

**Additional Statements by Republican Judicial Appointees  
About Sentencing Policy in the pre-Booker Era**

**United States Supreme Court**

Anthony M. Kennedy  
William H. Rehnquist  
John Paul Stevens

**United States Courts of Appeals**

Morris S. Arnold  
Eighth Circuit Court of Appeals

Frank H. Easterbrook  
Seventh Circuit Court of Appeals

John T. Noonan, Jr.  
Ninth Circuit Court of Appeals

Edward C. Prado  
Fifth Circuit Court of Appeals

Reena Raggi  
Second Circuit Court of Appeals

Pamela Rymer  
Ninth Circuit Court of Appeals

Charles E. Wiggins  
Ninth Circuit Court of Appeals

**United States District Courts**

Louis C. Bechtel  
Eastern District of Pennsylvania

Franklin S. Billings  
District of Vermont

Andrew W. Bogue  
District of South Dakota

Charles L. Brieant  
Southern District of New York

Vincent L. Broderick  
Southern District of New York

James M. Burns  
District of Oregon

John T. Copenhaver  
Southern District of West Virginia

Brian Duff  
Northern District of Illinois

J. Owen Forrester  
Northern District of Georgia

Richard A. Gadbois  
Central District of California

Lee P. Gagliardi  
Southern District of New York

Gerard L. Goettel  
Southern District of New York

Edward F. Harrington  
District of Massachusetts

Stanley S. Harris  
District of District of Columbia

J. Lawrence Irving  
Southern District of California

Richard G. Kopf  
District of Nebraska

Elizabeth Kovachevich  
Middle District of Florida

J. Spencer Letts  
Central District of California

John C. Lifland  
District of New Jersey

Charles C. Lovell  
District of Montana

John S. Martin, Jr.  
Southern District of New York

J. Frederick Motz  
District of Maryland

Edwin L. Nelson  
Northern District of Alabama

Alan H. Nevas  
District of Connecticut

Ralph W. Nimmons, Jr.  
Middle District of Florida

David C. Norton  
District of South Carolina

John S. Rhoades, Sr.  
Southern District of California

William W. Schwarzer  
Northern District of California

Stanley Sporkin  
District of District of Columbia

Franklin Waters  
Western District of Arkansas

Spencer M. Williams  
Northern District of California

Alfred Wolin  
District of New Jersey

**Special Courts**

Nicholas Tsoucalas  
U.S. Court of International Trade

**United States Supreme Court**  
**Justice Anthony M. Kennedy**  
**Appointed by Ronald Reagan, 1988**

"I think I am in agreement with most judges in the federal system that mandatory minimums are an imprudent, unwise and often unjust mechanism for sentencing. I simply do not see how Congress can be satisfied with the results of mandatory minimums for possession of crack cocaine."<sup>1</sup>

“Under the federal mandatory minimum statutes a sentence can be mitigated by a prosecutorial decision not to charge certain counts. There is debate about this, but in my view a transfer of sentencing discretion from a judge to an Assistant U. S. Attorney, often not much older than the defendant, is misguided. Often these attorneys try in good faith to be fair in the exercise of discretion. The policy, nonetheless, gives the decision to an assistant prosecutor not trained in the exercise of discretion and takes discretion from the trial judge. The trial judge is the one actor in the system most experienced with exercising discretion in a transparent, open, and reasoned way. Most of the sentencing discretion should be with the judge, not the prosecutors.<sup>2</sup>

“The legislative branch has the obligation to determine whether a policy is wise. It is a grave mistake to retain a policy just because a court finds it constitutional. Courts may conclude the legislature is permitted to choose long sentences, but that does not mean long sentences are wise or just. Few misconceptions about government are more mischievous than the idea that a policy is sound simply because a court finds it permissible. A court decision does not excuse the political branches or the public from the responsibility for unjust laws.”<sup>3</sup>

**Chief Justice William H. Rehnquist**  
**Appointed by Richard Nixon, 1971**  
**Appointed Chief Justice by Ronald Reagan, 1986**

"Mandatory minimums . . . are frequently the result of floor amendments to demonstrate emphatically that legislators want to 'get tough on crime.' Just as frequently they do not get involved in any careful consideration of the effect they might have on the sentencing guidelines as a whole. Indeed, it seems to me that one of the best arguments against any more mandatory minimums, and perhaps against some of those that we already have, is that they frustrate the careful calibration of sentences, from one end of the spectrum to the other, which the sentencing guidelines were intended

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<sup>1</sup> *Justice Kennedy Calls Mandatory Federal Sentences Unwise, Often Unfair*, WASH. POST, Mar. 10, 1994, at A15.

<sup>2</sup> Anthony M. Kennedy, Speech at the American Bar Association Annual Meeting (Aug. 9, 2003), available at [http://www.supremecourtus.gov/publicinfo/speeches/sp\\_08-09-03.html](http://www.supremecourtus.gov/publicinfo/speeches/sp_08-09-03.html).

<sup>3</sup> *Id.*

to accomplish.”<sup>4</sup>

**Justice John Paul Stevens**  
**Appointed by Gerald Ford, 1975**

“The consequences of the majority’s construction of 21 U.S.C. § 841 are so bizarre that I cannot believe they were intended by Congress. Neither the ambiguous language of the statute nor its sparse legislative history supports the interpretation reached by the majority today. Indeed, the majority’s construction of the statute will necessarily produce sentences that are so anomalous that they will undermine the very uniformity that Congress sought to achieve when it authorized the Sentencing Guidelines.”<sup>5</sup>

**United States Courts of Appeals**  
**Judge Morris S. Arnold**  
**Eighth Circuit Court of Appeals**  
**Appointed by George H.W. Bush, 1992**

“You may say that I said that many of our drug laws are scandalously draconian and the sentences are often savage. You may also quote me as saying the war on drugs has done considerable damage to the Fourth Amendment and that something is very wrong indeed when a person gets a longer sentence for marijuana than for espionage.”<sup>6</sup>

**Judge Frank H. Easterbrook**  
**Seventh Circuit Court of Appeals**  
**Appointed by Ronald Reagan, 1985**

Prior Legal Experience: Deputy U.S. solicitor general, 1978-79. Assistant to the U.S. solicitor general, 1974-77.

