

SMART ON CRIME: RECOMMENDATIONS FOR THE NEXT ADMINISTRATION AND CONGRESS

More than twenty organizations and individuals collaborated to create “Smart on Crime: Recommendations for the Next Administration and Congress.” The Constitution Project coordinated the production of the report, which was released in November 2008.

“Smart on Crime” identifies 43 criminal justice priorities in 15 issue areas, makes recommendations for congressional and executive action, and provides in-depth background information on a broad array of subjects. It also includes lists of issue-based resources and experts. The report includes the following chapters:

- Overcriminalization of Conduct, Overfederalization of Criminal Law, and the Exercise of Enforcement Discretion
- Federal Law Enforcement Reform — Improve Investigative Techniques, Including Eyewitness Identification, Incentives to Testify, and Interrogation
- Forensic Science Reform — Federal Oversight and Standards
- Federal Grand Jury Reform
- Federal Sentencing Reform
- Asset Forfeiture Reform
- Innocence Issues
- Prison Reform
- Pardon Power/Executive Clemency— Breathe New Life into the Pardon Power
- Re-entry—Ensure Successful Reintegration After Incarceration
- Public Defense Reforms—Make our Communities Safer by Supporting Quality Public Defense System
- Death Penalty/Habeas Corpus Reform
- Juvenile Justice Reforms
- Fixing *Medellin*: Compliance with International Law and Protecting Consular Access
- Victim Issues and Restorative Justice

The full report is available online at <http://2009transition.org/criminaljustice/>, at www.constitutionproject.org, and on the websites of many members of the coalition.

Please note that organizations and individuals identified as “potential allies” have indicated that they support the general principles expressed in the policy proposals described in that chapter. The allies listed do not necessarily endorse the specific language in every proposal in that chapter, but they do agree that the proposals reflect the general principles that should govern policy in that area. A potential ally signing on to one chapter is only signing on to that chapter and does not necessarily support the principles expressed in other chapters. Furthermore, the decision of a group not to sign on as a potential ally does not necessarily indicate an opposition to the policies proposed.

For policy questions, please contact the individuals or organizations identified in the catalogue as experts. Please direct general questions to Daniel Schuman, Director of Communications and Counsel, the Constitution Project, at 202-580-6922.

CHAPTER FOURTEEN

FIXING MEDELLIN: COMPLIANCE WITH INTERNATIONAL LAW AND PROTECTING CONSULAR ACCESS

To the international community, the Executive branch is the voice of the United States. The events leading to three Supreme Court rulings, *Medellin v. Dretke* (2004), *Medellin v. Texas* (March 25, 2008), and *Medellin v. Texas* (August 5, 2008), demonstrate the need to ensure that the United States speaks clearly and consistently, both to protect the right of citizens detained in a foreign country and to honor and enforce the United States' promises to the international community. While the Supreme Court's *Medellin* conclusions stand, despite the legal counter-arguments demonstrated by *amici curiae* such as former United States diplomats, International Court of Justice experts, Government of the United Mexican States, foreign sovereigns, the American Bar Association, the European Union, and many others, the President and Congress still have a strong role to play going forward. (These amicus briefs are attached below under "For Further Information.")

The Vienna Convention on Consular Relations grants foreign citizens the right to access to their own consulate when they are arrested, detained, or imprisoned. Vienna Convention on Consular Relations, Apr. 24, 1963, 21 U.S.T. 77, 596 U.N.T.S. 261 (*hereinafter* VCCR). Article 36 of the VCCR governs consular communication and contact with foreign nationals - including American citizens who are detained overseas. The United States ratified the VCCR without reservation in 1969, on the understanding that its provisions would be entirely self-executing and would prevail over any conflicting state laws. Although the treaty thus became part of the supreme law of the land, domestic compliance with Article 36 obligations has long been shockingly deficient - even in cases where foreign nationals would face the death penalty if convicted.

In 1969, the United States also unconditionally ratified the VCCR Optional Protocol concerning the Compulsory Settlement of Disputes, whereby disagreements over the interpretation or application of Article 36 fall under the compulsory jurisdiction of the International Court of Justice (ICJ). The ICJ is the principal judicial organ of the United Nations. Under Article 59 of the ICJ Statute, its decisions in such cases are binding on the parties to the dispute; under Article 94 (1) of the UN Charter, each member nation undertakes to comply with any ICJ decision to which it is a party. The United States was the first nation to bring a case under the VCCR Optional Protocol, in response to the seizure of U.S. diplomatic and consular personnel in Iran in 1979. The ICJ ruled in favor of the United States, whereupon the U.S. asserted the binding nature of that judgment and insisted that Iran comply with the decision.

