

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

S. 2123, SENTENCING REFORM AND CORRECTIONS

ACT OF 2015

- - -

MONDAY, OCTOBER 19, 2015

United States Senate,
Committee on the Judiciary,
Washington, D.C.

The Committee met, pursuant to notice, at 3:07 p.m., in room SH-216, Hart Senate Office Building, Hon. Chuck Grassley, Chairman of the Committee, presiding.

Present: Senators Grassley, Hatch, Sessions, Cornyn, Lee, Leahy, Feinstein, Durbin, Whitehouse, Klobuchar, and Franken.

OPENING STATEMENT OF HON. CHUCK GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Chairman Grassley. Good afternoon. Today the Senate Judiciary Committee will hold a hearing on an important bill, the Sentencing Reform and Corrections Act.

I am pleased to introduce this bill along with a broad bipartisan group of colleagues: Senators Durbin, Cornyn, Lee, Whitehouse, Graham, Schumer, Ranking Member Leahy, Booker, and Scott. And we have recently been joined by Senators Tillis and Coons.

It is a truly landmark piece of legislation. It is the result of months of hard work and very thoughtful

1 deliberation. It has already been called the "most
2 significant criminal justice reform bill in a generation."

3 I am pleased to say that this bill has formed the basis
4 for a bill in the House by Chairman Goodlatte and Ranking
5 Member Conyers.

6 Further, President Obama has asked that Congress send
7 him a bill this year, and that if we did so, he would sign
8 it. I am kind of glad that we had that bipartisan approach.

9 I am also pleased that such a large set of
10 organizations from across the political spectrum have
11 endorsed this bill. At this time, I would like to introduce
12 into the record letters of support from the Major Chiefs
13 Association, a group of 41 interfaith community
14 organizations, the Drug Policy Alliance, the American Bar
15 Association, Koch Industries, the Association of Prosecuting
16 Attorneys, the American Federation of Government Employees,
17 and the Faith and Freedom Coalition. I will also include
18 letters for the record raising concerns about the bill from
19 the National District Attorneys Association and the FBI
20 Agents Association.

21 [The letters follows:]

22 / COMMITTEE INSERT

1 Chairman Grassley. A reason why this bill has been
2 successfully negotiated is that it represents a broad
3 agreement among Members.

4 We all agree that stiff sentences can serve an
5 important role in protecting public safety and bringing
6 justice to crime victims. So this bill will preserve the
7 primary mandatory minimums to keep some certainty and
8 uniformity in Federal sentencing and to encourage criminals
9 to cooperate with law enforcement.

10 The bill expands some of those enhanced mandatory
11 minimums to criminals with prior violent felonies and State
12 crimes involving the unlawful use of guns. We even add two
13 new mandatory minimums for crimes involving interstate
14 domestic violence and supplying weapons or other defense
15 materials to prohibited countries or terrorists.

16 But our current system has produced some specific
17 instances of severe and excessive sentences. And there are
18 elements of the criminal justice system that all the
19 sponsors agree can and should be improved.

20 And so we all agree that we need to lower some of the
21 harshest enhanced mandatory minimums. This bill does not
22 eliminate a single mandatory minimum, but it cuts back on a
23 number of the most severe ones.

24 And we all agree that we can do a better job of
25 targeting those enhanced mandatory minimums to the most

1 serious violent and repeat offenders. And so this bill does
2 just that.

3 We also agree that our current system could benefit
4 from giving judges a bit more discretion in sentencing in
5 certain areas. That is why we are expanding the current
6 safety valve.

7 We also create a second safety valve so that nonviolent
8 offenders who have minor criminal histories or play low-
9 level roles in drug organizations are not improperly swept
10 up by harsher mandatory minimums.

11 Finally, we agree that we must improve our prisons and
12 stop the revolving door. So we have agreed to give lower-
13 risk inmates a chance to return to society earlier and with
14 better prospects to become productive, law-abiding citizens.

15 As I said, this is the biggest criminal justice reform
16 in a generation. But we understand that this bill needs to
17 be considered in context. The Sentencing Commission has
18 already acted to release tens of thousands of inmates, many
19 in a few weeks. There is a heroin epidemic raging across
20 the country. Crime rates that had been falling seem to be
21 rising again. Here in Washington, the police chief has
22 attributed at least some of the rising murder rate to the
23 release of violent inmates from prison after not serving
24 long enough sentences. We need to be very careful when
25 considering legislation that would reduce such criminal

1 penalties. And I believe that we have been very careful to
2 limit the people who gain relief under this bill while
3 imposing tougher sentences on others.

4 Now, the bill has been nearly unanimously praised, but
5 there is some opposition. The bill is unpopular with some
6 Federal prosecutors. And I might even agree with some of
7 their criticisms. But if we are actually going to pass
8 reform legislation, none of us is going to be completely
9 happy, and we are not going to do better than what I think
10 we have in front of us.

11 I also understand some organizations are calling for
12 more hearings and a delay in markup. This is, I think, a
13 thinly veiled attempt to kill the bill. They know that we
14 do not have a lot of time if we are going to get this done.
15 And we have had hearings on this subject over many years.
16 And none of these groups were active when I was out there,
17 almost alone, fighting other bills that would have gone too
18 far in reducing mandatory minimums.

19 But thanks to many people working together, we have
20 produced this historic bill. And I want to end with the
21 idea that this bill is about the United States Senators
22 working together.

23 Senators from both sides of the aisle and Senators with
24 very different perspectives have come together to solve an
25 important problem facing the United States. And I am

1 honored to be a part of that as the Chairman of this
2 Committee.

3 Senator Leahy?

4 OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S.

5 SENATOR FROM THE STATE OF VERMONT

6 Senator Leahy. Well, thank you, Mr. Chairman.

7 I think, as you suggested, the problems facing our
8 criminal justice system cannot continue to go unaddressed.
9 When we lock up too many people, for longer than is
10 necessary to keep our communities safe, it comes at an
11 extraordinary price. We have fewer resources to support
12 public safety efforts that actually work. And we are left
13 with a criminal justice system that is anything but "just,"
14 particularly for many communities of color.

15 To solve complex problems in our communities, like
16 addiction, Congress has too often resorted to simple but
17 deeply flawed mandatory minimum sentences. It is time we
18 fix our mistakes. And it is essential we apply the fix
19 retroactively so that those currently paying the price for
20 our mistakes are given a second chance. This is a historic
21 opportunity. We should not squander it.

22 This is a bipartisan bill. This bill is not perfect.
23 I would like it to go further. There are many mandatory
24 minimums the bill does not impact. But while it does not
25 contain everything I might like, it does not contain

1 everything Senator Grassley would like. That is the nature
2 of a compromise. And it might be an example to those in the
3 Congress who want to have all or nothing that it is the only
4 way you actually take a step toward passing historic
5 legislation. Both sides have to work together.

6 Today we are going to hear testimony about necessary
7 reforms that have garnered broad agreement. Because of
8 Senator Grassley's leadership and building on the work that
9 we did in the last Congress, half of the members serving on
10 the Senate Judiciary Committee, Republicans and Democrats
11 across the political spectrum, are sponsors of this bill.
12 Those numbers will grow. I hope the coalition can work for
13 more reforms in the future, but the Sentencing Reform and
14 Corrections Act is a good start.

15 I view this bill not just as a Senator but through the
16 eyes of a former prosecutor. I still treasure--the only
17 thing in my personal office with my name on it--the shield
18 that I carried as State's attorney in Chittenden County,
19 Vermont, because it reminds me of the brave men and women on
20 the front lines who protect us every day. These individuals
21 deserve to have the resources they need to do their jobs
22 effectively.

23 I also think about the families affected by our
24 criminal justice system, the families of inmates like our
25 with Debi Campbell, whose children grew up in foster care

1 because she received a 19-year sentence for selling
2 methamphetamine. Now, she will be the first to admit she
3 should have served some time. But 19 years? We have serial
4 killers who serve less than that. She had no criminal
5 history points. There was no violence involved. But she
6 was sent away for almost two decades at enormous taxpayer
7 expense. That simply does not make any sense, and we can do
8 better.

9 Now, Deputy Attorney General Sally Yates knows that the
10 reform we have proposed is desperately needed. The Justice
11 Department, which she helps lead, has to dedicate a quarter
12 of its budget to the Bureau of Prisons every year. A
13 quarter of the budget. That means less money for victim
14 services, for law enforcement, for reentry programs, for
15 going after terrorists, for you name the area. I thank
16 Deputy Attorney General Yates, who she herself is an
17 experienced prosecutor. I thank her for her leadership and
18 for being here today.

19 I have learned over the past four decades that it often
20 takes a few Congresses to make meaningful progress. We
21 started this effort years ago. We have steadily increased
22 bipartisan support for it. We continue to remember that we
23 are here to serve the American people, and historic reform
24 is within our grasp.

25 So I thank all of those who have responded to the call

1 to reform our criminal sentencing laws, and thank you, Mr.
2 Chairman.

3 Chairman Grassley. Our first witness is Deputy
4 Attorney General Sally Yates. Ms. Yates was sworn in to her
5 current position earlier this year. She previously served
6 as U.S. Attorney, Northern District of Georgia, since 2010.
7 Before that, she was a line prosecutor and supervisor with
8 the U.S. Attorney's Office there, where she led a number of
9 investigations and prosecutions, including that of Olympic
10 bomber Eric Rudolph. Ms. Yates is from Georgia and received
11 her undergraduate and law degrees from the University of
12 Georgia.

13 You may proceed, Ms. Yates.

1 STATEMENT OF THE HONORABLE SALLY QUILLIAN YATES,
2 DEPUTY ATTORNEY GENERAL, U.S. DEPARTMENT OF
3 JUSTICE, WASHINGTON, D.C.

4 Ms. Yates. Thank you, Chairman Grassley, Senator
5 Leahy, distinguished members of the Committee. It is my
6 privilege to appear before you today to talk about this
7 critically important issue of sentencing reform, and an
8 issue that is important both for our country and our
9 criminal justice system.

10 My perspective on sentencing policy is informed by my
11 26 years with the Justice Department, as a line AUSA in the
12 trenches, as a U.S. Attorney in Atlanta, and now as Deputy
13 Attorney General. And it is because of my commitment to
14 public safety and the fair administration of justice that I
15 believe that it is critical that we enacted meaningful
16 sentencing reform.

17 I have seen firsthand the impact that our system, and
18 particularly our drug sentencing laws, have on our ability
19 to be able to carry out the Department's mission, and I
20 believe that we can and we must do better.

21 We all know the facts that bring us here today. While
22 the population has only grown by about a third since 1980,
23 the Federal prison population has increased by over 800
24 percent. And half of all Federal prisoners are now drug
25 defendants.

1 Our current mandatory minimum sentencing laws do not
2 calibrate a defendant's sentence to really match the threat
3 that they pose to our public safety, and at its core, that
4 is because our mandatory minimum sentencing laws are based
5 entirely on one factor, and that is, drug quantity. Because
6 our laws cast such a broad net, we have a hard time
7 distinguishing between the cartel leader who needs to go to
8 prison for a long time and the low-level mope who does not.

9 This comes with great costs--costs to operate our
10 prison system, costs to our communities and families, and
11 costs to the public's confidence in our system of justice.

12 From a dollars-and-cents perspective, the exploding BOP
13 population means that it now accounts for roughly 25 percent
14 to a third of the Department budget. These prison costs are
15 crowding out all of the other important work that the
16 Department does, and every dollar that we spend imprisoning
17 a low-level, nonviolent drug offender for longer than he or
18 she needs to be there is a dollar that cannot be spent on
19 prosecutors and agents and cops on the street, to State and
20 local law enforcement, prevention and reentry, and other
21 crucial programs that are really necessary to keep our
22 communities safe.

23 Recalibrating these sentences for low-level, non-
24 violent drug offenders will enhance public safety by
25 allowing us to devote our scarce resources in a manner that

1 best keeps our communities safe.

2 But in addition to the fiscal cost, there are human
3 costs as well. Unquestionably, those who violate the law
4 should be held accountable. And there are some very
5 dangerous people who need to go to prison for a very long
6 time. But we need to ensure a sense of proportionality in
7 our sentencing laws. The punishment needs to fit the crime.

8 Take, for example, the case of a defense whose record I
9 recently reviewed who was an individual who only had a sixth
10 grade education, but had served honorably in the Army.
11 After he was discharged, he was convicted of a street-level
12 crack deal in a case that probably would not even be
13 prosecuted in Federal court today.

14 Now, although he did not have a history of violence--in
15 fact, he did not even have a gun with him--he was sentenced
16 to mandatory life in prison because he had two prior small-
17 time State convictions for selling cocaine, one of which
18 involved less than an ounce.

19 Now, should he have been held accountable for violating
20 our drug laws? Yes. Should he have to spend the rest of
21 his life in prison for it? No.

22 Importantly, the costs are not just borne by the
23 defendants. Too many children have parents in prison. One
24 in 27 children, one in 9 African American children has a
25 parent behind bars, and this cuts deeply into our society.

1 Similarly, when we send people to prison for longer
2 than is necessary to protect public safety, we risk losing
3 the public's faith in the fairness of their own criminal
4 justice system. And this may prove the most costly price of
5 all.

6 Our experience with the Department's Smart on Crime
7 Initiative demonstrates that more judicious use of mandatory
8 minimum sentences works. Under Smart on Crime, prosecutors
9 were directed not to seek mandatory minimum sentences for
10 lower-level, non-violent drug defendants, and some feared
11 that without having the hammer of a maximum sentence, we
12 would not be able to encourage cooperation and to be able to
13 work our way up the chain in drug organizations.

14 But the facts have not borne that out. In fact, since
15 the institution of Smart on Crime, drug defendants are
16 pleading guilty at precisely the same rate they were before,
17 and, importantly, defendants are cooperating at the same
18 rate that they were before. But to make lasting change,
19 Congress must act.

20 In Section 3553 of Title 18, Congress set out the
21 factors that a court should consider in fashioning the
22 appropriate sentence, and that section opens with the
23 overarching principle that the court should impose a
24 sentence that is sufficient but not greater than necessary
25 to achieve the purposes of sentencing. Sufficient but not

1 greater than necessary. Anything beyond that is
2 inconsistent with our principles of justice and with our
3 system of laws.

4 There is a balance that we must strike, and I believe
5 that the proposed Sentencing Reform and Corrections Act is a
6 good step towards striking that balance.

7 Thank you again for inviting me here today to speak,
8 and with that, I am happy to take your questions.

9 [The prepared statement of Ms. Yates follows:]

1 Chairman Grassley. We will have 5-minute rounds.

2 I only have two questions of you, General Yates.

3 Mandatory minimums help to provide certainty and uniformity
4 in sentencing, and as you yourself testified before the
5 Sentencing Commission in 2010, "Mandatory sentencing laws
6 increase deterrence and cooperation by those involved in a
7 crime." That is why it was important to me that this
8 compromise does not eliminate any mandatory minimums and
9 preserves the existing 5-year and 10-year mandatory minimums
10 for drug crimes.

11 The bill also creates two new maximums for certain
12 crimes: domestic violence and export violation. But I have
13 always said I was open to some reform of maximums. And as
14 you testified back before the Sentencing Commission in 2010,
15 "There are real and significant excesses in terms of
16 imprisonment being meted out for some offenders under the
17 existing mandatory sentencing laws, especially for some non-
18 violent offenders." That is what you said, and what I have
19 quoted is what we have tried to tackle in this compromise.

20 So then the question: Does the Department believe that
21 we have done a reasonable and responsible job in cutting
22 back and targeting some of the mandatory minimums? And,
23 also, have we even given the Department some new tools to go
24 after violent and repeat offenders?

25 Ms. Yates. Yes, Senator, I believe that you have. As

1 I testified in 2010, mandatory minimums can be an important
2 tool for prosecutors. But as I also said in 2010, those
3 mandatory minimums are most effective when they are targeted
4 at the most serious crimes and at the most serious
5 offenders. And I believe that that is what this proposal
6 does. It targets mandatory minimums where we need them the
7 most.

8 Additionally, this proposal gives us some other tools
9 that we did not have before. For example, with respect to
10 924(c), this proposal adds as a predicate State offenses
11 where a defendant is convicted of a State offense where he
12 or she is carrying a gun. It can now be used as a predicate
13 for 924(c). And, similarly, for 851, the recidivist
14 statute. It also provides that not just drug cases count,
15 not just drug convictions, in determining the cases that
16 work toward the 851 statute, but also crimes of violence,
17 which are really even more important from my perspective
18 than the drug cases.

19 So I believe that you have struck the right balance,
20 and you have given us some other additional tools that will
21 be helpful to us in keeping our communities safe.

22 Chairman Grassley. Okay. Thank you.

23 My last question. Again, as part of this compromise,
24 we agreed to lower some of the harshest mandatory minimums
25 and to apply those changes not just going forward, but then

1 also to people who were convicted and sentenced under old
2 laws. Inmates sentenced under the old mandatory minimums
3 can ask a judge to sentence them in accordance with the new
4 mandatory minimums. But a prosecutor gets to weigh in also,
5 and the inmate will only get a lower sentence if the judge
6 agrees that it is appropriate after the judge has considered
7 factors like the inmate's prison conduct and any danger to
8 the community.

9 So this strikes me as a fair and just thing to do. But
10 others have raised concerns about the Department of Justice
11 going to stand idly by and let dangerous criminals walk.

12 So this is my question, kind of a statement, and I hope
13 that I have your commitment that the Department of Justice
14 will review each of these resentencings on a case-by-case
15 basis and that the determination on these resentencings will
16 be made by local U.S. Attorney'S Offices.

17 Ms. Yates. Well, Senator, we are anything but idle at
18 the Department of Justice. You have our commitment that we
19 will carry out the retroactive application of the provisions
20 of this proposal in a thoughtful manner, on an
21 individualized basis at the U.S. Attorney's Office,
22 considering the specific facts and circumstances of each
23 case. And then this matter will go before the sentencing
24 judge who sentenced the defendant originally. And so we are
25 committed to ensuring that we carry this out in a way that

1 keeps public safety foremost in our minds.

2 Chairman Grassley. Thank you very much.

3 Senator Leahy?

4 Senator Leahy. Well, thank you. You have answered a
5 question I was going to ask about retroactivity. I would
6 note on the mandatory minimums, my experience from both
7 judges and prosecutors has proven many, many times a
8 problem, not an aid. When you have two cases that were
9 charged the same but both the prosecutor and the judge know
10 the level of culpability is dramatically different between
11 them, and yet they are going to be treated exactly the same.
12 I have had a lot of prosecutors tell me that ruins their
13 ability to have any kind of discretion.

14 Ms. Yates. And I think that is right, Senator.
15 Particularly when you look at our drug mandatory minimum, it
16 is based solely on drug quantity, which really does not take
17 into account the other factors that are also important
18 factors that we should be considering in determining how
19 dangerous this particular offender is.

