258 take to get to a jury trial -- to a civil trial?

1259 Judge Furgeson. My recollection where I was, it was
1260 much longer. Sometimes even longer than that. It took us,
1261 again, quite a while to get past the effects.

1262 You have to understand that when this happens, there is
1263 a lot of unproductive time that goes into clerks offices and
1264 everybody else to try to plan for what is happening. And so,
1265 normal court operations take a backseat while clerks offices,
1266 probation, pretrial offices, while the courts are trying to
1267 figure out how to make the shutdown work. It had a
1268 debilitating effect.

1269 The problem we have this time is there is a
1270 sequestration on top of a shutdown, and the sequestration
1271 took a very lean court operation, took \$350 million out of
1272 that lean court operation, and has really continued to have
1273 devastating effects. I think the sequestration plus the
1274 shutdown today is going to be much more the -- much more
1275 difficult than it was in the mid '90s.

1276 Mr. Scott. Thank you.

1277 Mr. Kramer, can you say a word about how the furloughs

1278 and shutdowns affect an attorney's ability to get his work
1279 done, particularly when you are dealing with a deadline.
1280 Sometimes you miss a deadline -- with Supreme Court cases, it
1281 is suggested that in capital cases if the lawyer misses a
1282 deadline, that is just too bad. Can you say a word about the
1283 ability to keep up with deadlines and do your work?

1284 Mr. Kramer. Yes, thank you very much, Congressman
1285 Scott.

1286 That is extremely difficult, obviously. The workload is
1287 still there. We, like the rest of the courts, have no
1288 control over our workload. It is what is brought in by other
1289 people, the Department of Justice for criminal cases and
1290 civil cases, private litigants, as well as the United States.

1291 So it makes it extremely difficult because the cases
1292 still pending, many times there are statutory deadlines to be
1293 met by the court, by the lawyers, and by the parties involved
1294 that have to be met. And furlough is not an excuse for that.

1295 The number of cases did not decrease along with our
1296 furloughs. The number of days that our lawyers were working
1297 decreased significantly in the system, but the work had to be
1298 done.

1299 And unfortunately, it does leave open the problem that a
1300 mistake is made, a deadline is missed, because the person has
1301 not been at work, has been overwhelmed and missed something
1302 inadvertently with enormous consequences for the defendant,

1303 of course, many of whom sit in custody as the case
1304 progresses. And therefore, a delay for them means not only
1305 extra days in custody, but expense to the Government for
1306 keeping them in custody like that.

1307 So it is ripple effects throughout the system, and I
1308 couldn't agree more with Judge Furgeson about the
1309 debilitating effects, as the Federal defender system was a
1310 lean system to begin with and I have to say, having been in
1311 it for 33 years, stewards of Federal money. And we were cut
1312 to the bone by sequestration, and having this on top has been
1313 catastrophic.

1314 Mr. Scott. Now is there a rule against volunteering to
1315 work when you are on furlough?

1316 Mr. Kramer. There is a rule against volunteering to
1317 work, yes. And we have been -- a matter of fact, I know that
1318 Department of Justice attorneys who have been under the
1319 furlough have had to turn in their BlackBerrys. People turn
1320 in their BlackBerrys, have to turn in their other equipment
1321 from work, and it makes it extremely difficult if you are
1322 furloughed when the Government is shut down to do any work.

1323 During the sequestration, we managed to avoid the worst
1324 effects of that, but this is going to just magnify everything
1325 exponentially.

1326 Mr. Conyers. Thank you, Mr. Scott.

1327 The distinguished gentleman North Carolina, Mel Watt.

1328 Mr. Watt. Thank you, Mr. Chairman.

1329 And let me start by telling my good friend Don Saunders
1330 how good it is to see him. We go all the way back beyond my
1331 days in Congress, back to North Carolina when he was with the
1332 legal services organization there. So I know how long he has
1333 been in the venue fighting this fight, and it is always great
1334 to see him still fighting because I know that I feel better
1335 if he is still fighting the fight.

1336 Mr. Kengle, I guess I want to focus more on the voting
1337 rights aspect of this, and we read in the paper, I guess, in
1338 North Carolina before the shutdown that the Justice
1339 Department had either announced or had filed a lawsuit in
1340 North Carolina. I guess, the voter identification, draconian
1341 voter identification measures that our legislature had
1342 adopted.

