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Judiciary Committee
February 10, 2011

[LB258 LB415 LB469 LB479 LB552]

The Committee on Judiciary met at 1:30 p.m. on Thursday, February 10, 2011, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB469, LB552, LB415, LB258, and LB479. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Colby Coash; Brenda Council; Burke Harr; Tyson Larson; and Amanda McGill. Senators absent: Scott Lautenbaugh.

SENATOR MCGILL: (Recorder malfunction)...get the hearing started, forgive my voice. And our Chair and Vice Chair are gone again this morning and so...morning, afternoon. So I'm Senator Amanda McGill, the Vice Vice Chair of the committee. (Laugh) We only have a few senators with us so far. We have Senator Burke Harr, here to my right; and across the table, Senator Colby Coash; LaMont Rainey is the legal counsel; and Oliver VanDerford (phonetic), is that right?

CLERK: VanDervoort.

SENATOR MCGILL: VanDervoort, okay, is...I'm sorry, I have not learned your last name correctly yet. I was closer. At least I had something coming out of my mouth today. Senator Council is joining us here right now. Please put your cell phones on silent or vibrate so our hearing doesn't get disrupted. We do utilize the light system here in the Judiciary Committee. So with the exception of bill sponsors, we just give you three minutes. So when you see that yellow light, please try to wrap up your comments and not go over them. Make sure to sign up when you come up to speak. There are forms on the front table, and the page will come and get those. Other than that, I think we can get going and start with LB469 and Senator Karpisek.

SENATOR KARPISEK: (Exhibit 1) Thank you, Senator McGill and members of the Judiciary Committee. For the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k. LB469 would prohibit retail sale of novelty lighters and provide a penalty. A novelty lighter is a device used to light cigarettes, cigars, etcetera, and it is designed to look like a cartoon character, a toy, a gun, a watch, a musical instrument or similar item. It may play musical notes, have flashing lights, or has more than one button or function. I brought this bill today at the request of the firefighters. Some of these lighters look like toys. They're hard to distinguish the difference between a toy tractor and a lighter. My concern...well, number one, I try to support the firefighters when I can, and if we can make their job a little easier then I am all for that. But a lot of these look just like a toy, and I am concerned about young children getting ahold of them, either mimicking their parents by using a cell phone lighter or lipstick lighter, and either hurting themselves or starting a house fire. These lighters are banned in 18 other states. So although it may seem that this is a new idea, it certainly is not. So I would like to have you consider this. And we also have an amendment that I passed out that would also take refillable lighters out of the novelty lighter classification. So, say, a Zippo lighter with a Husker

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 10, 2011

emblem on it would not be a novelty lighter. With that, I'd be glad to try to answer any questions. [LB469]

SENATOR MCGILL: Thank you, Senator. Questions? Senator Coash. [LB469]

SENATOR COASH: Thank you, Senator McGill. Senator Karpisek, something occurred to me as I read the letter from the Petroleum Marketers and they said that they only sell these types to adults. Did you consider, instead of banning these, putting an age limit like we...on purchasing them? [LB469]

SENATOR KARPISEK: No, Senator, I have not because I don't think that anybody...the people that I'm concerned about wouldn't be buying them anyway. I mean, they're probably toddlers or a little older, probably be preschool age. They see a lighter sitting somewhere that looks like a cell phone, so they grab it and mimic their parents and put it up to their ear. And I think there was a situation where a young girl caught her hair on fire. Those behind me can probably testify a little more to that. So I don't know that that would help anything. [LB469]

SENATOR COASH: Okay, thank you. [LB469]

SENATOR MCGILL: Senator Harr. [LB469]

SENATOR HARR: Thank you, Senator McGill. Do these lighters have safety features on them? I know some do. Do these novelty ones? [LB469]

SENATOR KARPISEK: The ones that I saw did not. Some of them are pretty hard to figure out how to get them to light, but... [LB469]

SENATOR HARR: But a kid could. [LB469]

SENATOR KARPISEK: Yeah. But... [LB469]

SENATOR HARR: I guess, this gives me a parent choice. (Laugh) [LB469]

SENATOR KARPISEK: (Laugh) Yes, it probably... [LB469]

SENATOR HARR: It's the ability of a good parent to watch their child. [LB469]

SENATOR KARPISEK: And you are correct on that, Senator. Again, maybe people behind me will have some more specific information for us. [LB469]

SENATOR MCGILL: All right. I think you're good to go then. [LB469]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 10, 2011

SENATOR KARPISEK: Okay, thank you, Senator McGill. [LB469]

SENATOR MCGILL: And I'll hand it back over to Senator Ashford. [LB469]

SENATOR ASHFORD: Thank you, Senator McGill. Proponents on this bill. Okay, come on up. [LB469]

RHONDA CERNY: Senator Ashford and members of the committee, I'm Rhonda Cerny, R-h-o-n-d-a C-e-r-n-y, and I come from the Linwood Volunteer Fire Department. And I'm here on behalf of the Nebraska State Volunteer Firefighters Association as my role as the fire prevention chairman. We've looked at this novelty lighter issue for a few years and have looked at what's happening with it in other states and are wanting to use it as a proactive measure of fire prevention for the state of Nebraska. One thing we're very proud of in Nebraska is that we try to educate everyone with fire prevention 365 days of the year. We feel this is important and we usually start at the children's level. We've often taught the toys and tools game as a method of trying to teach the children that you don't play with tools, and a lighter or a match is a tool. Well, now they're totally mixed up with, well, how do you tell the difference in a toy and a tool in some of these lighters? And I think most all of you have had a chance to look at the lighters that we have accumulated. And as far as the child restraint, I don't believe there are any of them that do have a child restraint on them. They are one of those, you know, "if you give it to a child they can usually figure it out" type thing. And some of them, I think, if they couldn't release it with their hands, it's able to turn them over and you can push on them and they will light. And there are...they just...it's atrocious how many are out there that look like something from the Barbie doll purse and the little John Deere tractor, and this is our main thing. We understand the age limit on restricting something like that. But it's that one that's setting around home or setting at grandpa and grandma's on the table that we fear is going to get played with. We've also thought about maybe discussing some restrictions on, you know, where they could be placed in the stores, because most of these are placed right by the candy counter. So they're very eye appealing to children. And some adults have bought them mistakenly thinking that they were a toy from the articles that we have read from other states. And so we don't have the statistics in Nebraska, which we're proud of to say we don't want those statistics. And we're figuring that possibly if we could just ban these before it gets to be a problem, it would be a proactive move. Another thing that has us concerned is that these novelty lighters that all look like toys have been banned in the European countries. So that gives us the fear that there's going to be more and more coming into the states. And we would just like to see us jump on board with the other states that have already passed the novelty lighter ban and use it as a proactive fire prevention measure for Nebraska. [LB469]

SENATOR ASHFORD: Okay. Yes, Senator Council. [LB469]

SENATOR COUNCIL: Yes, thank you. Thank you for appearing today. And how many

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 10, 2011

states, is it 19 states that have passed this ban? [LB469]

RHONDA CERNY: I'm not positive at this point. I know 14 for sure have already passed it. And Oregon was one of the first states and that was the first state that I had gotten information about it when I was out there at a conference. [LB469]

SENATOR COUNCIL: Okay. And do you know, is the language of Section 2 (a) and (b) taken from Oregon, and I probably should have asked Senator Karpisek, is that taken from the Oregon legislation or was this list developed locally? [LB469]

RHONDA CERNY: I'm not positive. I would have to refer back to Oregon's legislative bill on that. [LB469]

SENATOR COUNCIL: Okay. And the reason I'm asking is, I mean, while it does list the number of items, I think novelty can be in the eyes of the beholder as to whether...we could say, for example, resemble a cartoon character. Well, what about the one that resembles a TV character? I mean, does that...and... [LB469]

RHONDA CERNY: I think any of them that are going to entice a child to play with, not like the Bics or some of those that just have a little decoration on them, but something that would actually look like a child toy. There are some that look like little Christmas trees and things like that, that are enticing to a child to want to play with. [LB469]

SENATOR COUNCIL: All right, thank you. [LB469]