20 Senator Leahy. When we have a question in my little
21 State of Vermont on opiates and heroin, we are trying to
22 find ways through that. But the hearings I have held there,
23 we have had police officers and the faith community and
24 medical people, parents, educators, and they all agree on
25 one thing, police officers on through. You simply cannot

1 arrest your way out of it. You need more drug courts, more
2 treatment programs, more officers on the street. That, of
3 course, costs money. In our State, a lot of that money is
4 going to the jails. In the Federal system, a huge
5 percentage of the Department of Justice's budget goes to the
6 prison system.

7 Do you think if we pass this it is going to free up
8 money, save you money so you can put it on the things that
9 really count?

10 Ms. Yates. Well, it certainly will free up money, and
11 one of the things that we think is going to be important is
12 that this money is reinvested in other ways to ensure that
13 we are keeping our communities safe. That includes
14 prosecutors and agents, but, importantly, it includes more
15 than that. We need to be focusing more on prevention. We
16 need to be doing more about prisoner reentry, and that is
17 one of the things that I like so much about this proposal,
18 is the recidivism reduction proposal on the back-end reform
19 here that help to put people in a position to be able to
20 stay on the straight and narrow when they come out. You
21 know, that is crime prevention. Every time somebody
22 reoffends, there is a new victim.

23 So freeing up this money so that we can really be able
24 to use it in a thoughtful way to keep our communities safe
25 is very important.

1 Senator Leahy. You know, for years we have heard from
2 some in the Justice Department and elsewhere that mandatory
3 minimums were absolutely necessary to get defendants to
4 flip. It became almost a mantra. You in your own
5 experience as a prosecutor said what many other prosecutors
6 have told me--and it has been my experience--that mandatory
7 sentences are not necessary to get defendants to cooperate.
8 Is that the Department's position now?

9 Ms. Yates. Yes, it is. And as I mentioned, that is
10 exactly what we heard before Smart on Crime. And, look, I
11 understand it. If this is the manner in which you have been
12 prosecuting and you had mandatory minimums, one might have
13 assumed that that is why the defendants were cooperating.

14 But what we have seen from a data standpoint is that
15 simply is not the case. Since Smart on Crime, as I
16 mentioned, defendants are cooperating at precisely the same
17 rates, and they are pleading guilty at the same rates.

18 Likewise, you can look at other statutes that do not
19 have mandatory minimums, and you can see that some of those
20 statutes have even higher rates of guilty pleas and
21 cooperation.

22 So my personal experience of all these years of being a
23 prosecutor does not bear out the concern that we need
24 mandatory minimums, nor does the data that we have collected
25 since Smart on Crime.

1 Senator Leahy. Thank you. I have talked to a lot of
2 current and former Federal prosecutors who think that the
3 changes in the Grassley-Leahy-et al. bill are reasonable and
4 appropriate. We have heard from a small fraction of the
5 Federal prosecutors raising concern. What do you say to
6 those people in the field?

7 Ms. Yates. Well, I would say I think reasonable people
8 can disagree and people can have a different philosophical
9 approach. But just as we had AUSAs who were concerned about
10 what would happen with Smart on Crime, when the Attorney
11 General directed that AUSAs have a more judicious use of
12 mandatory minimums, and we have seen that those concerns
13 were not borne out, I think that those AUSAs will see the
14 same thing here after hopefully this legislation is enacted
15 as well.

16 Senator Leahy. Thank you.

17 Thank you, Mr. Chairman.

18 Chairman Grassley. Thank you.

19 I believe that everybody that is at the table here was
20 here when the gavel fell, so I will call you just based on
21 seniority. So Senator Sessions, then Senator Feinstein.

22 Senator Sessions. Thank you, Mr. Chairman, and I
23 appreciate your hard work and leadership on crime issues
24 over a number of years. I believe the Senate and Senator
25 Leahy and you and Senators Biden and Kennedy and Thurmond

1 created mandatory minimums, sentencing guidelines, ended
2 parole, and did a number of other things that ended the
3 revolving door in criminal justice and created the framework
4 that States followed through increased prosecutions and
5 ending the revolving door, and murder rates are half what
6 they were in 1980--half what they were. Thousands of people
7 since 1980 are alive today living productive lives because
8 they were not murdered on the path we were on.

9 We know recidivism is a big issue. We know that,
10 according to the Department of Justice, 75 percent of those
11 released after 5 years have been rearrested. We do not know
12 what other crimes they might have committed that they were
13 not arrested for and got away with. Certainly that is true
14 with the problem of drug dealers.

15 So we have a lot of people that are concerned about it.
16 The legislation that has been produced, the National
17 District Attorneys Association, the National Sheriffs
18 Association, the Federal Bureau of Investigation Agents
19 Association, they say, "This bill should not be advanced by
20 the Senate Committee at this time."

21 The National Narcotics Officers Association: "Our
22 membership remains opposed to the changes in the Federal
23 sentencing laws that are proposed."

24 The National Immigration and Customs Enforcement
25 Council, who think it will also have unintended

1 consequences, further hampering immigration efficiency in
2 the United States. Americans for Limited Government and the
3 Federal Law Enforcement Officers Association.

4 Well, Deputy Attorney General Yates, I want to get this
5 straight. Surely you would agree, would you not, that when
6 mandatory minimums are either eliminated or reduced
7 substantially, it reduces the ability of law officers to
8 negotiate and protect the public?

9 Ms. Yates. Well, Senator, actually I do not agree with
10 that.

11 Senator Sessions. Okay. I will not argue with you. I
12 will just take that as it is.

13 [Laughter.]

14 Ms. Yates. I was up for arguing if you wanted to.

15 Senator Sessions. I have been there. I have
16 prosecuted cases. When somebody is facing a 10-year
17 sentence, mandatory minimum, and they know it, and they are
18 not going to go before the judge and talk their way out of
19 it, it makes a difference. To suggest otherwise I think is
20 incorrect.

21 Ms. Yates. May I follow up on one thing, Senator?

22 Senator Sessions. Okay.

23 Ms. Yates. Because I do agree with you that the
24 prospect of a lengthy sentence certainly provides a powerful
25 incentive for a defendant to cooperate. But I do not think

1 that it has to be a mandatory minimum sentence, and that is
2 what we have seen since Smart on Crime, that merely the
3 prospect of--there is always an incentive for a defendant to
4 want to cooperate to reduce his or her sentence, and it does
5 not require the mandatory minimum to give them that
6 incentive.

7 Senator Sessions. All right. I do not agree.

8 The National Association of United States Attorneys
9 said, "If this bill is passed, it will add further fuel to a
10 ranging fire of increasing crime rates that correspond to
11 so-called sentencing and criminal justice reform efforts at
12 the State and Federal level. These reforms are reversing 20
13 years of crime reductions and endanger the American public."

14 So I would offer those for the record.

15 Chairman Grassley. They will be put in the record.

16 [The information follows:]

17 / COMMITTEE INSERT

1 Senator Sessions. Now, Director Comey of the FBI just
2 this month, October 1st, recently said he was "very
3 concerned" about the increase in violent crimes and murder
4 in cities across the country, and that it will prompt him to
5 be "thoughtful about moves to reform the Nation's criminal
6 justice system." On October 14th, Director Comey said, "We
7 have hit historic lows in violent crimes recently, and if we
8 let it slide back, we need to explain to those who come
9 after us what we did or did not do to let that happen."

10 That is exactly the way I feel about it. And I was
11 appointed to be a United States Attorney in 1981, and I saw
12 that crime was increasing at 15 percent a year some years.
13 The American people were really upset about it. And these
14 efforts have worked, and in recent years we have taken a
15 number of steps to undermine the guidelines. The Supreme
16 Court, the Department of Justice, Federal judges now do not
17 have to follow the guidelines. The only real teeth out
18 there are the mandatory minimums. They have not gotten
19 around that.

20 So, Mr. Chairman, I see you are getting nervous. My
21 time is up. And I will wrap up with that. Thank you for
22 working at this. I think you have avoided some of the most
23 dangerous things that have been proposed. But I do believe
24 we need to be very careful about this, do the right thing,
25 and we have to know that certainty in sentencing is

1 important, that the reduction of crime--the good reduction
2 of crime we have seen can get away from us if we make errors
3 today, as Director Comey said.

4 Chairman Grassley. Senator Feinstein.

5 Senator Feinstein. Thanks very much, Mr. Chairman.

6 My exposure to mandatory minimums was a very long time
7 ago in California when I set sentences and granted paroles
8 as part of a paroling authority under the indeterminate
9 sentence for women convicted of felonies, and what I
10 discovered at that time was they were very unequal. And I
11 suspect it is the same problem today with Federal minimums.

12 So I have never had a deep regard for mandatory minimum
13 sentences. My concern has been that when the minimum is
14 changed and the 6-month period, as I understand it, Ms.
15 Yates, is triggered, that there be some ability for a United
16 States attorney to sign a document or otherwise indicate
17 that they are in agreement with this; and if they have
18 particular concerns, that they have an opportunity to
19 indicate those concerns.

20 I have submitted language to you. It is my
21 understanding, as of Saturday, that your chief of staff
22 signed off on it. And I have submitted language to Senators
23 Durbin and Whitehouse, who were good enough to sit down with
24 me one afternoon, and we had an opportunity to go over the
25 bill.

1 So I am hopeful that we will be able to have some sign-
2 off of a prosecutor on the sentence. It is my understanding
3 that you are in agreement with this. You sent me a letter
4 dated October 16th. Is that correct?

5 Ms. Yates. Yes. The proposal that you sent over
6 certainly reflects the kind of process that we would go
7 through at the Department of Justice before agreeing to any
8 sentencing reduction. We recognize how important it is that
9 we be thoughtful with respect to every single defense and to
10 carefully review their case before agreeing to any such
11 sentencing reduction. And so this reflected the process
12 that we would be following in the Department of Justice
13 anyway. Whether you all include this in the actual
14 legislation, I will leave that to you all as to whether it
15 is part of the legislation. But this is a reflection of the
16 type of process that we would be following.

17 Senator Feinstein. Thank you very much.

18 Thanks, Mr. Chairman.

19 Chairman Grassley. Senator Cornyn.

20 Senator Cornyn. Well, thank you, Mr. Chairman.

21 Thanks, Ms. Yates, for being here. And I am proud to be a
22 cosponsor of this legislation. And I would just point out
23 to my friend from Alabama three things: this legislation
24 does not eliminate a single mandatory minimum; it does not
25 reduce sentences for any violent offender; and it actually

1 creates new mandatory minimums and extends the scope of
2 several existing ones related to violence.

3 I know the Senator speaks from experience in the
4 criminal justice system, and he is urging us to be very,
5 very careful, and I agree, we should be very, very careful
6 because the public safety is at stake.

7 But, Mr. Chairman, I appreciate your willingness to
8 include the Cornyn-Whitehouse Corrections Act as a key
9 element of the effort. And, Ms. Yates, thank you for your
10 comments about the so-called back end of the criminal
11 justice system.

12 Of course, in my case the motivation for this
13 legislation came from our experience in Texas where we are
14 proud to be tough on crime, and we finally decided to be
15 smart about crime, too, and realized that people who go to
16 prison typically get out of prison, and many of them are
17 woefully unprepared to deal with the real world. And so
18 they end up back in prison, and you alluded to that earlier.

19 But, thankfully, our experiment in Texas and in other
20 States--Senate Whitehouse's State I believe had a similar
21 experience. We both have been able to reduce our crime
22 rates by dealing with the causes or at least the issues that
23 inmates are dealing with, whether it is mental illness,
24 whether it is drug or alcohol, whether it is a lack of basic
25 skills, or even a basic education. We have been able to

1 reduce both our crime rate and our incarceration rate.

2 The recipe for success I believe in my State has been
3 three elements:

4 It has been rehabilitation, something we all learned
5 about in law school in our criminal justice courses but we
6 seem to have forgotten over the years, the importance of
7 actually giving people who will avail themselves of the
8 opportunity to actually turn their life around. Not
9 everybody will, but some will, and we ought to be giving
10 them the tools they need to do that.

11 Secondly, flexible sentencing and alternatives to
12 prison for low-risk, non-violent offenders, and at the same
13 time targeting our efforts on violent, high-risk career
14 criminals.

15 We learned from criminologists who have found long-term
16 prison sentences for low-risk, non-violent offenders often
17 make them more dangerous and more likely to commit crimes in
18 the future. Call it "higher ed" for criminals, which is
19 what our prisons sometimes end up being.

20 So we implemented flexible sentencing options and
21 alternatives to incarceration for low-risk and non-violent
22 offenders. And then we were able to actually shutter three
23 different prisons and save roughly \$10 billion since 2007,
24 something that is pretty popular in my State, as you can
25 imagine.

1 But I would say that we need to be extraordinarily
2 careful that we just do not take that money and not plow it
3 back into providing people with the opportunity to turn
4 their lives around. And I am glad we have all of the
5 witnesses here with us today, but I am particularly glad
6 that Mr. DeRoche is here, who will talk a little bit about
7 their work at the Prison Fellowship Ministries.

8 One of the things we have found in Texas is that a
9 faith-based volunteer program going into the prisons--and it
10 is volunteer participation by the inmates--gives people an
11 additional incentive and motivation to not just rehabilitate
12 themselves but to transform their lives and those of their
13 families and others.

14 So while this negotiation process was not easy to bring
15 such people of different political views and different folks
16 along the ideological spectrum--and I agree with Senator
17 Leahy, this is not a panacea--our work is not completed now
18 that this bill has been introduced and will be hopefully
19 voted out of Committee this week. It is a good start. We
20 have a long and arduous process ahead of us, and I hope that
21 the Senator from Alabama and others who are skeptical of
22 some of this work can help us make it better. And that is
23 what the process is designed to do.

24 So, actually I am delighted to be a part of a process
25 of finding solutions to our problems. It is unfortunate

1 that in our polarized politics these days, people tend to be
2 on the end of the political spectrum and not try to find
3 common ground, and that is what we have tried to do to
4 improve public safety, reduce costs, and give a second
5 chance to prisoners who are willing to take the opportunity
6 to turn their lives around.

7 I want to conclude by just telling the Chairman and the
8 Ranking Member and Senator Durbin, Senator Whitehouse,
9 Senator Lee, and Senators Graham and Schumer and all of our
10 cosponsors, thank you for their good work, and we look
11 forward to continuing to work on this legislation.

12 Thank you.

13 Chairman Grassley. Senator Durbin.

14 Senator Durbin. Senator Grassley, thank you very much
15 for chairing this hearing.

16 It was a little over 2 years when Senator Lee and I
17 introduced the first version of this bill, trying to call
18 for sentencing reform, particularly when it came to
19 mandatory minimums. I thought we made a good-faith effort.
20 We drew a lot of cosponsors. But we would not be sitting
21 here today with the very real prospect of enacting this bill
22 into the law of the land had a number of people not joined
23 us in the effort. First and foremost among them is the
24 Chairman of this Committee, and that is Senator Grassley,
25 who did not care much for our first version of the bill and

1 said so. And we sat down with him, and also with Senator
2 Cornyn, Senator Whitehouse. Senator Lee and I joined with
3 Senator Booker, who was also part of this effort, to try to
4 craft the effort before us today. It was a lot of hard work
5 involved, and most of it done by our staff, and that is the
6 case around the United States Senate in most instances. But
7 I think at the end we have a product well worth the title of
8 "meaningful, historic reform."

9 And I want to thank Ms. Yates from the Department of
10 Justice for encouraging us and grading us as we made
11 progress on this effort.

12 I would like to address a couple things that we wanted
13 to make clear.

14 First, we believe that there are many non-violent drug
15 offenders currently serving lengthy mandatory minimum
16 sentences, and that is the category that we were looking at.
17 In 2011, the Sentencing Commission did a comprehensive study
18 on mandatory minimums. They found 55,000 people were in
19 Federal prison serving mandatory minimum sentences for a
20 drug crime--55,000. That is more than 50 percent of all
21 Federal drug offenders and more than one-quarter of all
22 Federal prisoners.

23 Many of those serving are low-level offenders, and it
24 is true that some low-level offenders, like careers, do not
25 often receive mandatory minimums. But other low-level

1 offenders frequently are sentenced.

2 So what is your response to the claim that this is much
3 ado about nothing, that we are really not going to address
4 or potentially address a large sector of the Federal prison
5 population?

6 Ms. Yates. I think that we absolutely will. If you
7 look statistically at the profile of drug defendants that
8 are currently in the Bureau of Prisons right now, you will
9 see that there are a number of what we call "low-level, non-
10 violent drug defense." For example, less than 1 percent of
11 the defendants in Federal prison actually had violence or
12 threats of violence in connection with their drug offense.
13 Only 16 percent of them had a weapon. Half of them had
14 little or no criminal history at all, and only 7 percent of
15 them are leaders. So just those statistics alone should tel
16 you that there is a fairly sizable group of folks out there
17 that do not need to be serving a prison sentence for as long
18 as they are, and that is what this--that is what I believe
19 this reform is designed to address.

20 Senator Durbin. So my colleague Senator Sessions
21 rightly addresses the incidence of murder and violent
22 crimes, and what we have tried to do in crafting this safety
23 valve provision is to make sure certain that if you are
24 engaged in those violent crimes, using firearms and such,
25 you will be ineligible for the safety valve aspects of this

1 bill. So I applaud him--and I think he is right. I can
2 point to a city I represent, Chicago, and other cities where
3 violent gun crime is up dramatically. I do not want to make
4 it any easier for those who are sentenced under those
5 circumstances.

6 But do you see the distinction here between violent
7 crime murder and what we are trying to achieve with these
8 drug offenders?

9 Ms. Yates. Absolutely. And, again, that is why the
10 individualized assessment in each case is going to be so
11 important. We will look not only at what the offense of
12 conviction was but also the defendant's history. And we
13 will be addressing the concerns that you have had there to
14 be sure that we are only cutting sentences, again, for those
15 low-level, non-violent drug offenders.

16 Senator Durbin. And to repeat what has been said, the
17 bill does not repeal any mandatory minimum sentences, does
18 not repeal any of them. It establishes two new ones. It
19 raises some maximum sentences, and it does not lower any
20 maximum sentences. So when you are dealing with a bad
21 actor, that judge still has an opportunity to sentence at
22 the highest level, the maximum level, in this case.

23 Ms. Yates. Absolutely. That is one of the things--you
24 know, a mandatory minimum is just that. It is the floor for
25 a sentence, not the ceiling.

