

TASK FORCE ON JUDICIAL BUDGET CUTS
Co-Chairs: Hon. Stephen G. Crane and Michael Miller
Report on Public Hearing Conducted on December 2, 2013

This report was approved by the Executive Committee of the New York County Lawyers' Association on January 3, 2014.

COURTS IN CRISIS

The budget remains the single most important issue facing the courts.

Chief Justice John Roberts, December 31, 2013.¹

INTRODUCTION

In his Year-End Report on the federal judiciary, released on New Year's Eve 2013, Chief Justice Roberts noted that Congress has set a target date of January 15, 2014 to complete the appropriations process for fiscal 2014. He then warned that absent significant relief from the brutal and indiscriminate budget cuts mandated by sequestration, "The future would be bleak." Court staff would be further reduced, civil and criminal cases would be delayed, and the consequences would include "a genuine threat to public safety," as well as "commercial uncertainty, lost opportunities, and unvindicated rights."²

The New York County Lawyers' Association (NYCLA) has been tracking the real-world effects of budget cuts on our courts—both federal and state—for the past two and a half years. On December 2, 2013, NYCLA's Task Force on Judicial Budget Cuts (Task Force) held its second all-day public hearing on the continuing judicial budget crisis. Seven hours of testimony from 23 witnesses—including court administrators, judges, prosecutors, defense attorneys and bar leaders—dramatically illustrated both the breadth and depth of the problem.³ These witnesses provided detailed and compelling evidence that the

¹ 2013 Year-End Report on the Federal Judiciary, Dec. 31, 2013 (hereinafter Year-End Report), p.1, available at <http://www.supremecourt.gov/publicinfo/year-end/2013year-endreport.pdf>.

² Id., pp. 8-9.

³ Witnesses included New York State Court administrators; the Chief Judges of the United States Court of Appeals for the Second Circuit, the Eastern District of New York, the Southern District of New York and the Bankruptcy Courts for the Eastern and Southern Districts of New York; the United States Attorneys for both the Southern and Eastern Districts of New York; the Executive Director of the Federal Defenders of New York; the Presidents of the American Bar Association, the New York State Bar Association, the Federal Bar Council, and the Federal Bar Association; attorneys; and representatives of public interest groups. See Appendix A for the hearing schedule with the list of witnesses.

cumulative impact of judicial budget cuts over the past several years has pushed both the New York and federal courts into crisis, and the hearing received substantial coverage in the press.⁴

Witnesses detailed the continuing corrosive effect that budget cuts have had on the justice system over the past several years. Delays at every stage of every matter before the courts are now common: delays in getting into the courthouses, delays in processing documents, delays in the public's ability to obtain archived documents, delays in trial proceedings, delays in decisions. The decimation of court staff has also reduced security for both the courts and the public, and, ironically, forced the dismantling or reduction of a range of programs that actually generate revenue or save money, from prosecution of economic crimes to drug treatment programs that cut recidivism rates. Although there were some bright spots—and there is hope for limited budget relief from both Washington and Albany—the testimony concerning both the New York and the federal courts reflected a judicial system in deep crisis.

Regarding the federal courts, we heard that a series of budget cuts over the past several years, followed by the across-the-board ax of sequestration earlier this year—has damaged the courts in very meaningful ways. Cuts have created untenable management issues for all decision-makers, damaged morale and, as the testimony consistently reflected, compromised the courts' ability to meet their constitutional and statutorily mandated responsibilities and duties. Moreover, many of the cost reductions seemingly achieved are illusory. United States Attorneys Preet Bharara and Loretta Lynch—who head the federal prosecutors' offices in the Southern and Eastern Districts of New York, respectively—pointed out that their offices generate enormous amounts of money from fines, fees and restitution that go into the United States Treasury. Yet because of hiring freezes, the headcount for both Assistant United States Attorneys and staff positions has been significantly reduced, forcing those offices to curtail or scale back investigations or prosecutions that could pay for themselves many times over.

Additionally, the witnesses testified that the across-the-board cuts have caused serious public safety issues, not just for courthouse staff but for the public as well. There have been more threats to federal judges than ever before, yet there has been a mandatory reduction in the number of court officers. Moreover, essential training, such as for firearms safety, has been reduced or eliminated. The caseload for federal Probation Officers has increased due to the cutbacks and hiring freeze and, as a result, presentence

⁴ See, e.g., *New York Times*, December 2, 2013, p. A23 (available at http://www.nytimes.com/2013/12/03/nyregion/prosecutor-sees-danger-in-budget-cuts.html?_r=2&); *New York Post*, December 2, 2013 (available at <http://nypost.com/2013/12/02/us-attorney-preet-sequestration-cuts-put-safety-at-risk/>); *New York Daily News*, December 2, 2013 (available at <http://www.nydailynews.com/new-york/cuts-turn-ny-unsafe-chicago-u-s-attorney-article-1.1535466>); *New York Law Journal*, December 4, 2013 (available at http://www.newyorklawjournal.com/PubArticleNY.jsp?id=1202630403051&Judiciarys_Request_for_Increase_in_Funds_Receives_Early_Support&slreturn=20131130153218); *Wall Street Journal*, December 2, 2013 (available at <http://blogs.wsj.com/law/2013/12/02/us-attorney-chief-judge-decry-budget-cuts/?KEYWORDS=preska>); *Law360*, December 2, 2013 (available at <http://www.law360.com/legalindustry/articles/491818/prosecutors-say-budget-woes-imperil-ny-criminal-recoveries>); *Brooklyn Daily Eagle*, November 27, 2013 (available at <http://www.brooklyneagle.com/articles/hearing-judicial-budget-cuts-has-focus-brooklyns-court-2013-11-27-183000>); *Courthouse News Service*, December 3, 2013 (available at <http://www.courthousenews.com/2013/12/03/63394.htm>); *The Jewish Voice*, December 4, 2013 (available at http://jewishvoiceny.com/index.php?option=com_content&view=article&id=5989:budget-cuts-may-leave-nyc-office-of-us-attorney-in-peril&catid=112:new-york&Itemid=295).

reports are necessarily less thorough, and field work and probation services to and monitoring of offenders have been reduced.