1343 Was that case actually filed, or is it just announced?

1344 Mr. Kengle. Yes, Mr. Watt. The DOJ did -- the DOJ did
1345 file the case. I just -- I ran the docket before I came over
1346 here. DOJ has not filed a motion to stay that proceeding, as
1347 it did in Texas, but it was filed later. And the State has
1348 filed its own motion to seek an extension on answering the
1349 complaint.

1350 So DOJ is not -- I think they probably feel less of an
1351 impending deadline there. But if this goes on much longer,
1352 then I would anticipate that they would file a similar

1353 motion.

1354 Mr. Watt. And as a practical matter, if the shutdown
1355 continues, what would be the practical impact of that on the
1356 ability to pursue that case, as well as the Texas case?

1357 Mr. Kengle. Well, as an attorney, you know that Federal
1358 litigation of this type is a sequential and sort of
1359 orchestrated proceeding. There is written discovery that has
1360 to go out. There is expert discovery that is put underway.

1361 As the plaintiff, DOJ will have the burden of putting
1362 its own expert witnesses on the stand, and so the department
1363 has to get the underlying information for the experts to
1364 analyze and form the basis for their opinions and
1365 conclusions. And all of that, all of that has to -- or a
1366 large part of that has to come from the defendants
1367 themselves.

1368 There are depositions to be scheduled and documents to
1369 be reviewed. It is civil litigation, and it can -- you know,
1370 it has to occur in a particular sequence if it is going to be
1371 effective. So if it gets dragged past an election date, then
1372 that is an election where the challenged practice is in
1373 effect for that election.

1374 Mr. Watt. Should I assume, Judge Furgeson, that the
1375 court would have discretion to take all of that into account?
1376 A judge would have discretion to take all of that into
1377 account, would it not?

1378 Judge Furgeson. Absolutely, it would.

1379 Mr. Watt. It would. Okay. But as a practical matter,
1380 if the next election comes up and this case has not been
1381 disposed of one way or the other, where would that leave the
1382 State of North Carolina in terms of how it would proceed?

1383 Judge Furgeson. Well, I think unless the court felt it
1384 had adequate information to look at whether or not this was
1385 an unconstitutional practice, unless it felt like it had
1386 adequate information, it would have to let the election
1387 proceed. If it felt like there was adequate information that
1388 this was an unconstitutional practice, then it could render a
1389 temporary injunction preventing the election from going
1390 forward.

1391 Mr. Watt. So let me go back and approach this from the
1392 other end. I guess one of the reasons that this lawsuit had
1393 to be filed, as I understand it, a number of these practices
1394 that were adopted by the legislature were clearly
1395 retrogressive, and under the preclearance provisions had we
1396 still -- if we still had a preclearance section, that would
1397 have been stopped in the preclearance process without the
1398 expense of litigation.

1399 And I guess, actually, there are some people in North
1400 Carolina legislature saying that they never would have passed
1401 the statute in the way that it was passed had there been a
1402 preclearance. Is that your understanding, Mr. Kengle?

1403 Mr. Kengle. Yes, I think it is very fair to say that a
1404 lot of provisions in that statute would be very suspect and
1405 vulnerable if Section 5 were still in place. I think if you
1406 look at the sequence under which that statute was adopted,
1407 what happened was that there was a voter identification bill
1408 that was being considered. Then the Supreme Court issued its
1409 decision in the Shelby County case, and all of a sudden,
1410 these other provisions were added to the bill once the
1411 legislature became aware that Section 5 review no longer was
1412 going to be required for the bill.

1413 So I think the sequence supports your reading.

1414 Mr. Watt. I thank the chairman for the time. Bottom
1415 line being, of course, that in every one of these areas,
1416 there are practical, real-life implications for what we are
1417 doing, which is the benefit of building this record.

1418 I thank the chairman and yield back.

1419 Mr. Conyers. Thank you very much, Mel Watt. Because
1420 you are familiar with those circumstances in your State, and
1421 they are helpful to us understanding what can happen in any
1422 part of the country.

