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Judiciary Committee and Appropriations Committee
November 12, 2010

[LR535]

The Committee on Judiciary and the Committee on Appropriations met at 1:00 p.m. on Friday, November 12, 2010, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR535. Senators present: Brad Ashford, Judiciary Committee Chairperson; Steve Lathrop, Judiciary Committee Vice Chairperson; Colby Coash; Scott Lautenbaugh; Amanda McGill; Kent Rogert; Lavon Heidemann, Appropriations Committee Chairperson; John Harms, Appropriations Committee Vice Chairperson; Danielle Conrad; Tony Fulton; Heath Mello; John Nelson; Jeremy Nordquist; and John Wightman. Senators absent: Mark Christensen; Brenda Council; and Tom Hansen.

SENATOR ASHFORD: Why don't we get started. Colonel, would you get everybody settled down, please? No, I was asking you to get everybody settled down, but they quickly...as soon as you sat down, everybody else sat down which is...that's a powerful responsibility you got. Welcome, everyone, to the...how should I put this, Judiciary Committee/Appropriations Committee hearing? Is that the best way to put it, Senator Heidemann? I'm going to forgo introducing everyone, and we can get started. But I do want to thank Senator Conrad, and actually I'm going to ask her if she would come change places with me and conduct the hearing because I don't know anything about it and she does. But I do want to thank all the staff that have worked on this issue and everyone else. It's an important issue to our state, and it's something that we do need to draw our attention to. Danielle, would you mind, just...I'm going to sit...

SENATOR CONRAD: Sure, I can do it from here too.

SENATOR ASHFORD: Can you? Why don't you do...I'm going to ask Senator Conrad if she would conduct the hearing. So if you want to give the purpose of it and...

SENATOR CONRAD: Yes. Thank you, Senator Ashford, distinguished members of the

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Judiciary Committee and, of course, my beloved Appropriations Committee, who is here as well. And thank you to all of those in attendance to this hearing today. I don't know in terms of the procedure for how this joint committee will move forward today, but I'm happy to open from here or from the testifier's desk, at the Chair's preference or direction. [LR535]

SENATOR ASHFORD: I think you can just go from there. [LR535]

SENATOR CONRAD: All right, very good. Well, we're here today to talk about LR535 which I introduced last session, and which we're having a public hearing on today, wanted to draw your attention to some materials that...some excellent materials that have been put together in regards to this issue from Doug Nichols in the Fiscal Office, and just to give you each a little bit of background in context for how this issue got on my radar screen and what I'm hoping to accomplish with this effort. From the beginning of my term of service through our work on the Appropriations Committee and then later in specific public policy issues related to the provision and allocation of resources for public safety issues, these issues have continued to bubble up on my agenda and in communication with local law enforcement representatives from the Lincoln community and greater Nebraska as well. And I think we are all very well attuned to the economic challenges that are before us and that will have to be attended to, but I also want to really utilize this opportunity in this hearing today to make sure that we have a full awareness and understanding about where we are in terms of meeting some of our most important obligations which are public safety obligations that are, indeed, a state responsibility and need some additional attention. This area of our state public policy has not been immune from cuts and from impacts related to the economy and otherwise. And I think it's been well documented, and you already know that the State Patrol is currently at a very low watermark in terms for the number of officers that are out on the streets. I think it's comparative to what we've seen last in the 1985-86 range and that's already starting to have some impacts in terms of our public safety objectives for the state. And when you drill down further and more specifically to the issue

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contemplated in LR535 which relates to the crime lab, even though this is a small piece of the overall puzzle in relation to public safety objectives and budget issues, it's a very, very important piece. And my hope is today that you'll have a chance to hear from some of the people that are out on the front lines about how resource allocation for the crime lab affects their job and the ability to protect the safety of the public. And I hope that you will have some questions and dialogue that goes along with their expertise, and that we can leave here today with a committed sense of unified concern in terms of protecting and ensuring potentially even greater resources for this critical, critical piece of public policy that we have before us. So with that, I am going to go ahead and turn it over to some of our distinguished guests that are here today. [LR535]

SENATOR ASHFORD: Okay. Why don't we...how many testifiers do we have today? Then I'm going to turn it back to Senator...I didn't mean to... [LR535]

SENATOR CONRAD: No. [LR535]

SENATOR ASHFORD: (Laugh) These are some of the...we're not even going to use the lights today which is... [LR535]

SENATOR CONRAD: Yes. This is a joint hearing, and so I participate in... [LR535]

SENATOR ASHFORD: Right, and it's going to be lightless. But that doesn't mean that we... [LR535]

SENATOR CONRAD: Yeah. Senator Fulton reminded me, that's the way it always is in Appropriations, so we are used to that. [LR535]

SENATOR ASHFORD: Lightless. Well, maybe we can... [LR535]

SENATOR CONRAD: But I think that you will find the testifiers are incredibly savvy in

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their testimony and efficient with their time and these committees'. [LR535]

SENATOR ASHFORD: Okay. Thank you. [LR535]

SENATOR CONRAD: Thank you. [LR535]

JIM PESCHONG: (Exhibit 1) Okay. Thank you, Senator Heidemann, Senator Ashford, Senator Conrad, and members of the Appropriations and Judiciary Committee, my name is Jim Peschong, P-e-s-c-h-o-n-g. I am here on behalf of the Police Officers' Association of Nebraska. We appreciate this committee taking the time to study this very important issue and to ensure that the Nebraska State Crime Lab is meeting the needs and expectations of the criminal justice system and the citizens of this state. Reviews of crime labs and their turnaround times are being scrutinized all around the country by governors, legislators, the justice department, commissions, attorney generals' offices. Some of those which have been reviewed or are currently under review are Louisiana, Alaska, Ohio, New York, Connecticut, Mississippi, Michigan, Minnesota, Wisconsin, just to mention a few. DNA testing is a unique, powerful tool for solving crime and delivering justice with incredible accuracy between biological evidence where it exists. We have become accustomed to media reports around the country of cold hits, DNA tests that have identified repeat offenders as the perpetrator of an unsolved crime, and of prisoners who are being exonerated by DNA testing after years of wrongful incarceration. With each much-touted DNA testing success comes an ever-increasing demand for testing in more cases and more samples. Unfortunately, this takes resources to keep up with the demand. The lack of resources leads to delays in conducting timely analysis that can solve crimes, and when DNA testing is delayed, this sometimes allows dangerous people to remain free to commit additional crimes and cause more victimization. The Police Officers' Association would like to ask you to consider a few recommendations that we think can move us forward while still providing timely services to the criminal justice system and the citizens of the state. We believe that a reasonable turnaround time for all forensic tests coming from the lab should be

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established. Currently, there is no criterion for this. We also believe that you must recognize the fact that work flows in the lab setting are not always constant. There are continued fluctuations in analytical requests. In other words, if one or two months are very busy with evidence coming into the lab, this can greatly affect when results of an analysis can be completed. All the while, other citizens may continue to fall victims to perpetrators. Timely results should not take a backseat to these spikes in requests and needs for services. Therefore, we believe it is imperative that there is recognition of these facts, and that there are procedures in place to effectively address these circumstances. The answer or the procedures should not be we are real busy and we will get to it when we get to it. There needs to be some preplanning and recognition of these occurrences so when these situations do arise that analysis cannot be accomplished within a set timetable, there should be provisions to outsource some analysis in order to meet the established time lines. Also, it is my understanding that the crime lab struggles with being able to attract and retain qualified personnel. When a proficient scientist leaves his or her position at the lab for a better-paying job someplace else, this greatly affects the turnaround time of evidence that is in need of being analyzed. Currently, the crime lab has one pay classification for forensic scientists. A scientist is hired in this classification whether they are fresh out of school or have ten years' worth of experience and skill sets in their field. There is no consideration of this experience in skill sets when employing a person. Additionally, once they are hired, there is no room for career advancement in this field unless one seeks employment in another lab or chooses to transition to a supervisory or a management position. Therefore, we are left with a subtle encouragement to qualified staff to move on because of lack of opportunities for career advancement. Maybe there should be some consideration for a few other pay steps in this field, possibly a trainee step which might be a position for someone fresh out of school with no experience, a forensic scientist position for someone who has appropriate schooling and training and some experience, and an advanced or master's forensic scientist for someone who has exceeded the expectations of schooling and/or experience. Possibly pay steps such as these are apt to provide stability within the lab, encourage professional growth, and minimize the brain

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drain on the state. We believe that now is the time to do some good strategic planning in this area. Good planning, vision, direction from policymakers such as you can help ensure that the state of Nebraska can continue to meet the needs of the criminal justice system and the citizens of this state. We strongly believe that the sciences are going to continue to grow in this area, and we must be positioned to respond to all of our citizens, whether they are victims of a crime or a suspect of a crime. Thank you, and I'd be happy to answer any questions that you may have. [LR535]

SENATOR CONRAD: Thank you. I see Senator Lautenbaugh has a question. Senator Lautenbaugh. [LR535]

SENATOR LAUTENBAUGH: Thank you, Senator Conrad. Thank you for coming today, sir. [LR535]

JIM PESCHONG: You're welcome. [LR535]

SENATOR LAUTENBAUGH: Now, as I understand it, you're with the Lincoln Police Department. [LR535]

JIM PESCHONG: Yes, I am. [LR535]

