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House Oversight and Government Reform Hearing on “Criminal Justice Reform, Part II”
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Chairman Chaffetz, Ranking Member Cummings, members of the committee, my name is Kevin Ring. Thank you for the opportunity to testify. I want to clarify at the outset that, while I have been invited to appear in my capacity as an advocate for Families Against Mandatory Minimums (FAMM), I also plan to discuss my recent experience as a federal prison inmate. My comments about prison - what I saw, what I deem good and bad - are my own and will cover some topics on which FAMM does not take a formal position. My remarks about mandatory minimum sentencing reform, including our support for the SAFE Justice Act, reflect FAMM’s position and I am honored to represent the group’s views before the committee.

I have thought about the issues that make up criminal justice reform a lot over the past 20 years and have had the unique opportunity to think about it from different perspectives. In the 1990s, I worked on Capitol Hill as a staffer, both in the House and Senate. I was a counsel on the Senate Judiciary Committee and helped draft anti-crime legislation - really bad anti-crime legislation, I see now. I then observed the legislative process from a different perspective, as a lobbyist.

Ultimately, my work as a lobbyist brought me under federal scrutiny. After two trials and appeals, I was sentenced to serve 20 months in federal prison. I spent 15½ months at the Federal Prison Camp in Cumberland, Maryland. I then served two months of home confinement, wearing a GPS monitor, which ended a few weeks ago. I recently began my 30 months of probation and will also complete 200 hours of required community service.

Before I was indicted, I began working for Families Against Mandatory Minimums. I continued to work there during my trials and returned as soon as I got home from prison. I want to share FAMM’s positions on sentencing and prison reform with the committee, but first I want to share just a few observations from my time in prison.

I begin with the necessary caveat that I did my time in just one of the Bureau of Prison’s (BOP) 122 facilities, but I have good reasons to believe my assessment applies beyond Cumberland prison camp.

Programming in the BOP

First, I saw little to no rehabilitation in prison. There were few useful programs. The institution was either understaffed or uninterested in providing worthwhile programming. Trade apprenticeships, GED classes, and jobs with the National Park Service were the few

exceptions. Most people worked menial jobs and collected their 12 to 15 cent-per-hour wages.

If you were not in the Residential Drug Abuse Program (RDAP), you were mostly limited to Adult Continuing Education (or ACE) classes. These classes were taught by other inmates. Offerings at Cumberland included Movie Review, Jeopardy, and Current Events. Current events was taught by a Nigerian fraudster who hated the United States. A class called Money Smart was taught by a guy serving 14 years for bilking an EPA clean fuels program. He told the class that it was easy to start your own business and to do it you could simply raise money through crowd-sourcing sites on the Internet. This is not helpful advice for people who need to find realistic ways to support themselves and their families when they get out.

Most inmates skipped classes and would just sign their names to the attendance list during the week so the administration thought they went. The classes were one hour a week for ten weeks. When you completed a class, you got a certificate. The prison officials seemed to know the classes were worthless, but they wanted us to seem busy so they could get credit with the regional and national offices for keeping us busy.

The most glaring deficiency in the area of programming was the lack of any cognitive behavior therapy or anger management counseling. I know some people still hold onto the myth that criminals, drug and white-collar, are rational actors who review the U.S. Code and weigh the costs and benefits before breaking the law. The fact, however, is that the overwhelming majority of inmates are not simply uneducated or poorly educated, but rather, they have terrible social skills and very little impulse control, ability to delay gratification, and risk awareness. The result is bad decision-making. These are the issues they need to address during their time in prison. At Cumberland, however, we had 250 inmates and one psychologist. And despite studies from the National Institute of Justice showing the effectiveness of cognitive therapy, BOP offers a program for this in just two of its 122 institutions.

With regard to the BOP's RDAP program, while I think it is important to provide drug treatment for addicts, I think taxpayers deserve to have the program's effectiveness reviewed more frequently. RDAP is expensive. Moreover, the benefits to inmates who complete the program are great - up to 12 months off their sentence and extra halfway house time eligibility. For these reasons, I think Congress should work with BOP to review the program's eligibility requirements.

