your statement.

MR. MORIARTY: The Texas Department of Criminal Justice is who I'm employed by. I'm at the office of the Inspector General. It is an independent investigative oversight entity that reports to the board of Criminal Justice. The board is comprised of nine persons appointed by the governor of Texas to oversee prison operations. My office does not report to the prison administration. All of the crimes that occur within the Texas Department of Criminal Justice are investigated by the OIG. The majority of these crimes that occur within the prison system are typically homicides, sexual assault, aggravated assault, weapons cases, drug offenses, bribery, theft, and civil rights violations.

The OIG investigates TDCJ officials, inmates and civilians who commit crimes while on property owned, operated or controlled by the TDCJ.

The OIG staff consist of 100 commission state police criminal investigators and 30 administrative staff that are stationed at or near the 105 prison
facilities within the TDCJ system. TDCJ currently has 152,000 offenders in custody. My office investigates approximately 3,000 reports of felony crimes per year behind those walls. Last calendar year we investigated 700 reported sexual assaults and/or sexual contact with persons in custody by an employee.

Quite often what is reported to us as a sexual assault does not meet the elements of the offense. Upon completion of the investigation, the Special Prison Prosecution Unit reviews the case for possible presentation to a Grand Jury to seek an indictment. The SPU Criminal Division prosecutes violent crime within the Texas prison system. The OIG works closely with TDCJ and the SPU to implement both the Texas Safe Prison's Act and the Federal Prison Rape Elimination Act. The OIG, as a priority, aggressively investigates and seeks prosecution on sexual assault cases.

The report of an alleged sexual assault can come from many different sources, the offender, the prison staff or a family member are the most common
ways an investigation by the OIG is initiated. If the alleged sexual assault has just occurred, the prison unit will secure the crime scene until the arrival of the OIG investigator. When an investigation is open, the case is immediately assigned to an investigator who makes contact with the victim.

Under Texas law, the victim of sexual assault is offered a forensic and physical examination at the expense of the state for up to 96 hours after the assault. The investigator will process the location of the alleged assault as a crime scene in attempt to recover physical evidence. The latest methods of evidence collection, including the use of alternate light sources, are utilized by the OIG.

The prison staff offers the victim an advocate to assist the victim through the forensic examination process. The victim is placed in a safekeeping and, if identified, the suspect is placed into prehearing detention. The prison unit staff initiates a life endangerment investigation
and makes the appropriate classification decision based on that investigation. The investigation by the prison staff is separate from the OIG criminal investigation.

The OIG investigator will interview all witnesses and suspects during the course of the investigation. The OIG also utilizes polygraph as its investigative tool in all criminal investigations.

TDCJ has an extensive policy to ensure the safety of the victims. The evidence collected is then forwarded to the Texas Department of Public Safety Crime Laboratory for analysis. If the elements of the alleged sexual assault are met, the case is presented to the SPU upon completion of the criminal investigation.

The OIG maintains a database to identify predatory offenders of sexual assault. The OIG also maintains a database of victims and witnesses. The prison staff has access to the predator list. The Texas law prohibits any law enforcement agents from disclosing the identity of sexual assault
victims.

As I stated earlier, the OIG aggressively investigates allegations of sexual assault. Just as in a free world, the burden of proof for a conviction of a criminal court is to find the defendant guilty beyond a reasonable doubt. One of the primary issues that hindered the investigation is the time that has elapsed from the date of the alleged occurrence to the date it is reported to the OIG.

In 2003, the average reporting time was 70.7 days. Currently, in 2006, it is 11.7 days.

The ability to collect physical evidence is obviously greatly diminished beyond the 96-hour time frame. The absence of witnesses is also a common problem with offender on offender sexual assault cases. The issue of false reports is a serious probably. What we have found is that offenders who become involved in gambling or drug debts and are being pressured by other inmates quite often falsely report that they are victims of sexual assault to avoid paying off the debt. On
many occasions, the offender will withdraw the complaint once he has been moved from that cell. It is a tremendous waste of time, waste of the limited investigative resources available to investigate these crimes.

