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COMMITTEE ON JUDICIARY
February 3, 2005
LB 540, 541, 653, 431, 754, 349

The Committee on Judiciary met at 1:30 p.m. on Thursday, February 3, 2005, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 540, LB 541, LB 653, LB 431, LB 754, and LB 349. Senators present: Patrick Bourne, Chairperson; Dwite Pedersen, Vice Chairperson; Ray Aguilar; Ernie Chambers; Jeanne Combs; Mike Flood; Mike Foley; and Mike Friend. Senators absent: None.

SENATOR BOURNE: Welcome to the Judiciary Committee. This is the seventh day of committee hearings. We're hearing six bills today. I'm Pat Bourne from Omaha. To my left is Senator Mike Flood from Norfolk; Senator Friend from Omaha; Senator Aguilar from Grand Island. Laurie Vollertsen is our committee clerk. To my right is Michaela Kubat, the committee counsel; Senator Foley from Lincoln; and Senator Jeanne Combs. I will introduce the other members as they arrive. Please keep in mind that senators have duties and will be coming and going. Please do not take offense if they leave during your testimony. They're simply conducting other business. If you plan to testify on a bill, sign in in advance. We're going to use the on-deck table there where the Chief Justice is. Please print your information so it's easily readable and can be entered accurately into the permanent record. Following the introduction of each bill, I will ask for a show of hands to see how many people plan to testify on the bill. We'll first hear proponent testimony, then opponent testimony, and then neutral testimony. When you come forward to testify, please clearly state and spell your name for the benefit of the transcribers. Due to the large number of bills heard in the Judiciary Committee, we're using the Kermit Brashear memorial lighting system (laughter). Senators will get five minutes to open; three minutes to close. All other testifiers have three minutes exclusive of any questions the committee might have. The blue light goes on for three minutes. The yellow light will come on as a one-minute warning, and the red light I ask you to stop. Rules of the Legislature state that there are no cell phones allowed. If you have a cell phone please disable it. We will allow you to submit someone else's testimony but we will not allow you to read it into the record. We've been joined by Senator Pedersen from Elkhorn, soon to be Omaha (laughter)

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SENATOR Dw. PEDERSEN: Over my dead body.

SENATOR BOURNE: (laugh) With that, Senator Brashear to open on LB 540. Senator Brashear, welcome.

LB 540

SENATOR BRASHEAR: Thank you. Mr. Chairman, members of the Judiciary Committee, my name is Kermit Brashear. I'm a legislator. I represent District 4. I'm appearing in introduction of and support of LB 540. LB 540 would provide for an increase in judicial salaries for the coming 2005 through 2007 biennium. At the outset, I think it is important to stress the importance of our independent and well qualified judiciary. The independence of the judiciary is enhanced when compensation does not become a political issue but is provided as a matter of recognition of the importance of a co-equal branch of government. The judiciary, I respectfully suggest, ought not need to come to the Legislature with "hat in hand." And clearly, our ability to attract qualified people of talent and accomplishment to the bench will depend upon our ability to provide appropriate compensation. LB 540 will recognize the value of our judges and the justice of providing them with an increase in compensation. It is important to point out that during the prior budget cycle, during which you may recall things were somewhat tight, the judicial branch opted to forego salary increases. LB 540 would recognize this fact and provide an increase that does, in fact, make up for as well as providing a percentage increase comparable to that provided to other state employees. This results in an increase in the first fiscal year of the bill of 4.5 percent and an increase in the second fiscal year of 5.25 percent. The best way to assess the impact of LB 540 is to examine where Nebraska judges rank nationally and within our own state government in terms of their compensation. In national terms, Nebraska judges are below the median salary for state judges, currently ranking 29th among the states. If LB 540 is adopted, Nebraska salaries would closely approximate the current median salary although the median is expected to increase as other states adopt salary adjustments. Clearly, this bill is not, while intended to be appropriate is not overly generous when we compare what

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our judges are paid compared to other states. In terms of state government, although the members of the Supreme Court at the very top of our judicial system, there are many state officials with higher salaries including the director of the coordinating commission on postsecondary education. This bill is necessary and appropriate. Recognition of the value and responsibility of our judiciary ought to be a very high priority I respectfully submit in our budgeting process and I urge your advancement of LB 540. And thank you for your time and attention.

SENATOR BOURNE: Thank you. Before we have questions for Senator Brashear, could I get a showing of hands, those individuals testifying in support? I see four. Those in opposition? I see none. Those neutral? Thank you. Questions for Senator Brashear. So, Senator, it's been several years. When is the last time the judges received a pay increase, 2002?

SENATOR BRASHEAR: Yes, I believe that's correct.

SENATOR BOURNE: And in percent, this is, I mean the bill just says a number. Do you know what the percent increase is?

SENATOR BRASHEAR: The percent is 4.5 and 5.25 and those were arrived at as taking into account that which other state employees had gotten in the two years when we did not otherwise provide...when we only otherwise dealt with the judiciary in retirement as you're well aware and not in terms of salary increases. So this makes up the increase that the state employees got and that which they're anticipating getting now.

SENATOR BOURNE: Understood. Thank you. Further questions? Senator Friend.

SENATOR FRIEND: Just a comment. I'm a little confused, Speaker Brashear. This doesn't look like your normal shell bill so (laughter) that was a joke. I'm...

SENATOR BOURNE: Further questions on that note? Further questions for Speaker Brashear. Seeing none, thank you. First testifier in support.

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SENATOR FRIEND: We'll talk later, right?

SENATOR BOURNE: See, I can't even control the committee any longer, Kermit. First testifier in support. Welcome, Chief Justice.

JOHN HENDRY: Good afternoon, Chairperson Bourne and members of the Judiciary Committee. My name is John V. Hendry, H-e-n-d-r-y and I'm the current Chief Justice of the Nebraska Supreme Court. I appear before the committee today in support of LB 540. I support LB 540 because it will assist in my goal of attracting high quality legal talent to the judiciary and to retain those members currently serving in that capacity. The judiciary and, for that matter, the entire judicial branch of state government is no better than the sum of its parts. Those parts are the people who are employed to carry out the duties and the responsibilities of the judicial branch of government. To that end, it is helpful if the salaries of those employees are such that they both attract and retain quality individuals. The passage of LB 540 will be of assistance in my effort to attain that goal. I fully realize that rendering public service is not about money. However, the salary the state pays its judges is important if we want to attract to the judiciary those lawyers who have demonstrated both outstanding legal abilities and high ethical standards. The increases which LB 540 proposes, that being 4.5 percent on July 1, 2005, and 5.25 on July 1, 2006, will not bring Nebraska's judiciary to the upper echelon of salaries to members of the judiciary throughout the United States. The increases would, in my opinion, essentially maintain the Nebraska Supreme Court's current state ranking of number 29 according to the most recent survey of the National Center for State Courts of April 1, 2004. According to that survey, it is my further opinion that such increases will maintain the relative ranking of the Nebraska Court of Appeals which is currently number 25 and the relative ranking of the district courts currently at 26. Let me explain for a moment my understanding of how the proposed increases in LB 540 were derived. In fiscal years 2003 and 2004 the judges of this state did not receive a salary increase nor did they actively pursue one. Over that same period of time, most other state employees received a 1.5 percent increase commencing on July 1, 2003, and a 2 percent increase on July 1, 2004. It is currently

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projected that state employees in fiscal years 2005 and 2006 will be receiving a 3 percent increase on July 1, 2005, and a 3.25 percent increase on July 1, 2006. LB 540 simply mirrors the cumulative percentage increases of other state employees received in 2003 and 2004 together with the proposed increases to state employees recommended by the governor in 2005 and 2006. The total percentages requested in LB 540 reflect the same percentage increases given to other state employees over a comparable period of time. Thank you for considering my comments.

SENATOR BOURNE: Thank you. Questions for Chief Justice Hendry. Seeing none, thank you. Thank you for your testimony.

JOHN HENDRY: Thank you.

SENATOR BOURNE: Next testifier in support. Welcome.

SANDRA DOUGHERTY: Good afternoon, Chairman Bourne and members of the Judiciary Committee. My name is Sandra Dougherty, D-o-u-g-h-e-r-t-y and I am a district judge serving the public in Omaha. I am appearing here today as a representative of the District Judges Association. All of the district judges are members of the association and all of the district judges in that association support LB 540. And I am here to ask you to vote to advance LB 540. On behalf of the association, we thank you for your past support of the judiciary and hopefully your future support. Be happy to take any questions.

SENATOR BOURNE: Thank you. Questions for Judge Dougherty. Seeing none, thank you. Next testifier in support.

PAUL O'HARA: Mr. Chairman and members of the Judiciary Committee, my name is Paul O'Hara. That's O-'H-a-r-a of Lincoln. I'm a registered lobbyist appearing today on behalf of the Nebraska County Judges Association and we would just like to get on the record our support for LB 540 and our appreciation to Senator Brashear and the members of the committee for their support as well. If you have any questions, I'd be happy to answer them.

SENATOR BOURNE: Thank you. Questions for Mr. O'Hara? Seeing none, thank you. Next testifier in support?

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JOHN SENNETT: Good afternoon. I'm John Sennett, S-e-n-n-e-t-t. I'm president of the Nebraska State Bar Association. I appear here today to express the bar association's support for LB 540. It is our belief that the major thrust of our association is to encourage equal access to justice not only in equality but in quality. The quality bears a price tag that cannot be ignored and it can't be ignored much longer with regard to the judiciary. Judges don't become judges to become rich. What they do and are entitled to be adequately compensated. So long as we have adequate pay for the judges we will continue to have the high quality that we had not only on the Supreme Court but on all the other benches in our state. We strongly support this bill. If there are any questions, I would be happy to answer them.

SENATOR BOURNE: Thank you. Questions for Mr. Sennett. Seeing none, thank you very much. Further testifiers in support? Testifiers in opposition. Excuse me, Senator Foley.

SENATOR FOLEY: Senator Bourne, this is a bit unusual. What if, Senator Brashear, I don't know if you were planning on closing. I would just ask you to close please, I did think of a question I'd like to get on the record.

SENATOR BOURNE: Thank you. Testifiers in a neutral capacity? Senator Brashear to close.

SENATOR BRASHEAR: Mr. Chairman, members of the committee. I must admit I was not going to, having previously preached economy of time while in this room but certainly at the request of any member I'm pleased to close.

SENATOR FOLEY: Thank you very much for coming back on this bill, Senator. It didn't occur to me until you'd left earlier but is it typical for judges' salary bills to come to the Judiciary Committee?

SENATOR BRASHEAR: Yes, sir, it is. In my experience, in my ten years they have all come here. They always have come here.

SENATOR FOLEY: Okay, okay. Because it just...the thought

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occurred to me that whether or not we fund this maybe ought to be coordinated with the entire state budget question. But if it's precedent to send those kinds of bills here then...

SENATOR BRASHEAR: By tradition, they have always come here.

SENATOR FOLEY: Okay.

SENATOR BRASHEAR: We have exercised the jurisdiction of the committee or the committee has exercised the jurisdiction of the committee. And then there has been coordination with the Appropriations Committee.

SENATOR FOLEY: Very good, thank you.

SENATOR FOLEY: Thank you. Further questions for Speaker Brashear? Seeing none, thank you. That will conclude the hearing on LB 540. Senator Brashear to open on LB 541. Before he does that, Senator Chambers from Omaha has joined the committee. Senator Brashear, when you're ready.

