

1 struck by something my father used to say all the time: you
2 cannot cripple a person and then criticize the way that they
3 walk. And that crippling metaphor has to do with if we're
4 not going to train people, if we're not going to be involved
5 with programs and really dealing with the way we address
6 kids' and not looking at it from an adultified system, then
7 we're going to continue to have problems.

8 In closing, I want to thank you all for taking
9 this brave step to pass and implement the PREA. The impact
10 of your efforts will forever change the culture of our
11 juvenile facilities; youth will be safer, and the
12 victimization of this vulnerable population will no longer
13 be ignored. I believe this will lead to healthier
14 communities, greater public safety, changed attitudes,
15 administrator and staff accountability and behavior, and
16 successful integration back into society when people return
17 to communities that they come from. Thank you.

18 CHAIRMAN WALTON: Thank you, Mr. Dixon.

19 Mr. Soler.

20 MR. SOLER: Judge Walton and Members of the
21 Commission, thank you very much for the opportunity to
22 appear. I'm the Executive Director of the Center for
23 Children's Law and Policy which is a very new organization,
24 we officially opened just two months ago, but prior to that
25 I worked for twenty-seven years at the Youth Law Center

1 working on juvenile justice reform around the country. I
2 learned about prison rape very early in my career. One of
3 the first cases I took on at the Youth Law Center involved a
4 fifteen-year-old girl who was raped by a guard in an adult
5 jail in Ohio, and I remember to this day talking with her
6 about the experience and talking with the officials there
7 about the neglect that was involved with that and the
8 problems with policies and lack of supervision and lack of
9 training of staff, and I've seen that continually over the
10 intervening years.

11 I was asked to speak today about the differences
12 between the juvenile justice and adult criminal justice
13 systems. It's well known that since the juvenile court was
14 created in Chicago in 1899, the guiding principles of the
15 juvenile justice system have been to recognize the
16 developmental differences between children and adults in
17 terms of maturity and judgment, and to provide
18 rehabilitation and treatment needed by troubled youth to
19 become healthy and productive members of society.

20 The juvenile justice system, in my view, is a
21 compact across the generations to provide help for troubled
22 children, and these are not just lofty ideals. I think they
23 have important practical ramifications in the day-to-day
24 operations of the juvenile justice system. For example,
25 they require a different set of knowledge and skills for key

1 personnel in juvenile court, judges, prosecutors, defenders
2 and probation staff. All of the people who work in juvenile
3 court need to understand and receive training in adolescent
4 development, how it pertains to risk-taking and other
5 behavior that gets teens in trouble, the ability or
6 inability of teenagers to understand the future consequences
7 of their behavior, their developing sense of judgment which
8 is clearly not formed fully at the time they are adolescent,
9 their developing moral sense which may take a considerable
10 amount of time to fully development. And there is good
11 information available on these issues for juvenile court
12 personnel. The National Juvenile Defender Center working
13 with Youth Law Center and the Juvenile Law Center, and
14 funded by OJJDP and the McArthur Foundation and other
15 foundations, have developed extensive training criteria for
16 juvenile court personnel, and I'd be happy to make those
17 available to the Commission if that's your desire.

18 The differences between the systems also mean that
19 the states' response to unlawful behavior is different.
20 Rather than setting up prisons for kids in response to
21 crime, many juvenile justice systems around the country,
22 starting with this one more than -- in this state more than
23 thirty years ago, have developed effective treatment and
24 rehabilitation programs using proven evidence-based
25 practices and models. For this Commission, I think the

1 differences between the juvenile system and the adult system
2 are most important in terms of conditions of confinement in
3 institutions in which children are held. And as I thought
4 about my testimony today, I tried to think of practical
5 suggestions I could make that would help the Commission in
6 addressing your statutory task. In my written testimony I
7 discussed in some detail the conditions that I think are
8 relevant, and the acronym that many of us in the field use
9 to keep those different conditions in mind, C.H.A.P.T.E.R.S
10 is the acronym, and each of the letters stands for an
11 important area of conditions of confinement. "C" is
12 classification, "H" is health and mental health, "A" is
13 access to family and to counsel, "P" is programming, "T" is
14 training and supervision of staff, "E" is environmental
15 issues, "R" is restraints, isolation, discipline and
16 grievances, that is what happens when people misbehave, and
17 "S" is for safety. Overall I think the truth is that the
18 most effective method of preventing prison rape of children
19 is to ensure that juvenile facilities are operated in ways
20 that meet high standards in all of these areas, every one of
21 them, and my recommendation to the Commission was not to
22 leave out any of these areas as you think about the
23 standards that you're going to propose. Classification is
24 particularly important to think about protection of children
25 who are especially vulnerable due to their age or their size

1 or their sexual identity or other factors, and particularly
2 to separate them from violent or predatory youth. In terms
3 of health and mental health, the question is early screening
4 for histories of physical or sexual abuse for children who
5 come into the facility, getting treatment for victims by
6 professional staff who are trained to work with young
7 people. It's not a small adult system; it's a juvenile
8 justice system and the children are different.

