

REMARKS BY SENATOR EDWARD M. KENNEDY (D.Mass.)

SENATOR KENNEDY: Good morning and thank you very much, Mr. Chairman. I want to first of express my very sincere appreciation for your willingness to chair this panel and also to commend all of those that are members of the panel, all have very distinguished careers, good deal of knowledge and understanding about the challenges that we're facing on this.

Start from the beginning. I wanted to graduate you, Mr. Chairman, for being willing to undertake the chairmanship of this commission and to the members of the commission. I know by reputation many of them and personally, John Kaneb, from my home state of Massachusetts who's had an extraordinary interest and has been willing to spend a great deal of time with me personally on this issue and has been really such an important force in helping us move this whole process of forward.

I thank all the members of the commission for

taking the time and showing the interest and the commitment that this commission is undertaking. It's a matter of, I think, enormous importance. It stretches beyond political philosophy and ideology. I've enjoyed working with my colleague and friend, Senator Sessions, from Alabama, who played an extremely important role and I expect you're going to hear from later on in the day and also Congressman Wolf and Congressman Scott as well in the House of Representatives who were indispensable for the successful passage.

Thank the administration, the Justice Department for their work. They had some serious kinds of questions, but they were willing to work with us and we now find ourselves at the opening hearing and I welcome a chance to say a few words on this occasion and I want to just underscore, again, how important this work is and how we are looking forward to the studies, the recommendations, the insights that this commission can develop. It will be of enormous national importance and consequence. I think it's

implications will be profound in terms of the federal penal system. It will in terms of another area of great interest to me and that's the issues of immigration and detainees in the immigration system. And it will have a profound impact, I think, in helping assisting the states develop better policies and, hopefully, it can be reliable information for other countries around the world.

So, we have great expectations about the commission. We're fortunate to have the leadership that's being provided to you, Mr. Chairman and other members and we thank you for undertaking this particular challenge.

In the legislation, Congress expresses its unanimous commitment to end the epidemic of rape and sexual abuse in the Nation's prisons. We've all heard the shocking estimate that one in every ten prisoners in the country is raped. We still don't know how many more are victims of sexual abuse and exploitation. And until this law was passed, the Federal Government had never conducted a reliable study on the issue even though more than

2,000,000 men and women are now behind bars in the Nation and 200,000 more are held in immigration detention centers each year.

Every year countless juveniles and mentally ill defenders are in incarcerated conditions extremely vulnerable to abuse and exploitation. As we know, prison rape has devastating physical and psychological effects on its victims. It also has serious consequences for communities. 600,000 inmates are released from prison or detention each year, and the shameful assaults clearly increase the likelihood that they'll commit new crimes after they're released.

So infection rates for HIV, other sexually transmitted diseases, tuberculosis and hepatitis, are far greater for prisoners than for the population as a whole and prison rape undermines the public health. By contributing to the spread of these diseases, it often becomes a death sentence for its victims because of AIDS.

The scope of the problem is staggering. I support the commission's spotlight on it. Sexual

violence and exploitation are unacceptable to all whenever they occasion. The commission has a mandate to demand accountability and give the victims a voice and new hope.

And I especially commend the courage of the survivors and their families. Their testimony is a compelling basis for the commission's recommendations. And some of the experts who worked with us on this legislation, Michael Horowitz, Bob Dumond and Lara Stemple are on the panel, and I commend their leadership.

The Inspector General of the Department of Justices' recent report made important contributions as well. His conclusion highlights the need for a strong national response and provides important guidance for the future. It's just one example the commission should hold a hearing on the abuse in contract facilities for prisoners who are not protected by the act. The commission should also work with Inspector General in the National Institute of Corrections to establish standards for the investigation and

punishment of prisoner staff involved in such misconduct. The Bureau of Justice statistics, National Institutes of Justice and the Bureau of Justice Assistance, have all made significant process to implement the new law.

As mandated by the act, these studies will contain needed new data on the prevalence of sexual assault in the federal correction facilities. A major aspect of our concern is the victimization of juveniles. Those incarcerated with adults are five times more likely to report being victims of sexual assault than youth in juvenile facilities. Yet, the so-called Gang Bill recently passed by the House have dramatically increased the number of juvenile offenders in adult facilities.

In light of the enormous risk that such an change in policy, I urge the commission to hold hearings on juvenile victims and to make specific recommendations on the treatment of juveniles in your report.

Many forthcoming studies authorized by the new law are still in the initial stages and the final

data may not be available until next year. I hope the commission takes the time to analyze the data before completing the report. Since you're finding some recommendations to be so important, I also urge that you consider issuing interim reports based on public hearings.

Today's hearing is an important precedent. It's disappointing though that the commission's initial progress has faced so many obstacles. As you know, our bill requires the commission to conduct hearings on the economic, physical and social issues relating to prison rape before issuing it's final report and recommendation.