LB 541

SENATOR BRASHEAR: Thank you, Mr. Chairman and members of the Judiciary Committee. My name is Kermit Brashear and I'm a legislator. I represent District 4. I appear in introduction and support of LB 541. LB 541 was brought to me by Judge Michael McCormack of the Nebraska Supreme Court in his official capacity as chair of the Judicial Resources Commission. The commission has a mandate under the statutes of Nebraska, Neb. Rev. Stat. Section 24-1205 and following: To evaluate the distribution of judgeships across the state and to determine whether creating new judgeships or eliminating a particular judgeship is appropriate to any judicial district. The determination of the commission is by law based upon factors set forth in the statutes including judicial workload, access to the courts for all litigants, the population within the judicial district, other judicial duties and the travel time involved in rendering the service. The commission is required to report its conclusions to the Legislature but where judgeships are created or moved, its determination is not binding upon the Legislature. Justice McCormack reported the findings of the

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commission to me in my former role as chairman of this committee and asked me to introduce this bill on behalf of the commission. And I had agreed to do so prior to this session. I agreed because the efficient use of judicial resources is, I think, a very important part of the administration of justice and I believe you would all agree. Testimony will follow that will provide more detail on the factors considered by the commission and its rationale for recommending the changes set forth in LB 541. I would urge your consideration and advancement and I appreciate your time. Thank you.

SENATOR BOURNE: Thank you. Before we ask questions of Speaker Brashear, could I get a show of hands of those individuals wishing to testify in support? I see one. Those in opposition? Those in opposition? I see none. Those neutral? I see one. Questions for Speaker Brashear. Senator Chambers.

SENATOR CHAMBERS: Senator Brashear, for old time sake and also because I'm serious, I want to pose a question to you. It's somewhat theoretical, somewhat philosophical but practical. We're talking about the efficient use of judicial resources. Let's say you have a judge who handled a case, the Supreme Court decided it and had to send it back for resentencing because the judge said something obviously inappropriate. Another case came up, very similar facts, identical sentencing situation, and the judge again did exactly the same thing and it had to be...the sentence vacated, calls remanded for a resentencing by a different judge. Could that be considered inefficient use of judicial resources by requiring unnecessary additional judicial proceedings?

SENATOR BRASHEAR: Senator Chambers, in the theoretical sense or in the abstract,...

SENATOR CHAMBERS: Yes, yes.

SENATOR BRASHEAR: ...certainly the situation you outlined particularly as it relates to the repetitive use of appellate time would seem to me and I'm just me sitting here, as an appropriate consideration for the use of judicial resources.

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SENATOR CHAMBERS: Thank you. That's all that I have.

SENATOR BOURNE: Thank you. Further questions for Speaker Brashear? Seeing none, thank you. Next testifier in support?

JOHN SENNETT: (Exhibit 4) John Sennett again, S-e-n-n-e-t-t. As I said, we have the bar association main goal, I believe, and our main purpose is to attempt to give quality and provide for access to justice for the entire state of Nebraska. The bar association recommended to the Judicial Resources Commission that the judge in the 12th district not be replaced. The weighted caseloads would indicate that it was not necessary. But we also recommended that that judgeship and that position be reallocated in some fashion. The commission recommended that there be another county judge placed in the 4th district and that's the purpose of this bill. That was based, I believe, almost entirely on the weighted caseloads that are available that are being passed out here. Our primary goal is to be sure that there are judicial resources available. If it is anecdotally believed that the 4th district either does not need or there is greater need in some other locations then we would support that as well. So we are here supporting the concept of this bill which is to terminate the one judge in the 12th district but we feel very strongly that those judicial resources need to be reallocated and placed where the greatest need is. The commission's position was that it would be a county judge in the 4th district. Are there any questions?

SENATOR BOURNE: Thank you. Questions for Mr. Sennett? Senator Flood.

SENATOR FLOOD: Thank you for your testimony today. Could you explain to me weighted caseload? Does that take into account travel between different courts in the judicial district?

JOHN SENNETT: I would never pretend to be able to explain weighted caseload (laugh). I have been told and it's been represented to me that some travel time is involved in the weighting. I do not know if administrative time and administering the various courts is included in that weight. But I understand some travel time is included.

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SENATOR FLOOD: Thank you.

SENATOR BOURNE: Thank you. Further questions for Mr. Sennett? Seeing none, thank you. Next testifier in support? Again, we're going to make use of the on-deck area so if you're going to testify in support you should be using the on-deck chairs and as those are cleared, those in opposition make their way forward to the room so we don't have to wait for people to sign in.

_____: Mr. Goodroe would (inaudible) testify in support.

SENATOR BOURNE: Oh, okay. I'm sorry. Okay, (laugh) thank you for that clarification. No other testifiers in support? Those in opposition? I've received three letters in opposition from Beth Fiegenschuh from the Cheyenne County Clerk, Kimberly Quandt, from the law firm of Sonntag, Goodwin & Quandt, and Robert P. Goodwin from the law firm of Sonntag, Goodwin & Quandt. Those will be entered in negative testimony as part of the record (See also Exhibits 1, 2, 3). No other testifiers in opposition? Testifiers neutral?

JOHN HENDRY: Good afternoon again, Senator Bourne. For the record, my name is John Hendry, H-e-n-d-r-y. I'm the current Chief Justice of the Nebraska Supreme Court. I appear here in a neutral capacity on LB 541 and, in fact, my comments would also be equally applicable, I believe, to LB 349. I do believe strongly that there is not a need for a sixth county judge in the 12th judicial district. My concern, however, is what do we do with that particular judge who is now freed up because of my belief that we don't need six judges in the 12th judicial district? And I cannot tell this committee in all candor that another judge is needed in the 4th judicial district which is Omaha more than a district court judge might be needed in the 9th judicial district in Kearney or a county judge might be needed in the 2nd judicial district which is Cass County or a juvenile court judge may be needed in the 3rd judicial district which is Lancaster County or a district judge may be needed in the 7th judicial district in Norfolk. I will tell you candidly as I always try to do that I have minimal confidence in our current judicial workload formula and it has not been

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updated since 1996. And our court administrator, Frank Goodroe, who will follow me will explain to Senator Flood and the rest of the committee some of the deficiencies we see in the current judicial workload analysis. This is what I would propose. I would propose that no judges be taken by the Legislature because I do believe this judge that is freed up in the 12th is going to be needed somewhere. And I would ask that that judgeship just be held in abeyance until such time as a new judicial workload analysis can be performed by the National Center for State Courts who is the foremost authority in the United States in analyzing judicial workload necessities and efficiencies. The court has requested this funding in its budget and it costs about \$85,000. It would take about nine months to do that and this would allow the national center to come to Nebraska to perform a new judicial analysis which I believe then will give us better information that I can present to you so that our judicial resources can be used in a way that I can confidently tell you I think would be the most effective for the assets that are available to the citizens of the state of Nebraska. So, that's why I'm testifying in a neutral position and Mr. Goodroe who will follow me will get into some of the details of the deficiencies we see in the current judicial workload study. And I hope that will indicate, I think, why I believe we need further information before I can give you my view as to where these judgeships should go.

SENATOR BOURNE: Thank you. Questions for Chief Justice Hendry? Senator Chambers.

SENATOR CHAMBERS: Mr. Chief Justice, would you be saying that no bill should be enacted at this time or one should be enacted removing a judgeship from that 12th district but not placing it anywhere?

JOHN HENDRY: That's correct. I don't want to...

SENATOR CHAMBERS: But maintain...

JOHN HENDRY: ...well, I don't want to lose that judgeship...

SENATOR CHAMBERS: Right.

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JOHN HENDRY: ...but I would like it to be held so that when I can come back to you with information that I have confidence in, we can then work together in a partnership and place that judge where that he or she is most effectively needed.

SENATOR CHAMBERS: Okay. Thank you.

SENATOR BOURNE: Further questions for the chief?

SENATOR BOURNE: Senator Friend.

SENATOR FRIEND: Thank you, Chairman Bourne. Mr. Chief Justice, just so I understand and maybe to follow up on what you said. What happens if no action is taken and that judge is left in the 12th district. Is that a budget problem for the...?

JOHN HENDRY: If the judgeship is just set there...no, it's not a budget...

SENATOR FRIEND: Right. I mean, I mean, you remove it, put it in a limbo...

JOHN HENDRY: One of the possible advantages of that if we can do that is that that judicial savings, if the Legislature will permit us, the Appropriations Committee and the Legislature, to use the savings that we are creating by not filling that position, that will likely fund the entire cost of the \$85,000 study. I think that's a much more effective use of the public's money than now placing that judge in someplace that I'm not sure they need to go.

SENATOR FRIEND: Okay. Thank you.

SENATOR BOURNE: Chief, do you have a time...excuse me, Senator Flood.

SENATOR FLOOD: The commission's findings reveal that, in their opinion, District 4 would need a county judgeship. What's the situation with county judges in Douglas County in the 4th district? And do they have a courtroom already prepared to accommodate a new county judge?

JOHN HENDRY: I don't believe they have a courtroom that is

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already prepared so that would be a problem but my main concern is not that the 4th district does not need a county judge. Our current process by which we make these evaluations would, indeed, suggest as the Judicial Resources Commission has indicated, that another judge is there. But I just don't have confidence in the process or in the methodology in making that determination now since it's been 1996. So I would like to be able to come back in a nine-month period, hopefully, and be able to give you information which I think will make this process much more efficient.

SENATOR FLOOD: For my own benefit, Mr. Chief Justice, how do they make determinations on where judges should go right now in the commission? I'm unfamiliar with the process.

JOHN HENDRY: Yeah. Well, the commission takes information based upon filings and workload statistics which are based on its judicial workload analysis which I do not have a lot of confidence on. And based upon that methodology which I would like to update, they make these recommendations so the recommendations were made upon methodology that I do not have a lot of confidence in. That's not to suggest that another judge may not be needed in the 4th district and it's not to suggest in nine months we would come back and say, we do need another judge in that 4th but I want to make sure that we are maximizing our judicial resources as much as possible.

SENATOR FLOOD: Thank you. Would this \$85,000 study give us a formula that we could use after the nine months that we used...

JOHN HENDRY: Yes.

SENATOR FLOOD: ...so that we could employ that formula to figure out where the resources...

JOHN HENDRY: Precisely. That's what the whole project is about.

SENATOR FLOOD: Thank you.

SENATOR BOURNE: Thank you. Further questions? Senator Pedersen.

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SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. Chief Justice Hendry, getting out our crystal ball, not really so, but we talk a lot about diversion programs and they're just starting to grow. And as we get more diversion programs, don't you think that maybe with that possibly sentencing guidelines and diversion programs that we're going to cut down some of that caseload?

JOHN HENDRY: The opposite might very well be true but that's one of the things this new study will look at. For instance and Judge Dougherty is here, a district judge up in Omaha who has a very successful drug court. And she would be able to tell you that, in fact, the judges that in those drug courts actually spend much more time in court than they would under a traditional program where an offender is in court and then they're sentenced and then they're sent to jail. The judges up there now will meet with those offenders almost weekly for the first two years in this drug court program so it's quite possible and the Supreme Court is very interested in launching into this area because the results that we see from those programs have been very encouraging. It might be but I can't tell you for sure that it will be that additional judicial resources might be needed. But this study will evaluate that and that's one thing I want to be able to know before we use what resources we have and put them in specific locations.

SENATOR Dw. PEDERSEN: Judge, and I agree with you. I mean, that would be all crystal ball in that but a diversion program, what I'm talking about, is before they even hit the judicial system it stops at the prosecutor's office. And they've run the diversion programs and they don't come to court. Now the family courts and the drug courts I'm a hundred percent for and I'm sure it is going to take a little more time.

JOHN HENDRY: Yeah, if it's a pure diversion program then that's true. Then the judges would probably be cut out assuming that the diversion program is successfully fulfilled by the offender. But that is another thing, Senator Pedersen, that we can certainly put into the study and ask that they look at that.

SENATOR Dw. PEDERSEN: And that's what I was going to ask...

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JOHN HENDRY: Yeah, and that's an excellent idea.

SENATOR Dw. PEDERSEN: Mr. Goodroe, but I would think it would be something because...

JOHN HENDRY: Yeah,...

SENATOR Dw. PEDERSEN: ...diversion is really a good thing too and I think we need to expand it more...

JOHN HENDRY: ...right.

SENATOR Dw. PEDERSEN: ...than just in one or two counties.

JOHN HENDRY: I think that's an excellent idea and I'm sure we'll put that in if the Legislature will give us the money to do that.

