



CHANGING MANDATORY DRUG SENTENCING LAWS ON THE FEDERAL AND STATE LEVELS: PUTTING A HUMAN FACE ON INJUSTICE REVERSING A POLITICAL JUGGERNAUT FAMILIES AGAINST MANDATORY MINIMUMS (FAMM)

“You have people from every race and class and suddenly they’re united by the horror of what has happened to them.”

Laura Sager, Executive Director, Families Against Mandatory Minimums (FAMM)

A Strong Sense of Injustice

In 1978, JeDonna Young became a sad example of how radically wrong mandatory sentencing laws had really become. Young happened to be with her boyfriend when he was arrested on a drug trafficking charge. Even though the man insisted that Young had nothing to with his drug activities, they were both sentenced to life in prison without parole. The sentence was based on Michigan's tough new "650 Lifer" law that set brutal penalties even for first-time, non-violent offenders. At the same time, the law made no distinction between drug-trafficking, on the one hand; and conspiracy—which Young was accused of—on the other.

But Young's story isn't unusual. Although Michigan had the toughest mandatory minimum law in the country at the time, it was just a matter of degree when compared to other states and the federal government. In the 1980s and early 1990s, politicians nationwide were getting tough on crime as Congress and the states raced to boost sentences for anyone caught with or around drugs. It was seen as the “quick fix” that was going to solve the country's drug problems, and it allowed politicians to campaign as taking a “hard line against crime” come election time. Indeed, anyone opposing mandatory minimums put their political careers in jeopardy. The mandatory minimum

This leadership story was written in 2005 by Melinda Fine, Ed.D., Principal of Fine Consulting and Jonathan Walters. Melinda Fine is researcher for Leadership for a Changing World Research and Documentation Component at the Research Center for Leadership in Action, housed at New York University's Robert F. Wagner Graduate School of Public Service. Jonathan Walters is a writer and journalist. An additional co-researcher for this leadership story was Leadership for a Changing World award recipient Julie Stewart of Families Against Mandatory Minimums. The leadership story is intended solely as a vehicle for classroom discussion, and is not intended to illustrate either effective or ineffective handling of the situation described.

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phenomenon came to be viewed as a "third rail" issue, deadly to anyone who spoke out against the tough policies. And so a wave of laws swept through federal and state legislatures that stripped judges of their usual discretionary power to hand down sentences as they saw fit; and that were informed by the particular circumstances of a given crime and the offender in question.

But there were many who understood the real cost--personal, social and fiscal--of such blind inflexibility. And so in 1991, Families Against Mandatory Minimums (FAMM) became the first organization to step forward and begin the steep uphill battle to buck the mandatory minimums trend. Among FAMM's top priorities was the passage of a federal "safety valve" bill that would give control back to federal judges in the case of federal drug charges, allowing them greater discretion in sentencing for low-level, non-violent first time drug offenders. At the same time, FAMM began to work state-by-state to reverse mandatory minimums for those charged under state statutes.

As is often the case with important causes, inspiration for action came with personal experience. In 1990, FAMM founder Julie Stewart's brother was arrested for growing marijuana in his garage in Washington State. After pleading guilty to his first and only offense, he was sentenced to five years in federal prison without parole. It was a clear-cut instance of the punishment being hugely disproportionate to the crime. But the judge's hands were tied by mandatory sentencing requirements.

Stewart used her grief and her anger to fuel a new movement, one that shifted away from the lockstep drive to imprison even minor drug offenders for extended periods, and back toward granting leeway to judges in deciding sentences on a case-by-case basis. In the more than 12 years since Stewart founded FAMM, there has been a significant upwelling of interest and action in bringing sanity back to sentencing. FAMM now has a paid staff of 21 people, 42 volunteer coordinators in 29 states, and 30,000 members in nearly 30 states. Since its founding, FAMM has also succeeded in numerous legislative victories at both the state and federal levels.

Turning Anger into Political Action

FAMM has been trying to derail a political juggernaut by taking on mandatory minimums. In doing so, it has tapped into a deep reservoir of frustration and anger. Many of those who joined the cause have, like Stewart, personal experience with the unnecessary damage and deep disruption to families and individuals caused by inflexible sentencing policies. Through an expanding network of activists, FAMM has built extensive coalitions across diverse sectors, including not only those directly affected by mandatory minimums, but also those concerned more broadly with the issue. Although FAMM and its allies still face considerable political opposition, the movement against mandatory minimums is growing.