Regarding the New York State courts, we heard that the \$170 million in cuts to the judiciary budget three years ago, followed by “flat” funding since (in the face of rising costs), has produced a hiring freeze, reduced court hours and greater delays at every stage of court proceedings. New Yorkers now face routine delays and often long lines simply getting into the courthouses (sometimes resulting in default judgments and then orders to show cause to set aside the judgments), delays in obtaining files (up to 14 weeks to obtain an archived file), delays in trials, delays in motion practice, delays in obtaining decisions, and delays in the processing of papers. Not surprisingly, the morale of court personnel has declined dramatically.

As Chief Justice Roberts noted in his Year-End Report, the impact of budget cuts is more severe in the judicial system than in other parts of the federal government, as “virtually all of [the courts’] core functions are constitutionally and statutorily required.”⁵ The same is true, of course, for the courts of New York State. Moreover, as the Chief Justice pointed out: “The five percent cut that was intended [by sequestration] to apply ‘across-the-board’ translated into even larger cuts in discretionary components of the Judiciary’s budget.” The combined effects of cuts and sequestration have resulted in “the lowest staffing level since 1997, despite significant workload increases over the same period,” have reduced federal defender offices by 11 percent in fiscal 2013 alone, have “postponed trials and delayed justice for the innocent and guilty alike,” and have significantly reduced security, “placing judges, court personnel, and the public at greater risk of harm.”⁶

Since its establishment in June 2011, NYCLA’s Task Force has issued five substantive reports and held two all-day hearings on the impact of budget cuts on the administration of justice.⁷ NYCLA recognizes the difficult economic and political realities facing court administrators and appreciates their efforts to provide the best service possible under increasingly challenging circumstances. However, even the best efforts of dedicated and gifted administrators and court personnel cannot change the reality that our courts are perilously straining as a result of budget cuts and sequestration and that the quality of justice has been impaired.

On December 2, 2011—exactly two years before the most recent public hearing—the Task Force held its first hearing on the brewing budget crisis. The testimony at that time was deeply troubling, as we heard of

⁵ Year-End Report, p. 5.

⁶ Year-End Report, pp. 5-7.

⁷ Preliminary Report on the Effect of Judicial Budget Cuts on New York State Courts, August 15, 2011, http://www.nycla.org/siteFiles/Publications/Publications1475_0.pdf; Preliminary Report on the Effect of Judicial Budget Cuts on the U. S. District Court for the Southern District of New York, August 26, 2011; http://www.nycla.org/siteFiles/Publications/Publications1476_0.pdf; Electronic Survey Report, December 12, 2011, http://www.nycla.org/siteFiles/Publications/Publications1507_0.pdf; Public Hearing Report on the Effects of Judicial Budget Cuts on the New York State and Federal Courts, January 18, 2012, http://www.nycla.org/siteFiles/Publications/Publications1516_0.pdf; Report on Budget Cuts in the Federal Courts, September 4, 2013, http://www.nycla.org/siteFiles/Publications/Publications1637_0.pdf.

increased delays, deterioration of morale and a general decline in the ability of the courts to maintain the quality of service delivery. The testimony at the 2013 hearing was even more troubling, although there are a few positive notes.

We are heartened that the United States Congress has averted another government shutdown and has approved a budget for the next two years. However, the House and Senate Appropriations Committees have yet to determine how the proverbial budget pie will be sliced. Earlier in 2013, the House Appropriations Committee proposed a 5.4% increase and the Senate Appropriations Committee proposed a 7.4% increase in the judiciary budget. On December 6, 2013, the judiciary made its budget request, which is slightly below the amount recommended by the House Appropriations Committee. We note that the federal judiciary's budget, in total, represents 0.2% of the federal budget—two-tenths of one percent. We urge the respective Appropriations Committees to follow through on the recommendations they made earlier in the year and fund the federal judiciary's budget request in its entirety.

For the New York State courts, the hopeful aspect was the fact that on December 1, 2013, court administration released a proposed budget that called for a small (3.6%) increase over the flat budget of the preceding year, together with funding for 20 new Family Court judges. Additionally, if the proposed budget is adopted, we were told that courthouses would once again remain open to 5:00 p.m., regaining the half-hour that they lost as a result of funding shortfalls over the past several years.

However, the state judicial budget request remained significantly lower than the budget of two years earlier, which itself was slashed by \$170 million from the year before. Additionally, there have been significant salary increases that were contractually mandated, as well as an increased allocation to civil legal services, resulting in a further decline in the court's effective operations budget. The budget proposed just before our public hearing was also notable for a couple of items not included. For example, it would not restore child care facilities to the courts from which they had been removed or reduced (removed from Housing Court and reduced significantly in Criminal Court and Family Court). Nor would it restore Small Claims Court to four nights per week.

Wrapping up the public hearing, American Bar Association President James R. Silkenat stated, "We are well past the diagnosis stage." As he and other bar leaders pointed out, our courts are an equal branch of government, and should not be treated as though they are merely an administrative agency with discretionary programs to cut. NYCLA concurs. It is incumbent upon the organized bar to use its extraordinary powers of advocacy and persuasion to convey to Washington and Albany that our courts must be adequately funded in order to meet their constitutional obligations and, indeed, for the integrity of our system to survive.

