Cuts to federal defenders undermine judicial system

Adversarial system depends on adequate resources for both sides

By Seth Waxman

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As Americans, we all agree that everyone should get a fair hearing in our nation's courtrooms. Public defenders — lawyers assigned to those unable to afford one — ensure that every American's right to legal counsel, and a fair trial, is protected.

For over 40 years, the federal defender system has served as an essential resource for the 90 percent of people prosecuted in federal courts who cannot afford an attorney. In contrast to several state indigent defense systems, the federal system has been a model. Federal public defenders have had sufficient funding and followed professional standards, thus showing that we can achieve high-quality representation for poor individuals charged with crimes while also helping to make the criminal justice system more accurate and fair.

Today, however, sequestration and other devastating budget cuts to federal defender offices threaten to eviscerate this lauded program. I am deeply troubled by these ill-conceived cost-cutting measures. They achieve no genuine cost savings, and they undermine the federal defender system and the entire federal judicial system.

Federal defenders faced a nearly 10 percent cut in their 2013 budget. While this is a minuscule .001 percent of the federal budget, it is a huge blow to the defenders. It has already caused layoffs and up to 20 days of furloughs in many offices. Maryland's federal defenders, for instance, are being furloughed for 15 days this year and have already had to decline cases because they did not have sufficient money for travel and expert witnesses. In 2014, possible additional cuts would require layoffs of a large number of staff and the closure of many offices altogether. And cuts in attorney training, interpreters, expert witnesses and other professionals in complex cases will impair public defenders' ability to advocate for their clients.

At the same time, the much larger prosecution budget of the Department of Justice (DOJ) permits sufficient flexibility to avoid similar budget cuts, furloughs and other reductions. As a result, criminal prosecutions have proceeded apace, while federal defenders scramble to function at all. This disparity in resources between
prosecutors and defense attorneys seriously undermines the criminal justice system's efficient administration. As Edwin Meese, attorney general under President Ronald Reagan, observed, not having adequate defense counsel across the table is "like a bad game of tennis where one side is vastly overqualified compared to the other."

These unfair disparities may very well increase next year. Last month, the Senate Appropriations Committee approved 2014 funding for U.S. attorneys above the DOJ's request — $78 million more than in 2013. The extra money is intended to allow federal prosecutors "to prosecute approximately 300 additional criminal cases in federal courts."

This means federal defenders will have to defend even more cases with fewer lawyers and resources, because of the budget cuts that require layoffs and furloughs. This will increase their individual caseloads, making them less effective. Those who are not furloughed or laid off will have less time and fewer resources to investigate current cases, conduct legal research and hire expert witnesses. They will have to sit idle for days, delaying trials, leaving defendants in high-cost pretrial detention, and bloating judicial dockets across the country. Courts may be forced to engage private lawyers, despite the fact that in those areas with an established federal defender office, it is more cost-effective to have that office handle a majority of the cases.

These draconian cuts are not effective or sensible budget reductions. As Congress considers next year's spending policies, it must remember that the adversarial process is critical to the proper functioning of our criminal justice system. This process works effectively only when both sides are reasonably matched. Without a genuine adversarial system, wrongful convictions may become more common, imprisoning the innocent and allowing the guilty to avoid punishment and perhaps commit more crimes. That is not justice.

_Seth Waxman served as U.S. solicitor general under President Bill Clinton and is currently a partner at the WilmerHale law firm. His email is seth.waxman@wilmerhale.com._

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