

Sam Sparks
Western District of Texas

*There's absolutely no question in my mind that these are severe mandatory minimums. Ten years is a long time. I sentence under the Guidelines many people who have more narcotics, more cocaine, that don't even come to ten years. But I don't have the authority, Counsel, to reverse the Congress*¹

Appointed by: President George H.W. Bush, 1991.

Law School: University of Texas, LL.B. 1963.

Prior Legal Experience: Hardie, Grambling, Sims & Galatzan (now Mounce & Galatzan), 1967-1991.

Background and Reputation in the Legal Community

Judge Sparks completed his college and legal education at the University of Texas at Austin. After law school, he served as an aide to a Congressman for a year and went on to clerk for the Hon. Homer Thornberry (W.D. Tex.). He then practiced law in El Paso for twenty-six years with Hardie, Grambling, Sims & Galatzan (and its successor firms), twenty-four of which he was a partner. Before being appointed to the bench, he was a member of a variety of professional societies including the American College of Trial Lawyers and the Texas Bar Foundation.

In 1996, Texas Lawyer magazine spoke with fifty-six Texas attorneys of all backgrounds as part of a survey of the federal bench. Judge Sparks came across as a rising star in the district. He was characterized as a judge who “raises the performance of lawyers in his courtroom through his high expectations.” The lawyers surveyed by the Almanac of the Federal Judiciary likewise report that Judge Sparks has outstanding legal skills. Some note, however, that he can be very demanding. Comments there included: “He doesn't fool around.” “His level of legal ability is high and he wants preparation from lawyers.” He also runs a strict courtroom and “has little patience for nonsense.”

Most lawyers believe that Judge Sparks has no leanings in civil or criminal cases although several describe him as “a conservative judge” but not one with “a strong ideology.” A majority of criminal defense lawyers say that Sparks “sentences within the mid-to-upper range of the guidelines,” but also that he “can be persuaded to depart from the guidelines.”

In the 1990's, Judge Sparks received national attention for two of his rulings. In *Hopwood v. Texas*, he ruled for a group of white plaintiffs, who argued that the admissions procedures of the University of Texas Law School had violated the 14th Amendment by using a quota system to admit less qualified black and Mexican-

¹ Sentencing Transcript at 13, *United States v. Joann Zedler*, No. A-95-CR-104(1) (W.D. Tex. November 3, 1995).

American applicants.² The Fifth Circuit later upheld his decision and the Supreme Court declined to grant certiorari.³ In *Atwater v. City of Lago Vista*, Judge Sparks granted summary judgment for the police in a civil case that arose out of an incident in which the police decided to place a mother under arrest (and transported her to the station) for not having her children in seatbelts in her pickup truck, even though this infraction carried only a fine and no possible jail time. Later affirmed by the Supreme Court, Judge Sparks' opinion held that she failed to state a claim under the Fourth Amendment.⁴

Judge Sparks on Sentencing Policy

In July 1998, Judge Sparks wrote a letter to a member of Congress who had supported his nomination to the bench about his frustrations with the sentencing laws and his concern about the enormous amount of money being expended to incarcerate prisoners in the federal system.⁵ In this letter, Judge Sparks described a case he had just completed in which he had sentenced twenty-five people in two interrelated conspiracies. Even though many of the defendants received government substantial assistance motions, which allowed him to sentence them to a "somewhat lower range than the Sentencing Guidelines, [the] cost to the American taxpayer for food and housing alone for these twenty-five people [was] \$2,948,000."⁶ Judge Sparks added that this dollar amount did not include "any programs or contingencies such as medical treatment, drug rehabilitation, mental health counseling. . . [or] taxpayer expense in feeding, clothing and housing the children of these defendants - and there are over forty, all under eight years of age."⁷

² See *Hopwood v. Texas*, 861 F.Supp. 551 (W.D. Tex. 1994).

³ *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996), *cert. denied.*, *Texas v. Hopwood*, 518 U.S. 1033 (1996).

⁴ See *Atwater v. City of Lago Vista*, 532 U.S. 121 (2001) (discussing Judge Sparks' unpublished opinion).

