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LR424 Department of Correctional Services Special Investigative Committee
November 25, 2014

[LR424]

The Department of Correctional Services Special Investigative Committee of the Legislature met at 9:00 a.m. on Wednesday, November 25, 2014, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR424. Senators present: Steve Lathrop, Chairman; Les Seiler, Vice Chairman; Kate Bolz; Ernie Chambers; Bob Krist; Heath Mello; and Paul Schumacher. Senators absent: None.

SENATOR LATHROP: Okay. Dan, I'm looking over here for you and you're...I still haven't gotten used to the fact that you moved to the other side. Are we live? [LR424]

DAN JENKINS: We are live. [LR424]

SENATOR LATHROP: Okay. Terrific. Good morning, everyone. It is a little bit after 9:00. We are here today, this is the LR424 Committee, maybe our sixth hearing I think and what I expect to be our last hearing. And today our focus is on mental health and solitary confinement or, as they call it, administrative segregation or other euphemisms for solitary confinement. We have a lineup of I think six or seven witnesses. Our first witness is going to be Dr. Spaulding who I think everyone will find very, very informative. Before we start our hearing though I'd like to have everyone introduce themselves, and we'll start with Senator Bolz. [LR424]

SENATOR BOLZ: Senator Kate Bolz, District 29 in south-central Lincoln. [LR424]

SENATOR MELLO: Heath Mello, District 5, south Omaha. [LR424]

SENATOR SCHUMACHER: Paul Schumacher, Platte County and parts of Stanton and Colfax County. [LR424]

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SENATOR SEILER: Les Seiler, District 33, Adams County--all of Adams and all of Hall except for Grand Island. [LR424]

SENATOR LATHROP: I'm Steve Lathrop from the Ralston-Millard area. [LR424]

MOLLY BURTON: Molly Burton, legal counsel. [LR424]

SENATOR CHAMBERS: Ernie Chambers, Omaha. [LR424]

SENATOR KRIST: Bob Krist, Omaha and Bennington. [LR424]

DAN JENKINS: I'm Dan Jenkins. I'm the committee clerk. [LR424]

SENATOR LATHROP: Very good, and with that, I think we'll begin with our first witness. And, Dr. Spaulding, if you would step forward. In the tradition that we've observed in this committee, we'll have you raise your right hand, swear you in. Do you swear the testimony you're about to give this committee will be the truth, the whole truth, and nothing but the truth? [LR424]

WILLIAM SPAULDING: Yes, I do. [LR424]

SENATOR LATHROP: Please, thank you, and have a seat. Good morning. First of all, good morning and thank you for being here, Dr. Spaulding. Would you start by giving us your name and spelling your last name for us? [LR424]

WILLIAM SPAULDING: William Spaulding, S-p-a-u-l-d-i-n-g. [LR424]

SENATOR LATHROP: All right. And, Dr. Spaulding, can you give us your professional address? [LR424]

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WILLIAM SPAULDING: Department of Psychology, University of Nebraska at Lincoln.
[LR424]

SENATOR LATHROP: Okay. And I want to make sure you speak up loud enough so that I can hear and that we get a good transcript of the proceedings, if you would. Would you go through your education for us? [LR424]

WILLIAM SPAULDING: I received my Ph.D. in clinical psychology from the University of Arizona in 1976. I was a postdoctoral fellow in mental health research and teaching at the University of Rochester, Department of Psychiatry between 1976 and '79. I accepted a faculty appointment at UNL in 1979. I received tenure there in 1987 and was promoted to full professor in 1993, and I've been there ever since. [LR424]

SENATOR LATHROP: I assume that's a teaching position. [LR424]

WILLIAM SPAULDING: It's a teaching and training position. I'm on the clinical faculty and my primary responsibility is to train doctoral-level graduate students in clinical psychology. And I also do research primarily on schizophrenia, its treatment, and rehabilitation. [LR424]

SENATOR LATHROP: Okay. During the period of time that you've just given us, you said you started at UNL in 1979, have you also maintained a practice in psychology? [LR424]

WILLIAM SPAULDING: I practiced through my faculty position because it's primarily a training faculty position. Much of what I do is clinical practice, but it's in the context of teaching doctoral graduate students. [LR424]

SENATOR LATHROP: Are you a member or have you chaired a board, the purpose of which is Nebraska psychologists? [LR424]

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WILLIAM SPAULDING: Yes. I'm the immediate past president of the Nebraska Psychological Association and presently that also entails being the chair of the legislative committee whose main responsibility is liaison to the Unicameral. [LR424]

SENATOR LATHROP: Okay. Doctor, I'm hoping today to get sort of a perspective on mental health in Nebraska and ultimately to bring that discussion to the prisons or the corrections, Nebraska Department of Corrections. So if we could, perhaps we can have you start...you're familiar with the history of mental healthcare in Nebraska? [LR424]

WILLIAM SPAULDING: Yes. [LR424]

SENATOR LATHROP: Okay. Can we have you outline for us how mental healthcare was provided in Nebraska, the role of the state of Nebraska in, say, the pre-2004 period of time? [LR424]

WILLIAM SPAULDING: Well, the contemporary era most people would date to the mid-1970s when the national deinstitutionalization movement was implemented in Nebraska. And virtually overnight what was then called the "Lincoln State Hospital" and some other hospitals in Nebraska saw a drastic reduction in their inpatient populations as those patients were transferred to community treatment facilities. Unlike much of the rest of the country, southeastern Nebraska was fairly well prepared for that transition. And at that time a group of rather visionary practitioners and administrators configured the Lancaster County Mental Health Center as the main recipient for this population to come out of the regional centers. The Lincoln area was also fortunate to have a private corporate entity, well known, associated with Mary Hepburn-O'Shea to provide housing and other kinds of living assistance to this population as they came out of the regional centers. When I came in 1979, it was in large part because I perceived in the regions surrounding the university a unique opportunity to study the treatment and rehabilitation of schizophrenia because of the relatively advanced state of that system. As it

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happened shortly after I arrived, then the Department of Public Institutions, which was the state-level entity that governed the state hospitals, issued a mandate to reach out to those patients who had not benefited from the first wave of deinstitutionalization and institute modern treatment practices within the state hospitals that would help those individuals whose disabilities were too grave to benefit from the first wave to finally escape the institutions. I was approached because at that time it was known that I had specialized in that kind of research to collaborate with a group at Lincoln Regional Center to develop a modern forward-looking treatment and rehabilitation unit, which I did. The unit started in 1982, and by 1988 we had, in fact, evolved to a point where we were pretty much up to state of the art and had actually become eligible for fairly large federal research grants which are only granted to research settings that can demonstrate that they already are pretty much at the state of the art and, therefore, in position to do pioneering research on new treatment modalities. So starting in about 1990, my research group at the university was closely collaborating with the leadership of Lincoln Regional Center. We created a rehabilitation unit. We moved into a 40-bed unit that had previously been the back ward, so-called, of the state hospital. Back ward not only because the patients were the most disabled but also because it was the destination of the most problematic state hospital employees as well. And as has been done in other venues, we were able to create a very successful rehabilitation program discharging some of the most disabled and chronically institutionalized patients in the system. As the technology developed, and it did develop rapidly in the 1990s, at the national level we developed amazing new technologies that achieved outcomes that had not been foreseen. And those developments paralleled a new realization that people with severe mental illness actually are potential of far greater levels of recovery than had ever been imagined. And so as the new technologies and the new expectations came, we were able to keep up with that. We added the new treatment approaches as they became available. We continued to do front edge research proving the efficacy of these new treatments. And by the end of the nineties, we had extended those operations to a very close relationship with the county mental health center itself so that by 2004 I would say that the collaboration between Lancaster County and the

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surrounding areas and Lincoln Regional Center was second to none in the world. We attracted large numbers of professionals, administrators from the United States and Europe to study our program to figure out what they could do to do similar things in their system and to achieve similar outcomes. We exported a lot of our technology to other treatment venues, had a lot of relationships with colleagues around the world. [LR424]

SENATOR LATHROP: So at this point in time, you brought us in the history of care for the mentally ill to 2004. We've had one wave of deinstitutionalization, which I think you said happened in 1970. [LR424]

WILLIAM SPAULDING: In the seventies, yeah. [LR424]

SENATOR LATHROP: And now we're at 2004 and practicing at the state of the art. [LR424]

WILLIAM SPAULDING: Pretty much, yes. [LR424]

SENATOR LATHROP: And is that specific to the Lincoln Regional Center and southeast Nebraska or would that have been true for the entire state? [LR424]

WILLIAM SPAULDING: There's quite a bit of difference across the state, and I can only really speak with personal experience to what was happening in southeastern Nebraska. [LR424]

SENATOR LATHROP: All right. What happened in 2004 then? [LR424]

WILLIAM SPAULDING: Well, let me direct you to your handout. [LR424]

SENATOR LATHROP: Sure. [LR424]

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WILLIAM SPAULDING: I anticipated some of your questions, so I made some handouts. And if you'll look at page 2 at the bottom of the page you'll see a graph there. This is not my data. This is data that was collected by the Lincoln Police Department. They started tracking the number of police calls that they received that turned out to have some kind of mental health implication. And they started collecting that data in 2001 and they continue to collect it. I should also say at this point that the Lincoln Police Department has been equally progressive and state of the art and much of our success is associated with our...was associated with our continuing collaboration with law enforcement. So if you'll look at that, the line in that chart, you'll see that from 2001 to 2004 the police calls involving mental health problems actually was slowly decreasing. And then something happened in 2004 that started a linear increase that continued. It appears to be starting to level out in around 2009 at a much higher level, but then something else happens and it jumps up again. So it's reaching new levels in 2011 and '12 and continues to do so today. [LR424]

SENATOR LATHROP: So what precipitated those increases in mental health calls as documented by the Lincoln Police Department? [LR424]

WILLIAM SPAULDING: Well, two things happened that are associated with that chronology. One is the implementation of LB1083 in 2004. [LR424]

SENATOR LATHROP: Tell us what LB1083 did. [LR424]

WILLIAM SPAULDING: LB1083 was a mental health reform bill that was designed to do a number of things, most primarily reduce the state's dependence on state hospitals, which was a good thing and there was consensus that that was a good goal. By the time it made it through the legislative mill, it was somewhat different than originally conceived, and although it did result in reduced beds in the state hospitals, it also resulted in organizational changes across the system. Probably the most significant of those changes was a delegation of much of the state's state-level mental health

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planning and administration activities to the levels of the regions. There are six regions in this state. The state is divided into six regions for the purposes of mental health service administration. [LR424]

SENATOR LATHROP: When you talk about mental health institutions, are you referring to what we generally regard as regional centers? [LR424]

WILLIAM SPAULDING: Regional centers, also known as state hospitals most generically, yeah. [LR424]

SENATOR LATHROP: And did we close a number of them in connection with LB1083? [LR424]

WILLIAM SPAULDING: We closed a number of beds in them and arguably some of them were actually closed, although we could probably argue about what that means. There were a lot of political and economic considerations involved in that. For example, Norfolk changed from a state hospital that served a traditional psychiatric population to one that now serves exclusively a sex offender population. And I should say that one of the developments during that period was the nationwide implementation of laws that were designed to protect the public from sex offenders, the typical mechanism being when the offender jams out of prison time. If they are seen to be still dangerous as a sex offender, there's a specific mechanism by which they can be civilly committed to a state psychiatric institution. [LR424]

SENATOR LATHROP: At the completion of their sentence? [LR424]

WILLIAM SPAULDING: Correct. [LR424]

SENATOR LATHROP: Okay. So LB1083 is designed to take patients, much like the developmentally disabled, to the least restrictive environment, and that in itself is a

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worthy goal. [LR424]

WILLIAM SPAULDING: Everybody agreed at the time. The differences of opinion were about the degree of reduction that was optimal for a state like Nebraska. Ultimately the arguments ranged from we needed to reduce hospital beds 30 percent to 60 percent, and that's a large difference in opinion. And if you go by national statistical norms, the indicated reduction would have been closer to 30-40, to 40 percent. What we actually did was reduce closer to 60 to 70 percent. [LR424]

SENATOR LATHROP: Did LB1083 have a trade-off, which is to say they were going to take resources from the state institutions and then take them into the community? Was that the promise or the theory behind LB1083? [LR424]

WILLIAM SPAULDING: That was very much the intent. The discussion at the time was, very much included the concern that, simply stating, closing the state hospitals would put the patients at risk if there were not suitable alternative services in the community. Starting with the 1970s deinstitutionalization, this had been widely acknowledged to be a problem with deinstitutionalization. On the one hand, deinstitutionalization was accompanied by a federal act that created the public community mental health system. On the other hand, it didn't do what needed to be done, and by the end of the 1970s, a substantial number of commentators were arguing that deinstitutionalization had been a failure. It had simply created a process that some call transinstitutionalization, putting patients formerly in state hospitals into community...what were called "mental health ghettos" of extremely impoverished conditions or into the correctional system. The problems that were initially identified with deinstitutionalization continued and that commentary continued even until today where policy commentators continue to point out the flaws in our continuing efforts to reduce institutional populations not being coincident with successful efforts to transfer those resources into the community. And that...Nebraska's experience is essentially a recapitulation of that. For all of the good intentions of LB1083, nobody really seems to know where all of that money went that

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was freed up when we closed them. [LR424]

SENATOR LATHROP: All right. And I was going to ask you about that. And so if I understand, and this is very general. I'm sure LB1083 has a lot of facets to it. But we were going to close some of the beds in the institutions, put some of the resources out into the community to take care of the people that would no longer occupy those beds that were being closed, and we were going to turn over the administration to six regions across the state. [LR424]

WILLIAM SPAULDING: Yes. Well, to some degree. The language of the statute is not that unequivocal. I mean, the state still retained a responsibility for making sure that the funds were used appropriately. So the debate would... [LR424]

SENATOR LATHROP: Okay. How did we do with LB1083? Tell us what our experience has been. [LR424]

WILLIAM SPAULDING: Well, it was a checkered experience. It started off pretty good. There was quite a bit of intensive planning in 2002 and 2003. I mean, it was a long time coming and all of those of us involved knew what the challenges would be and we attempted to plan for it. One part of the planning in which I was involved, at that time I was the director of the clinical training program at UNL, and the administration set up a special task force at that time that was composed of all of training directors of mental health professional training programs in the state. So they're the two psychiatry residency program directors, the psychiatric nursing director, the school of social work, all of the programs that train professionals to serve people with severe mental illness were brought together in a task force to develop a document that was known as the best practices document. And the idea was that we're going to establish for sure what it is, what kinds of services and what kind of approach is going to be necessary to serve these people that are going to be discharged from the state hospitals as a consequence of LB1083. That group produced such a document, and many states have produced

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similar documents. It's a, I don't know, 25-some-page, carefully-worded document that outlines what needed to be done. And that was in 2003, well before implementation started. In addition, that best practices document enumerated 15 specific types of treatment or treatment approach that needed to be available across the system in order to adequately serve the population. What happened was that none of that best practices document was ever implemented. [LR424]

SENATOR LATHROP: Was that a legislative failure or a failure of resources once we made this switch in 2004 with LB1083? [LR424]

WILLIAM SPAULDING: Oh, boy. I think...it would be a mistake to say it was a legislative failure. I think that the Legislature did what it could to foresee these eventualities. I think it would have to be more an executive failure because the planning process between 2003 and 2004 basically devolved into a sort of a pea and shell game of figuring out where we're going to place these various patients without any real consideration to what services are going to be required or what they're going to do once they arrive in the communities. [LR424]

SENATOR LATHROP: What's been our experience since LB1083? I'm looking at your graph. It looks like we have more mentally ill police calls, for example, so I assume that we had some problems. [LR424]

WILLIAM SPAULDING: Yes. Again, this is peculiar to southeastern Nebraska where we had a more highly evolved system, and because of that it's easier to study changes. In western Nebraska or outside of the Lincoln-Omaha metro area, it's much harder to study these things because there was so little there before. And Lincoln is very different from Omaha. Omaha has two medical schools and a very large metro area and that makes for a very different venue for mental health services. But across the board, and we've seen these failures and these various indications of the degradation of mental health services in various ways. The Lincoln police data is especially interesting

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because the data was collected by an entity that really has nothing to do directly with mental health. If you'll turn to the next page, I'll show you some more data on that. What happened in 2009 to give another boost to the police call data was that the psychiatric rehabilitation program at Lincoln Regional Center was closed. Now you'll recall at that time the rehab program at Lincoln Regional Center was very much integrated with programs at the county level. People were following a very carefully designed step-down program so that the most severely disabled people at the Regional Center could, once they progressed a little bit, take a baby step into a slightly less restrictive and supervised environment in the form of a residential program in Lincoln. And we were cranking people out of the institutions, not simply because we were administratively closing beds but because those people were achieving higher levels of functioning and could thereby safely function in the community. The rehabilitation programs closed in 2009. The data that I'll show you here shows the effects of that. If you'll look first at the graph in the middle of page 3, that's a graph that shows changes in the rates of restraint and seclusion within the Regional Center data. Now restraint seclusion is very difficult data to interpret. You need a lot of it. But, fortunately, state hospitals today are required to keep restraint and seclusion data, so we had access to a large data set of publicly accessible data. And what you see there is three stages in the history of LRC before period, meaning before the closing of the rehabilitation unit. The transition period is actually a period of about almost a year during which time things were so unstable at the Regional Center that data would...like this, would be very difficult to interpret. And then there's an after period that shows after everything had settled down somewhat what was going on. And what the data shows was some time at about the time that the activities were trending toward closing the rehabilitation program, the instances of restraint and seclusion began an increase and continued to increase. A statistical analysis of this data shows that the probability that this is random change is astronomically low. And what we're looking at here really is a fairly linear increase to very high, very high levels of restraint and seclusion starting around the time the rehabilitation program was closed. This is not unexpected because one of the first things you see when you establish new rehabilitation and treatment programs like this in

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a state hospital is a drastic reduction of restraint and seclusion. So what the state is essentially showing is that if you take those programs away, the problems come right back. [LR424]

SENATOR LATHROP: So our movement in 2004, there was actually two steps: one was the closing of the beds in the institutions and the other is the closing of the Lincoln Regional Center psychiatric rehabilitation program. And what you've just described is an increase in restraints and seclusions that followed that second event. [LR424]

WILLIAM SPAULDING: Peculiar to the Regional Center, yes. [LR424]

SENATOR LATHROP: That's a bad finding. [LR424]

WILLIAM SPAULDING: That's very bad. [LR424]

SENATOR LATHROP: And suggests what? That we took a different approach? We didn't have enough help? The staff went downhill in terms of its talent? [LR424]

WILLIAM SPAULDING: Well, it... [LR424]

SENATOR LATHROP: Why are we restraining and secluding more after 2009? [LR424]

WILLIAM SPAULDING: Right. Restraint and seclusion is sort of like the parakeet in the mine, or is it a canary in the mine, that is an early indicator that something is going wrong. You get increases in violence and aggression. What we knew from other regional center documents was that the kind of state-of-the-art treatment approaches that we had been developing for two decades were pretty much stopped. And the Regional Center itself reverted to a state institution along the design of one more characteristic of 1960. [LR424]

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SENATOR LATHROP: Can you then take us from 2004 to the present in sort of a big picture view of the conclusion? We've made the change in LB1083. We're going to close some of the beds, send some of the resources out into the community, and rely on the regional centers more. Was it successful? And now I'm looking for sort of a big picture conclusion. [LR424]

WILLIAM SPAULDING: Well, there were some critical flaws, one I mentioned, in the planning. For all of the planning that was done, it wasn't really implemented. The rest of the data in the handout actually shows what happened subsequently as the reverberations extended from the Regional Center to the rest of the system. The Regional Center really was very much integrated with the rest of the community mental health system in 2004. And you can see, I'll just explain on page 3, there at the bottom of the page the bar graph basically shows that there continued to be a large contingent of people in the Regional Center after they closed the program. I show that because the belief at the time which not only in retrospect but at the time seemed quite naive was that if we just get rid of the rehab program then we'll get rid of these patients and we won't have as many of these nonforensic patients in the Regional Center. That didn't happen, needless to say, and it didn't happen nationwide, that's no surprise. The other graphs show what happened in other parts of the system. On page 4 what you see is it shows a decrease in the discharge rate. Basically the rehab program had been discharging patients from the Regional Center because of their functional levels. Well, you take away the treatment that increases people's functioning and you can't discharge them as fast, and that's exactly what happened. If you'll look in the middle of the chart, that's data from the Lancaster County Crisis Center, and that's showing the number of days that a person sat in the Lincoln or the Lancaster County Crisis Center after they had been civilly committed but were waiting for a bed in the state hospital. And you can see there's a precipitous increase. Basically the entire system slowly ground to a halt. The bottom of page 4 is a rather complicated profile. I'll just tell you that it shows a similar degradation in the outcome of the residential program in Lincoln that had been the step down of the program. So to summarize, basically what was lost in the course of

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this change, particularly to the Regional Center, the mandate for evidence-based practices was abandoned. The integration between state level services and local community services was ended. There was an exodus of the best professionals, the most highly trained professionals from the Regional Center, most of them went to the VA. And we lost the medium secure step down incremental part of the system that had been evolved to that time. And I want to pause with that because it converges with a focal interest of this committee. There's a striking parallel in this regard between the mental health system and the correctional system. What you hear nationally in terms of prison reform, one of the things you hear most is prisons and the correctional system need to have step-down programs. I mean, we all now know what happens when you take an inmate who's discharged directly from solitary confinement into the community. Common sense tells you that there's something wrong with that. You need step-down programs so that people can incrementally be integrated into the community. We had such a system in the mental health system in Nebraska, in this part of Nebraska, before 2004, and that incremental system was gradually dismantled. In response, Senator, to your question about how that happened or what caused that, I would identify the administrative attitudes of the leadership at the time as being a critical factor in that. There emerged a mentality between 2004 and 2010 that the role of the state mental health system was simply to house the most dangerous forensic patients and all other functions would be relegated to the regions. Of course, the regions didn't see it that way. I've noted some examples of this mentality so that you get a feel for what people were thinking at that time. I think in retrospect, a landmark was when the director of behavioral health services was at a Saltdogs game and was informed that there was a group of Regional Center patients who were at the Saltdogs game. This is a group of patients from the security unit who had earned their way to this community outing. It was a supervised community outing. They were under supervision of Regional Center staff. They were there because they had shown a functional improvement sufficient to enjoy some community activities and to further motivate them to continue their progress. The reaction of the behavioral health services director was, well, anyone that can go to a Saltdogs game doesn't need to be in the state hospital. That attitude trickled down to

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the CEO of the Lincoln Regional Center. Similar ideas were very much vocalized by the medical director of the Lincoln Regional Center to the point that one could "fill in the blank." If you're able to fill-in-the-blank, then you don't need to be in the state hospital. And the fill in for that blank devolved from if you can't go to a Saltdogs game down to if you can't...if you're able to go outside for a five-minute walk, then you don't need to be in the Regional Center. So because of that mentality, the Regional Center itself lost all of the incremental dimensions of progress into the community. [LR424]

SENATOR LATHROP: Was this the mental health patient equivalent of the state kicking...making an unfunded mandate down to the counties or the regions? [LR424]

WILLIAM SPAULDING: I think... [LR424]

SENATOR LATHROP: In other words, let's empty out the regional centers and make it the problem of the regions and they can deal with it and they can spend their money and not the state money on these patients. [LR424]

WILLIAM SPAULDING: Well, there are striking parallels. The only qualification to that is since we don't know where the money went, we don't know whether it was unfunded or not. But certainly there was no direction from the state level and no careful attention to exactly what the regions were supposed to be doing. They were left to figure that out themselves. [LR424]

SENATOR LATHROP: Okay. [LR424]

WILLIAM SPAULDING: And there were other problems that exacerbated what we saw at that time. We're pretty sure that the resources did not arrive. The lack of state responsibility for that is one potential reason, but there's another important reason that I'd like to point out. [LR424]

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SENATOR LATHROP: Okay. [LR424]

WILLIAM SPAULDING: And that is an evolution within the larger mental health industry toward a business model that is used by mental health services providers that depends on exploiting the availability of public funds for mental health services, but it's a model that emphasizes directing far fewer resources to direct care with much greater overhead. So what you have is nongovernmental agencies who are taking over the role of the historical state hospitals and so on but really with no intention to provide the same services to the same patients with much higher, much higher administrative overhead, meaning salaries, to the leadership. And the leadership of these entities are essentially professional fund-raisers, and very few resources going to direct providers. So instead of doctoral providers in the front lines, you now have people not only at the master's level but even without actual professional credentials providing services to the most disabled and severely ill of the patient population. And that also is one of the factors that has degraded the services in this part of the state. [LR424]

SENATOR LATHROP: And the interest of this committee is, of course, in the bigger picture of mental health but how it impacts Corrections and the population in Corrections and how Corrections became essentially a holding place for the mentally ill. So that this committee and I better understand, do I get from your testimony to this point in time, for a variety of reasons since 2004 we took people out of the institutions with the promise that they would get care in the community? The dollars were supposed to follow them into the community and that hasn't happened. They're not getting the care they need. The people that formerly would receive care in institutions in a state-of-the-art institution, for that matter, are now out on the street and many of them aren't getting the level of care they need. [LR424]

WILLIAM SPAULDING: That's it in a nutshell. [LR424]

SENATOR LATHROP: And that is a direct result of we're not practicing at the standard

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of care, we didn't send the resources from the regional centers to the communities, and if we did, much of it was chewed up by administration and not direct care. And then there's also another element you and I have talked about, which is that patient that was formerly at the Regional Center, a difficult patient at that oftentimes, is not the person most people in the community want to provide care for. [LR424]

WILLIAM SPAULDING: Right. [LR424]

SENATOR LATHROP: Tell us about that. Tell us about the free market as it relates to getting dollars to and providing care for the most difficult mentally ill. [LR424]

WILLIAM SPAULDING: Well, first, let me say that I'm an agnostic regarding the larger issue of privatization. I certainly would not argue that privatization is generically a bad idea. The problem that we have with mental health services is rather technical in that regard. There are a number of features or characteristics of the historical state institutional population that make it extremely difficult to write a good business plan that will keep you afloat while you're serving this population. And those features include the fact that you're talking about people with lifelong disabilities. This is not a population where, like with family healthcare, where you're dealing with people that get sick at a particular time and need treatment and then they're better. You're talking about people that have developmental problems, and even illnesses like schizophrenia have significant developmental dimensions. We're talking about lifelong needs here. And it's just extremely difficult to turn a profit or even stay afloat if you're providing services to that population. Another feature is the high risk. It's been since the 1980s that there's been any voluntary patients in any state hospital. They're all either civilly committed or under court-ordered treatment because they are mentally ill and dangerous. And if you're going to serve a high-risk population like that where there's a significant risk that someone is going to be harmed, that brings a lot of costs into the calculation and that's another reason why it's very hard to write a good business plan to take care of those costs. It can be done. You need a battery of attorneys and all kinds of careful planning

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and technical sophistication to make sure that you're managing the risks. [LR424]

SENATOR LATHROP: So are you telling us that the high-risk population that formerly treated in the regional centers were left behind out in the community-based care? [LR424]

WILLIAM SPAULDING: Left behind is probably the best single phrase for it. [LR424]

SENATOR LATHROP: All right. And what's happened to that population? Are we now incarcerating them? Take us from this, the realities of making the transition to the community, the difficulty with treating the chronically mentally ill that are high risk, and lifelong patients to the Corrections. Are these folks ending up in the Department of Corrections as criminals? [LR424]

WILLIAM SPAULDING: Many of them are. This is very difficult to study scientifically, so I can only like give you kind of indirect kinds of answers. Different things are happening to different people. Clearly, one thing that's going on is we're expecting the correctional system or even local law enforcement, as is evident in the Lincoln Police Department data, to take over or compensate for the shortcomings of what...of the mental health system that we've created. There's a lot of consensus nationally that there's been this transmigration. I would commend to you a recent report, a collaboration between the Treatment Advocacy Center, which is a national study think tank for mental health issues, and the National Sheriffs' Association. They just put out a comprehensive state survey, state-by-state survey, that illuminates this issue. Among the facts revealed in that survey, there are ten times as many people with mental illness in our prisons now as we have in state hospitals. In 44 out of 50 states, the prison population of people with mental illness is larger than the population of people in the state hospitals. The largest assemblages of people with mental illness in the country, the three largest institutions are the Los Angeles County Jail, Cook County Jail in Chicago, and Rikers Island in New York. This was a state-by-state survey and it was recent enough, by the way, that the

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survey actually commented on the Nikko Jenkins affair, pointing out that a person had been inappropriately released to the community. The largest mentally ill population in Nebraska is Douglas County Jail where about 21 percent of the inmates are receiving psychiatric medication. And one very pregnant statement in that report was, and I quote, county jails being used to hold mentally ill individuals awaiting a psychiatric hospital bed. So clearly it's a national trend. Clearly, Nebraska is not exempt. We are using the correctional system as a reaction to the degradation of the mental health system.

[LR424]

SENATOR LATHROP: So the data is the sum of a number of individual experiences, but what it suggests is there's a correlation between the changes that you've described and this population that's been left behind and an increase in the population in prison of the mentally ill. [LR424]

WILLIAM SPAULDING: That's correct. You know, scholars will debate this for a long time. There's one argument that really it's not so much the mental health side of it but that the overall drastic increase in incarceration that started in the United States in the late 1980s basically was a big dragnet that happened to drag a lot of people with mental illness along with it. The problem with that argument is that the overall prison population peaked in about 2007 has actually been going down since then, but the representation of people with mental illness in the correctional system has not. So there's clearly a differential effect and today it's very difficult to argue against the theory that the corrections system is absorbing a lot of the consequences. [LR424]

SENATOR LATHROP: And these individuals that make up the numbers that are part of the data are individuals who are not getting adequate care or in spite of the care are getting arrested and then placed into or treated as criminals and placed into the Department of Corrections or the county jails. [LR424]

WILLIAM SPAULDING: That's correct, and the county jails are just as bad as the state

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prisons in that regard. [LR424]

SENATOR LATHROP: Are you familiar with the care generally, generally the care received by inmates in the Department of Corrections? [LR424]

WILLIAM SPAULDING: I don't feel like I should speak to that. I'm not really qualified to talk about what goes on in the Nebraska correctional system. [LR424]

SENATOR LATHROP: Okay. That's fair. But we do know the correlation between the mental health system on the outside and the increase in the population of the mentally ill inside the Department of Corrections. [LR424]

WILLIAM SPAULDING: There's no doubt about that. And I should say I do read the newspapers, and I was pleased to see in the Omaha World-Herald a front page story a few weeks ago describing the reforms that are now being put in place or at least considered in the Nebraska correctional system. And I noted that the proposed reforms are generally in line with those that are being proposed nationally, and they include most primarily reducing overcrowding. This is a problem that we see everywhere. Diversion programs, things like mental health courts are very important components of that. We have yet to make that kind of progress in Nebraska, but I'm very hopeful that we're positioned to do so and also reform of procedures within prisons as well. There's growing consensus that procedures like solitary confinement and all of the related things that have other administrative jargon terms attached to them are, on balance, do more harm than good, and we need to eliminate a lot of those kinds of procedures and replace them with procedures that are more scientifically informed and more effective in dealing with the problems that lead inmates into situations like solitary. [LR424]

SENATOR LATHROP: I guess I'd be interested in your big picture view of what reforms you think the state needs to undertake to provide for that population that you described as left behind, those people who would have formerly been...started their care in an

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institution and been in a step-down process and returned to the community but are being left behind because it's difficult for providers to provide for them in the private sector. What do we need to do in the state? [LR424]

WILLIAM SPAULDING: Well, at the very highest level altitude view we need to reconfigure the Department of Health and Human Services. I think everybody has been discussing the silo characteristics of that department. Efforts to change that date back to the 1990s. It was perceived at that time that the Department of Public Institutions was operating separately from Health and Human Services, and so it was combined into one mega agency. That didn't work because the silos persisted, and there are a number of reasons for that. One is you can, you know, change the organization of the government but if you still have the same bureaucratic culture of ineptness and lack of accountability, no organization can really compensate for that. But in terms of legislative reforms, I think reconfiguring the Department of Health and Human Services so that there is more focal responsibility for that population that we're talking about would be one key reform and one that actually we inadvertently got away from in the 1990s and then it's taken, what, 20 years for that mistake to catch up with us. [LR424]

SENATOR LATHROP: How about the regional centers? You've shown us some data about how long it takes. We find if you're law enforcement, you get a call. There is somebody who is even to a law enforcement person, a police officer, appears to be mentally ill and dangerous to himself or another person and they're on track with an emergency protective custody towards a civil commitment. These people are being held in jails in the various counties pending space to provide for that civil commitment. Is that true? [LR424]

WILLIAM SPAULDING: Yes. [LR424]

SENATOR LATHROP: That's common. [LR424]

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WILLIAM SPAULDING: Yes. [LR424]

SENATOR LATHROP: Where are we at in our capacity to provide for even that population, the population of people who are the proper subject of a civil commitment? Do we need more space in the institutions, in other words? [LR424]

WILLIAM SPAULDING: That would be one of those "all of the above" answers. Yes, we need better services within the institutions. We need evidence-based practices throughout the system. And you can't pinpoint a single point of failure. It's a failure of all systems, so to speak. We need better services for the most severely dangerous people in secure settings. Whether that means a state institution or a state hospital is unimportant. The important thing is the secure setting. And the mistake that we made starting in the 1970s was assuming that we could eliminate the need for secure settings by having good community services. We can drastically reduce that need, but we can't eliminate it. And it's that black-and-white thinking that has caused the problem at the state level. [LR424]

SENATOR LATHROP: That does...I have to say that as we have followed the Nikko Jenkins time line, he was not, of course, civilly committed following his term at the Department of Corrections. But after he was engaged in the murders in Omaha and Judge Bataillon wanted him evaluated, the Lincoln Regional Center declined to take him. And, again, I know what I've read in the paper is all in that respect. But is the Regional Center equipped to handle someone who is mentally ill and homicidal? [LR424]

WILLIAM SPAULDING: Well, I'll take their word for it that they're not. That seems to be what they were saying in their affidavit. One could certainly question why not. Why would the state forensic hospital not be so equipped, especially after years of arguing that we're going to get rid of treatment and rehabilitation because the state hospital should have an exclusively forensic role? So I would agree. It just doesn't add up. For

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me, it indicates very poor planning and a lack of consideration at the highest levels as to what do we need to have in place in order to keep the public safe and to serve these unfortunate patients? [LR424]

SENATOR LATHROP: Is there any place that's equipped to handle him? Do we just take him down to the Corrections Center and put him in the mental health unit and do the evaluation or the treatment there, notwithstanding the fact that they haven't been convicted of anything? [LR424]

WILLIAM SPAULDING: Well, yes and no. Let me commend you to another very important document. In the summer of this year, the National Association of State Mental Health Program Directors issued a comprehensive white paper on the role of state hospitals, and I think we've supplied that to your staff. The conclusion of that group is that state hospitals still have a very important role in the mental health system, one of which is the forensic role. The state hospital, or whatever institution replaces it, needs to be able to provide a secure setting in which treatment can occur. And that's a real catch because you can provide secure settings in which treatment does not occur. And for many years that has been the case with the state hospital. Over the years, the degradation of quality at Lincoln Regional Center has eventuated into a situation where not only can we not treat them, we can't even manage them. That needs to be addressed in a planful way. There are a lot of debates as to whether those should be in the correctional system or the state hospital. It seems to me that it's got to be both. If you're convicted of a crime, you're going to be in the correctional system and you're still going to need mental health treatment. If you're not convicted of a crime in this country, you can't be put in prison, but there needs to be a secure place in which you can get state-of-the-art, evidenced-based treatment. [LR424]

SENATOR LATHROP: That's where we're deficient, right? That's where we're deficient. I mean, had Jenkins not plead no contest to four homicides, we'd have had no place to take him because we couldn't put him in Corrections in the mental health unit because

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he hadn't been convicted and you can't put him in prison. And to do an evaluation, the Regional Center couldn't take him because they didn't have the security to house him while they did an evaluation about his competency, for example. [LR424]

WILLIAM SPAULDING: That has me scratching my head, Senator. I mean, there's much been made of the death of the psychiatrist some years ago at the hands of a patient. I was still working under contract at the Regional Center at that time and part of the response to the psychiatrist's death was to amp up the security arrangements, even to hire paramilitary guards to enforce security. I don't know what happened to that. I just can't tell you. [LR424]

SENATOR LATHROP: Well, I guess the short answer is if not at the Regional Center, there's no better place, the Lincoln Regional Center, there's no more secure place. And what we found in Jenkins' evaluation or the failure of the Lincoln Regional Center to take Jenkins for an evaluation on competency is they're not equipped to do it. [LR424]

WILLIAM SPAULDING: Apparently not. [LR424]

SENATOR LATHROP: And that would clearly be a deficiency in our mental health system. [LR424]

WILLIAM SPAULDING: Absolutely. [LR424]

SENATOR LATHROP: Okay. I think that's all the questions I have, Doctor. The members of the panel do have an opportunity to ask questions, so. [LR424]

WILLIAM SPAULDING: Okay. [LR424]

SENATOR LATHROP: And I usually...I'm looking backwards. Senator Schumacher. [LR424]

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SENATOR SCHUMACHER: Thank you, Senator Lathrop. Thank you for helping us out with this very difficult issue. A couple of different questions. You made reference to I think the word was amazing new technologies. Could you kind of outline what happened in the 1990s? Was it behavioral technology, counseling technology, drugs? What was the amazing technologies? [LR424]