1 Senator Durbin. There is another aspect that Judge
2 Wilkins, who was an appointment of President Reagan, the
3 first Chair of the Sentencing Commission--here is what he
4 said: "There are few Federal judges engaged in criminal
5 sentencing who have not had the disheartening experience of
6 seeing major players in crime before them immunize
7 themselves from the mandatory minimum sentences by blowing
8 the whistle on their minions, while the low-level offenders
9 find themselves sentenced to mandatory minimum prison terms
10 so skillfully avoided by the kingpins."

11 What we have tried to do in this is to make it clear:
12 Kingpins are not going to get a break at all in any of the
13 changes that we make. Is that distinction clear to you as a
14 former prosecutor?

15 Ms. Yates. It is clear, nor should kingpins get a
16 break.

17 Senator Durbin. Thank you.

18 Chairman Grassley. Senator Lee.

19 Senator Lee. Thank you very much, Mr. Chairman. And
20 thank you, General Yates, for being here and for all of the
21 assistance you have given to us. Whenever we have had
22 questions, we have appreciated the Department's willingness
23 to not only reach out but also to respond quickly to our
24 questions.

25 Since my time as a Federal prosecutor, I have been

1 concerned about the excesses of our Federal criminal justice
2 system. In many cases, the long sentences required by our
3 Federal minimum mandatory laws result in sentences that
4 simply do not fit the crime. That is to say, they are too
5 long, and in many cases they are objectively unjust.

6 That is why more than 2 years ago Senator Durbin and I
7 teamed up on this issue, and we first introduced the Smarter
8 Sentencing Act. Now, I believe we can make Federal
9 sentencing more fair and more efficient without doing
10 anything to undermine public safety. And, in fact, I
11 believe we can do this in a way that will actually enhance
12 public safety by increasing the efficiencies and, therefore,
13 the effectiveness of our Federal criminal justice system.

14 The Sentencing Reform and Corrections Act achieves that
15 goal by doing some things to reform the most severe
16 penalties that often lead to disproportionate sentences, by
17 expanding the availability of the safety valve and by
18 increasing opportunities and incentives for rehabilitative
19 programming within the prison system for those that are
20 already there.

21 Now, General Yates, you testified a minute ago--and I
22 just want to reiterate--that this bill does nothing to
23 eliminate any minimum mandatory sentence available under
24 existing law. It does nothing of the sort. Correct?

25 Ms. Yates. No, they are all still in place.

1 Senator Lee. Nor does it do anything to reduce the
2 statutory maximum for any crime currently on the books
3 within the Federal penal system.

4 Ms. Yates. No, it does not.

5 Senator Lee. It does not do anything. In fact, in
6 some cases it raises the maximum, and in other cases, we
7 create new minimum mandatory penalties that do not already
8 exist.

9 Now, some opponents of sentencing reform, of the type
10 of reform effort that we are trying to undertake here,
11 believe that reducing mandatory minimums will necessarily,
12 unavoidably undermine our ability to keep the American
13 people safe. You have been an outspoken opinion leader on
14 this issue, and you have testified that you believe
15 sentencing reform will actually enhance our ability to keep
16 the American people safe. Tell us a little bit why you
17 think this is the case. Elaborate on this belief that you
18 have got.

19 Ms. Yates. Well, I believe that we need to act now
20 really to be able to ensure the safety of our communities by
21 being able to take some of the money that we are
22 unnecessarily spending on the Bureau of Prisons and to be
23 able to use it more thoughtfully to be able to keep our
24 communities safe.

25 Senator Cornyn was speaking a moment ago about some of

1 the innovative programs in Texas. We are not doing enough
2 of that in the Federal system. We are trying to do some,
3 but, frankly, we are not doing enough. We need to be
4 spending more time on prevention. We need to be spending
5 more time and more money on reentry. Those are the things
6 that are really going to have an impact on keeping our
7 communities safe.

8 Senator Sessions mentioned the recidivism rates. You
9 know, our recidivism rate has stayed the same over the last
10 30 years, despite our high incarceration rates. And so that
11 tells you that we need to be investing more. So that is one
12 of the reasons why I believe that it is going to keep our
13 communities safer.

14 We also can look to the experience of the States and to
15 see the 29 States across the country that have enacted
16 really meaningful sentencing reform, and all of those States
17 have experienced a decrease in violent crime. Violent crime
18 has decreased across the country entirely, but it has gone
19 down more in States that have enacted meaningful criminal
20 justice reform than anyplace else.

21 Senator Lee. Now, some critics of this legislation
22 will point to that aspect of our bill and will criticize it
23 saying that Federal offenders are by nature just very
24 different than their State counterparts, that they are a
25 different type of offender, such that the type of reform

1 mechanism in place already in many of the States, these
2 reform programs that are so successful in so many of our
3 States, just have no place within the Federal system.

4 Now, perhaps that may have been true 100 years ago or
5 even 50 or 60 years ago, but in my experience as an
6 Assistant U.S. Attorney, I do not think it is always the
7 case anymore. There are certainly areas where that is true,
8 but there are plenty of others where those who are being
9 prosecuted in the Federal system are not necessarily
10 inherently different than those that are being prosecuted in
11 the State system.

12 So in light of that, in light of the fact that not
13 everybody we are going after in the non-violent drug
14 offender arena is necessarily a kingpin, do you not think
15 some of those lower-level offenders could benefit from these
16 programs in the same way that many offenders have benefited
17 within the State system?

18 Ms. Yates. Absolutely. There is certainly a category
19 of defendants that is qualitatively different in the Federal
20 system and the State system. But, importantly, this reform
21 is not aimed at those defendants. This reform is aimed at
22 the defendant's that are very much like those that are being
23 prosecuted in the State--again, the lower-level drug
24 defendants.

25 Senator Lee. And there may have been a time many

1 decades ago when we were not going after very many of those
2 people through our Federal system, but we are now. There
3 are a variety of reasons for that, and we do not need to get
4 into that. We do not have time to get into that now. But
5 that is one of the reasons why we need these provisions in
6 Federal law today. Is that right?

7 Ms. Yates. That is right.

8 Senator Lee. Okay. I see my time has expired. Thank
9 you, Mr. Chairman. Thank you, General Yates.

10 Chairman Grassley. Senator Whitehouse.

11 Senator Whitehouse. Thank you, Chairman Grassley.

12 Before I ask a few questions, let me join the colleagues on
13 the panel who have thanked you for your chairmanship of this
14 process. You have brought very distinct views of your own,
15 but as Chairman, you have facilitated all of us coming
16 together and making this happen, and I appreciate that very
17 much.

18 I also want to mention, although he is not here today,
19 that Senator Graham played a very significant role working
20 behind the scenes and bringing all of us together based on
21 his experience as a military prosecutor. So thanks to both
22 of them.

23 And thank you, Ms. Yates, for the support that you and
24 the Department of Justice have given to us as we have worked
25 through some very complicated issues.

1 Senator Feinstein asked a question about making sure
2 that when a referral was made for the return to society part
3 of the bill, that the Assistant United States Attorneys and
4 the United States Attorneys would not let the ball fall
5 between the cracks and ignore their responsibilities. And I
6 just wanted to reassure her we are very keenly determined to
7 make sure that that takes place.

8 I am, I think, more confident than she is that that
9 would happen in the ordinary course and that something would
10 be developed under the U.S. Attorneys Manual to put that
11 into place. But I am delighted to work with her and with
12 you to make sure that something that codifies that, as long
13 as it is not creating unnecessary bureaucracy and delay,
14 becomes a part of this bill. So I look forward to working
15 with you to nail that last piece down.

16 Charging decisions are traditionally the preserve of
17 prosecutors. Prosecutors, because of mandatory minimums,
18 have the ability to actually affect sentencing,
19 traditionally the preserve of judges. That has given
20 prosecutors power to coerce cooperation from people who are
21 in their targets, in their gun sights, and that has had, I
22 think, a good effect on assuring cooperation.

23 But defendants were cooperating long before these
24 mandatory minimums emerged, and I just want to hear your
25 views on what effect you think there will be of this power

1 that moves from judges to prosecutors, now beginning to move
2 back more towards judges.

3 Ms. Yates. You are correct, Senator, that defendants
4 were cooperating before we had these mandatory minimums.
5 And, in fact, defendants cooperate in cases where we are
6 using statutes that do not have mandatory minimum sentences
7 at all. Again, our experience in Smart on Crime reflects
8 that a mandatory minimum is not necessary to be able to
9 incentivized a defendant to cooperate with us, and we are
10 confident that we will continue to be able to work our way
11 up the chain of organizations, even without mandatory
12 minimums, for this narrow class of defendants who would not
13 be covered then.

14 Senator Whitehouse. And on the Cornyn-Whitehouse
15 section regarding return of inmates to society, there are a
16 variety of timing requirements by which various acts have to
17 be undertaken by the Department and by the Bureau of
18 Prisons. Are you confident that those can all be met?

19 Ms. Yates. We are absolutely committed to meeting
20 those deadlines.

21 Senator Whitehouse. Very well. And this is going to
22 require some effort and some initiative on the part
23 particularly of the Bureau of Prisons to do the legwork
24 necessary to identify the programs that are most likely to
25 be effective, to put them into place and to make sure that

1 the system gets up and running. What is your perception of
2 the degree of excitement over at the Bureau of Prisons about
3 accomplishing this? Do you think they intend to truly lean
4 into this task? And if not, will you make sure that
5 sufficient excitement is induced?

6 Ms. Yates. Well, I do not have an excitement meter at
7 BOP right now to be able to tell you exactly what their
8 reaction is. But what I can tell you is how committed they
9 are, as we all are at the Department of Justice, in ensuring
10 that we are doing everything that we can--in fact, that we
11 are doing more to be able to reduce recidivism more
12 effectively than we have been able to do thus far.

13 Senator Whitehouse. Thank you, Chairman. Thank you,
14 Ms. Yates.

15 Chairman Grassley. Senator Klobuchar.

16 Senator Klobuchar. Thank you very much, Mr. Chairman,
17 and thanks to you and the Ranking Member and all of the
18 people that have worked on this bill. And welcome. I was
19 just in Georgia. Everyone misses you there, so thank you.

20 Ms. Yates. I miss them, too.

21 Senator Klobuchar. Yes, well, thank you for your good
22 work.

23 I am really proud of the work that the Senators did on
24 this bill. As a former prosecutor from a State that
25 actually values treatment, values sort of, I would say, a

1 carrot-and-stick approach, does a lot of work with drug
2 courts in the State of Minnesota, and compared to other
3 States, while we still have our challenges with crime,
4 especially in the last few weeks in the cities of
5 Minneapolis and St. Paul--and that is on the violent crime
6 side--we have tended to have a lower crime rate than a lot
7 of other States, while at the same time keeping our
8 incarceration rate lower by using more probation and using
9 more treatment options. And so that is why I am a fan of
10 the work that has been done here.

11 My first question is really along those lines of drug
12 courts. I have led some of the efforts here on drug courts
13 and getting funding for drug courts, carrying on the work of
14 many that came before me, including Ted Kennedy and Jim
15 Ramstad over on the House side. And when we look at what
16 this bill might save, we know that drug courts save money,
17 and we know that getting some of the non-violent offenders
18 out of the Federal prisons will save money or reducing their
19 sentences. Do you think that we could use some of this
20 money to pay for things like drug courts, Ms. Yates? Do you
21 think that would be helpful as we look at how we are going
22 to make up for the fact that we are going to be bringing
23 people out of prison, but they not only need reentry
24 programs, they also may need treatment down the line or to
25 prevent them from getting in trouble in the first place?

1 Ms. Yates. I am certainly hopeful that we will be able
2 to use some of the money saved for a variety of prevention
3 programs, which would include drug courts and other
4 alternatives to incarceration that the States, being the
5 leaders in this, have really proven is more effective than
6 just throwing everybody in jail sometimes for longer than
7 they need to be there.

8 So I think that is important that we spend money on
9 drug courts, alternatives, as well as the back-end reform,
10 reentry as well.

11 Senator Klobuchar. And so you have an exact number
12 where you think this bill is anticipated? What do you see
13 from the Department of Justice in a reduction in funds?

14 Ms. Yates. We do not. They are trying to do
15 predictions now. It is hard to get our arms around exactly
16 how many defendants will be impacted by this.

17 Senator Klobuchar. Thank you.

18 Also in this bill, in the Sentencing Reform and
19 Corrections Act, it adds a 10-year mandatory minimum
20 sentence when death of the victim results from interstate
21 domestic violence. It also increases by 5 years the maximum
22 sentences when interstate domestic violence results in
23 permanent disfigurement or life-threatening bodily injury to
24 the victim, serious bodily injury, or if the offender uses a
25 dangerous weapon during the offense.

1 As you know, I have done a lot of work in the domestic
2 violence area. I am glad this is in here. Could you talk
3 about the importance of this to the bill?

4 Ms. Yates. Yes, and we also agree and support these
5 provisions. You know, 10 years does not seem like too long
6 to spend in prison for someone who is convicted of domestic
7 violence that has that kind of result, particularly when you
8 compare that, again, to some of the sentences for drug
9 defendants. So we are very happy that this is a provision
10 in the bill and support this as well.

11 Senator Klobuchar. Very good. Could you talk a little
12 bit--in my State we have more sentencing guidelines. That
13 is what we use. And if you are going to depart, you explain
14 why you departed, and it is not exactly done in the same way
15 as the mandatory minimums on the Federal level. And I know
16 Senator Whitehouse has been asking you about this, but
17 especially in a State like mine where we tend to have lower
18 incarceration rates for drug crimes, the lower-level 5-year
19 sentence was very important to me and our office when we
20 would handle the bulk of the cases in our State, actually,
21 probably nearly half of the crimes in the State of Minnesota
22 because the population of our county was about 25 percent.

23 Could you talk a little bit about how that works for
24 the local prosecutors--again, I know you answered some of
25 this with him--and how this law, if you think it affects it

1 in any way, especially for States that have really relied on
2 the power of the lower-level Federal drug sentencing to try
3 to get pleas in their State laws or at least get the 5-year,
4 when we do not have much like that in our State?

5 Ms. Yates. Well, the 5-year will still be there and
6 still be available for defendants who really need the
7 mandatory minimum the most. It is still going to be
8 effective for defendants who have prior records, for those
9 who have guns, who were involved in violence, who were any
10 kind of leader in an organization. And from a Federal
11 resources standpoint, it does seem that those are the
12 defendants where we should really be targeting our resources
13 to begin with.

14 Senator Klobuchar. Very good. Thank you very much.

15 Chairman Grassley. The Senator from Minnesota.

16 Senator Franken. Thank you, Mr. Chairman.

17 Ms. Yates, earlier it was suggested that FBI Director
18 Comey's concern about violent crime rates extended to
19 sentencing reform more broadly. Can you clarify today
20 whether that is indeed the case?

21 Ms. Yates. Whether, in fact, that is Director Comey's
22 view or--I am sorry. I did not entirely understand the
23 question.

24 Senator Franken. It was suggested that FBI Director
25 Comey was concerned that sentencing reform might increase

1 the rate of crime. What are his views on sentencing reform?

2 Ms. Yates. Well, I know from my conversations with
3 Director Comey he is supportive of the goals of sentencing
4 reform, and with respect to--I mean, I think we all share
5 concern and want to ensure that any reforms that we
6 undertake are not going to contribute to an increase in
7 violent crime. And that is why I think that it is really
8 important to look at the specific provisions of this bill
9 and to see the defendants who are being provided relief here
10 are not those that are responsible for violent crime. In
11 fact, it is precisely the group who is not involved in that.
12 It is those who do not have guns, who do not have leadership
13 positions, who are not involved in violence.

14 And, in fact, in looking across the country, most
15 recently at some of the pockets that we have seen of
16 increased gun violence across the country, we are not
17 finding any correlation at all there with States that have
18 enacted sentencing reform or criminal justice reform and an
19 increase in gun violence, nor are we seeing a profile of
20 those defendants that would lead us to believe that they
21 would match up with the defendants that we provide relief
22 here--that would be provided relief here.

23 Senator Franken. Well, I would like to talk about
24 retroactivity and the nervousness about some of that and
25 speak to that nervousness about how that would work, because

1 it is one thing--people say, well, it is one thing for a
2 judge to be taking, you know, all these factors when they
3 are sentencing, but when you are releasing people, you
4 cannot just release people retroactively and give them a
5 get-out-of-jail-free card.

6 But I wanted to talk to the reality of this, which is
7 that the sentence reductions would not be automatic. As I
8 understand it, the Justice Department and judges would have
9 to look at the facts of each case. Can you explain how, if
10 enacted, the resentencing process would work and what
11 factors a judge would have to consider before reducing an
12 offender's sentence?

13 Ms. Yates. Well, retroactivity we believe is an
14 important component of this bill because it gives defendants
15 who received prison sentences that are longer than necessary
16 to keep the public safe an opportunity to have their
17 sentence reconsidered. But it is just that: It is an
18 opportunity to have that sentence reconsidered. And the
19 prosecutor who handled the case and the judge who sentenced
20 the case would then look individually at each defendant that
21 comes up, would look at the circumstances of this case,
22 would look at the background of the defendant, and would
23 make a determination as to whether or not public safety
24 would be negatively impacted by reducing the defendant's
25 sentence in this specific case. And it would be done on a

1 case-by-case basis.

2 Now, some have expressed concerns about retroactivity
3 and the ability to be able to implement that, and I can tell
4 you that there are some aspects of retroactive application
5 that the Department strongly supports in this bill, for
6 example, the Fair Sentencing Act.

7 There are other aspects of it that will be more
8 challenging for us, but we are committed to ensuring that we
9 do that case-by-case analysis, regardless of whether it is
10 the retroactive application of the Fair Sentencing Act or
11 the other provisions of the bill.

12 Senator Franken. So what you are saying is that
13 resentencing would depend heavily on the facts of each case.

14 Ms. Yates. Absolutely.

15 Senator Franken. And offenders seeking a reduced
16 sentence would file a petition, and every petition would
17 have to be evaluated on its merits. Each offender's
18 criminal history and individual circumstances would have to
19 be thoroughly examined. And doing this the right way would
20 really--would require a commitment of Department and
21 judicial resources.

22 Can you speak to whether DOJ has the resources,
23 certainly time but also an adequate number of staff, to
24 process and respond to petitions for retroactive sentence
25 reductions?

1 Ms. Yates. Well, we can always use more prosecutors.
2 I would not be doing my job if I did not make a pitch for
3 more resources. But we will--

4 Senator Franken. There is a time and place to do that.

5 Ms. Yates. And this is the wrong Committee, I know,
6 for that. But, yes, we will allocate our resources within
7 the Department of Justice in a way to ensure that we are
8 meeting our obligation to ensure that we are keeping the
9 community safe.