Specifically, I urge the committee to examine why a white-collar offender who developed a dependency on Ambien after his crime qualifies for RDAP, but a true addict whose addiction fueled his crime does not simply because the addict had (but didn't use) a gun when he committed his offense. Shouldn't the program be limited to those inmates whose addiction played a role in their offense?

I also think it makes little sense to have inmates participate in RDAP at the end of their sentences, as is the current practice. The apparent reasoning is that BOP can't afford to give

all inmates RDAP so, for budget reasons, they hold off admitting inmates until they are nearing the end of their sentences. But addicts would be better served by getting help when they arrive. Additionally, getting inmates sober at the beginning of their sentences, rather than at the end, seems like a prerequisite for any other programming to be effective. It would also likely reduce incidents of drug and alcohol abuse in prisons, contraband, and the practice of correctional officers bringing in this contraband for inmates. There are currently not enough RDAP programs for all those who need it. Space can be assured by limiting the program to those who truly need help fighting addiction.

Poor Health Care

During my initial screening, the physician assistant advised me to avoid getting hurt at all costs. Over the next 15.5 months, I learned why he gave this guidance: the healthcare provided was very poor. In one incident, a fellow inmate was given the wrong medication by the staff for his high blood pressure and ended up passing out in the TV room. The correctional officers who came through for count time (we are counted throughout the night) said there was nothing they could do until the morning. Early the next morning, the inmate was brought to the hospital and his stomach was pumped and he recovered.

Last fall, we had a terrible outbreak of scabies. A bunch of us were unable to sleep at night because the itching was so bad. The administration called a town hall meeting in the gym and told us it was just a skin rash and we had to practice better hygiene. (Note: scabies has nothing to do with personal hygiene.) This problem lasted much longer than it should have because the prison did not seem to want to treat everyone exposed to it, as experts recommend. In fact, the physician assistant knew it was scabies but the doctor, who rarely saw any patients, resisted. The problem got so bad that the administration was forced to shut down the compound and had all the inmates put all their personal property in garbage bags in the gym for a week.

I saw the dentist when I first arrived and was told I had a cavity. I requested an appointment but never heard back. Other inmates told me that there was a two-year waiting list to get a cavity filled. I saw three other inmates have teeth pulled because the pain grew so bad. Instead of filling cavities, the dental staff gives inmates 800mg Ibuprofen (a higher dose than you can buy at the commissary) to deal with the pain. When the pain gets bad enough, the inmates are able to get their teeth pulled. A 70-year-old white-collar offender who slept in the bunk below me had 8 teeth pulled during his ten years in prison.

Solitary Confinement Over-use

Before the prison administration finally decided to give everyone a pill to combat the scabies outbreak mentioned above, it treated a group of us with a cream. To quarantine us, the administration had eight of us spend two nights in solitary confinement at the medium security facility down the hill from the camp. Though we were not there for disciplinary reasons, we were treated that way: we never left our cells, were not given clothes (only t-shirts and underwear), and were not allowed any books or paper. I was only in solitary for 40 hours and I thought I was going to go crazy. That relatively short period was long

enough for me to fully appreciate how inappropriate it is to use the SHU (segregated housing unit, or solitary) for routine disciplinary infractions, which happens frequently. There seem to be other ways to punish inmates - loss of favorite job, loss of good time, loss of commissary privileges - that would be preferable than being locked in the hole.

Halfway House Time

Under the Second Chance Act, inmates are supposed to get up to a year of halfway house time and up to 10 percent or 6 months (whichever is less) on home confinement at the end of their sentences. No one gets a year in a halfway house today. Most get 3-6 months if they are serving a long sentence. Those of us with short sentences were being sent out to halfway houses on our “10 percent date” (the date we should have been able to begin a period of home confinement). This meant that every day we were asked to spend in a halfway house should have been a day we spent on home confinement.

Fiscally, the use of halfway houses is not cost-effective. The average annual cost of a halfway house for one person in FY 2014 was \$28,999.25 (\$79.45 per day), versus \$30,619.85 (\$83.89 per day) on average to incarcerate a person.¹ Halfway houses are difficult to build because of zoning restrictions and NIMBYism, and existing halfway houses are overcrowded and insufficient to meet demand. It would require enormous appropriations just to meet the existing need for halfway houses under existing law.

