

1 THE CHAIRMAN: How are you?

2 MS. WORTHY: I'm fine. How are you?

3 THE CHAIRMAN: Your reputation precedes  
4 you. We've read about you as a former prosecutor  
5 who didn't lose many cases.

6 MS. WORTHY: Not very many, not even when  
7 I had prisoner witnesses.

8 THE CHAIRMAN: We welcome you. We have  
9 read some new articles about the circumstances here  
10 and in the state in reference to the prosecution of  
11 prison cases and we were hopeful we'd have you  
12 before us to give your view of the situation and  
13 the difficulty that you have in pursuing these  
14 cases.

15 MS. WORTHY: Just for the record, I'm Kim  
16 Worthy. I am the elected prosecutor here in Wayne  
17 County. Wayne County is the eighth largest county  
18 in the country, and given the population, larger  
19 than the size of some 20 states in the United  
20 States.

21 Just so you understand my perspective, even  
22 though you've touched on it a little bit, I've been

1 the elected prosecutor since January of 2004.  
2 Before that, I was on the Wayne County Circuit  
3 Court bench for almost nine years handling felony  
4 cases. And prior to that, I was an assistant Wayne  
5 County prosecutor in the office of prosecutor where  
6 I am now for 11 years. So my entire career has  
7 been in the criminal justice system both on the  
8 prosecution side and also as a judge, as I said,  
9 for almost nine years.

10 It's timely for two years that I received this  
11 phone call this week to come here and testify  
12 before you. Number one, we are in the middle of  
13 negotiation budget proceedings right now. The  
14 record, as it stands now -- the recommendation  
15 becomes important to my comments later on.

16 As it stands, the recommendation from the CEO  
17 of my county is for a five percent cut. We are  
18 already 34 positions down and that would transition  
19 into 64 positions with five percent, which really  
20 translate -- I am not going to go through all the  
21 numbers -- into a 11 percent cut. So that would be  
22 down to 64 positions. So that's where I stand

1 right now.

2 I'm hopeful that that won't be the case once  
3 the budget process is completed, but it becomes  
4 important to know that so you can understand the  
5 position which I'm coming from.

6 In November of 2004, I wrote a letter to  
7 Colonel Sternamin (ph.), who was the Colonel for  
8 the Michigan State Police at the time. We recently  
9 have our new colonel. And I'm just going to read  
10 this in relevant part.

11 It says, Dr. Colonel Sternamin, I regret to  
12 inform you that this office will no longer be able  
13 to prosecute criminal activity committed by inmates  
14 in state correctional institutions. These cases  
15 have been investigated by the Michigan State Police  
16 or the Michigan Department of Corrections and then  
17 a warrant request presented to our office by the  
18 state police and processed in the ordinary fashion.  
19 Both the state police and the Department of  
20 Corrections have done an outstanding job in  
21 investigating and presenting these matters, so we  
22 don't have any investigation issues that may have

1           occurred prior, but because of the nature of the  
2           alleged offenses and the status of the victims and  
3           defendants is no longer the policy here that an  
4           assistant prosecuting attorney must conduct a  
5           face-to-face interview.

6           In other words, we would have to talk to that  
7           particular inmate when such a charge came. We  
8           don't just authorize warrants or deny warrants  
9           based on the written word. I'm assuming that most  
10          people have experience in law enforcement and we  
11          cannot proceed by that.

12          When we have a case, especially an assaultive  
13          case where a warrant request has been brought to  
14          us, we always interview that particular person.

15          But going back to the letter, it's important  
16          to enable the APA, assistant prosecuting attorney,  
17          to make an informed determination where the  
18          allegation is credible and the evidence sufficient  
19          to prove guilt beyond a reasonable doubt.

20          I am going to skip ahead. This interviewing  
21          processing, of course, takes time away from other  
22          duties of our APAs, as they travel to correctional

1 institutions to conduct these interviews. And  
2 processing the cases may result also in  
3 considerable resources, which is why I started with  
4 my position in the resources of my office or lack  
5 thereof.