SENATOR Dw. PEDERSEN: Thank you.

SENATOR BOURNE: Thank you. Further questions for the chief? Seeing none, thank you.

JOHN HENDRY: All right, thank you.

SENATOR BOURNE: Next testifier in a neutral capacity?

FRANK GOODROE: Good afternoon, Senator Bourne and members of the committee. My name is Frank Goodroe spelled G-o-o-d-r-o-e. I'm the state court administrator for the Supreme Court. I wasn't necessarily intending to testify on this legislation today but I perhaps can shed some light on the work measurement formula. We had two studies done, actually, one in 1980 and then the second one done in '96. And it took about a year to do it so it actually started in '95. And we use the formula that was developed by the National Center to provide the information we use today as far as the information we provide to the Judicial Resources Committee is a formula based on filings and other components of it as how we give them the scores, the information that they use. The problem with it is it's outdated. The methodology of coming up with these formulas is much more precise today. And there is a number of things that the formula really didn't address, particularly the juvenile

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court system and the abuse and neglect cases specifically. It showed them as a motion as opposed to something that is going to be in that court for months if not years of judicial time. Travel time was not well developed. We have many, many judges that are traveling long distances. Drug courts didn't exist in Nebraska until the latter part of '97 so the whole problem solving court component be it drug court or DUIs or mental health or domestic violence courts were not included in that. The administrative appeals that are unique to Lancaster County that only go to Lancaster County in the district court, they were not considered. The use of referees and magistrates, referees or child support referees, those were not adequately looked at. And then appeals that come from the county courts to the district courts were not well considered. So those are some of the kinds of things that we would be looking at to improve that formula.

SENATOR BOURNE: Thank you. Questions for Mr. Goodroe? Seeing none, thank you. Other testifiers in a neutral capacity? Senator Brashear to close.

SENATOR BRASHEAR: Mr. Chairman, members of the committee, having listened to all of the testimony, I felt compelled to just add, I am supportive of what is being suggested. I also thought it might be good for the record and given some new members of the committee, I'd like to lend a voice of support for what the Judicial Resources Commission did and for why it did it based on the existing formula. And I'm simply...that's why I kept stressing in my testimony, they're mandated to do this and required to do that and to use these criteria. I think the idea of having a new formula is a wonderful idea and if the committee were to hold the bill and we could use the savings from the vacant judgeship to fund it, I think this is all important progress. But having been in the Legislature ten years and heard some arguments about judgeship, I would like at least for myself not to leave the record as if the formula we have now makes no contribution because it makes a contribution of common analysis and evaluation. And if you don't have that then everybody is just ad hoc arguing based on what they think they know about who has the greatest workload. And I wouldn't want to go back to that as we...but we surely can move forward to a better system based upon more information now, the whole field of statistics and data has been much

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enlarged and improved. And so I'm very supportive of the course that's been outlined. But I believe we're coming from something good and making it better.

SENATOR BOURNE: Thank you. Senator Aguilar.

SENATOR AGUILAR: The particular commission that would come in and do that study, would they have to do it on a regular basis or is this a one time thing and how will that work?

SENATOR BRASHEAR: No, I, in very lay terms it's a one time analysis and then you continue to update that and manipulate the analysis yourself.

SENATOR AGUILAR: Once you know how it's done in other words. Thank you.

SENATOR BOURNE: Thank you. Further questions for the Speaker? Seeing none, thank you.

SENATOR BRASHEAR: Thank you.

SENATOR BOURNE: That will conclude the hearing on LB 541. Senator Beutler to open on LB 653. Could I get a showing of hands of those individuals wishing to testify in support of LB 653? I see none. Those in opposition? I see two. Those neutral? I see none. Senator Beutler, welcome.

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SENATOR BEUTLER: (Exhibits 5, 6, 7) Senator Bourne, thank you. While the page is passing around the handouts I thought I might explain to Senator Flood and maybe a couple of others of you why my nose seems to be in the business of judges around the state. More than 20 years ago I was chair of this committee and worked a great deal on issues such as this, the merger of the municipal courts to the county courts and the reduction of the number of judicial districts from twenty-some to twelve. So it's always been an area of great interest to me and I can't tell you how pleased I am to see the whole bar and the whole judiciary under the leadership of the Supreme Court really moving forward in a number of different areas lately. LB 653 would reduce the number of county judges in the 12th district from six to

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five. That's what it does quite simply stated. I believe most folks are pretty much in agreement now that the sixth judge is not needed in that area. The Judicial Resources Commission has recommended that there be five judges in the 12th and it also recommends that the sixth judge be switched over to the 4th district as you have just heard proposed in the last piece of legislation. I would normally support the commission's recommendation in these circumstances. I have consistently argued that we should follow the best evidence of need that we have and that evidence in the past has always been the weighted caseload statistics. Everything else has been anecdotal in nature as I have, by and large, observed what happens. These statistics that are in front of you now show that there are too many judges in the 12th and too few judges in the 4th district. If this committee now sent Senator Brashear's bill to the floor based on that evidence, I would still argue that that's the best evidence and I would support Senator Brashear's bill. However, I do agree with the Supreme Court study initiative as that initiative has already been outlined in the proposed budget to the Appropriations Committee on which I now serve. That initiative proposes a study of current judicial resources and their deployment across the state. It also proposes, as I understand it, a review of current methodologies used in determining the need of judges and other court personnel in particular districts. And I plan to do everything possible as a member of the Appropriations Committee to see that that item is included in the state budget. My hope is that this committee will not send any proposal to increase or reallocate judges to the floor this year until after completion of the resources study and subsequent review of that study. However, so why introduce LB 653? Let me ask you to consider something here. I would draw your attention to the statute that I have passed out to you which has some portion of it underlined in yellow. Note that it says, if no changes in existing law are needed and none are recommended by the commission, this is the Resources Commission, no legislative action shall be necessary to fill any judicial vacancy determined to exist. So if you do nothing this year, what will happen is that this matter will be taken up by law as directed by law again by the Resources Commission. And by law, they would have the power at that time to announce that the vacancy is in the 12th district even though everybody else was waiting for the study to be completed. Now, obviously, I'm not asserting that they

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would necessarily do that at all. But the point is, if you pass this bill then you will assure that action will be stopped completely and nothing will go forward until such time as the study has been completed and you have further recommendations before you. If you don't pass this bill, you simply leave open the possibility that action could be taken by the Resources Commission and if that action were taken, there is nothing that the Legislature could do to stop the filling of a vacancy in the 12th district. It would proceed to the nominating commission and it would go into effect. So you can decide whether you want to take that chance or whether you want to simply pass a bill to be sure this committee has the prerogative to react to the study in whatever way is appropriate. And that, in short, is really the entire purpose of this bill.

SENATOR BOURNE: Thank you. Questions for Senator Beutler? Senator Flood.

SENATOR FLOOD: Senator Beutler, does the Judicial Resources Commission have to determine that a need exists in a particular judicial district before they authorize the process to begin to name a new judge?

SENATOR BEUTLER: Yes, if I'm understanding your question correctly, they...yeah, they have to make a determination whether a vacancy exists in the district that's at issue. And if they determine that there is a vacancy there then they proceed to have it filled. If legislative action is required and legislative action would be required for any transfer elsewhere then they make a recommendation to the Legislature and wait for us to react. Unfortunately, I would have to say that in terms of the logic of various situations over the years the Resources Commission has at least a couple of times acted more rationally than the Legislature has and have sent us recommendations in at least one instance that we rejected. Notwithstanding there, having the political courage to do the right thing. I hope we behave better in the future.

SENATOR BOURNE: Thank you. Further questions for Senator Beutler? Seeing none, thank you. First testifier in support. Testifiers in opposition?

JOHN HENDRY: Senator Bourne and members of the Judiciary

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Committee, again, my name is John Hendry, H-e-n-d-r-y, the current Chief Justice of the Nebraska Supreme Court. I am up here testifying in opposition because I couldn't find a box somewhere between opposed and neutral. My only...I think, first of all, let me say that my earlier comments were not made to disparage the current judicial workload study. I believe it is the best that we have but my only point is, I think it can be made better and once it is made better I think it will provide more accurate information. My concern with this bill and I do believe that Senator Beutler is correct, if you do nothing it would go back to the Judicial Resources Commission and then, you know, what they do with it I'm assuming they've already said once, we don't need it. The studies clearly show it isn't needed and I do not believe that they would change their opinion. But I, you know, and if you give anybody a second chance, I guess you take that risk. I don't think it's a great one. But my main concern is is I don't want to do anything that would jeopardize losing this judge because we need this judge but I don't know where we need him yet. And I am concerned that if we lose the judge the difficulty I might have coming back to the Legislature and asking for now a new appropriation as opposed to we already have the appropriation in place, it could make it very difficult. This is a conundrum and I agree that it is and my only point here is to, and I think Senator Beutler as well, is to point out the conundrum and see if there is some way that it can be worked out so the goal of the Supreme Court and of everybody to better assess and place judicial resources is enhanced.

SENATOR BOURNE: Thank you. Questions for Chief Justice Hendry? Chief, just a comment. I think as we've all seen as, you know, two years into these budget problems, I think most agency heads would have just filled the spot so I appreciate your concern and your willingness to do it right so thank you.

JOHN HENDRY: Thank you.

SENATOR BOURNE: Further questions? Seeing none, thank you. Next testifier in opposition.

JOHN SENNETT: John Sennett again for the Nebraska State Bar Association. We oppose the bill simply stated because it

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does not preserve that position. I think I testified with regard to the earlier bill that we want judicial resources to be equitably placed around the state. We supported the first bill, the previous bill, because that was the commission's recommendation. We opposed this bill because it does terminate a judgeship. And I share the Chief Justice's concern that if the judgeship disappears, if this bill goes forward and the judgeship disappears, it's going to be much more difficult to try to replace that judge any place because we have to create a whole new judgeship. So we oppose the bill, Senator Beutler's bill.

SENATOR BOURNE: Thank you. Questions for Mr. Sennett? Seeing none, thank you. Other testifiers in a negative capacity. Neutral testifiers. Senator Beutler to close.

SENATOR BEUTLER: Members of the committee, just a comment. What does it mean to lose a judge to the process? If you pass this bill in a technical sense, you've lost a judge. But when action is taken next year which will be either to recommend that a judgeship be filled in some other district, that's the action that you'll be asked to take. That will require a bill. Even though that judgeship exists it will require a legislative bill to go through with 25 votes. If you pass this bill, it will still require a legislative bill to go through with 25 votes in order to establish a judgeship. The process is the same. The votes are the same. This committee is fully aware of the situation. If you don't pass this bill, you take a risk. Some may judge it small. Some may judge it larger. You should never underestimate the capacity of a local community to try to keep its local judge. And they can do it. If the Resources Commission reacting to the heavy lobbying that will come from that district and I'm not blaming that district. It's the same process every time. If they decide to change their mind and decide to fill the vacancy in Scottsbluff, citing the lousy workload statistics that the Supreme Court has, then they can do it and they can undermine the whole process. So the question is whether you want to allow the possibility of an undermining of the process or you're willing to trust that everybody will come forward again with the very same scenario they've come forward to you with on this occasion.

SENATOR BOURNE: Thank you. Questions for Senator Beutler?

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Seeing none, thank you. That will conclude the hearing on LB 653. Senator Beutler to open on LB 431.