"Mandatory minimum penalties, combined with a power to grant exceptions, create a prospect of inverted sentencing. The more serious the defendant's crimes, the lower the sentence--because the greater his wrongs, the more information and assistance he has to offer to a prosecutor. Discounts for the top dogs have the virtue of necessity, because rewards for assistance are essential to the business of detecting and punishing crime. But what makes the post-discount sentencing structure topsy-turvy is the mandatory minimum, binding only for the hangers on. What is to be said for such terms, which can visit draconian penalties on the small fry without increasing prosecutors' ability

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<sup>4</sup> William H. Rehnquist, Remarks at the Nat'l Symposium on Drugs and Violence in America (June 18, 1993).

<sup>5</sup> Chapman v. U.S., 500 U.S. 453, 468 (1991) (Stevens, J., dissenting).

<sup>6</sup> JAMES P. GRAY, WHY OUR DRUG LAW HAVE FAILED AND WHAT WE CAN DO ABOUT IT 95 (2001).

to wring information from their bosses? Our case illustrates a sentencing inversion. Such an outcome is neither illegal nor unconstitutional, because offenders have no right to be sentenced in proportion to their wrongs. Still, meting out the harshest penalties to those least culpable is troubling, because it accords with no one's theory of appropriate punishments.”<sup>7</sup>

**Senior Judge John T. Noonan, Jr.**  
**Ninth Circuit Court of Appeals**  
**Appointed by Ronald Reagan, 1985**

“Proportionality between crime and sentence is difficult to lay out abstractly. To achieve it is a matter of judgment--the judgment of the sentencing judge. To eliminate proportionality is to eliminate the virtue of prudence which should guide every act of judgment. To eliminate proportionality is to leave the way wide open to the cruel and unusual punishments that our Constitution proscribes. In the present climate, Congress's attempt to control crime by escalating the punishments has gone very far in the direction of eliminating the prudential, proportionate judgment of the sentencing judge.”<sup>8</sup>

**Judge Edward C. Prado**  
**Fifth Circuit Court of Appeals**  
**Appointed by George W. Bush, 2003**  
**Prior Legal Experience: Assistant District Attorney, Bexar County, Texas, 1972-1976**

“You’re not getting the kingpins, you’re getting some of these low-level people. Furthermore mandatory minimum sentences, are not being used uniformly. . . . The prosecutors are using their discretion in deciding who gets a mandatory sentence and who doesn’t. It’s not longer up to the judge to decide. But (rather) that prosecutor is making that decision, which is not right. That’s what the judge is there for. . . . And these mandatory sentences do not serve a deterrent effect. . . Crime has not gone down. Crime is just as bad as it was before. Mandatory minimums are applied inconsistently. The prosecutor decides who gets them.”<sup>9</sup>

**Judge George C. Pratt (ret.)**  
**Second Circuit Court of Appeals**  
**Appointed by Ronald Reagan, 1982**

“The irony of a mandated sentence, in the face of our long tradition that trumpets the importance of judicial discretion in sentencing, is not lost on us. The district judge was troubled by the harsh sentence that he was compelled to impose on Madkour, following a process that, in his words,

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<sup>7</sup> U.S. v. Brigham, 977 F.2d 317, 318 (7th Cir. 1992) (citations omitted).

<sup>8</sup> U.S. v. Harris, 154 F.3d 1082, 1086 (9th Cir. 1998) (Noonan, J., dissenting).

<sup>9</sup> Terry Hatter and Edward Prado, *Sentencing – The Miscarriage of Mandatory Minimums*, THE CHAMPION, July 1996, at 17.

‘makes a judge a computer,’ automatically imposing sentences without regard to what is right and just." We too are troubled, but unfortunately, have no power to disregard the clear mandate of congress, however ill-advised we might think it to be."<sup>10</sup>

**Judge Reena Raggi**

**Second Circuit Court of Appeals**

**Appointed by George W. Bush, 2002**

**Prior Legal Experience: Assistant U.S. Attorney, Eastern District of New York, 1979-1986  
Chief, Narcotics Division, 1982-1984**

“He finds himself now facing a 10 year minimum sentence, but given the scope of the criminal conduct engaged in, I thought with his lack of knowledge of the specific amount and the discreet role he played, even though he did take affirmative action, I would give him the benefit of the minimal participant credit. . . . You now face a very serious sentence, on I have no discretion to depart from.”<sup>11</sup>

**Judge Pamela Rymer**

**Ninth Circuit Court of Appeals**

**Appointed by George H.W. Bush, 1989**

"It takes the judging out of being a judge. There's no point in your being out there on the bench. I'm sort of a mouthpiece."<sup>12</sup>

**Judge Charles E. Wiggins (deceased)**

**Ninth Circuit Court of Appeals**

**Appointed by Ronald Reagan, 1984**

“As a federal court of appeals bound to follow precedent, we find that we are unable to alter what are essentially life sentences for Defendants. Congress mandated their sentences. . . . By mandating such high minimum sentences . . . Congress has removed the carefully circumscribed discretion granted to district courts in the Sentencing Guidelines to consider possible mitigating circumstances. We feel a just system of punishment demands that some level of discretion be vested in sentencing judges to consider mitigating circumstances. We do not believe that Harris needs to be in prison when he is 100, or Steward when he is 70, without the possibility for reconsideration of their sentences. . . . We urge Congress to reconsider mandatory minimum sentences. Given the political expediency of such sentencing schemes and the resulting improbability of their repeal, we likewise urge the President to examine overlong sentences such as these. The President should scrutinize

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<sup>10</sup> U.S. v. Madkour, 930 F.2d 234, 239-40 (2d Cir. 1991).