From GAO’s report on the BOP last September:

We have previously found that not all inmates are eligible to be sent to an RRC [Residential Reentry Center, or halfway house] prior to their release from prison, and that for those who are eligible, some spend only a portion of the full 12 months’ allowable time in an RRC because of a lack of bed space and because of eligibility criteria. According to BOP, an increase in the number of offenders getting the full 12 months’ allowable time would necessitate additional bed space, which would require both additional funding and additional RRC contracts. For example, **in fiscal year 2013, BOP reported that it had 9,455 RRC beds available nationwide, but would have required about 30,000 beds to provide the maximum allowable 12 months in RRCs to all participants, or an addition of more than 20,500 beds above its current capacity.** As noted above, and as we have previously reported, BOP officials explained that such an expansion could be challenged by local zoning restrictions and the unwillingness of many communities to accept nearby RRCs. Moreover, if such an expansion were to take place, BOP would need additional funding to pay for the new RRC bed space. For fiscal year 2013, BOP reports that the average daily cost per offender in an RRC was about \$73, or \$26,645 per year. **This means that an increase of the more than 20,500 beds that would be required to achieve the allowable 12 months for all participants (at current program levels) would cost about \$546 million annually.** Expanding RRCs might help

¹ 80 FR 12523 (Mar. 9, 2015), <https://www.federalregister.gov/articles/2015/03/09/2015-05437/annual-determination-of-average-cost-of-incarceration>.

reduce recidivism but would require a substantial funding increase, equal to almost 8 percent of BOP's entire \$6.9 billion fiscal year 2015 budget request.²

I applaud the members of Congress who are trying to find a way to reduce prison costs by moving low-risk offenders to halfway houses (and home confinement) sooner. Given the reality revealed by GAO, however, I think members should rethink the value of legislative proposals to make inmates eligible for more of something they already can't get – and are unlikely to get more of in the future.

Sentencing Reform Needed

I think the only way Congress can improve public safety while reducing costs is to reform federal sentencing laws, especially mandatory minimum sentences. I served with some prisoners who received mandatory minimum sentences that did not seem terribly excessive given their conduct. I met several others, however, who were serving mandatorics that far exceeded any notion of a fair sentence. That is the problem with one-size-fits-all sentences: not everyone is the same and not every crime is the same.

Indeed, during my time in prison, I came to believe that common conservative and liberal narratives about sentence length were not accurate.

The liberal narrative that all nonviolent drug offenders are serving too long is not right. Some got sentences that seemed appropriate for their offense and for their background. Also, not all of the drug offenders I met were addicts or sold drugs to escape poverty. Many committed their crimes for the same reason white-collar offenders commit theirs: simply because they wanted more money and did not think they would get caught.

The traditional conservative narrative that longer and mandatory sentences are important to reducing crime is not right. Put simply, if mandatory minimums reduced crime, we would see crime rates fall in jurisdictions that adopted them and rise in those that didn't. But we don't. Over the past decade, more than a dozen states have either outright repealed or reformed their mandatory minimum laws. All have seen their violent and property crime rates drop to historic lows. States have found that instead of locking everyone up in expensive prisons, they can protect their citizens better by using limited anti-crime funding to hire more police, prosecutors, and drug treatment specialists. This approach seems to be working.

My time in Cumberland confirmed my belief that many people are serving sentences that are longer than necessary to deter the individual or others. The idea that most of these offenders knew the punishment they risked and then conducted a cost-benefit analysis that included a consideration of the risks and rewards before violating the law is laughable.

² GOVERNMENT ACCOUNTABILITY OFFICE, BUREAU OF PRISONS: INFORMATION ON EFFORTS AND POTENTIAL OPTIONS TO SAVE COSTS 35-36 (Sept. 2014), <http://www.gao.gov/assets/670/666254.pdf>.

These are not rational actors. It is little wonder that every reputable criminologist now believes with regard to punishment that “swiftness and certainty” of apprehension and punishment is more important than “severity” of the sentence. Swift, certain, and short punishments are understandable and meaningful to people with the traits I saw in prison.