RHONDA CERNY: Um-hum. [LB469]

SENATOR ASHFORD: Thank you. [LB469]

RHONDA CERNY: Thank you. [LB469]

SENATOR ASHFORD: Are we on the proponents still or... [LB469]

JERRY STILMOCK: (Exhibit 2) Good afternoon, senators. My name is Jerry Stilmock, J-e-r-r-y Stilmock, S-t-i-l-m-o-c-k, testifying on behalf of my client, the Nebraska State Volunteer Firefighters Association, in support of LB469. In working with Senator Karpisek's Office in actually doing the drafting, we looked at several of the other states. And that language that appears in Section 2, items (a) and (b), was taken from other states. It's language that appears uniformly. And the one item that was not included in LB469 had to do with refillable lighters, in order to satisfy a contingency of the National Lighters Association. And by inserting that word "refillable," which is acceptable to Senator Karpisek and is acceptable to my client, I think it does follow the language from other states, the other 14 that have passed. The second item is I've been able to show

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 10, 2011

to several of you, unfortunately I've missed a couple of you, to show these lighters. We have samples of them this afternoon if it's appropriate. If you have time, I'll be glad to share those with you in the hallway or wherever the Chair deems it appropriate. We probably have 150 lighters here that are in a...with the first proponent, Ms. Cerny. The other item is I wanted to ask or at least broach the subject: Is this government being too big? Is it overstepping its bounds? And I think not. If I may answer my own rhetorical question, I think not. And I thought about the things that were so common perhaps growing up or maybe not too distant ago. Three-wheelers are nowhere around anymore, they're not sold, three-wheeled all-terrain vehicles. Now it's four-wheelers. Why? Because of the plaintiffs bar, I take it, and because of the action by that group has taken on that and saw the dangers in having three-wheeled vehicles. How about lawn darts? They were crazy in the seventies, those metal trajectories that you get together at a family reunion or whatever it is in the backyard. Those are gone, they're not sold anymore. [LB469]

SENATOR ASHFORD: Oh, my goodness gracious. (Laughter) [LB469]

JERRY STILMOCK: Yeah. [LB469]

SENATOR ASHFORD: What else is gone? (Laughter) [LB469]

JERRY STILMOCK: Well, apparently bath salts are going by the wayside too because people are doing crazy things with bath salts. [LB469]

SENATOR ASHFORD: Oh, my, my. [LB469]

JERRY STILMOCK: Ford Pintos, you know, and there's a reason for that. Why? Because all those terrible, horrible things happened to Johnny and Susie with the lawn darts and on and on and on. So we don't want something nasty and terrible to happen. And that's why the Nebraska State Volunteer Firefighters have asked Senator Karpisek to introduce the bill. In closing, I have a handout for the senators to consider. I've been in contact with the Nebraska State Fire Marshal's Office to try to provide some background in terms of how many people...children have been the cause of the start of fires; how many people have been killed because of children starting fires. I cannot tell the committee that they started the fires with novelty lighters. As far as the Fire Marshal goes it was caused by juveniles...you'll see in the exhibit, caused by juveniles and caused by lighters. And you have the information before you. We just need it to stop. We don't want Nebraska to have another fatality because of these reasons. We'd ask for your cooperation in advancing LB469. Thank you. [LB469]

SENATOR ASHFORD: Where are these made? Mostly in the Far East or... [LB469]

JERRY STILMOCK: I believe, Senator. But you know, they're so doggone small, it's

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 10, 2011

hard to make out the... [LB469]

SENATOR ASHFORD: You know, it's interesting because we've tried so many times, at least I have, to try to ask the state to be tolerant and lock up firearms so children don't get those. And we're not going to do away with firearms, but they could be locked up and maybe then children wouldn't get them. But maybe that's too much to ask. [LB469]

JERRY STILMOCK: That is...you've hit to the heart of a tender issue, of course. [LB469]

SENATOR ASHFORD: Oh, of course. But I mean, if we're...there are so many things that we should be doing to protect children and... [LB469]

JERRY STILMOCK: Yeah. The one thing that I'd ask you to consider, Senator, is in my mind it's the attractive nuisance, it's the attractiveness of this toy-looking item with bells and whistles and it makes noises and it flashes if you hit one button and it lights a fire if you hit the second button. [LB469]

SENATOR ASHFORD: No, I get it. I'm sure it is an attractive nuisance, so thanks, Jerry. [LB469]

JERRY STILMOCK: Thank you, appreciate it. [LB469]

SENATOR ASHFORD: Any other testifiers on this bill? Seeing none, Senator Karpisek, do you wish to...any opponents? I was going for a general testifier group. Go ahead. [LB469]

SENATOR KARPISEK: All right. Thank you, Senator Ashford, members of the committee. I agree with Jerry's statement of, is this government getting too big? Normally, I would not be bringing bills like this. But I do think it is a concern. I'd point out that the Lighter Association supports this. So I think they're kind of watching their own. You know, they don't want bad publicity either for their institution. I know it may seem frivolous. I know it may seem like one of those things that's outreaching but I do think it's a concern. I'd like to bring it in front of you and at least, if nothing else, have the talk about it and have a little exposure on it and people be a little more careful. So with that, I'd be glad to answer any more questions. [LB469]

SENATOR ASHFORD: (Exhibit 4) I don't see any. I don't think it's frivolous. I just...thanks, Russ. [LB469]

SENATOR KARPISEK: Thank you. [LB469]

SENATOR ASHFORD: Senator Nordquist is here. I wonder if Senator Lautenbaugh and Senator Lathrop are...at a lawsuit against each other somewhere or something? I don't

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 10, 2011

know. That would be fun to watch, wouldn't it? It would be great if they were, but I don't know. It was just a guess. Senator Nordquist.

SENATOR NORDQUIST: Thank you. Thank you, Chairman Ashford and members of the committee. It's a pleasure being here today. I'm Jeremy Nordquist. I represent District 7 in downtown and south Omaha. The intent of this bill, LB552, is to ban electronic impersonation and protect our identity via the new communication mediums available by the advancement of technology. A particularly high profile example of electronic impersonation in Missouri prompted many states to find a way to deal with this issue. You may remember the shocking story of a 13-year-old girl, Megan Meier, who hung herself in 2006 after receiving harassing messages through MySpace. The person sending those messages was her 47-year-old neighbor impersonating a teenage boy at the time. Another hypothetical example of such behavior could be as simple as a...could potentially be a constituent of ours who...or a constituent of one of yours deciding to open an e-mail account in one of our names, impersonating our personal, campaign or legislative e-mail address, sending out information pretending to be one of us without our consent. Maybe these e-mails contain information contrary to the image that we are trying to uphold as public officials or people in the community as well. These e-mails...but they could also contain something more insidious such as personal attacks against each other or more severe offensive behavior. With current laws on the books in Nebraska, it would be difficult to hold such persons accountable. In discussions with the AG's Office, depending on the exact conduct, one may be impersonating...potentially the most we may be able to prosecute this person under is the statute of disturbing the peace, which is a Class III misdemeanor, and that's potentially, depending on the circumstances. Other statutes, such as stalking and harassment, require a pattern of conduct to be established. And there's no direct reference in our statutes, stalking statutes about electronic communication. To commit a terroristic threat, according to our statute one has to threaten to commit an act of violence. There are references to electronic communication devices explicitly in those statutes, but these would not apply to either of the examples I cited earlier. It's my intent with this bill, LB552, to provide a specific reference to electronic impersonation in statute so as to offer legal recourse to punish and deter these kinds of electronic fraudulent behaviors. As introduced, the bill mirrored language of a law that passed in California last year. But after consulting with the Attorney General's Office, I recommend to the committee the amendment I just distributed which would replace LB552 as originally introduced. This amendment maintains the intent of protecting our identities from electronic impersonation, but with the assistance of the Attorney General's Office, the amendment simplifies the language and makes it fit more appropriately in our criminal statutes. With this amendment, LB552 makes it a Class I misdemeanor to use an electronic device to knowingly and without consent impersonate another person for the purposes of defrauding, terrifying, harassing, intimidating or threatening another person. Adding this offense to the criminal statutes does not preclude prosecution under any other law and shall be in addition to any other offense in which electronic impersonation is an element of the offense. The