1423 I am pleased now to yield to the gentlelady from Texas,
1424 Sheila Jackson Lee.

1425 Ms. Jackson Lee. Let me thank the chairman for this
1426 hearing.

1427 And the President spoke just a few minutes ago and

1428 indicated, I think, as lawyers would interpret, both legal
1429 sense and common sense. And he spoke very clearly to the
1430 American people and said that the unauthorized actions of a
1431 contingent of the Republican Party, specifically one might
1432 call the Tea Party or right wing, is no way to run a country.

1433 It is no way to do a budgeting process, which in earlier
1434 discussions we know is a parliamentary form of government
1435 where you engage in procedures to discuss how you would
1436 manage a budget, how you would pass an appropriations. And
1437 he offered to say that he would talk to anyone who wanted to
1438 discuss the running of this Government after we opened it up.

1439 And as I have heard today, we are not only in a crisis,
1440 but our house is burning down as we speak. I want to pose a
1441 series of questions about the elements of justice, and I want
1442 to go first to the president of the American Bar Association.
1443 And thank you for your advocacies dealing with mandatory
1444 sentencing, dealing with crack cocaine, and those efforts
1445 were on the issues of justice.

1446 And I want to read to you some numbers and want you to
1447 give me an assessment, and I know my time is short -- I want
1448 to get to Ms. Moyer as well -- assessment on the question of
1449 justice.

1450 Right now in the Justice Department, the Civil
1451 Litigation Division has cut 950 attorneys, 71 percent.
1452 Criminal Division, 250 attorneys. Environment and Natural

1453 Resources, 350. Tax Division, 200. U.S. attorneys, expected
1454 4,000.

1455 And another example, Executive Office of Immigration
1456 Review. Immigration courts, people lives are in the abyss,
1457 if you will, 950.

1458 Mr. President, what does that do to the issue of justice
1459 in this country?

1460 Mr. Silkenat. It closes it down. We have heard here
1461 what the dire effects have been on the defender services, but
1462 the effects on the prosecution side have been equally dire.
1463 In my own State of New York, our chief judge in the Southern
1464 District has taken the dramatic step of granting the Justice
1465 Department's request for a stay of almost all civil cases in
1466 New York.

1467 If the courts aren't operating, whether it is
1468 immigration courts, Federal courts at all levels, then we
1469 don't have a justice system. Everything depends on having a
1470 fully operating court system all across the country to
1471 resolve the disputes that our citizens have. And it is
1472 harming individuals, and that is why we need to fix it now.

1473 Ms. Jackson Lee. I thank you. We don't want to go to
1474 hyperbole, but would you say that we are near collapse as it
1475 relates to our justice system as relates to the Federal
1476 Government having a hand in that justice system?

1477 Mr. Silkenat. I would hate to say the word "collapse,"

1478 but it is very close to that. We have heard of all of the
1479 heroic steps that courts have been taking to keep the system
1480 going, despite the hurdles. But if the hurdles remain in
1481 place, that is exactly what will happen.

1482 Ms. Jackson Lee. Let me go to Mr. Saunders. I want to
1483 thank Judge Furgeson for your service. And I want to ask a
1484 question. I am going to ask three questions, and maybe I
1485 will get it in in my timeframe.

1486 We are all always committed to saluting our veterans,
1487 and we almost in a manner of bipartisan love. But isn't it
1488 ironic that you are dealing with veterans services which may
1489 be in very serious jeopardy and the dependence of veterans.
1490 I know homeless veterans, veterans who are in dire need of
1491 getting their benefits corrected. I know we have a lot of
1492 problems with that. Would you comment on that?

1493 And Judge Furgeson, if I would, you are in the eye of
1494 the storm. We almost wish we could bring you back. I chair
1495 the Texas Democratic delegation. We have been engaged in
1496 trying to get judges, and I will tell you it is more than a
1497 mountain to climb with the two -- the Senate structure that
1498 we have, and I would like you to comment on that.

1499 But let me go to Don, if you would, on the veterans,
1500 please.

1501 Mr. Saunders. Two very quick responses, but very
1502 heartfelt. One, it is pretty clear the fastest-growing

1503 percentage of the homeless in the United States are returning
1504 veterans.

1505 Ms. Jackson Lee. Yes.

1506 Mr. Saunders. That is simply a national tragedy. There
1507 is no other way to characterize it.

1508 In terms of that benefits system, the backlog, I know
1509 the administration and the Secretary have made many efforts
1510 to streamline that process. But once again, I think the
1511 sequestration, even though it might exempt that, but the
1512 shutdown is probably backing that up as well.