SENATOR LAUTENBAUGH: But you're generally familiar with our resources throughout the state regarding crime labs. Is that safe to say? [LR535]

JIM PESCHONG: Yes, I guess I would say I am a little bit (laugh). [LR535]

SENATOR LAUTENBAUGH: More so than I am,... [LR535]

JIM PESCHONG: Okay. [LR535]

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SENATOR LAUTENBAUGH: I know that to be a fact, however much you know. State Patrol has one, is that correct? [LR535]

JIM PESCHONG: Yes. [LR535]

SENATOR LAUTENBAUGH: And Douglas County Sheriff has one? [LR535]

JIM PESCHONG: Yes, they do. [LR535]

SENATOR LAUTENBAUGH: And does the Omaha Police Department also have one? [LR535]

JIM PESCHONG: For a lab itself that they process? Yes, they do. [LR535]

SENATOR LAUTENBAUGH: Yes. Does Lincoln? [LR535]

JIM PESCHONG: Yes, we do. Now, I should preface that. Each one of those labs may have different analysis that they're able to do and some is a duplication such as the Lincoln Police Department does not do any DNA testing. Omaha does not do any DNA testing. I believe Douglas County does do some DNA testing as well as the State Patrol's lab. [LR535]

SENATOR LAUTENBAUGH: And that kind of gets to where I'm going because I just was not aware of that. So is there...the areas where we're having the backlog, is that where we also don't have what you'd call any redundancy? This isn't something we can solve, I guess, by having the sheriff fill in if the State Patrol can't get to it or the...? [LR535]

JIM PESCHONG: Yeah, that's correct. I don't really know how the Douglas County lab works, but generally speaking, the Nebraska Crime Lab, State Patrol Crime Lab is the

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resource for all law enforcement for the analytical work on DNA and most evidence processing. Other agencies have moved in that direction to do some of those things where they've been able to wind up doing it, such as for fingerprinting and things like that where we don't send anything generally out there for things like that. Some tool mark comparisons we may do some general class comparisons, but we still rely a little bit on the State Patrol to assist us in those areas. But they really are, for lack of a better person, the guru for the state. [LR535]

SENATOR LAUTENBAUGH: Now is there a charge back to the local law enforcement for the services of the State Patrol Crime Lab? [LR535]

JIM PESCHONG: No, there is not. There is not any charge back to any law enforcement in the state. [LR535]

SENATOR LAUTENBAUGH: Thank you. [LR535]

JIM PESCHONG: You're welcome. [LR535]

SENATOR CONRAD: Senator Nelson. [LR535]

SENATOR NELSON: Thank you, Senator Conrad. Why is it that the state crime lab is the only one doing DNA testing? [LR535]

JIM PESCHONG: Well, one reason, I guess, is the Nebraska State Patrol Crime Lab from my perspective has always been the agency that's handled the analysis of evidence for all law enforcement needs on the state, and it's just never ever gone any further. [LR535]

SENATOR NELSON: Does it take expensive equipment that's beyond the capability of the Omaha Police lab and the Lincoln Police lab? I'm just curious about these things.

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[LR535]

JIM PESCHONG: Yes. It's a very expensive...especially as you get into DNA, and I'm sure you'll have other people that will wind up testifying. But that's a very expensive venture to wind up going off and doing DNA testing, certifying a lab, keeping a lab certified for...in order to be able to do that, takes a lot of money. [LR535]

SENATOR NELSON: Thank you. Thank you. [LR535]

SENATOR CONRAD: Are there other questions from the...? Senator Lautenbaugh. [LR535]

SENATOR LAUTENBAUGH: Briefly, I guess I didn't...after we got to Lincoln, I kind of stopped. Are those the only four: Omaha, Lincoln, Douglas, and the State Patrol? [LR535]

JIM PESCHONG: Yes, those are the only ones that I'm familiar. I don't think there's anybody else in the state that does any other kind of lab analysis. [LR535]

SENATOR LAUTENBAUGH: Thank you. [LR535]

SENATOR CONRAD: And, Senator Lautenbaugh, some of that is detailed in the report from the Fiscal Office, which I'm not sure if you had in advance, so you may not have had a chance to review that. But it does highlight where...some more specific information about existing labs. And just a couple of comments as we follow up here. You know, when I first started to think about these issues and we started to talk about these issues before the hearing or the resolution was introduced in this hearing, you know, I want to ensure that this forum is an opportunity that we can think about and talk about potential collaborations with existing labs and resources that exist, and whether or not that would require any statutory change to accomplish such, and whether there

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were other or additional legal implications that may prevent, hinder, or otherwise affect that kind of collaboration as we move forward. I'm not asking you to respond to that, but I want to make sure that is part of the dialogue. And I think the other thing that's important to be clear about is that, thankfully, it seems to me, in my research, that we don't have quality issues in terms of our lab work in Nebraska, thankfully. It's not a matter of the quality of work coming out of there but rather a question about ensuring they have appropriate resources to do the important work they need to do. And I think the turnaround time in terms of recent improvements is impressive, but we all know that we have a lot of work to do. And if you'd like to respond to the quality issue or the resource issue in any additional detail, please feel free. [LR535]

JIM PESCHONG: Certainly. I, for one, don't look at this, by any means, as being any kind of an indictment on the Nebraska State Patrol that they're not trying to wind up doing a very good job with their resources. I'll be the first one to stand up and say that I don't believe that that's the case at all. I think that they do a very good job. I'm not aware that we've had any problems with any of their scientists on being able to get testimony in or anything being turned over in regards to shoddy work or anything like that, and I don't think for one minute that that's the case here. The real case that I see is, you know, what's an appropriate time for a victim, somebody that the Lincoln Police Department may have arrested someone and put them in jail, and we believe that we have probable cause to believe that they committed the crime? Although we are doing some DNA analysis, we have every reason to believe that that's going to come back that this is the right person, but yet it comes back, and now the person has been sitting in jail for six months or so, and we find out that that really may not be the case. And we'd all feel very bad about that. So trying to find, you know, what's an appropriate timetable on that, and I'm not here to wind up saying what that timetable should be, and I think from policymakers, from your point of view, I think you're probably in a better position to do that. You know, right now I think that the lab on their turnaround time, for the most part, is doing a pretty good job. I can tell you from my perspective for us, crime is kind of down right now, and we're probably not sending an awful lot of stuff out to the

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lab. And we really kind of try to take a look at things before we do send it out to the lab and say, you know, is it really necessary, do we need to wind up having this analysis done? But when we kind of started off in this direction last January, a turnaround time at that particular point in time, if the Lincoln Police Department had a sexual assault and we had a rape kit that needed to wind up being analyzed, it was 12 months before we would be able to wind up getting a response. Now, that's not to say that, you know, if something really didn't need to happen that they couldn't wind up bumping that up into a priority, but for your average run of the mill, that might be where it was at. And that's a real hard sell for any victim that's a victim of a sexual assault, and, you know, she's very paranoid that this person is still out on the street and she may fall victim again, and she really wants things to wind up bringing a little bit of normalcy or feel that the person responsible for this is actually in jail. So, you know, those are the things that we're all kind of dealing with and stuff, and that's kind of where we're kind of trying to see if we can work our way through this maze. [LR535]

SENATOR CONRAD: That's very helpful. Thank you. Other questions before our next witness today? Senator Nordquist. [LR535]

SENATOR NORDQUIST: Yeah, thank you for being here. Do we currently do any analysis or testing outside of the state criminal lab? [LR535]

JIM PESCHONG: Yes, we do, and I think, depending on the type of DNA testing, some of them can't be done in the state. The Lincoln Police Department so far this year, we have...I think you'll have some testimony on this,... [LR535]

SENATOR NORDQUIST: Okay. [LR535]

JIM PESCHONG: ...but we've spent right around \$25,000 this year on sending evidence to the University Medical Center for DNA testing on cases that we felt we just had to have more of a timely response to be able to move our investigations forward and stuff.

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You know, we might be in a little bit more of a unique situation of more people and are able to occasionally wind up making those decisions. You know, some other law enforcement agency across the state that may only have two or three officers that might be in it, they may have a case that's just as sensitive but really truly have no resources to be able to do that. [LR535]

SENATOR NORDQUIST: Sure. Resources. And that just comes out of the general operation funds? [LR535]

JIM PESCHONG: Yes. You just kind of make it work (laugh). [LR535]

SENATOR NORDQUIST: Okay. Yeah, thanks... [LR535]

SENATOR MCGILL: Yeah. To piggyback real quick, I texted... [LR535]

SENATOR CONRAD: Yes, Senator McGill. [LR535]

SENATOR MCGILL: ...I texted my technology, texted my brother-in-law who works at Douglas County, their crime lab, and they send theirs to UNMC as well almost all the time. [LR535]

JIM PESCHONG: Okay. [LR535]

SENATOR CONRAD: Great, thank you. Thank you so much. [LR535]

JIM PESCHONG: Thank you. [LR535]

SENATOR CONRAD: Welcome. [LR535]

BEN HOUCHIN: (Exhibits 2 and 3) Hi. My name is Ben Houchin, H-o-u-c-h-i-n, and I

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have some handouts I'd like to give to them. And I'm not going to sit and testify to a bunch of things he just already said and just covered on that aspect of it. But I got lucky enough that I got to call all the surrounding states in Nebraska and spoke with their directors and assistant directors and asked them about their labs. [LR535]

