

**Testimony of Monica Pratt Raffanel
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**Before the
United States Sentencing Commission
Public Hearing on
“The Sentencing Reform Act of 1984: 25 Years Later”**

**Atlanta, Georgia
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Thank you Chairman Hinojosa and Commissioners for inviting me to address you today. My name is Monica Pratt Raffanel and I am the Communications Director of Families Against Mandatory Minimums. FAMM is a national, nonprofit organization working for sentences that are individualized, humane and no greater than necessary to impose just punishment, secure public safety and support successful rehabilitation and reentry. FAMM does not oppose prison or punishment, but we believe the punishment should fit the individual and the offense.

I was born and raised in Georgia and live now in Lilburn, not too far from Atlanta. I began working at FAMM in 1993, spending 13 years in Washington, D.C. before moving back to Georgia to raise a family. My job at FAMM is first and foremost to convey the human face of the sentences imposed by mandatory minimums and by the sentencing guidelines that you write. I have been listening to prisoners and their family members tell me their stories for 15 years, and many of their accounts deeply trouble me because they describe families wrenched apart and lives forever altered by sentences that in many cases are unnecessarily long. I know the pain caused by that separation and loss, because I too have experienced what it is like to have a family member in prison.

When I was seven years old, my father was sentenced to a year in state prison for a drug-related offense. My stay-at-home mother struggled to support two young daughters, turning to family and friends for assistance while my father was incarcerated. At the time, she thought it best that I didn't know where my father was, fearing the shame and stigmatization I might face if other kids (and their parents) knew my father was in prison. I remember being very confused and very angry, thinking my father abandoned us.

With the help of a lawyer, my father was released after serving a few months in prison. I'll never forget walking in the door after school and seeing him sitting at the kitchen table. But even that short time in prison had a devastating effect on our family.

I'm sure my father struggled in prison, but I've always felt that my sister, mother and I served a far greater sentence than he – and it didn't end the day he came home. For years after his release, we lived in a house without heat, or hot water, thankful just for a roof over our heads. My father's conviction barred him from certain jobs and made it difficult for him to find steady work. When I was 12, my parent's marriage ended and for years I did not speak to my father because of my anger over his incarceration. Thankfully, we have a good relationship today, but it came at a high cost.

Working for FAMM and hearing from so many families over the years, I realize my family was somewhat "lucky" that my father only received a year in prison. Prison sentences of five, 10, 20 years and more are commonplace today, even for nonviolent, low-level offenders. I want to share with you today two stories about the harm of unduly long sentences on the families of two southern FAMM members.

Stephanie Nodd grew up in Mobile, Alabama. She became pregnant in ninth grade and dropped out of school to care for her child. Stephanie was barely 20 years old when she met John, a handsome drug dealer new to the city with lots of money. He showered her with compliments and promised to reward her generously for helping him set up in the area. Stephanie introduced John to people and local drug spots, sold crack to customers on the street and later delivered cocaine and picked up money for him. In return, John gave her cash; money which Stephanie, a single mother, needed to provide for her four young children. A little over a month after meeting John, Stephanie was arrested, charged and convicted as part of John's crack cocaine business, which operated in the Mobile area from July 1987 to August 1988.

According to her judge, "this defendant is not an organizer, she was not the boss of this operation. She was only a lieutenant. And I feel that because of her young age, she was influenced to a great extent by [John]." So he departed from the life sentence required by the then-mandatory guidelines, calculated using the relevant conduct guideline. She was held accountable for eight kilograms of crack cocaine handled by the organization. Stephanie, who had no adult criminal record, was 23 and pregnant with her fifth child when she sentenced to 30 years in federal prison a few days before Christmas of 1990.

Stephanie's family has served every day of that sentence. Her five children were raised by different relatives. Her mother cared for two and sometimes three of the eldest boys until her death in 2006. Stephanie's youngest son, William, was taken in by his father's grandmother and after her death, by his father. Elizabeth, the youngest, stays with Stephanie's sister. The children can only see Stephanie twice a year. Until her grandmother's funeral, Elizabeth had never seen Stephanie outside prison walls.