1513 But certainly, the backlog in the benefits process is
1514 something again that cries out for representation being
1515 available as well.

1516 Ms. Jackson Lee. Thank you.

1517 Justice Furgeson -- Judge Furgeson?

1518 Judge Furgeson. Yes. I think the Western District of
1519 Texas and the Southern District of Texas are the second and
1520 third busiest courts in America because they are both on the
1521 border.

1522 Ms. Jackson Lee. Yes.

1523 Judge Furgeson. Vacancies in those two districts are
1524 clearly a judicial emergency, and the need to fill those
1525 vacancies is dire. Let me also say that those are border
1526 courts. They deal very heavily with criminal cases. We are
1527 very grateful to our public defender for what they do.

1528 Private attorneys who accept criminal appointments are
1529 also very necessary in that process. We have stopped paying
1530 private attorneys since September for their service. We have
1531 cut their hourly rates 15 percent for the present. And
1532 without the volunteer services of those attorneys, their
1533 willingness to take these cases, we would be in a terrible
1534 ditch.

1535 We have done that to protect the Federal public
1536 defenders, but we are not being able to really protect them
1537 as we should. And we may be in the process of taking good
1538 attorneys out of the appointment list and even putting more
1539 pressure for representation.

1540 Ms. Jackson Lee. Okay, Ms. Moyer, very quickly, is this
1541 a life-or-death matter that we should be aware of that some
1542 rape victims, some victims' lives may be even in jeopardy
1543 without services?

1544 Ms. Moyer. I absolutely agree with you that it is a
1545 matter of life and death, and particularly with teens, the
1546 suicidality of teen victims after a sexual assault is
1547 catastrophic. So we are not fooling around here. We owe
1548 this to victims of trauma. We need to get this done.

1549 Ms. Jackson Lee. I thank the chairman. I thank the
1550 witnesses very much for their testimony.

1551 Mr. Conyers. Thank you, Sheila Jackson Lee.

1552 I am pleased now to recognize the distinguished member

1553 of the committee from Memphis, Tennessee, Mr. Steve Cohen.

1554 Mr. Cohen. Thank you, Mr. Chairman.

1555 And first, I want to thank you for holding this hearing
1556 -- forum. I am having trouble adjusting to the minority and
1557 realizing that is what we have. Because when you were the
1558 chairman of the committee, we had hearings like this, and
1559 nobody seems to be interested in access to justice any
1560 longer. There are so many things we explored and not even
1561 thought about anymore.

1562 So I thank you for having the hearing. I asked the
1563 chairman if he had invited the Republicans to this panel, and
1564 Mr. Chairman, did you invite the Republicans to come into
1565 this forum?

1566 Mr. Conyers. Yes, we did.

1567 Mr. Cohen. And I think their lack of presence is a loud
1568 statement that can be heard. They don't have an interest
1569 here. If they would have come, they would have had an
1570 opportunity to hear about some of the problems they have
1571 caused, and they could have more bills they could file to
1572 open up new areas of the Government.

1573 And this could be just a field day for them, and that is
1574 one of the good things about this forum is you do get to see,
1575 some people might get to see how important Government is.
1576 There are so many people today that think that government is
1577 just bad and we don't need it.

1578 And I get some letters from constituents, some of whom
1579 have some intelligence, not a lot of judgment sometimes. But
1580 they say, one particular individual, and he says, well, it
1581 looks like we are doing all right without these people that
1582 have been furloughed. Maybe we can do without them forever.

1583 And that makes no sense because you have accidents
1584 happen, bus crashes in east Tennessee with people dying and
1585 nobody investigating it. And I think you had something up
1586 here with the subway. So there is lots of things going on.

1587 I wondered, and I don't know the answer to this. I
1588 asked my staff to give me an answer so I wouldn't seem too
1589 out in left field on this. But is there any area where an
1590 individual, an attorney could go to court and try to mandamus
1591 funding in areas like, say, Gideon v. Wainwright and say
1592 there is a constitutional right to a defense, and you are not
1593 adequately funding it. And therefore, the Government is not
1594 doing sufficient funding for constitutional guarantees.

