



# LR 601 SPECIAL COMMITTEE

## Report to the Legislature

### Members:

Senator Robert Hilkemann, Chair  
Senator Rick Kolowski, Vice Chair  
Senator John McCollister  
Senator Ernie Chambers  
Senator Matt Williams  
Senator Heath Mello  
Senator Les Seiler

### Committee Staff:

Kate Wolfe, Nanette Hesse, Tom Green

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## **INTRODUCTION**

LR 601 was introduced to create an opportunity for interested parties to determine the need for a regional accredited forensic crime laboratory in the Omaha area. The study set out to review present facilities, determine the needs and options for developing such a laboratory, and examine the feasibility of the state becoming a partner in the venture.

The primary question for the committee was whether the state should have a role in a new regional accredited forensic crime laboratory in the Omaha area.

## CURRENT STATE OF FORENSIC CRIME LABS IN NEBRASKA

Presently, forensic analysis in the Douglas County region is done at four different facilities: the Nebraska State Patrol (NSP) Crime Lab, the Douglas County Sheriff's Office (DSCO) Forensic Services Division, the Omaha Police Department (OPD) Forensic Investigations Unit, and the University of Nebraska Medical Center (UNMC).

The Nebraska State Patrol Crime Lab is located at 3977 Air Park Road in Lincoln, Nebraska. The lab has been nationally accredited since 2004, and internationally accredited since 2014. This is the only laboratory in Nebraska with the ability to access the Combined DNA Index System, commonly referred to as CODIS. A new NSP facility was opened in October 2015, and spans 28,000 square feet. Services are provided in the areas of: biology/DNA, controlled substances testing, trace evidence analysis, toxicology, latent prints, and firearms/tool mark examination. These forensic examination services are provided to any law enforcement agency within the state of Nebraska at no charge.<sup>1</sup>

The Douglas County Sheriff's Office Forensic Services Division is located at 15345 West Maple Road in Omaha, Nebraska. The lab is currently undergoing accreditation and is expected to achieve ISO 17020 and 17025 accreditation in the fall of 2016. Forensic services are provided for most of the metro Omaha agencies as well as the FBI, DEA, ATF, and DHS.<sup>2</sup> Services provided include: crime scene investigation, fingerprint analysis, controlled substance analysis, clandestine lab response, blood alcohol analysis, and fire debris analysis.<sup>3</sup>

The Omaha Police Department Forensic Investigations Unit processes the following forensic services within the Omaha Police Department: crime scene inspection, latent prints, firearms, forensic video, forensic graphics, breath maintenance, and forensic photography. For drug testing and blood alcohol toxicology, OPD utilizes the DSCO crime lab. OPD utilizes the NSP Crime Lab for drug testing, DNA, urine toxicology, and tool marking. The OPD also sends DNA for analysis to UNMC.<sup>4</sup>

The University of Nebraska Medical Center is located at 985900 Nebraska Medical Center in Omaha, Nebraska. The UNMC Department of Pathology provides high quality DNA testing for all of the forensic science laboratories serving the state.<sup>5</sup>

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<sup>1</sup> Pam Zilly testimony, June 1, 2016, page 30

<sup>2</sup> Mary Ann Borgeson, testimony page 57, exhibit 5, June 1, 2016

<sup>3</sup> <http://www.omahasheriff.org/fsd-services>

<sup>4</sup> Todd Schmaderer exhibit 4, June 1, 2016

<sup>5</sup> Jeffrey Gold, testimony page 18, June 1, 2016

## CRIME LAB WORKING GROUP

In 2015, conversations began between representatives of UNMC, the Legislature, the Attorney General, Douglas County, law enforcement, and the City of Omaha regarding the availability and accessibility of high quality and truly independent forensic science testing. A working group was formed to help identify and vet opportunities surrounding forensic science laboratory services.<sup>6</sup>

The working group includes representatives from UNMC, the City of Omaha, Omaha Police Department, Douglas County Sheriff's Department, Douglas County Board, Douglas County Attorney, Nebraska Attorney General, Nebraska Organ Retrieval System (NORS), Lion's Eye Bank of Nebraska, Nebraska State Patrol, and Sarpy County Attorney.

The working group has held eleven meetings, with the first meeting being held on December 21, 2015, and the most recent being held on June 22, 2016. UNMC hosted the meetings, and more than thirty individuals participated in varying degrees. Informational tours of the Douglas County crime lab and the Nebraska State Patrol Crime Lab were held in April of 2016.<sup>7</sup>

Throughout the course of the meetings, the group explored multiple concepts after identifying the needs of the region and the state. The group worked very hard to create an engaged and collaborative discussion that focused on preventing duplication, enhancing timeliness and accuracy of services, maximizing logistic and fiscal efficiencies, and eliminating questions of bias or lack of laboratory independence.<sup>8</sup>

The group has formulated four conceptual models for consideration.<sup>9</sup>

Concept 1: A fully integrated model at a UNMC facility

Concept 2: A partially integrated model based at the Douglas County facility

Concept 3: A partially integrated model at the Douglas County and UNMC facility

Concept 4: Maintain the status quo facilities and services

The agreement of the committee at the May 18, 2016 meeting was to move forward to explore the first three concepts. The fourth concept was unanimously not accepted by all in attendance at the meeting.

The working group anticipates that the due diligence process of the first three conceptual models will be forthcoming.<sup>10</sup>

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<sup>6</sup> Jeffrey Gold, testimony page 17-18, June 1, 2016

<sup>7</sup> Jeffrey Gold, testimony exhibit 2, attachment A, June 1, 2016

<sup>8</sup> Jeffrey Gold, testimony page 20, June 1, 2016

<sup>9</sup> Jeffrey Gold, testimony exhibit 2, attachments B and C, June 1, 2016

<sup>10</sup> Jeffrey Gold, testimony page 20, June 1, 2016

## LR 601 SPECIAL COMMITTEE PUBLIC HEARING

The LR 601 Special Committee members include Senators Robert Hilkemann (Chairperson), Rick Kolowski (Vice Chairperson), Ernie Chambers, Heath Mello, John McCollister, Les Seiler, and Matt Williams. Committee staff includes Nanette Hessee, legal counsel, and Kate Wolfe, committee clerk.

The LR 601 Special Committee held a public hearing at UNMC on June 1, 2016. The hearing included invited testimony from the following individuals:

1. Dr. Phillip Kinsey, Administrator, Forensic Science Division and State Medical Examiner's Office, State of Montana
2. Chancellor Jeffrey Gold, University of Nebraska Medical Center
3. Director Pam Zilly, Nebraska State Patrol Crime Lab
4. Chief Todd Schmaderer, Omaha Police Department
5. Mr. Marty Bilek, City of Omaha
6. Mayor Jean Stothert, City of Omaha
7. Commissioner Mary Ann Borgeson, Douglas County Board
8. Chief Deputy Tom Wheeler, Douglas County Sheriff's Office
9. Hon. Don Kleine, Douglas County Attorney
10. Hon. Lee Kenneth Polikov, Sarpy County Attorney
11. Director Kyle Herber, Nebraska Organ Recovery System
12. Director L. Christi Kjar, Lion's Eye Bank
13. Hon. Corey O'Brien, Nebraska Attorney General's Office

An invitation was extended to Washington County Attorney M. Scott VanderSchaaf, but no response was received.

Public testimony was heard following the invited testifiers. None testified in neither a proponent nor opponent capacity. Two testified in a neutral capacity: Jim Maguire, President of the Nebraska Fraternal Order of Police and Kevin Stukenholtz, Saunders County Sheriff.

## **CHALLENGES**

The committee is in agreement that there are challenges within the current structure of our forensic crime labs. Three primary ideals are lacking: independence, full array of services in a single location, and accreditation. In addition, other challenges exist within the Nebraska State Patrol Crime Lab and the Douglas County Sheriff's crime lab.

### **Nebraska State Patrol Crime Lab Challenges**

The NSP Crime Lab is accredited and offers the widest array of services at no charge to agencies. However, there is a backlog, a delay in processing, a lack of qualified workforce, and an increase in toxicology caseload.

#### **Backlog/delay in processing**

The testimony of NSP Crime Lab Executive Director Pam Zilly provided the committee with information regarding backlog and the delay in processing. She reported that backlog fluctuates, relating it most directly to a lack of staff retention. In the drug chemistry section, she reported that they have moved from a four and a half month turnaround to a three month turnaround.<sup>11</sup>

#### **Lack of qualified workforce**

Director Zilly testified that staffing is one of the largest challenges for the NSP Crime Lab. Competition among accredited forensic laboratories across the US for experienced and qualified staff is on-going. After hiring individuals, there is a significant investment of time and resources in training and gaining experience. The NSP Crime Lab is working on a plan to help with the attraction and retention of experienced personnel.<sup>12</sup>

#### **Increase in toxicology caseload**

The NSP Crime Lab has seen a significant increase in toxicology cases following the closure of a private laboratory in Omaha, which left them to be the only laboratory providing this service in the state. As a result, turnaround times have been negatively affected. Additional staff is being hired to address the increased workload.

#### **State investment to date**

The committee acknowledges that the state has already invested heavily in the new NSP Crime Lab. \$4.2 million was dedicated to the new facility, opened in October 2015, that is designed to meet the current needs. This lab provides an important service at no charge to many counties that may not be able to afford fees for valuable and necessary testing.

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<sup>11</sup> Pam Zilly, testimony page 34, June 1, 2016

<sup>12</sup> Pam Zilly, testimony page 34, June 1, 2016

## Douglas County Sheriff's Crime Lab Challenges

### Accreditation and credibility

Though the Douglas County Sheriff's crime lab has opened its new facility and is currently undergoing accreditation, there remains concerns over the public perception of its credibility following previous instances of malfeasance.

In April 2009, then chief crime scene investigator David Kofoed was indicted and subsequently convicted and sentenced for planting blood evidence in a 2006 murder investigation.<sup>13</sup>

In October 2014, then crime lab director Tracey Ray was suspended by Sheriff Tim Dunning who cited potential evidence-handling problems at the Douglas County crime lab.<sup>14</sup> In a December 2015 article covering the settlement between Ms. Ray and Douglas County and her imminent resignation, the Omaha World Herald reported, "Earlier this year, the Douglas County Attorney's Office distributed a memo to defense attorneys about crime lab problems, including allegations by the Sheriff's Office that Ray might have mishandled evidence."<sup>15</sup> The same story went on to report that, "A third-party forensics expert hired to investigate the matter found no evidence of cross-contamination or degradation of evidence."

### Future use and recompense of funding

As stated in the testimony<sup>16</sup> of Douglas County Commissioner Mary Ann Borgeson, more than \$4 million in federal drug forfeiture funds were used to create the Douglas County Sheriff's crime lab. Commissioner Borgeson stressed that vacating this space would require the sheriff to repurpose the space or repay the federal government the drug forfeiture funds.

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<sup>13</sup> [http://journalstar.com/news/local/crime-and-courts/ex-csi-chief-kofoed-sentenced-to-prison/article\\_3ae347c6-6dcb-11df-ba80-001cc4c002e0.html](http://journalstar.com/news/local/crime-and-courts/ex-csi-chief-kofoed-sentenced-to-prison/article_3ae347c6-6dcb-11df-ba80-001cc4c002e0.html)

<sup>14</sup> [http://www.omaha.com/news/metro/douglas-county-crime-lab-director-suspended-lab-work-reviewed/article\\_7169ae3a-1b81-5d4c-90c1-c4d951e947f8.html](http://www.omaha.com/news/metro/douglas-county-crime-lab-director-suspended-lab-work-reviewed/article_7169ae3a-1b81-5d4c-90c1-c4d951e947f8.html)

<sup>15</sup> [http://www.omaha.com/news/metro/after-settlement-douglas-county-crime-lab-boss-will-resign-and/article\\_253b5f15-8150-53d0-9848-6c07b4f18650.html](http://www.omaha.com/news/metro/after-settlement-douglas-county-crime-lab-boss-will-resign-and/article_253b5f15-8150-53d0-9848-6c07b4f18650.html)

<sup>16</sup> Mary Ann Borgeson, testimony pages 56-57



## **RECOMMENDATIONS OF THE COMMITTEE**

It is the recommendation of the LR 601 Special Committee that the Legislature encourage the interested parties to work out differences so that a regional independent accredited forensic crime lab can be built at the UNMC campus.

The committee's recommendation includes the addendum that the interested parties work together to explore all possibilities that will allow for the repurposing of existing lab space without creating any increase in taxes to the people of Douglas County.

The committee bases its recommendation on the conclusion that building a lab at the UNMC campus meets the three primary ideals: independence, full array of services in a single location, and accreditation. It also takes advantage of the partnerships with the Nebraska Organ Recovery System, the Lion's Eye Bank, the Douglas County Coroner's Office, and others.

The committee also recognizes that putting UNMC and the state of Nebraska at the cutting edge of forensic training in the nation is among the advantages of having state-of-the-art forensic labs.

## **ACKNOWLEDGEMENTS**

The committee thanks all of those who testified at, as well as those who attended, the public hearing. Special thanks to Dr. Philip Kinsey for his time and travel to share his expertise with the committee. Thank you to UNMC for hosting the hearing. The committee also expresses gratitude to our committee staff for their diligent work and on-going support.

## **APPENDICES**

- A. Acronyms
- B. Transcript from the Hearing on June 1, 2016
- C. Public Hearing Exhibits

## **APPENDIX A**

### **Acronyms**

ATF	Bureau of Alcohol, Tobacco, Firearms and Explosives
CODIS	Combined DNA Index System
DEA	Drug Enforcement Agency
DHS	Department of Homeland Security
DSCO	Douglas County Sheriff's Office
FBI	Federal Bureau Investigation
ISO	International Organization of Standardization
NORS	Nebraska Organ Recovery System
NSP	Nebraska State Patrol
OPD	Omaha Police Department
UNMC	University of Nebraska Medical Center

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LR 601 Special Committee  
June 01, 2016

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[LR601]

The LR601 Special Committee met at 9:00 a.m. on Wednesday, June 1, 2016, in Omaha, Nebraska, for the purpose of conducting a public hearing. Senators present: Robert Hilkemann, Chairperson; Rick Kolowski, Vice Chairperson; Ernie Chambers; Heath Mello; John McCollister; Les Seiler; and Matt Williams. Senators absent: None.

SENATOR HILKEMANN: Good morning and welcome to the public hearing on LR601. My name is Robert Hilkemann. I represent the 4th District of the state of Nebraska. I am Chair of this LR601 Special Committee. Thank you to the University of Nebraska Medical Center for hosting us today. I would like to have the members of the committee introduce themselves starting to my left with Senator Seiler.

SENATOR SEILER: Les Seiler, state senator from District 33 which is the west half and the south half of Hall County and all of Adams County.

SENATOR CHAMBERS: Ernie Chambers, District 11 in Omaha.

SENATOR WILLIAMS: Matt Williams, District 36. That's all of Dawson County, Custer County, and part of Buffalo County.

SENATOR KOLOWSKI: Senator Rick Kolowski, District 31, in southwest Omaha. Thank you.

SENATOR MCCOLLISTER: John McCollister, District 20, central Omaha.

SENATOR MELLO: Heath Mello, District 5, south Omaha.

SENATOR HILKEMANN: I'd also like to introduce my staff that is helping. On the right is my legal counsel, Nanette Hesse, and to my left is Kate Wolfe who is the clerk for this committee Chair. The hearing will begin with invited testimony and then will be followed by a period of public testimony. Public testimony will be limited to five minutes for those in that range. We do not have a light system today but our clerk will hold up one-minute warning and notify you when

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your time is up. We ask that all the testifiers, if you'll fill out your name and who you're representing and those forms are at the back of the table. And at this time I'm going to ask my LA, Nanette Hesse to introduce LR601.

NANETTE HESSEE: Good morning, Senator Hilkemann and members of the LR601 Special Committee. My name is Nanette Hesse spelled N-a-n-e-t-t-e H-e-s-s-e-e. I am Senator Hilkemann's legislative aide and today serving as legal counsel for this committee. LR601 was introduced on April 6, 2016, in front of the Executive Board of the Legislature. It was advanced on a vote of 7 ayes and 2 absent. The purpose of the resolution is to determine what, if any, should be the role of the state if a decision is made to open an independent accredited crime lab on the UNMC campus. The possibility of such a lab was initiated approximately a year ago when the city of Omaha began talks with other entities. Testimony today will review present facilities and express needs and options for an independent regional lab in the Omaha area. Once testimony is received and examined, the committee shall prepare a report for the Legislature. Recommendation should include but not be limited to state oversight and appropriations.  
[LR601]

SENATOR HILKEMANN: Thank you very much. Are there any questions for...? Okay, thank you. We're going to begin. Our first invited testifier Dr. Philip Kinsey who is the forensic science division and state medical examiner at the state of Montana. And so we'll look forward to his testimony. I wanted to begin this hearing with what is the state of the art for forensic medicine and where do we need to be going from there? And Dr. Kinsey will be presenting that for us.  
[LR601]

PHILIP KINSEY: (Exhibit 1) Good morning, Chairman Hilkemann, committee members. Thank you for allowing me to speak with you today. My name is Phil Kinsey; that's spelled P-h-i-l K-i-n-s-e-y. I work for Attorney General Tim Fox in the Department of Justice as the administrator of the forensic science division in the state medical examiner's office in Missoula, Montana. I've been in that position for three very interesting years. Before taking that position, my earlier 15 years in forensics was spent at various times as a DNA analyst, a technical leader or supervisor, and some of that experience was gained at the Oregon State Police Crime Lab in Portland. The Montana Forensic Science Division of the DOJ is an accredited laboratory and is the one

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provider of forensic services in the state. The lab employs 43 staff in six broad scientific disciplines as well as support staff. Those disciplines include drug identification and trace, serology and DNA, firearms and tool marks, toxicology and breath alcohol, latent prints and impression evidence, as well as the state medical examiner's office. We serve a large rural state of 1 million people with two-thirds of the population residing in the western half of the state where Missoula is located, and one-third in the eastern half. I'd like to speak with you today on a few topics that include our Forensic Science Laboratory Advisory Board, the recently established satellite lab in Billings and the recently reorganized state medical examiner's office. The first iteration of the Lab Advisory Board was formed in 1996 and is composed today of a similar cross section of criminal justice community members; representatives of city, county, tribal and state law enforcement; coroners; prosecuting and defense attorneys; the Department of Corrections and the Montana Board of Crime control, which is a statewide coordinating agency. At our annual meetings I give a presentation on the status of the lab. We discuss national trends in forensics, updates and future directions for each of our scientific disciplines, as well as for lab-wide operations. Staffing, incoming caseloads, turnaround times, accreditation and goals for improvement are presented and discussed as are ideas from our board members on how we might serve them better. As a requirement for some federal funding, the board serves as an independent body capable of investigating allegations of serious negligence or misconduct; but primarily it's used as a communication link between the lab and our criminal justice partners. The board and the relationships developed throughout the state have been invaluable and have contributed greatly to recent lab successes and to an improved lab image in our criminal justice community. The second topic involves the satellite crime lab recently established in Billings. During our last legislative session, several legislators from the Billings area moved forward House Bill 512 to provide forensic services there. Now there were many circumstances that prompted this bill and many I can only guess at, but the one that the crime lab was responsible for had to do with very long delays related to our drug identification testing or our chemistry section. Even before I began my administrator role, the section had been seeing increasing numbers of case submissions. That coupled with the additional analytical work required for cases involving the synthetic drugs Spice and bath salts as well as turnover in that section found us with average turnaround times of over eight months during the summer before the legislative session. This was clearly unacceptable to us and to everyone else in the criminal justice system and to me was a significant driver for the idea for a crime lab to be stationed in Billings. During testimony on

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this bill, the Department of Justice played a supportive, but largely informational role and though by that time that the session come along, our chemistry turnaround times had improved greatly and were continuing to improve, the train had already left the station for the idea to provide forensic services in Billings. The version of the bill that was approved provided for the leasing of lab space to house two forensic chemists and an evidence technician/administrative assistant. This level of support should enable the Billings lab to process drug identification cases for the eastern half of the state with turnaround times similar to those from Missoula where they currently complete 95 percent of their casework within four months. As we researched various locations for the satellite lab, we discussed possible interactions with the Billings campus of the Montana State University. Though some interesting synergies between the crime lab and the teaching labs of the university were considered that could have helped with the extensive training required of forensic scientists, construction time lines of university lab space required that we look elsewhere and fortunately we found space on the campus of one of the local hospitals. Lastly, in late 2014, it was becoming apparent that the state medical examiner's office was not functioning well on an administrative level due to long-time difficulties between the two state-employed medical examiners in Missoula and the one private pathologist that was stationed in Billings. With both state medical examiners leaving employment in a three-month period in 2015, the difficult decision was made to reorganize the medical examinees office to a truly statewide office. Until that reorganization could be completed or accomplished, an interim plan was invoked in which medical examiners were flown into Montana to perform autopsies or bodies were transported out of state to acquire those services. That period lasted from the end of June last year until the end of the year. After unsuccessful attempts at hiring new medical examiners, proposed salaries were increased dramatically and appropriate support staff was promised in order to attract applicants. The state ME's office is now stable and consists of three medical examiners, two in Missoula and one in Billings; as well as two autopsy/administrative assistants, one each in Missoula and Billings. This transition was not without great consternation across the state from local law enforcement, elected coroners, and the public. But through some difficult discussions with and good advice from our coroners and law enforcement partners, we were able to establish good working relationships between the Department of Justice and our coroners statewide. Though great strides have been made in improving medical examiner services in Montana, the work is not done yet. As the new medical examiners are performing their work and getting used to how death investigations are conducted in Montana, it's becoming

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clear that to be in line with national standards and recommendations by advisory groups, there should be more autopsies conducted to appropriately serve the public health of Montanans. While the facility and staffing of the medical examiner's office in Missoula is adequate, it's expected that the facility and staffing in the Billings area will need additional support soon. I hope this commentary has provided you with some insight to the recent challenges of the Montana State Crime Lab System which is just one of the many organizational formats that successfully provides forensic services nationwide. I commend you on your thorough investigation on how to provide services that best serve your community. This is a great opportunity to modernize, organize, and maximize the effectiveness of accredited forensic services far into the future by taking advantage of all of the great resources available to you here in Omaha to the benefit of the entire state of Nebraska. With that, I'll end my comments. I'll be happy to answer any questions. Thank you. [LR601]

SENATOR HILKEMANN: Thank you, Dr. Kinsey. Are there questions from the committee for Dr. Kinsey? Senator McCollister. [LR601]

SENATOR MCCOLLISTER: Thank you, Senator. Dr. Kinsey, thank you for appearing. Are there any national standards with regard to turnaround time? [LR601]

PHILIP KINSEY: No, the only recommendations that I'm aware of have to do with DNA cases. And so in our federal funding for DNA capacity enhancement grants ask that you consider backlog cases, those cases that haven't been worked within 30 days of receipt. There are no national standards that I'm aware of. There are norms I would say that are...that might be applicable and they're generally tied to speedy trial time frames. [LR601]

SENATOR MCCOLLISTER: You outlined a number of different disciplines that you follow. Are the turnaround times different for all of those different disciplines? [LR601]

PHILIP KINSEY: Senator, Chairman, they are and it depends on staffing and caseload. So we might have in our toxicology section a DUI blood alcohol sample. Our turnaround times are less than 20...our average turnaround time is less than 20 days. I think we get 95 percent of those cases done within 40 days...45 days. Elsewhere in the laboratory, for drug chemistry we're



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getting 95 percent of our cases done within four months. Right now our DNA section has been inundated with increased submissions. And so their 95 percent turnaround time is over 250 days right now. So that's the...right now that's the section that we're focusing on getting more additional help on. [LR601]

SENATOR McCOLLISTER: Is there any particular advantage to having all those six...those disciplines all in one house so to speak? [LR601]

PHILIP KINSEY: There...I think there certainly are. With a lot of the sections, there is often evidence that is submitted to the laboratory that needs to be analyzed by various sections in the laboratory. There might be a syringe that's picked up that law enforcement wants to know what the drug was on the inside, whose blood was on the needle, whose latent prints might be on the body of the of the syringe? Firearms evidence often goes between the serology and DNA section, the latent print section, and the firearms section. Regarding our...with our medical examiner office and being within the forensic science division, they are in close contact with our toxicologist who process coroner samples for death investigations and they're also involved...in close contact with our firearms examiners when there's a gun homicide. So there's an awful lot of interaction. [LR601]

SENATOR McCOLLISTER: Thank you, Doctor. [LR601]

SENATOR HILKEMANN: Before I take another question, are you able to hear in the audience out there? Perfect. Thank you. Additional questions? Senator Mello. [LR601]

SENATOR MELLO: Thank you, Chairman Hilkemann, and thank you, Dr. Kinsey. Your testimony really centered around the state of Montana's crime labs that you're affiliated with. Does the city of Billings or the city of Helena or any other city have their own individual crime lab, or the county government have their own crime lab in Montana that provides similar services? [LR601]

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PHILIP KINSEY: Senator, Chairman, there are some local police agencies that have some very limited latent print expertise. But that's the extent of it. Other than that, the crime lab in Missoula and now that satellite lab and Billings is the forensic service provider. [LR601]

SENATOR MELLO: So the experience that you're providing us today in the sense of a state that's somewhat similar in size, a little bit smaller, similar geographically in regards to a few very large urban centers in Montana--we'll be very liberal with the word urban centers--is the sense that the state though takes on a majority if not the supermajority of all of the crime lab investigation and services provided to law enforcement in comparison to local governments providing that through local taxpayer dollars through whether it's a city, county, or some other kind of political subdivision? That's a that's a fair statement to say, correct? [LR601]

PHILIP KINSEY: Chairman, yes, it is. [LR601]

SENATOR MELLO: Okay. I guess the only other follow up I'd have on that then is have you seen more coordination with local government because the state is the central organizing body for these services? Do you see that...I guess to some extent, is it you see turf wars between different political subdivisions, different agencies along the way? Or is everyone generally in line with saying the state provides the services. We're good with the state providing these services. We will fill in, so to speak, wherever they don't provide those services and we'll just...we'll work with them in regards to getting the needs that we need for individual cases. [LR601]

PHILIP KINSEY: Senator, that's an interesting question. I think by and large we kind of find ourselves where we are just because that's where we are. There...you know, it was designed a long time ago. We don't have we don't encounter very much turf wars but this has been the system in place for quite some time. I do know that there are agencies and governments in other states that there will be a city lab, a county lab, and a state lab all in the same city. And they all seem to work okay. The city of Phoenix comes to mind. There's seven or eight crime labs in the greater Phoenix area. I'm not sure that it's the most financially economical way of getting all that work done, but it seems to work for them. Smaller population states tend to have more state-run systems I think just because of the economy of scale. [LR601]

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SENATOR MELLO: Okay. Thank you, Dr. Kinsey. [LR601]

SENATOR HILKEMANN: Senator Kolowski. [LR601]

SENATOR KOLOWSKI: Thank you, Senator Hilkemann, and, Dr. Kinsey, thank you for your testimony this morning. My question is one of you were talking about salary levels and the maintenance of...the holding power of your staff is really important, the retention, ability to get them trained, certified, and all the things you need to do. And then if you don't have the salary power to hold them, there's a turnover. The turnover causes a lot of angst, a lot of difficulties over time and can lead to do deficiencies in production. Would you address that within your realm of your whole experience, the number of years you've been in the field, and what you had to do as far as boosting those salaries to maintain those staff. [LR601]

