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
District Attorney in Forest County, Pennsylvania. And Forest County is a very small rural county. We're in the northwest corner of the state. We're about 50 miles south of Erie and equally distant from Pittsburgh, Cleveland and Buffalo, about two and a half hours away from each of those cities. And we sit in the middle of the Allegheny National Forest.

So with that, little bit of information about our county. I was asked to testify today about the procedures that we use in Forest County to prosecute sexual assault cases that happened within the state correctional institution of both inmate on inmate cases and staff misconduct.

To date, we have only had one reported case of sexual assault and that involves inmate on inmate. And the case that I'm presently prosecuting was alleged to have occurred within the state correctional institution at Marienville, Pennsylvania.

The SCI Forest is a relatively new facility. It's been open for less than two years, opening in
November of 2004. And I think in some respects
listening to some of the earlier testimony today, I
think that that's been an advantage for us.
Director Hall and Director Caruso both talked about
the importance of having a personal relationship
between the District Attorney's office and the
State Correctional Institution or the place of the
facility of incarceration. And we have that in
Forest County.

Prior to the opening of SCI Forest and
continuing afterwards, there were a lot of meetings
and a lot of communication with the security and
the administrative staff at SCI and law enforcement
in Forest County, both the Pennsylvania State
Police and the District Attorney's Office. Because
to the extent that we could, we wanted to establish
policies and procedures for how crimes that were
committed within SCI Forest were going to be
prosecuted. And at that time, we were not looking
specifically at any particular type of crime, but
just how crime in general would be prosecuted. And
to that extent, what we did was we set a threshold
and we said that any crimes that were those for which our Magisterial Justices, our District Justices would have jurisdiction. And those would be misdemeanor, crimes classified as misdemeanors of the third degree or summary offenses would be handled internally at SCI Forest through their departmental disciplinary procedures, but that anything that would be graded as a Misdemeanor II or higher, we would attempt to handle as we would any crime committed in the community and that is that the Pennsylvania State Police would be notified. They would come and investigate and then if there was probable cause to believe a crime had been committed and a complaint was filed, then the District Attorney's Office would pick up the prosecution.

At the same time that we did that, we also talked extensively to the security personnel at SCI Forest about crime scene preservation, closing off the crime scene and about evidence collection. And I believe that having done that, it really set the ground work for the effective prosecution of the
case that I'm presently prosecuting.

So, with that background, I'll talk now in
general terms about the present inmate on inmate
alleged sexual assault. I can't talk specifically
because we're still in the very early stages of
prosecution.

With respect to the lapse of time in
reporting, I mean that's been something that's been
discussed today as a hinderance to prosecution of a
sexual assault case. In this case, the victim
reported to a corrections officer at the first
available opportunity that the assault had
happened. The corrections officer notified the
security personnel. The security personnel
interviewed the victim, arranged for the victim to
be transported out to a local hospital so that a
rape kit could be obtained, collected physical
evidence, secured the crime scene and photographed
the victim. So at the very beginning, we had the
initial investigative steps that were taken to
assist in the prosecution of this case.

With respect to the physical evidence, it's
significant that the procedures used to collect
that physical evidence at SCI Forest were done in a
way such that the chain of custody for that
evidence was preserved until it could be turned
over to the Pennsylvania State Police.

With respect to testimonial evidence, you
heard Troop Bootman (ph.) talk earlier about how he
investigates a case. He conducted numerous
interviews at SCI Forest and was able to obtain
written statements, a written statement from the
victim and written statements from other people
that he interviewed. And, again, these become
valuable tools later on as we go through the
prosecution.

The preliminary hearing for this case has been
held and the victim testified at the preliminary
hearing. And his testimony was preserved by way of
a court reporter's transcript. So, again, as we
proceed with the prosecution, that's going to be --
that's going to be helpful should the victim at
some point in time for reasons not known now begin
to be reluctant to testify.
I should also say that at the time of the preliminary hearing, it's standard practice in our county for any preliminary hearing that a representative from the Victim Witness Office is present for the victim and for any witness to act as an advocate and, basically, just inform the victims and any witnesses of their rights under the Pennsylvania's Victim Witness Act. And we provided that service to the victim in this case at the time of the hearing.

The level of cooperation that I experience in working with the Department of Corrections and with SCI Forest has been excellent. They have been completely responsive, both in terms of timeliness and content for any request that I've made to them for information. They have assisted with logistics in terms of making staff and inmates available for interviews because it's my practice after we get past the preliminary hearing and preparing for prosecution, assuming that a case is going to go to trial, to go back and then begin to interview everybody myself in much greater detail and at more
length, and the facility made all of the people
that I needed available to and assisted with that.  

In terms of the difficulties of prosecuting a
sexual assault case, I think those difficulties
exist whether the crime is committed within a penal
institution or out in the community. These are
always difficult cases to prosecute. But having
said that, as the other prosecutors who are here on
this panel have said, that's not a reason not to
prosecute them. 