6 We are in a budget crisis. And I remind you,  
7 this is 2004 and it's even worse now. We are in a  
8 budget crisis where the budget given us by the  
9 county will not allow this office to hire personnel  
10 even to replace APA that our office has lost.  
11 Because of this loss in resources, we can no longer  
12 assign scarce resources to handle crimes committed  
13 in state institutions by inmates on other inmates  
14 or state employees with inmates or state employees  
15 as witnesses.

16 Please understand that it's only because of  
17 the lack of adequate funding that we are forced  
18 into this position. If and when the county  
19 adequately funds this office, we would be happy to  
20 resume prosecution of these matters.

21 Moreover, this office presently has  
22 approximately seven completed investigations that

1           we have not reviewed -- that's not really privy to  
2           you.

3                     Last paragraph, the Attorney General, who we  
4           would note, has the authority to institute  
5           prosecutions. And it particularly makes sense for  
6           that authority to be exercising when a crime occurs  
7           within a state facility, involving state prisoners,  
8           and frequent with state employees as witnesses.  
9           Indeed, the Attorney General prosecutes welfare  
10          fraud based on precisely such the rationale.

11                    Again, we look forward to resuming prosecution  
12          of these cases once this office is again budgeted  
13          with staff at the appropriate servicing level.

14                    Some more history, as a matter of fact we  
15          received a letter and I am not going to read this  
16          into the record at this time, but if you want  
17          copies, I'll certainly provide them to you.

18                    We received a letter from one of the Assistant  
19          Attorney Generals just recently. It's dated  
20          July 11th, 2006, from a Thomas Cameron, Division  
21          Chief of the Criminal Division. He basically  
22          states in relevant part that the Michigan State

1 Police had submitted some prisoner cases to them  
2 that they are not being to be able to prosecute.  
3 And what they say is, After a brief review of the  
4 three above investigations, we are unable to accept  
5 the criminal references. Currently this office is  
6 offending either the state of Michigan or a prison  
7 guard against civil claims filed by these  
8 complaints. Civil actions arise out of the same  
9 facts and circumstances you submitted for the  
10 criminal charges. Obviously, this department is  
11 unable to defend the state and its agents against  
12 allegations and, simultaneously, evaluate the  
13 plaintiff for criminal charges. Accordingly, I am  
14 returning these investigations to your attention.

15 I find that kind of rationale to be kind of  
16 surprising because certainly there are many people  
17 within that office that could prosecute these  
18 cases. I returned the letter, I believe, on the  
19 day that I got the phone call from a representative  
20 of this commission, and the letter had already gone  
21 out, August 1st. And basically I say that we  
22 still are unable, for the same reasons I am not

1 going to go back through, to prosecute this  
2 criminal activity. And, again, I want to make  
3 clear it's only because of the lack of resources  
4 that we have.

5 Just to give you an idea, because we really --  
6 my personal philosophy is that the warrant stage  
7 is the most important stage of a criminal  
8 prosecution. Police agencies, we deal with over 90  
9 of them, bring us their relevant information for a  
10 warrant request. It is our duty, I feel, to make  
11 sure only cases get into the system that belong  
12 there. Because if it broke down, the assistant  
13 prosecutor could change someone's life forever.  
14 Rightly, certainly, they committed a crime, and we  
15 would vigorously prosecute anyone who we feel we  
16 can prove guilty beyond a reasonable doubt, so  
17 we're very careful in our warrant stage.

18 So even for one of these case, it would take  
19 an assistant prosecutor at least a half a day to be  
20 able to effectively decide if there's going to do  
21 the investigation. And I'll talk in a minute about  
22 most of those cases sometimes take for various

1 reasons -- and I'll going to outline those reasons  
2 for you -- two to two and a half months to  
3 investigate. And for a warrant process, as I said,  
4 even one of these cases takes at least half a day  
5 because we have to conduct, as I said earlier, a  
6 live interview. And this varies based on location.  
7 We may have to travel to the Upper Peninsula. That  
8 may take an entire day for that warrant prosecutor.

