

1 your statement.

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

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

20 The OIG staff consist of 100 commission state
21 police criminal investigators and 30 administrative
22 staff that are stationed at or near the 105 prison

1 facilities within the TDCJ system. TDCJ currently
2 has 152,000 offenders in custody. My office
3 investigates approximately 3,000 reports of felony
4 crimes per year behind those walls. Last calendar
5 year we investigated 700 reported sexual assaults
6 and/or sexual contact with persons in custody by an
7 employee.

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

20 The report of an alleged sexual assault can
21 come from many different sources, the offender, the
22 prison staff or a family member are the most common

1 ways an investigation by the OIG is initiated. If
2 the alleged sexual assault has just occurred, the
3 prison unit will secure the crime scene until the
4 arrival of the OIG investigator. When an
5 investigation is open, the case is immediately
6 assigned to an investigator who makes contact with
7 the victim.

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

17 The prison staff offers the victim an
18 advocate to assist the victim through the forensic
19 examination process. The victim is placed in a
20 safekeeping and, if identified, the suspect is
21 placed into prehearing detention. The prison unit
22 staff initiates a life endangerment investigation

1 and makes the appropriate classification decision
2 based on that investigation. The investigation by
3 the prison staff is separate from the OIG criminal
4 investigation.

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

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

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

1 victims.

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

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

13 The ability to collect physical evidence is
14 obviously greatly diminished beyond the 96-hour
15 time frame. The absence of witnesses is also a
16 common problem with offender on offender sexual
17 assault cases. The issue of false reports is a
18 serious problem. What we have found is that
19 offenders who become involved in gambling or drug
20 debts and are being pressured by other inmates
21 quite often falsely report that they are victims of
22 sexual assault to avoid paying off the debt. On

1 many occasions, the offender will withdraw the
2 complaint once he has been moved from that cell.
3 It is a tremendous waste of time, waste of the
4 limited investigative resources available to
5 investigate these crimes.

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

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

22 Mr. Johnson did a great injustice to the true

1 victims of prison sexual assault. Our criminal
2 investigation concluded that Mr. Johnson was not a
3 victim of sexual assault and a federal jury and a
4 failure to protect the law and Witchatafalls,
5 Texas agreed with us.

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

13 The issue of consent also plays a major role
14 in offender on offender sexual assault. Just as
15 the policemen in a free world responds to a
16 domestic situation at a residence, we are sometimes
17 faced with the domestic offender on offender
18 situation. Consensual sex does occur within the
19 penitentiaries. We have experienced this on
20 several occasions also. This issue does not exist
21 with offender and employee sexual contact
22 situations.

1 Texas has a specialty statute that prohibits
2 any sexual contact, consensual or otherwise,
3 between the offender and staff. Because of this
4 fact, sexual contact with a person in custody often
5 results in a criminal conviction of the employee.
6 The lack of sympathy for prison sexual assault
7 victims by grand jurors and jurors is also a
8 serious problem.

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

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

1 possession of the weapon.

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

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

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

20 One of our legislative recommendations during
21 the last session in Texas was the creation of a
22 prison court. This court would have jurisdiction

1 in all crimes occurring within the prison system
2 regardless of where the prison is located in the
3 state, a special prosecution unit to operate on a
4 statewide basis to effectively prosecute all prison
5 felony crimes. We have that in Texas and it's well
6 worth having.

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

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

19 Successfully investigating sexual assaults
20 that occur inside the prisons require trained
21 criminal investigators that are familiar with the
22 ongoing day-to-day operations of the prison

1 facility. The utilization of aggressive
2 investigation and prosecution is a critical
3 component to successful eradicating prison sexual
4 assault.

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

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

21 MR. CHAIRMAN: Thank you. I have heard
22 not only today, but on other occasions, that there

1 is a reluctance on the part of prosecutors to
2 prosecute these cases and when they are prosecuted,
3 and even if there's a conviction, sometimes judges
4 don't take it seriously and, therefore, don't
5 impose the type of sentences that you would expect.
6 We heard that this morning from one of the
7 survivors.

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

19 MS. SCHNEDAR: Quite honestly, I have not
20 looked at the issue of would a mandatory minimum
21 make an impact. We have looked a lot at presenting
22 these cases to the prosecutors. And in the past

1 they were only misdemeanors. And they expressed a
2 disinclination to go forward with them because they
3 weren't felonies. Now we do have significant
4 sentences and I think that will actually make an
5 impact.