SENATOR CONRAD: Would you tell us a little bit about your professional background because I'm familiar with what you do, but the rest of the committee, I'm sure, would be excited to know what brings you here today just briefly before we jump into the meat of it? [LR535]

BEN HOUCHIN: Sorry, you bet. You bet. I am the captain of our criminal division at Lancaster County Sheriff's Office. I've been there about 17.5 years, and I am testifying on the part of the Nebraska Sheriffs' Association. And I would also like to hand out a letter...and this one from the Clay County Sheriff, Jeffrey Franklin, and as you get this and you read these, this will let you know what we feel like when we're investigating these cases and what...when there is a lot of time that goes by that we do not get results. And it kind of hits home when you read, you know, bank robberies and murders and things of that sort, so I'll let those go. I also would like just to say, through my research I have learned that there are no designated turnaround times for the processing of evidence in state and forensic labs that I've found. And I sat and did a bunch of research on that. Nobody will come right out...and the big reason why they're saying that is a lot of these labs will say, well, this is how we measure our time. What I did, and I'm going to concentrate with my research on the state lab on DNA because right now that is the best evidence we have, and that's the most important stuff...evidence that we have out there. Iowa is turning around their DNA time from the time they get it to the time they get it back to the officers in 45 to 50 days; South Dakota, 60; Kansas, three to six months; Missouri, six to eight months. Nebraska, and this is from Douglas Nichols, the Legislative Fiscal, six to nine months is what he estimated in Nebraska; Colorado, one year. Now, just so you put this in perspective, when my investigators get some DNA...let's say we have an auto theft or burglary, and there's

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blood left, and we get it, but we don't know who did it. We send this to the lab, and we have to wait because we don't get to have a warrant because we don't know who did it. So six to nine months go by, and all of a sudden we get this back and then, let's say we have a suspect. Okay, we think this is who it is. Now we have to write the warrant, and now we have to put it back in line and wait to get it analyzed again to see if it is our person. That could give anywhere from...even if it is the six to nine months, that individual is running around breaking into cars. And this is occurring as we speak, and this happens on a lot of our cases. I also know, and in speaking with Assistant Chief Peschong, from January 5, 2010, to October 7, 2010, the Lincoln Police Department sent 16 cases to the University of Nebraska Medical Center, again, at about \$25,000 it cost them. The results came back in 59 days on an average. The median is 51 days. That makes a huge difference, especially when you're doing crimes. And, you know, there is nothing worse than having to talk to victims and tell them why you're waiting. It makes it hard on that end of it. I guess that's the one question we're asking you and the state: Is six to nine months good enough? And I know we're talking about, well, can Omaha, can Lincoln and some of these bigger agencies do that? And maybe they could, but let's start thinking about Scottsbluff; let's start thinking about Grand Island and all these other places that can't, and they have just as many major crimes that go on in those areas, and they're not going to be able to have their own labs. I also want to talk a little bit about wages, and as you can see on the sheet that I handed out, for starting and topped out: Iowa, \$50,000 to \$78,000; Colorado, \$45,000 to \$75,000; Nebraska, \$45,000 to \$65,000; South Dakota, \$35,000 to \$63,000; Kansas, \$41,000 to \$56,000; and Missouri, \$37,000 to \$54,000. But I want to make a little note on this. We don't have...the state of Nebraska doesn't have step raises, and the people who are on top in Nebraska at the \$65,000 have been here a long time. Most of them that are...the criminalists that we have are at the lower end. And I spoke to the director of the crime lab in Kansas, and as you can tell, Kansas is less on a topped-out rate. But he recently hired a criminalist from Nebraska and one of the major reasons that person went there is for salary and wages. And I think we need to really look at that part of it, too, because if you're only getting 0, 1, 2 percent cost-of-living raises, it's going to take a long time to

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get there. And, you know, it takes a year for a criminalist to get up and going and not only during that year are you teaching this individual, you're also taking the individual who already knows how to do it and making them a lot slower because they are teaching. And that puts them behind the eightball and on slowing things down. Improvements, I think one thing is to make the wage better and so we don't have turnover. I think we need to ensure the most up-to-date equipment is being purchased in a timely manner, and that we do develop standards. And I will go on a limb, and I think 60 to 90 days on DNA results back isn't out of the question. And some cases, there may be reasons why, and I think a law enforcement agency will listen to you as an investigator and say, hey, this is what's going on, this is why we couldn't do it. But I think we need to make sure that, you know, the quality is there, but also the turnaround is there. Slow turnaround hurts law enforcement in developing and excluding suspects. There's nothing worse than spending a bunch of time on somebody who's not our guy. Also, can cause prosecutors speedy trial issues. Victims are left waiting and worrying. And, again, I'm going to stress this. An innocent person may be in jail waiting for the results of the test to clear them. I would hate to spend...before I became a law enforcement officer, I worked at the penitentiary, and being there eight hours was long enough a day. I couldn't imagine being there, especially if you didn't deserve to be there. So that's my...if you have any questions for me, I'll try to answer them for you. [LR535]

SENATOR CONRAD: I know that we have Senator Fulton, Senator Lathrop. Senator Fulton. [LR535]

SENATOR FULTON: Thank you, Senator. Thanks for being here. [LR535]

BEN HOUCHIN: You bet. [LR535]

SENATOR FULTON: What's the...so what...just the brass tacks, what happens, so it's five to eight months? Is that what I heard for Nebraska? [LR535]

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BEN HOUCHIN: What I had on his is...let me get my...six to nine months, and that was a little while ago, and I will say, they have gotten better. They have. [LR535]

SENATOR FULTON: Okay. Do you know what's occurring? I mean, actual what's...so there's a backlog; there's a prioritization that occurs, but for six to nine months, is this DNA sample or what have you, is it sitting on a shelf? Is it...I mean, I understand that there is a backlog, but, I mean, what's actually happening with this? [LR535]

BEN HOUCHIN: I'm going to have to let the State Patrol answer that question. [LR535]

SENATOR FULTON: Okay. [LR535]

BEN HOUCHIN: Here's what I know, too, and this is a law enforcement problem. You can't just take every ounce of evidence you have, pack it up, and send it to the lab. That's wrong; that's not their job. I can say, I'm lucky enough that we have crime techs. I know the Lincoln Police Department and the bigger agencies have these, and we send them swabs, and that's what we need tested because we've done all the processing and things like that. And I think that would assist them a lot, so they're not getting 500 pieces of evidence on one crime. I think we need to probably start looking at what's your best five pieces of evidence? What's your best ten pieces? Send those. Let us get it tested and go from there, so we're not backlogging that aspect of it up too. So I'm not going to sit here and just say, this is the state lab's problem. It's a law enforcement problem, and I'm just saying that six to nine months for DNA evidence is too much, and it costs us way too much money to send it to the Med Center. You know, there's some parts of it when you're trying to get... [LR535]

SENATOR FULTON: Now, is that...? [LR535]

BEN HOUCHIN: There's some parts DNA that the state lab can't do, and I understand

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that. We'll send the teeth; we'll do it that way, and we'll pay it on those aspects of it. But just to spend \$25,000 in less than a year just to have something back quick, there's got to be a different way of going about it. [LR535]

SENATOR FULTON: And is that your only other alternative? I guess that's the follow-up. Do you... [LR535]

BEN HOUCHIN: We can try...if it falls into the right category like a bank robbery, you could try to send it with the feds and things like that. But we're limited on where we can go. We have the state lab or we pay. And I'm going to also say, you know, and also the county attorney's office ends up paying a lot of times on those too. It's not just out of our budget, but it affects everybody. [LR535]

SENATOR CONRAD: Senator Lathrop. [LR535]

SENATOR LATHROP: I listened to you and the witness before you talk about how we need to have standards. And I'm wondering if we had standards what benefit they would be to us, because if we don't have the capacity to move things through the crime lab any faster than we are, if we set a deadline, what difference is that going to make in this process? [LR535]

BEN HOUCHIN: I think some of it is, is getting people and the finances directed towards how to do it. If you sit...this is what we want to do; this is what we expect, then the hiring of the individuals have to go that are specialized in DNA. [LR535]

SENATOR LATHROP: So effectively, what we do is force the hand of the Appropriations to put the resources there, and the best way to do that is to establish standards, begin to not meet them, and then go to the Appropriations Committee, for example, and say, you know, we're supposed to be turning these things in 90 days and we're not, so we need more people, and it'd help if our guys got raises. [LR535]

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BEN HOUCHIN: I guess, way I look at it, I look at it as for my people who are investigating and the victims we have to talk to. I don't think 90 days is out of the question, and I don't think it's something, and we do it. [LR535]

SENATOR LATHROP: You know something? I've been involved in a case and I've talked to the colonel when it happened, and that was somebody who was involved in a sexual assault. And, you know, they do the rape kit and find out, they're not going to get an answer for a long time. I'm not going to try to recall how long it was, but it struck me as inordinately long. I appreciate that it needs to be faster. I'm just wondering what the benefit of a standard is other than to say, we now have a standard and we're not meeting it. [LR535]