WILLIAM SPAULDING: Two major things happened. One was, yes, behavioral technologies which actually had been pioneered in the 1970s, the data started rolling in on the outcome of those treatments. And it became unequivocal that if you put people with mental illness in an appropriate therapeutic environment they get better, much more so than in comparison condition where traditional kinds of comparison conditions. More generally though there was a lot of research in the eighties and nineties on mental illness in general that very unexpectedly show that people do recover and even come to lead relatively normal lives to a far greater degree than had been understood before that. Somewhat conspicuous in its absence has been advancements in biological treatments like medication, antipsychotic medication. There's no doubt that medication is an important component of modern treatment. But actually the argument these days is there really has not been any new advances in drug treatment of schizophrenia since about 1965 when the drug Thorazine was first introduced. We thought we were making progress in the 1990s. We introduced a whole new generation of medications that did not have the serious side effects of the old ones. But then we discovered that they had other side effects. And so instead of neurological damage now we're causing diabetes with these drugs. It's gotten to the point where the pharmaceutical industry has become very skeptical that there are going to be any new major breakthroughs with biological type treatments, at least in our lifetime. But that is in stark contrast with the prospects for these psychological and behavioral approaches which continue to show very positive outcomes and are under rapid development so they're getting better and better. [LR424]

SENATOR SCHUMACHER: The behavioral approach, a lot of that then the emphasis is

an operant conditioning kind of situation. [LR424]

WILLIAM SPAULDING: No. Well, in some ways. I mean, operant conditioning certainly has a historical legacy in this. But we're in a new era of psychological treatment now. We understand the psychology of mental illness much better than we used to. We understand that the mental illness does not completely take over your personality. You're still a person. You just have a disability. One of the major breakthroughs, in fact, is changing from the idea that mental illness is a disease that has to be cured to thinking of it as a disability that has to be overcome. And one of the interesting and important historical developments was starting in the 1970s, psychiatric treatment gradually absorbed what had been learned in the middle of the twentieth century from rehabilitation psychology. Back at the end of World War II, as many World War II vets were returning with serious physical disabilities, we really learned a lot about how to return people to normal lives even though they have a serious disability. And we discovered that you could take those same principles and apply them to psychiatric conditions with the same kinds of benefits. And so today the approach of choice for schizophrenia is termed psychiatric rehabilitation, which kind of reflects those kinds of ideas. There's a lot of learning involved, a lot of operant conditioning involved, but it goes way beyond that as well. [LR424]

SENATOR SCHUMACHER: Okay. And the second question, what percentage of the population suffers from these mental issues that the state needs to spend money on? Are we looking at 2 percent of the population have problems in this area, 10 percent, a quarter percent? Any feel for that? [LR424]

WILLIAM SPAULDING: Well, of those numbers you mentioned I'd pick a quarter of a percent. If you think epidemiologically, you know, about 2 percent of the population has a serious mental illness like schizophrenia. Only about 20 percent of those individuals reach a level of disability that would require the kinds of intensive rehabilitation that we're talking about. [LR424]

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SENATOR SCHUMACHER: One thing we've observed in the committee is what maybe is a disconnect between the language in our mental health law, commitment law, and the way diseases are diagnosed and labeled. Our mental health commitment law, as you probably know, basically refers to someone mentally ill and dangerous. [LR424]

WILLIAM SPAULDING: Yes. [LR424]

SENATOR SCHUMACHER: And if they trip that trip in a very generic way, they're subject to the police picking them up, taking them to the Regional Center, a county attorney filing a petition, and then ultimately a mental health board reviewing the situation. And in my experience as a county attorney in that, it was a very generic application. The guy is acting weirdly or a person is acting weirdly and it looks like they may hurt somebody and that trips it. But we've heard testimony before the committee here that there's a debate, well, do they trip some classification within the DSM-IV or V, now maybe it is, IV and are we...do we need to modify, clarify our mental health standard for the commitment process so that we don't have a debate whether or not they are a major mental illness within the DSM which wasn't even talked about maybe when they put this in the statutes in the seventies? [LR424]

WILLIAM SPAULDING: In a word, yes. It's not easy to keep up with the diagnostic system. You're right. The DSM-V just was adopted last December. So...but the thing is, the DSM-V has a very different perspective than the DSM-IV and it's much more circumspect, and that's a good thing. The DSM-III and IV were inappropriately concrete about the nature of mental illness. Mental illnesses were seen as diseases no different from cholera or tuberculosis--inviolable categories. You either had it or you don't. The DSM-V, in response to the science, is much more circumspect about that now. Fortunately mental health boards are also more circumspect than mental health professionals who will inevitably debate about where the fine line is with respect to mental illness. I think what we can do is inject more of a functional approach into the

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process so that instead of arguing about diagnosis, we go directly to the question of whether a person is dangerous, because diagnosis does not predict dangerousness as I'm sure you've noticed in your experience. We can make those reforms in the commitment law. It won't be easy and we need to be very careful, but I would certainly agree that that is one area that we can do much better. [LR424]

SENATOR SCHUMACHER: And, finally, one of the things we observed, I think we've observed in the committee is regarding maybe the training or the attitude of psychology professionals. One phase of it was that the conflict or the rub between psychiatrists and psychologists we saw that directly impacted in the Jenkins case and then the ethical duties of a mental health professional with regard to its interface with the legal system. Specifically here we had a case where a psychologist at the penitentiary had a couple of psychiatrists report suggesting dangerousness on the part of...and mental illness on the part of Mr. Jenkins. We had a debate within the psychology staff at the penitentiary saying, no, no, it's just behavioral. It's not really...raises to the level of a psychological problem. It's just behavioral. And then we had a psychologist at the penitentiary, when inquired by the county attorney after receiving complaints that put him on alert, saying...withholding information from the county attorney, specifically the two psychiatrists' reports saying that there was a real problem, withholding it from the county attorney thinking that...he must have been thinking that there was no obligation to make it available. There was a real bad situation evolving out of the lack of communication with the county attorney, the internal fighting over psychiatrists' opinions versus psychologists' opinions. And then this, what seemed to me to be an artificial distinction between behavioral and psychological causes for the problems they were observing. What's done to train the...in the training of the psychologist and psychiatrist that could be done to overcome this, what appears, very real problem? [LR424]

WILLIAM SPAULDING: I think that's a very important question and I don't have a single answer. I have a couple of answers and I think they're all pretty good ones, so I'll run through them. The first thing that comes to mind is I was following this in the

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newspapers, I was struck by one of the headlines. This was at the competency hearing, which would have been in August of 2014. The headline was dueling psychiatrists argue over competence. I think that pretty much demonstrates the degree to which this is a turf issue between disciplines. It's not. There are turf issues going on here, but it's not between disciplines. It's between entrenched institutional interests and other interests who have the patients' welfare and the public interests in mind and are focused on reform. In my life, I have had psychiatrists as close colleagues and I have been as estranged from other psychologists as I could be from any professional. It's not about a difference between disciplines. So that's part of my answer. Another thing that happens, and I think psychiatrists and psychologists are probably both somewhat can be blamed for this, is that mental health professionals tend to forget that their job is to advise the court not to be the court. And in the scholarly circles in which I participate, this is much discussed that a problem with the forensic part of the mental health system is that the courts are overly anxious to defer their prerogatives and responsibilities to the opinions of mental health professionals, and mental health professionals are all too willing to take over that function. When a psychiatrist or a psychologist provides an opinion, it's an opinion. And everybody knows that if you have enough money, you can hire either a psychologist or a psychiatrist or a psychologist to render an opinion that's the opposite of the one that you want to oppose. It's an adversarial process and that's a good thing. But we don't train mental health professionals to make decisions in the context of an adversarial process. That's for attorneys and judges to do. And I think among the reforms that one needs to put in place is an affirmation of that principle. And that will involve training judges and some argue that that might be an oxymoron as well, but we need an educational process by which the courts and the legal professions understand and are willing to accept their responsibility to be parts of that adversarial process and make very difficult decisions that science cannot really ultimately address. [LR424]

SENATOR SCHUMACHER: Thank you, Doctor. [LR424]

SENATOR LATHROP: Got anything? Senator Mello. [LR424]

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SENATOR MELLO: Thank you, Chairman Lathrop, and thank you, Dr. Spaulding, for your testimony. I think if anything I've taken from your testimony out of multiple components you've brought forward is the inability for us to separate I guess the reforms in LB1083 and the changes in the mental health system in comparison to what we're seeing now in the Department of Corrections and county jails in regards to serving the mentally ill population. Looking forward, and looking through your handout a little bit I was...I just want to give you an opportunity to give maybe a little bit more clarification. I think Senator Lathrop asked a question in regards to the need for us moving forward. Obviously we're looking at the Department of Corrections from a variety of different angles in respects to whether it's reforming the internal culture and operations of the agency, the need for more facility space, the need for more programming. Where does the mental health system fall in regards to that progress moving forward or path forward with the Department of Corrections specifically as it relates to services and facilities? I think Senator Lathrop mentioned or posed a question in regards to do we have a facility to take to, I'm going to use your language here, to address the historical institutional population. Do we have facilities or do we need to be considering building or expanding facilities to serve that population as we're developing proposals and considerations moving forward with the Department of Corrections? [LR424]

WILLIAM SPAULDING: Well, we certainly need to reform the system. Whether that would entail building new facilities, I'm not sure. I would say that we do have to have a more explicit understanding at the state level that there is a population which is pretty much the historical institutional population that are beyond the reach of marketplace-based healthcare systems. It's just bad business to try to serve that system. We may be able to find innovative ways of doing that in the private sector. I don't mean to be an absolutist about that. In fact, I could point to examples on the developmental disability side of the equation where there has been some innovation in getting private providers to help with the most high risk and disabled populations. But we don't exactly know how to do that yet and we have to figure out an approach where

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either the government takes on that direct responsibility if the marketplace can't do it or we find innovative ways for the marketplace to be able to...for a provider to be able to stay afloat while serving that population. What we have now is a situation where providers have no incentive to provide the services that are needed and there's nobody compelling them to do it, but they still have access to the money and other resources that used to be used for that purpose. And so those resources have been diverted to other populations and the left behinds are left unserved. [LR424]

SENATOR MELLO: Okay. Thank you. [LR424]

SENATOR LATHROP: Senator Seiler. [LR424]

SENATOR SEILER: Doctor, I have a couple of questions. I have seen and there's been testimony before this committee that 31 percent of the prison population are mentally ill, and they include drug and alcohol addiction, so there is a huge population there. But I also understand from previous testimony that there's not a real good program being used to work with these people while they're incarcerated. The question I have is have you seen good programs that we could implement to work with these people while they're serving their prison term so when they exit they have some rehabilitation already in the program? Thank you. [LR424]

WILLIAM SPAULDING: Yes, absolutely. I mean, the science is not obscure on this. [LR424]

SENATOR SEILER: Okay. [LR424]

WILLIAM SPAULDING: We know what works. It's a question of dissemination and implementation and ultimately a political will to do what needs to be done. [LR424]

SENATOR SEILER: We passed LB999 which is looking at a regional center rehab

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building at Hastings that would house about 205 beds at maximum with the idea that people could go to the...as they're going out, the last part of their sentence, they could receive treatment and training out there. And you're saying that program is available. [LR424]

WILLIAM SPAULDING: Well, the treatment approach is well known, the kind of treatment that we need, and it's the same treatment whether you're talking about in a correctional system or a mental health system. The nature of mental illness is not different. Same thing for medication. You would not use different medications in different settings. What kind of setting is best is determined by a lot of local exigencies that have to be carefully analyzed. [LR424]

SENATOR SEILER: Okay. [LR424]

WILLIAM SPAULDING: But what I would emphasize is whether it's in the correctional system or the mental health system or some other end of the bureaucracy, we know what to do from science. [LR424]

SENATOR SEILER: Okay. Good. Second or the last question I have is do we have the professionals trained that can be used or have jobs at a place like that? Is there enough professionals for psychologists, psychiatrists, or nurses trained in that area of treatment? [LR424]

WILLIAM SPAULDING: We don't do a great job with that, Senator. And that's as it happens in my role as a professor at the university I'm heavily involved in those kinds of questions. We could be doing a lot better. But, you know, it's that old principle of if you build it people will come. It's very hard to train doctoral students to have skills that they may never be given an opportunity to use. So we have to think of this as a process of one hand helping the other. But we need to create the career opportunities; and if we do create those opportunities, I think the higher education system will respond. [LR424]

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SENATOR SEILER: Thank you. That would help you in your teaching of professionals.
[LR424]

WILLIAM SPAULDING: Yeah. I'd appreciate the help with that. [LR424]

SENATOR SEILER: Thank you. [LR424]

SENATOR LATHROP: And the students. You need students. [LR424]

WILLIAM SPAULDING: Yeah. It's not hard finding the students. What's hard is getting them to stay in that career path where the rewards can be so sparse and the risks are so high. [LR424]

SENATOR LATHROP: Senator Bolz. [LR424]

SENATOR BOLZ: Good morning. You referenced how we lost some state functions in the dilution to the regional system, specifically state planning, accountability, and the culture of evidence-based practice. And I would be curious to hear you talk a little bit about the gaps that exist now and how you might envision rebuilding those functions on a state level. [LR424]

WILLIAM SPAULDING: Well, the second part of your question is sort of easier to answer I think. What we need is a very strong mandate and a consensus across the legislative, judicial, and executive branches insisting on best practices in every corner of the system. We don't have that now. There's no accountability. There's no accountability in state-provided services. There's no reason for the Regional Center to use best practices because nobody is insisting that they do it. It's clear that we can't depend on the conventional healthcare accreditation processes. Those, you know, you can maybe suppress the spread of infection in hospitals with accreditation processes but you can't,

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you know, ensure evidence-based practice. We need broad consensus that we will not tolerate anything less than that and we need to hold the administrative leadership of the mental health system accountable to use the technology that we have. [LR424]

SENATOR BOLZ: Do you think there's a specific function for the Division of Behavioral Health that needs to be rebuilt or reestablished to ensure those best practices? I mean, it's one thing to set a bar high; it's another to create a way of implementing that. [LR424]

WILLIAM SPAULDING: Yeah, yeah. Let me tell you a quick anecdote about one of the things that happened with LB1083. Some of you remember Mr. Santema who was the counsel of this committee or of the HHS Committee then. He and I and Dan Wilson worked very hard on the initial drafts of LB1083. Wilson was at the time the chair of the psychiatry department at Creighton, and he insisted that we needed a chief medical officer across the top level of the administrative system and proposed that we take a third of the psychiatrists position from each of the regional centers and combine them into a single position that would be basically the clinical director of all three regional centers who would have the kind of administrative focus and empowerment to make things happen. But what happened with that position? Well, we do have that position in the government now, but it turned into an administrative position. None of the leadership of the regional centers was changed and now we have a psychiatrist in the highest levels of the administration whose function is entirely unclear. So that's the kind of thing that happens and those are the kinds of mistakes that we need to reverse. [LR424]

SENATOR BOLZ: Thank you. [LR424]

SENATOR LATHROP: Senator Krist. [LR424]

SENATOR KRIST: Thank you, Doctor, for coming. Thank you for your testimony. And I apologize but I'm going to use your time to do a paid political announcement. [LR424]

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WILLIAM SPAULDING: I'll relax then. [LR424]

SENATOR KRIST: Oh, good. Please do. You related to political will several times during your testimony and during your comments and also to the mistakes made where money disappears into the rabbit hole and we can't track it. I wrote a note to the Fiscal Office that I'll follow up with Senator Mello after this, and I'd like to see what happened in those program funds and where they went to. And the two fiscal analysts that should be able to tell us that are unfortunately out for the holidays. But we'll follow up on that. And I think, like everything else I've seen in my time here in the Legislature, if you follow the money and you understand what the program funds and where they have gone, you can often find lack of political will or more political will in terms of taking that money and doing other things with it, which we have found is a culture within Corrections and within other agencies in terms of mismanaging the taxpayers' money and putting it places where it was never appropriated to go, it was never intended to go. So I promise you on that note that we will follow up on that, and I'll again follow up with members of Appropriations--Senator Bolz and Senator Mello--who are here on this committee. The other thing I would say is that nothing that we have talked about or anything that I have seen relating to juvenile justice, the justice system, corrections, probation, or parole is unrelated. I would say that there are 10 to 15 percent across the board comfortably, conservatively, people who are in our institutions, in our jails who don't need to be there. We are hearing in the Corrections Reinvestment Group, which is not done yet, that CSG has helped us out. We're hearing from the judges we need alternatives. And I would argue to Senator Seiler's point, I don't want them to go into the prison and then go on the backside to get their treatment. There are some of those people that should never come in the prison front door because of behavioral, mental health, substance abuse problems, etcetera. And those drugs courts, those DWI courts, those courts that we're seeing which are evidence-based which are having great effects across the United States are not cheap but they're less expensive than the track we're going on right now. So eliminating that population from our overcrowding situation would be a step in the right direction and more than that, it's the humane thing to do. It is treating people where

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they need to be treated. To that end, and some of my colleagues know this, I've had conversation with the chancellors at UNL and UNO and UNMC to try and institutionalize a change. And I believe the institution is the University of Nebraska System. I'm going to try to put a piece of legislation forward this coming year that will put behavioral, mental health, and substance abuse centers, if you will, across the state of Nebraska. Pilot programs that are based on evidence-based or have evidence-based programs at their core. I'm also arguing that brick and mortar may not be needed because we have wonderful institutions across the state that the university system not only controls but can redirect in doing other things. Those pilot programs would be held to evidence based. They would be monies that would be spent within the system that we already have. To that end, I would like you to comment for me, if you will. If I had an effort in my soul to serve in a certain way in psychology or psychiatry, where am I going now? What graduate schools am I going to outside the state of Nebraska? Because my contention is there's plenty...we have a factory of healthcare professionals that are coming out, but we're losing those students that are in disciplines like this. They're going to Kansas. They're going to these programs where they have more opportunities to grow their trade. Could you comment on that for me, please? [LR424]

WILLIAM SPAULDING: Yeah. (Laugh) That's what happens to my students. They go to other places. Now in fairness, there's a question about how many top-level researchers you need in every state, but that's different from staffing the mental health system. And I agree, we don't do a great job in Nebraska of making the mental health system and its surrounding system attractive to professionals. I think we've made some important steps though. The checkered history of the Behavioral Health Education Center of Nebraska, BHECN, has been a positive trend and I think we're doing better now in finding ways of setting up mechanisms for that to happen. There are some interesting technical questions as to exactly how to do that. For example, in psychology after you're done with your five to six years of didactic and practical training, then you do a full-time internship. And the way the system is set up is that you really have to go to a very large medical center for a year to do your internship, and most intern...when students leave to

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go on an internship, one of their major considerations is they choose...they're going to choose an internship that's basically in the region where they want to stay. So if you want psychologists in Nebraska, one important thing to do is have some good internship opportunities in Nebraska to draw the students there. [LR424]

SENATOR KRIST: Right. [LR424]

WILLIAM SPAULDING: Somewhat different in nursing and psychiatry and social work for various reasons. But my point is there are a lot of technicalities. The devil is in the details. We need a lot of people like yourself with good intentions to push on it, and we need a lot of collaboration between the political will and the technical expertise in order to actually make it happen. But I very much appreciate your intentions. [LR424]

SENATOR KRIST: So to wrap up or to summarize, the institution that Senator Seiler is talking about in Hastings could present itself to be an institution that would allow for an internship in a specialized area that really doesn't exist right here in Nebraska today. [LR424]

WILLIAM SPAULDING: Right. And if I may say so, the university system, both historically and in the future, could have much more involvement in state-level mental health services. [LR424]

SENATOR KRIST: And to that point, what we did in the last few years with juvenile justice and creating the justice center at the University of Nebraska at Omaha has institutionalized a change in the social worker and the probation officer. The two are now sharing a master's degree program that is second to none across the states... [LR424]

WILLIAM SPAULDING: Yeah. [LR424]

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SENATOR KRIST: ...and it's creating a hybrid, the kind of person that we need. Rather than having a social worker and a probation officer assigned, we have someone who has the facilities, the capabilities, and the wherewithal to make those kinds of changes happen. That's what I see that collaboration meaning. [LR424]

WILLIAM SPAULDING: Yeah. [LR424]

SENATOR KRIST: And, you know, Senator Lathrop is term limited and his best intentions will stop and someone will have to pick up on them. But if we institutionalize his ideas in the university system, it's a culture change and it becomes part of what I think we, as a Legislature, need to look at in terms of our investment. [LR424]

WILLIAM SPAULDING: Just one final comment to that. I agree strongly with everything you said. I had occasion to look back at the history of some of these statutes. And if you looked at the original statute that created the regional centers, there's a section in that statute that very strongly defines the role of higher education in state-level services and explicitly says the university has to be very involved in the development of mental health services. Those are some prescient guys that wrote that statute and I wish we had fulfilled that hope more than we have. [LR424]

SENATOR KRIST: Well, maybe we've come full circle. [LR424]

WILLIAM SPAULDING: Maybe so. [LR424]

SENATOR KRIST: Thank you, Doctor. [LR424]

SENATOR LATHROP: Senator Chambers, if you have questions, yeah. [LR424]

SENATOR CHAMBERS: Thank you, Mr. Chairman. Thank you. Dr. Spaulding, I appreciate, really, your coming here. My approach is different from that of a lot of

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people, whether in or out of politics, because I want to, if I can, find out how things actually work and to separate sound and fury from that motive force that can bring about a change. So I listen carefully when people are testifying who have the kind of knowledge that you're demonstrating you have, a breadth and depth of experience also. And from listening to people who have testified before us so far, I can detect a difference. I'm not trying to butter you up, but I'm trying to get to a point. I believe in compiling a record through our hearings because we're not a prosecutorial body, we're not a judicial body or even quasi judicial. We're fact gathering. Everything will be recorded; everything will be transcribed. I hear what is being said. I understand what I hear as I hear it. But it's not all sticking--just being honest--at my advanced age, as it was described in the newspaper. My brain cells are more Teflon than Velcro, so some of what I gather I will do a better job of gathering as I read the transcript. So while you were testifying, you were presenting a narrative that was logical and coherent. Questions were asked by our Chairman to get at some of the specific things that will benefit us. And as I made my notes, they are not maybe even coherent, but they certainly are not proceeding in necessarily a logical fashion. They may be episodic, so I want you to understand that the disjointedness of my questioning will not necessarily be based on the way my mind works but, rather, the way I took notes down on things I'd like to ask you about. We need to go where we can to get the information that we need. And when people who are highly trained, who are experienced come before us, to me it's like a gold mine: The gold is there, but we have to do the mining. If we don't do that, then we let opportunities go by that are really wasted. I don't want that to happen. So I hope you don't take offense at the type of questions I ask. Some may seem to be repetitive, and I'm saying they may be episodic. One of the comments I would make, first of all, by way of introducing what I want to get to, is that we have people in Corrections, whether it's at the state level, the county level, or the city, who are not even trained in terms of what it takes to be a guard. We give a different title, such as "correctional officer," to appear to be changing the game when we're not. So if these people are not even trained to properly discharge the work of a guard, they certainly are not going to be trained or capable of dealing with people who have genuine mental

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illnesses. They may see conduct and behavior that annoys them because it's going to make them pay attention to this person. So the thing that they might be interested in doing is quieting that person down, removing that person from having to be dealt with. And the favorite thing to do is put them in some form of solitary or administrative segregation. So when you have people who are not trained and who are not even paid what they should be paid, being untrained, just for being custodial, then a problem that's bad is going to be aggravated. In Douglas County, the hospital used to have more space to put people who are mentally affected than they are criminally inclined. So somebody with what some people may call a mild mental illness, not enough to be committed, will behave in a way that Senator...it might have been Senator Schumacher mentioned is weird, not criminal. But if the public becomes fearful or a business owner is annoyed because a homeless person is wandering around in front of the place and people may avoid that place, the police are called. This conduct is placed in a criminal context. The person is locked up, no treatment, just to be gotten out of the way. Maybe the person will be released without even going to trial. So the person is released, comes out, and engages in this kind of conduct again and winds up in jail. And the revolving door is actually making that person's situation far worse, so a system is helping to create the very problems it is supposed to help resolve. Now I'm going to ask some questions. When you look at the magnitude of the problem that you and others have described and the dearth of resources, maybe because of a lack of political will to appropriate money or a lack of vision, if everything that is needed to address the problem could be implemented immediately--enough beds, enough trained personnel, people who care more for the patient than carrying out an entrenched institutional agenda based on political considerations--if all of those things could be put in place immediately--and I don't mean in terms of weeks or months necessarily--how long would it take to right the ship that has been discussed this morning? [LR424]

WILLIAM SPAULDING: Well, first, of all of the things that you said, let me just make one digressive comment, which is, it's probably not about money. Now I can't say this with any expertise in the correctional system, but in the mental health system, in the parts

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with which I am most familiar, we actually waste a lot of money by using antiquated models, by paying for medical expertise that is not the kind of expertise that we need. And I'm skeptical that the reasons for the problems are because of fiscal conservatism. We did an analysis of the fiscal consequences of closing the psychiatric rehabilitation unit at Lincoln Regional Center in 2009, and even using just very simple per diem cost data we concluded that it costs the Regional Center about \$1.7 million a year to not have a medium-secure alternative. So we're spending a lot of money not to do the right thing. With regarding to your question of how long it would take, I think you have to think about that in an incremental way. Positive consequences accrue gradually. We can make immediate changes that will give us confidence that we're going in the right direction with new law and new policy and hiring of appropriately trained and expert individuals and we can see some immediate consequences of that. But in the long run, the kinds of positive consequences that we really need are going to take several years to accumulate. [LR424]

SENATOR CHAMBERS: And you had touched on accountability and absence of it in some regards, and I'm even more concerned about a total lack of accountability. But if we do have people in place who are trained, if we have good laws on the books, then the people still have to be held accountable in terms of doing what it is they're hired to do, discharging the duties associated with that job. And if they don't carry out those duties, there should be consequences. And that's what I mean by accountability. What would you add to that to get across the notion of what you mean by accountability? [LR424]

WILLIAM SPAULDING: I think you've put your finger on it. I would only add that, again, there's so many striking parallels between the correctional system that you've been studying and the mental health system with which I am familiar. One of those parallels is the one you mentioned about training direct-line staff. One of the key things that you would want to do in reforming the mental health system, especially in places like the Regional Center, is train the direct-care staff in modern techniques. The unwillingness

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of institutional interests to allow that to happen is one of the major barriers to reform. I think there are a number of fairly technical kinds of things like that. You could put that under the rubric of accountability for sure. Accountability includes accountability for doing technical things correctly, as well as for having the right kinds of intentions. I think you need both. [LR424]

SENATOR CHAMBERS: If people feel...I always start some of my discussions with this comment: All rivers and most people are crooked because they follow the path of least resistance. So this would apply to all people in all categories. They'll do not much more than they're really required to do. And if they look at the entity or agency which is called into account and see that that agency itself has no interest in insisting on accountability, we can use the term but nothing is going to happen. Let me give a concrete example, then you'll see the direction I'm going. In Corrections we had people who had access to a Nebraska Supreme Court decision that indicated the way they should carry out certain duties. Knowing what that decision required, they deliberately, consciously chose not to do so. Now there is a law on the books that talks about misconduct in office or misconduct by public officials and employees. And the purpose of that law is to make it clear that when you have a position of trust, there are duties and responsibilities that you must meet and discharge. And if you don't discharge it, then there are consequences because you are violating that trust. And the law makes that a low-level crime, a misdemeanor. The Attorney General will say, well, these people didn't intend to violate the law, so no action will be taken. Well, the purpose of the law is not to have a legal discussion but to let the people who are in these positions know that if you don't carry out your duties, then there are consequences. The Attorney General's decision indicates you don't have to know what your duties are, the law doesn't require you to do that. And since you don't know what your duties are, if you fail to discharge them, you cannot perform...you cannot perform the required intent to not carry out your duties because you didn't know what they are. But if you happen to know what they are and you don't carry them out, we won't charge you with anything because you did not sit down and say, I know these are my duties, I intend not to carry them out, but I don't

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intend that to be a crime. What I'm getting to is this: There are certain statutes that will make conduct criminal only because it's prohibited. The law calls it malum prohibitum, like violating a traffic signal or things like that. It's conduct that in and of itself is not bad. Then, conduct which is malum in se, it is bad, immoral, and evil because it's hurtful to others. Murder, mutilation, rape, assaults--those things are wrong in and of themselves. So when the Legislature for the purpose of enforcing accountability will say that when there are rules properly adopted, there are laws, there are regulations in place that govern your job and you have a job that involves the public trust, if you do not carry out those duties, you are guilty of a misdemeanor and you'll be punished accordingly. The Attorney General has just said to all public employees, all public servants that if you don't form a specific intent to say, I want to violate this law, then the law has no application. The Attorney General and every lawyer knows, and the public at large has heard it, ignorance of the law is no excuse. And that principle was formulated by a guy--I'm paraphrasing--who said it cannot be an excuse. And that is not based on the notion that every man understands the law, but it's a plea that every man will make and no man can adequately rebut. So the Attorney General has created, I think, an additional problem for us who are trying to do something in Corrections. These people now know they don't have to obey their own rules and regulations; they don't have to follow Supreme Court decisions; they don't even have to follow the law and they are home scot-free. And there are people who are going to act on that. Here's where I think it bleeds over into what you've been talking about. There are people employed by the Department of Corrections who are called psychologists and they, I think, do not live up to some of the professional standards that are required of licensed psychologists, so I'm not talking about the area of crime. But let me get to this notion that you brought up of these dueling psychiatrists. I sat in a courtroom and listened to some of this testimony and, speaking of these entrenched institutional interests, those psychiatrists who work for the state were the ones coming up with the conclusion that the Governor wanted. He wanted Nikko Jenkins to be found competent because he said Nikko Jenkins should get the death penalty. So that's what the state psychiatrists were saying, ignoring all of the evidence that was available from this man's conduct and so forth. On the other hand,

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independent psychiatrists--that's how I will distinguish those who are not hired directly by the state; they might be under contract--one of them had a contract with an agency that provides these people to the correctional facilities. The judge listened and he said words to the effect: Two psychiatrists said he's competent; three or more said he's not. But what he didn't say is that the ones who say he's competent are hired by the state. But as proceedings went further and the judge finally determined that Nikko Jenkins was incompetent to attend a sentencing hearing, although this very judge said he was competent to represent himself, he was competent to enter a plea, he then said, but he's not competent to go through the sentencing because that could result in death and there were so many irregularities. What the judge indicated was when Nikko Jenkins was returned to the custody of the Corrections Department, they returned him to solitary. That status had further deteriorated his already defective mental condition. That additional solitary confinement in a prison setting deteriorated his mental condition to such an extent that now he is not competent to go to this hearing, so you can say that the system helped deteriorate his situation. But when the Regional Center, even though they've got murderers out there, even though the man who killed the psychiatrist--and I don't think the killing was intentional; the act that resulted in the death may have been--I believe he's still out there, but because of things the Governor said, things that the police union said, the things that had been said by people with no medical or even psychological training had said, the Regional Center said, we're not going to accept him. The judge, instead of using the authority that he is entrusted with, said, you will accept him and you will establish circumstances to properly treat him and he's coming as a patient not as a prisoner, and the Regional Center would have done it or else. But instead he listened to some people from the Regional Center who said, if you leave him in the prison setting we can properly treat him there. We will visit him and so forth. That's a long way to get to this--here's what their lack of accountability resulted in, their lack of concern about anything the Attorney General will do when they violate the law even: Nikko Jenkins sent me a letter, and included in the letter was a razor blade that had been given to him by somebody in this circumstance in the prison setting, which is supposed to be secure, and was passed to him with the indication that he can use that

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to cut himself further. That's what's happening right now under the Governor's administration, under the Attorney General's nose, in Lancaster County where Joe Kelly is the prosecuting attorney. And I think what I've described could count...qualify as a crime. But it won't be prosecuted. Nobody will be called to account. So the value of your being here is to put things on the record. It will create a transcript that I can use portions of to argue for making, to the extent possible, reality of the good laws that might be on the books, the standards that are supposed to govern the conduct of professionals who are licensed by the state, and try to embarrass these people into doing their job not because there is any tinge of morality or professional pride but because they're afraid of being exposed by the media. See, if the media would write about what I'm saying now, something would be done about it. But the media has no interest in this. But once the World-Herald took an interest in people being let out sooner than they should have been and wrote expose after expose--and I'm glad, whatever their motivation was, I'm glad that they did it--then everybody got concerned--the Governor got concerned, the Director of Corrections got concerned, the Attorney General got concerned. The Legislature became aware of what was going on. Senator Lathrop, our Chairperson, provided the leadership to create an investigative committee. But despite all of these things, if conduct is not modified, if ongoing, very serious problems are left unaddressed and the Attorney General can tell people in Lancaster County and the county attorney can back him up, you will not be held criminally responsible even when you violate criminal laws...and, Doctor, I do have questions. But the reason I wanted to put it in that context is so that you'll understand that I'm not looking for you to be a miracle worker or for anything you say to bring about necessarily a change because you say it, but I want you to know that at least one person is going to try to make use of it. And you might be thinking of it as a healer, but I'm thinking of it in terms of maybe a club that can be...and now I can ask my questions without taking a lot of time and won't keep us here all day, even though I don't mind doing that. Now let's presume that the Regional Center genuinely is not equipped to handle a person who is convicted of a crime but is deemed to be mentally ill and dangerous. The state has an obligation to that person and to those that person will be around, and the mental hospital--that's what I'll call the Regional

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Center--is the place where that person should be housed. If the Regional Center says that they don't have the capability to handle a person like this and there are people such as myself interested in figuring out what it would take to put them in that position and what they would need, what kind of advice would you give in terms of what the Regional Center may lack that they need to handle a person like this and not just say what we all might say--a secure place to hold him? Because they could say, well, we've got a basement down here, we don't burn coal anymore, so we'll just throw him where we used to put the coal and lock him up and slide his food under the door. What would it take to put the Regional Center into the position to do what under the law they ought to be doing now; namely, provide a place for those convicted of crimes who are mentally ill and dangerous? Or can they not be expected to ever do that? [LR424]

WILLIAM SPAULDING: Senator, clinical scientists might...like myself are very eager, waiting for legal scholars like yourself to figure out how to do this. I...that...one of the strangest twists in this whole story was the inability of the Regional Center to accommodate that individual, and I hardly know what to make of it. I will say that, as I read the paper this morning, with regard to your previous comments, it struck me that among all of the remarkable parallels between what's going on in the correctional system and the mental health system, is that when the psychiatric rehabilitation program was closed in 2009, Senator Avery introduced a resolution for an interim study which was held and it was coincidence...coincident with a study by the Legislative Audit Committee as well. And with the information that was produced, the Legislative Audit Committee concluded that HHS had indeed violated LB1083 in closing the unit. But unfortunately, there was no remediation in the statute, so nothing could be done. It seems to me that we need statutes with teeth in them, but that's my naive, clinical, scientist point of view. And if I were a legal scholar, I might have a more helpful answer. But some...I certainly agree, somehow or the other there needs to be a broad mandate across all branches of government that the public will not tolerate this kind of inept administration of public institutions. [LR424]

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SENATOR CHAMBERS: Thank you, Doctor, and I'm wanting your input because I know the answer is not going to be found with you and certainly not with me because the Legislature does not enforce laws, the executive branch. And now the top law enforcement officer in the state has said he's not going to enforce the law, he's not going to hold people to account. The law can very clearly say what it should do, but he's not going to do it. And here's what he says: I dare somebody to try. So here's what I'm going to do in my little, ineffectual way borne of profound contempt for what the Attorney General did, disgust for the lack of standards, and the need for somebody to object. The Supreme Court has created an office known as the Counsel for Discipline of the Nebraska Supreme Court, and I'm going to file what's called a grievance: when a complaint is filed by a person against an attorney and it becomes known as a complaint if the Counsel for Discipline investigates and decides something should be done. If on the one hand the Attorney General's Office is involved in a very bad situation in the Correctional Department and it's his job to defend state agencies, then he is going to conduct an investigation of this very problem that his department knew about and then draw the conclusion that nobody did anything that violates the law because it would go right into his office, then there has to be something, some instrumentality outside of that corrupt office to try to get something done. He is not above the law, but nobody will call him to account. And the public can see these things happening and the question always is asked, why do they get away with it; how do they get away with it? Well, if in the law as the top enforcement officer the Attorney General can be equated with the king, the king can do no wrong. And it is a conflict. It would be like I have a complaint against Senator Schumacher because he's always bringing up quantum physics to show that the question is not, "To be or not to be," but whether it can be and not be at the same time, so it reaches a point where something happens between him and me. I get so irritated that I say, if you say one more word I'm going to knuckle your nose. And he says, I don't believe you'll do it. I said, that's the word. (Snaps) I hit him. Now we're not going to take it into the realm of the criminal. We're going to let it be in the realm of the civil. He wants to sue me for hitting him. I want to sue him for provoking me. Senator Lathrop is an unethical lawyer and he says he'll defend both of us. The law won't allow

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that, but that's what the Attorney General is doing. The Attorney General wants to ride two horses at the same time going in opposite directions. So we can have the best laws, and information such as you're giving will help us draft those laws and maybe get them enacted. But if we don't have those who are to enforce the law to do their job, they are words on the paper, they mean nothing. I am frustrated this morning because as scholarly as your presentation has been--and I don't think you'll take offense at this--I don't think you've said anything that people who have been following these issues would not be aware of. Recommendations of what can be done exist right now, but the will is not there to carry them out. I'm glad you came, still, so I want to ask you another question. If we have a situation, as described by people at the Regional Center, where they cannot handle Nikko Jenkins and they agree that he should be put in a secure environment such as that offered by the prison--and that means solitary confinement, which the judge already found deteriorates his condition further--how can that be considered ethical treatment when the first principle is first do no harm? If it has been determined that that type of confinement has deteriorated his mental condition to the point where he's incompetent, how can it be deemed--and you might want to say that it's a question you can't answer, but I want to ask it to you anyway--how can it be deemed proper medical/psychiatric/psychological treatment to put a person in that environment? [LR424]