A Texas case that made national headlines was involving an offender by the name of Roderick Johnson. The Office of the Inspector General had investigated allegations by Mr. Johnson that he had been sexually assaulted by 45 different offenders. He alleged that he was bought and sold as a sex slave by prison gang members.

The OIG spent thousands of man-hours conducting investigations into these allegations. The criminal investigation was presented to the Witchatal County Grand Jury. The Grand Jury declined to indict the 45 individuals. I received instructions from the Grand Jury to conduct an investigation of Mr. Johnson for filing a false police report. However, the Texas statute of limitations had expired by this time.

Mr. Johnson did a great injustice to the true
victims of prison sexual assault. Our criminal investigation concluded that Mr. Johnson was not a victim of sexual assault and a federal jury and a failure to protect the law and Witchatalfalls, Texas agreed with us.

A false report to a law enforcement agency is a misdemeanor offense. This statute, obviously, was not intended for replication in a prison setting. Until we get our arms around the false reporting issue, we'll be wasting a lot of investigative resources chasing the false allegations.

The issue of consent also plays a major role in offender on offender sexual assault. Just as the policemen in a free world responds to a domestic situation at a residence, we are sometimes faced with the domestic offender on offender situation. Consensual sex does occur within the penitentiaries. We have experienced this on several occasions also. This issue does not exist with offender and employee sexual contact situations.
Texas has a specialty statute that prohibits any sexual contact, consensual or otherwise, between the offender and staff. Because of this fact, sexual contact with a person in custody often results in a criminal conviction of the employee. The lack of sympathy for prison sexual assault victims by grand jurors and jurors is also a serious problem.

In 1999, the OIG had a sexual assault investigation that went to trial. We had a DNA evidence linking the suspect to the victim, as well as other physical evidence that should have resulted in a conviction. The suspect was a member of a white supremacy gang and brought in several of the gang members to testify on his behalf. The victim in the case had two black eyes, broken ribs.

This sexual assault is the closest case that I've seen that comes close to what is portrayed in television movies about prison sexual assault. The jury found the defendant not guilty for the sexual assault, but because the defendant used a weapon during the sexual assault, he got 30 years for
possession of the weapon.

In investigations that we have probable cause to believe that the offense occurred, the OIG investigators are instructed to humanize the victim. This is done in order to present the victim as somebody's brother, father, sister or mother.

The crimes that occur inside the penitentiaries have to be tried in the local court system. Quite often prison cases are the lowest priority for the local district attorneys and judges.

Recommendations: Ensure that persons conducting the investigations are commission peace officers trained in the recovery of forensic evidence and mod in criminal investigative procedures with the ability to arrest and file charges. They must also be independent from the prison administration.

One of our legislative recommendations during the last session in Texas was the creation of a prison court. This court would have jurisdiction
in all crimes occurring within the prison system regardless of where the prison is located in the state, a special prosecution unit to operate on a statewide basis to effectively prosecute all prison felony crimes. We have that in Texas and it's well worth having.

The ability to sanction offenders who false a report must be addressed. Currently, the laws in most states are not effective in dealing with the problem in a prison setting. A statute that eliminates the consent from offender on offender sexual assault issues would certainly make the prosecution easier; however, I do not believe that to be a practical option.

The prison system has administrative sanctions for offenders that engage in sexual misconduct. And it is my personal belief that this is better left in that arena.

Successfully investigating sexual assaults that occur inside the prisons require trained criminal investigators that are familiar with the ongoing day-to-day operations of the prison
facility. The utilization of aggressive investigation and prosecution is a critical component to successful eradicating prison sexual assault.

In my office, extensive and thorough investigation of sexual assault allegations by utilizing the latest forensic technology is proving that sexual assault in the Texas prisons is not as rampant as some people believe it to be. While the sexual assault of one offender is unacceptable, taking aggressive action against a predatory offender and moving him from the general population environment is extremely important.