BEN HOUCHIN: Maybe we need to go talk to Iowa and find out how they are doing it or South Dakota. Maybe we need to do some research. I didn't get a chance to go visit them, but they're capable of doing. And I guess I'm looking at it as if they're capable of doing it and getting it out that way, maybe we need to talk to them and see what they are doing, and how they are capable of doing it. I will say, I don't have the answer on all this stuff. I just know how it affects us on this. I also know what these other states are doing, and I know what the Med Center is capable of doing. And maybe 90 days isn't good enough or it is too much, but nine months to a year I would say is too long. [LR535]

SENATOR LATHROP: So would I. Is there a known standard? Do you guys have an association where you go to conventions and then say, let's adopt these as the standards for turnaround times on DNA testing? [LR535]

BEN HOUCHIN: In all my research, they don't have that. And like I said, the reason why is they'll start talking to you. They'll say, well, here's where we'll start our timetable. What I asked these individuals when I called them is, from the time you get it in-house

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to the time you're giving the officer the results, how long is that? And there's other things, I understand. If there's a gun, you got to print it, and you got to test fire it, then you got to do your DNA testing. That's going to make it go longer. I understand that. And that's one of those things where an investigator is going to say, okay, I get it. I understand why it's taking longer. But if I send a swab in, say, will you please test this, there's nothing else I want done. So that's where I have my concerns. [LR535]

SENATOR LATHROP: Okay. [LR535]

SENATOR CONRAD: You know, I think these are great questions and, Captain Houchin, as always, thank you for your excellent research, your dynamic presentation, and I'm hopeful that what is really our policy prerogative in conjunction with those in law enforcement to decide whether or not we need to have standards, and then if we do, what they should be, and how we adequately fund and prepare to meet those goals for ourselves and our citizenry. So with that, we will move to the next testifier. Welcome. [LR535]

PATRICK CONDON: Senator Ashford, Senator Heidemann, Senator Conrad, members of the committee, my name is Patrick Condon. I'm a deputy county attorney here in Lancaster County, Nebraska. I am one of the felony prosecutors in our office and kind of here to give the committee members kind of an idea of how this works in the area of prosecution of this. I would echo Chief Peschong and Senator Conrad's comments that we are in no way trying to make any type of indictment or criticism on the state lab. The quality of work that they do is very good quality work. The analysts that they have are very good analysts. It is just a matter of time and the turnaround time on these issues. Perhaps the most infamous crimes, homicides, rapes, are the kind of crimes that we see that grab the headlines in the papers. Our homicide and rape investigations are commonly when the Lancaster County Attorney's Office is in a situation where we feel we need DNA testing done. A lot of times we do send these samples to the UNMC lab in Omaha to get that work done. And this is to either eliminate, as Captain Houchin said,

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suspects that shouldn't be in custody or to direct the law enforcement and investigative agencies' focus on specific subjects. So that is a purpose that we sometimes would like a faster response time to the question of whose DNA or what the DNA profile is. Just for this committee's understanding, in the fiscal year July '08 through the end of June '09, the Lancaster County Attorney's Office itself spent about \$42,000 in testing at the UNMC laboratory in Omaha, about another \$1,000 for consulting; in July '09 through June of 2010, again about another \$8,800 for testing, about another \$1,800 for consulting for DNA testing. It is difficult as an administrator in these offices to determine what type of budget requests we're going to be making to our board because there is such a huge difference in those numbers--\$42,000 from one year to about \$10,000 in the following year. And some of that is just the ebb and flow of crime in the community, so it is very difficult for the administrators in the county attorney's office to make a determination and for budgeting purposes to address these issues. The Lancaster County Attorney's Office, again, budget constraints as all the state and everyone is facing, just will not be able to accommodate the payment of outside testing outside the state lab. In the future, we just do not see that as being a viable thing for us to do. If it comes down to it, you know, we're always going to be willing to take a look and see what we can do. But it's just at this point in time, it does not seem to be a viable option for the county attorney's office to be picking up these expenses. This is somewhat of an investigative, law enforcement type expense. Thus, it is...hopefully, we can...the board understands the importance, I'm sure it does, of the appropriate funds for the state lab and funding our state lab here. And with that, I would answer any questions. [LR535]

SENATOR CONRAD: Thank you. Questions? Thank you. [LR535]

PATRICK CONDON: Thank you. [LR535]

SENATOR CONRAD: Welcome. [LR535]

BRYAN TUMA: (Exhibit 4) Hello. Senator Ashford, Senator Heidemann, and members

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of the Judiciary and Appropriations Committee, good afternoon. I'm Colonel Bryan Tuma, B-r-y-a-n T-u-m-a, superintendent of the Nebraska State Patrol, and I appreciate the opportunity to be here today in order to provide testimony about the Nebraska State Patrol Crime Lab and to provide clarification regarding the interim study report completed earlier this year. I'd like to start with a brief historical overview of the laboratory and its relationship with the State Patrol. Within the structure of the Nebraska State Patrol, the crime lab is a division within Investigative Services. The crime lab division was established by Nebraska state statute in 1971, and became operational in July of 1973. The legislative mandate under Nebraska state statute 81-2010 is to "perform services necessary for the recognition and proper preservation, identification, and scientific analysis of evidence materials pertaining to the investigation of crimes." The division is entirely government funded and serves all municipal, county, state, federal, and military law enforcement agencies in Nebraska. It is the only forensic laboratory which provides services free of charge to law enforcement statewide. I believe it's important to note that those services are provided for free. And currently, the crime lab is staffed with 24 positions; 20 of those positions are funded through General Fund appropriations; the remaining 4 are funded by federal grants. There are two vacancies at this time and they are in the process of being filled. In addition, a new laboratory technician position to assist with the DNA databank samples will be added utilizing a federal grant. The State Patrol allows the crime laboratory the independence to function as an impartial forensic testing laboratory while providing them with significant administrative support. The lab is located in Lincoln in a separate facility from the State Patrol headquarters. Only laboratory staff have access to the nonpublic areas of the building. Ms. Pam Zilly, who is with me here today, she serves as our director of the crime lab, and I've authorized her independent control over the Laboratory Directives Manual. Those policies and procedures are written to comply with laboratory accreditation standards and are specific to the proper functioning of the crime laboratory. This procedure has been put in place, helping to ensure the laboratory's autonomy. As the superintendent, I do not intercede with the development of these specific standards. More importantly, neither I nor my command staff exert any pressure

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on the laboratory staff to influence testing results. In addition to the Laboratory Directives Manual, it's important to mention the significance of the crime laboratory's national accreditation under the American Society of Crime Lab Directors, the Laboratory Accreditation Board. We refer to that as ASCLD. Accreditation under this program ensures strict adherence to quality control measures, testing procedures, staff development and training, and compliance with accepted professional standards in the forensic science community. It should be noted, the ASCLD accreditation process is separate and it's no way associated with the national accreditation process for law enforcement agencies known as CALEA, which is the Commission on Accreditation for Law Enforcement Agencies. At this time, the Nebraska State Patrol Crime Lab is the only accredited multidisciplinary forensic facility in the state of Nebraska. In February 2009, the National Academy of Sciences issued a report entitled "Strengthening Forensic Science in the United States" which made mention of a recommendation to remove public forensic laboratories from the oversight of law enforcement agencies or prosecutors' offices. This recommendation is highly controversial, and there appears to be no consensus on a national level as how to proceed. The motivation for this recommendation comes from the frustration within the forensic community regarding the lack of consistency and standards, the far-ranging discrepancies in the capabilities of forensic crime labs, the lack of adequate funding, and the need for greater standardization of laboratory protocols. The Nebraska State Patrol understands the importance of having forensic scientists function with a degree of autonomy so as to not interfere with the independent finding of fact. Yet our crime lab requires the financial and the administrative support of the agency. I feel confident in saying our crime lab is not faced with autonomy problems within our agency. They function independently in the areas of services they provide while still being afforded the benefit of the many support services that being a part of the State Patrol affords. Without the support of the agency in the areas of funding, grant management, accounting, purchasing, supply and surplus, legal assistance, human resources, information technology, media, and legislative assistance, and providing the laboratory with vehicles, the lab would not be able to provide services to the greater law enforcement community. State Patrol Crime Lab's

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primary objective is to maintain and improve the quality of forensic science services available to all law enforcement agencies in the state. In order to meet this objective, a robust quality assurance system has been put in place. The quality assurance system ensures all evidence is properly handled and secured, the procedures are validated and appropriate, all instrumentation is working properly, analysts are trained and proficient, and analysis results are reviewed and confirmed prior to the results being released on each case. All procedures comply with the ASCLD accreditation program and meet national forensic science standards. Quality assurance controls put in place take time and the lab cannot compromise quality for speed. I would like to make available a handout with current information entitled "the Nebraska State Patrol Crime Laboratory Current Workload Information as of November 4, 2010." The document describes information about the number of cases pending, a comparison to the number of cases pending at the same time last year, the number of staff working cases in each section, and the approximate time it currently takes to get a routine case completed in each section. For example, the Biology/DNA Section of the lab is taking approximately 3.5 months to complete a routine case which demonstrates a significant improvement over turnaround times for those cases last year. At this time last year, the crime lab had 213 assignments pending; now it has 55. Only 13 of those pending assignments are 60 days old, and 8 of those are in the technical review stage and near completion. The oldest case that has not been started by an analyst is from September 23, 2010. The handout provides you with specific statistical information for each section of the lab. As you will note, reduction in the number of pending cases is ongoing and continues to improve in all areas, thus reducing turnaround times for the agencies served. Not unexpectedly, the crime lab on occasion is requested to rush cases for various reasons, such as an impending court date or the violent nature of the crime. In some cases, with sufficient justification and careful evaluation, the crime lab is able to accommodate those requests. In the event a case is taken out of the normal queue, it is only done so after consideration to fairness to those agencies that have cases waiting. Law enforcement agencies in Nebraska do have access to other crime labs, but all differ greatly. The University of Nebraska Medical Center, Douglas County Sheriff's Office, Omaha Police

