



National Association of Assistant United States Attorneys

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Testimony of

ERIC EVENSON

on behalf of the

**NATIONAL ASSOCIATION OF
ASSISTANT UNITED STATES ATTORNEYS**

for the hearing on

PENALTIES

before the

Over-Criminalization Task Force of 2014

of the

Committee on the Judiciary

UNITED STATES HOUSE OF REPRESENTATIVES

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Chairman Sensenbrenner, Ranking Member Scott and Members of the Task Force:

I am Eric Evenson, a former federal prosecutor. I retired as an Assistant United States Attorney from the Department of Justice in November 2013 after over twenty-three years of federal service. I served 17 years in the drug unit of the United States Attorney's Office for the Eastern District of North Carolina, including twelve years as Chief Prosecutor for the Organized Crime Drug Enforcement Task Force. From 2006 – 2011, I had the honor of serving under then-United States Attorney George Holding, a current member of the House of Representatives and a member of the Over-Criminalization Task Force.

I am pleased and honored to appear before you today on behalf of the National Association of Assistant United States Attorneys (NAAUSA). NAAUSA shares a strong concern over legislative proposals that would substantially reduce mandatory minimum sentences. I want to devote my testimony to explaining why strong mandatory minimums, along with safety-valves built into the current system, are so critical to the ability of federal prosecutors to induce cooperation from the so-called "small fish" to build cases against kingpins and leaders of criminal organizations.

During the 1980's I served as a state prosecutor. Whenever we prosecuted drug cases, we would often hear complaints that we were only prosecuting the lower-level dealers, and not the "big fish." Unfortunately, because of the weakness of state laws, there was a lot of truth in that complaint.

Most state prosecutions hinge on whether a drug dealer can be caught in possession of narcotics, or whether he can be caught selling the drugs. As a result, most state prosecutions are based on undercover buys or search warrants. While local drug agents might be able to make an undercover buy from a street dealer, it is unusual for a state prosecution to be able to gather the needed evidence to charge a source of supply, or a leader of a drug organization. These sources of supply can continue selling drugs to their street dealers for years without fear of arrest or prosecution.

When I became an Assistant United States Attorney in 1990, I quickly realized that federal law enforcement and prosecutorial efforts targeted a different set of drug defendants, ones involved in selling significant quantities of narcotics, typically larger than those sold by state defendants, and sizeable enough to trigger the application of mandatory minimum sentences. Congress also mandated that the Department of Justice pursue these criminal organizations and their leaders and provided the necessary tools, including mandatory minimums and the authority to charge drug organization leaders and others with conspiracy to distribute and sell large quantities of outlawed drugs.

What is needed to charge the leader of a drug organization, engaged in the trafficking of large quantities of heroin and other dangerous drugs, with a conspiracy charge? Cooperating defendants are needed as trial witnesses. To go after the big fish, prosecutors need the cooperation of the little fish. Every federal drug prosecutor worth his salt knows that he has to induce the cooperation of the lower-level dealers to testify against the kingpins and

their source of drug supply.

Securing witness cooperation is not an easy task for prosecutors. Lower-level dealers and conspirators have a strong incentive not to cooperate. The foremost reason for their restraint lies in their personal safety and that of their loved ones, whose lives can be snuffed out in a flash by higher-level drug leaders in reprisal for cooperation. This is a mean business, involving vicious people who prey on weak people who suffer from addiction. In weighing the risks of cooperation, lower-level defendants will be much more likely to refrain from cooperating when they are faced with only minor jail terms. It's easier to serve their time, secure interim protection for their families, and rejoin the drug business following their release from prison. Strong mandatory minimums alter that dynamic and cause defendants to reflect on the choice of cooperating, plea bargaining and receiving a relatively shorter sentence, or facing the prospect of a guilty verdict and a substantially longer sentence.

I have personally debriefed hundreds of arrested drug dealers and explained to them, in the presence of their attorney, the benefits of cooperating with law enforcement. Their attorney had already explained to them that they faced a strong mandatory minimum prison term and that the only way they might receive a reduced sentence was to cooperate, provide information and be willing to testify truthfully. This straightforward choice of options, designed by Congress, has led to the dismantling of numerous dangerous drug organizations in every district, city and town in America. Without the cooperation of the lower-level dealers, federal authorities simply will be unable to ever charge, arrest and convict the major sources of

illegal drugs in our country.

Deserving defendants who cooperate with federal authorities can receive leniency from judges. Current law permits federal prosecutors to move in court for a sentence reduction for a cooperating drug defendant, and leaves up to the federal judge what the appropriate sentence should be. This simple scheme works well and plays out in the majority of cases. If a defendant cooperates before sentencing, the prosecutor may file a motion pursuant to § 5K1.1 of the United States Sentencing Guidelines (also known as a "5K" motion). If a defendant cooperates after sentencing, the prosecutor can file a Rule 35 motion. The cooperation provided by the defendant must amount to "substantial assistance." These available options under current law undermine the notion that our current system is draconian or in need of change.

In reflecting upon my thirty-three years of public service as a state and federal prosecutor, my experience has clearly shown to me that our success in the pursuit of drug organizations relies upon mandatory minimum sentences to induce lower-level dealers and conspirators to testify against the higher-level dealers. Without them, many, if not most, of these lower-level defendants would simply refuse to cooperate and testify. Mandatory minimum sentences and the presumption of pre-trial detention in federal drug arrests have given federal prosecutors and investigative agents the leverage they need to garner witnesses and remove a very serious drug problem in our communities. If this leverage is removed or weakened, then these vital witnesses will become unavailable to prosecutors. In essence, reducing mandatory minimums will substantially diminish our testimonial

witnesses, and fewer drug organization leaders will be arrested and convicted. We will revert back to convicting only the little fish and will be unable to arrest the big fish.

Drug organizations set up strongholds in neighborhoods within communities. With drug gangs come guns and violence. Show me a city with a violence problem, and you will find an underlying drug trafficking problem. Those who suffer under such conditions are the most vulnerable, the poor, the elderly, the young, and the addicted. The local drug house quickly brings negative consequences into an area. When neighborhood property values plummet, the poorer families are stuck in their homes, unable to sell and move away. Their only choice is to hunker down and put bars on their windows. We as federal prosecutors represent these voiceless victims in our courts every day. We are deeply concerned about the impact of sentencing reductions on public safety. We urge you and your colleagues to refrain from reducing mandatory minimum sentences for drug trafficking and other serious federal crimes.

Mr. Chairman, thank you for the opportunity to share the comments of the National Association of Assistant United States Attorneys on these important issues. I will be happy to answer any questions that you and the panel may have.