SUMMARY OF HEARING TESTIMONY

Panel 1: Impact of Budget Cuts on the State Courts—Office of Court Administration

“...there is a point beyond which the Judiciary cannot be pushed if we are to continue to meet our constitutional responsibilities. We have reached that point...” Written testimony of Hon. Lawrence Marks, First Deputy Chief Administrative Judge, and Ronald Younkens, Executive Director, New York State Office of Court Administration

Hon. Lawrence Marks and Ronald Younkens provided an overview of the budget the Office of Court Administration (OCA) had submitted to the Governor and legislative leaders on November 29 for the fiscal year beginning April 1, 2014.

The proposed budget would provide the first increase in court system funding in five years. In that period of time, the state judiciary has absorbed \$300 million in increased costs and no additional funding. To accommodate the significant decline in resources, OCA has tried, wherever possible, to find savings in areas that do not affect the public by streamlining administration and reorganizing and consolidating offices and programs. Examples include expansion of electronic filing of court papers, using internet-protocol telephones, shifting from print to on-line legal materials, using technology for a record repository and an enhanced website, and upgrading case-management systems. Layoffs, early retirement programs and a hiring freeze have reduced court system non-judicial personnel by 1,900 employees over the past five years. Despite burgeoning caseloads, current staffing is the lowest in a decade.

The effects of the reductions in the workforce are evident. Depleted back-office staffing has resulted in delays in processing documents and disposing of cases. Managers have been diverted from their duties to cover front-line positions. The 4:30 p.m. courtroom closing time, adopted by some courts to control overtime, has produced complaints from the public and the bar. Reduced numbers of court officers have affected the timely delivery of prisoners to courtrooms and raise serious public safety concerns.

The proposed budget seeks increased appropriations of \$63 million or a 3.6% increase in funding. This budget provides funding for judicial salary increases, mandated increases for indigent criminal defense and incremental salary adjustments for non-judicial employees. It would allow OCA to maintain current staffing levels and fill a limited number of critical positions. Courtrooms would remain open to the public until 5:00 p.m. each day. Civil legal services would receive an additional \$15 million, which would provide for more legal representation in eviction, domestic violence, consumer debt and foreclosure cases.

Perhaps most significantly, the proposed budget would fund 20 new Family Court judgeships to be established in January 2015. Over the past 30 years as filings increased by 90%, the number of Family Court judgeships has increased by only 8.8%, with no new judgeships created in New York City since 1991. Increasing the number of Family Court judgeships will require legislative action; it cannot be accomplished by OCA alone.

Judge Marks noted the important role of the bar in advocating for sufficient funding for the judiciary and called on the bar to continue to document problems faced by litigants and attorneys as they navigate the state court system.

Panel 2: Impact of State Court Budget Cuts on Children, Families and the Public

“...the Family Court system cannot fulfill the functions it was designed to do without additional Family Court Judges....with a caseload of 1,533 cases per year, a Family Court Judge can only spend **52 minutes per case per year.**” Written testimony of Stephanie Gendell, Associate Executive Director, Policy and Government Relations, Citizens’ Committee for Children of New York

“...young children in particular have a vastly different sense of time, and delay can be very traumatic in the life of a child who has been removed from his/her home.” Oral testimony of Susan B. Lindenauer, Co-Chair, New York State Bar Association Task Force on the Family Court

In her testimony, Briana Denney, Esq., partner at Newman & Denney P.C. and co-chair of the NYCLA Matrimonial Law Section, noted that since she had testified at a similar NYCLA hearing two years ago, the “situation has become more dire with parties and children’s day-to-day lives hanging in the balance.” She attributed a list of problems in Supreme and Family Court to the budget cuts, including shortened courthouse hours, increased backlogs of cases on judges’ and referees’ calendars, delayed trials creating injustices for non-monied parties and difficulties for children whose lives are in flux, decreased availability of interpreters, and inadequate time for judges to understand complex cases, particularly when immediate court intervention is needed. Matrimonial judges often refer financial issues to referees and JHOs, with the result that the parties must bear the burden of conducting two trials of related matters. Additionally, delays in obtaining judgments of divorce have tax consequences and create problems with enforcement of agreements, including enforcement of child support.

Dora Galacatos, Esq., Executive Director of the Feerick Center for Social Justice at Fordham University School of Law, described the impact of judiciary budget cuts on both lawyers and the more than 97% of defendants who are unrepresented in consumer debt collection cases. She testified that “delays are so significant that they truly implicate due process concerns.” One advocate who was preparing for a hearing was told it would take 45 days for the clerk to take the request for a file and another 14 weeks to obtain the court file. In another case, an attorney assisting a client with mental illness waited ten months for a file to be retrieved from the archives. By then, the client was institutionalized. While the rate of default judgments is going down, it remains very high—52% in 2012. Despite this high rate, notice of default judgments is often untimely; sometimes judgment debtors do not learn about such judgments until their wages are garnished. Without access to court files for records, such as affidavits of service, claimants are hindered from fully asserting their claims for relief. Children’s Centers have closed, affecting single-parent families and working families who are pressured to settle cases when their children are in the courtroom instead of a child care center.

Representing Citizens’ Committee for Children of New York Inc., Stephanie Gendell, Esq., presented the context for the budget cuts in the Family Courts, noting that the statutory limit on Family Court judges in New York City has not changed since 1991 when the New York State Legislature authorized 47, while new and amended statutes have increased the role and workload of the Family Court without adding resources. Years of advocacy to increase both the number of judges and budget resources have not proved fruitful. The \$9.2 million in cuts in the last two years have translated into tangible losses in non-judicial staff, court officers, overtime and services such as child care and mediation programs. The impact on children and families is dramatic—delays in the resolution of juvenile delinquency cases, longer adjournments in support, custody and visitation cases, and longer stays for children in foster care as fewer permanency hearings are conducted. Notably, New York ranks 50th out of 52 jurisdictions in the length of foster care. Ms. Gendell called for a restoration of funding as “...otherwise the same children who missed this Thanksgiving might still be in foster care next Thanksgiving.”

