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
System.

My office is governed by a board of nine District Attorneys who have prisons in their districts. The board of SPU appoints me, the chief prosecutor, and I act as the Chief Executive Officer of the agency. We primarily address and prosecute violent crime that occurs within the prison system, but we also prosecute weapons cases, drug offenses, bribery, thefts, civil rights violations, and any other offenses. We prosecute, again, not only inmates, but TDCJ officials, employees or civilians who commit crimes on property that's either owned, operated or controlled by the Texas Department of Criminal Justice.

We are funded on a grant out of the Governor's office of Texas. We are not part of the Department of Criminal Justice. I don't report to the board of Criminal Justice. I have a very good working relationship with them and a very good working relationship with the office of the Inspector General, which is headed up by John Moriarty, who
spoke to you earlier. But my office is completely independent of the Department of Criminal Justice.

We are committed to implementing the Safe Prisons Act and the Federal Prison Rape Elimination Act, which strive to reduce the number of sexual assaults in prison through prosecution of those who commit such sexual assaults. Presently, my office is staffed with nine prosecutors, seven investigators, two legal assistants, an office administrator and a victim's assistance coordinator.

Because prison units are spread all over the huge state of Texas, we are headquartered in Huntsville, which is the headquarters of the prison system, but we also have six satellite offices in various regions of the state, which enable us to work closer with prisons and the prison system and the District Attorneys in those counties.

Because venue for any case that happens inside the Department of Criminal Justice happens to be in the county where the offense occurred, having these offices all over the state makes it easier for us
to response to the needs not only of the victims, but also for the court personnel.

I didn't note in my testimony, but my budget, including salaries, yearly is $1.4 million, so we actually don't have a huge budget for the amount of cases that we handle. Last year we handled 518 criminal cases. Specifically, with sexual assaults though, there's two types of particular sexual offenses that we prosecute the most. One would be, obviously the sexual assault statute, which is what we use for offender on offender sexual assaults.

There's also a special statute that I am going to talk about in greater detail that was passed in the late 90s called Improper Sexual Activity with a Person in Custody. And that special statute is what the state uses to prosecute civilians or employees who sexually assault offenders.

Under that law, consent is never an issue. It is per se nonconsensual for an employee or civilian to have any type of sexual contact with an offender. This law became about in response to a case that I will refer to later. It's very
difficult to prosecute employees for sexual assault of offenders, but under this new law it's a state jail felony and we've had great success in prosecuting employees for improper sexual activity with a person in custody.

My office utilizes the same intake procedures and policies to evaluate a sexual assault case as it does any other case which occurs within the Department of Criminal Justice. The prosecutor assigned to a specific region carefully reviews the facts of each case to determine if all elements of the offense are met. If all elements of the offense are not met, the prosecutor will decline to accept the case for Grand Jury consideration. If the initial elements of the case are met, the prosecutor will review the facts to see if they are sufficient to proceed with prosecution. There are several factors we look at to determine not only if there's probable cause to seek an indictment, but also if the facts are sufficient to sustain a conviction.

In the early years after PREA went into
effect, the Criminal Division took each sexual assault case it received from OIG and presented it for Grand Jury consideration. The vast majority of these cases were not prosecutable for various reasons, including a lack of physical evidence, a long delay in reporting the allegation of sexual assault and a lack of witnesses. However, over time, numerous Grand Juries throughout Texas expressed displeasure at having to consider cases for which there was clearly no probable cause whatsoever to issue an indictment. In several jurisdictions my office was asked to reduce the number of sexual assault cases it presented at each Grand Jury meeting. I personally had experiences where if I had about 20 sexual assault cases that I wished to present to a Grand Jury, I would separate them out over several months and maybe present five or six each time rather than present them all at once.

The reluctance of Grand Juries to consider sexual assault cases for which there was no probable cause whatsoever led to my office changing
its intake policy regarding sexual assaults. We now treat these cases exactly like we would treat any other criminal case that comes to our office for consideration, and we only present cases for which there is evidence of probable cause.