1595 Mr. Kramer, you believe there isn't such a possibility?

1596 Mr. Kramer. Yes, Congressman, thank you.

1597 I think there is not only such a possibility, but it
1598 will start to happen in one of two ways. Either to say the
1599 Supreme Court held in a case called Ake quite a while ago
1600 that there is a constitutional right to necessary services to
1601 present the defense. That was a psychiatrist in that case.

1602 And I think there will be motions either to force

1603 funding for such services or to dismiss cases because people
1604 cannot be provided an adequate defense, and I think that will
1605 present judges with a serious dilemma and would be very --
1606 society would have a very difficult situation in the sense of
1607 if cases are dismissed because of failure to provide adequate
1608 services for a defense.

1609 Mr. Cohen. Mr. Saunders, you have some opinion on that,
1610 too, and maybe other areas where there could be citizen
1611 action?

1612 Mr. Saunders. I do, Congressman. Unlike Gideon v.
1613 Wainwright, on the civil side, the Federal courts have ruled
1614 there is no constitutional right to counsel. However, the
1615 ABA has provided leadership in terms of a resolution calling
1616 for a civil right to counsel in certain civil matters where a
1617 critical human need is at stake, such as safety in a domestic
1618 violence situation, adequate housing, food, or healthcare.

1619 There is significant litigation underway across the
1620 country in the State courts, not at the Federal level. That
1621 has pretty much been decided at this moment at least. But in
1622 cases where parental rights are at stake or children are
1623 being abused or things of that sort, there is significant
1624 litigation underway, trying to create a limited right to
1625 counsel in civil matters.

1626 Mr. Cohen. Anybody else have any thoughts on possible
1627 legal strategies to try to force some action? No? Well, at

1628 least we have got a couple of ideas.

1629 Ms. Moyer, let me ask you, in Memphis and in many places
1630 else in the country, there is a backlog on using rape kits.
1631 Does this sequester affect the ability of local governments
1632 to get rape kits and to keep up with the results thereof?

1633 Ms. Moyer. Naturally, the Debbie Smith Act, as it is
1634 called, the rape kit backlog is critical in its funding and
1635 in its indicating who is a predator and who is not and
1636 affecting cold cases. But also I think people are more
1637 comfortable talking about the rape kit legislation than they
1638 are rape itself.

1639 I don't know what other people's experience is. Mr.
1640 Conyers is laughing because he has been working on the
1641 Violence Against Women Act forever, like me. But I think
1642 what is most important is that we keep our doors open to rape
1643 crisis centers. We work well with law enforcement and
1644 district attorneys now, and we are a community against
1645 predators.

1646 We have gotten Megan's Law passed, the Adam Walsh Act.
1647 And none of this can happen without funding, and we are going
1648 to be -- we are going to go back in time. It is just
1649 heartbreaking to me that so many of you who have worked so
1650 hard on this legislation and to see it all come to naught is
1651 just -- I can't wrap my head around it.

1652 Mr. Cohen. Excuse me. I didn't hear the last thing.

1653 Ms. Moyer. I can't wrap my head around it.

1654 Mr. Cohen. Okay. Thank you.

1655 I am going to yield back the balance of my time, and
1656 thank you for your answers.

1657 Mr. Conyers. And I thank you very much, Steve Cohen.

1658 I am pleased now to introduce the distinguished
1659 gentleman on the committee from the great State of Georgia,
1660 Atlanta, to be specific, Hank Johnson.

1661 Mr. Johnson. Thank you, Mr. Chairman. And thank you
1662 for holding this forum today.

1663 Our U.S. Constitution, Articles I, II, and III set forth
1664 a delicate system of checks and balances between the three
1665 branches and those branches being co-equal. But it is a
1666 given almost that whoever controls the purse strings calls
1667 the shots.

1668 And so, it is kind of easy to, you know, think about it
1669 in those terms that if we say that the branches are co-equal,
1670 but whoever is handling the purse strings, whoever has got
1671 control of that is actually calling the tune. And so, that
1672 is kind of in the back of our minds as we proceed, as we
1673 proceed forward.