My sense after talking to many of the other inmates was that the sentences issued pursuant to the sentencing guidelines ranged from short to long, but seemed mostly to fit the crime and offender, especially when compared to the sentences required by mandatory minimum laws. Two men I met are serving 10-year mandatory minimums because they did not qualify for the current “safety valve,”³ which allows nonviolent drug offenders with no record to escape the mandatory minimum. But in these cases, both men had one prior but very minor offense that made them ineligible for the safety valve. So, instead of getting five or even seven years, both got ten. Ten years is an incredibly long time to spend in prison for truly nonviolent offenders, as these men were.

One reason I think that lengthy sentences can be so counterproductive is because prison infantilizes people. I rarely hear people talk about this point, but I think it is very important. Everything we do and everything we need is “on campus.” Inmates have very few responsibilities. Within a couple of years, people start to become institutionalized. They know what it takes to get by day-to-day in prison, but lose touch with what it takes to live outside. So while some people absolutely deserve prison time, our goal should be to give them as little as is necessary to accomplish the purposes of sentencing. If society can get its pound of flesh with a three- or five-year sentence, go with that instead of ten years. It’s incredibly important to keep in mind that while people are in prison, the world does not stop – technology advances, job markets change, skills atrophy, children age and stop seeing the incarcerated loved one as an authority figure, spouses and partners bear burdens alone and often move on. We must be mindful that more than 90 percent of prisoners are coming home some day, and we want them to be successful - if not for their sake, for the sake of those of us who want to live in safe communities with less crime.

FAMM Supports The SAFE Justice Act

Fortunately, meaningful changes to our federal sentencing and prison laws appear to be gaining support in Congress every day. This committee’s two days of hearings is evidence of that. President Obama’s decision to visit a federal prison, the first such visit in history by a sitting president, is another encouraging sign. But more important to FAMM and its members, who have been fighting for reform for more than 20 years, is action. We need Congress to pass meaningful sentencing reforms now.

Towards that end, FAMM was very pleased last month to join Congressmen Jim Sensenbrenner (R-WI) and Bobby Scott (D-VA), other members of the House from both sides of the aisle, and an incredibly diverse group of policy advocates to announce the

³ 18 U.S.C. § 3553(f) (2014) (permitting federal drug offenders to be sentenced below the applicable mandatory minimum term if they have a negligible criminal history, were not leaders or organizers of the offense, did not possess a gun or use violence, and plead guilty).

introduction of H.R. 2944, the Safe, Accountable, Fair, and Effective (SAFE) Justice Act. The legislation would bring the federal criminal justice system up-to-date with evidence-based and cost-effective practices adopted in many states, as well as re-focus federal law enforcement and its limited resources on the highest-level drug offenders.

The changes most important to FAMM and its members would do the following:

- 1. Limit application of federal mandatory minimum drug sentences** to people who meet the drug quantities listed in 21 U.S.C. §§ 841 and 960 and were organizers, leaders, managers, or supervisors of a criminal activity that involved at least five people. Everyone else would not be subject to a mandatory minimum sentence, but could still be sentenced up to the law's statutory maximum terms, depending on the drug quantity, number of participants, and role in the case. People who are already in prison would be permitted to seek retroactive application of these changes to their current sentences by filing a motion to the courts under 18 U.S.C. § 3582.
- 2. Expand the existing "safety valve":** The bill would enlarge the safety valve so that courts could sentence a person below the mandatory minimum term for drug offenses and gun offenses that occurred during drug offenses (18 U.S.C. § 924(c)), as long as the person meets all of these criteria:
 - a. is in criminal history category I (0 to 1 criminal history points under the sentencing guidelines) after any downward departure;
 - b. did not use violence or threats;
 - c. the offense did not result in death or serious bodily injury;
 - d. the person was not convicted of a continuing criminal enterprise (21 U.S.C. § 848), and
 - e. the person pled guilty.
- 3. Create a new "safety valve" for drug and gun mandatory minimums:** The bill would create a new safety valve so that courts could sentence a person below the mandatory minimum term for drug offenses and gun offenses that occurred during drug offenses (18 U.S.C. § 924(c)), as long as the person meets all of these criteria:
 - a. The person committed the crime as a result of mental illness, cognitive defects, or a history of persistent or serious substance abuse or addiction; financial, emotional, or mental distress; trauma suffered while serving on active duty in an armed conflict zone for a branch of the United States military; or victimization stemming from any combination of physical mental, emotional, or psychological abuse or domestic violence, if the offense was committed at the direction of another individual who was a more culpable participant in the instant offense or played a significantly greater role in the offense or effectively coerced the defendant's involvement in the offense by means of threats or abuse either personally or from any person or group;
 - b. the defendant did not use violence or credible threats of violence in connection with the offense;
 - c. the offense did not result in death or serious bodily injury to any person;
 - d. the person was not convicted of a continuing criminal enterprise (21 U.S.C. §

- 848) and
- e. the person pled guilty.