<sup>11</sup> Sent. Tr. at 15-16, U.S. v. Lozada, No. CR-90-0171 (E.D.N.Y. Aug. 8, 1990) (Judge Raggi served as a District Court judge before her elevation to the Second Circuit).

<sup>12</sup> Stuart Taylor, Jr., Ten Years For Two Ounces, THE AMERICAN LAWYER, Mar. 1990, at 65.

cases in which the inmate has already been incarcerated for many years and consider clemency after an appropriate length of time in worthy cases. In such cases, the public interest will be well served by the release of the defendant.”<sup>13</sup>

**United States District Courts**

**Judge Louis C. Bechtle (resigned)**

**Eastern District of Pennsylvania**

**Appointed by Richard Nixon, 1972**

**Prior Legal Experience: Assistant U.S. Attorney, Philadelphia, Pennsylvania, 1956-1959**

**U.S. Attorney for the Eastern District of Pennsylvania, 1969-1972**

“Guidelines sentencing, I think, is bad because it takes away the discretion of judges. It's a statutory expression that we don't trust district court judges. And I say, if they don't trust me, get somebody else to do it. I think as a general proposition, they're intended to be kind of like scare tactics. But the people they're aimed at are immune because sometimes the dumb things they do – they're repeat offenders, they keep doing it; social pressures make them do it – so mandatory minimums don't mean much.”<sup>14</sup>

**Senior Judge Franklin S. Billings**

**District of Vermont**

**Appointed by Ronald Reagan, 1984**

“This type of statute does not render justice. This type of statute denies the judges of this court, and of all courts, the right to bring their conscience, experience, discretion, and sense of what is just into the sentencing procedure, and it, in effect, makes a judge a computer, automatically imposing sentences without regard to what is right and just. It violates the rights of the judiciary and of the defendants, and jeopardizes the judicial system. In effect, what it does is it gives not only Congress, but also the prosecutor, the right to do the sentencing, which I believe is unconstitutional. Unfortunately, the higher courts have ruled it to be constitutional. . . . This case graphically illustrates the failure of the justice system. . . . But for the mandatory sentence, I would have sentenced defendant to the minimum of 15 months.”<sup>15</sup>

**Senior Judge Andrew W. Bogue**

**District of South Dakota**

**Appointed by Richard Nixon, 1970**

**Prior Legal Experience: State's Attorney, Turner County, South Dakota, 1952-1954**

“I will say this on the sentencing guidelines: I detest them. The sentencing guidelines divest courts

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<sup>13</sup> U.S. v. Harris, 154 F.3d 1082, 1085 (9th Cir. 1998) (citations omitted).

<sup>14</sup> Shannon P. Duffy, *Bechtle To Step Down From Bench*, LEGAL INTELLIGENCER, June 4, 2001, at 1.

<sup>15</sup> U.S. v. Madkour, 930 F.2d 234, 236 (2d Cir. 1991).



of their role in imposing just and appropriate sentences to fit the crime and the defendant, with due consideration to all the attendant circumstances. They deprive judges of their discretion which is the touchstone of justice. Were the sentencing guidelines merely suggestive, they might very well serve as an important and helpful model which could assist judges in a difficult task. However, in their present form, as I said, they are detestable.”<sup>16</sup>

**Judge Charles L. Briant**

**Southern District of New York**

**Appointed by Richard Nixon, 1971**

**Prior Legal Experience: Special Assistant District Attorney, Westchester County, New York, 1958-1959**

“It should be self-evident that mandatory minimum sentencing is likely to lead to unfairness in particular cases, and that the policy of mandatory minimum sentences overlooks the fact that the verbal articulation of a particular crime may not describe with reality the true nature of the criminal activity.”<sup>17</sup>

**Judge Vincent L. Broderick (deceased)**

**Southern District of New York**

**Appointed by Gerald Ford, 1979**

**Prior Legal Experience: Chief assistant U.S. attorney, Southern District of New York, 1961-1962, 1962-1965; U.S. Attorney for the Southern District of New York, 1962; Police Commissioner, New York City, 1965-1966**

“Regrettably, mandatory minimum sentences that have been enacted by Congress make it in many cases impossible for federal judges today to fairly and honestly carry out their sentencing duties. Judges of every federal circuit involved with criminal sentencing have adopted resolutions opposing mandatory minimums, as has the Judicial Conference of the United States – the principal policy-making body of the U.S. courts. I warrant that there is no single issue affecting the work of the federal courts with which there is such unanimity: Mandatory minimum sentences are the major obstacle to the development of a fair, rational, honest and proportional federal criminal justice system. Proponents say that mandatory minimum sentences are tough on crime. They are not. No matter how serious the crime – and there certainly are numerous offenders who deserve to be incarcerated for lengthy periods – there are variables that should be taken into account when punishment is imposed. If all people were the same and the circumstances surrounding every crime were the same, mandatory minimum sentencing would be an efficient way to assure uniformity. But the different issues present in each criminal case demand that, in order to be fair, punishment be tailored not only to fit the crime but also to fit the defendant. A mandatory minimum sentence can be lessened only at the initiation of the prosecutor who informs the judge that a defendant has provided substantial assistance in the investigation or prosecution of another person. It is the person

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<sup>16</sup> Letter from Judge Andrew W. Bogue, to David Zlotnick (Sept. 9, 1998) (on file with the author).