Stephanie's long incarceration and the children's separation and dislocation have taken their toll. Her two oldest boys, Marquise and Timothy, are both incarcerated.

While in prison, Stephanie has earned her GED and taken college courses, obtained her forklift license, culinary certification, graduated from computer programming, and completed many other programs.

There is no justification for condemning Stephanie and her family to prison for 30 years, but that is the unconscionable consequence of the crack cocaine penalty structure and relevant conduct on this first-time offender. Had she been sentenced as if her crime involved powder cocaine, she would have left prison more than seven years ago. Stephanie has eight more years to serve on her federal sentence.

Ricky Minor's life, at the time he was convicted of attempt to manufacture methamphetamine, was a mess. Born and raised in Niceville, Florida, he began using drugs at the age of thirteen and graduated to cocaine shortly after he turned 20. He sold some drugs to support his own addiction and repeatedly got into trouble with the law. Despite his troubles, he managed to open and run a small business and, in 1994, got married. He and his wife raised her two children and had a child of their own. But Ricky struggled with addiction and depression and was hospitalized on one occasion after threatening to kill himself. He became addicted to methamphetamine after trying to shake his drug habit in 1998.

In 2000, acting on a tip, police found methamphetamine residue, 1.2 grams of methamphetamine and pseudoephedrine pills in Ricky's house. The DEA estimated that 191.5 grams of methamphetamine could have been produced from the pills.

Ricky pled guilty and, though he had never spent a day in prison, was sentenced by reluctant Judge Roger Vinson to life in prison as a career offender. (His sentence under the

guidelines would have reflected a three-level reduction for acceptance of responsibility. At level 31 with 6 criminal history points it would have been 135 to 168 months – still a lengthy sentence but with the chance of return). He completed the 500-hour drug abuse program and today is proudly sober. He has excelled in prison classes, and is a changed person.

But after his incarceration his family fell apart. He and his wife divorced. His wife abandoned their daughter, who is now a teenager and cared for by her elderly grandparents, who live on a fixed income. His stepdaughter is unmarried, unemployed, and trying to care for two children. His stepson died of a drug overdose. Ricky writes compellingly about the mistakes he made and the clarity he has for the first time in his adult life as a sober person. He will never leave prison, however, to help his elderly parents or guide his daughter into adulthood.

Michael Short, whose sentence was commuted by President George Bush last year, testified to the Judiciary Committee Subcommittee on Crime shortly after his commutation and said “there is a point beyond which the lessons that could be learned and the punishment that could be extracted are well past – they are lost. And beyond that point it makes no sense to warehouse those humans.”

He is right. Not only because there is no benefit to keeping people who have been adequately punished locked up, but also because of the harm it causes their children and communities.

American taxpayers spend almost \$5.4 billion on federal prisons annually.¹ While some criminologists credit incarceration with 20 to 25 percent of the national crime decline, the

¹ U.S. DEP’T OF JUSTICE, FY2008 BUDGET AND PERFORMANCE SUMMARY, *available at* http://www.usdoj.gov/jmd/2008summary/pdf/127_bop.pdf (last visited Feb. 10, 2009). As of June 2008, the annual cost of incarceration was estimated at \$24,922 per prisoner. Annual Determination of Average Cost of Incarceration, 73 Fed. Reg. 33853 (Dep’t of Justice, Bureau of Prisons June 13, 2008), *available at*

relationship between incarceration and crime rates is rather more complicated. According to The Sentencing Project, in the 1990s, “a time of historic declines in crime, there was no discernable correlation between incarceration rates and criminal offending. Between 1991 and 1998, states with above average increases in the rate of incarceration (72 percent) experienced a 13 percent decrease in crime rates. But states with below average increases in the rate of incarceration (30 percent) actually experienced a greater decline in crime rates, 17 percent.”² Certainty of punishment, not its severity, is the chief contributing factor to deterring crime. Moreover, the destruction to the family carries significant financial and social costs, as illustrated in the stories of Stephanie’s and Ricky’s children.