WILLIAM SPAULDING: Well, it seems to me that that is a policy issue. I mean it would appear that the state does not have a policy regarding how to provide appropriate treatment to a person in the situation you're describing. And what all of this business has revealed is that we do need such a policy, and so let's get to work. I do have one suggestion more mechanistic than that. You know, the state spends a lot of money paying to these national accreditation agencies that come and visit the hospitals and make sure that their Autoclave is working and so on. It's a lot of money, and there's really no evidence that such accreditation really do improve treatment. If we were to spend half that amount of money to create a truly independent panel of real experts who could independently evaluate the quality of services in state mental health services and

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make recommendations in that regard, that would be a significant step I think toward bringing the technology under administrative control. [LR424]

SENATOR CHAMBERS: Now I've never been a CEO or COO but I believe in results. I think that's worthwhile. If we were going to try to create an independent panel, how would we formulate it and how would the members be selected? If you have any thoughts on it. [LR424]

WILLIAM SPAULDING: Well, my grandma would say there's more than one way to skin a cat. I never really understood exactly what she meant by that, but... [LR424]

SENATOR CHAMBERS: I'm very...I'm a great animal lover, so could we say there's more than one way to crack a walnut? [LR424]

WILLIAM SPAULDING: (Laugh) Yeah, right. That was poorly chosen. But it wasn't about cougars. (Laughter) [LR424]

SENATOR LATHROP: Oh, great. [LR424]

WILLIAM SPAULDING: I think there are ways of...to do...the concept would be a truly independent panel of experts that could credibly make determinations about whether we are in fact using best practices and whether we've configured the system in such a way that we are accommodating the people that need those services. [LR424]

SENATOR CHAMBERS: Now, Doctor, when I ask somebody to assist me, it's not that I'm just saying that I will try to do something. Would you be willing, because it would be unfair to expect you to come up with something right here, to talk to me about that? [LR424]

WILLIAM SPAULDING: You bet. [LR424]

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SENATOR CHAMBERS: Because I am willing to try to put something there legislatively. We can formulate legislation. We can put it on the books, and that may be all that we can do. But I want to do that to the extent we can in the best way possible. So I'm going to get your card before you leave and see what I can get. Now I'm going to move on because I feel like there might be something I can do to at least alleviate some of the frustration I feel. You said that the problem may not be so much between these disciplines--like the psychologists and the psychiatrists who were working in the Department of Corrections even though, as Senator Lathrop pointed out, there was...there seems to be a turf battle--but these entrenched institutional interests, as opposed to those interests that might be genuinely interested in the patients. This seems to me it would come back to the area where I'm having such a difficulty. The entrenched institutional interests cannot be touched because nobody calls them to account. [LR424]

WILLIAM SPAULDING: Well, to put that in perspective, the entrenched institutional interests have been present since Day One. And again, with respect to my own personal experience, we started that rehabilitation program in 1982 and it operated until 2009. I don't know if we have a national record on...in that regard, but that's a long time to have a progressive, innovative program running in a state institution. Those institutional interests were there all along. They were held in check by a leadership that was strong and progressive enough to do so. I find myself thinking about how we now understand the common cold. The bugs that make us sick are in our bodies all of the time. What makes us sick is the failure of our immune system to control that, and I think that's a very good analogy to what goes on in the mental health system. [LR424]

SENATOR CHAMBERS: So we need better leadership. If I knew how to do that, then I think I could walk on water without it being in the form of frozen ice. But it does offer a glimmer of hope. Because of the time that I've taken, that's all that I will ask you even though I have a multitude of questions. And if you're willing to talk to me more, then I

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will, in the context of that discussing, go through some of these other things. But I wanted a little bit on the record and express again the appreciation I have for your willingness to come here and share with us the information that you did in your opinions. Thank you, Mr. Chairman. [LR424]

SENATOR LATHROP: You're very welcome. Senator Seiler has a follow-up question for you. [LR424]

WILLIAM SPAULDING: Yes, sir. [LR424]

SENATOR SEILER: I just have one question. Does the Board of...I believe it's Psychology or Psychiatry that does the...that's set up by statute, does that board have authority to settle disputes between two doctors that cannot agree on a diagnosis? [LR424]

WILLIAM SPAULDING: No. [LR424]

SENATOR SEILER: Okay. [LR424]

WILLIAM SPAULDING: In a word, no. But... [LR424]

SENATOR SEILER: I couldn't remember. [LR424]

WILLIAM SPAULDING: But let me say that it's a rare case, a rare case indeed, that you can't find a dispute between two doctors. The saying is: You get five psychiatrists in a room, you're going to get six opinions. [LR424]

SENATOR SEILER: (Laugh) Okay. Thank you. [LR424]

SENATOR LATHROP: I'm...just to follow up and maybe to summarize, Senator

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Chambers asked you if you could tell us what needs to happen at the Regional Center. I've been listening carefully. In terms of the Regional Center's ability--and by that I mean the Lincoln Regional Center, perhaps I'm narrowing it down--but we need a facility that is, one, for those people who have mental illness that makes them dangerous to themselves or another person. And we're talking about serious mental illness and people with a serious risk of harm to someone else. We need a facility that is secure, we need capacity, and they need to be practicing your profession at the standard of care and with evidence-based practices. [LR424]

WILLIAM SPAULDING: That's correct. [LR424]

SENATOR LATHROP: Okay, and that's what's missing right now. [LR424]

WILLIAM SPAULDING: Yes. [LR424]

SENATOR LATHROP: Okay, I don't see any follow-up question. Doctor, I do...I...we've worked on a number of things over the last few years. I always appreciate the opportunity to hear what you have to say and today was no exception. [LR424]

WILLIAM SPAULDING: Thank you. [LR424]

SENATOR LATHROP: I greatly appreciate your time and your expertise. [LR424]

WILLIAM SPAULDING: Thank you very much. I'm pleased to help. [LR424]

SENATOR LATHROP: Okay. So I think my next witness just ran to the rest room, so we're going to stand at ease while we wait for Dr. Miller to return, who I think should be here in like moments, rather than have everybody run off to some corner of the Capitol. You got away from us there. [LR424]

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STACEY MILLER: I know. Sorry. [LR424]

SENATOR LATHROP: Well, we finally finished with the last witness. Before you sit down, let's have you raise your right hand and we'll swear you in. Do you swear the testimony you're about to give this special investigative committee will be the truth, the whole truth, and nothing but the truth? [LR424]

STACEY MILLER: I do. [LR424]

SENATOR LATHROP: All right, thank you very much and have a seat. Will you recite your name for us, please? [LR424]

STACEY MILLER: Stacey Miller. [LR424]

SENATOR LATHROP: And can you tell us your profession? [LR424]

STACEY MILLER: Well, I am currently a provisionally licensed psychologist in the state of Nebraska. I am not practicing right now though. [LR424]

SENATOR LATHROP: Okay. Would you tell us what your education is? [LR424]

STACEY MILLER: I have my doctorate in clinical psychology. [LR424]

SENATOR LATHROP: And how long have you been a doctor of psychology? [LR424]

STACEY MILLER: Since October 2012. [LR424]

SENATOR LATHROP: All right. What has been your work experience since 2012?
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STACEY MILLER: I moved back to Nebraska and I started at OMNI Behavioral Health. I was there briefly and went to Child Guidance Center in Lincoln, Nebraska. And then I was hired by the state of Nebraska to be the psychologist out at Tecumseh State Correctional Facility. [LR424]

SENATOR LATHROP: Before you began your tenure at...you don't work at Tecumseh any longer, is that true? [LR424]

STACEY MILLER: Yes, sir, I don't. [LR424]

SENATOR LATHROP: Okay. Before you began your time at Tecumseh, can you tell us what your experience was working with inmates or in a correctional setting? [LR424]

STACEY MILLER: While I was getting my doctorate, I was in practicum at Greene County Justice Center in Springfield, Missouri, for approximately two years. I also did my clinical internship at Greene County Justice Center, giving me about three years in county experience. I also went out to the Federal Bureau of Prisons for about six months in Greenville, Illinois, and that was the extent of my training in prisons until I moved back here. And I was waiting, hoping to get a job with the Department of Corrections, and then was finally offered a job, so. [LR424]

SENATOR LATHROP: Would it be fair to say that, while you have a doctorate in psychology, that providing care and treatment to an inmate population has been a special interest? [LR424]

STACEY MILLER: Yes. [LR424]

SENATOR LATHROP: Okay. What date did you begin your term with...or at Tecumseh? [LR424]

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STACEY MILLER: Well, we started...I'm trying to think of the day that we started academy. It was in March, but I started on site in Tecumseh the beginning of April 2014. [LR424]

SENATOR LATHROP: 2014? [LR424]

STACEY MILLER: Yes, this last year, um-hum. [LR424]

SENATOR LATHROP: Okay. And you left when? [LR424]

STACEY MILLER: September 12 was my last day, 2014 as well. [LR424]

SENATOR LATHROP: Tell us why you left. [LR424]

STACEY MILLER: I didn't necessarily agree with some of the things that were going on in administration. I was very uncomfortable with the use of segregation and misuse of segregation and disciplinary things that were keeping guys, I felt, in segregation far too long. So I felt like it would probably be...I could probably find a career with a better fit in terms of my goals and things that I felt that were best practice. [LR424]

SENATOR LATHROP: Okay. By the way, Dr. Miller, you're here under a subpoena, is that true? [LR424]

STACEY MILLER: Yes, sir. [LR424]

SENATOR LATHROP: Okay. What were your job duties when you worked at Tecumseh? [LR424]

STACEY MILLER: It varied day to day. I did some psychological testing, evaluation with individuals, some crisis intervention. We did...we checked on individuals on a regular

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basis who were in either intensive management or the special management unit. I did some therapy. I use that term loosely because I met with guys about once a month just to check on them, see how they were doing, just...and I did some anger management, a couple of groups and programming that's out there. But it kind of just varied day to day on what needed to be done and what was priority at the time. [LR424]

SENATOR LATHROP: Okay. Can you tell us--and I think we...most of us know, but just so that we kind of start at the beginning--what's the population at Tecumseh? [LR424]

STACEY MILLER: Last I was aware, it was approximately 1,033 inmates. [LR424]

SENATOR LATHROP: And if it's 1,000, give or take, inmates, are they generally high security? [LR424]

STACEY MILLER: Well, Tecumseh is a maximum security prison, and it is the highest security as I'm aware in the Department of Corrections in Nebraska, so yes. [LR424]

SENATOR LATHROP: Okay. And so the way they place inmates is to put the...those with the highest security risk in the highest security institution. [LR424]

STACEY MILLER: Yes, sir. [LR424]

SENATOR LATHROP: Okay, and so that would be the population that you were dealing with when you were a staff psychologist at the Tecumseh facility. [LR424]

STACEY MILLER: Yes. [LR424]

SENATOR LATHROP: Can you give this committee some idea of the prevalence of mental illness at Tecumseh when you were there? [LR424]

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STACEY MILLER: I would say approximately 40 percent had a mental illness of some sort, varying degrees, of course. There were probably about 40 percent who were also on psychiatric medications. So I would say approximately 40 percent. [LR424]

SENATOR LATHROP: So 40 percent somewhere on the spectrum of mental illness. [LR424]

STACEY MILLER: Yes, sir. [LR424]

SENATOR LATHROP: And do psychologists generally distinguish mental illness between serious mental illness and other forms of mental illness? [LR424]

STACEY MILLER: Yes, at least for myself. [LR424]

SENATOR LATHROP: All right. Can you tell us what's generally meant by serious mental illness? [LR424]

STACEY MILLER: Serious mental illness is going to include any psychotic spectrum disorders, borderline...bipolar disorders, schizophrenic spectrum disorders, so anything that's kind of in that acuity. I know the department used major mental illness as defined by, you know, PTSD, depending on the level of severity. So if somebody has, you know, say, something easy like anxiety, depression, and PTSD, if their level of functioning is impaired significantly, that would then put them in consideration of being major mental illness. But what we're usually talking about is the schizophrenia, bipolar disorder, thought disorders, and on a psychotic spectrum. [LR424]

SENATOR LATHROP: Okay. So how prevalent was the serious mental illness at Tecumseh when you were there, of the 1,000 inmates? [LR424]

STACEY MILLER: Off the top of my head I would say there was at least 10 to 15

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percent who were or had a major mental illness, and a lot of them were being housed in the special management unit, which was also kind of concerning for me. [LR424]

SENATOR LATHROP: Special management being a euphemism for solitary confinement? [LR424]

STACEY MILLER: Yes. [LR424]

SENATOR LATHROP: So you've given us an idea of the percent of population inside Tecumseh while you were there that has mental illness being 40 percent, and the percentage that had a major mental illness being...did you say 15 percent? [LR424]

STACEY MILLER: That would be a conservative estimate. [LR424]

SENATOR LATHROP: Somewhere in there, so if that's the population that we're dealing with, the mentally ill inside of the Tecumseh facility while you were there, what resources did we have for the care and treatment or the evaluation of the mentally ill at Tecumseh? [LR424]

STACEY MILLER: Very little. The...if you look at just numbers, we...when I say "we," meaning when I was out there myself, and there were three other master's-level providers, so there were four total providers for 1,033 inmates, which I felt was pretty understaffed considering. I don't think the ratio of 4 to 1,033 is necessarily meeting a standard of care. [LR424]

SENATOR LATHROP: Okay. Of the 1,033, not all of them are going to be mentally ill, right? [LR424]

STACEY MILLER: Correct. [LR424]

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SENATOR LATHROP: So 40 percent would require some care or services or assistance from the staff. [LR424]

STACEY MILLER: That's correct. [LR424]

SENATOR LATHROP: Okay. So if that's the ratio of staff or professionals to the number of mentally ill at Tecumseh, what did that translate into in terms of the ability of any one inmate to receive care or services? [LR424]

STACEY MILLER: It was pretty standard for individuals who did have, whether it was a mental health concern or concerns that arise after coming to Tecumseh, to be seen approximately once a month. That was pretty standard for anybody requesting mental health services. [LR424]

SENATOR LATHROP: Was that the standard because that's enough or was that the standard because that's all you had? [LR424]

STACEY MILLER: That's all we had. [LR424]

SENATOR LATHROP: Okay. Tell us, can you expand on that a little bit and share with us the experience? In other words, if you have all these patients or all these inmates that require some attention from the mental health professionals being seen once a month, is that enough? [LR424]

STACEY MILLER: I don't believe it's enough. However, I do know that the staff who are employed at Tecumseh are very good mental health staff. It's just a matter of how much can you really do given a population. And I think another consideration is also the population out at Tecumseh and individuals who might not have mental illness, per se, but have mental health concerns such as grieving, family, or not being able to see their family, not having support, and not having access to support because there are so few

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staff members that are actually out at the facility. [LR424]

SENATOR LATHROP: Would the...if you saw an inmate once a month, how much time would that involve in a particular session or visit or opportunity? [LR424]

STACEY MILLER: Approximately 30 minutes, maybe an hour, depending on the acuity of the actual patient. [LR424]

SENATOR LATHROP: Okay. So the patients with mental illness were getting 30 to 60 minutes a month. [LR424]

STACEY MILLER: Well, I know...and I can only speak for myself in this manner. I had a couple individuals on my caseload who had major mental illness, so very acute needs, and I was seeing them maybe once or twice every two weeks at the very minimum. I tried to see them at least once a week. But I can't speak for my colleagues in how they approached their mentally ill individuals. But I know that about once a week would be ideal. [LR424]

SENATOR LATHROP: I guess what I'm looking for is, were the resources adequate for the needs that you saw during your time there? [LR424]

STACEY MILLER: No, no. [LR424]

SENATOR LATHROP: All right. And what needed to be different? [LR424]

STACEY MILLER: I feel as though having at least two psychologists would be a good start. Having four therapists would be a good start. And there's just not enough mental health staff out at Tecumseh given the population that they house. [LR424]

SENATOR LATHROP: Is there a relationship between the need for mental healthcare

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and the availability of programming? [LR424]

STACEY MILLER: Yes, absolutely. [LR424]

SENATOR LATHROP: Tell us about the programming that in some way relates to mental health issues. [LR424]

STACEY MILLER: There's a variety of programs that the department offers, whether it be for sex offender or violent offender programming. They do have anger management and the VRP and then the different varieties of sexual offender programming. Out at Tecumseh--and again, I can only speak for Tecumseh because that's where I was--we didn't have much programming available. I know more recently when I was there I did do some anger management groups with the guys who had that as a parole condition. Also, I know Dr. Weilage recently started the METEOR programs for the individuals that are in the special management unit, but that was about as much programming as we had. [LR424]

SENATOR LATHROP: Okay. Can you compare what you just described to the need? [LR424]

STACEY MILLER: Well, for example, in my anger management groups, I think in two anger management groups I graduated 14. And I don't know how relevant this is, but a lot of the guys need anger management in order to parole or be considered for parole. But in the 14 that I graduated, I still had a list--considerably long--of individuals waiting for anger management programming and we just didn't have the staff to provide it, if that kind of gives you an idea. [LR424]

SENATOR LATHROP: Would...you and I have had a conversation about this before we got here, and so maybe I can ask the question in a little bit of a leading way. In our conversations you've related to me that had there been more programming available

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perhaps it would have let...taken some of the pressure off the staff that was there for mental health purposes. [LR424]

STACEY MILLER: Well, I think a lot of that falls into the special management unit and the use of that. I mean, there's approximately 400 inmates in the special management unit, so 400 people are being locked down 23 hours a day. Now I can't attest to that from an expert point of view what that does, but I do know that psychologically it does affect them tremendously. And I think that failure to provide programming within the special management unit creates anger and hostility that kind of just spreads institution wide. And I think that in providing more programming and getting the guys out of their cells and doing more proactive type of treatment modalities would increase the...I guess the feel of the institution. I think that people would be happier, inmates and staff alike. [LR424]

SENATOR LATHROP: Okay. But I guess the point I was driving at when you and I spoke maybe last week, you talked about the fact that if there had been more of the programming--call it anger management, violence reduction, whatever those programs might be that would be offered, and some of them are a condition of parole--more of that programming or the availability of more of that programming would relieve some of the demand for the care and services of the mental health professionals. [LR424]

STACEY MILLER: Well, as mental health professionals, they are doing a lot of one on one. And I know that group therapy--I don't want to call it group therapy because it's not--but group interactions, you're kind of addressing more people than the one on one. Obviously, numbers don't lie. And in my experience with groups out at Tecumseh is they were very, very positive. They were very positive in nature and it kind of set a good tone for the institution. And so I'm saying if there were more opportunities for these guys to get into anger management or VRP or more staff to provide these programs, we would see more individuals getting out of prison and probably less violence within the prison and less conflict between the inmates feeling like they're not getting the care because I

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know personally that there are a lot of individuals specifically at Tecumseh who say, I'm not getting my mental health needs met. And if you look at what they have available, they're right: they're not. [LR424]

SENATOR LATHROP: Okay. So back, just to go back, and I may be taking a step back, but when you were there, how many mental health professionals were there? [LR424]

STACEY MILLER: Myself, three licensed mental health practitioners, and one provisionally licensed mental health practitioner, so four providers total, one mental health supervisor, so five total. [LR424]

SENATOR LATHROP: Okay. And what do you feel like the institution needed to provide sort of the basic care at the standard of care? [LR424]

STACEY MILLER: It would have been nice to have two psychologists and six therapists. I think that would meet the need much greater than what we had. [LR424]

SENATOR LATHROP: Okay. You also had experience then with administrative segregation. [LR424]

STACEY MILLER: Correct. [LR424]

SENATOR LATHROP: Did you provide care or meet with some of the inmates that were in administrative segregation at Tecumseh? [LR424]

STACEY MILLER: I'm assuming that you're using the verbiage "administrative segregation" to refer to disciplinary segregation or intensive management just as an umbrella, correct? [LR424]

SENATOR LATHROP: The folks that are locked up for 23 hours a day. [LR424]

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STACEY MILLER: Okay, okay, okay. I just wanted to make sure that... [LR424]

SENATOR LATHROP: Okay. [LR424]

STACEY MILLER: Yes, I did. [LR424]

SENATOR LATHROP: And you said there would be 400 people at a time in that circumstance at Tecumseh? [LR424]

STACEY MILLER: That's an approximation. I mean it's been two and a half months since I've worked out there, so I can't tell you the population of the special management unit now. But when I was out there, we had approximately 30 that were in the intensive management unit and then probably, I would say, about 300 in the rest, so 300 to 400, and I think that would wax and wane, depending. [LR424]

SENATOR LATHROP: And they may be there for different reasons and they may be categorized differently depending on the reason they're there, but they all share the same circumstance, which is 23 hours a day in a cell. [LR424]

STACEY MILLER: Yes. [LR424]

SENATOR LATHROP: Okay. Tell us what you observed about that. [LR424]

STACEY MILLER: It was very loud in the galleries, a lot of yelling going back and forth, a lot of individuals who were upset about being locked down 23 hours. They didn't have access to actually being outside. It was kind of this locked cage that...I can't really explain it unless you go out there. But they never had access to the actual outside, like they couldn't go out and see the grass and the sky. And I know that seems very, very arbitrary, but when you're talking about general mental health, you know, getting out

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and getting exercise and sun and all that stuff, it has very positive benefits for mental health. And I think a lot of the guys, once they got to segregation, they became very angry and their anger kind of poured over into the staff becoming frustrated. And when you have staff that are frustrated and working very long hours, that dynamic between inmate and staff becomes very, very scary. [LR424]

SENATOR LATHROP: Describe it for us, if you would. [LR424]

STACEY MILLER: Well, it didn't happen all the time, but it becomes a power struggle of, well, you're in segregation, you're going to listen to what I say, and the guys, the inmates saying, no, this isn't right, this isn't okay. And it's a power struggle. I mean they want their voices to be heard, and the officers kind of want to keep their job. And that's kind of the feeling I got, was that they didn't feel like their voices were being heard and they were being left in segregation or whatever we're calling it for X amount of time without reason. [LR424]

SENATOR LATHROP: We'll hear this afternoon from somebody that's going to visit with us at greater length about administrative segregation. But one of the things that I expect we will hear is that people in administrative segregation, because they become angry, you see defiant behavior. Is that right? [LR424]

STACEY MILLER: Absolutely. [LR424]

SENATOR LATHROP: And the defiant behavior in turn gets them more time in administrative segregation. [LR424]

STACEY MILLER: That was my experience. There were times that I witnessed and experienced individuals getting time in administrative segregation that was completely unwarranted, so I didn't really feel like there were specific guidelines for getting in "seg" or getting out of "seg." It was just kind of this subjective decision that somebody made.

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[LR424]

SENATOR LATHROP: Can you give us examples of that? [LR424]

STACEY MILLER: I had an individual that I was working with who had threatened to harm himself and he disclosed that to me. And in the world of mental health and psychology, we appreciate when people share thoughts of harming themselves because then we can do something about it. And he was written up and given 45 days in disciplinary segregation for telling me that. I was very lucky to have that overturned because the administrative staff listened and looked at the report, but I felt like it was kind of silly that we were...I even had to do that because I don't think suicide or suicidal thoughts or behaviors should be punished. [LR424]

SENATOR LATHROP: Okay. Are there other examples? [LR424]

STACEY MILLER: It kind of varied. I mean, I can give you a lot of different examples. There were individuals who were put in segregation because they didn't follow a direct order, but then there was other people who maybe yelled at an officer and they got put in segregation. There were just no...it...there was no guidelines about what got you in "seg." It was kind of the officers' discretion. That's how...that's the feeling I got. Now whether that's true or not, I can't say. But that's kind of the feeling and the report that I was getting was that it's just kind of, well, you did this, we don't like it, so go to "seg" and we'll reevaluate you after 30 days. [LR424]

SENATOR LATHROP: Can you tell us what your observations were on the effect administrative segregation or this isolation has on the mental health of those who are sentenced to that type of incarceration? [LR424]

STACEY MILLER: The individuals that I worked with, with major mental illness, I did not see anything but decompensation from them being in...and especially in intensive

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management. [LR424]

SENATOR LATHROP: Describe that for us, if you would, Doctor. We...none of us, I don't think, have ever visited there. [LR424]

STACEY MILLER: Sure. [LR424]

SENATOR LATHROP: So we're trying to understand this through your testimony. [LR424]

STACEY MILLER: The intensive management? [LR424]

SENATOR LATHROP: Yes. [LR424]

STACEY MILLER: So that is a special gallery within the special management unit. There's one on each side, and there's three compartments to the cell. So if...say you're in an intensive management cell and I'm standing outside of your door. There is a door between the shower. So there's a shower, another door, your room, another door, your "rec" yard. Does that make sense? So there's three components. So if I open the shower door and I come in the shower area, there's still another door between you and I... [LR424]

SENATOR LATHROP: Okay. [LR424]

STACEY MILLER: ...and another door between outside, so. And those individuals rarely come out of their cells because to do their "rec" they just open the back door and they can go into the "rec" area that's attached to their cell. [LR424]

SENATOR LATHROP: I think the paper called it a dog run. Does it look like a dog run when they're let out into the area where they're allowed to exercise? [LR424]

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STACEY MILLER: A dog run would imply that they have room to run. [LR424]

SENATOR LATHROP: This is a small area. [LR424]

STACEY MILLER: It's probably a little bit wider than this desk, but you could not run in it. [LR424]

SENATOR LATHROP: Okay. [LR424]

STACEY MILLER: You could do push-ups and pull-ups pretty much. [LR424]

SENATOR LATHROP: And you said that for those who suffer from major mental illness you saw only deterioration in their condition when they're so confined. [LR424]

STACEY MILLER: Well, absolutely. You put an individual who has, you know, a long history of schizophrenia in a room where for 23 hours the only...and I'm not saying the only, but most of the interactions that they have with staff are very minimal and it's usually during mealtimes. And you have individuals who are in the special management unit maybe because they had a bad attitude and...or they're antisocial or whatever the case may be. And then so they're in the same gallery as this individual kind of making fun or making comments. And to put somebody in a 23-hour lockdown who already has significant deficits in their functioning and give them no stimulation is no good for anybody. I would encourage you all to think about sitting in a room for 23 hours straight and how restless and anxious you might feel and then pair that with significant mental illness, severe and persistent mental illness, and let that kind of resonate. [LR424]

SENATOR LATHROP: Okay. Did you provide care to those kind of folks? [LR424]

STACEY MILLER: I did. [LR424]

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SENATOR LATHROP: Was there much you could do for them? [LR424]

STACEY MILLER: Make sure that they stayed medicated, I think that was...we had a couple individuals who were on involuntary medication orders, so that was important to make sure that this...as Dr. Spaulding talked about psychiatric rehabilitation, making sure that they...we were at least meeting that need to where they were stabilized and going to their doors and talking to them and kind of...like we do in regular therapy, establishing rapport, listening to their concerns, and... [LR424]

SENATOR LATHROP: But when you say "going to their door," I'm imagining a solid metal door, maybe with a window and a little hole that looks like a vent. [LR424]

STACEY MILLER: It's not terribly therapeutic in terms of the environment. [LR424]

SENATOR LATHROP: Okay. So every...you kind of have to shout through that hole to communicate, don't you? [LR424]

STACEY MILLER: Right, which creates a very interesting dynamic because there's 15 other people in a gallery. [LR424]

SENATOR LATHROP: Interesting, it's a little bit of a difficulty providing therapy to somebody who is...while you're trying to counsel them... [LR424]

STACEY MILLER: Oh, going door...yeah. [LR424]

SENATOR LATHROP: ...you're talking about their issues loud enough for the neighbor to hear. [LR424]

STACEY MILLER: Right, well, and door to door, I wouldn't call it therapy. It's kind of just

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checking in and seeing how things are going. [LR424]

SENATOR LATHROP: So did you ever bring them out of their cells and have them go into a room where you can sit down and talk to them and actually provide therapy? Did that happen? [LR424]

STACEY MILLER: I tried...yeah, I tried my best to get them out to the attorney-client room or to...there was a room on the upstairs units. I tried to do it as best I could, but, you know, it would take sometimes 15-20 minutes to get the guys, you know, in their cuffs out. And so it was a very time-intensive process to get the individuals out of their cell to, you know, the attorney-client room. And still, in an attorney-client room it's very impersonal because you're talking on the...to a telephone, which is neither here nor there. [LR424]

SENATOR LATHROP: So you need to build trust, and it's hard to do it in that circumstance. [LR424]

STACEY MILLER: Well, in some situations with the individuals, especially in special management unit, the attorney-client room was nice because there were some guys who were pretty dangerous. [LR424]

SENATOR LATHROP: Okay. So you talked about what it does for the mentally ill. How about the person that enters this environment, intensive management, that doesn't have a mental illness going in? [LR424]

STACEY MILLER: Well, I think that you create an environment that could foster the emergence of a psychiatric illness. I mean there are people who are predisposed to psychosis or schizophrenia, whatever the case may be, and putting them in isolation could stress them out enough to trigger a psychotic break. If we go more away from mental illness and just look at behavior, if you put an angry person in a 23-hour

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lockdown and don't give them anything to work for, they are just pissed with nothing to do. [LR424]

SENATOR LATHROP: Okay. And you saw a lot of that? [LR424]

STACEY MILLER: Yes. [LR424]

SENATOR LATHROP: Did you see or can you describe for us the use of force and restraints in that environment, in the 20...those who are involved in the 23-hour-a-day lockdown, what was the...what were your observations regarding the use of force or restraints? [LR424]

STACEY MILLER: That was one situation that I...it was kind of sensitive for me. I've personally never been supportive of the use of restraints and seclusions for anybody. I've worked in inpatient facilities and group homes that try and do that, and it doesn't work. As Dr. Spaulding said, it doesn't work. I felt like it was excessive. There would be individuals who would be restrained or use-of-force situations that would generate because somebody wouldn't give their tray back or because they had their hands hanging out a door... [LR424]

SENATOR LATHROP: Describe that for us, will you? [LR424]

STACEY MILLER: Well, one situation I think of in particular is in the intensive management cell. So if I am in an IM cell and I'm sitting in my cell, there's two doors that's...well, I'm going to use you again. [LR424]

SENATOR LATHROP: So to describe it--and I think someone has, but just to be... [LR424]

STACEY MILLER: Yeah. [LR424]

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SENATOR LATHROP: ...to summarize it--there's a door from the hallway, if you will, that you can walk up and down, and you have a door between you. That door opens up. [LR424]

STACEY MILLER: And there's still another door. [LR424]

SENATOR LATHROP: And if you stepped inside, you would see a shower and then another door. [LR424]

STACEY MILLER: Yep. [LR424]

SENATOR LATHROP: And if a guy wants to take a shower, they open the inside door. A person gets a shower, they go back, and that door shuts, and they're two doors away from the hallway. [LR424]

STACEY MILLER: Right. [LR424]

SENATOR LATHROP: Okay. [LR424]

STACEY MILLER: Right. [LR424]

SENATOR LATHROP: And what you're saying is if they open the big door in the hallway, you're inside where the shower area is and you can see... [LR424]

STACEY MILLER: You can see inside their cell. [LR424]

SENATOR LATHROP: Okay. [LR424]

STACEY MILLER: And that's where you do a lot of the consultation or going up and just

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talking to guys: Hey, how are you doing, is there anything...you know, whatever the case may be. But individuals would hang their arms out of their cell, so there's still another door between them and the hallway, and they... [LR424]

SENATOR LATHROP: So they'd hang them into the room where the shower is. [LR424]

STACEY MILLER: Yes. [LR424]

SENATOR LATHROP: Okay. [LR424]

STACEY MILLER: And so the answer...and I don't know how many times this happened. I know it happened one time when I was there, and I was only there for six months. But they decided to use force, and to me that seemed very stupid because he was seeking attention and he certainly got it. And was it warranted? Nobody was in danger with his arm hanging out. [LR424]

SENATOR LATHROP: So when you say that there was a use of force in that circumstance, somebody is hanging their arms out of the inside cell door and somebody on the other side of the very first door in the hallway could see that their arms were hanging into the shower part of the cell and... [LR424]

STACEY MILLER: Um-hum. But without opening that door, there's no way that an individual could touch somebody else. I mean there's another door. [LR424]

SENATOR LATHROP: In other words, they weren't bothering anybody but they were breaking a rule. [LR424]

STACEY MILLER: Yeah. [LR424]

SENATOR LATHROP: Okay. And the response that you saw, at least on one occasion,

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was to use force to go in. And what happens in that circumstance? [LR424]

STACEY MILLER: I mean I don't...I never really stuck around to watch because I didn't like it. I thought it was silly. But they go in with five individuals and either, if the person complies, they put them in cuffs and take them...well, I guess if you're already in SMU you're already there. But they usually extend the time that you're in there. Sometimes they'll put you...they were put in restraints. I saw restraints used I think on four or five different occasions, one of which I thought was warranted; the other I thought were kind of silly and arbitrary, but... [LR424]

SENATOR LATHROP: You said something about the staff going in if a prisoner or an inmate wouldn't put their tray or return their tray out to I suppose the food-service people, that the staff would go in and use force to retrieve the tray. [LR424]

STACEY MILLER: Yes. I experienced that on at least one occasion where they were having kind of, again, a power struggle with an individual because they wouldn't give the tray back. And this individual knew that by not providing the tray they would suit up and come into the cell. And so it was, again, a situation where, you know, whether he got restrained or taken up to a different...like an observation cell, sometimes that was the answer. And that would be the answer: to restrain them or use force and then figure out from there what was going to happen. But they were very silly reasons to use force. [LR424]

SENATOR LATHROP: And sort of unhelpful when it comes to providing mental healthcare... [LR424]

STACEY MILLER: Well,... [LR424]

SENATOR LATHROP: ...or contrary to maybe principles of mental healthcare, which is, if they're looking for attention, don't give it to them. [LR424]

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STACEY MILLER: Well, I think that what should have been happening is listening to why was this person not wanting to give their tray back. And in talking to, you know, this particular individual, and I can't tell you a whole lot about it, but he felt like he was getting bullied by staff. And I heard from several inmates and staff that staff bullied inmates in SMU. And you're talking individuals with antisocial personality disorder who everything is a power struggle with them, and then people with mental illness and then people with severe and persistent mental illness being in a situation where their staff members are instigating or making fun or kind of perpetuating these power struggles. [LR424]

SENATOR LATHROP: The last...maybe the last question I have for you before I turn it over to my colleagues: Did you get a sense that, while you were at Tecumseh, that it was about rehabilitation? [LR424]

STACEY MILLER: No. [LR424]

SENATOR LATHROP: Tell us about that. [LR424]

STACEY MILLER: I felt...well, first of all, I didn't feel that way because there wasn't the staff to rehabilitate the number of individuals who needed assistance out there. I feel like there is a lot of good intentions out at Tecumseh, especially with the mental health staff, but, given the confines in which I say we had to work, were very, very hard to do. [LR424]

SENATOR LATHROP: Okay. I think that's all the questions I have. Senator Krist has a question for you. [LR424]

STACEY MILLER: Okay. [LR424]

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SENATOR KRIST: Only because I don't think the record is clear, Chair. Thank you. You said that there were...define the staff for me right now at Tecumseh. You were the only doctor and there were master's-level therapists on staff? [LR424]

STACEY MILLER: Yes, sir. [LR424]

SENATOR KRIST: You were the only doctor and there were three or two... [LR424]

STACEY MILLER: There were when I was out there three mental...master's-level therapists. One was the mental health supervisor, and then we had two who were providers and myself who was also a provider. Right now, as far as I know, they have three or four master's-level therapists and one psychologist going out there once a week. [LR424]

SENATOR KRIST: Did you ever have--just a follow-on, one--did you ever have an opportunity to interface with a psychiatrist in that setting and consult with them on the unit that you talk about? [LR424]

STACEY MILLER: I worked with Dr. Natalie Baker. I consulted with her. The only problem was...again, is resources with Dr. Baker. She was only able to be out there approximately eight to ten days a month for such a population that was on medication that it was really hard to catch her because when she was out there she was busy, so. But we did, when we had the opportunity, did consult on quite a few cases and mostly for the severely mentally ill or individuals who we were trying to either get sent to LCC or develop a different plan and kind of brainstorming different ways to approach them. [LR424]

SENATOR KRIST: So just to summarize for the record, you had 1,033 that you recall being at the facility. [LR424]

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STACEY MILLER: Um-hum. [LR424]

SENATOR KRIST: Out of that group you had 30 percent...40 percent you say were touched by some mental diagnosis, some problem. [LR424]

STACEY MILLER: Right. [LR424]

SENATOR KRIST: Fifteen percent of those were severe, and you had one doctor who showed up less than ten days out of the month. You were the only person above a master's level treating, and there were three therapists at the time. That was the extent of the mental...the behavioral and mental health therapy that was...that these folks are getting. [LR424]

STACEY MILLER: In sum, yes. [LR424]

SENATOR KRIST: Okay. Last question: You came from most of your training...it sounds like you came from Missouri. [LR424]

STACEY MILLER: Um-hum. [LR424]

SENATOR KRIST: Do they do it better than we do? [LR424]

STACEY MILLER: Yes. [LR424]

SENATOR KRIST: Good. Well, you may get calls from us asking what specifics those are... [LR424]

STACEY MILLER: Okay. [LR424]

SENATOR KRIST: ...because we're in the business to try to move forward and fix, and

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that insight would be very helpful. Thank you for coming today. [LR424]

STACEY MILLER: You're welcome. [LR424]

SENATOR LATHROP: Senator Chambers, do you have questions? [LR424]

SENATOR CHAMBERS: I always go last. [LR424]

SENATOR LATHROP: Yeah, and I don't see anybody to my left that's raising their hand, so you're up. [LR424]

SENATOR CHAMBERS: I don't even like to see what would be considered a wild beast taunted, tormented, deprived of common human decency. And when human beings are treated in the way you've described--and I'm aware of some of this--it's helpful to get it into a record of the kind we're compiling because it comes from somebody who actually saw it. I don't really have any questions. But in the old days before you were born, and most of the people on this panel, I would go out to the prison that's in Lincoln all the time. But it was...I compare it to a situation where--not comparing the individuals out there to buzzards but to make the example--I was one little piece of carrion about the size of a dime and there were about 500 buzzards who all wanted that dime. So when I would go out there, people...I'd walk...the cells were different. They had literally the bars, the doors that open and clang, and a big door here that lets you into the little area where the little cells are. And they'd reach out just to try to touch me, not harm, because I was the only official in those days who would go out to the prison. And whenever I went out there, I would ask to speak to as many men as I could, and I did it for a reason. They would bring them and they had handcuffs, they had a chain around their waist in those days and a chain from the cuffs to this chain around their waist, and they had on ankle cuffs and a chain that went from the ankles up to this chain around their waist and you could hear them clanking. And I would only talk to each man for about two minutes. And the warden, his name was Sigler, he said, what do you come out here for, you