The U.S. failure to comply with its consular notification obligations was brought to international attention when the International Court of Justice found that the United States had breached its responsibilities under the VCCR with respect to 51 Mexican nationals. *Case Concerning Avena and Other Mexican Nationals* (opinion attached). In *Avena*, the ICJ rejected Mexico's request that the convictions and death sentences of the Mexican nationals be

vacated. Instead, the court held that U.S. courts must provide "review and reconsideration" of the convictions and sentences to determine in each case if the Article 36 violation was harmful to the defendant. The ICJ held that the remedy of "review and reconsideration" applied to all 51 cases, including those where the VCCR claim would otherwise be procedurally defaulted.

President George W. Bush issued a Memorandum to the Attorney General stating that the United States would "discharge its international obligations" under the ICJ's decision "by having State courts give effect to the decision," which required "review and reconsideration" of the decisions to determine if the violation prejudiced the defendant.

In 2005 the President withdrew the United States from the VCCR Optional Protocol, although it recognized the *Avena* ruling as binding.

When Texas refused to recognize the ICJ's decision, and continued its plans to execute Mexican national Jose Ernesto Medellin, the issue went to the Supreme Court. President Bush argued to the Supreme Court that there was no private right of action under the VCCR. The Supreme Court ruled that *Avena* is not directly enforceable in the domestic courts because none of the relevant treaty sources – the VCCR Optional Protocol, the U.N. Charter, or the ICJ Statute – create binding federal law in the absence of implementing legislation by Congress. The Supreme Court also held that the President did not have the authority to implement *Avena* unilaterally. The Court unanimously agreed, however, that compliance with *Avena* is an international legal obligation of the United States and that Congress has the authority to implement that obligation.

As the scheduled execution date drew near, the State and Justice Departments asked Texas to halt the execution. When Mr. Medellin petitioned the Supreme Court for a stay of execution, however, the Department of Justice did not weigh in. In the absence of word from the Executive, Supreme Court Justice John Paul Stevens voted to wait to rule on the stay of execution until the President's position could be heard: "Balancing the honor of the Nation against the modest burden of a short delay to ensure that the breach is unavoidable convinces me that the application for a stay should be granted." *Medellin v. Texas*, 2008 U.S. LEXIS 5362, 4-5 (Aug. 5, 2008) (J. Stevens, dissenting). Nonetheless, the stay was denied.

In rejecting the stay, the Supreme Court noted that both the Congress and the Executive could have altered the outcome. The majority inferred from the fact that the Department of Justice did not seek intervention that "[i]ts silence is no surprise: The United States has not wavered in its position that petitioner was not prejudiced by his lack of consular access." 2008 U.S. LEXIS 5362, 2-3. It emphasized that Congress had had "ample" time to act, but had not. 2008 U.S. LEXIS 5362, 2.

Jose Ernesto Medellin was put to death at 10 p.m., August 5, 2008.

Although nothing can restore Mr. Medellin's rights, the next President can ameliorate the damage caused by the chain of events that led to the *Medellin* decisions. First, the President can rejoin the Optional Protocol concerning the Compulsory Settlement of Disputes of the Vienna

Convention on Consular Relations. Second, the President must work with Congress to pass legislation further protecting those rights and the rights the United States has promised in other international agreements. Third, President can require the Department of Justice to educate law enforcement about the right to consular access. Finally, the President can use the Presidential pulpit here and abroad to ensure that, in the future, the United States speaks with one voice.

Summary of the Problem: The United States has not been able to comply with a ruling of the International Court of Justice (ICJ) of the United Nations, and has withdrawn from the Optional Protocol concerning the Compulsory Settlement of Disputes of the Vienna Convention on Consular Relations.

The United States ratified the VCCR in 1969 without reservations, on the understanding that its provisions would be entirely self-executing and would prevail over any conflicting state laws. Article 36 of the VCCR governs consular communication and contact with foreign nationals - including American citizens who are detained overseas. Article 36 also confers on consulates the right to communicate with, visit, and offer assistance to their detained nationals, including the right to arrange for their legal representation. The article further requires that local laws and regulations must enable full effect to be given to the rights accorded to detained foreigners and their consular representatives. These rights are entirely reciprocal in nature.