Janet Ray Kalson, Esq., Associate, Himmelstein, McConnell, Gribben Donoghue & Joseph, focused on the impact of the budget cuts on the Housing Court, where the overwhelming majority of tenants are

unrepresented. There are now fewer court attorneys, impeding the resolution of cases, fewer attorneys providing information to unrepresented tenants and more discontinuous trials as the trial parts do not have full-time clerks and enough court officers. With 20% of the translators gone, translators are often unavailable, requiring tenants and their attorneys to return to court several times. As Ms. Kalson noted: “These staff cuts matter. They result in endless delays, inefficiencies and hardships for tenants in Housing Court. The Housing Court is in crisis, and it is *pro se* tenants who are suffering the most.”

In her written and oral testimony, Susan B. Lindenauer, Esq., representing the New York State Bar Association Task Force on the Family Court, advised that she would address two of the five priority areas and briefly touch on a third priority identified in the Task Force Report, approved by the New York State Bar Association House of Delegates in January 2013. First, she advocated for an increase in the number of Family Court judges to hear the approximately 700,000 cases filed each year, describing the Family Courts as akin to “hospital emergency rooms.” Next she emphasized that legislative authorization of more judges without sufficient funding for the judicial positions and ancillary support for staff and security “would serve no purpose.” The third issue needing attention is the delays in hearings, often delays of months, and the lack of continuous trials. These are “systemic problems that result in large measure from too few judges.”

In written testimony not presented in person at the hearing, Alan M. Moss, Chair of the Small Claims Improvement Committee created by Hon. A. Gail Prudenti, Chief Administrative Judge of the New York State Unified Court System, noted that the severe reduction in evening hours in Small Claims Court from four nights a week to one night in most boroughs and to only one or two nights a month in Richmond County makes the Small Claims Court basically unavailable to claimants who cannot take time off during the day to appear. In Brooklyn and Manhattan, it may now take up to several years to get a judgment. Defendants who know how to “play” the system request adjournments or allow default judgments to be entered against them and then easily get the matters restored to the calendar.

Panel 3: Impact of Budget Cuts on the Federal Courts Part 1: Court Operations, Criminal Defense and Public Safety

“If sufficient funding is not provided to our courts in the next year, the federal judiciary will be unable to execute its core constitutional and statutory duties with the quality the public has come to expect.” Written testimony of Hon. Carol Bagley Amon, Chief Judge, United States District Court, Eastern District of New York

“We will continue to prioritize the most serious crimes, but the thought of other crimes leading to tragedy is one that keeps me and my colleagues up at night.” Written testimony of Loretta E. Lynch, United States Attorney for the Eastern District of New York

“I worry that we’re suffering from budget fatigue.” Oral testimony of David Patton, Executive Director and Attorney-in-Chief for the Federal Defenders of New York

Judge Amon began by noting that when she testified at the NYCLA hearing two years ago, she said “we would plan for the worst and hope for the best.” What the court got was the worst. Funding allocations for the current fiscal year were 10% below fiscal year 2012 levels, including a cut of \$731,770 for the Eastern District because of sequestration. Sequestration cuts on one of the largest federal districts, which

had 6,500 civil cases and 736 criminal cases filed last year, have affected every aspect of the court's operations. The Clerk's Office, which is the administrative arm for all court operations, lacks funding for 27 employees and has 17 fewer employees than two years ago. Understaffing has created delays in processing victim restitution payments, docketing cases and responding to queries from the public; there are no longer dedicated staff for various critical tasks leading to inefficiencies and high staff stress levels. Layoffs in the Clerk's Office were averted by diverting about \$971,000 from expense and IT accounts to staff salaries; now the court has no ability to maintain or purchase equipment and limited ability to service and maintain the state-of-the-art technology so beneficial to litigants.

"The impact of sequestration-related funding cuts on the Eastern District's Probation Department cannot be overstated," advised Judge Amon. Probation officers now take an extra month to complete Presentence Reports for judges and cannot do all the field work necessary to verify material in the reports. Fewer officers are available to conduct home searches, monitor sex offenders' computer use and conduct 24-hour location monitoring of defendants. Treatment services for defendants have also been cut by 20%; funds for emergency housing and other services for offenders were eliminated entirely. The Pretrial Services Agency, currently responsible for supervising over 1,000 defendants, experienced cuts in salaries of 14% and in treatment funds of 20%, resulting in less intensive supervision.

Judge Amon discussed the additional risks to the safety of the public, judges, employees, jurors and litigants created by sequestration cuts of 30% to funding for court security systems and equipment. The Eastern District, which has eight national security cases currently pending, received 42 threats in the past year against judges and court officials, including a plot to assassinate a judge on Long Island.

Eileen Kelly, Chief Probation Officer for the Eastern District of New York, amplified Judge Amon's testimony about the effects of budget cuts on her department, noting that her administrative office needs 148 people, has 120, but only has funding for 117. Furloughs were narrowly avoided by transferring funds from other accounts to salaries. Essential training, such as for firearms safety, is either non-existent or postponed. All of these cuts have adversely affected morale.