⁵ July 20, 1998 from Judge Sparks to [receiving party's name omitted] at 1 (redacted copy on file with author) . Judge Sparks has articulated his concern that Guideline sentences are not cost effective in at least one published opinion. See *United States v. Charles*, 275 F.3d 468, 471 (5th Cir. 2001) (sitting by designation, Judge Sparks wrote a concurring opinion stating, "The purpose of this guideline was certainly not to sentence a person convicted of car theft, unauthorized use of a vehicle, or DWI in the same manner as a convicted murder[er], rapist, bomber, hijacker, or drug dealer. A sentence of 27 to 33 months in prison for possessing a gun by a felon with no aggravating factors constitutes a sufficiently severe sentence. Of course, if the district judge determines a sentence is too lenient, the judge can always [depart upward]. . . . The expense of \$55,000 of taxpayers' money and making a defendant serve twice as long a sentence simply because he *might* have an accident when he steals a car, or is driving a stolen car, simply has no basis in the Guidelines nor in logic.").

⁶ *Id.* (adding that "a conservative estimate of their supervision in terms of the supervised release required by the Sentencing Guidelines is \$260,400.00.").

⁷ *Id.* He added that neither the Assistant U.S. Attorneys nor the law enforcement personal in the courtroom were aware that these convictions would result in such expenditures and that they were "astonished." *Id.* at 2.

Judge Sparks added that normally he sentenced six to eight criminal defendants a week, yet he handled only half of one docket and there were seven dockets in his district. As a result of all these cases, “we are expending an incredible amount of money by sentencing under the United States Sentencing Guidelines.”⁸ Moreover, in his opinion

The Guidelines themselves have illogical results. The sentence for a bank robber who walks into a bank with a gun and jeopardizes life and limb to steal money can be substantially less than a twenty-two year old without a criminal record who is addicted to crack cocaine and who has never held a gun in his or her life. The mechanical rules of sentencing are neither uniform nor logical and too many times they represent a “knee jerk” reaction to one specific area of the law.⁹

Judge Sparks did not purport to have a solution other than eliminating the Guidelines, but even so, he did not believe that a return to the prior system would lead to chaos. He wrote that, “[w]hile I have over twenty-five years of trial experience, I suspect that my greatest assets are judgment and/or discretion. Other than integrity, these talents are indispensable in providing competent service in the judiciary. With the unlimited use of judgement and discretion, I am confident that experienced federal judges can cut in half the expenses to the taxpayer that sentencing under these guidelines mandates.”¹⁰ Judge Sparks concluded his letter by saying, “I appreciate very much your reading this letter and allowing me to relieve my frustrations to persons I respect and hope might be able to do something about the problem.”¹¹

With regard to mandatory minimums, Judge Sparks writes they give “unbridled discretion to the U.S. Attorney’s Office to control a criminal case and pretty much apply sufficient pressure to keep some cases from being tried that perhaps ought to be tried.”¹²

Joann Zedler¹³

Offense:	Conspiracy to Manufacture Marijuana.
Sentence:	10 year mandatory minimum.
Released:	September 27, 2004.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² July 27, 1998 letter from Judge Sparks to author at 1(on file with author).

¹³ Although Judge Sparks wrote his July 27, 1998 letter in response to an inquiry from the author, this case was located via inmate records and without the judge’s participation.

On January 13, 1995, Joann Zedler and her husband, Alan Zedler, had a domestic dispute with disastrous consequences for both their lives. The police were called to the premises and because Alan had fled, the responding officers conducted a K-9 lawful search of the property for him. During this search, the police noticed a fenced-off garden plot located behind the house. The garden bore all the indicia of a marijuana operation. The fence around it was partially covered with tree brush and underground water lines appeared to be in place.¹⁴ Additional surveillance over the next few months led to a state search warrant. When the warrant was executed on June 28, 1995, over 6,000 live marijuana plants were found in the secret garden and just under 16 pounds of usable marijuana was recovered from the garage and residence.¹⁵ The police also found twelve loaded guns on the property including a .45 caliber handgun under Alan Zedler's pillow.