<sup>17</sup> Letter from Judge Charles L. Briant, to David Zlotnick (July 27, 1998) (on file with author).

managing or operating the drug trafficking enterprise, not the mule or street-level dealer, who most often has information with which to bargain. As a result, there are few federal judges who have not had the disheartening experience of seeing major players in crimes immunize themselves from harsh mandatory minimum sentences by blowing the whistle on their minions, while the low-level offenders find themselves sentenced to the tough terms that the kingpin so skillfully avoided.”<sup>18</sup>

**Judge James M. Burns (deceased)**

**District of Oregon**

**Appointed by Richard Nixon, 1972**

**Prior Legal Experience: District Attorney, Harney County, Oregon, 1952-1956**

“[W]hen folks set out to write statutes and guidelines and so forth they sometimes don’t really remember that human events present a myriad of circumstances. And anyone who thinks that he or she can sit down ahead of time and plan for everything, that person or those persons are simply fooling themselves. Thus we are left with this policy and statute that, as it plays out in this case, is seen by many, certainly, as a absolutely foolish and absolutely the exaction of a terrible price.”

**Judge John T. Copenhaver**

**Southern District of West Virginia**

**Appointed by Gerald Ford, 1976**

“The punishment for what you have done is simply too severe. It is, however, what is required by the guidelines. The court simply doesn’t have the discretion, as it once had, to do otherwise than to sentence you within the guideline range under the facts of this case.”<sup>19</sup>

**Senior Judge Brian Duff**

**Northern District of Illinois**

**Appointed by Ronald Reagan, 1985**

“I spent years in the legislature, including years as the chairman of the Criminal Justice Committee, and I fought consistently against mandatory minimum sentences because I think that sometimes they have an effect that is awesomely terrible.”<sup>20</sup>

**Judge J. Owen Forrester**

**Northern District of Georgia**

**Appointed by Ronald Reagan, 1981**

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<sup>18</sup> Vincent Broderick and Barefoot Sanders, *Mandatory Sentences Are Unfair*, DALLAS MORNING NEWS, Oct. 18, 1993, at A15.

<sup>19</sup> Sent. Tr. at 127, U.S. v. Wyatt, No. 2:93-00177-001 (S.D. W. Va. Dec. 9, 1993).

<sup>20</sup> FAMILIES AGAINST MANDATORY MINIMUMS, FAMM PRIMER ON MANDATORY SENTENCES 10.

**Prior Legal Experience: Assistant U.S. Attorney for the Northern District of Georgia, 1969-1976**

“I don’t know of much of anything that would be uniformly thought of by liberals and conservatives alike as good for this country like gutting this present sentencing scheme.”<sup>21</sup>

**Judge Richard A. Gadbois, Jr. (deceased)**  
**Central District of California**  
**Appointed by Ronald Reagan, 1982**

“The law stinks. I don’t know a judge that thinks otherwise.”<sup>22</sup>

**Judge Lee P. Gagliardi (deceased)**  
**Southern District of New York**  
**Appointed by Richard Nixon, 1971**

“I have no choice. I have no choice and it seems out of line with – with all of the others that played the same role. The fact that he went to trial isn’t going to go against him any way and I wouldn’t take it against him in any way. But there are others in this similar role to this have gotten plus or minus four years, depending upon certain facts. And it seems so out of line with that and so out of line with some of those who played more, quote, unquote, important roles that have been getting less. It just is – it doesn’t make me feel very good about this, but nonetheless the law is the law is the law and I must follow it.”<sup>23</sup>

**Senior Judge Gerard L. Goettel**  
**Southern District of New York**  
**Appointed by Gerald Ford, 1976**  
**Prior Legal Experience: Assistant U.S. Attorney for the Southern District of New York, 1955-1958; Deputy Chief, U.S. Attorney General's Special Group on Organized Crime, 1958-1959**

“Like most federal judges, I am opposed to the mandatory minimums since there are often subtle aspects to a case which make the application for the mandatory sentence inappropriate. In addition, although I have no objections to the Sentencing Guidelines in theory, the overlay of mandatory minimums reduces their effectiveness. The Sentencing Guidelines do afford the court some opportunity to customize the sentences to the offense but mandatory minimums prohibit that.”<sup>24</sup>

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<sup>21</sup> Sent. Tr. at 49, U.S. v. Poole, No. 1:90-CR-396-JOF (N.D. Ga. Aug. 2, 1991).

<sup>22</sup> Jim Newton, *Judges Voice Anger Over Mandatory U.S. Sentences*, L.A. TIMES, Aug. 21, 1993, at A1.

<sup>23</sup> Sent. Tr. at 8, U.S. v. Smith, No. 89-CR-73 (M.D. Fla. Apr. 23, 1990).

<sup>24</sup> Letter from Judge Gerard Goettel, to David Zlotnick (July 27, 1998) (on file with author).