Allies include federal judges who are incensed by the constraints placed on their judgment and authority as they are forced to pronounce sentences they consider totally inappropriate given the crime. Meanwhile, legislators are become increasingly aware that

shrinking state budgets cannot accommodate a growing prison population; particularly when the growth is among inmates who have never hurt anyone and pose no threat to anyone except, perhaps, themselves. Policy makers and civil rights advocates are also increasingly aware of the toll that mandatory minimums takes on low-income communities of color, and are coming to view both current policing and sentencing procedures as discriminatory. At the same time, there is clear and growing public awareness that mandatory minimum sentencing laws for drug offenders are seen not only as unnecessarily costly, but also ineffective. Mandatory sentences have been shown to be the least cost-effective means of reducing drug use and sales. The money spent locking people up would be much better spent on treatment and prevention. Consequently, a continuing FAMM strategy has been to continue to educate, mobilize and coordinate action with a growing and diverse corps of mandatory minimum opponents.

FAMM's essential strategy has been to reverse the mandatory minimum trend wherever it can find the political opening to do so, and where it seems to demand focused action. At both the federal and state levels, the group has been working methodically and strategically to bring sanity back to sentencing. Drug defendants constitute approximately 60 percent of the federal prison population, a statistic that has increased from 38 percent in 1986 when mandatory sentencing laws were passed. Not all of FAMM's victories have been 100 percent satisfying to advocates, but slowly the organization sees the tide turning. By bringing strategic pressure to bear on policy makers, FAMM has managed to buck one of the most powerful criminal justice trends to ever sweep the country. In doing so the organization has been able to recruit more and more converts to what was once considered a most unpopular cause.

Taking the High Ground

For all the passion that mandatory sentencing arouses on both sides of the table, FAMM's work is adamantly and consistently non-ideological. Although FAMM's goals might be considered by some to be "liberal" or "progressive," the organization knows that what they are after is a matter of common decency and common sense. By framing the subject in terms of justice, fairness, sanity and equity, the organization has been able to attract bipartisan support among socially and politically diverse coalition partners.

"I've always felt really strongly that we have to have Republicans and conservatives in whatever coalitions we have," says Julie Stewart. "Because in many states the majority of the legislators are Republican, and in the federal system, you definitely need Republican votes. It has been an effort on our behalf to keep FAMM as politically neutral as possible."

Efforts to stay neutral in the political arena are matched by efforts to stay neutral within FAMM's own membership community. In advocacy training with family members, for example, FAMM staff insists that family members focus narrowly on the issue that unites them. "You have people from every race and class and suddenly they're united by the horror of what has happened to them," says FAMM executive Director Laura Sager. "There's this sense of bonding that really transcends the usual political divisions. What

we generally say is, ‘there’s only one thing everyone in this room agrees on. Mandatory minimums don’t work. They’re wrong.’ Other issues are left outside the room.”

Putting a Face on Injustice

But probably the most powerful and effective force that FAMM brings to the debate are the personal stories that drive home the fundamental wrongs that have been inflicted on real people by mandatory sentencing policies. FAMM looks for stories that put a human face on the issue of mandatory sentencing, which turns a distant, abstract policy issue for some into one that drives home the real personal tragedy of mandatory minimums.

For example, in taking on Michigan’s mandatory minimum law, the toughest in the nation, FAMM and its coalition partners used the case of JeDonna Young. This became a key focal point of FAMM’s campaign to ease the 650 Lifer Law restrictions, which required harsh sentences for minor and first time drug offenses and virtually eliminated any possibility of parole even for model, non-violent prisoners. As Stewart explains, “It helps to have a JeDonna Young, or whoever the poster child is, to help take something really quite abstract and make it very understandable in human terms. Every good politician uses story, because we’re storytelling animals. That’s how we understand the world. We’ll throw away statistics in a minute for a story.”

It is by using those kinds of stories and statistics that FAMM has established its clear expertise with respect to sentencing; an expertise that has afforded it considerable credibility in the eyes of lawmakers of all political and ideological stripes.

