



January 23, 2019

The Honorable Donald J. Trump
President of the United States of America
1600 Pennsylvania Ave NW
Washington, D.C.

Dear President Trump,

I am writing to strongly discourage you from nominating William Otis to serve on the U.S. Sentencing Commission. Mr. Otis's long and controversial record, marked by hostility to evidence-based criminal justice reform, contradicts your administration's leadership in passing the First Step Act

The U.S. Sentencing Commission has a number of important responsibilities, none more so than promulgating the sentencing guidelines that are consulted by federal courts regarding the appropriate form and severity of punishment for offenders convicted of federal crimes. Roughly 70,000 defendants every year are sentenced pursuant to the guidelines established and regularly modified by the members of the U.S. Sentencing Commission. The Commission also is tasked with collecting, analyzing, researching, and distributing a broad array of data on crime and sentencing issues. This data informs both the Commission's work in developing the federal sentencing guidelines and the advice and assistance it provides to Congress and the executive branch as they develop anti-crime policy.

Given these roles the Commission is expected to play, it is vital that the individuals appointed to serve on the Commission approach their job with an open mind and a willingness to consider fully all of the data and evidence available to them. Over the years, FAMM has disagreed with the policy views held by nominees to the Commission, but we did not oppose their confirmation because we believe that, once confirmed, they would be persuaded and guided by data and evidence.

The very extensive public record of Mr. William Otis gives us no such hope. Mr. Otis is an ideologue who seems impervious to evidence and data. For example, Mr. Otis has said and written on more than one occasion, "Two facts about crime and sentencing dwarf everything else we've learned for the last 50 years: When we have more prison, we have less crime. And when we have less prison, we have more crime." These assertions are not facts. National crime and imprisonment rates have not moved in tandem during the past half century. The recent record from the states is compelling. According to the Pew Charitable Trusts, between 2008 and 2016, 35 states reduced both their prison population and crime rate. In fact, the ten states with the biggest reductions in their prison populations experienced larger drops in crime than the states

with smaller cuts in their prison populations. Mr. Otis' oft-repeated claim otherwise is false. Yet he repeats it despite overwhelming evidence to the contrary.

As far as we can tell, Mr. Otis has not backed away from other assertions and predictions well after they were contradicted by facts. Mr. Otis has been particularly and repeatedly critical of attempts by the U.S. Sentencing Commission to reduce the harshness and inflexibility of its drug guidelines. For example, in 2002, the U.S. Sentencing Commission proposed to cap the guideline recommendation for lower-level drug dealers so that culpability, not simply the weight of the drugs involved, would be used to determine an offender's sentence. Mr. Otis testified in support of legislation to block the U.S. Sentencing Commission's amendment. He stated:

The Commission's proposed amendment, however, decreases sentences to the point that incentive for a low-level player to help catch the bigger fish is all but decimated, particularly in light of the risks to which a cooperating defendant is exposed.

In other words, the amendment is likely to produce the twin evils of less information being furnished to investigators and fewer substantial assistance motions for those who most deserve them...

Be clear this not an amendment that will reduce drugs or drug use. It will only reduce the penalties for these things, and thus create a perverse system of incentives that stands on its head the guidelines' central purpose of protecting the public.

Mr. Otis' predictions proved spectacularly wrong. The Commission's amendment did not decimate cooperation rates. Ten years after the amendment passed, 95.8 percent of all crack offenders accepted plea agreements, a rate that was nearly identical to the 96.2 percent that took deals in 2002. A decade after Congress ignored Mr. Otis' attempts to block the Commission amendment, the government filed motions to reward cooperators in 26.2 percent of all crack cocaine cases, a rate more than double the rate of these motions filed by the government in all cases that year (12.1 percent).

As for Mr. Otis's inference that the amendment would incentivize drug use, teen use of crack cocaine fell by nearly 50 percent between 2002 and 2014, according to a study from Monitoring the Future/University of Michigan. Finally, with regard to his claim that the sentencing cap amendment would undermine the guidelines' purpose of protecting the public, Mr. Otis's speculation was happily off the mark. From 2002 to 2013, the nation's violent crime rate dropped a remarkable 25.6 percent. Rates of robbery, manslaughter, assault, and rape also significantly decreased.