The ICJ found that the United States had breached its responsibilities under the VCCR with respect to 51 Mexican nationals. *Case Concerning Avena and Other Mexican Nationals*, (Mex. v. U.S.) 2004 I.C.J. 12 (Mar. 31).

President George W. Bush subsequently withdrew from the VCCR Optional Protocol concerning the Compulsory Settlement of Disputes in 2005, stripping foreign nationals, including United States citizens abroad, of a binding enforcement mechanism for their right to access to their consulate when detained or arrested outside of their country.

While President Bush pressed state courts to enforce the *Avena* decision under principles of comity, he argued to the Supreme Court that the VCCR was not privately enforceable. (United States Amicus brief attached).

The Supreme Court permitted Texas to execute one of the Mexican nationals, Mr. Jose Ernesto Medellin, despite the fact that the inquiry required by the ICJ had never been made. *Medellin v. Dretke* (2004) (*Medellin I*), *Medellin v. Texas* (Mar. 25, 2008) (*Medellin II*) and *Medellin v. Texas* (Aug. 5, 2008) (*Medellin III*).

As a result, the United States is not compliant with the ruling of the ICJ, no longer recognizes the mechanism for the enforcement of foreign nationals' right to receive access to their consulate when detained, and can no longer expect its citizens to receive the same protections abroad.

Proposed Solutions:

Executive:

1. As soon as the Secretary of State is appointed, the President should rejoin the Optional Protocol to the VCCR, reversing the 2005 withdrawal from the Protocol by the Bush administration that occurred as a result of the *Avena* decision.
2. The President must work with Congress to pass legislation strengthening the United States' treaty commitments.
3. The Executive should instruct and train federal law enforcement agents to emphasize the importance of making foreign nationals aware of their rights under VCCR, and specifically their right to consular access, and should support similar training for state and local law enforcement agents.

Legislative: Adopt proposed H.R. 6481: Avena Case Implementation Act of 2008 or similar legislation. Because the Supreme Court concluded that the VCCR was not self-executing, Congress should enact stand-alone legislation to fulfill the United States' core obligations under the VCCR, including the International Court of Justice's decision in *Avena*. The text of a pending bill is presented in relevant part below:

"JUDICIAL REMEDY.

(a) Civil Action- Any person whose rights are infringed by a violation by any nonforeign governmental authority of article 36 of the Vienna Convention on Consular Relations may in a civil action obtain appropriate relief.

(b) Nature of Relief- Appropriate relief for the purposes of this section means--

(1) any declaratory or equitable relief necessary to secure the rights; and

(2) in any case where the plaintiff is convicted of a criminal offense where the violation occurs during and in relation to the investigation or prosecution of that offense, any relief required to remedy the harm done by the violation, including the vitiation of the conviction or sentence where appropriate.

(c) Application- This Act applies with respect to violations occurring before, on, or after the date of the enactment of this Act."

If no federal legislation can be enacted, each state legislature must be pressed to adopt consular notification legislation.

Jurisdiction:

Executive Branch: U.S. Const. art. II, §§ , 3

Legislative Branch: U.S. Const. art. 1 § 1 and House and Senate Judiciary and Foreign Relations Committees

Background:

Executive Branch:

VCCR. Ratified by over 170 countries, the Vienna Convention on Consular Relations regulates the establishment and functions of consulates worldwide. The United States proposed the VCCR in 1963 and ratified it -- along with the rest of the Vienna Convention -- in 1969.

In 1969, the United States also unconditionally ratified the VCCR Optional Protocol concerning the Compulsory Settlement of Disputes, whereby disagreements over the interpretation or application of Article 36 fall under the compulsory jurisdiction of the ICJ. The United States was the first country to invoke the protocol before the ICJ, successfully suing Iran for the taking of 52 U.S. hostages in Tehran in 1979. Article 36 rights and obligations are entirely reciprocal in nature. As Secretary of State Madeleine Albright wrote in 1998, the ability of U.S. consulates:

.... to provide such assistance is heavily dependent . . . on the extent to which foreign governments honor their consular notification obligations to us. At the same time, we must be prepared to accord other countries the same scrupulous observance of consular notification requirements that we expect them to accord the United States and its citizens abroad.