Although sexual assault is one of the most violent and heinous criminal acts to occur inside of a prison, the prosecution of sexual assaults is the same as the prosecution of any type of offense. There must be sufficient credible evidence of each and every element of the sexual assault beyond a reasonable doubt. Although TDCJ has internal disciplinary procedures in place to administratively punish offenders who rape other offenders, their burden of proof is much lower. In all criminal cases, we must prove our case beyond a reasonable doubt. So there could be many situations where the Department of Criminal Justice may be able to administratively punish an offender for sexual assault even if the evidence is not sufficient to sustain a criminal conviction.

Since September 1, 2005, every sexual assault
victim in Texas must be afforded the opportunity to submit to a sexual assault exam within 96 hours of the assault. The best evidence to sustain a conviction is for the victim to submit to a sexual assault exam in hope of collecting DNA or other biological evidence. However, if an offender waits days or weeks or months to report the sexual assault, there's very rarely any physical or biological evidence to tie a suspect to the crime.

If an offender waits over 96 hours, it's very difficult to collect such evidence. The easiest cases for my office to prosecute occur when a suspect claims that sexual contact did not occur. Many times DNA evidence is critical if the suspect claims that sexual contact did not occur and evidence from the rape kit indicates evidence of sexual activity.

My office has sustained a couple of convictions against offenders who claim to have not engaged in any type of sexual activity with the victim and the evidence from the rape kit indicated otherwise. However, the converse is also true, if the suspect
does admit to sexual contact with a victim, but
claims that the sexual contact with consensual.

Although the Texas prison system does not allow for
consensual sexual activity among offenders, if two
offenders are involved in a consensual
relationship, many times there will be biological
or other physical evidence present. In this
instant, additional evidence will be necessary to
rebut the implicit defense of consent.

Other forms of physical evidence, which are
certainly helpful, including boxer shorts,
T-shirts, sheets or other items which may contain
physical evidence of sexual activity. As noted
above however, these items do lose their
significance if the suspect admits to sexual
contact but insists the contact was consensual.

Unlike most crimes which occur in the
penitentiary, sexual assault cases rarely have
nonparticipant witnesses. By their very nature,
sexual assaults are crimes of violence which are
shrouded in secrecy. In most instances, it is the
victim's word against the suspect. It makes it
very difficult to corroborate the victim's story, especially if there is no physical or biological evidence as noted above.

One aspect of prosecuting sexual assaults in prison as opposed to prosecuting sexual assaults in the free world involves the motivation of the victim. Quite frequently, offenders make false accusations of sexual assault in an attempt to get moved to a different part of the prison or to a different unit. There are many reasons for this. Perhaps, an offender feels his life is in danger and wants to go to safekeeping. Perhaps, he owes gambling debts or, perhaps, he wants to live closer to another offender. Whatever the motivation, offenders know that if they allege they were sexually assaulted, they will most likely be moved to a different unit.

The challenge for us as prosecutors is to determine which offender has truly been sexually assaulted and who is manipulating the system for personal reasons. Often a suspect will request a polygraph examination to show that he did not
sexually assault another offender. Although these results are not admissible in court, they are a good indication of whether a person is telling the truth. My office has declined several cases when a potential suspect passes a polygraph examination. It's very difficult to bust a polygraph examination and it could be evidence of an offender using TDCJ's policies and procedures under the Prison Rape Elimination Act to manipulate the system.

Another good source of information to determine an offender's motivation involves other offenders. Often other offenders who are housed nearby may have personal information about an offender who uses TDCJ's policies and procedures as tools of manipulation.

One case in which the system was manipulated involved an offender by the name of Roderick Johnson. Mr. Johnson sued the Texas Department of Criminal Justice claiming, among other things, that while confined at the All Red Unit near Witchatalfalls, he was bought and sold as a sex slave and that TDCJ failed to protect him when he
made them aware of his situation.