PHILIP KINSEY: Yes, Senator, thank you. The majority of the work that we've done in improving salaries had to do directly with our medical examiner system that kind of came to a screeching halt last summer. Forensic pathologists are a very rare breed, so there are 30 or 40 of these individuals trained each year for the 400 or 500 jobs that are available. And so in order to attract people, we have to try and lure them away from...to attract...well, let me back up a second. The timing of our needs kind of ruled out that population of new trainees. So new trainees come out in June, they're actually looking for jobs in March, our system didn't come to a halt until June, end of June. So we were sort of out of luck with the newly trained people. We had to try to lure experienced people to the state and that required that we bring salaries up to commensurate levels with other agencies. Fortunately we had a statewide market analysis of jobs that allowed us to expand those salaries so that the salaries do impact our ability to retain attract people. As far as the forensic scientists in the rest of the laboratory, salaries have been slowly going up recently which has been a good thing. We do still experience some turnover, but that's generally, I guess in my mind, more related to the few people who are looking to move up in their in their career, develop their careers more. The analysts that we have are still interested in developing their careers, but the job that they have in Missoula is a good job, a good-paying job for the area. And so by and large, I think everybody would like to have their salaries up a little bit, but by and large, I think people are fairly satisfied with those right now. [LR601]

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SENATOR KOLOWSKI: But you had to go through a time where you really had to work at that.  
[LR601]

PHILIP KINSEY: We did. We did. And so the salaries for the medical examiners were increased...well, from our state medical examiner was being paid \$187,000 but we had to raise that \$236,000. And then the deputy was making \$157,000; that was raised to \$201,000. Yes.  
[LR601]

SENATOR KOLOWSKI: Thank you. [LR601]

PHILIP KINSEY: Thank you. [LR601]

SENATOR HILKEMANN: Before I acknowledge another question, I want to just...did you say there are 30 to 40 new forensic pathologists coming out each year? [LR601]

PHILIP KINSEY: Nationally. [LR601]

SENATOR HILKEMANN: And we have a need for 500. [LR601]

PHILIP KINSEY: Well, there are there are 400 or 500 forensic pathology jobs in the country.  
[LR601]

SENATOR HILKEMANN: Okay. [LR601]

PHILIP KINSEY: Not all of them are open right now, but there's always 40 or 50 jobs on the...available. [LR601]

SENATOR HILKEMANN: So for a pool of 400 to 500 people, we have...we're training 30 to 40. Thank you. I thought that's what I heard you say. Senator Williams. [LR601]

SENATOR WILLIAMS: Thank you, Chairman Hilkemann, and thank you, Doctor, for being here. I'm going to change gears just a little bit with this question. We all understand how vitally

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important that crime labs demonstrate an ability to be independent, not only be independent but have the perception of independence to the public. What would you say to that kind of a question from Montana's position where you have the state this involved? What is the independence and what is the perception of that independence? [LR601]

PHILIP KINSEY: Senator, that's a that's an excellent question. We...so the crime lab works for the Department of Justice, the attorney general. We are by statute required to process samples that are submitted by all law enforcement and state agencies. So that includes the office of the public defender. And so we have...we do do casework with the public defender's office. It's not very often, but we do provide that service and then we'll provide expert testimony on their behalf at their request. So as far as perception is concerned, I would imagine a little bit is in the eye of the beholder. But we do make a strong effort at being as objective as possible. One example would be several years back we gave a training for prosecuting attorneys at the crime lab. We had them come in and let them know what we were doing, gave just a lab update. A couple weeks later, office of the public defender came in and the only slide that had changed on the presentation was the title slide. They got the same exact information that the prosecuting attorneys got. And we got pretty good feedback from them, that they appreciated knowing that. I've worked at the Oregon State Police Crime Lab for seven or eight...I think was seven years. At the beginning of my career...and you might think that that's, you know, a police agency and would...might have some more...a little bit more of a lack of independence from law enforcement. I think in that instance because we're a statewide agency, again we didn't really work for local law enforcement, local prosecutors. We were able to maintain a little bit of independence there. But it is I think highly important that the perception...well, it's highly important that we are objective, that we are unbiased in our presentations, and that the perception goes along with that. [LR601]

SENATOR WILLIAMS: I think in your comments you mentioned the connection that you have to a medical facility. Is that medical facility operated by the state or the county, or is it a privately owned? [LR601]

PHILIP KINSEY: Well, we....so, Senator, we have...our state medical examiner's office is attached to the forensic science division, part of our crime lab. So they are housed in about an

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eighth of our facility. So we have an autopsy suite, a body cooler, and two medical doctors who are stationed at our lab in Missoula. And that's the connection to medicine for us is just through the forensic pathologists that work for us. [LR601]

SENATOR WILLIAMS: Okay, so it's not attached to a medical school? [LR601]

PHILIP KINSEY: No, it's not. [LR601]

SENATOR WILLIAMS: Thank you, Doctor. [LR601]

SENATOR HILKEMANN: Additional questions? Dr. Kinsey, is there...are any specific problems that you can see exists if a lab, a forensic lab is run by a university? [LR601]

PHILIP KINSEY: There is one example that I know of. At the University of North Texas they run a missing persons program and so will do some forensic testing. So it's certainly possible. I do know that there are regional facilities in Colorado that have interactions between city, county, and even state agencies all working out of the same facility. So those organizations are in existence and do function, function well. [LR601]

SENATOR HILKEMANN: So what are the things that we should be...what are the questions we should be asking of the university if they're going to be doing this crime lab or this forensic lab? [LR601]

PHILIP KINSEY: Chairman, that's a good question. I guess I would ask that. If the university was able to provide...certainly they can provide the expertise that's needed. The space, it's a beautiful campus. I got to visit a little bit today. It's...you've got plenty of space, plenty of new construction going on. That won't be a problem. Security won't be a problem to establish. I think one of the things...one of the benefits that would come from having a good interaction with the university is the ability to teach and train upcoming young forensic scientists, especially in the more instrumental type disciplines. So I'm thinking of drug identification, toxicology, DNA analysis; those are all disciplines that grew originally out of university settings. [LR601]

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SENATOR HILKEMANN: And you mentioned the need for the forensic pathologist. How about other areas of forensics and do you think that there's a real need for people to be trained in...not as pathologists, but in other areas, or that a university can do that other training labs would not be able to do? [LR601]

PHILIP KINSEY: Senator, the other disciplines, at least the ones that I have in...that we have in Montana that are historically not trained at universities include fingerprints or latent print analysis and firearms analysis. Those are comparison disciplines that require years of experience to develop the expertise. If there could be some training that could be established through the university certainly through the ability for universities to provide outreach, Web-based training, I don't see any reason why the university couldn't be a good provider of those training services. [LR601]

SENATOR HILKEMANN: When we're dealing with where there's a zero basis for error in this thing, is there problem when you have students in university settings for security purposes? [LR601]

PHILIP KINSEY: Well I would, Senator...Chairman and Senator, I would, if I was setting up a laboratory on the university, I would make sure that although students can and frequently perform projects in crime labs, it's under close supervision. And so the students don't work on pieces of evidence. They will do side projects. Their backgrounds are thoroughly vetted before they're allowed into the laboratory so security problems are minimized there. But as far as teaching labs, I would think that you'd want to have those separate from the crime labs. Now there's no reason why laboratories...or at least no reason I can see why not, that essentially mirror laboratories could be set up where the same instrumentation that's housed in the crime lab is housed in some student laboratories where they can be trained on the instruments outside of the crime lab setting but on the same instrumentation, the same policies and procedures if you want to. So there's some unique opportunities I think. [LR601]

SENATOR HILKEMANN: Are there additional questions of Dr. Kinsey? Senator Kolowski. [LR601]

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SENATOR KOLOWSKI: One brief one if I may. Thank you, Mr. Chairman. Dr. Kinsey, on the recent national conference, did you go to the one in Seattle a short time ago? [LR601]

PHILIP KINSEY: No, I had to cancel out. Our first grandchild was born. So I... [LR601]

SENATOR KOLOWSKI: Congratulations. [LR601]

PHILIP KINSEY: Thank you very much. I took the opportunity to go visit them. [LR601]

SENATOR KOLOWSKI: Absolutely. On the national scene, the accreditation standards have been going through some change and some of the different associations have been coming together, melding a little bit, and doing some things in that way. That accreditation is extremely important for any lab. And how do you see that accreditation window in the future? What's taking place there just to give us an anchor on the legitimacy and dependability of what it means to be trained by those people? [LR601]

PHILIP KINSEY: Yes, Senator, to my knowledge and it's very, very limited, There's been a--I'm trying to think of the right word--two different...two independent accrediting bodies have now joined forces essentially. My understanding is that the accreditation provided through the American Society of Crime Laboratory Directors/Lab Accreditation Board, that's where most forensic labs are accredited through, that will remain, that process will remain. It's...that accreditation process is also tied to international standards as well. And so I don't have very much concern about the basics changing very much at all. We are all accredited to the same international standards that is...you might think of that are sort of above or outside our small, more narrow window of crime lab accreditation. Does that make sense? [LR601]

SENATOR KOLOWSKI: Um-hum. So those are good things that are taking place then. [LR601]

PHILIP KINSEY: I think that everything will be just fine, that the quality of accreditation will remain the same. I don't have any concerns about that. [LR601]



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SENATOR KOLOWSKI: Thank you very much. [LR601]

SENATOR CHAMBERS: Mr. Chairman. [LR601]

SENATOR HILKEMANN: Senator Chambers. [LR601]

SENATOR CHAMBERS: Doctor, do you have a legal staff attached to your crime lab, or do you get legal advice and other assistance from, say, the attorney general, or just how are legal matters handled? [LR601]

PHILIP KINSEY: Senator, we do not have any specific legal help at the crime lab. We do get ours, just as you mentioned, from the attorney general's office where we have an awful lot of legal assistance through them. [LR601]

SENATOR CHAMBERS: And if there are cases that are decided which may have a bearing on activities in the crime lab, do you have to be informed of that and request that information, or does the attorney general in your case bring that to you as it comes to their office? [LR601]

PHILIP KINSEY: Senator, I am informed almost on a daily basis of topics that are important to the crime lab that come through the attorney general's office. We work very, very closely together. So although the AG's office is in Helena about 120 miles away from Missoula, we do interact very closely. [LR601]

SENATOR CHAMBERS: Since you have a medical examiners office, are there coroners also in Montana? [LR601]

PHILIP KINSEY: Yes, Senator. We have 56 counties in the state. There are a couple of the more rural counties that share a corner between them, but by and large each county has an elected coroner...well, let me backtrack. Each county has a corner. Most of the corners are through the sheriffs offices. The sheriff typically in the bigger counties is the coroner and he has appointed deputy coroner. [LR601]

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SENATOR CHAMBERS: And the coroner does not necessarily have medical training and is not required to have such training, isn't that true? [LR601]

PHILIP KINSEY: That's correct, sir. [LR601]

SENATOR CHAMBERS: So exactly what do they do other than be there in name? [LR601]

PHILIP KINSEY: Senator, they are essentially the death-investigating arm forward for coroner's cases, medical examiner cases. They're the local people who respond first to death scenes and they determine, often in consultation with the medical examiners, whether or not an autopsy should be performed. But they have the ultimate responsibility in whether or not one is performed. [LR601]

SENATOR CHAMBERS: But if we were going to make it very, very succinct, about all they do is determine that a person is dead, that somebody has been killed or has died whether by accident or whatever, where there may be the law enforcement component, that's about what they do. [LR601]

PHILIP KINSEY: Senator, that's...you know, that's my kind of high-level understanding, yes. We also have elected coroners who are often funeral home directors and who have studied various aspects of anatomy and physiology. But they are the kind of the hands and eyes of the medical examiner system, if you will, that are the first people on the scene, determine whether or not a crime has been committed. If not, if there are any concerns about the death that should...so it should be...to determine whether or not it should be forwarded. [LR601]

SENATOR CHAMBERS: My final question, they do not do anything in connection with a body that might impede or impair what the medical examiner's office may do. [LR601]

PHILIP KINSEY: Senator, they should not, no. [LR601]

SENATOR CHAMBERS: Do they? Have you had instances where that has happened? [LR601]

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PHILIP KINSEY: Not specific cases that I'm aware of but... [LR601]

SENATOR CHAMBERS: Okay. [LR601]

PHILIP KINSEY: ...sometimes it a concern, yes. [LR601]

SENATOR CHAMBERS: Okay. That's all I have. Thank you. Oh, one other thing. Do you have a system of inquests? [LR601]

PHILIP KINSEY: We do have coroner inquests, yes, Senator. [LR601]

SENATOR CHAMBERS: And the coroner's in charge of that? [LR601]

PHILIP KINSEY: Yes, my understanding...I've got limited understanding of that process. My understanding is if there are...inquests are mostly used...now the cases that I'm familiar with are with cases of officer-involved shootings. And so coroners will, if the shooting is in one county, the coroner will request that a corner from an adjacent county or a different county will take charge of that inquest so there's no conflict of interest. [LR601]

SENATOR CHAMBERS: And because of what that inquest is trying to determine, would the inquest have legal counsel attached to it to give guidance, direction, and structure to what is being done? [LR601]

PHILIP KINSEY: Senator, I apologize. I don't know if that's the case or not. [LR601]

SENATOR CHAMBERS: Oh, that's all right. I don't want to ask you beyond your depth. Thank you. [LR601]

SENATOR HILKEMANN: Are there additional questions for Dr. Kinsey? Doctor, thank you for coming and testifying for us this morning. [LR601]

PHILIP KINSEY: Thank you for the invitation. [LR601]

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SENATOR HILKEMANN: We're off to a great start. It's this way in Omaha all the time. I want to tell you that, so enjoy the day. (Laughter) [LR601]

PHILIP KINSEY: Thank you very much. [LR601]

SENATOR HILKEMANN: Our next testifier, invited testifier is Chancellor Jeff Gold from the UNMC Medical Center. [LR601]

JEFFREY GOLD: (Exhibit 2) Good morning, Chairman Hilkemann and distinguished members of the LR601 Study Committee. My name is Jeffrey Gold; that's J-e-f-f-r-e-y G-o-l-d. Is it my honor to serve as Chancellor of the University of Nebraska Medical Center. I welcome you and the many city, county, and state officials and others to our campus this morning. It is a truly pleasure to host you. During the next few minutes I will attempt to answer four questions regarding the engagement of UNMC in the ongoing discussions regarding the forensic laboratory sciences. The four questions are, one, why did UNMC become involved in the discussions regarding the future of forensic science laboratory services in our region and our state? Secondly, what are the core considerations that will frame the UNMC participation in any future crime lab collaborative models? Thirdly, what has been the extent of involvement of UNMC with state, county, city, and other crime lab discussions regarding potential integration? And then finally, what is UNMC's perception of the outcomes of discussions and the next steps to be explored regarding the potential integration of forensic laboratory sciences? The University of Nebraska Medical Center is the only public academic health science center in the state of Nebraska. We have served since approximately 1869 as a resource for Nebraskans to help them achieve their dreams and to address their healthcare needs. Our mission broadly spans across the educational, research, and clinical delivery areas in conjunction with our principle partner, Nebraska Medicine. The majority of the healthcare professions in almost every specialty and discipline in the state of Nebraska have received either part or all of their professional education within feet of where we are currently convened. We have by far the largest concentration of competitive federal, state, foundation, and private research programs in the state. And in addition, we serve in a major role engaging the communities to meet multiple needs, including in this instance, ongoing diagnostic services in forensic laboratory science. Therefore, it came to be, approximately a year ago and most intently since last December, that we have been approached

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separately and collectively by representatives of the state of Nebraska, Douglas County, the city of Omaha, and others to help identify and vet opportunities surrounding forensic science laboratory services. These opportunities are based upon, in most instances, perceived challenges including availability of high-quality and truly independent forensic science testing, as well as perceptions of prolonged time frames surrounding the availability of quality laboratory results. The combined effect of this has impacted not only the law enforcement and judicial systems we have learned, but also most importantly those citizens of our local communities, whose safety increasingly depends upon accurate and timely forensic laboratory determinations. Over this same time period, the leadership of the Nebraska Organ Recovery System known as NORS also reached out to us in consideration of colocating a new facility on or adjacent to the UNMC campus. This made imminent sense as Nebraska Medicine and UNMC together are the largest solid organ transplantation facility in the state and indeed in the region with nationally ranked programs in almost all solid organ systems. The ongoing need for NORS to expand their space, given increased demands on organ retrieval and processing, and the need for proximity to our facility as well as the potential educational opportunities for a tighter relationship continues to make a sense and is a high-priority commitment of NORS and of UNMC. And over the same time period, we have had several discussions with those who lead the Douglas County Coroner's Office, currently located on the 42nd Street facility in the Douglas County shop. There has been longstanding recognition of a need to upgrade and expand those facilities and to provide a tighter relationship to the university faculty, students, and staff. During the past decade, the UNMC Department of Pathology, under the leadership of Dr. James Wisecarver, has worked hand in hand with all of the forensic science laboratories serving the state, the county, and the city to provide high-quality DNA testing in a timely and effective fashion. The availability of UNMC forensic laboratory facilities, and our expert leadership under the direction of Dr. Wisecarver, has provided an important resource, particularly for selected high-profile cases that require DNA analysis. As the demand for these services has increased, our demand for incremental laboratory space, as well as additional advanced testing also has increased. And then finally and possibly even most importantly, UNMC has been involved because there's a significant opportunity to expand the work force in the area of clinical care delivery, research, education in the forensic laboratory sciences. We have learned, and as you have just heard, that forensic laboratory accreditation currently requires master's-prepared work force. There are several undergraduate programs in Nebraska, but there are currently no graduate, master's or doctoral level, programs in

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the state. And this is an opportunity for UNMC to develop such a graduate level accredited training program. It is extremely clear in speaking with the leadership of the forensic science laboratories on the local, county, and state levels that having a solid pipeline of well-educated individuals who wish to have an enduring career in the forensic laboratory sciences in Nebraska is quite important. Having certified and accredited training programs in all of the forensic science areas is a critically important consideration that has historically limited work force development and subsequently access to services. The second question relates to the understanding of UNMC's core considerations for determining any level of participation in one or more of these conceptual models. It is particularly important to UNMC that any future participation advances our mission and vision and is consistent, of course, with our core values. Under all circumstances, we wish to enhance our educational, our research, our clinical, and our engagement mission. We are convinced that the provision of these clinical laboratory services is consistent with our role as the state's public health sciences university. When studied across the United States, modern forensic science laboratories are highly successful in serving their communities when they operate a full range of services in tight geographic proximity and when they are fully accredited by their respective outside agencies, as well as having sufficient expertise and independence that is recognized as highly reliable by the judicial and legal processes. The demand for high quality forensic laboratory determinations has increased exponentially over the last decade and continues to increase not only in the communities we serve and nationally. We are told that there is good reason to believe that the doubling rate will continue for at least the next decade, thus underscoring the need for quality and sustainable pipelines of education and training programs. UNMC is also dedicated to advancing the teaching and research missions and in so doing, promoting public and private partnerships. We have a long history of such partnerships. Our recent recognitions in cancer, transplantation, trauma, and others, highly infectious agents such as Ebola Virus, are just a few such examples of the successful global partnerships that we have been involved in and are consistent with these discussions. And then finally, one of our core considerations is the important fiscal determination that in order for UNMC to participate in a sustainable way in any of the conceptual models, UNMC would need to be revenue neutral. It is our goal to provide these forensic laboratory science services in a true break-even fiscal rate to cover the costs of providing them in an effective and an efficient fashion and yet not at the same time jeopardize any other components of the university's mission. The third question we have been asked is to describe UNMC's role in

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this conceptual exploration process. It is best summarized by describing how we have, at the request of others, convened and hosted multiple collaborative meetings to explore the unmet needs and the defined number of models for collaboration. Over the last year, we have hosted more than ten meetings on the University of Nebraska Medical Center campus, which has had participation not only from the city of Omaha and the county leadership, but multiple aspects of the state forensic sciences laboratory, the Office of the Attorney General, as well as multiple state senators, including several of you who are gathered here today. We have also visited the key facilities, met the staff and leadership personnel, and through the work of our pathology leadership, studied best practices across the country. We have used these meetings to explore multiple concepts after identifying the needs of the region and the state and have worked very hard to create an engaged and truly collaborative discussion that would focus on preventing duplication, enhancing timeliness and accuracy of services, maximizing logistic and fiscal efficiencies, and eliminating questions of bias or lack of laboratory independence. As a result, four conceptual models with their respective laboratory services and geographic integration were extensively discussed. They are fully detailed in the attachments, however, Concept 1 is a fully integrated model on the UNMC facilities; Concept 2 is a partially integrated model based at the Douglas County facilities; Concept 3 is a partially integrated model shared at the Douglas County facilities and UNMC; and Concept 4 was to maintain the status quo. During the same time period, in partnership with our city, county, and state colleagues, we've attempted to begin a very preliminary exploration process of these four conceptual models. That is to say, to do due diligence. The fourth and final question I wish to attempt to answer that we are commonly asked is what are our perceptions of these discussions of the participating entities in the exploration and this due diligence process. As a result of the most recent meeting, which occurred on May 18, 2016, the agreement was to move forward to explore the first three concepts. The fourth concept, to maintain the status quo, was unanimously not accepted by attendees at the meeting. The due diligence process, which will hopefully produce a consensus on the strengths and weaknesses of each conceptual models will be based upon full accreditation of all services, recognized independence, a full range of forensic laboratory services, as well as the financial and programmatic efficiencies that can be derived from geographic juxtaposition of a critical mass of the services. The need to serve the organ recovery organization's needs as well as the coroner's needs are of particular importance to UNMC as well and will very likely proceed. It is the anticipation that this due diligence process will be completed in the next several weeks. Finally,

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the input from the state hearing process will be of critical importance as well. The role of the state of Nebraska in oversight of access to quality, timely forensic laboratory services, as well as other important considerations will hopefully be derivative to the discussions that will occur today and the deliberations of the esteemed senators who are hosting this legislative hearing. I wish to extend once more my sincere thanks in representing the University of Nebraska Medical Center and Nebraska Medicine in this process and to have had the honor of helping to convene the previous discussions and to serve as the host institution for this hearing. Please be assured that the university is dedicated to working with all of the parties involved and will continue to work hard to find solutions and to support the needs of the people of Nebraska and beyond. I thank you for the opportunity to share these thoughts and look forward to your comments and questions. Thank you. [LR601]

SENATOR HILKEMANN: Thank you, Dr. Gold, for your comments and laying out those concepts. And I also appreciate very much that you changed your schedule to accommodate this hearing today. So thank you very much. Are there questions from the committee? Senator Mello. [LR601]

SENATOR MELLO: Thank you, Chairman Hilkemann, and thank you, Chancellor Gold. You hit on maybe the main point I wanted to dig a little deeper with you, which is the role of the state in this entire process knowing that this is mostly being driven by the city of Omaha and Douglas County in having UNMC facilitate multiple models. From a state perspective, what do you see our role...what should our role be in an ideal situation? Should it be an appropriations role of helping construct the facility, help paying the operations so that the state can participate knowing that we have a backlog across the state in regards to DNA testing and other crime lab services that are needed? Is a just oversight in part because it would be hosted at a UNMC facility which is a state agency in that respect? Anything you could dig in a little bit more, I know you touched on it a little bit at the very end, but I think that's a question we've been wrestling with in our internal conversations is what is our role moving forward, particularly in light of what we just heard from Dr. Kinsey and how a state like Montana has everything really centralized at the state instead of more of a decentralized model like we have here. [LR601]



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JEFFREY GOLD: Thank you, Senator Mello. I would say all of the above in answer to your questions. You know, as part of this process, Dr. Hinrichs, our chair of the Department of Pathology, has actually done a bit of a study across the country looking at various roles of the states, etcetera. And they vary from just their own forensic pathology and forensic laboratory sciences work to oversight roles to funding, etcetera. I think as the University of Nebraska System and of course UNMC is a state enterprise, our educational programs are state enterprises, building the work force that will staff these facilities for a long period of time obviously is a state role. But above and beyond that it's very clear from our visits to the state facilities in Lincoln to Douglas County, etcetera, that staffing has become an issue, that timeliness of processing of specimens is a concern of some depending upon the area, and that while the facilities are integrated they probably, just as is anything in life, there's always room for improvement. And so I think the integration, potentially funding the education programs, etcetera, will...are all important roles that the state may want to have. However, I think that there are both similarities and differences in the needs of the counties and in the needs of the cities, particularly in this case Douglas County and in the city of Omaha, that are not identical. And therefore, independence of some level in order to meet the specific needs of the county, of the city, of the state needs to be built into a system with some flexibility. [LR601]

SENATOR MELLO: One quick follow-up question in regards to the work force and the training components that you discuss in your testimony, what...could you give us maybe a ballpark figure of what you anticipate it would cost for UNMC to develop or to create an accredited training program, maybe in collaboration UNL or UNO in the process for an undergraduate/graduate pipeline. [LR601]

JEFFREY GOLD: Thank you, Senator Mello. As it turns out, I believe that there is a combined UNO-UNL criminal justice program that is of high quality, that has historically fed graduate level, master's and doctoral level programs that have produced the work force for the crime labs of the state. Unfortunately, that graduate level program has not been a University of Nebraska program at UNL, UNO, here or elsewhere, and hence it has closed. I can't...I would need to run that to ground a bit more, but I would imagine that we would need, I am told, three or four faculty, perhaps some dedicated space. If I could reflect very briefly on one of the senator's questions during the last testimony, students, residents, faculty, etcetera, work in many different

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roles in academic medical centers, in high-security settings, government-cleared laboratory work, etcetera, continuously. We are very blessed here to be able to attract the best and the brightest students not only from Nebraska and elsewhere and all of them go through extensive background checks before they're permitted into any of these roles. And so my concerns about student involvement with appropriate supervision and credentialing really would be minimal. [LR601]

SENATOR MELLO: Okay. Thank you. [LR601]

SENATOR HILKEMANN: Senator McCollister. [LR601]

SENATOR MCCOLLISTER: Yeah, thank you, Mr. Chairman, and thank you, Dr. Gold. In your testimony you indicated that there had been some fiscal implications that we need to consider. Have you done any modeling with the other parties involved to see how the fiscal impact might work in each case? [LR601]

JEFFREY GOLD: So that is the due diligence process that is currently underway. Now that there are four central concepts on the table, one has been eliminated, which is maintain the status quo. The questions that need to be answered is, how much space? How much capital? How much operating? Where would the efficiencies occur? How would the needs of the organ recovery organization and the coroner's office be integrated into this? And what would...what specifically, to Senator Mello's question, will the educational programs cost in terms of dollars and space to put this all together? We philosophically believe that there are a synergies of creating geographic proximity, certainly from a crime lab perspective, of being able to share the various aspects of forensic sciences in a single geographic location has made a lot of sense. What adding the others to it and how much could actually be saved economically to the taxpayers would be part of the due diligence, is part of the due diligence process. [LR601]

SENATOR MCCOLLISTER: Thank you, Dr. Gold. Thank you, Mr. Chairman. [LR601]

SENATOR HILKEMANN: Senator Williams. [LR601]

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SENATOR WILLIAMS: Thank you, Chairman Hilkemann, and thank you, Chancellor Gold, for being here and hosting us today. A question off completely from anything we've talked about. In your testimony, you talked about joining with the organ transplant group that may share some space or something with the crime lab. Would you address what could be perceived by some people as some ethical concerns with having a crime lab and having in concert the organ transplant and the donor program. Or do you see any ethical concerns? [LR601]

JEFFREY GOLD: Well, I think a lot depends upon how the separation of the governance of the crime lab and the governance of the organ recovery organization is handled. I think to put them into geographic proximity will just create some synergies, but not as much on a programmatic level as it would just be in terms of utilities, physical plants, security, and things along those lines. The proximity of the organ recovery organization to the Med Center is an important consideration from an educational perspective, but also from the increasing amount of transplantation work that we do, given their dramatic needs for increased space does make logical sense and almost certainly will proceed independent of whatever comes out of the discussions regarding the forensic sciences laboratories. But as it was explained to me, the governance of the crime lab aspects would be totally separate and independent other than anything related to the physical site, meaning who pays for the electricity and the water, whatever. [LR601]

SENATOR WILLIAMS: Thank you. [LR601]

