

## 1                   A F T E R N O O N   S E S S I O N

2                   CHAIRMAN WALTON: We will convene the afternoon  
3 session at this time.

4                   We are honored to have the presence of Senator  
5 Edward Kennedy with us today. Senator Kennedy was one of  
6 the sponsors of the legislation that created this  
7 Commission. Obviously he brings to this effort a commitment  
8 to alleviate it, and we are very honored to have his  
9 presence and fortunate to have his support.

10                  Senator, you had indicated to us you had an  
11 interest in particular on this issue, and the focus of this  
12 hearing is on juveniles, and obviously your interest was the  
13 impetus behind us scheduling this particular hearing here in  
14 Boston. I know you also have a keen interest in the issue  
15 of the immigration population, and with some of the  
16 legislation that may be pending, I assume that population  
17 may increase and we will, in fact, have a hearing focusing  
18 on that issue sometime in the near future. I know you also  
19 had told us the last time you spoke to us that you would  
20 like to see an interim report from the Commission and we  
21 will have something for you near the end of the summer, so,  
22 we are acceding to your desires and we will continue to do  
23 that.

24                  So, thank you for your presence and we welcome  
25 your remarks.

1           SENATOR KENNEDY: Well, thank you very much, Your  
2 Honor. We are enormously grateful for your willingness with  
3 all of your responsibilities to be willing to take on this  
4 challenge and this very, very important assignment. And I  
5 know just from personal knowledge the time and the effort  
6 that you have put into this project and I want to just at  
7 the outset thank you very, very much for your diligence and  
8 perseverance and attention you've given to this, and to  
9 thank all of our panelists for their willingness to spend  
10 the time and the effort and energy. It's a project very,  
11 very worthwhile.

12           This is my first time in this room. I understand  
13 this is where they hear the cases in court. I've been  
14 involved with Joe Moakley in the development of this  
15 magnificent courthouse. It's been an incredible success in  
16 terms of the administration of justice in creating the  
17 atmosphere and climate for justice to take place. I'm very,  
18 very proud of those that have served on the Federal District  
19 Court which I've had some opportunity to have welcome and  
20 support and to recommend to serve on the courts as well as  
21 Judge Lynch on the Circuit Court and others, so, this is a  
22 special pleasure for me to be in this courtroom.

23           I want to thank Judge Walton and the Commissioners  
24 for inviting me to participate in this hearing, and I want  
25 to acknowledge them all, but I especially want to thank John

1 Kaneb who's here as a member of the Commission and was very  
2 much involved in helping us in the Congress in the shaping  
3 of the legislation, as others have been, but John in  
4 particular.

5           The stories you've heard from these courageous  
6 young people earlier today underscore the urgent need to  
7 deal with the ongoing problems of juvenile prisoner abuse.

8           With the Prison Rape Elimination Act, Congress  
9 made a bipartisan commitment to do more to deal with the  
10 long ignored epidemic of rape and sexual abuse in the  
11 nation's prisons. And as those here today know well, with  
12 over two million prisoners now incarcerated nationwide, one  
13 in ten will be a victim of rape, and given these sobering  
14 numbers and a greater push in Congress to treat juveniles as  
15 adults, we need a clear strategy to confront the problem  
16 before us to give hope to those already in the system.

17           Congress needs input from the Commission on next  
18 steps. We know we have a responsibility to protect the  
19 incarcerated from such vile and predatory acts. The nearly  
20 hundred thousand children who make up the juvenile prison  
21 population are possibly the most vulnerable and defenseless  
22 group in our criminal justice system, and too often, we fail  
23 to protect them. As two survivors testified so courageously  
24 this morning, the juvenile facilities are regularly the site  
25 of shocking physical and mental abuse.

1           In addition to issues surrounding juvenile  
2 facilities, the plight of child inmates in adult prisons is  
3 an even more serious concern. Juveniles housed with adults  
4 are five times more likely to report being victims of sexual  
5 abuse than those in juvenile facilities. An even more  
6 appalling statistic is that the suicide rate of child  
7 inmates in adult prisons is over seven times higher than in  
8 juvenile facilities.

9           In 34 states, juveniles who have been tried and  
10 convicted in criminal court must be tried as adults for all  
11 subsequent offenses, and the number of youth under 18 in  
12 adult jails has nearly tripled in the last 15 years. Over  
13 7,000 child prisoners now live daily alongside adult  
14 criminals.