Letter from Madeleine Albright, Secretary of State, to Victor Rodriguez, Chairman of the Texas Board of Pardons and Paroles, (Nov. 27, 1998) (as cited in Brief Amicus Curiae of Ambassador L. Bruce Laingen et al., attached).

The Avena Litigation. In January 2003, Mexico brought a case before the ICJ on behalf of a group of Mexican nationals who had been sentenced to death without being advised of their consular rights. The ICJ is the principal judicial organ of the United Nations. Mexico asked the court to consider whether these Mexican nationals were entitled to a legal remedy for the violation of Article 36 of the VCCR. The United States participated fully in the case.¹

In those proceedings, Mexico did not call into question either the heinous nature of the crimes that the defendants were convicted of, or the legitimacy of the death penalty. Rather, Mexico sought to ensure that each of its nationals received the protections to which he was entitled under domestic and international law.

¹ In *Germany v. United States* (2001), ICJ ruled that the VCCR confers judicially enforceable rights on foreign nationals detained for prolonged periods or sentenced to severe penalties without notice of their right to communicate with their consulates. The Court also ruled that states that fail to give timely notice cannot later invoke procedural default to bar individuals from judicial relief. However, the Court did not clearly address other issues, such as requiring individuals to show prejudice to the outcome of the trial, or denial of certain remedies for Convention violations, which may effectively foreclose relief.

On March 31, 2004, the ICJ held, by a vote of fourteen to one, that the United States had breached Article 36(1) in the cases of 51 of the 52 Mexican nationals it reviewed. *Case Concerning Avena and Other Mexican Nationals* (Mex. v. U.S.), 2004 I.C.J. 12 (Mar. 31). The ICJ rejected Mexico's request that the convictions and death sentences of the Mexican nationals be vacated. Instead, the Court held that U.S. courts must provide "review and reconsideration" of the convictions and sentences to determine in each case if the Article 36 violation was harmful to the defendant. The ICJ held that the remedy of "review and reconsideration" applied to all 51 cases, including those where the VCCR claim would otherwise be procedurally defaulted.

Withdrawal from VCCR Optional Protocol concerning the Compulsory Settlement of Disputes. In 2005, the Bush Administration withdrew from the VCCR Optional Protocol concerning the Compulsory Settlement of Disputes. Even after withdrawing from the Optional Protocol, however, the Executive Branch confirmed that it was bound to uphold the *Avena* Judgment and to provide review and reconsideration to the Mexican nationals named in that Judgment.

Legislative Branch:

Proposed Legislation. On July 14, 2008, H.R. 6481, the "Avena Case Implementation Act of 2008," was introduced into the House by Rep. Howard Berman (D-CA), Rep. John Conyers (D-MI), Rep. William Delahunt (D-MA), and Rep. Zoe Lofgren (D-CA). On July 14, 2008, it was referred to the House Committee on the Judiciary.

Committees. The Judiciary Committees for the House and Senate and the Foreign Relations Committees for the House and Senate should be engaged on this issue. It should be noted that the Senate Foreign Relations Committee in particular has taken a recent interest in ratifying a number of treaties.

Judicial Branch:

Medellin I. In 2004, in the case of *Medellin v. Dretke*, the U.S. Supreme Court agreed to consider whether the *Avena* Judgment should be enforced by domestic courts. Before the Court heard oral argument in the case, however, the President issued a memorandum addressed to the U.S. Attorney General stating:

I have determined, pursuant to the authority vested in me as President by the Constitution and laws of the United States of America, that the United States will discharge its international obligations under [*Avena*] by having State courts give effect to the decision in accordance with general principles of comity in cases filed by the 51 Mexican nationals addressed in that decision.

White House Press Release, Feb. 28, 2004 (attached).

The Supreme Court decided not to rule on the merits of the case and instead found that Mr. Medellin's newly filed state habeas petition based on *Avena* and the Presidential

memorandum should first be considered by the Texas courts. *Medellin v. Dretke*, 544 U.S. 660 (2005).

Medellin II. After the Texas Court of Criminal Appeals declined to give Mr. Medellin the review he sought pursuant to the ICJ's judgment and President Bush's determination, the Supreme Court again agreed to review Mr. Medellín's case.