LB 431

SENATOR BEUTLER: (Exhibits 8, 9) Senator Bourne, I'm going to make very short work of this. In a sense, the bills are coming before you in reverse order here. I didn't file this bill until a bill was filed to create a judgeship in the 9th judicial district, the district court district. And I'm guessing that in light of the recent testimony, the committee is either going to accept the idea of doing a study and holding at abeyance both of these situations or you're not. And you're going to go forward. But if you choose to go forward, then I simply wanted to put into the mill for your consideration the same bill I put in last year for your consideration on this issue and that was to simply suggest to you that instead of adding a judge to the 9th district that you simply combine the 9th and the 8th district and that the resulting workloads, if you look carefully at the pages, simply show very clearly, if you place any credence in the workload statistics at this point, that there would be five judges to handle a workload that is only adequate for 4.4 judges. So by combining the two districts you can solve the problem in my opinion in a happier way than adding \$150,000 to \$200,000 of expense. I would also argue as I argued last year that to a large extent, these judicial district boundaries are artificial barriers and that what we ought to really be looking at is the ability of the Supreme Court and the court administrator's office to draw up territories and districts and workloads that comport to what is most efficient rather than being too driven by artificial boundary lines. If you look at the 8th and the 9th in this instance, for example, it's probably a district that's...probably two districts that over time are likely to become instable in two different ways. Up in the 8th district that area has continued to lose population decade after decade and becomes a district that has too many judges for the area. If you look on your workload statistics, it's the most underworked district in the state. On the other hands, the districts that are along I-80 including prominently nine are probably going to tend to gain population and become overworked districts more rapidly. So in some sense, it makes some

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sense to put together eight and nine to create a more stable district altogether, at least I would make that argument and I think it's a decent one. Having said that, Mr. Chairman, and in light of all the discussion that's taken place with regard to this study and all, I think perhaps I've taken enough time.

SENATOR BOURNE: Thank you. Before I ask for questions from Senator Beutler, can I get a showing of hands of those wishing to testify in support? I see none. Those in opposition? I see one. Those neutral? I see one. Perhaps there may be someone familiar with the study would be willing to testify in a neutral capacity. We didn't make clear on the last bill whether or not this study would include judicial districts. Questions for Senator Beutler. Senator Flood.

SENATOR FLOOD: Senator Beutler, thank you for your testimony. I was interested, I looked at the handouts you provided with regard to District 8 and where it says mileage/judge, I see zeros across the board. As a resident of the 7th judicial district, a practicing lawyer up in Holt County quite often, I know those judges travel quite a ways and district court isn't often held in some of those counties at best once a month.

SENATOR BEUTLER: Which district...I'm sorry, Senator, which district?

SENATOR FLOOD: Oh, District 8, I'm sorry.

SENATOR BEUTLER: Eight?

SENATOR FLOOD: Yes.

SENATOR BEUTLER: Okay.

SENATOR FLOOD: I show Judge Olberding and Kozisek in there but my concern would be and I know that you voiced support for the study. I guess this is what it looks like. It's this. I'll give this to you. My concern and the reason I like the idea of the study is I'm concerned that that table that they're looking at to make decisions doesn't reflect the time that a judge travels from courthouse to courthouse.

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SENATOR BEUTLER: I'm thinking that these statistics are showing the travel time from his residence to the various courthouses.

SENATOR FLOOD: Um-hum.

SENATOR BEUTLER: And it has 4,000 miles in one case and 1,700 in the other.

SENATOR FLOOD: I guess I would be more in...

SENATOR BEUTLER: Oh, I'm sorry, I'm sorry. I'm looking in the wrong column. I see what you're saying.

SENATOR FLOOD: See those zeros across the board there?

SENATOR BEUTLER: Yes.

SENATOR FLOOD: My concern and maybe you share this is that...

SENATOR BEUTLER: Well, that's...

SENATOR FLOOD: ...our district courts wouldn't be quite as open to the public if we don't take the mileage into consideration. I guess I'd be interested to see what the study said about that.

SENATOR BEUTLER: Yeah. No, mileage is taken into consideration. There's something wrong with the chart here. And I think that what...it looks to me like what the case is is that the figure over in the far hand right, 38,000 may be the figure you're looking for.

SENATOR FLOOD: Right. I guess my other question, I recently, when Judge Cassel made his way to the court of appeals, we only had one judge in the 8th district. And I know there was quite an outcry. Are you familiar with any of the problems that they ran into when Judge Cassel began his work in Lincoln and before Judge Kozisek accepted his new responsibilities in the 8th district. I didn't know if you'd been aware of any of those problems or.

SENATOR BEUTLER: I'm not intimately familiar with what went on. I imagine it would be a little hard to handle with one.

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SENATOR FLOOD: It was rather hard and one of my concerns that was raised in this letter was that if you combine districts 8 and 9, a district judge from district 8 would end up spending almost all of his or her time exclusively in district 9, leaving one district judge for all those counties. I don't know if you have...share that concern or if we were to modify your bill to make sure that didn't happen. I don't know how you see or envision the two districts sharing the judges.

SENATOR BEUTLER: You know, I envision that not nearly all the time of one of the two judges up there would be involved in going down south to help. It's kind of interesting. If you look at last year's workload in the 9th district, it was higher last year than it is this year. It's dropped somewhat. And also in the case of the 8th district that workload has dropped very significantly in the last year indicating, as opposed to last year, an even greater ability of the area as a whole taken together to deal with the weighted caseloads that are attributable to them. You know, I'm not out there and you would have a better opinion of some of these things than I would but if you look at the...again, if you look at the statistics there's nothing that would indicate they shouldn't be able to handle it. But I'm anxious to see how the statistics would change with a new study nine years after the last one.

SENATOR FLOOD: One of the things...and I was wondering if you'd be interested in this same. A new study would maybe explore the time that maybe a criminal defendant waits between the time they're arrested and they have the opportunity to plea or have a trial. One of the concerns we ran into up in Holt County, I know the county attorney, Tom Herzog, had a number of cases that he dismissed before the speedy trial time ran out and then refiled so that he could avoid that kind of a problem. I hope that a new study would address some of those concerns of how often a district judge can be there even if it was for one defendant. If they commit a serious felony, be nice to...

SENATOR BEUTLER: Absolutely. Those situations should never occur, I would hope.

SENATOR FLOOD: Well, thank you very much.

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SENATOR BEUTLER: But if they are we ought to be looking at it.

SENATOR FLOOD: Yeah, thank you.

SENATOR BOURNE: Thank you. Further questions for Senator Beutler? See none, thank you. First testifier in support. First testifier in a negative capacity, first opponent? (See also Exhibit 10)

JOHN SENNETT: John Sennett again with the Nebraska State Bar Association and I must share with you that not only am I the president of the bar, I practice law in Broken Bow which is in the middle of what we famously call the black hole which is the 8th judicial district. I think that there was a letter from Judge Olberding that was sent to the committee and I assume that's been distributed. I can't explain to you the gravity, the distance that we are involved with in the 8th district. It's over 190 miles from St. Paul to Valentine. We right now have a judge, Judge Olberding, in Burwell and another judge just recently appointed in Ainsworth. During that three or four months between when Judge Cassel went on the appellate bench and the time that we got our second judge back, I can tell you that Judge Olberding was absolutely overwhelmed, not because he was overwhelmed with what he had to do but simply to try to bring judicial services to that district. The only purpose of this bill that you're now considering is to, in effect, move Judge Olberding's time, at least half of it, to Buffalo County. If you do that then you've got one-and-a-half judges to cover 15 counties, 15 counties that have the right under our law to have judicial services. Right now Custer County where I live is the biggest county caseloadwise, I believe, in the district. Given the fact we are the biggest county caseloadwise we have a district judge two days a month the way it sets right now. We have it two days a month. If I go to Judge Olberding tomorrow and say, I have a case that's ready to try it will take one day to try that case, a nonjury case, a domestic relations case, divorce case. I can hope, I can hope to get a final hearing from him sometime in May and possibly in June. We are talking months, not because he isn't busy but he's on the road. He has to administer a number of counties. If you combine these two districts based on whatever you combine it on, you

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will not give judicial services to western Nebraska and to our district.

SENATOR BOURNE: Thank you. Questions for Mr. Sennett? Seeing none, thank you. Next testifier in opposition? Seeing none, testifiers in a neutral capacity?

WILLIAM CASSEL: (Exhibit 11) Mr. Chairman, members of the committee, my name is William Cassel, C-a-s-s-e-l, now of Lincoln lately, formerly of Ainsworth, Nebraska. I'm a judge now on the Nebraska Court of Appeals. I'm testifying in a neutral capacity but the reason I'm here is that I have some familiarity with the situation because until January of 2004, I was one of the two district judges in the 8th judicial district. And I think to understand part of this, you need to go back much further than 2004. You need to go back to 1992 when the districts were reorganized and it explains a lot about why we do it and how we do it. And the handout that's in front of you shows the districts as they existed before July of 1992, and in the area that we're talking about there were at that time four judicial districts, one dominated by Grand Island with Howard County tossed in along with Hall; one dominated by Kearney with Sherman County tossed in along with it; and then two districts up north, one, the 15th district of which I was the last judge appointed actually as a judge of the 15th judicial district. Shortly after my appointment, the 15th and the 20th were effectively merged so that Judge Olberding and I became the two judges of the 8th judicial district but we picked up the two northern counties of the 12th and 11th districts respectively. And I'm here to tell you I've been involved in this weighted caseload statistics throughout my judicial service and even took an active interest in it before I became a district judge in 1992. I participated in the study that was done in 1995. I kept a diary for a period of time documenting every minute of what I did and I have no confidence in the results of that study and quite candidly, Senator Flood, I still don't know to this day if mileage actually enters into the statistics or not. I can tell you that the biggest factor that influences efficiency is whether or not the judge travels or whether the judge stays in one community all the time. When the judge stays in one community all the time you can organize yourself in a fashion that's much different than when you travel. You can use staff effectively. People come to you

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instead of you going to them. And one of the efficiencies that was obtained in this 1992 change is that the 9th district became exclusively composed of judges that stay in the same place all the time. The two judges in Grand Island stay there and unless there's a recusal, of course, and the one judge in Kearney stays there. The two judges up north in the 8th district are constantly traveling on the road. In my experience, I might have been in Valentine one day and O'Neill the next and who knows where the rest of the week. I see my time is expired. I'll be glad to respond to any questions that any of you may have.

SENATOR BOURNE: Thank you. Questions for Judge Cassel? Seeing none, thank you.

WILLIAM CASSEL: Thank you very much.

SENATOR BOURNE: Next testifier in a neutral capacity.

FRANK GOODROE: Mr. Chairman, members of the committee, my name is Frank Goodroe spelled G-o-o-d-r-o-e, the state court administrator of the Supreme Court. Once again I'll just talk a little bit more about the work measurement formula. This \$85,000 study is going to become more expensive as we add more work but I appreciate the suggestion of Senator Pedersen in terms of diversion, looking at that and then the issue of looking at the distribution of the districts and the district boundaries. That certainly is something that can be included in the comprehensive study.

SENATOR BOURNE: Thank you. Questions for Mr. Goodroe? Mr. Goodroe, so the study just looks at...the study as originally contemplated simply looks at judicial workload, windshield time, things of that nature. It seems like there's...not seems like, there is quite a dispute over boundaries and that. That would be an add-on to the study? That's something that the original study did not contemplate.

FRANK GOODROE: Right.

SENATOR BOURNE: Okay, does it...

FRANK GOODROE: It just looks purely at caseload numbers and doesn't really...and then county boundaries it doesn't go

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into.

SENATOR BOURNE: Okay. I was just curious about that. It seems like we haven't adjusted the boundaries since '92 so it's some 13 years so.

FRANK GOODROE: Yeah, worthy of review.

SENATOR BOURNE: Further questions? Seeing none, thank you. Thanks for clarification. Other testifiers in a neutral capacity? Senator Beutler to close.

SENATOR BEUTLER: Members of the committee, I think the only thing I would say is that I know from looking at the statistics before that travel time is taken into account and is accounted for in every case, in every district. Whether it's adequately dealt with or not, you know, maybe that's another reason for the study too. Certainly, over the history of the last ten years one of the biggest complaints from the districts in the rural areas is that travel time is not adequately taken into account in the formula. And maybe it would be a good time to once and for all put that to bed, get a basic understanding of how we're accounting for travel time since that's the big item and settle the matter with a study that directs its attention to that item in particular but to all the other factors also. And certainly if you don't think travel time is properly accounted for in the current workload statistics, you shouldn't be shifting judges even from Scottsbluff to Omaha from a rural district to an urban district. So I guess the more I hear, the more I think and the more I wish this committee would just hold everything up and let's see what the court can do in terms of getting a decent study and some decent information for us.