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

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

21 Your writing in your oral statement seemed to
22 be focussed solely on offender on offender sexual

1 assault, and so I wondered if the 700 reported,
2 that seems to include by an employee -- but the
3 rest of it when you say, for example, the suspect
4 is placed in prehearing detention, when you talk
5 about a database of offenders, et cetera, et
6 cetera, I wondered if OIG has different practices
7 policies, ways of going about when you're dealing
8 with allegations of staff sexual abuse that you'd
9 like to let us know about in addition to what
10 you've said about offender on offender.

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

21 COMMISSIONER FELLNER: How many
22 substantiated cases or unfounded or how many cases

1 have you had and what have been the results in a
2 recent period of time for staff?

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

6 COMMISSIONER FELLNER: Forty cases?

7 MR. MORIARTY: Forty cases.

8 COMMISSIONER FELLNER: And how many of
9 those were substantiated?

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

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

14 MR. MORIARTY: Out of how many employee
15 cases?

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

18 MR. MORIARTY: Well, we actually haven't
19 had that many employee cases involving allegations
20 of sexual assault. Under Texas law, you got to
21 understand, touching is not -- you know, we have a
22 lot of touching cases where the employee

1 inappropriately touches the inmate. Well, those
2 cases are handled under that specialty statute.
3 The sexual assault cases -- I can only think of one
4 in recent memory where there was an employee that
5 sexually assaulted an inmate.

6 COMMISSIONER FELLNER: Thank you.

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

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

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

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

18 COMMISSIONER KANEB: Okay. A question
19 for Ms. Schnedar. Mr. Dignam, who was here this
20 morning, he made an illusion to a practice that I
21 gather is probably troubling and not just he,
22 you're talking about the Department of Justice, I'm

1 assuming is probably in the various states and the
2 Attorney General's office, and that is reviewing
3 prosecutors' record of convictions, I assume that's
4 the standard procedure. I would think it should
5 be. And the suggestion is that a lot of these
6 cases where, for whatever reason, a jury doesn't
7 believe an inmate, is against a staff person's
8 word, these cases are tougher than others might be
9 to -- in which to get a conviction. I mean -- so
10 you can't hear me right now?

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

13 COMMISSIONER KANEB: Okay. So, I think
14 you see where I was going. Is this a problem? Do
15 you think, A, in the Department of Justice, and
16 would you have an opinion as to whether it's a
17 problem in states, that is these are tough
18 convictions to get and, you know, we keep hearing
19 prosecutors are indifferent or uninterested. And
20 I'm wondering if part of it is that, you know,
21 they're not on the job to be handled an innocent
22 verdict, they're there to get convictions.

1 MS. SCHNEDAR: Let me answer that
2 question as a former prosecutor who used to handle
3 these cases and now is someone who is trying to
4 sell these cases to prosecutors' offices. Any
5 sexual assault case is often hard to take on,
6 whether it's within the prison system or outside
7 the prison system because you have to prove beyond
8 a reasonable doubt, and often you have the victim
9 and you have the perpetrator. And the key to any
10 successful prosecution is corroboration,
11 corroboration, corroboration. So we, in the
12 Inspector General's office, try to offer as much
13 corroboration as we can, whether it's a one-party
14 consent call, DNA, if we can find it, witness who
15 may have noticed even that the victim was
16 traumatized, a counselor who noticed that the day
17 she was always exposed to this particular guard,
18 she comes back traumatized or, you know, someone in
19 the library, anything you can get to corroborate.
20 That is our job as investigators.

21 We have found that the more prosecutors do
22 these cases, the more they're willing to take them.

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

13 So part of it is our job to liaison with these
14 U.S. Attorney' offices. And part of the persuasive
15 tool that we bring now is that there are higher
16 penalties. There is more incentive to take these
17 cases on, but we do get personally involved when we
18 have a reluctant prosecutor to try to convince them
19 if the evidence is there that this case is worth
20 taking on. Again, though, it does come down to a
21 judgment call, and that prosecutor is the one who
22 knows the District and knows the likelihood of

1 success and also has a question of competing
2 resources. That's something that we're often
3 competing against. They simply may not have the
4 resources, particularly when it was a misdemeanor
5 to take it on, but it's harder to say no now that
6 it's a felony.

7 COMMISSIONER KANEB: Thank you.

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

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

21 THE CHAIRMAN: Ms. Worthy.

22 MS. WORTHY: That's me.

1 THE CHAIRMAN: How are you?

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

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

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

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

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

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