

Written Testimony
Submitted by
Congressman Robert C. "Bobby" Scott
Ranking Member
U.S. House Judiciary Subcommittee on Crime, Terrorism and Homeland Security
To the
Inter-American Commission on Human Rights Hearing
124th Period of Sessions
On the
Discriminatory Impact of Mandatory Minimum Sentencing in Federal Criminal Justice
System of the United States of America
March 3, 2006

This testimony is written in support of the petition by the Justice Roundtable urging the Inter-American Commission on Human Rights to determine whether the United States government is violating international law and norms protected under the American Declaration of Rights and Duties of Man ("American Declaration") by the implementation as well as the application of mandatory minimum sentences in the federal criminal justice system in a discriminatory manner .

Mandatory minimum penalties have been studied extensively in the U.S.. The research reveals that they do not work to achieve their purported purpose of reducing crime and eliminating disparities in sentencing. To the contrary, mandatory minimum sentencing has been shown to distort the sentencing process, to discriminate against minorities in its application, and to waste money. The Judicial Conference of the United States, which sees the impact of mandatory minimum sentences on individual cases as well as on the federal criminal justice system as whole, has reiterated its opposition to mandatory minimum sentencing over a dozen times to Congress, noting that these sentences ``severely distort and damage the Federal sentencing system undermine the Sentencing Guidelines regimen" established by Congress to "... promote fairness and proportionality in sentencing," and ``destroy honesty in sentencing by encouraging charge and fact plea bargains." In its recent letter to the members of the House Judiciary Subcommittee on Crime, Terrorism and Homeland Security regarding H.R. 1279, the "Gang Deterrence and Community Protection Act of 2005", the Conference noted that mandatory minimum sentences create "the opposite of their intended effect". Far from fostering certainty in punishment, mandatory minimums result in unwarranted sentencing disparity. Mandatory minimums treat dissimilar offenders in a similar manner, although those offenders can be quite different with respect to the seriousness of their conduct or their danger to society..." and "...require the sentencing court to impose the same sentence on offenders when sound policy and common sense (emphasis added) call for reasonable differences in punishment."

The United States Sentencing Commission in its study entitled ``Mandatory Minimum Penalties in the Federal Criminal Justice System" found that minorities were substantially more likely than whites under comparable circumstances to receive mandatory minimum sentences. The Sentencing Commission study also reflected that mandatory minimum sentences increased the disparity in sentencing of like offenders with no evidence that mandatory minimum sentences had any more crime-reduction impact than discretionary sentences. The difference is that

mandatory minimum sentences cost a lot more by keeping minor role offenders locked up a lot longer than necessary while the worst offenders get no more time than they would have gotten anyway under a discretionary sentencing system.

This latter point was born out dramatically in a Rand Commission study report entitled "Mandatory Drug Sentences: Throwing Away the Key or the Taxpayers Money?". The study showed that mandatory minimum sentences were far less effective than either discretionary sentences or drug treatment in reducing drug-related crime and, thus, far more costly than either. The study found that the results of spending a million dollars to impose federal mandatory minimum sentences for those arrested for drug dealing would reduce cocaine use by almost 13 kilograms. If, however, the money was used to arrest, confiscate the assets of, prosecute, and incarcerate dealers with prison terms under conventional sentencing schemes where judges could determine the sentences based on the seriousness of the offense and the offender's background, more offenders could be incarcerated and cocaine consumption would be reduced by over 27 kilograms. But, if you spent the million dollars to treat heavy users rather than incarcerate them cocaine consumption would be reduced by a little over 100 kilograms. The point of this study is that if the objective is to reduce cocaine consumption, the least effective, and most costly, means is through mandatory minimum sentences.

And federal mandatory minimum sentencing has been shown to discriminate against minorities. Both the Judicial Center in its study report entitled "The General Effects of Mandatory Minimum Prison Terms: a Longitudinal Study of Federal Sentences Imposed" and the United States Sentencing Commission in its study mentioned above entitled "Mandatory Minimum Penalties in the Federal Criminal Justice System" found that minorities were substantially more likely than whites under comparable circumstances to receive mandatory minimum sentences. One of the most egregious reflections of the racially disparate impacts of federal mandatory minimum sentencing can be seen in the sentencing for "crack" cocaine when compare to sentencing for powder cocaine. There is a statutory mandatory minimum sentence of 5 years for possessing 5 grams of "crack" cocaine as compared to 500 grams of powder cocaine before that level of sentence is required. This disparity clearly has a racial impact in that 95% of those arrested on crack offenses are Black (88%) or Hispanic (7%), although drug use data indicates that over 60% of those who consume crack cocaine are White. Approximately 70% of those arrested for powder offenses are White.

Extensive studies have shown that there is no pharmacological difference between crack and powder cocaine. Indeed, it is common knowledge that crack is derived from mixing powder cocaine with water and ordinary baking soda and cooking it until the mixture hardens. One of the sinister consequences which flows from this set of facts is that the higher ups and significant beneficiaries in a crack cocaine distribution chain need only handle the cocaine in its powder form, which carries a much lighter penalty for much higher quantities when compared to the crack version. Another perverse effect of this is that the mangers and controllers the powder cocaine from which the crack is derived, by law, are subject to lower penalties than their underlings who convert it and distribute it as crack cocaine. This, in turn, becomes racially disparate in its penalty application, by law, since the direct distributors of crack cocaine tend be overwhelmingly Black or Hispanic. For these reasons, I support the Justice Roundtable's petition to have the Inter-American Commission on Human Rights determine whether the United

States government is violating international law and norms protected under the American Declaration of Rights and Duties of Man ("American Declaration") by the implementation and application of mandatory minimum sentences for drug law violations in a discriminatory manner.