SENATOR HILKEMANN: Senator Kolowski. [LR601]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Chancellor Gold, thank you for your time and expertise this morning. It's been very good to hear. Would you give any additional examples of the kind of research that could be conducted that would make UNMC unique and helpful in advancing discovery of the additional forensic science expansion and fields, anything like that you could touch on. [LR601]

JEFFREY GOLD: Well, thank you, Senator. You know, most of our experience thus far has really been in DNA testing and the whole area of genetic sequencing in the area of cancer and

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heart disease, women's health, mental health, neurologic diseases. It's just exploding across the United States right now. This whole concept of precision medicine is to a very large extent based on genetic sequencing and genetic testing. So the opportunities for extramurally funded research for discovery of new drugs, new cures, new ways of detecting diseases--if you think about what has recently happened with Ebola, a large amount of that testing happened in state-funded facilities because of the necessary security for these highly infectious agents. Having a collaborative...imagine a situation, for instance, if there's a death due to a highly infectious agent, how would that be handled and what could be learned from that? So I think there are extensive opportunities that could exist. [LR601]

SENATOR KOLOWSKI: Thank you. [LR601]

SENATOR HILKEMANN: Senator Chambers. [LR601]

SENATOR CHAMBERS: Thank you. Kind of tailgating on what Senator Williams touched on, currently is there any relationship, association, or contact between UNMC and the organ retrieval system? And if so, what is it? [LR601]

JEFFREY GOLD: The UNMC and Nebraska Medicine work closely with the organ retrieval organization for procurement of solid organs for transplantation. [LR601]

SENATOR CHAMBERS: And...go ahead. [LR601]

JEFFREY GOLD: And there are perhaps some research relationships and educational relationships that I'm not aware of. [LR601]

SENATOR CHAMBERS: How would that differ from what would be envisioned here? [LR601]

JEFFREY GOLD: If I can ask, Senator, specifically with regards to the NORS relationship or more broadly with the crime lab? [LR601]

SENATOR CHAMBERS: Yes, NORS. [LR601]

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JEFFREY GOLD: I believe we're going to hear later today but the NORS organization has articulated a need for a significant increase in physical space due to changes in technology and increase in workload of organ recovery. And having that in closer proximity to the university, given the fact that we implant the majority of the organs that they recover, makes sense. I don't think the contractual relationships on the services provided would change very much. But I would hope that there would be more education. For instance, it would be very nice to help build a pipeline of healthcare professionals that are knowledgeable in organ recovery. It might help our transplant people learn more about organ recovery to make organ transplantation more successful, and hopefully there would be some combined research activities that could be applied for as well. [LR601]

SENATOR CHAMBERS: Now I've listened to you. I listened to Senator Williams' question. What would be a connection between the crime lab and organ transplant system? Nothing directly, would there? [LR601]

JEFFREY GOLD: Other than the fact that sharing a physical location might allow some efficiencies in terms of utility, if there was needed to be construction, there would be construction; perhaps some security issues might be important as well. But in terms of either the governance or the function, I don't see that overlap. Could there potentially be some shared research at some time? Could there potentially be some laboratory work that would be spun off from the organ recovery organization that would have to be done or could be done contractually by the crime lab? I don't know the answer to those questions, sir. [LR601]

SENATOR CHAMBERS: And as you pointed out, the spokesperson for NORS will be here; and if I have further questions, I will go to that person. But here's what I need to get from you if you are prepared to give it. Do you have an opinion about where this crime lab should be located? I know you have an opinion. Are you free to express it (laughter) or is there a reason? Would you rather not? [LR601]

JEFFREY GOLD: Thank you, Senator. The process that we've put into place to identify three conceptual models are going to produce determinations about space, about capital, about operating costs, about efficiencies, and how well we serve law enforcement, how well we serve

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the judicial system, the prosecutor's office, the Attorney General's Office, etcetera. You know, being a... [LR601]

SENATOR CHAMBERS: Let me rephrase the question. Rather than giving the appearance I'm setting you against these others, are you confident that UNMC could provide or fulfill all of the necessary functions that you have discussed which would relate to an effective crime lab? [LR601]

JEFFREY GOLD: In partnership with all of the other entities, yes, sir, I believe in that structure (inaudible). [LR601]

SENATOR CHAMBERS: I'm confused again so I'll let that go because that's almost like saying leave things as they are. [LR601]

JEFFREY GOLD: UNMC offers the, if you will, the educational and scientific leadership in many of these areas. Our knowledge and experience in the areas of ballistics and latent prints and areas such as that, crime scene investigation, etcetera, is limited to nonexistent. [LR601]

SENATOR CHAMBERS: I'm talking about location. [LR601]

JEFFREY GOLD: Within a throwing distance of a rock from where we are sitting would be my suggestion. [LR601]

SENATOR CHAMBERS: That's all I have. Thank you. [LR601]

SENATOR HILKEMANN: Senator Kolowski. [LR601]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Chancellor Gold, just to repeat one thing you said, the undergrad or graduate programs available in the state have not dried up because Nebraska Wesleyan, I believe, has dropped their forensic science program. Is that correct? [LR601]

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JEFFREY GOLD: They have dropped the graduate program. [LR601]

SENATOR KOLOWSKI: Graduate program. [LR601]

JEFFREY GOLD: The undergraduate programs at UNO and UNL are still quite vibrant in criminal justice. [LR601]

SENATOR KOLOWSKI: Very good. Thank you. [LR601]

JEFFREY GOLD: This would be a continuation of that. [LR601]

SENATOR KOLOWSKI: Just to clarify that. Thank you so much. [LR601]

SENATOR HILKEMANN: Dr. Gold, it's my understanding that you had experience with a forensics laboratory at your previous university setting. Is that correct? [LR601]

JEFFREY GOLD: Yes. We had some opportunity to work in the state of Ohio with the state criminal justice facilities, criminal laboratory facilities, yes. [LR601]

SENATOR HILKEMANN: Did you have a facility that you worked with there or developed there that is similar to what we envision here for UNMC? [LR601]

JEFFREY GOLD: We...the tightest relationship we had was actually with the county coroner's office which was sited on the university campus that we actively staffed and collaborated with. The chair of pathology, when he retired, became the county coroner, which is not unusual situations. The crime labs in the state of Ohio are very different in the sense that they're organized on a statewide level but they're also somewhat organized on a county level. We actually went through an extensive planning process to build a crime lab on the university campus. Ultimately it was built in conjunction to another university campus in Bowling Green, Ohio, not in Toledo where I was located. But we did spend a good deal of effort in building that collaborative relationship. [LR601]

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SENATOR HILKEMANN: In order to establish a viable educational program here at UNMC, do you see that we have to have a relationship with the city or the county? In other words, can you have an educational program without being involved and actually doing the forensic work for either the city or the county or the state? [LR601]

JEFFREY GOLD: The educational programs consist, of course, of didactic lectures and teaching laboratories; but there needs to be a hands-on component. I'm a nearly recovered children's heart surgeon. I would never want to have a child that I knew of operated on by somebody who hasn't had hands-on experience doing pediatric cardiac surgery. In the same way here, the best learning occurs side by side with the experienced technologists and leaders of the crime labs as they handle forensic evidence. And that type relationship is important to the success of the educational program. [LR601]

SENATOR HILKEMANN: In your testimony, you said that this needs to be a revenue neutral project. Do you think that this is going to increase...if this program develops, that it's going to be more costly to carry out the forensic than it is at the present time? [LR601]

JEFFREY GOLD: My testimony referenced the fact that from the UNMC perspective we're not trying to make money on this, but we don't want to lose money on this as that would dilute other parts of our mission. [LR601]

SENATOR HILKEMANN: Okay. [LR601]

JEFFREY GOLD: Given the synergies that can potentially occur, without actually running the numbers, it's difficult to know whether it will cost more or cost less or cost the same. But we have been told by everybody, including the people here of course in Nebraska, that the demand for these services continues to increase at a dramatic rate. So even if the cost per unit of service were to not change, my guess is that the cost will continue to rise as the demand for these forensic laboratory services has gone up dramatically. [LR601]

SENATOR HILKEMANN: Okay. Are there additional questions from the committee? Senator Chambers. [LR601]



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SENATOR CHAMBERS: What did you say your prior experience was in? [LR601]

JEFFREY GOLD: Where? [LR601]

SENATOR CHAMBERS: You said pediatric heart surgery? [LR601]

JEFFREY GOLD: I'm a pediatric cardiac surgeon, nearly recovered. [LR601]

SENATOR CHAMBERS: Are you planning at any point to run for President? (Laughter) You don't even have to answer. Thank you. That's all I had. [LR601]

SENATOR HILKEMANN: Are there additional questions for Dr. Gold? [LR601]

JEFFREY GOLD: I leave that to the pediatric neurosurgeons. [LR601]

SENATOR HILKEMANN: Thank you very much, Dr. Gold, for your testimony this morning. Our next testifier is Pam Zilly, who is the director of the State Crime Lab in Lincoln. Welcome. [LR601]

PAM ZILLY: (Exhibit 3) Senator Hilkemann, members of the committee, good morning. I am Pam Zilly, P-a-m Z-i-l-l-y, director of the Nebraska State Patrol Crime Laboratory. I would like to thank the committee for the opportunity to testify here today. I would like to share a little bit about the Nebraska State Patrol Crime Laboratory and the services we provide to the citizens of Nebraska without cost. The Nebraska State Patrol Crime Laboratory provides forensic examination services to any law enforcement agency within the state of Nebraska. We have been a nationally accredited laboratory since 2004 and obtained international accreditation in 2014. We provide services in the areas of biology/DNA, controlled substances testing, trace evidence analysis, toxicology, latent prints, and firearms/tool mark examination. We receive over 4,000 cases from approximately 160 different agencies each year. This number is growing as we have received approximately 400 more cases this year than the same time last year. We are the only laboratory in Nebraska with the ability to access the Combined DNA Index System, commonly referred to as CODIS. The CODIS database is owned and controlled by the FBI. All qualifying

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convicted offenders are required by Nebraska law to provide a known DNA sample. These samples are tested at our laboratory and securely uploaded into CODIS. In 2015, we tested and uploaded 3,594 convicted offender samples. All unknown DNA samples which met the FBI eligibility requirements are also uploaded into CODIS for searching against offender samples and unknown casework samples. In 2015, 190 forensic unknown DNA profiles were processed. Entries into the CODIS database resulted in 72 matches in 2015. This is accomplished by associating the previously unknown DNA profile from casework to a known individual, or two unknown casework samples to each other from previously unassociated criminal cases. The UNMC Human DNA Identification Laboratory currently performs DNA testing. However, they do not qualify for CODIS participation under their current structure. To assist the UNMC when requested, we also upload their unknown DNA profiles into the CODIS database. We recognize that timely results are important, and the Nebraska State Patrol has taken proactive steps to address the current backlog. While backlog times are constantly changing, quality cannot be sacrificed. To meet the large demand within our biology unit, we have filled two previously vacant analyst positions and anticipate the completion of their training by December of this year. We aggressively work to prioritize critical cases. Homicides are routinely placed at the front of the line. Other cases, particularly violent ones, can be prioritized after consultation with our biology unit manager. Currently priority cases are typically completed in about 30 days. Our drug chemistry section currently has about 930 cases pending with an average turnaround time of 3 months. We have recently added an additional forensic scientist position which will substantially reduce the turnaround time in that section. Due to the closure of a private laboratory in Omaha, we have experienced a significant increase in toxicology cases. We are currently the only laboratory providing this service in the state of Nebraska. To meet the demand, we are in the process of hiring two forensic scientists within the toxicology section. These additions will have a positive impact in shortening the existing turnaround time. We strive to provide professional and accurate services equally to all agencies and have made considerable financial investments to reinforce our commitment to Nebraska--\$4.2 million has been dedicated to a wonderful new facility that was professionally designed and built to meet our specific and current needs. The Nebraska Attorney General contributed \$2.5 million to assist in making the new facility a reality. This 28,000 square foot building is owned by the Lincoln Airport Authority and occupied by us through a long-term lease. In closing, I would like to thank you for your interest on this issue. The Nebraska State Patrol appreciates the opportunity to testify. We

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remain committed to serving the entire state of Nebraska. I will be happy to answer any of your questions. [LR601]

SENATOR HILKEMANN: Thank you, Ms. Zilly, for your testimony this morning. And I want to thank you. Senator Kolowski and I had the opportunity to visit your facility, and it's a beautiful new facility that you have. [LR601]

PAM ZILLY: Always happy to show it off. [LR601]

SENATOR HILKEMANN: Great. Are there questions from the committee? Senator Kolowski. [LR601]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Director Zilly, thank you for being here again this morning and for your hospitality as we have visited. One of the aspects again, the holding power of staff becomes extremely important for you as you're expanding a number of positions. You're opening more doors for people to be involved. And do you find it to be a continued challenge as far as the state pay scales for your folks as you're getting them certified, they get skilled and accredited and all the rest and then you sometimes lose people? Would you just address that within your own context of trying to maintain those people? [LR601]

PAM ZILLY: Certainly. Staffing is certainly one of our largest challenges. We compete with all accredited forensic laboratories across the United States for experienced and qualified staff. And these individuals are experienced, educated, motivated people that are willing to go anywhere for the position that they desire. Once we do hire somebody, we invest a great deal of time and resources in getting that person trained, getting them some experience. So trying to retain them as well as attract other experienced people certainly is always a challenge. We are in the process of working on a plan that will hopefully help address that issue. And as that moves along, I'm hopeful that we will be able to create a little bit better situation that will enable us to hold our staff for longer. [LR601]

SENATOR KOLOWSKI: Thank you very much. [LR601]

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SENATOR HILKEMANN: Senator McCollister. [LR601]

SENATOR McCOLLISTER: Yeah. Thank you, Mr. Chairman, and thank you for your attendance here this morning. Crime rates over the last 20 years have declined. How do you account for the big increase in the number of laboratory tests that you're doing or are called on to do? [LR601]

PAM ZILLY: I'm not sure if I actually am the best person to answer that because it's kind of speculating on what's happening out there. We only know what we receive. But I would suspect it's probably something to do with the heightened awareness of forensics in general. I think it's used more than it used to be. Law enforcement is more aware of it. Juries are more aware of it. So I think that may account for some of the reasons for increases. [LR601]

SENATOR McCOLLISTER: Second question in regard to CODIS, you have a relationship with that organization. Is it typical that just one laboratory in the state has access to those computer files from the FBI? [LR601]

PAM ZILLY: That varies state to state. There are a number of states that have one laboratory that is the CODIS state administrator, which is normally the state lab--that is our current role--but also have local CODIS labs called LDIS labs which also contribute to CODIS. Our state does not have that at this point in time. The FBI has very strict rules as to what qualifies to allow an agency to be a contributing laboratory. It has to be part of a criminal justice agency, a nonprofit, not doing private work, a number of rules that they have in place. And the laboratory applying for access has to meet their qualifications. Currently we are the only one in the state, but there are many states that have more than one lab that contributes to CODIS. [LR601]

SENATOR McCOLLISTER: And there are controls that guarantee that folks won't...those results won't be processed unless there's a conviction. Is that correct? [LR601]

PAM ZILLY: For the offender samples, is that what you're talking about? [LR601]

SENATOR McCOLLISTER: Yeah, um-hum. [LR601]

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PAM ZILLY: Yeah. Currently in our state there are certain qualifying offenses: all felonies as well as some other offenses that qualify for entry into CODIS and they are based upon conviction. [LR601]

SENATOR McCOLLISTER: Thank you. Thank you, Mr. Chairman. [LR601]

SENATOR HILKEMANN: Senator Williams. [LR601]

SENATOR WILLIAMS: Thank you. Thank you, Ms. Zilly. From my part of the state which is in central Nebraska, the frustration that I hear continually from law enforcement and prosecutors is the time delay in receiving information. Is it as simple as I think it is that if we had more money to hire more people, buy more technology we could solve that delay in time? [LR601]

PAM ZILLY: It's not always as simple as that. There are a lot of factors that impact backlog. And backlog goes up and down. You know, there are points where one section has a very short turnaround time. A significant event may occur and they may have a longer turnaround time. Often it's due to our challenges in keeping staff. It may also be due to increases in cases, maybe a change in legislation that requires more testing. It may be due to a change in the type of cases we get like the addition of synthetics in the drug testing community which is really complicated, increased the time involved to do testing. So a lot of things factor into that. Definitely staffing is one of our challenges, and it's difficult to determine exactly how many staff we would need without having been full staffed with qualified people for a very extended period of time. But staffing is definitely a challenge. [LR601]

SENATOR WILLIAMS: So do you think that situation with your new lab and where you are today will improve from what the experience of law enforcement has been up to this point? [LR601]

PAM ZILLY: Yes. I'm very optimistic about those improvements. We have an additional person in the drug chemistry section who recently completed her training. And already we're seeing improvements based on that productivity. We were at about 4.5-month turnaround time not long ago, and we're already down to 3. So I'm very...feeling very optimistic about drug chemistry. We

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do have two people in training in biology. That discipline takes quite a bit of training so it takes longer to get people through there and productive. But once those two people have completed their training, I believe we will see improvements in the biology unit as well. Toxicology as well. [LR601]

SENATOR WILLIAMS: Is a three-month turnaround acceptable? [LR601]

PAM ZILLY: A three-month turnaround in which... [LR601]

SENATOR WILLIAMS: Whichever one you were talking about. [LR601]

PAM ZILLY: I would prefer it to be less, but it's definitely an improvement over four. [LR601]

SENATOR WILLIAMS: Okay. Would you clear up one question that I have? In your testimony at the very beginning, you talked about the State Patrol Crime Lab providing your services to the state of Nebraska without cost to the citizens. Can you explain how we can provide those services and the citizens are not paying for that somehow? [LR601]

PAM ZILLY: I meant to law enforcement agencies. We don't charge for our services is what I was referring to. [LR601]

SENATOR WILLIAMS: Okay. I just wanted to be sure that... [LR601]

PAM ZILLY: Sure. [LR601]

SENATOR WILLIAMS: ...we understood there is a cost. [LR601]

PAM ZILLY: Oh, absolutely. [LR601]

SENATOR WILLIAMS: Thank you. [LR601]

PAM ZILLY: There is not a charge for our services. [LR601]

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SENATOR HILKEMANN: Senator Chambers. [LR601]

SENATOR CHAMBERS: Director Zilly, it is a pleasure for me to meet you and to have you here today. I'd like to ask a few questions. And I will go to the third page of your provided testimony. You mention that there is...well, I'll read the statement. "We strive to provide professional and accurate services equally to all agencies, and have made considerable financial investments to reinforce our commitment to Nebraska. 4.2 million dollars has been dedicated." Now that \$4.2 million comes from the state General Fund. Is it a part of the State Patrol's budget? [LR601]

PAM ZILLY: It was part of...not all of it--\$2.5 million was from the Attorney General's Office. [LR601]

SENATOR CHAMBERS: And the Attorney General gets his money from the state through his budget. Is that correct? [LR601]

PAM ZILLY: I believe that was from a settlement fund and I'm not sure how that all works. [LR601]

SENATOR CHAMBERS: But the settlement money would come to the state and happen to rest in the Attorney General's Office, but not because the Attorney General's Office generated this money. It came from another source. [LR601]

PAM ZILLY: That's way beyond the scope of my knowledge. I'm sorry. [LR601]

SENATOR CHAMBERS: Well, let's say that Brother Williams here instead of being a banker was J.R. (sic--R.J.) Reynolds or one of those--I get the initials wrong--and was made to pay a certain, and I'll call it indemnity, into a fund and it would be distributed to the states. And the repository for such money from these settlements would be the Attorney General's Office. The Attorney General did not generate that money through operating that office efficiently. That money came in a sense like manna from heaven. So this money that--and you can answer this yes or no--this money that the Attorney General or came from the Attorney General's Office was not necessarily from the General Fund. [LR601]

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PAM ZILLY: Oh, correct. [LR601]

SENATOR CHAMBERS: Okay. Now you state that the facility where you're located now is in a building owned by the Lincoln Airport Authority. [LR601]

PAM ZILLY: Correct. [LR601]

SENATOR CHAMBERS: Yet you say it was professionally designed and built to meet the specific and current needs of the State Patrol. [LR601]

PAM ZILLY: Yes. [LR601]

SENATOR CHAMBERS: So a deal was struck between the State Patrol and the Lincoln Airport facility that they would construct this building, they would own it, but the State Patrol would pay for it? [LR601]

PAM ZILLY: We would pay it back via long-term lease, yes. [LR601]

SENATOR CHAMBERS: You say what? [LR601]

PAM ZILLY: Via long-term lease, yes, we are committed to a long-term lease. [LR601]

SENATOR CHAMBERS: Now when you say current needs, that doesn't allow for expansion, does it? [LR601]

PAM ZILLY: The building was designed to meet today's needs and placed on a lot that would allow for growth expansion on either end of the building. [LR601]

SENATOR CHAMBERS: But the building itself is not constructed to meet future needs. [LR601]

PAM ZILLY: The building itself is for today's needs, correct. [LR601]



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SENATOR CHAMBERS: I hope you don't feel that I'm being confrontational... [LR601]

PAM ZILLY: No, I don't. [LR601]

SENATOR CHAMBERS: ...or inquisitorial. I'm seeking information so that you might improve my education. [LR601]

PAM ZILLY: Absolutely. That's fine. Absolutely. [LR601]

SENATOR CHAMBERS: Okay. [LR601]

PAM ZILLY: I'm just trying to answer the ones I'm not sure if I know the answers to so I'm trying to be careful. [LR601]

SENATOR CHAMBERS: You're doing very well and you have such a pleasant personality. It's a pleasure doing business with you as far as I'm concerned. [LR601]

PAM ZILLY: Thank you, sir. [LR601]

SENATOR CHAMBERS: Now when we come to CODIS, I have always had concerns about how law enforcement operates. I do not believe that law enforcement is always operating at the level it should, meaning they protect and serve. Sometimes they are the culprits, the perpetrators, and then they cover for each other. I'm giving my opinion. [LR601]

PAM ZILLY: Sure. [LR601]

SENATOR CHAMBERS: Now when we read on your first page about CODIS getting this information, all qualifying convicted offenders are required by Nebraska law to provide the DNA sample. Now once you upload this to CODIS, the state loses all control over those samples, isn't that true, and it's up to CODIS or the FBI to determine what use they will be put to? You don't tell the FBI how to operate this program and they don't seek your input, do they? [LR601]

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PAM ZILLY: No, they don't. But I will say that the profiles are uploaded into CODIS, but the names associated to the profiles are not. So the profiles themselves are not identified with an individual within the CODIS database. [LR601]

SENATOR CHAMBERS: Right. But the samples themselves once in never come out. [LR601]

PAM ZILLY: They don't normally come out unless there would be some reason we would get a court order or something to remove something. But no, normally they stay in. [LR601]

SENATOR CHAMBERS: Now it's based on state law as to which samples would be allowed... [LR601]

PAM ZILLY: Correct. [LR601]

SENATOR CHAMBERS: ...to be sent. And that would start with which persons or category of persons are required to give a DNA sample. [LR601]

PAM ZILLY: Correct. [LR601]

SENATOR CHAMBERS: When it says "convicted offenders" do you know at this point whether there's a time lag between when that conviction occurs, when the DNA sample is taken, and when it is uploaded by the State Patrol? In other words, is there a lag between the time of the conviction and when a sample which has been taken is uploaded to CODIS? [LR601]

PAM ZILLY: Certainly there is. Depending upon what the conviction is and what happens with the specific individual, a number of the samples are collected by the State Probation Office. Others are collected by the correctional facilities if the person goes to a correctional facility. Then those samples are submitted to us and we accession them and do the testing. Once we get them, it's about a 30-day turnaround time to get them actually uploaded into CODIS from when we receive them. [LR601]

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SENATOR CHAMBERS: And that's not enough time for there to be a complete and total exoneration of the one who had been convicted, is there? [LR601]

PAM ZILLY: I would doubt very much that that would be time for that. [LR601]

SENATOR CHAMBERS: So if a person is convicted, that doesn't necessarily mean the person committed the crime. Otherwise, a person couldn't be exonerated. I use the word exonerated to mean that the conviction was erased. So there could be a sample from a person who really is innocent which is in CODIS. Because the way the state law is written now, once the conviction occurs that sample is into CODIS. If subsequently there is a total and absolute exoneration based on actual innocence, that person, although the name is not there, that person's DNA is in CODIS. [LR601]

PAM ZILLY: It can be removed if requested. [LR601]

SENATOR CHAMBERS: Who would have to make the request? Could the individual make the request? [LR601]

PAM ZILLY: I would have to review the statute again, but I know that there is something in the statute about removal. [LR601]

SENATOR CHAMBERS: Well, I happen to know that there...I had gotten a law through the Legislature so that people at the state level, meaning within the state, who had DNA taken and it was found that it shouldn't have been that the person should not have had to give it, it can be returned. The person can seek it, but that is not always done. And I work with some people who tried to get their DNA and it was like pulling hen's teeth. And the reason I'm doing this, I want it on the record because I intend to look at what is being done. And my colleagues and people in law enforcement have a way of thinking every time I'm critical of law enforcement I have a grudge. But what I want to show is that when I raise an issue it's based on specific documentable, rational bases. And when an innocent person's DNA can wind up in CODIS along with the DNA of somebody who obviously is guilty, something is wrong. And I know that the change will have to come at the state level. And I'm kind of giving my colleagues notice so when they jump up on

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the floor and start saying I'm anti law enforcement, I will remind my colleagues here that...  
[LR601]

SENATOR HILKEMANN: Senator, we'll take that as a reminder and we'll also say that that CODIS conversation will have that. That's not directly what we're talking about today. [LR601]

SENATOR CHAMBERS: Well, since it was in the testimony, I will review and deal with whatever people bring to us. And if they don't want it discussed, don't say it in their testimony. But, Mr. Chairman, I don't want to make your job difficult. But there are a lot of law enforcement people here and I'm talking to them as much as to the record. [LR601]

SENATOR HILKEMANN: Right. Thank you. Senator Mello, you had a question. [LR601]

SENATOR MELLO: Thank you, Chairman Hilkemann, and thank you, Director Zilly. I think you did a very, very adequate job explaining the financing of the crime lab. I believe the other \$1.7 million came from the State Patrol's forfeiture funds that the Legislature appropriates on a biennial basis as well. Question regarding the staffing, are all the staff at the crime lab members of the State Troopers Association? [LR601]

PAM ZILLY: I don't believe any of them are members of the State Troopers Association.  
[LR601]

SENATOR MELLO: So they are not part of any negotiating or bargaining, collective bargaining unit within the State Patrol. [LR601]

PAM ZILLY: Correct. [LR601]

SENATOR MELLO: Okay. That's good to know. One item I had and Senator Williams asked and I guess it's for someone, maybe the testifiers that will come up afterwards from the metropolitan area, do you get a lot of requests from the city of Omaha, Douglas County, from the crime lab to perform tests knowing that your services are at no cost to the city, at no cost to the county

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knowing that everyone else in the state pretty much uses you on a regular basis for all of your forensic science testing? [LR601]

PAM ZILLY: In anticipation that someone may want to know that, I brought it. Is there a specific agency you're interested in, or in general? [LR601]

SENATOR MELLO: I think what mostly what we're discussing is the city of Omaha and Douglas County being the two drivers in this conversation. [LR601]

PAM ZILLY: From Omaha Police Department, I just took last year's numbers, we received 175 cases. Douglas County Sheriffs Office last year submitted to us 17 cases. [LR601]

SENATOR MELLO: Thank you. [LR601]

PAM ZILLY: You're welcome. [LR601]

SENATOR HILKEMANN: Senator Kolowski. [LR601]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Director Zilly, just one last question from my end, when you look at setting up a crime lab and having the full running as yours is, the independence, the full service, and the accreditation are all extremely important for the operation of that lab. Within your potential of expanding on your location, that footprint, what services would you add to your lab if you had the ability to do that that's not there now? [LR601]

