Prepared Statement by Senator Chuck Grassley of Iowa
Chairman, Senate Judiciary Committee
Executive Business Meeting
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Good morning. Today we will vote on several nominees.

We also have six drug-related bills on the agenda for the first time. By marking up these bills, the Judiciary Committee is doing its part to address the opioid crisis ravaging communities all across our country. We'll hold over these bills for next week and hopefully will be able to move each bill successfully through Committee.

Today, the Committee will vote on one circuit court nominee and five district court nominees. We'll also vote on one U.S. Attorney nominee.

Among the nominees we'll consider today is Andy Oldham, nominated to the Fifth Circuit. After graduating from Harvard Law School, he clerked for Judge Sentelle on the D.C. Circuit and for Justice Alito on the Supreme Court. Early in his career, Mr. Oldham served in the Justice Department's Office of Legal Counsel. After a short stint in private practice, he joined the Texas Attorney General's Office as Deputy Solicitor General. He is now General Counsel to Texas Governor Greg Abbott.

Mr. Oldham received a unanimously Well-Qualified rating from the ABA, which my Democratic colleagues have called the "gold standard" for judicial nominations. He's an experienced appellate advocate who has argued before the Supreme Court. In his hearing, Mr. Oldham pledged to "leave behind" all of "those advocacy positions, and swear an oath to simply apply the law as an impartial jurist." I believe Mr. Oldham will be a fair and impartial judge.

Judicial ethics rules generally don't allow judges or judicial nominees to express personal opinions on pending legal matters or established Supreme Court decisions. Consistent with these rules, Mr. Oldham declined to weigh in with his personal opinion on pending cases or established Supreme Court precedent, including the *Brown* opinion. I'd like to take a moment to address the criticism that he and the other nominees have received over this.

On this day 64 years ago, the Supreme Court handed down *Brown v. Board of Education*. I think I speak for all my colleagues when I say there is no question this case was correctly decided. *Brown* is perhaps the most widely accepted and celebrated Supreme Court decision of all time. I have no doubt that the judicial nominees before us share the belief that segregation is deeply wrong and contrary to our values as a nation.

However, these nominees have been criticized because they declined to answer questions about the "correctness" of specific Supreme Court cases—particularly, *Brown*. At its core, this criticism isn't about *Brown*. It's about whether it's appropriate for nominees to opine on Supreme Court precedents.

Lower court judges must apply all binding Supreme Court precedents—regardless of whether they believe they are correctly decided.

Judicial nominees and lower court judges should not discuss their personal opinions about the correctness of Supreme Court precedent. Indeed, it is entirely improper for a judicial nominee to make promises to Senators on how they will decide cases, before their confirmation votes. When nominees are required to label Supreme Court decisions as "correct" or as "incorrect" it calls into doubt their impartiality. And it is not the job of a lower court judge to grade the Supreme Court's work.

The nominees on whom we will vote today declined to answer questions about the correctness of Supreme Court cases, including *Brown,* on these ethical grounds. But from the critiques directed at them you would think they disagreed with the holding in *Brown*. That's simply not true.

In his testimony before the Committee, Mr. Oldham said that *Brown* "corrected an egregious error in overruling Plessy v. Ferguson and the separate but equal doctrine." In his response to questions for the record, Mr. Oldham said that "*Brown* is obviously a landmark, binding precedent." In his written answers he agreed that "*Brown* is rightfully celebrated as a landmark decision that laid the groundwork for many pillars of the civil rights movement."

Another nominee we'll consider today, Wendy Vitter, has also made her position quite clear. In her testimony before the Committee, Mrs. Vitter made very clear that racial discrimination and segregation was unequivocally wrong. She also agreed with Justice Harlan's dissent in *Plessy*. She testified that "that was the right decision."

Each and every one of these nominees has emphasized the importance of the *Brown* decision and praised the decision as one of, if not the, most important decisions ever handed down by the Supreme Court. They have been unwavering in their commitment to apply the precedent of *Brown*. It is very unfair and simply inaccurate to suggest that these nominees somehow disagree with *Brown*.

I'd like to briefly note that my Democratic colleagues have been vocal in their calls for the President to nominate more women and minorities to the federal bench. Unfortunately, they've voted against many of the women and minorities who have been sent up. So, the calls appear pretty hypocritical.

I believe the federal judiciary would greatly benefit from more female and minority jurists. And I hope my colleagues follow their own advice and join me in my support of Mrs. Vitter today.

I'll now turn to Senator Feinstein for her remarks.