In her testimony, Loretta E. Lynch, United States Attorney for the Eastern District of New York, noted that her office has prosecuted more terrorism cases since 9/11 than any other United States Attorney's office, foiling plots to blow up the subway system and the Federal Reserve Bank building and putting together cases on international cybercrime and corporate fraud. She described the mandatory cuts caused by sequestration as taking a "meat cleaver" to the budget, with no consideration for how the government can carry out its mission. With cuts allocated based on size, the Eastern and Southern Districts both took 8% cuts to their non-personnel budgets, affecting training, travel in the line of duty and IT. Since a hiring freeze was invoked in early 2011, few new hires have been permitted. Early retirement options for senior staff have further depleted personnel; 25 attorney positions are now "empty chairs." Resources are needed to continue to bring terrorism and national security cases and to investigate complex fraud cases to find assets and justice for victims. One of the true costs of sequestration emerges in the area of making sure "that crime does not pay." In the last year, Ms. Lynch's office was credited with over \$2.2 billion in fines, restitution, penalties, forfeiture and civil settlements, vastly surpassing the office budget of \$38 million. If sequestration continues and people are furloughed, these and other law enforcement efforts will be jeopardized. And, ironically, revenue to the federal government will be diminished. Ms. Lynch

concluded by noting: “While some may say we’re shrinking government, what will shrink is the blanket of protection we provide for the American people and the recoveries we provide to the Treasury.”

David Patton, Esq., Executive Director and Attorney-in-Chief for the Federal Defenders of New York, reiterated his office’s constitutional mandate—to provide a lawyer to defendants who are charged with a serious crime and cannot afford an attorney. Ninety percent of defendants in federal court qualify for court-appointed lawyers; 200,000 cases a year are assigned to Federal Defenders or Criminal Justice Act (CJA) Panel attorneys. His office represents 40% of all federal criminal defendants in the Eastern and Southern Districts. In Fiscal Year 2013, Federal Defenders staff nationally was cut by 10% and forced to take 12,500 unpaid furlough days. Federal Defenders of New York required each attorney to take 12 days of unpaid leave. Further cuts are expected in Fiscal Year 2014; ironically, these cuts will increase costs for taxpayers because if Defenders cannot handle cases, they will be shifted to the private attorneys on the CJA panel at higher costs. Mr. Patton characterized the cuts as “not just short-sighted but blind.” A recent Congressional appropriation of \$26 million included \$5 million for Federal Defenders, which reduced cuts from 9.5% to 9%. Mr. Patton presented a vivid example of a case where complex and extensive investigations by Federal Defenders enabled a defendant to win his case instead of spending many years in prison. Reduced funds will affect resource-intensive cases that Defenders will have to turn away, costing the public more money. Mr. Patton urged the Task Force not to suffer from “budget fatigue” but to keep advocating for adequate funding for quality representation that promotes the rule of law and safeguards constitutional rights.

Panel 4: Impact of Budget Cuts on the Federal Courts Part 2: Court Operations and the Administration of Justice

“The Judiciary must adjudicate all civil and criminal cases that are filed in our Courts. We do not have the luxury of choosing our cases or controlling the growth of our dockets.” Written testimony by Hon. Robert A. Katzmann, Chief Judge, United States Court of Appeals for the Second Circuit

“In addition to significant delays of justice, budget cuts to the United States District Court for the Southern District of New York have impeded access to information, jeopardized public safety, and potentially impacted the nation’s economy.” Written testimony of Hon. Loretta A. Preska, Chief Judge, United States District Court for the Southern District of New York

“The bottom line is this. At the end of the day, justice cannot be done on the cheap, and public safety does not come free.” Written testimony of Preet Bharara, United States Attorney for the Southern District of New York

Chief Circuit Judge Robert A. Katzmann emphasized in his testimony that deep funding cuts mean the federal judiciary—the Third Branch of government—will not be able to carry out its constitutionally and statutorily mandated responsibilities. To date, the court system has coped with reduced funding but it “cannot continue to operate in this way.” Between Fiscal Year 2011 and 2013, the Courts of Appeal nationally reduced personnel by 10.9%, at the same time filings fell by less than 2%. The Second Circuit Clerk’s Office lost 23% of its staff, while filings fell by 6%, translating into the departure of 17 employees with a cumulative history of more than 210 years of knowledge and experience. Continued budget reductions will affect the court’s ability to keep pace of technology developments and will lead to

increased caseload backlogs and additional time to process civil cases and bankruptcy petitions. Judge Katzmann noted that budget cuts and sequestration have had the most significant impact on the Defenders Service and reaffirmed David Patton's prior testimony. Additionally, shortfalls in the Juror Fee Account could affect the diversity of jurors reporting for duty and have an impact on the "Courts' ability to ensure a fair representation of citizens serving as jurors." Inadequate funding will further reduce the number of hours for each Court Security Officer and leave courthouses with security vulnerabilities. In conclusion, Judge Katzmann stated: "We have no programs to cut, only people and when we cut our staff and reduce our operations deep into the bone, we will be forced to curtail our ability for our citizens to access justice...."

In her testimony, Hon. Loretta Preska, Chief Judge of the Southern District of New York, reviewed the dramatic cuts in operations forced by reduced funding over the last several years. The Clerk's Office staff has been cut from 229 to 173 employees, leading to delays in docketing civil filings and responses to requests for records. The docketing delays can affect orders and other decisions having an impact on financial markets or a litigant's financial viability, on civil contempt orders informing a party when to report to prison, and on civil complaints and criminal indictments of high public interest. Delays in receiving archival records affect released prisoners who need files for employment applications and civil litigants who need documents from prior cases.