Mobilizing Affected Families

Humanizing an issue through the use of personal stories helps to dispel stereotypes and deepens understanding, sometimes moving even the staunchest of opponents of reform to change their minds. But FAMM learned early on that mobilizing family members themselves was key to pushing for policy changes.

FAMM’s members come to the organization out of a sense of personal loss and tragedy, rather than some abstract commitment to prison reform. In that regard, FAMM’s challenge is two-fold: it must transform family members’ personal grief into sustained political activism; and it must sustain members’ engagement even when their own loved ones are unlikely to be affected by gains made, such as when a change in federal or state policy might not help someone already in prison.

First, FAMM allows family members the space and opportunity to express their grief and rage, creating a sense of community and common cause among people who otherwise may differ from one another in significant ways. FAMM then offers advocacy training, including educating families about the political and economic forces driving sentencing and prison reform. FAMM also engages family members in lobby days and other advocacy work. “The whole goal is to allow people the space for the emotions of the problem, and then for the issues to move into sort of a recognition of what can be done

first by you, and then collectively," say a FAMM staffer. When describing a training session, Executive Director Sager notes, "In so many cases when people come to these workshops they say, 'I was horrified when my son was sentenced, but I was also devastated when I saw what happened at trial and how unfair it was, and how he didn't have any defense.' That's the second tragedy. And people get up and they'll say in a meeting, 'This was about my son at first. Now it's about everyone who's incarcerated.'"

In the eyes of FAMM's grassroots members, the organization provides desperately needed information, guidance, and hope. The father of a young man who, as a first-time non-violent offender involved in a small crack cocaine deal, was sentenced to almost 20 years in a federal prison without parole says, "Before FAMM there was nobody who kept [us] informed about what was happening that was above board and told [us] the truth straight up. And if it weren't for FAMM and their fighting, [we] had absolutely nothing. Nothing. No information. Nothing to go on."

Diverse Coalitions, Strategic Alliances

FAMM's pragmatic approach to political action is also reflected in the alliances it forms, alliances that include individuals, institutions, and key change agents. The organization's vigilance in maintaining a single-issue focus is what allows it to build that broad-based support. Sager says that the broader the issue, the more opportunity for differences among potential allies. The narrower the issue, the better chance it will unite diverse interests. "The broader the issue you're trying to address, the narrower the coalition because you have fewer people who can sign on," says Sager. "The coalitions that FAMM puts together are so effective because they're so clear-minded on the end goal. And they're willing to compromise in a way that doesn't sell out on the idea, but in a very realistic way, which makes them even more effective," says a former General Counsel to the House Judiciary Committee, and a FAMM ally.

FAMM has frequently joined forces with individuals and groups that many would consider to be unlikely bedfellows, ranging from the American Civil Liberties Union to the American Federation of Government Employees, a union that represents federal prison guards. "When you're talking about changing laws, you're talking about the real development of a base that has the political power to make the changes you want, and it's very strategic," says Sager. "You have to look at building coalitions that cut across party lines and cut across the usual divisions in order to achieve the objectives you want."

Alliances are also based on a hard-nosed assessment of who holds power. "When you're assessing your ability to get legislation passed, you look at who are your likely opponents," says Sager, "and the first rule is to neutralize the opponent and/or to win them over to your side. Neutralizing them means you don't treat them like a monolith, but you look at their own interests within the larger interest, and you try to identify who you can recruit, and on what basis. If we get too ideological about politics, then we're unable to see how we can really develop our political strategy in the real world."

There are, of course, dangers to collaborating with such an eclectic constituency.

“Bringing along prosecuting attorneys or other unlikely allies into the fold means working with them over time and being very, very clear about what your long-term objectives are,” says Sager, “so you know where you can compromise and where you can’t, and how to have a constant ongoing dialogue with people who are commonly perceived as your opponents.”

FAMM’s approach to coalition building is, as a consequence, both flexible and adaptive. The organization sees benefit in forming alliances for both short- and long-term gain. So while some alliances are long-standing, others are ad hoc, based on strategic need and opportunity. “You have to understand the limits of those alliances,” Sager says. “They’re likely to be temporary, and issue-based, and you may agree to disagree at a later point. The process of building coalitions is ‘seize the day.’ You seize the factors that are moving in your favor and then move on.”