None of us is perfect, and we do not fault Mr. Otis for making a mistake. What is notable, however, is that Mr. Otis did not retract his unfounded predictions and fearmongering. To the contrary, he has continued to predict crime waves every time the Commission has voted to reduce the drug guidelines. If anything, he has doubled down on dire predictions following Commission actions to reduce penalties for drugs. As before, those predictions were not borne out. His unwavering fearmongering demonstrates that he is more influenced by ideology than facts and evidence.

In addition to his false comments on Commission business, Mr. Otis has long been critical of sentencing reform in Congress, including reforms that were at the heart of the First Step Act. For example, Mr. Otis criticized the 2010 Fair Sentencing Act, which will now be applied retroactively thanks to the First Step Act. Mr. Otis had been vocal in his opposition to reducing the 100-to-1 disparity between crack and powder cocaine quantities used to trigger mandatory minimum sentences, testifying in 2002 before the Senate that Congress should not alter this indefensible disparity. When Congress finally voted unanimously in 2010 to reduce the disparity, Mr. Otis derided the bill as the “Crack Dealers Relief Act.”

We also urge you to consider the manner in which Mr. Otis has advanced arguments involving race. For example, it has been reported that Mr. Otis referred to Asians as “Orientals” and said a judge’s remarks that “blacks and Hispanics are more violent than whites” were true. On another occasion, Mr. Otis dismissed claims that bigotry was responsible for white violence against blacks. Instead, Mr. Otis wrote, “If one must think about it in this way, it’s blacks doing the predations and whites being the prey, not the other way around.”

Objecting to a news story about former Stanford student Brock Turner’s rape case that suggested campus rape was a crime carried out predominantly by white males, Mr. Otis wrote, “If a newspaper were to print a photograph of a black man with the caption, ‘Bring it on – the snickering smile of a ghetto dweller selling crack cocaine, destroying the lives of so many young women,’ it would be out of business the next day. The racist smear behind the statistical truth is too obvious for words.”

Many people have concluded from his own words – or will conclude upon learning of them – that Mr. Otis’s views are ignorant, if not bigoted. We do not profess to know what motivates Mr. Otis. We do know, however, that members of the U.S. Sentencing Commission establish guidelines that are used to set prison terms for approximately 70,000 individuals every year of all races and backgrounds. The legitimacy of those guidelines rests, in part, on the reasonable belief that the commissioners’ decisions are driven by data and evidence, not bias and ideology. Mr. Otis’s past words and behavior give no indication that he is likely to act contrary to bias and ideology in the future.

Mr. Otis’s writings about members of Congress and their work product also call into question whether he has the temperament and judgment to be a reliable partner to Congress in developing federal sentencing policy. For example, after Senators Rand Paul (R-KY) and Patrick Leahy (D-VT) introduced a bill to authorize judges to depart from otherwise applicable mandatory minimums, Senator Paul stated that he was motivated, in part, by the stark racial disparity in the federal prison population. Mr. Otis wrote in response:

At one time I thought Sen. Paul was not as much of a wacko extremist as his father. I apologize for my error. And his father didn't pander to racially selected audiences. Maybe Sen. Paul could do some tag-team matches with Al Sharpton, from whom he seems increasingly indistinguishable.

In January 2014, the Senate Judiciary Committee considered and approved the Smarter Sentencing Act, legislation introduced by Senators Leahy and Mike Lee (R-UT) to reduce the length of federal drug mandatory minimums. Mr. Otis called the bill “The Heroin Dealers Bonanza Act.” The idea that Senators Leahy and Lee, two former prosecutors, would have supported leniency for heroin dealers is preposterous and insulting.

When you nominated Mr. Otis last year, FAMM broke its 27-year-long policy against taking a position on nominees to the Commission. We believed then, and continue to believe today, that Mr. Otis would damage the Commission’s ability to tackle initiatives in a collaborative and thoughtful way.

We do not wish to silence Mr. Otis and his views. Mr. Otis certainly has a place in the public policy debate on criminal justice policy. That place, we respectfully submit, is not one of the seven seats on the U.S. Sentencing Commission, where an openness to evidence and data is crucial. Please do not nominate him again.

Thank you for your consideration of our views.

Sincerely,

A handwritten signature in black ink that reads "Kevin A. Ring". The signature is written in a cursive, flowing style.

Kevin A. Ring
President
FAMM