

1 county that would certainly be an issue that I can
2 see defense counsel raising and probably by way of
3 a motion for change in venue. I mean it's clear
4 that we are a small rural county without a lot of
5 diversity in our community population. And I think
6 that that probably is an issue. I'm not certain
7 that having a state office address the prosecutions
8 is the answer, but certainly it would be one way to
9 do it. And the other alternative possibly would be
10 something through our State Attorney General's
11 Office if it appeared that it was impossible to
12 have a fair trial in our county for that reason.
13 But we are bound jurisdictionally. If the crime is
14 committed in Forest County, it has to be prosecuted
15 by the Forest County District Attorney, and the
16 change of venue would not change that. It would
17 simply change the area from which the jury pool was
18 taken.

19 THE CHAIRMAN: Ms. DeBottis, do you think
20 there are benefits from the system that you have
21 where you have a special unit that prosecutes
22 prison cases?

1 MR. DeBOTTIS: Absolutely, because you
2 have consistency in prosecution. You have
3 experienced prosecutors that handle these cases all
4 over the state. Like I said, we've got offices
5 spread all over Texas. We're highly experienced in
6 this area. We work closely with local law
7 enforcement with the prison system. The Department
8 of Criminal Justice also has, basically, a Public
9 Defender's Office that represents the inmates, so
10 we work very closely with them as opposing counsel.
11 I think it works very well just because you have a
12 committed group of people that focus on that,
13 because the elected District Attorneys don't have
14 the resources, don't have the time to devote to
15 these cases and having an office like ours, that's
16 all we do is prosecute crime that happens inside
17 the prison system.

18 THE CHAIRMAN: Was there nonetheless
19 political opposition by the local prosecutors?

20 MR. DeBOTTIS: We have to go in at the
21 invitation of the local District Attorney. And I
22 would say that we work in about 95 percent of the

1 counties that have prisons. There are some urban
2 counties that have prisons. There's a prison in
3 Bomont. There's one up in Witchatafalls, but the
4 vast majority of them are in rural areas. And the
5 small local counties don't have the money to
6 address that.

7 I mean you've got some smaller counties that
8 have upwards of 10,000 inmates housed in their
9 community. And I think our specialized expertise,
10 particularly working with the Office of the
11 Inspector General, it gives these cases the
12 attention they deserve that they may not otherwise
13 get with so many other jurisdictions handling them.

14 I mean we've got 106 units in over 50
15 counties. And I think having a centralized office
16 in a state as big as Texas with 152,000 inmates is
17 definitely helpful. But, again, the District
18 Attorney's, if they don't want to use our services,
19 they don't have to.

20 COMMISSIONER SMITH: Ms. DeBottis, I
21 don't know if you'll be able to answer this, but
22 one of the things that we're very mindful of is,

1 and I think we mentioned it earlier was the recent
2 BJS report that sort of talked about investigations
3 and prosecutions and so on and so forth. But this
4 was certainly Mr. Moriarty's testimony and in your
5 testimony as well talking about the ultimately
6 unsuccessful prosecution involving, I believe it
7 was, Roderick Johnson.

8 I guess the question is, given that you are
9 this sort of comprehensive unit, can you tell me
10 about what is the percentage of substantiated,
11 unsubstantiated, and false allegations? Because I
12 think that in any context, whether it's in this
13 context in a prison environment or in an external
14 environment, in sexual assault cases, whenever
15 there's some sense that there is a false
16 allegation, it really galvanizes people. And I
17 think that what happens often is it creates a
18 climate where it seems that other allegations are
19 not -- what do I want to say -- meritorious. And
20 so I guess I'd be interested in sort of the mix of
21 what you found here since both you and Mr. Moriarty
22 mentioned that as an impediment in prosecutions.

1 MR. DeBOTTIS: Well, I think you're
2 absolutely right. I mean I think you've got to be
3 careful as a prosecutor to balance what you know on
4 its face looks meritorious or on its face does not
5 look meritorious. And I think you do have to look
6 pretty deep to find out.

7 It's difficult at my level though because a
8 lot of cases may be unsubstantiated long before I
9 see them. But at the beginning, we were looking,
10 basically, at every single case that came across
11 our desk. And I think I was sexually assaulted; I
12 don't know the guy's name; I woke up in the middle
13 of the night and I just thought I was. They don't
14 identify a suspect. They wait forever to report.
15 Those types of things, I can't give you a number on
16 that specifically because we don't see those cases
17 any more.