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 10, 2011

amended version references existing statutory language to define what electronic means. The amendment refers to any impersonation using an electronic device and device is defined in statute as any device which its ordinary and intended use transmits by electronic means writing, sounds, visual images or data of any nature to another electronic communication device. I'd also like to address the removal of the civil remedy provision in the amendment of LB552. As introduced, the bill had a provision that specifically provided for a civil action to be brought against the violator. The AG's Office suggested that this language should be removed as it would be inappropriate to include it in criminal statute. If the committee feels there are not sufficient statutory provisions to provide civil remedies, I leave it up to expertise of the committee and your fine committee staff to address that provision. We don't know for sure how many states have specific electronic impersonation statutes on their books. However, 47 states have laws, according to NCSL, have laws that explicitly include electronic forms of communication within stalking and harassment laws. Other state laws that do not include specific reference to electronic communication may still apply to those who defraud, threaten or harass; but this specific language in this bill will make laws easier to enforce and help eliminate the practice in our state. The bottom line is our on-line presence and reputations are becoming increasingly important not just as legislators, but members of the public as well, whether community, business leaders or others. And it's certainly important for young people who are trying to get into college or get into the job market. This bill will protect and hopefully deter individuals from using on-line impersonation to take advantage of our on-line identities. Thank you. [LB552]

SENATOR ASHFORD: Yes, Senator McGill. [LB552]

SENATOR MCGILL: Senator Nordquist, so could it be then a Class I misdemeanor if, say, a senator impersonates a Governor on the floor of the Legislature? (Laugh) [LB552]

SENATOR NORDQUIST: If... [LB552]

SENATOR MCGILL: That was posed to me by Larry Bare, so. (Laughter) [LB552]

SENATOR NORDQUIST: That's very interesting. If it would fall under the...if it was to defraud, harass, intimidate, it would... [LB552]

SENATOR ASHFORD: Well, it's probably harassment, you know. [LB552]

SENATOR NORDQUIST: Yes. [LB552]

SENATOR ASHFORD: Did you say no to that or... [LB552]

SENATOR NORDQUIST: If it falls...falls under the bill. [LB552]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 10, 2011

SENATOR ASHFORD: Senator Council. [LB552]

SENATOR COUNCIL: Thank you, Chairman Ashford. And thank you, Senator Nordquist. I just have a couple of questions. It was my understanding that there are federal prohibitions against impersonation on the...electronically. Are you aware of... [LB552]

SENATOR NORDQUIST: I guess, I don't know. There will be someone from the AG's Office. I guess I'm not familiar with it. [LB552]

SENATOR COUNCIL: Okay, because it was my understanding that there is current federal law prohibiting someone from impersonating someone else by electronic means. And, in fact, it was my understanding that that's how they prosecute many of these bank fraud schemes and lottery fraud schemes that show up on the Internet. And I guess I just... [LB552]

SENATOR NORDQUIST: Sure. I don't know. [LB552]

SENATOR COUNCIL: I just question, I mean. And if there is federal jurisdiction, and the penalty is probably going to be far more than a Class I misdemeanor, I mean, do we really need to be... [LB552]

SENATOR NORDQUIST: Yeah, if there are sufficient, then that certainly would be okay. I don't know if those are just for financial dealings or if they apply to harassment or threatening. [LB552]

SENATOR COUNCIL: That's what I mean, harassing and intimidating. [LB552]

SENATOR NORDQUIST: Yeah. [LB552]

SENATOR COUNCIL: Okay. The other question is, just curious, the last subsection of the amendment speaks to other offenses where impersonation is an element of the offense. Other than impersonating a law enforcement officer, are you aware of any other statute where impersonation is a... [LB552]

SENATOR NORDQUIST: That would be the only one that would come to mind. [LB552]

SENATOR COUNCIL: Okay, because I was just trying to think of something where impersonation is an element of the offense, other than impersonating a law enforcement officer. Okay. Well, maybe the Attorney General's representative...thank you. [LB552]

SENATOR NORDQUIST: Yeah, sure. [LB552]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 10, 2011

SENATOR ASHFORD: Yes, Senator Harr. [LB552]

SENATOR HARR: Senator Council's question was the perfect lead up to mine. And that's one of my concerns about this bill is this possibly doesn't go far enough. And my real concern is the children in that I'm worried that this doesn't prevent a situation where an adult goes to a minor and asks for consent and then goes on the Internet as that minor and perps on that minor. And I don't know how...and I've been working with this trying to figure out how to do it, because it still wouldn't be a crime in that situation, because the child would knowingly and with consent. So do you have any way to address that? [LB552]

SENATOR NORDQUIST: I would certainly welcome that discussion from the committee with your expertise here. I mean, I'd be open to that. I don't know that I have any specific language that would address that at this time. But I could certainly see a situation where, whether it's a parent or, you know, any authority figure going to a minor and saying: I want access to this. And whatever they do with it, you know, it could be a situation that we would want to crack down on. So yeah. [LB552]

SENATOR HARR: Thank you. [LB552]

SENATOR ASHFORD: Senator Coash. [LB552]

SENATOR COASH: Thank you, Senator Ashford. Senator Nordquist, to your understanding where would the burden of proof lie with regard to the intent of this impersonation, I haven't got to look at the amendment here, but to be terrifying, harassing, intimidating or threatening. I work with a lot of juveniles, and if you say...and they send a message over Facebook, for example, and it's meanspirited or, you know, the person who is getting it is going to say, that was pretty threatening or intimidating. Then the person that's sending it is going to say, hey, I was just joking, you know, it's just joking, this is like. Where...I mean, I know what your intent is, but I'm wondering where the burden of proof is going to lie in the line between joking and really being harassing. [LB552]

SENATOR NORDQUIST: And I understand that. And in the situation of that line I think could be difficult. If it's something more along financial, could be...I think it would be easier to show if, you know, you have...I'm sure circumstances could be that a couple breaks up. You know, the boyfriend is upset. He knows his girlfriend is applying for a job or something, and puts up a Facebook page with all sorts of inappropriate things on. She doesn't get the employment. I think that could certainly be a case to cause financial harm. You know, I would probably ask the representative to follow me about cases that aren't as clear-cut as something like that. [LB552]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 10, 2011

SENATOR COASH: Okay, all right. Thank you. [LB552]

SENATOR NORDQUIST: Yeah, thanks for the question. [LB552]

SENATOR ASHFORD: Thank you, Jeremy. [LB552]

SENATOR NORDQUIST: Thank you, guys. [LB552]

JOHN FREUDENBERG: Good afternoon. My name is John Freudenberg, F-r-e-u-d-e-n-b-e-r-g. I'm the criminal bureau chief of the Nebraska Attorney General's Office. I'm here to testify in support of LB552, the amendment to it specifically. Senator Nordquist's Office approached our office to assist him with the technical points of this bill. And the amendment you have before you is the result of that collaboration. The amendment to LB552 makes it illegal to use an electronic communication device to impersonate another person for the purpose of hurting somebody else. Currently, there are no provisions which directly address this type of behavior. The amendment adopts the definition of electronic communication device established in 28-833(4). I believe that's a good move. It will provide consistency in the definition of such term. It also encompasses the issues that Senator Nordquist has previously identified as problems. For a violation to occur, an impersonation must be knowingly done and without the consent of the impersonated person. But that impersonation only becomes a crime if it is done for the purpose as set forth, as Senator Nordquist set forth, which is defrauding for either pecuniary gain or loss or for the purpose of terrifying, harassing, intimidating or threatening another person. A violation would be a Class I misdemeanor. The amendment establishes that the proper venue to bring a charge under this bill would be either where the communication was initiated or where it was received. This is very important due to the mobility of modern electronic communication devices and the fact that these attacks do occur across state lines, where one person is in one state and the (inaudible) person in the other, so the attacker could be in Nebraska, and the victim outstate or vice versa. The Internet has been a great tool which has shrunk our world and provided access to information that once was unthinkable. However, it has also created a shadow world where people do things that they would never do if their identity was known. Unless steps are taken to deter this type of activity, I have little doubt that the number of such incidents will continue to grow as more and more people discover that they can strike out at people hiding behind either a fictional persona or the identity of another. I'd be happy to try to answer any questions anybody may have. [LB552]

