

FAMMMGram

Sentences that fit. Justice that works.

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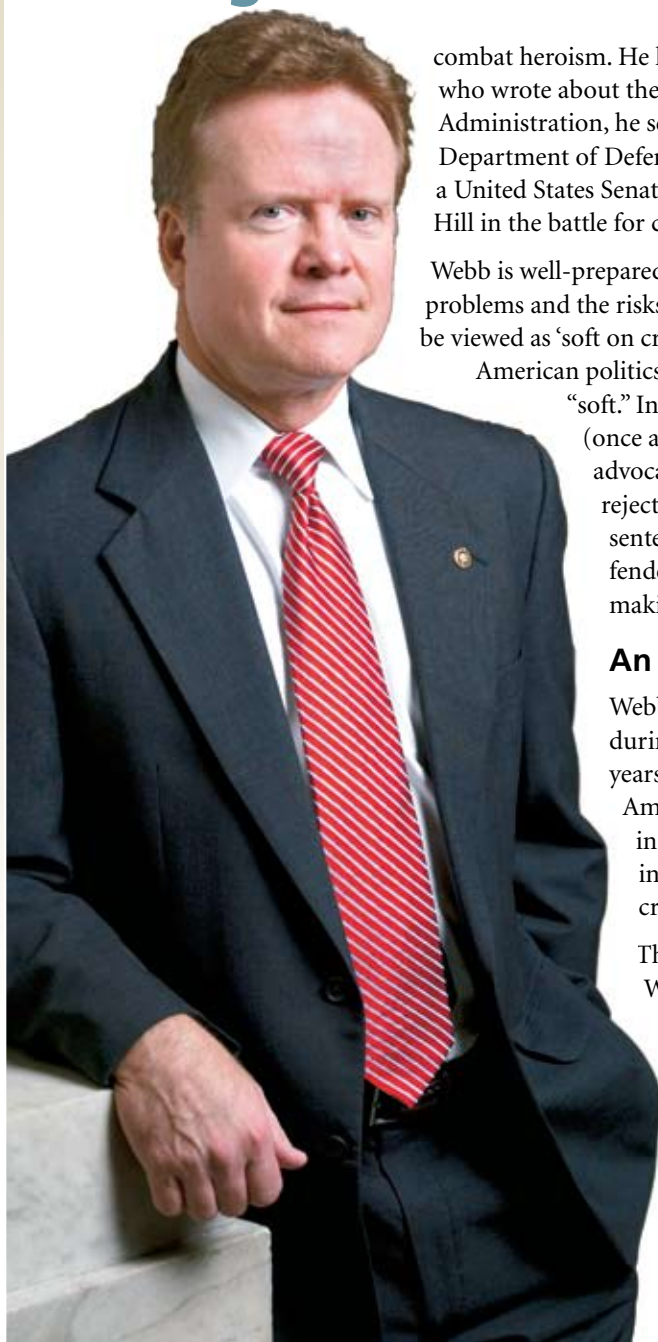
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FAMM SPOTLIGHT:

Jim Webb

An Agent for Change



SENATOR JIM WEBB is not one to shy away from a fight. As a Marine during the Vietnam War, he received the nation's second- and third-highest awards for

combat heroism. He later became an author and journalist who wrote about the hardships of war. And, during the Reagan Administration, he served as an Assistant Secretary of the U.S. Department of Defense and Secretary of the Navy. Today, he is a United States Senator from Virginia and a leader on Capitol Hill in the battle for criminal justice reform.

Webb is well-prepared for the battle. He understands the problems and the risks of his mission. As he once wrote, "To be viewed as 'soft on crime' is one of the surest career-killers in American politics." But no one would ever call Jim Webb "soft." Instead, his colleagues recognize that Webb (once a Republican and now a Democrat) is an advocate for "smart on crime" initiatives. He rejects the mindless addiction to long prison sentences as the "answer" for every criminal offender and argues that mass incarceration is not making the country any safer.

An education in Japan

Webb's interest in prison reform was sparked during his time as a journalist. Twenty-five years ago, Webb became one of the first American reporters allowed access to the inner workings of Japan's prisons. He was intrigued by the Japanese focus on reducing crime, not merely incapacitation.

The incarceration statistics alone convinced Webb that something was broken at home.

Whereas Japan's population was one-half the size of America's, its prison population was just 1/20th the size. Webb has said, "There are only two possible con-

IT'S 2010. Is it just me or does 2010 sound very space age? Shouldn't we be zooming around in little aero-cars by now like they did on the 1960s TV show the Jetsons? Shouldn't we have found the cure for cancer, figured out how the world can feed itself, learned how to get along with all nations, and finished with the absurd criminological experiment of mandatory sentences?

Okay, maybe we're not that far into the space age but we're gaining on it. At least the trend of over-punishing people we're mad at is beginning to go out of style. It's making its exit partly because states can no longer afford to incarcerate every person who breaks a law, and partly because people are beginning to question the wisdom of the strategy.

One of the people responsible for this public awakening is Senator Jim Webb (see cover). From his bully pulpit as a U.S. Senator, former Marine, former Republican, and author of nine books, he can command the cover of *Parade Magazine* with its circulation of 33 million readers. In the March 29, 2009 issue of *Parade*, Webb told those millions that "America's criminal justice system...is a national disgrace...We are wasting billions of dollars and diminishing millions of lives." Amen. Webb has no personal incentive to take up this unpopular cause. He is one of the rare elected officials who is willing to fight for what he believes, regardless of consequences.

Thankfully, there are others in Congress and in state houses across the country who share Webb's desire to reform the criminal justice system, and their numbers are growing. FAMM works with many of them, including those you'll read about in this issue: long-time champion Congressman Bobby Scott (D-Va.) and Sen. Richard Durbin (D-Ill.) (see page 3),

Massachusetts Sens. Therese Murray and Cynthia Creem, and a number of New Jersey Senators and Assemblymen (see page 10). In every state where sentencing reform is achieved, there are legislators who deserve credit. They may not have Sen. Webb's national bully pulpit, but they are chipping away at laws that over-punish and they are moving us closer to the tipping point that will end this punitive criminological experiment.



Julie Stewart

Let's work together in 2010 to expedite that process. Let's turn 2010 into our space age year where we move beyond the outdated policies of the past!

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Since 1991

Mission: FAMM is the national voice for fair and proportionate sentencing laws. We shine a light on the human face of sentencing, advocate for state and federal sentencing reform, and mobilize thousands of individuals and families whose lives are adversely affected by unjust sentences.