**Senior Judge Edward F. Harrington**  
**District of Massachusetts**

**Appointed by Ronald Reagan, 1988**

**Prior Legal Experience: Assistant U.S. Attorney for the District of Massachusetts, 1965-1969, Attorney-in-Charge, U.S. Department of Justice's "Strike Force" against Organized Crime, 1970-1973, U.S. Attorney for the District of Massachusetts, 1977-1981**

"This transfer constitutes an erosion of judicial power and a breach in the wall of the doctrine of the separation of powers."<sup>25</sup>

"Courts are required to act passively as automatons and to impose a sentence which the judge may personally deem unjust."<sup>26</sup>

**Judge Stanley S. Harris (ret.)**

**District of District of Columbia**

**Appointed by Ronald Reagan, 1983**

**Prior Legal Experience: U.S. Attorney for the District of Columbia, 1982-1983**

"I've always been considered a fairly harsh sentencer, but it's killing me that I'm sending so many low level offenders away for all this time."<sup>27</sup>

**Judge Harry L. Hupp (deceased)**

**Central District of California**

**Appointed by Ronald Reagan, 1984**

I wouldn't have sentenced you to 15 years if Congress had given me the discretion. . . . Because of his (Sherbondy's) youth, because of his obvious intelligence, if it were up to me, I would think a shorter sentence would be appropriate. But the question here is Congress has told me the contrary . . . I've got a duty to follow the law."<sup>28</sup>

**Judge J. Lawrence Irving (resigned)**

**Southern District of California**

**Appointed by Ronald Reagan, 1982**

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<sup>25</sup> J.M. Lawrence, *Judge riled by guidelines won't take criminal cases*, BOSTON HERALD, June 28, 2001, at 12.

<sup>26</sup> FAMILIES AGAINST MANDATORY MINIMUMS, FAMM-GRAM 10 (Summer 2001).

<sup>27</sup> Stephen Chapman, *An insult to justice: Large sentences for small crimes*, CHICAGO TRIB., Mar. 21, 1993, at C3.

<sup>28</sup> Miles Corwin, *Popular Minimum-Term Law Hit As Harsh, Unfair*, L.A. TIMES, Oct. 17, 1988, at 3.

“For youthful first-time offenders, my opinion is that the minimums are unnecessary and counterproductive.”<sup>29</sup>

“Really, the system is run by the U.S. attorneys. When they decide how to indict, they fix the sentence.”<sup>30</sup>

“I can’t continue to do it – I can’t continue to give out sentences that I feel in some instances are unconscionable. Every week, I get these cases of ‘mules’ – most of them Hispanic – who drive drugs across the border. Ninety percent of the time they don’t even know how much they’re carrying – they met somebody in a bar who paid them \$500. If it’s a couple of kilos, you hit these mandatory minimums and it’s unbelievable . . . You’re talking 10, 15, 20 years in prison.”<sup>31</sup>

**Judge Richard G. Kopf**  
**District of Nebraska**  
**Appointed by George H.W. Bush, 1992**

Judge Kopf sentenced a 25-year old woman with no prior criminal record to 70 months in prison for her role in a conspiracy to distribute 249 grams of crack cocaine. At sentencing, Judge Kopf stated that criminal penalties were too harsh and singled out low-income, black or “just plain dumb” people. Acknowledging that he had to follow the law, Judge Kopf said, “This is an awful thing to require a judicial officer to do.”<sup>32</sup>

**Judge Elizabeth Kovachevich**  
**Middle District of Florida**  
**Appointed by Ronald Reagan, 1982**

“These guidelines are harsh, but harsher ones are coming. Soon someone is going to seek the death penalty for what you’ve done. This country is perhaps going overboard out of frustration with this drug problem. Judges don’t make laws; Congress makes laws. Congress says this sentence fits the crime. I can’t argue with Congress.”<sup>33</sup>

**Senior Judge J. Spencer Letts**

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<sup>29</sup> *Judges call minimums bad as a rule*, SAN DIEGO UNION TRIB., July 8, 1991, at A1.

<sup>30</sup> Mary Pat Flaherty and Joan Biskupic, *Rules Often Impose Toughest Penalties on Poor, Minorities*, WASH. POST, Oct. 9, 1996, at A1.

<sup>31</sup> Michael Isikoff and Tracy Thompson, *Getting Too Tough on Drugs; Draconian Sentences Hurt Small Offenders More Than Kingpins*, WASH. POST, Nov. 4, 1990, at C1.

<sup>32</sup> *Second Judge Criticizes Crack Sentencing Rules*, OMAHA WORLD-HERALD (Neb.), Apr. 20, 1996, at 63.

<sup>33</sup> Bruce Vielmetti, *Charge nets life sentence*, ST. PETERSBURG TIMES (Fla.), Nov. 5, 1991, at 1B.

**Central District of California**  
**Appointed by Ronald Reagan, 1985**

“At least at the outset, this sentencing appeared to place me in the position of making the most difficult choice I have yet faced, between my judicial oath of office, which requires me to uphold the law as I understand it, and my conscience, which requires me to avoid intentional injustice. When I took defendant's plea of guilty in this case, he seemed to me to be the clearest possible example of everything that is wrong with guideline sentencing and statutorily imposed mandatory minimum sentences. . . . The minimum ten year sentence to be served by defendant was determined by Congress before he ever committed a criminal act. Congress decided to hit the problem of drugs, as they saw it, with a sledgehammer, making no allowance for the circumstances of any particular case. Under this sledgehammer approach, it can make no difference whether defendant actually owned the drugs with which he was caught, or whether, at a time when he had an immediate need for cash, he was slickered into taking the risk of being caught with someone else's drugs. Under the statutory minimum, it can make no difference whether he is a life time criminal or a first time offender. . . . I do not advocate giving up the attempt to rid our society from the evils of drug use. Drug crimes are not "victimless crimes," and it would be naive to suggest otherwise. . . . Since the days when amputation of the offending hand was routinely used as the punishment for stealing a loaf of bread, however, one of the basic precepts of criminal justice has been that the punishment fit the crime. This is the principle which, as a matter of law, I must violate in this case. . . . I, for one, do not understand how it came to be that the courts of this nation, which stood for centuries as the defenders of the rights of minorities against abuse at the hands of the majority, have so far abdicated their function that this defendant must serve a ten year sentence. . . . In my view a criminal justice system that does not require not only those who accuse a criminal, but also those who sentence him, to confront him and publicly acknowledge their acts as their own, to his face, is worse than uncivilized. It is barbaric.”<sup>34</sup>