We are currently utilizing the best available electronic surveillance technology in order to obtain evidence in these cases. The key to ending sexual assault in prisons is prevention, not investigation and prosecution. Investigation and prosecution are the last line of defense in the fight against prison sexual assault.

MR. CHAIRMAN: Thank you. I have heard not only today, but on other occasions, that there
is a reluctance on the part of prosecutors to
prosecute these cases and when they are prosecuted,
and even if there's a conviction, sometimes judges
don't take it seriously and, therefore, don't
impose the type of sentences that you would expect.
We heard that this morning from one of the
survivors.

I'm loathed to ask this question because
judges don't necessarily like mandatory minimum
sentences. The federal statute, I know, says 15
years, but I assume that would also authorize
judges to impose probation if there's no mandatory
sentence. Is that something that would possibly
have an impact on the willingness of prosecutors to
take these cases and that would make them obviously
significant from the judge's perspective since
there would be a mandatory requirement of a certain
sentence being imposed?

MS. SCHNEDAR: Quite honestly, I have not
looked at the issue of would a mandatory minimum
make an impact. We have looked a lot at presenting
these cases to the prosecutors. And in the past
they were only misdemeanors. And they expressed a
disinclination to go forward with them because they
weren't felonies. Now we do have significant
sentences and I think that will actually make an
impact.

We are anecdotally starting to see more
response. We are getting involved at a high level
when prosecutors are reluctant to take them
forward, you know, to convince the prosecutors to
take them forward. And I know from being a former
prosecutor, even sometimes getting the conviction
in a situation like this and you know that the
guard is no longer going to be in that environment,
I think prosecutors are committed enough that they
see that they're making a change. So I do think
that the increased penalties are going to help.
The fact that we can get a felony conviction is
really going to help the situation.

COMMISSIONER FELLNER: Mr. Moriarty, I'm
sorry getting here was such a trial.

Your writing in your oral statement seemed to
be focussed solely on offender on offender sexual
assault, and so I wondered if the 700 reported, that seems to include by an employee -- but the rest of it when you say, for example, the suspect is placed in prehearing detention, when you talk about a database of offenders, et cetera, et cetera, I wondered if OIG has different practices policies, ways of going about when you're dealing with allegations of staff sexual abuse that you'd like to let us know about in addition to what you've said about offender on offender.

MR. MORIARTY: The -- we don't have that much of an issue because of the consent issue being removed. It's a lot easier case to make for us. Sometimes, you know, we utilize devices on the inmate to wires that -- you know, so we can pick up conversations that talk about past activities, illegal activities, that he may have had contact with the inmate and that type of thing. And we also do a lot of installs on cameras inside, hidden cameras inside the prison.

COMMISSIONER FELLNER: How many substantiated cases or unfounded or how many cases
have you had and what have been the results in a
recent period of time for staff?

MR. MORIARTY: For staff alone, I'd
probably say that in the past couple of years we've
done about 40, I'd say.

COMMISSIONER FELLNER: Forty cases?

MR. MORIARTY: Forty cases.

COMMISSIONER FELLNER: And how many of
those were substantiated?

MR. MORIARTY: That's what I'm talking
about, that were referred for prosecution.

COMMISSIONER FELLNER: Oh. So out of how
many that you investigated?

MR. MORIARTY: Out of how many employee
cases?

COMMISSIONER FELLNER: Yes, of employee
cases involving allegations of sexual assault.

MR. MORIARTY: Well, we actually haven't
had that many employee cases involving allegations
of sexual assault. Under Texas law, you got to
understand, touching is not -- you know, we have a
lot of touching cases where the employee
inappropriately touches the inmate. Well, those
cases are handled under that specialty statute.
The sexual assault cases -- I can only think of one
in recent memory where there was an employee that
sexually assaulted an inmate.

COMMISSIONER FELLNER: Thank you.