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FAMM

celebrates year of firsts

THE YEAR 2009 will be known as a year of “firsts.” Unlike other years, when a single achievement outshines all others, the past year was marked by a number of firsts that suggest significant sentencing reform is on the way. As always, FAMM was on the forefront of many of these efforts.

Obama Administration backs equal cocaine sentences.

In March, the U.S. Department of Justice (DOJ) announced that it opposed the disparity between crack and powder cocaine sentences. The new head of the DOJ’s criminal division, Lanny Breuer, told Congress that the new Administration supports equal sentences. This public expression of support by the Obama Administration had an immediate impact on Congress, prompting another of the year’s firsts.

Crack cocaine reform legislation on Capitol Hill. For the first time since the crack and powder cocaine disparity was created, a congressional committee acted to eliminate it. Legislation to eliminate the disparity, authored by Rep. Bobby Scott (D-Va.) and supported by FAMM, was approved by the full House Judiciary Committee in July. A Senate bill to eliminate the cocaine disparity was introduced in the Senate by Sen. Richard Durbin (D-Ill.), joined by 10 other fair-minded senators.

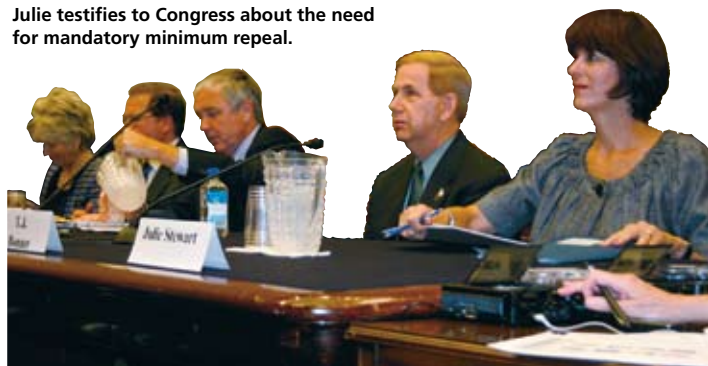
Congress confronts mandatory minimums head-on. The U.S. House Judiciary Subcommittee on Crime, Terrorism and Homeland Security in July approved a bill championed by FAMM to eliminate the “mandatory” part of mandatory minimum penalties. The committee vote marked the first time in over 30 years that Congress has pushed forward a bill that would do away with mandatory sentencing. FAMM was excited to have the opportunity to move from defense to offense and to begin the push for repeal.

Conservatives take up the cause. Another important first did not involve legislation, but was just as

significant to the cause of reform. In 2009, well-known national conservative leaders testified in Congress with FAMM president Julie Stewart against mandatory minimums. The conservative Americans for Tax Reform President Grover Norquist expressed opposition to mandatory minimums, saying, “Questioning the wisdom of mandatory minimums has nothing to do with being soft on crime. ... But the government has a responsibility to use taxpayer money wisely. ... I have concluded that mandatory minimum sentencing policies are not worth the high cost to America’s taxpayers.”

FAMM has long believed that real reform is going to take a bipartisan effort. The recent support from right-leaning policy leaders is very encouraging.

Julie testifies to Congress about the need for mandatory minimum repeal.



States embrace smart on crime sentencing. The past year also saw great strides made at the state level. In New York, the legislature and governor worked together and repealed the harsh mandatory minimums that applied to drug crimes. These laws, known as the Rockefeller Drug Laws, once represented the nation’s most punitive response to drug crime. Rhode Island also made history by passing landmark legislation repealing mandatory minimums for nonviolent drug offenders.

FAMM led a strong effort for reform in Massachusetts. Legislation to expand parole eligibility for nonviolent drug offenders, many of whom are barred from applying for parole because of mandatory minimum sentencing laws, was drafted, introduced, and then passed by the Massachusetts Senate. FAMM worked hand-in-hand with the bill’s sponsors and supporters at every stage. In New Jersey, FAMM’s multi-year fight to reform inflexible mandatory minimums for drug-free school zone offenses finally achieved success when the Senate passed legislation to alter the laws in December.

All of these firsts position FAMM to create lasting change in 2010. **FG**

Left: Support for sentencing reform grew in Congress and among conservatives in 2009. L to R: Grover Norquist, Julie Stewart and Rep. Ted Poe (R-Texas).





CONTINUED FROM PAGE 1

clusions to draw about our country's present approach to criminal justice: Either we are home to the most evil population on earth, or we are locking up a lot of people who really don't need to be in jail." Webb says the latter explanation is clearly correct and that it is time for public leaders to do something about it.

FAMM president Julie Stewart meets with Sen. Jim Webb to discuss the National Criminal Justice Commission.

A national commission for change

Webb's proposal for reform – a bill that creates a national commission comprised of criminal justice experts – is a brilliant way to engage even the most cautious members of Congress in a dialogue that has the potential to create the conditions for real reform. Webb has already gained bipartisan support for his bill, and one-third of the Senate has cosponsored it. More than one hundred organizations have been consulted and support the bill. They include such diverse groups as the Fraternal Order of Police, the ACLU, Prison Fellowship, the American Probation and Parole Association, the Sentencing Project, the National District Attorney's Association and, of course, FAMM.

The National Criminal Justice Commission would be charged with examining all aspects of the nation's criminal justice system. Its members would be selected by both Democratic and Republican political leaders in Washington and in the states. The commission would not simply identify the shortcomings of the current system, but would also be tasked with writing a report that includes concrete recommendations for reform.

Webb's proposal has deep roots in prior successful commissions. In the 1960s, both Presidents John F. Kennedy and Lyndon Johnson established commissions to study issues related to drug abuse and crime. These presidential panels concluded that long prison sentences did not deter drug users, that rehabilitation should be a primary objective for the government, and that courts should have wide discretion to deal with drug criminals.

Within a few years after President Johnson's commis-

sion issued its report, Congress passed a major anti-crime bill that implemented both of the commissions' recommendations by emphasizing rehabilitation for drug users and providing better tools for law enforcement in the fight against drug trafficking. Most notably, the bill eliminated almost all federal mandatory minimums and replaced them with a more balanced scheme of penalties for drug crimes.

A vehicle for criminal justice reform

FAMM is hoping history will repeat itself. The bill has gone through a number of changes since it was first introduced, but the fundamental goal of the bill – a call to reassess our criminal justice system – remains. In its current form, the commission has the potential to create conditions from which good things may flow for sentencing and for other areas of the criminal justice system.