18 COMMISSIONER SMITH: But I guess what I'm
19 asking is what would you think the -- I mean in
20 that case, right, that's not necessarily a case
21 that didn't happen, it's just unable to be
22 substantiated because of the lack of information.

1 And so I guess what I'm trying to do is to sort of,
2 you know, kind of size up what percentage do you
3 think are substantiated, unsubstantiated or can't
4 go forward because there's not enough evidence, and
5 what do you see as false allegations, which you've
6 talked about and Mr. Moriarty have talked about in
7 your testimony?

8 MR. DeBOTTIS: It would be hard for me to
9 say t number of cases that are unsubstantiated from
10 the prison level because there could be so many
11 that I don't see. I mean so I can't really respond
12 as to a percentage of that, but are you asking
13 maybe of the cases that would make it to my office?

14 COMMISSIONER SMITH: I'm talking about
15 what you see. I can only ask you about what you
16 see.

17 MR. DeBOTTIS: I really don't want to
18 appear to be evading your question when I don't
19 really feel like I can give you an accurate answer.
20 I think now that we're looking at the cases closer
21 and trying to separate the true allegations that we
22 can prove versus the ones that we're not seeing any

1 more, I think we are definitely declining fewer
2 cases that actually come to us, if that makes
3 sense.

4 I would say maybe in the past we would have
5 accepted a lot of cases and maybe, maybe,
6 10 percent of them would have been worthy of going
7 to the Grand Jury. But now that TDCJ and OIG have
8 kind of refined their investigations and, you know,
9 we're getting referred a different caliber of case,
10 I think our numbers and our ability for success go
11 up, I mean particularly like the testimony now the
12 average time for reporting is 11 days. And that's
13 encouraging because if that trend continues and,
14 you know, offenders are being encouraged to report
15 it right away, I think you'll see our numbers --
16 our prosecution numbers of successful cases go up.
17 I can't give you a percentage, but I think we're
18 getting a lot better.

19 COMMISSIONER FELLNER: What is a false
20 allegation? How do you define that?

21 MR. DeBOTTIS: Well, it's difficult and
22 maybe that's a bad term. I think really it's an

1 allegation that if you cannot substantiate it or --
2 I mean I will speak freely about the Roderick
3 Johnson case because I was the prosecutor. This is
4 not anecdotal evidence.

5 Stuff that came out in that case that came to
6 my attention and came to the Grand Jury's
7 attention, there was no way that some of the things
8 that this offender was alleging could be true
9 against certain people. They either were not
10 housed at the unit at the time. They would never
11 have had occasion to come in contact with him. So
12 maybe it's a tough term to use, but something like
13 that I would say is a false allegation. Now what
14 his motivation is, I don't know. It could be to
15 get moved. I believe in his case it was to get
16 moved to another offender in a different part of
17 the state based on letters that I've read.

18 COMMISSIONER FELLNER: But you're clearly
19 meaning false is something different than just
20 untrue? There's sort of a deliberate attempt to
21 deceive?

22 MR. DeBOTTIS: I think so.

1 COMMISSIONER FELLNER: Okay. So it's not
2 just that he couldn't prove his case?

3 MR. DeBOTTIS: Oh, no, no, no, no, maybe
4 like a manipulation of the process, manipulation of
5 TDCJ's policies under PREA.

6 MR. MILLER: My district is a relatively
7 small district, although we have about 4 percent of
8 the federal prison population in the district. The
9 number of cases pale in comparison to what Ms.
10 DeBottis deals with in Texas. But I did, a couple
11 of weeks ago in preparing for this, wanted to pull
12 back historically a few years what my office has
13 done just to get a feel for what some of the
14 problems were, what the cases were, what we went
15 through in investigating the cases, what the
16 outcomes were figuring that this type of question
17 may come up. And I would say that over about a
18 four to five-year period, we had referrals from the
19 Office of Inspector General or the FBI of about ten
20 cases that had been reported to them, they looked
21 into, and called us to see what we would do. Of
22 those ten we looked at, I think about eight were

1 actually charged and we received convictions in all
2 eight of those, either by trial or by plea.