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make all this trouble and you don't even spend time with these men? I say, the only reason I come out here is because I've made you know that I don't want any person brought to me shackled like a beast, and you have to take the chains off in order for them to come talk to me, that's why I do it, to get them out of the chains. And the warden wanted to say it first that they were worried about my safety. I said, I'm a grown man, I'm an elected official, you let me worry about my safety. I don't want you to bring anybody in here to talk to me in chains again, and I'll tell you who I want to talk to and you'll bring that person to me. And when I could find out that they had somebody in the hole and I'd get his name, I'd make sure that I'd have as many of those guys as I could come visit me. Then I'd make it a point to go through what they called the chow hall. And as bad as some things might be now, they were horrendous then. And the men would tell me that they wished that I'd let the people running the prison know when I'm coming. I said, well, don't you--and I knew what they were getting at--said, well, don't you think it's better if I come out here and catch them off guard and see what really happens? They said, man, Chambers, you know what's happening, so let them know you're coming. I said, well, you tell me why you want me to let them know. They said, we get trays that have been washed, we get food that's edible and food that's supposed to be hot will be hot and what's supposed to be cold will be cold, so let them know when you're coming, and come three times a day, every time we have a meal. I mean, that's how bad things were and nobody, even in the Legislature, wanted to hear what I had to say. There were articles written about what I was trying to do and eventually some people in the Legislature caught on because the media again was interested. The prison at that time looked like what might have been like a bastille, an old castle, and it was segregated. The wing where the white prisoners were, as bad as it was, was better than where the black prisoners were, all kind of things like that. They were...they had a big garden out there and the warden would sell this produce to people in Lincoln and keep the money. He had inmates cutting the grass around his house. His house was out there on the grounds in those days, and for...I don't know what favors they were doing for him, but he'd let them be the grass cutters, and that would get them outside for a little while. Some of them would tend two or three cows. And I wanted to break that up

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because, I said, most of the men out here are from the city and they're not going to be on a farm; I don't want this kind of stuff out here anymore because it leads to corruption and you're not teaching them anything. It was extremely difficult, and some people wonder to this day why I'm so bitter toward the prisons, the people who run the prisons, the Governors, the media people who don't care, and how once somebody is locked up they're thrown away. And I do believe there are innocent people locked up, and I believe there are people who committed crimes and they should be locked up but not for as long or under the conditions that they should be. Here's what I'm going to wrap up with you. I don't blame you for leaving. I don't know how you could bear it to stay as long as you did because of the sensitivity and concern you seem to have. But you're the very kind of person who we need not to leave. We need people on the inside who will try. But there's only so much that can be demanded of anybody and I don't blame you at all for leaving. There's no way that prisons can be shut down, but that's what I would do if I could do things the way I wanted to. There are people who are guards, and I tell my colleagues that there are guards and people out there who will provoke and antagonize these men so that they could get write-ups and get them locked up and so good time can be taken away. And I hope they're listening so when these fools, like the Governor-elect, like Mayor Stothert, like Police Chief Schmaderer comes out here and say, we should do away with good time, you all are going to hear me say some things that you wish one wouldn't say to another. You hear how she said we've got sick people and there are employees out there making fun of these people. Would it have to be one of your relatives for you to care? Would it have to be you? Where is the humanity we are supposed to have? This is a white Christian country, not a backward place where people like me are considered savages who wouldn't dream of treating people who are ill like that. And I have to listen to all of these things the white people have to say, their prayers every morning in the Legislature, wanting to make kids salute a flag. And we have institutions that we are directly responsible for because we took an oath, and these bad things are happening because the ones running these places know that we don't care. When they were trying to confirm Kenney, I spoke strongly against confirming him. My colleagues mean well, but they're nicer than I am. But I'm glad that

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you brought the sunshine that was there while you were there. And you know what? If those men could sing and you went out there right now and you ask them, what did you...what do you think of Dr. Miller--that is the name, Dr. Miller, correct?--you know what they'd do? They would temporarily lose their insanity and become sane. And you know what they'd say? (Singing) Ain't no sunshine since she's gone. And that's what it would be, that's what you were. So I appreciate your coming and I don't have any questions. [LR424]

SENATOR LATHROP: I think that's it. [LR424]

STACEY MILLER: Okay. [LR424]

SENATOR LATHROP: Dr. Miller, thank you for your time. [LR424]

STACEY MILLER: Thank you. [LR424]

SENATOR LATHROP: Although you were subpoenaed here, we appreciate your willingness nevertheless to visit with the committee and share your experience. And it will prove helpful as we try to make appropriate changes. [LR424]

STACEY MILLER: Thank you. [LR424]

SENATOR LATHROP: Okay, thanks. I will remind the committee members--we're going to break for lunch--at 1:30 we are doing a witness by videoconference. That is a scheduled witness. They're going to turn the cameras on in Colorado and we are going to have her in our room through the magic of technology so, if you would, be here maybe 1:25 so we can get situated and get that underway right at 1:30. With that, we're adjourned until 1:30. [LR424]

BREAK

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SENATOR LATHROP: We...for those of you that are watching on television or computer or whatever you might be watching, we'll get started. We're waiting for Senator Krist, who I think...Senator Chambers may be a few minutes late and Senator Krist should be here momentarily. Well, you know what? Maybe we'll start just the same so that we can...maybe we can do some background stuff while we're waiting for the last two members to show up. We are back on the record. It's a little bit after 1:30 on November 25. This is the LR424 committee hearing. We are getting together after a break and our first witness this afternoon is going to be Rebecca Wallace who appears today by videoconference. Welcome, Ms. Wallace... [LR424]

REBECCA WALLACE: Thank you, Senator. [LR424]

SENATOR LATHROP: ...yeah, to the LR424 committee. And because you haven't...you weren't here this morning and you probably can't read these signs, maybe we'll have everybody introduce themselves to let you know who the senators are, beginning with Senator Mello. [LR424]

SENATOR MELLO: Heath Mello, state senator from District 5 in south Omaha. [LR424]

SENATOR SCHUMACHER: Paul Schumacher, senator from District 22, which is Platte County and parts of Stanton and Colfax County. [LR424]

SENATOR SEILER: Les Seiler, District 33, which is all of Adams County and all of Hall, except Grand Island. [LR424]

SENATOR LATHROP: And I'm Steve Lathrop, Chairman of the committee. [LR424]

MOLLY BURTON: Molly Burton, legal counsel. [LR424]

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DAN JENKINS: And I'm Dan Jenkins, I'm the committee clerk. [LR424]

SENATOR LATHROP: We will be joined shortly by Senator Chambers who will be to the immediate right of committee counsel. And beyond that will be Senator Krist who will join us shortly. I think they had phone calls to make or something like that. So, Ms. Wallace, can we have you begin by...well, why don't we start with your profession. [LR424]

REBECCA WALLACE: Sure. I just wanted to say at the outset that I'm really honored to be here and have this opportunity to talk with the committee and help it think through some possible reformations for the state's reliance on solitary confinement. And just an honor to be here. So my profession is I'm a staff attorney for the American Civil Liberties Union of Colorado, and I've been there for about five years. [LR424]

SENATOR LATHROP: Okay. What's your role as a staff attorney with the ACLU? [LR424]

REBECCA WALLACE: So I work on all sorts of civil rights legal issues. But I'd say my...if there was a singular...if there was a primary focus over the last four and a half years, it would have been solitary confinement, reducing the numbers in solitary confinement in Colorado and also specifically helping to get prisoners with serious mental illness out of solitary confinement. [LR424]

SENATOR LATHROP: Okay. Is that something the ACLU came to by way of litigation or what approach has the ACLU taken with the Department of Corrections? [LR424]

REBECCA WALLACE: So I'm just speaking about the ACLU of Colorado. And our approach has been really direct collaboration and advocacy with the department of corrections, with the legislature, and with education to the public, directed to the public. And we had an opportunity to do that because after a long era of building up our solitary

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confinement in prison population, we welcomed...Tom Clements was an executive director to the department of corrections in early 2011. And as I'm sure that many if not all of you know, he was murdered in early 2013. And then we have been lucky to have executive director, Rick Raemisch, take over that role. And both of them have been reform-minded and engaged in deep, close, and regular collaboration with the ACLU. As a result, the ACLU filed no lawsuits related to solitary confinement or prisoners in solitary confinement who have mental illness because we are working so closely with the department. And we still are. [LR424]

SENATOR LATHROP: Can you share, maybe as a starting point, your understanding of what solitary confinement is? And maybe we're making a record because I think a lot of us already have some appreciation for it, but let's start with that...start from that place. [LR424]

REBECCA WALLACE: Sure. I use a simple definition that solitary confinement is the practice of placing a person alone in a cell for 22 to 24 hours a day. That cell is in every place that I know of is a tiny room where a person eats, sleeps, and defecates within arm's reach of each activity. Solitary confinement is designed to deny prisoners as much, if not all, meaningful human contact. And it's designed to deprive prisoners of positive touch so that the only touch that they'll receive is by a prison guard to move the prisoner around or to restrain them. It's designed to deprive prisoners of all meaningful activity; almost always devoid of programming. There's little to no natural light in almost all solitary cells. There's severe constraints on visitation, never an opportunity to do personal visitation but also rarely through even glass; it's usually over television. And really the goal is sensory deprivation. You know, for better or worse, I believe the goal is to break down sort of the spirit and sense of who the prisoner is so that the person can be, in theory, rebuilt and reborn in the prison's image. It's called...it's a variety of names. In Colorado it's called administrative segregation. I've heard that maybe there's a special management unit in Nebraska. It's also often called max security in places, restrictive housing, the SHU. [LR424]

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SENATOR LATHROP: Okay. Is there a justification historically for placing people in administrative segregation? [LR424]

REBECCA WALLACE: Certainly, and it's one that continues to be used today. I'm sure we've all heard it, but solitary confinement is necessary to punish and isolate the worst of the worst, which are those prisoners who are so violent and so dangerous that they can't be managed in general population. And, of course, the great terrible irony of that is if they can't be managed in general population in a prison setting, what's going to happen when we release them to the public? [LR424]

SENATOR LATHROP: Right. So is there a reality? You've given us what is the historical justification. What's the reality of the use of administrative segregation? [LR424]

REBECCA WALLACE: Well, the reality is...I think there are a few different realities. But building on the issue of sort of who is in solitary confinement and whether or not it's the worst of the worst. You know I am lucky and frankly I think all of us are lucky to be working in an era where we are starting to look at...we are starting to analyze data to tell us who are these prisoners. Are these really prisoners who there's an evidence-based risk assessment that shows us that they're a real danger to themselves, to others, and to the community? What we're finding increasingly when we did this analysis in Colorado is that the primary...the bulk of the people who are in solitary confinement are prisoners who are mentally ill; prisoners who are cognitively disabled; and prisoners who are habitual minor rule violators. And frankly, often the habitual minor rule violators are people who are either mentally ill or cognitively disabled. Now that is not to say that there isn't a small population in every prison who are so violent, so dangerous and incorrigible that long-term isolation may be appropriate. But that is a small number. And if we get an opportunity to talk about Colorado's story, that really...those figures will bear out for you; it will be more clear. [LR424]

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SENATOR LATHROP: And let me ask, if you know, to what extent is the experience in Colorado similar to what you would expect to be the circumstance in Nebraska or in corrections facilities all across the country that have not undertaken the reforms you're going to describe? [LR424]

REBECCA WALLACE: Well, in every state that I know of that has decided to analyze what their solitary confinement population is and to consider reforms, they have all found a disproportionate number of prisoners in solitary confinement who are mentally ill; a disproportionate number of prisoners in solitary confinement who are cognitively disabled; and many, many prisoners in solitary confinement who do not have a serious ongoing problem of violence but instead are habitual minor rule violators. I cannot imagine the circumstances are different in Nebraska, particularly given that I understand--like Colorado was just a few years ago--there was a really significant percentage of the population in Nebraska that's in solitary confinement, far above the national average. But obviously, you'll never know until you really start that data collection and evidence-based analysis. [LR424]

SENATOR LATHROP: Okay. So tell us what the problems are with solitary confinement as a practice or a tool at the Department of Corrections. What are the difficulties or the problems that a correctional facility runs into by the use of administrative segregation? [LR424]

REBECCA WALLACE: Okay. Well, these problems have really become more apparent in the last several years because we sort of are in the middle of a great experiment. We saw in the 1990s this huge rise in the prison population and a huge rise in reliance on super max and isolation. Colorado in the '90s and then 2000, built two large super-max prisons. And they're not alone. So we saw this tough on crime, nothing works to rehabilitate, we're just going to lock people away and kind of throw away the keys. And I think that really justified putting people in a nonrehabilitative atmosphere. And I think back then--and I hope that this is changing--that the concept of rehabilitation was like a

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soft on crime concept. That's coddling the prisoners. But what we're learning as we looked back on three decades of increasing our prison population and increasing our solitary confinement population is that when we don't focus on rehabilitation, our prisons become more violent. That's what we've seen over the last three decades. Our prison population grows. As the prison becomes more violent, there's more of a need to put people in solitary confinement. And the solitary confinement population continues to grow. And we get this toxic mix of violent prisons, which justifies the need for more severe conditions and requires the building of super-max prisons. Has it worked? Well, I'm so sorry about what's happened in Nebraska with what you all are experiencing right now with the murders by Nikko Jenkins. But I know that I don't have to tell you that long-term solitary confinement really can jeopardize public safety. And that was something that the leadership in Colorado has...we speak about it openly in our state. And there is really no leadership in the department of corrections or in the legislature that doesn't recognize this. The prison system's number one goal must be to protect the public; that's the goal. Ninety-seven percent of prisoners in Colorado are released to the public and 95 percent or more prisoners across the country are released to the public. So if prisons don't work on rehabilitation, the public is going to pay the price. And I know that Nebraska knows this. Solitary confinement has, and it is intended to have, no rehabilitative purpose or effect. That's why it's bad policy. It lowers the possible successful reentry of prisoners because I don't think it takes an expert to tell you, although many experts will, that normal human contact is essential to ensuring successful reentry into society and reducing recidivism rates. And we can talk more about these but I'm just kind of reviewing the worst reasons and the most obvious evidence that this is a failed experiment. We know that solitary confinement wastes taxpayer dollars. It's one of the most expensive ways to house prisoners. I've read that in Nebraska it's three times...a solitary cell will cost three times the amount of a general population cell. That fits well with what we saw in Colorado. And again the terrible irony of that is, because it has no rehabilitative effect, the general public gets, at best, nothing for this additional money, for all the money they're paying for solitary. And at worst, they get a prisoner who's more likely to cause injury in the public when they're released. You

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know, we also know solitary confinement is a failed experiment because more and more there is public consciousness that accepts that solitary confinement is inhumane. It is the most severe punishment short of death. I was told that that is sanctioned by the government. I was told that recently. And I've been working on solitary for quite a while and it was kind of shocking to hear, but it's really true. And it's interesting because death is something we use for the most heinous crimes that people commit. Solitary confinement is used because people are seriously mentally ill and act out, because people are minor rule violators and they're stuck for years in torture. But one of the reasons it's inhumane that our legislature in Colorado is particularly concerned about and we're seeing increasing concern in the courts is that solitary confinement usually hits most hard on our most vulnerable populations. So we talked about how we use solitary confinement to manage prisoners with mental illness and we do that instead of giving them treatment. We use solitary confinement to manage prisoners with developmental disability and we do that instead of providing accommodations for their disabilities. We also...and I'm not sure what the status of this is in Nebraska, but in many places in the country solitary confinement is used to protect youth. And you know, that...which is going to damage children's growing brains in the sense of selves. But the justification from the prison is they can't keep the youth safe in a prison environment or they're applying the PREA standards. We also see that solitary confinement is used to protect LGBTI prisoners from harm by other prisoners. I don't know if you all have read recently that Rikers Island actually opened its own transgender facility for transgender males. So in each of these cases, we essentially punish the most vulnerable populations by putting them in solitary confinement and that's fundamentally inhumane. But lastly and maybe of most interest to your committee, there are better, more cost-effective alternatives to solitary confinement. And in that sense it's inexcusable we continue to rely on it. And I am looking forward to getting to talk to you about some of those alternatives today. [LR424]

SENATOR LATHROP: So you've talked about what it's like to be there. How well are these people able to...or generally, what happens when a person is in solitary

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confinement in terms of are they able to endure it, come out the other end, live through it? [LR424]

REBECCA WALLACE: I am lucky to be able to have not only have talked to many people in solitary confinement and worked with them daily, but to have worked with some of the great national forensic psychiatric experts on this matter. And there is a lot of published peer review research that if at some point...studies that if at some point you want me to direct your committee to, I'm happy to do so. But suffice it to say that there are well-documented, very significant side effects to many, many healthy...mentally healthy prisoners who enter solitary confinement. And those side effects are quite similar to what we see with torture victims. I'm just going to highlight a few of them for you and the ones that I can tell you I've personally seen which include: hypersensitivity to stimuli, hallucinations, revenge fantasies, rage, irrational anger, severe and chronic depression, apathy, we're more and more seeing decreased brain function, and then self-mutilation and suicide. There are myriad studies showing hugely statistically significant increases on rates of suicide and self-harm for prisoners in solitary confinement compared to the general population. [LR424]

SENATOR LATHROP: So that's the folks that don't go into it with a mental illness. How about the people that do? What effect does it have on the people that start their time in solitary confinement with a mental illness? [LR424]

REBECCA WALLACE: So for many prisoners with mental illness, solitary confinement is completely devastating to their mental health. And frankly, many of them who spent years there I think it's questionable whether they will be able to recover. Human beings need...so I'm going to sort of say something that the forensic psychiatrists report all the time, but I don't think you need a forensic psychiatrist to understand that human beings need social interactions to ground themselves in reality. And they also need some productive activities to have a reason to live and be and continue to exist. So for prisoners with mental illness in solitary confinement who are already mentally ill, they

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often lose all touch with reality and lose their desire to live. So things we've seen and that forensic psychiatrists report is you see bizarre and extreme acts of self-injury and suicide. We see prisoners compulsively eating their own flesh, we see them smashing their heads against the wall, swallowing razors, eating feces, attempting to hang themselves. And one of the...one thing that we see when these prisoners act out--and usually injuring themselves--is the response when they're in solitary confinement is to punish them for acting out, either because the prison guard who generally is not trained in mental health issues has decided that the prisoner is making up the symptoms or because the prison guard is angry because they have to clean up the cell or the prisoner or they have to escort the prisoner out and be on hospital watch. So we see that the prisoners get...they get punished, their cells get stripped, their beds get taken away, their mats, their books get taken away, their television gets taken away, they get written up, or they get sent to a...in a best case they might get sent to a psychiatric hospital to stabilize. And then once they're stabilized, be brought right back into solitary confinement where they will be subject to the same conditions that were so...that caused them to deteriorate. So it's really not possible to provide meaningful mental healthcare in a solitary confinement setting. The extreme security measures in super max render appropriate mental health treatment nearly impossible. And you all may know this, but when a prisoner in solitary confinement leaves their cell, there's usually a two- to three-guard escort as well as universal restraints, you know, five-point restraints, and oftentimes strip searches on return from the cell. So in this isolation-based model, there are so many...not only is it incredibly costly to provide therapy to get somebody out of their cell, but the prisoner is totally disincentivized from ever leaving their cell. Beyond the fact that once in the cell for an extended period, one of the reactions to solitary confinement is for many prisoners to want to stay in their cell; they're afraid to leave. So most of the therapy that we see that happens in a solitary cell is cell side, so no privacy. You know, all the prisoners can hear the conversation through the door while the prisoner is in the room. And they tend to last less than 15 minutes. There's no opportunities for group therapy. And it's not the therapy part that's important as the group part, which means having opportunities to socialize and ground yourself. And

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I...you know, Colorado is a really...has a...I'm very proud of the department of corrections for an admission they made a few years ago. Now under Tom...when Tom Clements was running the department of corrections--and he is a man that I deeply respect and admire and was honored to work with--he tried a program called the Offenders With Mental Illness program in solitary confinement, where he tried to bring the mental health program. He recognized he had all these seriously mentally ill prisoners in solitary and he tried to bring the mental health program to them. And it was an honest effort. He put some money...he put a good amount of money into it and a good amount of staff, but it had nearly a 70 percent failure rate. And he...it was finally an admission in a report to the legislature I think about a year and a half ago that it is just impossible to provide meaningful mental healthcare in a solitary confinement setting. So there have been many important organizations...national organizations that have come out against solitary confinement of prisoners with mental illness. But one of the ones that I think has been most influential is the American Psychiatric Association, which has come out against placing prisoners who have serious mental illness in solitary confinement for more than 14 days. They consider that prolonged isolation and has the potential for detrimental effects on the mental health of the prisoner. But that wasn't the only reason the American Psychiatric Association was against it. It was also because the reason those prisoners are winding up there...up in solitary is often because of behaviors associated with their mental illness. And I know we want to talk more about that further in the hearing, but one last thing I just wanted to point out that's been happening with...about the placement of prisoners with serious mental illness in isolation that I think will be of interest to your committee, are the legal implications of doing that. And of course, legal implications often have fiscal implications. Every single court to consider the issue has found that placement of prisoners with serious mental illness in long-term solitary confinement violates the U.S. Constitution, that it's cruel and unusual punishment. There is no exception to that. So when we did not bring a case against the department of corrections in Colorado, it wasn't because we didn't have good legal grounds. It was because we had an active, participatory, reform-minded department of corrections; and we didn't want to get in their way of doing great work.

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We wanted to help them. One federal judge--I have to just share one quote with you because it has always stuck with me--in an Opinion where he found that the department of corrections was violating prisoners' rights when they were holding seriously mentally ill prisoners in solitary said: Placing those prisoners in solitary was the mental equivalent of putting an asthmatic in a place with little air to breathe. And it's not hard to find judges who agree with that viewpoint. [LR424]

SENATOR LATHROP: How prevalent is the use of solitary confinement for the mentally ill? [LR424]

REBECCA WALLACE: Well, I think as I mentioned, across the country every state that has investigated this and done an honest assessment of their solitary population, my understanding is they've all found a greatly disproportionate number of prisoners with mental illness in solitary confinement. Colorado is no exception. I want to step back--and I'll give you some data--but I want to step back for a minute and make sure we are able...like that we understand why the prison system is sort of having to deal with such a large number of mentally ill prisoners. We know that we deinstitutionalized people with mental illness back in the 1980s. And we did not, as a country, in our states, in our cities, fund community-based mental health services. So really as a result of that, more and more we are seeing people who have mental illness who do not come from stable families that can give them the support and medical treatment that they need...mental health treatment that they need. Those people are winding up in our jails and prison systems. And this is something again where the ACLU and the DOC are really working together. I do not think that the prison is a good place to provide mental health services, but 30 percent of the prisoners...32 percent of the prisoners in the department of corrections in Colorado have moderate to severe mental health needs. I read in an article that you're at about 31 percent in Nebraska compared to 10 percent to 20 percent of the general population. So this is where our mentally ill are going. And once in...once they're in prison or jail, even for very minor law violations, people with mental illness have a much harder time conforming their behavior to the very strict

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mandates of conduct in a prison setting. So not only do we see prisoners with mental illness catching much more significant charges that will hold them in prison longer even when they came in on a minor charge, we see that with multiple minor rule violations these prisoners are getting sent into solitary confinement. In Colorado although about 30 percent of the prison population has mental health needs, we found that in 2011 50 percent of the prisoners in solitary confinement had moderate to severe mental health needs. So it's a hugely significant population. [LR424]

SENATOR LATHROP: And that 50 percent, it's difficult to determine whether...what percentage of that 50 percent went in there with a mental health problem or developed one as a result of their confinement. [LR424]

REBECCA WALLACE: Yeah, that's very difficult to know. I mean, one thing in Colorado we thought was really important to do is to make sure that the public and the legislature and the DOC, frankly, understood that there are people who are totally healthy who leave very sick. We ended up...and I just wanted to make sure I told you guys about this...this committee about this man. We ended making a movie and are still following a man named Sam Mandez, who's a juvenile life-without-parole prisoner who...he's no longer a juvenile. But he was sentenced to life without parole as a juvenile. And at age 19, he went into solitary confinement for two minor prison rule violations: making a three-way phone call; trying to break into a prison bathroom. (Recorder malfunction) I just want to let people know I don't need the tech person, very quickly, because I think they're about to come. Okay. I was describing Sam Mandez; I promise I will be brief. But he is somebody who went as a 19-year-old into solitary confinement for these minor prison rule violations and he did not get out for 15 years. And we tracked all of his records and also we know his lawyers and then we had extensive conversations with him. And he became so psychotic in solitary confinement, he created an entire world of fictional figures, mostly taken from TV since that's his only real interaction with people. And he created a whole world where he is now floridly psychotic and afraid to leave his cell. He begged for mental health treatment and of course did not get it because it isn't

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possible to provide it. And then when he tried to commit suicide on several occasions, he was typically punished for it. Like he is one person who had a stripped cell for 100 days as a result of trying to commit suicide. Every time he acted out, like when he got cut down from committing suicide one time, he kicked in the shin a prison guard. And he got charged for it. You know, he got charged for kicking a prison guard when he was in a psychotic state. Sam did eventually, because of advocacy by the ACLU, changes with the department of corrections, he did get out of solitary confinement and he's in a residential treatment program now; and he's struggling. But he is an important example, and we know of many others, of a mentally healthy person who goes in who just cannot withstand the pressures in solitary confinement and who broke under it. [LR424]

SENATOR LATHROP: So you've told us about the nature of solitary confinement. What...the fact that an awful lot of mentally ill people end up in solitary confinement and what happens to them and what happens to people who end up there that are healthy to start with. What did Colorado do about it? [LR424]

REBECCA WALLACE: Well, I mentioned to you that back in the 2000s we built two...well, in 1990s and 2000s we built two super max prisons and we grew and grew our prison population and the solitary confinement population with this view that we were being tough on crime. In 2011, in came Tom Clements appointed by our governor. It was a surprise to all of us. And Tom Clements is...was reform minded, first and foremost. He believed in evidence-based practices. He believed in redemption. Those are his words; he used it over and over again. I would, you know, from what I saw it is he was willing to put in the work to work towards rehabilitation and he was haunted by two figures he has quoted over and over again and he shared it with me all the time, which is: Ninety-seven percent of prisoners are released to the public and 47 percent of prisoners in "ad seg" were released directly to the public. And he kept asking, if we can't manage these prisoners and can't move them at least into a transition unit, how can we be just releasing them directly to the public? We as a prison have to take more responsibility to help reintegrate these prisoners before they're released. I want to also

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share a few more figures that existed at the time Tom Clements began his work that haunted me. There were over 1,500 prisoners that we had in long-term solitary confinement, which was 7.1 percent of our prison population. Now I've read some figures about Nebraska that has you guys well into the teens in your solitary confinement population. If that is accurate, that is so wildly high compared to what we see in the rest of the country. National average for solitary confinement is between 1.5 percent and 2.5 percent of the prison population and it's going down. So I also mentioned we had over 50 percent of solitary confinement prisoners who had moderate to severe mental health needs and we had prisoners staying in solitary confinement for an average of two years. We had some people that were there for a short time, but many who were there for 10 to 15 years. So Tom Clements got in and got to work. One of the things he did was he engaged directly with rights groups and I'll say particularly with the ACLU so that he could understand the issues prisoners faced that he might not otherwise hear about. Then he contacted the National Institute of Corrections and he requested an external review of the classification systems and the "ad seg" policies. You'll hear me say several times during this that it is imperative that you bring in outside experts to assess, review, and make recommendations of...we've talked about the different systems, but your classification system, your solitary policies, mental health policies, and reentry programming. And that's just...it...that can't be done internally. I mean really, no huge bureaucratic systems could be expected to fully reform themselves, but also you really need the expertise of other states and leadership that have come in and done these reforms themselves and you can get the learned lessons from them. So he brought in some great reviewers through the National Institute of Corrections and learned that DOC was overrelying on restrictive housing and was not providing meaningful healthcare to a large population of prisoners with mental illness. In part, because he was responding to pushing from the ACLU but also because he was so focused on evidence-based practices, he got busy on data collection. The one thing I've read that the Nebraska DOC leadership has said is that they keep good data. There are so few prison systems that keep good data, especially if they have got an antiquated computer system as I think the DOC leadership said in this article that they

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have an antiquated computer system. You just can't fix the problems that you can't assess. So Tom Clements, frankly, spent most of his tenure, to be honest, assessing that problem about who's in "ad seg." What kind of mental health provision are they getting? How do our prison violence rates relate to our placement of prisoners in administrative segregation? What are our reentry programs? How many people are we releasing directly to the public from "ad seg"? And he'd surround himself with a reform-minded team; that's his executive team. And then one other important outside help he hired was he hired a forensic psychiatric expert to come in and look at their mental health program. And he invited us to the meetings and really had a rather transparent analysis. We didn't promise Tom Clements we weren't going to file a lawsuit, but he invited us to the table because he wanted to have, I think, the best experts at the table to help him make the best decisions. So then in March 2013, that's when Tom was murdered. And it was by Evan Ebel who was in solitary for many years and released. And he has mental health problems and he was released directly from solitary confinement to the public. And he had asked for mental healthcare and he hadn't received it and I'm sure this is sounding familiar to you all. And he went to Tom Clements' home and killed him at his door. And he did it...you know, Evan Ebel left this tape recording that suggested he was doing it as punishment for mistreatment in...for his mistreatment in solitary confinement. And, of course, Tom Clements was working harder than anyone else in this state to provide the treatment that this prisoner needed. I can't say that if the DOC had provided the right mental healthcare that Tom would be alive today. And I don't want to pretend to say that. But I think that that was...Nebraska is in this moment in time that Colorado was when Tom died where they were sort of we were on the tipping point; there were two paths. We could take what had happened to Tom as a signal that these people are too violent and incorrigible to rehabilitate. Or we could take it as a signal that we owe the public something more. We have to give the prisoners rehabilitative opportunities and mental healthcare to protect the public. And we frankly did not know what direction our state was going to take. And then about six months later, no, five months later the governor appointed Rick Raemisch who was the former head of the Wisconsin Department of Corrections. He is also reform-minded. He

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is also focused on making policy decisions based on evidence, based on data. He engaged with the ACLU. He came to the Sam Mandez movie premier. He showed the movie to his staff. He talked to the legislature about it and he committed very early on to getting all prisoners with serious mental illness out of solitary confinement. And then I don't know if any of you have read it, he wrote an editorial about 20 hours that he chose to spend in solitary confinement in the prison and spoke at Senator Durbin's hearing against heavy reliance on solitary confinement. And to be clear, when I'm talking about these reform-minded men, these are not crazy progressives or liberals. They are people who are interested in protecting the public safety, public "fisc," and being at a base-line level humane with the prisoners. So after this, the ACLU started working on a bill to get prisoners with serious mental illness out of solitary confinement and into treatment and the DOC joined us at the table. We ended up passing a pretty narrow bill, but with the DOC's support and with the--I think one person voted against it--near unanimous, bipartisan support, passed a bill that prohibited placement of prisoners with serious mental illness in long-term solitary confinement absent exigent circumstances. And we worked with the DOC to then pass administrative regulations that would ensure mental healthcare to prisoners, that would build residential treatment units for prisoners who are leaving solitary who had mental health needs; that would limit the reasons why prisoners could get into solitary confinement in the first place; and very important for Nebraska, that would...that created finite solitary confinement sentences. I understand that Nebraska leaves prisoners in solitary confinement indefinitely, and I think the prisoners need to work their way out there. That was the same system we had in Colorado, and it creates no incentives for prisoners to improve their behavior and really creates a system where you're...it's going to be inevitable that your prisoners will languish there for years. Now I wanted to sort of share new statistics, tell you where are we now. I told you some from 2011 and I'm going to do a little comparison to let you know where we are now. So I said back in 2011 there were about 1,500 prisoners in solitary, 7 percent of the prison population. I just looked at the stats yesterday. We're at 191 prisoners in solitary confinement, which is about 1 percent of the prison population. Six hundred ninety of those prisoners were transferred from solitary confinement to

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general population and most of them either remain successfully in population or there was also a quarter that were released to the community from general population. That tells us we had the wrong people in solitary confinement. The most dangerous, violent prisoners could not be transferred to general population safely if that was really who they were. In March of 2013 we had 87 prisoners who were seriously mentally ill in solitary confinement. CDOC now reports one. October 2011 the average time in solitary confinement was two years; it's now less than ten months. And in 2011, 47 percent of prisoners that were released from solitary confinement were released directly to the public. We're down to 17 percent. With all of this, the sky has not fallen, prison violence has not skyrocketed, and we are continuing to work very closely with the department of corrections to see that changes go even further. And sort of the moral of this is that change is possible. It takes long-term commitment, evidence-based practices, and a reform-minded leadership and legislature. [LR424]

SENATOR LATHROP: So that's kind of what you did and obviously you had a good deal of success. Does that translate into Nebraska or into other jurisdictions? The numbers that you've given us, would we expect a similar result with that type of reform effort? [LR424]

REBECCA WALLACE: So Colorado is right now probably leading the way in reform in solitary confinement, so I can't say that we have examples of ten other states that have undertaken this. Mississippi has undertaken some similar reforms and had quite significant successes. But there is every reason to believe if Nebraska has a very high percentage of its prisoners in solitary confinement, certainly far higher than the national average, then they have many prisoners that can be successfully moved out of solitary confinement into general population safely. And they also almost certainly are going to have a high number of prisoners with mental illness who need treatment. If the goal is really protecting public safety, they need treatment. The other thing is, Nebraska will need to get a handle on what prisoners...how many prisoners are they releasing directly to the public? I would imagine there's no one in this room...and it would probably be

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easy to get support for the premise that we don't want to release prisoners directly from solitary confinement to the public. So creating a reentry program, it is not going to make all prisoners okay for release to the public, but it certainly will have a significant effect. I just want...one thing that I needed to make sure I said is I don't want to mislead the committee about where Colorado is and that it's not all roses. We see a big gulf still between policy and practice. Our policies that require certain out-of-cell mental health treatment, we're seeing in a lot of ways that the mental health treatment may not be meaningful. We're seeing that some prisoners are housed and getting only four hours a day out, which while maybe not technically solitary confinement may not be sufficient for mental health needs and just for humaneness. And then the other thing is we're seeing huge cultural challenges. We've got a great executive team at the department of corrections, but we have got a staff who have been under different leadership for many, many years. People hold their guard positions a long time and they...many of them have followed prisoners from solitary confinement into these mental health units, so they're the guards in the mental health units. And making that transition for guards who have been trained that these individuals are the worst of the worst, that they can't leave their cell without three guards and universal restraints, and now need to look at these prisoners also as patients and address behavioral problems not just as...from a punitive perspective but also from a therapeutic perspective, it has proven incredibly difficult to get the line staff to come on board. So I just want to share that that's been a big problem. We've seen huge turnover. We've had lack of consistent therapists, not enough mental health staff. It's not all roses, but I do think we are making significant progress. [LR424]

SENATOR LATHROP: So from beginning to end, when this began to today, how much time has passed? Is that two years? [LR424]

REBECCA WALLACE: No, it's longer. The evidence collection started in mid-2011. [LR424]

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SENATOR LATHROP: What's the evidence collection? Performance Audit...someone who's going to report here after you're done testifying is going to tell us that we've been doing a poor job of gathering data or that we haven't collected it well enough to have reliable data at this point in time. So what's that undertaking going to be like and what's the information we're going to be needing to gather in order to develop evidence-based practices? [LR424]

REBECCA WALLACE: Well, again, I mean I will get...I will be happy to give some recommendations. But again, I would say the first step is to get the right experts in to help you do this assessment and figure out how to collect the data. You're going to want to look at your classification system. So why are people classified in the different security classifications to...many, many systems, and Colorado was one of them, operate on far too of a discretionary system for classification when, in fact, they should be doing evidence-based risk analysis. And there are great models out there and I'm not going to bore you with those details. But that was exactly what...when Tom Clements contacted the National Institute of Corrections and said, we need someone to come in and look at our classification system. We need experts to come in and look at our solitary confinement policies. And that's when James Austin and Emmitt Sparkman came in and really reviewed the policies--that was back in 2011--and then also assessed what was happening on the ground. So you'll want to look at those. You'll need to...you'll want to look at who is your solitary confinement population, so which requires doing a meaningful mental health assessment of each of the people in solitary confinement. That is usually not doable with current staff. Current staff can assist, but there are so many incentives built into the prison system to find people to be malingering or making up their symptoms. And there's also so much bias built into a prison system that for so long has relied on solitary confinement to manage prisoners with mental illness that you have got to bring in outside experts to help assess what is the mental health needs of our population in solitary confinement. And then what services are we providing to people in solitary confinement, both programming--which I'll bet you is nothing meaningful but you'll have to assess that--and mental health? And

