

Justice Roundtable

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Dr. Santiago Canton
Executive Secretary
Inter-American Commission on Human Rights
Washington, D.C. 20006

Via U.S. Mail, facsimile: 202-458-3992
and e-mail: cidhoea@oas.org

Dear Dr. Canton:

Pursuant to Article 64 of the Regulations of the Inter-American Commission, the undersigned organizational participants of the Justice Roundtable¹ write to request that the Inter-American Commission hold a hearing during its 126th session to examine the issue of the discriminatory impact of mandatory minimum sentencing in the federal criminal system of the United States of America. The issue of mandatory sentencing has implications not only in the U.S., but throughout the hemisphere as well, as it impacts the administration of justice in all the Member States of the OAS.

We allege that mandatory minimum sentences violate protected rights found in the American Declaration on the Rights and Duties of Man -- specifically, the right to equal protection of the law, the right to a fair trial, and the right to judicial protection against violations of fundamental rights. Under the OAS Charter, the United States, as a member state of the Organization of American States, is bound by the provisions of the American Declaration. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), further elaborates on the provisions of the American Declaration and, as such, this Commission should look to its provisions for guidance as well.

A mandatory minimum sentence is a prison term predetermined by the U.S. Congress and automatically imposed for certain crimes, the overwhelming majority being offenses involving drugs or weapons. In most cases the sentence is at least 5 years, and often is 10, 15, 20 years or more for low level, nonviolent offenders. Judges are barred from considering mitigating factors, resulting in the application of inordinately harsh sentences

¹ The Justice Roundtable is a broad-based, informal coalition whose mission is 1) to promote fairness and equality in all areas of the criminal justice system; 2) to reduce the over-reliance on incarceration in the United States; 3) to minimize the counter-productive consequences of criminal convictions; and 4) to conform domestic criminal justice policies to international human rights doctrine. The Participants in the Justice Roundtable pursue this mission through education and advocacy to influence public policy, and through public and legislative discussion of criminal and civil justice reform. Our ultimate goal is to build safe and healthy communities that respect the civil and human rights of all.

which apply regardless of the defendant's role. In 1991 the U.S. Sentencing Commission² completed a meticulous study on mandatory minimums, finding that such sentences are applied in a discriminatory fashion, with non-whites being more likely to receive them³. The Federal Judicial Center reported that in cases where a mandatory minimum prison term could be applied, African Americans and Hispanics were more likely than whites to receive at least the minimum sentence.⁴ Thus, although Congress' stated intention was to reduce arbitrariness and unwarranted disparities in sentencing, the report concluded that mandatory minimums actually increase such problems.

The most flagrant example of the discriminatory impact of mandatory minimum sentences is the distinction between crack and powder cocaine. In what has come to be known as the 100-to-1 quantity ratio, it takes 100 times as much powder cocaine compared to crack cocaine to trigger the same mandatory minimum penalty. In 2002, 81.4% of those convicted of crack cocaine offenses in federal courts were African American.⁵ This disparate sentencing scheme has been touted as the single most important factor accounting for the dramatic racial disparities in federal sentencing between black and white drug offenders. The Sentencing Commission has stated that revising the crack/powder disparity would better reduce the sentencing gap between blacks and whites than any other single policy change, dramatically improving fairness.⁶

At the requested hearing, we propose to present expert testimony from the judicial and legislative branches of government, as well as experts representing civil society organizations, on the discriminatory impacts of mandatory minimum sentences. We will also present testimony on the current legal and legislative challenges to the crack cocaine mandatory minimums. We will describe how mandatory minimum sentences are inconsistent with non-discrimination principles found in international and regional human rights standards. Finally, we will make recommendations to the Members of the Commission. If our request for a hearing is granted, we will provide your office with the specific names of our expert panelists and resource persons.

We appreciate your consideration of our request for a hearing and look forward to a favorable response.

Respectfully submitted,

² The U.S. Sentencing Commission (USSC) is an independent agency in the judicial branch with responsibility for advising Congress on sentencing matters.

³ U.S. Sentencing Comm'n Special Report to the Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System (1991).

⁴ Barbara S. Meierhoefer, "The General Effect of Mandatory Minimum Prison Terms: A Longitudinal Study of Federal Sentencing Imposed" (1992).

⁵ USSC, Sourcebook (2002), Table 34

⁶ USSC, Fifteen Years of Guidelines Sentencing (Nov. 2003), p. 132.

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