

**Prepared Statement by Senator Chuck Grassley of Iowa  
Chairman, Senate Judiciary Committee  
Executive Business Meeting  
Thursday, November 15, 2018**

Good morning. We have a number of judicial nominees and bills on today's agenda, and I will now hold all of them over at the minority's request.

The following nominees are/will be held over:

- Bade, Ninth Circuit
- Miller, Ninth Circuit
- Murphy, Sixth Circuit
- Readler, Sixth Circuit
- Rushing, Fourth Circuit
- Alston, Eastern District of Virginia
- Barber, Middle District of Florida
- Barker, Northern District of Ohio
- Berger, Middle District of Florida
- Immergut, District of Oregon
- Maze, Northern District of Alabama
- Morrison, Southern District of Ohio
- Smith, Southern District of Florida
- Wetherell, Northern District of Florida
- Hertling, Federal Claims

Several of the nominees we're holding over today had their nominations hearing when the Senate was in recess. The minority sent me a letter this week asking that these nominees be given a second hearing. They argued that they weren't able to attend the hearings because the Senate was in recess, so I'd like to briefly address this request.

In August, I informed the minority of my intention to hold hearings in September and October. The Ranking Member asked that I postpone a hearing originally scheduled for September 26th. I postponed this hearing twice at her request, which meant that the other scheduled hearings were also pushed back. In order to catch-up to our original schedule, I scheduled three hearings three weeks in a row.

Because we don't usually do three hearings in three weeks, I discussed this with the Ranking Member ahead of time. She agreed to the schedule because we had pushed back the other hearings.

To be clear, the Ranking Member and I had an agreement that the Committee would hold hearings on October 17th and 24th and that she didn't object to the timing of those hearings. We made no stipulation that they wouldn't occur if the Senate was in recess. These hearings

were on Members' calendars well before recess was announced. Of course, Members are welcome to change their plans and not attend hearings, but Members not only had advance notice of when they were happening, but also agreed to the timing of them.

And although Members didn't attend the hearings, many of them submitted written questions to the nominees. So, because the Ranking Member agreed to the timing of the hearings and because Members were able to, and did, ask questions, I won't make these nominees appear before the Committee again.

Turning to another topic, I want to address some complaints I've received from the other side about President Trump's decision to appoint Matthew Whitaker as Acting Attorney General. After all the withering criticism lodged against former Attorney General Jeff Sessions over the past two years, it's incredibly ironic that members are now distraught over former Attorney General Sessions' resignation last week.

As far as the appointment of Matthew Whitaker, the Federal Vacancies Reform Act gives the President the authority to direct a senior official within DOJ to serve as the acting officer as long as that senior official served at the agency for at least 90 days prior to the appointment. The Vacancies Act works in tandem, and is not inconsistent with, the statute addressing DOJ vacancies. DOJ's Office of Legal Counsel has now issued three separate legal opinions – in 2003, 2007, and yesterday – confirming that the President can fill vacancies of Senate-confirmed agency heads under the Vacancies Act. In other words, President Trump acted in strict conformance with the law; and Acting Attorney General Whitaker's appointment is perfectly legal. I have confidence that Acting Attorney General Whitaker will carry out the functions of the Justice Department to the best of his abilities.

In the meantime, I look forward to working with the President on the confirmation effort for whomever the President nominates. And although I will welcome a new nominee, the Senate is never a rubber stamp for any president, and won't be for this President or his nominee. We will perform our advice and consent role and properly vet whomever the President chooses to be the next Attorney General.

Now I want to take a moment to discuss our ongoing effort to advance criminal justice reform. Many of us on this committee have worked closely together for several years on this issue to reduce crime and improve fairness in sentencing. Not too many years ago, I think a lot of people would have been surprised to see Senator Durbin and Senator Grassley on the same criminal justice bill—not to mention many others on this committee on both sides of the aisle. But we came together because we saw that the tough sentences that are part of our justice system weren't doing enough to reduce crime and fight the drug war. Far too many criminals left prison only to fall back into a life at crime. And the opioid crisis began and got worse even while these tough sentencing regimes were in place.

If there's anything I've learned in government, it's that you have to be willing to face up to facts and fix things when they're broken. And so I came to the table with Senator Durbin and a

bipartisan group of colleagues: Senator Cornyn, Senator Whitehouse, Senator Lee, Senator Graham, Senator Booker, Senator Scott, and others.

At various points, we've all made concessions and compromises, but by and large, we stuck together to move the reforms forward. Along the way, we've picked up cosponsors and key endorsements from across the political spectrum. And we've crafted a bill that will make our criminal justice system more fair; give offenders a better chance to turn over a new leaf when they leave prison; and reduce crime. It will also allow us make better use of taxpayer dollars—directing more resources to law enforcement and efforts to reduce crime.

Yesterday, the President announced support for a package that reflects our fundamental shared goals. Leader McConnell pledged to give the package a vote if it can earn the support of 60 senators. Given the strong backing previous versions have received, I believe this version can easily earn that support.

Earlier this year, when this committee marked up the Sentencing Reform and Corrections Act, some on this committee hesitated to support the bill because of concerns about retroactivity and whether the President would support the bill. Well, with this compromise, the retroactivity is limited to the Fair Sentencing Act, which reduces the significant and unfair disparity between sentences for crack cocaine versus powder cocaine. And the President has come out in full support. As President Trump said yesterday, "It's the right thing to do." "It's my honor to be involved and it will be an even greater honor to sign."

The First Step Act will put into place historic reforms—the most significant criminal justice reforms in a generation or more. I think it's significant that these reforms came out of this committee—out of so many of us in this room reaching across the aisle to accomplish something meaningful and significant. We've crafted a bill that will make our criminal justice system more fair and our country more safe. It's probably true that each of us could find something to disagree with in this bill. But an opportunity to pass legislation like this that does so much good does not come often. And when it does come, we must join together and support it. It can require courage, because it involves compromise and some will criticize that. But bipartisan compromise is the essence of leadership in the Senate. That is how you get good things done for the country we all love and endeavor to serve. I hope that every member of this committee will support and cosponsor the First Step Act. I look forward to continue working with my colleagues on this committee and across the Senate to make these reforms a reality.

We have four pieces of legislation on today's agenda, all of which have been held over. So, the following bills are held over:

- S. 3339 and its House companion bill, H.R. 3996, the Protecting Access to the Courts for Taxpayers Act.
- S. 2432, National FFA Organization's Federal Charter Amendments Act and
- H.R. 4100, Foundation of the Federal Bar Association Charter Amendments Act.