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again, I hope that it does not...that you...that Nebraska doesn't have to go through Colorado's failed experiment of trying to provide mental health services in a solitary confinement setting. You know we wasted a year and a half on that. It's not possible in our view. But it...you know...and so starting to create...what we ended up doing...well, what the department of corrections ended up doing was creating a residential treatment program, building a...reconfiguring another prison to be a 240-bed residential, therapeutic unit for prisoners with serious mental illness. So there has to be a place for prisoners to go, you know, for the seriously mentally ill. Oh, yeah, so we were talking about who is your population. You were looking at what is the mental health...what are their mental health contacts. Do you have youth in solitary confinement? Are there developmentally disabled people in solitary confinement? How do those numbers compare to the general population? Length of stay in solitary and why are people getting into solitary? And you're also going to want to track prison violence. I know this sounds like you're going to spend so much time keeping data. But I can't underscore how important that data was to help sell, I mean, not only the legislature but the public and to try to start selling line staff on why these changes were so necessary. Let's see. I've written down a few things I wanted to...you know, one of the things...if I could say if there was one thing that I thought was the most important decision that the state could make to effect change of the solitary confinement system...for solitary confinement reliance, it would be who they choose to lead the department. I think there's no amount of work that organizations like the ACLU or activities by committee...like your committee can do that can overcome or make change in a department without strong leadership. And I guess I'm biased towards the type of leadership I've seen in Colorado, but it must be in my opinion reform-minded, focused on rehabilitation, focused on evidence-based practices, and committed to decreasing reliance on "ad seg." And those leaders are out there. And I know because we were making recommendations to the governor's office when it was time to think about who to select in Colorado. Those leaders are out there and increasingly they're having a strong and persuasive voice amongst other correctional leaders. So that would be the most important. [LR424]

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SENATOR LATHROP: So you want to run down the things that we need to change or the things that need to happen? I know you've talked about keeping the data, identifying the people that we have in administrative segregation to see if they're mentally ill, developmentally disabled, and the like. But what are the other changes that need to take place in this process? [LR424]

REBECCA WALLACE: So some of the most essential sort of policy changes is if you want to limit the numbers who are in solitary confinement then you need to limit how people get into solitary confinement. So what the department of corrections did in partnership with the ACLU is change their...they made a matrix...a sentencing matrix for getting into solitary confinement. You know from the ACLU's perspective, we don't want to see anybody in prolonged solitary. That being said, what the department of corrections adopted is the maximum length of time a prisoner can be in solitary now is 12 months. The sentences range from 3 to 6 months or 6 to 12 months, depending on the offense. And then the offenses are limited to serious violent offenses that had the potential to cause serious bodily injury. No more you throw a cup at a guard five times and you can wind up in solitary. It takes a lot of the discretion out of who goes into solitary confinement. It ensures that the prisoners who go in are the truly violent prisoners. And it takes away the indefinite terms of solitary confinement where we see the most serious mental health deterioration and sort of loss of will to be and live and produce...do something meaningful. So that's how we...I think that's the primary way the department of corrections decreased the average length of stay from two years to less than ten months in the last few years. So create a sentencing matrix. Stop placing prisoners in indefinite solitary confinement. It will also help you in terms of legal...you know, the types of deprivations that prisoners experience when it's an indefinite placement are much more likely to become constitutional violations when you've passed a certain type of year mark, but are less likely to be actionable when they're for a shorter period of time. Another really important change is to create...we talked about creating treatment programs. These are treatment beds for prisoners with serious mental illness. I don't know your numbers but you need to assess the numbers of prisoners with

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serious mental illness and they have to have treatment beds. And there's multiple levels of treatment as necessary. You know, acute, hospital-level care and residential treatment care for prisoners who are somewhat stabilized but still need regular mental health intervention. Along with that, what we pushed for and what is increasingly becoming the national standard is to guarantee a minimum for all prisoners with serious mental illness of 20 hours a week of out-of-cell time, 10 of which is dedicated therapeutic time. That's what the department of corrections in Colorado adopted and you'll see...I think you're going to see that increasingly adopted in reform-minded departments. The interventions, in order for them to be meaningful, there has got to be consistent mental health staff. This is a challenge we've really faced in our department of corrections. And I think part of it is because we maybe didn't do a good enough job getting the buy-in from the line staff and so there's been some tumult with the culture there. But we've had this huge turnover. And so prisoners who may have a connection with a particular therapist lose their therapist all the time and you see kind of outrageous behavior once that happens. There's multiple ways I think to address that. One is there has to be enough mental health staff. And I know, you know, money. Right? Money is huge for the department, it's huge for the state. But if there isn't the money to pay the mental health staff or if you're paying them low wages, it's really difficult to recruit mental health staff to prisons to begin with. So actually the wages should be better than in the community. And I know that's really sort of a hard pill to swallow. And I would say that's something...I think that the Colorado DOC and the ACLU agree on and we're working with the legislature on. But if this committee were instrumental in educating the Legislature about the need for mental health staff and the need to pay them well enough to be able to keep them, I think that could be quite significant. So the mental health...and one of the reasons that the number of mental health staff is in part driven by the need for one-on-one, meaningful, mental health contacts. That is at the...that creates the therapeutic relationship between the patient, between the prisoner and the therapist. And it's usually the foundation for their ability to progress in their treatment. So that's one-on-one, that's a lot of time, but it's been really interesting because we've been assessing because Colorado has been tracking how are prisoners spending their

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out-of-cell time. Once you have an out-of-cell requirement, you need to track how are they spending their out-of-cell time. And what we see is that the prisoners in the residential treatment program have well over a 90 percent attendance rate to meaningful, one-on-one mental health contacts. And they have almost a 50 percent refusal rate for like group therapy, you know, the group contacts. Those one-on-one mental health contacts are a key to their ability to progress. And they're costly to get that mental health treatment. I think that in the long run, the cost will decrease because you'll see prisoners becoming healthier and you'll be closing "ad seg" units. I didn't mention that Tom Clements closed one of our super max units. And the other one now only has 200 people in it in the super max program there. I think those are...oh, reentry programming. So I don't know where Nebraska is at on reentry programming, but there's got to be transitional programming from solitary confinement. There's just no other way around it. And it can't just be to go to general population. Right now I think Colorado has management control units that maybe give four hours a day out--I don't think that's sufficient but it's certainly an improvement--and that let prisoners out in smaller groups. Again, I don't think that's the only solution. And I think if you bring in outside consultants who can talk to you about reentry and really partner with reform-minded, evidence-based DOC leadership then you're going to...Nebraska will come up with a good reentry program. It can be done. [LR424]

SENATOR LATHROP: I have a question for you. You've described the process that Colorado used. Was that a direct result of or was that approach developed by your director or is this something that is a direction found from the National Institute of Corrections? In other words, are these standards someplace right now or are we dealing with somebody who just could see far enough out into the future and was a visionary and decided on these reforms in Colorado and you guys are lucky and we'll have to imitate you because there are no other standards? [LR424]

REBECCA WALLACE: There are no national standards that are written by the National Institute of Corrections. There are...it's increasingly easy to find piecemeal national

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standards where you'll, for instance, like I said, you are more and more seeing the 10-10 if you talk to forensic psychiatric experts, prison forensic psychiatric experts, you'll hear more and more about the 20 hours of out-of-cell therapy, 10 that is...sorry, the 20 hours out-of-cell time a week, 10 that is dedicated to therapy. So there's those type of standards, but there's no consistent national standard for how to deal with solitary confinement, how to deal with prisoners with mental illness to ensure they get enough out-of-cell time. And I'd say that having...yeah, we did have a reform-minded leader and Nebraska can...as I mentioned, Nebraska can do the same. There are other leaders that are out there and looking for this type of opportunity, especially if they know they have a supportive legislature which, you know, we certainly didn't know one way or the other when Tom Clements came on board. But the other thing was, frankly...I sort of hesitate to say this. But we wouldn't be where we are in terms of the speed of changes if there wasn't the pressure coming from the community advocacy groups. And so I'm not trying for the ACLU to take some huge amount of credit, but reform was really slow with Mr. Clements. And when we got the legislature involved and started basically suggesting if the DOC doesn't make the change, we're going to bring it into the legislature, the DOC very quickly committed to getting prisoners with serious mental illness out of solitary confinement and very quickly committed to policy changes we had been pushing for for years. So you know, this is I guess this is sort of politics. I think it's the right leadership with the right community pressure. And I think it sounds like this legislative body could play some of the roles that advocacy groups were playing in Colorado. [LR424]

SENATOR LATHROP: Okay. I have another question for you. And that is, it has to do with the money. If you are taking this many people...if solitary confinement is the most expensive way to house an inmate--never mind all the other reasons why you wouldn't want to do it that you've given us--but if it's the most expensive way to house an inmate and you reduce the population as significantly as you did, are there savings? In other words, is there a way to make this roll over so that there's a savings as you reduce this population? It gets cheaper to house X number of prisoners. The savings then are

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invested in the mental health professionals, for example. Have you tracked the dollars to follow how that might work? [LR424]

REBECCA WALLACE: We have not tracked the dollars. And I would have loved to have had a little sweet info graphic to show the public and this committee to show how it's all cost effective in the long run. I would say first of all, we're not in the long run yet. These are really recent changes, some of them as recent as July. But I mentioned to you that 690 prisoners got transferred from "ad seg," from our solitary confinement to the general population. There is no doubt that there is significant cost savings in the transfer of those prisoners. And if we weren't going to replace...one of the things that I think increased the costs and this is just...I don't want to separate--and I think, you know, Rick Raemisch and Tom Clements see that you can't--the reforms in solitary from reforms with how we provide mental health services. And once a prison starts really assessing how they're providing mental health services and to whom and decides that they want to provide meaningful mental healthcare, that is expensive. It is possible to make a different choice, right, to get prisoners out of solitary confinement but not put them in treatment. And then you would have an obvious net cost savings. But we have seen the desire for reform of solitary confinement to go hand in hand with the provision of meaningful mental health services. So now, you know, in Colorado we have a 240-bed mental health treatment program that we didn't have before these reforms started. So was that necessary to get prisoners out of solitary confinement? Did we need that program? No. And if we had been looking at the dollar bottom line only, I presume the prison wouldn't have gone that route. The problem is once you start thinking about solitary, you start thinking about mental health. And once people start talking about mental health and the prison system, I think you end up having prison officials standing up and talking about all the ways in which they're unable to provide the mental health services to an increasingly...to a growing population with significant mental health needs. One of the reasons that we got...because our bill that excluded prisoners with serious mental illness from solitary confinement came with a significant fiscal note. And one of the reasons we had fiscally conservative support for that is because there was a

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recognition that the--and this was discussed in the committee--there was a recognition that we are asking the prisons to provide mental health services that we were refusing to provide in the community. And we want them to do it for public safety. So that was our choice. I don't know that you can provide mental health services to such a needy population and a significant population without increasing the fiscal costs. That's my honest testimony. [LR424]

SENATOR LATHROP: So the net effect is that you can...the money you save taking a mentally ill person out of administrative segregation, putting them into the general population, that savings will be more than spent on the mental healthcare that person should get once they're removed from administrative segregation? [LR424]

REBECCA WALLACE: Again, I wish it were something other than that that I could say, but I think that's true. I think it's true. [LR424]

SENATOR LATHROP: Okay. Okay. One of the things that we talked about the other day when you and I had a chance to visit on the phone and maybe what happens in Nebraska when you talk about the indefinite sentences to administrative segregation come into the fact that--and I think you described this or somebody did to me in the last week--that the person gets in there for maybe breaking two minor offenses. And then they get angry because they're in there. They become defiant and then they break more rules and then they get more time in there. And then it becomes a sentence that can go on for years. And part of the recommendations I think you said you came up with or Colorado came up with is, recognize that they're going to become defiant, that they may have some rule violations, but not every rule violation should get them more time in administrative segregation. [LR424]

REBECCA WALLACE: That's absolutely right. And you know, when I was telling the story about Sam Mandez, he is exactly the type of prisoner you just described. And he is exemplary, he is not unique. He got in for two minor rule violations and then he never

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seriously injured anyone for the next 15 years, except for himself. Never. But he kept...you know, it's sort of...in most solitary confinement incentive systems, it's like a boot camp, an extreme boot camp where they want to break you down. And the idea is once you get to perfect behavior, that means that you've become compliant and you can get out. Beyond the fact that so many prisoners in solitary are struggling with mental illness and so they are going to have difficulty conforming their behavior to what's required in solitary or any prison setting. Even putting that aside, people are going to get angry when they're locked in a room for weeks and months and years on end. That's human. And so, yes, we saw that prisoners would then act out and there would be a minor violation and they'd get...in Colorado it was called a crime. And they just wouldn't be able to work their way through the level system. And that was most prisoners. So one of the ways that this matrix...this sentencing matrix works to address the problem you're talking about, Senator, is even if you are in solitary confinement for, say, a 6- or a 12-month sentence--I'm looking at it right now, this matrix--even if you were in solitary for a 6- or a 12-month sentence and you throw a cup or you scream at a guard, that isn't one of the violations that can support an additional solitary sentence. It took that discretion from the prison guards. And if there is a reason to sort of go beyond what the sentencing matrix says, that has to be signed off by a high-ranking official outside of that specific prison. You know one thing that's kind of it may be a little bit hard to accept is that the solitary confinement units, they are not the best equipped...people who work in the solitary confinement units or manage them are not the best equipped to make decisions about who should stay in the solitary confinement unit. Because in order to work there and to treat people the way you need to in a solitary confinement unit, they can't be rehabilitatable. They've got to be the worst. There's no other way to...I don't...I mean, we talked to prison guards and I don't think there's any other way to function in that system. So it's fine for there...in fact, it's appropriate for there to be recommendations or to have reports coming up from staff about the behavior of the prisoner. But ultimately, it needs to be a decision maker from outside the prison who is saying, you know, we're going beyond whatever is in the matrix. Yeah. [LR424]

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SENATOR LATHROP: Okay. I think that covered the questions that I had. We'll have questions from other members. It sounds like the major takeaway is, it's all about who we hire next. Right? We've got to have a reform-minded director. [LR424]

REBECCA WALLACE: It's pretty significant, yeah. I mean that would be the...that's the number one. [LR424]

SENATOR LATHROP: Okay. Senator Krist has questions for you. [LR424]

SENATOR KRIST: Hi. Senator Bob Krist. I just wanted to, for the record, what we have in Nebraska right now is a perfect storm. We have recognized our problems, we have seen it through an incident...a very unfortunate incident that's taken lives. A man who wanted psychiatric treatment, mental treatment, and was refused that. But it's brought us to this place. This committee...this piece of legislation was brought about by Senator Lathrop was the pure legislative reaction to investigating that particular event. The CSG is here as a result of the invitation of all three branches of government. We're working through their recommendations. In addition, an internal performance audit has been released just this past week that agrees with the findings and follows, you know, if you are the brain surgeon, we've already written the book and you've confirmed the diagnosis and brought these forward from your successes in Colorado. So here's my question. We now sit at a point where if we don't take action, we very well will face an ACLU lawsuit which, if you follow history, is not a very good thing for the state to have gone through the process and had the DOJ or anybody else tell them how to reorganize their state. And you're telling us the most important thing that we can do is find the right leadership to bring ourselves into this circle of healing and making sure that this is it. What legislatively would you recommend we do to show our political will to move forward without definitely moving ourself forward and spending millions of dollars for fixes that we'll never use? You said data was important, but what is the one single action legislatively that you would recommend would demonstrate that political will? [LR424]

REBECCA WALLACE: I'm just thinking for a moment. [LR424]

SENATOR KRIST: It's a big question; I understand. [LR424]

REBECCA WALLACE: You know, it's very...I do have some thoughts. But it is very hard for me to get behind nonbinding aspirational legislation. And this is just from personal because I work on these issues and we, in Colorado, have had aspirational legislation and...but I understand the importance of making a statement. One thing we did in Colorado...I can't say it's the single most important thing, but I should have mentioned it is, you know, we tried to pass a comprehensive solitary bill before Tom Clements came on board. And that bill got gutted in the legislature, but it resulted in a reporting requirement for the DOC that gave us the first bit of really important information about what was happening in solitary confinement. So we told the DOC that it had to collect data and report it to the legislature, which allowed...you know, that's how the ACLU really got to start understanding what was happening within the DOC. So I can't say that's the single most important thing, but if that was accompanied with a statement by the Legislature that it is committed to studying and decreasing the population of prisoners in solitary confinement and as an initial step that it's going to engage in this reporting data and create a work group to advise the Department of Corrections on issues related to solitary confinement and prisoners with mental illness, I think that would be a great first step. The work group that I bring up, we have that in our second solitary bill, this prisoners with serious mental illness solitary bill, we established a work group which the legislature...I'm on it, the legislature appointed me. And there's a forensic psychiatrist on it, so it created...and there's another prison rights activist and then there's leadership from the clinical division in the department of corrections that are all sort of working together to understand what's happening in the DOC and make recommendations. You know, I think these are aspirational pieces. They don't...they should have minimal fiscal impact that would show a commitment. I can't...you know, I think that would be a reasonable place to start. Another piece of legislation we're seeing

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increasingly proposed is legislation to prohibit the placement of certain vulnerable populations in solitary confinement. And that may be something at this point your Legislature doesn't feel able to do. But I mentioned some of those vulnerable populations and that includes: prisoners with mental illness, youth, LGBT, prisoners with developmental disabilities. And our fiscal note that came with our bill didn't have to be there. The truth is that saying don't put prisoners in...who have serious mental illness in solitary confinement doesn't actually cost money. It only costs money if you decide you also want to create the residential treatment programs to move them into. [LR424]

SENATOR KRIST: Thank you. [LR424]

SENATOR LATHROP: Senator Chambers? Okay. Well, I think that takes care of it. I want to once again thank you for your testimony. It has been very helpful. I know one of our ACLU guys from Nebraska is sitting in the front row taking copious notes, and we'll probably hear from him in the upcoming months. But it is very helpful to see...I know I read about what Mississippi did. It was great to hear about what Colorado did. I know that in both instances, it was done in collaboration with the department as opposed to the ACLU forcing some type of solution onto the department of corrections. And hopefully, the Legislature next year will follow suit. And I know they're reform-minded in the wake of the work this committee has done and maybe more so in the wake of bringing in the Council of State Governments. So they have certainly been conditioned to expect significant change in the Department of Corrections, how is that run, and I think in its leadership as well. So we're optimistic, but it is good to hear from you and good to have you share your experience in Colorado. [LR424]

REBECCA WALLACE: Well, thank you so much for giving me the opportunity to speak with your committee. And I will be watching to see what great changes Nebraska makes. I hope that you do find ways to work closely with the ACLU because I actually think we could be a great resource. And if you want any further information, Senator Lathrop especially, please do not hesitate to contact me. [LR424]

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SENATOR LATHROP: Okay. We'd be happy to do that. Thanks once again. Bye.
[LR424]

REBECCA WALLACE: Bye. [LR424]

SENATOR LATHROP: Okay, you may disconnect, Chuck. Okay. Well, that was certainly helpful. And we're moving right along. And in the interest of keeping things moving, we'll call the next witness, who will be Esther Casmer. Ms. Casmer, if you'd come forward and raise your right hand, I'll swear you in. Will you raise your right hand? Do you swear the testimony you're about to give this committee will be the truth, the whole truth, and nothing but the truth, so help you God? [LR424]

ESTHMER CASMER: My other right. [LR424]

SENATOR LATHROP: I was going to say, you know, I don't think it would affect the oath and the record won't reflect that you raised your left hand. Yeah, let's try it again. Do you swear the testimony you're about to give this committee will be the truth, the whole truth, and nothing but the truth? [LR424]

ESTHER CASMER: I swear. [LR424]

SENATOR LATHROP: All right. Thank you very much and have a seat. Okay. The first thing I'll tell you is if you need anything like water, coffee, anything to be comfortable, let us know...or a break, although I don't think it's going to take that long. And all I'll ask you to do is as we're having this conversation that you make sure you speak up enough so that the record or the recording picks up your voice and we can get a good transcript. Okay? [LR424]

ESTHER CASMER: Okay. [LR424]

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SENATOR LATHROP: Very good. Let's start with your name if you don't mind. [LR424]

ESTHER CASMER: Esther Casmer. [LR424]

SENATOR LATHROP: And can you spell your last name for us? [LR424]

ESTHER CASMER: C-a-s-m-e-r. [LR424]

SENATOR LATHROP: And, Ms. Casmer, are you here by virtue of a subpoena issued by this committee? [LR424]

ESTHER CASMER: Yes, I am. [LR424]

SENATOR LATHROP: Okay. Can you tell us, Ms. Casmer, what your employment is at the present time? [LR424]

ESTHER CASMER: I am Chairperson of the Nebraska Board of Parole. [LR424]

SENATOR LATHROP: And when did you begin your tenure on the Board of Parole? [LR424]

ESTHER CASMER: Nineteen ninety-seven, December, I think. [LR424]

SENATOR LATHROP: So how many years would that be? [LR424]

ESTHER CASMER: Let's see, 19 years. [LR424]

SENATOR LATHROP: Pardon me? [LR424]

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ESTHER CASMER: Nineteen. [LR424]

SENATOR LATHROP: Oh, okay. And you haven't been the Chair of that board for the entire time, is that true? [LR424]

ESTHER CASMER: No. I have been the Chair at this time approximately eight years, nine. [LR424]

SENATOR LATHROP: Okay. Who first appointed you? [LR424]

ESTHER CASMER: On the board? [LR424]

SENATOR LATHROP: Yes. [LR424]

ESTHER CASMER: Governor Nelson. [LR424]

SENATOR LATHROP: Okay. Have you been...how long of a term do you serve when you're on the Parole Board? [LR424]

ESTHER CASMER: A six-year term. [LR424]

SENATOR LATHROP: And then each Governor has reappointed you up to the present Governor? [LR424]

ESTHER CASMER: That is correct. [LR424]

SENATOR LATHROP: That process requires that you go through a confirmation hearing in the Judiciary Committee? [LR424]

ESTHER CASMER: Yes. [LR424]

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SENATOR LATHROP: And you've been approved on each occasion. [LR424]

ESTHER CASMER: Yes, sir. [LR424]

SENATOR LATHROP: Okay. I'm not sure, as much as we've talked about parole in this committee and as much as Corrections has been an issue, that the committee fully understands--and I might be saying this because I don't fully understand--the Parole Board. So perhaps you could start with something really basic for us. How many members are there on the Parole Board? [LR424]

ESTHER CASMER: There are five board members at this point in time. One has retired, so there are four. [LR424]

SENATOR LATHROP: So when you're fully staffed, you have five members. [LR424]

ESTHER CASMER: That is correct. [LR424]

SENATOR LATHROP: And you're down one, so you're four at the present time? [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: Okay. Mr. Jenkins, can you...are you getting her recording? Okay, I didn't know. You have a soft voice and I don't know if it's just hard for me to hear or if we're not picking it up. [LR424]

ESTHER CASMER: I'll speak up. [LR424]

SENATOR LATHROP: Tell us what the role of...and maybe I'll say, when you started on

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the Parole Board in 1997, what was the role of the Parole Board? What's its purpose?
[LR424]

ESTHER CASMER: The purpose is to review each and every individual that's currently or at that time is incarcerated, those that have what is referred to as flat sentences. We see them one time. If they choose to wait, then they're automatically mandatorily discharged. However, it is our position to review each and every offender within the Department of Corrections and to determine whether or not they are eligible or recommended for parole through programming, family support systems, etcetera, and whether or not the institution is supporting. [LR424]

SENATOR LATHROP: Okay. So we've heard a lot about determining parole eligibility date, as you might expect or maybe you've read. A person that comes before the Parole Board though, other than the furlough programs that maybe we'll talk about in a minute, they have reached a point in their sentence where they're parole eligible and they come before you to make their pitch for being paroled. Is that true? [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: Do they...are they first recommended by the Department of Corrections? Can you share that process? How do they come to you? [LR424]

ESTHER CASMER: We see a number of individuals which we consider reviews. That's an executive session of which we receive information from the Department of Corrections, through their programming, through their behavior, whether or not they are in support of them. They also indicate personalized plans, community support. Those type of factors are indicated. We review the individual and determine whether or not they are prepared. When we look at their preparedness, we're looking at programming, we're looking at past history, possible past history on paroles. There's a lot of...there are many factors of which we use to determine. But the main thing that we look at is

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programming that has been recommended and programming that has been successfully completed. [LR424]

SENATOR LATHROP: Okay. So when a person comes into the Department of Corrections, if I'm sentenced from Douglas County--I'll use myself as the hypothetical inmate--if I'm sentenced in Douglas County, my first stop would be at the Diagnostic and Evaluation Center. Is that the case? [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: And if I understand the process at D&E, as it's called, they will do some type of an evaluation of each inmate that comes to the Department of Corrections and develop a plan? [LR424]

ESTHER CASMER: Correct. [LR424]

SENATOR LATHROP: Okay. And tell us what a typical plan looks like. [LR424]

ESTHER CASMER: What occurs at the Diagnostic and Evaluation unit is psychological testing, educational testing, whether or not it is determined that they are in need of substance abuse treatment, whether or not it's in-patient or out-patient, whether or not sex offender programming has been recommended. There's various programs of which they'll make an assessment. And when we review them at that period of time, we look at all of this information and we make a determination based on their parole eligibility, what are the chances are of them actually completing the program, whether or not it is available within the community that would be of standard, and a determination will be made. Also we put into the equation their behavior. [LR424]

SENATOR LATHROP: Okay. So how they function inside the Department of Corrections, whether they have a lot of write-ups or have been identified as people or

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an individual that violates the rules would be important to you; the plan that was developed by D&E and how much of it they've completed and their behavior; and then perhaps whether they have support when they get out from the Department of Corrections which improves the likelihood that they'll successfully complete parole. [LR424]

ESTHER CASMER: At D&E the programming is identified. Their personalized plan will come in after they have left the D&E facilities. [LR424]

SENATOR LATHROP: Okay. Who does the personalized plan? [LR424]

ESTHER CASMER: Case managers within the various facilities. [LR424]

SENATOR LATHROP: So again, I've just been sentenced. I'm in D&E. How long am I going to stay there before I'm moved to one of the facilities? [LR424]

ESTHER CASMER: That, I really couldn't give you a definite time... [LR424]

SENATOR LATHROP: Okay. [LR424]

ESTHER CASMER: ...because of the amount of movement that is currently going on regarding the jails, etcetera. [LR424]

SENATOR LATHROP: Okay. It depends on availability among other things. [LR424]

ESTHER CASMER: Of beds. [LR424]

SENATOR LATHROP: But once I'm moved to LCC, for example, then I develop or I'm provided a personalized plan. [LR424]

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ESTHER CASMER: That is correct. [LR424]

SENATOR LATHROP: Okay. When you started in this, on the Board of Parole, were the inmates completing all of their programming before they were paroled, generally? [LR424]

ESTHER CASMER: When I initially started, they were. That was one thing that was definitely a factor of which was placed into consideration, whether or not they had completed their programming. [LR424]

SENATOR LATHROP: So we'll talk about sort of modern day or current time. But if I'm given...if my personalized plan calls for me to go through four things, like substance abuse, violence, anger management, whatever those things might be, when you started on the Board of Parole, the expectation would be if I want to be paroled, that I've completed all of the programming. [LR424]

ESTHER CASMER: That is correct. [LR424]

SENATOR LATHROP: Okay. Did that change at some point? [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: And to what extent has there been a change in the model from you will complete all your programming and demonstrate your commitment to the completion of the programming, being a model prisoner to, well, we're going to have you complete some of the programming after you're placed on parole? [LR424]

ESTHER CASMER: When did it change? [LR424]

SENATOR LATHROP: When did it change? [LR424]

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ESTHER CASMER: Approximately 2008. [LR424]

SENATOR LATHROP: Can you speak up just a little bit more? [LR424]

ESTHER CASMER: Approximately 2008. [LR424]

SENATOR LATHROP: Okay. And what happened in 2008? Did we have some change in the regulations or the law or...? [LR424]

ESTHER CASMER: The Department of Corrections director was, at that time, very interested in doing the reentry form of corrections. [LR424]

SENATOR LATHROP: Okay. And that resulted in what with respect to completing the programming before one is paroled? [LR424]

ESTHER CASMER: The theory of a reentry program is programming can be done outside of the prison system, therefore, there was a faster pace on moving the individuals through the system. [LR424]

SENATOR LATHROP: So would it appear...and if you can't make this conclusion, I won't ask you to. But as I think back on the history of our population, we began to experience more and more pressure and getting closer to that 140 percent or maybe past the 140 percent of capacity around 2008. Did that play a role in the decision to have people...parolees, instead of completing their programming before they're paroled, doing all or part of their programming after they've been paroled? [LR424]

ESTHER CASMER: That is correct. [LR424]

SENATOR LATHROP: And how is it that you believe the overcrowding played a role in

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the changing of that model? Did somebody tell you that's what they were doing?
[LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: Okay. Who would have told you that? [LR424]

SENATOR LATHROP: Houston made it very clear that he had received permission or instructions to work very closely with the Board of Parole in order to move individuals out of the system at a faster rate. [LR424]

SENATOR LATHROP: To what extent after 2008 was an inmate required to complete any programming before they were paroled? [LR424]

ESTHER CASMER: To what extent? We... [LR424]

SENATOR LATHROP: I mean, did you...did the Board of Parole require that they do half of their programming before they were parole eligible or were there people after 2008 that were paroled to complete all of their programming? [LR424]

ESTHER CASMER: The only way I can honestly answer that, prior to that time, a lot of the programming, even though there were long waiting lists, was available in the institutions. The programming disappeared in the institutions, so to speak, phased out, and they were expected to complete it on the street. [LR424]

SENATOR LATHROP: How much of the programming...when you say the programming disappeared, did we literally go to no programming? Or were the lines so long that we couldn't parole people in a quick enough fashion to have them complete the programming before they were paroled? [LR424]

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ESTHER CASMER: It was a combination of both. Nonresidential substance abuse programming, they were no longer able to get involved in that. It depended on what institution they were placed in, whether or not mental health, per se, anger management programming was available. There were...at that time, it was no domestic violence programming available. It was very limited. And in having limited programs with the number of individuals incarcerated, it of course made the waiting lists longer. [LR424]

SENATOR LATHROP: And, Ms. Casmer, was the waiting...did the waiting list get longer because the population was so high? Or did we cut back on--I'll just use the term--man-hours devoted to programming? [LR424]

ESTHER CASMER: Combination of both, sir. [LR424]

SENATOR LATHROP: So the population goes up and the number of people that are providing the programming goes down. [LR424]

ESTHER CASMER: Correct. [LR424]

SENATOR LATHROP: And in order to move enough people out to manage the overcrowding, we began to parole people. And instead of having them complete their programming, we sent them on the street with a condition of parole being that they will actually secure the programming. [LR424]

ESTHER CASMER: That is correct. [LR424]

SENATOR LATHROP: When those folks were sent out into the community to complete their programming, was that paid for by the Department of Corrections or were the...was it the expectation that the inmate would, or the parolee at that point, provide that programming at their own expense? [LR424]

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ESTHER CASMER: It depended on the programming that was required. There were vouchers that were available after a point in time in the community through Parole Administration. They did have vouchers. But the majority of the programming would be at the offender's expense, the parolee's expense. [LR424]

SENATOR LATHROP: Okay. So under the pre-2008 model, we knew that they were completing the programming because they weren't going to get out on parole unless they had. But afterwards, they were called upon to get the programming postrelease and much of it at their own expense. My next question is, were they doing it? What kind of compliance or...yeah, what kind of compliance did you get from those parolees who had been discharged with instructions to secure the programming they once got inside the Department of Corrections? [LR424]

ESTHER CASMER: The only...there's no...I have not requested data specifically on that. But as the numbers of parolees increased, so did the number of revocations. [LR424]

SENATOR LATHROP: Okay. Were the revocations related to the failure to secure the programming that was once provided inside the Department of Corrections? [LR424]

ESTHER CASMER: Some, yes. I couldn't say a lot of them or many of them because I don't have the data on that. But as a whole, we saw more and more revocations. [LR424]

SENATOR LATHROP: Okay. So when a person was discharged to go and get anger management or substance abuse, something like that, on the outside and didn't, would their parole be revoked? [LR424]

ESTHER CASMER: It would be considered a technical violation. And normally, when those type of situations occur, the minute that they see their freedom about to become

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incarceration, they...I'd say several of them will go out and make sure they get into the programming. [LR424]

SENATOR LATHROP: So do I take from that, that they somehow get word from your office or a parole officer that they need to appear in front of the Parole Board to account for the fact that they haven't completed, for example, an anger management class? [LR424]

ESTHER CASMER: That could happen, yes. [LR424]

SENATOR LATHROP: Was money an issue in their failure to get the programming? [LR424]

ESTHER CASMER: Sometimes. [LR424]

SENATOR LATHROP: So instead of getting it on the inside, like they did before 2008, they were sent out on parole to get programming, some of which they couldn't afford. [LR424]

ESTHER CASMER: That is what they say. [LR424]

SENATOR LATHROP: If they couldn't afford it, would you revoke them? You have them in there and you give them the talk the first time. And the second time, what happens? [LR424]

ESTHER CASMER: If an individual has a history of violence, it is imperative that they address that issue. If they refuse at some point in time, we have to look at public safety and bring them back in. [LR424]

SENATOR LATHROP: How many chances were you giving these people? [LR424]

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ESTHER CASMER: We permitted Parole Administration on many occasions to hold administrative hearings rather than bring them in. We were encouraged to work with these individuals, which the parole officers have done a very good job in performing their duties in that aspect. They would find, to the best of their ability, places where they could receive some type of programming. There are centers through different agencies. They would...if the individual truly wanted to get involved in the programming, the parole officers found a way for them to do it. [LR424]

SENATOR LATHROP: Okay. So you told us that the...that things changed in 2008 and it was related to the overcrowding. Did the standard for revoking parole and bringing people back to the institution change at or about the same time? [LR424]

ESTHER CASMER: Yes. We started... [LR424]

SENATOR LATHROP: And were the parolees...were parolees allowed to have more violations before they were brought back than would have been the case before 2008? [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: So in other words, we're moving...because of the overcrowding, we're moving more people out that haven't completed their programming. And those who are violating parole that would have before 2008 had been brought back to the Department of Corrections--in other words, back to the prison--we're giving them more and more chances because we don't want to bring them back on account of overcrowding. [LR424]

ESTHER CASMER: Parole Administration uses what they refer to as a matrix. Minor violations, they're handled administratively. However, if there is a violation where you

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see this person is losing control regarding substance abuse issues, regarding domestic violence, there is no chance that we would leave them out. [LR424]

SENATOR LATHROP: Okay, so if somebody has a domestic violence episode, they're involved in assaulting a family member or a girlfriend or something like that, they're coming back. [LR424]

ESTHER CASMER: Any assaultive behavior, oh, yes. [LR424]

SENATOR LATHROP: Okay. But the people who weren't attending the programming weren't brought back... [LR424]

ESTHER CASMER: Not right... [LR424]

SENATOR LATHROP: ...as quickly as they would have in the past because of the overcrowding. Is that true? [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: Okay. For a person to be placed on parole, do they...before they get to the Board of Parole, are they first recommended by the Department of Corrections? [LR424]

ESTHER CASMER: Yes, they make the recommendations. [LR424]

SENATOR LATHROP: Okay, so for me...I've been sentenced. For me to be placed on parole, I have to have two signatures on my slip, if you will. One is the Department of Corrections or the director, and the other is the Board of Parole. [LR424]

ESTHER CASMER: No, sir. What occurs when...they have a parole progress report,

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which is written by their case manager, caseworker, and it is signed off by the unit administrator. And at that point in time, we see it. If we choose to parole this person, the director's signature is not on the parole certificate. We are a separate agency so, therefore, it would only be the members of the board that would be signing off on the furloughs...not furlough but the... [LR424]

SENATOR LATHROP: Okay. And I used the signature as a metaphor. Maybe I'll do it differently. Does the director or the Department of Corrections recommend a prospect to the board? [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: So by the time a person is paroled, both the department and the Parole Board have okayed it. [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: All right. When there is a parole hearing...and, you know, I've been a lawyer for a long time. I've never done a parole hearing. Revocation, I've never been in the room, and so I ask this question mostly because I don't know. The term "board" would suggest that I'm going to appear before more than one person. Is that true? [LR424]

ESTHER CASMER: Correct. Yes. [LR424]

SENATOR LATHROP: And if I'm parole eligible and the department thinks I'm a decent prospect and I have a hearing, are there...how many Parole Board members will there be that I must appear in front of? [LR424]

ESTHER CASMER: No less than three. [LR424]

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SENATOR LATHROP: But it can be as many as five. [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: Okay. Is it typically a three-person board? [LR424]

ESTHER CASMER: No, it is not. [LR424]

SENATOR LATHROP: Okay. And are these held at the various institutions? [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: Okay. Talk to this committee about the role of the Parole Board as a neutral gatekeeper. Is that a fair description of the intended role of the Board of Parole? [LR424]

ESTHER CASMER: By legislation, that was the intent. [LR424]

SENATOR LATHROP: Okay. And maybe I can go back to something even more fundamental. The Board of Parole is a separate agency from the Department of Corrections. Is that right? [LR424]

ESTHER CASMER: That is correct. [LR424]

SENATOR LATHROP: And if we were thinking about this in terms of maybe a factory and an inspector, the Department of Corrections, it's their responsibility to have people parole ready by the time they're parole eligible. [LR424]

ESTHER CASMER: That is correct. [LR424]

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SENATOR LATHROP: And they may recommend a number of inmates for parole, but ultimately they have to come before the Board of Parole for approval. [LR424]

ESTHER CASMER: That is correct. [LR424]

SENATOR LATHROP: And that approval is the board exercising its own judgment about whether this person before them, the inmate or the prospect, is...done the things that you've described but is also not a risk to reoffend or a risk to the public. [LR424]

ESTHER CASMER: That is correct. [LR424]

SENATOR LATHROP: So a "neutral gatekeeper" would be a fair description of the role of the Board of Parole? [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: So, Ms. Casmer, did that ever change during your tenure at the Board of Parole? [LR424]

ESTHER CASMER: I felt it did. [LR424]

SENATOR LATHROP: Okay. And tell me when you felt that the...and I'll get to the "why" and the "how." But tell me when you felt like the role of neutral gatekeeper changed during your tenure. [LR424]

ESTHER CASMER: When the population increased. [LR424]

SENATOR LATHROP: And do you have a year when that might have happened, or a time frame? [LR424]

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ESTHER CASMER: There was some movement in 2008, but it gradually, throughout those upcoming years, continued to be more stressful. [LR424]

