



WASHINGTON BUREAU · NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
1156 15TH STREET, NW SUITE 915 · WASHINGTON, DC 20005 · P (202) 463-2940 · F (202) 463-2953
E-MAIL: WASHINGTONBUREAU@NAACPNET.ORG · WEB ADDRESS WWW.NAACP.ORG

**STATEMENT OF HILARY O. SHELTON
DIRECTOR, NAACP WASHINGTON BUREAU AND
SENIOR VICE PRESIDENT FOR ADVOCACY AND POLICY
BEFORE THE UNITED STATES SENTENCING COMMISSION
ON THE RETROACTIVE APPLICATION OF
THE FAIR SENTENCING ACT**

June 1, 2011

Thank you, Chair Saris, Vice Chairs Carr and Jackson, and Commissioners, for inviting me here today to share with you the perspective of the NAACP.

For almost 25 years, sentences for a conviction of crack cocaine possession have had a tremendously disparate and devastating effect on racial and ethnic minority Americans, especially African Americans. The result has been not only a loss by millions of African Americans and others of the basic rights for which the NAACP has fought for so long and so hard, including voting rights, the right to an affordable, high quality education as well as essential rights including assistance with housing, employment, and food. But the sentencing guidelines which led to the incarceration of a vastly disproportionate number of African Americans and Latino's, and has had a very real destruction of entire communities of color, has also led to a crisis of confidence in the American judicial system.

Founded more than 102 years ago, in 1909, the National Association for the Advancement of Colored People, the NAACP, is our nation's oldest, largest, and most widely-recognized grassroots based civil rights organization. We currently have more than 2,200 membership units across the nation, with members in every one of the 50 states. For over 15 years now, I have been the Director of the NAACP Washington Bureau, our Association's federal legislative and national public policy advocacy arm.

As many of you know, the NAACP has testified before you at previous hearings regarding the disparate impact of crack cocaine laws on African Americans in particular, as well as the communities nationwide served by the NAACP.

The members of the NAACP across our Nation know all too well the devastating impact the 100 to 1 sentencing disparity has had on our communities. That is why we

celebrated on Tuesday, August 3, 2010, when President Obama signed the *Fair Sentencing Act* into law. This important legislation reduced the mandatory minimum sentence for a federal conviction of crack cocaine possession from 100 times that of people convicted of carrying the drug in powdered form to 18 times the sentence.

The NAACP supported this legislation as an important first step toward completely eliminating this racially discriminatory sentencing disparity. There is still work to be done to fully correct injustice.

The NAACP appreciates all of the hard work that went into passing this legislation, as well as the fact that it represented the first time the U.S. Congress has moved to reduce any mandatory minimum sentence in over 40 years. The NAACP also recognizes and appreciates that everyone involved in the negotiations seems to agree that the current 100:1 sentencing disparity has had a hugely unfair and racially discriminatory impact on racial and ethnic minority Americans. The NAACP will continue, however, to push for complete elimination of the disparities between crack and powder cocaine sentencing.

We know everyone on this commission seems to agree that crack cocaine use is higher among Caucasians than any other group: most authorities estimate that more than 60% of those who use crack cocaine are white. Yet in 2006, 82% of those convicted and sentenced under federal crack cocaine laws were African American. When you add in Hispanics, the percentage climbs to above 96%. Since enactment of this law, almost 25 years ago, the 100 to 1 ratio has had a devastating and disproportionate impact on the African American and Hispanic communities.

Because of the mandatory minimum jail sentence for those convicted of possession of 5 grams of crack cocaine or more, people of color are being put in prisons at much higher rates than their Caucasian counterparts, and the judges have no discretion to mitigate the sentence for first-time or nonviolent offenders or special circumstances.

This is especially galling in light of the fact that there is no scientific reason for the sentencing disparity: we know that crack and powder cocaine are pharmacologically indistinguishable. Furthermore, 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.

The question before us today is whether or not to apply the new guidelines, as dictated by the Fair Sentencing Act, retroactively to those who were convicted of crack cocaine possession prior to enactment of this new law. To us, the answer is a clear and resounding "yes."

Retroactive application of the revised guideline is the necessary next step in addressing the unfair, unjustified and racially discriminatory disparity in the treatment of the powder and crack forms of cocaine. By applying the new law retroactively, the US Sentencing Commission would be agreeing with the Congress when it passed the Fair Sentencing Act and with President Obama when he signed the bill into law that too many racial and ethnic minority Americans have been unfairly and discriminatorily incarcerated under the old law.

While not fully correcting the sins of the past, applying the new guidelines retroactively will send a strong signal to those who are currently incarcerated, as well as their families, their friends and their community that the discriminatory nature of the law has been recognized. And this is a big, crucial and a necessary step.

As the US Sentencing Commission said in its 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 cocaine¹.”

In developing and debating the Fair Sentencing Act, as I said earlier, the NAACP was gratified to see that everyone seemed to agree that the policies adopted in the 1986 law had a racially discriminatory impact. It is now up to the Sentencing Commission to follow through on Congress's attempt to ameliorate that discrimination.

By the U.S. Sentencing Commission's own estimate, more than 12,000 men and women who are currently incarcerated because of a crack cocaine conviction will have their sentences reduced if the guidelines of the Fair Sentencing Act are applied retroactively. Given that a hugely disproportionate number of these men and women are racial and ethnic minority Americans, more specifically African American, this has the potential to have a dramatic impact on our communities and our perception of “justice.”

As I have in the past, I would like to again thank the U.S. Sentencing Commission for their efforts to correct many of the problems associated with federal convictions for possession of crack cocaine. By holding this hearing, and by accepting and reviewing my testimony, the NAACP is grateful that somebody is listening. It is however our further wish that change will come and fair and equal justice will be served for all Americans.

Thank you again, and I welcome any questions you may have.

¹ United States Sentencing Commission, *Report to Congress: Cocaine and Federal Sentencing Policy*, May 2002.