SENATOR ASHFORD: Senator Council. [LB552]

SENATOR COUNCIL: Yes, thank you, Mr. Freudenberg. You heard my question to Senator Nordquist regarding federal criminal statutes in the same area. [LB552]

JOHN FREUDENBERG: Yes. I don't believe they cover the same type of activities. I

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 10, 2011

think the federal statutes cover more under the Commerce Clause and financial transactions or if somebody is trying to rip a bank off, someone is trying to rip somebody else off. This is more of an interpersonal reaction, like the example he gave in Missouri where the neighbor went on and basically harassed a young girl until the point she felt suicide was her only option. This is more of a interpersonal defense as opposed to the financial defenses. Criminal impersonation already exists under Nebraska law, which is the financial component to this where if you go on and you're trying to impersonate somebody to try to just flat out steal from them, that covers that. [LB552]

SENATOR COUNCIL: Okay, well, and I guess that gives rise to my section. And I was looking at that because I had LaMont see if there's any other statute where impersonation is an element, and I'm looking at 28-639 identity theft. Okay. We do have criminal impersonation which is what you're referring to, and that's generally associated with pecuniary loss or gain, so that's criminal impersonation. Identity theft, on the other hand, is, "A person commits the crime of identity theft if he or she knowingly takes, purchases, manufactures, records, possesses, or uses any personal identifying information or entity identifying information of another person or entity without the consent of that other person or creates personal identifying information for a fictional person with the intent to obtain or use the other person's or entity's identity for any unlawful purpose or to cause loss to a person or entity whether or not the person or entity actually suffers loss." So is it for any unlawful purpose broad enough to cover the threatening, the intimidating, and the harassing? [LB552]

JOHN FREUDENBERG: I would say no because it's not criminal for me to harass you, unless you make it so. I mean, that is not a crime in itself. Terrifying someone else is not necessarily...there's the terroristic threats, but that's a tough level to get to. That's a felony level. There's threatening in a menacing manner, but you can terrify someone without threatening them. There are all kinds of parts of this bill that are not covered by the identity theft. Identity theft is a pecuniary bill, it's a theft-based bill. [LB552]

SENATOR COUNCIL: But it gets back to Senator Coash's question. I mean, what is terrifying? I mean, if it's...I mean, how do we define terrifying then, or if it's not harassing. Harassment in the criminal sense of the term harassment, and there is a criminal harassment statute, what is terrifying? I mean, how do you define terrifying or harassing? And it gets back to Senator Coash's question. I mean, if it's not a criminal terrifying or a criminal harassing, is it just...just if I'd say I'm being harassed, that's going to be enough to carry today under LB552? [LB552]

JOHN FREUDENBERG: As in all of our statutes we have, unless this body gives a definition of those terms, that's a question that's going to be determined by the members of the jury--in a misdemeanor case, that will be six jurors--for them to determine. And that's the way our system is set up. We don't define every term through every statute, and that's because we leave some to the common sense of the jurors to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 10, 2011

interpret and say, okay, that's where our line is going to be; that's where it's not going to be. [LB552]

SENATOR COUNCIL: Okay. But that makes my point, Mr. Freudenberg. The jury will decide if it's an unlawful purpose. I mean, if the terrifying rises to the level of being an unlawful purpose or the intimidation rises to the level of being an unlawful purpose. [LB552]

JOHN FREUDENBERG: I absolutely agree with that, and then after you combine that with the second part of the bill where the person is being impersonated, those two things combined would equal the violation of this bill. [LB552]

SENATOR COUNCIL: Okay. Well, like I said, it appears to me that 28-639 already gives you that avenue. [LB552]

JOHN FREUDENBERG: I respectfully disagree. [LB552]

SENATOR COUNCIL: All right. [LB552]

SENATOR ASHFORD: Okay. Senator Harr. [LB552]

SENATOR HARR: I'll start with a softball. Section 4 of this, is that somewhat redundant and "nonnecessary?" [LB552]

JOHN FREUDENBERG: Section 4 of the... [LB552]

SENATOR HARR: Of the bill. Is that...I guess my question is do you believe that to be necessary? [LB552]

SENATOR COUNCIL: It's been amended out. [LB552]

JOHN FREUDENBERG: I believe Section 4, it's now the new Section 3 is part of the amendment. Is that the paragraph you're referring to, subparagraph (3) in Section 2 of the amendment? [LB552]

SENATOR HARR: Yes. [LB552]

JOHN FREUDENBERG: That is...it doesn't make one difference one way or the other, I believe, on that part. [LB552]

SENATOR HARR: Okay. Yeah, that doesn't appear anywhere else in statute, does it, something similar to that? [LB552]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 10, 2011

JOHN FREUDENBERG: No, the only thing that would do is if there was a second crime that was committed, that means they could charge both this and that. So let's say this led to some kind of...I don't know of an actual basis, but say it led to a murder, this and that could both be charged. But I'm... [LB552]

SENATOR HARR: Is that prevented right now though? [LB552]

JOHN FREUDENBERG: I don't believe so. [LB552]

SENATOR HARR: Okay. And I guess, to a certain degree, to get to Senator Council's question, this is more kind of a cyberbullying to a certain degree, where you're pretending to be someone else and then cyberbullying. Is that your belief? So the...as I read this, the criteria, it's only a Class I misdemeanor, where I think criminal impersonation is...is that a felony? I believe it's a Class IV. [LB552]

SENATOR COUNCIL: Class III... [LB552]

JOHN FREUDENBERG: I think it depends on the level of the loss. [LB552]

SENATOR COUNCIL: It's the level. [LB552]

SENATOR HARR: Okay. And correct me if I'm wrong, this is more getting at what's obviously cyber, since it's electronic, but it's getting at the harassment, the Missouri-type situation, which is a lower level than the criminal impersonation. Is that your belief? [LB552]

JOHN FREUDENBERG: Yes, it is. [LB552]

SENATOR HARR: Okay. And then I don't know if you heard my question earlier. And this is my fear is...and this doesn't...and I don't know if it's meant to, but it would be nice if we could do something about this in which an adult gets the permission of a minor and then goes on as that minor and perps on another minor. Would you have any cleanup language you'd recommend for that to address that situation? [LB552]

JOHN FREUDENBERG: I had not considered that situation before. But I believe Senator Nordquist's office and our office would be willing to discuss the matter with you and see if there would be something that could address that. [LB552]

SENATOR HARR: All right, and I appreciate that. Thank you very much. [LB552]

SENATOR ASHFORD: Thank you, John. [LB552]

JOHN FREUDENBERG: There was a question that was referred to me essentially

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 10, 2011

through... [LB552]

SENATOR COASH: Yeah, I think, Senator Council was getting to it. My question, John, had to do with, where does the burden of proof lie as to whether or not the message was harassing versus a joke? [LB552]

JOHN FREUDENBERG: You know, the state will always have the burden of proof. So it's the state's burden. We would have to prove, as prosecutors, that this actually occurred. If we fail to reach that burden or (inaudible) convince the six jurors, there would be an acquittal. [LB552]

SENATOR COASH: Okay. Seeing no other... [LB552]

SENATOR ASHFORD: Yeah. Not, but I'm just...and where does this run...I mean, I was just thinking about First Amendment issues. Where does this run into that? [LB552]

JOHN FREUDENBERG: There's not going to be any First Amendment issues here when it's directed directly at an individual. This is more of an attack or harassment or intimidation, and those have consistently been held to not be protected speech. Your right to speak does not necessarily outweigh my right to be protected from your speech in the safety of my own home. [LB552]

SENATOR ASHFORD: Okay. But I could...in some of these political cases that have been brought involving intentional statements, maybe that's not an impersonation but... [LB552]

JOHN FREUDENBERG: Well, that is one of the big differences between...I think I know the case you're referring to. That case, that person is not hiding behind a false persona and making unsolicited attacks. That was a case where a dialogue was going back and forth and it escalated. And both sides knew who the other one was. This is where I come in and say I am Senator Coash; I get on his computer or I assume his identity on the computer and I start making attacks at you. [LB552]