Without further delay, the commission needs to announce, I believe, a public schedule for future hearings across the country. At these hearings, I urge the commission to include a wide range of perspective in order to involve more researches, academic experts, correctional professionals, advocates, and most importantly, the survivors. And in doing so, the commission will raise public awareness about these issues and improve the

likelihood of needed changes. It will also enable the commission to develop a record of best practices. We know that in some areas and some prisons have really extraordinary positive records, which could be enormously -- I think set a very, very important example and to know what some of these prisons are doing and correctional facilities that result in these best practices and why they have these positive results, I think would be enormously interesting, very valuable for all of us.

So, we thank you for your leadership, Mr. Chairman. I look forward very much to this report and this unique opportunity for the nation to end this serious abuse.

I again thank you very much for letting me testify here, comment on it. I know that I've outlined just some additional kind of hopes that the commission might consider. It's got a full program, full agenda. And I don't mean to add additional kind of challenges to the commission, but these are a few ideas that might be of some

value, I know would be of value to all of us in the Congress. And I think as the commission moves around the country, my own belief is the focus and attention that the commission will get will give additional light to its recommendations and will also help us at the time of implementing some of these recommendations because of the development of understanding awareness, concern, and in many instances outrage about what's happening in the prison system today.

THE CHAIRMAN: Thank you very much, Senator. One of, I think, the major efforts we have to engage in also is to educate the public about the problem and the impact the problem has on society in general. I was at an affair on Sunday and was dismayed to have one of the individuals who was present when I was talking about the issue say, well, they deserved it. They put themselves in this position and why should we really care. I think that's a attitude of different hostility between the inmate population and is something that we have to address.

SENATOR KENNEDY: Well, I agree. I think that that's certainly something we have to address. I think it's hopefully explainable as well in terms of but for the fact that we're letting 600,000 out every year and these kinds of patterns and conduct are going to be embraced in the kinds of penal system. The public is going to be the recipients of these kinds of activities as well.

As we all find out, there are a variety of different reasons, perhaps, and justifications and emotions for taking these steps. It does seem to me in terms of our society and humane and decent society where we are expecting to have accountability for those that are going to violate the law certainly justified. But there's also a basic kind of condition and definition of a humane society and one of them is to make sure that the individuals at least that are going to be paying their dues to the society are not going to be subjected to this kind of horrific kind of condition.

But, I agree with you, I think it's important

that we get the support for that reason, but I think, ultimately, we understand that individuals are going to be coming out of these prisons and the lessons that are learned in these prisons are going to have important implications.

In terms of the society as a general, we're going to at least develop and have communities that are going to be free from predators and from those that are going to be subject to these incredible kinds of horrific mental and physical conditions as a result of violence perpetrated on them. It's important that we get to the root cause. And it seems to me that there's a variety of reasons why people ought be interested. I think, hopefully, it will be for the nobler reasons, but I think all of us will take about any reason if we can get a policy that's going to be sensible, responsible and consistent with the values of our society.

THE CHAIRMAN: Thank you. Any comments or statements?

COMMISSIONER FELLNER: Senator, you were just speaking about some of the practical reasons

why communities might be interested if they aren't otherwise interested. And I wondered if -- I know you've been a champion of Human Rights throughout your career in the Senate and I wondered if you could say a word or two about the relationship of staff sexual abuse and inmate on inmate sexual violence with regard to Human Rights in general and why and how you see the Human Rights framework here.

SENATOR KENNEDY: Well, I know on this panel a number of you, including yourself, who have written about this over a long period of time. I think in terms of our whole society and development of our whole nation has been based upon the values of individual rights and liberties, which is as old as the country itself, as the Declaration of Independence, not the constitution which describe slavery and our founding fathers and we paid a fierce price for that mistake of theirs. But, nonetheless, we've been a constant nation that has been protecting itself highly. And we have been attempting to free ourselves from the stains of

discrimination and bigotry and hatred. And we took a small step last evening in the United States Senate on this to recount the failures of the United States Senate in our nation on the issues of taking action on lynching.

But we have been constantly attempting to free ourselves from forms of discrimination. We wrote it into the constitution. We fought a civil right. Dr. King, and you know the history as well, better than I do, but awakened the nation on the problems of discrimination again and we made important progress, I think particularly in the early 60's. And from that progress that we've made about bigotry and discrimination, and this is basically these acts of sexual violence are, I think, most -- you'll hear during the course here in our health committee, are more acts of violence and our much more rooted in terms of mental conditions and violence and control and other aspects as much as in sort of sexual gratification.

So, as we are working in terms of freeing ourselves from these stains of mental illness and

from mental bigotry and prejudice and discrimination, we've made progress on race. We've made it on religion. We've made it on ethnicity. We've eliminated the national origin quota system on immigration, the Asian Pacific Triangle. We've done it on gender. We've done it more recently on disability. And we are beginning to face it, I think, with regards to sexual orientation and privilege.

