WRITTEN TESTIMONY

OF THE

NATIONAL AFRICAN AMERICAN DRUG POLICY COALITION, INC.

SUBMITTED TO THE

UNITED STATES SENTENCING COMMISSION

NOVEMBER 5, 2007

BY

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NATIONAL EXECUTIVE DIRECTOR

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On behalf of the NATIONAL AFRICAN AMERICAN DRUG POLICY COALITION, INC. as the National Executive Director, I have the high honor and privilege to submit this written testimony regarding whether Amendment 9 pertaining to offenses involving cocaine base ("crack") and Amendment 12 pertaining to certain criminal history rules should be applied retroactively to previously sentenced defendants.

The NATIONAL AFRICAN AMERICAN DRUG POLICY COALITION, INC. evolved from an unincorporated association which commenced organizing April 1, 2004 with a number of organizations meeting and signing a Memorandum of Understanding to work together to deal with the devastating effects of illegal drug usage in African American communities throughout this Nation and to develop and implement some meaningful and effective solutions. This unincorporated association of organizations was incorporated as a District of Columbia not-for-profit corporation on January 12, 2006, and was accorded by the Internal Revenue Service Section 501©(3) status on August 30, 2006 retroactive to the date of incorporation. One of its principal purposes at the time of its creation was to focus on drug abuse and addiction as a disease, to be treated as a public health and medical issue as an alternative to criminal prosecution and incarceration, and to promote the expansion of drug treatment as an alternative to criminal sanctions, increasing funding for such treatment and increasing the number of drug courts, whenever this can be done without unduly jeopardizing public safety. A second major purpose of the COALITION was and is to develop and implement a drug prevention program which not only influences our youth not to become involved in drug usage and trafficking, but also encourages them to stay in school, achieving educational excellence and taking advantage of the manifold opportunities the civil rights

developments of the last half century have made possible for minority youth in this Nation.

Today this COALITION consists of twenty-five (25) professional organizations and legal entities which have come together to work on the foregoing goals and to lend their support to proceed with unity to achieve the objectives set forth above. The current member organizations are: the National Bar Association; the Association of Black Psychologists; the National Association of Black Social Workers, Inc.; Howard University – School of Law; Congressional Black Caucus Foundation, Inc.; National Dental Association; National Black Caucus of State Legislators; Association of Black Sociologists; National Black Nurses Association, Inc.; the National Organization of Black Law Enforcement Executives; the National Association of Blacks in Criminal Justice; the National Black Alcoholism & Addictions Council, Inc.; the Black Administrators in Child Welfare, Inc.; the Association of Black Health-System Pharmacists; the National Medical Association; the National Black Police Association; the National Alliance of Black School Educators; the National Institute for Law and Equity; the National Conference of Black Political Scientists; the Black Psychiatrists of America, Inc.; the National Black Prosecutors Association; the National Organization of African Americans in Housing; the Thurgood Marshall Action Coalition; the National Historic Black Colleges and Universities Substance Abuse Consortium, Inc.; and, the National Association of Health Services Executives. We conservatively estimate that together these twenty-five (25) organizations and entities represent between 350,000 – 400,000 African American professionals, college and university faculty members and administrators, and minority college and graduate students preparing to become future

professionals in this Nation. We strongly support giving retroactive effect to these amendments for the benefit of previously sentenced defendants.

First and foremost, it is the consensus among the leaders of these organizations that long prison sentences for drug offenses is inconsistent with treating drug abuse and addiction as a disease and as a medical and public health problem. We question the wisdom and policy of long prison sentences for persons whose offenses can reasonably be said to be the result of their drug addiction. To put it plain and simple, we are of the view that giving drug addicted offenders long prison sentences is inconsistent with the rationale of *Robinson v. California,* 370 U.S. 660 (1962) which recognized that the status of drug addiction is a disease and that criminal sanctions for the status of being a narcotic addict would be cruel and unusual punishment. Thus, it could be urged that simply possessing illegal drugs to satisfy that craving or minor selling of drugs to get one's own supply because of the craving or compulsion is a product of the disease of drug addiction, which would justify treatment of such duration as necessary to achieve a cure and recovery rather than criminal prosecution and long prison sentences.