10 Senator Franken. Thank you.

11 Thank you, Mr. Chairman.

12 Chairman Grassley. Ms. Yates, we thank you very much
13 for your testimony and appreciate very much your being here.
14 For you and also let me announce for the second panel, since
15 several members are not here, you may get questions in
16 writing to answer, and those questions have to be submitted
17 I think within 7 days. And so for you, Ms. Yates, and the
18 Department and for the second panel, if you get questions in
19 writing, we would appreciate a prompt response.

20 Thank you very much, and you may go now. Thank you for
21 your time.

22 Ms. Yates. Thank you, Senator.

1 Chairman Grassley. I am going to have the panel come
2 while I introduce you so I do not waste a lot of time.

3 I welcome our second panel. Judge Michael Mukasey
4 served as Attorney General under President George W. Bush.
5 He was also a U.S. District Court Judge in New York. He is
6 now a partner at the law firm of Debevoise & Plimpton.

7 Hilary Shelton is the Washington bureau director and
8 senior vice president for policy and advocacy for the NAACP,
9 one of the leading civil rights organizations in the United
10 States.

11 Craig DeRoche is executive director, Justice
12 Fellowship, and senior vice president of Prison Fellowship
13 Ministries, one of the leading faith-based criminal justice
14 reform organizations.

15 Debi Campbell is a member of Families Against Mandatory
16 Minimums and served 16 years in prison for crimes related to
17 the distribution of meth.

18 Steven Cook is president, National Association of
19 Assistant U.S. Attorney Attorneys, and is testifying today
20 in that capacity. He is also an Assistant U.S. Attorney in
21 Tennessee.

22 Marc Mauer is executive director, The Sentencing
23 Project, and one of the country's experts on sentencing
24 policy, race, and criminal justice system.

25 Heather Mac Donald is Thomas W. Smith Fellow at the

1 Manhattan Institute for Policy Research, and a contributing
2 editor at City Journal. She has written widely on criminal
3 justice reform, policing, racial profiling, and race
4 relations.

5 Brett Tolman is a former U.S. Attorney and former chief
6 counsel for the Crime and Terrorism Subcommittee of this
7 Senate Committee. He is a shareholder at the law firm of
8 Ray Quinney & Nebeker. I would like to personally extend my
9 thanks to Mr. Tolman because he had to rearrange his
10 schedule so that he could testify today.

11 Normally I am pretty darn lenient on how long people
12 run over 5 minutes, but I would like to--I am not going to
13 cut you off in the middle of a sentence, but I hope maybe if
14 you go 1 minute, I will rap the gavel and you will stop.

15 Go ahead, General Mukasey.

1 STATEMENT OF THE HONORABLE MICHAEL B. MUKASEY,
2 FORMER ATTORNEY GENERAL, U.S. DEPARTMENT OF
3 JUSTICE, AND PARTNER, DEBEVOISE & PLIMPTON LLP,
4 NEW YORK, NEW YORK

5 Mr. Mukasey. Thank you, Madam Chairman, and I am
6 grateful to the Chairman, the Ranking Member, and the rest
7 of the Committee. I have submitted a written statement that
8 constitutes my testimony here, and I am not going to burden
9 either the Committee or the record by repeating it. It is
10 easily summarized.

11 I think that sentencing is a matter not only for judges
12 but for the political branches as well, including
13 particularly the Congress, and that I think this bill
14 achieves the proper balance by preserving mandatory minimums
15 where they are necessary, and yet increasing the flexibility
16 with which judges can approach sentencing.

17 I think the principal measure of the success of any
18 sentencing system is not the incarceration rate. It is the
19 crime rate, and that has to be watched carefully.

20 And, finally, with respect to retroactivity, I was
21 relieved to hear that it is the Department's position that
22 the position of the Government on retroactivity is going to
23 be set in each district by the prosecutors in that district
24 where the case was originally brought and decided, of
25 course, by the sentencing judge, applying all of the

1 standards that are set forth in 3553(a) of Title 18, the
2 appropriate sentencing considerations, in addition to the
3 record of each defendant while incarcerated so as to assure
4 that we do not make any mistakes.

5 With that, if the Committee has any questions, I am
6 happy to answer them.

7 [The prepared statement of Mr. Mukasey follows:]

1 Chairman Grassley. Well, you are done already?

2 [Laughter.]

3 Chairman Grassley. Mr. Shelton?

4 Mr. Shelton. Perhaps he could yield the duration of
5 his time.

1 STATEMENT OF HILARY O. SHELTON, DIRECTOR,
2 WASHINGTON BUREAU, AND SENIOR VICE PRESIDENT FOR
3 POLICY AND ADVOCACY, NAACP, WASHINGTON, D.C.

4 Mr. Shelton. Good afternoon, Chairman Grassley,
5 Ranking Member Leahy, and members of this esteemed
6 Committee. I appreciate the opportunity to provide you with
7 the thoughts and opinions of the NAACP on the very important
8 issue of sentencing reform. My name is Hilary Shelton. I
9 am director of the NAACP's Washington bureau and serve as
10 senior vice president for policy and advocacy.

11 Our Nation's criminal justice system, of which
12 sentencing policy is an integral part, is not working.
13 Despite the fact that Americans are being incarcerated at
14 high rates, we are not seeing an equivalent drop in crime as
15 incarcerated high rates. Too many people are being locked
16 up for too long for nonviolent offenses, and they are not
17 getting the support they need to become productive members
18 of society either in prison or once they are released.

19 Furthermore, the racial disparities which exist among
20 people who come in contact with our criminal justice system
21 has led whole communities, as well as many, many others
22 throughout our Nation, to lose faith that the system is fair
23 and unbiased.

24 Too many Americans are being convinced that justice is
25 not blind when it comes to race and ethnicity. There are

1 2.2 million people are currently in our Nation's prisons or
2 jails, or approximately 1 in every 110 adults, locked up
3 America today. Today there are more than 205,000 people in
4 Federal prison alone, a growth of almost 800 percent since
5 1980, when changes in our Nation's sentencing laws began to
6 be enacted. Too many of those who are incarcerated are in
7 prisons and jails for nonviolent offenses.

8 In 2014, violent offenders represented 53 percent of
9 those in State prisons, yet only 7 percent of the Federal
10 prison population. The rapid increase in incarceration is
11 especially disturbing to the NAACP, since more than 60
12 percent of the men and women currently incarcerated today
13 are racial and ethnic minorities. For African American
14 males in their thirties, 1 in every 10 is in prison or jail
15 on any given day. Despite making up just 13 percent of our
16 Nation's overall population, African Americans comprised 30
17 percent of offenders convicted of an offense carrying a
18 mandatory minimum sentence in 2014.

19 The question as to why racial and ethnic minorities are
20 overrepresented among those who are incarcerated is as
21 complicated as it is important. The NAACP is committed to
22 reducing not only the overall number of those incarcerated,
23 but also the disparity of those who are put into prisons or
24 jails.

25 Thus, the NAACP was pleased when the introduction of S.

1 2123, the Sentencing Reform and Corrections Act of 2015,
2 occurred. Not only does this legislation address some of
3 the more prominent flaws in our sentencing policies today,
4 but by its very bipartisan nature the legislation speaks to
5 the overwhelming severity of the problem and the
6 acknowledgment by all that something must be done.

7 Specific elements of the legislation which are
8 supported by the NAACP include:

9 A reformed of mandatory minimum sentences for prior
10 drug felons, including three strikes you are out;

11 A broadening of the existing safety valve and the
12 creation of a second safety valve;

13 The retroactive application of the Fair Sentencing Act;

14 The promotion of successful reentry;

15 Juvenile record sealing and expungement;

16 A prohibition on solitary confinement for juveniles;

17 And a requirement that the Attorney General establish
18 and enforce procedures for individuals who undergo
19 background checks for employment to challenge the accuracy
20 of their Federal criminal records.

21 The NAACP feels that S. 2123 is a good start. Yet more
22 can and should be done to reform the criminal justice system
23 and the sentencing policies of our Nation.

24 The NAACP looks forward to working with this Committee
25 and other like-minded lawmakers and interested parties to

1 enact additional sentencing reforms, including--we would
2 like to see:

3 An addressing of all mandatory minimum sentences;

4 An increased use of evidence-based sentencing
5 alternatives, including drug, veteran, and mental health
6 courts;

7 A concentration on using prison space for career or
8 violent criminals;

9 Reducing recidivism through educational and job
10 training opportunities for prisoners; this includes
11 restoring Pell grant eligibility for prisoners, among other
12 steps;

13 In-depth reports to Congress by the Department of
14 Justice on the extent to which reforms have addressed both
15 overincarceration and racial disparities.

16 Chairman Grassley, Ranking Member Leahy, allow me to
17 conclude my testimony by sharing with you one anecdote of an
18 individual who will be helped by this legislation.

19 Mr. Alton Mills has served 22 years of a mandatory life
20 sentence for acting as a street-level courier in a crack
21 cocaine conspiracy. At his 1994 sentencing, the Federal
22 prosecutor conceded that "the thrust of the evidence against
23 Mills was that Mills did whatever [the drug ring's leader]
24 told him to do." Prior to his Federal life sentence, Mr.
25 Mills had never spent a single day in prison. He received a

1 mandatory life sentence only because the prosecutor
2 contended Mr. Mills' two prior probation sentences for
3 simple crack possession--involving less than 5 grams on each
4 occasion--warranted a mandatory lifetime of imprisonment.
5 Mr. Mills' sentence was particularly harsh because every
6 person above him in the drug conspiracy--including the
7 multi-kilogram cocaine suppliers and three supervising
8 leaders--will be released from prison by 2020, before him.
9 Unable to apply his discretion at the 1994 sentencing,
10 Federal Judge Marvin Aspen called the sentence "farcical"
11 and "cruel and unusual." With no avenues for legislative or
12 judicial relief, Mr. Mills' only hope at that point is
13 clemency. S. 2123 would render Mr. Mills eligible to
14 petition for a reduction in his sentence which would lead to
15 his release from prison in the near future, it is our hope.

16 Mr. Mills' case is but one example of the problems with
17 our current sentencing policies. The NAACP is pleased to
18 work with this Committee and to produce and enact
19 legislation to abate and eventually end the racial
20 injustices that plague our criminal justice system today.

21 Mr. Chairman, I thank the Committee again for inviting
22 me here today, and I stand ready to answer your questions.

23 [The prepared statement of Mr. Shelton follows:]

1 Chairman Grassley. Thank you.

2 Mr. DeRoche.

1 STATEMENT OF CRAIG DEROCHE, EXECUTIVE DIRECTOR,
2 JUSTICE FELLOWSHIP, AND SENIOR VICE PRESIDENT,
3 PRISON FELLOWSHIP MINISTRIES, LANSDOWNE, VIRGINIA

4 Mr. DeRoche. Thank you, Mr. Chairman, Ranking Member
5 Leahy, and the members of this Committee, for the
6 opportunity to testify about this significant criminal
7 justice legislation that you will be considering.

8 I am privileged to speak in my capacity as the
9 executive director of Justice Fellowship, the advocacy arm
10 of Prison Fellowship. The bipartisan introduction of the
11 Sentencing Reform and Corrections Act represents a
12 significant milestone for our organization and the broader
13 faith community which has long advocated for a more
14 restorative approach to crime and punishment.

15 As many of you know, our founder, the late Chuck
16 Colson, went from being President Nixon's counsel to being a
17 Federal prisoner as a result of his involvement in a
18 Watergate-related scandal. Although his power and pride
19 crumbled, Colson's faith in Jesus Christ was strengthened.
20 Upon his release, Colson vowed never to forget those he met
21 in prison and founded Prison Fellowship in 1976. Today our
22 organization is the world's largest prison ministry. We
23 mobilize thousands of volunteers to serve in over 1,400
24 correctional facilities and reach over 200,000 men and women
25 in prisons nationwide. In 2014, our Angel Tree program

1 provided over 330,000 children with a Christmas gift on
2 behalf of their incarcerated parent.

3 Additionally, our advocacy team has played a prominent
4 role in passing groundbreaking justice reforms at the State
5 and Federal level. This includes working alongside many of
6 you to pass the Religious Freedom Restoration Act, the Fair
7 Sentencing Act, and the Second Chance Act.

8 When I explain to people how I got involved in this
9 ministry, I like to joke that Chuck Colson would do anything
10 for the prisoner, but he never bothered to take the time to
11 get addicted to anything, and so he brought a recovering
12 alcoholic to the ministry. I am also a recovering
13 politician. Eleven years ago, I served as the Speaker of
14 the House in Michigan, and Chuck approached me and said that
15 he thought that my experience in Government as well as my
16 experience in addiction and recovery could be used for the
17 benefit of others.

18 After my two alcohol-related arrests, I had lost
19 everything. I had been relying on alcohol as my solution to
20 the problems in my life. When I hit bottom and entered
21 recovery, that is when I finally found freedom in my faith.
22 So just like Chuck, when I speak about reforming the
23 criminal justice system, I do not speak about "those
24 people." I am one of them, and what we need is justice that
25 restores, rooted in accountability, as this bill does.

1 For me and so many other people watching today who have
2 been impacted by crime and incarceration, this bill
3 represents a historic turn away from the flawed political
4 epithets like, "Lock 'em up and throw away the key," toward
5 a more restorative punishment model.

6 The sentencing reforms included in the legislation are
7 particularly significant to the faith community because
8 disproportionate punishment disparages human dignity and is
9 itself an injustice.

10 We applaud that this bill applies some of these
11 sentencing reforms retroactively. This honors a moral
12 imperative. The Bible calls Christians to "Remember those
13 in prison, as if you were there yourself..." What message
14 do we send about respect for human dignity if we acknowledge
15 that we have condoned unwarranted punishment, but we are
16 willing to disregard the years of human life that will be
17 wasted unnecessarily behind bars?

18 Beyond sentencing, this legislation tackles an equally
19 important question of how we punish and for what purpose.
20 Taxpayers and victims of crime expect a return on society's
21 large investment in the criminal justice system.
22 Unfortunately, many prisons today teach people how to become
23 good prisoners rather than good citizens. Prisons that
24 provide programs that address criminogenic needs and instill
25 a culture of hope and purpose can result in a positive

1 fiscal and social return.

2 Accordingly, we commend the bill's directive to the
3 Department of Justice to expand recidivism reduction
4 programming, such as drug rehabilitation, education, faith-
5 based classes, and work programs for all Federal prisoners.
6 We believe the faith community can and should play a
7 significant role in delivering these programs.

8 Faith-based programs have shown a significant reduction
9 in recidivism. An intensive Prison Fellowship program in
10 Minnesota, for example, has shown a 26-percent decrease for
11 rearrest and a 40-percent decrease for reincarceration for a
12 new crime. Providing more robust opportunities for Federal
13 prisoners and incentives for completion of programs will
14 improve public safety, strengthen families and communities,
15 and improve the effectiveness and culture of our prisons.

16 In closing, we believe this legislation moves the
17 Federal system to a more restorative model that should
18 awaken America to the value of the human lives affected by
19 crime and incarceration. We look forward to helping this
20 body advance this toward the President's desk, and I have
21 also submitted a longer version in writing, Mr. Chairman.

22 [The prepared statement of Mr. DeRoche follows:]

1 Chairman Grassley. I did not make that clear, but all
2 your longer versions will be included in the record.

3 Ms. Campbell.

1 STATEMENT OF DEBI CAMPBELL, SPOTSYLVANIA COUNTY,
2 VIRGINIA

3 Ms. Campbell. Hi. Chairman Grassley, Ranking Member
4 Leahy, and members of this Committee, thank you for giving
5 me the opportunity to speak here today. My name is Debi
6 Campbell. I was born in Long Beach, California, and I
7 currently live in Spotsylvania County, Virginia. I
8 experienced the Federal criminal justice system in the most
9 personal way. I spent more than 16 years in a Federal
10 prison for a nonviolent drug offense. I do not have any
11 excuses for my crime. In the early 1990s, my then-husband
12 and I began using methamphetamine at a point in our lives
13 when we should have known better. I am sorry to admit that
14 I became addicted to the drug and began selling it to others
15 for monetary gain to support my own habit. I was not a drug
16 kingpin, and I was not a major manufacturer. I just wanted
17 the extra money in hopes that it would help me keep my
18 family together. A woman that my co-defendant sold drugs to
19 was arrested and agreed to cooperate with prosecutors in
20 exchange for a shorter sentence. I was arrested. I knew I
21 was guilty, and I knew I was going to prison.

22 With that said, I want to stress this important point:
23 People who support mandatory minimum sentencing laws think
24 that these long punishments will deter people from using or
25 selling drugs. That is not the case. I can assure you that

1 I had no idea that there were mandatory minimum sentences
2 when I became addicted to drugs or when I was caught. I had
3 no idea how prison time I would face.

4 Federal prosecutors charged me with a conspiracy to
5 sell 10 kilograms of methamphetamine, a quantity that was
6 based on testimony from the woman who pled guilty and
7 cooperated with them. I never even saw that much drugs,
8 much less sold it. I did not understand that my conspiracy
9 charge meant I would be sentenced for everything my co-
10 defendants did--and everything that they said I did.

11 When I went to prison, I learned that I was not the
12 only person with this misunderstanding. Many other women
13 were doing time not just for their own mistakes, but also
14 for the mistakes of their co-defendants, their husband,
15 their partners, other family members, or anyone else being
16 charged in the conspiracy, whether they knew them or not.

17 Even though I pled guilty and I had no criminal history
18 points under the Sentencing Guidelines, I still received a
19 mandatory minimum sentence of 10 years, plus almost another
20 decade under the then-mandatory Sentencing Guidelines. In
21 May of 1994, I was sentenced to 19 years and 7 months in a
22 Federal prison. The woman who cooperated received
23 probation.

24 I deserved to go to prison. I had broken the law, and,
25 more importantly, I needed to go to prison because I

1 desperately needed a wake-up call. But I did not need
2 nearly 20 years in prison to learn my lesson.

3 The first few years are the worst. I committed myself
4 to self-improvement. I was sober; I earned an associate's
5 degree in business administration, and I started a
6 bachelor's degree in social science. I participated in the
7 Prison Fellowship ministry, and I stayed in close touch with
8 my family. I kept my spirits high by believing I would
9 never serve my full sentence.

10 But there I sat year after year, with many other women
11 just like me. Not only did I waste years of my life sitting
12 in prison, but taxpayers wasted hundreds of thousands of
13 dollars to keep me there.

14 The worst part was not being able to be with my four
15 daughters. I had already failed them once, and now they
16 were growing up in foster care. Visits are rare for many
17 moms in prison, and very painful. Prison time passes
18 slowly, but children grow quickly. I wanted to get out and
19 be a better, wiser parent while my children were still young
20 enough for it to matter. My long sentences made that
21 impossible. It is hard to parent on one 15-minute phone
22 call a day. There are no more bedtime stories with kids, no
23 helping them with their homework, no parent-teacher
24 conferences, and it is a lot to miss and a lot to make up
25 for.

