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**STATEMENT OF HILARY O. SHELTON  
DIRECTOR  
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ON APPLYING THE U.S. SENTENCING COMMISSION AMENDMENT TO THE  
CRACK COCAINE SENTENCING GUIDELINES RETROACTIVELY**

*November 13, 2007*

I would like to thank the commission for inviting me here to testify today on behalf of the NAACP, our Nation's oldest, largest and most widely known grassroots civil rights organization. My name is Hilary Shelton and I am the Director of the NAACP Washington Bureau, our organization's Federal public policy and national advocacy arm.

I would like to begin by thanking the United States Sentencing Commission for your steadfast efforts to eliminate the racially discriminatory sentencing laws mandating that a conviction for possession of 5 grams of crack cocaine is equivalent to one for 500 grams of powder cocaine, despite the fact that the two drugs are pharmacologically indistinguishable.

The result of this 100-to-1 ratio has been the incarceration of a vastly disparate number of African Americans and Americans of Hispanic origin.

As such, the NAACP would like to commend the Sentencing Commission for its May 2007 amendments to sentencing guidelines for crack cocaine which will have the effect of lowering the guideline sentencing range for certain categories of offenses and offenders. While it is not all that we have been advocating for, it is an important first step.

The NAACP strongly supports making the amendment retroactive to those currently incarcerated for crack cocaine convictions.

It has been a year almost to the day since I last testified before you in opposition to this injustice. At the time, I told you that despite the fact that cocaine use is roughly proportionate among the different populations of our nation, the vast majority of offenders who are tried, convicted and sentenced under federal crack cocaine mandatory minimum sentences are African Americans. Our people, and our communities, continue to be disproportionately devastated by this law.

Almost 83% of those convicted of federal cocaine offenses are African American<sup>1</sup>, while according to the 2000 Census only 12.9% of the entire U.S.

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<sup>1</sup> United States Sentencing Commission, 2005 Datafile, USSCFY05.

population is African American<sup>2</sup>. Furthermore, according to the federal government's most recent survey, less than 18% of our Nation's crack cocaine users in 2005 were African American<sup>3</sup>.

Few people today argue that policy makers could have foreseen twenty years ago the vastly disparate impact the 1986 law would have on communities of color. Yet the facts that African Americans, and especially low-income African Americans continue to be disproportionately and severely penalized at much greater rates than white Americans for drug use, and that the policy of the federal government is having a devastating effect on our communities and that these laws continue to be maintained show, at the very least, a callous disregard for our people and our communities.

And it is this disregard for the fate of our people and our community that continues to erode our confidence in our Nation's criminal justice system. How can African Americans trust or respect policy makers who perpetuate a law that clearly has such a racially discriminatory impact? And, because it is only human nature to punish the messenger, the resulting distrust, disrespect and anger that the African American community feels, often results in a lack of necessary cooperation with law enforcement representatives and the criminal justice system as well.

Reform of our Nation's cocaine laws has been a priority of the NAACP since the resulting disparities in incarceration became evident, and it is now a rallying point for our members and the communities we represent.

And so I would like to reiterate the NAACP's support and appreciation for the Sentencing Commission's continued call for a repeal of the mandatory minimum crack cocaine sentences. I would also again like to extend our gratitude for the Commission's recent amendment which will, on average, trim over 15 months from current crack sentences. And I would like to strongly repeat the NAACP's strong support for making this amendment retroactive.

As you know, a decision to make this amendment retroactive will impact roughly 19,500 men and women currently in jail, approximately 86% of whom are African American. It only makes sense that a person who was sentenced between October 1, 1991 and June 30, 2007 should not have to spend more time in prison than those sentenced after November 1, 2007, simply because they had the misfortune of being sentenced at the wrong time.

As I have said earlier, the continuation of the 100-to-1 sentencing ratio and the disparate impact it has on our communities exacerbates our mistrust of the American Criminal Justice system. It is my hope that the November crack

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<sup>2</sup> United States Census, *The Black Population: 2000, Census 2000 Brief*, August 2001

<sup>3</sup> United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Office of Applied Studies, *2005 National Survey on Drug Use & Health*, September 2006

cocaine amendments will help begin to address this problem. A failure to apply them retroactively, however, as has been done in the past relative to LSD, marijuana and oxycodone – all of which has benefited other groups more so than African Americans – would perpetuate and perhaps even intensify the image of injustice.

I would like to thank the Commission again for all of your work on this issue. Together, we can hopefully persuade Members of Congress as well as the American public at large for the dire need to reform crack cocaine sentencing. In the meantime, please know that the NAACP supports and appreciates your recent amendment to crack cocaine sentencing guidelines and strongly urges you to apply these changes retroactively, this is indeed a matter of fairness and simple justice.

At this time I would welcome any questions or comments you may have.