

1           civilization in a society can be judged by entering  
2           its prisons." And although the overwhelming  
3           majority of our prisons are safe and  
4           well-maintained, I look forward to a future in  
5           which our society can be so judged and not found  
6           wanting.

7                     And I thank you very much for extending me the  
8           privilege of addressing you on this important  
9           issues and look forward to answering your questions  
10          later.

11                    THE CHAIRMAN: Thank you. Ms. DeBottis.

12                    MR. DeBOTTIS: Thank you very much, Mr.  
13          Chairman and ladies and gentlemen of the  
14          Commission.

15                    My name is Gina DeBottis and I am the chief  
16          prosecutor with the Special Prosecution Unit in  
17          Huntsville, Texas. And the Special Prosecution  
18          Unit Criminal Division is a prosecution assistance  
19          program charged with prosecuting crimes which occur  
20          within the Texas Department of Criminal Justice,  
21          whether those crimes are committed by offenders,  
22          civilians or employees of the criminal Justice

1 System.

2 My office is governed by a board of nine  
3 District Attorneys who have prisons in their  
4 districts. The board of SPU appoints me, the chief  
5 prosecutor, and I act as the Chief Executive  
6 Officer of the agency. We primarily address and  
7 prosecute violent crime that occurs within the  
8 prison system, but we also prosecute weapons cases,  
9 drug offenses, bribery, thefts, civil rights  
10 violations, and any other offenses. We prosecute,  
11 again, not only inmates, but TDCJ officials,  
12 employees or civilians who commit crimes on  
13 property that's either owned, operated or  
14 controlled by the Texas Department of Criminal  
15 Justice.

16 We are funded on a grant out of the Governor's  
17 office of Texas. We are not part of the Department  
18 of Criminal Justice. I don't report to the board  
19 of Criminal Justice. I have a very good working  
20 relationship with them and a very good working  
21 relationship with the office of the Inspector  
22 General, which is headed up by John Moriarty, who

1 spoke to you earlier. But my office is completely  
2 independent of the Department of Criminal Justice.

3 We are committed to implementing the Safe  
4 Prisons Act and the Federal Prison Rape Elimination  
5 Act, which strive to reduce the number of sexual  
6 assaults in prison through prosecution of those who  
7 commit such sexual assaults. Presently, my office  
8 is staffed with nine prosecutors, seven  
9 investigators, two legal assistants, an office  
10 administrator and a victim's assistance  
11 coordinator.

12 Because prison units are spread all over the  
13 huge state of Texas, we are headquartered in  
14 Huntsville, which is the headquarters of the prison  
15 system, but we also have six satellite offices in  
16 various regions of the state, which enable us to  
17 work closer with prisons and the prison system and  
18 the District Attorneys in those counties.

19 Because venue for any case that happens inside  
20 the Department of Criminal Justice happens to be in  
21 the county where the offense occurred, having these  
22 offices all over the state makes it easier for us

1 to response to the needs not only of the victims,  
2 but also for the court personnel.

3 I didn't note in my testimony, but my budget,  
4 including salaries, yearly is \$1.4 million, so we  
5 actually don't have a huge budget for the amount of  
6 cases that we handle. Last year we handled 518  
7 criminal cases. Specifically, with sexual assaults  
8 though, there's two types of particular sexual  
9 offenses that we prosecute the most. One would be,  
10 obviously the sexual assault statute, which is what  
11 we use for offender on offender sexual assaults.  
12 There's also a special statute that I am going to  
13 talk about in greater detail that was passed in the  
14 late 90s called Improper Sexual Activity with a  
15 Person in Custody. And that special statute is  
16 what the state uses to prosecute civilians or  
17 employees who sexually assault offenders.

18 Under that law, consent is never an issue. It  
19 is per se nonconsensual for an employee or civilian  
20 to have any type of sexual contact with an  
21 offender. This law became about in response to a  
22 case that I will refer to later. It's very

1           difficult to prosecute employees for sexual assault  
2           of offenders, but under this new law it's a state  
3           jail felony and we've had great success in  
4           prosecuting employees for improper sexual activity  
5           with a person in custody.