1674 And as long as everybody acts in a responsible manner in
1675 their respective realms of Government, in their branch,
1676 everyone acting reasonable, and so we proceed on. And then
1677 we get to a point where a branch is not acting reasonably,

1678 and when we ponder that this is not just a recent phenomenon.
1679 In other words, Grover Norquist, big-time Republican -- and
1680 you know, we say that it is not political about the judicial
1681 branch, but yes, it is political.

1682 Grover Norquist didn't leave the judiciary out when he
1683 said he wanted to have a Government that was small enough to
1684 drown in the bathtub. That includes the judicial branch,
1685 which I am afraid will be the first victim to go down the
1686 drain, closest to the drain than any other branch right now.

1687 And so, my question is, given the compensation clause in
1688 Article III, Section 1, compensation shall not be diminished.
1689 But yet, you know, there have been no raises since 1991 for
1690 the Federal judges, except for cost of living adjustments,
1691 and those have not happened every year. In fact, they have
1692 not taken place more years than since 1991 more than they
1693 have been given.

1694 So we have got the erosion of judicial pay that
1695 certainly hurts the quality of persons who are able to make
1696 the financial sacrifice to serve, and then we have the
1697 judicial vacancies where the Republican Senators are refusing
1698 to allow up-or-down votes on judicial nominees. You have
1699 judicial vacancies throughout the country. In my district,
1700 Northern District of Georgia, there are 3 been pending for 4
1701 years, district court and a couple of court of appeals slots
1702 as well.

1703 And then judicial administration has been taking an
1704 awful beating, as you all have outlined. So the judicial
1705 system, it appears to me, is actually under attack, and it is
1706 not something that just started. It is something that has
1707 been allowed to creep forward and get bigger, the attack.

1708 So what I am wondering is when will the judges who have
1709 the power, a Federal district court judge has the power to
1710 take control of the Fulton County jail, put in a receiver and
1711 make Fulton County create a jail that is safe and humane. If
1712 you can do that, if a Federal judge can do that, can not a
1713 Federal judge order the Speaker of the House or the leader of
1714 the Senate to take action with respect to providing adequate
1715 resources so the judicial branch can do its job? Is that
1716 where we have come to?

1717 I know I have asked a lot of questions, but I will -- I
1718 just wanted to make that statement. And because I think we
1719 have gotten to the point where action is going to have to be
1720 forced, and it will create quite a constitutional display.

1721 So I understand my time has expired. If anyone would
1722 care to comment, I would be fine.

1723 Mr. Silkenat. Actually, yes. This goes back to
1724 Representative Cohen's question about how can we change the
1725 system? What steps can be taken, in court or otherwise, to
1726 move the ball forward here?

1727 Our focus today has been on harm to individuals as a

1728 result of the shutdown, of the sequestration. But it also
1729 has a significant impact on businesses, on jobs, on job
1730 creation. So we need to enlist the business community in
1731 support of this notion. They are strongly in support of it,
1732 but their voices need to be louder to the other side of the
1733 aisle on this issue because it is important not only to
1734 individuals in our country, but to businesses and full
1735 employment for the rest of the country.

1736 Mr. Johnson. Thank you.

1737 Mr. Conyers. Thank you very much, my dear friend Hank
1738 Johnson.

1739 Let me do two things in closing. I thank my colleagues
1740 for remaining. I wanted to ask a couple questions, and then
1741 I wanted to see if any of you had any closing observations
1742 that you would like to put in the record before we adjourn
1743 this forum.

1744 I wanted to ask Mr. Lilly to provide us, if he can, with
1745 predictions concerning some of the possible adverse results
1746 that could ensue as a result of a sequester cut anywhere from
1747 10 to 15 percent to the Bureau of Prisons and the Federal
1748 Bureau of Investigation.

1749 And then I wanted to ask Ms. Aron about the
1750 sequestration, which have cost the court 2,500 employees
1751 between July and August, representing about an 11 percent
1752 reduction in staff. In addition, as of June, the courts have

1753 incurred 4,500 furlough days and project an additional 4,100
1754 furlough days by the end of the year 2013.

1755 If you would both make some responses to those
1756 questions, I would be very honored.

1757 Mr. Lilly. I will go first. Well, I think, first of
1758 all, with respect to the Bureau of Prisons, I think if we go
1759 down this path, we are going to find a kind of riot going on
1760 in a major Federal prison that is going to involve major loss
1761 of life, maybe the escape of a significant number of
1762 dangerous people, probably lives of prisoners who were not
1763 perpetrators of the violence, and we are going to see Federal
1764 prisons a much more dangerous place for Federal workforce.