3 Two of those cases, one of which I would say
4 was unfounded, basically the investigation showed
5 that this person had made certain allegations.
6 Based on our following investigation, we were able
7 to determine it was a one-on-one case, no physical
8 evidence. But by locating and tracking down all
9 the cell mates or people within the area that
10 associated with these individuals, we were able to
11 find out numerous allegations or statements that
12 this person who was making the claim had also told
13 a number of people that she was doing this to make
14 money, was going to file a civil suit that it was
15 untrue, but she didn't care. So that was a case I
16 would say upon our investigation we determined was
17 an untrue allegation.

18 The one that was unfounded was one after
19 continued investigation it was one-on-one, but we
20 had a witness who we didn't actually -- couldn't
21 say she was being untruthful, but because of
22 inconsistent statements and the fact it was

1 one-on-one with no corroborative evidence, we
2 didn't feel that we had sufficient evidence in
3 which we could in good faith go forward and lodge
4 charges. In the other eight cases or so that we
5 felt there was sufficient evidence to go forward
6 with, we were successful. So I'd say in my
7 district, and you have districts all around the
8 country that have different experiences, but in my
9 district, you, know, I would say that the vast
10 majority of cases when looked at carefully are
11 founded, and you don't have a large percentage of
12 false allegations, but that's just only my
13 experience in my district.

14 COMMISSIONER SMITH: I think that we
15 think that there are more people here.

16 COMMISSIONER FELLNER: You mentioned and
17 I think other people have said today that there
18 will be two sets of investigations, one that's done
19 administratively and one that's done for the
20 criminal. And I'm wondering if that leads to any
21 problems or inefficiencies or if that makes sense.
22 I can understand that the standards that are

1 applied to the results of the investigation is one
2 that, you know, what's required, and one of the
3 consequences may be different, but would there be
4 any reason to try and have only a police
5 investigation?

6 For example, let's take for all sexual abuse
7 cases, they're potential criminal. There may be
8 administrative consequences, but what's being
9 alleged is a crime for the most part. Should those
10 cases purely be investigated by people with
11 expertise in criminal investigations and are the
12 resulted turned over to the prisons for them to
13 make whatever administrative decisions they want to
14 make rather than pursuing the two? I was just
15 surprised that you have these sort of two parallel,
16 which means witnesses are getting asked multiple
17 times or they get their stories -- is this an
18 issue?

19 MR. MILLER: The cases go strictly from
20 the Bureau of Prisons to the Inspector General of
21 the FBI and they are trained that in criminal
22 investigations they quickly confer with us. We

1 make initial assessments of whether to bring a case
2 into the system. And then we work with them over a
3 period of months to try to develop the evidence.
4 It sounds like it could be different in the state
5 systems and they may have parallel investigations.

6 COMMISSIONER FELLNER: I think you had
7 mentioned that.

8 MR. DeBOTTIS: I believe it's important
9 to have two investigations. The initial
10 investigation by the Department of Criminal Justice
11 is for administrative purposes, for purposes of
12 security, for purposes of protecting the victim.
13 As soon as the victim makes the outcry, the
14 Department of Criminal Justice needs to initiate an
15 investigation. They need to protect the victim.
16 They need to offer the victim services, counseling.
17 They need to go see a sane nurse and all of that.

18 The department needs to have an administrative
19 investigation as to what happened. Did inmates
20 know what happened? Did guards know what happened?
21 Was there a breakdown in procedure? And let's
22 punish the suspect if he's found -- you know, by

1 their lower standard, if he's found to have
2 committed sexual misconduct. If you punish that
3 person right away, I think it's a huge, huge
4 deterrent. Take away their commissary. Put them
5 in administrative segregation. Give them some kind
6 of swift punishment right away.

7 Meanwhile you have the Office of the Inspector
8 General who is conducting the actual criminal
9 investigation, taking statements, collecting
10 evidence, doing all of that to build, hopefully,
11 what will turn into a successful prosecution. But
12 in my experience in Texas, I think it's beneficial
13 particularly for the victim and also as a deterrent
14 to have both.

15 COMMISSIONER SMITH: What about in
16 staff/inmate situations? Because it sounded there
17 as if you were talking about offender on offender.