- 4. Create a new “safety valve” for drug mandatory minimums:** The bill would create a new safety valve so that courts could sentence a person below the mandatory minimum term for drug offenses, as long as the person meets all of these criteria:
- a. the person falls within criminal history category II (2 or 3 criminal history points under the sentencing guidelines) after any downward departure;
 - b. the person does not have any prior convictions for an offense that has as an element the use, attempted use, or threatened use of physical force against the person of another;
 - c. the current offense is not a sex, terrorism, or racketeering offense, or gun offense under 18 U.S.C. §§ 922 or 924(c);
 - d. the defendant did not use violence or credible threats of violence in connection with the offense;
 - e. the offense did not result in death or serious bodily injury to any person
 - f. the person was not convicted of a continuing criminal enterprise (21 U.S.C. § 848) and;
 - g. the person pled guilty.

These first four reforms are absolutely critical to eliminating the most harmful consequences of federal mandatory minimum sentencing laws. Those laws were intended to target drug kingpins and major suppliers, but U.S. Sentencing Commission data reveals that the offender most likely to receive a mandatory minimum is a street-level seller distributing grams and ounces, not kilograms, of drugs.⁴ Because these offenders are also the most easily replaceable ones in a drug conspiracy, their lengthy incarceration does little to disrupt or stop drug trafficking.⁵

Moreover, contrary to the assertions made by some opponents of reform, minimum sentences are not necessary to get people to plead guilty at high rates. People plead guilty at high rates regardless of whether a mandatory minimum sentence applies. In fiscal year (FY) 2014, 97.4 percent of federal drug offenders pled guilty, compared to 97.1 percent of federal offenders overall. Individuals accused of larceny and forgery, environmental and wildlife offenses, and embezzlement all pled

⁴ U.S. SENTENCING COMM’N, REPORT TO CONGRESS: MANDATORY MINIMUM PENALTIES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM 165-70, 171, Fig. 8-11 (2011), available at <http://www.usc.gov/news/congressional-testimony-and-reports/mandatory-minimum-penalties/report-congress-mandatory-minimum-penalties-federal-criminal-justice-system>.

⁵ The U.S. Sentencing Commission and other experts have long recognized that “sellers at the retail level are the most exposed and easiest targets for law enforcement, provide an almost unlimited number of cases for prosecution, and easily are replaced.” U.S. SENTENCING COMM’N, REPORT TO THE CONGRESS: COCAINE AND FEDERAL SENTENCING POLICY 85 (2007), available at http://www.usc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/drug-topics/200705_RtC_Cocaine_Sentencing_Policy.pdf.

guilty at higher rates than drug offenders, even though none of those crimes carry mandatory minimum sentences.⁶

