

3Testimony by

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Before

Forum Examining the Impact of the Government
Shutdown & Sequestration on the Provision of Justice

Chaired by

John C. Conyers, Ranking Member
House Committee on Judiciary

Ranking Member Conyers, Members of the Judiciary Committee thank you for holding this discussion on the impact that sequestration and the government shutdown are having on the U.S. Justice Department and our justice system. It is an important topic that is poorly understood. The current fiscal impasse in Washington is placing the American people at significantly greater risk than they realize and that risk will actually increase once the shutdown is lifted if immediate steps are not taken to dettrigger the fiscal year 2014 sequestration.

Let me first talk about what happened in fiscal 2013 because that is also not well understood. The Justice Department had a unique wrinkle to its budget that was not available to other government agencies. The department's Working Capital Fund was with the approval of the Appropriations Committees able to recapture nearly half a billion dollars in unobligated, prior year budget authority which was not scored by the Congressional Budget Office as new budget authority. Those funds were then redistributed to agencies within the department in a manner that greatly blunted the impact of the sequester and permitted all activities within the department to operate through the fiscal year without furloughs.

This rather extraordinary transaction restored \$150 million to the Bureau of Prisons; \$239 million to the Federal Bureau of Investigation; \$36 million to the U.S. Marshalls and additional funds to the DEA, the U.S. Attorneys and other elements within the department. That did mean that the Department escaped unscathed by the sequester. The entire department was placed under a hiring freeze which as significantly whittled away at its capacity to perform its mission. A recent report by the FBI Agents Association argues that as many as 20 separate counter intelligence cases that might have been opened last year were not investigated because of inadequate personnel resources. There were also a significant cutbacks in operating resources including reductions in the funds available to pay informers and in the availability of gasoline to operate department vehicles thereby limiting investigations in certain areas.

But the one point I want to make in this hearing is that the money that blunted the impact of the 2013 sequestration is gone. It has been used up and this hat has no more rabbits. Unlike many Departments in the government which will be required under the 2014 sequester to operate at the same level they

operated last year, the Justice Department will have to operate at below the 2013 level which will seriously and dangerously impair operations.

One thing that I would urge this committee to examine in considerable detail is the impact that the FY 2014 sequester level will have on the Bureau of Prisons. My impression is that resources in the prisons are already stretched so tightly that even a few days of furloughs of prison personnel will significantly increase the possibility of violence against personnel, inmates or possibly even the public.

But I want to spend the rest of my time talking about the FBI because it is not only the largest entity within the department but also because the challenges it faces will be reflective of the kinds of problems that will confront the U.S. Marshalls, Drug Enforcement, BATF and the U.S. Attorneys.

The 2014 sequester against a continuing resolution funding level will leave the Bureau with \$7.3 billion of the \$8.3 billion that President Obama requested for the current year. Those cuts will probably be extracted disproportionately from the operations side of the budget in order to protect personnel. None the less all Bureau personnel face at least 8 days of furloughs and perhaps as many as 13. That translates into a 4 to 5 percent reduction in work effort overall and that is on top of a hiring freeze that will by next March have reduced the Bureau's work force by 3500 or about 10 percent below levels of last January. These cuts will affect the bureau's capacity to confront a range of major threats including:

- The continued threat of terrorism;
- The expanding efforts by foreign governments and economic competitors to conduct espionage against U.S. targets
- The expanding use of the internet for fraudulent purposes;
- The continuing problem of White Collar Crime, particularly with respect to corporate and securities fraud
- Gang violence
- The continued expansion of international criminal syndicates that target American citizens and businesses.

One agent quoted in the report of the FBI Agents Association talked about what is already happening with respect to perusing mortgage and financial fraud cases

The hiring freeze has prohibited our team from adding new agents to combat the significant surge in investment fraud and mortgage modification fraud. Resources are stretched...just this past week, four known fraudsters were advertising in the classified for employees to expand their current fraudulent schemes, however, with our lack of resources and now the additional cuts and furloughs, we are not able to address the progressing schemes.

The other half of the cuts will come from non-salary and expense items which make up 39 percent of the Bureau budget. These cuts will total about \$350 million but only part of the non-salary is subject to cuts. \$1.5 billion of the \$3.5 billion spent on non-salary items goes to paying leases and can only be canceled if the Bureau pays penalties so the cut against the remaining \$2 billion of the operations budget amounts to about 18%. This includes everything from gasoline to listening devices, and payments to

informants. Many agents fear that such cuts will seriously degrade the quality of work done by the agency beyond the level of staff.

I also want to comment briefly about the impact of the government shutdown on the Justice Department and the FBI. Although only about 15 percent of the workforce has been furloughed that 15 percent plays an essential role in planning and management. The longer those individuals remain off the job the greater the price the tax payer will pay in terms of longer term management issues. Agents are not currently being reimbursed for expenses, for instance because the people who manage that part of the operation are on furlough.

The fact that a portion of the workforce is allowed to be away from the job and will be paid the same as those who are working is also creating morale issues that no one should welcome. The uncertainty, the furloughs, the questions of equity all making it more difficult to recruit and retain top individuals particularly in highly competitive skill markets such as cybercrime and investment fraud.

The long term impact of the Congress' inability to fund the Bureau and other agencies in the Justice Department is likely to be much greater than simply the time lost by those who have been furloughed.