1 Being that there is no parole in the Federal system,
2 the only sentence reduction prisoners can earn is up to 15
3 percent off for good behavior. I earned the full 15
4 percent. And I also asked to have my sentence commuted on
5 three different occasions. All three times I was denied.
6 The last rejection, from President Obama, arrived after I
7 was already home. I was released in 2010 after serving 16
8 years and 1 month.

9 Since my release, I have struggled to make up for lost
10 time with my now adult children. I provided child care to
11 my grandchild so that one of my daughters could pursue her
12 own education. I volunteered with prisoner reentry groups,
13 continuing my own education, and I am now an advocate for
14 all the grandmas, moms, and daughters that I left behind.

15 Even if the bill you are considering now had passed
16 years ago, it would not have shortened my sentence. I wish
17 that this bill went further to help more people. I would
18 actually like to see Congress repeal all mandatory minimum
19 drug sentences. But this is a start, and it will help a lot
20 of the women that I left behind. But I am hoping that it
21 will only be a start. There is much more work to do if this
22 bill becomes law.

23 Thank you for considering my views, and I will be happy
24 to answer any questions you might have for me.

25 [The prepared statement of Ms. Campbell follows:]

1 Chairman Grassley. Thank you very much.

2 Mr. Cook.

1 STATEMENT OF STEVEN H. COOK, PRESIDENT, NATIONAL
2 ASSOCIATION OF ASSISTANT UNITED STATES ATTORNEYS,
3 KNOXVILLE, TENNESSEE

4 Mr. Cook. Chairman Grassley, members of the Committee,
5 I appreciate the opportunity to be here. I would like to
6 begin, though, by making two clear points.

7 The first is in our view the criminal justice system,
8 the Federal criminal justice system, is not broken.

9 Secondly, we have some, I think, very legitimate
10 concerns about the legislation that has been proposed.

11 Now, as I begin, what I would like to do is point out
12 to you that my perspective is not one from 100,000 feet. My
13 perspective is at street level, and I say that because my
14 perspective comes from 7 years as a police officer, 29 years
15 as a Federal prosecutor. I have experienced up close the
16 death, destruction, and heartache that violent criminals and
17 drug traffickers--the individuals who stand to gain from
18 this statute, this proposed legislation, I have viewed what
19 they would bring to our communities. I have stood next to
20 the casket of a 19-year-old boy while his mother asked me in
21 tears how it is we could let that poison be sold on the
22 street.

23 I have stood in the neonatal care ward of our local
24 children's hospital and watched as the babies, the innocent
25 babies, went through drug withdrawal, knowing that that was

1 nothing but a prelude to a life complicated by physical and
2 mental health issues. And I have been to more than my share
3 of homicide scenes.

4 To understand this perspective, I would like to ask you
5 to go back to the 1980s, to the mid-1980s, a time in our
6 history when what we had seen and what we were seeing was
7 violent crime had more than tripled over the two-and-a-half
8 decades before that--more than tripled. Drive-by shootings,
9 murders, and violent crime scenes commonplace to us, and in
10 many areas of the inner cities, they were controlled by drug
11 traffickers. Crack was king, and it brought on a blood-
12 letting like we had never seen before.

13 The American public said they were fed up. They
14 demanded change, and Congress responded. They responded by
15 fundamentally changing our criminal justice system. Parole
16 was eliminated. Judicial discretion was narrowed through
17 mandatory minimums for crimes that were literally tearing at
18 the fiber of our country.

19 A strong bipartisan Congress in our country had a
20 vision and a sense of determination to take back our streets
21 and to make those streets safe again. Dedicated Assistant
22 United States Attorneys across the country, working with our
23 local, Federal, and State law enforcement partners and
24 district attorneys' offices, worked with these tools to take
25 armed career criminals off the street. We used the

1 mandatory minimums to dismantle drug-trafficking
2 organizations, often working from the very bottom up. And
3 this criminal justice system with truth in sentencing shut
4 the revolving door of justice and became the model of the
5 criminal justice system, one that was followed by States
6 across the country. Putting these armed career criminals
7 and drug traffickers in prison enabled us to drive crime
8 down. In fact, we drove violent crime down and cut it in
9 half by 2013, and even more by 2014.

10 Then someone started the refrain of mass incarceration
11 and nonviolent drug offenders in an attempt to suggest that
12 the Federal system and State systems were broken and to
13 suggest the solution was to let criminals out, and slowly we
14 entered the era of sentencing reform. One source reports
15 that 30 different States enacted sentencing reform.

16 On the Federal side, we began by backing away from
17 prosecution of drug traffickers and from using mandatory
18 minimums. And in 2007, as we know, we started what has now
19 become the early release of 70,000 drug traffickers, some of
20 whom have committed murder since being released while they
21 should have been incapacitated.

22 As these reform movements have spread across the
23 country, more and more criminals have been released or
24 avoided incarceration altogether. Violent crime is
25 returning to cities across our country. On top of that, our

1 country is in the grips of the worst heroin and opioids
2 epidemic that we have ever seen. Over 46,000 people are now
3 dying every year, 120 a day, from drug overdoses.

4 Still, people call for more reform, and there are--you
5 would ask, Are there too many people in Federal prison. Of
6 course there are. But they are there because they have
7 committed serious crimes. The solution, I would submit to
8 you, is not to let them out of prison. It is to address the
9 root causes of the crime.

10 With that, I would like to address the bill briefly.
11 There are parts of the bill that we fully support, and we
12 recognize the hard work that has gone into it. But a huge
13 but not the only vice of the bill is the retroactive
14 application. Retroactivity will have a real and very
15 immediate negative consequence on our community.
16 Retroactivity will further destabilize an already
17 destabilized criminal justice system. Victims will be
18 notified that cases they thought were closed and had come to
19 an end will be reopened. The cornerstone to a healthy
20 criminal justice system is one that we can have confidence
21 in, one that has finality.

22 So I close with these questions--questions that I
23 suggest the Committee should ask and that every informed
24 American will ask:

25 With thousands of Federal prisoners being released into

1 our community early, with the violent crime surging upward,
2 and with the country in the grips of the worst addiction
3 epidemic in history, is the time right to make thousands of
4 convicted criminals, violent criminals, eligible for
5 release? Is this the time to weaken the tools for front-
6 line prosecutors to use to dismantle drug-trafficking
7 organizations?

8 We submit that the prudent thing is to step back,
9 measure the impact of the reforms already in play, and work
10 aggressively to address the root causes of violent crime.

11 Thank you.

12 [The prepared statement of Mr. Cook follows:]

1 Chairman Grassley. Thank you, Mr. Cook.
2 Mr. Mauer.

1 STATEMENT OF MARC MAUER, EXECUTIVE DIRECTOR, THE
2 SENTENCING PROJECT, WASHINGTON, D.C.

3 Mr. Mauer. Mr. Chairman, thank you so much for the
4 opportunity to be here, and thanks to the Committee for all
5 its hard work to get to this point today with this very
6 significant legislation.

7 I have submitted written testimony. I have three
8 objectives that I believe this legislation can produce, and
9 I want to describe them briefly. Those three are:

10 First, I think we will see better outcomes for public
11 safety if this legislation is enacted.

12 Second, we will see more rational and effective
13 sentencing decisions that are possible.

14 And, third, we will address racial/ethnic disparities
15 in the use of incarceration. Let me just elaborate a bit on
16 each.

17 In the area of public safety, I think it has become
18 quite clear that we are well past the point of diminishing
19 returns in terms of what we get for public safety through
20 incarceration, and much of that is a function of the fact
21 that it has long been known that offenders age out of crime.
22 A 20-year-old robber is much less of a risk to public safety
23 by the time he turns 30, 35, or 40 or so, and this is true
24 more or less across the board. So what happens is that for
25 each successive year that we keep people in prison as those

1 risk factors are starting to decline, we are getting less
2 public safety that we produce through incarceration, and it
3 is coming at an increased cost. As offenders age in prison,
4 it costs more to keep them there, largely because of health
5 care costs that are produced.

6 We have empirical data that supports the impact of
7 excessive incarceration. Last year, the National Research
8 Council of the National Academies of Justice had convened a
9 panel of 20 of the leading scholars and practitioners in the
10 field of criminal justice and incarceration. They produced
11 a massive report looking at these impacts. When they looked
12 at the effect of incarceration on crime, their conclusion
13 was that, yes, incarceration has some impact on crime, but
14 the scale of that impact was "unlikely to have been large."

15 I think this measure will also help to produce public
16 safety by giving us a better balance of criminal justice
17 resources. We saw in 2007 when the Sentencing Commission
18 adjusted its Sentencing Guidelines for crack cocaine
19 offenses, then persons in Federal prison for these offenses
20 were released an average of about 2 years less than they
21 previously might have been. The Commission looked at
22 recidivism rates following the releases, and what they found
23 essentially was that the people who were released 2 years
24 earlier than the other cohort did previously had recidivism
25 rates that were virtually identical. So we can reduce

1 sentences, save costs, without an adverse effect on public
2 safety

3 In terms of sentencing outcomes, I think one of the
4 real challenges and problems of mandatory sentencing is that
5 we have a sentencing process there whereby one size fits all
6 is the situation. And I think every judge in the country
7 would tell us that no two offenders, no two offenses are
8 exactly alike, and that is why we need an individualized
9 approach.

10 The safety valve over two decades now has provided a
11 very appropriate option for cases that do not require a
12 mandatory sentencing and would be unjust as well. A
13 substantial number of drug cases, many Federal judges, and
14 the Sentencing Commission have provided very good examples
15 of additional cases that could benefit from an expanded
16 safety valve, as is being proposed. I think there is no
17 reason to believe judges would not use it in the same
18 careful and thoughtful manner that they have for 20 years
19 now.

20 In terms of the racial/ethnic disparities in
21 incarceration, as we sit here today, 1 of every 10 black
22 males in his thirties is incarcerated in prison or jail.
23 And regardless of what each of us may think are the
24 contributing factors to those outcomes, that is a situation
25 that should be disturbing to all of us.

1 One of the factors that contributed to that has been
2 excessive penalties, particularly for drug offenses, and
3 this legislation, by making the provisions of the Fair
4 Sentencing Act retroactive, would take a major step towards
5 helping to ameliorate part of that problem. I think it is
6 very difficult to explain to people on the street how a
7 person sentenced the day before the legislation was adopted
8 is serving considerably more time in prison than an equally
9 similar defendant the day after the legislation was adopted.
10 The estimates are that something like 6,500 people might
11 benefit from retroactivity. More than 80 percent of this
12 population will be African American. Most of these people
13 will still serve a very substantial prison term, just not
14 quite as long.

15 Let me just close by saying I think this legislation
16 can produce a better balance in our approach to public
17 safety. I think it could reduce excessive incarceration. I
18 think we will see a more effective and more fair criminal
19 justice system resulting from this.

20 Thank you.

21 [The prepared statement of Mr. Mauer follows:]

1 Chairman Grassley. Thank you.

2 Ms. Mac Donald.

1 STATEMENT OF HEATHER MAC DONALD, THOMAS W. SMITH
2 FELLOW, MANHATTAN INSTITUTE FOR POLICY RESEARCH,
3 INC., AND CONTRIBUTING EDITOR, CITY JOURNAL, NEW
4 YORK, NEW YORK

5 Ms. Mac Donald. Chairman Grassley and members of the
6 Committee, I am honored to address you today.

7 I want to examine the broader political context of the
8 Sentencing Reform and Corrections Act. We are in the midst
9 of a national movement for deincarceration and
10 decriminalization. That movement rests on the following
11 narrative:

12 America's criminal justice system, it is said, has
13 become irrationally draconian, ushering in an era of so-
14 called mass incarceration. The driving force behind mass
15 incarceration, the story goes, is a misconceived war on
16 drugs. As President Barack Obama said in July in
17 Philadelphia: "The real reason our prison population is so
18 high" is that we have "locked up more and more nonviolent
19 drug offenders than ever before, for longer than ever
20 before."

21 The most poisonous claim behind the deincarceration
22 movement is that our criminal justice system is a product
23 and a source of racial inequity. The drug war in particular
24 is said to be infected by racial bias. Mass incarceration
25 is allegedly destroying black communities by taking fathers

1 away from their families. Finally, prison is condemned as a
2 gross waste of resources.

3 Nothing in this dominant narrative is true. Prison
4 remains a lifetime achievement award for persistence in
5 criminal offending. Drug enforcement was not the driving
6 factor in the growth of the prison system. Violent crime
7 was and is. Since 1999, violent offenders have accounted
8 for all of the increase in the prison census, and they were
9 the predominant factor before then.

10 Violent crime is also the reason why America's prison
11 population is larger than other countries. The U.S.
12 homicide rate, for example, is seven times higher than the
13 combined rate of 21 Western nations plus Japan.

14 The most dangerous misconception about our criminal
15 justice system is that it is pervaded by racial bias. For
16 decades, criminologists have tried to find evidence for that
17 bias, and they have always come up short. In fact, racial
18 differences in criminal offending account for all of the
19 racial disproportionality of blacks in prison.

20 The drug war was not a war on blacks. It was the
21 Congressional Black Caucus that demanded a Federal response
22 to the 1980s crack epidemic, including more severe penalties
23 for crack trafficking. The demand for suppression of open-
24 air drug markets continues today. Go to any police-
25 community meeting in Harlem, South Central Los Angeles, or

1 Anacostia in Washington D.C., and you will hear some variant
2 of the following plea: "We want the dealers off the corner.
3 You arrest them and they are back the next day." Such
4 voices are rarely heard in the media and, indeed, not often
5 in the halls of Congress.

6 Incarceration is not destroying the black family. The
7 black marriage rate was collapsing long before incarceration
8 started rising in the late 1970s. Indeed, the late Senator
9 Daniel Patrick Moynihan wrote his prescient call for
10 attention to black out-of-wedlock child-rearing in 1965,
11 just as that era's deincarceration and decriminalization
12 movement was gaining speed.

13 It is crime, not incarceration, that squelches freedom
14 and enterprise in urban areas. And there have been no more
15 successful Government programs for liberating inner-city
16 residents from fear and disorder than proactive policing and
17 the incapacitation of criminals.

18 Compared to the costs of crime, prison is a bargain.
19 The Federal system spends about \$6 billion on incarceration;
20 the States spent \$37 billion in 2010 on institutional
21 corrections. The economic, social, and psychological costs
22 of uncontrolled crime and drug trafficking dwarf such
23 outlays.

24 To be sure, the Federal drug penalties are not
25 sacrosanct. But though all sentencing schemes are

1 ultimately arbitrary, our current penalty structure was
2 arguably arrived at empirically through trial and error.
3 Sentences were increased incrementally in response to the
4 rising crime rates of the 1960s and 1970s. Those rising
5 crime rates were themselves the product of an earlier era of
6 deincarceration and decriminalization. Sentences lengthened
7 until they took a serious bite out of crime, in conjunction
8 with the policing revolution of the 1990s.

9 As has been noted today, crime is shooting up again in
10 cities across the country. Police officers are backing away
11 from proactive enforcement in response to the year-long
12 campaign that holds that police are the greatest threat
13 facing young black men today. With pedestrian stops,
14 criminal summons, and arrests falling precipitously in urban
15 areas, criminals are becoming emboldened.

16 While I do not think that the current crime increase is
17 a result of previous changes in Federal sentencing policy,
18 it behooves the Government to tread cautiously in making
19 further changes. However, I unequivocally support the
20 "productive activities" component of Section 202 of the Act,
21 to the extent that it aims to engage all prisoners in work.
22 And I also support the supervised release pilot program of
23 Section 206, though it needs some tightening up to
24 faithfully implement the swift, certain, and fair principles
25 which inspire it.

1 In closing, let me say that the Committee would provide
2 an enormous public service if it could rebut the myth that
3 the criminal justice system is racist.

4 Thank you for your attention.

5 [The prepared statement of Ms. Mac Donald follows:]

1 Chairman Grassley. Mr. Tolman.

1 STATEMENT OF THE HONORABLE BRETT TOLMAN, FORMER
2 UNITED STATES ATTORNEY FOR THE DISTRICT OF UTAH,
3 AND SHAREHOLDER, RAY QUINNEY & NEBEKER, PC, SALT
4 LAKE CITY, UTAH

5 Mr. Tolman. Chairman Grassley and members of the
6 Committee, thank you for the opportunity to testify today.

7 As I have said in prior testimony, my experience in
8 nearly a decade with the Department of Justice revealed the
9 need for certain Federal criminal justice reforms that are
10 not only meaningful, but the result of thoughtful analysis
11 of deficiencies in the administration of justice--and there
12 are some deficiencies.

13 It remains puzzling to continue to read statements of
14 some who apparently do not recognize or acknowledge any
15 significant issues with the current system and urge Congress
16 to resist any meaningful reform. Such a position raises
17 questions of credibility and whether such are in touch with
18 the experiences of those who have actually labored in the
19 trenches of the criminal justice system. Nearly all of the
20 changes contained in the bill before this Committee are the
21 result of former United States Attorneys and Assistant
22 United States Attorneys identifying issues within the
23 Federal criminal justice system which are in need of
24 attention.

25 The reality is that today's Federal system is

1 increasingly mired in the pursuit of low-level offenders who
2 are too often overpunished by extremely long sentences that
3 often do not match the gravity of the crimes committed. The
4 result of these very real deficiencies is a burgeoning
5 prison population that, ironically, with its rising costs,
6 is becoming a real and immediate threat to public safety.

7 This is why I am here to praise the efforts of this
8 Committee on the remarkable bipartisan negotiations which
9 have resulted in the very thoughtful bill aimed at making
10 some of the most needed changes to the front and back ends
11 of the Federal criminal justice system. I certainly hope to
12 convey today that while there are additional issues that
13 still need to be addressed in the area of criminal justice,
14 I am pleased to express my endorsement of S. 2123.

15 I am not alone in this position. Many of my former
16 colleagues have joined me in signing a "Policy Statement of
17 Former Federal Prosecutors and Other Government Officials"--
18 signed by former U.S. Attorneys, Federal judges, and senior
19 Department of Justice officials, including the likes of the
20 Honorable Larry Thompson, former Deputy Attorney General,
21 and former Federal Judge Paul Cassell and others--which
22 describes the need for these meaningful Federal criminal
23 justice reforms and formally endorses S. 2123. I ask that
24 it be submitted into the record of this hearing, Mr.
25 Chairman.

1 [The information follows:]

2 / COMMITTEE INSERT

1 Mr. Tolman. Specifically, there are a few provisions I
2 believe to be the most important and impactful provisions on
3 the front end of S. 2123. It preserves the 5- and 10-year
4 mandatory minimum sentences but broadens the existing safety
5 valve and creates a second safety valve that more
6 effectively targets the 10-year mandatory minimums to
7 higher-level drug offenders.