5. **Fix the technical error that leads to § 924(c) “stacking”:** The bill would fix 18 U.S.C. § 924(c) so that the 25-year mandatory minimum sentence for second or subsequent gun possession/use offenses only applies when the prior 924(c) violation is a final conviction.⁷
6. **Make the Fair Sentencing Act of 2010 retroactive:** Federal prisoners serving crack cocaine mandatory minimum sentences for crimes committed before August 3, 2010, would be allowed to petition the court for a sentence reduction in line with the new, 18-to-1 crack-powder ratio Congress unanimously passed in 2010.
7. **Life mandatory minimum terms for drugs:** Reduce the mandatory minimum life sentences for a third felony drug offense or a second drug offense that results in death or serious bodily injury under 21 U.S.C. § 841 to a mandatory minimum term of 35 years. These changes would be retroactive, if the bill becomes law.
8. **Redefine the kinds of prior convictions** that can be used to increase mandatory minimum drug sentences to 10, 20 years, or higher and that can be used to trigger the 15-year mandatory minimum sentence for gun possession under the Armed Career Criminal Act (18 U.S.C. § 924(e)). The bill also strengthens the procedural and notice requirements when prosecutors want to increase sentences based on prior convictions.
9. **Allow prisoners to earn up to 33% earned time credit for rehabilitation:** With few exceptions, federal prisoners could earn up to 10 days of time credits for every 30 days of rehabilitative programming they complete in prison. These credits would be real sentence reductions, not time spent in another form of confinement such as a halfway house or home detention. This change would be retroactive. Federal prisoners would not be eligible to earn time credits if they were convicted of federal homicide with intent to cause death and death resulted, or terrorism or sex offenses. These prisoners may instead receive other incentives for completing programming, such as additional commissary, telephone, or visitation privileges.
10. **Fix the technical error in good time credit calculation:** Prisoners could earn up to 54 days of credit for good behavior per year in prison, rather than 47 days, as is current practice. This change would be retroactive.

⁶ All data here are from U.S. SENTENCING COMM’N, 2014 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS Tbl. 11 (2014), available at <http://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2014/Table11.pdf>.

⁷ If this change were enacted, multiple counts of 924(c) charges in the same indictment would no longer lead to stacked sentences like the horribly unjust and infamous 55-year term being served by Weldon Angelos. For more on Mr. Angelos’s case, see <http://famm.org/weldon-angelos>.

11. Expand compassionate release and elderly prisoner release: The bill would permit prisoners and the courts, as well as the BOP, to request a compassionate release for extraordinary and compelling reasons, or for prisoners who are at least 60 years old, have an extraordinary health condition, or have been notified that the primary caregiver of the prisoner's minor child has died or become incapacitated or is unable to care for the child any longer or cannot be cared for by other family members and is at risk of being placed in foster care.

The SAFE Justice Act's sentencing reforms would fix many of the problems FARM has highlighted with existing mandatory minimum sentencing policies. If the bill were enacted, courts would be required to keep imposing stiff prison sentences on violent offenders and major drug kingpins, but would be spared from giving lower-level and first-time offenders lengthy sentences that do not fit their crimes.

Consider among the thousands of nonsensical mandatory sentences FARM has highlighted the recent sentencing of Shirley Schmitt.

For more than 50 years, Shirley Schmitt lived a quiet, serene life, raising her daughter and training horses on an Iowa farm with her husband, Lawrence. But when her beloved husband died of a heart attack in 2006, Shirley's life began to unravel. She struggled to care for her farm and animals. She developed chronic pain and fell into a depression. To numb herself and her pain, she foolishly started using methamphetamine. She soon became an addict.

Shirley wasn't the only addict in her area. Shirley and seven others began buying pseudoephedrine, a highly monitored chemical that is found in allergy medication and used in manufacturing methamphetamine. Shirley offered the use of her farm to manufacture the drug, which was split among the eight acquaintances for their own personal use.

When a couple of people in the group were arrested on meth charges, they gave Shirley's name to police and pointed to her, the property owner, as the leader. Shirley was arrested in July 2012 on charges of conspiracy to manufacture and distribute 50 grams or more of methamphetamine and possession of pseudoephedrine with intent to manufacture methamphetamine.

While awaiting trial, she entered drug treatment for 30 days, and then was released to live with her parents. Her sister was relieved that Shirley was able to live with and care for her parents, as they both needed daily assistance. Shirley had turned her life around; she remained clean the entire year before she went back to court and still maintains her sobriety today. "I left the area where I got into trouble, got a new job, and was helping my parents," she says. She thought that her progress and the fact that she had never sold meth for profit would work in her favor at trial.

Her judge seemed to find the circumstances of her case unique, as well. He made the following statement during her trial: "All matters of methamphetamine manufacturing are

serious. The Court's well aware of that. But this case, the evidence was pretty clear, that there wasn't anybody really selling any methamphetamine. There wasn't—nobody had any big cars or stacks of 20s in their pocket or anything like that. It involved a group of addicts who were satisfying their own addiction.”