SENATOR LATHROP: And by "more stressful," the role of neutral gatekeeper became compromised. [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: Tell us, Ms. Casmer, what happened in 2009. Well, strike that. Tell us in what way you feel like the role of the Parole Board became less a neutral gatekeeper. [LR424]

ESTHER CASMER: I was constantly being told by the director of the Department of Corrections how many people the board should parole on a monthly basis in order to keep the numbers down. No, I did not comply. [LR424]

SENATOR LATHROP: And when you talk about the director, you're talking about Bob Houston. [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: Did you have some conversation, or more than one conversation, with Mr. Houston where he attempted to impose a quota on the Board of Parole... [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: ...in terms of the number of people that the board should approve on a weekly or monthly or annual basis? [LR424]

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ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: How frequently did you have conversations with Mr. Houston about the quota he was trying to impose on the Board of Parole? [LR424]

ESTHER CASMER: It was a continuum. Also, he would pop into my office in the mornings and wanted to discuss stats and what have you. And then we would hear the same thing at the Department of Corrections and the Board of Parole meetings. He would present stats on what we needed to do. [LR424]

SENATOR LATHROP: How was that communicated to you? Or what did you feel or experience when Director Houston was telling you how many people you needed to parole per month in order to make the numbers work at the Department of Corrections? [LR424]

ESTHER CASMER: How did I feel? [LR424]

SENATOR LATHROP: Yes. [LR424]

ESTHER CASMER: Pressured. [LR424]

SENATOR LATHROP: Do you think that was the intent? [LR424]

ESTHER CASMER: I can only tell you what I felt. I felt pressured. [LR424]

SENATOR LATHROP: Were there...do you remember what the quota...or the standard that Director Houston set for you? [LR424]

ESTHER CASMER: I remember the first...he gave me some verbal numbers, and then

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he had one of his staff come to my office with a quota of...at that time, 168 people is what we needed to parole per month. And the individual apologized because they were embarrassed to come to me with that. [LR424]

SENATOR LATHROP: So the first communication...and I just had my trusty clerk here tell me that I have to ask you to speak up a little bit if you don't mind... [LR424]

ESTHER CASMER: Oh, okay. [LR424]

SENATOR LATHROP: And I hate to keep reminding you to do that. [LR424]

ESTHER CASMER: Okay. [LR424]

SENATOR LATHROP: I know this isn't easy for you but, if you can, try to remember to do that. The first communication would have been sometime in 2009. And it would have been someone from the Department of Corrections... [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: ...came into your office and said that you were...the expectation now was that you would parole 168 people per month. [LR424]

ESTHER CASMER: Um-hum, and... [LR424]

SENATOR LATHROP: Is that true? [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: Okay. And do you remember who came to see you that day? [LR424]

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ESTHER CASMER: He's retired now: Steve King. [LR424]

SENATOR LATHROP: Steve King... [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: ...had been dispatched by Director Houston to provide you with this quota that you were expected to achieve in the parole process. [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: What was Steve King's job, besides the guy that comes down from the Department of Corrections and talks to you about a quota? [LR424]

ESTHER CASMER: Oh, I'm sorry. I'm nervous and I forget his exact title. But he was one of the administrators. [LR424]

SENATOR LATHROP: Okay. And when he came and presented that quota to you, what did he have to say about it? [LR424]

ESTHER CASMER: He just told me he was embarrassed to present this to me. He said...and his words, I'll never forget them. He was always a very fair individual. He said, they keep saying what the board needs to do, and at this point in time DCS isn't doing anything. [LR424]

SENATOR LATHROP: When he said, they keep saying what the Board of Parole needs to do and DCS isn't doing anything, do you know what he meant by that? [LR424]

ESTHER CASMER: Yes. [LR424]

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SENATOR LATHROP: Tell us what you think he meant by that. [LR424]

ESTHER CASMER: We were always given what we should do, how we should do it, and it just became a constant. [LR424]

SENATOR LATHROP: So you just described the first time somebody gave you a quota, which was 168 people a month. [LR424]

ESTHER CASMER: Um-hum, yeah, um-hum. [LR424]

SENATOR LATHROP: And how did that compare to your historical number of inmates released per month on parole? [LR424]

ESTHER CASMER: I don't have the data, but we weren't releasing that many, per se, at that time. [LR424]

SENATOR LATHROP: Do you...and I appreciate you don't know the exact numbers. But would that represent doubling the number of people you put out or... [LR424]

ESTHER CASMER: I... [LR424]

SENATOR LATHROP: ...or 130 percent of the people you were putting out? Do you know? [LR424]

ESTHER CASMER: It would increase because some months we had noticed we were doing like 100. There would 68 more people basically. But it didn't stop there. It continued each month. He was always saying that--we've got to get these people out of here--and, in doing so, he wanted the numbers to increase. [LR424]

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SENATOR LATHROP: And when you say "he," is this Mr. King or is this Mr. Houston?
[LR424]

ESTHER CASMER: Mr. Houston. [LR424]

SENATOR LATHROP: So after King visited you the first time and said, we need you to send 168 people out, you're going from roughly 100...or they're asking you to go from roughly 100 qualified people to 168 per month. [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: Did he send Mr. King over on other occasions or did he begin to make it a personal visit? [LR424]

ESTHER CASMER: After that, Steve King never came to my office with that again. It was Mr. Houston making his personal appearances. [LR424]

SENATOR LATHROP: After Mr. King talked to you about putting out 168 persons a month, did you express that you didn't think there were...and I don't know if you did or not or if there was or wasn't, so I'm asking this question and maybe it's assumed something that we haven't covered yet. But did you talk about whether you thought there were 168 people that were qualified for parole per month at the time? [LR424]

ESTHER CASMER: He was the messenger. I made no comment. [LR424]

SENATOR LATHROP: Okay. After...and I think you already answered this earlier on. But after you were given that quota, did you meet it? [LR424]

ESTHER CASMER: No. [LR424]

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SENATOR LATHROP: When he said 168 people, did you put 168 people out that month? [LR424]

ESTHER CASMER: No. [LR424]

SENATOR LATHROP: Okay. So was there any visit from anybody over at the Department of Corrections or the administration after you didn't meet the quota Mr. King shared with you from the director? [LR424]

ESTHER CASMER: It was always the director. [LR424]

SENATOR LATHROP: Okay. So what is the next conversation you have? It's going to be with Bob Houston? [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: And are we sometime in 2009? [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: And just so that we understand or we have the stage set, you're already beginning to parole some individuals who haven't completed their programming. So we've gone into a different model, which is no longer are we requiring everyone to complete their programming and demonstrate their worthiness. We're now sending some people out to get it on the street. You get a quota of 168 and don't meet it and the director comes by. What does he have to say about that? [LR424]

ESTHER CASMER: Well, we've got to take a look at this; we've got to get these numbers up. [LR424]

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SENATOR LATHROP: And was that in your office? [LR424]

ESTHER CASMER: The majority. [LR424]

SENATOR LATHROP: Or did he summon you to his office? [LR424]

ESTHER CASMER: No. [LR424]

SENATOR LATHROP: Or how did that happen? [LR424]

ESTHER CASMER: He'd always stop in my office. [LR424]

SENATOR LATHROP: Okay, how frequently did you begin to see Director Houston in your office to talk about the quotas or the number of people that were placed on parole? [LR424]

ESTHER CASMER: More than I'd care to even count. [LR424]

SENATOR LATHROP: Okay. [LR424]

ESTHER CASMER: If we went two days without seeing him, it was two days at the most. [LR424]

SENATOR LATHROP: So... [LR424]

ESTHER CASMER: It was almost a morning thing. It was like on his way to work he'd think of these ideas and wanted to meet with me first thing in the morning. [LR424]

SENATOR LATHROP: Was your...did you share office space? Were you in the same building? [LR424]

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ESTHER CASMER: We were in the same building. [LR424]

SENATOR LATHROP: Okay. So this is the director showing up for work. You're at work, and he'd come down the hall or into whatever space you occupied in the same building and talk to you about the number of people you were... [LR424]

ESTHER CASMER: Stats, how many people that we need to get out, whatever new programming he wanted to implement with the board's support. [LR424]

SENATOR LATHROP: Was he pressuring you to increase your numbers? [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: What form...or describe the pressure that was exerted by the director to try to get you to increase the number of people that were placed on parole. [LR424]

ESTHER CASMER: He would always remind us, whoever he was speaking to regarding changes that he wanted to make, that he had conversations on a daily basis. I don't know. I wasn't privileged to those conversations. But this is what he would say, that he spoke with the Chief of Staff on a daily basis. [LR424]

SENATOR LATHROP: So when he would come into your office every other day and talk to you about the necessity of getting more people on parole and out the gate and rightsizing or diminishing the overcrowding through the parole process, he would remind you that he'd had conversations daily with the Governor's Chief of Staff? [LR424]

ESTHER CASMER: Yes. [LR424]

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SENATOR LATHROP: That would be Larry Bare? Did he mention Larry Bare's name?
[LR424]

ESTHER CASMER: Yes, he did. [LR424]

SENATOR LATHROP: Did that cause you to feel more pressure to move more people
out? [LR424]

ESTHER CASMER: I was expected to be a team player. I was expected to work very
closely with the Department of Corrections in order to reduce the population. I take pride
in what I do, and I did not want to be viewed as someone who was not willing to
cooperate, although I didn't always agree. I didn't always do it. But that was the situation
that the board was placed in, not only myself but the board. We did not want to be
viewed as being obstinate, set in our ways. We attempted to do what we were hired to
do, and that was to be the gatekeeper, the safeguard of the citizens of Nebraska. And
there were times we felt very pressured, all of us. [LR424]

SENATOR LATHROP: You talked about the director coming into your office frequently,
reminding you that he had heard from the Governor's Chief of Staff and that he would
on those occasions exert pressure for you to parole more people. Did you ever have a
meeting with the Governor's Chief of Staff where that was the subject? [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: Can you tell us how many occasions you met with Mr. Bare for
the purpose of discussing the parole process and the number of people who were to be
paroled on a monthly basis, or some quota? [LR424]

ESTHER CASMER: I cannot quote the number of times. It wasn't a lot. But when we did
meet, Houston usually did all the talking about the numbers and closing units and

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decreasing the population. It was that type of conversation. [LR424]

SENATOR LATHROP: Did the Chief of Staff, the Governor's Chief of Staff, Mr. Bare, ever provide you with a quota? [LR424]

ESTHER CASMER: No, he never did. What he asked of us, asked me, well, you know, basically, what was I doing to assist DCS in paroling more people. Initially, the board, when an individual had been set for a hearing--this is just an example... [LR424]

SENATOR LATHROP: Sure. [LR424]

ESTHER CASMER: When they had been set for a hearing and they receive a drug or an intoxicant abuse misconduct report, gone through the programming, applied the skills, if they involve themselves with the narcotics or the alcohol, for the first misconduct report we would defer their hearing six months--excuse me, defer...yeah, six...I'm sorry--either six months or a year. We've changed it so often through the past few years. Then we reduced it down to six months to try and move individuals. Then we reduced it down to three months. Then we reduced it down to no sanctions unless they had the second one. I feel that we had compromised ourselves. None of us felt good about it, but this is what we were expected to do in order to attempt to resolve the situation. [LR424]

SENATOR LATHROP: And that was the kind of conversation you'd have with the Chief of Staff? [LR424]

ESTHER CASMER: Yes, what we were doing, how many were scheduled for hearings, etcetera. [LR424]

SENATOR LATHROP: Okay. When you met with the Governor's Chief of Staff, did you feel pressure to parole more individuals as a result of those meetings? [LR424]

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ESTHER CASMER: Told, point blank and simple, you will work with the Department of Corrections and...to come up with some solutions. [LR424]

SENATOR LATHROP: Ms. Casmer, did the Governor's Chief of Staff ever threaten your job? [LR424]

ESTHER CASMER: Jim Pearson and myself... [LR424]

SENATOR LATHROP: You'll have to speak up just a little bit for me. I'm sorry. [LR424]

ESTHER CASMER: Jim Pearson and myself--Jim Pearson was the vice chair--we were in the office. We were talking and we were asking questions and... [LR424]

SENATOR LATHROP: Whose office were you in? [LR424]

ESTHER CASMER: Mr. Bare's office. [LR424]

SENATOR LATHROP: Okay. [LR424]

ESTHER CASMER: And he did...we were concerned about and asking questions, and Jim was somewhat...a little...well, extremely concerned. And he...the Chief of Staff told us: Don't be concerned about losing your jobs for paroling people; be concerned about losing your jobs for not paroling people. [LR424]

SENATOR LATHROP: Was anybody else present besides you and Mr. Pearson and Mr. Bare? [LR424]

ESTHER CASMER: I believe Mr. Becker was. "Becker," is that his name? [LR424]

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SENATOR LATHROP: That would be Nelson's chief of staff. [LR424]

ESTHER CASMER: No. Yeah. [LR424]

SENATOR LATHROP: Pretty sure he wasn't there. [LR424]

ESTHER CASMER: No, he wasn't there. I'm trying to think of his name. He just left the office. Jim... [LR424]

SENATOR LATHROP: In any case, there might have been one other person. [LR424]

ESTHER CASMER: Yeah, at least. [LR424]

SENATOR LATHROP: And what concern was Mr. Pearson expressing to the Governor's Chief of Staff that led him to advise that you, or the two of you, that you wouldn't be fired for releasing too many people, you'd be fired for not releasing enough? [LR424]

ESTHER CASMER: I believe Jim was questioning allowing...or making sure individuals had completed programming before they were paroled, specifically DWIs or DUIs. [LR424]

SENATOR LATHROP: So that was the circumstance. And one of the examples of a meeting you had with Mr. Bare before, or perhaps at the same time as this threat was made, related to...or it provides us with another example of what was done to alleviate overcrowding and the attempts to use the Parole Board to do that, which is to say, if I am sentenced there and I'm identified as having an alcohol problem and/or a drug program and I complete the programming and then I'm caught with a dirty UI (sic)... [LR424]

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ESTHER CASMER: UA. [LR424]

SENATOR LATHROP: UA? UI, I don't even know what I'm thinking there, (laugh) a UA, that we just look the other way and parole him nonetheless... [LR424]

ESTHER CASMER: No. [LR424]

SENATOR LATHROP: ...even though that might have in the past got him a year's cooling off in the penitentiary. [LR424]

ESTHER CASMER: That's what we did. The information that was given to the Governor's Office indicated by Bob Houston was that all this programming was available in the community. So the drive was to get them out into the community to get the programming. Hundred dollars' gate pay doesn't go very far. A lot of individuals do have family support. They have people in the community--pastors, etcetera, mentors--but not everyone does. And not everyone has the resources. You look at this state and the one thing that this state does not have, and that is an ample or a good transportation system. Lincoln and Omaha are the two cities that have transportation. It is not perfect. When you start looking at the surrounding towns in this state, there's no public transportation, none. So we look at it as, how can they get to the programming? How can they afford the programming? Are we setting these individuals up for failure? How are they going to get to their jobs? They have to rely on others. Well, if we push them out before they get the program, what are the chances? [LR424]

SENATOR LATHROP: What did you find to be the case? You changed the model or...not you changed the model. The model changed in 2008 from "complete all your programming" to "get it on the outside." What was your experience with that? It sounds like you ran into people who couldn't afford it, didn't have the support or the transportation. [LR424]

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ESTHER CASMER: Yes, on numerous occasions. I'm not saying Mr. Houston's idea of reentry is a bad situation. But when you look at reentry, you have to look at the state itself. You have to look at the population. You have to look at what's available in that state. You cannot take New York's reentry program and bring it to Nebraska and expect it to work. That isn't how it works. [LR424]

SENATOR LATHROP: Did you express that to somebody at some point in time, your skepticism about this change in the way parole was going to be done? [LR424]

ESTHER CASMER: I told Houston on numerous occasions. I remember one conversation in my office. Oh, man. What happened was he went gung-ho with the reentry program. And the people hadn't been trained to respond to the reentry. His staff hadn't. And I asked him, I says, when are you going to start training your line staff as far as reentry? You don't start the program and train afterwards. [LR424]

SENATOR LATHROP: And line staff, are those people on the outside that are going to provide assistance? [LR424]

ESTHER CASMER: No. These are people in the facilities, the caseworkers, the case managers. They need to be trained in those areas so that they could research what was available in the communities. You can't just say, we're going to start reentry, and then go full force. It doesn't work. [LR424]

SENATOR LATHROP: Well, was that what happened? [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: So Houston has you putting people out on parole. The people that are supposed to support the parolee before they're placed on parole aren't trained to do their job. So these people go out there without the resources, without any aid or

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assistance or direction? Is that kind of what happened? [LR424]

ESTHER CASMER: They have their parole officer. But when you look at the numbers of individuals that a parole officer is dealing with, they're there to assist you. They're not going to hold your hand. They will guide you, but they can't walk with you, hand in hand. Say, for instance, I'm on parole. And this is exactly what happens on numerous occasions. Okay, I'm a female. I'm on parole. My family is taking care of my children. The day that I walk out, guess what? Here are your children. Now, my parole officer expects me to get programming. My parole officer expects me to get a full-time job. And guess what? I am learning to deal with my children. My children are learning to deal with me. [LR424]

SENATOR LATHROP: And you have no day care. [LR424]

ESTHER CASMER: I have no day care. I've got to find day care. I've got to find a way to get to...get back and forth to work. What happens? [LR424]

SENATOR LATHROP: Well, you've described these situations or you've given us a number of examples, and it makes me think that it happened frequently, these failures. And you're nodding your head yes. [LR424]

ESTHER CASMER: It does happen. It... [LR424]

SENATOR LATHROP: So what happened to these people? Were we so eager to not have them return that we looked the other way? [LR424]

ESTHER CASMER: I won't say we looked the other way. A lot of leniency was involved. [LR424]

SENATOR LATHROP: Okay. And that was a result of not wanting to bring them back

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and return them to the overpopulated corrections system? [LR424]

ESTHER CASMER: I'd say twofold. There are times when you find individuals in the community that see male and female offenders struggling and they will reach out. And I think if it wasn't for them, we would see a lot more failures. [LR424]

SENATOR LATHROP: But as it is, or as it was... [LR424]

ESTHER CASMER: It's difficult. [LR424]

SENATOR LATHROP: ...I guess still is, there's still a lot of failures and there's, as you say, a lot of leniency or looking the other way. [LR424]

ESTHER CASMER: Using the matrix system "technicals" and what have you, as far as being on parole...the other thing, too, I want to stress, please... [LR424]

SENATOR LATHROP: Sure. [LR424]

ESTHER CASMER: These are not perfect individuals that we're paroling. A lot of them lack coping skills. They lack job skills. There's a lot of things that are lacking as far as their ability to function. That is what a parole officer is there for. They will guide them. They do the best that they can. Some individuals, they...because of the lack of coping skills and the lack of programming in order to learn these coping skills, that is the failure, the lack of the programming. [LR424]

SENATOR LATHROP: That was cuts on the inside... [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: ...before they ever got to the Parole Board. [LR424]

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ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: You talked--and I appreciate the examples and answering the questions--you talked about the pressure that was exerted on you by both the Governor's Chief of Staff and Director Houston. And it strikes me that we're, with this pressure, blurring the lines between the two agencies. In other words, the Department of Corrections...you're now becoming an instrument of the Department of Corrections' problem with respect to overcrowding. [LR424]

ESTHER CASMER: That is correct. [LR424]

SENATOR LATHROP: Tell us about the extent to which you believe...you're supposed to be a neutral gatekeeper and a separate agency, a separate appointment by the Governor and independent of the Department of Corrections. And it sounds like those lines began to get blurred and your answer to that was, yes, that's true. Tell us the extent to which those lines were blurred and the extent to which you were no longer an independent gatekeeper but became an instrument of the Department of Corrections. [LR424]

ESTHER CASMER: With the RFP program. [LR424]

SENATOR LATHROP: Were you involved in the RFP program? [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: That's where you think the lines got completely blurred. [LR424]

ESTHER CASMER: Yes. [LR424]

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SENATOR LATHROP: Then we're going to talk about the RFP program. Whose idea was the RFP program, if you know? [LR424]

ESTHER CASMER: At a brainstorm meeting with the Department of Corrections, I came up with the RFP program. It was taken off the model of the extended leave program. When I mentioned it and they said no, I asked, what happened with the ELP program? And I... [LR424]

SENATOR LATHROP: What was the ELP program? [LR424]

ESTHER CASMER: Extended leave program, that was a number of years back. I couldn't remember what the problem was with the program, other than the fact I knew the judges were not pleased with the program and that's why it stopped. And I was told it was because it had no ending date. Well, initially, I says, well, what about putting a six-month date on it and only people that are set for a hearing, nonviolent, could you implement something like that? Well, they thought about it and apparently they worked and came up with a formula for it and that was it. [LR424]

SENATOR LATHROP: So, so far, you just...you're sitting around a brainstorming session on how can we help alleviate overcrowding. [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: And is the goal to find some path other than parole? [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: How was this conceived? Was it...it looks to me like there are people on the RFP program who are not yet parole eligible. Was that the intended target? [LR424]

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ESTHER CASMER: No. [LR424]

SENATOR LATHROP: What's our intended target when you were having the brainstorming session and the RFP program was first discussed? [LR424]

ESTHER CASMER: The intended target was individuals that were set for a hearing and it wouldn't extend longer than six months. Now that's the discussion that was taking place. Discussions after that I was not involved in. The program was in the formulating stage and Houston invited me to go to Douglas County and speak with the district judges regarding the RFP program. [LR424]

SENATOR LATHROP: And just to be clear, you talk about it in a brainstorming session. Are you involved at all until Houston brings...he's taken your idea and gone and created a program. [LR424]

ESTHER CASMER: Yes, um-hum, it was... [LR424]

SENATOR LATHROP: Okay. And at some point, he brings you back into the conversation to go sell it to the district court judges. [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: Did anybody say why this was happening? Was it intended to help alleviate overcrowding? [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: So it was devised as a tool to help get the numbers down inside the Department of Corrections. [LR424]

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ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: And originally, it was going to be people who were within six months of their parole eligibility date. [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: And it was intended to be nonviolent offenders. [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: When Director Houston enlisted you to speak to the district court judges, what county were you going to, or did you do it all across the state? [LR424]

ESTHER CASMER: Douglas. [LR424]

SENATOR LATHROP: Okay. Was there a reason that he was concerned about Douglas County, if you know? [LR424]

ESTHER CASMER: No. He had planned, as far as the information that I received, he had planned to visit with the different judges and that at no time would anyone be released on RFP without the county officials being in agreement. [LR424]

SENATOR LATHROP: So was it the district court judges in Douglas County that had a problem with this earlier program? [LR424]

ESTHER CASMER: I don't know. [LR424]

SENATOR LATHROP: Okay. But Director Houston, after he developed this concept,

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then felt he had to sell it to the district court judges in Douglas County. [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: And he took... [LR424]

ESTHER CASMER: That was the initial county. [LR424]

SENATOR LATHROP: And he took you along to make the pitch. [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: Did you meet with all the judges at once, or did you go from chamber to chamber and... [LR424]

ESTHER CASMER: It was a working lunch. We met with them all at once, those that were available. [LR424]

SENATOR LATHROP: Do you know when this occurred? [LR424]

ESTHER CASMER: Oh, I don't remember the date. [LR424]

SENATOR LATHROP: Are we in 2008 or '09, this same time when... [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: ...the push is on? [LR424]

ESTHER CASMER: Yes. [LR424]

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SENATOR LATHROP: Okay. And did you make the pitch to the district court judges or did Bob Houston? [LR424]

ESTHER CASMER: Bob Houston made the pitch that unless they approved the individuals being out on RFP, they would not be placed on RFP. They would have the final say. Also, the agreement was no violent offenders. I gave my word and so did he. [LR424]

SENATOR LATHROP: So you're sitting around with the district court judges in Douglas County having this meeting and selling the RFP program. And one of the tenets of that program that you both promised would be true is that the program would not be available to violent offenders. [LR424]

ESTHER CASMER: That is correct. [LR424]

SENATOR LATHROP: Okay. What happened next? [LR424]

ESTHER CASMER: I did not realize that Houston had not received the approval from the judges to add violent offenders to the RFP program. I did not realize that they were unaware of it until it hit the paper or a judge complained. And at this time, if I may,... [LR424]

SENATOR LATHROP: You may. [LR424]

ESTHER CASMER: ...I offer my deepest apologies to the judges in Douglas County. I never had any intentions of going against my word that I gave to them. I feel someone else took that and ran with it. It was not me. I...that has bothered me. It has been a great concern of mine. I'm a person of my word and I gave it, and someone else changed the oath or the promise that was given. [LR424]

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SENATOR LATHROP: When you went up to Omaha to talk to the judges, had the RFP already been developed? In other words, these regulations that were developed outside of the law, in my opinion, by the Department of Corrections, had they already been developed? Or did that happen subsequent to your visit with the judges? [LR424]

ESTHER CASMER: It was already developed. At that point in time, it needed to be approved by the judges in different counties. They...I was with him when he went to Lancaster County, but I was not with him when he went to the other counties. [LR424]

SENATOR LATHROP: Ms. Casmer, when you say that the district court judges needed to sign off on the RFP program, are you saying that they needed to be on board with it as opposed to they need to sign off on each individual that is placed on the RFP program? [LR424]

ESTHER CASMER: They needed to be on board with it. [LR424]

SENATOR LATHROP: Okay. [LR424]

ESTHER CASMER: That was the problem with the other program, is that the judges were not advised. [LR424]

SENATOR LATHROP: Okay. So Houston continues to secure enough district court judges' approval that the RFP program is now underway. [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: Did you have a conversation with Mr. Houston about the RFP program as a tool for alleviating overcrowding at the Department of Corrections? [LR424]

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ESTHER CASMER: The conversation at that time was the initial conversation as far as the brainstorming to look at program...implementing program. That would help reduce the population. [LR424]

SENATOR LATHROP: Okay. But did anybody forecast the number of people you'd be able to put out? [LR424]

ESTHER CASMER: No. I didn't. [LR424]

SENATOR LATHROP: In other words, they didn't say, well, with this we can get another 40 guys a month out, or something like that? [LR424]

ESTHER CASMER: No. [LR424]

SENATOR LATHROP: Okay. [LR424]

ESTHER CASMER: I had no privilege to those conversations. [LR424]

SENATOR LATHROP: And when I looked at those regulations--and I don't have them in front of me, but we did two meetings ago...no, one meeting ago, when we had the Governor in here--I noticed, on the regulations, they're promulgated by the Department of Corrections, again, outside of the Administrative Procedures Act, which I wouldn't expect you to be the gatekeeper on that one, Ms. Casmer. But they're signed off by Bob Houston and by you. [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: And so we got one department promulgating these regulations that are promulgated off the grid, and then they have you sign off on them. [LR424]

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ESTHER CASMER: Yes. In fact, one... [LR424]

SENATOR LATHROP: You are the head of a different agency of the executive branch of government. [LR424]

ESTHER CASMER: That is correct. [LR424]

SENATOR LATHROP: Is this where the lines get blurred? [LR424]

ESTHER CASMER: Very much so. [LR424]

SENATOR LATHROP: Why were you...why were...who asked you to sign off on those regulations for the RFP program? [LR424]

ESTHER CASMER: I did not want to sign. I did not want the board to be involved in it. And I was told by George Green that that was the only way the program could be validated, was through our signature. And again, I was expected to work with the Department of Corrections. [LR424]

SENATOR LATHROP: Okay. George Green telling you that, did anybody else tell you that, that you...the expectation was that you were going to sign these regulations? [LR424]

ESTHER CASMER: No. [LR424]

SENATOR LATHROP: Sometimes, us lawyers that...we learn this in law school. I remember Dean Skolnick teaching contracts. And he told us, you're going to develop a smell test as lawyers. Did this one pass the smell test for you when somebody told you, the head of Parole, that you needed to sign off on some regulations for a program developed by the Department of Corrections? [LR424]

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ESTHER CASMER: No, because, unfortunately, the Parole Board's signature is required on any type of furloughs. Any extended leave outside of the prison, our signatures have always been required. [LR424]

SENATOR LATHROP: It's required for you to approve an individual but not necessarily the regulations. [LR424]

ESTHER CASMER: That's true. [LR424]

SENATOR LATHROP: Did you feel pressure to sign those regulations? [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: When you signed the regulations initially, did you notice that it was a program not available to violent offenders? [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: In other words, before you signed them, you looked at them and you said, well, I may be uncomfortable with this and I don't know why they have me, the director...or the head of the Parole Board signing, but at least it has the thing that's important to me, which is no violent offenders. [LR424]

ESTHER CASMER: Correct. [LR424]

SENATOR LATHROP: Something like that? And did they have you sign each new version of those regulations? [LR424]

ESTHER CASMER: Yes. [LR424]

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SENATOR LATHROP: After the Governor was in here and we had this exchange about the RFP program, not surprisingly, somebody from the Department of Corrections runs into my office with a director's directive allowing for violent offenders in 2010. Did you ever see that? [LR424]

ESTHER CASMER: No. [LR424]

SENATOR LATHROP: When did you begin to see violent offenders offered to the Parole Board? They...even under the RFP program, you have to sign off. Am I right? [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: So in the sense...in some sense, it tracks parole. You have some people who...or, rather, the department has to offer them or suggest that they're suitable candidates, and then the Parole Board has to approve them. Is that how the system works? [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: At some point, do you notice that the people being offered to you for approval for the RFP program are violent offenders? [LR424]

ESTHER CASMER: "Once stung, you're not going to sting us again," is what occurred. After the judges brought it to our attention that they were not in approval of violent offenders being on the RFP program, every last RFP program is scrutinized. If they have any violence, any at all, we don't sign. [LR424]

SENATOR LATHROP: But for a period of years, you did. [LR424]

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ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: Okay. And I want to go back in time, if I can. The program is promulgated for nonviolent offenders, and these people are coming before you. There is a period of time when they are literally nonviolent offenders. A few of those trickle across the Parole Board desk early on. Would that be true? [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: And then at some point, and not long after the program began, do you notice that you are being offered inmates who have violent offenses in their history? [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: In other words, they've been sentenced to things like second-degree murder and first-degree assault, things that you and I can both agree are violent offenses. [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: And they're now coming before you for approval under the RFP program. [LR424]

ESTHER CASMER: That is correct. [LR424]

SENATOR LATHROP: When that happened, did you have a conversation with Bob Houston or anybody about, I thought we weren't going to approve violent offenders? [LR424]

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ESTHER CASMER: To be truthful, no. It was like he was out of my office. I wasn't looking at him. He wasn't bothering me at that point. I'm being very honest at this point. I did not think, I did not think that he would go against his own word. [LR424]

SENATOR LATHROP: So you see the violent offenders in roughly 2010,... [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: ...maybe a year after the program is in place? [LR424]

ESTHER CASMER: Approximately so, yes. [LR424]

SENATOR LATHROP: And are you still getting pressure from either the...Bob Houston or the Governor's Chief of Staff to meet some quota? [LR424]

ESTHER CASMER: No, no. [LR424]

SENATOR LATHROP: When did that stop? [LR424]

ESTHER CASMER: When Houston resigned. In fact, shortly before then, Houston and I had a meeting in the Governor's Office and I reminded him that he runs his agency, I run mine, and he needs to understand and respect agency boundaries. And that was the last, per se, conversation I had with him. [LR424]

SENATOR LATHROP: When was that in relationship to Bob Houston's resignation? [LR424]

ESTHER CASMER: I'm sorry? [LR424]

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SENATOR LATHROP: When was that conversation with respect to Bob Houston's resignation? [LR424]

ESTHER CASMER: Oh, goodness. April of last year, because I remember it, it was...actually, it might have...it was sooner than April because...I remember. It was before April of last year. [LR424]

SENATOR LATHROP: And where was that meeting at? When you had this conversation with Bob Houston, where did that take place? [LR424]

ESTHER CASMER: It was in Mr. Bare's office. [LR424]

SENATOR LATHROP: Who was present besides the two of you? [LR424]

ESTHER CASMER: Hank Robinson, myself, Bare, and there was one other individual. I can't remember his name. [LR424]

SENATOR LATHROP: By the time this meeting happens in the spring...can we call it the spring of 2013, late summer/early spring of 2013? By the time this happens, you have been approving people for the RFP program that include some violent offenders. [LR424]

ESTHER CASMER: No. We had stopped by then. [LR424]

SENATOR LATHROP: Okay. That took place. Do you know why they stopped? Was there some incident with a... [LR424]

ESTHER CASMER: They didn't stop. We stopped. [LR424]

SENATOR LATHROP: Oh, really. [LR424]

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ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: What precipitated your decision to stop approving violent offenders? [LR424]

ESTHER CASMER: When it came to our attention, or my attention, that the judges were not in agreement. So they were still submitting them and we were denying them. [LR424]

SENATOR LATHROP: I see. So in the time line, you sell it as a furlough program for the nonviolent offenders. That lasts a year. You begin to see violent offenders. The judges apparently don't know that the rules have been changed and we're now "RFPing" violent offenders. And when they find out, they express something to you. [LR424]

ESTHER CASMER: They...no, not to me directly. I read it in the Omaha World-Herald. [LR424]

SENATOR LATHROP: Okay. And when you found out the district court judges hadn't been apprised of the change that allowed violent offenders to be "RFPed," you stopped approving them. [LR424]

ESTHER CASMER: That's right. [LR424]

SENATOR LATHROP: And did that precipitate the meeting in Mr. Bare's office with Director Houston? [LR424]

ESTHER CASMER: No. I... [LR424]

SENATOR LATHROP: What was the purpose of that meeting? [LR424]

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ESTHER CASMER: I have no idea. I was told that there would be a meeting in Mr. Bare's office and I went. And Bob Houston was not pleased with the way I had been doing my job. I listened... [LR424]

SENATOR LATHROP: In what respect? [LR424]

ESTHER CASMER: He felt that I wasn't doing enough, that I wasn't paroling enough people. And he proceeded to state how he felt that the board wasn't moving in a positive direction. And that's when I felt it was time. No matter what, I had to say how I felt. And I told him, you're not my boss, you need to respect and understand agency lines, we are doing the best we can with what we have, what you require or what you're requesting we cannot give you. [LR424]

SENATOR LATHROP: Was he upset about the fact that you were done paroling violent people to RFP? [LR424]

ESTHER CASMER: I don't know anything in particular he was upset about, but he did not feel that he was getting the cooperation that he wanted from my agency. [LR424]

SENATOR LATHROP: What was his demeanor at this meeting? [LR424]

ESTHER CASMER: He was Bob Houston. [LR424]

SENATOR LATHROP: Well, we always got the nice Bob. So why don't you tell us what you saw? (Laughter) [LR424]

ESTHER CASMER: Well, he proceeded to speak to Larry Bare about his disapproval. And at some times, you know, when people are saying things, you have to shut down so that you can regain your composure, because I was very upset. And I shut down and

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I let him speak, and then I had an opportunity to speak. And Larry Bare listened to what I had to say. He also listened to what Bob had to say. And at that point in time, Houston had shut down a unit and he was speaking of certain things that he needed to do, this, that, and the other. And I don't remember all of the conversation, but what it amounted to is...kind of turned. I think Larry Bare became aware of shuffling of money and no savings. That's the main thing that I remember. [LR424]

SENATOR LATHROP: Okay. [LR424]

ESTHER CASMER: He was closing units down in order to save money, but yet the money was going out in a different direction. And one of the...part of the conversation was that people were sleeping in cots at D&E. And Larry looked at him and said, reopen the unit. And Bob says, well, we need this, this, and this and this. And Larry looked at him. He says, oh--I'm trying to remember the conversation--Houston did say, but I'm saving money here, here. And Larry looked at him and says, you're not saving money, you're just moving it around. And at that point, my conversation was over. [LR424]

SENATOR LATHROP: But he apparently used this occasion to say that the Parole Board, or you in particular, were not cooperating with the Department of Corrections. [LR424]

ESTHER CASMER: Pretty much, yeah. [LR424]

SENATOR LATHROP: And that's when you asserted the boundaries that exist, or should exist, between your agencies. [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: You talked before about how you felt like the lines between Corrections and Parole had been blurred. Do you think they were properly reestablished

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in that conversation, or do you think they remain still fuzzy and in need of some clarification? [LR424]

ESTHER CASMER: At that particular time, I think I felt--I don't know if it was things that I was holding in and finally spoke them--that I felt that the lines were established in my own mind, in my own feelings. But I didn't have any pushback from Larry Bare at all. [LR424]

SENATOR LATHROP: When we look back...that's the last conversation you had with Houston? [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: Okay. So we've talked about the first one you had and the last one you had. Now in between there you had a whole bunch of conversation where he's in your office, like, two or three times a week. [LR424]

ESTHER CASMER: All the time, yes. [LR424]

SENATOR LATHROP: Any of those get contentious? [LR424]

ESTHER CASMER: Not...I wouldn't say contentious. After a while, I'd just sit there and look at him with a blank stare. He'd get the drift and he'd leave. [LR424]

SENATOR LATHROP: Okay. But on each occasion, the purpose of the meeting was to share with you the fact that he'd talked to Larry Bare and that he wanted to see more people out the door. [LR424]

ESTHER CASMER: Yes. [LR424]

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SENATOR LATHROP: That's a yes? Okay. And that's either through the RFP program or the parole. [LR424]

ESTHER CASMER: Yes, basically parole. He didn't push me on the RFP program. He pushed me as far as parole. [LR424]

SENATOR LATHROP: Okay. You must have, in the time between 1997 and 2008 when things started to change with the overcrowding, have established in your own mind sort of a standard for who should be out on parole... [LR424]

ESTHER CASMER: Oh, yes. [LR424]

SENATOR LATHROP: ...and sort of the criteria in your own mind about who is a suitable candidate and who you're comfortable letting out of the corrections system early. [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: Did you feel, as a result of all the pressure that we've talked about and you've described, at some point that you were signing off on some people you weren't comfortable with? [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: Was it kind of a gnawing uncomfortable, or was it, boy, I'm really uncomfortable with some of these guys? [LR424]