SENATOR ASHFORD: Or it's not impersonating a third person. It's impersonating the person who is the subject of the...it's impersonating somebody that's terrifying or directing their intimidation at somebody else. [LB552]

JOHN FREUDENBERG: If I was the wrongdoer, it would be me either assuming a fictional identity or the identity of another person in order to harass, intimidate, defraud you. [LB552]

SENATOR ASHFORD: Okay, because I could see this happening in a political context, even though there is the broad umbrella...I get, you know, in a political speech issue,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 10, 2011

but I could see taking on the identity of somebody else on Facebook or...I mean, it seems like I see it all the time but maybe I'm misunderstanding. [LB552]

JOHN FREUDENBERG: And there's two parts to this where the attacks have to be considered. If someone assumes my identity and attacks you, that has damaged my reputation and also harassed you. So, I mean, this is addressing two different forms of wrongdoing. [LB552]

SENATOR ASHFORD: If you impersonate...I mean, I'm trying to think of the example other than the case you were mentioning. But if you take on somebody else's identity, a well-known person to, in a political campaign, and you make scandalous statements or untrue statements that you know to be untrue, is it the impersonation of the well-known person and then the statements that are harassing in nature? That's those two things combined, theoretically, if it wasn't a political speech issue, theoretically...or it is always a political speech, but somehow you got beyond that, would that be what's actionable? You take on some well-known person's identity, you make harassing statements against the subject. That's what causes this to happen, this cause of action to occur? [LB552]

JOHN FREUDENBERG: As long as both prongs were fulfilled. You know, as long as you had taken on someone else's identity and you do it for the purpose of as set here. When you fulfill those two prongs, regardless of the fame of the person, but yes. [LB552]

SENATOR ASHFORD: Or it could be just any...you could create an identity to hide behind. [LB552]

JOHN FREUDENBERG: Right. [LB552]

SENATOR ASHFORD: So you could create XYZ for, you know, a "More Freedom for America Committee," or something, and you could take on that identity and harass somebody. And I realize it's public speech issues, but harass someone or intimidate or threaten somebody who is a public figure, let's say, or involved in a political campaign potentially. Is that...I mean, is that...I mean, theoretically, that's what this is, right? You could...if you take on...create an identity for yourself, it's not you,... [LB552]

JOHN FREUDENBERG: Um-hum, yes. [LB552]

SENATOR ASHFORD: And then what is going on then out there that's causing this to have to happen? What is the activity generally that we're dealing with here? [LB552]

JOHN FREUDENBERG: I believe it's what Senator Harr pushed forward, and most of the time it's the cyberbullying. And it usually... [LB552]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 10, 2011

SENATOR ASHFORD: It is cyberbullying? [LB552]

JOHN FREUDENBERG: It usually comes from the breakdown of some relationship,... [LB552]

SENATOR ASHFORD: Okay. [LB552]

JOHN FREUDENBERG: ...friends breaking down,... [LB552]

SENATOR ASHFORD: Okay, so that's really... [LB552]

JOHN FREUDENBERG: ...boyfriend, girlfriend breaking down. [LB552]

SENATOR ASHFORD: ...what you're dealing with here. [LB552]

JOHN FREUDENBERG: That's more what it's directed at, I believe. I haven't discussed that specific question with Senator Nordquist, but... [LB552]

SENATOR ASHFORD: And cyberbullying... [LB552]

JOHN FREUDENBERG: ...that's...that would be where it would come from. [LB552]

SENATOR ASHFORD: Okay. And cyberbullying statutes wouldn't address this necessarily? [LB552]

JOHN FREUDENBERG: They don't address this directly at this point, Your Honor. [LB552]

SENATOR ASHFORD: (Laughter) That's fine. [LB552]

JOHN FREUDENBERG: Sorry, I'm used to...wrong place. Not the court; the committee. [LB552]

SENATOR ASHFORD: No, I'll answer to that. My brother. But the...okay. So if someone takes on another identity and cyberbullies somebody else, that's not a crime? [LB552]

JOHN FREUDENBERG: It's not going to be directly a crime as we have it defined at this point in this bill. [LB552]

SENATOR ASHFORD: Okay. But is it a crime in some other bill, some other law? [LB552]

JOHN FREUDENBERG: The only reason I...I don't have an answer for you on that one.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 10, 2011

[LB552]

SENATOR ASHFORD: Okay, and I think that's just all I was getting at. [LB552]

JOHN FREUDENBERG: I don't...I think it's being discussed at this point, but I don't know if it's there yet or not. [LB552]

SENATOR ASHFORD: Okay. All right. That's enough. I just...and I think Senator Council hit on it and I just don't want to duplicate something that's already out there. Senator McGill. [LB552]

SENATOR MCGILL: I'm just willing to quickly share my story, even though I'm not sure how this would apply to it. But this fall, I was impersonated in e-mails to each of us as state senators. Someone created amandamcgill2010@gmail.com. It was somebody who I had been having a discussion about. He didn't like some stuff posted on the Web about him, and he came to my office saying: You need to make it illegal for people to post certain information, otherwise I'm going to show you what happens. So when I, you know, gave him freedom of speech information back, he then started sending e-mails to everybody as me showing how easy it is to impersonate someone, sending them stuff about my opponent or, you know, saying, you know, from Amanda McGill, that the e-mail said from Amanda McGill on the in box and was, like, vote for, you know, my opponent or whatever. So I've even had this happen to me. [LB552]

SENATOR ASHFORD: Yeah. I'm wondering about that situation. I mean, it may be a... [LB552]

SENATOR MCGILL: And I don't know if this really...if it rose to the level of anything, which is why I didn't make a stink about it. But I know the Speaker had said that every time he got one of those e-mails, because it kept going for several months, he'd stop and stare at it for five minutes trying to figure out what I was trying to tell him. He was assuming it was from me. And... [LB552]

SENATOR ASHFORD: Is that protected speech? [LB552]

JOHN FREUDENBERG: Protected speech? I don't know if it's protected, but I don't believe it's criminal either. [LB552]

SENATOR MCGILL: Yeah. [LB552]

SENATOR ASHFORD: Why not? [LB552]

JOHN FREUDENBERG: That's not what I was asked to do today. [LB552]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 10, 2011

SENATOR ASHFORD: Well, isn't that this? I mean, I'm trying to understand... [LB552]

SENATOR MCGILL: And that's where, you know, I feel like there should have been, because I talked to a couple of attorneys, I talked to A&D, you know. And it didn't seem like there was really any course for me to take in terms of that. And really, he was just e-mailing other legislators and not constituents or anything like that. [LB552]

SENATOR ASHFORD: But using your name. [LB552]

SENATOR MCGILL: But using my name. [LB552]

JOHN FREUDENBERG: And if he went a step further and done something to harass someone or intimidate someone or defraud someone or threaten someone, then that would fall under this bill. [LB552]

SENATOR LATHROP: Okay. I think this is a great subject because certainly the things that Senator Nordquist is trying to get at are important. This is just as important because, as we watch these campaigns go into, you know, where the truth is not just optional but it's thrown out the window. And if you say this is...you send something out from amanda.mcgill.2010@gmail.com, and it's entirely crap or it's entirely intended to make her, the subject, appear like they want to raise property taxes, they're ready to do this or ready to do that, when do we...what do we do about that? [LB552]

JOHN FREUDENBERG: Well, if they are doing something in that manner, especially since this last year was an election year, I think you could argue that was a defrauding. And there is a pecuniary interest to having this position, although it would be small, that would be defrauding for a pecuniary loss. [LB552]

SENATOR LATHROP: Well, I'll tell you what I would like to do. That's...I think this is...we ought to get ahead of it, and I don't know if anybody has addressed it. But before we send this bill out, to take care of beating up on little kids on-line, we ought to make sure that we've addressed it from a political point of view, too, with an amendment. [LB552]

SENATOR ASHFORD: Well, that's why I asked those question. [LB552]