Second, we are concerned that many persons serving long prison terms for drug offenses under the mandatory sentencing scheme were really minor players in drug offenses and were convicted as fringe participants in a drug distribution conspiracy or as aiders and abettors, sometimes for only one or two incidents of reluctant personal involvement. In many instances, women – girlfriends – have been unwittingly "sucked into the drug operation" as aiders and abettors who themselves were victims of domestic violence at the hands of their paramours and main drug dealers, and in other instances young adults have been forced to participate through coercion and exertion of duress on

them. They have not been profiteers as such. Mandatory prison sentence requirements which drives the establishing of the Federal guidelines in this area have deprived judges of judicial discretion to tailor the sentence to the individual circumstances of the offender and his or her personal culpability, and have resulted in sentences far longer than necessary to serve any legitimate penal interest. Finally, we observe that attributing to even minor players the total amount of drugs involved in a conspiracy, even without knowledge of the scope of the conspiracy by that individual, smacks of guilt by association and punishment by association, rather than on the merits of that individual's behavior and conduct. To us, this appears and is unfair in a just and equitable justice system where each person should be treated for his or her own individual conduct or behavior.

With these observations by way of background for our position, we understand that the proposed corrective action will reduce sentences by two levels for those convicted of crack cocaine offenses, merely bringing them in line with current mandatory minimum sentences, the change of which would require action by Congress. Making these changes retroactive would apply only this reduction to those previously sentenced now serving time, and only partially rectify the problems which we have emphasized above. The Sentencing Commission is statutorily authorized to determine whether a guideline amendment that reduces a sentencing range can be applied retroactively. We wholeheartedly support the retroactive application of the guideline amendment which became effective November 1, 2007. Indeed, in our humble opinion, it is only a partial step along the path of achieving our ultimate goal of parity between crack cocaine and powder cocaine federal offenses. Retroactive application of the proposed change in

guideline levels will impact a significant number of defendants who, because of the inconsistency caused by the sentencing guidelines, received sentences higher than the statutory mandatory minimum. The proposed corrective action would reduce sentences by two levels for those convicted of crack cocaine offenses, bringing them in line with current mandatory minimum penalties. It appears that there is a consensus that the proposed amendment would on the average trim about 15 - 16 months from current crack sentences. Some defendants may receive larger reductions and some lesser reductions. Analysis prepared by the Sentencing Commission's Office of Research and Data estimates that 19,500 offenders sentenced between October 1, 1991 and June 30, 2007 would be eligible for a modification in their sentences if the crack cocaine amendment were made retroactive. Further, the Office of Research and Data emphasizes that the estimated 19,500 people impacted would receive staggered release dates over a period spanning more than three decades.

We also note that drug guideline amendments involving LSD, marijuana and oxycodone were made retroactive by the Commission. We urge that the same practice should be followed with reference to crack cocaine for the sake of fairness and preventing the perception of bias. Treating the crack cocaine amendment in the same manner is necessary to prevent racial disparities in the implementation of our laws and policies.

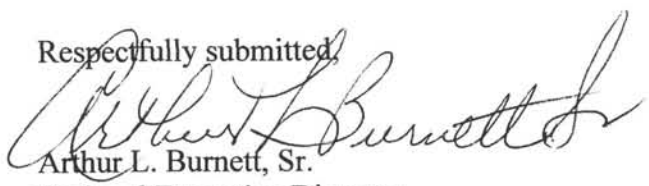
We conclude by noting that the Blue Ribbon Commission on Racial Disparities in Substance Abuse Policies established by the NATIONAL AFRICAN AMERICAN DRUG POLICY COALITION, INC. in its Report with Recommendations in September 2006 emphasized that with respect to sentencing in criminal cases, changes should be made which would give judges broader judicial discretion in sentencing so that they can

tailor a sentence to the circumstances of the individual offender. This concept was at the very heart of its concerns for fairness and justice in the sentencing practices in this country. Thus, the amendments making these changes retroactive should clearly support giving judges the maximum discretion on how the retroactive amendments should apply to individual defendants. The guidelines as amended should consistent with *United States v. Booker,* 543 U.S. 220 (2005) be deemed advisory and not mandatory in considering re-sentencing of individual defendants. It would not mean that every defendant would automatically get the reduction authorized by retroactivity. On a motion for re-sentencing the judge retains discretion to determine what the sentence would have been had the retroactive guidelines been in existence at the time of sentencing.

While this is but a small step in dealing with the disparity in sentencing laws, policies and practices between crack cocaine and powder cocaine in this Nation in the federal court system, it is an extremely important one to make in the history of administering our criminal justice laws in this Nation, when we imprison more people per 100,000 than any other Nation in this World due primarily to how we deal with illegal drug offenses.

We strongly urge the Sentencing Commission to approve the proposed Amendments for retroactivity. We thank you for this opportunity to present our views on this important issue.

Respectfully submitted,



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