As in the Eastern District, cuts to the Probation Office have compromised public safety as fewer officers manage increased caseloads. Since January 2009, Probation Office staffing has been reduced from 155 to 126 employees, with average caseloads increasing from 52 to 66. Funding for substance abuse treatment, location monitoring and mental health treatment has decreased; fewer court-ordered searches mean more weapons, drugs, child pornography and contraband remain in the community. Pretrial Services has been similarly affected, with 16 vacant positions, an increase in average caseloads and delays in processing new arrests, which creates problems for judges, attorneys, defendants and their families. Because of high-profile proceedings, the Southern District also attracts and must process large jury pools and crowds of visitors; lines now wrap around the block as fewer Court Security Officers operate the magnetometers at the entrance to the courthouse. The Southern District is also facing a 34% cut in non-salary funds, threatening maintenance, equipment upgrades, purchase of supplies and reduction in hours that lights and HVAC are used. Court reporters, previously considered essential staff, have been cut, leaving nine vacancies and causing delays in trials and in transcription. Judge Preska concluded by stating: "The effects of sequestration go far beyond an inconvenience to judges or to the court's litigants; budget cuts have created a ripple effect that impacts New York City and beyond."

Edward Friedland, Southern District Executive, reported that staff had not received a cost-of-living increase in three years, with resulting demoralization and turnover. Even worse, the SDNY's non-salary budget had been slashed 34%, with drastic cuts in technology, office supplies and maintenance. Only two audiovisual employees cover over 60 courtrooms.

Preet Bharara, United States Attorney for the Southern District of New York, noted at the outset of his testimony that "no topic weighs more heavily on my mind" than the effects of budget cuts imposed by sequestration on his office. He added that "the impact of a prolonged hiring freeze and continuing budget cuts could ultimately work irrevocable harm to the fundamental mission of my office—which is to keep our homeland secure, our streets safe, our markets fair, and our government honest." He particularly

emphasized the impact of the freeze on headcount. There are 20 fewer Assistant United States Attorneys (AUSA) now than in 2011, creating a 13% vacancy rate for AUSA's and a 26% vacancy rate for other staff, the highest in the country. A complete and indefinite hiring freeze and a traditional annual attrition rate of 22 AUSA's mean that by January 2015, a quarter of the allocated prosecutor positions will be vacant. Mr. Bharara added that, ironically, every dollar spent on his office generates much more money; last month, for example, a plea agreement with SAC Capital, a hedge fund, will lead to a \$1.2 billion payment, 24 times his office's annual budget. Lost revenue is not the only impact; the longer term impact is on communities as cases will take longer to make and potentially fruitful but labor-intensive investigations will be foregone.

Blanket budget cuts will force painful, supremely difficult choices in the future. He ticked off a list of choices he might have to confront, including should he settle civil cases because going to trial is too resource intensive, should he plead out criminal cases for the same reason, should he stop pursuing some smaller but important cases involving guns on the street or child pornography, should he ease up on financial fraud investigations or the prosecution of violent gangs, should he moderate his commitment to confronting cyber threats? He concluded: "In a sane world, we should have to do none of these things."

Panel 5: Impact of Budget Cuts on the Federal Courts Part 3: Bankruptcy, Business and Consumers

"In short, we are cut to the bone." Written testimony of Hon. Carla E. Craig, Chief Judge, United States Bankruptcy Court for the Eastern District of New York

"Often the relief requested from the bankruptcy court can mean the loss or gain of millions of dollars and thousands of jobs, or even the very ability of the debtor or other enterprises to survive." Written testimony of Hon. Cecelia Morris, Chief Judge, United States Bankruptcy Court for the Southern District of New York

"I hope there is never another Lehman. But what would happen under sequestration if there were?" Written testimony of James B. Kobak Jr., NYCLA Past President and Partner, Hughes Hubbard & Reed LLP

"Every petition we file transforms people's lives." Written testimony of William Z. Kransdorf, Director, New York City Bankruptcy Assistance Project, Legal Services NYC

Chief Judge Craig noted the importance of the bankruptcy courts to the national economy and then identified two principal areas where the cumulative impact of funding cutbacks has affected the Bankruptcy Court in the Eastern District: personnel and technology. In the last 15 months, the court reduced staff by 16 positions, representing a 23% loss of personnel. At current funding levels, three additional employees may be laid off, which may require the court to restrict or stagger courtroom hours. Staff have been required to perform multiple jobs, affecting morale and prompting some employees to seek jobs elsewhere. Bankruptcy courts, more than other courts, are highly dependent on technology, particularly the electronic filing system. In the past, the court maintained a reserve fund for emergencies and unexpected technology needs; now, the court is analyzing whether it can renew IT maintenance contracts. Library support funds, for both books and electronic research, have been cut, threatening to limit access to critical research needed on a daily basis.

Vito Genna, Clerk of the Court, United States Bankruptcy Court for the Southern District of New York, presented Chief Judge Morris's written testimony. Judge Morris described her court as experiencing a "crisis of staffing." Over the past three years, the court has absorbed the loss of 39% of its administrative staff, as well as the loss of support staff upon the retirement of a judge. These losses pose serious problems for one of the most active commercial courts in the world, where both complex, mega Chapter 11 cases, as well as thousands of consumer bankruptcy cases, are handled. With the mega Chapter 11 cases, the filing, review and disposition of hundreds of motions per month and the resolution of complex issues require substantial service by the court, including maintaining the status quo while the debtor formulates a path to reorganization, utilizing bankruptcy tools to broaden the pool of assets and build consensus among creditors, and employing the judicial process to liquidate estate property for the benefit of creditors. And some of these cases last several years. While consumer cases have a smaller dollar amount of claims, they operate on the same statutory scheme and require substantial attention. In 2009, the court launched its Loss Mitigation Program Procedures to assist the thousands of debtors trying to prevent the loss of their homes to foreclosure. This program is also resource intensive, with regular conferences and the enforcement of the loss mitigation scheduling order. As Judge Morris stated: "The diligence and excellence required for a federal body on the scale found in the three divisions of this court can only be achieved by the work of committed judges and their meticulous staff."