**Senior Judge John C. Lifland**  
**District of New Jersey**  
**Appointed by Ronald Reagan, 1988**

“I am also mindful of the situation which we see frequently, where an individual who, because of minor or minimal involvement, has no information with which to satisfy the requirements [for reduction in sentence], or satisfy the government that those requirements are met, whereas someone with much more substantial involvement necessarily has the information which authorizes the Government to make a [reduction in sentence] motion. There is no such motion in this case. I am satisfied, because Mr. Miller was unable to supply the kind of information with which the government feels authorizes it to make such a motion. Again, it is something of a vicious circle because the reason he does not have that information is because of his minor involvement.”<sup>35</sup>

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<sup>34</sup> U.S. v. Patillo, 817 F. Supp. 839, 840-44 (C.D. Cal. 1993) (footnotes and citations omitted).

<sup>35</sup> From FAMM profile for Ronald P. Miller. U.S. v. Miller, No. 92-391 (D.N.J. June 24, 1993).

**Senior Judge Charles C. Lovell**  
**District of Montana**  
**Appointed by Ronald Reagan, 1985**

“The mandatory minimum sentence in this case is a sentence which the Court would not otherwise impose, but I’m charged with executing the laws that Congress enacts and with doing so to the best of my ability, and that the Court’s duty.”<sup>36</sup>

**Senior Judge George M. Marovich**  
**Northern District of Illinois**  
**Appointed by Ronald Reagan, 1988**

“[I]t goes back to days of Learned Hand and other jurists: We are not courts of justice, we are courts of law. And I’ve schmoozed about that once in a while in my private moments, because while it is true that applying the law is the heart of what we do, if we have a soul, it’s justice. And the Circuit Courts have gone on to tell us, you know, the nomenclature, the name “guideline” is a modest description of what they are. They are not guidelines, they are laws, and that as judges, we are to follow the law. And I think there is some wording in Appellate Court decisions that say judges on the district level have got to understand that the days when they perceived themselves as medieval lord chancellors is gone. They are bound to follow the law. And if there is not a legal reason to depart, then you cannot depart just because you think that it is fair or right. And I’ve got the message. And there is another thing they said: You know, we know judges don’t like it and we’ve heard your commentary about it, but kind of whining is unprofessional and unbecoming, and it kind of denigrates the process, and we kind of wish that when you’re sentencing people and following the law you’d quit saying how much you hate it. And maybe there is a kernel of truth there, too. It might be a good suggestion. The guidelines are – they are here. They are not guidelines; they are laws, and I am bound to follow them. No doubt about that.”<sup>37</sup>

“The Congress, in its wisdom in addressing this problem of drugs, has come up with rather severe sentences, and if you do the crime, you do the time. And they are willing to, as part of their war on drugs, if that’s the way you want to characterize it, give some trade-offs. If you’ve got some information that is going to help you get somebody else who is involved in the traffic and, therefore, help them wage another battle, that is something they are willing to trade. If you don’t have something to trade, I mean, you don’t get it and you get the time that you are involved with as far as the offense that you are convicted of.”<sup>38</sup>

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<sup>36</sup> Sent. Tr. at 44, U.S. v. Maki, No. CR-91-3 (D. Mont. Aug. 16, 1991).

<sup>37</sup> Sent. Tr. at 7-8, U.S. v. Brigham, No. 90-CR-561-4 (N.D. Ill. Jan. 16, 1992).

<sup>38</sup> *Id.* at 31-32.

**Judge John S. Martin, Jr. (ret.)**

**Southern District of New York**

**Appointed by George H.W. Bush, 1990**

**Prior Legal Experience: Assistant U.S. Attorney, Southern District of New York, 1962-1966; Assistant to the Solicitor General of the United States, 1967-1969; U.S. Attorney for the Southern District of New York, 1980-1983**

“While no one, not even the defendant, disputes that Pedro Lara should be sentenced to a substantial prison sentence, I find it impossible to believe that any rational person could say that justice will be done if Pedro Lara is sentenced to a prison term that is greater than that served by most convicted murders in New York State. . . . Can we really say we have a rational system of justice when the court, in imposing sentence, is stripped of the power to even consider the socio-economic and educational background of the defendant? Can we honestly say that Pedro Lara’s role in the distribution of narcotics require a ten-year jail sentence without parole when the Government candidly admitted that there was no attempt to prosecute the ‘pitchers,’ who worked at the level of distribution just below Lara, because their role in the chain of crack distribution was too insignificant to warrant prosecution?”<sup>39</sup>

“Every sentence imposed affects a human life and, in most cases, the lives of several innocent family members who suffer as a result of a defendant’s incarceration. For a judge to be deprived of the ability to consider all of the factors that go into formulating a just sentence is completely at odds with the sentencing philosophy that has been the hallmark of the American system of justice. When I took my oath of office 13 years ago I never thought that I would leave the federal bench. While I might have stayed on despite the inadequate pay, I no longer want to be part of our unjust criminal system.”<sup>40</sup>

**Judge J. Frederick Motz**

**District of Maryland**

**Appointed by Ronald Reagan, 1985**

**Prior Legal experience: Assistant U.S. Attorney, District of Maryland, 1969-1971; U.S. Attorney for the District of Maryland, 1981-1985**

“I’ve been extremely concerned about public policy and the alleged uniformity in sentencing caused by the sentencing guidelines when, in fact, that may be an illusion because really discretion has merely been transferred from the court to the prosecutor.”<sup>41</sup>

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<sup>39</sup> U.S. v. Genao, 831 F. Supp. 246, 247-54 (S.D.N.Y. 1993).