8 It clarifies and reduces the enhanced mandatory minimum
9 sentence for certain firearms offenses, but expands its
10 application to include similar prior State-level
11 convictions, a very useful tool for Assistant U.S. Attorney
12 Securities.

13 It raises the statutory maximum for unlawful possession
14 of a firearm and creates an overlapping range by reducing
15 the enhanced mandatory minimum for armed career criminals.

16 It applies the Fair Sentencing Act and certain
17 sentencing reforms retroactively.

18 These sentencing reforms are important because they
19 refocus mandatory minimum sentences and limited Federal
20 resources on higher-level offenders and provide additional
21 new tools to help law enforcement target violent criminals
22 with enhanced penalties.

23 They provide a more accurate focus on the role of the
24 offender instead of drug quantity alone and increase a
25 judge's ability to utilize limited discretion when

1 determining appropriate sentences. This is the only way to
2 more effectively tie the longer mandatory minimum sentences
3 to the higher-level drug offenders and violent criminals.

4 Further, they fix the Weldon Angelos type "outlier"
5 problems associated with the recent trend towards
6 unnecessary count stacking and potential for overpunishment.

7 I should note that applying these reforms retroactively
8 does not eliminate the initial mandatory minimum sentences,
9 nor does it eliminate the additional time for the underlying
10 offense which they will be sentenced for.

11 I make clear that it is not enough to focus on
12 sentencing reforms. By themselves, sentencing reforms do
13 little or nothing to reduce the risk of recidivism. So we
14 must acknowledge the absolute essential inclusion of the
15 Corrections Act in addressing the issues associated with
16 risk and recidivism reduction.

17 Consequently, the back-end changes of S. 2123 are
18 perhaps even more immediately important because they put a
19 new focus on rehabilitation and correction and establish
20 risk and needs assessments as the cornerstone of more
21 effective recidivism reduction programming and a more
22 efficient Federal prison system.

23 We will assess prisoners as they enter prisons, and
24 then periodically reassess them over time as they complete
25 the number, types, and intensity of programs they need, and

1 work in real jobs rather than sitting idle as most do today.
2 This reassessment is vital, as it goes to the heart of the
3 need for this legislation. It is true that risk of
4 recidivism will go down with good programming, but we need
5 to identify dynamic risk factors and indicators of real
6 change, make prisoners demonstrate this change, and then
7 reassess them with standard, objective instruments to
8 measure it over time as they complete their programs. This
9 will be a major advancement in the Federal system. In fact,
10 it will establish a new standard for corrections in this
11 country.

12 It will incentivize prisoners to not only participate
13 in programs and jobs alone, but to actually personally
14 contribute to the reduction of their own risk of recidivism.
15 Lower-risk prisoners will be eligible for up to 25 percent
16 of their sentences in home confinement and community
17 supervision, which will produce significant savings.

18 Congress must act on this legislation. Otherwise, it
19 will continue to tacitly allow the terms to be dictated by
20 the executive and judicial branches, and States such as
21 California have recently served as a warning of what the
22 failure to act can produce. The reforms contained in S.
23 2123 have proven successful in a number of States across
24 this country. They have proven to increase public safety
25 while reducing costs. I urge members of the Committee to

1 act quickly to report this bill to the Senate floor.

2 Thank you.

3 [The prepared statement of Mr. Tolman follows:]

1 Chairman Grassley. We will have 5-minute rounds. I am
2 going to start with Judge Mukasey.

3 In 2014, you and other prosecutors signed a letter that
4 opposed sentencing reform. You said that you believed, "Our
5 sentencing regimen strikes the right balance between
6 congressional direction and the establishment of sentencing
7 levels, due regard for appropriate judicial direction, and
8 the preservation of public safety."

9 I have also been a strong defender of our current
10 sentencing framework, but I have always said that I was open
11 to reform.

12 Two questions together for you to respond to: Would
13 you agree that this reform bill seeks to preserve our
14 current sentencing framework by making reasonable and
15 responsible changes to it? And, two, does this bill still
16 give prosecutors the tools to go after dangerous and violent
17 criminals?

18 Mr. Mukasey. The answer is yes at to both. I think
19 that what I was against in 2014 was taking the structure
20 apart. This, as you pointed out, preserves the structure
21 and, indeed, as a number of people have pointed out,
22 preserves intact mandatory minimums while at the same time
23 providing flexibility to both prosecutors and judges. So,
24 yes, that accounts for the change in my supporting this bill
25 and not supporting that one.

1 Chairman Grassley. Okay. And, Mr. Tolman, the bill
2 applies mandatory minimum sentences to serious offenders in
3 a way that current law does not. It applies the enhanced
4 drug minimums to serious violent offenders, not just drug
5 offenders. It raises maximum sentences for unlawful
6 possession of a firearm. And it counts State gun crimes for
7 the first time towards the enhanced firearm minimum.

8 So, to you, can you explain how these provisions target
9 the application of mandatory minimum sentences towards some
10 of the worst offenders? Are these new tools good for
11 prosecutors?

12 Mr. Tolman. These tools are good for prosecutors. I
13 personally prosecuted an individual that provided the gun
14 and ammunition that killed the longest-serving police chief
15 in Utah at the time, Chief Cecil Gurr. That individual
16 under this bill would be able to receive 15 years in Federal
17 prison for his giving of the firearm with the instruction to
18 kill where we would not have been able to under current law.
19 And it was a source of frustration that the sentence did not
20 seem to capture an individual such as that. This bill would
21 provide that additional tool to an Assistant U.S. Attorney.

22 Chairman Grassley. Okay. And then a follow-up for
23 you. The bill applies many of the mandatory minimum
24 reductions retroactively. Some people have claimed that our
25 bill is going to automatically release violent and dangerous

1 offenders. But these inmates are still going to face the
2 new mandatory minimums.

3 Can you explain why making these provisions retroactive
4 does not mean that violent and dangerous offenders are going
5 to be released onto the street?

6 Mr. Tolman. Absolutely. It does not remove the 5- and
7 10-year nor does it remove, for example, under 924(c) the
8 application of a 15-year mandatory minimum on top of a
9 violent crime. If you were to take, for example, many of
10 those 924(c), use of a gun in a violent felony, oftentimes
11 the judges, facing so many years of sentence that they have
12 to administer, refuse to even sentence on the underlying
13 crime that they were arrested for--the drug deal, for
14 example--and will instead just sentence on the mandatory
15 minimum. Under this bill, it is providing more integrity to
16 the sentence so that you are sentenced on the mandatory
17 minimum and the underlying offense. They will serve very
18 long sentences, if convicted of multiple 924(c)'s, multiple
19 charges using a gun. And they will serve decades still
20 potentially under this regime.

21 It gets rid of, however, the absurd Weldon Angelos type
22 cases where you have 55 years with no criminal history to
23 account for the sentence.

24 Chairman Grassley. I think you answered this question
25 just now, but let me bring emphasis to the fact that some

1 critics of our bill claim that it is soft on criminals and
2 that it eliminates stacking on gun crimes under Section
3 924(c). That is not true. So could you explain why under
4 our bill a defendant will still face a consecutive mandatory
5 minimum sentence for each and every gun crime he commits?
6 Isn't it true that our bill simply reforms the enhanced
7 mandatory sentences so that it is a better tool for repeat
8 gun offenders?

9 Mr. Tolman. Let us use Weldon Angelos as an example.
10 Under this bill, Weldon Angelos is not getting out and is
11 not being sentenced to a small time in prison. He would be
12 receiving at a minimum 15 years in Federal prison, plus be
13 sentenced on the underlying drug crime, which has a maximum
14 of up to 15 years. So for anyone to say this is going to be
15 weak on crime has not necessarily seen what the application
16 of the bill will be. Even in those most extreme
17 circumstances under this bill, you would still see a
18 sentence of at least 15 years.

19 Chairman Grassley. Senator Durbin.

20 Senator Durbin. Thank you, Mr. Chairman.

21 Mr. Shelton, I met Alton Mills' mother and father.

22 They have been to several meetings that I have attended to
23 discuss this bill. I am glad that you mentioned his case
24 before us because it is clearly a miscarriage of justice.

25 The sentencing judge, Judge Aspen, not considered a

1 pushover by anybody, said that this was a terrible outcome
2 in this case. This man has now been in prison 20 years and
3 no end in sight. He has been sentenced to life imprisonment
4 for what appears to be two minor crack offenses and the
5 third one that put him away for life. While the kingpins
6 who were ratting him out will be out of prison, he will
7 still be in prison.

8 Now, if that does not speak to the injustice of some of
9 our current Sentencing Guidelines, then turn the page to Ms.
10 Debi Campbell. Is there anyone here who thinks, having
11 heard this woman give her candid testimony about her life
12 experience, that she should have served 19 years and 7
13 months in Federal prison. Does that make sense to anyone
14 here? Those who are arguing against reform are basically
15 saying leave the system as it is. And I disagree.

16 Keep in mind that, despite Ms. Mac Donald's testimony,
17 using the word "decriminalization" twice in her testimony,
18 there is no decriminalization in this law. None whatsoever.
19 What we are doing is saying that a judge in his or her
20 discretion can look at an individual case, a mandatory
21 minimum case, still impose the maximum if they feel that
22 case is so egregious and so unjust, but has the flexibility
23 in some cases to bring the sentence down to a lower level.
24 That is it.

25 So maybe they would have decided Ms. Campbell would not

1 serve 19 years and 7 months, maybe only 16 years and 7
2 months, or 12 years and 7 months. In each one of those
3 instances, I would raise the question: Is that serving
4 justice? Is that making us a safer Nation? Is that the
5 right investment?

6 Mr. Cook, I thank you for your service as a law
7 enforcement officer and for your service as a prosecutor.
8 And when you talk about the importance of police work, as
9 Ms. Mac Donald has spoken, I could not agree more. The
10 purpose we are trying to serve here is to have resources to
11 put them into law enforcement in our communities, into the
12 investigation of crimes, the arrest and conviction of those
13 serious criminals that you described, the people who are
14 dangerous. I want dangerous people off the street as much
15 as you do. But we are putting more and more money into the
16 incarceration of people like Ms. Campbell for, in her case,
17 16 years--16 years. Don't you think justice is served and
18 community safety is served by, from time to time, making an
19 honest assessment as to whether our resources can be applied
20 in communities to make us safer, more than keeping people in
21 jail for decades?

22 Mr. Cook. I do, and I think what has been lost in the
23 debate is drug trafficking is a very serious crime. It has
24 very serious consequences in our community. People by the
25 scores are, unfortunately, dying every day. As I said, 120

1 people are dying by drug overdose every day here in the
2 United States of America. We are in the midst of a heroin
3 and opioid epidemic like we have never seen.

4 To suggest, as the inference that has been thrown
5 about, that drug trafficking is a nonviolent offense--is the
6 way it is often said--suggests--the implication is it is not
7 a serious offense. It is a serious offense.

8 Senator Durbin. No one is suggesting it is not a
9 serious offense. That is not even the suggestion by anybody
10 involved in this. What we are trying to do is to take those
11 at the lowest level and say they can be subject to
12 Sentencing Guidelines which are different than those who are
13 kingpins.

14 You mentioned opiates. We have dirty doctors in this
15 country, dirty doctors who are peddling these opiates
16 through their front door. Those dirty doctors should have
17 the book thrown at them. They are worse than any drug
18 dealers I have ever heard of or read about. This
19 suggestion--this bill does not change that in any way
20 whatsoever. But the street-level criminals like Alton
21 Mills, he has been in prison 20 years. He is sentenced to
22 life. And you look at that and think, How can this possibly
23 be? The kingpins are getting off. They ratted him out, and
24 they are going to be free--they are going to have their
25 freedom while this fellow is sitting in jail.

1 Mr. Cook. And, of course, I do not have the benefit of
2 the entire record. I wish I did. But what happens in
3 cases, many cases, is you have individuals in the drug-
4 trafficking organization who either do not cooperate or are
5 not eligible for the safety valve. I would take it that
6 this individual did not cooperate, did not provide
7 substantial assistance in the investigation. I do not know.
8 I do not have the benefit--

9 Senator Durbin. It was an 851 case, if that means
10 anything to you. It was characterized as a serious crime in
11 his case. It was not applied to others.

12 The reality is--I do not have time to read this. I am
13 running out of time. I am not going to go into this.

14 Let me just conclude by saying this--I hope my staff
15 will forgive me. I am sure it is a great--

16 [Laughter.]

17 Senator Durbin. Do not take it personally, Joe.

18 What we have tried to do is strike a balance. A
19 prosecutor here who has a serious criminal defendant before
20 him still has the full range of the maximum sentence
21 possible under this mandatory minimum. The full range of
22 it. We do not tie that prosecutor's hands in any way. But
23 when it comes to cases like Ms. Campbell's or a case like
24 Alton Mills, we give them the option.

25 Last point: Retroactivity. We are not going to give

1 blanket retroactivity. What happens in these cases, as was
2 mentioned by Senator Feinstein before, each one of them has
3 to go back to the prosecutor as well as the sentencing judge
4 to go through a process to determine whether they are
5 eligible. So it is not a matter of opening the jail doors
6 and saying you are free, go your own way. It is a much more
7 complex arrangement.

8 I yield.

9 Senator Hatch. [Presiding.] Senator Sessions.

10 Senator Sessions. Thank you.

11 Well, crime and punishment is a huge issue for our
12 country. It is something that I have cared about for a long
13 time. It is for deterrence. If people know that they can
14 commit crimes and they are not going to be punished, then
15 they tend to commit them more. It is for incapacitation. A
16 person that is in jail cannot sell dope, he cannot murder
17 someone, he cannot rape someone, cannot abuse a child. It
18 is for rehabilitation. Occasionally, that happens.
19 Unfortunately, history shows we are not as good as we would
20 like to believe we are at that.

21 Mr. DeRoche, there was a great study in the late 1970s,
22 a big study that said people make decisions about whether or
23 not to remain in criminal activity for a whole lot of
24 reasons. One of them may be that prisons were bad. One of
25 them would be they took advantage of the prison system. One

1 may be they have life-changing experiences. Spiritual
2 experiences were explicitly mentioned.

3 But it is difficult to have policies, that study
4 concluded, that would impact them in a significant way. And
5 Ms. Yates said we have gone 30 years with the same
6 recidivism rate. I think that is true. I would say, do you
7 think, Mr. Tolman, nobody has ever tried a program to reduce
8 recidivism? Do you think if we have a program that could
9 reduce recidivism by 40 percent that it would not be adopted
10 in every prison in America? I wish it were not so. I wish
11 there was a quick fix.

12 And, Mr. Shelton, I have worked with Senator Durbin,
13 and we heard the NAACP's concerns. I think we made some
14 progress in dealing with the crack situation where it
15 appeared clearly that the African American community felt
16 they were unfairly treated.

17 So this is a whole big deal. Ms. Campbell, these are
18 brutal sentences. Ten years in jail, 15 years, 20 years is
19 really a big sentence, and we need not to have people serve
20 any more than they have to. But I think Mr. Comey last week
21 told us the truth. We have got to be careful. If we let
22 this slide back, we need to explain to those who come after
23 us what we did or did not do to let it happen. That is what
24 I am concerned about.

25 Ms. Mac Donald, I think you correctly mentioned that it

1 goes from community-based policing to broken windows
2 philosophies to police presence in the communities. And I
3 have been in communities, African American communities, when
4 they demanded that police come there and do something about
5 the crime. And they are tired of their children being
6 victimized and afraid to go out on the street at night like
7 they did when they were a child in that community. I have
8 heard that, and it is not a little matter.

9 Mr. Cook, you are very experienced at this, and let us
10 see if we can run down this kind of briefly. The Booker
11 decision a number of years ago has undermined the Sentencing
12 Guidelines significantly, did it not? Did that not in
13 effect reduce prison sentences throughout the country?

14 Mr. Cook. It did, sir. As well, it returned a huge
15 amount of judicial discretion to the courts. The courts, of
16 course, had been limited because of the Sentencing
17 Guidelines.

18 Senator Sessions. Well, it did. All right. That is
19 one of the things that has already happened, since many of
20 these sentences since Ms. Campbell was sentenced. The
21 Sentencing Commission has proposed a sweeping amendment to
22 redefine what "career offender" is. How does that impact?

23 Mr. Cook. Well, of course, that is on the back of the
24 Supreme Court's decision in Johnson, which strikes down part
25 of the Armed Career Criminal Act. We will as a consequence

1 revisit all Armed Career Criminal Act convictions, and many
2 of them will be eligible for much earlier release. The
3 Sentencing Commission follow-on with the guideline
4 amendment--

5 Senator Sessions. That will, in effect, reduce
6 sentences.

7 Mr. Cook. As to all career offenders and other
8 criminals, if made retroactive, that will open a huge class
9 of offenders.

10 Senator Sessions. These are not little criminals.

11 Mr. Cook. No, sir.

12 Senator Sessions. They are serious criminals.

13 Mr. Cook. Yes, sir.

14 Senator Sessions. As a result of Attorney General
15 Holder's memorandum, minimum sentences against--he has
16 required them to limit opposition to minimum mandatory
17 sentences in certain drug offense cases. Is that right?

18 Mr. Cook. That is correct, sir, and we have--

19 Senator Sessions. I do not know how he can do that.

20 Mr. Cook. We have backed away from prosecuting many
21 drug offenders under the mandatory minimums because of that.

22 Senator Sessions. Now, as a result of these things,
23 and others, the Durbin-Sessions bill that we passed, the
24 Federal prison population has dropped by 5,149 prisoners in
25 2014. I am reading from your data, but it is prison data.

1 In 2014 alone, 5,000 down; 8,000 in 2015, fiscal year 2015.
2 But the Bureau of Prisons predicts that the population will
3 further decline 12,000 inmates by the end of fiscal year
4 2016, meaning that in 3 years the Federal population in
5 prison will drop 11 percent. That sounds like a pretty
6 significant trend, and I guess it would continue, and that
7 is all without considering this legislation, is it not?

8 Mr. Cook. It is, and there is a huge cause for
9 concern, because we know what the recidivism rates are.
10 Recidivism rates run 45 to 77 percent. That is a lot of
11 victims.

12 Senator Sessions. It is, and that is costly, too.

13 Mr. Chairman, thank you. Good to see you return. Not
14 that Senator Grassley is not wonderful, but I am glad to
15 serve under you as Chairman one more time.

16 Senator Hatch. I was happy to have you with me, I tell
17 you.

18 Senator Whitehouse?

19 Senator Whitehouse. Thank you, Chairman.

20 First of all, thank you to the panel for being here.
21 If I were to summarize the testimony, it would be that
22 fairly widespread support for Title 2 of this bill related
23 to the improvement of reentry preparation for inmates who
24 are being returned to society, and certainly no direct
25 criticism of any part of it, so I am going to hope that we

1 will be able to move smoothly forward with that part of the
2 bill--in fact, with the whole bill. But we have obviously a
3 House process to get through and a conference to get through
4 before the bill goes to the President's desk.