In his testimony, James B. Kobak Jr., Esq., discussed his role as lead counsel to the Lehman Brothers Inc. and MF Global Inc. trustees, two of the mega Chapter 11 cases discussed by Judge Morris in her testimony. He noted that more than 1,250 business commercial cases were filed in the Southern and Eastern Districts last year, over and above 22,000 non-commercial cases. The business cases often have "far-reaching consequences for not only tens of thousands of creditors and employees immediately involved but for the U.S. and worldwide financial system and the communities where businesses are located." Judges, courtrooms, support staff and systems need to be available on an emergency basis as filings often take place after hours and on weekends. Because of the superb response of the court in the *Lehman* case, 110,000 customer accounts involving \$90 billion in assets were available to customers the Monday after the filing, rather than being removed from the financial markets. In the *MF Global* case, with the court's help after an emergency filing and hearing, 3,000,000 open commodity contracts continued to be traded, amounting to 40% of the entire futures market. For both these cases, the filings and initial hearings were only the beginning of a long and complicated process. In terms of adequate resources for the Bankruptcy Courts, Mr. Kobak concluded: "The cost is small in terms of the national budget. To fail to provide that modest funding creates enormous and unacceptable risk for an always uncertain economic future."

The NYCLA Bankruptcy Committee, co-chaired by James P. Pagano, Esq., and David Wiltenburg, Esq., submitted written testimony that was not presented in person. The Committee expressed serious concerns that "if the downward spiral of financial support continues, the ability of our Bankruptcy Courts to respond to the next crisis... will be put at risk." Budget cuts and sequestration have led to reduced hours and the loss of more experienced personnel, burdens for both the judicial and support staff.

In his testimony, William Kransdorf, Esq., of Legal Services NYC, whose project provides assistance to low-income consumers, painted a poignant picture of how transformational filing for bankruptcy is in his clients' lives: they can stop a garnishment and harassing calls, they can get a job again and they can move into better housing. They get a "fresh start" and move onto a more sustainable financial path. His

project provides assistance through volunteer attorneys and law students to low-income New Yorkers in preparing their petitions; after that, the clients navigate the system on their own, most very successfully. Of the 1,000 petitions filed since 2006, fewer than ten have been dismissed. Mr. Kransdorf attributed this success, not only to the volunteer lawyers and law students, but to the case-management expertise and “humanism” of the court clerks and courtroom deputies. Judges also play an important role by identifying litigants who need attorney guidance. Layoffs in the Bankruptcy Courts may actually cost money in the long run as experienced staff foster efficient operations.

Panel 6: Courts in Crisis—The View from the Bar

“Budget cutbacks are corroding the efficient administration of justice and threatening our justice system, perhaps as in no other time in our country’s history.” Written testimony of James R. Silkenat, President of the American Bar Association (ABA)

“Additional costs for litigants due to funding-related delays...serve as disincentives for the international community to choose New York as the forum for dispute resolution.” Written testimony of David M. Schrauer, President of the New York State Bar Association (NYSBA)

“The sequester already has severely compromised the courts’ ability to fulfill their constitutional duties....” Written testimony of Robert J. Anello, President of the Federal Bar Council

“The judges and their staff are not in ivory towers; they jump into the trenches every day and help bring resolution to critical disputes.” Written testimony of William F. Dahill, President of the Southern District of New York Chapter of the Federal Bar Association (FBA)

ABA President James R. Silkenat noted that adequate funding for state and federal courts has long been a priority for the ABA, which conducted hearings around the country over the last several years to determine the status of state court funding. The theme that emerged: “State court systems were in worse shape than first thought and faced the most severe funding crisis in U.S. history.” Mr. Silkenat indicated that in the short term, state court funding appears to be “stabilizing” but that states like New York are far behind because of previous funding cuts. The ABA is working closely with state and local bar associations and other partners to encourage legislators to allocate more funding for state courts. On the federal side, Mr. Silkenat recently testified before the House of Representatives about the huge negative impact of the government shutdown on the federal courts, with special emphasis on how sequestration devastated the Federal Defenders Service. He concluded by stating: “I can assure you that the ABA will continue to work to guarantee the promise for all Americans of equal justice under law.”

In his testimony, NYSBA President David M. Schrauer reviewed NYSBA’s efforts to address both the impact of funding cuts on the state level and also on the federal side. He noted that “inadequate funding from sequestration poses a threat to New York’s status as a top choice for businesses engaged in international transactions....”

Federal Bar Council President Robert J. Anello highlighted the effects of the federal budget cuts and sequestration on the federal criminal justice system, including the insufficient funds for the Federal Defenders Service to represent all needy defendants and for the Probation Departments to prepare pre-sentencing reports and monitor criminal defendants. Courthouse security and physical facilities have also been affected. Both the Southern and Eastern Districts cannot make needed upgrades for security

cameras and ancillary computer systems and have had to reduce staffing by the United States Marshals. Routine building upkeep and maintenance of computer systems are compromised. Mr. Anello also noted the effect of budget cuts on staffing in both the Bankruptcy Courts and Second Circuit.

In his testimony, FBA Chapter President William F. Dahill presented examples from his own practice of federal judges, magistrate judges, clerks, other non-judicial staff and U.S. Marshals going above and beyond their normal responsibilities to assist him and his clients. He then commented on how budget cuts have led to delays in same-day docketing and processing requests for archived files, creating delays in filing and resolving cases. He concluded by noting his chapter's involvement in lobbying on funding issues on behalf of the federal judiciary.