<sup>40</sup> John S. Martin, Jr., *Let Judges Do Their Jobs*, N.Y. TIMES, June 24, 2003, at A31.

<sup>41</sup> Mary Pat Flaherty and Joan Biskupic, *Prosecutors Can Stack the Deck*, WASH. POST, Oct. 7, 1996, at A1.



**Judge Edwin L. Nelson (deceased)**  
**Northern District of Alabama**  
**Appointed by George H.W. Bush, 1989**

"[This sentence] was simply unconscionable. The result will likely be that a young man who, given a reasonable response to his offense by the criminal justice system, might have become a productive and responsible citizen will instead spend . . . years in prison learning how to be a criminal."<sup>42</sup>

“So far as I can tell, this is a very minimal participation in a serious offense. But because of the guidelines and the minimum mandatory sentence required by the statute, here is a young man in his early twenties who is going to spend most of the next 10 years of his life in prison. If he had 50 other involvements, he could sit down with [the assistant United States attorney] and the agent and tell everything he knows, and [the assistant United States attorney] would be back in here pretty soon with a motion asking me to reduce the sentence; and almost certainly, I would reduce the sentence. So that he would have been better off in this situation, at least – probably – if he had been involved more extensively. That doesn’t make any sense to me. It just makes absolutely no sense whatsoever.”<sup>43</sup>

**Senior Judge Alan H. Nevas**  
**District of Connecticut**  
**Appointed by Ronald Reagan, 1985**  
**Prior Legal Experience: U.S. Attorney for the District of Connecticut, 1981-1985**

"Mr. Edwards, sentencing is never easy for a judge. I have been sitting as a judge for almost seven years. And in my view, the sentence I am being forced to impose is one of the unfairest sentences that I have ever had to impose. I don't excuse your conduct. . . . You deserve to go to jail. But 10 years at your age is absolutely outrageous. I know what 10 years is going to do to you. . . . I hope you don't come out embittered, hardened, tough and angry . . . This 10 year mandatory minimum is just awful. It looks good when some candidate stands up and says, 'I voted for a 10 year mandatory minimum,' I wish that candidate would come into the courtroom and sit here and have to sentence this young man to 10 years. They wouldn't find it so easy. But having said all that, Mr. Edwards, there's nothing I can do. So it's the sentence of this court that you be committed to the custody of the Bureau of Prisons for 120 months."<sup>44</sup>

**Judge Ralph W. Nimmons, Jr. (deceased)**

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<sup>42</sup> Stuart Taylor, Jr., *Janet Reno's Test of Courage*, THE AMERICAN LAWYER, Sept. 1993, at 34.

<sup>43</sup> Sent. Tr. at 7-8, U.S. v. Overton, No. CR-92-N-330-NE (N.D. Ala. Apr. 20, 1993).

<sup>44</sup> Dennis Cauchon, *Balanced Justice? Sentences For Crack Called Racist*, USA TODAY, May 26, 1993, at 1A.

**Middle District of Florida**

**Appointed by George H.W. Bush, 1991**

**Prior Legal Experience: Assistant Public Defender, Jacksonville, Florida, 1965-1969**

**Assistant Florida state attorney, 1969-1971**

“Yesterday, in reading this presentence report, reviewing it again . . . there quickly developed a keen sense of frustration on my part. I referred in my remarks a few moments ago to the fact that this is a tragic case, tragic in a number of ways. This is, I guess, a caricature of where our society has gone and what illicit, illegal drugs has done to our society and to so many people. . . . There’s very little that I can do under the law in this case. . . . My hands are tied in terms of the – I’m certainly not going to impose a sentence of any greater that what I’m required to, of 15 years. I would not impose that period of incarceration if I could avoid it, but I can’t. So there are a lot of frustrating aspects about this case.”<sup>45</sup>

**Judge David C. Norton**

**District of South Carolina**

**Appointed by George H.W. Bush, 1990**

“Okay. I don’t like to sentence people. That’s the worst part of my job. And what makes it even worse is that Congress has tied the judges’ hands in making sentences. There is nothing I can do about that. I mean, I’ve got to do what Congress tells me to do. I think this law is wrong. I think that mandatory minimum sentences are ridiculous, especially with regard to the Guidelines, but there’s nothing I can do about it. You know, Congress can change that if it wants to. It ought to do it. There’s something going – there is a ground swell saying we out to get rid of the, you know, mandatory minimums. . . . there is nothing I can do about it because Congress has tied my hands, and there’s – I wish I could do something about it, because I would.”<sup>46</sup>

**Senior Judge John S. Rhoades, Sr.**

**Southern District of California**

**Appointed by Ronald Reagan, 1985**

**Prior Legal Experience: Prosecuting Attorney, San Diego, California, 1955-1956**

“Sometimes I feel like an orangutan up here, just doing what the sentencing manual calls for with no room anymore for using my judgment.”<sup>47</sup>

**Senior Judge William W. Schwarzer**

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<sup>45</sup> Sent. Tr. at 15-16, U.S. v. Clyburn, No. 95-82-T-21A (M.D. Fla. Feb. 12, 1996).

