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TESTIMONY OF HILARY O. SHELTON
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BEFORE THE HOUSE JUDICIARY SUBCOMMITTEE
ON CRIME, TERRORISM AND HOMELAND SECURITY

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Good afternoon. My name is Hilary Shelton and I am the Director of the NAACP Washington Bureau, the federal legislative and national policy and advocacy department of our Nation's oldest and largest grassroots civil rights organization. We currently have over 500,000 members and more than 2200 membership units in every state in our Nation.

I am here today because the federal mandatory minimum sentence for crack cocaine is an unfair, immoral and racially discriminatory.

And it is because of our unwavering support for fairness and equality and consequently opposition to current law that the NAACP strongly supports H.R. 4545 / S. 1711, the *Drug Sentencing Reform and Kingpin Trafficking Act of 2007*. As such, we are very appreciative of the courage, wisdom and leadership shown by the primary sponsors of this legislation, Congressman Shays, Congresswoman Jackson Lee and Senator Biden. The NAACP is also very appreciative and supportive of legislation authored by the Chairman of this Subcommittee, Congressman Scott H.R. 5035, *The Fairness in Cocaine Sentencing Act of 2008*, which would eliminate federal mandatory minimum sentences for cocaine offenses, regardless of the drug's form, as well as provide funding for federal and state drug courts. We also support and appreciate Congressman Rangel's legislation, H.R. 460, the *Crack-Cocaine Equitable Sentencing Act of 2007* would also eliminate the federal crack and powder cocaine disparity.

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 on a large scale.

As you are probably aware, the report issued last year by the nonpartisan United States Sentencing Commission found, among other things, that –

- The current quantity-based penalties overstate the relative harmfulness of crack cocaine compared to powder cocaine.
- The current severity of crack cocaine penalties mostly disparately impacts racial and ethnic minorities.

African Americans still comprise the majority, almost 82% in 2006, of people convicted and sentenced of federal crack cocaine offenses, while White offenders comprise less than 9% of crack cocaine defendants in 2006. I should remind you that according to the federal government's most recent survey, less than 18% of our nation's crack cocaine users were African American. The reasons for these disparities are numerous and varied, but the results are discriminatingly consistent.

Quoting from the US Sentencing Commission's 2002 report, "...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."

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 neighborhoods and that these laws continue to be maintained show, at the very least, a callous disregard for people of color and our communities.

And it is this disregard for the fate of our people that continues to erode our confidence in our nation's criminal justice system. How can African Americans trust or respect policy makers, those who enforce the policies, or those who perpetuate a law that clearly has such a racially discriminatory and devastating 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.

Before I get into the where the NAACP would like us to go from here. I would like to take a minute to talk about what we have learned about crack cocaine since the 100-to-1 sentencing ratio became law. We have learned conclusively that

crack and powder cocaine are pharmacologically indistinguishable. Furthermore, several respected medical authorities have found that crack cocaine is no more addictive than powder cocaine. And, as the US Sentencing 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, much like the violence our Nation experienced during prohibition.

Finally, 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 has effectively been debunked in medical, scientific and academic circles. Unfortunately the myth of the “crack baby” persists in the minds of much of the American public. Perhaps most troubling to 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 differences between crack and powder cocaine and 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 a candid assessment of crack cocaine – who uses it and what its impact is on our communities.

We also need to change the law.

Though illegal drug trafficking 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 abuse of the drug, but also from the resulting unjust federal sentencing policy. The average sentence for a powder cocaine conviction is 85 months versus the average sentence for a crack cocaine conviction, the less expensive version of the same illegal substance, which is 122 months. This difference of 37 months, or slightly more than 3 years, is huge to African Americans, as it would be to any American, considering that the large majority of those sentenced under crack cocaine penalties are black.

In a misguided quest for fairness and justice, 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, undercutting the wisdom, integrity and balanced discretion empowered in our Nation’s judges who serve in courtrooms across America.

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 Congresswoman Sheila Jackson Lee (TX), Congressman Robert “Bobby” Scott (VA), Congressman Charles Rangel (NY) as well as other members of the Congressional Black Caucus and the Congress 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.

I would also like to take a minute to briefly address the recent statements by Attorney General Michael Mukasey regarding people currently in prison for crack cocaine possession and the decision by the U.S. Sentencing Commission to apply their May 2007 decision to allow a reduction in some crack cocaine sentences retroactively. The NAACP was both saddened and offended by Attorney General Michael Mukasey’s call for Congress to override the decision by the U.S. Sentencing Commission.

Attorney General Mukasey’s characterization of people currently in prison for crack cocaine convictions, and of the impact that a potential reduction in their sentences could have on our communities, is not only inaccurate and disingenuous, but it is alarmist and plays on the worst fears and stereotypes many Americans had of crack cocaine users in the 1980s. The fact that a federal judge will be called on to review each and every case individually and take into account if there were other factors involved in the conviction, whether it be the use of a gun, violence, death, gang membership or the defendant’s criminal history before determining if the retroactivity can apply, appears to have eluded the Attorney General.

Furthermore, because more than 82% of those currently in prison for federal crack cocaine convictions are African Americans and 96% are racial or ethnic minorities, the NAACP is deeply concerned at the Attorney General’s callous characterization that many of the people in question are “violent gang members. The NAACP has steadfastly opposed the mandatory minimum for crack cocaine

possession and the disparity in sentences for crack and powder cocaine convictions.

In fact, in addition to repeatedly testifying before the Sentencing Commission in strong opposition to the crack / powder disparity, in November 2007 I personally testified in on behalf of the NAACP in support of retroactivity. Changes in sentencing have been applied retroactively in the cases of marijuana, LSD and oxycodone – all of which overwhelmingly benefited racial and ethnic groups other than African Americans. To not apply the sentencing changes for crack cocaine retroactively would perpetuate, and perhaps even intensify, the sense of injustice among the African American community and other communities of color.

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.