

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

1 District Attorney in Forest County, Pennsylvania.  
2 And Forest County is a very small rural county.  
3 We're in the northwest corner of the state. We're  
4 about 50 miles south of Erie and equally distant  
5 from Pittsburgh, Cleveland and Buffalo, about two  
6 and a half hours away from each of those cities.  
7 And we sit in the middle of the Allegheny National  
8 Forest.

9 So with that, little bit of information about  
10 our county. I was asked to testify today about the  
11 procedures that we use in Forest County to  
12 prosecute sexual assault cases that happened within  
13 the state correctional institution of both inmate  
14 on inmate cases and staff misconduct.

15 To date, we have only had one reported case of  
16 sexual assault and that involves inmate on inmate.  
17 And the case that I'm presently prosecuting was  
18 alleged to have occurred within the state  
19 correctional institution at Marienville,  
20 Pennsylvania.

21 The SCI Forest is a relatively new facility.  
22 It's been open for less than two years, opening in

1 November of 2004. And I think in some respects  
2 listening to some of the earlier testimony today, I  
3 think that that's been an advantage for us.  
4 Director Hall and Director Caruso both talked about  
5 the importance of having a personal relationship  
6 between the District Attorney's office and the  
7 State Correctional Institution or the place of the  
8 facility of incarceration. And we have that in  
9 Forest County.

10 Prior to the opening of SCI Forest and  
11 continuing afterwards, there were a lot of meetings  
12 and a lot of communication with the security and  
13 the administrative staff at SCI and law enforcement  
14 in Forest County, both the Pennsylvania State  
15 Police and the District Attorney's Office. Because  
16 to the extent that we could, we wanted to establish  
17 policies and procedures for how crimes that were  
18 committed within SCI Forest were going to be  
19 prosecuted. And at that time, we were not looking  
20 specifically at any particular type of crime, but  
21 just how crime in general would be prosecuted. And  
22 to that extent, what we did was we set a threshold

1           and we said that any crimes that were those for  
2           which our Magisterial Justices, our District  
3           Justices would have jurisdiction. And those would  
4           be misdemeanor, crimes classified as misdemeanors  
5           of the third degree or summary offenses would be  
6           handled internally at SCI Forest through their  
7           departmental disciplinary procedures, but that  
8           anything that would be graded as a Misdemeanor II  
9           or higher, we would attempt to handle as we would  
10          any crime committed in the community and that is  
11          that the Pennsylvania State Police would be  
12          notified. They would come and investigate and then  
13          if there was probable cause to believe a crime had  
14          been committed and a complaint was filed, then the  
15          District Attorney's Office would pick up the  
16          prosecution.

17                 At the same time that we did that, we also  
18                 talked extensively to the security personnel at SCI  
19                 Forest about crime scene preservation, closing off  
20                 the crime scene and about evidence collection. And  
21                 I believe that having done that, it really set the  
22                 ground work for the effective prosecution of the

1 case that I'm presently prosecuting.

2 So, with that background, I'll talk now in  
3 general terms about the present inmate on inmate  
4 alleged sexual assault. I can't talk specifically  
5 because we're still in the very early stages of  
6 prosecution.

7 With respect to the lapse of time in  
8 reporting, I mean that's been something that's been  
9 discussed today as a hinderance to prosecution of a  
10 sexual assault case. In this case, the victim  
11 reported to a corrections officer at the first  
12 available opportunity that the assault had  
13 happened. The corrections officer notified the  
14 security personnel. The security personnel  
15 interviewed the victim, arranged for the victim to  
16 be transported out to a local hospital so that a  
17 rape kit could be obtained, collected physical  
18 evidence, secured the crime scene and photographed  
19 the victim. So at the very beginning, we had the  
20 initial investigative steps that were taken to  
21 assist in the prosecution of this case.

22 With respect to the physical evidence, it's

1           significant that the procedures used to collect  
2           that physical evidence at SCI Forest were done in a  
3           way such that the chain of custody for that  
4           evidence was preserved until it could be turned  
5           over to the Pennsylvania State Police.

6                       With respect to testimonial evidence, you  
7           heard Troop Bootman (ph.) talk earlier about how he  
8           investigates a case. He conducted numerous  
9           interviews at SCI Forest and was able to obtain  
10          written statements, a written statement from the  
11          victim and written statements from other people  
12          that he interviewed. And, again, these become  
13          valuable tools later on as we go through the  
14          prosecution.

15                      The preliminary hearing for this case has been  
16          held and the victim testified at the preliminary  
17          hearing. And his testimony was preserved by way of  
18          a court reporter's transcript. So, again, as we  
19          proceed with the prosecution, that's going to be --  
20          that's going to be helpful should the victim at  
21          some point in time for reasons not known now begin  
22          to be reluctant to testify.

1           I should also say that at the time of the  
2 preliminary hearing, it's standard practice in our  
3 county for any preliminary hearing that a  
4 representative from the Victim Witness Office is  
5 present for the victim and for any witness to act  
6 as an advocate and, basically, just inform the  
7 victims and any witnesses of their rights under the  
8 Pennsylvania's Victim Witness Act. And we provided  
9 that service to the victim in this case at the time  
10 of the hearing.

11           The level of cooperation that I experience in  
12 working with the Department of Corrections and with  
13 SCI Forest has been excellent. They have been  
14 completely responsive, both in terms of timeliness  
15 and content for any request that I've made to them  
16 for information. They have assisted with logistics  
17 in terms of making staff and inmates available for  
18 interviews because it's my practice after we get  
19 past the preliminary hearing and preparing for  
20 prosecution, assuming that a case is going to go to  
21 trial, to go back and then begin to interview  
22 everybody myself in much greater detail and at more

1 length, and the facility made all of the people  
2 that I needed available to and assisted with that.