5 So I would like to ask three of you--Mr. Tolman, Mr.
6 Mauer, and Mr. DeRoche--to think forward to when this bill
7 passes, presume that it has a Title 2 in it intact, and give
8 us advice on what we should be looking for from an oversight
9 point of view, what should be the benchmarks or other advice
10 you might have as to what should inform the implementation
11 of that title by the Bureau of Prisons and the Department of
12 Justice. Why do we not start with you, Mr. DeRoche, and
13 work on to Mr. Mauer and Mr. Tolman.

14 Mr. DeRoche. Thank you, Senator.

15 Senator Whitehouse. You have 1 minute each, and then
16 my time is expired.

17 Mr. DeRoche. Okay. Thank you, Senator, and as Senator
18 Sessions said earlier, if something is working, you would
19 expect that it would be expanded. And in our experience in
20 the Federal sentencing and the Bureau of Prisons, this
21 legislative body with your oversight has not been provided
22 with the types of metrics of what is working and what is not
23 working at the same level that is done in the States. When
24 the States look for alternative sentencing and went a
25 different way for, say, a mandatory minimum for a drug use

1 to a drug court where the accountability was done outside,
2 they measured the success of sobriety on the other end of
3 that sentence because they wanted to be able to report to
4 the policymakers and the budget counters as to whether or
5 not the investment was making the community safer or not.
6 And I believe that--while lavishing praise on Title 2--this
7 is what opens the door already. I am just saying that as
8 you are talking with the House and you are talking with
9 other negotiators, you know, in this, to make sure that you
10 are looking for expanded use of programming, life skills,
11 mentoring. These are the things that actually transform the
12 system, that are baked into every successful criminal
13 justice reform that we have seen.

14 Senator Whitehouse. Mr. Mauer?

15 Mr. Mauer. Thank you. First, I very much appreciate
16 your combined interest in these issues. I have two points.

17 One is I think let us not expect miracles from this
18 initiative and this program. You know, criminal behavior
19 involvement is a function of a variety of different factors
20 in life. It is critically important we do more inside
21 prisons to help people make it, but then we have to
22 transition outside. We have employment rates, we have
23 family, all those things. So even modest successes we
24 should celebrate, and we should try to build on those. That
25 is the first point.

1 The second is in terms of the risk level and the
2 categorization in the legislation, and I understand, I
3 think, the rationale for setting it up and using different
4 risk levels.

5 I would hope over a period of time, if this legislation
6 can be successful, that we could gradually begin to take on
7 all risk levels in prison, and the reason is 95 percent of
8 these people are coming home someday. So to categorically
9 say a certain group of people should not participate, in a
10 way we may be setting ourselves up for a bigger problem than
11 we anticipate because those are the very people that need
12 something like that.

13 Senator Whitehouse. Mr. Tolman?

14 Mr. Tolman. It is a great question. The States that
15 have addressed similar Title 2 have realized that risk of
16 recidivism is the crux. They have used to date primarily
17 static risk assessment measurement tools. Those are
18 improved now with the great work of individuals like Ed
19 Latessa, who has said static is one thing, that is your
20 criminal history and some of those factors that do not
21 change. But in this bill, it uses static and dynamic, so it
22 requires reassessment of the risk of recidivism as they
23 serve. So you know whether or not they are actually
24 reducing their risk. That is where Congress can inject
25 itself and identify is it appropriately reassessing, because

1 if they are, then you experience what Texas did, the closure
2 of prisons and a savings of billions of dollars.

3 Senator Whitehouse. Thank you.

4 Mr. Chairman, as I conclude, let me just express my
5 appreciation to Senator Cornyn. It was a pleasure co-
6 authoring this measure with him. And in everything from
7 size to disposition, there are considerable differences
8 between Rhode Island and Texas. But one place where we have
9 the same outcome is that we have applied these techniques in
10 our prisons, and we have seen prison populations come down
11 and crime rates come down together, which was something that
12 was not really thought possible. So my appreciation to
13 Senator Cornyn.

14 Thank you, Chairman.

15 Senator Hatch. Thank you. I am not sure what you mean
16 by "disposition."

17 Senator Whitehouse. You know, we are sensible and
18 thoughtful--

19 Senator Hatch. Yes, that is what I thought you meant.

20 Senator Whitehouse. Rhode Islanders.

21 [Laughter.]

22 Senator Hatch. Senator Cornyn.

23 Senator Cornyn. General Mukasey, I appreciate the
24 point that you made--all of the points you made, but one
25 point in particular where you say the test of sentencing

1 reform is not on the incarceration rate but, rather, it is
2 on the crime rate. And would you say that same standard
3 should be used for the success of rehabilitation or reentry
4 programs that we have been talking about here as well?

5 Mr. Mukasey. Sure. Those are, in fact, even more so
6 because you are talking about the circumstances under which
7 people are leaving prison, and then that is where the rubber
8 meets the road when it comes to recidivism. To the extent
9 that you have reentry programs that are actually capable of
10 changing the rate, that is obviously a welcome thing.

11 Senator Cornyn. As somebody who believes that not all
12 good ideas emanate from the District of Columbia and then
13 spread out to the rest of the country but, rather, they
14 should come the other direction, from the States and local
15 communities there where we can learn from the best
16 practices, I think we can be encouraged that some of the
17 provisions of the Corrections Act which deal with the
18 education, training, and reentry programs actually has some
19 real promise.

20 Mr. Chairman, I would ask unanimous consent to make
21 part of the record this report from the National Reentry
22 Resource Center relating to the States' experiences.

23 Senator Hatch. Without objection.

24 [The information follows:]

25 / COMMITTEE INSERT

1 Senator Cornyn. And I would just point out that in a
2 number of these States, for example, Georgia--well, North
3 Carolina experienced after the implementation of their
4 reentry program something modeled after the Corrections Act,
5 they saw a 19.3-percent reduction in recidivism; other
6 States, 10 percent in Georgia, 9.4 percent in Rhode Island.
7 So I think rather than take this as a matter of faith or
8 perhaps expressing our hopes and best wishes, we actually
9 have some real results we can point to that demonstrate the
10 workability of some of these programs.

11 I do not think there is as much disagreement among all
12 of us here as it may look at first, because obviously for
13 the people who will refuse to avail themselves of the
14 opportunity to get an education, deal with their drug and
15 alcohol problem and the like, incarceration undoubtedly
16 works. But for those people who will come out, it strikes
17 me as just common sense to try to help equip them so that
18 they can cope with a productive life as opposed to being in
19 the turnstile and going back and forth.

20 So, Mr. DeRoche, I appreciate the important
21 contribution that your organization's efforts have
22 contributed to in my State and I think helped contribute
23 tremendously to these results that I mentioned earlier.

24 Mr. Tolman, thank you for your contribution to our
25 efforts as well.

1 I want to just use the minute and 30 seconds left of my
2 time to say as I have traveled from Houston to Austin to San
3 Antonio to Dallas most recently, and asking people whether--
4 the faith-based community whether they are criminal--whether
5 they are experts in this area in the criminal law or not,
6 they tell me that other problems that many former inmates
7 have, they have problems getting jobs, number one, because
8 they have a criminal record. And even if you eliminate the
9 box, as some people have proposed, employers are still going
10 to get a criminal background check as a routine matter. So
11 whether they put it on their job application or not, that is
12 still going to follow them. And obviously, if you cannot
13 get a job, even if you are trained in a prison reentry
14 program with skills, that is going to limit your opportunity
15 and I think increase the likelihood you are going to repeat
16 your--end up back in prison.

17 The last thing that was mentioned to me--and I hope we
18 can address it at some point along the way--is the
19 difficulty simply in finding a place to live, because many
20 apartments, for example, will not rent the premises to
21 somebody who has been convicted of a felony, and, frankly, I
22 think they are entitled to be skeptical of that. But I
23 think we ought to recognize that there are some real
24 obstacles to people simply getting a job, finding a place to
25 live, becoming reunited with their family, which to me has

1 to be one of the elements we ought to find some way to
2 encourage so people can be successful in turning their lives
3 around.

4 There are a lot of challenges, Mr. Chairman, but I
5 appreciate the good work Senator Whitehouse has done on this
6 bill. I think the corrections part of the bill is perhaps
7 the least controversial part of this legislation, but now
8 that they have been combined with the sentencing provisions,
9 we have got our work cut out for us.

10 Thank you.

11 Senator Hatch. Well, thank you, Senator.

12 Senator Lee?

13 Senator Lee. Thank you, Mr. Chairman, and thanks to
14 all of you for being here today, and thanks for helping us
15 have greater insight into this legislation.

16 Mr. Tolman, I would like to start with you, if I can.
17 You used to be a Federal prosecutor. You were an AUSA, and
18 you were later a U.S. Attorney. And I am sure you have
19 prosecuted people under these tough sentencing laws. In
20 fact, I know you have. Why do you believe, in light of all
21 of your experience as a Federal prosecutor, that mandatory
22 minimums should be adjusted in the fashion proposed by this
23 legislation?

24 Mr. Tolman. There is a need for adjustment not out of
25 a need to change the ceiling. The need for the adjustment

1 does not affect the tools that a prosecutor has. The need
2 for the adjustment is because the Department of Justice and
3 as a prosecutor you care about disparities in sentences, and
4 you care about overpunishment and you care about
5 underpunishment.

6 This bill is the result of years of thoughtful
7 analysis, and it is modest, and it addresses those areas
8 that have the susceptibility of either abuse or
9 overpunishment. But it is in no way a reduction of the
10 tools or a retraction of the ability to deter, to punish,
11 and ultimately with Title 2, it significantly increases the
12 ability to rehabilitate. So we have advanced the balls in
13 all areas.

14 Senator Lee. Now, there are those who oppose this
15 bill, many insist that they oppose it because the
16 overpunishment concern that those of us who have gotten
17 involved in this effort and who are behind this bill is
18 somehow imagined, that we have somehow imagined or we have
19 severely exaggerated the overpunishment risk. But I would
20 like to ask you a couple questions about that.

21 Do you think it was overpunishment in the case of
22 Weldon Angelos, who sold marijuana on three occasions over a
23 72-hour period, relatively modest quantities, happened to
24 have a gun on his person at the time, did not brandish it or
25 discharge it at the time, but did have the gun on his

1 person? Have you met anybody who thinks that is a just
2 sentence?

3 Mr. Tolman. I think that is the appropriate follow-up
4 question. I have not met anyone that agrees that that
5 punishment fit the crime.

6 Senator Lee. What about the judge--

7 Mr. Tolman. In fact, even the prosecutor that
8 prosecuted the case initially offered a 15-year sentence,
9 which is ironic since under this bill that is roughly about
10 the sentence that would have occurred. But instead, because
11 of the stacking provisions, even the judge was in some ways,
12 I know, so affected that he felt he was not sure he could
13 continue being a judge if having to face these kind of
14 sentencings. That is a real example. It is not just an
15 outlier. You hear many examples. It can be common
16 depending on the aggression of the office or the aggression
17 of the investigators.

18 Senator Lee. And this judge was not necessarily known
19 as a minimum sentence kind of a guy.

20 Mr. Tolman. No. A law and order--

21 Senator Lee. Not exactly like he was opposed to the
22 law and order movement.

23 Mr. Tolman. That is correct. An Assistant U.S.
24 Attorney in the Eastern District of Virginia before--

25 Senator Lee. Right. What about, for example, there is

1 a case that came out of the Eighth Circuit involving a
2 gentleman who was renting an apartment in a home, and in
3 exchange for rent, he agreed to lay carpet in a living room
4 and in a hallway of that home. While laying this carpet, he
5 was required to remove the carpet that had been there
6 previously, and in the process of doing that, he discovered
7 a single round of ammunition. It was a .22 round, a .22
8 caliber round. And he did not take it and discharge it. He
9 did not take it and put it in a gun. He took it and put it
10 in a box somewhere in the home where he lived and just set
11 it aside, apparently forgetting about it.

12 Somehow it was later discovered that he was in
13 possession of this round of ammunition. He was charged with
14 possessing it. He was a convicted felon and consequently
15 was not allowed to possess ammunition. And he was given a
16 minimum mandatory sentence of 15 years in prison for
17 possessing one round of .22 caliber ammunition.

18 Do you think that is a just punishment?

19 Mr. Tolman. I am not sure there would be a prosecutor
20 that could justify outside the existence of a homicide that
21 resulted in the use of that ammunition, which obviously is
22 not the case. It is a disparate sentence.

23 If this Congress is concerned with the Department of
24 Justice issuing by fiat a mandate to its prosecutors to
25 ignore certain laws, it should be equally concerned that it

1 could issue a request that they be overaggressive in this
2 same manner. And that is why Congress taking these issues
3 and addressing them in a thoughtful way can prevent those
4 highs and lows, absurd extremes that should concern
5 everyone.

6 Senator Lee. And, Mr. Chairman, if I could take just a
7 few more seconds just to complete this thought, there are
8 those who have attacked this legislation by suggesting
9 somehow that those of us who were behind this bill, who have
10 drafted it, who have introduced it, are acting on the part
11 of a desire to somehow dismantle the major overhaul of the
12 criminal justice system that occurred 30 years ago and
13 revert to a bygone era in which criminals went unpunished or
14 significantly underpunished. As a former Federal
15 prosecutor, do you think that is in any way, shape, or form
16 a fair characterization? Is that what we are doing with
17 this bill?

18 Mr. Tolman. I think it is entirely unfair. It would
19 be akin to someone accusing me for the years that I
20 prosecuted cases that, you know, I did not care about my
21 service, I did not care about the contribution I made.

22 We are talking about a bill that is being supported by
23 the likes of Chairman Grassley and Senator Cornyn and
24 Senator Lee and Senator Hatch and individuals that I have
25 watched--and Senator Whitehouse--that were hard on crime,

1 tough law and order-minded Government officials. This
2 should say something and should be a wake-up call to people
3 that both sides of the aisle care about this issue and want
4 to make it right. Is there any other area than when liberty
5 is at stake that we should care about making it right?

6 Senator Lee. Well said. Thank you, Mr. Tolman.

7 Thank you, Mr. Chairman.

8 Senator Hatch. Thank you, Senator Lee.

9 Brett, nice to have you back with the Committee. You
10 once served on this Committee.

11 Mr. Tolman. Great to see you again.

12 Senator Hatch. And we are proud of you. And, by the
13 way, I chatted with the judge on the Angelos case, and he
14 was upset that he had to do that. I am both puzzled and
15 disappointed that the bill that we are discussing here today
16 does not include any provisions to shore up mens rea
17 requirements, criminal intent requirements.

18 The need for robust mens rea protections and the
19 inadequacy of such protections in much of our modern
20 criminal code have been a central part of the
21 overcriminalization discussion from the beginning.

22 Over in the House, Members from both sides of the aisle
23 have said that the lack of meaningful criminal intent
24 requirements in Federal law is a major problem that Congress
25 must and should address. Advocacy groups across the

1 ideological spectrum have agreed.

2 The Heritage Foundation and the National Association of
3 Criminal Defense Lawyers, for example, published a study
4 finding that over half of all nonviolent crimes proposed
5 during the 109th Congress contained inadequate mens rea
6 requirements and over a quarter contained no mens rea
7 requirements at all.

8 Along similar lines, a coalition of left-leaning
9 groups, including the National Association of Criminal
10 Defense Lawyers, the ACLU, the ABA, and Families Against
11 Mandatory Minimums, authored a chapter decrying the absence
12 of meaningful intent requirements in many criminal laws and
13 calling on Congress to pass a statute to "direct Federal
14 courts to read a protective default mens rea requirement
15 into any criminal offense that lacks one."

16 From where I sit, I do not see how we can adequately
17 address the problem of overcriminalization without getting
18 at the root causes of the problem. And one of those root
19 causes is that we have let wither the fundamental principle
20 that, in order for an action to be criminal, a person must
21 have acted with a criminal intent. When criminal laws lack
22 meaningful mens rea requirements, honest, hardworking
23 Americans can face criminal penalties for accidental conduct
24 or conduct that a reasonable person would not know was
25 wrong.

1 For this reason, I believe that any package of criminal
2 justice reforms that passes this body must include
3 provisions to strengthen mens rea protections.

4 In particular, I believe that such a package should
5 include language setting a default mens rea requirement for
6 all criminal statutes, especially those that lack such a
7 requirement. This is an idea that General Mukasey and many
8 others have strongly endorsed.

9 Now, there are three points to emphasize about default
10 mens rea.

11 First, such a provision would not override existing
12 standards set forth in statutes. All it would do is set a
13 default for when Congress has failed to specify the criminal
14 intent required for a conviction.

15 Second, a default mens rea provision would in no way
16 limit the authority of Congress or agencies to create new
17 criminal offenses. All it would do is require them to be
18 more thoughtful about selecting criminal intent standards.

19 Third, a default mens rea provision would have no
20 impact on statutes or regulations that prescribe civil
21 penalties. It would only apply to criminal prosecutions
22 where the question is whether to take away someone's freedom
23 or impose other criminal penalties.

24 I hope that we can find a way to make the default mens
25 rea part of this meaningful package of justice reforms.

1 Indeed, I do not think it will surprise anyone to hear me
2 say that I believe the default mens rea is at least as
3 important as many of the provisions that were included in
4 this bill at the request of Senators who are even members of
5 this Committee.

6 And with those comments, I would like to ask just a
7 question or two of General Mukasey. General Mukasey, you
8 have written about the need for robust criminal intent
9 requirements. In fact, you have called on Congress to pass
10 a statute "requiring proof of guilty knowledge in any
11 criminal prosecution unless Congress has legislated
12 specifically to the contrary."

13 Could you please explain the need for a default mens
14 rea statute, what such a statute would do, and also what it
15 would not do?

16 Mr. Mukasey. Sure. I think that the need becomes
17 especially pressing when you consider the number of criminal
18 statutes that exist. I think many people are not aware of
19 exactly how many criminal laws we have. When you combine
20 the criminal statutes that are in Title 18, Title 21, and
21 scattered elsewhere throughout the Federal Code with
22 regulations, it is my understanding that the Library of
23 Congress was unable to come up with an accurate statement of
24 how many criminal laws we actually have.

25 You add to that the fact that many of them do not have

1 mens rea requirements, and it is a mine field out there for
2 people who are trying to obey the law.