6           My office utilizes the same intake procedures  
7           and policies to evaluate a sexual assault case as  
8           it does any other case which occurs within the  
9           Department of Criminal Justice. The prosecutor  
10          assigned to a specific region carefully reviews the  
11          facts of each case to determine if all elements of  
12          the offense are met. If all elements of the  
13          offense are not met, the prosecutor will decline to  
14          accept the case for Grand Jury consideration. If  
15          the initial elements of the case are met, the  
16          prosecutor will review the facts to see if they are  
17          sufficient to proceed with prosecution. There are  
18          several factors we look at to determine not only if  
19          there's probable cause to seek an indictment, but  
20          also if the facts are sufficient to sustain a  
21          conviction.

22          In the early years after PREA went into

1 effect, the Criminal Division took each sexual  
2 assault case it received from OIG and presented it  
3 for Grand Jury consideration. The vast majority of  
4 these cases were not prosecutable for various  
5 reasons, including a lack of physical evidence, a  
6 long delay in reporting the allegation of sexual  
7 assault and a lack of witnesses. However, over  
8 time, numerous Grand Juries throughout Texas  
9 expressed displeasure at having to consider cases  
10 for which there was clearly no probable cause  
11 whatsoever to issue an indictment. In several  
12 jurisdictions my office was asked to reduce the  
13 number of sexual assault cases it presented at each  
14 Grand Jury meeting. I personally had experiences  
15 where if I had about 20 sexual assault cases that I  
16 wished to present to a Grand Jury, I would separate  
17 them out over several months and maybe present five  
18 or six each time rather than present them all at  
19 once.

20 The reluctance of Grand Juries to consider  
21 sexual assault cases for which there was no  
22 probable cause whatsoever led to my office changing

1           its intake policy regarding sexual assaults. We  
2           now treat these cases exactly like we would treat  
3           any other criminal case that comes to our office  
4           for consideration, and we only present cases for  
5           which there is evidence of probable cause.

6           Although sexual assault is one of the most  
7           violent and heinous criminal acts to occur inside  
8           of a prison, the prosecution of sexual assaults is  
9           the same as the prosecution of any type of offense.  
10          There must be sufficient credible evidence of each  
11          and every element of the sexual assault beyond a  
12          reasonable doubt. Although TDCJ has internal  
13          disciplinary procedures in place to  
14          administratively punish offenders who rape other  
15          offenders, their burden of proof is much lower. In  
16          all criminal cases, we must prove our case beyond a  
17          reasonable doubt. So there could be many  
18          situations where the Department of Criminal Justice  
19          may be able to administratively punish an offender  
20          for sexual assault even if the evidence is not  
21          sufficient to sustain a criminal conviction.

22          Since September 1, 2005, every sexual assault

1 victim in Texas must be afforded the opportunity to  
2 submit to a sexual assault exam within 96 hours of  
3 the assault. The best evidence to sustain a  
4 conviction is for the victim to submit to a sexual  
5 assault exam in hope of collecting DNA or other  
6 biological evidence. However, if an offender waits  
7 days or weeks or months to report the sexual  
8 assault, there's very rarely any physical or  
9 biological evidence to tie a suspect to the crime.

10 If an offender waits over 96 hours, it's very  
11 difficult to collect such evidence. The easiest  
12 cases for my office to prosecute occur when a  
13 suspect claims that sexual contact did not occur.  
14 Many times DNA evidence is critical if the suspect  
15 claims that sexual contact did not occur and  
16 evidence from the rape kit indicates evidence of  
17 sexual activity.

