I'm Barbara Litten and I'm the District Attorney in Forest County, Pennsylvania.

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

(Panel sworn)

THE CHAIRMAN: Thank you. Mr. Miller.

ISSUES FACED BY PROSECUTORS IN PRISON RAPE CASES

MR. MILLER: Thank you. Good afternoon Mr. Chairman, members of the Commission. I appreciate the opportunity to appear before you today to discuss federal investigations and prosecution of sexual assaults on confined persons.

I am the United States Attorney for the Northern District of Florida. I have been serving in that office since my confirmation by the Senate in August of 2002. I have been a prosecutor for more than 23 years, having served first as a Marine JAG, then as an Assistant State Attorney in the state of Florida, and then serving with the U.S. Attorneys Offices in the Middle and Northern Districts of Florida both as a line prosecutor and in the
various supervisory capacities.

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

The prosecution of these cases present unique challenges affecting every aspect of the case from the investigation to the verdict and beyond. The public corruption aspect of what would otherwise be a very straightforward assault case, makes these cases some of the most difficult a prosecutor encounters.

In the investigatory stage, the primary obstacle is secrecy. Unlike other crimes, prison assaults are conducted in secret and cloaked in silence. In most cases, there are only two witnesses to the crime, one, the attacker whose
silence is constitutionally protected and the
victim's whose silence is produced by fear. Unlike
the rapist on the street, a corrupt prison guard
does not need a knife or a gun to achieve his aims.
His weapons are the power and authority of his
position. And unlike the rapist on the street,
these weapons enable the prison rapist not only to
facilitate his crime, but to secure his victim's
silence. The threats take various forms, but the
message is generally the same. No matter how bad
it is for you now, I can make it worse.

Whether expressed or implied, threats to
retaliate against a confined victim can result in
delays in reporting a crime or worse, initial
reports by the victim that the crime never
occurred. Delays in reporting put the
investigators at a disadvantage from the outset.
During the interval between the time when the crime
is committed and when it is brought to law
enforcement's attention, valuable physical evidence
can be lost or destroyed. As days and even months
intervene, the victim's memory of the details or
the date or time of the assault may blur, making it
difficult to corroborate their account through
prison work schedules or other means.

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

At trial the jury is instructed that the fact
that a witness has been convicted of a crime is
something they may consider in deciding whether to
believe the witness. They are told to consider
testimony of cooperating witnesses, "with great
cautions" and to be mindful of the fact that "a
witness who hopes to gain more favorable treatment
if his or her own case may have a reason to make a
false statement because the witness wants to strike a good bargain with the Government."
Conversely, even if investigators are fortunate enough to obtain a confession or some other incriminating statement from the target of the investigation, at trial the jury is told to treat that evidence differently than other evidence. The Court warns the jury to consider post-arrest confessions made by defendant "with caution and great care." Jurors are generally told that they first must decide whether the defendant actually made the statement that the law enforcement officer testified about and how much weight to give to the statement if they find that such statement was, in fact, made.
Reflect on this for a moment. The vast majority of federal prison assault cases involve a prisoner's word against the attacker's. To return a verdict of guilt, the jury must find beyond a reasonable doubt that the prisoner is telling the truth. The most important evidence in the Government's case is usually the victim's testimony
and, if one exists, a statement from the defendant. But before the jury sets a foot into the room to deliberate, they are told that they must treat this evidence differently than other evidence, including, for example, testimony from defense witnesses. They are told they must consider the evidence that forms the bulk, if not all, of the Government's case with caution and great care.

What would you expect a jury to do?

Not-guilty verdicts are never high on the list of a prosecutor's favorite experiences, but in the context of prison rape cases the impact of an acquittal is particularly disturbing. Acquittals in these cases empower those inclined to abuse their positions of trust and imbue them with an ever greater sense of invulnerability. At the same time, they confirm the victim's assumptions that it is pointless, and even dangerous, to report crimes against them. To the extent that there are other witnesses to the crime, the prospect of having a correctional officer return to work in the prison, in the wake of an acquittal, is more than
sufficient cause to keep silent about what they
know.

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

In addition to the obvious privacy issues
raised by the installation of these cameras, this
practice has also provoked a debate over whether
installation of video cameras carries with it the
concurrent obligation of 24-hour monitoring. If
so, limitations on resources would prohibit the use
of these cameras in most circumstances. On the
other hand, if cameras could be installed and video
tapes on those cameras reviewed periodically, they
could prove a source of evidence so that it tips
the scales back in favor of the Government.

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

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

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

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

I often wonder that with greater use of surveillance cameras, possibly if the GPS systems that were referred to earlier today work and are
feasible with a greater monitoring of guards and prisoners and the locations, the observation of them when needed looking back at videotapes coupled with the removal of the ability of guards to bring in the types of tools they use to coerce prisoners to have sex, whether or not that would go a long way in reducing the referrals to my office to offices of other U.S. Attorneys around the country and also to those types of facilities or other agencies state and local who are also receiving referrals.

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

I view it personally as something to be improper to rate my attorneys on the number of
convictions and what their conviction rate is and how many cases they do. My attorneys are rated strictly on the quality of the representation they provide and not whether or not they win or lose tough cases. We win or lose tough cases routinely. We're responsible for bringing tough cases and we never shy away from tough cases.

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

Moving back, I would note and quote that in the past Dostoevsky observed that, "The degree of
civilization in a society can be judged by entering its prisons." And although the overwhelming majority of our prisons are safe and well-maintained, I look forward to a future in which our society can be so judged and not found wanting.

And I thank you very much for extending me the privilege of addressing you on this important issues and look forward to answering your questions later.


MR. DeBOTTIS: Thank you very much, Mr. Chairman and ladies and gentlemen of the Commission.

My name is Gina DeBottis and I am the chief prosecutor with the Special Prosecution Unit in Huntsville, Texas. And the Special Prosecution Unit Criminal Division is a prosecution assistance program charged with prosecuting crimes which occur within the Texas Department of Criminal Justice, whether those crimes are committed by offenders, civilians or employees of the criminal Justice