PAM ZILLY: I'm not actually looking at adding any particular services. I think expansion, it would be something more along the lines of expanding the number of people that we have to work on the services that we currently provide. Now there may be a possibility of expanding our trace evidence section down the road to include some additional types of examinations. Those take some expensive instrumentation and are not in high demand. So that would be something we would maybe look at someday, but certainly not in the near future. [LR601]

SENATOR KOLOWSKI: Okay. Thank you very much. [LR601]

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SENATOR HILKEMANN: Director Zilly, do you...what benefits do you see in this proposed facility at UNMC? What benefits do you see to the state of Nebraska? [LR601]

PAM ZILLY: The difficulty in answering that question is there is a number of proposals and I'm not real familiar with what all of them are. I haven't been part of all of that discussion. I do think a benefit to any kind of development of a forensic system in Omaha would be to have some consistency provided. Currently we have agencies that they use one lab for a while and then they switch and they come and now they're using our lab and then that may change again. And it's very difficult to allocate resources for what might be temporary situations. So to have some stability and consistency in what's being provided in the Omaha area would certainly be beneficial. [LR601]

SENATOR HILKEMANN: Kind of in response to Senator McCollister's question that he had earlier, you see the...as forensics is going to be...continue to increase, with the laboratory in Omaha, this regional lab, will that not...you say right now you're meeting the demands, you're catching up, you're kind of getting to that point. But at some point you say you could expand your laboratory if absolutely necessary. You see, at this laboratory we're here in Omaha, that maybe the state would not have to expand the laboratory in Lincoln maybe as soon as they may have to? I mean, I know that's hypothetical, but... [LR601]

PAM ZILLY: That is very hypothetical. That would depend. I mean, currently my understanding is the services are available in Omaha and they're being used in Omaha. They're not being used under one umbrella necessarily, so I don't know if we would see a change in what we receive if the structure of how those services are provided in Omaha changes. Maybe we would, maybe we would not. I don't know. [LR601]

SENATOR HILKEMANN: Do you see some advantage...did you hear Dr. Kinsey's testimony earlier? [LR601]

PAM ZILLY: Yes. [LR601]

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SENATOR HILKEMANN: Do you see some advantage of having a whole centralized system?  
[LR601]

PAM ZILLY: I'm not sure. I think it's more a manner of how do the systems operate? Do they have a good cooperative agreement with each other? Is there consistency kind of throughout the state? I know of a number of states that have separate systems that operate very well. I know of places that have more one of uniform system that operates very well. So I can't say that it necessarily...it could be good or bad. It depends upon how it's operated. [LR601]

SENATOR HILKEMANN: Are there other questions for Director Zilly? Thank you very much for coming to testify these morning. [LR601]

PAM ZILLY: Thank you. [LR601]

SENATOR HILKEMANN: A little change in what was published just as far as our testimony. We'll now hear testimony from Chief Todd Schmaderer. [LR601]

TODD SCHMADERER: (Exhibit 4) Good morning to the committee. It's always an honor. I speak with a great amount of respect any time I speak to legislative committees, especially this one convened. I want to put some order on my testimony today. First, I'll talk about our objectives, what are our top objectives to advance forensic science services in the Omaha area? I will then talk about the current state of crime laboratory or forensic science affairs in the Omaha area. And then my last caveat will be state involvement, what are we asking from the state as far as involvement? There are three objectives that I look at when I took over as chief that would provide adequate crime laboratory services to our community. First one is independence; second one is a full array of services; and the third one is accreditation. As I look at all three of those positions, as we sit right now in the city of Omaha, Douglas County area, we're 0-3 in all three of those. It's not to my standards at this point where we want to be with our forensic sciences. So this is part of the movement from the Omaha Police Department through my office to try to shore some of this up. So it galvanized and initiated a lot of these talks. The first piece is independence. I really look at independence as it goes towards credibility. When the employees who work in the crime laboratory function don't work for the agency that's investigating the

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crime in and are not on the campus of the agency investigating the crime, you at least have that appearance of independence. Some will say...and you might hear some testimony later that this independence is not of paramount importance if you get accreditation. I don't see it that way, especially in the aftermath of communities that happen to have issues with crime laboratory services that makes its independence factor even more important. The second piece is a full array of services, a one-stop shop if you will. I will get in a little bit about how we do our crime laboratory services in a second. But that one-shop, as Dr. Kinsey pointed out, a lot of pieces of evidence will go through various functions. It's much more efficient when you have that one-stop shop. Currently we don't have that. And the third piece is accreditation. I understand Douglas County Crime Lab is facing accreditation shortly. I appreciate that. But even when that's achieved we're still 1-3 on these caveats. We're still 1-3 on that. So what is the current state of crime laboratory affairs? I handed a...I gave you a handout. We could take a look at that. This is how the Omaha Police Department handles or farms out our evidence. You can see the Omaha Police Department itself will do the ones by the X. The Douglas County Sheriffs Department, for a cost of \$135,000 a year is the contract that we have, will provide blood alcohol content and will determine our drug testing. Is this a drug that we identified or not? The state lab we will also use on occasion. Generally the state lab is used when we don't have the function or in the area of DNA if it's a lower level offense, maybe a burglary, that nature, we'll send it to the state lab only because the time frame. It takes a long time for the state lab to get back to us. So most of our work in Omaha and Douglas County has to be done here. The state lab right now is really not equipped to handle our work completely and fully. In the area of DNA, we spent last year \$185,000 having DNA tested by UNMC--DNA tested by way of murders, sexual assaults, you name it, your very high-level crimes. And that UNMC model and accreditation and independence is very important when you have those cases proceed through the court system. When you hear the term crime laboratory, it evokes the image that you have a one-stop shop, that you can go and have an independent crime with a full array of services that's accredited. That one-stop shop and that image that's evoked when you hear that, you instantly think of the state of Montana, what Dr. Kinsey talked about. That not the system we have here. In fact, the Douglas County Sheriffs Crime Lab focuses on two entities for us: drug testing and toxicology testing for blood alcohol only. Right now, because we don't have that one-stop shop, the mechanism to test for drivers under the influence of drugs is severely lacking in the city of Omaha. Why is it lacking serves as an example of how I tease through the gathering and the processing of evidence



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in our city. Officer pulls over somebody, suspects and the driving under the influence of drugs, they initiate a urine sample. Currently we cannot take a urine sample at the Douglas County Sheriffs Office. They don't provide that service. Discussions have been held in the hopes of seeing if they would provide that service. Those discussions have stalled based on cost. So the other option is you send it to the state. But oftentimes the state is not a viable option to us because of the prospect of a speedy trial and the time frame, our city prosecutors have said, that the evidence gets back. So essentially we're extremely absent on this one example and there are others in the crime laboratory services facing our Omaha metropolitan area. The third piece that I want to talk about is the state involvement, what we are asking for of the state? Well, at the very least I'm asking for this, I'm asking for an acknowledgement that the status quo is not working and we need to make some "addressments." The second piece is recognition. I'd like the state to recognize that the size and volume of work in Omaha causes efficiency issues and the state lab, as great as they are, great respect for them, if we were to send all our work there it would it would backlog things to no end. And the final piece I would ask is an endorsement. I'd love to see the state as a partner, but at the very least, an endorsement that a forensic science partnership with UNMC would benefit the state via reduced workload at the state crime lab, and of course, benefit the state because Omaha...sometimes we talk about the state and Omaha as two separate entities. We are not. Omaha is part of the state and I see a benefit in this joint venture which we've initiated the discussions with on UNMC. And I believe the best-case scenario for top-level forensic science services in our community, a community that has struggled with this subject for many, many years, is a partnership with UNMC, the Omaha Police Department, perhaps Douglas County Sheriffs Office or the state. Be happy to take your questions. [LR601]

SENATOR HILKEMANN: Chief Schmaderer, thank you for your testimony. Are there questions for the chief? Senator Williams. [LR601]

SENATOR WILLIAMS: Thank you. One quick question, you talked about, Chief, the DNA either going to the state or UNMC and you're typically going to UNMC now. Can you tell me the approximate time differences of those two if you send a sample? [LR601]

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TODD SCHMADERER: Well, let me...I'll give you approximates. I mean everything varies and ebbs and flows as Ms. Zilly talked about. But if we have a case and it's a high-level case and we need a high turnaround on that DNA, we will go to UNMC because it can be guaranteed that turnaround and that efficiency needed to make those arrests. As you know, violent offenders are rare and they'll continue to offend so it's very important that we get that evidence back as soon as possible. The reliability going to UNMC has always been there on that front. If you have a lower level crime, maybe we're testing a door knob for DNA on a burglary, we'll...generally would send that to state. It's a free service to us and the expectation is that we may not get that back for four, five, six months. [LR601]

SENATOR WILLIAMS: When you send a high-profile DNA sample to UNMC, how soon do you expect to receive that back? [LR601]

TODD SCHMADERER: It depends. We can have that within a couple days, a week sometimes. [LR601]

SENATOR WILLIAMS: Okay. Thank you. [LR601]

SENATOR HILKEMANN: Senator Chambers. [LR601]

SENATOR CHAMBERS: For the sake of both the chief and my reputation, Chief, "grr." I want the media to be able to report that I growled at you. (Laughter) [LR601]

TODD SCHMADERER: I was looking down when you did that. Do it again for me. (Laughter) [LR601]

SENATOR CHAMBERS: The sound was it. You emphasize something that I'm concerned about and that's independence and the appearance of independence to the public. We both know that there is skepticism, especially in my community, about the police department. And if something can be done, especially in this area where evidence is going to be handled, that the police department is not in control of it, that it is an entity that is competent, professional, and not on the grounds of the police department that would take away a lot of doubt that might exist--and

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I'm mentioning my community--about whether evidence has been tampered with or any of those other things. Would you agree with that? [LR601]

TODD SCHMADERER: I'll answer that in two parts. [LR601]

SENATOR CHAMBERS: Yes. [LR601]

TODD SCHMADERER: For one, we've made a lot of strides with the trust issue in the city of Omaha. I want to note that. And yes, an independence factor for that reason would go towards police-community relations and trust. [LR601]

SENATOR CHAMBERS: And you wouldn't have any interest in retaining the activities that are done by the police department if we can have this model that is embracing the UNMC as a location. [LR601]

TODD SCHMADERER: That is correct. It is my desire to move away completely from the forensic science game and have that done by an independent entity. I understand though as this progresses, the progression will be to phase that out. But that is my ultimate desire, yes. [LR601]

SENATOR CHAMBERS: I guess we are on the same page. So just like when you support some legislation I had in Lincoln, I couldn't go after you like some people thought I would. You stymied me again. (Laughter) [LR601]

TODD SCHMADERER: Well, now my reputation is being affected. (Laughter) [LR601]

SENATOR CHAMBERS: I'll stop here. Thank you. [LR601]

SENATOR HILKEMANN: Thank you, Chief. Yes, Senator McCollister. [LR601]

SENATOR MCCOLLISTER: Thank you, Mr. Chairman. Chief, currently the police department does the firearms and tool mark examination. [LR601]

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TODD SCHMADERER: Yes, sir. [LR601]

SENATOR McCOLLISTER: So are you thinking that UNMC would take that function over as well? [LR601]

TODD SCHMADERER: We sure would like to. We would like to. That might be one of the entities that lingers last. There are other things to move forward first that are more in line with UNMC's expertise than that, but ideally testing of firearm's is a very important function. And ideally we would like to move that over to an independent aspect. [LR601]

SENATOR McCOLLISTER: Apart from that particular function, what other functions of the police department do themselves without aid from any other organization? [LR601]

TODD SCHMADERER: We do our own latent prints. We do the firearms for the Douglas County area. We do forensic video analysis, forensic graphics. We do breath test maintenance and forensic photography. [LR601]

SENATOR McCOLLISTER: And you would retain some of those functions? [LR601]

TODD SCHMADERER: Ideally, when you're talking a full-service lab sort of in the model that the state of Montana doctor described, it would be under one roof. [LR601]

SENATOR McCOLLISTER: Okay. [LR601]

TODD SCHMADERER: So we are not looking to retain that. We realize that that transfer will come towards the end. [LR601]

SENATOR McCOLLISTER: Thank you, Chief. [LR601]

SENATOR HILKEMANN: Chief, you say we're 0-3 right now for what you'd like to see in the forensics. If UNMC does not proceed with this planned facility, how do you see the city of Omaha proceeding in forensics? [LR601]

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TODD SCHMADERER: When I talk about being 0-3, I want to lay this out first. My comments here today are not to be critical of the Douglas County Sheriffs Office Crime Laboratory. They stepped in. They fill the void. What I'm looking for is to take this to a new level and go 3-3 and put this issue to bed once and for all in our community. If this protocol and what we're talking about these concepts fall through, I very seldom say this and I've never said it before in my career, but good luck to our community at this point. We will regret this moment and not seizing it, probably sooner than later. This is our opportunity to take this to a level that's unquestioned, an A-plus model. And as chief, I have to do everything I can to make sure the greatest push goes toward that or else I'll figure that I'm not doing my duties to this community. This is an opportunity, and I don't say that often. Let's not pass upon this opportunity. [LR601]

SENATOR HILKEMANN: Thank you. Senator Kolowski. [LR601]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Chief, thank you very much for your comments this morning. One of the things, if we had this full-blown lab as we were talking about, you'd need to train your current staff and upcoming staff in the future through the academy, all new recruits and all the rest. What changes would you see and how much time would it take to add more specificity in their training to how to handle a crime scene? How do you walk in and not mess it all up by doing the improper things? What thoughts do you have on that end? [LR601]

TODD SCHMADERER: Are you referring to as we progress towards the full concept? [LR601]

SENATOR KOLOWSKI: Yes, sir. Yes, sir. [LR601]

TODD SCHMADERER: Obviously we have employees that do that now and I see their integration into this. I don't see employees losing their positions over our talks here today. I feel that they'll enhance it. One of the glaring issues that we have...and I talked about the testing of urine for driving under the influence of drugs earlier as an example of deficiencies that we have. One of the reasons we can't do that, it's tough to find somebody with that qualification. It's tough to find employees with the certification to stay in this line of work and to provide this full of level service because that is the one unquestioned benefit of having an on campus of UNMC

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attached to a university setting is that it becomes that pipeline. We don't have that right now. So as I see this progressing, I see the positions and the careers only enhancing in the forensic science ability. And I'm not sure if I answered your questions. [LR601]

SENATOR KOLOWSKI: That's fine. [LR601]

TODD SCHMADERER: If I'm missing a piece, go ahead. Will you hit me again with it? [LR601]

SENATOR KOLOWSKI: It's just the matter of the additional training for your academy candidates going through as well as your current staff so everyone gets an additional... [LR601]

TODD SCHMADERER: They do. [LR601]

SENATOR KOLOWSKI: ...set of background and behaviors as expected as they walk into a crime scene. [LR601]

TODD SCHMADERER: They do. The crime scene investigators are not sworn law enforcement. They work in a separate unit within the Omaha Police Department. And the training that we do give them is vast, but we're struggling. We're behind. And it's a struggle for an agency to keep up with all these functions. And the last thing you want an agency to struggle with is crime laboratory and forensic science services. [LR601]

SENATOR KOLOWSKI: Thank you, Chief. [LR601]

SENATOR HILKEMANN: Are there additional questions for Chief Schmaderer? Chief, thank you for coming this morning. I just wanted to say that you said your reputation might be hurt. I want to say that your reputation is that you're doing a fabulous job for the city of Omaha and I want to thank you for that work that you're doing for us. [LR601]

TODD SCHMADERER: Thank you, Senator. [LR601]

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SENATOR CHAMBERS: Excuse me. Mr. Chairman, you opened the door. [LR601]

SENATOR HILKEMANN: Oh, yes. Uh-oh. [LR601]

SENATOR CHAMBERS: Chief Schmaderer, last time you were down in Lincoln you said you would listen awhile if I had some complimentary things to say. Does that hold true for today? [LR601]

TODD SCHMADERER: Sure it does. [LR601]

SENATOR CHAMBERS: Here's what I want to say and I really mean this. One thing I appreciate about you, you never are defensive. You never seem to be, and I'd say you never are, threatened by improvements that may be offered, even if those improvements would affect your own agency. And that is what I really appreciate about you. [LR601]

TODD SCHMADERER: I appreciate everybody on this panel. Thank you. [LR601]

SENATOR CHAMBERS: Now I'm waiting. You want to reciprocate? (Laughter) No, that's okay. [LR601]

TODD SCHMADERER: I appreciate everybody on this panel with special emphasis, Senator Chambers. How's that? [LR601]

SENATOR CHAMBERS: Thank you. [LR601]

SENATOR HILKEMANN: Thank you, Chief. Now we're going to be hearing, next invited guest is Marty Bilek, the chief of staff for Mayor Stothert. [LR601]

MARTY BILEK: Good morning, Senators. Part of my serving in the mayor's office, I spent almost 40 years with the Douglas County Sheriffs Office and in that time I've seen many advances in law enforcement. When I started in 1974, portable police radios were an emerging technology. There were no Taser guns or body cameras. Dialing 9-1-1 from emergency calls was

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not yet widely available. Women and minority police officers were rare. Obviously we've come a long way. We now have a similar opportunity in the developing field of forensic science. Forty years ago, forensic science was largely about fingerprints and photographs. In 2016, fingerprints and photographs are still important, but fingerprints are classified and stored by computers and the camera is digital. In addition, police and prosecutors must have access to modern chemistry unit when it is necessary to identify controlled substances. Ballistics has always been an available tool to law enforcement, but there is a national database to catalogue this evidence too. However, the greatest advancement in forensic science over the last half-century is a complex science of DNA profiling. The point being the criminal justice system and its forensic science component must evolve with the emerging technology and best practices that surround it. Prosecutors, jurors, and defense counsel will insist that courtroom evidence be credible and compelling. As forensic science becomes more complex and sophisticated, so, too, must our approach for managing this evolving discipline. That is why our combined regional and accredited lab with an appropriate level of independence located on the campus the University of Nebraska Medical Center is a logical and desirable next step. The teaching opportunities that would exist on the campus of UNMC would ensure that the region would always...that the region would have local access to highly trained forensic science professionals. Independence is an important aspect to a new crime lab because it creates a layer of integrity that minimizes the perception that investigators and lab technicians, who may work for the same agency, could interact in a way that would bring the credibility of evidence into legal question. Even though the majority of crime labs are under a parent law enforcement agency now, the National Academy of Sciences in 2009 recommended that forensic science providers be independent of law enforcement. For the same reason that the Nebraska Legislature just passed LB1000, a bill that would ensure the integrity of photo lineups used by law enforcement when confirming eyewitness identifications, so, too, should the Legislature be convinced that forensic science in the state of Nebraska is credible and efficient so the guilty will be convicted and the innocent most assuredly will remain free. The Omaha Police Department, the Douglas County Sheriffs Office, Douglas County Board, the city council, the Douglas County Attorney, city prosecutor, and NORS have all been in consultation over the past month in an attempt to agree on a configuration of a forensic science center that would be a national model for success. We have a unique opportunity before us and we hope the Legislature will appreciate the significance as we move forward. Thank you. Glad to answer any questions. [LR601]



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SENATOR HILKEMANN: Do we have questions for Mr. Bilek? Letting you off easy today, Marty. [LR601]

MARTY BILEK: Very good. Thank you. [LR601]

SENATOR HILKEMANN: Thank you very much. We will now hear from Mayor Stothert. [LR601]

JEAN STOTHERT: Good morning. [LR601]

SENATOR HILKEMANN: Good morning. [LR601]

JEAN STOTHERT: Thank you, Senator Hilkemann, and good morning, Senators. For many years, the city of Omaha and Douglas County have discussed and debated the merits of the joint City-County Crime Lab to provide the timely and accurate evidence testing needed for successful criminal prosecutions. We believe it is now time to refocus this discussion on the development of a forensics science center, a full-service accredited independent facility that can become a national model for investigations and academic training. Over the last nine months we have discussed a partnership that would include the city of Omaha, Douglas County, the Nebraska Medical Center, the Nebraska Organ Retrieval System, Lions Eye Bank, and the Douglas County Coroner. We see many opportunities for the state of Nebraska to join this partnership. We could reduce delays by sharing resources and improving efficiencies. Working together, this one-of-a-kind facility will offer services to law enforcement agencies throughout eastern Nebraska and potentially for the entire state. We cannot be satisfied with the current status quo. We must have a full range of services that a large metropolitan area desperately needs. The Omaha Police Department has an extremely high clearance rate for violent crime arrest. This year, OPD has investigated 12 homicides and we have resolved all but one. This is on the heels of the last three years being well above the national average. The Forensic Science Center that we support will provide tools and highly trained independent staff. The evidence needed to achieve a conviction rate that matches our high arrest rate will be reliable and accurate and juries will trust the evidence. Locating the center on the campus of University of Nebraska Medical Center achieves many goals and this includes independence, accreditation, and a full

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range of forensic services. When evidence testing is done in a lab affiliated with the same law enforcement agency that is investigating the crime, it raises concerns about the independence and reliability and we can change that perception. Second, an affiliation with Nebraska Medical Center, a nationally known institution with an outstanding reputation. Third, training and educational opportunities such as a new forensic pathology training program. And finally, a full range of lab and testing services centralized and expanded in one location. What's in it for the taxpayers? Efficiency, timeliness, and accuracy. Local county attorneys have stated the next crime lab error could have a catastrophic effect on our ability to prosecute successfully. We are currently evaluating several viable and attractive options for governance and funding of the center. This could include: Option one--each partner would pay a portion of the building cost; two--a private developer could build the center, we would pay a long-term lease and the private developer would be eligible for TIF; three--the Omaha Douglas Building Commission could pay for the portion of the building shared by the city and Douglas County if they were to merge. But this is not just about saving money. It's about credibility. This multi-purpose forensic science center is an opportunity to develop the crime lab of the future. We urge this committee to recognize the benefits of being a leader in this area of law enforcement and criminal justice. Thank you all and I'll be happy to take your questions. [LR601]

SENATOR HILKEMANN: Do we have questions for Mayor Stothert? Mayor, what do you think the state's role should be? [LR601]

JEAN STOTHERT: Well, I think, first of all, a partnership. I think we could help each other and benefit each other, help each other with efficiencies, managing the overflow. When we first started discussions, it wasn't just a matter of who is...who we are going to get to be a partner to pay for it? It's, how could we benefit not only eastern Nebraska but the entire state? [LR601]

SENATOR HILKEMANN: You heard earlier testimony from our expert from Montana? [LR601]

JEAN STOTHERT: Yes. [LR601]

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SENATOR HILKEMANN: Would you envision at some point down the line that if we develop this right that this could be a model for the entire state? [LR601]

JEAN STOTHERT: I think it could be a model for the entire country if it's developed right. You know, you could imagine at the center on the campus of UNMC being a hub and perhaps satellites with the rest of the state. But I think that there is a great opportunity and I think especially the opportunity for educational training. I think being full service on the campus of UNMC and having the ability to have a forensics pathology training program and the training possibilities that would be associated with being on the campus, the credibility of being on this campus opens up a lot of opportunities. And I do think it will help the prosecution immensely. [LR601]

SENATOR HILKEMANN: Okay. Additional questions? Anyone else? Thank you, Mayor. [LR601]

JEAN STOTHERT: Thank you so much. [LR601]

SENATOR HILKEMANN: Now we'll be hearing testimony from Commissioner Mary Ann Borgeson who's chair of the Douglas County Board. [LR601]

MARY ANN BORGESON: Good morning, Chairman and Senators. [LR601]

SENATOR HILKEMANN: Good morning, Commissioner. [LR601]

MARY ANN BORGESON: (Exhibit 5) Thank you very much for allowing me to testify today. My name is Mary Ann Borgeson, M-a-r-y A-n-n B-o-r-g-e-s-o-n. I am the chair of the Douglas County Board of Commissioners. Douglas County has been in intense discussions, as you've heard, with the city of Omaha and UNMC for the past several months in regards to a possible consolidation of forensic crime lab services. Several years ago the county board committed to supporting the Douglas County Sheriff Tim Dunning in utilizing more than \$4 million federal drug forfeiture funds to create a state-of-the-art crime lab in the west wing of the former Thomas Fitzgerald Veterans Home, which is located directly adjacent to the current sheriffs office at

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156th and Maple. The Douglas County Forensic Crime Lab performs forensic lab services for many governmental agencies in the Omaha metropolitan area. This is important because today we've only really talked about Omaha and Douglas County. But we provide services to the FBI, DEA, ATF, and DHS. The crime lab also has a great professional relationship with the Nebraska State Patrol Crime Lab. It employs dedicated, professional lab technicians who do excellent work. The county's crime lab is in the process of becoming accredited through ANAB, which is a worldwide accrediting body which was here just a few weeks ago and I appreciate those that attended the presentation at our crime lab that attended. I appreciate that. That accreditation should be achieved this fall. Once it is accredited, the county's lab will be able to take on a greater role assisting the State Patrol and others. I have handed out some bullet points in regards to our professional crime lab for your review and you will also hear from the sheriffs office and the county attorney's office following me. The Douglas County Board is supportive of creating a regional crime lab at or utilizing the current Douglas County Forensic Crime Lab facility, in cooperation with the city of Omaha and UNMC. The alternative would be to move the existing crime lab operations into an yet-built facility on the UNMC campus. However, the source of funding to create such a facility is currently unknown and the county would have to vacate our existing crime lab space. This also does not take into account the cost of operation yet. And you heard from Dr. Gold that those three concepts we're looking at, we're doing our due diligence on all of that information. Vacating the existing space would require the sheriff to either repurpose the space for other law enforcement uses or repay the federal government a significant amount of drug forfeiture funds. Either option would be a large financial hit to the county taxpayers. In closing, while the county board is committed to continuing to engage in discussions with the city of Omaha, UNMC, and this committee to find the best solution for the taxpayers, at this time the county board is convinced that the best solution resides at utilizing the current county crime lab facility. Thank you and I would answer any questions. [LR601]

SENATOR HILKEMANN: Are there questions for Commissioner Borgeson? Senator Chambers. [LR601]

SENATOR CHAMBERS: Commissioner Borgeson, had it not been for the drug forfeiture money, that money...that Thomas Fitzgerald building would not have been refurbished or whatever they want to call it, handled in that fashion, would it? [LR601]

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MARY ANN BORGESON: Potentially it would have gone as a bond issue instead. [LR601]

SENATOR CHAMBERS: Right. So it may be a lesson not just to Douglas County but others who want to engage in what's called cash register justice, where there's a financial incentive to do certain things because it produces money. So the Legislature altered the forfeiture bill...law and it's being looked at around the country. So Douglas County won't be the only one in that particular situation. But let's forget the drug money, let's forget the Thomas Fitzgerald building and look at what is envisioned by this proposal of using UNMC. Without anything you say being interpreted necessarily as an endorsement, do you have doubts as to whether this facility, if it's put on the UNMC campus, do you have doubts about its ability to function fully in the way that has been projected as a crime lab? [LR601]

MARY ANN BORGESON: On the UNMC campus? [LR601]

SENATOR CHAMBERS: Yes. [LR601]

MARY ANN BORGESON: No, not necessarily. [LR601]

SENATOR CHAMBERS: So we're not looking at capability, professionalism, and so forth. [LR601]

MARY ANN BORGESON: No. We're...in my opinion, we're basically looking at what resources we currently have and put to good use. [LR601]

SENATOR CHAMBERS: You and I are both politicians. We know that we must have thick skins. We know that we may be called on to deal with situations that may be somewhat ticklish which nonpoliticians will not have to deal with. Are you aware of doubt, skepticism, and suspicion that hangs over the Douglas County Crime Lab? [LR601]

MARY ANN BORGESON: I have been aware of it, Senator, and I think our sheriff has done an excellent job in addressing that. I guess I look at...what you're referring to is any entity, you can take law enforcement. If there is a bad apple in law enforcement, do you throw the whole thing

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out? No. You look at what the bad is and you try to reengineer those services to a higher quality. And that's what I think our sheriff has done within our facility. [LR601]

SENATOR CHAMBERS: So that people won't think I'm making just a scattergun accusation, David Kofoed is what I have in my mind. [LR601]