15           And despite all the testimony that you'll hear  
16 today about the grave consequences of incarcerating  
17 juveniles with adults, there's been an alarming escalation  
18 in the willingness of many of my colleagues in Congress to  
19 treat children as adults. Historically, judges have been  
20 given broad discretion to choose the best course in dealing  
21 with child offenders. This discretion helps ensure that  
22 arbitrary requirements do not prevent judges from finding  
23 the best solutions in individual cases; but unfortunately,  
24 many states have gradually reduced the power of judges to  
25 make these determinations. At least 29 states have enacted

1 statutes that exclude large categories of cases from the  
2 jurisdiction of juvenile courts. Now some in Congress want  
3 to do the same. The House of Representatives has also  
4 passed a draconian bill on gangs that would dramatically  
5 reduce judges' discretion over cases still within their  
6 responsibility.

7           In the Senate Judiciary Committee of which I am a  
8 member, Chairman Specter is now working on a companion gangs  
9 bill with Senators Hatch and Feinstein and Schumer. While  
10 we haven't had any hearings on the issue, it seems that  
11 there's a strong push to do something this year. The Senate  
12 bill would expand mandatory minimums for juvenile offenders,  
13 including mandatory life sentences. For some offenses, the  
14 Senate bill would even establish a presumption in favor of  
15 transferring a juvenile to an adult court.

16           While the punishment must fit the crime, the  
17 current proposals fail to create comprehensive solutions to  
18 the problems of youth violence and sentencing facing our  
19 country today. While the Senate proposal takes a different  
20 approach than the House, we face a real challenge in trying  
21 to work out the differences between these very different  
22 bills.

23           The work of the Commission is important in  
24 understanding the enormous risks of such policy changes. At  
25 the same time, we are seeing a continued and disturbing

1 trend of under-funding and undercutting juvenile justice  
2 programs across the board. For this reason, the Commission  
3 should provide Congress with specific recommendations on how  
4 best to target resources.

5           Only a better understanding of the consequences of  
6 condemning a child to the adult penal system can adequately  
7 address these issues, and I commend the Commission for its  
8 leadership here, and I urge the Commissioners to continue to  
9 focus on this important aspect of the problem.

10           One further issue is also of particular concern to  
11 me. Our treatment of mentally ill child inmates remains  
12 grossly inadequate, as many of those here today know  
13 firsthand. Only half of juvenile facilities screen all  
14 inmates for mental health issues. One in ten don't screen  
15 at all. Over a third of these facilities provide no on-site  
16 mental health treatment. Even when young people are able to  
17 obtain services, the treatment is often inadequate and the  
18 consequences can be severe. According to a report of the  
19 House Committee on Government Reform, scores of mentally ill  
20 youth are held in detention simply because no space is  
21 available in community mental health facilities. Two-thirds  
22 of these facilities report that some of the young offenders  
23 have attacked others or attempted suicide, and I urge the  
24 Commission to study carefully this serious problem of the  
25 incarceration of mentally ill youth, particularly where

1 there is abuse, and include recommendations to Congress in  
2 its final report.

3           While Congress grapples with the issues  
4 surrounding youth violence and gangs, we cannot forget to  
5 include provisions to address serious concern with youth  
6 with mental illness. Given the stakes, I'm prepared to  
7 reach across party lines to get something done. We did it  
8 before with the passage of the Prison Rape Elimination Act  
9 and I'm prepared to do so again.

10           With all the experts and those with direct  
11 experience here today, the Commission is moving in the right  
12 direction to provide thorough recommendations to Congress.  
13 Let me take a moment to respectfully suggest the things that  
14 we need.

15           One, we need an analysis of the best research  
16 available. With these factual findings, Congress will be in  
17 a better position to legislate.

18           In addition, we also need an assessment of the  
19 resources needed to implement strategies to address the  
20 problems discussed today. I hope the Commission will  
21 continue to work with the panelists here today, including  
22 the National Council on Crime and Delinquency, the National  
23 Partnership for Juvenile Service and the Center for  
24 Children's Law and Policy, to propose standards and best  
25 practices in the area of juvenile detention. We need

1 guidance on how best to ensure that proper staff training  
2 and interventions take place, as well as clear  
3 recommendations on how to make conditions of confinement  
4 better and safer.

5           Finally, I hope that the Commission will recommend  
6 a system of checks and balances so that the federal  
7 government can do a better job of monitoring these  
8 facilities.

