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
the elected prosecutor since January of 2004.

Before that, I was on the Wayne County Circuit
Court bench for almost nine years handling felony
cases. And prior to that, I was an assistant Wayne
County prosecutor in the office of prosecutor where
I am now for 11 years. So my entire career has
been in the criminal justice system both on the
prosecution side and also as a judge, as I said,
for almost nine years.

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

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

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

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

It says, Dr. Colonel Sternamin, I regret to
inform you that this office will no longer be able
to prosecute criminal activity committed by inmates
in state correctional institutions. These cases
have been investigated by the Michigan State Police
or the Michigan Department of Corrections and then
a warrant request presented to our office by the
state police and processed in the ordinary fashion.
Both the state police and the Department of
Corrections have done on outstanding job in
investigating and presenting these matters, so we
don't have any investigation issues that may have
occurred prior, but because of the nature of the
alleged offenses and the status of the victims and
defendants is no longer the policy here that an
assistant prosecuting attorney must conduct a
face-to-face interview.

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

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

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

   I am going to skip ahead. This interviewing
processing, of course, takes time away from other
duties of our APAs, as they travel to correctional
institutions to conduct these interviews. And processing the cases may result also in considerable resources, which is why I started with my position in the resources of my office or lack thereof.

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

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

Moreover, this office presently has approximately seven completed investigations that
we have not reviewed -- that's not really privy to you.

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

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

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

  We received a letter from one of the Assistant Attorney Generals just recently. It's dated July 11th, 2006, from a Thomas Cameron, Division Chief of the Criminal Division. He basically states in relevant part that the Michigan State
Police had submitted some prisoner cases to them that they are not being to be able to prosecute. And what they say is, After a brief review of the three above investigations, we are unable to accept the criminal references. Currently this office is offending either the state of Michigan or a prison guard against civil claims filed by these complaints. Civil actions arise out of the same facts and circumstances you submitted for the criminal charges. Obviously, this department is unable to defend the state and its agents against allegations and, simultaneously, evaluate the plaintiff for criminal charges. Accordingly, I am returning these investigations to your attention.

I find that kind of rationale to be kind of surprising because certainly there are many people within that office that could prosecute these cases. I returned the letter, I believe, on the day that I got the phone call from a representative of this commission, and the letter had already gone out, August 1st. And basically I say that we still are unable, for the same reasons I am not
going to go back through, to prosecute this
criminal activity. And, again, I want to make
clear it's only because of the lack of resources
that we have.

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

So even for one of these case, it would take
an assistant prosecutor at least a half a day to be
able to effectively decide if there's going to do
the investigation. And I'll talk in a minute about
most of those cases sometimes take for various
reasons -- and I'll going to outline those reasons
for you -- two to two and a half months to
investigate. And for a warrant process, as I said,
even one of these cases takes at least half a day
because we have to conduct, as I said earlier, a
live interview. And this varies based on location.
We may have to travel to the Upper Peninsula. That
may take an entire day for that warrant prosecutor.

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

So it takes a warrant prosecutor, again I'm
down three, away from day-to-day warrant duties.
And our warrant prosecutor, particularly, does anywhere from 15 to 20 warrants per day. And we have sometimes 50 to 60 live victims sitting in our office on a daily basis that we have to get to. And so we can't send a warrant prosecutor to the UP and take a day. And who is going to do the other 15 to 20 warrants when we have a defendant, a potential defendant who has not been charged yet and may not be charged depending on our investigation, who is sitting in prison awaiting our decision one way or the other.

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

In addition to that, we have to have an investigator or a detective, a prosecutor/detective, go with the assistant prosecutor to the location to interview the inmate for two reasons. Number one, we can't make the warrant prosecute a witness. They have to have the investigator be able to verify it in case something
happens to the case because we can't locate him later on. We want to have that investigator there to be able to testify or to corroborate in some cases, depending on what the circumstances are.

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

I am not even going to avail you with our problems -- I will, a little bit. Like I said, we're the eighth largest county. I have approximately 175 assistant prosecuting attorneys. And a county of my size is just a little under 2 million people, about 2.2 million people. Most prosecutor's offices around this country have
double and tripiple the number of prosecutors that I
have, which is an issue that I keep on bringing to
our commission. So, I only have 12 investigators.
So that gives you an idea. Most offices my size
have 24, 50, 75 and sometimes in the area of 100
investigators. I have 12. So certainly we can not
despair our investigators.

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

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

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

After they have done an investigation, we do a separate investigation. So we don't just rely on cases where we have state inmates or even jail inmates. We don't rely on the investigation done by the police, although we don't have the issue here that I think may be in other counties though of bad investigation or lack of investigations on
the shoulders of police personnel. But we always,
whenever we have public officials, state
institutions, police officers, do our own
investigation because of the appearance of
impropriety, and because we're a local law
enforcement agency also.

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

We have to then interview the corroborating
witnesses. We're not just talking about the victim
here, as I'm sure you've heard. The corroborating
witnesses we have to talk to as well. If the
inmate or the witnesses are no longer incarcerated,
we have to track them down and have to come and
bring them in and sometimes it takes days and weeks
and months to track down inmates that have been
released or witnesses that have been -- people who
have been witnesses.

Most of the cases have complications. Let me
just insert here because I heard it said when I was
sitting back in the back for a minute, I want to
make very clear that this has not nothing to do
with an unwillingness to take them on. The
philosophy of my office and of my assistant
prosecutors, whether it be this case or another in
terms of our time, it really doesn't make a
difference. We, of course, have the draw the line
when we have our victims that are sitting in the
waiting room in the warrant sections. But this is
nothing to do with the unwillingness to take them
on or the difficulty of these cases because if it
did, we certainly wouldn't be trying homicide
cases, we wouldn't be trying child sexual abuse
cases and, like it was said before, we wouldn't be
trying criminal sexual conduct cases period if we
were afraid of the difficulty of them. That's not the case. And it has very little to do also with the understanding of the culture. It has everything to do with resource.

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

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

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

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

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