FAMM is dedicated to this effort because we realize that any examination of criminal justice reform will necessarily include a thorough review of sentencing. After all, the use of long, mandatory sentences is one of the biggest causes of skyrocketing prison populations. Thus, the Webb bill gives sentencing reform advocates like FAMM a tremendous platform to better educate the public and its elected representatives about the need for substantial changes.

"Either we are home to the most evil population on earth, or we are locking up a lot of people who really don't need to be in jail."

— SEN. JIM WEBB

The commission bill proposed by Sen. Webb is also important because it calls for both federal and state reform ideas. As FAMM's work in many states has made clear, the lack of proportionate sentencing is a national crisis.

The Webb bill gives FAMM an opportunity to work on parallel tracks for reform. On one track, FAMM continues to push for targeted reforms that will result in immediate change. For example, FAMM is fighting hard to eliminate the disparity between crack and powder cocaine sentences and is committed to targeted mandatory minimum reforms such as those included in H.R. 3327, The Ramos-Compean Justice Act of 2009, introduced by Representatives Robert "Bobby" Scott (D-Va.) and Ted Poe (R-Texas). The Webb bill opens another track for reform – one that might take a little longer, but that could ultimately lead to the repeal of mandatory minimum sentences. **FG**

Your role in reform

EACH YEAR, FAMM receives hundreds of calls, emails and letters from prisoners, family members, and other people who want mandatory minimum sentencing reform. “What can I do to help?” is one of the top questions we hear.

Believe it or not, one of the most important things you can do to bring about change is to build relationships with your federal and state lawmakers. Lawmakers listen to their constituents, which is what you are if you live in their district and are a U.S. citizen. You can help federal and state lawmakers understand the injustice of mandatory sentences by writing, calling, emailing, and/or meeting them.

These interactions get your views across to the people who make the decisions and policies that affect your life. Just a dozen calls or letters from different constituents on a particular issue are enough to get the attention of a lawmaker.

Consider that there are over two million people in prison in the United States, many of whom are serving mandatory minimums. That means there are millions more family members and friends on the “outside” who could influence the lawmakers responsible for creating or changing these sentencing policies. With those kinds of numbers working for sentencing reform, change could come a lot faster for our families and incarcerated loved ones.

It’s easier than you think to build relationships with lawmakers. All you need to do is identify who they are, obtain their contact information, and start communicating with them. FAMM makes it easy to know what to say by providing action alerts and talking points on bills and important developments on our website, www.famm.org, and through our email list, which you can join by emailing famm@famm.org.

How do I find the names of my federal lawmakers in the U.S. Congress?

Use FAMM’s online action center at <http://capwiz.com/famm/dbq/officials/> or go to www.senate.gov to look up the names of your United States senator and to www.house.gov to find your U.S. representatives.

Ask the librarian at your local library to help or call FAMM at (202) 822-6700.

Call the U.S. Capitol operator at (202) 224-3121 and give the operator your zip code.

How do I contact my federal lawmakers in Congress?

Write your U.S. senators at:

The Honorable [insert name]
United States Senate
Washington, DC 20510

Write your U.S. representatives at:

The Honorable [insert name]
U.S. House of
Representatives
Washington, DC 20515

Call your federal lawmak-

ers in Washington through the U.S.
Capitol operator at (202) 224-3121.

Email your federal lawmakers by using

FAMM’s Action Center [http://
capwiz.com/famm/dbq/officials/](http://capwiz.com/famm/dbq/officials/).

How do I find the names of my state lawmakers? How do I contact them?

Use FAMM’s online Action Center at

<http://capwiz.com/famm/dbq/officials/>
for a listing of state legislative websites.
Scroll down to the U.S. map and click
your state.

Ask the librarian at your local library to help,
or call FAMM at (202) 822-6700.



“What can
I do
to help?”

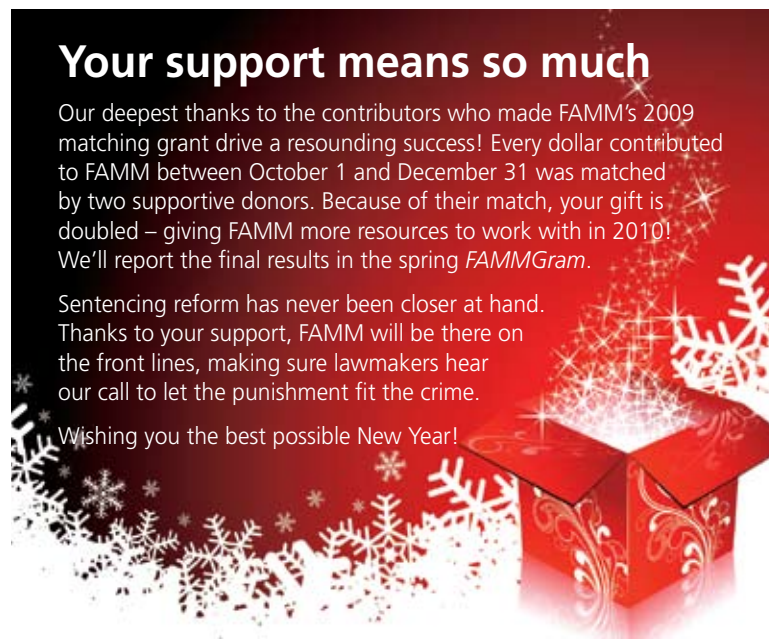


Your support means so much

Our deepest thanks to the contributors who made FAMM’s 2009 matching grant drive a resounding success! Every dollar contributed to FAMM between October 1 and December 31 was matched by two supportive donors. Because of their match, your gift is doubled – giving FAMM more resources to work with in 2010! We’ll report the final results in the spring *FAMM Gram*.

Sentencing reform has never been closer at hand. Thanks to your support, FAMM will be there on the front lines, making sure lawmakers hear our call to let the punishment fit the crime.

Wishing you the best possible New Year!



Sentencing Commission to report on mandatory minimum sentencing

NEARLY 20 YEARS after its groundbreaking report condemning mandatory minimum sentencing, the United States Sentencing Commission will publish a new mandatory minimum report in 2010. While the Commission has made a mandatory minimum report one of its potential priorities for the last several years, it was a directive from Congress that moved the completion of the report to the forefront. Congress directed the Commission to produce the report, which would, among other things, assess:



Judge William Sessions III

the effect of federal mandatory minimums on the goal of eliminating unwarranted sentencing disparity;

- the compatibility of mandatory minimums and advisory guidelines;
- the interaction between mandatory minimums and plea agreements; and
- mechanisms, other than mandatory minimums, that the Commission can use to address sentencing policy.