1765 With respect to the FBI, I mean, I would just say it is
1766 a good time to be a terrorist. It is a good time to be a
1767 foreign intelligence agency, and it is a good time to be an
1768 illicit businessman who is trying to perpetrate fraud on
1769 American consumers because we just -- we don't have the team
1770 that we used to have or that we ought to have to block those
1771 kinds of activities. And we clearly could pay a price and
1772 perhaps a huge price for not having that.

1773 Mr. Conyers. Thank you.

1774 Anyone else would like to make an observation? Thank
1775 you.

1776 Ms. Aron. Mr. Johnson mentioned an article in the New
1777 York Times a couple days ago by Sheryl Stolberg, which

1778 demonstrated that the current sequester and shutdown did not
1779 occur independent of anything but were part and parcel of a
1780 very long, conceived plan to reduce and dismantle Government.

1781 And unfortunately, part of that is the judiciary, and if
1782 I could just say, use some closing comments. We conduct
1783 focus groups every 2 years, and we -- at the Alliance. And
1784 we assess people's understanding and knowledge about the
1785 courts.

1786 And what we find every 2 years is that the level of
1787 knowledge and information that people have about our court
1788 system is minimal. For instance, almost no one knows how
1789 many justices sit on the Supreme Court. Almost no one in the
1790 groups that we bring together can even name a Supreme Court
1791 justice.

1792 So I would like to thank you and your colleagues today
1793 for holding these hearings on such an important topic, a
1794 topic that doesn't get the attention it deserves.

1795 Mr. Conyers. Exactly.

1796 Ms. Aron. And given that the judiciary is really viewed
1797 as the crown jewel of our democracy, I want to thank you
1798 today for going ahead and holding these hearings.

1799 Mr. Conyers. Well, thank you. Because that is exactly
1800 why we did decide to hold these hearings because there were
1801 so many other aspects of the shutdown, as the refusal to come
1802 to an agreement on a funding resolution, and the pending debt

1803 limit vote that we will run out of credit on October 17th.

1804 And that even compounds the problem, as I see it.

1805 And it was in that spirit that my colleagues on the
1806 Judiciary were so gracious and generous with their time. And
1807 I want to thank them all and ask you if there was any closing
1808 observation that anybody might choose to make as we wind this
1809 forum down?

1810 Yes, sir? President of the ABA.

1811 Mr. Silkenat. Thank you.

1812 In addition to our democracy, our independent courts
1813 have been, I think, the most acclaimed portion of our
1814 Government around the world, our system of government. So
1815 that 50 years after Gideon to have this circumstance, this
1816 current situation for our courts, is just unacceptable. So
1817 Congress needs to pass a budget now.

1818 Mr. Conyers. Exactly. Yes, sir, Judge?

1819 Judge Furgeson. Mr. Chairman, to me, we are truly
1820 playing with fire by letting this sequestration and shutdown
1821 continue because it will eventually gridlock the co-equal
1822 branch of Government that protects the constitutional rights
1823 of our people and that delivers justice to our Nation. It is
1824 an eventuality that I never thought possible. And the longer
1825 it continues and the longer we decide that the Constitution
1826 and justice no longer matter enough to be adequately funded,
1827 then anything is possible.

1828 I would close by saying it is ironic to me that
1829 Republicans and Democrats serving on the Appropriations
1830 Committees of both the House and the Senate have agreed to
1831 fund the judiciary adequately. And if this shutdown ended,
1832 those appropriators could make their recommendations, they
1833 could be accepted, and this terrible trauma would pass.

1834 But until that happens, our worst nightmares are upon
1835 us.

1836 Mr. Conyers. Thank you, Judge Furgeson.

1837 Mr. Kramer?

1838 Mr. Kramer. Thank you, Mr. Chairman.

1839 I just want to repeat one thing I said and say one other
1840 thing. The ultimate irony, of course, is that in the
1841 criminal justice context, the cutbacks will, in the end, if
1842 they continue, result in a greater expense to the American
1843 taxpayer than would have been if the system had been
1844 adequately funded.