CONCLUSION

The compelling testimony at the public hearing held on December 2, 2013 dramatically demonstrated that as a result of the severe budget cuts over the past several years, both the New York State courts and the federal courts in New York City are struggling to provide access to justice and that they are dangerously close to the point where they cannot meet their constitutional and statutory duties.

We are encouraged that the New York State Office of Court Administration has requested a budget increase for Fiscal Year 2014, albeit a very modest one, to \$1.81 billion and initially there seems to be a good deal of support for it in Albany. We note that this amount represents a tiny 1.27% of the \$142.6 billion New York State budget proposed by Governor Cuomo. We urge the New York State Legislature and Governor Cuomo to approve the court's budget request in its entirety and to fund the judiciary at a level sufficient to allow the New York State courts to meet their obligations under the New York State Constitution and relevant case law.

As noted above, we are also pleased that Congress has approved a budget for the next two years. However, now the appropriations process is underway and the various federal agencies and departments are competing for the same budget dollars. We urge the respective Appropriations Committees to follow through on the recommendations they made earlier in the year and grant the federal judiciary budget request in its entirety. As Chief Justice Roberts noted, there are profound issues in the balance: "It takes no imagination to see that failing to meet the Judiciary's essential requirements undermines the public's confidence in all three branches of government."⁸

America's judiciary is the envy of the world. "Through over two hundred years of committed effort, our federal court system has become a model for justice throughout the world."⁹ Though they are respectively co-equal branches of government with profound constitutional and statutory obligations, both the New York and the federal judiciary have budgets representing only tiny fractions of the New York State and United States budgets. Our courts are struggling to meet their vitally important duties with diminished and shrinking resources. The Task Force on Judicial Budget Cuts urges that the courts receive sufficient

⁸ Year-End Report, p. 10.

⁹ Year-End Report, p. 2.

resources to meet their constitutional and statutory duties lest we jeopardize the most basic and essential values of due process and access to justice that have been the hallmark of the American judicial system.

NYCLA Task Force on Judicial Budget Cuts

Co-Chairs: Hon. Stephen G. Crane and Michael Miller

Stewart D. Aaron
Morrell I. Berkowitz
Hon. Herman Cahn
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Vincent Ted Chang
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Briana Denney
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Prof. Philip Weinberg
Alison Wilkey

Marilyn J. Flood, NYCLA Counsel



TASK FORCE ON JUDICIAL BUDGET CUTS
Co-Chairs: Hon. Stephen G. Crane and Michael Miller

PUBLIC HEARING – COURTS IN CRISIS

DECEMBER 2, 2013

NEW YORK COUNTY LAWYERS' ASSOCIATION
14 VESEY STREET

9:00 A.M. TO 4:30 P.M.

- 9:00 a.m. Welcome and Introductions
- 9:15-9:45 a.m. **Panel 1: Impact of Budget Cuts on the State Courts – Office of Court Administration**
- Presenters:
- Hon. Lawrence Marks, First Deputy Chief Administrative Judge, New York State Office of Court Administration
- Ronald Younkins, Executive Director, New York State Office of Court Administration
- 10:00-11:00 a.m. **Panel 2: Impact of State Court Budget Cuts on Children, Families and the Public**
- Presenters:
- Briana Denney, Co-Chair, NYCLA Matrimonial Law Section
- Dora F. Galacatos, Executive Director, Feerick Center for Social Justice, Fordham University School of Law
- Stephanie Gendell, Associate Executive Director, Policy and Government Relations, Citizens Committee for Children of New York
- Janet Ray Kalson, Associate, Himmelstein, McConnell, Gribben, Donoghue & Joseph
- Susan B. Lindenauer, Co-Chair, New York State Bar Association Task Force on the Family Court

11:15-12:15 p.m.

**Panel 3: Impact of Budget Cuts on the Federal Courts – Part 1
Court Operations, Criminal Defense and Public Safety**

Presenters:

Hon. Carol Bagley Amon, Chief Judge, United States District Court, Eastern District of New York

Eileen Kelly, Chief Probation Officer, United States Probation Department, Eastern District of New York

Loretta E. Lynch, United States Attorney, Eastern District of New York

David Patton, Executive Director and Attorney-in Chief, Federal Defenders of New York

12:15-12:45 p.m.

Break

1:00-2:00 p.m.

**Panel 4: Impact of Budget Cuts on the Federal Courts – Part 2
Court Operations, the Administration of Justice**

Presenters:

Hon. Robert Katzmann, Chief Judge, United States Court of Appeals for the Second Circuit

Hon. Loretta A. Preska, Chief Judge, United States District Court, Southern District of New York

Edward Friedland, District Executive, Southern District of New York

Preet Bharara, United States Attorney, Southern District of New York

2:15-3:15 p.m.

**Panel 5: Impact of Budget Cuts on the Federal Courts – Part 3
Bankruptcy, Business and Consumers**

Presenters:

Hon. Carla E. Craig, Chief Bankruptcy Judge, Eastern District of New York

Hon. Cecelia Morris, Chief Bankruptcy Judge, Southern District of New York

James B. Kobak Jr., NYCLA Past President, Partner, Hughes Hubbard & Reed

William Z. Kransdorf, Director, New York City Bankruptcy Assistance Project, Legal Services NYC

3:30-4:30 p.m.

Panel 6: Courts in Crisis – the View from the Bar

Presenters:

James R. Silkenat, President, American Bar Association

David M. Schraver, President, New York State Bar Association

Robert J. Anello, President, Federal Bar Council

William F. Dahill, President, Southern District of New York Chapter of the
Federal Bar Association