MARY ANN BORGESON: Yes, I understand. [LR601]

SENATOR CHAMBERS: And I had a program on public television and I was very critical of how the Douglas County sheriff was defending David Kofoed and almost pledging his integrity and sacred honor. And I explained before it all came out how David Kofoed had created evidence, planted evidence, how illogical it was to say that evidence of a blood nature would continue to exist when there had been rain and other things affecting it. But Kofoed managed miraculously to find evidence where nobody else could. The sheriff defended him. The same sheriff is in charge now. So tell me what the sheriff has done to overcome that performance by him. [LR601]

MARY ANN BORGESON: And I can be corrected when they come up, but my understanding is that they have created basically a separation of those that collect the evidence and those that analyze the evidence. Those two do not mix at all. And the oversight of it is with a new director from the state of New York. [LR601]

SENATOR CHAMBERS: Now this is not being critical, but if you who are our county commissioner are not exactly sure how that is, the public is going to have no conception whatsoever and all they see is that the same crime lab where David Kofoed worked and was protected and shielded by the sheriff is the one that is to be taken over the UNMC proposal. But what you did make crystal clear is that your comments are not going to an incapability by UNMC to perform. And what is your main reason for wanting to keep it out there at Fitzgerald? [LR601]

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MARY ANN BORGESON: One is that I think we've taken the steps necessary to create an efficient and good lab. And, two, why not utilize the current resources that we have in a manner which saves the taxpayers some dollars? [LR601]

SENATOR CHAMBERS: But the big one I think you left out, what...you said some about reimbursement of the federal government. [LR601]

MARY ANN BORGESON: We would have to... [LR601]

SENATOR CHAMBERS: Give back. [LR601]

MARY ANN BORGESON: ...pay back some of that money. [LR601]

SENATOR CHAMBERS: And that is a large consideration, isn't it? [LR601]

MARY ANN BORGESON: Sure it is. Money, yeah, sure it is. [LR601]

SENATOR CHAMBERS: Okay. I just want the record to be clear. [LR601]

MARY ANN BORGESON: Absolutely. [LR601]

SENATOR CHAMBERS: Thank you. [LR601]

MARY ANN BORGESON: Yes, absolutely. [LR601]

SENATOR HILKEMANN: Senator McCollister. [LR601]

SENATOR MCCOLLISTER: Thank you, Commissioner, for your testimony. Thank you, Mr. Chairman. I thought there was some effort to get an attorney's determination on the financial aspect that you just spoke of, is that correct? [LR601]

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MARY ANN BORGESON: Yeah, and I think the sheriff can address that or the county attorney can address that better than I. [LR601]

SENATOR McCOLLISTER: As the various parties in this effort today come to a decision matrix, is relative cost the primary element that we should consider, or is there...should synergy kinds of aspects be considered? Or what...? [LR601]

MARY ANN BORGESON: I think in the climate that we're in today with taxpayers, we have to have cost as a top priority. You know, when we talk to our taxpayers the first thing they say is cut your spending. And so it doesn't make sense to me that we look at any model that increases those costs. You can create synergies and efficiencies and better utilization of resources with current resources if you want to, and basically if you have to, in saving those dollars. And I think we have all the players at the table that are very...that are experts and are willing to do that. So I don't think we just have to rest on one model and say throw out all the rest, again, especially in this climate with our taxpayers wanting us to reduce our spending. [LR601]

SENATOR McCOLLISTER: Thank you, Commissioner. [LR601]

SENATOR HILKEMANN: Commissioner, I want to check one of your...on paragraph three, you begin to say the county board is supportive of this regional lab. And then in the next line it says that you would want to move your existing law to be a part of this. Is that...am I reading that wrong? Or did I pick up that...did I pick it up wrong? It says, the alternative would be... [LR601]

MARY ANN BORGESON: The alternative...if we don't use our current facility, and again, when we supported the sheriff in creating that, there's actually a second...all the suites are not currently used so there's space available. There's a second floor that's been gutted so it's a shell that is able to be utilized for any further expansion or cooperation with any of the entities in which we're talking to currently. So that facility could be used in some way, shape, or form as it exists today in the creation of this regional model. [LR601]

SENATOR HILKEMANN: Okay, so I'm not...so I'm reading into wrong that you'd say, yes, we would move but we want to have the Douglas County Lab moved down to that... [LR601]



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MARY ANN BORGESON: Right. [LR601]

SENATOR HILKEMANN: ...but be an independent, still stay Douglas County Lab but then that...that's not with the intent of this... [LR601]

MARY ANN BORGESON: No, no. [LR601]

SENATOR HILKEMANN: Okay. Very good. Additional questions for Commissioner Borgeson? [LR601]

MARY ANN BORGESON: Thank you. [LR601]

SENATOR HILKEMANN: Thank you for coming. We'll now have testimony from Chief Deputy Tom Wheeler of the Douglas County Sheriff's Department. [LR601]

THOMAS WHEELER: (Exhibit 6) Good morning, Senators. I'm Chief Deputy Tom Wheeler, speaking on behalf of the Douglas County Sheriff's Office. The stated intent of LR601 is to determine the need for a regional accredited forensic crime laboratory in the Omaha area. This study would review present facilities, determine the needs and options for developing such a lab, and examine the feasibility of the state becoming a partner in the venture. I'd like to briefly describe the Douglas County lab as it presently operates and offer a plan to address the needs of our stakeholders to include prosecutors, area law enforcement agencies, and taxpayers. In 2011, Sheriff Dunning and the Douglas County Board authorized a \$4.2 million renovation to the west wing of the Thomas Fitzgerald Home to create a forensic services space and K-9 facility. The building itself is owned outright by the county. Since then, hundreds of thousands of dollars have been invested into the lab in the form of equipment and training, and none of it has been funded through taxpayer dollars. Prior to the renovation project, engineers evaluated the structure and determined that the building, which was built in 1929, had another hundred years of usable life. Many of you on this committee had an opportunity to tour the lab recently and interact with the staff. For those of you who did not, I can report that a secure, well-equipped, modern crime lab was built to an accredited standard. In addition to a state-of-the-art lab, another 10,000 square feet was roughed out on the top level of the building for future expansion. Douglas County

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currently performs chemistry testing, limited toxicology, fire debris analysis, latent print examinations, and crime scene investigations, or CSI. All members of the Douglas County Crime Lab maintain current certifications in their respective disciplines. The lab performs forensic services for 17 local area law enforcement agencies, and performs testing for the FBI, ATF, DHS, and DEA. These federal agencies all have access to federal labs but choose to use the Douglas County lab. The average turnaround time for the Douglas County lab is under 30 days. The Douglas County lab does not conduct DNA testing, urine toxicology, or ballistics testing. UNMC conducts DNA testing and the Omaha Police Department conducts ballistics testing, multimedia analysis, latent print examinations, and CSI. Urine toxicology testing remains as the area of need for our region and must be addressed. In late 2015, Douglas County contracted with a consultant to assist us in achieving a rare accomplishment: dual accreditation. Under this model, the crime lab will become accredited under ISO standard 17025 while the crime scene investigators and latent print examiners will be accredited under ISO standard 17020.

Accreditation is critical to the lab for several reasons, but I want to mention two. First, for prosecutors and law enforcement agencies, accreditation brings credibility to the courtroom. Second, accreditation provides a layer of separation and independence from undue influence on the crime lab. We expect the lab, CSIs, and latent prints to achieve accreditation later this year. At that time the Douglas County Crime Lab will be among a handful of agencies in the nation to achieve this dual accreditation. Over the last several months the city of Omaha, members of the Douglas County Board, Douglas County Attorney, Sheriff, and UNMC have been meeting to discuss crime lab issues, and we continue to meet. The group has made progress and two plans have emerged. Under one plan, the city, county, and UNMC would build a new, independent facility on the campus of UNMC. The projected cost of this new facility is in excess of \$10 million. Most, but likely not all, of the services I have listed would be housed under one roof. The second plan would establish a combined crime lab in the existing Fitzgerald space. This combined lab would invite UNMC to add urine toxicology in a currently vacant lab space while DNA testing would remain at UNMC. The second plan would establish a shared governance structure that would include the city of Omaha, Douglas County, and UNMC. One plan will cost taxpayers millions of dollars either in the form of up-front tax dollars to build a new facility or annual tax dollars to lease the space back from the builder. The annual operating cost of this new lab is currently being evaluated. The other plan leverages the strengths of the existing organizations and achieves accreditation, an additional layer of independence through shared

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governance, and a full array of services, and it comes with very little additional cost to taxpayers. I'd like to conclude with this. As the state evaluates its potential role in a metro crime lab, I would ask that you please consider the following: (1) What need is the state going to address that local governments cannot address? (2) If the state does become involved in a metro-area crime lab, is it willing to fund that lab in the same way it funds the Nebraska State Patrol Crime Lab, thereby providing uniform access to state-funded crime lab services? And (3) If the state mandates the creation of an independent lab in eastern Nebraska, will it apply that same independent standard to the State Patrol Crime Lab? That concludes my remarks. Thank you. [LR601]

SENATOR HILKEMANN: Thank you, Deputy Wheeler. Senator McCollister. [LR601]

SENATOR MCCOLLISTER: Yeah. Thank you, Mr. Chairman. And thank you for coming here this morning. You identified three areas of cost: training, the building, and the machinery that's utilized in the lab. Do you have a breakdown of those costs? [LR601]

THOMAS WHEELER: I don't have the breakdown with me today. I can tell you that renovating the crime lab was \$4.2 million. That included the K-9 facility. We've invested several hundred thousand dollars in equipment over the last five or six years, and training to keep our staff current. Those costs do not include the annual salaries, of course. [LR601]

SENATOR MCCOLLISTER: So most of the cost is the renovation of the building, is that correct? [LR601]

THOMAS WHEELER: Yes, most of the cost we're discussing right now, yes. [LR601]

SENATOR MCCOLLISTER: Okay. Thank you, Mr. Chairman. Thank you, Chief. [LR601]

SENATOR HILKEMANN: Senator Chambers. [LR601]

SENATOR CHAMBERS: Mr. Bilek (sic), who owned that Fitzgerald building after it ceased to be a care facility? [LR601]

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THOMAS WHEELER: My understanding is the county owned it. Prior to that I'm not sure.  
[LR601]

SENATOR CHAMBERS: But it was a county "white elephant," so to speak, after that, wasn't it? And they needed something to do with it. If they could get money other than tax money, they wanted to do that and do something with it, is that correct? [LR601]

THOMAS WHEELER: I believe the county would like to utilize the space. They currently have a bond issue that they're considering for a few...other renovation in the building. [LR601]

SENATOR CHAMBERS: If that drug forfeiture money had not been available, the county never would have spent that much money on an old building like that, \$4-point-something million, to turn it into anything, would they? [LR601]

THOMAS WHEELER: No, Senator, I don't believe that's the case. There is a bond issue that the county is pursuing that would renovate the remainder of that building, so I do believe that the plan was to utilize the space. [LR601]

SENATOR CHAMBERS: Well, now what they're trying to do is avoid paying back the federal government that \$4-point-something million, and they figure spending a smaller amount than that to avoid paying that bigger amount makes it worthwhile. But they could have done that a long time ago had they chosen to do so, couldn't they? [LR601]

THOMAS WHEELER: The county could have pursued other funding mechanisms for the facility. [LR601]

SENATOR CHAMBERS: But they didn't, did they? [LR601]

THOMAS WHEELER: No. [LR601]

SENATOR CHAMBERS: Now if that forfeiture money had not gone for that building, it would not have been under the sheriff's control, would it? That money would not have gone into the

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sheriff's budget, would it? It would have gone into the county general fund most likely, wouldn't it? [LR601]

THOMAS WHEELER: The forfeiture money goes into the county general fund to be used for law enforcement purposes. [LR601]

SENATOR CHAMBERS: And this was something the sheriff would like to have had at his disposal. [LR601]

THOMAS WHEELER: This was filling a need in the community at the time dealing with the processing of evidence. [LR601]

SENATOR CHAMBERS: Okay. Now we're at a situation where a proposal is before us where a facility would be on the campus of UNMC. I have to ask you some direct questions, knowing that you know the answer and you know that I know the answer. Are you aware that there is a cloud of suspicion over that crime lab, the Douglas County Crime Lab? [LR601]

THOMAS WHEELER: I'm aware of a cloud of suspicion in the past, yes. [LR601]

SENATOR CHAMBERS: Was there a more recent incident involving another technician, or whatever her title was? [LR601]

THOMAS WHEELER: Comparable to the other? No. [LR601]

SENATOR CHAMBERS: Not comparable, another issue involving another technician. [LR601]

THOMAS WHEELER: There was. [LR601]

SENATOR CHAMBERS: And could it raise suspicion and concern in the mind of the public? [LR601]

THOMAS WHEELER: It should not. It was a personnel matter. [LR601]

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SENATOR CHAMBERS: But it was not perceived that way by the public. The reason I can tell you: because I had calls at my office and I told them that's not my responsibility, call the county commissioners. But here's the point I'm getting at, and I'll try to phrase questions instead of making statements. There is an expression that Caesar's wife must be above suspicion. That means not only must Caesar's wife not do anything wrong, Caesar's wife must not be in compromising circumstances. Should a crime lab be above suspicion? [LR601]

THOMAS WHEELER: I think every crime lab strives for that. [LR601]

SENATOR CHAMBERS: When a crime lab has had a case like that of David Kofoed, where even I, who am not trained in forensics, could see all the flaws and shortcomings, why couldn't the sheriff see that, see those same shortcomings? [LR601]

THOMAS WHEELER: Senator, you referenced earlier comments that the sheriff had made in support of David Kofoed at that time. I think understanding the context in which those comments were made is important. [LR601]

SENATOR CHAMBERS: Well, you can give the context. [LR601]

THOMAS WHEELER: The comments were made after a federal jury acquitted Dave Kofoed of criminal charges. Sheriff Dunning made comments of support for him at that time. Later, when a state court found him guilty, he was fired and Sheriff Dunning made comments that were not supportive of Dave Kofoed. [LR601]

SENATOR CHAMBERS: Now let's give a little more context. The prosecutor was persuaded to agree not to offer certain evidence during the trial, isn't that true? [LR601]

THOMAS WHEELER: I'm sorry? [LR601]

SENATOR CHAMBERS: The prosecutor agreed not to offer certain evidence of Kofoed during that trial which was used against him in the state trial. And the reason I'm saying it: because I was critical of the prosecutor for making that agreement. I said he had cut a deal, that he had

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ensured that Kofoed would not be convicted, and I said that before the final. But here's what I'm getting at. When all was said and done, do you believe that Kofoed created evidence/planted false evidence and thereby procured great harm to individuals who were framed by that placement of evidence? Have I said anything that's incorrect? [LR601]

THOMAS WHEELER: My position is that David Kofoed committed a crime. [LR601]

SENATOR CHAMBERS: Mine too. [LR601]

THOMAS WHEELER: And he was held accountable. [LR601]

SENATOR CHAMBERS: But it was...it grew directly from his work in the Douglas County Crime Lab, isn't that right? [LR601]

THOMAS WHEELER: Senator, I don't know that anyone can ensure that another individual won't commit a crime. [LR601]

SENATOR CHAMBERS: That's not what I'm asking you. I'm talking about... [LR601]

THOMAS WHEELER: We come today... [LR601]

SENATOR CHAMBERS: ...Kofoed so that you can give yes or no answers if you want to. He created suspicion toward the crime lab based on his creating, falsifying, planting evidence. Do you agree with that? [LR601]

THOMAS WHEELER: He created suspicion, yes. [LR601]

SENATOR CHAMBERS: And that suspicion still hangs over the crime lab because I've heard it discussed in the context of what is being considered right now. So you're aware that that cloud has not dissipated, aren't you? [LR601]

THOMAS WHEELER: No, I'm not, and I believe... [LR601]

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SENATOR CHAMBERS: Oh, okay. [LR601]

THOMAS WHEELER: ...several changes have occurred. When Dave Kofoed was fired, this new lab was constructed. It was...the lab came after Dave Kofoed left. [LR601]

SENATOR CHAMBERS: That's not what I'm asking you. [LR601]

THOMAS WHEELER: Several policy changes were made in how we collect and analyze evidence. [LR601]

SENATOR CHAMBERS: Mister... [LR601]

THOMAS WHEELER: Several... [LR601]

SENATOR CHAMBERS: Mr. Bilek (sic), I will try to be more clear in my questions. [LR601]

THOMAS WHEELER: It's "Mr. Wheeler," and I want to answer your questions but... [LR601]

SENATOR CHAMBERS: No, you're not. I'm asking you, do you think that that cloud of suspicion has dissipated? That's yes or no. [LR601]

THOMAS WHEELER: Yes, I believe it has. [LR601]

SENATOR CHAMBERS: Okay. Now do you think that this crime lab at the Fitzgerald building would be more effective in providing all the services that would be available at a crime lab on the UNMC campus? Would Fitzgerald do a better job of all of that? [LR601]

THOMAS WHEELER: I believe working in cooperation would do a better job than moving it under one roof. [LR601]

SENATOR CHAMBERS: Would Fitzgerald do a better job than the UNMC facility? Because if the UNMC facility is not put here, the only thing available is Fitzgerald. [LR601]



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THOMAS WHEELER: Could you be more specific? What are you asking that we would do a better job with? [LR601]

SENATOR CHAMBERS: I'm sorry I can't make you understand, so my English is very poor. But I assure everybody I am an American citizen. But I cannot speak English clearly enough to be understood, so mea culpa. And I'm through asking questions. Thank you, Mr. Chairman. [LR601]

SENATOR HILKEMANN: Senator McCollister. [LR601]

SENATOR McCOLLISTER: Yeah. Thank you, Mr. Chairman. Let's go back on the history of the Fitzgerald facility. Wasn't that a state facility until the time it was transferred to Douglas County? [LR601]

THOMAS WHEELER: I believe it was. [LR601]

SENATOR McCOLLISTER: Do you know what the time sequence on that was? [LR601]

THOMAS WHEELER: I do not. [LR601]

SENATOR McCOLLISTER: Okay. How many acres is the Fitzgerald, that whole area on that 100-and-what...156th and Maple, is it? The sheriff has got his facility on those acres, is that correct? [LR601]

THOMAS WHEELER: Well, the Sheriff's Department itself sits on a plot of land. The Fitzgerald Home is adjacent to us. [LR601]

SENATOR McCOLLISTER: Are there any other facilities or operations that occur apart from those two? [LR601]

THOMAS WHEELER: The Douglas County Engineer's Office and Douglas County Garage are on the southern half of that campus. [LR601]

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SENATOR McCOLLISTER: That's pretty valuable property, is it not? [LR601]

THOMAS WHEELER: I would suspect so. [LR601]

SENATOR McCOLLISTER: Yeah. The real estate value I would guess at that part of the city would be very valuable. I'm just speculating that if you tore the Fitzgerald facility down you could resell that ground and make a lot of money. But that's just mere speculation. Thank you very much. Thank you, Deputy. [LR601]

SENATOR HILKEMANN: Additional questions? Deputy Wheeler, do you see the...we've talked about this new facility and the potential particularly for the educational purposes and so forth of that. And there's a question as to whether it ought to be on the UNMC campus or if it ought to be out at the Thomas Fitzgerald question. Do you see, you really see a need for an educational facility such that's being proposed by UNMC? [LR601]

THOMAS WHEELER: Well, I think there could be benefits to them offering it. As you probably know, we worked closely with Nebraska Wesleyan when they were in the business of offering graduate work. Many of our employees are instructors, adjunct instructors at Nebraska Wesleyan. So the education component is important and we've partnered with the educational community. [LR601]

SENATOR HILKEMANN: Do you think the state should be involved in this whole process? [LR601]

THOMAS WHEELER: Well, I think that depends. If the state is going to come in and fund the Eastern Nebraska Crime (sic--Forensic) Lab area, then there is a place for that. I just don't think at this time that the state needs to be involved. I think this is a local issue and it's being dealt with locally. [LR601]

SENATOR HILKEMANN: As we look into not just the immediate situation, but as we look going forward and we've talked...and we had Director Zilly talking about how forensics is becoming more and more a part of, you know, the accepted part of solving crime. Do you see

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that the facility at the Douglas County facility as it exists today can meet the needs of the future for 25 to 50 years from now? [LR601]

THOMAS WHEELER: I do believe that. Structurally the building has 10,000 square feet on the top floor that is shelled out for future expansion, so the space is available. [LR601]

SENATOR HILKEMANN: Okay. Is it just a matter of space? You think that the...I mean the...I'm thinking logistically here with where UNMC is located. If we had that teaching facility that we have out there, I think logistically that would present some problem. Do you see problems in that logistics with...if we coordinate with UNMC? [LR601]

THOMAS WHEELER: Well, we were able to have an effective partnership with Nebraska Wesleyan. Their campus was in Lincoln. I don't know that it has to be colocated at one location to be effective. [LR601]

SENATOR HILKEMANN: Okay. Do you see a scenario where UNMC develops its center and focuses with the city of Omaha? Do you see both laboratories coexisting? [LR601]

THOMAS WHEELER: I think that's a possibility. I think it's in the best interests of the city and the county to work together and continue to work together like we have, and I hope we continue to do that. [LR601]

SENATOR HILKEMANN: Okay. Are there additional questions? Okay. Thank you, Deputy Wheeler. All right. I have been requested that we have a five-minute break and we will be back...and I'm very sensitive to those that have...waiting here for testify. We will keep this to a five-minute break here. [LR601]

BREAK

SENATOR HILKEMANN: I'm going to ask that we come back to order. Okay, let's continue back. We're now continuing on with our invited testimony, and our next testifier is Douglas County Attorney Don Kleine. [LR601]

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DON KLEINE: Good morning, Senators. [LR601]

SENATOR HILKEMANN: Good morning. [LR601]

DON KLEINE: My name is Don Kleine, K-l-e-i-n-e. I'm the Douglas County Attorney. And I'm very appreciative of this committee being here and I just hope that we all can accomplish something together here. I mean this is something I think has been very important. I know my colleagues from Sarpy County, this is something that we've been talking about for I'll bet you nine, ten years with the different law enforcement entities realizing the importance in the largest part of the metropolitan area of Nebraska and not having an accredited crime lab. We haven't. Just to give you a little history here...and you know, this is really the...it's vital, being in the courtroom, our people being in the courtroom, and talking to jurors after we try cases, this type of evidence is vital to hold people responsible for doing bad things and to make sure that we get it right and exonerate people who aren't involved in crimes. This is absolutely vital in the criminal justice system, this type of evidence. So I guess what we're looking for is some...is credibility. We're looking for full service, and by full service I mean ballistics, fingerprints, forensic DNA evidence. Kind of the cutting edge now is forensic digital evidence. By that I mean cell phone analysis, video, computer, and then also obviously drug analysis and toxicology. That's the full gamut of, when I'm talking about forensic evidence, what I mean. And something else that I think is important to consider here is the cost-effectiveness of that service and continuing to provide that service for the county, for prosecutors. Little background here, Douglas County, we have...I have 56 lawyers in my office now. We file about 3,500 felonies a year. We have almost...I think we're close to having 50 pending murder trials right now, which is probably more than the other 92 counties combined in Nebraska as far as the pending...those kinds of cases pending. And I always thought it was interesting--and you asked what's the state's role--the state already has a role. I mean you have a crime lab in Lincoln that does analysis free of cost to all the counties in Nebraska. But the services that are provided to Douglas County are minimal, quite frankly. And that's not because they aren't good people. There's good people in the Nebraska State Patrol Crime Lab that do--great people--great work. They just don't have the ability to handle the volume that would come from our part of the state. So this is something that we need to have, you know, a discussion about, we need to find some answers, and we need to get answers to how to effectively provide those services for the citizens of Douglas County. You

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know, we've had these discussions over the years with different administrations, with different police chiefs, with the sheriff. The sheriff has done a tremendous job in moving towards accreditation because I've talked to them about that a long time ago. We need to have an accredited crime lab. He has taken those steps. He is going to have an accredited lab the end of this year it looks like. Chief Schmaderer, same thing, he realizes that issue, is moving towards that issue, and is full bore towards having something happen in this area. So I think everybody's purpose and everybody's intent is to do the right thing. But how can we best do this for the largest county in the state of Nebraska and other counties in the eastern part of the state? And that's the question here. We got involved with UNMC, the Douglas County Attorney's Office did, in 1996. And we approached them and said, hey, can you help us out? And we realized that forensic DNA analysis was going to be the cutting edge and that was an area that we needed to have some help in, and they stepped up to the plate and did a tremendous job. I mean they're really kind of the gold standard. I talk to jurors after we try cases, Dr. Wisecarver, his staff when they testify, and the job that they do is tremendous and it's tremendous service for the criminal justice system, all parties involved. You know, anybody can send something to be analyzed at UNMC and they do a great job. So that history is there. They got accredited, by the way, right away, as soon as they...shortly after they started doing forensic DNA analysis for us, for the state, and have been accredited by ASCLD since...during that time period. And their credibility is above reproach, so they do a tremendous job. So that started back in '96. And accreditation obviously is part of the solution here with regard to credibility and focus. When I hear the things talk about turnaround time, if you can just imagine as a prosecutor, you know, we're the ones that charge people. I mean police officers, law enforcement agencies make arrests. All right. Something bad happens, either they make an arrest or they come to us and say, we'd like to get a warrant for this person and it's based on the evidence. Okay. So maybe we have some evidence about this person but there is some DNA analysis that we need done or there's fingerprints that we need analyzed. All right? And this bad guy is out there still committing a crime, other crimes maybe, still a danger to the public or we have to make a decision because they've been arrested. As a prosecutor, do I want to make that decision with a bunch of unknowns out there with regard to that piece of evidence that hasn't been analyzed yet or it's going to be three months before it's analyzed? Or I don't know what the fingerprints that were found at the scene on that broken glass, who they come back to, but I'm going to try and...should I file the charge anyway and just hope that it comes back to the person that I'm charging as the perpetrator? No. I have a

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responsibility when I charge somebody to make sure I have the evidence to back up that charge. And I don't want something hanging out there that's going to be doubtful for me. So I can't wait 90 days or 120 days or a month on this piece of forensic evidence. Even a drug test, you know, somebody delivers some drugs to someone and we get this substance and we might do a presumptive test initially to see, okay, this looks like it's cocaine or it looks like it's crack or it looks like it's heroin. But we're going to charge that person and then wait how long to see if that drug actually is what we say it is because of a chemical analysis? So that turnaround time is vital to decisions that we need to make from a prosecutor's standpoint and vital to the public interest as far as protecting the public from somebody who might be out there committing very serious crimes, or also from the standpoint of exonerating someone who is being looked at as a suspect when that DNA evidence, which is the greatest power of DNA, is to absolutely exonerate that person as the perpetrator of the crime from a forensic standpoint. So the turnaround time issue is important as far as the resources that we need involved in these laboratories so that we can get that knowledge or those answers before we file a charge in a case. The coroners, there was questions about coroners. I brought some numbers also that...from some bills that I have. We also pay for DNA analysis. We've kind of worked that out with the police department. Sometimes they'll pay for the DNA analysis prior to arrest. We still might have some evidence that we find that we want other tests run on, so we'll pay for it after the arrest, after we've charged somebody. But we pay, you know, right now \$575 for each piece of evidence that we send to the Med Center Laboratory for DNA testing. So can you imagine you go to a homicide scene, how many pieces of evidence that you might want to have analyzed for DNA, what the cost factor is going to be. And then when we have somebody come in and testify from the Med Center, and they're tremendous witnesses, we have to pay them a witness fee. It's either \$1,000, \$1,500, couple thousand dollars for them when they come in and testify in court. So those costs add up. So I'm very curious when we have these possibilities out there that sound wonderful is, okay, what's that going to cost? At the end when we have this, whoever is going to do this testing for us, is, am I going to be responsible to pay that cost for every piece of DNA evidence that I want to have DNA analysis done on, or other types of analysis or toxicology like we do in a lot of our autopsies? We currently, you know, in the coroner's system that we have, we have four forensic pathologists that do our autopsies for Douglas County: Dr. Bowen; Dr. Jaskierny; Dr. Lindy (phonetically); and Dr. Elah (phonetically). Two are board-certified forensic pathologists. They do a tremendous job for us and, in fact, we do the autopsies for Lancaster County, Sarpy

