

**Testimony for the House Judiciary Subcommittee  
on Crime, Terrorism, and Homeland Security**

**Hearing on the National Prison Rape Elimination Commission  
Report and Standards**

**July 8, 2009**

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I practice law in Northwest Indiana. Admitted to practice in 1991, I first served for four years as a law clerk in the United States District Court, for the Northern District of Indiana. Since then, I have been in private practice as a civil-trial and appellate attorney.

In mid-2003, I began representing a young man, who as a fifteen-year old, was raped while confined at the South Bend Juvenile Facility, a detention institution operated by the Indiana Department of Corrections. In the interest of privacy, I will refer to my client as John. In the course of investigating his case, I have interviewed approximately a dozen other juveniles or parents of confined juveniles. I have also read many reports and assessments of the South Bend Juvenile Facility as well as other juvenile facilities in the State of Indiana.

John had a history of mental illness. Before he was confined to the Indiana Department of Corrections juvenile system, he had been diagnosed with depression and was taking medication for depression. Like most of the high-school-aged students entering Indiana state juvenile facilities at the time, his medication was soon discontinued by medical staff.

I have constructed a fairly comprehensive time-line detailing the events of his confinement through interviews, self-reporting by John, and examination of the records maintained by the State of Indiana. His first three weeks in the South Bend facility seem to have been largely uneventful. Thereafter, in mid-October, 2002, during a visit from his mother, he attempted to pass her a note. But the guards would not allow him to give the note to his mother.

That event heralded a downward spiral of events. About four days after that visit by his mother, his medical records note that he awoke in the medical unit of the facility. Jail records do not indicate precisely what occurred, and it remains unclear as to whether he had been involved in a fight or suffered a seizure. Medical records report that he had bruises near his left ear and left eye. About one week later, he was examined for a lump or swelling on his lower lip.

Sometime in late October, John was raped near his bunk in the dormitory, just after he had taken his evening shower. A boy much larger than John raped him, and at least one other boy served as a look-out and may have helped to hold John down. John struggled unsuccessfully. He does not have a good memory of the event and has never provided great detail about what happened to him. He did not report the rape while in the detention facility, other than to state to the medical staff in early November that he was being “messed with” and “recently jumped by offenders in his unit.” Only after his release, approximately six months later, did his mother begin to suspect that he had been raped. She questioned him further and sought a medical examination and therapy for him at that time.

Without question, the records maintained by the Indiana Department of Corrections, documenting John’s incarceration from early November, 2002, reflect a very different young man from the one who had entered the facility. His medical records note that in early November, he was suicidal. The physician ordered him to be moved to a facility where he could be assessed by a psychiatrist, as there was no staff-psychiatrist at the South Bend Juvenile Facility. The physician reported his assessment and recommended plan for transfer to the superintendent of the facility. The superintendent advised the physician that arrangements would be made for John’s transfer the next day, as that particular day was an Indiana Department of Corrections

holiday. In the meantime, because John had worked to twist a bed sheet into a rope to use in committing suicide, the physician ordered John placed on suicide watch directing that he be checked at five-minute intervals. No transfer, as recommended by the physician, was arranged by the administration. So, three days later, two physicians recommended that he be transferred to a facility with twenty-four hour nursing care for further observation, evaluation, psychiatric intervention, and monitoring for his safety and stabilization. But, again, the correctional staff at the facility made no effort to transfer him.

Instead, he spent most of November, 2002 in segregation at the South Bend Juvenile Facility, either for medical suicide watch or for disciplinary reasons. John's strategy for survival became clear. Each time that he was moved from a segregation area back into the general dormitory section of the juvenile facility, he would act out. His actions led the guards to put him back into disciplinary segregation. Although the guards noted tensions between John and another student, he typically resorted to damaging property rather than harming or acting aggressively toward other students. The damage he caused would result in his being confined to disciplinary segregation, where other students could not gain access to him. In isolation, John would be safe from the "survival-of-the-meanest" environment that pervaded the facility.

It is not surprising that he did not report the rape and attempted, instead, to secure his safety by his own means. First, the embarrassing nature of the subject would keep many quiet in such a circumstance. And adolescent boys are particularly sensitive to issues of manhood. Second, fear of retaliation discouraged reporting the rape. When confined, John was relatively young -- just fifteen-years-old -- and slightly built. I have interviewed at least a dozen other adolescents (or their parents), who have been confined to the South Bend Juvenile Facility or

other juvenile facilities operated by the State of Indiana. They have consistently described harassment, abuse, and sexual assault carried out by older and larger youths on younger, smaller students. The environment they have described calls to mind William Golding's novel, *Lord of the Flies*.

Additionally, many students reported that the guards at the South Bend facility encouraged and sometimes enabled fights among the youths. At times, in fact, the guards placed bets on which student would win a fight. This situation is exacerbated by the fact that in Indiana the length of confinement for these youths is not decided by the Judge, who orders them confined. It is, rather, the guards, staff, and administration at the juvenile facilities, who determine when a particular confinee should be released. Therefore, the confined youths are loath to report inappropriate guard behavior, fearing a longer confinement. The inability to trust those in charge and fear of retribution were not conducive to a boy reporting that he had been raped.

Moreover, the design of the building and lack of staffing at the South Bend Facility added to the fear of retribution experienced by John and others. Assessments carried out by the United States Department of Justice, as well as internal assessments performed by the state, have concluded that the facility was under-staffed and without sufficient cameras in the dormitories and other areas in the facility to assure proper oversight of the youths. The South Bend Juvenile Facility has mirror-image, dormitory facilities on the east and west sides. Each side is sectioned into fourths, with bunks for approximately 16 students in each of those sections. In 2002-2003 and at last known report in 2008, there were insufficient cameras to allow proper monitoring by staff of the students in the dormitories. Particularly at night, staffing shortages were common

place. Several “hidden” areas or “blind spots” provided the cover needed for some students to have the opportunity to harm others without being detected.

And in John’s case, fear of retribution proved justified. Even after seeing him bruised, being aware that he had reported being “messed with” and “jumped” by others in his unit, and knowing that he had expressed suicidal thoughts, the administration could not, or would not, protect him from further attack. Not long after being returned to the general dormitory area, in January 2003, he was jumped again by a group of boys and beaten over the head with socks filled with padlocks that the perpetrators had collected from the lockers assigned to those housed at the facility. In the course of the attack, he experienced some sort of spasm or seizure, which caused other juveniles to run for help. The beating resulted in injuries to his head that required sutures to close. Thereafter, his mother engaged in a nearly three-month effort to secure his release, ever fearful that he would suffer further and more serious injury. His release finally came once his mother prevailed upon the *governor* of Indiana to order John released.