The Supreme Court issued its decision on March 25, 2008. *Medellin v. Texas*, 128 S.Ct. 1346 (U.S. Mar. 25, 2008). The Court held that *Avena* is not directly enforceable in the domestic courts because none of the relevant treaty sources - the VCCR Optional Protocol, the U.N. Charter, or the ICJ Statute - create binding federal law in the absence of implementing legislation, which did not exist. The Court concluded that state law is not pre-empted under the Supremacy Clause. The Supreme Court also held that the President did not have the authority to implement *Avena* unilaterally and that Congress had not acquiesced in the exercise of that authority. Independent of the United States' treaty obligations, the Memorandum was not a valid exercise of the President's foreign affairs authority to resolve disputes with foreign nations.

While the majority, concurring and dissenting opinions differed widely in their approaches to the legal questions presented, there was unanimous agreement that compliance with *Avena* is an international legal obligation of the United States and that Congress has the authority to implement that obligation. The majority opinion cites examples of other forms of binding international arbitration given domestic effect by Congressional implementation. The Court was also unanimous in recognizing the importance of securing compliance with *Avena*. In the words of the concurrence:

On the other hand, the costs of refusing to respect the ICJ's judgment are significant. The entire Court and the President agree that breach will jeopardize the United States' "plainly compelling" interests in "ensuring the reciprocal observance of the Vienna Convention, protecting relations with foreign governments, and demonstrating commitment to the role of international law."

Medellin v. Texas, 128 S. Ct. 1346, 1375 (U.S. Mar. 25, 2008) (J. Stevens).

Medellin III. Finally, Mr. Medellin sought a stay of execution from the Supreme Court. *Medellin v. Texas*, 2008 U.S. LEXIS 5362 (U.S. Aug. 5, 2008), arguing that Texas should wait until either Congress or the state legislature spoke to whether the ICJ's decision should be given effect. With four dissents, the *per curiam* opinion denied the stay on the basis that "these possibilities are too remote to justify an order from this Court staying the sentence imposed by the Texas courts. And neither the President nor the Governor of the State of Texas has represented to us that there is any likelihood of congressional or state legislative action." *Id.* at 1. As the Court noted, the Department of Justice did not intervene. The state of Texas executed Mr. Medellin on August 5, 2008.

Potential Allies, Potential Opposition, and Public Opinion:

Potential Allies: Potential supporters of the United States' rejoining of the VCCR, implementing the VCCR through legislation, and strengthening the enforcement of the VCCR include stakeholders (1) who want to protect the right to consular access for United States citizens abroad, (2) who oppose the death penalty and believe that consular access and the related legal representation it usually provides will result in fewer execution sentences, and (3) who believe that the failure to comply with treaty commitments weakens the Executive's international influence and discredits the United States in the eyes of the international community. It is likely, though not confirmed, that many groups who supported Mr. Medellin in the litigation will also support the measures advocated in this memo. Particular potential allies include:

Rep. Howard Berman (D-CA), Rep. John Conyers (D-MI), Rep. William Delahunt (D-MA), and Rep. Zoe Lofgren (D-CA), who sponsored the "Avena Case Implementation Act of 2008," the language of which is advocated here. (H.R. 6481, full text attached).

- The National Lawyers Guild sent a letter to Congress in support of H.R. 6481, at <http://nlg.org/news/statements/SenatorLtr.pdf>.
- The American Society for International Law sent a letter to Congress in support of H.R. 6481, at <http://www.asil.org/pdfs/presidentsletter.pdf>.
- The Center for Constitutional Rights sent a letter in support of H.R. 6481, at http://salsa.democracyinaction.org/o/383/t/6374/campaign.jsp?campaign_KEY=25299.
- The Constitution Project
- Ambassador L. Bruce Laingen (amicus curiae to Supreme Court) and hostage in Iran from November 4, 1970 to January 20, 1981. Holds the Award for Valor from the Department of State and the Distinguished Public Service Medal from the Department of Defense.
- The Executive Branch (Solicitor General, State Department, White House Counsel). Although President Bush interpreted the VCCR not to encompass a private right of action, Congressional support of Presidential commitments will increase the Executive's credibility and ability to use the ICJ on the United States' behalf.
- National Association of Criminal Defense Lawyers (an Amici Curiae to Fifth Circuit Court of Appeals case, attached).
- Amnesty International (Press release, <http://www.amnesty.org/en/news-and-updates/news/mexican-national-executed-in-texas-20080807>), (an Amici Curiae to Fifth Circuit Court of Appeals case, attached).
- Association of the Bar of the City of New York (an Amici Curiae to Fifth Circuit Court of Appeals case, attached).
- Hispanic National Bar Association (an Amici Curiae to Fifth Circuit Court of Appeals case, attached).
- Human Rights First (an Amici Curiae to Fifth Circuit Court of Appeals case, attached).
- Human Rights Watch (an Amici Curiae to Fifth Circuit Court of Appeals case, attached).
- League of United Latin American Citizens (an Amici Curiae to Fifth Circuit Court of Appeals case, attached).
- Mexican American Bar Association (an Amici Curiae to Fifth Circuit Court of Appeals case, attached).
- Mexican American Legal Defense and Education Fund (an Amici Curiae to Fifth Circuit Court of Appeals case, attached).