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County. I think we're all the way out to Grand Island now. They bring their people here because of the reasonableness of the autopsy cost and the good job that they do. So we've got a system that works pretty well in that regard. So the question here is, again, with regards to...I've always thought, because I had heard these answers come from, whether it's the county or the city, well, gee, we have...there's cost issues, we just don't have the resources to build the new crime lab facility, why don't we combine instead of having two crime labs here in Douglas County. First of all, most of the citizens of Omaha are Douglas County residents. All right? Then we have the Douglas County residents. And both of them are residents of the state of Nebraska. All right. So it seems to me that there ought to be an ability for us to work together here to provide the best service with a crime lab with all these residents being from really the same group or whatever you want to call it, the same faction, the county, the city, and actually now as being part of the state. You know, the sheriff's office is moving towards accreditation. They'll be accredited at the end of the year, which is tremendous. That's a big factor to consider when we're talking about how to combine these. The cost factor is also important. The other part of this is, you know, 95 percent of the cases that I handle in Douglas County are...come from the city of Omaha, the Omaha Police Department. So to have the sheriff's office say, well, I'm accredited, and the city of Omaha, the police department not to be accredited, that's another problem for us. So there's...you know, I could see defense counsel standing up in the courtroom saying, well, look, you've got the sheriff's office, their lab is accredited, Omaha Police, how come you're not accredited, if it's an Omaha Police case. So there's all these kinds of issues when we have these...so what I'm very appreciative of I guess is that something I feel is going to happen here that needs to happen. I don't know what exactly that answer is. But from a cost perspective and a combination perspective, accreditation perspective, a credibility perspective, something needs to take place here because we need to have this happen. I've always said we're the largest county in Nebraska and we don't have a crime lab that's accredited until hopefully the end of this year other than UNMC with regard to DNA analysis. Like I said, they've done a....they're the gold standard with that regard. So there's been a history with UNMC and it started back in '96 with them doing...taking on this DNA analysis. And it's been very helpful to us. So there's kind of a natural...you know, there's a link there that we've had in the past that I think we could build on. I don't know what the model that is the best model. I'm curious about cost, who is going to build the building if we have the build a building. We have a facility that the county uses now. Those services that are going to continue to be provided, are those going to be free to the Douglas

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County Attorney's Office when I say I need some DNA analysis done? Is that going to be something that the state is going to come in and maybe help with appropriations because you already appropriate money for the State Crime Lab that services all the other counties in Nebraska? So those are answers I don't know the answer to, those are questions I don't know the answer to. And I think those are important questions that need to be answered before we get to an end result here. But certainly the ideas that have been proposed are good ideas from the standpoint of moving towards accreditation, moving towards creditability, moving towards a combination of services in this part of the state. The state I think should be involved. That's my own opinion. There's cost factors that the county board is going to have to consider, the city council is going to have to consider, the mayor's office is going to have to consider. Certainly UNMC, as an educational institution, I see benefits to that. We had previous discussions with regard to the coroner's office just with regard to forensic pathology programs even at Creighton at one time because they saw that as an opportunity for them to use, you know, the autopsies that are going on as training for people who are in the pathology program at Creighton. I see the same for the University of Nebraska obviously. And then I see the possibility of a statewide system with UNMC. It seems only natural in some regards. So I'd be happy to answer any questions. I could go on and on about this stuff forever. I mean I've got all kinds of notes. We could talk about CODIS; we could talk about time delays again; we could talk about turnaround time, the impact it has on us. Like I said, we're in the courtroom. We try the cases. We're the end user of this product, so this is so important to us. And we could talk about the National Academy of Science report, the recommendations they make nationally, the people that...Lee or I on the national board of directors of the National County (sic) Attorneys...or District Attorneys Association, different ideas that they have. But I would be happy to answer any questions any of you have about this. [LR601]

SENATOR HILKEMANN: Thank you. Senator McCollister. [LR601]

SENATOR MCCOLLISTER: Yes. Thank you for your attendance here this morning. How much money in your budget goes for testing with various organizations you deal with, the county, the state? You don't pay the state, correct? [LR601]



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DON KLEINE: We don't pay the state but we pay...we would pay UNMC. We also do our autopsies. You know, those cost about \$900 a pop. We also do...there's toxicology that comes from the autopsy, maybe blood that's drawn in a post. There's other microscopics from autopsies. So we kind of divide those up from an autopsy standpoint, a DNA standpoint, and then other toxicology or expert witness fees. But, you know, it's...I didn't bring the figures with me today. I can get those for you but it's a substantial amount of money. [LR601]

SENATOR McCOLLISTER: Tens of thousands of dollars perhaps? [LR601]

DON KLEINE: What's that? [LR601]

SENATOR McCOLLISTER: Tens of thousands of dollars? [LR601]

DON KLEINE: Oh, yes, yes, absolutely, more than that. I mean I have a bill here just on our autopsies that...and some of the toxicologies that run probably about \$30,000 a month. [LR601]

SENATOR McCOLLISTER: Wow. [LR601]

DON KLEINE: And that's...I suppose I've got a bill from three months here from a physician's lab on autopsies and different toxicology testing processes that are done, microscopics. One month was \$33,000; one month was \$19,000; one month was \$31,000. So, you know, there's a lot we...a lot of money that's spent. [LR601]

SENATOR McCOLLISTER: Between a quarter of a million and perhaps half a million dollars a year? [LR601]

DON KLEINE: Right, right, somewhere in there. [LR601]

SENATOR McCOLLISTER: Okay. Thank you. [LR601]

SENATOR HILKEMANN: Senator Kolowski. [LR601]

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SENATOR KOLOWSKI: Thank you, Mr. Chairman. Mr. Kleine, on the bills that you're talking about, what's the turnaround time for the DNA at the Med Center right now for you, for your office? [LR601]

DON KLEINE: We can usually get some results done in about ten days. [LR601]

SENATOR KOLOWSKI: Okay. [LR601]

DON KLEINE: We'll get some...we'll get an answer. And if we ask them to expedite it, they're very good about doing that maybe in a couple of days, two or three days. It's going to take a little time but we can usually get it within a week to ten days if we have to. [LR601]

SENATOR KOLOWSKI: And if we had a larger, inclusive lab, wherever it's located, and with or without satellites or anything else, I'm thinking in terms of political boundaries are human made. We have a river and we have another state right across the river. We have a standardized metropolitan area. We do things through MAPA and other areas where we look at the entire population, not just Nebraska's side. If we had more...can you think regionally about these things and take in some of the other opportunities that would be there from the Council Bluffs side of things and then charge for it and come out better as far as overall budget when you do a lab like... [LR601]

DON KLEINE: Sure, I think that's possible. [LR601]

SENATOR KOLOWSKI: ...in that nature? [LR601]

DON KLEINE: You know, if you look at the autopsies, we kind of do that regionally right now. [LR601]

SENATOR KOLOWSKI: Okay. [LR601]

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DON KLEINE: You know, we are the center for probably the eastern half of the state with regard to autopsies. And we used to do them for western Iowa also and then they found easier to...in their medical examiner system to send them to Ankeny. [LR601]

SENATOR KOLOWSKI: Okay. [LR601]

DON KLEINE: So certainly that's a possibility, so...and... [LR601]

SENATOR KOLOWSKI: I'm not trying to get out of the state boundary issue. [LR601]

DON KLEINE: Oh, no. But I think it's a good example though... [LR601]

SENATOR KOLOWSKI: But we need to think bigger. [LR601]

DON KLEINE: ...that in the past that we've done that... [LR601]

SENATOR KOLOWSKI: Yeah. [LR601]

DON KLEINE: ...where we provide the services. And if you're good at providing the services and if you do it in a cost-effective manner, people will come. [LR601]

SENATOR KOLOWSKI: Yes. [LR601]

DON KLEINE: I mean that's..it's true. They'll use those services if you do it in an effective manner. [LR601]

SENATOR KOLOWSKI: Because we're talking only about our state most of the time, or Douglas County or Lancaster County or whatever else, but really we have opportunities that are bigger than that, so. [LR601]

DON KLEINE: Well, it's the same with counties. I mean the sheriff's office I know does a lot of services for other counties on the eastern part of the state. And anecdotally I can tell you I'm

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aware of a situation where somebody called from another county. The sheriff asked me because of the services they provide. Another county said, look, we've got somebody who...I think it was a burglary or something, and we have this glass, we have fingerprints on it, we were going to send it to the State Crime Lab, we think we know who the perpetrator is, we want the comparison done. And they were told, you know, quite a lengthy period of time for that analysis to come and they asked, could we send it to Douglas County to have that testing done? [LR601]

SENATOR KOLOWSKI: Sure. [LR601]

DON KLEINE: Sheriff said, sure, we'll be glad to help you out. So I mean, again, if you provide the services, people will use those services in a cost-effective manner. [LR601]

SENATOR KOLOWSKI: Thank you. [LR601]

SENATOR HILKEMANN: Other questions for...95 percent of the cases of the city of...of your cases are from the city of Omaha. [LR601]

DON KLEINE: That's an estimation but I'd say that's pretty accurate. Most of our cases come from the Omaha Police Department. We service, you know, the Douglas County Sheriff's Office, the Ralston Police Department, the Bennington Police Department, the Valley Police Department, the Nebraska State Patrol. But I'd still say that 90-95 percent of our cases come from the Omaha Police Department. [LR601]

SENATOR HILKEMANN: I heard you say that our present situation isn't good, but the county is going to be accredited by the end of the year. You think we can do just better than that, being involved with a facility from UNMC, can even be better than just having an accredited lab that's available to you? [LR601]

DON KLEINE: Well, yeah, I think it could. I mean, like I said, it's...there's all kinds of possibilities here. Like I said, the question is the cost issues, the money that's already been spent by the county, how do we figure that into play. But obviously there needs to be some cohesiveness or working together between the state, the city, and the county here to make an

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effective facility of some type that would serve the prosecutors in this part of the state and the citizens of this part of the state effectively. [LR601]

SENATOR HILKEMANN: As I look at this, initially this may...there may be more cost up-front. But as we go in the future, if we had a regional center, do you think that that would lower the overall cost down the line? [LR601]

DON KLEINE: Well, I would hope so, I mean, and I think that's the way this needs to be looked at. This shouldn't be just a Band-Aid approach. I mean let's figure this out long term. And it does have an impact on the entire state then. And I think in my estimation and my humble opinion, I've always thought, you know, we're the largest county here, we should set kind of an example for the rest of the state. We see the most diverse, different types of cases here. We see them first usually. We have the volume. We have the reps and experience in those kinds of cases. We should be setting the standard for the state and be helpful in that regard because of the experiences that we have with the cases that we handle. So I think long term that we should be setting, you know, setting something up that everybody can look at and say, hey, that's what we need, if it's regionally or whatever, for the rest of the state. [LR601]

SENATOR HILKEMANN: Do you see any disadvantages in having a regional center at UNMC? [LR601]

DON KLEINE: No. I still wonder about the cost factor. That's a question that I have. Who are these going to be employees of? Are they going to be employees of UNMC? Are they somehow being paid by the different entities that get the services from that location? So those are concerns that I have. You know, is it going to come out of my budget when I ask for those services? So those are the questions I need to...would have to have an answer before I could say, yeah, that sounds perfect, because those are unanswered questions at this point in time. But certainly, as I said, my experience with the Med Center has been a very positive experience, and from a courtroom perspective also very positive. And the feedback I've heard from jurors, who are ultimately the people that we're going to hear from about the work that we do, has been very good. [LR601]

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SENATOR HILKEMANN: Okay, good. Additional questions from the panel? [LR601]

DON KLEINE: All right, thank you. [LR601]

SENATOR HILKEMANN: Thank you for coming. Next invited testifier is Lee Polikov, the Sarpy County Attorney. [LR601]

LEE POLIKOV: (Exhibit 7) Thank you to Mr. Chairman. Senators, Lee Polikov, Sarpy County Attorney, L-e-e P-o-l-i-k-o-v. I decided to submit my letter and it's not too preachy and it probably is repetitive of some of the comments that have already been made. So in the interest of time I took some notes, had like four points I was going to make, then I made more notes on top of those, so I'll try and keep it short. I really would then submit myself to questions if you have any. I really couldn't add or say it better than Don Kleine just did from a perspective of the prosecutor. Everything he said was the same with us and we feel...we have a common mind on that. I think one thing I'd like to ask the committee: to expand their definition of the purpose for this resolution, and that would be to include the issue of statewide facilities. I don't see how we can exclude everybody else. The rules of beyond a reasonable doubt are the same for the smallest jurisdiction as they are for the largest jurisdiction and to do otherwise would be to leave a big portion of the state geographically, maybe a smaller population, without consideration in how they were going to proceed professionally and ethically in prosecution. I'd also urge the senators to kind of give up this idea that we can do it cheaper somehow or that it's going to be expensive. It's not we can't afford to do it; it's we can't afford not to do it. If you believe in the appropriate administration of justice and if you believe in the protection of the rights of the defendant and the community, then I think we need the availability, the timeliness, the best evidence analysis we can get. And so that should be the goal of the state. The question, should the state be involved, absolutely. A lot of the requirements are generated by the state. You've heard that before. The Legislature tells us what we've got to do and then says, figure out how to spend it. I proudly say that after 16 years, 26 years with the sheriff and now 16 years as county attorney, none of my constituency thinks that I'm spending too much money, they don't think my budget should be cut. Most of the time I'm talking to them about my needs and what we do and how we do it. So I would ask that the Legislature get the courage to stand up and say this is something we have to do professionally and ethically, we share those responsibilities, and so we're going to

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fund it. And then the details need to be worked out obviously and they might not be able to be done completely by the Legislature or the people in this room, but they need to be done and there should be a way of getting agreement between people to get that goal of the best resources in the future. So I think it's a state obligation, there's no question. That doesn't mean there isn't some cost sharing, but the state has that obligation to really pay for it and we have this opportunity to move forward. The partnership with the university is exciting to me. It's been talked about what the opportunities would be for teaching and disciplines, how to improve the services, how to even out the backlogs. And then there's things we haven't even talked about. We shouldn't just think about alcohol, DNA. The digital evidence is going to be huge. We're going to have...with body cameras, they're coming and we'll have rooms this size full of video that needs to be processed and discovered by...you know, we have to, as an obligation from the prosecution, we have to give it to the defense side. First we have to see what it is and we have to process it. So I think other states are facing huge backlogs of evidence. And some of those videos are going to need analysis, they're going to need clarity enhancement, they're going to need sound enhancement, so to get...to protect the rights of the defendant, quite frankly. So in the end we need to recognize the future and develop a plan and I think we all have that shared responsibility. So I'd be glad to answer any questions you have. [LR601]

SENATOR HILKEMANN: All right, thank you. Do we have questions for Attorney Polikov?  
[LR601]

LEE POLIKOV: Thank you. [LR601]

SENATOR HILKEMANN: Thank you very much. The next testifier is Directory Kyle Herber-- did I say that adequately, properly? Okay.--the Nebraska Organ Retrieval (sic--Recovery) System. [LR601]

KYLE HERBER: (Exhibit 8) Good afternoon, Senator Hilkemann and members of the committee. My name is Kyle Herber and I am the president and CEO of Nebraska Organ Recovery System, also known as NORS. Since 1977 NORS has been the federally designated organ procurement organization, or OPO, for Nebraska. As Nebraska's designated OPO, NORS evaluates, recovers, and distributes all organs and tissues in the state. NORS welcomes the

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opportunity to colocate to a shared building space with the other organizations and entities you have heard from today. NORS continues to experience dynamic growth with substantial increases in both organs and tissues recovered, resulting in the need to expand into new or additional space. Almost a year ago and prior to these crime lab conversations, we at NORS had similar exploratory meetings individually with UNMC, the Douglas County Coroner, and with the Lions Eye Bank of Nebraska. I'll further explain why we are interested in working closer with these three organizations. Between 65 and 70 percent of the organs that we recover in Nebraska are sent to UNMC for transplant. That is approximately 150 organs per year. Approximately one-half--between 100 and 125--of the organ and tissue donors that we recover have forensic autopsies. Roughly 90 percent of those autopsies are performed by the pathologist working for Douglas County. NORS and the Lions Eye Bank already partner on many shared programs and services as we carry out our unique missions. NORS is attracted to the potential process efficiencies that could be created by colocating with the named entities. These efficiencies would ultimately improve our ability to serve the donor families and other key stakeholders. NORS is also encouraged about the possibility of being a partner for the different educational programs that may be created by UNMC with a joint facility of this type. Whether it be a medical student watching a tissue recovery, a surgeon in their fellowship training learning to recover an organ for transplant, providing organs and tissues for cutting-edge research programs, or any other form of education, NORS is eager to help teach the community. As you have probably identified, and I want this to be clear, NORS does not have a stake in the crime lab merger; however, we feel there is a great amount of collaboration to be gained if we have the opportunity to colocate with the organizations mentioned within this resolution. Thank you. [LR601]

SENATOR HILKEMANN: Thank you very much. Are there questions? [LR601]

SENATOR McCOLLISTER: I'll just have one. [LR601]

SENATOR HILKEMANN: Senator McCollister. [LR601]

SENATOR McCOLLISTER: Yeah. Thank you, Mr. Chairman. Did you say that you have a pressing need for more space in your operations? [LR601]



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KYLE HERBER: That is correct. We currently own 9,000 square feet. We've leased an additional 2,500 square feet. And with our growth over the last two years we've done some programming, and the results of that program said we need an area of 20,000 square feet. [LR601]

SENATOR McCOLLISTER: I understand. So are those two locations abutting? Are they together? Or are those two locations separate facilities? [LR601]

KYLE HERBER: Two separate locations located a few blocks apart. [LR601]

SENATOR McCOLLISTER: Okay. So you would see some advantage to closer proximity to this and along with the extra space that you would obtain. [LR601]

KYLE HERBER: Senator, that is correct. [LR601]

SENATOR McCOLLISTER: Okay. Thank you very much. [LR601]

SENATOR HILKEMANN: One of the questions that has been...or one of the options that has been posed should be to have the UNMC facility out at the present Douglas County. If that were an option that were chosen, do you see NORS being a part of that? [LR601]

KYLE HERBER: No, I don't think that would serve any benefit to our organization... [LR601]

SENATOR HILKEMANN: Okay. [LR601]

KYLE HERBER: ...because of our partnership with UNMC. [LR601]

SENATOR HILKEMANN: Okay. Any other questions we have? Thank you very much for your time today. Okay. Next testifier is Christi...Car (phonetically)? Is that properly? [LR601]

CHRISTI KJAR: Care (phonetically). [LR601]

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SENATOR HILKEMANN: Care (phonetically), okay, from the Lions Eye Bank. [LR601]

CHRISTI KJAR: As long as it's clean we'll answer. [LR601]

SENATOR HILKEMANN: I see you've got one of those names like I do--it gets pronounced all sorts of ways. [LR601]

CHRISTI KJAR: I know. They said (inaudible). [LR601]

SENATOR HILKEMANN: Talk about creativity. [LR601]

CHRISTI KJAR: (Exhibit 9) Senator Hilkemann, members of the committee,... [LR601]

SENATOR HILKEMANN: For the record, would you...okay. [LR601]

CHRISTI KJAR: ...my name is Christi Kjar, and it's spelled C-h-r-i-s-t-i; last name is K-j-a-r. I'm the executive director of the Lions Eye Bank of Nebraska. Lions Eye Bank of Nebraska is a 501(c)(3) organization. We are the only eye bank in the state of Nebraska. It is our responsibility to recover, evaluate, process, and distribute human eye tissue for recipients needing corneal transplants. We have been providing the gift of sight to patients in Nebraska, the United States, and internationally for the last 56 years. During our entire history we have had the pleasure of being housed on the UNMC campus. We have a very close working relationship with Nebraska Organ Recovery Services, NORS, and have for many years. Because of our shared mission of facilitating organs, eyes, and tissue donation, we work very closely on donation events, education, legislation issues, with funeral homes, all hospitals in the state of Nebraska. We also have a close working relationship with the Douglas County Coroner's Office who handles the autopsies on many of our donors. The proposal of having NORS, LEBN, and the pathology group of physicians all under one roof came about several months ago during a conversation with Kyle Herber from NORS. We thought it would be a win-win for everyone involved. All hospitals are required to call us on every death, but we are not receiving calls on deaths that occur outside the hospital setting but are instead reported to the county coroner or go to the county coroner for autopsy. We feel that if everyone is in the same building, we will work more

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effectively and efficiently in offering the families of these deaths the opportunity to honor their loved ones with the gift of donation. Anyone have any questions? [LR601]

SENATOR HILKEMANN: Okay. Thank you. Do we have questions for Ms. Kjar? Do you anticipate, from what your last statement is, that you would have more specimens available for transplant? [LR601]

CHRISTI KJAR: Yes,... [LR601]

SENATOR HILKEMANN: Okay. [LR601]

CHRISTI KJAR: ...very much so. [LR601]

SENATOR HILKEMANN: Okay. That's the bottom line. [LR601]

CHRISTI KJAR: Yes. [LR601]

SENATOR HILKEMANN: Yes, Senator McCollister. [LR601]

SENATOR McCOLLISTER: Yeah, just to follow up on your question, Senator Hilkemann. The notion of moving your facility out to 156th and Maple is not attractive to you? [LR601]

CHRISTI KJAR: No. We do so much with UNMC and on campus that that would not be attractive to us. That really wouldn't offer us any solutions to what our issues are right now. [LR601]

SENATOR McCOLLISTER: Thank you. [LR601]

SENATOR HILKEMANN: Okay. Are there additional questions from anyone? Thank you very much. [LR601]

CHRISTI KJAR: Thank you. [LR601]

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SENATOR HILKEMANN: Last but not least, our last invited testifier is Corey O'Brien from the Attorney General's Office. Some may wonder why the Attorneys General were not first; this is at their request that they...to honor their schedule today, so. [LR601]

COREY O'BRIEN: Thank you for accommodating, Mr. Chairman. I had a court matter early this morning. The advantage of going last is you've already heard all the good stuff so I'll just say ditto. My name is Corey O'Brien and I am the criminal bureau...criminal prosecution chief for the Nebraska Attorney General's Office. I appear here today on behalf of the Attorney General in a limited capacity to basically reiterate that the Attorney General believes that there is substantial advantages to having a metro-area crime lab that is fully accredited and full service. What that looks like...we're supportive of that idea as long as it gets done. As we all know, murderers and rapists, they don't honor county boundaries or city boundaries. And so it benefits not only the citizens of Douglas County and Omaha to have that laboratory, it benefits the entire state. It also, in our opinion, will benefit the issues that we have in the State Crime Lab. One thing the Attorney General asked me to reiterate is that we've built a beautiful \$11 million facility that was drastically needed. It is a magnificent facility but it doesn't solve all the problems that we have at the State Crime Lab and we can't overlook those things. We need to continue to recruit the best and the brightest to come and work there and stay there and not be a breeding ground for crime labs in Colorado and Kansas. We need to ensure that they maintain the level of equipment and the science and evolve with the technologies, such as digital and computer evidence, that will service the entire state of Nebraska and the greater Nebraska community. We need to ensure that whatever evolves here in Douglas County is collaborative with the State Crime Lab and that they're providing consistency in terms of services. And what the Attorney General really wanted me to emphasize is how welcoming it is to have UNMC on board and interested in this endeavor. The Medical Center in our opinion is a vital link that we should not overlook in this endeavor and we should do whatever is necessary to foster that relationship because we think it could benefit not only just here in the Douglas County/Omaha Crime Lab situation, but the entire state. That independence that Mr. Kleine and Mr. Polikov and others spoke about, you know, eventually we would like to see if there's a way to get that done even at the state level because, again, the cases that get prosecuted out of Douglas County and Sarpy County, those cases that get prosecuted in out-state Nebraska, that independence would give credibility and reliability just as much as here in Nebraska. You know, Mr. Kleine talked about how he talks to jurors. I talk to

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jurors after every case I have. It used to be when I'd talk to them, you know, they'd say, well, the key witness, they were great, they were credible, they were reliable. Nowadays, when I go and talk to jurors after trials, they're always talking about forensic evidence and how they expect it. The demands on our forensic community are only going to go up in time. I mean I've had jurors tell me in DUI cases, well, why didn't you test the steering wheel for DNA? Again, those expectations are going to grow over time and so are the demands in our labs and we have to stay on top of that. As I travel around the country and I interact with other prosecutors across the country and they regale about the quick turnaround times and the fantastic facilities they have in their community, I usually have to walk away in envy. I'm tired of that, and I think that we have as much at stake in getting the right result, exonerating the people as any other. And we have to do whatever is necessary as a state, local municipalities, counties, to get the right result. I was fortunate enough to work on the Beatrice Six case. Everybody says, where are we going to come up with the money? As you guys remember in the Beatrice Six case, six months after the murder they had the prime suspect that we ultimately identified by DNA. They went down to Oklahoma City. They had the guy, got some tissue samples from him. A lazy and discredited scientist down in Oklahoma City did the testing and in the end they got the wrong result. As a result of that, six innocent people got convicted. And how many millions of dollars has that cost the state of Nebraska over that period of time? We can't go cheap here. There is too much at stake. We want to get it right. The defense attorneys want to get it right. The justice system wants to get it right. The cops want to get it right. And all I'm asking is for you, the members of the Legislature, to understand that we have to get it right because there's more at stake here than, you know, just boundary disputes. So with that, I would invite any questions you have. And again, thank you for inviting us to be here. One last thing that I forgot to mention is the Attorney General, you know, wants UNMC to really help us out in this endeavor. And, you know, with the loss of Wesleyan's forensics program, their master's program, that's a huge loss. We have to find a way to be competitive in our salaries, attract the best candidates, get them to stay here in Nebraska, to have those programs, rather than having to recruit them from North Carolina, South Carolina, Colorado, because we can't compete with those other labs financially. And without those personnel and without those equipment things that we need, then we're never going to get it right. So we have to all work together on trying to get that right. Thank you. [LR601]

SENATOR HILKEMANN: Questions? Senator Chambers. [LR601]

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SENATOR CHAMBERS: A comment: Mr. O'Brien, you did yourself proud today. I'm glad that you presented as you did the necessity of getting it right and then talk about cost later, because there's somebody who said some people know the cost of everything and the value of nothing. Here we're dealing with the value and the necessity; then it's for us who are the policymakers to come up with what it's going to cost. But we need people who are doing the work--you, Mr. Kleine, Mr. Polikov, Chief Schmaderer, and others--to let us know that those who are doing this work need this and without this the job that you policymakers say you want done cannot be done. For that reason I appreciate it. I've clashed with you in the past. Well, we didn't clash. I was kind of harsh in the past. But it works both ways. When somebody does something noteworthy, I think it ought to be stated as publicly as my criticisms have been. [LR601]

COREY O'BRIEN: And on that cost issue, you know, we spent hundreds of millions of dollars probably statewide on new cruisers and body cameras and things like that, investigative things that are all necessary. But when I, again, I go talk to the jurors and they say the most important evidence you present in your case, that star witness, that was the DNA tech that came in and testified, we need to be equivalent in terms of, you know, paying for those services as we are for the law enforcement guys that are out there investigating the crimes as well and not be so short shrift there. [LR601]

SENATOR CHAMBERS: How did it happen that Nebraska had the foresight to put legislation dealing with DNA on the books that would make the outcome in the Beatrice Six possible? [LR601]

COREY O'BRIEN: I have to give you 100 percent credit on that, Senator. [LR601]

SENATOR CHAMBERS: (Laugh) Oh, really? Unsolicited. (Laughter) Thank you. [LR601]