The Zedlers were arrested and charged in a seven count indictment with marijuana manufacturing and trafficking and firearms violations. Joann, who had been released on an unsecured appearance bond, accepted the government's plea offer. She had to plead guilty to one count of conspiracy to manufacturing marijuana and not to oppose property forfeitures that included her home and the surrounding land.



When the Presentence Investigation report (PSI) was first written, Joann was assessed at Offense Level 33, with a sentencing range of 135-168 months, because each live plant was considered to be the equivalent of 1 kilogram of marijuana.¹⁶ However, the judge delayed the sentencing to allow Amendment 516 to the Sentencing Guidelines to take effect. Amendment 516 substituted a more realistic assessment of the actual amount of marijuana produced by the average plant.¹⁷ As a result, her offense level dropped to Level 25, with a sentencing range of 51-71 months.¹⁸

However, while the Guideline sentencing range was now more favorable to her, the

¹⁴ The police also noticed that observation towers had also been built into the brush overlooking the plot and in one of the two barns on the property.

¹⁵ Also seized were scales, packaging paraphernalia, and \$2,800. The marijuana plot was protected with motion detectors. (Note: The PSI states that the search warrant was executed on June 28th. The Fifth Circuit opinion in her husband's case says the date was July 28th. See *United States v. Zedler*, 1996 WL 3497148 (5th Cir. May 24, 1996). I elected to use the June date in the text because the parties had the opportunity to review and correct any inaccuracies.

¹⁶ 6,258 live plants plus 159 pounds of harvested marijuana totaled 6265 kilograms of marijuana for Guideline purposes before Amendment 516.

¹⁷ 2002 U.S.S.G. § 2D1.1(c) amend. 516 (changing each live plant to the equivalent of 100 grams of marijuana for Guideline purposes).

¹⁸ Joann also received a three point reduction for acceptance of responsibility.

statute still set forth a ten year mandatory minimum for 1,000 or more marijuana plants, and the statutory scheme trumped the new Guideline range. At the sentencing hearing, Joann's counsel tried to argue that Judge Sparks could sentence Joann based upon the Guideline range and not the mandatory minimum, but his only legal grounds was that the statutory sentence in this case would be "a harsh and cruel sentence that would shock the conscience of the court."¹⁹ Without any meaningful statutory or case law support, Judge Sparks properly rejected this argument, telling the defense attorney that he had "no authority to overrule the Congress, whether I think their wisdom is correct or not."²⁰

Throughout the sentencing hearing, however, Judge Sparks made clear that he thought a ten year sentence for Joann was too long. He began the sentencing hearing by saying, "When I read the presentence report, I thought to myself this just doesn't seem right."²¹ Later he added

There's absolutely no question in my mind that these are severe mandatory minimums. Ten years is a long time. I sentence under the Guidelines many people who have more narcotics, more cocaine, that don't even come to ten years. But I don't have the authority, Counsel, to reverse the Congress..."²²

Given Judge Sparks' sympathy for her situation, it was particularly tragic that Joann's defense attorney failed to ask the judge to apply the newly created "safety-valve" statute to her case, which would have allowed the judge to sentence below the mandatory minimum.²³ Under the facts of the case, Joann would likely have been able to qualify because she had no criminal record and her husband had clearly been running the operation. In addition, even though a dozen firearms were found in the house, Judge Sparks had already ruled that all the guns belonged to her husband and that Joann's "personality is just incompatible with the use of the gun in a . . . drug trafficking offense."²⁴ Therefore, although she lived in the house, the weapons would not have been

¹⁹ Sent. Tr. at 11.

²⁰ He further added, and "any argument that they impliedly reversed the written word that they have enacted . . . falls on clay feet." Sent. Tr. at 13.

²¹ Sent. Tr. at 3.

²² Sent. Tr. at 13.

²³ The safety-valve requires that: a) the defendant does not have more than one criminal history point; b) the defendant did not use violence or credible threats of violence or possess a firearm or dangerous weapon (or induce another participant to do so) in connection with the offense; c) the offense did not result in death or serious bodily injury to any person; d) the defendant was not an organizer, leader, manager, or supervisor of others in the offense; and e) not later than the time of the sentencing hearing, the defendant has truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan. To ensure that the safety-valve benefitted defendants who qualified, the Sentencing Commission also incorporated the safety-valve into the Guidelines at §5C.1, and provides for a two-level decrease in the offense level for those eligible.