FAMM is looking forward to the report and will

encourage the Commission to reiterate its strong opposition to mandatory minimums and refrain from making recommendations that would undermine the current advisory guideline system.

Leading the effort is the Commission's new chair, Judge William K. Sessions, III, who was confirmed on October 29 and will serve until the end of the current Congress in 2010. Judge Sessions has served the Commission as a vice chair since he joined the body in 1999. He has been a strong champion for crack cocaine sentencing reform. Judge Sessions is the Chief Judge of the District of Vermont.

The Commission has sponsored a series of regional hearings designed to mark the 25th anniversary of the Sentencing Reform Act of 1984 and to review and evaluate federal sentencing policy. They end in January with a final hearing in Phoenix, Arizona (January 20-21). Testimony from judges and practitioners has strongly endorsed the advisory guideline system, while condemning mandatory minimums. To view testimony from the hearings, visit the Sentencing Guidelines page on www.famm.org.



Rumor mill

CHANGE IS COMING, but, sadly, not as fast as any of us would like. Here are some of the rumors that we wish were true, but are not. For up-to-date, accurate information about pending legislation affecting mandatory mini-

mums and sentencing, please see our website, www.famm.org. If you have any questions about rumors you have heard, please call FAMM at (202) 822-6700 for more information.

Good time rumors

While legislation has been introduced that would affect good time credit – H.R. 1475, the Federal Prison Work Incentive Act of 2008 and H.R. 61, the Federal Prison Bureau Nonviolent Offender Relief Act of 2009 – neither bill is scheduled to be heard by the House Judiciary Committee and neither has a counterpart introduced in the Senate. In other words, neither bill is near becoming law.

Crack cocaine rumors

There are many rumors about crack cocaine legislation. None of the bills dealing with crack cocaine reform have been voted on by the entire House or Senate, much less been signed by the President. We do not know when the bills will be considered by Congress. For details on the leading bills, please see page 7.

Federal parole rumors

No bill to reinstate federal parole has been introduced.

Cracks forming in cocaine sentencing disparity

THIS OCTOBER, Congress took another step toward equalizing the sentencing disparity between crack and powder cocaine, an injustice that has marred our criminal justice system for more than two decades. On October 15, 2009, Senator Richard Durbin (D-Ill.), joined by 10 other senators, introduced S. 1789, the Fair Sentencing Act of 2009. The Fair Sentencing Act would:

- Equalize the amount of crack and powder cocaine required to trigger mandatory minimums: 500 grams will require five years, and five kilograms will require 10 years, no matter what form of cocaine is involved;
- Eliminate the five-year mandatory minimum for simple possession of crack cocaine;
- Call for increased penalties and emphasis on mitigating and aggravating factors, including enhancements for drug offenses involving vulnerable victims, violence, and other aggravating factors; and
- Require a report on the effectiveness of federally-funded drug courts.

Sen. Durbin (D-Ill.) gave this statement when he introduced the bill: "Drug use is a serious problem in America and we need tough legislation to combat it. But in addition to being tough, our drug laws must be smart and fair. Our current cocaine laws are not. The sentencing disparity between crack and powder cocaine has contributed to the imprisonment of African Americans at six times the rate of whites and to the United States' position as the world's leader

in incarcerations. Congress has talked about addressing this injustice for long enough; it's time for us to act."

S. 1789 is similar to H.R. 3245, the Fairness in Cocaine Sentencing Act of 2009, introduced in the House by Representative Robert "Bobby" Scott (D-Va.). Like the Senate bill, Scott's proposal would eliminate the 100-to-1 disparity, treating crack and powder cocaine the same for punishment purposes. Unlike S. 1789, the House bill does not call for increased emphasis on mitigating and aggravating factors nor does it require a report on the effectiveness of federally-funded drug courts.



Neither bill is retroactive, meaning neither proposal would apply to most people sentenced before the

bills become law. FAMM believes that any bill should apply to those in prison, as well as those yet to be sentenced. We will fight to make the proposed legislation retroactive, as we successfully fought to make the sentencing guideline crack reduction retroactive.

Next steps toward change

You have helped move Congress closer than it has ever been to eliminating the cocaine sentencing disparity. There are a number of steps between where we are and where we need to go. Together we've come this far and together we will finish the job. Sign up to receive our ealerts that will help you let Congress know you want reform at www.famm.org.

New mandatory minimum signed into law

LAST OCTOBER, The President signed into law a new mandatory minimum as part of the National Defense Authorization Act. The law requires a six-month mandatory minimum when an individual knowingly assaults a U.S. servicemember because of the victim's service in the military, and that assault results in a bodily injury. FAMM fought the new mandatory minimum in this bill. Ironically, the same Act includes a directive to the U.S. Sentencing Commission to study the effect of mandatory minimum sentences. For more information about this provision, see page 6.



Your toolkit for legislative change.

Request FAMM's "Advocating for Change" guide to influencing law-makers and learn more about the legislative process. For a free copy, visit www.famm.org or email famm@famm.org.

Who calls the shots on crack?

Answers to your frequently asked questions

What's the difference between what is happening now and what happened two years ago with crack cocaine sentences?

Two years ago, on November 1, 2007, the U.S. Sentencing Commission changed the crack sentencing guidelines, shortening federal crack sentences by about 15 months, on average, for many people who were sentenced to a guideline sentence for a crack offense AFTER November 1, 2007. The change only affected crack guideline sentences, not the five- or 10-year mandatory minimum sentences. The Commission also allowed those who were sentenced for a crack offense BEFORE November 1, 2007 to ask the courts for a sentence reduction. These guideline changes did not change the mandatory minimum sentences and did not change the amount of crack cocaine it takes to trigger mandatory minimums.

Today, Congress is considering changing the crack mandatory minimums by equalizing the amounts of crack and powder cocaine that would trigger the five- and 10-year mandatory minimums. For details on these bills, see page 7. None of the crack bills in Congress have passed yet. Even if they are passed and signed into law by President Obama, none of these bills (as currently written) would benefit people who have already been sentenced for a crack offense when the bill goes into effect.



So, how do the Sentencing Commission and Congress interact when it comes to making sentencing policy?

For every crime, Congress sets a maximum sentence. Sometimes, Congress also sets a minimum punishment for that crime. Those minimum sentences are called “mandatory minimums.” Each time Congress creates a new criminal law, the Sentencing Commission writes a new sentencing guideline to help judges sentence people under that new law.