<sup>46</sup> Sent. Tr. at 9-10, U.S. v. Lee, No. 2:91-573-4 (D.S.C. July 28, 1993).

<sup>47</sup> Mary Pat Flaherty, *Justice By the Numbers*, WASH. POST, Oct. 6, 1996, at A21.

**Northern District of California**  
**Appointed by Gerald Ford, 1976**

[The 1986 law is an] “unjust statute [that] makes judges clerks or, not even that, computers, automatically imposing sentences without regard to what is just and right. In the long run, if that's the task we impose on judges, the kind of judges we will get on the bench are those who have no sense of justice or conscience and who will serve as clerks to carry out the rule of the Congress. It behooves us to think that it may profit us very little to win the war on drugs if in the process we lose our soul.”<sup>48</sup>

**Judge Stanley Sporkin (ret.)**  
**District of District of Columbia**  
**Appointed by Ronald Reagan, 1985**

“I do not know what efforts, if any, the government has made to bring to justice James, or any of the drug kingpins who are ultimately responsible for Ms. Jackson's possession of the drugs. While it is incumbent upon the government to do everything it can to rid our community of street-level drug dealers, it is equally if not more important that the government direct its attention and resources to apprehending the suppliers of these street-level dealers. Too often, because of either a lack of resources or a difficulty in infiltrating drug distribution networks, this Court and other district courts find themselves sentencing underlings to substantial sentences while the drug overlords remain at large. Unless the government is able and willing to go after drug suppliers, the nation's prisons will be filled with the Renee Jacksons of the world, at tremendous costs and with very little impact on the drug trade. If progress is to be made in the war against drugs, the government must devote the resources necessary to pursue those who operate and manage drug enterprises, rather than being content to merely apprehend and punish the addict who makes street sales to support his or her habit. In this case, and unfortunately in too many others, the government seeks to justify a severe and disproportionate sentence by pointing to the need to fight the drug war. I will not treat the Renee Jacksons of the nation as stand-ins for drug kingpins simply because those genuinely deserving of harsh sentences are not before me. The drug war simply cannot be won on the backs of Renee Jackson and others like her.”<sup>49</sup>

**Judge H. Franklin Waters (deceased)**  
**Western District of Arkansas**  
**Appointed by Ronald Reagan, 1981**

“In any system where people are to be sentenced by formula as the guidelines attempt to do, lines must be drawn, and where those lines are drawn certainly, without question in my mind, results in some inequities and some sentences that are not in either the interest of the accused or, more

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<sup>48</sup> Stuart Taylor, Jr., Ten Years For Two Ounces, *THE AMERICAN LAWYER*, Mar. 1990, at 65.

<sup>49</sup> *U.S. v. Jackson*, 756 F. Supp. 23, 26-27 (D.D.C. 1991).

importantly, the public interest.”<sup>50</sup>

“I feel strongly that mandatory minimums are an abomination that does not serve the public interest. The guidelines are sometimes bad enough, but the mandatory minimums are even worse.”<sup>51</sup>

**Senior Judge Spencer M. Williams**  
**Northern District of California**  
**Appointed by Richard Nixon, 1971**

“The U.S. attorney can make a deal with a big shot, but the guy who's a mule and can't put his finger on any information, can't get a break. We have more persons in prison per thousand than any other country in the world. We're building prisons faster than we're building classrooms. And still the crime rates [sic] going up. The whole thing doesn't seem to be very effective.”<sup>52</sup>

**Senior Judge Alfred Wolin**  
**District of New Jersey**  
**Appointed by Ronald Reagan, 1987**  
**Prior Legal Experience: Special Assistant Prosecutor, Union County, New Jersey, 1970;**  
**Municipal Prosecutor, Town of Westfield, New Jersey, 1973-1974**

“There's no doubt that the sentence that the guidelines calls for is a very harsh and very extreme sentence, one that this Court, if left to its own devices, would not impose. While I think that you should go to jail, and I think that all couriers should go to jail, to take a 21 year old woman and to sentence her to a mandatory minimum of 10 years, as I must, is a very harsh and extreme sentence. When one thinks that when you emerge from an institution, you will be 31, you will have given away 10 of the productive years of your life and will be separated from you child in your child's development years, that's a very heavy concern for this Court. But I have no choice.”<sup>53</sup>

**Special Courts**

**Senior Judge Nicholas Tsoucalas**  
**U.S. Court of International Trade**  
**Appointed by Ronald Reagan, 1985**  
**Prior Legal Experience: Assistant United States Attorney, S.D.N.Y., 1955-59**

“As far as this court is concerned, the guidelines are superseded by the statute, and that being so, the court must sentence him to the minimum under the statute which is ten years. . . . The court's hands are tied. The court believes that the defendant should be sentenced to less than ten years. In fact, the court was prepared to sentence the defendant to seven years in jail. However, the statute

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<sup>50</sup> Letter from Judge H. Franklin Waters, to Jerry Hinshaw (Mar. 26, 1992) (on file with author).

<sup>51</sup> Letter from Judge H. Franklin Waters, to David Zlotnick (July 24, 1998) (on file with author).

<sup>52</sup> *Id.*

<sup>53</sup> U.S. v. Tannis, 942 F.2d 196, 199 (3d Cir. 1991) (Higginbotham, J., concurring).

prescribed a minimum, and that minimum is ten years, and the court cannot disregard the statute.”<sup>54</sup>

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<sup>54</sup> Sent. Tr. at 24-25, U.S. v. Larotonda, No. 89-CR-575 (S.D.N.Y. July 17, 1990).