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**TESTIMONY OF HILARY O. SHELTON  
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BEFORE THE US SENTENCING COMMISSION  
ON COCAINE AND FEDERAL SENTENCING POLICY**

*November 14, 2006*

Good afternoon. My name is Hilary Shelton and I am the Director of the NAACP Washington Bureau. We are the public and federal policy branch of the National Association for the Advancement of Colored People (NAACP), our nation's oldest, largest and most widely-recognized grassroots based civil rights organization. We currently have more than 2,200 units in every state of the Union, as well as Asia and Europe.

I welcome the opportunity to discuss our federal laws regarding crack cocaine prison sentencing ranges and mandatory sentences, and to highlight what we at the NAACP feel is a discriminatory, unfair and immoral policy.

Despite the fact that cocaine use is roughly equal 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.

I was specifically asked by the Commission to discuss any changes that may have occurred in the last five years. Unfortunately, because the law governing federal crack cocaine offenders has remained the same, so has the horribly discriminatory impact of our government's policy. From the perspective of the NAACP, not much has changed since 2002.

Even in light of the 2005 US Supreme Court's *Booker* decision<sup>1</sup>, which really only applies to cases in which the mandatory minimum does not apply or in which enhancements beyond the baseline sentence are under consideration<sup>2</sup> not much has changed when it comes to the demographics of those sentenced for possessing 5 grams or more of crack cocaine.

In its 2002 report "Cocaine and Federal Sentencing Policy", the US Sentencing Commission noted that nearly 85% of men and women convicted of federal crack cocaine offenses were African American<sup>3</sup>. For fiscal year 2005, the numbers are roughly the same: almost 83% of those convicted of federal cocaine offenses

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<sup>1</sup> United States v. Booker, 125 S.Ct. 738 543 US 220 (2005)

<sup>2</sup> The Sentencing Project, "Sentencing with discretion: Crack Cocaine Sentencing After *Booker*"

<sup>3</sup> United States Sentencing Commission, *Report to Congress: Cocaine and Federal Sentencing Policy*, May 2002.

are African American<sup>4</sup>, while according to the 2000 Census only 12.9% of the entire U.S. population is African American<sup>5</sup>.

Furthermore, the continued inequalities that occur as a result of federal policy toward crack cocaine have only exacerbated the Commission's assessment, in its 2002 report, that

...even the perception of racial disparity (is) problematic. Perceived improper racial disparity fosters disrespect for and lack of confidence in the criminal justice system among those very groups that Congress intended would benefit from the heightened penalties for crack cocaine<sup>6</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 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 mistrust, disrespect and anger that the African American community feels is also taken out on law enforcement representatives and the criminal justice system as well.

It would not be fair to say that nothing has changed in the last five years. On-going research into crack and powder cocaine has further eroded the myths that crack cocaine is more addictive than powder cocaine, that crack cocaine users are, because of their choice in drug use, more violent than powder cocaine users, or that the prolonged presence of crack cocaine in our communities has led to maternity wards full of "crack babies." It was these initial theories, which were widely held beliefs in 1986, which led to the dramatic disparity in the treatment of crack versus powder cocaine in federal law.

We have long known that crack and powder cocaine are pharmacologically indistinguishable. Several respected medical authorities have found that crack

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<sup>4</sup> United States Sentencing Commission, 2005 Datafile, USSCFY05.

<sup>5</sup> United States Census, *The Black Population: 2000, Census 2000 Brief*, August 2001

<sup>6</sup> United States Sentencing Commission, *Report to Congress: Cocaine and Federal Sentencing Policy*, May 2002.

cocaine is no more addictive than powder cocaine<sup>7</sup>. Furthermore, as this Commission concluded in its 2002 report, the violence that was often associated with crack cocaine is related to the nature of the drug trade and not to the effects of the drug itself<sup>8</sup>.

Finally, and perhaps most disturbing to the NAACP, was the myth that crack cocaine was responsible for thousands of innocent babies being born addicted to cocaine because their mothers had smoked crack cocaine during their pregnancies.

Although the myth of the “crack baby” has largely been debunked in medical and academic circles, it unfortunately persists in the minds of much of the American public. Furthermore, and perhaps more problematic for the NAACP, the image of the “crack baby” that comes to most Americans’ minds is that of an African American infant, crying inconsolably in an incubator.

It is the myth of the crack baby that perhaps best reflects one of the reasons the NAACP would welcome an open, honest national debate on federal crack cocaine policies: we need to correct the image of crack cocaine – who uses it and what its impact is on our communities. We also need to change the law. Though illegal drug traffic devastates our communities, and indeed communities across the nation, the debilitating affects of crack cocaine on African Americans has proven to come not only from the use of the drug, but also from the resulting unjust federal sentencing policy.

Some argue that the answer would be to increase the penalties for powder cocaine so that they are more in line with those of crack cocaine. The NAACP rejects this proposal, however, as it does not take into consideration the more even-handed, informed and balanced approach that went into the development of powder cocaine sentencing ranges. And, as our more recent experiences have taught us, it would only fill even more prison cells with low-level offenders serving mandatory sentences which in turn would create an even larger drain on our nation’s financial and human resources while undermining the trust and respectability needed by law enforcement officials to be effective in protecting our communities.

I should also state for the record that the NAACP is opposed to all mandatory minimum sentences, and that the proposal to increase the penalty for powder cocaine is yet another example of politicians trying to prove themselves “tough on crime” to the detriment of sound and effective policy.

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<sup>7</sup> Dorothy Hatsukami and Marian Fischman, “Crack Cocaine and Cocaine Hydrochloride: Are the Differences Myth or Reality?” *Journal of the American Medical Association*, November 20, 1996 and the testimony of Charles Schuster before the Subcommittee on Crime and Drugs of the Senate Judiciary Committee, May 22, 2002

<sup>8</sup> United States Sentencing Commission, *Report to Congress: Cocaine and Federal Sentencing Policy*, May 2002.

The NAACP applauds the efforts of the US Sentencing Commission which has consistently sought to end the disparity between federal penalties for crack and powder cocaine, and cited the glaring racial inequities as one of the motivators behind its position. We further would like to applaud the efforts of Congressman Charles Rangel (NY) and other members of the Congressional Black Caucus who have tried, through legislation, to correct this inequity.

Finally, I would like to extend the appreciation of the NAACP, as well as my own gratitude and admiration, to some of my colleagues in this fight, among them the Sentencing Project, the ACLU, the Open Society Institute and others for all they have done to shed light on and correct this very real problem.

The bottom line is this: Until the racial inequalities in our nation's "War on Drugs" and other crime initiatives are addressed, communities of color across the nation will continue to distrust the American criminal justice system. The federal government's crack cocaine policy is one glaring example of how the American government has failed an entire segment of its population.