The Sentencing Commission’s main job is to write the sentencing guidelines, but it is also responsible for making changes (called “amendments”) to the guidelines. The Sentencing Commission typically acts every year to adjust some existing guidelines and write new guidelines for new crimes. This is the timeline for how guidelines are amended by the Sentencing Commission:

MAY 1: The Commission suggests guideline changes, known as “amendments,” and notifies the public and Congress.

MAY 2 – OCTOBER 31: Anytime during this period, Congress can reject the guideline amendments by a majority vote in the Senate and House of Representatives.

NOVEMBER 1: If Congress does not reject the guideline amendments, they go into effect. The changes automatically apply to everyone sentenced AFTER November 1 of that year.

AFTER NOVEMBER 1: The Commission decides whether to make amendments that lowered guideline sentences apply to people who were sentenced BEFORE the change went into effect on November 1. This is called making an amendment “retroactive.”

How often are changes to the guidelines made retroactive?

Very few guideline amendments are made retroactive. Guideline amendments cannot help people sentenced before November 1 unless the Sentencing Commission makes them retroactive.

Even when the Sentencing Commission makes an amendment retroactive, it does not automatically help people sentenced before November 1. First, they must file a motion under 18 U.S.C. § 3852(c) in the court that sentenced them and ask the court to apply the new guidelines amendment to their cases and reduce their sentences. The prosecution may agree with a reduction or may oppose the motion. It is entirely up to the court to grant a reduction.

Who decides whether changes to mandatory minimum laws are made retroactive?

If Congress changes laws so that mandatory minimum sentences are reduced, Congress decides whether the shortened sentences will be retroactive. Congress rarely shortens sentences and almost never makes shorter sentences retroactive. Usually, when Congress changes a law and shortens a sentence, the changes apply only to people who commit their crimes AFTER the new law goes into effect.

As they are currently written, none of the crack bills pending in Congress would benefit people who are already in prison for a crack offense. But if a crack reform bill does become a law, FAMM will fight to make it retroactive! **FG**

Massachusetts Senate passes parole eligibility bill

MASSACHUSETTS took yet another historic step towards mandatory minimum sentencing reform on the last day of the state legislature's 2009 session. The Senate passed by a vote of 26 to 12 a sentencing reform bill that includes parole eligibility for drug offenders serving mandatory minimums.

The bill, S. 2220, includes the version of parole eligibility that FAMM originally proposed. State prisoners would be able to apply for parole after serving two-thirds of their minimum sentence, while county prisoners would be able to apply after serving one-half of their sentence. Unlike previous versions of the bill where parole eligibility was based on the maximum sentence, all drug offenders who are serving mandatory minimums could apply for parole. In addition, drug offenders could also apply for work release programs.

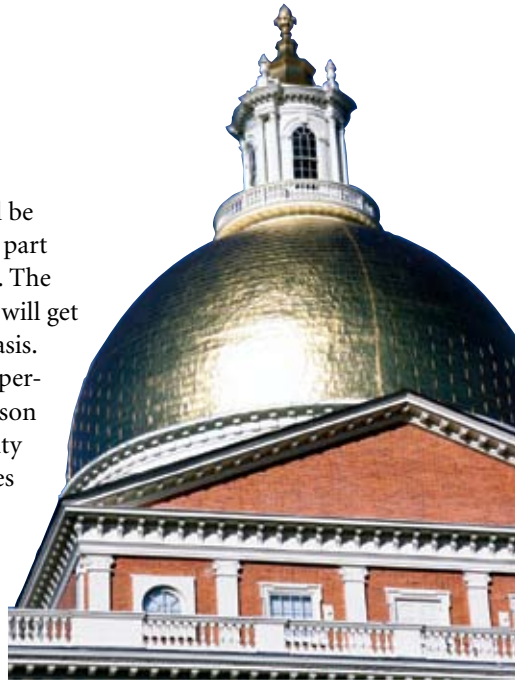
What the bill does – and doesn't – do

It is important to keep in mind that if the bill is signed into law, it would let prisoners apply for parole and work release. It doesn't

guarantee that anyone will be paroled or allowed to take part in a work release program. The Parole Board decides who will get paroled on a case-by-by basis. As for work release, the superintendent of each state prison or the sheriff of each county House of Correction makes that decision.

Unfortunately, the bill did not include changes to the law on earned "good time" credits. If the bill passes, drug offenders still could not earn "good time" during the mandatory part of their sentence. S. 2220 also addresses many other issues, such as CORI (criminal records) reform and mandatory post-release supervision. Please see our summary of the bill at www.famm.org.

In order for the bill to become law, the Massachusetts House of Representatives needs to pass it by July 31, 2010, the end of the 2009-2010 session. The Governor would then need to sign it into law.



FAMM's Massachusetts members did a terrific job of writing and calling their senators, asking them to vote for S. 2220, and then thanking those who did. We will again ask our members for their help in passing a parole eligibility/work release bill in the House. In addition to contacting lawmakers, there are many other activities that members can undertake to push for sentencing reform, such as inviting FAMM staff to speak at events or sending a letter to local newspapers. Please contact FAMM's Massachusetts Project for a list of ideas.

Sentencing reform heroes



Senate President Therese Murray, a Democrat from Plymouth, showed the kind of leadership skills needed to assemble a groundbreaking sentencing package and to bring it to a successful vote. We greatly appreciate her hard work.



Sen. Cynthia Creem, a Newton Democrat and Senate chairwoman of the Judiciary Committee, has been a long-standing champion of mandatory minimum reform. She again filed several sentencing reform bills this session, including the parole eligibility bill that led to the final version contained in S. 2220.

FAMM weighs in on other bills

IN ADDITION TO working for mandatory minimum sentencing reform, FAMM's Massachusetts project submits testimony in favor of other bills that would improve the state's drug sentencing policy. In 2009 we filed testimony in support of bills to expand the use of drug courts and to create an independent commission for prison oversight.

FAMM has also spoken out against the "three strikes" bill, H. 1423, which would require judges to impose the

maximum sentence for hundreds of felonies, including nonviolent property and drug crimes, if the defendant has been convicted twice before. Massachusetts already has a "habitual offender" law that gives prosecutors the ability to seek the maximum sentence when appropriate. Most notably, the three strikes bill could result in school zone offenders being sentenced to an additional 15 years in prison, resulting in sentences of 30 to 35 years, never before seen in Massachusetts.