9           This hearing, and your forthcoming reports, will  
10 help to raise public awareness and improve the prospect of  
11 needed changes. In particular, I hope that you will  
12 highlight the important need to address the specific  
13 challenges relating to juveniles.

14           In addition, I'm encouraged that the Commission  
15 will also focus on the problems with abuse in immigration  
16 detention facilities. We can't go on like this, and we're  
17 counting on your guidance for the most effective resolution  
18 as soon as possible. I mention the immigration detention  
19 facilities because I think we've seen both in the House  
20 legislation and in the recently passed Senate of the great  
21 expansion in terms of detention facilities and that'll be an  
22 area, and although we don't have great numbers in terms of  
23 detention facilities to date, we're going to be -- we want  
24 to know what we should learn on the basis of what exists  
25 today, because whatever happens, and I'm hopeful that we can

1 still have a sensible and responsible comprehensive  
2 immigration bill, but whatever happens, there's going to be  
3 a sizeable expansion of the detention facilities.

4 I think I also mentioned that there's also the  
5 issue of about 12,000 children that come in every year with  
6 -- unaccompanied children that come in here that are sort of  
7 loose in the system. The Department of Homeland Security  
8 and the Department of Health and Human Services have  
9 undertaken a program to try and ensure that they are going  
10 to have adequate, both representation -- they have had no  
11 representation virtually, no guarantee of representation --  
12 children separated from their families, no representation,  
13 just shuffled off into various facilities. And we have very  
14 little information that's been gathered, but we know what  
15 happens when we don't have good training, clear lines of  
16 responsibility, clear authority. We know what the  
17 consequences are. And as we are dealing with these kinds of  
18 issues, we don't expect the Commission to perhaps have the  
19 definitive work on this area, but to have at least some  
20 preliminary recommendations and suggestions to us in the  
21 Congress would be immensely helpful and useful. And this is  
22 an area, I can say, having been on the Immigration  
23 Subcommittee for many, many years, 42 years actually, we  
24 haven't really got into, and with the rearrangement in terms  
25 of the Department of Homeland Security and the Immigration

1 Services and the organizational dilemma that's taking place,  
2 we want to make sure that the children are not going to fall  
3 through the cracks in terms of protection and in terms of  
4 safety. So, we thank you. We apologize for every time we  
5 see you to task this Commission with additional kinds of  
6 responsibilities, but I think it's an indication of the kind  
7 of confidence that I have in the Commission and about the  
8 area of need.

9 I mentioned in my brief comments the mood and  
10 climate on both judiciary committees in the House and Senate  
11 with regards to the whole movement of the holding the youth  
12 accountable and being tried as adults and also being  
13 sentenced as adults and in those facilities, and this is  
14 really a very significant and important trend and it has  
15 very significant and important implications with regard to  
16 children and particularly with regard to children who have  
17 special needs or are dealing with mental health and a range  
18 of different kinds of issues and questions, and to have some  
19 thoughtful consideration of this kind of a challenge will be  
20 immensely important to our community, and I'm sure I speak  
21 for the House as well. We do not have that kind of  
22 information. We're operating, quite frankly, in the dark.  
23 I can say that as one who is very much, or at least very  
24 much aware of the House legislation on gangs, and aware of  
25 the Senate consideration in the development of legislation,

1 so, we're looking forward to the recommendations and the  
2 work of the Commission.

3           CHAIRMAN WALTON: Thank you very much, Senator.  
4 We hope we can meet the challenge that you've given to us.  
5 From the testimony we've heard today and otherwise, we know  
6 the consequences that young people suffer when they are  
7 incarcerated in adult facilities, and hearing from the  
8 corrections community, they don't relish the idea of having  
9 a large number of young people housed in their institutions  
10 because of those problems, so, hopefully there will be a  
11 sensitivity to the plight of young people when they are  
12 incarcerated under those circumstances, because the reality,  
13 because of their age, they will come back into society, and  
14 if they've only become worse as a result of their  
15 experiences, it's only going to result in further infliction  
16 of harm on society at their hands. So, we hope we can  
17 contribute to the debate.

18           COMMISSIONER SMITH: Senator, first of all, thank  
19 you. And my question would be, in all of these, in this  
20 legislation, the gang legislation, is there significant  
21 presence of the corrections community making that position  
22 known, that they are really not in favor of having youth in  
23 adult systems? Because it seems to me that that would be  
24 very persuasive.

25           SENATOR KENNEDY: Well, clearly not enough. It's