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Department, as well as the State Patrol Crime Lab offer valuable services to law enforcement, that each lab may have a different focus. For example, the University of Nebraska Medical Center offers DNA testing only, and agencies are charged for those services. The laboratories operated by Douglas County Sheriff and Omaha Police Department focus a great deal on crime scene processing and investigations, while providing some types of laboratory analyses. Douglas County charges a fee for services provided to other agencies. The State Patrol Crime Lab personnel do not respond to crime scenes but instead focus on analytical forensic laboratory analyses. The State Patrol Crime Lab is the only laboratory in Nebraska that is available free of charge to law enforcement in the state while offering a diverse list of forensic services. For your reference I have included a handout which lists most of the analytical services provided, as well as some types of analyses that are occasionally requested but not currently provided. I have included a brief explanation regarding analyses that were once offered but are not currently available. Last year we received cases from approximately 166 different agencies. These agencies varied dramatically in size, budgets, and needs, and are located throughout the state. The State Patrol recognizes many of these agencies do not have the funds needed to pay for services at private or governmental labs. They are completely dependent upon the State Patrol to provide forensic laboratory services. As an agency, we strive to provide the most timely, highest quality and complete services available given the budget we are provided. The agency would welcome the opportunity for input regarding our services and a joint effort to find ways for improvement. And one final note I'd make that if you desire any additional information or if you would like to tour the lab, I'd be glad to make those arrangements for you. Thank you. [LR535]

SENATOR CONRAD: Great. Thank you. I think...I know there's a couple of questions on deck, Senator Fulton, Senator Heidemann. Senator Wightman, did you have questions as well? [LR535]

SENATOR WIGHTMAN: No. [LR535]

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SENATOR CONRAD: Okay, all right. We'll start with those two, please. Senator Fulton.
[LR535]

BRYAN TUMA: Okay. [LR535]

SENATOR FULTON: Thank you, Senator. Thanks for being here, Colonel Tuma.
[LR535]

BRYAN TUMA: Thank you. [LR535]

SENATOR FULTON: So what, just the...what is actually happening, the question I asked previously. What's happening for the period of time between commencement and closure? Is it just that...is each scientist juggling numerous projects and waiting? Is it a prioritization? I guess what's the brass tacks of what's happening day to day for six months or nine months? [LR535]

BRYAN TUMA: Well, I think there are a lot of things happening. First of all, the cases that come in, they're put in a queue, so, you know, for lack of a better explanation, that means the first ones that arrive are the first ones that are going to get the attention, and then we go through the queue as they come in. But there could be other factors that really influence the processing of a case through that process from start to finish. In some cases, the quality of the sample that comes in along with other evidence, we may have to handle that evidence, extract the DNA, and then begin the testing. There are a number of quality assurance steps that are in that process along with the testing, and, you know, then once the testing is completed, then the reports have to be prepared and then has to be given to the prosecutors and testimony for court developed. So we factor that time frame from when we receive the sample to the time that we complete the tests and it's ready for court. [LR535]

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SENATOR FULTON: And there's headway being made? Apparently, it looks like you're catching up. [LR535]

BRYAN TUMA: Yes, if you look at what happened from last year, we had a number of cases in the queue, 213 cases at that same time last year. Now we're down to about 55, so we feel that that's a fairly dramatic decrease in the backlog within the one-year time frame. [LR535]

SENATOR FULTON: Okay. And so then lastly, can we expect that trend to continue? And I understand that there's going to be a certain attrition, and from what you've explained, the day to day, it's not possible to get down to zero for any number of extenuating circumstances. But what I'm seeing by way of policy here is that there's a trend and, therefore, there's been...you know, X was done in order to cause this trend to come down. Can we expect X to continue being done or do we expect that perhaps with, you know, an increase in crime that is usually following an economic recession that we can expect that to go back up? I guess what's your expectation? [LR535]

BRYAN TUMA: Well, I think you make the point, there are a number of variables to look at, certainly the workload that comes in. I can tell you, overall, the lab has about 72 more cases right now than it did last year at this time, but they're all not DNA. I mean, the lab performs a lot of analyses in a lot of different areas. But, you know, the variables are this. If our staffing remains consistent, and that was a big issue for us last year. We had turnover in staff, and that dramatically impacted our ability to provide some services. A few years ago, we had a firearms ballistics scientist gave us two weeks' notice and was gone, and it takes over a year to get those people trained and through the accreditation process, certification requirements before they can start doing independent analysis on cases. So, you know, when you have a situation like that occur, that can really cause you to begin to have problems with turnaround times. So the answer is, right now I think we're doing a very good job in getting the turnaround issue addressed. I think the lab is doing a very good job of working through those

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issues. I would credit Director Zilly with her efforts to really get the staff focused on this issue, but a number of things could happen that could influence our ability to process cases. [LR535]

SENATOR FULTON: Thank you. [LR535]

SENATOR CONRAD: Senator Heidemann and then Senator Mello. [LR535]

SENATOR HEIDEMANN: Thank you, Senator. Colonel Tuma, we got a handout from the Legislative Fiscal Office and it just talks about expenditures. And just looking at that, in '06-07 there was federal funds of \$340,192. The very next year, in '07-08, there was federal funds of \$765,836, a doubling of federal funds. Why the spike of federal funds and how were they used? [LR535]

BRYAN TUMA: I'm going to make a guess that there are a couple of funding sources available through the federal side. Some of it is Byrne dollars--Edward G. Byrne dollars that are available to law enforcement, and then sometimes the Bureau of Justice Assistance will provide funding for various initiatives. I think Pam Zilly could probably answer that far better than I, but I think what we began to see was at the federal level they were directing more money for state labs to try and address DNA backlog issues. And that money could be used, and in our case we are using some monies from the federal folks, to outsource our testing to private labs to help with that effort. In some cases, they allow us to fund a position to help with some of those backlog issues. I think we had a cold case initiative that we received some federal money for during this time frame that may have been in this spike. So it...I mean that federal funding, I can tell you the Byrne dollars, we saw a dramatic reduction in funds in that 2006-2007 time frame. And I think there were a number of issues that were vetted before Judiciary and Appropriations about Byrne dollars and the ability of those funds to help support drug task forces and other law enforcement initiatives. So I think this...and then we saw a restoration of those monies after that point in time. So I think that's part of the spike.

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[LR535]

SENATOR HEIDEMANN: Just looking at the spike in federal funds and then the additional \$200,000 in '07-08 General Funds that the state put in, the budget for the crime lab went from \$2.4 million to \$2.9 million, which is a 20 percent increase in one year. Reflecting on that 20 percent increase then, was there a...did the backlog go down? Is it money here? [LR535]

BRYAN TUMA: Well, part of the problem with staffing was the ability to retain staff, and we had some folks that left. One of the testifiers mentioned we had somebody leave for the laboratory in Kansas. We devote significant resources to getting those people trained, and then you get them to a certain point where they'll do the casework independently, and then they're a very attractive commodity for other laboratories, and their skills are very marketable. And, you know, we lost a person that way. Sometimes we have spouses that move and we lose people that way. So I think the last...when we saw the dramatic increase in the turnaround times was really the period where we had several staff members leave, and we're in the process of hiring additional forensic scientists, especially in the area of DNA, and I think we received some additional funds to do that. And then, you know, it's just staffing, training, and then turnover. And now we're at a point where we've seen some stability in our staffing and that's reflecting on our ability to do a quicker turnaround time on cases. [LR535]

SENATOR HEIDEMANN: It almost appears like in '07-08 you was...I mean, it doesn't appear like it's always the question of money, is what I'm trying to get. [LR535]

BRYAN TUMA: Well, I think you're right. I think we did get some additional resources, and it takes time to get people trained. It takes a year...at least a year to get those people through the training and the accreditation and certification processes. And so that probably contributed more to our...the issue of turnaround times than perhaps the money did. [LR535]

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SENATOR HEIDEMANN: I think I'm understanding. Thank you. [LR535]

BRYAN TUMA: Yeah. [LR535]

SENATOR CONRAD: Thank you, Senator Heidemann. Senator Mello and then Senator Wightman. [LR535]

SENATOR MELLO: Thank you, Senator Conrad, and thank you, Colonel Tuma. And I guess maybe I'll...and if there's someone else who could answer this question, maybe that would be all right to defer. As Senator Heidemann just talked about some of the federal funds, and I believe the state of Nebraska received about \$13 million in Byrne grant funds through the American Recovery and Reinvestment Act. Do you know how much of that state funding was allocated all to the State Patrol Crime Lab? [LR535]

BRYAN TUMA: I can't tell you that right off the top of my head. Pam, do you have any idea? [LR535]

PAM ZILLY: As far as the Byrne grant goes, I believe the main thing you get from that is one position that is from that (inaudible). Most of our equipment purchases and other positions (inaudible). [LR535]