SENATOR LATHROP: I really, really, really believe we ought to be thoughtful about our approach. But this is...the things that are getting said now, and it's one thing to say we'll call the group "Americans for..." I want to say "Prosperity," and I'm not picking on them, but a group that calls...let's say "Nebraskans for Lower Taxes," okay, that's one thing. But when you adopt the name of a candidate or appear to be communicating or generating information that would be from a campaign, and you set up a Web site to make it look like it, and then you start spewing nonsense out there to affect a race, and

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 10, 2011

it's...and the fraud is in the appearance of creating a legitimate host site that represents a candidate that is...it's completely bogus. Has the Attorney General thought about that one? [LB552]

JOHN FREUDENBERG: Beings that I'm the one who's been working with,... [LB552]

SENATOR LATHROP: Before somebody does it, jon.bruning@... [LB552]

JOHN FREUDENBERG: ...but where I was working on this bill, basically we were not addressing that issue. We were addressing more the cyberbullying issue. And I guess I, since it's not personally my bill, I would say that would be something between you and Senator Nordquist to work out and see if he would like to expand it, or if this committee wants to expand it on its own. And I would... [LB552]

SENATOR LATHROP: So we won't have any ideas from the Attorney General on how to stop that? [LB552]

JOHN FREUDENBERG: I have been asked to help with this bill and I will do so. [LB552]

SENATOR LATHROP: Pardon me? [LB552]

JOHN FREUDENBERG: I have been asked to help with this bill and I will do so. [LB552]

SENATOR LATHROP: You'll do what? [LB552]

JOHN FREUDENBERG: I will help. [LB552]

SENATOR LATHROP: You'll address the situation I just described? [LB552]

JOHN FREUDENBERG: I'm helping Senator Nordquist, I mean, at his request. That is what I'm saying. [LB552]

SENATOR LATHROP: Okay, okay. So if Senator Nordquist says, please help me, you'll jump in. [LB552]

JOHN FREUDENBERG: Yeah, that's where I am. It's not necessarily Senator Nordquist's, but that's why I'm here today because of that request from him. So I'm trying not to overstep my bounds on the request that was made of me by Senator Nordquist, right now. [LB552]

SENATOR LATHROP: Okay, if he asks you to come up with an amendment that addresses this circumstance, will you help him? [LB552]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 10, 2011

JOHN FREUDENBERG: I'm sure there wouldn't be any problem helping him. [LB552]

SENATOR LATHROP: Okay. [LB552]

SENATOR ASHFORD: And I...that's why, and not in as effective a manner as Senator Lathrop's questions, that's what I was trying to get at is that if you have...we're trying to promote civil discourse. And there is, aside from the pecuniary interest, and I think there are other interests involved. There is a pecuniary interest not only the interest in the job itself that you're trying to get or have, but also the investment of other funds in an effort to get elected or chosen for a particular position. That creates, I think, a pecuniary...it may create a pecuniary interest. But the other thing, and this is a very interesting, I think, concept and that's what struck me was if someone...or at least we should not preclude the possibility that someone would do what they did to Senator McGill. Even carrying it to a worse kind of a scenario where it could really be very, very injurious not only to the process of civil discourse, which gets into the First Amendment protections and so forth and so on, but really does go to, as it did to some degree here, a harassment, a falsification of identity clearly. It was intended to harm. There was no public purpose really in impersonating Senator McGill other than embarrassing her or putting her in bad light. I think it's an interesting idea. I mean, I know you didn't come prepared to talk about it. But I...it really strikes me as an interesting idea. And maybe it's the kind of thing that's sort of groundbreaking to say to people that are out there on the Internet, whether it's dealing with a product or, you know, an idea or a campaign and impersonating that person that's purveying that idea or that speech or political campaign, whatever it is, to really injure. I mean, I suppose the level of injury has to be fairly grave. But it does...it is interesting because you really can't do that like on a...you can do that in other forms of communication. But with the Internet it's just instantaneous. And the injury could be incredible, especially utilizing...they say don't put anything on Facebook you wouldn't want someone to see five years from now in another environment. I get that. But if someone takes your name or your picture, which is easy to do, and then totally misrepresents it and uses it to injure, that's an interesting concept. I wonder how it does run up against the First Amendment. [LB552]

JOHN FREUDENBERG: The only concern I would have is due to the fact of the political nature of what we're talking about, I think it's going to take a little bit of time to work through all the wrinkles of that. And I would just hope that that would not hold up the important purpose of the bill as we have it now to reach and get something that's basically a collateral issue. [LB552]

SENATOR ASHFORD: Well, I guess what I'm saying is it may be enough, the language here, may be sufficient to address it. [LB552]

SENATOR LATHROP: Isn't it as simple as prohibiting someone who is going to provide political speech from impersonating a candidate they do not speak for? [LB552]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 10, 2011

JOHN FREUDENBERG: All I'm saying is I would like... [LB552]

SENATOR LATHROP: You want to have a name like Americans for Lower Taxes, that's one thing. And you can say Amanda McGill is an awful... [LB552]

SENATOR ASHFORD: For higher taxes. [LB552]

SENATOR LATHROP: Yeah, for higher taxes. But it's another to say amanda.mcgill@gmail.com, and then say I am, or give the impression that it's her speaking. That's not...that can't be politically...that cannot be protected speech. It's the impersonation... [LB552]

JOHN FREUDENBERG: I just, all I'm saying is I have done nothing on that issue, so I can't speak as intelligently about it as I'd like to. And if I have my name on something we're trying to help bring through, I want to make sure it's right. [LB552]

SENATOR ASHFORD: I mean, that's a fair response, John. I just think it raises an interesting issue because you can use someone's name to injure that person in many, many contexts. And the question is, you know, how does that apply to cases of political speech, First Amendment-type cases? I don't know. Because, yeah, are you protected when you take on another identity, Steve? That's what you're saying, that person's identity, do you lose that protection? [LB552]

SENATOR LATHROP: Yeah. And no one can say... [LB552]

BURKE HARR: Unless it's for satire. Then it might be protected, if it's satirical. [LB552]

SENATOR ASHFORD: Good point there. And I was thinking of the...what brought this to my mind, I was just thinking about the Jefferson, those cartoons, and that calendar used to...or those write about Jefferson, and he'd take on the persona of Jefferson and...but it was a caricature, theoretically. But anyway, thanks, John. [LB552]

JOHN FREUDENBERG: Thank you. [LB552]

SENATOR LATHROP: Thanks a lot. [LB552]

SENATOR ASHFORD: Any other testifiers? Senator Nordquist, see what we can do with your ideas? We can just go right to Mars with them. Right? Okay. Do you wish to close? [LB552]

SENATOR NORDQUIST: Thank you, Chairman Ashford, members of the committee, for a great discussion. And I certainly am willing to work on this issue with you guys.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 10, 2011

You have the best legal minds in the body, in this committee, and Senator Lathrop, but...(laughter). But the political issue is right on, but also this does apply to people in the private sector. And the reason the California bill really got traction is a senator brought it on behalf of a constituent who was the leader of an association of some Silicon Valley, high-tech businesses. Had been impersonated, e-mails sent out with all sorts of vulgarities; was on the verge of losing his job before it got around to everyone that that wasn't him and he was being impersonated. So... [LB552]

SENATOR ASHFORD: Yeah, that's a good...that isn't cyberbullying. That's really...that's sort of closer to what we're talking about here, where you take on...or even in a corporate environment, yeah, or take on the... [LB552]

SENATOR NORDQUIST: Exactly. Exactly. It could really cause problems. So I welcome engaging with you guys on this and trying to find the appropriate line between prohibiting those acts and free speech, so. [LB552]

SENATOR ASHFORD: I mean it's actually a fairly big deal, I think, that you've brought to us. [LB552]

SENATOR NORDQUIST: Yeah, absolutely. [LB552]

SENATOR ASHFORD: Thanks, Senator Nordquist. [LB552]

SENATOR NORDQUIST: Thank you. [LB552]

SENATOR ASHFORD: Senator Wallman, LB415. [LB552]

SENATOR WALLMAN: Good afternoon, members, Chairman Ashford.