SENATOR BOURNE: Thank you. Questions for Senator Beutler? Seeing none, thank you. That will conclude the hearing on LB 431. Senator Chambers to open on LB 754.

LB 754

SENATOR CHAMBERS: (Exhibits 12, 13) Mr. Chairman, members of the committee, I'm Ernie Chambers. I represent the 11th Legislative District. I've been a member of the

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Judiciary Committee going on 35 years. The last few days I've noticed a trend that I find delightful and that is one of moving with dispatch and taking care of our business in as prompt a manner as possible. And I'm going to try to continue that developing tradition. Before I start, I have a couple of handouts I would like to have the pages give to the committee members. Then I won't have to delay. This bill is LB 754 and if you look at the green copy you will see at the bottom of page 2, starting in line 27 the new language. The existing language above that will tell you various activities that the Commission on Judicial Qualifications will carry out so I'm not even going to touch on those. One of the responses the commission can make to a complaint which it receives against a judge when misconduct is found is the issuance of a private reprimand. When a reprimand is private, maybe the complaint which generated that reprimand was filed by a citizen. Nobody has a way of knowing that such a reprimand has been issued so the notion is abroad in the land that judges who misbehave are covered up for. There are judges who have not liked the idea of the private reprimand or the notion that there is secrecy surrounding the activities of the Judicial Qualifications Commission. So to keep the commission from being criticized as never responding to complaints and as most of us know, if a complaint is made and it doesn't come out the way you want it to as far as the response, you might feel there was not only no response but the wrong response. The only thing this bill does in its present condition is to do away with the private reprimand. By now you've had a chance to see one of the pieces of paper that I gave you which is an amendment I would propose and I did share it with the chief justice because he is the chairperson of the Judicial Qualifications Commission and what it would do in effect is allow the commission to the extent permitted by the Constitution to prepare and make available to the public an annual report outlining the activities of the commission in the previous year. And it states the factors which that report can include. This, again, goes to the issue of openness and for the purpose of the record I would like to put in my statement of intent. A judge once made reference to the purifying power of sunlight when explaining the need to take disciplinary action against misbehaving judges and to publicize it. Currently, the law permits the Commission on Judicial Qualifications which investigates complaints against judges to issue a "private" secret reprimand to a

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judge found guilty of misconduct. Secret has an extra e. I didn't catch that. I'm a senator, not a typist obviously (laughter). LB 754, in keeping with the principle of openness in government and the public's right to know, abolishes the private reprimand and it provides simply, any reprimand shall be public and shall be announced in a fashion similar to that of a published opinion of the Supreme Court. In the reports of the Supreme Court which are in bound volumes you can find the reports of their opinions and before they are bound you get little advance sheets which look like little magazines with gray covers. I don't have time but I would tell you what a judge said about that. Under this process, the public will know that formal action has been taken against a misbehaving judge and the impression of possible cover-up will be dissipated. Never must judicial robes be permitted to become a shield behind which judicial misconduct may be hidden. Only good can result from passage of LB 754, good for the public, good for the judiciary, good for the administration of justice. Let's do it. And if you want to know what that judge said about the advance sheets you can ask me and I'll be happy to tell you but I don't want to go over my time. I will answer any questions that you may have.

SENATOR BOURNE: Before taking questions from Senator Chambers, could I get a showing of hands of those individuals wishing to testify in support? I see one. Those in opposition? I see none. Those in a neutral capacity? I see none. Questions for Senator Chambers. Senator Combs.

SENATOR COMBS: By the way, I will ask that. That will be my second question. My first question is, is when we as voters vote to retain or oust a judge, is this the same body that would be affected by this bill?

SENATOR CHAMBERS: No, that vote doesn't affect the...

SENATOR COMBS: That doesn't affect these guys, okay.

SENATOR CHAMBERS: ...Judicial Qualifications Commission. No, these people are appointed to this commission for this specific purpose. Some judges, some laypersons and maybe a lawyer or two, I'm not sure exactly what the break-out is.

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SENATOR COMBS: Okay. And then tell us, please.

SENATOR CHAMBERS: Well, (laughter) in some parts of the state judges don't have access to...this is literally true, not the story, access to computers, an adequate law library or just the basic tools that are needed to function adequately as a judge. So in this hypothetical, theoretical district court way out in Nebraska, this judge was sitting on the bench and the lawyer knowing that the judge did not have access to bound volumes was going to read the most recent Supreme Court decision on that particular subject. So when he read from the opinion and stated the decision, it was going contrary to what that judge wanted so the judge was getting angrier and angrier, and he said, you can just throw that thing away. I'm not going to have the law read to me out of no comic book (laughter). Now that really did happen someplace else, not in Nebraska, and it was many years ago. But in reading it, I was really struck by the fact that a situation can arise even today where some judges may be unfamiliar with the form in which opinions are first printed and released to the public.

SENATOR BOURNE: Thank you. Further questions for Senator Chambers? Senator Friend.

SENATOR FRIEND: Thank you, Chairman Bourne. Senator Chambers, and that's why you might have just offhandedly answered the question. And the language, can you elaborate the particular reason that the language of a published opinion in the form of a Supreme Court opinion...

SENATOR CHAMBERS: Um-hum.

SENATOR FRIEND: ...for that reprimand? I mean,...

SENATOR CHAMBERS: That would...

SENATOR FRIEND: ...could there be better...I mean, more concise, more efficient ways? Because it's my understanding that that's...well, or it that true that it might not be the most efficient way to notify of a reprimand?

SENATOR CHAMBERS: Well, see the way the opinions are made available to the public would be the advance sheet so it would appear there. And these opinions are left in a desk,

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I mean, in a basket on a desk in the Supreme Court clerk's office and the media can come there each week or whenever the opinions are handed out, and they can gather these and see whatever has been handed out and report it in the press. But in case there's an area of the state where these reports may not appear in the newspapers, the advance sheets would have them and the bound volumes because that's the way Supreme Court opinions are reported. And that would be my understanding of how this would work.

SENATOR FRIEND: How can you insure that that's going to be sufficient? I mean, couldn't staff or who is putting all of this stuff together and maneuvering and implementing that process on a consistent basis? How do you envision that? I mean,...

SENATOR CHAMBERS: Well,...

SENATOR FRIEND: ...how do you know it's going to be sufficient, I guess?

SENATOR CHAMBERS: ...it's the best way you can do it. Periodically, in your mailbox you'll see these advance sheets. The gray covered ones from the Supreme Court, the yellow or auburn covered ones or whatever that color is from the Court of Appeals.

SENATOR FRIEND: Right.

SENATOR CHAMBERS: And they will keep these advance sheets in the law library and other places until there has been a sufficient number of opinions and decisions rendered to bind them into a hard-cover volume. And these are then made available. Libraries buy them, anybody can but they're in advance sheets first so that they are updated each week or whenever new decisions are handed out. And the public has access to them. But there is no way that they would be mailed to everybody in the city, in the state, or anything like that. And what you're seeing that I handed out to you today is a reprimand that was public that the commission handed out and you see from the cover letter that it was made available to the media. It is on file in the Supreme Court clerk's office and the media will have access to it. But if they could be private, that may not be the way a reprimand would be handled and it could be a case where

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there should have been something maybe more serious than a reprimand. But once it's issued by the commission, then the public will be able to judge whether or not the commission is viewing these matters seriously enough. Now the commission can do that or refer a matter to the Supreme Court in which case the Supreme Court will look at the recommendations that the commission made in terms of what violations may have occurred, what provisions of the code or statute may have been violated, and then review the record and determine if the recommendation of the commission should be upheld. The court is not bound by that. That's just advisory and before the court will find that there's been a violation there must be clear and convincing evidence that a violation occurred. Then the judges will vote on that as they do anything else and a majority of the judges would have to agree that a violation had occurred. Then a majority would have to agree on the discipline. It can range even when it's in the court's hands from a reprimand to removal. The only thing that the commission can do is issue, I believe, a reprimand. They can't remove or suspend a judge.

SENATOR FRIEND: Well, and thanks, and that answers it. But, and there's some things that I just...you've educated me, I guess. The thing is you're a creative guy but I don't think this has been done in other areas. I mean, I'm assuming.

SENATOR CHAMBERS: Say it again. You don't think this...

SENATOR FRIEND: You're a creative guy but I'm assuming you didn't invent this.

SENATOR CHAMBERS: Oh, no, I'm not an inventor. I'm mostly a retailer (laughter). I just take things that others have dealt with and try to distribute them where they should go.

SENATOR FRIEND: Thanks.

SENATOR CHAMBERS: Oh, and by the way, after somebody informed that judge that this was not a comic book he started wearing a wig like they wore in England so he'd look more judicial. And one day a great wind came through the courtroom because he had opened the windows and everything blew off except his wig (laughter). So the lawyer asked

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him, why didn't your wig blow off? He said, well, it's nailed on (laughter).

SENATOR BOURNE: Senator Chambers, I assume...oh, further questions for Senator Chambers? Senator Chambers, I assume your goal is to make reprimands public.

SENATOR CHAMBERS: Yes, that's it exactly.

SENATOR BOURNE: But doesn't the commission have the ability to make it public now?

SENATOR CHAMBERS: But they can also issue private and private reprimands have been issued.

SENATOR BOURNE: So it would totally take away from the commission the ability to privately reprimand a judge.

SENATOR CHAMBERS: Yes.

SENATOR BOURNE: Is there a mechanism in statute that a lawyer can still be privately reprimanded?

SENATOR CHAMBERS: This does not touch that and lawyers can receive private reprimands and that would be through the Office of the Counsel for Discipline of the Supreme Court.

SENATOR BOURNE: So if there's a way that a lawyer can be privately reprimanded based on the discretion of that body, why would we want to make all judge reprimands public?

SENATOR CHAMBERS: First of all, a judge is a public official. A judge is paid by the public. There is a higher standard on judges than any other person or profession in this society and the court itself has said, and this is throughout the country at the federal and state level that judges are held to a standard higher than that of lawyers or ordinary citizens. And such being the case, things that an ordinary person may be able to do or say and not be even criticized too strongly for, a judge can be disciplined for it because they are the ones who ensure that this is a government of laws, not of men. So since they get these high positions which nobody else can hold, they have powers that nobody else can exercise, they can sentence people to death, they can take away parental rights, they can put

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people in prison for life and longer because they'll give them a life sentence plus 50 years to be served consecutive to the life sentence. So based on that standard that they are held to and they voluntarily go into this position, if they violate the ethical codes that bind the judges the public should know. Because the way a judge stays in office is to stand for retention. It is not like a political contest where there's an opponent and if the public is not aware that this judge has violated his or her ethics, a judgment cannot be made because the public has not been informed.

SENATOR BOURNE: Good points but can you ever fathom a situation where somebody who makes a mistake, a judge who makes a mistake is entitled to some privacy?

SENATOR CHAMBERS: No.

SENATOR BOURNE: Okay.

SENATOR CHAMBERS: No.

SENATOR BOURNE: Further questions? Senator Foley.

SENATOR FOLEY: Just to be a devil's advocate.

SENATOR CHAMBERS: Okay. We're brothers in that case this afternoon (laugh).

SENATOR FOLEY: Would you have any concern that a judge might not be reprimanded because the person offering the reprimand wouldn't know (inaudible) public (inaudible).