Sentencing victory for NJ FAMM

IN A LEGISLATIVE victory for FAMM and sentencing reform supporters, New Jersey is steps away from giving courts discretion when sentencing some defendants under the drug-free school zone law.

FAMM's drug-free school zone reform bill, S-1866 was passed by the NJ Senate on December 10, 2009. The bill now must go back to the Assembly for a new vote. Gov. Jon Corzine has promised that he will sign sentencing reform legislation if it makes it through the legislature.

Senate Bill 1866, sponsored by Senator Raymond Lesniak (D-Union) and Senator Sandra Cunningham (D-Jersey City), is a companion bill to A-2762, legislation sponsored by Assembly Majority Leader Bonnie Watson

Coleman (D-Mercer) and Assemblyman Gordon M. Johnson (D-Bergen) and passed by the Assembly in June 2008.

Both S-1866 and A-2762 would allow the courts to waive or reduce parole ineligibility or place a defendant convicted of violating the drug-free school zone law on probation if they meet certain requirements. At sentencing in cases involving school zone charges, courts could consider the extent of the defendant's prior criminal record and seriousness of the offenses; the location of the zone offense; and the reasonable likelihood of exposing children to drug-related activities at that location.

FAMM helped lawmakers draft the language of the bill and FAMM members were instrumental in building legislative support for reform.

"New Jersey is becoming smart on crime. The Senate's vote today follows the national trend away from one-size-fits-all sentencing laws and is the most recent demonstration that state lawmakers are increasingly disenchanted with the ineffectiveness and high cost of mandatory minimum sentences for nonviolent, drug-related offenses," said Deborah Fleischaker, FAMM's director of state legislative affairs.

The current drug-free school zone law imposes a mandatory three-to-five year sentence for disturbing, dispensing or possessing with intent to distribute a controlled dangerous substance within 1,000 feet of a school. As a result of the law, the court must impose lengthy and costly mandatory minimum terms without considering other mitigating factors.

New Jersey's shift away from mandatory minimum penalties is part of a national trend that is rapidly gaining momentum. Over a dozen cash-crunched states have enacted significant sentencing reforms in the last decade. In New Jersey, it costs more than \$46,000 a year to incarcerate each prisoner, and the state spends roughly \$331 million a year just to incarcerate nonviolent drug offenders.



Rhode Island

Rhode Island removes mandatory minimums for drug crimes

FAMM praises Rhode Island lawmakers and advocates for their persistence in fighting for and winning the repeal of mandatory minimum sentences for nonviolent drug offenders.

The Rhode Island General Assembly passed S-039 and H-5007 on October 29, 2009. In November, with relentless advocacy from DARE (Direct Action for Rights and Equality) and other groups, the bills became law.

"Rhode Island lawmakers proved that political courage and smart policy are not mutually exclusive," said

Deborah Fleischaker, FAMM's director of state legislative affairs. "Lawmakers around the country, including those in Rhode Island, are recognizing that mandatory minimum practices are ineffective, waste taxpayer dollars, lead to excessive prison terms and strip individualization from sentencing decisions."

The legislation brings a close to more than two decades of harsh and excessive mandatory minimum drug sentencing in Rhode Island. The bills restore judicial discretion by eliminating mandatory minimum sentences for drug offenses and abolishing minimum fines of \$10,000 for smaller drug quantities and \$25,000 for larger amounts. Now, courts may determine the appropriate sentence for an individual by weighing the person's culpability through a thorough examination of the circumstances surround the case.

Florida

FAMM begins Florida campaign

For the past 11 years, Scott Earle has found little consolation in the fact that the judge who sentenced him declared, “This punishment does not fit the crime. We are not talking about a first degree murder...with a great deal of reluctance I will have to sentence the defendant [to] 25 years minimum mandatory.”

Earle began using, then abusing, painkillers after an injury. He later became a middleman between an illegal seller and a friend he was trying to help who turned out to be an undercover officer. Though Earle was a first-time, nonviolent offender who made no money from arranging others’ transactions, he was sentenced



Scott Earle and his mother on a visiting day in 2009.

to 25 years in prison under Florida’s mandatory minimum laws.

This is just one of the examples of the injustice of Florida’s mandatory minimum drug laws. Unfortunately, there are hundreds more like Scott Earle.

Florida has some of the most punitive mandatory minimum drug laws in the country. Florida law makes it a crime to knowingly buy, sell, manufacture, or bring certain drugs into the state, including marijuana and cocaine. Florida laws include a one-size-fits-all sentencing regime whereby offenders receive a mandatory minimum prison term based solely on the weight of the illegal drug involved in their offense (see table).

In Florida, the penalties possible (prison terms and fines) for drug trafficking crimes involving prescription drugs, including morphine, oxycodone, and hydrocodone are as follows:

Weight of prescription drug	Penalty
4 to 14 grams	3 years / \$50,000 fine
14 to 28 grams	15 years / \$100,000
28 grams to 30 kilograms	25 years / \$500,000
30 or more kilograms	life imprisonment without parole

FAMM’s task in Florida will be to create the support and momentum necessary to change the state’s mandatory minimum laws. As in most states with mandatory minimums, the laws have had no impact on reducing drug crimes but have contributed significantly to a burgeoning prison population. **FG**



FAMM needs your help in Florida!

We are excited to launch a new sentencing reform project in Florida, and we need your help to make it a success.

Please make a donation to FAMM’s Florida project by visiting www.famm.org or sending a check to FAMM’s headquarters in DC. Just put the words “Florida project” in the notefield or memo line of your check.

Thank you so much for your help!

State sentencing resources a click away

FAMM’s website has a new, interactive online map that provides hard-to-find state sentencing resources and information on our state campaigns. Click on any of the 50 states on the map and learn about the state’s sentencing structure, specific mandatory minimum sentences, and read helpful links. Check back



often for new information, as we will update the site continually as we research each state’s mandatory minimum laws.

Visit www.famm.org/StateSentencing.aspx.

The Star-Ledger December 11, 2009

Repeal of mandatory minimums in drug cases clears N.J. Senate

[New Jersey's sentencing changes] "follows the national trend away from one-size-fits-all sentencing laws and is the most recent demonstration that state lawmakers are increasingly disenchanted with the ineffectiveness and high cost of mandatory minimum sentences for nonviolent, drug-related offenses."

Deborah Fleischaker, state legislative affairs director

The Washington Post November 27, 2009

Op-ed: Turkeys, 2. Humans, 0.