Fighting the Feds

But even the most effective organizations find pushing politically charged change in Washington, D.C., to be a very dicey proposition. This is why one of FAMM’s first victories was both one of its most impressive, but also one of its most troubling, say FAMM staffers and allies.

It was decided early on that a key target for change should be federal mandatory minimums because of their high profile and the theory that many state legislatures were taking their cue from Congress. The goal of the campaign was to pass legislation in Congress that would give discretion back to federal judges, allowing them to reduce sentences for non-violent, first-time drug offenders, essentially offering a “safety valve” to federal judges looking for more discretion in how they handled sentencing.

The result was the Federal bill HR3355 Violent Crime Control and Law Enforcement Act, passed in 1994. In winning that victory, though, FAMM had to accept an early and tough lesson in political reality. FAMM had campaigned for language that would make the safety valve bill retroactive. But lawmakers balked. Though they agreed to re-insert discretion into future sentencing processes, they would not agree to reviewing judicial decisions that had already been made.

The terms posed to FAMM and its legislative allies were stark: either kill the bill altogether by insisting on retroactivity, or secure passage of a watered down version that would undeniably help future offenders, but exclude the already incarcerated relatives of FAMM’s own members who had fought so hard for the bill’s passage. As a FAMM ally and former General Counsel to the House Judiciary Committee acknowledged, it was “a terrible, terrible decision to make.”

But as those involved in the battle at the time realized, getting some positive change was better than losing the issue entirely, especially in a city where legislation can easily get derailed for the smallest reason. And so FAMM and its coalition members agreed to the

compromise. A Federal public defender involved in the effort says, “We had to try to see into the future, if there was a change in control of the Congress, or the Clinton White House lightened up or whatever, would we have a better chance in the next Congress, or could we get this now and maybe get something better in the next Congress? We all decided it was better than nothing.”

FAMM founder Julie Stewart says that having to back off on retroactivity represented “The saddest day of my life, because I had to go to work the next day and take phone calls from the families and they were crying and I was crying and it was really incredibly hard to say that you fought for us and with us and it’s not going to help your kid.”

But like any organization that wants to succeed in a highly political arena, FAMM’s concession illustrates the hard-nosed strategic thinking that it takes to make progress on an issue as controversial as mandatory sentencing. That level of maturity is particularly impressive, say those involved in the safety valve fight, given the deeply held beliefs of those involved in the battle. FAMM staff frequently describe what they do as “more of a calling than a job;” even as “a holy crusade.”

In the end, the decision to compromise might indeed have been painful, but the bottom line was powerful and positive. Since the law was passed 5,000 people – or one in four offenders entering prison – have had their sentences reduced by as much as three years compared to what the mandatory minimum would have required.

Winning It All

In taking on the federal law, FAMM learned important lessons about strategy and tactics. As it began to accumulate wins such as the safety valve law, the organization found that it had begun to build the savvy, the backing and the leverage to demand more in future fights. And so when FAMM turned its attention to the nation's toughest mandatory minimum law—Michigan's "650 Lifer Law"—in 1998, they had renewed energy and a clear eye toward more sweeping success.

In dismantling Michigan's law, FAMM mounted a two-stage offensive. It first won significant amendments to sections 333.7401 and 791.234 of the public health code that included mandatory minimums for controlled substance abusers. FAMM wasn't content to simply modify the law; it wanted it off the books entirely. And so FAMM mobilized what activists describe as a substantial grassroots and "grassroots" campaign aimed at raising broad awareness of the damage and injustice done by mandatory minimums in the state. In the spring of 2002, the effort paid off. Michigan passed legislation that essentially eliminated mandatory drug sentencing and repealed lifetime probation, and also offered early parole to those who had been sentenced under previous guidelines.

That law represented a substantial change in attitudes and policy and has set the standard for future fights. But for DeJonna Young, it represented much more than that. After spending 21 years behind bars, the new law meant the elimination of her lifetime sentence and freedom.

Changing Mandatory Drug Sentencing Law on the Federal and State Levels: Leadership Story

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