SENATOR CHAMBERS: In case you all didn't hear Senator Foley because it is a very important question, might there be a situation where those who are to deliver the reprimand may not do so because they don't feel that it should be made public? We run that risk all the time but I think then we're building a process, we have to be aware that there are people who might find a way around it, people who can find a way to corrupt it but when the process itself is evaluated, people should be able to see that the way it is structured, it will accomplish its purpose if the proper people behaving properly operate under it. But if we create a system that has loopholes in it, that will invite secrecy, secrecy is

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what will result. If a complaint is filed, say that I file it. And the commission decides not to do anything then I will talk about that and nobody can stop me. And then the public might want to ask a question, if this judge did thus and so and was not reprimanded and reprimanded, but this judge over here did something that was not that egregious and was reprimanded, is there favoritism being shown to this judge who received no reprimand? And if judges are so weak and so tender that they don't want to accept the consequences of their actions, they should not sit in judgment of others where they constantly say, you must accept responsibility for your actions. And these people who are being sentenced are not on the public payroll with a high public trust. Judges are. So I'm willing to run that slight risk which I don't think is one that is going to be actualized too often, if at all.

SENATOR BOURNE: Thank you. Further questions? Senator Friend.

SENATOR FRIEND: Just one briefly. Thank you, Senator Bourne. Senator Chambers, how...I wanted to follow up quickly. I mean, Senator Bourne made a point and then you said unequivocally no. You know, the language here, any reprimand shall...

SENATOR CHAMBERS: Let's forget that language. Let's look at what they agree to when they become a judge.

SENATOR FRIEND: Let's step back and yeah, talk about your no. I'd like you to elaborate.

SENATOR CHAMBERS: The code of judicial conduct tells these judges that you are going to be subject to constant public scrutiny. Conduct which might be allowable in others is not going to be allowable in you. This code is to set out standards and guidelines for that conduct which is acceptable and appropriate for a judge. However, it would not be possible to list every requirement that a judge must meet so these are not the only things you're required to conform your conduct to. Along with the notion of a person being a judge is the idea that he or she will know the law, stay informed on the law, be faithful to the law, uphold that oath as a judge and a lawyer, follow the code, and develop a judicial temperament where somebody doesn't have

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to stand over them with a club all the time or a microscope, saying I'm going to analyze everything you do frame by frame to make sure you do it right. You're hoping that you get people who develop a sense of what is just, fair, and proper so that the administration of justice creates confidence in the public that when they come into court they're not going to be judged...now this is the ideal. They're not going to be judged on the basis of what they wear, their sexual orientation, their religion, their race, their political party, or anything else but only the facts that are produced through admissible evidence. That's what you're aiming for and you hope that you get people sitting as judges who will understand that. You don't. So you have to have a method by which you can monitor these judges and correct the conduct of those who misbehave. We don't say punish because the aim is not to punish. And move those whose conduct is so egregious or who have been so repetitive that it's not likely they're going to be corrected.

SENATOR FRIEND: And maybe I'm oversimplifying it but let me... this is the final thing,...

SENATOR CHAMBERS: I don't mind being questioned.

SENATOR FRIEND: ...you know, the road I'll go down here. I'm driving down the interstate in the morning and I cut over into the right lane and I cut a judge off.

SENATOR CHAMBERS: Um-hum.

SENATOR FRIEND: And he gets up next to me and he rolls his window down and starts screaming at me and calling me names.

SENATOR CHAMBERS: Um-hum.

SENATOR FRIEND: We pull over, we get into a, you know, tit for tat. Can...and, again, maybe I'm oversimplifying it. Not only...I'm guessing, can that judge be reprimanded, that's going to be made public,...

SENATOR CHAMBERS: Um-hum, um-hum.

SENATOR FRIEND: ...now whereas possibly before that little tit for tat, I guess to follow along Senator Bourne's lines, did that judge...I mean, maybe I started it. Does that

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judge really need...I'm, again, devil's advocate, does that judge need to be...

SENATOR CHAMBERS: Yeah.

SENATOR FRIEND: ...reprimanded for that tit for tat with me...

SENATOR CHAMBERS: Absolutely.

SENATOR FRIEND: ...and what if it was my fault? I mean, where is that judge's...

SENATOR CHAMBERS: You're not a judge. You don't have a judicial temperament. You're not a model for (inaudible) society...

SENATOR FRIEND: Well, I'm...

SENATOR CHAMBERS: ...let me finish.

SENATOR FRIEND: Okay.

SENATOR CHAMBERS: The judge is. The judge is not free to behave in that situation as somebody who is not a judge. You might roll down your window and give him the finger. Now if he rolls down his window and he gives you the finger and you can prove it, he will be punished and he should. He has voluntarily put himself into a position where he knows he is held to a higher standard. It is not just the violation of a criminal law that will get a judge in trouble. It is not just a violation of the ethics when he or she is functioning as a judge but in all of the judge's conduct on the bench, off the bench, in the courtroom, outside the courtroom because that person is a judge all of the time, 24/7, 7 hours a day, 24 days a year...that's what Bush said so I kind of like the way he says it.

SENATOR FRIEND: Yeah (laughter). Okay, thank you. That helps.

SENATOR CHAMBERS: I knew that would end that (laughter).

SENATOR BOURNE: Thank you (laugh). Further questions?
Senator Chambers,...

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SENATOR CHAMBERS: Yes.

SENATOR BOURNE: ...how many reprimands are given a year and of those, how many are public?

SENATOR CHAMBERS: Well, we want to have this report issued because I cannot answer that question.

SENATOR BOURNE: Good enough. Further questions? Seeing none, thank you. First testifier in support?

JOHN HENDRY: Good afternoon, once again. My name is John Hendry, H-e-n-d-r-y. Chairperson Bourne and members of the Judiciary Committee, I am the Chief Justice of the Nebraska Supreme Court but I appear here today in front of you in a little different role. As Chief Justice of the Nebraska Supreme Court, under our Constitution I am also the chairperson of the Commission on Judicial Qualifications. I support this bill because I believe it removes a potential ambiguity that exists between our statute and the Constitution of the state of Nebraska. It is my belief and the belief of the commission that the Constitution of state of Nebraska right now will not permit a private reprimand. And since I have been the Chief Justice of the Nebraska Supreme Court we have not issued any private reprimands so I believe that this language will clarify and bring specific guidance to the commission and we will effectively be doing that which we have been doing since I've been the chief justice which I think is consistent with the Constitution of the state of Nebraska as it now exists. I have never issued a private reprimand. I would not issue a private reprimand because it's my belief, as I said, that the Constitution does not provide for that. This will clarify, however, because it is true, the statute that Senator Chambers refers to and amends has the term, private reprimand. And, frankly, our commission has ignored that because we believe that the Constitution prevails. So I do not think this is going to change the current practice in any way whatsoever. It certainly will not change the current practice of the current commission which I chair but I think it will certainly clarify in the future for any other commission who may try to interpret the Constitution and the statute so that no private reprimands are rendered. I also believe that the manner in which it is proposed to distribute the

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reprimands is reasonable. When you look at the purpose of this, the purpose is not to punish. The purpose is not to embarrass. The purpose is to educate and the better our judiciary is educated as to what is proper and what is not then the educational function of the commission on judicial qualifications is fulfilled. I believe this manner is one in which that can help do that. So nobody likes reprimands. It is the worst job that I have. I cannot tell you the turmoil that I go through in chairing that commission because of all of the things that you have to do but I do it. And I'm proud of our commission and I think we do it well and I think what the senator has proposed in his legislation will accommodate that which we are doing already and that which I believe the Constitution requires.

SENATOR BOURNE: Thank you. Questions for Chief Justice? Senator Foley.

SENATOR FOLEY: Thank you, Senator Bourne. Mr. Chief Justice, how do other states handle this, do you know?

JOHN HENDRY: I think a lot of other states permit private reprimands. A number of states also distribute the reprimands as they do other opinions of their Supreme Court. I think this will effectively bring us to clarify a manner in how they're to be distributed. And I don't think this would take Nebraska out of the mainstream as how other commissions distribute their reports.

SENATOR BOURNE: Thank you. Further questions? Senator Flood.

SENATOR FLOOD: I'm unfamiliar with the process that a judge goes through before a reprimand is issued. What types of protections does he or she have and what is the burden of proof? I believe, I heard clear and convincing. Is that the burden of proof? And they're entitled to counsel through the entire process and none of that is made public. Is that true?

JOHN HENDRY: Well, no. If there are a couple of processes that can occur. What the Commission on Judicial Qualifications does is when a complaint is made to our commission we have an individual who is employed by the commission who, if any of the complaints suggest that if the

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information contained were true that that would pose a violation of the code, that information is given to this individual and she investigates it. And then when the commission meets she provides us with a report of that conduct. If that conduct is such that we...and the reported investigation is such that we believe that that conduct could be...also be a violation of the code then if we want to proceed we notify the judge, tell the judge what our investigation has essentially indicated, ask that judge to respond. And that judge has a right then to write back to the commission and explain his or her situation. At that point in time, the commission can do a couple of things. One, it can hold a closed hearing and during that closed hearing, if it holds a closed hearing and it finds that a violation of the code has occurred and during this hearing there is full due process the judge can be represented by a lawyer. If we have a closed hearing, what happens in the hearing is not public but the most that we can do in that situation is a reprimand and that reprimand would be public and under the statutes in the Constitution the basic information surrounding the basis of that reprimand is recited in the public reprimand. Now, if the commission believes that something more than a public reprimand might be appropriate then we would not permit a private hearing. At that point in time, the commission would then file a complaint with the Supreme Court and you have what's called an original action in the Supreme Court. Then myself as the chairperson of the commission will request that the Supreme Court in most instances appoint a special master. I do not participate in any of those discussions with respect to appoint a special master or am I in any way involved with how the court may decide a particular case. I recuse myself from all discussions. I'm not even in the room. I'm in my office when those things occur. Then a special master is appointed who must be a judge of a court of record in the state of Nebraska. That judge then conducts a hearing or a trial just as if that judge would conduct a hearing or trial in another case. Then that, as a result of that fact-finding process where the judge is represented and the commission is represented, the special master then makes his or her findings of fact, conclusions of law and recommendations. That information is then given to the commission. The commission looks at that and then makes a determination and a recommendation that goes to the Supreme Court and the Supreme Court has orders oral argument and can

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also have additional testimony given to them at the Supreme Court level if it chooses to do that. And then the Supreme Court will decide the case based upon the record presented, are prepared by the special master. The delineation of the recommendations and beliefs of the commission as it evaluates the special master's finding. Then all that information is given to the Supreme Court and the Supreme Court makes its determination.

SENATOR FLOOD: Thank you.

JOHN HENDRY: And then that becomes a public record and is put in our advance sheets just as this would now happen, same thing as a public reprimand. Senator Friend, you asked a lot of questions. I hope I've clarified. We are not...the senator, I believe, is, in my view, is clarifying something that the Constitution would not permit but I think it's beneficial because some other commission could interpret it differently but I don't think so.

SENATOR BOURNE: Thank you. Senator Friend.

SENATOR FRIEND: Thank you. Yeah. Mr. Chief Justice, I just want to respond and Senator Chambers cleared up for me quite a bit too. But I guess I was just a little concerned. I mean, the language is pretty descript. I guess I just stepped back and looked at the language before that which is existing language that shows that there could be shelter or the ability for some folks to put a judge into a privacy situation by saying, hey, well, this was a discipline or a censure. That tit for tat hypothetical that I gave on the highway, wasn't really a reprimand, more of a discipline. The next thing you know, that thing's not in the public eye...

JOHN HENDRY: Well, what...

SENATOR FRIEND: ...and I think, don't let me speak for you but I think that that's what the kind of thing that maybe should have been in the public eye. You know what I mean?

JOHN HENDRY: Well, what will happen is it could come in the public eye because what could happen in that scenario, somebody could file a complaint. That complaint would come to our commission. Our commission would have our

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investigator in that situation go out and talk to all the parties. They even go to the point where they take sworn statements from the people if we think it's a situation that if the facts are as alleged could be a violation of the code. All that information is then presented to the committee. Then we give the judge the opportunity to respond and then the judge responds. And then it's a process by which if the commission itself believes that there is probable cause that that conduct violates the code then we can ask for a closed public hearing or a private reprimand would be issued, or we could ask for an open hearing where a special master would be appointed and then that special master would assist in determining not only the facts but whether or not the law as set forth in the Code of Judicial Conduct would show that the facts are a violation of the code. If it is, then that recommendation would be made. And then the Supreme Court would have the ultimate decision as to whether or not in your scenario or what the senator said when somebody gives an inappropriate sign with their hand to each other, whether or not given all the circumstances and the facts, that would be a violation of the code. So it's a very elaborate, important process that the commission takes very seriously, the Supreme Court takes very seriously because there are a lot of things involved here. And everybody wants to make certain that everybody's due process rights are followed and everybody is accorded an opportunity to be represented and to give their side of the situation.