ESTHER CASMER: Both. [LR424]

SENATOR LATHROP: Happen a lot? [LR424]

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ESTHER CASMER: Enough. [LR424]

SENATOR LATHROP: Did you have a conversation with other board members about the pressure, the quotas, the things that you were experiencing? Was it unique to you? They always talked to you because you were the head of the Parole Board? [LR424]

ESTHER CASMER: I remember very clearly Bob Boozer, during a meeting, he told Houston there are certain lines he would not cross because it was his signature and the rest of the board members' signatures on the paper. And Houston made the comment: Oh, I'll stand behind you. And Bob looked at him and laughed. We were all under a lot of stress at that time. We were expected to make decisions concerning the public's safety. And at times, those lines became a blur to us. Example: We should not be put in a position of having to weigh the degree of a domestic violence situation on whether or not this person should get paroled. We shouldn't have to do that, but there have been times. [LR424]

SENATOR LATHROP: So the question for your consideration is, well, this is a little domestic violence. He only hit her a little bit and didn't... [LR424]

ESTHER CASMER: We...exactly, and we should not be placed... [LR424]

SENATOR LATHROP: ...really use the butt of a gun. [LR424]

ESTHER CASMER: We should not be placed in that situation. Domestic violence is just that. We've gotten to the point that we are not going to parole them, point blank and simple. [LR424]

SENATOR LATHROP: How did you get there? Who...what was it that led you to have to weigh those kind of...whether a little domestic violence is okay? [LR424]

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ESTHER CASMER: There...you know, as a woman, there is no such thing as a little domestic violence. [LR424]

SENATOR LATHROP: Right. I agree. [LR424]

ESTHER CASMER: I should not have to sit there and go, well, hmm, she's writing him, she wants him back, well, let's parole him and put a stipulation on him that he cannot live with her until he completes the domestic violence program. That's ridiculous. That type of program needs to be in a facility. We should not be in a position where we have to parole somebody the same way that they came through the door when none of those issues have been addressed. [LR424]

SENATOR LATHROP: Especially while you're trying to sell a good time law that's based on earning it. [LR424]

ESTHER CASMER: It wasn't just domestic violence. And where we all drew the line was sexual assault. They were looking at...and there needs to be more programming in that area. And I probably shouldn't be saying this, but I do have a conscience. Some of these programs are fine for doing on parole. But if you incarcerate somebody for domestic violence, if you incarcerate somebody because they have substance abuse issues and they're preying upon the public, why are you going to send them back out into the streets to get the program? We're sending them back out broken, just like you gave them to us. That's not being a gatekeeper. I don't think that's right. [LR424]

SENATOR LATHROP: But that was happening though, wasn't it? [LR424]

ESTHER CASMER: I know no one wants to spend the money for programming. I know that. I've heard that. Spend now or we're going to spend later--that's what it's all about. Everybody is not going to be cured. Everybody is not treatable. But I think--I mean, I've

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said enough; I might as well say the rest--we're spending tax money as it is. Why not do some good with some of it? Just like we spend money to educate our children, let's spend money to try and fix these situations. Don't send them back out on the street and hope and pray that they get the treatment. It doesn't make sense. It's a revolving door. Of course, there are going to be individuals--and I can probably name a few--that have been through treatment three, four, five times. But we're making an effort. We're making an effort. I would rather live next-door to an individual who is on parole, who's been through treatment, than one I'm hoping that he's not watching where I live to break in because he didn't get the treatment. And trust me, I have lived next-door to some of them. They're very respectful individuals. I had one, I knew it the minute I came out of my garage when he said, "Hey, Ms. Cashmere (phonetically)." They always mispronounced my name. He was very respectful, never caused any problems. Finally, I had to tell him, you don't have to yell at me every time you see me, I know you're there. I would prefer that than one that is hiding, trying to figure out how to break into somebody's home. We cannot keep sending these people to prison without treatment. We can't do it. [LR424]

SENATOR LATHROP: That's what happened in 2008 though, isn't it? [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: And do we need to go back to the old model where everybody gets their programming before they're discharged on parole? [LR424]

ESTHER CASMER: You know, I will say this: In a perfect world, all treatment would be available in all institutions, not just a few. All the treatment will be completed. The Board of Parole can take a look at them, look at the resources that are available to them, and they parole with the treatment under their belt. It's unfortunate that certain institutions are the only ones that have certain programs. [LR424]

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SENATOR LATHROP: But to talk about how we got here, if I can, we have a decision made not to put enough resources into the Department of Corrections to hold up what should be our programming. That's one piece of this problem. Am I right? [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: And after we've made the decision not to have...put the resources into Corrections to provide the programming, we get the brilliant idea--let's have them go on the outside and get their care and treatment and make them pay for it. So it's about not spending the money to do the role that Corrections is there to do, which is not only to punish but to rehabilitate. Right? [LR424]

ESTHER CASMER: Right. [LR424]

SENATOR LATHROP: And then overcrowding starts driving the bus, does it not? [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: In 2008-2009, in that time period, we say: We don't care; we didn't spend the money on programming; we don't...we're not going to spend the money on programming; we didn't spend the money on more beds and now we've got a huge overcrowding problem; Esther Casmer, start moving people out on parole. That about it? [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: I have...I'm just about done. Now these other folks have an opportunity to ask questions. I want to go back to the RFP program for just one second. When it was originally established, it was going to be a bridge between parole and that

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time period within six months of one's parole eligibility date. [LR424]

ESTHER CASMER: Correct. [LR424]

SENATOR LATHROP: Am I right? [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: And so the...if we added up all the people that got out a little earlier than their parole eligibility date, it makes some room inside the prison. [LR424]

ESTHER CASMER: Yes. And they...correction, they also intended to use it for individuals that were serving flat sentences, a year or less. [LR424]

SENATOR LATHROP: Okay. When I look at the numbers, when I look at the numbers, there were a number of people on the RFP--and it might have been maybe 100; I'm not sure of the number--who were parole eligible but put on the RFP. [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: Okay, let me say that again. There were a number of people who were parole eligible but placed out into the community under the RFP rather than the parole. [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: Tell me why that would be. What's the rationale for sending them out on RFP if they're parole eligible? [LR424]

ESTHER CASMER: An empty bed. [LR424]

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SENATOR LATHROP: Pardon me? [LR424]

ESTHER CASMER: An empty bed in the facility. [LR424]

SENATOR LATHROP: So when we look at that 100 or so individuals that were placed on RFP when they were parole eligible, how is it that putting them on RFP creates an empty bed faster than paroling them, or more efficiently or...? [LR424]

ESTHER CASMER: When an individual is on RFP, they still report to a parole officer, but it would take longer to place them on parole because, first of all, we'd have to review them. And then we'd have to set a date, and then they'd have to wait until the date that we paroled them because the parole officer would need to investigate the residence, etcetera. [LR424]

SENATOR LATHROP: So it was just a quicker way to get them out the door. [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: Did they...was it easier to get somebody on RFP than parole or were the criteria pretty much the same? [LR424]

ESTHER CASMER: Probably quicker, when I stop and think about the process, yeah. [LR424]

SENATOR LATHROP: It was just a little bit faster. [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: Okay. Lastly, did you ever have any type of personal

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conversation with the Governor where you expressed your concern about blurring the lines between Corrections and Parole? [LR424]

ESTHER CASMER: No. [LR424]

SENATOR LATHROP: And if we were to...if you were to wave your magic wand over this whole process, recognizing that your piece is in the Parole Board, what's the solution? Are you back to the neutral gatekeeper or is there some legislative fix or do we just need a different Governor? [LR424]

ESTHER CASMER: The one thing I would like very much...and I'm not an attorney. However, the Parole Board got pulled into this RFP thing because they needed our signature to validate the program. I am retiring soon, very soon. The one thing I would like to leave with the board is the ability to operate totally independently and not be required to sign off on their furloughs, on their RFPs, their work releases. Let them be responsible for their own programs. [LR424]

SENATOR LATHROP: Well, I'm kind of thinking that might have not worked very well since 2008. [LR424]

ESTHER CASMER: How's that? [LR424]

SENATOR LATHROP: Because, if we'd have left it up to the Department of Corrections, the lines may have been blurred but you remained a gatekeeper and they still needed your signature. I can only imagine who they would have put on the street if they didn't have to face you or the other members of the Parole Board, to be perfectly honest. [LR424]

ESTHER CASMER: Point taken. [LR424]

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SENATOR LATHROP: Okay. [LR424]

ESTHER CASMER: Point taken. [LR424]

SENATOR LATHROP: I am going to make this observation before I turn it over to the next person, and that is, I have sat in Judiciary Committee I think twice and done confirmation hearings on your appointment. And I can say this, that I don't know that that committee has ever had more respect for someone taking an appointment from the Governor's Office in the way they've treated you and the way they have addressed you. And I, for one, appreciate your public service for all these years. I understand that you're not going to be there much longer, but thank you for being here today and for your service... [LR424]

SENATOR CHAMBERS: Hear, hear. [LR424]

SENATOR LATHROP: ...to the state of Nebraska. So with that, I'll... [LR424]

ESTHER CASMER: Thank you very much. [LR424]

SENATOR LATHROP: ...turn it over to Mr. Senator Seiler. [LR424]

SENATOR SEILER: I echo his remarks when I sat on the Judiciary Committee and approved you. [LR424]

ESTHER CASMER: Thank you. [LR424]

SENATOR SEILER: What I'd like you to do, and I think the committee can then appreciate more the full pressure you were under, how...would you walk us through a parole hearing? Well, you started to. You said you had to look through the file. You send out notice. Is that a 60-day notice or 30 days? [LR424]

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ESTHER CASMER: Sometimes, in certain situations, we can do 45 days if it's an urgent situation. Thank you, Senator. What occurs: I'm going before the board. This is my first review. I have been identified as needing the residential substance abuse program. The board presents me with a contract. I signed the contract, agreeing to complete this program by this date. They tell me up-front that if I don't complete this program I will not be paroled. If I am on a waiting list and I get into the program where I would be extended maybe a month or two after this parole date, I can be paroled pending. They tell me all this before I leave the room. I receive written notification. It is entered into several different programs with the Department of Corrections that I have a hearing set for X number of months away. I have to watch my institutional behavior. I have to complete my program and do it in a satisfactory manner. And also, I need to be talking to my case manager as to where I'm going to live; if I have any job skills; could I possibly get to work release; do I have enough time. All those factors are entered. When we receive the parole progress report, it indicates the program that the person is completing, whether or not this person will complete the program--that's...it gives a date when the program will be completed, whether or not there have been any misconduct reports of any violence or whether or not I've received segregation time, whether or not I have received a loss of good time. Anything that I am written up for is indicated on that sheet. If I have a parole plan--where will I work; where will I live; who will I be living with; what programming will I be recommended for--that's on that sheet. The Parole Board, we see, each one of us on our computers, we see this information. And we talk to the individual: Well, where do you plan to live? We may have that information... [LR424]

SENATOR SEILER: Now this is at the time of the hearing. [LR424]

ESTHER CASMER: At the hearing? Oh, at the hearing, we're looking at where they're going to live, with... [LR424]

SENATOR SEILER: And is the parolee there before you? [LR424]

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ESTHER CASMER: The parolee is there before us. We're looking at where they're living, with whom they're living, where they're working, do they have job prospects, their institutional behavior, and institutional recommendations. [LR424]

SENATOR SEILER: And can they bring forward witnesses to help them? [LR424]

ESTHER CASMER: Sure, um-hum. [LR424]

SENATOR SEILER: And then there can be opponents too. [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR SEILER: Okay. How long...and I know it's different for every case but, on average, 10, 15, 20, 30 minutes? [LR424]

ESTHER CASMER: I wish they were that simple. It all depends. Sometimes, they can be 10-15 minutes. We've had some that last an hour or more. [LR424]

SENATOR SEILER: Okay. When they were talking to you about 168 new per month, how many times do you meet during a month, your board? [LR424]

ESTHER CASMER: Every day. [LR424]

SENATOR SEILER: Every day. [LR424]

ESTHER CASMER: And the last... [LR424]

SENATOR SEILER: But that's 20 days, working days, average per month. [LR424]

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ESTHER CASMER: The first part of... [LR424]

SENATOR SEILER: Per month. [LR424]

ESTHER CASMER: The first part of the month is devoted to reviews. The last ten working days are devoted to hearings. [LR424]

SENATOR SEILER: So you only have three days of hearings. [LR424]

ESTHER CASMER: No, we have ten days of hearings. [LR424]

SENATOR SEILER: Excuse me? [LR424]

ESTHER CASMER: 10. [LR424]

SENATOR SEILER: Ten days at 168 cases per month? [LR424]

ESTHER CASMER: Well,... [LR424]

SENATOR SEILER: How does that number come out? [LR424]

ESTHER CASMER: Well, we're pretty close to that at this point, if not higher because usually on the last Wednesday of every month we're looking at no less than 54 cases in one day, in one day. [LR424]

SENATOR SEILER: Wow. And then they wonder why there's pressure. [LR424]

ESTHER CASMER: Yeah. [LR424]

SENATOR SEILER: Thank you. [LR424]

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ESTHER CASMER: You're welcome. [LR424]

SENATOR LATHROP: Senator Mello. [LR424]

SENATOR MELLO: Thank you, Chairman Lathrop, and thank you, Ms. Casmer, for your testimony today. Just maybe a point of clarification on a couple of your answers: You mentioned a meeting with Larry Bare, Jim Pearson, and yourself in regards to the...feeling threatened in regards to not paroling enough inmates through the process. You mentioned there was one other person you couldn't remember who was there. Was it someone from the Policy Research Office? [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR MELLO: Robert Bell? [LR424]

ESTHER CASMER: Robert Bell, that's him. [LR424]

SENATOR MELLO: Was he at the other meeting you had with Bob Houston and Larry Bare back in April as well? [LR424]

ESTHER CASMER: Yes, yes. [LR424]

SENATOR MELLO: Okay. I think it's just more a point of clarification. We've seen plenty of communication that we've seen back and forth through some of our subpoenaed documents that the Policy Research Office has been involved primarily through Robert Bell being the point person through some of this issues. The only one real question I have and it's in relationship to a recent legislative performance audit that was released last week regarding the Department of Corrections. And I don't know if you've had a chance to review that audit. There was a specific component of the audit. And we're

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going to get briefed next by the Performance Auditor in respects to the Parole Board and the parole process as it relates to existing state law, that existing state law says that an inmate cannot be paroled if they had not received their mental health treatment and programming in Corrections. There seems to be to some extent, and it's something that it's laid out in this audit and if you haven't read the audit I guess I can't really...I'm going to pose this to you and I fully expect you to say, I don't know because I haven't read the audit if you haven't read it. But it's come to our attention through this audit that state law says that you're not able to parole an individual if they've not received their required mental health programming and treatment in Corrections. They can receive other programming out in the community, but law forbids you to be able to parole someone if they've not received their mental health treatment in state custody in the Department of Corrections. That's a finding that was in last week's legislative performance audit. I guess the best option I've got is if you haven't read the audit, the Performance Auditor will be here to present on that next after your testimony. But it raised I think a red flag in the sense of the Performance Audit Committee, when we reviewed this, that it was something that was occurring and whether or not the Parole Board did it maliciously or not, I don't believe that generally was our conclusion, that you were maliciously trying to break the law. But it was a point of contention that some programming, you can parole some inmates outside of Corrections, they can receive programming in the community, but mental health treatment was not one of those programs. And that really is the way the law is written. It forbids specifically for the Parole Board to be able to do that. So I'll let you read the audit. I'm not going to put you in the hot seat, so to speak, to even answer to something you haven't read yet. But I know the Performance Auditor will be up to testify and walk us through some of those findings. So it may be worthwhile to stay and listen to that presentation afterwards. [LR424]

ESTHER CASMER: Okay. [LR424]

SENATOR LATHROP: Senator Krist. [LR424]

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SENATOR KRIST: I told you before I thought you were a lady of courage. I say that again. Thank you for your service. [LR424]

ESTHER CASMER: Thank you. [LR424]

SENATOR LATHROP: Senator Chambers, do you have any questions? [LR424]

SENATOR CHAMBERS: No questions, but, Ms. Casmer, I've known you a lot of years. I've enjoyed working with you. I'm sorry that you are ending your tenure with the state, but it's something like somebody finally being discharged from the Army. You fought the good fight. You finished your course. You kept the faith. And I can understand the types of pressure that can be brought by high-placed politicians. Sometimes they can do it like a steel fist, sometimes the fist in a velvet glove. But they know how to get across the threat that they make to a person. So I'm glad that you have survived all that. And I would take the time to repeat what Senator Lathrop said but I won't, that I agree with everything he said. I've been on the Judiciary Committee every time that you came for...did you come during one time when I was term limited out or have I been in the Legislature every time you came up for reappointment? [LR424]

ESTHER CASMER: You've been on every time I came up. [LR424]

SENATOR CHAMBERS: Okay, and then I'm glad that I was because I always went along with it and we never had a lot of questions. Your reputation is good and I appreciate your coming today. Thank you very much. [LR424]

ESTHER CASMER: Thank you. [LR424]

SENATOR LATHROP: I do have one more question. I know everybody is saying good-bye and thank you and on. But do you have access to a lawyer in the Parole Board? Can you do...if you're not part of Corrections, you can't use the Corrections

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lawyers. Do you have legal questions that come up that require a legal opinion or for which you sought a legal opinion? [LR424]

ESTHER CASMER: I had utilized the AG's Office. That had always been the avenue of which we would receive our answers. And I was told that I needed to submit in writing what I was requesting, state statute I was questioning. It's a lot of paperwork just to get an approval to go to the AG's Office. [LR424]

SENATOR LATHROP: So you couldn't just, as the head of the Parole Board, if you needed help or you had a question about interpreting a statute, you couldn't just call the Attorney General's Office? [LR424]

ESTHER CASMER: No. [LR424]

SENATOR LATHROP: Who forbid you from doing that? [LR424]

ESTHER CASMER: I was told verbally that I would need to follow that process so it would not appear it was two agencies in conflict. [LR424]

SENATOR LATHROP: And who...if you had a question about an interpretation of a statutory provision, who would you have to send this form to asking them if it's okay if you can get a clarification of a legal issue? [LR424]

ESTHER CASMER: Robert Bell. [LR424]

SENATOR LATHROP: He's the Governor's policy research guy. [LR424]

ESTHER CASMER: Was. [LR424]

SENATOR LATHROP: Was. Yeah, he left. So if you wanted...did you have any lawyers

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on the Parole Board? [LR424]

ESTHER CASMER: No. [LR424]

SENATOR LATHROP: So this instrument of the executive branch of government couldn't communicate with the Attorney General to clarify statutes, which presumably you had questions with from time to time, unless you went through the Governor's Policy Research Office. [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: Did they ever turn you down? [LR424]

ESTHER CASMER: No. To be real honest, we still were able to get what we needed. [LR424]

SENATOR LATHROP: By other means. [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: Okay. But that was the system put in place. [LR424]

ESTHER CASMER: Yes. [LR424]

SENATOR LATHROP: Okay. That doesn't look like it provokes any other questions. So again, thank you very much for being here today. I appreciate your candor. And the committee has learned a great deal from your testimony. [LR424]

ESTHER CASMER: Thank you, sir. [LR424]

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SENATOR LATHROP: And we will make certain...well, these guys will make certain because I'm term limited, but we'll make certain that we tighten up the independent gatekeeper function of the Parole Board as part of our reforms. [LR424]

ESTHER CASMER: Thank you. [LR424]

SENATOR LATHROP: All right. Thanks, Ms. Casmer. Does the committee want to stretch its legs before we take up the next two witnesses, for five minutes? Let's make it...come back at ten till. And I appreciate Martha Carter has been here since 9:00 this morning, but we'll get to you after everybody has a chance to... [LR424]

BREAK

SENATOR LATHROP: Okay. The time is about eight minutes before 5:00. We're back. This is the LR424 Committee. We have three witnesses left. And our next witness is Martha Carter. We'll have you raise your right hand. We've sworn everybody else in so we'll swear you in as well. Do you solemnly swear the testimony you're about to give this committee will be the truth, the whole truth, and nothing but the truth? [LR424]

MARTHA CARTER: I do. [LR424]

SENATOR LATHROP: All right. Thank you. Will you give us your name, please? [LR424]

MARTHA CARTER: Martha Carter. [LR424]

SENATOR LATHROP: And, Ms. Carter, by whom are you employed? [LR424]

MARTHA CARTER: The Legislature, I'm the Legislative Auditor. [LR424]

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SENATOR LATHROP: And how long have you been the Legislative Auditor? [LR424]

MARTHA CARTER: I've been the Legislative Auditor for eight years, since the position was created in 2006. [LR424]

SENATOR LATHROP: And what's a Legislative Auditor do? [LR424]

MARTHA CARTER: Our office is in charge of performance audits. We do not do financial audits. Those are the purview of the elected State Auditor. And performance audits look at how agencies are administering programs, whether they're operating the programs in accordance with guidance from the Legislature in terms of statute and legislative intent, and whether they're operating efficiently and effectively. [LR424]

SENATOR LATHROP: And you can tell that by studying? [LR424]

MARTHA CARTER: Yes, we do a lot of studying. [LR424]

SENATOR LATHROP: Okay. And what you study mostly is what agencies of government are doing and whether they're in compliance with the law and operating according to the legislative intent. [LR424]

MARTHA CARTER: That is correct. [LR424]

SENATOR LATHROP: Okay. This year, were you called upon to do a legislative audit of Corrections? [LR424]

MARTHA CARTER: We were. [LR424]

SENATOR LATHROP: And can you tell us what the scope of that undertaking was? [LR424]

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MARTHA CARTER: Yes, we had three primary areas in the scope. The first was the disciplinary process, specifically looking at issues relating to good time and disciplinary segregation. We wanted to look at programming, so whether or not inmates were receiving the programming they were recommended to have. And the third area was to do a comparison of the Mental Health Commitment Act and the Sex Offender Commitment Act. And I just want to add that the scoping process and the assignment process is...there's a special legislative committee, the Performance Audit Committee. That committee makes assignments to my office. So we do the audit work, but it is the committee that approves topics for and the scope statement for our work. [LR424]

SENATOR LATHROP: Okay. And those are the three areas you were called upon to investigate. [LR424]

MARTHA CARTER: Yes. [LR424]

SENATOR LATHROP: And as a result of that work, did you issue a report... [LR424]

MARTHA CARTER: We did. [LR424]

SENATOR LATHROP: ...and come up with certain findings? That report was issued just last Friday, am I right about that? [LR424]

MARTHA CARTER: Last Monday. [LR424]

SENATOR LATHROP: Last Monday, okay. [LR424]

SENATOR SEILER: Yesterday. [LR424]

SENATOR LATHROP: Can you walk us...I will just tell you, I'll give you a little preview,

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the committee has already reviewed the report and made the decision to incorporate it and your findings and recommendations into the work of the LR424 Committee so that when this committee is reconstituted, they can provide some oversight and make sure that the recommendations are followed up on. But for the sake of the record and for all those people that might still be watching while they're having dinner, can you share what the findings were in your report and kind of walk us through the three subjects and visit with us about the findings and the recommendations? [LR424]

MARTHA CARTER: I can. And I've provided you with the handout. I'm not going to go through it in detail, but it's sort of a working paper for you that lists all of the findings and then it lists a little bit of detail. For example, if we are talking about statutory language, we've included that little piece of the statute here. The first page you'll see there's a court case reference. So again, it's more of a working paper. But just as you move forward, that may be helpful to you. So the first finding we had, and you heard some discussion about this, this afternoon, was that there...in our efforts to look particularly at programming and segregation, we found that the electronic data that the department has is not reliable, was not reliable for the purposes that we wanted to use it. So we were unable to answer some of the questions, some of which this committee had requested be part of the audit such as the issue of, are people able to complete their programming before they're being paroled or to what extent does the lack of programming keep people from being paroled or numbers on how many people don't receive the programming before they're paroled but have that as a special condition? And we were simply unable to do that because of the problems with the data. So I guess the only point that I want to make about the data is the department, in their response to the audit, said that they have a very old computer system and that it's hard for them to compile information. And we don't take any issue with that. That is very likely true and it's very likely part of the problem. But the data system is not the only problem. So for example, in the programming data that we looked at, a large part of the problem was just the information was either not entered or some of the information, for example, maybe you have that the inmate got recommended for programming and they started

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the programming. But then there was no subsequent information about whatever happened. So that kind of problem is not a computer system problem. That's a data entry problem and it's a verification problem. So that's just important as you go forward and you think data problems, don't just think data: new computer system. You need to have...or the department needs to have some clear policies about what they're going to keep in terms of data and how they're going to allocate resources to keep that information up to date because let's face it, it's easy to say you want data and as policymakers you need good data. But that can be a resource issue. And so that all needs to be taken into account as you move forward and decide what you'd like to see in terms of better data. [LR424]

SENATOR LATHROP: Interesting that that would be one of your findings because earlier in the day we listened to the witness from Colorado talk about the importance of data in trying to make decisions about the use or overuse or who we should have in administrative segregation and what kind of folks are there and how much time they're spending there. And then the last witness sounds like...I don't know. Did you get a sense that maybe they had the data or that they deliberately didn't keep track of it given the change in the approach to programming before one was eligible for parole? [LR424]

MARTHA CARTER: Well, as an auditor, I am sort of bound to not speculate on why something occurs if I don't have evidence to back it up. And in fairness, it is not unusual that we do a performance audit and find that an agency does not keep track of data in a way that would be most useful to policymakers. I mean, if you think about, for example, with the mental health programming, it may well be that their individual files on inmates have all that information in them. That's what people are using. And we would like to see that aggregated and made into an electronic form that's available for policymakers. The Department of Corrections is not the only department that doesn't have that information in that form. But it... [LR424]

SENATOR LATHROP: Okay. So your recommendation is that they begin the process of

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maintaining regular records and data regarding any particular subject or all subjects relating to Department of Corrections? [LR424]

MARTHA CARTER: The Audit Committee makes recommendations. We make, as the staff, we make some draft. We make the findings. Here's what we looked at. Here's what we found. And we make some draft recommendations to the committee. The committee ultimately makes the final recommendations. So one of the committee's recommendations was that there be both an internal and external review, so that the department should be looking at their resources and data systems and that there should be an external audit of some sort to look at the data. But I think--and Senators Mello and Krist are both on the Audit Committee; they can correct me or add to this--but I think the key piece that was talked about in the committee meeting was the programming information, that it's very hard to know whether you need more services or the extent to which you need more services if you don't know what people are getting and what they're not able to get in a timely fashion and those kinds of things. [LR424]

SENATOR LATHROP: Okay. Did you have any more recommendations with respect to that finding? [LR424]

MARTHA CARTER: I think that was the gist of it, really. [LR424]

SENATOR LATHROP: Okay. What about the next finding? [LR424]

MARTHA CARTER: So the next area that we looked at was the disciplinary process. And I'm not going to go through each finding in detail but the finding number 2 on page 1 I think is very relevant and timely for your conversation today, which was that in order for the department to impose either disciplinary segregation or loss of good time as a sanction for inmate misconduct, they're required by law to make a finding that the misconduct was serious or flagrant. So our finding was the statute does not define what those terms should mean. There's a 1972 court case that we note at the bottom there

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that gives a little bit of direction, but there's nothing in the department's regulations that articulates how those terms should be applied. So for example, there are offenses listed in the regulations. There are limits on how long those penalties can be for. But there's nothing that says you can only issue a sanction of segregation for these kinds of offenses or it can only be for X number of days if it's happened multiple times. Or the piece I'd like to tie in that you heard this afternoon was, does the Legislature envision that those sanctions should only be used for violent offenses? That's what the witness from Colorado was talking about. Well, that is not at all what is laid out in statute and is not...and there's nothing like that in the department's regulations. So I just highlight that as an area that you may be interested in pursuing a little bit further. [LR424]

SENATOR LATHROP: And that regard, that witness from Colorado talked about having a matrix... [LR424]

MARTHA CARTER: Right. [LR424]

SENATOR LATHROP: ...or sort of a...it might be a stack of smaller offenses or the matrix might have one serious offense like trying to strangle a guard, for example. [LR424]

MARTHA CARTER: And that's exactly what we recommended to the department, was that they need to have some kind of guidelines about how those terms are applied. It's never going to be a completely...there needs to be some room for discretion in the sense that there might be something that you don't think of when you're creating the metrics and you need to...or the matrix and you need to have an option for the department to say, well, we didn't think of this as being flagrant but it is and here's why. And you just document that it's an exception. But they're serious penalties--segregation, loss of good time--and there ought to be some consistency across agencies...I'm sorry, across institutions and people ought to have an idea of what kinds of behavior could cause those kinds of sanctions. [LR424]

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SENATOR LATHROP: Yeah. It would allow for a less subjective approach to punishment, which makes it more effective I would expect too. [LR424]

MARTHA CARTER: We would agree with that. [LR424]

SENATOR LATHROP: And a good time for us to decide whether we want to be continuing people on administrative segregation for relatively small offenses. [LR424]

MARTHA CARTER: Right, exactly. Yep. [LR424]

SENATOR LATHROP: Okay. [LR424]

MARTHA CARTER: So there's also a finding, it is somewhat of a technical finding, especially in light of everything that you heard today about segregation. But I just want to mention it briefly. [LR424]

SENATOR LATHROP: Sure. [LR424]

MARTHA CARTER: And that is on page 2, there is currently a statute that refers specifically to solitary confinement. And we've talked and you've heard a lot about the different kinds of segregation that are in existence. From the department's perspective, and you'll see their regulation right below the statutory language there, they define solitary confinement in a very narrow way. So it's...if you think of solitary confinement as being you're in a room for 23 hours a day, the way they define solitary confinement is that then you are also in complete isolation from any sight or sound. So all we're recommending here, this does not get into any of the rest of the discussion that has occurred about the use of segregation, but it probably...if the Legislature is going to look at this area of segregation, you may want to take that out of the statute and just eliminate that and have the department eliminate that as well because it's...they say

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they're not using it. We didn't...we struggled a little bit with whether there was a way that we could prove that they were not using it, which we ultimately decided there wasn't. We did tour the SMU, the segregation unit at Tecumseh. Those cells do not meet this very restrictive definition in the sense that you can still hear other people and you can see people. So we don't have any reason to believe that they are still using that very extreme kind of segregation, so it probably should just be something that's off the books as one less thing to... [LR424]

SENATOR LATHROP: Senator Krist has a question. [LR424]

SENATOR KRIST: And as an interesting little comment, it is interesting to note that our video teleconference guest today did not define solitary confinement the way this Department of Corrections did and that the complete isolation is not a factor. So potentially the argument that solitary confinement is, what is the definition of "is" in this case because they don't agree. And she was quoting what we hear in the industry today as new terms and definitions and new science. So I make that point only to say their argument to me at this point, particularly as we discussed it in the committee, is moot. [LR424]

SENATOR LATHROP: Right. I know...I'm remembering back to Nikko Jenkins--this is Lathrop, for the record--I'm remembering back to Nikko Jenkins' sentencing order. And it says, and I think this is customary language, no part of which shall be served in solitary confinement. And it may be with the purpose of having this definition of solitary confinement is when the judges say, no part of it shall be served in solitary confinement, they know what that means. It means absolute sensory deprivation. And anything north of that or less restrictive or not as bad doesn't meet the definition. So they're not constrained by the court's sentencing order that prohibits solitary confinement. [LR424]

MARTHA CARTER: Right, could be. [LR424]

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SENATOR LATHROP: I just point that out, but you may proceed or continue. [LR424]

MARTHA CARTER: Thank you. So just very briefly, we looked at a sample of offenses that occurred in 2013. And our original goal was to identify some offenses that were very likely to result in the sanctions of loss of good time or disciplinary segregation because we knew that policymakers were interested in that. And we had hoped to do a fairly extensive analysis looking at types of segregation and behavioral and mental health diagnoses and whether or not you could make any correlations in the data. We ultimately were not able to do that because of the problems with the data. So what I've given you are just some descriptive statistics essentially of what we found on page 3. And I'll just make a couple of points about that. For both disciplinary segregation and loss of good time, there are limits on how long those may be imposed in terms of a disciplinary sanction. So what we found was that of the ones that we looked at, they were all within the limits set in the regulations. What we felt was a little bit incomplete about just stopping the analysis there is that we could tell from the data and certainly has been discussed in this committee that there are some people who spend much more time in some form of segregation than those individual, let's say a 45-day individual sanction might suggest. So we pulled a few examples from our data and had the Department of Corrections look at those again. And so we've included those at the bottom of page 3, a couple of examples. So you have...one example is someone who spent 40 days in disciplinary segregation. Then they were...for 26 days they had two types of segregation. They had both disciplinary segregation and administrative confinement, which is not a punishment. It's still...you're still segregated from the population, but that administrative confinement is for the purpose, according to Corrections, of managing the institution and protecting the inmates and the workers. So it is not, in the strictest sense, a punishment. But you are still in segregation. So another 26 days in both types. And then another 436 days just in administrative confinement. So this afternoon when you heard from the testifier in Colorado who was saying that they're...that Nebraska has an open-ended policy relating to segregation, that's the administrative confinement piece. Disciplinary segregation, when it's used for

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punishment, is supposed to only be limited to a certain amount of time. But administrative confinement can go on for a much longer period of time. And as these two examples suggest...I cannot say...because we did not do a random sample of this, I cannot say how often that occurs. But we can say and we felt it was important to say in this report that there certainly are instances of people spending much more time in some form of segregation than those individual disciplinary sanctions suggest. [LR424]

SENATOR LATHROP: Senator Schumacher. [LR424]

SENATOR SCHUMACHER: Just one...thank you, Senator Lathrop. Just one brief question, from the inmate's point of view, do the 40 days in disciplinary segregation, 26 days, and the 436 days in administrative confinement, are they in the same room? I mean, is it the same thing? [LR424]

MARTHA CARTER: I think...in general terms, I think the answer to that is yes. [LR424]

SENATOR SCHUMACHER: Okay. [LR424]

MARTHA CARTER: My only qualification would be that there are some differences in terms of, for example, immediate segregation is the most restrictive of segregation. So that was the type that was discussed earlier today where you have a door to get into the part of your cell that has a shower, that sort of thing. So in very specific terms, there are some differences. But to your point, is the inmate still separated from the general population with fewer services, less programming? Absolutely. [LR424]

SENATOR SCHUMACHER: And 23 hours a day in the same...okay. [LR424]

MARTHA CARTER: Right. [LR424]

SENATOR SCHUMACHER: That's all I have. [LR424]

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SENATOR LATHROP: Okay, you may proceed or continue. [LR424]

MARTHA CARTER: So page 4, we looked at programming and mostly what we did in the audit was provided you with information on the types of programming that were offered and at which institutions. But we have two findings and one was one that Senator Lathrop referred to earlier or, I'm sorry, Senator Mello referred to earlier. There is a statute that requires the department to provide certain kinds of programming. There is then the opportunity for the Parole Board to waive a programming requirement and allow the person to receive those...that programming when they're on parole. That originally and still applies to substance abuse programming. What we determined in the course of the audit was that the Legislature had adopted a bill with the intent of allowing that kind of waiver provision to also apply to mental health services, but the bill itself did not actually do that. And I'm not a lawyer and I have no desire to try and play one on TV today, so if you have legal questions, I will have our legal counsel get back to you. But my understanding is just the note under the...on page 4 under the section of the statute. The highlighted portion says: The board may waive the requirement of section 28-416 only if, as a condition of parole, the person agrees to complete the programming. The problem is that section, 28-416, only applies to substance abuse treatment; it does not apply to mental health treatment. [LR424]

SENATOR LATHROP: When was that passed, do you know? [LR424]

MARTHA CARTER: I don't know off the top of my head. [LR424]

SENATOR LATHROP: But is it...does it...do you know if it's somewhere back in the 2008? In other words, was this done to accommodate what Ms. Casmer just testified to? [LR424]

MARTHA CARTER: I'm sorry. I don't know. [LR424]

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SENATOR LATHROP: Okay. Okay. [LR424]

SENATOR MELLO: Actually, Senator Lathrop, it's in the report. I think 1997 was the bill, when it passed. Yeah. [LR424]

SENATOR LATHROP: Ninety-seven? Okay. [LR424]

MARTHA CARTER: So then the Performance Audit Committee took...we need to reevaluate this or this committee, the LR424 Committee, needs to discuss that. They didn't say, well, yes, we should automatically introduce legislation to fulfill the intent of that previous bill. So that is a policy issue that remains for your consideration. And the only other finding related to programming, and it's one I think you're well aware of, is that if someone has a very short sentence, it's impossible in some cases for them to receive the programming that the department would recommend for them before they're parole eligible, which is what the law requires. So that may be something, I don't know if the Justice Reinvestment program would maybe be looking at some of those people with shorter sentences and other ways to address that. But it's a policy question, that the law says the department has to provide certain programming before people are parole eligible. And if you have a very short sentence and it's a long kind of program, it's just not possible. [LR424]

SENATOR LATHROP: Okay. Is that it? Is that the completion of your report? [LR424]

MARTHA CARTER: That's it for programming and then we have the commitment acts. I thought Senator Krist looked like he was... [LR424]

SENATOR KRIST: No, go ahead. I thought you were done. Go ahead. [LR424]

SENATOR LATHROP: Oh. Oh, I didn't see that. Do you want to ask a question now?