SENATOR MELLO: So before...so would it be safe to say then before this influx of \$13 million for Byrne grant funds that the normal allocation the state would receive in Byrne grant funds, fiscal years 2006-07, 2007-08, that you only got one position out of that, Byrne grant funds as well? [LR535]

BRYAN TUMA: Yes. [LR535]

SENATOR MELLO: So that really there was no increase in Byrne grant funds from the

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ARRA funds that went to the crime lab. [LR535]

BRYAN TUMA: No. No. [LR535]

SENATOR MELLO: You still roughly got about \$500,000 or so... [LR535]

BRYAN TUMA: Right. [LR535]

SENATOR MELLO: ...and the rest of the \$13 million went elsewhere around the state.
[LR535]

BRYAN TUMA: Yes, and I think, again, there's other federal programs that were funding some of our initiatives. Was it BGA? (Inaudible) yeah, NIGA that provided funding. We had a cold case grant; we had a... [LR535]

SENATOR CONRAD: And, Director Zilly, if you would just state and spell your name for the record. And thank you for coming forward and welcome to the table. I think you're critical to this debate, but thank you. [LR535]

PAM ZILLY: Thank you. I'm Pam Zilly, Z-i-l-l-y. Grant-wise, we get a lot of grants through the National Institute of Justice, DNA grants particularly, which is the majority of the funding you see through grants. Also through the Coverdell Grant, National Forensic Sciences Initiative (sic) Act. We get some funds through HIDTA for two positions and some training. But most of that grant money, the largest bulk of it, is the DNA grants that are specifically for DNA, and a lot of that money is for equipment purchases. [LR535]

SENATOR MELLO: And most of this, I think, for other...the committees...most of the ARRA Byrne grant dollars went to the Crime Commission, and they give it out, not so much you. [LR535]

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BRYAN TUMA: They all go...yeah. [LR535]

SENATOR MELLO: Okay. [LR535]

BRYAN TUMA: And it's...there's a formula. I think it's a 20/80 split--80 percent for local and 20 percent state, and then there's different programs within those categories. [LR535]

SENATOR MELLO: Um-hum. Okay. And this kind of follows up, I guess, on...I think Senator Heidemann posed the question in regards to performance and results based on budgeting in regards to more money in theory equals shorter caseloads. Has the State Patrol evaluated at all, knowing that we're obviously in the middle of a \$1.4 billion projected budget deficit, of moving away...and your testimony mentioned multiple times of the services the crime lab provides are provided for free. Has there been any investigation on your end internally as we prepare for the upcoming legislative session to move away from that free charges to a reduced fee-for-service for some services that the crime lab provides? [LR535]

BRYAN TUMA: We have not considered that,... [LR535]

SENATOR MELLO: Okay. [LR535]

BRYAN TUMA: ...or that proposal is not being offered up by us. And I believe the state statute says we provide those services for free, so it would require legislative overview in this. I would say this. I think...well, I know that proposal would get an adverse reaction from the local law enforcement community. And I'll have to be honest with you, I don't know if they're in a position to absorb those costs right now. I mean, that's really the bottom line. [LR535]

SENATOR MELLO: Okay. Thank you so much. [LR535]

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SENATOR CONRAD: Senator Wightman. [LR535]

SENATOR WIGHTMAN: Thank you, Senator Conrad. Colonel Tuma, we passed some legislation last time, I think it was Senator Avery's bill, that provided that all DNA or all convicted felons, I think, would leave samples of their DNA. Will these be tested and analysis run, or will they just be held and, if so, what...if they are tested, what will that do to the workload of the crime lab? [LR535]

BRYAN TUMA: Well, if we look at the DNA all felons bill, those samples are going to come in, in kind of a big tidal wave because we have to go back and collect those samples from people that are currently incarcerated. So we were able to get federal dollars that would help us outsource those samples to a private lab, and I think we're looking at about 8,000 samples right now. We have funding to get about 10,000 samples tested. We would expect, once we get through the big wave, that the lab will be in a better position where we can address, you know, the cases that are going to come in on an annual basis. There won't be that many that we wouldn't be able to keep up once we get the initial wave processed. [LR535]

SENATOR WIGHTMAN: So you'd be doing them in-house after you get the initial wave? [LR535]

BRYAN TUMA: Yes. Yes. [LR535]

SENATOR WIGHTMAN: Have you done any analysis on what that might generate on an annual basis if you didn't have the big wave as far as numbers? [LR535]

PAM ZILLY: Are you talking...the numbers? I believe we're anticipating about 3,000 a year. [LR535]

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SENATOR WIGHTMAN: Three thousand? [LR535]

PAM ZILLY: I believe that's correct. [LR535]

SENATOR WIGHTMAN: So when you got...you said you got eight to ten or? [LR535]

BRYAN TUMA: Right now I think we have about, what, just less than 8,000 that you...
[LR535]

PAM ZILLY: We've had just less than 8,000 so far, um-hum. [LR535]

SENATOR WIGHTMAN: So far, and that's caused by people who were convicted that
have been in longer than one year, sometimes as much as... [LR535]

BRYAN TUMA: Right. Yeah, and there's folks that are on probation and parole that we
have to follow up on. [LR535]

SENATOR WIGHTMAN: Right. So probably included a large share of prison inmates...
[LR535]

BRYAN TUMA: Right. [LR535]

SENATOR WIGHTMAN: ...because a few of them would have had DNA samples, I
assume, taken or analysis made, is that correct, at the time? [LR535]

BRYAN TUMA: Yes. [LR535]

SENATOR WIGHTMAN: Thank you. [LR535]

SENATOR CONRAD: Thank you, Senator Wightman. Senator Nordquist, Senator

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Lautenbaugh, Senator Nelson. [LR535]

SENATOR NORDQUIST: Thank you, Senator Conrad. Thank you, Colonel. Of your...the total cases that you perform each year, kind of...what's the rough breakdown of DNA versus trace evidence or fingerprints? [LR535]

BRYAN TUMA: I'm going to let Pam take that one. [LR535]

PAM ZILLY: I didn't figure that exactly for you. [LR535]

SENATOR NORDQUIST: Okay. That's fine. [LR535]

PAM ZILLY: I will say the largest bulk of them are our controlled substance testing section for drug chemistry. They get a huge portion of our cases. If I go from 2009, for instance, out of 3,610 laboratory cases, we have 353 for biology. Now, let me specify how these numbers are computed. One laboratory case may be assigned to a number of sections,... [LR535]

SENATOR NORDQUIST: Sure. Uh-huh. [LR535]

PAM ZILLY: ...so the total assignment is not going to add up to case submissions. [LR535]

SENATOR NORDQUIST: To the total, uh-huh. [LR535]

PAM ZILLY: But in biology, they had 353 assignments and that would be your DNA testing included there. Drug chemistry, 2,456; firearms examination, 102. That includes shoe print, tire tread and tool marks; latent prints, 448; toxicology, 563; trace evidence, 75. I don't have the numbers for questioned documents here. I believe there are around 25. [LR535]

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SENATOR NORDQUIST: Okay. Do you do a breakdown roughly what it...man-hours and financial costs for, for instance, a DNA analysis done through you? I mean... [LR535]

PAM ZILLY: The reason we don't attempt to do that is because of the huge diversity in the cases. One case, it may be a homicide. One analyst may spend three days going through the evidence, collecting samples. [LR535]

SENATOR NORDQUIST: Sure. [LR535]

PAM ZILLY: They may spend a couple of weeks, maybe three or four weeks doing just that case. Then they may get a sexual assault case that is nothing but the kit that was collected at the hospital. [LR535]

SENATOR NORDQUIST: Uh-huh. [LR535]

PAM ZILLY: Well, then you have much simpler sample collection and extraction, and it's a much shorter time period. [LR535]

SENATOR NORDQUIST: Uh-huh. [LR535]

PAM ZILLY: So we don't try to do that. I will say in drug chemistry, those samples are batched, so they can do a number of them in a very shorter period of time whereas in sections like firearms/tool marks, biology, latent prints, trace evidence, you're not going to see as much of that. You're going to do a lot more individual one case at a time work that takes the time of the analyst. [LR535]

SENATOR NORDQUIST: Sure. Okay. I guess if you're talking cases, it's probably hard to break out pieces. But would there be any efficiencies to look, if we're looking from the

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state perspective here, of having one location in the state, maybe at the Med Center, that focused on just all...that we sent all DNA stuff there, and we supported that somehow? And would there be efficiencies as far as equipment and manpower just like outsourcing that from you guys to them? [LR535]

PAM ZILLY: I don't see that as more efficient. [LR535]

SENATOR NORDQUIST: Okay. [LR535]

PAM ZILLY: We did do outsourcing at one time. We got a grant to outsource some of our backlog cases. I'd like to point out that's considerably different from outsourcing of the convicted offender samples. Because when you outsource cases, you've got the evidence,... [LR535]

SENATOR NORDQUIST: Sure. [LR535]

PAM ZILLY: ...the collection, and the location of the evidence. It's a lot more complicated. We found it to be so time consuming in preparing those cases to be sent. Getting them back, we're required to do a technical review of all the data, and so that process was so time consuming,... [LR535]

SENATOR NORDQUIST: Uh-huh. Sure. [LR535]

PAM ZILLY: ...it wasn't very beneficial as far as an efficiency savings. [LR535]

SENATOR NORDQUIST: Okay. All right. Thank you. [LR535]