18 My office has sustained a couple of convictions  
19 against offenders who claim to have not engaged in  
20 any type of sexual activity with the victim and the  
21 evidence from the rape kit indicated otherwise.  
22 However, the converse is also true, if the suspect

1 does admit to sexual contact with a victim, but  
2 claims that the sexual contact with consensual.  
3 Although the Texas prison system does not allow for  
4 consensual sexual activity among offenders, if two  
5 offenders are involved in a consensual  
6 relationship, many times there will be biological  
7 or other physical evidence present. In this  
8 instant, additional evidence will be necessary to  
9 rebut the implicit defense of consent.

10 Other forms of physical evidence, which are  
11 certainly helpful, including boxer shorts,  
12 T-shifts, sheets or other items which may contain  
13 physical evidence of sexual activity. As noted  
14 above however, these items do lose their  
15 significance if the suspect admits to sexual  
16 contact but insists the contact was consensual.

17 Unlike most crimes which occur in the  
18 penitentiary, sexual assault cases rarely have  
19 nonparticipant witnesses. By their very nature,  
20 sexual assaults are crimes of violence which are  
21 shrouded in secrecy. In most instances, it is the  
22 victim's word against the suspect. It makes it

1 very difficult to corroborate the victim's story,  
2 especially if there is no physical or biological  
3 evidence as noted above.

4 One aspect of prosecuting sexual assaults in  
5 prison as opposed to prosecuting sexual assaults in  
6 the free world involves the motivation of the  
7 victim. Quite frequently, offenders make false  
8 accusations of sexual assault in an attempt to get  
9 moved to a different part of the prison or to a  
10 different unit. There are many reasons for this.  
11 Perhaps, an offender feels his life is in danger  
12 and wants to go to safekeeping. Perhaps, he owes  
13 gambling debts or, perhaps, he wants to live closer  
14 to another offender. Whatever the motivation,  
15 offenders know that if they allege they were  
16 sexually assaulted, they will most likely be moved  
17 to a different unit.

18 The challenge for us as prosecutors is to  
19 determine which offender has truly been sexually  
20 assaulted and who is manipulating the system for  
21 personal reasons. Often a suspect will request a  
22 polygraph examination to show that he did not

1 sexually assault another offender. Although these  
2 results are not admissible in court, they are a  
3 good indication of whether a person is telling the  
4 truth. My office has declined several cases when a  
5 potential suspect passes a polygraph examination.  
6 It's very difficult to bust a polygraph examination  
7 and it could be evidence of an offender using  
8 TDCJ's policies and procedures under the Prison  
9 Rape Elimination Act to manipulate the system.

10 Another good source of information to  
11 determine an offender's motivation involves other  
12 offenders. Often other offenders who are housed  
13 nearby may have personal information about an  
14 offender who uses TDCJ's policies and procedures as  
15 tools of manipulation.

16 One case in which the system was manipulated  
17 involved an offender by the name of Roderick  
18 Johnson. Mr. Johnson sued the Texas Department of  
19 Criminal Justice claiming, among other things, that  
20 while confined at the All Red Unit near  
21 Witchatalfalls, he was bought and sold as a sex  
22 slave and that TDCJ failed to protect him when he

1           made them aware of his situation.

2           I can speak firsthand about this situation  
3           because I was the prosecutor that handled it and I  
4           was the prosecutor that presented it to the Grand  
5           Jury. After an exceptional investigation by the  
6           Office of the Inspector General and a thorough  
7           review by this prosecutor, I prepared an indictment  
8           against 49 offenders for the offenses of sexual  
9           assault and also engaging in organized criminal  
10          activity because he had made allegations that these  
11          offenders were acting in concert with each other.

12          In February 2004 I presented this case to the  
13          Witchatal County Grand Jury. The investigation  
14          showed that Mr. Johnson had a lover who was housed  
15          in another part of the state. He wrote letters to  
16          his lover indicating that when he won his case and  
17          got all his money that they would be together.