9 For access, the "A" for access issues,
10 particularly important to arrange that children can
11 communicate freely with their families and with counsel and,
12 if necessary, with public officials about problems that are
13 going on in the facilities. Under "P" for programming, it's
14 important to understand that there should be classroom
15 education for children in the facilities or after school
16 programming on how young people can recognize and combat
17 sexual abuse in the facility, their rights under the law and
18 in the facility, and particularly who the adults are in the
19 facility who they can talk to.

20 In terms of training of staff, the question of
21 pre-employment screening, pre-service training and
22 in-service training of staff on prevention, detection,
23 reduction and punishment of sexual abuse in juvenile
24 facilities, and particularly adequate numbers of staff.
25 I've seen a lot of facilities that are short-staffed, staff

1 do double shifts, they are not able to fully supervise the
2 facility appropriately, and they get in trouble themselves
3 because they're just too tired when they go on that second
4 shift.

5 Under "E" for environmental issues, particular
6 attention should be paid to architectural dangers in
7 juvenile facilities, such as isolated corridors and rooms
8 and stairwells where children report to us that sexual abuse
9 often occurs. On the "R" for restraints, I hope the
10 Commission will consider strict standards on the use of
11 force, the use of restraints, and the use of isolation. In
12 my twenty-seven years of working in this field, this is the
13 area where I found the most abuse in facilities, and I
14 mentioned in my testimony the abuses that we learned about
15 when we litigated in South Dakota over the training school.

16 I understand that staff have an obligation and must keep
17 order in facilities, we must protect security, but the kinds
18 of abuses we've seen in this area over the years frankly
19 rival the abuses that we've seen on television on Abu
20 Ghraib.

21 We teach children a wrong and dangerous lesson
22 when staff in juvenile facilities can use force in an
23 undisciplined way to address conflicts. Children who see
24 force used to conquer conflict will use force themselves,
25 and that's when they will act out those feelings and result

1 in physical and sexual abuse. As was mentioned earlier by
2 Commissioner Smith, it's particularly important to have an
3 effective grievance system in facilities. In many places
4 that I've gone into children can only complain about
5 mistreatment by going up to a staff person in their unit,
6 asking for a complaint form, filling it out and naming the
7 staff that they have a complaint about, and then giving it
8 back to staff in the unit, and not surprisingly children
9 don't have faith in that kind of system, they worry about
10 retaliation, they don't say everything that's on their
11 minds, and, so, a grievance system has to be confidential
12 and the complaints need to go directly to higher level
13 administrators in the facility rather than going through the
14 staff who are likely to be the object of complaints for the
15 children who are there.

16 There are many standards available in the field
17 that can be helpful to the Commission. The ACA standards
18 and the performance-based standards I think can be very
19 helpful, and I mentioned in my testimony standards that
20 we've developed through the Annie E. Casey Foundation's
21 Juvenile Detention Alternatives Initiative. I think one
22 problem is that all of these standards are not specifically
23 geared to preventing prison rape, but I think that there are
24 standards within all of these standards, and, frankly,
25 particularly the JDAI standards, that can be adopted very

1 quickly and easily to focus on the issues of prison rape in
2 terms of prevention, detection, reduction and punishment.
3 So, I urge the Commission to look carefully at those sets of
4 standards and use the ones that are useful to you.

5 There's been progress in improving conditions of
6 juvenile confinement in my career over the last twenty-seven
7 years, but I will tell you that there are many, many
8 facilities in this country that have a long way to go before
9 they are safe and humane for your incarcerated youth. And I
10 hope the Commission standards will promote the safety and
11 security and quality of care that children are entitled to
12 and that it's our obligation as a society to provide. Thank
13 you very much.

14 CHAIRMAN WALTON: Thank you very much.

15 Questions?

16 COMMISSIONER KANEB: Mr. Flores, I heard you say
17 that there is a compliance monitoring officer from your
18 division in each state, and I would ask you to expand upon
19 how, first of all, what that person's job is, and how, if in
20 any way, the Commission might make use of the existence of
21 that party.

22 MR. FLORES: Thank you for your question.

23 We provide funding through our office to states to
24 comply with the requirements of the JJEP Act, the Juvenile
25 Justice Emergency Prevention Act. These compliance monitors