In the federal system alone, 123,800 parents (63 percent of the men and 55 percent of the women) of 279,100 children under 18 were incarcerated in 2007.³ Of the parents in federal prison in 2004, 67.2 percent had been the primary financial supporters of their minor children and 73 percent of them had supported their children with earned income.⁴ Racial disparity in sentencing outcomes affects children as well: a black child is seven and one half times more likely to lose a parent to incarceration.⁵

<http://www.thefederalregister.com/d.p/2008-06-13-E8-13265> (last visited Feb. 10, 2009). There are currently 188,603 federal prisoners (excluding those in halfway house and other facilities). U.S. DEP’T OF JUSTICE, BUREAU OF PRISONS, WEEKLY POPULATION REPORT (Feb. 5, 2009), *available at* http://www.bop.gov/locations/weekly_report.jsp (last visited Feb. 10, 2009).

² THE SENTENCING PROJECT, “Do More Prisoners Equal Less Crime? A Response to George Will” (June 2008) *available at* http://www.sentencingproject.org/Admin/Documents/publications/will_overall%20response.pdf, (last visited Feb. 10, 2009).

³ Lauren E. Glaze & Laura M. Maruschak, *Parents in Prison and Their Minor Children*, at 2 (U.S. Department of Justice, Bureau of Justice Statistics, Special Report, NCJ 222984, August 2008), *available at* <http://www.ojp.usdoj.gov/bjs/pub/pdf/pptmc.pdf> (last visited Feb. 10, 2009).

⁴ *Id.* at 17.

⁵ *Id.*

Maintaining family ties while incarcerated is profoundly difficult. Children lose daily contact with the incarcerated parent and many lose contact altogether. In the federal system in 2004, 45 percent of parents reported never having a personal visit from their children, and 8.8 percent have no contact whatsoever.⁶ A significant contributing factor to the lack of visits appears to be the distance at which parents in federal prisons are incarcerated. The federal Bureau of Prisons houses 83.6 percent of parents more than 100 miles from home (42.4 percent are housed more than 500 miles from home).⁷

Children of incarcerated parents are more likely than their peers to leave school, become delinquent and end up incarcerated themselves.⁸ Of the parents incarcerated in state prisons in 2004, 25 percent reported that one of their parents had also been incarcerated.⁹

I am here today, on behalf of all the families from the southern states with incarcerated spouses and parents in federal prison, to urge you to take steps to ensure that the guidelines promote sentences that are, as required by federal law, no greater than necessary to comply with the purposes of punishment.

We especially ask you to do the following:

1. Urge Congress in the strongest possible terms to end **mandatory minimum sentencing**. Ricky is serving life in prison as a career offender under 21 U.S.C. § 841. His guideline

⁶ *Id.* at 18.

⁷ THE SENTENCING PROJECT, *Incarcerated Parents and Their Children: Trends 1991-2007* at 8, available at http://www.sentencingproject.org/Admin/Documents/publications/inc_incarceratedparents.pdf (last visited Feb. 10, 2009).

⁸ D.H. Dallaire, "Incarcerated Mothers and Fathers: A Comparison of Risks for Children and Families," *Family Relations*, 56(5), 440-453 (2007), reprinted in THE SENTENCING PROJECT, *Incarcerated Parents and Their Children: Trends 1991-2007*, at 1, available at http://www.sentencingproject.org/Admin/Documents/publications/inc_incarceratedparents.pdf, (last visited Feb. 10, 2009).

