

**QUESTIONS FOR THE RECORD FOR DR. JEFFREY SEDGWICK,
AUGUST 1, 2012
“Rising Prison Costs: Restricting Budgets and Crime Prevention Options”
SUBMITTED BY CHAIRMAN PATRICK LEAHY**

1. You have argued that the increasing prison population might be worth the cost and that crime rates decline as incarceration rates rise. Various states, including Texas and my own state of Vermont, have reduced their incarceration rates and yet have seen drops in crime rates and in recidivism.

Are you opposed to sentencing reforms that these states have done that have saved billions of dollars in taxpayer money, and have also apparently decreased crime rates?

Answer: Absolutely not, Mr. Chairman. As I noted in my written statement to the Committee, we should begin by acknowledging that, like any other complex social problem, variations in crime rates cannot be explained adequately by any single cause. Broadly speaking, the most commonly researched variables affecting crime rates are the economy, demography and criminal justice policies. Incarceration is but one of several criminal justice policies that may affect crime rates, and I was very careful in my written testimony to quantify how much of the historically large crime decrease of the 1990s is attributable to increased incarceration. Intelligent policing is certainly another influence on crime rates as Commissioner Davis eloquently testified, though research demonstrates that changes in policing were not as influential in the nationwide reduction in crime during the 1990s as increased rates of incarceration.

2. At the hearing, you testified that the notion that the prison population is composed of people who have committed one or two nonviolent crimes, and are sentenced to long periods is “simply not supported by the evidence.” Based on brief research, I have found several examples where this has occurred, and anecdotal evidence of many more such cases.

For instance, take the case of Stephanie George, a woman who was sentenced to life in prison when she was 26 years old for conspiracy to possess with intent to distribute cocaine. That conviction, in federal court in Florida, was due to the fact that 500 grams of powder cocaine and 500 grams of crack – belonging to her boyfriend – were found at her residence.

Prior to that conviction, she had previously been convicted one other time for possession of crack when a bag of cocaine residue was found on her front porch. But because of these two convictions, she was found to be a career criminal. At sentencing, Judge Roger Vinson said to prosecutors: “There’s no question that Ms. George deserved to be punished. The only question is whether it should be a mandatory life sentence ... I wish I had another alternative.” He then told Stephanie, “Even though you have been involved in drugs and drug dealing for a number of years ... your role has basically been as a

girlfriend and bag holder and money holder. So certainly, in my judgment, it doesn't warrant a life sentence."

- (a) For cases like Stephanie's would you support changes to mandatory minimum laws? Please explain why or why not.

Answer: As a general proposition, Mr. Chairman, I am more in favor of sentencing guidelines than mandatory minimums. The former facilitate equal treatment of offenders across jurisdictions (a desirable quality) without inhibiting the use of discretionary judgment to achieve equitable outcomes in unusual or idiosyncratic cases.

- (b) As Commissioner Davis testified at the hearing, he wants to put drug kingpins in jail for a long time, not people who are caught up in the dragnet. He also said that "it is my estimation, after working in the drug field for many years, that a system that bases minimum mandatory sentences on 14 grams or 28 grams is missing the big picture." It seems like Stephanie George's case is one of those that Commissioner Davis was referring to, in that she was simply caught up in the dragnet because her boyfriend dealt drugs, and yet, she has been sentenced to life in prison. Do you agree with Commissioner Davis that drug kingpins should be the primary target and that we should not be imposing mandatory life sentences on individuals like Stephanie George?

Answer: I most certainly do agree with both my fellow witnesses that effective and efficient criminal justice policy is based on the exercise of good judgment to make nuanced distinctions among offenses and offenders. Blunt policy responses like mandatory minimums for broad categories of offenses and offenders or accelerated "good time" credits for all inmates rarely, if ever, achieve optimal results.

- (c) Do you agree with Commissioner Davis that "a system that bases minimum mandatory sentences on 14 grams or 28 grams is missing the big picture"?

Answer: Yes; however, I would want to know the content of the phrase "big picture." For example, I am less concerned about the quantity of drugs than in the type of drug, intent to use versus intent to distribute, and the character of the drug market the offender participates in. Consider the current homicide problem in Chicago; it is the intersection of particular drugs, particular youth gangs, and a particular type of drug market (open air marketing among strangers all of whom are heavily armed because disputes over price, quantity or quality cannot be referred to the legal system for adjudication) that has produced a public safety catastrophe most heavily impacting already disadvantaged communities. A sentencing policy based solely on quantity of drugs in the possession of the offender is ill-equipped to respond to the Chicago crises in an efficient and effective way without significant collateral or unintended consequences.

3. Statistics show that drug offenders are the largest category of offenders entering federal prison each year. Indeed, in 2009, Grover Norquist testified before the House Committee on the Judiciary and stated:

[E]xplosion in costs is driven by the expanded use of prison sentences for drug crimes and longer sentences required by mandatory minimums. Drug offenders are the largest category of offenders entering federal prisons each year. One third of all individuals sentenced in federal courts each year are drug offenders. And these convicts are getting long sentences. In 2008, more than two-thirds of all drug offenders receive a mandatory minimum sentence, with most receiving a ten-year minimum... The benefits, if any, of mandatory minimum sentences do not justify this burden to taxpayers.

Do you agree with Grover Norquist that the benefits of mandatory minimum sentences – especially for drug offenders – do not justify the burden to taxpayers?

Answer: Based on the quote provided, Mr. Chairman, I can neither agree nor disagree with Mr. Norquist. He proffers conclusions without supporting evidence. He quantifies neither the cost of incarceration nor its benefits in terms of reduced crime rates. Without such information, reaching a position on whether we incarcerate too many or too few drug offenders is impossible.

4. You testified at the hearing that “our high incarceration rate is the result of our comparatively high violent crime rate.” Yet, studies show that approximately three-fourths of Federal prisoners are serving time for a non-violent offense and have no history of violence. One-third of our Federal prisoners are first-time, non-violent offenders. Based on these statistics, it appears that a large part of our prison population is due to non-violent offenders.

In these cases, do you believe that there are reforms we can undertake that would continue to keep our communities safe while saving our taxpayers dollars?

Answer: Yes, Mr. Chairman, I do believe that there are reforms we can undertake that would continue to keep our communities safe while saving our taxpayers dollars. Many of our States have reduced prison populations, reduced recidivism rates, and achieved continued crime rate reductions by intelligent prevention, policing and sentencing. All of these are based on a more nuanced, evidence-based discussion of issues at the heart of the criminal justice system. For example, if the issue at hand is the growth of the *Federal* prison population, then citing statistics about the overall incarceration rate in the United States compared to other countries is irrelevant at best and misleading at worst. The size and composition of the Federal prison system is the result of policy choices that dictate where Federal resources will be focused. Over time, those choices change. At the federal level, are we prioritizing guns, drugs, illegal immigration or white collar crimes? That priority will dictate who is in federal prison and who is in State prisons or local jails.

Second, are our performance metrics sensible? If U.S. Attorneys and their offices are evaluated and rewarded by crude measures of productivity where every arrest and conviction is treated alike, then we can be sure that those offices, to maximize their ratings, will concentrate on “easy” arrests and convictions rather than on the most serious offenders and offenses where cases may take longer to investigate and complete. Quantity rather than quality of arrests and convictions will drive the system. And finally, are we making sensible distinctions of seriousness within and among categories of crime and are those gradations of seriousness reflected in sanctions imposed? Here sentencing guidelines rather than mandatory minimums on broad categories may be more productive. By addressing each of these issues in a thoughtful and evidence-driven way, we have protected and can continue to protect public safety in an efficient and effective manner.