Unfortunately, Shirley was found guilty, and the judge had little discretion at sentencing. Judge O'Brien ruled that Shirley was not a “leader” because there can be no leader in “a group of people who had next to no money and were not selling anything and were all working together trying to satisfy their addictions.” Shirley was shocked, though, that two prior convictions for minor offenses—purchase of pseudoephedrine over limit and possession of drug paraphernalia, both of which stemmed from a 2008 incident—gave her criminal history “points” that disqualified her from the safety valve and led to a lengthier sentence.

Shirley spoke passionately at her sentencing and expressed disbelief that her rehabilitation and sobriety would have no influence on her sentence: “If successfully completing treatment, moving away from the area, getting a new job, [staying sober], and moving in with my folks, helping them both physically and financially, isn't enough to show my ability to rehabilitate, then my mere words are not going to do anything to keep me out of prison.”

She was right. Because of mandatory minimum laws, Shirley received and is currently serving a 10-year mandatory minimum prison term. Had she been sentenced under the SAFE Justice Act, she would not have received this mandatory minimum prison sentence, though she still would have served some prison time. Since Shirley reported to prison, her father has passed away.

My Role in Creating Unjust Sentencing Laws

In 1998, I had the high honor of working as a counsel for then-Senator Ashcroft on the Senate Judiciary Committee. After he decided to forgo a presidential run in 2000 and instead focus on keeping his Senate seat in Missouri, Senator Ashcroft needed to show he was focused on the threats facing Missourians — and none was scarier at that time than the growing menace of methamphetamine abuse and production. Meth was becoming known as the crack of rural America.

I had what I thought was a great idea. I suggested that we draft a bill to impose the same mandatory minimum sentences on meth trafficking that applied to crack, which were the harshest penalties on the books. The Clinton Justice Department supported the bill, which we were able to attach to an omnibus appropriations bill and get signed into law.⁸

When I look back on what should have been a genuine professional accomplishment - developing an idea and getting it codified into law - I can tell you that, instead, I am embarrassed. I am embarrassed how certain I was of our righteousness when I lacked the

⁸ See Methamphetamine Trafficking Penalty Enhancement Act of 1998, Pub. L. No. 105-277, 112 Stat. 2681 (1998).

most basic facts to support what we were doing. I did not know what the average sentence imposed on meth traffickers was at the time, whether those sentences were sufficient at deterring use, whether alternatives to prison might have been more effective at reducing recidivism, or how much these new, longer sentences would cost the federal government. These are things policymakers — or, at least, the staff they entrust to craft their legislation — should know before making national policy.

If I did not know these critical facts as the lead staffer on the bill, how little did other Hill staffers (and their bosses) know when they agreed to let this bill pass? I know this for certain: If someone had objected, I would have recommended that we accuse the objector of not being serious about saving Americans from this deadly threat. I am not proud of this fact, but neither can I deny it.

The new meth penalties we passed changed the weight thresholds for triggering mandatory minimum sentences. Thanks to our work, five grams – the equivalent of a couple of sugar packets – of methamphetamine triggers the 5-year mandatory minimum, and 50 grams – about the weight of a candy bar – of methamphetamine triggers the ten-year mandatory minimum.

Shirley Schmitt was convicted of trafficking 50 grams of methamphetamine. The law I helped create required her to serve a minimum sentence of ten years in federal prison. Needless to say, 55 year-old mothers who buy drugs to feed their own addictions and do not sell drugs to anyone else are not the dangerous kingpins we had in mind when we sought support for the meth sentencing law. I can blame my ignorance in not foreseeing such cases, but the truth is that all mandatory minimum sentencing laws sweep up offenders that the laws' authors did not envision reaching. Members of Congress must act with the humility I lacked as a young staffer and refrain from establishing sentences to cover thousands of future cases, the facts and circumstances of which are not knowable today.

Conclusion

I hope that my observations and experiences both as an inmate in a federal prison and as a congressional staffer who was involved in making federal anti-crime policy are helpful to the committee. I hope even more that today's hearing helps to build momentum for meaningful sentencing and prison reform. FAMM believes that Congress should act now to take advantage of the unprecedented level of bipartisan support to improve our criminal justice system.

I am very grateful to the committee for holding this hearing. FAMM and I look forward to helping the committee and Congress in any way possible.