3 In terms of the difficulties of prosecuting a  
4 sexual assault case, I think those difficulties  
5 exist whether the crime is committed within a penal  
6 institution or out in the community. These are  
7 always difficult cases to prosecute. But having  
8 said that, as the other prosecutors who are here on  
9 this panel have said, that's not a reason not to  
10 prosecute them.

11 And in evaluating the difficulty of the case  
12 and the effectiveness of the prosecutorial effort  
13 in evaluating the strength and the weaknesses of  
14 the case, that analysis begins with an evaluation  
15 of the evidence that's available to support the  
16 prosecution. And I think in this particular case,  
17 in the case that I'm prosecuting, I believe it's a  
18 strong case for the commonwealth.

19 We have sufficient physical and medical  
20 evidence, I believe, to go forward with a credible  
21 prosecution. We have witnesses who are available  
22 and who are willing to testify. Based on my

1 interview with the victim, I believe that the  
2 victim in this case is going to come forward and  
3 step up to the plate and actually testify. And  
4 assuming that we, in the event that we have to go  
5 to trial, would be available to testify at trial  
6 and also I think is going to be able to withstand  
7 the riggers of testifying at trial.

8 The factors which hinder the prosecution of a  
9 sexual assault case are, fortunately, not present  
10 in this case. We had a very prompt and effective  
11 time frame for the reporting of the alleged  
12 assault. The time lapse from the time that the  
13 victim reported it to the time that the  
14 Pennsylvania State Police were contacted was less  
15 than two hours, so it was a very fast response  
16 time. The victim was at the hospital for the  
17 obtaining of the medical evidence within, you know,  
18 just a few -- again, less than two hours after he  
19 notified the facility of the assault.

20 So, you know, we have timely obtained medical  
21 evidence. We have no lapse of time with respect to  
22 the reporting and we have victim who is willing to

1           testify. That said, it's still going to be a  
2           difficult case to prosecute, but my office is  
3           willing to do that. And I have to say that all of  
4           the entities who were involved in this case so far  
5           acted promptly and acted professionally. And  
6           because of that, the office of the District  
7           Attorney has the tools that it needs to prosecute  
8           this case. That doesn't guarantee a conviction.  
9           That doesn't mean it's going to be an easy case,  
10          but it certainly puts me in a much better position  
11          to go before a jury, potentially, to at least have  
12          the evidence that I need to present. So I thank  
13          you very much for your time and your attention.

14                    THE CHAIRMAN: Thank you also. I can  
15          appreciate the difficulties that can exist in  
16          reference to prosecuting these cases and I would  
17          suspect, having looked at the system as a  
18          prosecutor, defendant lawyer and a judge for many  
19          years, that to at least some degree, and I would  
20          said probably a significant degree, the makeup of  
21          the jury pool can have a significant impact on the  
22          ultimate result. And the ability of that jury pool

1 to identify with the victim obviously can make a  
2 big difference. In many situations, as you know,  
3 our institutions are put in rural, very rural  
4 areas. And the net result of that is that many  
5 times the people who are incarcerated in those  
6 institutions are very different from the people who  
7 live in that community that will ultimately make up  
8 the jury pool that will hear a case that's brought  
9 in that county.

10 Would it be advisable in a situation because  
11 of those realities for there to be a state  
12 prosecutor like you have and that the  
13 jurisdictional boundaries as far as prosecuting  
14 within the county were not restricted to the  
15 prosecution occurring there. So it could take  
16 place anywhere in the state.

17 So, you've got a case involving a black  
18 defendant who is accusing someone of having raped  
19 him in a community where you're going to have,  
20 basically, an all white jury. If you could take  
21 that case and prosecute it in Dallas where you may  
22 have some blacks on the jury who will be maybe

1           sympathetic to the individual, or at least be able  
2           to identify with him, would that be something that  
3           we should be maybe recommending be considered?

4                   MR. MILLER: Judge, I think that's an  
5           excellent suggestion. We, and I'm trying to think  
6           how many years back this was, seven or eight years  
7           ago, had a situation where the state came to us  
8           recognizing they had a problem like that where we  
9           had an elected local sheriff who was basically in  
10          control of the county running a jail in the county  
11          and was he, himself, coercing prisoners to have sex  
12          with him for special consideration and treatment.

13                   The state had expressed concern that they did  
14          not feel there was any way possible that should  
15          that case be tried in the state system in that  
16          county with no prospect of a removal to -- in  
17          Florida, it's very difficult for the prosecution to  
18          move a case from one jurisdiction to another for  
19          trial. They were going to be stuck in the  
20          sheriff's county for purposes of the trial. They  
21          asked if we'd consider looking at it. And in  
22          exchange for that, they were giving up -- under the

1 state system, that would have been a felony  
2 conviction. In the federal system, we had to  
3 proceed under civil rights because it was a state  
4 official. It wasn't a federal prison, obviously.  
5 It wasn't a federal official. So our only remedy,  
6 in order to take that, was to do a civil rights  
7 violence. And they recognized in bringing that to  
8 us that the most we could hope for would be  
9 misdemeanor convictions for these violations and  
10 they thought that was the best way to go to  
11 alleviate the concerns that you've just raised  
12 where you may find a situation where the prisoners  
13 may not get a fair trial in a particular  
14 jurisdiction. And I found that to be a very  
15 effective technique. We ended up having a much  
16 broader pool, although it was still in an area  
17 where that sheriff had his, you know, following, we  
18 were able to expand the jury pool to a much larger  
19 jury pool where we offset whatever favoritism or  
20 home cooking you suspect was going to take place.  
21 But that would, obviously, have to be a state by  
22 state recommendation. But I do think that's an