COMMISSIONER KANEB: Mr. Moriarty, you
obviously filmed and occasionally used wires. You
folks look at any of these tracking systems whereby
you wear a bracelet and your location can be
tracked at all times and recorded at all times?

MR. MORIARTY: The Inspector General's
office hasn't looked at it.

COMMISSIONER KANEB: Do you think the
Texas Department of Corrections has looked at it?

MR. MORIARTY: They may have, but to my
knowledge I'm not familiar with it, if they have.

COMMISSIONER KANEB: Okay. A question
for Ms. Schnedar. Mr. Dignam, who was here this
morning, he made an illusion to a practice that I
gather is probably troubling and not just he,
you're talking about the Department of Justice, I'm
assuming is probably in the various states and the
Attorney General's office, and that is reviewing
prosecutors' record of convictions, I assume that's
the standard procedure. I would think it should
be. And the suggestion is that a lot of these
cases where, for whatever reason, a jury doesn't
believe an inmate, is against a staff person's
word, these cases are tougher than others might be
to -- in which to get a conviction. I mean -- so
you can't hear me right now?

COMMISSIONER FELLNER: No, it's for the
tape.

COMMISSIONER KANEB: Okay. So, I think
you see where I was going. Is this a problem? Do
you think, A, in the Department of Justice, and
would you have an opinion as to whether it's a
problem in states, that is these are tough
convictions to get and, you know, we keep hearing
prosecutors are indifferent or uninterested. And
I'm wondering if part of it is that, you know,
they're not on the job to be handled an innocent
verdict, they're there to get convictions.
MS. SCHNEDAR: Let me answer that question as a former prosecutor who used to handle these cases and now is someone who is trying to sell these cases to prosecutors' offices. Any sexual assault case is often hard to take on, whether it's within the prison system or outside the prison system because you have to prove beyond a reasonable doubt, and often you have the victim and you have the perpetrator. And the key to any successful prosecution is corroboration, corroboration, corroboration. So we, in the Inspector General's office, try to offer as much corroboration as we can, whether it's a one-party consent call, DNA, if we can find it, witness who may have noticed even that the victim was traumatized, a counselor who noticed that the day she was always exposed to this particular guard, she comes back traumatized or, you know, someone in the library, anything you can get to corroborate. That is our job as investigators.

We have found that the more prosecutors do these cases, the more they're willing to take them.
It's, again, part of they have to understand the culture. In D.C., when I used to be a prosecutor, because we had a sex offense section, I think you have prosecutors that understand these cases and are willing to take them on. We, in the Inspector General's office, work with prosecutors' offices to try and get prosecutors to take these on and we have found that -- for example, you're going to hear from the U.S. Attorney from the Northern District of Florida. They have had a plethora of these cases and they're very willing to take them on and we have a good relation with that.

So part of it is our job to liaison with these U.S. Attorney' offices. And part of the persuasive tool that we bring now is that there are higher penalties. There is more incentive to take these cases on, but we do get personally involved when we have a reluctant prosecutor to try to convince them if the evidence is there that this case is worth taking on. Again, though, it does come down to a judgment call, and that prosecutor is the one who knows the District and knows the likelihood of
success and also has a question of competing resources. That's something that we're often competing against. They simply may not have the resources, particularly when it was a misdemeanor to take it on, but it's harder to say no now that it's a felony.

COMMISSIONER KANEB: Thank you.

THE COURT: I know there are other questions that some of the commissioners have and we would hope that when we submit those to you that you will respond to them because that will be helpful.

We do have the local prosecutor from this county present and I know she has a very tight schedule and she was able to accommodate us, so we do need to fit her in. So we do appreciate, again, your presence and your testimony and we will be submitting additional questions to you and we hope you'll expeditiously respond to them. Thank you very much.

THE CHAIRMAN: Ms. Worthy.

MS. WORTHY: That's me.
THE CHAIRMAN: How are you?

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

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

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

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

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

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