SENATOR HILKEMANN: Mr. O'Brien, I've got a couple questions. I picked up on in your testimony you said that when you go to...when you've been at other conferences and so forth, you're envious of some of the laboratories and so forth that you've seen, and state of the art. Is that taking into consideration present facilities that we have in the state of Nebraska, including the State Crime Lab? [LR601]

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COREY O'BRIEN: I think the facility there, that's a great start. But again, it's about the work product that comes out. And my friends at the State Patrol, they are dedicated, fantastic, responsive to anything I ever want. And there's a lot of things that we can do other than throw money at this and throw additional personnel and equipment at this, you know. But the State Patrol gets abused, gets abused by prosecutors like myself, gets abused by law enforcement officers, because their services are free. But also there's, you know, some education involved with that. And we've been trying to go around the state of Nebraska to educate law enforcement and prosecutors on, you know, what to send into the lab so that they're not saying every...all 500 cigarette butts they find at a murder scene need to be sent in and tested and backlog them up any further. We need to look at some other inventive solutions, like every time that somebody is out of the crime lab to go testify in Scottsbluff they lose two days of actually doing testing in the lab. Are there ways to use technology, such as video conferencing, in order to cut that down? So when we talk about facilities, we're getting there on facilities. I'd love to see some new and modern facilities here in Omaha, and I'd love to see some new and modern facilities continue to flourish in the State Patrol and maybe other places. You know, we're really lax when it comes to computers and digital evidence, as Mr. Polikov said. I mean we have very few of those capabilities right now. And those things are absolutely critical to solving a lot of cases right now. The phones are gold mines, almost like DNA, but we're missing out on that opportunity. And when I hear my friends in Kansas and Iowa talk about how great their facilities are and how fast they get back their DNA results or their drug testing results, I do get a little jealous of that. But it shows that this is not...you just can't throw money at the problem and it's going to go away. You've got to approach it from all sides and there's a lot of different solutions that go into meeting the equation. [LR601]

SENATOR HILKEMANN: Do you see in some ways, as was...Dr. Kinsey mentioned it probably before you got here. Do you see this maybe...in some ways this is a first step, we develop this regional that may become the statewide model for us? [LR601]

COREY O'BRIEN: I'm hopeful that that will be the case. [LR601]

SENATOR HILKEMANN: Okay. [LR601]

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COREY O'BRIEN: I mean that's what we would love to see is something that works for all parties concerned that's efficient, that produces great results, that we'd never question the integrity of the evidence or the people that are working on it or the science that's involved. That's exactly what we all want as prosecutors and law enforcement. [LR601]

SENATOR HILKEMANN: Any other questions from the committee members? [LR601]

COREY O'BRIEN: Thank you, Mr. Chairman. [LR601]

SENATOR HILKEMANN: Thank you very much. That concludes our invited testimony for this morning. Now we are having...we will open the floor to public testimony. We ask that you come forward. First of all we will have persons who would like to testify in support of this, then we will have testimony for those who are opposed to it, and then those who would be in a neutral position. We will limit your testimony to five minutes. So are there those who would like to come forward in support? Seeing none, are there any who are here that would like to be in opposition? Seeing none, then I would ask, are there anyone who would like to testify in a neutral position? [LR601]

JIM MAGUIRE: I believe we're at the afternoon. Good afternoon, Senators. My name is Jim Maguire; it's M-a-g-u-i-r-e. I'm president of the Nebraska Fraternal Order of Police. We're here testifying in a neutral capacity because Senator Mello hit upon a section saying, what should the state's role be? Our organization doesn't have an opinion whether or not the city of Omaha or Douglas County should merge. A lot of this has to do with what is...what should the state do. And a lot of the things that the states around the country have started to look at always are the aftermath of some type of a scandal. And some of the things that they're doing now on a statewide level are we need to make it mandatory that if you're going to run some type of a crime lab, that there has to be a state law that says that, that says, if you are going to run this, you must be certified. In November of 2015, it's November 23, the Attorney General on her Web site put out a memo directing that if the federal agencies are going to start using crime labs, that they must maintain certification by 2020 or they can't use them. So if the states are going to have the FBI, the ATF, DHS, if they're going to be using local agencies, then those local agencies have to have accreditation. And this may be something that as a state board or as state lawmakers that



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you may have to consider. One of the things that the Attorney General brought up, and I'm just...just bear with me because I'm just going to read a section of it. And this is a...it states, "As a result of the commission's recommendations, the Attorney General also has directed two changes to the department's grant funding in an effort to encourage and support state and local forensic labs in the process of becoming accredited. First, solicitations for both Edward Byrne Memorial Justice Assistance Grant funding and Paul Coverdell Forensic Science Improvement Grant funding will be redrafted to make clear that applicants can use this money to seek accreditation, because labs have not always used these funds to seek accreditation. Second, relevant discretionary grant programs at the Office of Justice Programs will be modified to give preferences to labs that will use the money to obtain accreditation. These applicants will get a 'plus factor,' increasing their likelihood of getting the money they need." So you as state senators can maybe through the Attorney General's Office, what have you, can direct these local agencies that are trying to get accredited, you know, get them some assistance through these grant funding to get them accredited, because it's become apparent. You hear the county attorneys from Douglas, Sarpy, the Attorney General's Office. They're all saying these crime labs have to be accredited, you can't wait anymore. And here we have the Attorney General has started to come up with these programs that say, yes, we recognize that there is a need for this and we're going to give you some funding mechanism to help you out. So thank you. [LR601]

SENATOR HILKEMANN: Okay. [LR601]

JIM MAGUIRE: That's all I have. [LR601]

SENATOR HILKEMANN: Are there questions of Mr. Maguire? Seeing none, thank you very much. [LR601]

JIM MAGUIRE: Thank you. [LR601]

SENATOR HILKEMANN: Are there additional persons who would like to testify? [LR601]

KEVIN STUKENHOLTZ: Good afternoon. My name is Kevin Stukenholtz, S-t-u-k-e-n-h-o-l-t-z. I'm a retired captain with the State Patrol, currently the Saunders County Sheriff. We utilize

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Douglas County for assistance in our investigations. They're a critical part of the crime work that we do. We also utilize the State Patrol and we utilize the Med Center. The Med Center enjoys a tremendous reputation; however, there are costs that are associated with that. One of our concerns is that, if you have a one-shop stop, there are going to be additional expenses. And that's going to be increased case load for the State Patrol because every case they do is free. So as I talk to my fellow sheriffs across the state, they utilize the State Patrol Crime Lab at a greater frequency than anywhere else. But obviously the Med Center has a quick turnaround time and it's very critical; if you have a high-profile case, you utilize them. So it's important to us that the state of Nebraska moves forward with some assistance for getting these criminal tests done as efficiently and as correctly as possible, but that you consider how that's all going to be paid for. Thank you. That's all I have. [LR601]

SENATOR HILKEMANN: Okay. Do we have any questions from the senators? [LR601]

SENATOR WILLIAMS: One quick comment. [LR601]

SENATOR HILKEMANN: Yes, Senator Williams. [LR601]

SENATOR WILLIAMS: Thank you for making it apparent again that this is not just an Omaha or Douglas County issue, that this is across the state and those comments that were made earlier--and I know, Don, you made them, and Lee--the fact that we need a solution for the whole state here, we shouldn't penalize people because they live in central Nebraska or the western part of the state. Criminal defendants and prosecutors and defense counsel need the same tools there. Thank you. [LR601]

KEVIN STUKENHOLTZ: Thank you. [LR601]

SENATOR HILKEMANN: (Exhibits 10 and 11) Okay. Any additional questions? Thank you. Additional testifiers? Seeing no one coming forward for that, I will then close this public hearing. Oh, we do...thank you. We do have two letters for the record. We have one from the office of the county sheriff, Captain Griger, G-r-i-g-e-r; and we also have a letter from the...from Ron Murtaugh, the chief of police of the city of Ralston. And those are part of the public record

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as well. Thank you everyone for coming today and being a part of this hearing and helping us in our decision process. Thank you very much. We will adjourn and then we'll go up to our...and have Executive Session. [LR601]

**Testimony to the Nebraska State Legislature: June 1,  
Recent Challenges at the Montana State Crime Lab 2016  
and State Medical Examiner's Office**

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Chairman Hilkemann, Committee Members

Thank you for allowing me to speak with you today. My name is Phil Kinsey (spelled: P-H-I-L K-I-N-S-E-Y). I work for Attorney General Tim Fox in the Department of Justice as the Administrator of the Forensic Science Division and the State Medical Examiner's Office in Missoula, Montana. I have been in that position for three very interesting years. Before taking that position, my earlier 15 years in forensics was spent at various times as a DNA analyst, Technical Leader or Supervisor and some of that experience was gained at the Oregon State Police Crime Lab in Portland.

The Montana Forensic Science Division of the DOJ is an accredited laboratory and is the one provider of forensic services in the state. The laboratory employs 43 staff in six broad scientific disciplines as well as support staff (6 FTE). Those disciplines include: Drug Identification and Trace (9 FTE), Serology and DNA (7 FTE), Firearms and Tool Marks (2 FTE), Toxicology and Breath-Alcohol (11 FTE), Latent Prints and Impression Evidence (2 FTE) as well as The State Medical Examiner's Office (5 FTE). We serve a large rural state of 1 million people with two-thirds of the population residing in the western half of the state, where Missoula is located, and one-third in the eastern half.

I would like to speak with you today on a few topics that include our Forensic Science Laboratory Advisory Board, the recently established satellite crime lab in Billings and the recently reorganized State Medical Examiner's Office.

The first iteration of the Lab Advisory Board was formed in 1996 and is composed today of a similar cross section of criminal justice community members; representatives of city, county, tribal and state law enforcement, coroners, prosecuting and defense attorneys, the Department of Corrections and the Montana Board of Crime Control, which is a state-wide coordinating agency. At our annual meetings I give a presentation on the status of the lab. We discuss national trends in forensics, updates and future directions for each of our scientific disciplines as well as for lab-wide operations. Staffing, incoming caseloads, turn-around times, accreditation and goals for improvement are presented and discussed as are ideas from our Board Members on how we might serve them better. As a requirement for some federal funding, the board serves as an independent body capable of investigating allegations of serious negligence or misconduct; however, it's used primarily as a communication link between the lab and our criminal justice partners. This board and the relationships developed throughout the state have been invaluable and have contributed greatly to recent lab successes as well as an improved lab image in our criminal justice community.

The second topic involves the satellite crime lab recently established in Billings. During our last legislative session several legislators from the Billings area moved forward House Bill 512 to provide forensic services there. There were many circumstances that prompted this bill, many I can only guess at, but the one the crime lab was responsible for had to do with long delays related to our drug identification or chemistry section. Before I began my administrator role, the section had been seeing

increasing numbers of case submissions. That coupled with the additional analytical work required for cases involving the synthetic drugs Spice and Bath Salts as well as turn-over in the section found us with average turn-around times of over 8 months during the summer before the legislative session. This was unacceptable to us and to everyone else in the criminal justice system and to me was a significant driver of the idea for a crime lab to be stationed in Billings.

During testimony on this bill, the Department of Justice played a supportive, but largely informational role and though by that time our chemistry turn-around times were improving rapidly, the train had already left the station on the idea of providing forensic services in Billings. The version of the bill that was approved provided for the leasing of laboratory space to house two forensic chemists and an evidence technician / administrative assistant. This level of support should enable the Billings lab to process drug identification evidence for the eastern half of the state with turn-around times similar to those from Missoula where they currently complete 95% of their casework in less than four months.

As we researched various locations for the satellite lab, we discussed possible interactions with the Billings campus of the Montana State University. Though, some interesting synergies between the crime lab and the teaching labs of the university were considered that could have helped with the extensive training required of forensic scientists, construction timelines of university lab space required that we look elsewhere and fortunately we found space on the campus of one of the local hospitals.

Lastly, in late 2014, it was becoming apparent that the State Medical Examiner's Office was not functioning well on an administrative level due to long time difficulties between the two state-employed medical examiners in Missoula and a private forensic pathologist in Billings. With both state medical examiners leaving employment in a three month period in 2015, the difficult decision was made to re-organize the Medical Examiner's Office to a truly state-wide office. Until that re-organization could be accomplished, an interim plan was invoked in which medical examiners were brought into Montana to perform autopsies or bodies were transported out of state for those services. That period lasted from the end of June through the end of the year.

After unsuccessful attempts at hiring new medical examiners, proposed salaries were increased dramatically and appropriate support staff was promised in order to attract applicants. The State Medical Examiner's Office is now stable and consists of three medical examiners (two in Missoula and one in Billings) and two autopsy / administrative assistants (one each in Missoula and Billings). This transition was not without consternation across the state, from local law enforcement, elected coroners and the public. But through some difficult discussions with and good advice from our coroners and law enforcement partners, we were able to establish good working relationships between the Department of Justice and our coroners state-wide.

Though great strides have been made in improving medical examiner services in Montana, the work is not done yet. As the new medical examiners are performing their work and getting used to how death investigations are conducted in Montana, it is becoming clear that to be in-line with national standards

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and recommendations by advisory groups, there should be more autopsies conducted to appropriately serve the public health of Montanans. While the facility and staffing of the Medical Examiner's Office in the Missoula Crime Lab is adequate, it is expected that the facility and staffing in Billings will need additional support soon.

I hope this commentary has provided you with some insight to the recent challenges of the Montana State Crime Lab System which is just one of the many organizational formats that successfully provides forensic services nationwide. I commend your thorough investigation in how to provide forensic services that best serve your community. This is a great opportunity to modernize, organize and maximize the effectiveness of accredited forensic services far into the future by taking advantage of all of the great resources available to you here in Omaha to the benefit of the entire state of Nebraska.

With that I'll end my comments and I'll be happy to answer any questions.

Thank you for your time and attention.

Respectfully submitted,

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# LR-601 HEARING TESTIMONY

Jeffrey P. Gold, M.D.

Chancellor, University of Nebraska Medical Center  
Board Chair, Nebraska Medicine Health System

June 1, 2016

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Good morning, Chairman Hilkemann and distinguished members of the LR601 Study Committee. My name is Jeffrey Gold (J-E-F-F-R-E-Y G-O-L-D). Is it my honor to serve as Chancellor of the University of Nebraska Medical Center. I welcome you and the many city, county, and state officials, as well as other guests to our campus this morning. It is a pleasure to host you.

During the next few minutes I will attempt to answer four questions regarding the engagement of the University of Nebraska Medical Center (UNMC) in the ongoing discussions regarding the forensic laboratory sciences:

- 1- Why did UNMC become involved in the discussions regarding the future of forensic science laboratory services for our region and our state?
- 2- What are the core considerations that will frame the UNMC participation in any future forensic laboratory sciences collaborative model?
- 3- What has been the extent of involvement of UNMC with state, county, city and other forensic laboratory services discussions regarding potential integration?
- 4- What is UNMC's perception of the outcomes of discussions and the next steps to be explored regarding any potential integration of forensic laboratory sciences labs?

**T**he University of Nebraska Medical Center is the only public academic health science center in the state of Nebraska. We have served since 1869, as a resource for Nebraskans to help them achieve their dreams, and to address their health care needs. Our mission broadly spans across the educational, research and clinical delivery areas in conjunction with our principle clinical partner, Nebraska Medicine. The majority of healthcare professionals in almost every specialty and discipline in Nebraska have received all or part of their professional education within feet of where we are currently convened. We have by far the largest concentration of competitive federal, state, foundation and private research programs in the state. In addition, we serve in a major role engaging the communities that we serve to meet multiple other needs, including in this instance, ongoing diagnostic services in forensic laboratory science.

Therefore, it came to be, that over the last year, and most intensely over the last seven to eight months, we have been approached separately and collectively by representatives of the State of Nebraska (Senators, Attorney General, Law Enforcement), Douglas County, and the City of Omaha to help identify and vet opportunities surrounding forensic science laboratory services. These opportunities are based upon, in several instances, perceived challenges including the availability of high quality and truly independent forensic science testing, as well as the perceptions of prolonged time frames surrounding the availability of these quality laboratory results. The combined effect of this has impacted not only the law enforcement and judicial systems, but also most importantly those citizens of our local communities, whose safety increasingly depends upon accurate and timely forensic laboratory determinations.

In addition, the leadership of the Nebraska Organ Recovery System (NORS) also reached out to us in consideration of co-locating their new facilities on or adjacent to the UNMC campus.

This made imminent sense, as Nebraska Medicine and UNMC together are the largest solid organ transplantation facility in the state and indeed in the region. We have large, and nationally ranked, programs in almost all solid organ systems. The ongoing need for NORS to expand their space, given increased demands on organ retrieval and processing, and the need for proximity to our facility as well as the potential educational opportunities through tighter collaboration continues to make a sense and is of a high priority commitment for both NORS and UNMC.

Over approximately the same interval of time, we have been in discussions with those who lead the Douglas County Coroner's Office, currently located on 42<sup>nd</sup> street in the Douglas County facility. There has been longstanding recognition of the need to upgrade and expand those facilities and to provide a tighter relationship to the University faculty, students and staff. The opportunity to co-locate with UNMC an autopsy and mortuary facility, with the coroner's office, is therefore extremely attractive as well.

During the past decade, the UNMC Department of Pathology, under the leadership of Dr. James Wisecarver, has worked hand in hand with all of the forensic science laboratories serving the state, the county and the city to provide high quality DNA testing in a timely, and effective fashion. The availability of UNMC forensic laboratory facilities, and our expert leadership, under the direction of Dr. Wisecarver, has provided an important resource, particularly for selected high profile cases that require DNA analysis. As the demand for these services has increased, our demand for incremental laboratory space, as well as additional advanced testing technology capability, has also increased.

Finally, UNMC has been involved because there is a significant opportunity to expand the workforce in the area of clinical care delivery, research and education in the forensic laboratory sciences. We have learned that forensic laboratory accreditation currently requires masters prepared workforce. While there are several undergraduate programs in Nebraska, there are currently no graduate (masters or doctoral level) programs in the state. This is an opportunity for UNMC to develop such a graduate level accredited training program. It has become extremely clear in speaking with the leadership of the forensic science laboratories on the local, county and state levels, that having a solid pipeline of well-educated individuals who wish to have an enduring career in the forensic laboratory sciences in Nebraska is quite important. Having certified and accredited training programs in all of the forensic science areas is a critically important consideration that has historically limited workforce development and subsequently access by the law enforcement, judicial and legal communities to timely forensic laboratory science determinations.

**T**he second question relates to the understanding of UNMC's core considerations for determining any level of participation in one or more of the conceptual models for program integration of the forensic science laboratories that has been brought forward. It is particularly important to UNMC that any future participation advances the UNMC mission and vision and is consistent with our core values. Under all circumstances that would enhance UNMC's educational, research, clinical and engagement missions we will continue to work closely with of the providers and stakeholders of these services. We are convinced that the provision of these services is consistent with our role as the state's public health sciences university.

When studied across the United States, modern forensic science laboratories are highly successful in serving their communities when they operate a full range of services in tight geographic proximity and when they are fully accredited by their respective outside agencies, as well as when they have sufficient expertise and independence that is recognized as highly reliable by the judicial process. The demand for high quality forensic laboratory determinations has increased exponentially over the last several years and continues to increase not only in the communities that we serve, but nationally. There is good reason to believe that this



doubling rate will continue for at least the next decade, thus underscoring the need for quality and sustainable pipeline educational and training programs in quality institutions that attract the best and the brightest students to learn and then practice in our communities.

UNMC is also dedicated to advancing our teaching and research missions and in so doing, promoting public and private partnerships. UNMC has had a long history of public and private partnerships that have spanned the local, county and state wide forensic science laboratories. UNMC also enjoys multiple relationships with the city, the county, and the state, as well as private public partnerships that span the region, the nation and indeed the world. Our recent recognitions in cancer discovery, transplantation, trauma care and highly infectious agents such as Ebola Virus Disease are but a few such examples of our global partnerships.

Finally, one of our core considerations is the important fiscal determination that in order for UNMC to participate in a sustainable way in any of the conceptual models, UNMC would need to be in a sustainable revenue-neutral situation. It is our goal to provide these forensic laboratory sciences at a true break-even fiscal rate to cover the costs of providing them in an effective and efficient fashion and yet not jeopardize any other components of the University's mission.

**T**he third question we are asked has been to describe UNMC's role in this conceptual exploration process. It is best summarized by describing how we have, at the request of others, convened and hosted multiple collaborative meetings to explore unmet needs and a defined number of models for collaboration. Over the last year, we have hosted several meetings on the University of Nebraska Medical Center campus, which has had participation from not only the city and the county leadership, but multiple aspects of the state forensic sciences laboratory, the office of the Attorney General, as well as multiple state Senators, including several of those gathered here. [See Attachment A]. We have also visited the key facilities, met the staff and leadership personnel and studied best practices across the country. We have used these meetings to explore multiple concepts after identifying the needs of the region and the state and have worked very hard to create an engaged and collaborative discussion that would focus on preventing duplication, enhancing timeliness and accuracy of services, maximizing logistic and fiscal efficiencies and eliminating questions of bias or lack of laboratory independence.

Four conceptual models with their respective laboratory services and geographic integration were extensively discussed. [See Attachments B and C].

Concept 1 - A fully integrated model at a UNMC facility

Concept 2 - A partially integrated model based at the DC facility

Concept 3 - A partially integrated model at the DC & UNMC

Concept 4 – Maintain the status quo facilities & services

During the same time period, in partnership with our city, county and state colleagues we have attempted to conduct a very preliminary exploration process on the four models [See Attachment D] that have been suggested during the multi-meeting sequence mentioned above. While a due diligence process to explore feasibility of each conceptual model is incomplete, it is an ongoing attempt to look at the amount of space that would be necessary and several different governance and financing models in order to determine what an optimal framework might be. The actual needs in terms of the distribution of services were also discussed at some length, which includes all of the key desired functions of full service forensic science laboratories.

**T**he fourth and final question we are commonly asked is based upon our perceptions of what stage are the discussions of participating entities in the exploration and the due diligence process. As a result of the most recent meeting, which occurred on

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May 18, 2016, the agreement was to move forward to explore the first three concepts. The fourth concept, which was to maintain the status quo, was unanimously not accepted by all in attendance at the meeting.

The due diligence process, which will hopefully produce a consensus on the strengths and weaknesses of each conceptual model will be based on full accreditation of all services, recognized independence, a full range of forensic laboratory services as well as the financial and programmatic efficiencies that will be derived from geographic juxtaposition of a critical mass of the services. The need to serve the organ retrieval organization's needs as well as the coroner's needs are of particular importance to UNMC as well and will very likely proceed. It is the anticipation that the due diligence process will be completed in several weeks, with the preliminary results provided back to all of the entities providing forensic laboratory science services in the local, regional and state wide distributions.

Input from this state hearing process will be of critical importance. The role of the state of Nebraska in overseeing the access to quality, timely forensic laboratory services, as well as other important considerations will hopefully be derivative to the discussions that will occur today and the deliberations of the esteemed Senators who are hosting this legislative hearing.

I wish to extend once more my sincere thanks in representing the University of Nebraska Medical Center and Nebraska Medicine in this process, to have had the honor of helping to convene the previous discussions and to serve as the host institution for the LR-601 hearing. Please be assured that the University is dedicated to working with all of the parties involved and will continue to work hard to find solutions and to support the needs of the people of Nebraska and beyond. I thank you for the opportunity to share these thoughts and look forward to your comments and questions.

**MEETINGS HELD**

The following meetings were hosted by UNMC (listed in chronologic order):

- 12/21/15 Preliminary discussion held – 1 hour
- 1/12/16 Nebraska Organ Retrieval Meeting – 1 hour
- 2/11/16 State Crime Lab meeting ( Attorney General) - 2 hours
- 2/12/16 Crime Lab Meeting - 1 hour
- 2/23/16 Due Diligence Meeting - 90 minutes
- 3/8/16 Crime Lab Meeting – 1 hour
- 3/31/16 Crime Lab Meeting - 1 hour
- 4/12/16 Crime Lab Meeting – 1 hour
- 5/2/16 Crime Lab Meeting – 90 minutes
- 5/18/16 Crime Lab Meeting – 90 minutes

Over thirty individuals participated in the above meetings in varying degrees.

Outside informational tours held:

- 4/1/16 Douglas County Crime Lab Tour – 1 hour
- 4/7/16 NE State Patrol Crime Lab Tour – 2 hours

**Pro Forma Options**

**Concept 1:** Collaboration between City's Forensic lab, County's Crime lab and UNMC at a consolidated location with an independent governance structure with all participating parties represented, which could even include the State Patrol for statewide coordination. Would assist with caseload overload in DNA /Toxicology of State Patrol lab. For synergy, co-location would also include NORS, Douglas County Coroner, NE Med morgue and Eye Bank.

Conduct full array of services: Biological including DNA, Ballistics, Fingerprint, video and print analysis, Chemistry including toxicology and also include NORS, coroner and Eye Bank services.

UNMC DNA lab  
Douglas County Crime lab  
OPD Forensic lab

Plus:  
NORS  
Douglas County Coroner  
NE Med morgue  
Eye Bank

**Concept 2:** Create joint governance structure for Douglas County Sheriff, OPD and UNMC providing services, which would assist the overload in DNA/Toxicology at the State Patrol lab.

Douglas County Crime lab provide current services  
UNMC provide DNA tests on central campus and establish a Toxicology lab at a location TBD  
OPD maintain ballistics and fingerprint forensics lab downtown or move to 156th and Maple  
Douglas County Coroner offered space at 156th and Maple

NORS, Eye Bank and NE Morgue not addressed in proposal. No new building.

**Concept 3:** Create joint governance structure for a collaboration with City's forensic lab with UNMC at a consolidated location at UNMC. For synergy, co-location also would include NORS, Douglas Country Coroner, NE Med morgue and Eye Bank. City of Omaha and Douglas County would work toward single location for provision of ballistics and latent finger prints. UNMC and Douglas County would collaborate on expansion of toxicology services. Explore partnership with State Patrol's Crime Lab to assist with overload in DNA/Toxicology of the State Patrol lab.

UNMC DNA lab  
UNMC Toxicology lab (develop)  
OPD Forensic lab  
Douglas County Crime Lab  
State Patrol Crime Lab

Plus:  
NORS  
Douglas County Coroner  
NE Med morgue  
Eye Bank

**Concept 4:** Status Quo

Current	Agency	State Patrol Lincoln	Sheriff Douglas County	Omaha Police Dept	UNMC Campus Omaha	NORS Facility	Coroners Office
<b>Test</b>							
DNA		X			X		
Fingerprinting		X	X	X			
Ballistics		X		X			
Fire debris		X	X				
Tool, print		X					
Toxicology		X					
Video/print		X		X			
Chemistry		X	X				
Drug Testing		X	X				
Crime Scene		X	X	X			
OPO Functions						X	
Coroner's Fcts							X
UNMC Workforce Training							

Concept 1	Agency	State Patrol Lincoln	County- OPD- UNMC
<b>Test</b>			
DNA		X	X
Fingerprinting		X	X
Ballistics		X	X
Fire debris		X	X
Tool, print		X	X
Toxicology		X	X
Video/print		X	X
Chemistry		X	X
Drug Testing		X	X
Crime Scene		X	X
OPO Functions			X
Coroner's Fcts			X
UNMC Workforce Training			X

<b>Concept 2</b>	<b>Agency</b>	State Patrol Lincoln	Sheriff Douglas County	OPD (@ Douglas County)	UNMC Campus Omaha	NORS Facility	Coroners Office
<b>Test</b>							
DNA		X			X		
Fingerprinting		X	X	X			
Ballistics		X		X			
Fire debris		X	X				
Tool, print		X		X			
Toxicology		X			X		
Video/print		X		X			
Chemistry		X	X				
Drug Testing		X	X				
Crime Scene		X	X	X			
OPO Functions						X	
Coroner's Fcts							X
UNMC Workforce Training							
<b>Concept 3</b>	<b>Agency</b>	State Patrol Lincoln	Sheriff Douglas County	OPD & UNMC (@ UNMC)			
<b>Test</b>							
DNA		X		X			
Fingerprinting		X	X	X			
Ballistics		X		X			
Fire debris		X	X				
Tool, print		X		X			
Toxicology		X		X			
Video/print		X		X			
Chemistry		X	X	X			
Drug Testing		X	X				
Crime Scene		X	X	X			
OPO Functions				X			
Coroner's Fcts				X			
UNMC Workforce Training				X			

**Concept 4 - Status quo. See CURRENT matrix above.**

## Due Diligence Outline

- I. Legal Issues
  - a. Resolution of issues concerning future use of space and equipment paid by drug forfeiture funds
  - b. Options for Building Commission to construct/operate building under Concept 1 & 3
  - c. Does CODIS and APIS need to be under Law Enforcement?
- II. Governance structure to operate crime lab under each concept
- III. Building size and cost under Concept 1 and 3
  - a. Conduct program statement to estimate true size and cost. Since expensive to conduct, best to do after concept approach decided upon.
  - b. Determine ongoing maintenance and operations costs and compare to current.
  - c. Allocate projected construction and O&M costs to different owners.
- IV. Capitol budget and ongoing operations and maintenance funding of building under Concept 1 and 3
  - a. Building Commission construct/operate/lease the building as landlord?
  - b. UNMC construct/operate/lease the building as landlord?
  - c. NORS own/operate/lease the building as landlord?
  - d. New independent joint 501C3 own/operate/lease the building as landlord?
- V. Operating budget of the Crime Lab concept 1 and 3 (Concept 2 would remain by definition independent operations)
  - a. Evaluate two choices:
    - i. Integrate the operating funds and expenses of the functions of the Crime Lab under one organization with a governance structure having oversight
    - ii. Have governance structure oversee independent units with independent operating funds and expenses.
- VI. Under Concept 1, evaluate options to develop space at 156<sup>th</sup> and Maple for other needed law enforcement purpose under appropriate use guidelines defined by DOJ.

