

1 MS. LITTEN: And I'm Barbara Litten and
2 I'm the District Attorney in Forest County,
3 Pennsylvania.

4 THE CHAIRMAN: Would you please stand and
5 take the oath?

6 (Panel sworn)

7 THE CHAIRMAN: Thank you. Mr. Miller.

8 ISSUES FACED BY PROSECUTORS IN PRISON RAPE CASES

9 MR. MILLER: Thank you. Good afternoon
10 Mr. Chairman, members of the Commission. I
11 appreciate the opportunity to appear before you
12 today to discuss federal investigations and
13 prosecution of sexual assaults on confined persons.
14 I am the United States Attorney for the Northern
15 District of Florida. I have been serving in that
16 office since my confirmation by the Senate in
17 August of 2002. I have been a prosecutor for more
18 than 23 years, having served first as a Marine JAG,
19 then as an Assistant State Attorney in the state of
20 Florida, and then serving with the U.S. Attorneys
21 Offices in the Middle and Northern Districts of
22 Florida both as a line prosecutor and in the

1 various supervisory capacities.

2 Most of the prison rape cases that come to my
3 office have been in the form of complaints by
4 inmates against prison employees. While the
5 overwhelming majority of Bureau of Prison employees
6 are dedicated and outstanding public servants,
7 there are some who abuse their positions of trust
8 for their own personal gratification. These are
9 the defendants we see most often in federal prison
10 rape investigations.

11 The prosecution of these cases present unique
12 challenges affecting every aspect of the case from
13 the investigation to the verdict and beyond. The
14 public corruption aspect of what would otherwise be
15 a very straight forward assault case, makes these
16 cases some of the most difficult a prosecutor
17 encounters.

18 In the investigatory stage, the primary
19 obstacle is secrecy. Unlike other crimes, prison
20 assaults are conducted in secret and cloaked in
21 silence. In most cases, there are only two
22 witnesses to the crime, one, the attacker whose

1 silence is constitutionally protected and the
2 victim's whose silence is produced by fear. Unlike
3 the rapist on the street, a corrupt prison guard
4 does not need a knife or a gun to achieve his aims.
5 His weapons are the power and authority of his
6 position. And unlike the rapist on the street,
7 these weapons enable the prison rapist not only to
8 facilitate his crime, but to secure his victim's
9 silence. The threats take various forms, but the
10 message is generally the same. No matter how bad
11 it is for you now, I can make it worse.

12 Whether expressed or implied, threats to
13 retaliate against a confined victim can result in
14 delays in reporting a crime or worse, initial
15 reports by the victim that the crime never
16 occurred. Delays in reporting put the
17 investigators at a disadvantage from the outset.
18 During the interval between the time when the crime
19 is committed and when it is brought to law
20 enforcement's attention, valuable physical evidence
21 can be lost or destroyed. As days and even months
22 intervene, the victim's memory of the details or

1 the date or time of the assault may blur, making it
2 difficult to corroborate their account through
3 prison work schedules or other means.

4 At trial corroboration is critical. In prison
5 assault cases, the victim's credibility is far more
6 vulnerable to attack than in other cases. Two
7 formidable bases for attack are built into the
8 system. First, unlike the attacker, the inmate is
9 obviously a felon and is subject to impeachment on
10 that basis. Second, whether actual or theoretical,
11 the availability of a sentence reduction for
12 providing assistance to law enforcement makes these
13 witnesses especially vulnerable to the claim that
14 their story was fabricated.

15 At trial the jury is instructed that the fact
16 that a witness has been convicted of a crime is
17 something they may consider in deciding whether to
18 believe the witness. They are told to consider
19 testimony of cooperating witnesses, "with great
20 caution" and to be mindful of the fact that "a
21 witness who hopes to gain more favorable treatment
22 if his or her own case may have a reason to make a

1 false statement because the witness wants to strike
2 a good bargain with the Government."

3 Conversely, even if investigators are
4 fortunate enough to obtain a confession or some
5 other incriminating statement from the target of
6 the investigation, at trial the jury is told to
7 treat that evidence differently than other
8 evidence. The Court warns the jury to consider
9 post-arrest confessions made by defendant "with
10 caution and great care." Jurors are generally told
11 that they first must decide whether the defendant
12 actually made the statement that the law
13 enforcement officer testified about and how much
14 weight to give to the statement if they find that
15 such statement was, in fact, made.

16 Reflect on this for a moment. The vast
17 majority of federal prison assault cases involve a
18 prisoner's word against the attacker's. To return
19 a verdict of guilt, the jury must find beyond a
20 reasonable doubt that the prisoner is telling the
21 truth. The most important evidence in the
22 Government's case is usually the victim's testimony

1 and, if one exists, a statement from the defendant.
2 But before the jury sets a foot into the room to
3 deliberate, they are told that they must treat this
4 evidence differently than other evidence,
5 including, for example, testimony from defense
6 witnesses. They are told they must consider the
7 evidence that forms the bulk, if not all, of the
8 Government's case with caution and great care.
9 What would you expect a jury to do?

