

**Testimony of Kemba Smith
before the
Inter American Commission on Human Rights**

March 3, 2006

Members of the Commission, my name is Kemba Smith, and only a little over five years ago, I was identified by an inmate number, and today I am speaking on behalf of those currently incarcerated, those who are in district court today, and for those in the future who are being sentenced under federal mandatory minimum drug sentences.

Three days before Christmas 2000, President Bill Clinton commuted my sentence of 24.5 years for drug conspiracy charge. If he had not done so, this morning, instead of talking to you, I would still be in Federal prison until the year 2016. If my parents had not waged a campaign in the news media, in the churches, and among the criminal justice reform community, I would not have been freed from prison to raise my 11 year old son.

I grew up as the only child of professional parents in a Richmond, Virginia suburb, leading an advantaged and sheltered childhood. After graduating from high school in 1989, I left the security of my family to continue my education at Hampton University in Hampton, Virginia. I was not a drug trafficker. I was a college student and at the age of 19, away from the protective watch of my mother and father and in an attempt to "fit in", I met a man while a sophomore in college who I became romantically involved with and unbeknownst to me at the time, according to the government, he was head of a violent 4 million dollar crack cocaine ring. He eventually became verbally and physically abusive in which I had to seek medical attention. I continued to be in a relationship with him for over 3.5 years in which during this time he increasingly drew me into his drug activities. The prosecutor stated during my court hearings that I never handled, used or sold

any of the drugs involved in the conspiracy. Yet, I was sentenced as a first-time nonviolent drug offender to 24.5 years, one for every year of my life. I remained in prison from the moment I turned myself in September 1994, 7 months pregnant with my first child, until December 22, 2000. My boyfriend at the time, did not do any time, he was killed.

After my boyfriend was murdered, the U.S. government came after me and held me accountable for the total amount of drugs within the conspiracy, which was 255 kilograms of crack cocaine, even though according to the government's investigation, the drug dealing started two years before I even met him. I did not traffic in drugs, but I knew my boyfriend did. I knew that while living with him that he did not have a job and we were living off of the proceeds of his drug crimes. I never claimed total innocence and this is the reason why I pled guilty. The prosecutor added extra incentive in negotiating the guilty plea stating that he would allow me a bond so that I could go home until sentencing to give birth to my son and that I would only receive a two-year sentence. Unfortunately, due to his unethical conduct, after pleading guilty I remained in jail.

Minutes after giving birth in a hospital, guarded by two prison officials, the U.S. Marshall Service walked into my room and ordered that I be shackled to the bed, and two days later my son was taken away. I was sent back to a cold jail cell with my breast gorging and in extreme pain. If my parents had not been able to take and raise my son, my parental rights would have been terminated.

Since being released from prison in 2000, I graduated from Virginia Union University with a bachelor's degree in Social Work, worked at a law firm for over 4 years, bought a home and I am currently a first year law student at Howard University. I have spoken across the country to youth

audiences, inspiring them to become educated about injustices in the U.S. criminal justice system, and hoping that they will recognize that there are consequences to their life choices. But most importantly, I am raising my only child who is now eleven years old. Unfortunately, my burden is that I represent the thousands of others still currently incarcerated, some my friends, who I left behind that deserve an opportunity to raise their children, as well.

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Mandatory minimum sentences are sentences, usually of imprisonment, created by legislative bodies that must be imposed by a court upon a finding of guilt based upon either that fact or some other fact, notwithstanding any other factors that are traditionally relevant to a just sentence, including the degree of culpability and the accused role in the offense.

U.S. law provides that any person who is an accessory to a crime or who aids or abets the commission of a crime is a principal and is treated and punished exactly like the principal perpetrator of an offense (18 U.S.C. sec. 2, Principals). In the Anti-Drug Abuse Act of 1988 (P.L. 100-690), section 6470(a), 102 Statutes at Large 4377, Congress applied the mandatory minimum sentences it enacted in 1986 (P.L. 99-570) to the crimes of attempt and conspiracy in the Controlled Substances Act (21 U.S.C. 846).

The consequence is that the most minor participants in the activities of a drug trafficker are charged with all of the crimes of the drug trafficker. This means they are facing the equivalent punishment. The threat of imprisonment for 20 or 30 years or more leads many to plead guilty and seek a departure below the mandatory minimum sentence.

In 1986, the U.S. Department of Justice insisted on a provision to the mandatory minimums to permit the government to move the court to sentence below the statutory mandatory minimum if

the government found that the defendant had provided “substantial assistance in the investigation or prosecution of another person who has committed an offense.” (18 U.S.C. 3553(e), carried forward in the Sentencing Guidelines as a section 5K1.1 departure).

Many women are unwilling to provide this “substantial assistance” in order to be loyal to the man they love, even if they are not married. This results in what has been called, “the girl friend problem.” The drug trafficker pleads guilty, cooperates in the prosecution of his colleagues, and is sentenced below the mandatory minimum. His girl friend, having no information about the criminal organization other than the acts of her boy friend, feels morally and emotionally compelled not to testify against him. Therefore she is unable to qualify for the “substantial assistance” departure and receives the full mandatory minimum sentence even though, in fact, her culpability is substantially less than that of the principal offender.

Aside from mandatory minimum sentencing, various features of drug enforcement in the United States have a racially disparate impact.

The United States Housing Act of 1937 was amended by section 5101 of the Anti-Drug Abuse Act of 1988 (P.L.100-690, 102 Stat.4300) to permit the termination of a lease in a public housing facility “if any member of the tenant’s household, or a guest or other person under the tenant’s control. . . engage[s] in criminal activity, including drug-related criminal activity, on or

near public housing premises, while the tenant is a tenant in public housing..” (42 U.S.C. 1437d(l)(6)). This has been implemented as the “one strike and you’re out” public housing provision that has resulted in the eviction of public housing tenants. This policy was recently unanimously upheld by the United States Supreme Court in *Department of Housing and Urban Development v. Rucker*, 535 U.S. 125 (2002). Mrs. Rucker’s daughter was found with cocaine and a crack pipe three blocks away from her apartment, and Mrs. Rucker was evicted.

A person with a drug conviction has a lifetime ban from food assistance and temporary assistance to needy families (P.L. 104-193, sect. 115).

Any student convicted of any drug offense (even a summary citation for simple possession) shall be denied Federal higher education financial aid (P.L. 105-244, sec. 483(f); 20 U.S.C. 1091(r)). Such sanctions are not applied to convicted murderers, rapists or child molesters.

A non-U.S. citizen convicted of a drug offense or regulation (other than one involving less than 30 grams of marijuana) must be barred from entry into the United States, or deported from the United States, no matter when the offense took place (8 U.S.C. 1227(a)(2)(B)).

It is evident that the people who are disproportionately impacted by these federal drug sentencing laws are people of color and I am not ashamed to say again that I represent those who are currently incarcerated, people just like me who are capable of being productive taxpaying citizens.

When the U.S. Congress created the mandatory minimum sentences and collateral consequences for drug offenses, they may not have been acting with the intent to inflict special punishment upon people of color, but that has unquestionably been the effect.