- Minnesota Advocates for Human Rights (an Amici Curiae to Fifth Circuit Court of Appeals case, attached).
- American Citizens Abroad (Amicus Curiae to the Supreme Court, through founder William D. Rogers on Laingen brief, attached).
- Federation of American Women's Clubs Overseas (Amicus Curiae to the Supreme Court on brief of Ambassador L. Bruce Laingen, attached).
- Possible pool of support and mobilization: groups sensitive to what may happen to United States citizens abroad.
- Possible pool of support and mobilization: groups concerned that the failure to enforce the President's own promise discredits the White House in the eyes of the international community.
- Possible pool of support and mobilization: organizations that oppose the death penalty.

Potential Opposition: Opposition to this legislation is likely to stem from (1) concern that it represents a softening toward crime, and especially that it may serve as a stepping stone to abolishing the death penalty, or (2) antipathy toward the principle that international tribunals, especially the United Nations, can have any binding effect on proceedings within the United States, as evidenced by the long history of disputes over U.N. dues.

Some state governors or legislators

- Legislators opposed to the United Nations
- Defenders of the state's right to inflict the death penalty.

Response to Opposition: It should be made clear that the VCCR does not actually affect the status of the death penalty. It should be made clear that access to consul does not mean that foreign citizens who commit crimes avoid the legal consequences. The value of reciprocal protections for American citizens abroad should be emphasized. Finally, because the Supreme Court ruled that the VCCR is not self-executing, it should be made clear to those distrustful of international organizations that the American Congress and President would be voluntarily committing to adopt this treaty and legislation.

Experts:

Sandra Babcock, Northwestern University School of Law

Richard Burr, Burr & Welch (Houston, Texas)

Jeffrey Davidow, University of California

Harold Koh, Yale Law School

Oona Hathaway, Yale Law School

Ambassador L. Bruce Laingen (see above)

Richard Atkins, lawyer. Specializes in assisting American citizens detained in foreign countries and authored a guide to prisoner transfer treaties for the United Nations) (Amicus Curiae to the Supreme Court in Laingen brief, attached)

For Further Information:

Supreme Court Medellin I, *Medellin v. Dretke*, 544 U.S. 660 (U.S. 2005)

Supreme Court Medellin II, *Medellin v. Texas*, 128 S.Ct. 1346 (March 25, 2008)

Supreme Court Medellin III, *Medellin v. Texas*, 2008 U.S. LEXIS 5362 (August 5, 2008)

Case Concerning Avena and Other Mexican Nationals (Mex. v. U.S.), 2004 I.C.J. 12 (Mar. 31)

Text of Proposed House Bill, H.R. 6481.

Medellin Amicus Briefs:

- Brief of Former United States Diplomats as Amici Curiae in Support of Petitioner
- Brief of Amici Curiae the European Union and Members of the International Community in Support of Petitioner
- Brief of International Court of Justice Experts as Amici Curiae in Support of Petitioner
- Brief Amicus Curiae of the Government of the United Mexican States in Support of Petitioner José Ernesto Medellin
- Brief of Foreign Sovereigns as Amici Curiae in Support of Petitioner José Ernesto Medellin
- Brief of the American Bar Association as Amicus Curiae in Support of Petitioner
- Brief Amicus Curiae of the United States in Support of Respondent
- Recommendations for Federal Criminal Sentencing in a Post-Booker World
<http://constitutionproject.org/sentencing/article.cfm?messageID=245&categoryId=7>
- Principles for the Design and Reform Of Sentencing Systems: A Background Report, available at:
<http://constitutionproject.org/sentencing/article.cfm?messageID=148&categoryId=7>
- *Mandatory Justice: The Death Penalty Revisited*
<http://constitutionproject.org/pdf/mandatoryjusticerevisited.pdf>