9 We are down three prosecutors in our warrant  
10 section right now. And what that means is not in  
11 custody cases, in other words, our cases where the  
12 defendant is not in custody, cases stack up and we  
13 get the business, for lack of a better word, from  
14 our outer county police departments and the Detroit  
15 Police Departments because we don't get to the  
16 warrants fast enough that we should on our existing  
17 cases for defendants that are not in custody. Of  
18 course, we don't have that issue because we work to  
19 make sure that our in custody cases are handled  
20 first.

21 So it takes a warrant prosecutor, again I'm  
22 down three, away from day-to-day warrant duties.

1           And our warrant prosecutor, particularly, does  
2           anywhere from 15 to 20 warrants per day. And we  
3           have sometimes 50 to 60 live victims sitting in our  
4           office on a daily basis that we have to get to.  
5           And so we can't send a warrant prosecutor to the UP  
6           and take a day. And who is going to do the other  
7           15 to 20 warrants when we have a defendant, a  
8           potential defendant who has not been charged yet  
9           and may not be charged depending on our  
10          investigation, who is sitting in prison awaiting  
11          our decision one way or the other.

12                 And, as I said, in 2004 that was a problem and  
13                 it's even more of a problem now. And God forbid  
14                 this current recommendation goes through, I don't  
15                 know what we're going to do. That's another story.

16                 In addition to that, we have to have an  
17                 investigator or a detective, a  
18                 prosecutor/detective, go with the assistant  
19                 prosecutor to the location to interview the inmate  
20                 for two reasons. Number one, we can't make the  
21                 warrant prosecute a witness. They have to have the  
22                 investigator be able to verify it in case something

1 happens to the case because we can't locate him  
2 later on. We want to have that investigator there  
3 to be able to testify or to corroborate in some  
4 cases, depending on what the circumstances are.

5 If we don't take an investigator with us, then  
6 we have to rely on a correctional officer to sit in  
7 there during that interview. Well, that creates an  
8 atmosphere of intimidation. And oftentimes,  
9 inmates are not going to come forward. We find  
10 this when we have inmate that are witnesses on our  
11 other cases, they are not going to come forward or  
12 oftentimes are very afraid to talk in front of that  
13 correctional facility that they have to go back and  
14 be around on a daily or hourly basis. So we have  
15 to take an investigator with us.

16 I am not even going to avail you with our  
17 problems -- I will, a little bit. Like I said,  
18 we're the eighth largest county. I have  
19 approximately 175 assistant prosecuting attorneys.  
20 And a county of my size is just a little under  
21 2 million people, about 2.2 million people. Most  
22 prosecutor's offices around this country have

1 double and tripple the number of prosecutors that I  
2 have, which is an issue that I keep on bringing to  
3 our commission. So, I only have 12 investigators.  
4 So that gives you an idea. Most offices my size  
5 have 24, 50, 75 and sometimes in the area of 100  
6 investigators. I have 12. So certainly we can not  
7 despair our investigators.

8 We have to go out and round up homicide  
9 witnesses and sit with them and do other things  
10 that investigators do, go out and investigate,  
11 serve subpoenas and bring in witnesses and all  
12 those kinds of things when I have 12 to go up to  
13 and accompany these assistant prosecutors.

14 Now let me just give you a little example and  
15 then I'll tell you what our possible solution might  
16 be. Aside, it is still my firm view that the State  
17 General should handle these cases. They have the  
18 resources. They're all state witnesses, state  
19 employees, state inmates. Certainly, our Attorney  
20 General here has the resources to come into my  
21 county and prosecute some of our cases and,  
22 certainly, he has the resources to go out and

1 prosecute these prison rapes.

2 This is a memo that I requested from a woman in  
3 my office, an assistant prosecutor in my office,  
4 that when we did have the resources, she handled  
5 these cases, not exclusively, but she handled these  
6 cases on a regular basis and she says, and I quote,  
7 "I handled rapes that involved prison guards or  
8 employees as perpetrators. Although I did not work  
9 exclusively on these cases, they are very time  
10 consuming. The Michigan State Police was an  
11 investigating agency for the prisons and the Wayne  
12 County Sheriff's Department handled the rapes and  
13 assaults -- we don't even call it rape, we call it  
14 criminal sexual conduct here in Michigan -- that  
15 occurred in the jails.