1845 And I would just like to observe that the entire court
1846 system is such a tiny part of Government relative to the
1847 other parts. I heard the budget for the Department of
1848 Justice and parts of it, and the FBI. The layoffs in the
1849 FBI, the number of people being laid off are greater than the
1850 entire number of people in the Federal public defender system
1851 in the entire country.

1852 And the budget of the Bureau of Prisons is greater by \$2

1853 billion than the entire court budget. So what you are
1854 talking about is such a tiny portion of the Federal budget
1855 that is at stake, but such a crucial and important part of
1856 it.

1857 Mr. Conyers. I thank you so much.

1858 Mr. Kengle of the Lawyers' Committee for Civil Rights
1859 under Law.

1860 Mr. Kengle. Mr. Conyers, just very briefly, I want to
1861 thank you and your fellow Members for the presentation today.
1862 My prior remarks were directed at the voting rights issues.

1863 Mr. Conyers. Yes.

1864 Mr. Kengle. But you and my distinguished fellow
1865 panelists have done an excellent job of highlighting the
1866 issue of judicial vacancies, which is a very important issue
1867 to the Lawyers' Committee that I didn't touch upon, but
1868 something that we will return to in the future.

1869 And I once again thank you for doing so.

1870 Mr. Conyers. Thank you so much.

1871 Don Saunders?

1872 Mr. Saunders. Mr. Chairman, I am privileged to be among
1873 so many gifted and articulate voices for justice. On behalf
1874 of the part of the justice system that ensures justice for
1875 people of limited means, it is just really a privilege to be
1876 here.

1877 I want to thank you and your colleagues for the

1878 leadership you have shown, and I just stress once more how
1879 critically important the Federal component of justice for
1880 civil and criminal litigants is to the future. So thank you,
1881 sir, for inviting me here.

1882 Mr. Conyers. You are more than welcome.

1883 And the lady that is the head of not one, but two
1884 important organizations, Nan Aron.

1885 Ms. Aron. Again, I just add my voice thanking you for
1886 showing great interest in putting some attention on our third
1887 and critically important branch of Government, the judiciary.
1888 I thank you and look forward to working with all of you in
1889 the future.

1890 Mr. Conyers. Thank you.

1891 Scott Lilly?

1892 Mr. Lilly. Thank you. I would like to also thank you
1893 for holding this forum.

1894 I think there is no question that we have a full-blown
1895 constitutional crisis right now. We have one branch of
1896 Government that can't play its role because another branch
1897 has denied them resources. We have chaos in the executive
1898 branch as well because of this.

1899 It is ironic to me that the branch that is the source of
1900 this problem is the one that is most directly elected by the
1901 American people, and I think that is why this hearing is
1902 important. And I think that is a message to all of us. We

1903 need to communicate much better with our fellow citizens
1904 about what is at stake and what needs to be done than we
1905 obviously have been doing previously.

1906 Thank you.

1907 Mr. Conyers. Thank you.

1908 Attorney Diane Moyer, or legal director.

1909 Ms. Moyer. Chairman Conyers and members of the
1910 committee, thanks so much for staying with us. On behalf of
1911 the National Alliance to End Sexual Violence, the 1,300 rape
1912 crisis centers throughout the Nation, and for the
1913 Pennsylvania Coalition Against Rape, I would like to thank
1914 you for this opportunity.

1915 And I have been walking around the organization saying I
1916 feel like Chicken Little because I keep saying, "The sky is
1917 falling," and nobody else seems to get it. But I think the
1918 sky is falling, and we really need to act now.

1919 And my esteemed colleagues on this panel, the fact that
1920 America, my America, doesn't care about justice anymore
1921 breaks my heart. It really does. And the people here that
1922 are doing the work that comes from our Founding Fathers' work
1923 on a Constitution that we all swear to defend and we all
1924 pledge allegiance to, but let us make it real. Let us make
1925 it real and get this budget done so we can all go back to
1926 work.

1927 Mr. Conyers. Well, on behalf of all of my colleagues on

1928 the Judiciary Committee, we thank you for the incredible
1929 response. We think we have a record now that can make
1930 clearer the crisis that is going to affect the justice system
1931 and the judicial system of this country.

1932 And with that, this forum is adjourned. Thank you very
1933 much.

1934 [Whereupon, at 4:16 p.m., the forum was adjourned.]