And in evaluating the difficulty of the case
and the effectiveness of the prosecutorial effort
in evaluating the strength and the weaknesses of
the case, that analysis begins with an evaluation
of the evidence that's available to support the
prosecution. And I think in this particular case,
in the case that I'm prosecuting, I believe it's a
strong case for the commonwealth.

We have sufficient physical and medical
evidence, I believe, to go forward with a credible
prosecution. We have witnesses who are available
and who are willing to testify. Based on my
interview with the victim, I believe that the
victim in this case is going to come forward and
step up to the plate and actually testify. And
assuming that we, in the event that we have to go
to trial, would be available to testify at trial
and also I think is going to be able to withstand
the riggers of testifying at trial.

The factors which hinder the prosecution of a
sexual assault case are, fortunately, not present
in this case. We had a very prompt and effective
time frame for the reporting of the alleged
assault. The time lapse from the time that the
victim reported it to the time that the
Pennsylvania State Police were contacted was less
than two hours, so it was a very fast response
time. The victim was at the hospital for the
obtaining of the medical evidence within, you know,
just a few -- again, less than two hours after he
notified the facility of the assault.

So, you know, we have timely obtained medical
evidence. We have no lapse of time with respect to
the reporting and we have victim who is willing to
testify. That said, it's still going to be a
difficult case to prosecute, but my office is
willing to do that. And I have to say that all of
the entities who were involved in this case so far
acted promptly and acted professionally. And
because of that, the office of the District
Attorney has the tools that it needs to prosecute
this case. That doesn't guarantee a conviction.
That doesn't mean it's going to be an easy case,
but it certainly puts me in a much better position
to go before a jury, potentially, to at least have
the evidence that I need to present. So I thank
you very much for your time and your attention.

THE CHAIRMAN: Thank you also. I can
appreciate the difficulties that can exist in
reference to prosecuting these cases and I would
suspect, having looked at the system as a
prosecutor, defendant lawyer and a judge for many
years, that to at least some degree, and I would
said probably a significant degree, the makeup of
the jury pool can have a significant impact on the
ultimate result. And the ability of that jury pool
to identify with the victim obviously can make a big difference. In many situations, as you know, our institutions are put in rural, very rural areas. And the net result of that is that many times the people who are incarcerated in those institutions are very different from the people who live in that community that will ultimately make up the jury pool that will hear a case that's brought in that county.

Would it be advisable in a situation because of those realities for there to be a state prosecutor like you have and that the jurisdictional boundaries as far as prosecuting within the county were not restricted to the prosecution occurring there. So it could take place anywhere in the state.

So, you've got a case involving a black defendant who is accusing someone of having raped him in a community where you're going to have, basically, an all white jury. If you could take that case and prosecute it in Dallas where you may have some blacks on the jury who will be maybe
sympathetic to the individual, or at least be able
to identify with him, would that be something that
we should be maybe recommending be considered?

MR. MILLER: Judge, I think that's an
excellent suggestion. We, and I'm trying to think
how many years back this was, seven or eight years
ago, had a situation where the state came to us
recognizing they had a problem like that where we
had an elected local sheriff who was basically in
control of the county running a jail in the county
and was he, himself, coercing prisoners to have sex
with him for special consideration and treatment.

The state had expressed concern that they did
not feel there was any way possible that should
that case be tried in the state system in that
county with no prospect of a removal to -- in
Florida, it's very difficult for the prosecution to
move a case from one jurisdiction to another for
trial. They were going to be stuck in the
sheriff's county for purposes of the trial. They
asked if we'd consider looking at it. And in
exchange for that, they were giving up -- under the
state system, that would have been a felony conviction. In the federal system, we had to proceed under civil rights because it was a state official. It wasn't a federal prison, obviously. It wasn't a federal official. So our only remedy, in order to take that, was to do a civil rights violence. And they recognized in bringing that to us that the most we could hope for would be misdemeanor convictions for these violations and they thought that was the best way to go to alleviate the concerns that you've just raised where you may find a situation where the prisoners may not get a fair trial in a particular jurisdiction. And I found that to be a very effective technique. We ended up having a much broader pool, although it was still in an area where that sheriff had his, you know, following, we were able to expand the jury pool to a much larger jury pool where we offset whatever favoritism or home cooking you suspect was going to take place. But that would, obviously, have to be a state by state recommendation. But I do think that's an
excellent factor to consider.

MR. DeBOTTIS: Again, that would probably be something that you would have to address on a state by state level. I know in Texas the District Attorneys that are elected are the only ones with constitutional authority to handle cases that happen in their counties, which is why my office, we have to report to the local District Attorneys. I think I would be very difficult to get venue if something happened in far West Texas, let's say to get it moved to Houston, even though that is where the majority of the offenders come from.

One of the things we've talked about in Texas is trying to coordinate and get special prison courts created, maybe getting three or four of them created in different parts of the state. Some of the District Attorneys are resistent to that in terms of giving up local control, although it's something that several of the judges would like to see. But, again, I think it would be an issue where you'd have to write venue into the statute.

MS. LITTEN: I think in our particular