16 After they have done an investigation, we do a  
17 separate investigation. So we don't just rely on  
18 cases where we have state inmates or even jail  
19 inmates. We don't rely on the investigation done  
20 by the police, although we don't have the issue  
21 here that I think may be in other counties though  
22 of bad investigation or lack of investigations on

1 the shoulders of police personnel. But we always,  
2 whenever we have public officials, state  
3 institutions, police officers, do our own  
4 investigation because of the appearance of  
5 impropriety, and because we're a local law  
6 enforcement agency also.

7 We have to drive, like I said, to the prison  
8 facility to interview the complainant. The travel  
9 time could take two hours or ten, depending on  
10 where -- two hours or six hours depending on where  
11 the facility is. We sometimes have to do  
12 investigating of subpoenas because inmates fear for  
13 their safety. That's very common. That's a  
14 separate hearing where a court reporter has to be  
15 called in and additional expenses for my office.  
16 Then the arrangements have to be made to have them  
17 taken away from the facility.

18 We have to then interview the corroborating  
19 witnesses. We're not just talking about the victim  
20 here, as I'm sure you've heard. The corroborating  
21 witnesses we have to talk to as well. If the  
22 inmate or the witnesses are no longer incarcerated,

1           we have to track them down and have to come and  
2           bring them in and sometimes it takes days and weeks  
3           and months to track down inmates that have been  
4           released or witnesses that have been -- people who  
5           have been witnesses.

6           Most of the cases have complications. Let me  
7           just insert here because I heard it said when I was  
8           sitting back in the back for a minute, I want to  
9           make very clear that this has not nothing to do  
10          with an unwillingness to take them on. The  
11          philosophy of my office and of my assistant  
12          prosecutors, whether it be this case or another in  
13          terms of our time, it really doesn't make a  
14          difference. We, of course, have the draw the line  
15          when we have our victims that are sitting in the  
16          waiting room in the warrant sections. But this is  
17          nothing to do with the unwillingness to take them  
18          on or the difficulty of these cases because if it  
19          did, we certainly wouldn't be trying homicide  
20          cases, we wouldn't be trying child sexual abuse  
21          cases and, like it was said before, we wouldn't be  
22          trying criminal sexual conduct cases period if we

1           were afraid of the difficulty of them. That's not  
2           the case. And it has very little to do also with  
3           the understanding of the culture. It has  
4           everything to do with resource.

5                     Just to conclude, in cases where there are  
6           multiple allegations from four or more victims  
7           making allegations of the same person, it could  
8           take two or more months to charge a case. Once a  
9           case is in the system, the challenges to get the  
10          victims to come forward all over again and tracking  
11          down inmates who may be released from prison or  
12          moved around the state then don't want to come back  
13          and testify. Some of those problems are incumbent  
14          in all criminal cases, but it's particularly  
15          difficult when you have inmates as witnesses.

16                     That basically is, not basically, that is our  
17          position. Again, nothing to do with unwillingness  
18          or afraid to tackle these cases. We just don't  
19          have the resources. And in many cases, we don't  
20          have the resources or won't have the resources  
21          depending on how the budget cycle goes to  
22          efficiently and judiciously prosecute the cases

1           that we have.

2                       MR. CHAIRMAN:   So those several  
3           individuals who the States Attorney said they can't  
4           proceed against, what will happen to those cases?

5                       THE WITNESS:   Well, we sent this letter  
6           indicating what our problems are and what our  
7           resource was.   That's when we sent a copy to the  
8           Michigan State Police and to the State's Attorney  
9           General's Office.   So what's going to happen from  
10          there, I can't tell you.

11                      Oh, I did say I was going to give you a  
12          solution.   When I tried to assess this since  
13          Tuesday or Monday, whenever I got the call, if  
14          there are grants or federal monies available to be  
15          able to prosecute those cases, then that's  
16          something we would be able to do.   But I can't sit  
17          here and tell you picking, at this point, even one  
18          full-time person because unless you get that case,  
19          and oftentimes you will, it's reciprocal.   I can't  
20          tell you honestly that it's going to take one or  
21          two full-time people because I haven't had chance  
22          to assess it.   So it might be a situation where we