²⁴ Sent. Tr. at 20.

found to be within her possession for purposes of the safety-valve.²⁵

However, the safety-valve also requires that a defendant make a truthful proffer about their involvement in the offense. In this case, it is unclear how this issue would have been resolved because of the confusion at Joann's sentencing hearing which occurred just a month after the statutory safety-valve became effective and just two days after the Guideline implementing it was issued. Unfortunately for Joann, in this period, there was much uncertainty over what constituted compliance with this last requirement and who had the power to determine if the defendant's proffer was sufficient. In order not to lose the coercive power of substantial assistance agreements, federal prosecutors took the position that the government had to be satisfied that the defendant was being truthful and fully forthcoming, both about their own activities and all others involved in the offense. Moreover, the government's position in the early years was that judges had no power to apply the safety-valve over the government's objection.

Eventually, the appellate courts ruled that the statute did empower judges to make their own findings on whether the defendant's proffer was sufficient and truthful. However, at Joann's sentencing, it appears that everyone present believed that the safety-valve required both government assent and the same level of disclosure as a cooperation agreement. For example, at one point Judge Sparks stated, "you don't come with any safety-valve . . . simply because you have not complied with the guidelines. . . . whether they cause you to think you have to do something dishonorable or not, they are the law."²⁶ Later in the sentencing hearing, Judge Sparks also seemed to indicate that he could not use the new safety-valve provision unless the government indicated their agreement.²⁷

Several years later, Joann's appellate attorney confirmed that her first lawyer failed to argue a broader interpretation of the fifth safety-valve criteria.²⁸ Joann writes that she

²⁵ Sent. Tr. at 20. The judge had already ruled on the gun possession issue because the probation officer believed that Joann's offense level should be increased by five points because of the presence of the firearms, including an automatic weapon (which carried an additional increase). In addition to the judge's assessment of Joann's personality noted above, Alan also admitted at the sentencing hearing that all the weapons were his alone. Without this ruling, Joann's Offense Level would have been 30 instead of 25.

²⁶ Sent. Tr. at 3. Joann reports that the government wanted her to name the people involved in Alan's distribution ring. However, she refused to "ruin someone's life" and that she was afraid that if she cooperated she would have to "testify forever." September 5, 2005 telephone conversation with Joann Zedler (notes on file with author).

²⁷ Judge Sparks stated, "To cooperate . . . with the United State Attorneys office and law enforcement . . . then it would permit me to proceed from the mandatory minimums under these recent amendments. But, unless the Government has made that certification - in this particular instance Mr. Zedler wouldn't be eligible because of the gun count. Ms. Zedler . . . assuming that she was, I would have had that discretion. But as I understand it, from the Government . . . there has been no cooperation." Sent. Tr. at 14. In this excerpt, the judge seemed to conflate cooperation agreements, which requires the government's assent, with the safety-valve, which does not require the government's approval but does have a gun possession disqualification.

²⁸ Notes of an August 4, 1997 conversation between Joann's appellate attorney and law clerk at

had met with government agents the day before sentencing in an effort to qualify. However, the agents wanted to know the names of the Zedler's marijuana customers and when Joann said that she had no customers, the government terminated the meeting.²⁹ However, because the defense attorney never requested that Judge Sparks hold a hearing to determine if her proffer was truthful and sufficient, there is no way to determine if she would have been found eligible over the government's objection.³⁰

For Joann, the failure to qualify for the safety-valve at sentencing was catastrophic. With the further two point reduction under the Guidelines safety-valve provision, her applicable Guideline sentencing range would have been 46-57 months. While the record contains no hint of what sentence within this range Judge Sparks would have chosen, it is clear that she would not have gotten anywhere near the 120 months that Judge Sparks was required to impose.³¹

Joann served her sentence and was released from federal custody on September 27, 2004. Her husband originally pled guilty to one count of manufacturing marijuana and one count of using or carrying a firearm in connection with a drug trafficking offense. Because this second charge carried a mandatory five year consecutive sentence, he received a fifteen year sentence on the same day that Joann was sentenced. However, under a later Supreme Court opinion, *Bailey v. United States*, 516 U.S. 137 (1995), using a firearm during a drug trafficking offense was interpreted to require active employment of the weapon, not just simple possession. Since the only evidence the government had in this case was that the gun was under Alan's pillow, the conviction on this count was later vacated and he too ended up with the same 120 month sentence as Joann, although he was actually released about 16 months before her.