SENATOR FRIEND: Thanks.

SENATOR BOURNE: Thank you. Further questions for the chief? Seeing none, thank you. Appreciate your testimony. Next testifier in question?

RICHARD HEDRICK: My name is Richard Hedrick and I (inaudible) understand a few things. If a speeder is violating the law and gets pulled over, he gets notice in the paper for everybody to see. And the public has the right to know what is going on in the court. These reprimands are important to know that high standards are held. Thank you.

SENATOR BOURNE: Thank you. Questions for Mr. Hedrick? Seeing none, thank you. Other testifiers in question?

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Testifiers in opposition? Testifiers neutral. Senator Chambers to close. Senator Chambers waives closing. That will conclude the hearing on LB 754.

SENATOR CHAMBERS: Oh, one question. Mr. Chief Justice, could you come back for a second to the chair?

JOHN HENDRY: Okay.

SENATOR CHAMBERS: I'm sorry, I forgot.

SENATOR BOURNE: We have an extended...

SENATOR CHAMBERS: This is...

SENATOR BOURNE: ...support, neutral testimony.

SENATOR CHAMBERS: This is for the sake of the record. I had stated that I gave you a copy of a proposed amendment that I'm offering and my understanding was that you agreed that the amendment is okay to be added. Did I correctly state that?

JOHN HENDRY: You did. I believe your proposed amendments of 24-719 will bring a sense of understanding to the public as to the hard work and dedication of those commission people. And it will tell us how many meetings that are held, the complaints that are filed, the reprimands that are issued. It won't necessarily identify people who reprimands were not issued but will identify processes and the language is, I think is fine because it says to the extent permitted by the Constitution where your confidentiality provisions are encapsulated in the law.

SENATOR CHAMBERS: And the main reason I called you back because I shouldn't have done it this way. I had said on the record that I believe that you agreed with the amendment and I wanted to be sure that I had not misrepresented anything on the record.

JOHN HENDRY: I think this would be helpful for the people of the state to know how that commission operates.

SENATOR CHAMBERS: Thank you.

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SENATOR BOURNE: Thank you. Further questions for Chief Justice Hendry? Seeing none, thank you. That will conclude the hearing on LB 754.

LB 349

SENATOR Dw. PEDERSEN: We will now open the hearing on LB 349. Senator Bourne here to present. Whenever you're ready, Senator Bourne.

SENATOR BOURNE: Thank you, Senator Pedersen, members of the Judiciary Committee. My name is Pat Bourne. I represent the 8th Legislative District in Omaha, here today to introduce LB 349. LB 349 amends the statutory provision that governs the number of judges serving in each of the 12 judicial court districts in Nebraska. The bill is being introduced pursuant to recommendations from the Judicial Resources Commission. One of the purposes of the Judicial Resources Commission is to determine whether or not the number of district or county judges should be changed. The commission has determined that the caseload in the 9th judicial district warrants changing the number of judges serving in that district. Currently, the 9th district which is comprised of Buffalo and Hall Counties is served by three district court judges. LB 349 would increase the number of judges serving in the 9th judicial district to four. The bill is supported by both the Judicial Resources Commission and the judges in the districts impacted by this bill. Thank you.

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. Is there any questions from the committee? Seeing none, could I ask before the first testifiers come up, how many people we have here in support? Two? Support, three? Any opposition? Neutral, one. With that, would the first supporter please take the stand and I'll turn the committee back to Senator Bourne.

SENATOR BOURNE: Thank you. Welcome, Senator Johnson.

SENATOR JOHNSON: Thank you, Senator Bourne. Ladies and gentlemen of the committee, I will be brief here. What I do want to do is to emphasize the need for the additional judge in the Grand Island Kearney area. As I understand it, there

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are...well, I know that there are three judges out there now. Two of them reside in Grand Island and one in Kearney. The problem is this, is that there are so many trials that occur in the Grand Island courts that it basically ties up both of the judges 100 percent of the time. I think all of the judges' schedule is such that it is over the recommended amount but because of the unusual circumstances with part of the district and then this is complicated by the fact that there are a growing number of cases like medical liability that occur in the Kearney area in Kearney courts. So I'm here really just to support the fact that, indeed, the figures that show the backlog of cases because of this is certainly present. And I would ask you to remedy this.

SENATOR BOURNE: Thank you. Questions for Senator Johnson? Seeing none, thank you. (See also Exhibit 14)

SENATOR JOHNSON: Thank you.

SENATOR BOURNE: Next testifier in support?

JOHN SENNETT: John Sennett, president of the Nebraska Bar Association. The association supports this bill, supports the addition of a judge to the 9th district. And I would want to say that we also support the Chief Justice's idea and plan and program of studying these issues and trying to come with a more coordinated position and better statistics and better items. My only concern, ladies and gentlemen, is the fact that we're looking out nine months to a year before this all can happen. We're assuming that we're going to get funding for this study. And I just suggest to you that if you look at Kearney, if you go out there, if you see the community, it's a growing community. It has a college, it has a lot of legal work. There are a lot of lawyers located in Kearney and a lot of cases get filed in Kearney. Those cases are not being treated or dealt with as fast as they should be dealt with in order to get quality justice in the Kearney area. I've already testified that we do not believe that the 8th and 9th should be combined and one of the reasons simply stated is that moving a part-time judge into Kearney isn't going to fix the problem. It's going to exacerbate it. My only suggestion and my only hope is that we support the chief's idea that we get the funding, that we do the resources, that we check and see that our numbers are right. But do not delay justice and the quality of justice

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and the availability of justice, waiting for more reports. There will be future vacancies. We have judges retiring all the time. We've had a number of judges retire in the last six months. We do need to do a better job in placing these judges where the most need is. I don't disagree with that and certainly support that. But we should not continue to simply say, we won't do anything when we need to put judges in a place that needs them. Thank you.

SENATOR BOURNE: Thank you. Questions for Mr. Sennett?
Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. Mr. Sennett, I appreciate your testimony in regard to Buffalo County and the need for a judge in the Kearney area. I have in front of me a...has there been a district court weighted caseload need for judge's graph prepared by the State Bar Association? Maybe I don't have one in front of me here. I have a county court weighted caseload need for judges.

JOHN SENNETT: There should have been one for district judges in the packet that we distributed at the very beginning of the hearing. There were two separate ones. They look a lot alike but they're two different ones.

SENATOR FLOOD: As I recall there are two district judges that primarily serve Buffalo County. Is that...

JOHN SENNETT: Two in Hall County.

SENATOR FLOOD: Two in Hall County.

JOHN SENNETT: Hall and Buffalo are one district.

SENATOR FLOOD: Okay.

JOHN SENNETT: They have three judges in that district. Two are located in Hall County. One is located in Buffalo County.

SENATOR FLOOD: And the need in Buffalo County was three as I...

JOHN SENNETT: If you read the weighted caseloads I think the caseload study for the district court for the

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9th district says they need three. That's the latest one that came out.

SENATOR FLOOD: Okay.

JOHN SENNETT: Which absolutely flies in the face of this bill. I understand that. But I think that you folks have sat here and heard everyone from the chief justice on down to poor grunts like me basically say, this thing is flawed beyond comprehension. And so what I'm suggesting is that you should look at the weighted caseloads we always have but you need to look at the other factors and criteria which is population, which is growth, which is the real feet on the ground people that are out there trying to deal with the administration of justice. And I don't think there's any lawyer out of Kearney or Grand Island or in our area that would tell you that the cases are moving correctly or fast enough to give true justice. And that's not an indictment of the district judge.

SENATOR FLOOD: The reason I raise that and I have no reason to believe that Buffalo County doesn't need an extra judge but in the 7th judicial district where I practice, that same formula shows that we need 2.6 judges and we have two in our area. Has the bar association identified one need higher over another? Is the need in Kearney higher over...higher than that that would be needed in the 7th judicial district?

JOHN SENNETT: I don't think that when the Judicial Resources Commission made its recommendation to add the judge to the 9th, I don't think there was anyone that came to them from the 7th and said we need one, too.

SENATOR FLOOD: Okay.

JOHN SENNETT: To my knowledge and I can't say that I was there at that hearing but I don't remember that occurring. If it did, then I've misspoken but I don't think that pitch or request was made.

SENATOR FLOOD: Okay. You would obviously be in favor of the study that would take a look at the big picture but you see an immediate need for a judge in Buffalo County.

JOHN SENNETT: Well, I see immediate need for a judge in

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Buffalo County and I think there's an immediate need for judges elsewhere whether they be in the 4th, in the county court, whether they be juvenile judges in the Lancaster County. We've all gone through the misery of judicial heat here and not getting cases done. And my concern, I certainly have no objection again to the chief's idea that we study this issue but let's not study it, delay it, and if I may, we went through this misery in our district. We lost a judge for all practical purposes when Judge Cassel went on the bench. There was a delay, wasn't nine months, it wasn't a year, it was like four or five months. And that four or five months of not having that judicial opportunity has backlogged our district for years to come, frankly. And we keep putting these off when we know we need judges. We may not know where we need them right now but we know we need them. And we're going to have future vacancies. I encourage the study but let's get the judges out there so we can get justice for everybody.

SENATOR BOURNE: Further questions? Senator Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. Sir, in Omaha, in Douglas County District 4, there has been in the past when there was a shortage of judges and the cases were bounding up that they brought in some retired judges to help that load. Can that be done out in your area too?

JOHN SENNETT: If you can find them, there are very few retired judges that want to get in their pickup and drive (laugh) two hours to go to court. The only other anecdotally that I've been told is that the getting retired judges to come back because of the retirement process and the retirement payments, that if they come back and serve as retired judges they really take a terrible financial hit. It reduces their retirement and they don't get paid enough and the chief or Mr. Goodroe could explain that much better than I do but I think it's a real problem in getting retired judges to come back. One, they're retired, you know. I mean, these guys don't quit because they're having a good time. I mean, they've served a long time, most of them. But I think it is a financial burden for them.

SENATOR Dw. PEDERSEN: Thank you.

SENATOR BOURNE: Thank you. Further questions? Seeing

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none, thank you. Next testifier in support.

TOM TYE: (Exhibit 15) Thank you, Chairman Bourne and members of the Judiciary Committee. My name is Tom Tye. That's spelled T-y-e and I'm here to testify in support of LB 349 which would add an additional district judge in the 9th judicial district which comprises Hall and Buffalo Counties. I'm a practicing attorney in Kearney and I'm also an officer of the Buffalo County Bar Association and so I'm here in support of the Buffalo County Bar Association in support of this bill. You may recall that last year this committee supported the exact same bill and, in fact, prioritized that bill. We feel that the same arguments are present this year that compel an addition of a fourth district judge in the 9th judicial district. In preparation for this hearing, I'd requested from the three judges in the 9th judicial district their 2004 caseload data which they would submit to the administrative office of the Supreme Court. And what I passed out to you is a copy of a letter from Judges Icenogle and then one from Judge Livingston and from Judge Luther from Grand Island which has their 2004 information. Part of the struggle that I think we all deal with when you look at those weighted caseload numbers is that the numbers, the most current numbers that you have are for year-end 2003. Last year when we came before you, when we were looking at weighted caseload numbers they were 2002 data so they are dated and it's difficult to make judgments on what the current need or even the projected need is based upon that data. If you look at the 2004 information that they just recently submitted, in Buffalo County alone Judge Icenogle has 965 new case filings. In addition to that, a factor that I don't believe is taken into account in the weighted caseload study are cases that are reopened. Judge Icenogle had 512 cases that were reopened during 2004. These would be cases such as modification of child support, probation violation cases, and a lot of times they take as much or more time than a new case filing. And so if you add those two together, Judge Icenogle's caseload for 2004 would be 1,477 cases. Judge Livingston and Judge Luther in 2004 had 1,508 new case filings. They had 690 cases that were reopened for a total of 2,198 cases in 2004. Another factor that's been mentioned that Hall County contends with is they have an inordinate number of jury trials in Grand Island and it's been that way for several years. In 2003, they had 45 jury

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trials. In 2004, they had 34 jury trials. Already in January of 2005 they've had nine jury trials in Grand Island. That takes a tremendous amount of court time when you have that volume of jury trials and it makes it difficult, if not impossible, for Judge Luther and Judge Livingston to provide any service to Buffalo County. And that's a problem. Senator Johnson had mentioned in Buffalo County, we have a large medical center. It's a regional medical hub. As a result, there are lots of medical malpractice cases that get filed in Buffalo County. Judge Icenogle I think last I knew handled more medical malpractice cases than any other district judge in the state. That takes a lot of his time to focus and concentrate on that type of complex litigation. That means he can't spend the time on other cases. I see my time is up so I'd be happy to answer any questions you may have.