10 Not-guilty verdicts are never high on the list
11 of a prosecutor's favorite experiences, but in the
12 context of prison rape cases the impact of an
13 acquittal is particularly disturbing. Acquittals
14 in these cases empower those inclined to abuse
15 their positions of trust and imbue them with an
16 ever greater sense of invulnerability. At the same
17 time, they confirm the victim's assumptions that it
18 is pointless, and even dangerous, to report crimes
19 against them. To the extent that there are other
20 witnesses to the crime, the prospect of having a
21 correctional officer return to work in the prison,
22 in the wake of an acquittal, is more than

1 sufficient cause to keep silent about what they
2 know.

3 All of this is not to say that prosecution of
4 these cases is impossible, but to point out the
5 present challenges require innovative approaches.
6 One area that we have been exploring has been the
7 greater use of surveillance cameras in areas where
8 prison assaults are likely to take place. Videos
9 go a long way toward corroborating a victim's
10 testimony and can well make the difference between
11 a guilty plea and a trial and a guilty verdict and
12 an acquittal. Video cameras in particular also may
13 have a deterrent effect discouraging assaults
14 through fear of being watched.

15 In addition to the obvious privacy issues
16 raised by the installation of these cameras, this
17 practice has also provoked a debate over whether
18 installation of video cameras carries with it the
19 concurrent obligation of 24-hour monitoring. If
20 so, limitations on resources would prohibit the use
21 of these cameras in most circumstances. On the
22 other hand, if cameras could be installed and video

1 tapes on those cameras reviewed periodically, they
2 could prove a source of evidence so that it tips
3 the scales back in favor of the Government.

4 I noted earlier today in listening into the
5 testimony before the Commission, Ms. Schnedar from
6 the Office of Inspector Generals noted that the
7 correlation, a very high correlation between number
8 of sexual assaults committed by prison guards on
9 the prisoners were also correlated very highly with
10 the amount of contraband or types of contraband
11 that are brought into the prisons.

12 We heard earlier this morning from a young
13 woman, Dana Ragsdale, in quoting her that a friend
14 of hers told her that she had "pimped herself out
15 for candy and for cookies." We heard then later
16 that Ms. Schnedar commended and gave tribute to
17 Special Agent Buddy Sentner, who was killed in my
18 district just about two months ago during the
19 course of the arrest of a prisoner -- of a prison
20 guard who had been introducing contraband into the
21 prison, who was alleged to have been bringing
22 contraband into prison in exchange for sexual

1 favors.

2 The death of Buddy Sentner also points out to
3 the issue of contraband coming into the prison
4 because that same guard had brought not only soft
5 contraband, allegedly, to coerce these prisoners
6 into having sex, but also was able to smuggle into
7 the prison his own personal handgun, which he used
8 to kill Buddy Sentner and a lieutenant and
9 seriously injured a lieutenant in the Bureau of
10 Prisons.

11 I oftentimes wonder when I reflect on these
12 things, you know, we're here in Denver and we have
13 a Mint and we notice that employees of the Mint
14 that go in and out in order to protect the security
15 and safety of the pennies, dimes and nickels, they
16 are searched going in and searched going out. But
17 unlike that in our federal prison system, guards
18 are not searched as they come in or when they leave
19 the prison facility.

20 I often wonder that with greater use of
21 surveillance cameras, possibly if the GPS systems
22 that were referred to earlier today work and are

1 feasible with a greater monitoring of guards and
2 prisoners and the locations, the observation of
3 them when needed looking back at videotapes coupled
4 with the removal of the ability of guards to bring
5 in the types of tools they use to coerce prisoners
6 to have sex, whether or not that would go a long
7 way in reducing the referrals to my office to
8 offices of other U.S. Attorneys around the country
9 and also to those types of facilities or other
10 agencies state and local who are also receiving
11 referrals.

12 I want to briefly clarify something that I
13 think was an issue that I heard earlier in the day
14 that U.S. Attorneys' offices or prosecutors' office
15 are rating -- at least the impression was that we
16 rate our attorneys by the types of convictions or
17 numbers of convictions that they receive and that
18 may shy or caution us to be shy in bringing these
19 cases forward. Nothing can be further from the
20 truth.

21 I view it personally as something to be
22 improper to rate my attorneys on the number of

1 convictions and what their conviction rate is and
2 how many cases they do. My attorneys are rated
3 strickly on the quality of the representation they
4 provide and not whether or not they win or lose
5 tough cases. We win or lose tough cases routinely.
6 We're responsible for bringing tough cases and we
7 never shy away from tough cases.

8 I'm sure Chairman Walton in his many years on
9 the bench has seen many times when attorneys come
10 in before him who are unprepared who fail to
11 present evidence that is available and have
12 overlooked an important matter of a prosecution.
13 Those are the factors that go into how you rate an
14 attorney. If they have an acquittal and it was
15 because of an obvious mistake they made, yes, they
16 may take a hit on that, but never would be rated an
17 attorney on the numbers of acquittals or difficulty
18 of the cases that they bring. I myself have lost
19 cases and would hate to think that my career would
20 be held up because I've had acquittals.

21 Moving back, I would note and quote that in
22 the past Dostoevsky observed that, "The degree of

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