SENATOR ASHFORD: Good afternoon, Senator Wallman.

SENATOR WALLMAN: Beautiful room you have here. Judiciary Committee, my name is Norm Wallman, W-a-l-l-m-a-n, and I represent Legislative District 30. I'm here today to introduce LB415. Currently, a person commits an offense if they unlawfully introduce within a detention facility or provide an inmate with any weapon, tool, or other thing which may be useful for escape. This bill adds "any article prohibited by law, regulation, or order of the detaining authority." Currently, within the statutes that apply to the Department of Correctional Services there is a statute, 83-417, that provides, "Any person who purposely or knowingly allows any committed offender to escape or, without the approval of the chief executive officer of the facility, allows any offender to be visited, conversed with, comforted, or relieved or conveys to or from any committed offender any communication or article shall be guilty of a Class IV felony." However, because this section specifically applies to the Department of Correctional Services,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 10, 2011

county detention facilities are not covered. As a result, certain items can be smuggled into these facilities without a penalty to those involved. This can create security and safety issues for those operating the facility. Amber Mulbery will follow me and explain some of the items that have been smuggled into the Gage County jail. She will be able to further explain to the committee why this bill is so important to detention facilities. Thank you. [LB415]

SENATOR ASHFORD: Thank you, Senator Wallman. Any questions of Senator Wallman? Yes. [LB415]

SENATOR LATHROP: Maybe just...great bill, Senator Wallman. The concern is that right now you just can't provide tools of escape. And so if you bring marijuana in or a cell phone or something like that, that's not against the law right now? Well, the marijuana might be. [LB415]

SENATOR WALLMAN: Yeah, marijuana is, but not anything...cell phones are not, no. [LB415]

SENATOR LATHROP: Okay. [LB415]

SENATOR HARR: I think cell phone is. [LB415]

SENATOR ASHFORD: Senator Council. [LB415]

SENATOR COUNCIL: Thank you, and thank you, Senator Wallman. I certainly understand the concern. But the difficulty I have, just following up on Senator Lathrop, a cell phone. A cell phone is not prohibited by law. And how do you convey to other than the inmates what is unlawful? Isn't that going to impose on the...or shouldn't it impose on the county detention facility, you know, some sign or notice? That's my only concern. I mean, I walk in and I'm not searched or anything, and I go in. And after the fact, I'm advised that what I brought in was prohibited by jail regulation or an order. I mean, there has to be notice to people. And maybe the county people would...but there would have to be notice because not everything that people would carry...I know county jails are not like the correctional department, because you can't take...I mean, if you get in there with something, then you've really worked the metal detector and the pat down...I mean, you're patted down, the whole nine yards. But how do you give people notice so that they don't unwittingly find themselves subject to criminal prosecution? [LB415]

SENATOR WALLMAN: Well, I'll let Amber handle that one. [LB415]

SENATOR COUNCIL: Thank you. [LB415]

SENATOR LATHROP: Thank you, Senator Wallman. Those testifying in support of the

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Judiciary Committee
February 10, 2011

bill. [LB415]

AMBER MULBERRY: Amber Mulbery, M-u-l-b-e-r-y. Do you want me to answer the question first? [LB415]

SENATOR LATHROP: Well, you can give us your testimony and then we'll give the senators an opportunity to ask questions. [LB415]

AMBER MULBERRY: Okay. I am here in support of LB415 on behalf of Gage County and the Nebraska Sheriffs' Association. This process kind of started in December. I sent a signature sheet out to multiple counties in the state, if they would be in support of this issue. And I received sheets back from about 15 agencies with over 100 signatures. Additionally, I conducted a phone interview with about 17 counties, just kind of to see what their issues and problems have been with contraband in their facilities. And it ranged from cigarettes, chewing tobacco, drugs, lighters, matches, K2, cell phones, money, prescription pills. And most of the counties are using in-house discipline to deal with these issues just because there isn't a good statute to charge anyone with a crime, except for the drugs. They could be charged with possession. Back in October of 2010, we ran into a problem in Gage County. An inmate was transported from another facility and placed in a holding cell for a few hours. And she had been pat-searched prior to being placed in a holding cell. When they did the strip search on her, she ended up having a cell phone on her person. And then the following day a urine test was conducted on her for drug court at which time an empty pill bottle with tape and foam wrapped around it was located in her body cavity. Charges were filed. However, the case was dismissed because of the statute. Three weeks ago in Gage County, a subject was arrested on an out-of-county warrant. At that time, the arresting officer located prescription pills out of the bottle on the subject. And so he was placed in a holding cell while the officer was investigating it. At this time, the correctional staff was monitoring the subject on camera and observed him take something out of his pocket and place it in his body cavity. This resulted in us having to call staff in for overtime and x-rays at the hospital. And no charges were filed against him. On Tuesday, in a different county, a defense attorney was visiting a client, and when the inmate was escorted back to his cell a protein shake fell out of his pants pocket, which was given to him by the defense attorney. I just find it disturbing that we have 83-417, which protects the Department of Corrections, and then for jails we don't have that protection, only if it deals with escape and then it's only a misdemeanor. And just some preliminary research I did for other states: Wyoming, it's a felony; Montana, it depends on what type of contraband it is, some is felony, some is a misdemeanor; Missouri again separates it to felony to misdemeanor; Oklahoma separates it; South Dakota, it's a felony; Iowa, it's a felony; Kansas, it's a felony. [LB415]

SENATOR LATHROP: Okay. Let's see if people have questions, because I suspect they will. [LB415]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 10, 2011

AMBER MULBERRY: Can I just say just like two more things quick before, real quick? [LB415]

SENATOR LATHROP: Real quick, because we got...well, it's not a huge deal today. There's not a lot of people here so go ahead. [LB415]

AMBER MULBERRY: Beyond, I'd like to see it be a felony, I don't know if an addition could be made to it. I don't believe there's a statute protecting juvenile detention facilities. I don't know if we could add that in there as well for contraband in adult and juvenile facilities. [LB415]

SENATOR LATHROP: Is it a problem in juvenile facilities as well? [LB415]

AMBER MULBERRY: I had one phone call from a juvenile detention, asking: Hey, what about us? So. [LB415]

SENATOR LATHROP: Okay. I think Senator Council has a question. [LB415]

SENATOR COUNCIL: I did. What statute did you reference that the Department of Corrections has this protection and county jails don't? [LB415]

AMBER MULBERRY: In 83-417 it deals with the Department of Corrections, and it has the escape, but it also has any article: "...conveys to or from any committed offender any communication or article shall be guilty of a Class IV felony." [LB415]

SENATOR COUNCIL: Well, I don't know what version of 83-417, but the most current version says, "Any person who purposely or knowingly allows any committed offender to escape or, without the approval of the chief executive officer of the facility, allows any offender to be visited, conversed with, comforted, or relieved or conveys to or from any committed offender any communication or article shall be guilty of a Class IV felony." What is "or article?" I don't know what that means. [LB415]

AMBER MULBERRY: I know for sure that they've had successful prosecution on...in Johnson County where the...the Tecumseh...for the state prison. [LB415]

SENATOR COUNCIL: And it's a Class IV felony? [LB415]

AMBER MULBERRY: Correct. [LB415]

SENATOR COUNCIL: So one of the proponents who says a minister bringing in a bookmark with religious quotes that had not been cleared ahead of time, that's an article, could be subject to a felony prosecution? [LB415]

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Transcriber's Office

Judiciary Committee
February 10, 2011

AMBER MULBERRY: If they could prove it. [LB415]

SENATOR COUNCIL: Thank you. [LB415]

SENATOR LATHROP: Tell us about...do you run the jail or do you work in the jail?
[LB415]

AMBER MULBERRY: Yes. [LB415]

SENATOR LATHROP: And does your jail have regulations or prohibitions against cell phones and things like that? [LB415]

AMBER MULBERRY: Yes. [LB415]

SENATOR LATHROP: Do you have a series of rules? [LB415]

AMBER MULBERRY: Right. There's some... [LB415]

SENATOR LATHROP: And if I'm a visitor, I appreciate that the inmate who is now a resident is going to maybe be familiar with the rules. But if I am coming in there to visit somebody I know, or even a lawyer coming in to visit, how am I going to know what your rules are? [LB415]