I can speak firsthand about this situation because I was the prosecutor that handled it and I was the prosecutor that presented it to the Grand Jury. After an exceptional investigation by the Office of the Inspector General and a thorough review by this prosecutor, I prepared an indictment against 49 offenders for the offenses of sexual assault and also engaging in organized criminal activity because he had made allegations that these offenders were acting in concert with each other.

In February 2004 I presented this case to the Wichitaal County Grand Jury. The investigation showed that Mr. Johnson had a lover who was housed in another part of the state. He wrote letters to his lover indicating that when he won his case and got all his money that they would be together.

In addition, evidence was presented that showed that several of the inmates were not even housed at the time at the time he alleged these rapes occurred. It was also evidence presented that showed that he would accept money from other
offenders to voluntarily provide sexual favors. The Grand Jury declined to indict any of the 49 individuals. In fact, the Grand Jury instructed the Witchatal County criminal District Attorney to request that the OIG investigate Mr. Johnson for filing a false report, but the statute of limitations had already run out on that charge.

Turning very quickly to employee on offender sexual assault. It's very difficult to prosecute an employee for sexual assault of an offender. In many instances, a jury is likely to believe the employee's version rather than that of the offender.

In 1998, I personally prosecuted a TDCJ preparole caseworker for the sexual assault of three female inmates at one of the units in Gatesville. There was also evidence presented that he was alleged to have sexually assaulted nine other women. I had physical evidence that was collected from a trash can. He took the stand. He admitted to having sex with these women and he said it was consensual and the jury acquitted him.
Although women were able to successfully win a civil case against Mr. Taylor and also received significant damages from the state of Texas, it was a devastating feeling for them to understand that the jury in this county did not believe them.

As Mr. Miller said earlier, prosecutors shying away from difficult cases, I would try that case again tomorrow. I think we did everything right. I hate that these women were not vindicated. I would try that case tomorrow and I wouldn't do anything differently.

Luckily for us now, we have a new law in Texas that improper sexual activity with a person in custody makes it much easier to win these cases because any type of contact whatsoever is nonconsensual. In many cases, although an offender may be a willing participant in the sexual contact, this law does not take the willingness of an offender into account.

In all TDCJ training academies, new trainees are told that any sexual contact with an offender is nonconsensual by nature and will most likely be
prosecuted under this statute.

In fact, we've prosecuted numerous officers under this statute. A vast majority of them end up pleading guilty either for the shame of it finally coming out or knowing that because it's nonconsensual it's very easy to get a conviction in these cases.

In conclusion, it's my personal opinion, it is very difficult to measure a state's compliance with PREA looking only through the prism of the prosecution of sexual assaults. I believe the Department of Criminal Justice does an excellent job in complying with the mandate of PREA. I believe they conduct exceptional investigations. I think the Office of the Inspector General conducts exceptional concurrent investigations on the criminal side. So in Texas you have two investigations going on at the same time. On the administrative side of the House and also on the criminal side of the House. I think those investigations are wonderful.

Unfortunately, with the high burden of proof
in criminal cases, plus the various factors that I outlined that hinder prosecution, the success of the Department of Criminal Justice in complying with PREA I don't think can adequately be measured by looking just at my statistics.

My office is whole heartedly committed to being an integral part of PREA. We take our responsibility very, very seriously. We have had six convictions in the last two years on offenders who are sexually assaulting other offenders. And we've had 14 convictions in the last couple of years against employees for improper sexual activity with persons in custody.

I believe those numbers will go up as the reporting time gets shorter and as TDCJ continues to do an excellent job of informing offenders of their rights under this act. I do feel that our three entities are doing what we can to reduce sexual assault in prison.

MR. CHAIRMAN: Thank you. Ms. Litten.

MS. LITTEN: Thank you. Good afternoon.

My name is Barbara Litten and I am the elected