⁹ Glaze & Marushak, *supra* note 3, at 7. They do not report comparable figures for federal prisoners

range would have been 135 to 168 months. Mandatory minimums often result in unduly long sentences. They are a chief contributor to the undue length of many guideline sentences indexed to them, and they utterly undermine the mandate of individualized consideration, proportionality and parsimony in 18 U.S.C. § 3553 (a) The Commission has made a tremendous contribution by making its considered opinion that mandatory minimums do not belong in our criminal justice system known to Congress and the public. It would do all a service by updating the outstanding report on mandatory sentencing produced in 1991 and though well out of date, still referred to and conveying a renewed message to Capitol Hill that such sentences should be ended.

2. **Extend the two-level reduction for crack cocaine to all guidelines anchored to mandatory minimums.** This is a step you can take now that will lower sentences while maintaining the relationship between statutory minimums and guideline ranges. The founding Commission’s decision to correlate the guidelines with the mandatory minimums and index the guideline starting point above the mandatory minimums provided for even longer guideline sentences than those called for by Congress. This twin attack on drug offenses caused the unprecedented and disproportionate incarceration of first-time and low-level drug offenders,¹⁰ characterized by the American Bar Association’s Kennedy Commission as “far beyond historical norms.”¹¹
3. **Honor the 25th anniversary of the Sentencing Reform Act by complying with its unrealized directives.** For example, the Commission should review the guidelines with an eye to lowering those sentencing ranges that have generated continued concern with their undue length and severity of punishment in certain cases. The Sentencing Reform Act provides a variety of tools that the Commission can use to do this.
 - 29 U.S.C. § 994(g) provides that “[t]he sentencing guidelines prescribed under this chapter shall be formulated to minimize the likelihood that the Federal prison population will exceed the capacity of the Federal prisons, as determined by the

¹⁰ U.S. SENTENCING COMMISSION, FIFTEEN YEARS OF GUIDELINE SENTENCING: AN ASSESSMENT OF HOW WELL THE FEDERAL CRIMINAL JUSTICE SYSTEM IS ACHIEVING THE GOALS OF SENTENCING REFORM at 49, 5 (figure 2.7), and iv (2004) (where the Commission states that under the Guidelines sentences have been made “more severe” and lengths of imprisonment have “climbed dramatically.”).

¹¹ AMERICAN BAR ASSOCIATION, JUSTICE KENNEDY COMM’N, REPORTS WITH RECOMMENDATIONS TO THE ABA HOUSE OF DELEGATES, at 38 (Aug. 2004), *available at* http://sentencing.typepad.com/sentencing_law_and_policy/files/JusticeKennedyCommissionReports-11Aug2004.pdf (last visited Feb. 10, 2009). The report also shows, by a comparison to states’ guideline systems, that the federal guidelines are unique in accomplishing an *increase* in the severity of sentencing. Thus, the over-incarceration wrought by the federal sentencing guidelines is a problem with the administration of the guidelines, not the guidelines as a system. This is a problem that can be fixed.

Commission. The Department of Justice indicates that during 2007, the federal system operated at 37 percent above its rated capacity and the prisons appear to have been overcrowded for many of the years the guidelines have been in effect.¹²

- 28 U.S.C. § 994(j) directs the Commission to “insure that the guideline reflect the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first offender who has not been convicted of a violent crime or an otherwise serious offense”
- 28 U.S.C. § 994(o) provides the Commission broad authority to use the sentencing decisions, especially departures and variances, as well as “comments and data coming to its attention” to inform guideline revisions, including those that would lower guidelines. Many of the sentences called for by the guidelines have been sharply criticized over the years, in judicial opinions and by criminal justice experts, for being unduly harsh and the guidelines themselves for being too complicated. Engaging the feedback mechanism envisioned by the Sentencing Reform Act in a meaningful way could do a great deal to ameliorate what many see as unjust sentences called for in the guidelines.

We look forward to working with the Commission as it considers its work on the guidelines. Thank you.

¹² HEATHER C. WEST & WILLIAM C. SABOL, DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2007, at 7 (Dec. 2008), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/p07.pdf> (last visited Feb. 10, 2009).