As his daughters and others watched on Wednesday, President Obama followed long-standing tradition and pardoned two turkeys in honor of Thanksgiving Day. The 40-pound Butterballs, Courage and Carolina, were flown to California and will live out their days at Disneyland. Unfortunately, Obama has failed to follow another tradition of sitting presidents: granting clemency to humans.

Molly M. Gill, FAMM special projects director

The Washington Post October 16, 2009

Senate bill would eliminate cocaine sentencing disparity

"No institution stands in the way of crack cocaine changes. Every piece is in place to make this decades-past-due reform a reality."

Julie Stewart, FAMM president, discussing crack cocaine sentencing legislation before Congress.

THE WALL STREET JOURNAL

November 12, 2009

Sentencing Commission to assess mandatory sentences

"Certainly from FAMM's perspective, as much information as the commission can provide on the operation and impact of mandatory minimums can only help us better understand and advocate for their elimination."

Mary Price, FAMM vice president and general counsel

StarTribune November 24, 2009

Op-ed: Cocaine sentencing disparity must end

We hope Congress was listening Wednesday when the nation's top prosecutor, Attorney General Eric Holder, told the Senate: "There are few areas of the law that cry out for reform more than federal cocaine sentencing policy." Public safety has a price -- one that, for the most part, we are willing to pay. But when a bad sentencing policy locks up the wrong people for too long, alienates the public, and frustrates prosecutors and defense attorneys alike, it's time to take a hard second look and make some adjustments. In Holder's words, "the stakes are simply too high to let reform in this area wait any longer."

Pamela Alexander, a former Hennepin County district judge, is president of the Council on Crime and Justice and Julie Stewart is FAMM president

The Boston Globe November 18, 2009

Senate to take up crime records

"We've got too many people serving long prison sentences who don't need to be there, and the taxpayers are footing an enormous bill for this."

Barbara J. Dougan, Massachusetts FAMM project director

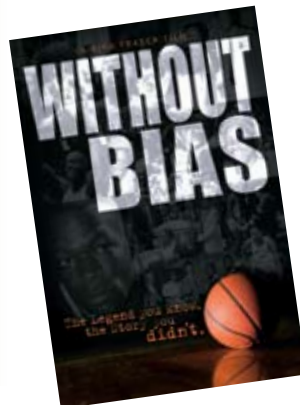
San Francisco Chronicle November 24, 2009

The law professor and the pardon power

"We had certainly hoped that by now President Obama would have used the pardon power," said Molly Gill of the sentencing-reform group Families Against Mandatory Minimums. "We are a little bit surprised and a little bit disappointed." **FG**

ESPN's Without Bias Highlights FAMM

In November, sports network ESPN premiered *Without Bias*, a documentary about basketball star Len Bias's rise to fame and tragic death from overdosing on cocaine. FAMM's Julie Stewart and Eric Sterling, a FAMM board member, are interviewed. Directed by Kirk Fraser, the documentary will rebroadcast in 2010. For more information, visit www.espn.com.



Supreme Court agrees to hear challenge to BOP “good time” calculation!

FOR MANY YEARS, prisoners, FAMM and others have asked the federal courts to strike down the way the federal Bureau of Prisons (BOP) awards good time credit to federal prisoners. Now a new Supreme Court case (*Barber v. Thomas*, No. 09-5201) challenges the way the BOP calculates good time credit.

The federal law, 18 U.S.C. § 3624(b), tells the BOP to award “up to 54 days at the end of each year of the prisoner’s term of imprisonment.” FAMM agrees with prisoners who argue that the phrase “term of imprisonment” means the sentence imposed and that any credit should be applied to the full sentence. So, a 10-year sentence should generate 540 days of good time credit. A prisoner with a 10-year sentence who does not lose any good time credit is entitled to see his sentenced reduced by the full 540 days. The BOP has always held that the term means “time served,” and refused to apply the credit to the sentence beyond the time served. The difference: seven days for every year of the imposed sentence, or only 470 days credit on a 10-year sentence.

The Supreme Court will answer two questions. First, does “‘term of imprisonment’ . . . unambiguously require the computation of good time on the basis of the sentence imposed” and “if ‘term of imprisonment’ in the federal good time statute is ambiguous, does the rule of lenity and deference appropriate to the U.S.

Sentencing Commission require that good time credits be awarded based on the sentence imposed?” FAMM will file a friend of the court (amicus) brief in the case in support of the prisoners’ arguments. The outcome of the case does not affect pending legislation in Congress. You can visit www.famm.org to find briefs, frequently asked questions, and other information to follow the case. See the Fall 2009 *FAMM Gram*, p. 13, for a discussion about FAMM’s amicus brief asking the Supreme Court to review the case. A decision in the case is expected by June 30.

FAMM filing amicus on weapons issue

In *United States v. O’Brien and Burgess*, No. 08-1569, the Supreme Court will consider whether a federal 30-year mandatory minimum sentence for machine gun possession can be imposed solely on the judge’s finding of the gun by a preponderance of the evidence or if it is an element of an offense that must be charged and proved to the jury beyond a reasonable doubt. The case presents a renewed opportunity to challenge mandatory minimum sentencing, and FAMM is planning on telling the Court what we think in an amicus brief. You can visit the litigation news section at www.famm.org to follow the case, which should be decided by the end of June. **FG**

BOOK REVIEW

Prisoners’ Guerrilla Handbook to Correspondence Programs in the United States & Canada, 3rd Edition

Written by Jon Marc Taylor, Ph.D., and edited by Susan Schwartzkopf, MA.
Published by Prison Legal News (2009); retail price: \$49.95.

This handbook is a good starting point for anyone who is trying to get an education while they are incarcerated. *The Guerrilla Handbook* provides an extensive listing of schools that offer distance learning programs that are open to prisoners. The list includes high school, vocational, paralegal, and undergraduate and graduate degree programs offered by colleges and universities across the country and in Canada. Among other helpful chapters, the *Handbook* includes information on what to look for in a school, how to avoid “diploma mills” (which are usually not accredited and charge people for worthless degrees), how to pay for school, and how to manage study time. Most school listings include the school’s address and accreditation, courses and degrees offered, and tuition rates. Look for the *Handbook* in prison law libraries, or order it directly from Prison Legal News, 2400 NW 80th St., PMB#148, Seattle, WA 98117. You can also order online at www.prisonlegalnews.org or by calling 206-246-1022.

The following federal and state cases represent FAMM's "profiles of injustice." Are you or a loved one serving a mandatory sentence in federal or state prison? If so, we need you to help to show the human face of sentencing injustice. Please request a profile form from FAMM, c/o Profile Researcher, 1612 K St., N.W., Suite 700, Washington, DC, 20006.