BRYAN TUMA: I would just add to that. UNMC is not set up necessarily to be a forensic lab in the sense that where they're actively working criminal cases. I think it's fair to say that Pam's staff is probably working with law enforcement officials on some very

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complicated cases, whereas UNMC is set up to give us the sample; we put it in...you know, into the queue; we test it and we give you the result back right away, where her process is perhaps much more different than what they're doing at UNMC. So, you know, those are some of the procedural issues I think you have to look at, plus chain of evidence, custody, retention of the evidence after it's tested. And all those kinds of things become issues, I think, that if you were to give that all to UNMC, you would have to build that into their operation as well, so I'm not sure you gain any efficiencies by doing that. [LR535]

SENATOR NORDQUIST: Okay, okay. Thank you. [LR535]

SENATOR CONRAD: Senator Lautenbaugh. Senator Lautenbaugh waives. Senator Nelson. [LR535]

SENATOR NELSON: You've made a lot of headway in reducing your backlog. Thank you. If that continues, do you still see a problem here with getting DNA back within a reasonable time where law enforcement would like to see it or do you need more casework analysts in that area? [LR535]

BRYAN TUMA: Well, again, the variable that we're dealing with is retaining our personnel. [LR535]

SENATOR NELSON: Okay. [LR535]

BRYAN TUMA: The other variable is if we're in a down period of crime, what happens if we see a spike in crime? How is that going to affect the lab? The other issues, and I think these are really strategic issues that you have to look at in the long term. What are the new technologies that may be coming down the line that we would want to support because our customers, the other law enforcement agencies, including us...what are those types of things that we want to be looking at for the future? In some cases, we

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can automate processes because we have equipment such as robots to do some of the procedures. In other cases, it comes down to analysts and, again, right now we're able to retain our...we've got stability with our analysts. If that changes, that changes our ability to process work. I mean, we're no different than a construction company. You lose your workers--you lose your ability to be productive. So that's the one variable that we deal with. [LR535]

SENATOR NELSON: Yeah, it's very hard to anticipate, but if there's stability during the next year or two, and you don't have a lot of changes, are you going to be able to reduce the time farther in your estimation for these critical things like DNA or do you need to hire some additional people? [LR535]

BRYAN TUMA: Well, again, it's demand, and we see increased demand for DNA. We understand we have a finite source, resource. We have looked at this issue annually in our inspections process that we do internally, try and identify where we're at with some of these issues. I can tell you, this last year the turnaround time on DNA tests were an issue, and I give a lot of credit to Pam and her staff for really taking this issue and working it and making a lot of change. And we've also vetted this issue, you know, in concert with our budget consultations with the Governor's Office and the Legislative Fiscal Office and others. So, I mean, we look at this and it would be very difficult for me to sit here and say we need more people because of the constraints of the budget, but on the other hand... [LR535]

SENATOR NELSON: Well, I understand that. I'm in Appropriations; we're aware of this all the time, so I don't mean to be putting you on the spot. But certainly law enforcement across the state, if they're losing money because they have people in jail for seven, eight, nine months, it would be cheaper for them to come up with the money on a fee basis or something like that, and this would require a statutory change. [LR535]

BRYAN TUMA: It would, yes. [LR535]

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SENATOR NELSON: Yeah. So there might be economy in doing that, so that if you needed this biology area, you need an additional two analysts, you win-win all the way around. Is that something you contemplated or think would work? [LR535]

BRYAN TUMA: Well, I could tell you, we could use staffing in all kinds of areas and lab is certainly one of those areas. But I can tell you, we've not made that request. [LR535]

SENATOR NELSON: Okay. Thank you, thank you. [LR535]

SENATOR CONRAD: Are there other questions? Senator Ashford. [LR535]

SENATOR ASHFORD: If I might just ask, you know, Colonel, in Omaha we have shots fired incidents every night. [LR535]

BRYAN TUMA: Yes. [LR535]

SENATOR ASHFORD: And the shots fired incidents are increasing, again, unfortunately, this last couple of weeks. What happens...can you tell me what happens when they find the casings or the cartridges from a firearm incident? What happens to those? Now, is that all Douglas County or do you get some of that, city of Omaha ballistics, or do you get any of that information? [LR535]

BRYAN TUMA: I'll let Pam answer that. I don't want to confuse the issue. [LR535]

PAM ZILLY: The Omaha Police Department, within their laboratory, have a firearms examiner, and they also have NIBIN, the National Integrated Ballistics Information Network, which allows them to enter those into that system to be searched nationwide, so those... [LR535]

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SENATOR ASHFORD: Now, and when you say "those," is that the actual cartridge itself? [LR535]

PAM ZILLY: The cartridges from the crime scene. [LR535]

SENATOR ASHFORD: And do you know how that works? [LR535]

PAM ZILLY: Well, they take those and they image them. There's a camera attached to the national networking instrumentation. They image that. It goes into a database. Then if there has been an image of another cartridge case fired by the same gun which has also been entered within the district that ours automatically searches, it will hit upon it to tie those two together. [LR535]

SENATOR ASHFORD: Okay. So the cartridge itself, it's not necessary for that cartridge to have a special marking in order to identify it as the same cartridge that was found somewhere else that would be traced to the same gun. You can just... [LR535]

PAM ZILLY: Well, the markings on the cartridge will come from what is left on it from being in the firearm. [LR535]

SENATOR ASHFORD: Right. [LR535]

PAM ZILLY: The firearm will mark it. [LR535]

SENATOR ASHFORD: So those markings on the cartridge...today science is to the point where we can tell by just those markings from the gun on the cartridge to link that gun to those two disparate incidents using the same...different cartridges. [LR535]

PAM ZILLY: Right. The NIBIN Network will either link the two casings from two separate crime scenes as having come from one firearm, or if a firearm is found then it will be test

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fired and a cartridge from that firearm entered to link the firearm to the casings. [LR535]

SENATOR ASHFORD: Okay. So...and that's done in the Omaha ballistics lab, correct? [LR535]

PAM ZILLY: That is done in the Omaha lab and our laboratory. [LR535]

SENATOR ASHFORD: And in yours as well. [LR535]

PAM ZILLY: Yes. [LR535]

SENATOR ASHFORD: So do you get the...what part of that do you do, and what part...or do you just do...? [LR535]

PAM ZILLY: For the Omaha area, the Omaha Police Department does those entries. If we do an entry in our NIBIN for another part of Nebraska and it hits on an Omaha case, we will request that evidence from Omaha because the match must be confirmed by a firearms examiner,... [LR535]

SENATOR ASHFORD: All right. [LR535]

PAM ZILLY: ...so the evidence has to come to the laboratory for a match. The actual NIBIN is a screening device. [LR535]

SENATOR ASHFORD: And the NIBIN will give you...it will identify a firearm type or by what, just the same...if it's the same firearm...? [LR535]

PAM ZILLY: No, it will just simply indicate it's the same. [LR535]

SENATOR ASHFORD: So by looking at two cartridges, you can tell whether it came

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from the same gun, but you don't necessarily know what the gun is. [LR535]

PAM ZILLY: Not necessarily. Yes. [LR535]

SENATOR ASHFORD: Okay. So you have to work backwards from the cartridge and then, hopefully,... [LR535]

PAM ZILLY: Depending on the circumstance, they may be able to give you a breakdown of types of guns that may have fired that. [LR535]

SENATOR ASHFORD: Can you do that? [LR535]

PAM ZILLY: Yes, but it's not necessarily all inclusive. It's not a hundred percent accurate, but it can give you a listing of possible guns that are likely to have fired that. [LR535]

SENATOR ASHFORD: Automatic versus semiautomatic versus...or that kind of thing? Or does it have to do with the barrel or the...? [LR535]

PAM ZILLY: It has to do with the markings that those types of guns leave. [LR535]

SENATOR ASHFORD: Okay. [LR535]

PAM ZILLY: You know, is it a round firing pin mark, a square firing pin mark,... [LR535]

SENATOR ASHFORD: Okay. [LR535]

PAM ZILLY: ...those kinds of things that put it in a class of a type of a firearm. [LR535]

SENATOR ASHFORD: Okay. In your experience, how helpful is that technology today

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in investigating cases in Omaha where shots are fired? Do you have...? [LR535]

PAM ZILLY: I couldn't answer for Omaha because, like I say, they do their own separate work within the Omaha Police Department. [LR535]

SENATOR ASHFORD: How about statewide? Have you had occasion to...? [LR535]

PAM ZILLY: Statewide I believe we've had, to date, 13 cold hits associating cases that were not previously associated. [LR535]

SENATOR ASHFORD: Okay. So you're able to link by using NIBIN and examining the cartridges, you're able to find 13 linkages. [LR535]

PAM ZILLY: Yes. [LR535]

SENATOR ASHFORD: Were the guns found in any of those cases? [LR535]

PAM ZILLY: I don't know. Once we release the information back to the investigating agency, it's up to them to follow up, and we don't normally hear back as to what results in that. [LR535]

SENATOR ASHFORD: And those were in Omaha...or not in Omaha...those are other places. Okay. [LR535]

PAM ZILLY: No, those were not. Mostly Lincoln, Lancaster County, and Grand Island. [LR535]

SENATOR ASHFORD: Okay. And we were in Grand Island this week, and it's scary what's going on in Grand Island with the number of gang affiliations and the gang ideals. It's really... [LR535]

