

Statement of Senator Patrick Leahy (D-Vt.)
Chairman, Senate Judiciary Committee
Executive Business Meeting
November 14, 2013

This morning I hope we can report out some nominations and begin our discussion of the urgent need for comprehensive sentencing reform.

Regarding the legislation, it is clear to me that we must confront the unsustainable growth of our federal prison population. We now spend approximately \$6.4 billion a year on federal prisons; that is around one-quarter of the Department of Justice's budget and it is quickly increasing. This spending means fewer federal prosecutors, DEA agents and FBI agents; it means less support for state and local law enforcement; and fewer resources for crime prevention programs and victim services. It means that if we do nothing – if we fail to address our burgeoning prison population – we will be cutting the very programs that help keep us safe.

Perhaps the loss of funding for these programs would be acceptable if the only way to improve public safety was long prison sentences, regardless of the crime committed. But we know that is not the case. While Congress has continued to pass legislation mandating ever longer sentences, the states have focused on successful alternatives and they have reduced their prison populations, and saved tax payer dollars – all while their crime rates have decreased. It is time we look to the states and draw on the lessons they have learned.

Our efforts should in no way be seen as a criticism of the tireless efforts of law enforcement officials who dedicate their lives to keeping us safe. They deserve our appreciation and support. The problem here is one that Congress created. And Congress must fix it.

I have listed on the agenda three bipartisan bills on the subject but not with the intention that we will move each piece of the solution separately. I appreciate that Senator Cornyn is also working on a proposal and I look forward to reviewing that once it is introduced. My hope is that all four proposals can be combined into one comprehensive fix.

Next Thursday morning, we will have a short business meeting to consider nominations and then we will have our third FISA oversight hearing. That means that we will have the Thanksgiving recess to hammer out a manager's amendment on sentencing legislation before we act on that legislation in December.

I want to be clear that some offenders deserve long sentences and no one is saying that we should not send dangerous criminals to prison. As a former prosecutor, I know that behind our most serious crimes are victims and they deserve the peace of mind of knowing that the criminal who robbed them, or raped them, or defrauded them of their life savings is off the streets and being punished. But the fact that some offenders deserve long sentences does not mean that all do. My hope for this process is that we can come together and find common ground on ways to reduce those sentences, particularly mandatory minimums, that we know are simply not necessary.

I thank Senators Paul, Durbin, Lee, Whitehouse and Portman for their significant efforts in bringing their ideas to the table. We must find our way to a responsible solution that improves public safety and protects taxpayers from the waste of irrational, counterproductive sentencing policy. I look forward to working with all members of this Committee to find a comprehensive and practical solution. It is long overdue.

Turning to the nominations on the agenda, I hope we can report out the Marshals listed for Ohio and Florida. I believe the Republicans want to hold over the judicial nominees and the Assistant Attorney General nominee listed for the first time.

Earlier this week, Senate Republicans decided to continue their filibusters of well-qualified nominees. They have now blocked three well-qualified women in a row to the D.C. Circuit. They have attempted to justify their unprecedented obstruction based that court's caseload. I have raised the fact in previous meetings that anyone paying attention might wonder if the same argument applies to other circuit courts with a lower caseload than the D.C. Circuit. The first nominee that we will consider today is nominated to the Tenth Circuit. That court has 10 active judges and 10 senior judges to handle 1,341 pending appeals. The D.C. Circuit has 8 active judges and 6 senior judges to handle 1,479 pending appeals.

The Tenth Circuit has the lowest caseload of pending appeals per judge in the country. And it will go even lower once its two vacancies are filled.

I want to make clear, however, that it is my belief that the nonpartisan Judicial Conference, led by Chief Justice John Roberts, is in the best position to determine the number of judges needed to handle the caseload of our co-equal branch of government. Therefore, I will move forward today and call up the Tenth Circuit nominee for a vote.

The Ranking Member's talking points frequently focus on the number of appeals *filed* instead of the number of appeals *pending* in the D.C. Circuit. Anyone familiar with the nature of the cases heard by the D.C. Circuit knows that its cases are more complex than other appeals courts. With that important reality in mind, the number of *pending* appeals is a better gauge of the court's actual workload and judgeship needs.

For example, as of June 30, 2013 there were 1479 *pending* appeals in the D.C. Circuit. If the D.C. Circuit only had 1 additional appeal *filed* since the end of June, its caseload for the year would be 1480, not merely the 1, since the court would still have to dispose of the remaining 1479 appeals as well.

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