ROBERT ANGER (Massachusetts)

ROBERT GREW UP in rural Vermont. Though he excelled in athletics, a lifelong struggle with learning disabilities caused him to drop out of school at age 17. He completed his GED but had difficulty holding down a job. He worked construction or factory jobs for a few weeks before he quit or was fired.

Robert began using marijuana and alcohol as a teen, and was arrested for possession of both. At age 19, he tried Oxycontin. He quickly became addicted. Robert turned to selling cocaine to finance his drug addiction. When Oxycontin was not available, he turned to heroin to prevent withdrawal. Each time Robert tried to stay sober, he became very sick and resumed his drug use.

In 2004, Robert drove from Vermont to Massachusetts, where he had arranged to buy \$15,000 worth of cocaine in Springfield. He planned to resell most of it to support his \$300/day Oxycontin addiction.

The area was under police surveillance and officers intervened midway through the transaction, arresting both Robert and his supplier.

While out on bail after his arrest, Robert decided to change his life. With much support from his girlfriend and family, he was able to quit using Oxycontin and heroin. "That was probably the hardest thing I've ever done," recalls Robert, "but I am proud that I was able to do it." He also held down a steady job making furniture. His employer wrote a letter to the sentencing judge, describing Robert as industrious and reliable and stating his willingness to rehire him.

Robert is studying in order to take college level courses. Upon his release in 2021, he would like to continue his education and get a job, perhaps working with at-risk teenagers. As he says, "Maybe they would listen to someone who has already lived through bad choices."

What sentence do you think Robert should have received?

The supplier fled before their 2006 trial; only Robert was convicted of trafficking over 200 grams of cocaine. At sentencing, Judge Judd J. Carhart stated, "I wish I had discretion" before sentencing Robert, 22, to a mandatory minimum sentence of 15 years, based solely on the weight of the drugs. In 2008, Robert's brother wrote to Governor Deval Patrick, noting that Robert's extreme sentence was longer than the average national sentence for murder.

IVETH VEGA (Federal)

AFTER HER PARENTS separated, eight-year-old Iveth was shuttled between Puerto Rico and Chicago. She began using drugs at age 12 to cope with previous abuse and had her first child when she was a teenager. Iveth's drug abuse and depression increased as the father of her children became extremely violent. She finally escaped the abusive relationship and achieved sobriety. She met a man who became her husband, and devoted herself to caring for her children. Unfortunately, Iveth eventually relapsed but hid her addiction from her family.



Iveth Vega

In August 2000, an acquaintance told 25-year old Iveth he would pay her \$1,000 to carry drugs from Mexico to the United States. Iveth, desperate for money to support her six children, finally agreed. In October 2001, she flew to Acapulco, Mexico and back with approximately 200 grams of heroin. Afterwards, Iveth felt terrible about what she had done. She told the man she had made a mistake and no longer wanted to transport drugs. He refused and told her that the only way she could stop was to find others to carry his heroin.

Afraid for her safety, Iveth asked her stepmother and a friend to help. The two women agreed and carried drugs from Mexico on two occasions. Iveth did not handle the drugs carried by her stepmother and friend and was not paid for these trips. Later that year, a woman was arrested transporting heroin for the man and gave police Iveth's name.

Since her incarceration, Iveth has excelled in college courses and parenting classes. She has completed drug rehabilitation and is waiting to be certified as an associate addiction professional. Iveth's six young children are supported by her sister, brother-in-law and her mother. Though Iveth is many miles away from her kids, she remains involved in their lives through phone calls and letters.

What sentence do you think Iveth should have received?

Iveth was held accountable for 700 to 1,000 grams of heroin. Her sentence was enhanced because she recruited her stepmother and friend and asked her stepmother not to tell officers about their involvement in the offense. With a criminal record of several counts of driving without a valid license and uninsured motor vehicle, the judge gave Iveth, 27, the shortest time possible within the sentencing guidelines: 14 years. **FG**



Robert Anger

FAMM staff share wisdom on sentencing reform

INTEREST IN MANDATORY minimum sentencing reform is at an all-time high, with policy-makers and organizations across the nation and in Canada seeking FAMM's expertise.

JULIE STEWART was a speaker at the 2009 Congressional Black Caucus Foundation in Washington, D.C. on September 24. She had the pleasure of meeting Chicago FAMM members Barbara Bates and G'Ahyne Hawkins, who joined her in thanking the CBC for its work on sentencing reform. Julie also spoke at a conference sponsored by the Minnesota Council on Crime and Justice on October 12.

MARY PRICE testified by video on October 28 before the Canadian Senate Committee on Legal and Constitutional Affairs about the impact of mandatory minimums in the United States. Regrettably, factions in Canada's parliament (similar to our Congress) are pursuing mandatory minimums for various offenses, despite all of the evidence that shows America's experiment with one-size-fits-all sentencing is an abject failure. Mary's testimony shone a light on the high cost and injustice of mandatory minimums and was well received. She also spoke at the American Bar Association sentencing conference in Washington, D.C., on November 6.

DEBORAH FLEISCHAKER spoke at the Florida Criminal Defense Lawyers Association meeting in Sandestin, Florida, on November 6, the Alternatives to Incarceration Summit in Ft. Lauderdale on September 25, and at a Florida ACLU event in St. Petersburg on September 11.

BARBARA DOUGAN was a panelist at the annual convention of the National Association of Criminal Defense Lawyers in August. She spoke about FAMM's work in Massachusetts at a workshop on sentencing reform. In October, Barbara spoke at the First Unitarian Society in Newton, along with former prisoner Michaelene Sexton. In December, she was on a Boston Bar Association panel about state sentencing reforms. **FG**



Above left: FAMM members Barbara Bates and G'Ahyne Hawkins with Rep. Danny Davis at the Congressional Black Caucus Foundation conference. Above right: Deborah Fleischaker. Left: Barbara Dougan at the Boston Bar Association panel. Far left: Mary Price

FAMM's monthly radio show available online

FAMM has a monthly radio show, thanks to Sharon North, a dedicated FAMM member and host of the Shattered Lives program on KZFR Radio in Chico, Calif. The first Monday of each month, Sharon hands over the reins to FAMM and we discuss federal and state sentencing developments and how people can get involved with reform. To listen to FAMM's program outside of the Chico area, visit www.famm.org and click the FAMM radio button. An archive of 2009 shows is available to download.



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