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[LR424]

SENATOR KRIST: No. I'll wait until the end. [LR424]

SENATOR LATHROP: Okay. Good. [LR424]

MARTHA CARTER: So I will summarize the rest of these next few pages on the two Corrections act. The bottom line for what we found is that the Mental Health Commitment Act was passed in the '70s. Sex Offender Commitment Act was passed much more recently than that, 2006 I think. There are differences between the two that it's not really clear whether those differences were intended by the Legislature or things have just kind of grown up in different ways. And so our recommendation is that that needs to be reviewed because there are likely places where those processes could be brought more into conformance and be more efficient. And so a couple of those that are listed in here, one of the big issues that I know has been an issue for this committee is whether or not the Mental Health Commitment Act applies to individuals who are diagnosed with personality disorders as opposed to clinical disorders. And again, I can't speak as a lawyer. But the opinion of our legal counsel was that it's really unclear because when the Sex Offender Commitment Act was passed, there is legislative intent where it says, in transcript, that the Legislature was specifically including personality disorders because they wanted to broaden the reach of the statute. I mean, in addition to the fact that it is a separate population, but they also wanted to broaden the reach. But if you look at the plain letter of the law, there is no exclusion in the Mental Health Commitment Act for people with personality disorders so you could argue that it would apply to whatever the current psychiatric standards are. So that's an area that definitely needs to be addressed. And especially considering that the psychiatric standards are going away from that really clear distinction between clinical disorders and personality disorders, that seems like an area that really would warrant legislative attention. The evaluation process, when you're determining whether or not a person is a dangerous sex...potentially a dangerous sex offender or potentially mentally ill and dangerous, for

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the Sex Offender Act it's very clearly spelled out. There are very clear criteria, a certain number of certain kinds convictions. For mentally ill and dangerous there are no criteria at all. And it's never going to be that that population is going to have...that you're going to have as clear of criteria as you have for dangerous sex offenders because it's not as defined a population. But it seemed pretty dramatic that the one is so specific and the other, there's no guidance. There's no statutory guidance for the department in who the Legislature thinks are the types of...or people with the types of problems that should be reviewed as mentally ill and dangerous. And the last point on that is just that similarly there's the Sex Offender Commitment Act is very specific about who needs to be notified that somebody is potentially ill and...potentially--I'm sorry, saying it wrong--dangerous sex offender. It's very specific who needs to be notified and when, whereas there's nothing comparable in the Mental Health Commitment Act. So those just suggest some areas of policy that you may want to look at. And the last little part of the report was just looking at people who were actually referred for commitment under those two acts in 2013. So there were 21 referred as potentially dangerous sex offenders and 6 potentially mentally ill and dangerous. So that's quite a difference in the number. We can't tell you why but it's...seems reasonable that the fact that there are less stringent criteria for the one group, it probably plays a role in that. So I think that's the highlights and I would be happy to answer specific questions. And we would be happy to work with your staff on statutory changes. [LR424]

SENATOR LATHROP: Well, I appreciate that too. Senator Krist. [LR424]

SENATOR KRIST: Just for the record, the Performance Audit Committee does not usually follow through with corrective measures; that is, we don't introduce bills. As a matter of fact, we go back to the committee of jurisdiction and recommend that these things need to be taken care of or we ask for the Chair of that committee to give us a sacrificial lamb who will carry that bill, no pun intended. But in this case, the jurisdictional lines between Health and Human Services and the Judiciary Committee may be broached between the two different committees. So I think what we had decided

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to do was, in this particular case, some of these things need to be tied up because there's some loose ends out there. And we...talking to Senator Harms, we're going to follow through with these things. If they're incorporated in our committee's report, which I understand you wanted to do, Chair, then those following actions will be identified as well if you choose to do that. [LR424]

SENATOR LATHROP: Does the Performance Audit Committee get two priority bills? [LR424]

SENATOR MELLO: Yes. [LR424]

SENATOR KRIST: Yes. [LR424]

SENATOR LATHROP: So they can introduce legislation. [LR424]

MARTHA CARTER: Yes. The committee does not hear bills but they can introduce them and prioritize them. [LR424]

SENATOR LATHROP: Okay. [LR424]

SENATOR KRIST: It's just been our tradition to turn it back to the jurisdiction. And in some cases we've used the priority to support those bills that have gone forward. [LR424]

SENATOR LATHROP: Okay. [LR424]

MARTHA CARTER: Uh-huh. [LR424]

SENATOR KRIST: Those priorities, right. [LR424]

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SENATOR LATHROP: That makes sense to me. Senator Bolz. [LR424]

SENATOR BOLZ: In one of the early reports I read from the ACLU in Colorado, they had recommendations about mental health staff being involved in disciplinary decisions. And I was just curious if you saw any evidence of mental health staff being engaged in disciplinary discussions, if there was any consideration of mental health status or maybe developmental disability in disciplinary action. I'm just curious to hear more. [LR424]

MARTHA CARTER: I can't speak to having observed that because we just didn't look at it. But I can say that when we had interviews with mental health staff, that was certainly something that they discussed, you know, wanting to be and being involved in that process from time to time to bring that information into the process. But I wouldn't be able to tell you whether that happens regularly at all institutions. [LR424]

SENATOR BOLZ: Okay. Thank you. [LR424]

SENATOR LATHROP: I see no other questions. Thank you for the report. [LR424]

MARTHA CARTER: You're welcome. [LR424]

SENATOR LATHROP: More importantly, thanks for all the work that went into it and having you stick around all day. [LR424]

MARTHA CARTER: Not a problem. [LR424]

SENATOR LATHROP: If I'd known we were going to call you at 5:00, I would have invited you to show up at 5:00. [LR424]

MARTHA CARTER: Yeah, it's fine. You can't predict that. [LR424]

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SENATOR LATHROP: But we never know, so I apologize for that. [LR424]

MARTHA CARTER: No, not a problem. Thank you very much. [LR424]

SENATOR LATHROP: Okay. Thank you once again. Okay, that brings us to Joe Nigro. Joe, before you sit down, let's have you raise your right hand. We'll swear you in. Well, you can do it from a seated position, I guess, since you're the public defender-elect. Do you swear the testimony you're about to give this committee will be the truth, the whole truth, and nothing but the truth? [LR424]

JOE NIGRO: I do. [LR424]

SENATOR LATHROP: All right. Have a seat. Why don't we start by having you give us your name and spell your last name for us. [LR424]

JOE NIGRO: My name is Joe Nigro; my last name is spelled N-i-g-r-o, and... [LR424]

SENATOR LATHROP: Okay. Were you recently elected... [LR424]

JOE NIGRO: Yes. [LR424]

SENATOR LATHROP: ...to a position in government? [LR424]

JOE NIGRO: Yes, I was elected as the next public defender in Lancaster County. So I'll take office on January 8. I've been employed in the Public Defender's Office in Lancaster County for 31 years, originally from Omaha and came down here to go to the university for undergraduate and law school. So I've spent my entire legal career in the public defender's office. And Senator Lathrop wanted me to come and talk about mental health courts, which is an idea that I've been very interested in. [LR424]

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SENATOR LATHROP: Why don't you start by telling us what study you've made of the subject matter. [LR424]

JOE NIGRO: Well, I... [LR424]

SENATOR LATHROP: How is it that you're the expert? [LR424]

JOE NIGRO: Early...well, throughout my career, it's not a secret that a large percentage of the people we represent have significant mental health issues. And I've spent a lot of my career trying to deal with people who got thrown into jail for mental health issues and then you're trying to move them over perhaps to the mental health system because the criminal justice system, as you know, is a terrible place to try and deal with mental health. I first became aware of mental health courts years ago reading about something in King County, Washington. And I thought, gosh, what a good idea to try and find folks who keep coming into the criminal justice system because of mental health issues and to try and get them on another track so they don't just get caught in this revolving door. And the thing about...you know, in the legal system, we deal with mental health. There's questions of competency, which is whether somebody understands the proceedings and can go to trial, essentially. There's an insanity defense and then there the mental health commitments. Insanity defenses really aren't raised that often and it's a pretty high standard to meet. I have been...I do the mental health commitments in Lancaster County right now. And that's been a particular area of interest for me. So I've done that for a long time. I also represent our office in the Lancaster County Drug Court. And I've been very impressed with the effectiveness in drug court in dealing with people. And the way drug court works and I want to... [LR424]

SENATOR LATHROP: I think that would be useful if you explained it. [LR424]

JOE NIGRO: I'll explain that because I think it'll help you to understand how a mental health court might work, because there are drug courts across Nebraska. The way drug

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court works is, at least in Lancaster County, for certain nonviolent felonies that are drug related, a person would apply. If they're accepted, they enter a plea to the charges but sentencing is delayed and then they're involved in the drug court. And if they can complete it successfully, it's a way to get the case completely dismissed. So it's a powerful incentive for people to get involved in the drug court. And the reality is, I mean, what I've been able to observe up close over the last few years as I've been involved is that you have this team involvement with the participants in drug court that makes it far more effective than probation. I mean even SSAS probation, which is a good thing, does not compare to drug court in terms of the level of involvement with the individuals. And so we meet every Friday and we staff... [LR424]

SENATOR LATHROP: Joe, tell us how they determine who's going to be allowed to take this route. Is it everybody that's got a drug offense that hasn't committed a serious or a dangerous offense or is...? [LR424]

JOE NIGRO: Well, the way it works in Lancaster County, there's a list of eligible offenses. And so people apply; they're screened by the drug court staff. We have certain limitations based upon history of violent offenses. They do a test called the RANT and it rates people in four quadrants. So it's high risk, high needs, all the way to low risk, low needs. The way our drug court applies it, if you're low risk, low needs, your attorney would have to come in and show that that's maybe not a valid assessment. The high-risk, high-needs people are automatically eligible. And the other groups, the other quadrants would be eligible if there's room. And since we've implemented that, having room hasn't been an issue. They're screened in some other ways and then the county attorney is given an opportunity to object. Some drug courts function where the county attorney is the gate keeper, so they get to decide who comes in. But in our drug court, people apply. If they appear to be appropriate individuals after screening, the county attorney has an opportunity to object and then there's a hearing where the defense counsel and the county attorney get to discuss the objections and then we have two judges who run our drug court. They make a decision on when those individuals will be

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allowed in. If they're allowed in, then they plead and then they start the program. And if they complete it, the case gets dismissed. [LR424]

SENATOR LATHROP: What's a program like? [LR424]

JOE NIGRO: Well, every Friday the drug court team meets and staffs people and talks about how people have done. And then there are sanctions imposed for people who have violated the rules. If people are doing well, there can be rewards. And they're subject to drug testing. There's certain...there's like ten principles of drug courts. And actually, I've been to the national drug court conference multiple times. Our Lancaster County meets most of the model standards. And I've been involved in some committee work to try and standardize things across the state. But the people are subject to testing randomly. So they call in every morning. If it's their color, they have to come in and test. And people never know how often because it's the randomness that really kind of critical, a critical component of the drug testing. They have to go to treatment. They're involved with other kinds of counseling. Many, many of the people we have in drug court are dual diagnosis which means they have substance abuse and mental health issues. So you're trying to work with them on those kinds of issues. Once they've completed treatment then they're supposed to find a job. If they don't have a GED, they're supposed to get a GED and perhaps further their education. They have to remain...they can't graduate unless they've been sober or had negative...they've had to have had negative drug tests for nine months. Some of the standards we have are harsher than other parts of the state and even nationally. And so the graduation rate is lower than I would like it to be, but the recidivism rates for drug courts are much lower than for people who have just gone to prison. [LR424]

SENATOR LATHROP: When you say a drug court, literally, people come before a judge who is sitting on the bench, got a black robe on. The authority of the state of Nebraska is sitting right there. And the person that can revoke them and convict them is going to listen to them talk about whether they're making progress in these areas that you've

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described. [LR424]

JOE NIGRO: Yes, every Friday, after the team meets and talks about people's progress and the individuals, and early on people come every week. The frequency reduces as they move phases and do have to accomplish certain things to move phases. Then the judge has a conversation one-on-one with each individual. And usually, our judges will only be on the bench for people who are perhaps about to be terminated or things of that nature, very serious matters. Our judges come down off the bench, and even though they have their robe on, they're engaging in conversation. It's much different than most other court experiences. And they really do get involved with these individuals' lives. They know everything about them and how they're doing. And then as I indicated...and then there's a whole menu of sanctions. I mean part of what we've learned, because they've done more and more research nationally, I think we used to use jail far too often as a sanction. They've become more creative. So people do community service or there are all kinds of sanctions. I mean we've had people had their Xbox taken away or, you know. I mean you try to find things that will have impact. And the research has shown that if the jail sentence is more than about three days, the impact is lessened. Jail, when people first come into program, has less of an impact, especially if they've come from jail, than somebody who's in phase four and perhaps now is working and their life has stabilized to a large extent. And now going back to jail for the weekend might be pretty significant. There's a lot of research about proximal and distal behaviors and things people can control. Early on in the program, people are far more likely to relapse, whereas the research indicates, you know, that people can control lying. And so if people are dishonest, then that may be treated kind of the same throughout the program. But somebody who relapses early on or...I mean you're just...you're going to treat it differently and you're going to treat things differently depending upon the individual. And the more you can tailor things to what's effective for a particular individual, the more effective I think it will be in the long-run. But drug courts have been around now for 20 years, 25 years. And so there's enough research about drug courts that they really...they do seem to have much better success than prison. I

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mean the point I try to make to people is that, except for people going to prison for the most serious offenses, they're going to get out. And prison does nothing to modify behavior. If you want to change behavior and make the community safer then you have to figure out ways to modify behavior. And I think for people who have substance abuse issues and that seems to be the cause of their breaking the law, drug courts have been very effective. The thing about...we don't have any mental health courts in Nebraska. And I've been interested in this for a long time. And so when I've gone to the national conference there's tracks on all kinds of things, because there are veterans courts, there's DUI courts. The research is pretty consistent that they tend to be more effective than imprisonment. And the thing about mental health courts is that you're looking at individuals who you haven't raised an insanity defense and maybe that's because the charge...sometimes charges are so minimal an attorney and the defendant might be reluctant to raise an insanity defense, because there's a pretty good chance your client is going to go to the regional center for a while. And then they may be involved in outpatient. But it's also a very hard standard to meet. But we represent lots of individuals who are coming into the system repeatedly because they have schizophrenia, schizoaffective disorder, bipolar disorder, severe and persistent mental illness. It may not rise to the level of an insanity defense, but it's why they keep getting into trouble. And if they don't get medication and they don't have a stable living situation, they're either going to be hospitalized or they're going to get in trouble with the law. And trying to deal with their mental health issues in the criminal justice system is a terribly awkward place. So if we were to...so my vision is that maybe Lancaster County, which I think would be the perfect place to be a pilot program for a mental health court because we have significant mental health providers in the community and almost every one of the...those providers I've talked with are unanimous that this would be a good idea. They're very supportive. Richard Wiener is in the law psych program here at the university. He's written a textbook on problem-solving courts and he's very interested because they could do research to help us structure it and also could come up with research to try and help measure success of the program. But it would work similarly. A person would come in. They would apply. If they were accepted then they would plead.

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The sentencing would be delayed while they participated in the program. They would have the opportunity to get the charges dismissed. It's going to be...it's a little more complicated when you try to look at a mental health court because, although there are other places that have violent offenders in their drug courts and the results are just as successful and I hope over time will be more open to including a wider variety of offenses in drug courts, but you want to capture your target population. And so you're...it will take some time to study what should be the eligible offenses. Because, from my perspective, if you're just looking at nonviolent offenses, you're going to miss a lot of the target population. You're probably going to have to include assault, assaultive behavior if you want to get these folks who have committed offenses because they're not on their meds and they're not getting services. You may also have to look at misdemeanor offenses. I mean we have people who come in on very minimal offenses, they get thrown into jail over and over and over because they become a nuisance. And then they sit in jail for weeks sometimes and, you know, by the time they get...and then if they're competent enough to do a plea, they do the plea, they get credit, they go back out on the streets, and then they go bother people again. And so structuring it so you capture the target population on both the serious end and less serious end is going to be important to try and make it successful. Now our particular drug court is a county drug court. A lot of the drug courts in Nebraska are through Probation. We're very proud of our drug court and I think it's quite effective. Kim Etherton is the head of our Community Corrections Department. And she thinks we could easily add a drug...a mental health court because we've got the structure in place. She used to be the director of the Crisis Center here so she has significant experience with mental health issues herself. I've talked with Joe Kelly, our county attorney. He's open to the concept. He wants to see some numbers to see that it is more effective and he's concerned about funding. I think that if it's a pilot program there's a good chance we could access grant money. And obviously there could be money coming from the Legislature, but would the funding be there on an ongoing basis because you have to have that money. I mean we know that it's... [LR424]

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SENATOR LATHROP: But the reality is, and forgive me for interrupting but I think I've seen the statistics on the problem-solving court. You incarcerate somebody and it's about \$33,000 a year, and a drug court is something like \$3,000 a year. [LR424]

JOE NIGRO: The number I've heard...and that may be locally. Nationally, the number I heard quoted was about \$7,000 a year. And obviously it's well over \$30,000 for imprisonment. And I think probation, parole drug courts are similar in the cost. I mean it's...but you're spending... [LR424]

SENATOR LATHROP: Do they pay for it...in the case of a drug court, Joe, do they, does the program pay for whatever care the guy needs? So if he needs to go into inpatient treatment, is that part of the cost of drug court or is that on the guy himself? [LR424]

JOE NIGRO: Yes, yes. They contract with treatment providers and...now the individuals in drug court have a drug court bill and that's part of what they have to accomplish to graduate is they have to pay that. With mental health courts, sometimes it works a little differently because some folks, their disability may be severe enough that they may not be able to become employed. And so you have to make adjustments for that. Sometimes people are involved in drug courts longer than...or mental health courts longer than a drug court program. Our drug court is a minimum of 18 months. We've had people as long as four years. But I would say 18 months to 2.5 years, most people. Mental health courts might take a little longer if you want to be assured of the stability. I went to a session at the national drug court conference and it was Oakland, California's, juvenile drug court. And they had...I mean besides having treatment providers and the staff and prosecutor, defense attorney, and the judge on the team, they had people from Legal Aid, they had social workers. So they were...I mean because there were times that there kids who were in danger of being expelled. So they had people who kept that kid in school because keeping them in school was critical to keeping them successful in the program. The kid's mother...another kid's mother was at risk of being evicted. So

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they had a Legal Aid attorney on the team who was able to keep that person in their housing. I mean when you talk about mental health issues, it's not just medication, although that's the most important component perhaps. But you've got to provide stability in their life. And so you've got to be able to provide access to housing and all the other things. You know, having done the mental health commitments for many years, certainly I represent people who have good family situations. Their success, the chances for them being able to avoid coming back to the hospital are very good. But so many of the people I represent do not have a good family structure and so they just fall through the cracks all the time. They don't have a support system. And a mental health court I think could help for those folks who are coming into the system in that way. You know, so I'm a firm believer that it would a good option. I mean I think that...I know this committee and other...I mean other people looking at prison overcrowding and sentencing reform are trying to look at improving programming in the institution and beefing up the services for people on parole and probation. I think expanding problem-solving courts could be a helpful way to try and reduce the prison population and to reduce the risk of recidivism. And the research, there isn't as much research about mental health courts nationally, but there is research. In fact, I was...spent quite a bit of time today before I came over to look and there has been research: Broward County, Florida; I think Clark County; California; there's stuff in Ohio; New York. There are different places. And the research does seem to indicate that people are less likely to offend. They're more likely to continue to be involved with mental health services after they're done with a mental health court. And so I think it would be a good thing. And as I indicated, I think Lancaster County is a perfect place to try and structure that. I'm talking about these different programs because I think they're all important pieces of the puzzle in trying to look at people who have come into the system and reducing the risk that they won't come back. The bigger picture, I mean if you really want to make the biggest impact as far as people with mental health, spend more money for community programming and we'll have people who will never come into the system at all. Our community-based programs are inadequate. I mean the reality is we don't enough beds at the regional center either. You know, they were reduced but the community programs

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weren't improved. But we need more programming in our communities and that's going to have to be money that I think is going to have to come from the state. One of the things that you could do is expand Medicaid. I've seen an estimate that 42,000 people in Nebraska would qualify for mental health services if Medicaid was expanded. And some of those people, I can guarantee you some of those people are the people that we're talking about who come into the criminal justice system. If you want to make the biggest reduction in people coming into the system, put more money into those community-based programs so they can treat people who will then never get into trouble. But I do think that mental health courts could be an important piece of dealing with people who have come into the system and reducing the risk that they will return. [LR424]

SENATOR LATHROP: Okay. Senator Krist. [LR424]

SENATOR KRIST: To your point, there's a juvenile mental court system and behavioral court system in New Jersey as part of a JDAI function, the Juvenile Detention Alternatives Initiative programs, where any child in the introduction to the system is tested. Below a 70 IQ automatically goes in a different direction. And behavioral issues are also a part of that as well as education. We have to make sure if we're going to do this that it's not just an adult system. It's there for juveniles as well. To your point about probation I would say the probation model has within it a voucher system so they can pay for it with Probation funds. But they're also taking a unique and I think a very frugal look at, are you capable of self-pay? Do you have insurance? Are there other funds available? And the community funds in some cases are there. I think you're right on track. I just think that when...and my last comment, I honestly believe as we restructure the intent of the LB561 money, that can be used for this purpose, particularly if it's a pilot program that has a value system or an evidence-based system attached to it with the outcomes being presented as a study at the end of it. So I wouldn't discount LB561 money in this program at all. Thank you. [LR424]

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JOE NIGRO: Okay. [LR424]

SENATOR LATHROP: Senator Seiler. [LR424]

SENATOR SEILER: You mentioned a couple times that in the process they enter a plea. What plea do they enter? [LR424]

JOE NIGRO: Well, people would either plead guilty or no contest. Now the way... [LR424]

SENATOR SEILER: Okay, hold it just there. [LR424]

JOE NIGRO: Yeah. [LR424]

SENATOR SEILER: Okay. Let's assume they plead guilty. [LR424]

JOE NIGRO: Yes. [LR424]

SENATOR SEILER: Then you said that they could...later the judge could dismiss the case. [LR424]

JOE NIGRO: What happens is the judge delays sentencing. When the person graduates... [LR424]

SENATOR SEILER: No, I understand that. But I have a little problem there with once you plead guilty, does the judge allow you to withdraw your guilty plea before he dismisses it? [LR424]

JOE NIGRO: At the graduation ceremony, I move that the court set aside the finding of guilt so that the defendant can move to withdraw his plea. [LR424]

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SENATOR SEILER: Okay, that clarifies it. [LR424]

JOE NIGRO: They withdraw their plea and then the county attorney moves to dismiss.
[LR424]

SENATOR SEILER: Yeah, because if you couldn't withdraw your plea, you're screwed.
(Laugh) [LR424]

JOE NIGRO: Yes, yes. So... [LR424]

SENATOR SEILER: Okay. [LR424]

SENATOR LATHROP: Which is an LR424 term for, it's not a good deal. (Laughter) We
do have our own... [LR424]

JOE NIGRO: I'm familiar with this term. [LR424]

SENATOR LATHROP: We have developed our own language here sometimes. Senator
Schumacher. [LR424]

SENATOR SCHUMACHER: Thank you, Senator Lathrop. It seems we've set up, you
know, this massive criminal system and all the court procedures. And then we...the end
of the criminal system is the penitentiary or probation. And now we're struggling to find
diversions from this massive system, be it drug courts, mental health courts, veterans
courts, just hard luck courts. And from your experience, 31 years, a long time watching
the system, who really should we apply the criminal system to? Instead of saying, this is
the general rule, the criminal system, now let's divert. Can we turn it on it's head? Who
belongs in the penitentiary? [LR424]

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JOE NIGRO: Well, I think that there are...you know, the interesting thing I think because I have close contact with clients, I...you know, it's always interesting to me because it's a lot easier to become a judge if you've been a prosecutor. And my perspective has always been that because we have such close contact with defendants, I think we develop a pretty good sense of who might really be dangerous. And it isn't necessarily the type of offense; sometimes it is. Sometimes it's the individual I mean because it's...so prison should be there for offenses that are just so serious that kind of the community sort of demands that the person is incarcerated. And it needs to be there for people who are dangerous. And so with almost every group, I mean I can give you examples of people where, you know, perhaps it might be better if we tried some alternative. But there's obviously individuals, I mean the most serious violent crimes. You know, I know...I mean 70 percent of the people in prison are there for nonviolent offenses. And most of those are Class IV felonies. I mean we could dramatically reduce the flow of people into prison if we started looking differently at nonviolent offenses. But on the violent end...because again, I'm hesitant to say even like a particular crime because, you know, you can say first-degree sexual assault and you think, well, okay, that person should go to prison. Well, okay, is it somebody who's molested a five-year-old, especially a stranger encounter? Or is it a 19-year-old who is having an essentially consensual encounter with a 15-year-old but the 15-year-old can't consent? I mean she was a willing participant but she can't consent because she's not of legal age. From my perspective, I mean we probably don't need to put that 19-year-old in prison, but the stranger who's molested a couple of 5-year-olds probably should go to prison, although I might be able to give you a set of circumstances where I'd be able to articulate why not. But does that make sense? [LR424]

SENATOR SCHUMACHER: So if we really limit down the number of offenses that qualify for the penitentiary, okay, and then give the judge back the discretion to say, you know, all right, you're in this class that really qualifies but there's exceptional circumstances because she was 15 and consented but couldn't consent under the law. So you don't...you know, we'll divert you off to the probation system. It seems with the

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drug courts and mental health courts and those things we're making a real effort not to engage a bad system because we know that those people really aren't served by the bad system. So maybe the overall needs to bigger than creating special diversion routes out of the system. [LR424]

JOE NIGRO: Well, I think they're all little pieces of the puzzle. I mean one of the things that we've learned with drug court, when you have these lower risk individuals, it's not good for them to be mixed with higher risk individuals. They're not a good influence on the higher risk individuals. It's far more likely that the lower risk individuals or their problems will become worse. And the research is the same about people in prison. If you put lower risk people in prison, you are increasing the likelihood that they're going to reoffend when they're mixed in, when they're put in that culture and they're mixed with higher risk individuals. And so we should do everything we can. I mean you were asking about types of offenses: robbery. Robbery is a Class II felony. You know, it's a serious offense. But I've had clients charged with robbery who have gotten a chance at probation because the judge looked at them and they were a young individual. They didn't have much of a record and they wanted...they thought they could reform their behavior without incarcerating them. But then sometimes you can have a robbery that is so violent in nature that even if it's a first offense, the judge might think I have to put this person in prison, or somebody who repeatedly commits violent offenses. So I think, you know, from my perspective it's always good to have flexibility. But clearly we're putting too many people in prison right now. When you look, I mean it doesn't make the community safer because they're going to get out and you're increasing...for the lower risk people you're increasing the risk that they're going to reoffend. You can do other kinds of programming for people on nonviolent offenses that might result in better outcomes. So why are we doing the most expensive thing? And heck, we don't even have room for the people we're sending there. [LR424]

SENATOR SCHUMACHER: Thank you. [LR424]

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SENATOR LATHROP: I think that's it. Joe, thanks for the work you've done on this subject. It certainly makes sense to me. I know we've studied this a little bit in Judiciary Committee during my time there and the cost savings and the information or the data on recidivism is compelling I think. [LR424]

JOE NIGRO: Well, I just think spending money on mental health, whether you're doing it for people in the prisons, whether you're creating mental health courts, putting in probation, parole, but most importantly, spending money on mental health in the community is not going to be...it's going to be money well spent. [LR424]

SENATOR LATHROP: Well, that's a good point. And I think that was the first witness we took up today, which is what are the failures in the provision of services and care for the mentally ill that have landed such a large number of people into prison? Or, you know, we've...instead of taking care of the "left behinds," we're now waiting for them to get arrested and putting them in jail or in prison. [LR424]

JOE NIGRO: Well, and, you know, I...there was a story on NPR a few months ago and they talked about how the biggest mental health provider in the United States is the Cook County Jail in Chicago; number two is the L.A. County Jail; and number three is Rikers Island in New York. [LR424]

SENATOR LATHROP: Right. [LR424]

JOE NIGRO: Fifty years ago, we used to put too many people in mental hospitals and there was a move to get people out and to create the right to hearings and commitment process. But we never funded community programs and so now our jails and prisons have become our biggest mental health providers. And it's cruel and it's ineffective and it's expensive. And we can do better. [LR424]

SENATOR LATHROP: Okay. I think we agree. All right, thanks. I appreciate your

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testimony. [LR424]

JOE NIGRO: You're welcome. [LR424]

SENATOR LATHROP: Our last witness is going to be Scott Carlson and he's going to be a brief witness because...I guess we'll swear you in as long as...you're our last witness and the last witness I'm ever going to interrogate from here. So do you swear the testimony you're about to give will be the truth, the whole truth, and nothing but the truth? [LR424]

SCOTT CARLSON: I do. [LR424]

SENATOR LATHROP: All right. Have a seat, Scott. And start by giving us your name and spelling your last name if you would. [LR424]

SCOTT CARLSON: Scott Carlson, C-a-r-l-s-o-n. [LR424]

SENATOR LATHROP: And where do you work, Scott? [LR424]

SCOTT CARLSON: I work for the Nebraska Supreme Court in the Administrative Office of the Courts as the statewide coordinator for problem-solving courts. [LR424]

SENATOR LATHROP: Okay. So you are the coordinator for problem-solving courts in Nebraska. [LR424]

SCOTT CARLSON: Correct. [LR424]

SENATOR LATHROP: And to what extent has the state of Nebraska utilized problem-solving courts? [LR424]

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SCOTT CARLSON: Currently, we have 24 problem-solving courts across the state. All of those, save two, are drug courts. We have one that's a young adult court in Douglas County and then we have a DWI court out in Scottsbluff. We serve approximately 1,200 individuals a year in our problem-solving courts. And at any given time, we probably got about 625 to 650 individuals in problem-solving courts. [LR424]

SENATOR LATHROP: And you said we have a youth court and a DWI court, but the rest of them then would be substance abuse? [LR424]

SCOTT CARLSON: Correct. [LR424]

SENATOR LATHROP: Can you give us a little background on how long we've been doing it and how effective they are? Kind of sell us on the concept, if that's what you intend to do,... [LR424]

SCOTT CARLSON: Sure. [LR424]

SENATOR LATHROP: ...of problem-solving courts and their efficacy. [LR424]

SCOTT CARLSON: Sure. Drug courts in our state started in 1997 with the Douglas County Adult Drug Court through James Murphy, who happened to be friends with a judge down in Florida who started the first drug court back in 1989. Our drug courts, we've had an explosion of drug courts in the early 2000s, a lot of that was related to...there was a lot of federal dollars that came down through the Bureau of Justice Assistance, Department of Justice. And so in Nebraska we...that's kind of the time frame that we exploded. I began in the juvenile drug court. I started that program up in 2000 in Lancaster County and moved into this position in 2005. In 2005, we had 9 problem-solving courts in the state and now we're sitting at 24. As Joe indicated, drug courts, problem-solving courts have been around for approximately 25 years. We celebrated 25 years this last summer. Drug courts are probably the most researched

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criminal justice prison alternative program in the country. You could probably fill your desk to the ceiling with the amount of research around drug courts. They've been found to be the most successful criminal justice alternative, keeping people out of prison, doing it in a cost-effective manner. Joe was correct: Our average cost per participant here in Nebraska is around \$4,000 with a state contribution of around \$3,500 or so based on the dollars that come from the Legislature. When we talk about graduation rates, Joe was correct in indicating that in our drug courts we're moving at fairly rapid speed towards utilizing evidence-based practice. We've always used evidence-based practice. But based on the research, there's so much more evidence-based practice that's come out and we actually have now created a set of standards. We're working with the National Center for State Courts to create a volume of standards for problem-solving courts, to create those standards across all adult drug courts. And all those standards are based on the research. And so we're moving that direction. We also have a five-year strategic plan to institutionalize our drug courts and our problem-solving courts in the state. And Joe mentioned about graduation rates and he's correct. And one of those evidence-based practices when he talked about high-risk, high-need individuals. The research shows that drug courts are being the most effective with that high-risk, high-need population. And so we did an assessment a couple years ago and determined that we were sitting probably medium to low high-risk individuals in our programs. And so we made a concerted effort to shift that population, that target population, into the drug courts. That innately is going to then decrease the graduation rates because the higher risk, the less likely they may achieve. But what we...at the national level what we've learned is that rather than looking at graduation rates, we tend to look at what we call retention rates. And research again shows that even somebody who stays in drug court for a significant amount of time but then may be terminated from the program is likely to be more successful than somebody that did not have any drug court services at all. And so we look at our retention rates and our retention rates across the state are about 71 percent, which is higher than the national average. And so we kind of pride ourselves on, you know, we're impacting people regardless of whether they complete the program or not. The last time we had a statewide evaluation done in 2011

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and our adult drug courts were approximately 60 percent graduating. And then our juvenile program is a little less, based on the volatile nature of the juvenile. That... [LR424]

SENATOR LATHROP: So let's take a fellow convicted of possession of methamphetamines. That would be a typical person passing through the drug court? [LR424]

SCOTT CARLSON: Sure. [LR424]

SENATOR LATHROP: Okay. And if that person were to go to the penitentiary or a hundred of those people went to the penitentiary and a hundred of them went to the drug court, what's going to be the difference in whether they either use or reoffend? [LR424]

SCOTT CARLSON: What's going to be the difference? [LR424]

SENATOR LATHROP: Yeah, what's the...there's a lower recidivism rate among people that go through the drug court, am I right? [LR424]

SCOTT CARLSON: Correct, right. [LR424]

SENATOR LATHROP: So can you compare or contrast just going through prison, going and doing time, whatever they offer when you get there, versus going through drug court? It's not just the money, in other words. [LR424]

SCOTT CARLSON: Right, right. [LR424]

SENATOR LATHROP: It's cheaper to go through drug court, but they also have a better success rate. [LR424]

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SCOTT CARLSON: Right. They have a better success rate and it's not...even more importantly, it's not just about necessarily that individual. Drug courts assist in reunifying families, eliminating social costs, giving back to the community, education, employment, other types of services. And so we did have as part of that evaluation that I mentioned in 2011, we did have a semblance of a cost-benefit analysis done. It didn't go as far as we would have liked but it did determine...or did discuss how difficult it is to really estimate the social costs that drug courts provide. You know, the penitentiary, yes. You asked about the types of people that should be in prison and I always like to quote Ellen Brokofsky, the Probation administrator, that she always says the people in prison should be the people that we're scared of. The people that we're mad at we should have on probation, we have in the community, and we should be working with them to bring back into our community. And that's what drug courts and problem-solving courts do for our community. And so that social cost is tremendous. Typically, that offender you're talking about likely is going to go to the penitentiary, likely is going to be, as Joe talked about, going to be immersed in with other high-risk individuals and is going to come out high risk and likely going to commit even more serious crime or harm to themselves, others, and what have you. That meth addict who comes in drug court is more likely going to succeed, go on to be a taxpaying citizen, a good family member, school, education, and contribute to society. [LR424]

SENATOR LATHROP: So there's 25 years of history that we can look at and information or data on the drug courts. We can evaluate them and say these things are a success. [LR424]

SCOTT CARLSON: Correct. [LR424]

SENATOR LATHROP: Are there special challenges for mental illness courts, or mental health courts? [LR424]

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SCOTT CARLSON: Sure, there are. Joe talked a little bit about it. One of the biggest differences between a drug court and a mental health court are the range of services that are going to be necessary to operate a mental health court. And again, we're already...I mean we're already tasked with not having enough substance abuse services throughout our state, particularly in our rural areas. And so we're working on that; Probation is working hard on that. The voucher system has helped with that. And so we're just...it's probably...the magnitude is much greater in the rural areas for mental health services. And so creating that continuum of mental health service if going to be a challenge. I think again, as Joe inferred, in the larger metropolitan areas I think we could do that. But again, scaling it... [LR424]

SENATOR LATHROP: It's about accessing the providers... [LR424]

SCOTT CARLSON: Right. [LR424]

SENATOR LATHROP: ...and having enough and when you get out to western Nebraska, for example, or various parts in the state where they don't have the mental health providers, that's the issue. [LR424]

SCOTT CARLSON: Correct, right, right. [LR424]

SENATOR LATHROP: Okay. Do you think it can be done? [LR424]

SCOTT CARLSON: I do, I do. [LR424]

SENATOR LATHROP: Are you willing to accept that challenge? If the Legislature next year sets up a pilot program, for example, in Lincoln, are you prepared to assume responsibility for that? [LR424]

SCOTT CARLSON: Absolutely. [LR424]

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SENATOR LATHROP: Okay. Senator Krist. [LR424]

SENATOR KRIST: Just very quickly, one of the problems with a voucher system, and please jump in there and correct me if I'm wrong, we have mom-and-pop...look at the LR37 when we tried to privatize outsource family services. We destroyed infrastructure, okay. We're rebuilding the infrastructure. One of the problems we have with the voucher system is a mom-and-pop provider, for lack of better terminology, a small provider, needs to establish a budget. So if there's a voucher system in place, there's really a problem with, how do I establish a budget when I don't know how many services I'm going to have to provide, which allows for a larger community to do well, a smaller community not so much. That's why I think that the university being involved with these programs will allow some stability. But the voucher system really has been very successful I think in trying to get those services in the right place. [LR424]

SCOTT CARLSON: It has and we're certainly grateful for the dollars that came out of LB907, the 5 million mental health dollars that are spread amongst various programs, because the problem-solving courts are going to benefit from those as well on the mental health side. But again, those dollars, you know, are going to go to drug courts. And they're not going to cover everything, you know, across programs and parole and what have you. But you're right, the voucher system... [LR424]

SENATOR KRIST: Well, if Senator Mello were here...actually, and we can remind Senator Bolz, there was a promise there would be another \$5 million this year. So voila. [LR424]

SENATOR LATHROP: Oh. [LR424]

SCOTT CARLSON: Okay. There it is. [LR424]

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SENATOR LATHROP: Well, apparently we solved that problem. Any other questions for this witness? I see none. [LR424]

SCOTT CARLSON: Great. [LR424]

SENATOR LATHROP: Thank you for showing up and your willingness to assume responsibility for that program if we can get the next Legislature to do something about it. [LR424]

SCOTT CARLSON: Well, the court will have to resume...assume responsibility, but. [LR424]

SENATOR LATHROP: Yeah, yeah, the court will. All right, thanks. [LR424]