What is particularly tragic about this case, however, are the facts that were never made know to the judge, probation officer, or prosecutor - that Joann was the victim of serious domestic abuse at the hands of her husband. She now reports that she had been taken to

Families Against Mandatory Minimums ("FAMM") (copy on file with author).

²⁹ June 6, 1998 letter from Joann Zelder to FAMM (copy on file with author). Remarks by the prosecutor at the sentencing confirm that the government also believed it held the key to a lesser sentence, whether for cooperation or under the safety-valve: "[S]he knew what was going on, and we're trying to engage in an effort here to maybe help her out because the sentence is so harsh, but Mrs. Zedler hasn't done a single thing to allow the Government or Your Honor to lower this sentence in this case. Instead, she is content to sit silently over there, and not tell us one single thing with regard to where this money came from and who she's distributed the pot to." Sent. Tr. at 23.

³⁰ Joann attempted on her own and through counsel to litigate the safety-valve issue, but under the restrictive rules on post-conviction motions, she was never able to get back into court for a full hearing on the merits. The PACER docket sheet reflects that Joann's first appellate attorney was relieved of her obligations to file an appeal. After that, she made several efforts to have her direct appeal reinstated and to obtain a post-conviction hearing on this issue on the merits but she was rebuffed by Judge Sparks and the Court of Appeals. *United States v. Zedler*, #95-CR-104 at 16-18 PACER docket sheet (on file with author).

³¹ Under the Sentencing Reform Act, federal inmates must serve at least 85% of their sentences. Thus, her actual time served was a little less than ten years.

the emergency room many times as the result of Alan's violence against her and that he had even put her into a coma once. As in many domestic violence situations, Joann was too frightened to seek help. Although she remained close to her parents and sister in her adult life and believes that they had some awareness of the problem, no one knew "how to handle the situation."³² She also had limited economic options. She dropped out of high school in the 10th grade and had limited work experience as a secretary and bank clerk.

Even this case was ultimately linked to the recurring domestic violence in her home. The night the police came to the house and discovered the marijuana field was because a neighbor called in a report of a domestic assault. She says that the years of domestic violence had left her "like a prizefighter hit too many times."³³ Prison doctors thought she was mentally ill but she has participated in some neurofeedback sessions which have helped her function much better.

Even after years in prison, she was still afraid of Alan. Thus, when she was assigned to a half-way house in Austin near the end of her sentence, she refused to go because Alan was also being released to that city at the same time and she had heard that he wanted to see her. As a result, she lost the opportunity for half-way house placement and was required to serve her all of sentence in prison, whereas Alan was released more than a year before her.

Nevertheless, Joann says that she made good use of her time in prison, taking courses in culinary arts, HVAC, electrical wiring, and other skills to enable her to work when she was released. Outside of prison, she has re-established contact with her adult son³⁴ and has been able to support herself. She began living with her elderly parents but now has a small apartment of her own. She reports that she was very fearful during the first six months after her release and that it took her time to be able to speak with strangers and "shake prison life."³⁵ However, she now says that she has a positive outlook and enjoys working with her hands.

Compiled from Sentencing Transcript, PSI, letters from Judge, telephone interview notes with Joann Zedler, PACER docket sheet.

³² Id.

³³ September 5, 2005 telephone conversation with Joann Zedler (notes on file with author).

³⁴ She married for the first time at seventeen and had a son who was an adult by the time of her conviction. Although he was raised by his paternal grandparents she maintained contact and visitation throughout his childhood. Joann married Alan in 1986 but they had no children together.

³⁵ September 5, 2005 telephone conversation with Joann Zedler (notes on file with author).