18          In addition, evidence was presented that  
19          showed that several of the inmates were not even  
20          housed at the time at the time he alleged these  
21          rapes occurred. It was also evidence presented  
22          that showed that he would accept money from other

1 offenders to voluntarily provide sexual favors.  
2 The Grand Jury declined to indict any of the 49  
3 individuals. In fact, the Grand Jury instructed  
4 the Witchatal County criminal District Attorney to  
5 request that the OIG investigate Mr. Johnson for  
6 filing a false report, but the statute of  
7 limitations had already run out on that charge.

8 Turning very quickly to employee on offender  
9 sexual assault. It's very difficult to prosecute  
10 an employee for sexual assault of an offender. In  
11 many instances, a jury is likely to believe the  
12 employee's version rather than that of the  
13 offender.

14 In 1998, I personally prosecuted a TDCJ  
15 preparole caseworker for the sexual assault of  
16 three female inmates at one of the units in  
17 Gatesville. There was also evidence presented that  
18 he was alleged to have sexually assaulted nine  
19 other women. I had physical evidence that was  
20 collected from a trash can. He took the stand. He  
21 admitted to having sex with these women and he said  
22 it was consensual and the jury acquitted him.

1           Although women were able to successfully win a  
2           civil case against Mr. Taylor and also received  
3           significant damages from the state of Texas, it was  
4           a devastating feeling for them to understand that  
5           the jury in this county did not believe them.

6           As Mr. Miller said earlier, prosecutors shying  
7           away from difficult cases, I would try that case  
8           again tomorrow. I think we did everything right.  
9           I hate that these women were not vindicated. I  
10          would try that case tomorrow and I wouldn't do  
11          anything differently.

12          Luckily for us now, we have a new law in Texas  
13          that improper sexual activity with a person in  
14          custody makes it much easier to win these cases  
15          because any type of contact whatsoever is  
16          nonconsensual. In many cases, although an offender  
17          may be a willing participant in the sexual contact,  
18          this law does not take the willingness of an  
19          offender into account.

20          In all TDCJ training academies, new trainees  
21          are told that any sexual contact with an offender  
22          is nonconsensual by nature and will most likely be

1 prosecuted under this statute.

2 In fact, we've prosecuted numerous officers  
3 under this statute. A vast majority of them end up  
4 pleading guilty either for the shame of it finally  
5 coming out or knowing that because it's  
6 nonconsensual it's very easy to get a conviction in  
7 these cases.

8 In conclusion, it's my personal opinion, it is  
9 very difficult to measure a state's compliance with  
10 PREA looking only through the prism of the  
11 prosecution of sexual assaults. I believe the  
12 Department of Criminal Justice does an excellent  
13 job in complying with the mandate of PREA. I  
14 believe they conduct exceptional investigations. I  
15 think the Office of the Inspector General conducts  
16 exceptional concurrent investigations on the  
17 criminal side. So in Texas you have two  
18 investigations going on at the same time. On the  
19 administrative side of the House and also on the  
20 criminal side of the House. I think those  
21 investigations are wonderful.

22 Unfortunately, with the high burden of proof

1 in criminal cases, plus the various factors that I  
2 outlined that hinder prosecution, the success of  
3 the Department of Criminal Justice in complying  
4 with PREA I don't think can adequately be measured  
5 by looking just at my statistics.

6 My office is whole hardedly committed to being  
7 an integral part of PREA. We take our  
8 responsibility very, very seriously. We have had  
9 six convictions in the last two years on offenders  
10 who are sexually assaulting other offenders. And  
11 we've had 14 convictions in the last couple of  
12 years against employees for improper sexual  
13 activity with persons in custody.

14 I believe those numbers will go up as the  
15 reporting time gets shorter and as TDCJ continues  
16 to do an excellent job of informing offenders of  
17 their rights under this act. I do feel that our  
18 three entities are doing what we can to reduce  
19 sexual assault in prison.

20 MR. CHAIRMAN: Thank you. Ms. Litten.

21 MS. LITTEN: Thank you. Good afternoon.

22 My name is Barbara Litten and I am the elected