## Nebraska State Patrol Testimony on LR 601

### **Special Committee-June 1, 2016**

Senator Hilkenmann and members of the committee. Good morning. I am Pam (P-A-M) Zilly (Z-I-L-L-Y), Director of the Nebraska State Patrol Crime Laboratory. I would like to thank the Committee for giving me the opportunity to testify today.

I would like to share a little bit about the Nebraska State Patrol Crime Laboratory and the services we provide the citizens of Nebraska without cost. The Nebraska State Patrol Crime Laboratory provides forensic examination services to any law enforcement agency within the state of Nebraska. We have been a nationally accredited laboratory since 2004, and obtained international accreditation in 2014. We provide services in the areas of Biology/DNA, Controlled Substances Testing, Trace Evidence Analysis, Toxicology, Latent Prints, and Firearms/Tool Mark Examination. We receive over 4000 cases from approximately 160 agencies each year. This number is growing as we have received approximately 400 more cases than this time last year.

We are the only laboratory in Nebraska with the ability to access the Combined DNA Index System, commonly referred to as CODIS. The CODIS database is owned and controlled by the FBI. All qualifying convicted offenders are required by Nebraska law to provide a known DNA sample. These samples are tested at our laboratory and securely uploaded into CODIS. In 2015, we tested and uploaded 3,594 convicted offender samples. All unknown DNA samples which meet the FBI eligibility requirements are also uploaded into CODIS for searching against offender samples and unknown casework samples.



In 2015, 190 forensic unknown DNA profiles were processed. Entries into the CODIS database resulted in 72 matches in 2015. This is accomplished by associating a previously unknown DNA profile from casework to a known individual, or two unknown casework samples to each other from previously unassociated criminal cases.

The UNMC Human DNA Identification Laboratory currently performs DNA testing. However, they do not qualify for CODIS participation under their current structure. To assist the UNMC when requested we upload their unknown DNA profiles into CODIS.

We recognize that timely results are important, and the Nebraska State Patrol has taken proactive steps to address the current backlog. While backlog times are constantly changing, quality cannot be sacrificed. To meet the large demand within our Biology Unit we have filled two previously vacant analyst positions and anticipate the completion of their training by December of this year. We aggressively work to prioritize critical cases. Homicides are routinely placed at the front of the line. Other cases, particularly violent ones, can be prioritized after consultation with our Biology Unit Manager. Currently priority cases are typically completed in about 30 days.

Our Drug Chemistry Section currently has about 930 pending cases with an average turnaround time of three months. We have recently added an additional forensic scientist position which will substantially reduce the turnaround time.

Due to the closure of a private toxicology laboratory in Omaha we have experienced a significant increase in toxicology cases. We are currently the only laboratory providing this service in the State of Nebraska. To meet the demand we are in the process of hiring two forensic scientists

within our Toxicology Section. These additions will have a positive impact in shortening the existing turnaround time.

We strive to provide professional and accurate services equally to all agencies, and have made considerable financial investments to reinforce our commitment to Nebraska. 4.2 million dollars has been dedicated to a wonderful new facility that was professionally designed and built to meet our specific and current needs. The Nebraska Attorney General contributed 2.5 million dollars to assist in making the new facility a reality. This 28,000 square foot building is owned by the Lincoln Airport Authority and occupied by us through a long term lease agreement.

In closing, I would like to thank you for your interest on this issue. The Nebraska State Patrol appreciates the opportunity to testify, and we remain committed to serving the entire state of Nebraska.

I will be happy to try to answer any questions you may have.

**FORENSIC AND CRIME LAB SERVICES UTILIZED BY OMAHA POLICE DEPARTMENT  
BY AGENCY**

	Omaha Police Department	Douglas County Sheriff Department	State Crime Laboratory	UNMC
Crime Scene Inspection	X			
Latent Prints	X			
Firearms	X			
Forensic Video	X			
Forensic Graphics	X			
Breath Maintenance	X			
Forensic Photography	X			
Drug Testing		X	X	
Toxicology - Blood Alcohol (DUI)		X		
DNA			X	X
Toxicology - Urine (DUID)			X	
Tool Marking			X	

Good morning Senators,

My name is Mary Ann Borgeson and I am the Chair of the Douglas County Board of Commissioners.

Douglas County has been in intensive discussions with the City of Omaha and UNMC for the past several months in regards to a possible consolidation of forensic crime lab services.

Several years ago the Douglas County Board committed to supporting the Douglas County Sheriff, Tim Dunning, in utilizing more than \$4 million dollars in federal drug forfeiture funds to create a state of the art crime lab in the west wing of the former Thomas Fitzgerald Veterans Home, which is located directly adjacent to the Sheriff's Office at 156th and Maple.

The Douglas County Forensic Crime Lab performs forensic lab services for many governmental agencies in the Omaha Metropolitan Area, as well as for the FBI, DEA, ATF and DHS. The County Crime Lab also has a great professional relationship with the Nebraska State Patrol Crime Lab. It employs dedicated, professional lab technicians who do excellent work.

The County's Forensic Crime Lab is in the process of becoming accredited through ANAB, which is a world-wide accrediting body. That accreditation should be achieved this Fall. Once it is accredited, the County's lab will be able to take on a greater role assisting the State Patrol.

I have handed out some bullet points in regards to our professional crime lab for your review.

The Douglas County Board is supportive of creating a regional crime lab at the current Douglas County Forensic Crime Lab facility, in cooperation with the City of Omaha and UNMC. The alternative would be to move the existing crime lab operations into an as yet to be built facility on the UNMC campus. However, the source of funding to create such a facility is currently unknown and the County would have to vacate our existing crime lab space.

Vacating the existing space would require the Sheriff to either repurpose that space for other law enforcement uses or repay the federal government a significant amount of drug forfeiture funds. Either option would be a large financial hit to the County.

In closing, while the Douglas County Board is committed to continuing to engage in discussions with the City of Omaha, UNMC, and this Committee, to find the best solution for the taxpayers, at this time, the County Board is convinced that the best solution resides at the current Douglas County Crime Lab facility.

## Quick Facts About the Douglas County Sheriff's

### Forensic Laboratory

- The DCSO Forensic Lab is currently undergoing accreditation with ANAB, a world-wide accrediting body.
- Our accreditation team is a distinguished group and is highly regarded in the forensics community.
- This group includes former NY State Lab director, NYPD Lab director, and Orange County California Lab Director.
- Some of the group's initial findings include:
  - Our facility is better than most labs they have assessed.
  - We are well equipped and the facility will provide for the community well into the future.
  - Our security is much better than most labs across the country.
  - Our personnel are well trained and have all necessary credentials to work in a forensic lab.
- We will achieve ISO 17020 and 17025 accreditation this fall. This means both our CSI unit (collects evidence) and Forensics lab (tests the evidence) will both receive accreditation. Only a few agencies in the United States have this dual accreditation.
- Our CSI unit will be the only accredited in the state.
- We currently provide forensic services for most of the metro Omaha agencies as well as the FBI, DEA, ATF and DHS. We continually receive favorable feedback from all agencies.
- We are also fully supported by the Douglas County Attorney's Office and have received positive feedback from the Public Defender's Office.
- A merged facility will not eliminate the need for a lab at the DCSO and OPD as both will maintain their CSI units.

## Quick Facts About the Douglas County Sheriff's Forensic Laboratory

- The DCSO Forensic Lab is currently undergoing accreditation with ANAB, a world-wide accrediting body.
- Our accreditation team is a distinguished group and is highly regarded in the forensics community.
- This group includes former Directors from the NY State Lab, NYPD Lab, and Orange County California Lab.
- Some of the group's initial findings include:
  - Our facility is better than most labs they have assessed.
  - We are well equipped and the facility will provide for the community well into the future.
  - Our security is much better than most labs across the country.
  - Our personnel are well trained and have all necessary credentials to work in a forensic lab.
- We will achieve ISO 17020 and 17025 accreditation this fall. This means both our CSI unit (collects evidence) and Forensics lab (tests the evidence) will both receive accreditation. Only a few agencies in the United States have this dual accreditation.
- Our Crime Scene Investigator Unit will be the only accredited CSI in the state.
- We currently provide forensic services for most of the metro Omaha agencies as well as the FBI, DEA, ATF and DHS. We continually receive favorable feedback from all agencies.
- Our turnaround time is under 30 days.
- We are also fully supported by the Douglas County Attorney's Office and have received positive feedback from the Public Defender's Office.
- A merged facility will not eliminate the need for a lab at the DCSO and OPD as both will maintain their CSI units.

Douglas County Sheriff's Office  
Forensic Services Division

Presentation on Accreditation

By

Mark Dale, MBA and Terry Mills III, M.S

May 11<sup>th</sup> 2016

Douglas County Sheriff's Office  
Forensic Services Division  
ISO/IEC 17025  
and  
ISO/IEC 17020  
Preparation Project

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Before we get started...  
Who is the ANSI-ASQ National  
Accreditation Board (ANAB)?



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Who is ANAB?

- American National Standards Institute (ANSI) is a not-for-profit membership organization comprised of government agencies, organizations, companies, academic and international bodies, and individuals and is the voice of the U.S. standards and conformity assessment system.



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### Who is ANAB?

- ASQ, a not-for-profit membership organization, is a global community of experts and the leading authority on quality in all fields, organizations, and industries. As a professional association, ASQ advances the professional development, credentials, knowledge and information services, membership community, and advocacy on behalf of its more than 85,000 members worldwide.



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**ANSI-ASQ National Accreditation Board**



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### ANAB

- ANAB is the third largest accreditation body in the world
- Acquired ACLASS, FQS, LAB, and now ASCLD/LAB for over 2000 accredited labs



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## Accredited Agencies

- Accredits registration and accrediting bodies
- USA Government labs - DOE, DOD, FDA, EPA
- State labs
- Private and commercial
- NAME (forensic pathologists)
- World Wide- many countries around the world
  - Forensic- Brazil, Algeria, Mexico, Caribbean islands
- Assessors- 200+ assessors



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## Management

- Programs
  - ISO 9001
  - ISO 14001
  - AS 9100
  - BA 9000
  - ISO 13495
  - ISO 22000
  - ISO 20000
  - ISO 27001
- And dozens of other accreditation standards



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## Laboratory

- Programs
  - ISO/IEC 17025
  - ISO/IEC 17020
  - ISO 15189
  - ISO/IEC 17043
  - RPM/ISO Guide 34
- And dozens of other accreditation standards



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## Forensics

- Programs
  - ISO/IEC 17025
  - ISO/IEC 17020
  - Accrediting since 1998 to ISO standards



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## Recognition of ANAB as a Forensic AB

- ILAC- affiliate member 2003
- NACLA- member 2004
- NACLA- recognition 2004
- IAAC- full member 2007
- NIJ- recognition as AB for forensics
- FBI- recognized provider of accreditation
- States- recognized as provider of forensic accreditation



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## Recognition of ANAB as a Forensic AB

- IAAC- MLA Signatory 2010
- ILAC- MRA Signatory 2010
- APLAC- recognition 2012 AB for forensics
- IAF- recognition 2012
- ANAB is recognized for:
  - ISO/IEC 17025 Testing
  - ISO/IEC 17025 Calibration
  - ISO/IEC 17020 Inspection
  - ISO Guide 34 RMP- Reference Material Provider
  - ISO/IEC 17043 Proficiency Test Providers
  - ISO/IEC 17021 Certification Bodies



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## DCSO Accreditation

- Dual accreditation- only a few forensic agencies in the world have dual ISO accreditations
  - ISO/IEC 17025
  - ISO/IEC 17020

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## Accreditation Consultant Team

- Terry Mills –ANAB Accreditation Manager, Lead Assessor, Deputy Director GBI, published author, 46 years in forensic, 18 years in ISO accreditations, train ISO assessors, expertise chemistry
- Mark Dale – Director NY State system, NYC lab, Director NE Institute 43 years in forensic, forensic accreditations for 20 years, ASCLD/LAB president, ASQ certified author, Albany, DOD Forensic training manager, specialty management

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## Accreditation Consultant Team

- Frank Fitzpatrick- Director of Forensic Science, Orange County Sheriff-Coroner's Department with 30 years of service, transition Director of Houston PD, ISO 17020 and 17025 experience, ASCLD/LAB and ANAB lead assessor, train ISO assessors, specialty crime scene, latent prints,
- Laurette Rapp- Quality Manager Acadiana Crime Lab, 22 years experience in forensics and quality, ANAB lead assessor, specialty chemistry (drugs, fire debris, blood alcohol)

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## Accreditation Consultant Team

Ashraf Mozayani- director and professor at Texas Southern University, appointed by Texas Governor Texas Forensic Science Commission, Board certified toxicologist, Director Harris County Institute Science, assessor for SCC, National Lab certification, ABFT, CAP, Forensic urine drug testing, senior forensic advisor for DOJ

Peter Pizzola –Director Yonkers Crime Lab, manager NYC crime scene response team, blood spatter expert, NYC Lab Director, professor Pace University in forensics, 40 years forensic experience

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## INITIAL OVERVIEW

Most forensics labs are under law enforcement and work perfectly fine because the lab is unbiased in their science. ISO helps reduce any cognitive bias.

Sheriff has supported the lab and is dedicated to having a quality forensic system to provide excellent service to the citizens of Douglas County.

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## INITIAL OVERVIEW

- ISO accreditation will be a requirement in the future in the United States. DCSO is being proactive by achieving this status.
- Science is sound and the quality system is being designed to meet the specific requirements of ISO accreditation and for improvement in the management process.

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## INITIAL OVERVIEW

- Facilities are more than adequate and are better than many forensic labs in the US with ample room for expansion. The lab has several computer management systems (The Beast and Qualtrax), has excellent quality control measures, has over \$500,000 in advance scientific instrumentation

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## Tentative Timeline

- Initial full gap analysis in Jan 2016 in both ISO/IEC 17025 and 17020
- Continual off-site support including development of quality management system that meets the ISO requirements.
- Week of May 9<sup>th</sup> – On-site Mid-term Review of SOPs, quality manual and audit training
- Week of June 13<sup>th</sup> - operations under quality system
- Week of July 11<sup>th</sup> – full team on-site internal ISO audit
- Week of July 18<sup>th</sup> – Application to ANAB
- Month of Sept/Oct – ANAB ISO assessment
- Accreditation –by end of the year 2016

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## QUESTIONS?

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# Office of the County Attorney

Hall of Justice · 1210 Golden Gate Drive · Box 1420  
Papillion, NE 68046-2889  
(402) 593-2230 · Fax: (402) 593-4359

L. Kenneth Polikov  
Sarpy County Attorney

June 1, 2016

LR 601 – Invited Testimony to Special Committee on Combined Forensic Laboratory Services

Senator Hilkemann and Members of the Committee:

I am Lee Polikov and I have been at the heart of law enforcement and criminal justice for more than 40 years, the last 16 years as Sarpy County Attorney.

I do not appear today, as a critic of Sheriff Tim Dunning's plan to provide forensic laboratory services to law enforcement. To the contrary, I can attest that the Douglas County Sheriff stepped up and provided necessary analysis and expertise to the prosecution function of the greater community. Sheriff Dunning and I have the same roots, so I am here to support his efforts as much as I can.

In the pursuit of justice, the prosecution needs timely and uncontroverted analysis of evidence. Without such analysis, neither the rights of the defendant, nor the rights of the community are protected. The range of such forensic analysis goes beyond the identification of drugs. We must consider DNA, blood and body fluids, toxic chemicals, fingerprints, tool marks and impressions and firearms.

Additionally, digital evidence from computers and cell phones will present a huge and ever-growing source of laboratory study, analysis and needs. Body cameras will explode the volume of data and provide images and sounds that need enhanced clarity and definition.

Competition in the development and adoption of these services does not benefit the system. However, a combined leadership would facilitate widespread services and is the most attractive vision of the future. The needs are very clear and everyone involved needs to expect that services are available and that they meet the highest standards.

Using the NSP Lab as an example, it is predictable that there will be struggles with staffing and costs. Drug analysis is backlogged four months and that is an obstacle to reasonable case resolution. The fact that services are free does not offset the cost to any ineffectiveness of the system.

Also, the present structure requires an unfair internal competition, pitting laboratory services against patrol and investigation. This is not negative commentary on State Patrol leadership, as the structure developed when forensic science had not yet seen wide acceptance and the pending, meteoric rise of needs was not anticipated.

Looking to the future, I suggest this committee expand the purpose of Legislative Resolution 601 to address the statewide needs of the justice system. The requirements of “beyond a reasonable doubt” are the same for the smallest jurisdiction in the state, as they are for the largest jurisdiction. The inherent high cost associated with forensic science analysis is a statewide responsibility, where the cost can be shared by the most people and duplication can be avoided.

The University system offers an exciting opportunity of competitive salaries, teaching and discipline offerings and a statewide organization for delivery of services. In the interest of justice, all entities represented here, have the obligation to recognize the future and develop a unified plan, knowing that there are no shortcuts to the shared responsibility to protect the innocent.

Lee Polikov  
Sarpy County Attorney



Nebraska Organ Recovery  
Give the most precious gift of all...LIFE!

June 1, 2016

Senator Hilkemann and Members of the Committee:

My name is Kyle Herber, and I am the President & CEO of Nebraska Organ Recovery System, also known as "NORS". Since 1977, NORS has been the federally designated organ procurement organization, or OPO, for Nebraska. As Nebraska's designated OPO, NORS evaluates, recovers and distributes all donated organs and tissues in Nebraska.

NORS welcomes the opportunity to co-locate to a shared building space with the other organizations and entities you have heard from today. NORS continues to experience dynamic growth, with substantial increases in both organs and tissues recovered resulting in the need to expand into new or additional space. Almost a year ago and prior to these crime lab conversations, we at NORS had similar exploratory meetings individually with UNMC, the Douglas County Coroner and with the Lions Eye Bank of Nebraska. I'll further explain why we are interested in working closer with these three organizations:

- Between 65%-70% of the organs we recover in Nebraska are sent to UNMC for transplant. That is approximately 150 organs per year.
- Approximately one-half (between 100-125) of the organ and tissue donors that we recover have forensic autopsies. Roughly 90% of those autopsies are performed by Pathologists working for Douglas County.
- NORS and the Lions Eye Bank already partner on many shared programs and services as we carry out our unique missions.

NORS is attracted to the potential process efficiencies that could be created by co-locating with the named entities. These efficiencies would ultimately improve our ability to serve the donor families and other key stakeholders. NORS is also encouraged about the possibility of being a partner for the different educational programs that may be created by UNMC with a joint facility of this type. Whether it be a medical student watching a tissue recovery, a surgeon in their fellowship training learning to recover an organ for transplantation, providing organs and tissues for cutting edge research programs, or any other form of education, NORS is eager to help teach the community.

As you have probably identified, NORS does not have a stake in the crime lab merger discussions, however, we feel there is a great amount of collaboration to be gained if we had the opportunity to co-locate with the organizations mentioned within this resolution.



LIONS  
**EYE BANK**  
 OF NEBRASKA

985541 Nebraska Medical Center  
 Omaha, NE 68198-5541  
 Tel 402-559-4039 • Fax 402-559-7705  
 1-800-225-7244  
[www.eyebanknebraska.org](http://www.eyebanknebraska.org)

LR 601  
 Exhibit 9  
 Processing Labor Kjar  
 Good Samaritan I  
 Kearney, NE 6/1/2016

LR 601  
 PUBLIC HEARING  
 JUNE 1, 2016

LIONS EYE BANK OF NEBRASKA  
 L. Christi Kjar  
 Executive Director  
[Ckjar@unmc.edu](mailto:Ckjar@unmc.edu)

**Chair:**  
 Michael C. Hall

**Treasurer:**  
 Michael McGuire

**Secretary:**  
 Russell Terman-White

**Medical Director:**  
 Michael A. Halsted, MD

**Executive Director:**  
 L. Christi Kjar

**Technical Director:**  
 Curtis J. Coughlin, BS, CEBT

The Lions Eye Bank of Nebraska (LEBN) is a 501c3 organization. We are the only Eye Bank in the State of Nebraska. It is our responsibility to recover, evaluate, process, and distribute human eye tissue for recipients needing a corneal transplant. We have been providing the “gift of sight” to patients in Nebraska, the United States, and internationally for the past 56 years. During our entire history we have had the pleasure of being housed on the UNMC campus.

We have a very close working relationship with Nebraska Organ Recovery Services (NORS) and have for many years. Because of our shared mission of facilitating organ, eye, and tissue donation, we work closely on donation events, education, legislation issues, with funeral homes, and all hospitals in the state of Nebraska. We also have a close working relationship with the Douglas County Coroner’s office who handles the autopsies on many of our donors.

The proposal of having NORS, LEBN, and the pathology group physicians all under one roof came about several months ago during a conversation with Kyle Herber from NORS. We thought it would be a win, win for everyone involved. All hospitals are required to call us on every death, but we are not receiving calls on deaths that occur outside the hospital setting, but are instead reported to the County Coroner or go to the County Coroner for an autopsy. We feel that if everyone is in the same building we will work more effectively and efficiently in offering the families of these deaths the opportunity to honor their loved ones with the gift of donation.





# OFFICE OF THE SHERIFF COUNTY OF SARPY



LR 601  
Exhibit 10  
Griger  
6/1/2016

**JEFFREY L. DAVIS**  
Sarpy County Sheriff

**8335 Platteview Road**  
**Papillion, Nebraska 68046**  
**Telephone (402) 593-2288**  
**Fax (402) 593-4323**

Committee Members

June 1, 2016

LR 601

The Sarpy County Sheriff's Office has contracted with the Douglas County Sheriff's Office for the services of both the CSI personnel as well as the Crime Lab for a number of years. In 2015, the Douglas County Crime Lab handled 227 and a total of 416 items for our office. During the first five months of 2016, they have handled 92 cases and 151 items of evidence.

In January of 2015 I was transferred to the Investigations Division which oversees the Evidence and Property Unit for the Sarpy County Sheriff's Office. Due to that transfer I have had a great deal of exposure to the very complicated world of evidence. Immediately after the transfer, I met with Captain Glandt who arranged a tour of their facility for me and explained all of their duties and abilities. During this last year, I have seen how the DCSO Crime Lab has been extremely willing to assist our agency in cases, even those requiring time sensitive delivery. We could not possibly perform either the CSI work or the Crime Lab work in-house and we depend on DCSO for those purposes. I also believe they provide those services to us, as a contract partner, at an extremely reasonable rate.

I fear that if the DCSO Crime Lab was dissolved or merged with another, we may suffer as a result as will the cases we have a responsibility to present to the courts.

I have every confidence that the DCSO Crime Lab and CSI Unit will achieve their desired accreditation and I believe this will provide for the standards which some are calling for across the country.

Thank you for your consideration.

Sincerely,

*Capt. K. Griger*  
Captain Kevin Griger



## POLICE DEPARTMENT . . . CITY OF RALSTON

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7400 MAIN STREET RALSTON, NE 68127  
OFFICE: (402) 331-1786 FAX: (402) 331-0765  
AFTER OFFICE HOURS: (402) 444-5802

Ronald D. Murtaugh  
Chief of Police

May 25, 2016

Senator Robert Hilkemann  
Room #1115  
P.O. Box 94604  
Lincoln, NE 68509

RE: LR601

Dear Senator Hilkemann,

Upon reviewing LR601 introduced by you and other fellow Senators, I wanted to forward my thoughts and input. I understand that a hearing is scheduled for the first part of June to solicit feedback and input regarding the merging of crime laboratory services. I will be in Washington D.C. during the hearing, however I wanted to insure that you had my thoughts.

My thoughts and input are the result of 29 years in law enforcement, 10 years in York, Nebraska and the remainder of time spent in the Omaha metro area, serving the community of Ralston. Throughout that time, I have held various positions, including investigations. My roles within the agencies have provided me with working relations of both the State of Nebraska Crime Lab and the Douglas County Crime Lab. The experiences I have enjoyed come from both a customer service perspective, as well as a budgetary perspective.

The Ralston Police Department has worked many years with the Douglas County Crime Lab. Over those years, the police department has been able to leverage superior criminalistics services in crimes affecting the community and visitors of Ralston. This incredible service has been provided without putting fiscal stress on my budget or the tax payers of Ralston. I am concerned the proposed plan will have an adverse fiscal impact on our agency and community.

Currently, Douglas County Crime Lab has invested monies into a facility, equipment, training, and accreditation processes that would have to begin all over, should a merger take place. Currently, the Douglas County Crime lab is in the final process of obtaining dual accreditation, by achieving their ISO Accreditation this fall. From my understanding, there are extremely few agencies in the United States that boast that accomplishment.

Next, the crime lab is housed in a building that has been renovated and is up and running. A merger will likely result in the building of another facility, costing millions of dollars to either the tax payers, the agencies, or a combination thereof. This additional cost will come at a time when current and future dollars are scarce and should be scrutinized.



Furthermore, the police department experiences fast and efficient turnaround on items presented for processing. In addition, our close working relationship has resulted in the ability to communicate a need for "rush" processing, as needed. Our relationship is such that the techs at the lab know that everything is not an emergency. However, based on how an investigation is proceeding, or guidance from the prosecutor, we may experience a situation where processing a piece of evidence be moved forward in the processing schedule. This type of relationship has a strong potential of being lost, where the processing entity becomes larger and stakeholder status changes. Currently, the Ralston Police Department's priority request receives the same focus and attention as the Douglas County Sheriff's Office, Valley Police Department, Waterloo Police Department, and such. As mergers begin, the hierarchy of priority has a strong likelihood of being directly to the size or perceived importance of a stakeholder.

Had the above mentioned investments not been made and the Douglas County Crime Lab was not operating at its current level, a merger may have made more sense than it makes today. However, that is not the case and any merger will come with an extremely high price tag with minimal return on monetary investment, coupled with the other negative ancillary results.

Thank you for the opportunity to share my thoughts with you.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Murtaugh', written over a faint, illegible typed name.

Ronald D. Murtaugh  
Chief of Police

cc: Mayor Donald Groesser  
Senator Rick Kolowski  
Senator Bob Krist  
Senator John McCollister  
Senator Merv Riepe