

Testimony of

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Hearing on

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Thank you for giving me this opportunity to speak on behalf of Families Against Mandatory Minimums. As our name suggests, the subject of today's hearing is of existential importance to our organization.

In my time this afternoon, I want to stress three main points. First, the Sentencing Commission must continue to play a leadership role in opposing mandatory minimum laws. Second, the growing number of profiles of injustice – or “Faces of FAMM” – that we collect prove that unreasonably long sentences cannot be considered anomalies. And third, I want to tell you why we think individualized sentencing is complementary to the goals of uniformity and proportionality.

First, I urge you to continue to play the same leadership role in opposing mandatory minimums that previous commissions have. You have a bully pulpit that we do not have, and you should continue to use it to say loudly and clearly: Mandatory minimums were wrong before there were sentencing guidelines; they were wrong when the guidelines were enforceable; and they are wrong now that the guidelines are advisory.

I do not want to spend my time with you today citing facts and figures you already know about the devastating consequences of mandatory sentencing. In fact, I know you know them because I learned them from you. I first became aware of the Sentencing Commission in 1991 when its report to Congress on mandatory minimums in the federal code was released.

It was one year after my brother had been sentenced to a five-year mandatory minimum for growing marijuana, and just a month before I started FAMM. I knew from my family's experience that mandatory minimum sentences were wrong, but as I prepared to launch a national organization to oppose these laws, I needed hard data and solid evidence. I got both in that 1991 report. It became like the Bible for me. I read it often and began proselytizing.

Perhaps most important, that report served as the intellectual foundation upon which the federal safety valve was built three years later. I simply do not think it would have been possible to convince Congress to scale back mandatory minimum sentences even for some of the least threatening drug offenders without the evidence and findings of the 1991 report.

Nineteen years later, I am eager for the commission's new report in October. It's time for a New Testament. I am hopeful that the commission's new report will be as bold and uncompromising as the original. After all, the 1991 report said that mandatory minimums were not applied evenly, resulting in disparate sentences; that mandatory minimums were applied in a racially discriminatory manner; that their uneven use undermined their deterrent effect; and that the “cliffs” created by factor thresholds in mandatory sentencing laws reduce the proportionality of resulting sentences. I expect that the commission will find that the 19 years of mandatory minimum sentencing that have passed since the first report more than confirm the original conclusions.

The second point I want to make is that the number of stories we collect of people receiving absurdly long sentences continues to grow, demonstrating that these sentences are not anomalies. Beginning with my brother's case, I have always believed it was very important to show how mindless mandatory sentencing policies affect real people. We began developing profiles, sometimes referred to as the "faces of FAMM." Nineteen years after we started, we have a full-time staffer adding new case profiles every week. Let me briefly share a few of them with you now.

Thirty-year old Weldon Angelos is serving 55-years and a day in prison for having a gun present at two drug transactions involving half a pound of marijuana. The first time the gun was present, a five-year sentence was triggered; the second time, it triggered an additional 25 years; when a gun was found in Angelos' home, an additional 25-year sentence was required, all consecutive, for a total of 55 years. The judge, Paul Cassell who has appeared before the Commission numerous times, tried unsuccessfully to find a way around the mandatory minimum sentence. He noted that an airplane hijacker receives a shorter sentence than the one he was forced to impose on Weldon Angelos. In the end, Judge Cassell followed the law and sentenced Weldon to 55 years for the guns and one day for the marijuana conviction.

Thirty-six year old Eric Rinehart is serving 15 years in a federal prison for downloading sexually explicit photos and a video that were taken by him and his 16-year old girlfriend and his 17-year old girlfriend. Although both girls were of the legal age of sexual consent in the state, downloading the photos violated federal law and Rinehart was charged and convicted of producing and possessing child pornography. The charges carried a mandatory minimum sentence of 15 years. Rinehart's judge, David Hamilton, wrote a strongly worded sentencing memorandum for the express purpose of helping Rinehart get a commutation. He wrote, "The mandatory minimum 15-year sentence is far greater than is necessary to serve the statutory purposes of sentencing."