SENATOR BOURNE: Thank you. Questions for Mr. Tye? Senator Flood.

SENATOR FLOOD: Mr. Tye, just a question. If we consider your bill and were to forward it on, how would you react to an amendment that said we make a provision to authorize a judge in the district that you practice in with the understanding that that judge or maybe we authorize two judges. Maybe we send one to the 7th as well with the understanding that these district judges could be relocated to a different part of the state. Or does that cause too much trouble because we get a Kearney lawyer that becomes a judge and then ends up in Omaha. I see the inherent problems but you see what I'm trying to do is to address an immediate need...

TOM TYE: Right.

SENATOR FLOOD: ...that you have.

TOM TYE: And I appreciate the question because last year I served as chairman in the House of Delegates and as a consequence, I was chairman of the Judicial Resources Committee of the bar and we studied a lot of these issues. Because it's difficult in dealing with the current statute because if the need is immediately identifies, it takes, as you know, legislative action to address and correct that. I think the efforts to do the study are wonderful. You know,

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we've all struggled with the weighted caseload data and so, you know, we are in support of that in Buffalo County. The problem you have when you identify a vacancy is that typically the commission will also want to identify principal place of office and so that's the next challenge is where is that judge going to be located so that you can then go to the applicants and say, if you apply for this position more than likely it's going to be in this community or sometimes they give you a choice of two. So that would need to be, I think, identified as to how we can give that direction to the applicants so they know where the office would be placed.

SENATOR FLOOD: Are you confident that the study would show a need in Buffalo County?

TOM TYE: I am if it includes some of the things that were lacking from the last study. I am confident that it will show the need there. Kearney is a very growing community. Buffalo County will very shortly hit 50,000 in population and as a result, our county board is already planning for courtroom expansion and jail expansion and modification and modernization of our courthouse. And so there, and, in fact, they're planning, at some point in time, a second district judge in Kearney because we think that the growth will support that.

SENATOR FLOOD: Thank you very much.

TOM TYE: Thank you.

SENATOR BOURNE: Thank you. Further questions? Senator Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. Just a simple question, sir. Does Buffalo County have any diversion type programs or drug courts or anything like that out there?

TOM TYE: The county attorneys office does have a diversion program and he has his own criteria as to what types of individuals would qualify. We have a college community, as you know, and so sometimes there are opportunities for minors in possession, that sort of thing, that are available to the diversion program. We also have a very successful

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drug court in both Hall and Buffalo County and the judges, as has been testified to before, spend a great deal of time with that program. They're very proud of it and it's a good program but it does take away from some other court time in order to develop that drug court. We also, in addition, have for years used a child support referee to take away some of the pressure on paternity cases and child support contempt matters. We also, in Kearney in particular, have had a child custody officer for many years. And I don't know if there's another one like that in the state, quite frankly. This individual meets with all divorcing parents where children are involved and has an initial meeting with them and makes every attempt to try to mediate custody and visitation issues. And we've had that resource in place for many years as well.

SENATOR Dw. PEDERSEN: Thank you.

SENATOR BOURNE: Thank you. Further questions? Seeing none, thank you. Thanks for making the trip down. Further testifiers in support? Testifiers in opposition? Testifiers neutral?

JOHN HENDRY: Good afternoon once again, Chairperson Bourne and members of the Judiciary Committee. My name is John Hendry, H-e-n-d-r-y, the current Chief Justice of the Nebraska Supreme Court. I appear here in a neutral position on LB 349 simply because I believe it is an example of what we have heard just preceding my testimony, points out why I think we need a judicial study. In the 7th judicial district you have Judges Ensz and Rogers. In the 9th judicial district you have Judges Icenogle, Luther and Livingston. Five extremely hard-working judges without question. Do they need some help in those districts? They probably do. Can I tell you for sure which one needs it the most, when we should do it, and how it should occur? Under our current weighted caseload study, my answer is, I don't think so. So I think if we do this study and do it the right way that all of these issues can be addressed in appropriate fashion. I will say that this thought of a study is not something that was just conjured up to meet a certain circumstance. This was put in our budget back in September, October when it was submitted to the governor. The governor chose not to include funding for the study in his budget so if we're going to get some help and relief,

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it's going to have to come first through the Appropriations Committee and then through the entire body. But I think this is a critical and important thing. I have had Senator Pedersen, Senator Beutler, Senator Chambers, other members of the body indicate to me that we need to try to look at the efficiencies of the judicial system. This is precisely what I'm trying to do in addressing your concerns that you have brought to me and we need your support because there are judges out there in these districts that are working probably harder than they need to be and there are some judges in other districts, not because they don't work hard because they have fewer cases. We need to balance that workload and this study will help me evaluate that.

SENATOR BOURNE: Thank you. Questions? Senator Flood.

SENATOR FLOOD: Not for purposes of actually implementing this but what would your reaction be on a trial basis when you have a district in immediate need of a district judge, allowing a county judge inside that same district to work as a district judge?

JOHN HENDRY: That can be done right now if the district judge does that appointment.

SENATOR FLOOD: Is that something that we could be encouraging in the 7th and 9th district? And I guess I'd...

JOHN HENDRY: I think there's a lot of issues involved there and I think it would depend upon the types of cases, the experience of the county judge on those particular type of cases. And I think a lot of that has to be decided by that district judge who makes that assignment. So I couldn't say carte blanche that yes, we ought to do that. But you had mentioned, Senator, earlier about moving judges and Senator Beutler introduced a bill last year that was passed that, because...and I testified in favor of that bill. Because once the Supreme Court upon a recommendation of the Judicial Resources Commission decides to fill a vacancy, the court decides the principal office. But what happens sometimes in those situations is because the demographics and population and some other things, all of a sudden maybe that principal office ought to be effectively somewhere else. So the Legislature supported that bill and it was passed and now for judges who are coming into the system subsequent to the

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passage of that bill, we can now relocate that judge within the district. Moving judges outside of the districts would be difficult...well, first of all, you can't because under the current statutes. And secondly, it would be difficult to impose that type of possibility on those judges who bought into the system as it is now and all of a sudden you might move them from western Nebraska to eastern Nebraska. But if you did that prospectively, that might be worth exploring.

SENATOR FLOOD: Could you...I notice in the weighting of the district judge out in Scotts Bluff, district 12...

JOHN HENDRY: Those are the county judges.

SENATOR FLOOD: Oh, let's go back to district judges for a second. I believe the district judge may be overserved out there under the current formula which I know has been rendered useless for the most part.

JOHN HENDRY: Well, not...not...again, I don't want to leave anybody with the impression that I'm trashing it...

SENATOR FLOOD: Well, I don't want to say useless but I know there's concerns...

JOHN HENDRY: ...I just think other things have come to light that were not, and it wasn't the fault of the National Center. It was probably not anticipating those factors which would affect the methodology that we do have a handle on now.

SENATOR FLOOD: Well, right now, Chief Justice, district 12 has five judges and their need is shown as 3.8. What if you, and I believe you have the power to do this, were to take a judge from Scotts Bluff or district 12 and move them to Kearney until we can figure out what needs to be done?

JOHN HENDRY: I don't know if I can do that for sure or not on a permanent basis. I can certainly sign an order, having a judge go into a district. I'm not sure if I can do that. And I'm not sure if I'd want to do that because I don't think it's necessary now. If we do this study, we will avoid those problems.

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SENATOR FLOOD: Thank you.

JOHN HENDRY: But that is one of the districts that Senator Beutler referred to. When the Judicial Resources Commission recommended not to put another judge there but notwithstanding the recommendation of the Judicial Resources Committee the Legislature did anyway. So I think it's kind of difficult to in any way be critical. I know you're not being critical.

SENATOR FLOOD: No.

JOHN HENDRY: But some people have of how these resources are apportioned throughout the state when in that specific instance we recognize that that wasn't the most effective use of judicial resources. Recommend to the Legislature that another judge position not be created there but not withstanding that for political reasons which I can certainly understand because this is a very political issue with judges in various districts. The Legislature passed the bill and now we have the situation that you have described and I think it would be unfair for me to take a judge because of that circumstance and how it was created and tell them from Scottsbluff you have to go to Omaha or you have to go somewhere else. If possible, you could get a judge who would volunteer to do that. But I would be reluctant to impose the responsibility of a judge in western Nebraska or some other place have to go to an entirely different district.

SENATOR FLOOD: Thank you.

JOHN HENDRY: I would do it if it was an emergency and we had the system...I would not let the system crumble. I would act but I don't think we're there.

SENATOR BOURNE: Thank you. Senator Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. Chief Justice Hendry, is there anything currently that can be done if we...to help out in Buffalo and Hall County with their caseloads? Because with even a study, we're looking at...you can expedite as much as you can, probably a year and a half.

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JOHN HENDRY: Yes. You know, we do have some retired judges and we're having several more judges who are retiring now and we have Judge Hannan. Judge Hannan is currently now, upon an order that I signed, up in Dakota County helping out with the situation up there. We have Judge Davis in Omaha who is willing to serve and I was going to appoint Judge Davis about three weeks ago but I believe he fell and broke a leg or something and could not accommodate the request but will. We have several judges who have retired or going to be retiring within probably the next six to nine months, most of whom have indicated a willingness to do that. One of the problems is we don't have a lot of retired judges but we are getting more of them. And so, yes, I will use those resources.

SENATOR Dw. PEDERSEN: Not using retired judges, I've known some judges in Omaha and just in passing, said they went down and heard some cases to help some other county out. Is that on a volunteer basis?

JOHN HENDRY: No. Well, yeah. What happens is that I normally issue an order to send them down there when the judges in that district say to me they have a problem that's not manageable. And in that situation then I contact district judges and one of the things I will say about the district judges when I contact them. Of course, it's kind of hard to tell a Chief Justice no (laughter), pretty hard to do that. But I have never ever had anything but 100 percent cooperation from any judge, on any level, county or district, when I've called and said, a colleague needs help in a particular district. They have rose to the occasion and have gone and helped. And we utilize that. It's just some of the judges are very busy and it's hard to get down there. And we do not have a plethora of retired judges but that situation is improving.

SENATOR Dw. PEDERSEN: Thank you.

SENATOR BOURNE: Thank you. Further questions for the chief? Senator Chambers.

SENATOR CHAMBERS: Just to get in the swing of things, suppose we pass with the emergency clause a bill calling for a nine-month moratorium on crime in Hall County. Would that help? (Laughter) If it was complied with.

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JOHN HENDRY: I think that would be an excellent idea
(laughter).

SENATOR BOURNE: Thank you. Further questions? Seeing
none, thank you.

JOHN HENDRY: Thank you.

SENATOR BOURNE: Other testifiers in a neutral capacity?
Closing is waived. That will conclude the hearing on LB 349
and the hearings for today. Thank you.