3 This would not prevent the enactment of statutes in the
4 public safety area where standards have to be very high,
5 where you are talking about the possibility of mass effect
6 of behavior. It would not prevent the enactment of laws in
7 dealing with food and drugs and things of that kind, and
8 possibly lowering the intent requirement. But as to other
9 crimes--and you have spoken on this, I know, and we are all
10 familiar with the examples. The fellow out here who was
11 working at a veterans' facility and hosed down some waste
12 into the drain because that is the way he was told to do his
13 job found out that he was polluting a navigable river
14 because it eventually went into the Potomac and had to plead
15 guilty to a felony as a result. That is ridiculous.

16 So you have to have some sensible standard, and an
17 across-the-board mens rea requirement other than in cases
18 where there is a public safety element involved, where
19 Congress has already legislated that the standard is lower,
20 a law of that kind I think would be enormously valuable.

21 Senator Hatch. Well, we are certainly happy to have
22 you here. Some individuals have expressed concern that a
23 default mens rea is somehow an effort to unwind the
24 regulatory state or to make regulatory enforcement more
25 difficult. Could you please respond to those concerns? And

1 in your answer, could you also please explain the difference
2 between default mens rea and other proposals that are, in
3 fact, targeted at cutting back regulation such as the
4 proposal in the SAFE Justice Act to sunset criminal
5 regulations after 5 years?

6 Mr. Mukasey. Well, default mens rea is precisely what
7 it says, which is that in the absence of a standard set by
8 Congress, the standard is conventional mens rea, unlawfully,
9 willfully, and knowingly. It would not prevent Congress
10 from setting a different standard in those areas of activity
11 where it felt it was necessary and where there was a
12 considered judgment made that it was necessary. Nor would
13 it set aside regulations that impose civil penalties and
14 other sanctions.

15 As you pointed out in your introductory remarks, the
16 only thing we are dealing with are situations where people
17 are potentially being deprived of their freedom, plus
18 whether they are deprived of their freedom or not, are being
19 tarred as criminals. And in those areas, I think a default
20 mens rea requirement is absolutely necessary.

21 Senator Hatch. Well, thank you.

22 Senator Sessions? And let me just add that I do not
23 see how we can have this bill and really reduce the
24 injustices that currently seem to exist without a mens rea
25 provision. I just do not see how you can. Senator

1 Sessions?

2 Senator Sessions. Thank you.

3 Well, this is all important, and I thank all of you
4 excellent witnesses. And you have added something to this
5 discussion.

6 It is clear that criminal research shows, according to
7 Matt DeLisi before our Committee, that releasing just 1
8 percent of the current Federal prison population will result
9 in approximately 32,850 additional murders, rapes,
10 robberies, aggravated assaults, burglaries, thefts, auto
11 thefts, and incidents of arson. Now, I do not know if that
12 is exactly accurate or not. That is what he testified to, a
13 professor before us, so if you have an 11-percent reduction
14 in the population, that could be 361,000.

15 Then there are costs. When your car is burglarized,
16 well, you have got to call the insurance company and the
17 police and take time off from work and testify at a trial,
18 and all these things are ramifications of crime that are
19 important. We are on the right track.

20 With regard to the Federal--I mean, we have been on the
21 right track to reduce the surge in crime we saw in the late
22 1980s, and Senator Hatch was one of the architects of the
23 effort that paid off, I believe.

24 Now, I do believe that we have exaggerated the number
25 of people who are serving long sentences for minor offenses.

1 My experience is contrary to that. Not that it has not
2 happened, and a lot of things have happened since, Ms.
3 Campbell, you were incarcerated. A lot of things have
4 happened to produce that.

5 According to the Bureau of Prisons, Mr. Cook, I believe
6 50 percent of the Federal prisoners serve less than--or are
7 from 1- to 10-year sentences, 50 percent of the people in
8 there.

9 First, is it not true that Deputy Attorney General
10 Yates can tell the prosecutors not to prosecute small cases
11 if that is what the policy is of the Department of Justice
12 and focus on larger cases? And so if we have got people
13 being convicted today for cases inappropriate for Federal
14 court because they are too small, that can be handled by a
15 policy of the Attorney General, can it not?

16 Mr. Cook. It can, sir.

17 Senator Sessions. And, in fact, it is already being
18 dictated to some degree in an extreme fashion, I would
19 think.

20 Mr. Cook. It has, and, of course, the statistics
21 reflect that. I think both the Bureau of Prisons
22 statistics, Sentencing Commission statistics, as well as the
23 judicial administration, all of those statistics reflect a
24 steep decline in the prosecution of drug offenses in the
25 Federal system.

1 Senator Sessions. One of the things, Senator Hatch, we
2 are seeing is the 5-year mandatory minimum for carrying a
3 gun during an offense, a crime, and the possession of a
4 firearm after conviction of a felony have fallen under the
5 Obama administration steadily, which is one reason I am not
6 too impressed with the idea of more laws to impact lawful
7 people who want to maintain a firearm when we have seen a
8 decline in the existing gun law prosecutions, rather
9 significant numbers, actually.

10 So all of you, thank you. Senator Cornyn, I do think--
11 and I believe you mentioned, Ms. Mac Donald and Mr. Mauer,
12 that the ability of having people in prison begin to work
13 before they are released has real potential. Maybe, Mr.
14 Tolman, you mentioned it. I do think that can work. My
15 observation over the years of attempts to have education and
16 other kinds of character-building programs in prison before
17 they are released does not seem to have much benefit. Do
18 you agree with that, Ms. Mac Donald?

19 Ms. Mac Donald. Yes, it is very hard to find a current
20 or a released prisoner who has not been offered programs
21 galore. They do exist in prisons, but I think work gives a
22 sense of self-esteem and is the best training for reentry
23 that we have got. The risk assessment, the cognitive
24 therapy, that is already being done, and I am afraid that
25 the judgment that was reached in the 1970s, which is that it

1 is very hard to find a therapeutic program that reduces
2 recidivism significantly, remains the case, and that is by
3 the Justice Department's own evaluations. But work is
4 something that we have not tried.

5 Senator Sessions. Mr. Mauer mentioned incremental
6 improvements. Senator Cornyn mentioned a 9-percent or maybe
7 one program 19-percent improvement. Well, that is enough.
8 You show me a program that has a 19-percent improvement
9 rate, I am interested. The only problem is I have never
10 seen a new program that the first few years the data always
11 looks great, and as time goes by, they have not proved to be
12 able to maintain that success. But it is worth considering.

13 Thank you, Senator Cornyn, and all of you for your
14 work.

15 Senator Hatch. Senator Cornyn.

16 Senator Cornyn. Well, one thing strikes me as true,
17 and that is, for people who do not want to change, they
18 never will change. But there are people in prison--Ms.
19 Campbell may be an example of that--who have, if given an
20 opportunity to reduce their level of confinement by dealing
21 with their underlying issue, whether it is drugs, alcohol,
22 mental health issues, work skills, general education, can
23 earn a lower level of confinement, perhaps a halfway house,
24 perhaps in-house confinement, which is the goal, as you
25 know, Mr. Tolman, of the Corrections Act, to provide those

1 incentives for people who do have the desire to turn their
2 lives around. But for those who do not, I agree, Ms. Mac
3 Donald, we cannot design enough programs, because none of
4 them will work, I somebody has not made the decision in
5 their own mind that they want to turn their life around and
6 take advantage of that.

7 Mr. DeRoche, what has your experience been with the
8 Prison Fellowship?

9 Mr. DeRoche. Thank you, Senator. For all the
10 Senators, in the testimony that I submitted, there are
11 citations of some of these results that are through time,
12 and, Senator Cornyn, one of them is a study that was done by
13 the Texas Policy Council of the Interchange Freedom Program
14 that started in 1998 in Texas that shows, I think to Senator
15 Sessions' point, significant numbers. We have seen that in
16 the Iowa Department of Corrections, the Minnesota Department
17 of Corrections. These things are not available. I do think
18 that they should be expanded. I think that they should be
19 available to people.

20 The mention I make in my testimony was I said I had a
21 drinking problem. I had to enter recovery for alcoholism
22 because alcohol was my solution. I think too often we think
23 the person--the crime they are doing is their problem. It
24 is not. It is their solution. And so what we need to do is
25 we need to go in when people have the willingness--and we

1 work at Prison Fellowship, even if someone is never going to
2 leave prison and says, "I want to live my life differently
3 for the rest of my time here," and make that transformation
4 worth something, because it is available and it has been
5 demonstrated time and again and by studies all throughout
6 this country that people can, when they have the
7 willingness, change their behavior and their character, and
8 that faith plays an important role in that, Senator. And I
9 think that can be demonstrated right in facilities in Texas.

10 Senator Cornyn. Judge Mukasey, we have been talking
11 about mandatory minimums and the length of those sentences.
12 But could you just comment, is it the certainty of
13 punishment or is it the length of the sentence that provides
14 deterrence in your view?

15 Mr. Mukasey. They both do, obviously, but I think it
16 is certainty that is far more of a deterrent than--once you
17 get beyond 5 years, I think a lot of people who are involved
18 in the criminal justice system are involved because they do
19 not think in segments longer than 5 years, and it is usually
20 a lot shorter than that, sometimes not longer than 5
21 minutes. But the certainty of punishment is a major
22 deterrent, and that is one reason why I think the guideline
23 system before Booker was more effective and why I think
24 mandatory minimums to some extent ought to be retained.

25 Senator Cornyn. Mr. Chairman, I would just like to

1 make one last point and then thank the panel, and that is,
2 it seems like we have been through a swing of a pendulum
3 here from the time back when--the last time we took a
4 systemic view of our criminal justice system, we realized
5 that crime was rampant and something else needed to happen.
6 And so the incarceration rates went up, mandatory minimums
7 and the stacking that has been described here. But the
8 reason why that was done I think was at least in part the
9 sense that people who commit the same offense, tried in
10 different courts, could end up with vastly different
11 sentences, which is not what I would call equal justice
12 under the law.

13 So we have seen a swinging of the pendulum, and maybe
14 it is time to look at--and I believe this legislation does
15 carefully look at some of the mandatory minimums,
16 particularly with regard to nonviolent offenders. But we do
17 need to do both. We need to have the certainty of
18 punishment as deterrence, and we also need to make sure that
19 people who commit the same acts are treated similarly and
20 not dissimilarly. I do not know how we aspire to a system
21 of equal justice under the law where people receive such
22 wildly disparate punishments for the same crime, which has
23 been the goal of some of the mandatory minimum policies.

24 So I just think we do need to be very careful, and I
25 appreciate this great panel. You have made us all think and

1 question some of our assumptions, and I hope you will hang
2 in there with us as we work through this process not only on
3 this Committee but through the Senate and also with the
4 House and eventually to the President. So thank you very
5 much.

6 Senator Hatch. Well, thank you, Senator. You are
7 absolutely right. I was here when we did the mandatory
8 minimums, and we were tired of some of the courts that did
9 not enforce the law and did not give sentences the way they
10 should have, and that is what happened. Now I think most of
11 us feel it has gone way too far, and we have got to find
12 some way to resolve that. That is one reason for this bill.

13 Senator Lee, you will be the last Senator.

14 Senator Lee. Thank you, Mr. Chairman.

15 I want to echo and agree with and build on what Senator
16 Cornyn said just a minute ago, with one clarification, which
17 is that I do not think we should see this bill as something
18 that is going to reverse a pendulum. I think, by and large,
19 the American people feel good about the direction of our
20 criminal justice system in the sense that no one is calling
21 for a return to the system that we had prior to 30 years
22 ago. No one that I am aware of that is involved in this
23 effort on this bill is saying let us go back to what we had
24 before. That is not what this is about.

25 Nor would it be fair to say that this bill starts to

1 push the pendulum back in that it swings in only one
2 direction. That is not true either. We are making
3 adjustments in this legislation to the existing framework.
4 In some cases, those adjustments might result in some
5 shorter sentences. In other cases, those adjustments might
6 result in larger sentences. And, in fact, we do create some
7 new minimum mandatory penalties, and in some cases we extend
8 the statutory maximum.

9 So this is not a reversal. This is an adjustment that
10 is made necessary by what we have seen in recent years, that
11 it has occurred to us that in some instances--not in every
12 instance, but in some instances, we overpunish crime, and
13 that is not always a good thing. Overpunishing crime
14 generally results in a waste not only of money but of human
15 lives, and we want to avoid that wherever we can.

16 Judge Mukasey, I was wondering if I could ask you a
17 question. You have spoken about the important role that
18 Congress plays in setting the limits of punishment, on the
19 top end and on the bottom end, setting the top range and the
20 bottom range.

21 Now, if we as a Congress can agree, if we can get to
22 the point where most of the Senators and most of the Members
23 of the House agree that certain penalties under current law
24 are greater than necessary, and if we decided to reduce
25 those penalties, would it not also be appropriate in that

1 circumstance for us to make those reductions available not
2 only to those who will go through the system in the future,
3 but also those who have already been sentenced?

4 Mr. Mukasey. It may or may not, depending on the case.
5 I think many of those cases, particularly those that end in-
6 -paradoxically, particularly those that end in pleas rather
7 than trials, are the result essentially of a negotiation
8 involving both charges and length of sentence, such that you
9 would not necessarily want to come in after the fact and
10 decide that that bargain does not make sense anymore.

11 Senator Lee. And that is why we would not want to make
12 them automatic.

13 Mr. Mukasey. Correct.

14 Senator Lee. We would want to make sure that they
15 would apply on a case-by-case basis such that it would not
16 occur automatically, but it would have to occur in a
17 subsequent proceeding in front of an Article I sentencing
18 judge.

19 Mr. Mukasey. Article III, I think.

20 Senator Lee. I am sorry. An Article III sentencing
21 judge.

22 Mr. Mukasey. Because there are Article I judges.

23 Senator Lee. Right, right. That would be a big
24 problem if we were talking about putting this authority in
25 Article I judges. I did not even know there was such a

1 thing, now that I--

2 Mr. Mukasey. I think that also lodging the
3 responsibility in the individual districts is important
4 because they are the people who, A, are familiar with the
5 case and, B, are going to have to put up with the
6 consequences. So that part of it is very important. I
7 spoke to the Attorney General about this on Friday, and the
8 Deputy testified here today that that is going to be their
9 policy. So I think that is all to the good.

10 Senator Lee. Thank you, Judge Mukasey.

11 Mr. Tolman, you were asked some questions about the
12 mens rea component. I want to be clear. This has long been
13 a concern of mine, and for the last several years, ever
14 since I came to the United States Senate, I have been very
15 concerned about the overcriminalization trend generally and
16 about the mens rea problem in particular in the sense that
17 we have got so many Federal crimes on the books that, when
18 we ask groups like the Congressional Research Service--who
19 pays people to research things like this. When we ask them
20 how many Federal crimes there are on the books, they cannot
21 tell us.

22 So one of the things this bill does is to identify the
23 number of crimes that are out there. We have got to first
24 get a handle on the number of crimes that are out there, and
25 as we do that, I think we will find ourselves in a better

1 and better position to address the mens rea problem. Not
2 every Federal crime on the books has an absence of a mens
3 rea requirement or has some kind of an inadequate mens rea
4 provision.

5 Mr. Tolman, based on your understanding of the bill,
6 the crimes that are addressed in this bill are not the
7 crimes that we are talking about, are they?

8 Mr. Tolman. No.

9 Senator Lee. They are not the crimes that lack a mens
10 rea requirement.

11 Mr. Tolman. No. That is correct. They have mens rea,
12 and with respect to the mens rea issue, it is a worthwhile
13 endeavor, and I would love to work with Senator Hatch going
14 forward.

15 It appears as though it is an appropriate vehicle to
16 follow the current legislation, and the reason is that this
17 legislation will identify what those crimes are, some
18 estimate over 30,000 potentially. There needs to be an as
19 careful an analysis of those crimes and the appropriate mens
20 rea to apply that may not be there in applying the current
21 legislation to this legislation. It is, however, something
22 that should be on the, you know, near future of this
23 Congress to address the mens rea issue, and I would be happy
24 to work with the Congress in doing that.

25 Senator Lee. But there is certainly no reason to delay

1 this legislation for that and, in fact, you would argue that
2 we do the opposite.

3 Mr. Tolman. Well, you know, having worked here,
4 certainly this hearing is evidence of the fact that Members
5 of Congress can get along on both sides of the aisle and
6 propose a bill together still. It is evidence that Members
7 of Congress work past 5 o'clock. But I also know that
8 sometimes adding bills that are very well supported to an
9 existing negotiated package, that would be my concern,
10 Senator Hatch and others, that adding the mens rea element
11 at this point may really disrupt the ability to pass this
12 legislation, which, frankly, hangs on a very thin precipice
13 on whether it will succeed or fail.

14 Senator Lee. Thank you.

15 Senator Hatch. Well, I will just add, it may pass
16 without my support if we do not do something about mens rea,
17 because I think it is essential to any criminal action.
18 And, by the way, it could come into play in these matters as
19 well. I think you would have to admit that.

20 Mr. Tolman. I have learned to never underestimate you,
21 Senator Hatch, and your ability in the Senate. I do
22 appreciate that it is a significant issue that the Senator
23 has highlighted. You are absolutely right to highlight
24 that, and I would really look forward to working with this
25 Congress on that issue.

1 Senator Hatch. Well, we appreciate your comments. We
2 appreciate every one of you for being here, and we are sorry
3 it is so late and that it had to be at this particular time.
4 I had to make it back from Utah so I could be here. But we
5 want to thank each and every one of you for testimony. It
6 has been very important to all of us up here.

7 With that, we will recess until further notice.

8 [Whereupon, at 6:06 p.m., the Committee was adjourned.]

C O N T E N T S

| STATEMENT OF: | PAGE |
|--|------|
| The Honorable Sally Quillian Yates, Deputy Attorney General, U.S. Department of Justice, Washington, D.C. | 10 |
| The Honorable Michael B. Mukasey, Former Attorney General, U.S. Department of Justice, and Partner, Debevoise & Plimpton LLP, New York, New York | 54 |
| Hilary O. Shelton, Director, Washington Bureau, and Senior Vice President for Policy and Advocacy, NAACP, Washington, D.C. | 57 |
| Craig DeRoche, Executive Director, Justice Fellowship, and Senior Vice President, Prison Fellowship Ministries, Lansdowne, Virginia | 63 |
| Debi Campbell, Spotsylvania County, Virginia | 68 |
| Steven H. Cook, President, National Association of Assistant United States Attorneys, Knoxville, Tennessee | 73 |
| Marc Mauer, Executive Director, The Sentencing Project, Washington, D.C. | 79 |
| Heather Mac Donald, Thomas W. Smith Fellow, Manhattan Institute for Policy Research, Inc., and Contributing Editor, City Journal, New York, New York | 84 |
| The Honorable Brett Tolman, Former United States Attorney for the District of Utah, and Shareholder, Ray Quinney & Nebeker, PC, Salt Lake City, Utah | 90 |