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PAM ZILLY: It's frightening. [LR535]

SENATOR ASHFORD: ...you know, until you sit and listen to the amount of...the number of firearms that are found in Grand Island, Nebraska, for heaven's sake, that are related to gang shootings, it's a pretty difficult situation. And just on another matter, I want to...Colonel, I want to thank you for pursuing your officers out...you know, in Douglas County and out on the...throughout the community and in the...as you have said you would do, you did. And I know that's making a significant impact on law enforcement within the Omaha area. Do you have any comment on that? I know it's not directly related... [LR535]

BRYAN TUMA: Well, it's the Omaha Metropolitan Safety Initiative, which is a collaboration between all the metropolitan law enforcement agencies, not all, most. It's growing. It operates under a program that was started by...is a joint effort between Department of Transportation and the Department of Justice, which is kind of a unique marriage. But the idea is based on using data to identify high crime and problematic areas with traffic issues, and then doing GIS mapping and overlaying that information and intelligence, and then really trying to impact both crime and traffic issues. [LR535]

SENATOR ASHFORD: And are you doing that mapping with shots fired, I know you are, with shots fired incidents? [LR535]

BRYAN TUMA: We're working with OPD on those issues and Douglas County. We have pulled Sarpy County into that mix. Bellevue PD and others are now participating in that whole effort. We refer to it as DDACTS, which is Data-Driven Approaches to Crime and Traffic Safety. It's a growing or an emerging program on the national level. A lot of agencies are taking a look at that. We're pretty proud of the fact that we got in on this concept very early on. We think it's making a tremendous difference...or it's making a difference in the Omaha area. [LR535]

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SENATOR ASHFORD: We had zero homicides between May and October. Now we've had some unfortunate incidents the last couple of weeks, but that mapping, I think, has had an impact. And I think other states have utilized similar... [LR535]

BRYAN TUMA: Oh, yeah. [LR535]

SENATOR ASHFORD: ...strategies and inside the cities and inside high crime areas, and just...and then I'll drop this. But what is it about what you're doing within the city itself that has, in your opinion, that relates to, you know, interdiction of crime? [LR535]

BRYAN TUMA: Well, I think if you look at the people that are causing the majority of the problems are probably the same people that have problems with obeying traffic laws or they're involved in some other type of criminal activity, and if you can identify who those folks are, where they have a propensity to operate in, and you interdict them either through a criminal investigation or a simple thing like a traffic stop, and maybe, you know, when you stop them. I mean, the traffic stop is the primary reason why most felony arrests occur. So you're just simply interdicting those people in the areas where they're operating... [LR535]

SENATOR ASHFORD: And they're not on the street once you do that,... [LR535]

BRYAN TUMA: And once you interdict them...yeah. [LR535]

SENATOR ASHFORD: ...and if they are armed and that happens from time to time,... [LR535]

BRYAN TUMA: Oh, yes. [LR535]

SENATOR ASHFORD: ...and those firearms are checked through the system that...the

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state system. But do they...now, if you interdict someone in Omaha in the city limits and that person is armed, does that check occur through the state system or the city system? I mean, you can make that arrest or do you call in...? [LR535]

BRYAN TUMA: Well, oh no, we can make that arrest. NIBIN is a national system... [LR535]

SENATOR ASHFORD: Right. So you just run it off that...okay. [LR535]

BRYAN TUMA: ...so what we do in Nebraska could affect cases all across the country. Yes. [LR535]

SENATOR ASHFORD: And you're finding in Omaha significant matches, are you not, with firearms that you are...? [LR535]

BRYAN TUMA: I think it's fair to say we're encountering a lot of firearms (laugh). [LR535]

SENATOR ASHFORD: Right. Okay, thank you. [LR535]

SENATOR CONRAD: Thank you. Senator Mello. [LR535]

SENATOR MELLO: Just a follow-up question to some questions I think Senator Ashford was asking. It looks like at least the Legislative Fiscal Office memo shows that your case growth is about...at least a hundred cases more per year over the last three years. Is that about right? How many of those cases are from the Douglas County area? [LR535]

PAM ZILLY: Yes. I don't know if I brought that. Regrettably, I did not break it down that way. I have, you know, police departments versus sheriffs' offices versus State Patrol...

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[LR535]

SENATOR MELLO: How about...so the city of Omaha Police Department, how many of those...? [LR535]

PAM ZILLY: I don't have it by particular department. I have it grouped, all PDs versus all sheriffs' offices. I didn't bring that with me, I'm sorry. I could get it for you, but I don't have it today. [LR535]

SENATOR MELLO: I raise that question because it appears from the information that the Fiscal Office has provided us in their memo that Douglas County is the only...and the city of Omaha are the only two property tax paying entities that have their own crime lab. And the reason I pose that question is if, for one reason or another, they reduced their local appropriations of property tax dollars to the Douglas County Crime and/or the city of Omaha Crime Lab, how many current cases are going to the state crime lab? And if they reduced local appropriations, would you be able to pick up the number of cases that they would then submit to the state since it is no cost to local sheriffs and/or police departments to do their case through you instead of paying through local property tax dollars for the same exact thing? [LR535]

BRYAN TUMA: I'm not sure. [LR535]

PAM ZILLY: All I can say is the types of cases that we do do for the Douglas County and Omaha area. We do their toxicology cases right now for Douglas County, and I'm not sure about Omaha. But the main thing that we do not do for those agencies, at this point in time, is the controlled substance drug chemistry testing. They send that, I believe, to eastern Nebraska private laboratory. I don't know how many there are of those cases because, obviously, we don't get them. If we did, it would be a huge increase in our controlled substance testing. [LR535]

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SENATOR MELLO: Okay, thank you. [LR535]

PAM ZILLY: And as far as UNMC, I don't know how many cases they send to UNMC for DNA testing because, obviously, we don't see them. If it's a large amount, it would hugely impact our services if they came to us. Those are the two biggest areas I see of impact. [LR535]

SENATOR MELLO: If at all possible, I think it would be helpful to, I think, the committees to find the breakdown of where these cases are coming from across the state. I mean, it would be even better if we know if it's sheriffs' or police departments or other state agencies. I know also federal agencies can also use you as well. It would be helpful for us to know, knowing that the state of Nebraska is not the only entity that's facing fiscal problems in the state. I know our larger cities and counties have also been dealing with similar issues, and it would be worthwhile, I think, to know in regards to some of the other conversations that were brought up regarding cost savings in regards to duplication, if there's ways that we have to look to redesign or reinvent the crime lab system with the largest county, largest city, and the State Patrol. It might be a good opportunity to know how many cases each one is currently doing. [LR535]

BRYAN TUMA: We'll get that for you. [LR535]

PAM ZILLY: Are you interested in the number of cases each agency sends to us or the number per type of analysis requested? [LR535]

SENATOR MELLO: I think the...I mean, me personally, I'd like to know more...let's start macro level, the number of cases they do, and if you can break that down in regards to what kinds of cases they send, because, obviously, as the colonel mentioned, some cases are significantly different. One might last three weeks compared to one that lasts ten minutes. It all depends on the kind of case that it is. [LR535]

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PAM ZILLY: And do you need this for all agencies or are you primarily wanting the Douglas County, Omaha area? [LR535]

SENATOR MELLO: I would find it helpful, at least for me, I'd let my colleagues speak for themselves, in regards to counties and cities. Actually, I should say local political subdivisions would probably be a better way to state that. [LR535]

PAM ZILLY: Is it all right if I do that by examination type requested as in DNA cases versus trace cases versus firearms? [LR535]

SENATOR MELLO: Yeah...yes. [LR535]

PAM ZILLY: I can get that for you then. [LR535]

SENATOR MELLO: Okay. Thank you. [LR535]

SENATOR ASHFORD: Senator Mello, you don't need that this afternoon, do you? (Laughter) [LR535]

SENATOR MELLO: No, no,... [LR535]

PAM ZILLY: Thank you. [LR535]

SENATOR MELLO: ...just...(laughter) yeah, there's no...not this afternoon, a little weekend reading (laughter). [LR535]

SENATOR CONRAD: This is a...not only a good learning experience on this topic for...but for other committee members to see how Appropriations goes on a daily basis (laughter) so... [LR535]

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SENATOR LATHROP: We were just commenting on that on the Judiciary side of things (laughter). [LR535]

SENATOR ASHFORD: Where policy meets money. That's great (laughter). [LR535]

SENATOR CONRAD: Right, right, right. But in all seriousness, thank you, Director, thank you, Colonel, for your always helpful, enlightening testimony and interaction with this body and for your service otherwise to the state. And I'm hopeful that this will be a continued dialogue rather than the conclusion of our discussion about how we can work together. Thank you. [LR535]

BRYAN TUMA: Okay. Thank you very much. [LR535]

PAM ZILLY: Thank you very much. [LR535]

SENATOR CONRAD: Other testifiers? With that, I'll conclude very, very quickly and just to thank those who came down to participate today for their time and consideration and also for the very active participation of both committees that were here today. And, again, I'm hopeful that we can utilize this as an opportunity to be proactive and get out in front of these issues to ensure that we don't have to take the route that other states and other entities have looked at in terms of contemplating local assessments or otherwise, because I believe this is a state obligation, a state responsibility, and we need to find a state solution, and ensure that the good work that's happening can continue down that road. So thank you. [LR535]