We still have a ways to go, we in the Congress. I'm a strong believer in the hate crimes legislation and we try to recognize the kind of violence that we see with hate crimes and, perhaps, as some kind of association with some of these crimes of violence that are motivated by predators in prison are real acts of terror. I always think hate crimes are domestic terrorism. Because it's not focused sort of on the individual, sort of in a group. You got all these mixtures in terms of the kinds of attitudes of people that are involved in these kinds of activities in prisons.

But we, as a country, have to free ourselves,

if we're going to be America, from these kinds of negative impulses which either threaten individual rights and individual liberties or group rights and group liberties or community rights and community liberties or whatever. And this certainly is something that is a scar on our nation and we ought to be about trying to do something about it. And the best way, I think, is to first of all illuminate the problem so we all understand it in a better way. This commission can perform enormously and to hear from thoughtful people like yourselves who will give a lot of focus and attention to that, ideas and recommendations to us and challenge us legislatively to see if we do not respond.

COMMISSIONER SMITH: I am going to speak loudly.

SENATOR KENNEDY: Okay. I can hear you.

COMMISSIONER SMITH: Thank you. Senator, I have a question. You talked about wanting the commission to look at immigration and those in immigration and detention facilities. As you know, there's been a lot of information and media

coverage with regard to detainee abuse. How would you see the role of this commission vis-a-vis that issue, and are there suggestions that you would make about how we would look at some of that information that's already out there?

SENATOR KENNEDY: Well, this is an enormous kind of challenge. You are going to have to limit this. There's some very, very good people in the immigration field. I would be glad -- I've been on the Immigration Committee for a long time since I came to the senate. I would be glad to share some of the experts. You've got unaccompanied children, for example, that come to this country unaccompanied that run into the judicial system and are housed through various kinds of conditions.

More recently we moved those kinds of attention and focus for those children from the Department of Justices to HHS, but nonetheless they are being held and detained in a lot of kind of centers and there's always questions about what's happening and who's watching and who's caring for

them. There have been different suggestions, which we've been unable to do, and that is to have the children be assigned an individual that would protect their rights and follow them because they get lost in the system.

You have people that are even asylum. You have asylees, Haitian asylees, that are even guaranteed asylum through the court system and is still detained down in places of this country for long periods of time. And I think as I mentioned, you've got several hundred thousand that are in the immigration system that are being held. And I think it's useful and worthwhile to take a look both at what's happening to the children, the youth, that come through the system, as well as those that are being held and then the general kind of policies.

What's happened in the immigration is with the Homeland Security it's spread through a variety of different sort of functions in the Homeland Security without a clear kind of definition of authority and responsibility. And so it's sort of

a difficult kind of challenge. You'd have to be very targeted on this, but I do think it's very, very worthwhile, because you are going to find similar kinds of problems in this area. And this is very, very important. Some of these individuals will move on become citizens and some of them will be released, but they're going to be held.

I'm most concerned probably about unaccompanied children that come in, how they are detained, where they're detained, the conditions of which they are detained, how they are treated, but I think for those that are in detention as well. And there's a number of people that are, Former Chairman, Ms. Mizner (ph.), she's been head of immigration. She might have some ideas. There are a number of people that are very thoughtful about some of this and know a great deal about it. My staff would be glad to work with your staff and just give you some recommendations and mix it with some ideas or judgements that you want.

THE CHAIRMAN: Senator, we only received a commitment for you to be with us until 9:30 and

we're at that point. We do want to thank you.

SENATOR KENNEDY: We're very interested in this. We want to work with you and cooperate if we can be of help and assistance as we move along on this issue like immigration and other issues. We welcome the opportunity.

THE CHAIRMAN: It's a little awkward for me. Every time I've appeared over here, it's been you here and me there (indicating). But thank you for your presence.

SENATOR KENNEDY: Thank you very much.

THE CHAIRMAN: I will take a few minutes just to put a face to what you have on the paper. I won't review the illustrious resumes of the commissioners, but I do want you to be able to put a face with what you have in your written material. To my right is Commissioner James Aiken. Next to Commissioner Aiken is Commissioner Cindy Struckman-Johnson. Next to her is Commissioner Jamie Fellner.

To my left is Commissioner Professor Brenda Smith. Next to her is Commissioner Pat Nolan. And

next to Commissioner Nolan is Commissioner John Kaneb. As I say, you have before you written information that outlines the various backgrounds of the commissioners.

I am Reggie Walton. I serve as a judge here in the District of Columbia in the Federal District Court.

We do have next before us Mr. Glenn Fine, who is the Inspector General -- oh, I'm sorry. Senator Sessions, please come forward.