18 MR. DeBOTTIS: Oh, I'm sorry. I was. At
19 least on the staff situation I know that they also
20 have two different investigations going. I know on
21 the administrative investigation Mr. Moriarty has a
22 separate group of people that would conduct an

1 administrative violation. So they would be looking
2 at it criminally against the employee, but they
3 would also be running an administrative case on
4 that employee to get him or her fired if the case
5 need be from an administrative standpoint, but I
6 also believe that TDCJ's EEO Division conducts
7 their own investigation.

8 COMMISSIONER FELLNER: So that would be
9 three.

10 MR. DeBOTTIS: Well, is it three or two?
11 Mr. Moriarty could answer this much better than I
12 can.

13 MR. CHAIRMAN: For the reasons you've
14 articulated, I think I probably agree that you
15 probably need both, but as a old prosecutor I would
16 suspect that you'd have concerns about that dual
17 process because the more statements you give, the
18 more likely you're going to have some
19 inconsistencies because people just don't say the
20 same thing, you know, exactly identical the second
21 time around.

22 COMMISSIONER FELLNER: And witnesses get

1 used to what they're going to say to make it.

2 COMMISSIONER SMITH: But constitutionally
3 you have to, I believe, have dual prosecutions
4 because if you can compel an employee to testify
5 under threat of losing their job, you can't use
6 that in a subsequent criminal prosecution.

7 MR. DeBOTTIS: That's why Mr. Moriarty's
8 office does two completely separate investigations.

9 COMMISSIONER SMITH: He's shaking his
10 head yes.

11 MR. DeBOTTIS: For garity (ph.), for
12 purposes of garity, to get that person fired, that
13 they're compelled to answer administratively in a
14 hearing, but that cannot be used against them in
15 the criminal case. But you usually get around the
16 varying statements and we do. We've got more
17 statements than you can count, but they're given
18 for different purposes. So it's not that the
19 stories are different. They're kind of tailored
20 towards different things.

21 They may give a statement that's more tailored
22 to the administrative thing versus something that's

1 tailored more towards a criminal thing. But that's
2 why I think it's important to have those two
3 investigations done as soon after the incident as
4 possible.

5 MS. LITTEN: Again, with respect to
6 administrative hearings, I think that Mr. Sprenkle
7 would actually be the person who can speak to that
8 more than I can because he's the one that knows
9 exactly what the DOC policies are on their
10 hearings. My involvement has been strickly on the
11 criminal side on the prosecution in the criminal
12 investigation.

13 COMMISSIONER FELLNER: I just had one
14 final question. There was a comment made that
15 prison rapes are shrouded in secrecy. And earlier
16 this morning, I think it was A.T. Wall who said,
17 you know, if you put enough aggression and passion
18 and commitment into your investigations, you're
19 going to find out a lot. And, in fact, in prisons
20 everybody knows everything as also has been said.
21 And I think, in fact, Commissioner Aiken often says
22 it.

1 So, I'm wondering at the notion that things
2 are shrouded in secrecy, people may not be
3 forthcoming right away, but if enough aggressive
4 investigation is done, you find out, and there's
5 not so much secrecy. And so I was just curious
6 about that comment of yours.

7 Are you finding that there's enough effort put
8 into the investigations or are you not even seeing
9 them because they're not coming to you? I mean
10 what's the quality check? You only get the ones
11 that OIG passes on. So for all you know they were
12 cases that if they had been more aggressively
13 investigated, there could have been a reason to
14 pass it on for criminal prosecution, but they never
15 even get to you.

16 MR. DeBOTTIS: I apologize if my earlier
17 remarks were confusing. I certainly did not mean
18 for them to be. And what I meant when I said
19 shrouded in secrecy, I think I meant more from the
20 victim's standpoint of the feelings of shame and
21 the feelings of embarrassment and not wanting to
22 come forward. But I stated later in my testimony

1 participation. I would like to publicly say to our
2 staff that I appreciate the hard work that they put
3 in assembling this hearing and I think it was a
4 success. Thank you.

5 The hearing is now adjourned.

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8 (The meeting was adjourned at
9 approximately 5:20 p.m.)

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CERTIFICATE OF NOTARY PUBLIC

I, ROBIN E. WATSON, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witnesses were taken by me in stenotype and thereafter reduced to typewriting under my direction; that said deposition is a true record of the testimony given by said witnesses; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this meeting was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

ROBIN E. WATSON
Notary Public in and for the
District of Columbia

My commission expires:
October 14, 2007