Deborah Brackett, age forty-nine, is approaching the end of a 10-year mandatory minimum sentence for her first and only conviction, selling methamphetamine in 1998. Brackett had become addicted to meth at a young age, then beat her addiction after she discovered she was pregnant. Unfortunately, ten years later she relapsed and began selling drugs to earn money to support her habit. She was caught, convicted and sentenced to 10-years in prison. She has been separated from her children – one of whom has Down Syndrome – for eight years now.

Members of the commission, if we had collected only a handful of these horrible stories over the course of FAMM's existence, I might understand the reluctance of Congress or this body to pay too much attention. But we've collected thousands of these cases in nearly two decades. This is an epidemic of injustice.

Mandatory minimums do not simply result in sentences that are too long. They don't just wreak havoc on individuals and their families. They destroy faith in the criminal justice system, one sentencing hearing at a time. American citizens believe that courts and judges should sentence individual offenders. They are shocked, dismayed, and angered – as I was – when they learn that this is not the case. They feel that their rights have been violated, and there is no remedy for them. This anger leads to disrespect for, and distrust of, the justice system.

This brings me to the final point I want to make today, which is related but not limited to mandatory minimums, and it is this: Individualized sentencing, where judges (aided by the guidance of this commission) are free to judge, is not the enemy of uniformity. To the contrary, individualized sentencing complements both uniformity and proportionality.

The biggest change that has taken place since the commission released its mandatory minimum report in 1991 is that the guidelines are no longer enforceable. I have heard it said that in an advisory guideline world, mandatory minimums are more important than ever to ensure uniformity of sentences. That is flawed logic.

There is only one definition of uniformity that makes any sense in a system where Congress has commanded that sentences should be sufficient but not greater than necessary to achieve the purposes of sentencing. In the shadow of this directive, uniformity simply cannot mean issuing the same sentence to every person who commits Crime A. That's because hypothetical violators of Crime A are certain to have varying levels of culpability, different criminal backgrounds, and divergent potentials for rehabilitation.

Research, science, and experimentation with alternative sentencing have given this commission and those in the states more and better information about what works in reducing crime. For example, we know how important age of the offender is in calculating risk of recidivism. We know that certainty and swiftness of punishment matter more than severity as deterrents. Mandatory minimums force judges to put their heads in the sand, ignore all of the new science and research, and issue pre-assigned, one-size-fits-all sentences. If that is what is meant by uniformity, it is not a goal worth pursuing.

Further, I would urge the commission not to see every variance from the guidelines as evidence of wayward judging. In many cases, what is called disparity is simply a healthy rejection of unwarranted uniformity and a guideline system that has become, partly as a result of mandatory minimums, a one-way ratchet toward ever higher sentences. Guidelines variances can be addressed by ignoring the message being sent by district courts or by heeding it. To paraphrase Bastiat, the safest way to make the guidelines respected is to make them respectable.

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Members of the Commission, for those of us who have made mandatory minimum reform their mission, this meeting comes at an exciting time. States across the country – those laboratories of democracy, as Justice Brandeis famously called them – are turning away from mandatory minimums. In the past year alone, New York and Rhode Island have repealed their mandatory drug sentencing laws. In January, FAMM culminated a years-long campaign in New Jersey to enact a law limiting the reach of one of the state’s worst mandatory sentencing laws. One of my co-panelists, Marc Mauer, and his group has produced some excellent reports detailing the sweeping changes taking place across the country. These studies reveal that states have not gone lax on public safety, but rather they have chosen to replace their reliance on long prison sentences with new evidence-based sentences and programs that have been effective and at less cost to taxpayers.

We also meet at a time when Congress stands on the verge of repealing a mandatory minimum for the first time since the Nixon Administration. The Senate has already voted unanimously to eliminate the mandatory minimum for crack possession and dramatically reduce the disparity between crack and powder cocaine sentences.

It is fitting that I close my remarks on the issue of crack. I remember very clearly the day in 2007 that the commission voted to apply the new crack guidelines retroactively. The hugs and calls and letters I got that day from our members reminded me why we are in this fight. But what I also recall is the leadership role played by this commission. It was not simply the final vote for reform; it was the intellectual and moral leadership displayed by members of the commission leading up to and making possible that final vote.

That strong, smart, and moral leadership is what we need from this commission on the issue of federal mandatory minimums. I look forward to your report, and to working with you to make our federal sentencing laws worthy of respect again.