AFTERNOON SESSION

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

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

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

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

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

I want to thank Judge Walton and the Commissioners for inviting me to participate in this hearing, and I want to acknowledge them all, but I especially want to thank John
Kaneb who's here as a member of the Commission and was very much involved in helping us in the Congress in the shaping of the legislation, as others have been, but John in particular.

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

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

Congress needs input from the Commission on next steps. We know we have a responsibility to protect the incarcerated from such vile and predatory acts. The nearly hundred thousand children who make up the juvenile prison population are possibly the most vulnerable and defenseless group in our criminal justice system, and too often, we fail to protect them. As two survivors testified so courageously this morning, the juvenile facilities are regularly the site of shocking physical and mental abuse.
In addition to issues surrounding juvenile facilities, the plight of child inmates in adult prisons is an even more serious concern. Juveniles housed with adults are five times more likely to report being victims of sexual abuse than those in juvenile facilities. An even more appalling statistic is that the suicide rate of child inmates in adult prisons is over seven times higher than in juvenile facilities.

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

And despite all the testimony that you'll hear today about the grave consequences of incarcerating juveniles with adults, there's been an alarming escalation in the willingness of many of my colleagues in Congress to treat children as adults. Historically, judges have been given broad discretion to choose the best course in dealing with child offenders. This discretion helps ensure that arbitrary requirements do not prevent judges from finding the best solutions in individual cases; but unfortunately, many states have gradually reduced the power of judges to make these determinations. At least 29 states have enacted
statutes that exclude large categories of cases from the jurisdiction of juvenile courts. Now some in Congress want to do the same. The House of Representatives has also passed a draconian bill on gangs that would dramatically reduce judges' discretion over cases still within their responsibility.

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

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

The work of the Commission is important in understanding the enormous risks of such policy changes. At the same time, we are seeing a continued and disturbing
trend of under-funding and undercutting juvenile justice programs across the board. For this reason, the Commission should provide Congress with specific recommendations on how best to target resources.

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

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

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

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

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

In addition, we also need an assessment of the resources needed to implement strategies to address the problems discussed today. I hope the Commission will continue to work with the panelists here today, including the National Council on Crime and Delinquency, the National Partnership for Juvenile Service and the Center for Children's Law and Policy, to propose standards and best practices in the area of juvenile detention. We need
guidance on how best to ensure that proper staff training and interventions take place, as well as clear recommendations on how to make conditions of confinement better and safer.

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

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

In addition, I'm encouraged that the Commission will also focus on the problems with abuse in immigration detention facilities. We can't go on like this, and we're counting on your guidance for the most effective resolution as soon as possible. I mention the immigration detention facilities because I think we've seen both in the House legislation and in the recently passed Senate of the great expansion in terms of detention facilities and that'll be an area, and although we don't have great numbers in terms of detention facilities to date, we're going to be -- we want to know what we should learn on the basis of what exists today, because whatever happens, and I'm hopeful that we can
still have a sensible and responsible comprehensive immigration bill, but whatever happens, there's going to be a sizeable expansion of the detention facilities.

I think I also mentioned that there's also the issue of about 12,000 children that come in every year with -- unaccompanied children that come in here that are sort of loose in the system. The Department of Homeland Security and the Department of Health and Human Services have undertaken a program to try and ensure that they are going to have adequate, both representation -- they have had no representation virtually, no guarantee of representation -- children separated from their families, no representation, just shuffled off into various facilities. And we have very little information that's been gathered, but we know what happens when we don't have good training, clear lines of responsibility, clear authority. We know what the consequences are. And as we are dealing with these kinds of issues, we don't expect the Commission to perhaps have the definitive work on this area, but to have at least some preliminary recommendations and suggestions to us in the Congress would be immensely helpful and useful. And this is an area, I can say, having been on the Immigration Subcommittee for many, many years, 42 years actually, we haven't really got into, and with the rearrangement in terms of the Department of Homeland Security and the Immigration
Services and the organizational dilemma that's taking place, we want to make sure that the children are not going to fall through the cracks in terms of protection and in terms of safety. So, we thank you. We apologize for every time we see you to task this Commission with additional kinds of responsibilities, but I think it's an indication of the kind of confidence that I have in the Commission and about the area of need.

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

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

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

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