AMBER MULBERRY: Two things. First, if you're...in many county jails there are not contact visits. However, visitation rules are generally posted outside for visitors to see. I know many places have them on the phone or even the Internet. You can see the visitation rules for different agencies. Additionally, for the actual inmate knowing, they are given the jail rules which say what's allowed and what's not allowed. [LB415]

SENATOR LATHROP: Okay. But if I...we kind of talked about this yesterday in Exec Session, interestingly enough, which is making it unlawful to do something that's referred to someplace else. And the concern I think Senator Council has expressed, and I share, is if we're going to make it against the law to break a regulation, we got to make sure that people know about it. Right? [LB415]

AMBER MULBERRY: I would agree with that. But not knowing the law is not a defense. Right? [LB415]

SENATOR LATHROP: Well, that's not the law, it's a jail regulation, and that's a little bit different, because we presume, I guess as a society, that people are looking at the statutes, but we don't know necessarily that they're going to see the regulations in Gage County. I wonder if the solution is just requiring that you post a sign or something or

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 10, 2011

have the rules available to visitors. [LB415]

AMBER MULBERRY: I would say that would be good, yes. [LB415]

SENATOR LATHROP: If you said, no cell phones, no contraband. [LB415]

AMBER MULBERRY: Or limit it to "This is the only allowable items for inmates." Because that's probably, most places it would be maybe money, you know, your prescription eyewear or valid prescriptions. I mean, that would be a lot shorter list than everything that's not allowed. This is the allowable items, period, and anything subject to approval of the...anything else. [LB415]

SENATOR LATHROP: Okay. And you were talking earlier about what other states have done. So I presume you've read their statutes. Are their statutes similar to ours? If you break a regulation you're guilty of a crime? [LB415]

AMBER MULBERRY: Some of them, yes. [LB415]

SENATOR LATHROP: (Exhibit 3) Okay. Any other questions? I see none. Thank you for coming down. We appreciate your testimony and your concern. Are there any other proponents here to testify in favor of the bill? Anyone here in opposition? How about anyone in a neutral capacity? Seeing none, Senator Wallman, would you like to close? Senator Wallman waives closing. [LB415]

SENATOR ASHFORD: Senator Krist, LB258.

SENATOR KRIST: Good afternoon, Chairman Ashford and members of the Judiciary Committee. For the record, my name is Bob Krist; it's spelled K-r-i-s-t. I represent the 10th Legislative District in northwest Omaha. I appear before you today in introduction and support of LB258, a bill I'm introducing at the request of the Professional Surveyors Association of Nebraska. To preface, I offer AM318, which you're receiving a copy of, for the committee's consideration to resolve concerns raised by both the Union Pacific and the Burlington Northern Santa Fe given the federal regulatory oversight of railroad properties by the Department of Homeland Security. I appreciate the input those companies provided and I thank them for allowing us to address them in this manner. LB258 would provide for the right of entry upon private property for registered surveyors in performance of their duties. The bill would limit their ability to enter premises in order to engage in the following activities: to determine section quarters, quarter corners, property corners, boundary lines, right-of-ways and easements, to make surveys, to conduct examinations or investigations to perform tests or to acquire other necessary and relevant data in contemplation of establishing the location of a street, road, highway, acquiring of land, property and road building materials or performing other operations incident to the construction and reconstruction or maintenance of roads,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 10, 2011

streets or highways. LB258 still requires, still requires the surveyor to make a good faith attempt to announce and identify themselves and purpose for entry to the owner. The surveyor would be responsible for any actual or demonstrable damages to the property. LB258 also subjects any surveying, examining or testing to the same statute and limitation and repose that currently exists for design, planning, supervision, construction or construction of an improvement. The primary reason I agreed to bring this before you today, Mr. Chairman and members, is in order to provide some kind of peace of mind for those surveyors. You'll receive some written stories and testimony today about surveyors who have feared for their lives when they entered onto property in an effort to merely get a small measurement or to ensure that their measurement was correct only to be shot at or almost hit by a truck or tractor due to an irate landowner. As previously indicated, LB258 was brought to me by the Professional Surveyors Association of Nebraska, and their president will follow me in testimony this afternoon. I am not the functional expert, so would propose that you ask him the questions. But I do see a need for attention in this matter and I thank you for allowing me to introduce LB258 to you. [LB258]

SENATOR ASHFORD: Thanks. What's the railroad issue, Bob? I'm sorry. [LB258]

SENATOR KRIST: It's Homeland Security: the maintenance of their property, the infrastructure, the...just getting onto the railroad itself, plus the safety issue with the proximity to the tracks and trains. Trains are pretty quiet these days, as you know, and pretty... [LB258]

SENATOR ASHFORD: No, but I mean what is the...how does the railroad enter into this bill? [LB258]

SENATOR KRIST: Your amendment... [LB258]

SENATOR ASHFORD: Oh, I see, okay. [LB258]

SENATOR KRIST: Yes, sir. The amendment, it... [LB258]

SENATOR ASHFORD: Oh, I see. Safety issues related to railroad operators. [LB258]

SENATOR KRIST: Yeah, yes, sir. Yes, ma'am. [LB258]

SENATOR COUNCIL: Yes, thank you, Senator Krist. So as I understand it, the reason for the act...your bill proposing that that entry does not constitute criminal trespass is to remove from the landowner an affirmative defense for taking some action against a surveyor? [LB258]

SENATOR KRIST: Well, in point of law, I think that--I would never presume that I could

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 10, 2011

point out point of law to you, first of all. But in point of law, I think surveyors if they've in good faith made an attempt to notify the landowner and then proceeds at that point, will, however he's made that attempt, would feel more comfortable in the fact that he's on the land or property. And in some cases that means vacant property, so there's no way to get in touch with the landowners. But I'd like for further testimony to answer your question in a more clear form. [LB258]

SENATOR COUNCIL: Yeah, okay. [LB258]

SENATOR ASHFORD: Yes, Senator Harr. [LB258]

SENATOR HARR: Thank you, Senator Ashford. So it's "shall make a good faith attempt to announce, identify or...and his or her purpose for entering such property to the..." What if I'm a landowner and I don't want you coming on my land to conduct an examination or investigation or to perform a test? What rights do I have? [LB258]

SENATOR KRIST: I think that's up to this committee to decide whether we want to try to protect the person who's under contract. Obviously, if you and I own adjacent property and you need to establish a cornerstone, you may have to put your heel of your boot on my side in order to establish that point. And I think that's what this is about: where does the landowner's use of the shotgun stop and where does the surveyor's right to be there to perform a duty, what is the legal limit. [LB258]

SENATOR HARR: And I guess my issue is it says make a good faith attempt to announce--it doesn't require notice--except if you're a railroad. And why is there a difference if you're a railroad? [LB258]

SENATOR KRIST: I think again, it comes to the regulatory effects of the Homeland Security forces in terms of the Homeland Security Act. [LB258]

SENATOR HARR: Wouldn't that apply to airports too, then? [LB258]

SENATOR KRIST: I would...you know, the question I asked about the railroad, in specific, was that if you're going to step on railroad property, one would assume you could pick up the phone and call the railroad and someone would be at the other end. If one would assume that he's going to go on airport authority land--being a pilot, I'm sure I can find a phone number where I can make notification. I don't think the surveyor is trying to sneak on anybody's property and tell you where your cornerstone is. I think he honestly wants peace of mind that he's made a good faith effort and he's executing his professional job. So that would be my answer, but... [LB258]

SENATOR HARR: Thank you. [LB258]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 10, 2011

SENATOR KRIST: ...I think you're going to get some more testimony. [LB258]

SENATOR HARR: I appreciate your testimony. [LB258]

SENATOR ASHFORD: Thanks, Senator Krist. [LB258]

SENATOR KRIST: Thank you, Senator Ashford. [LB258]

SENATOR ASHFORD: Proponents. [LB258]

DOUGLAS STEVENSON: (Exhibits 6 and 7) Good afternoon, Mr. Chairman and committee. My name is Douglas J. Stevenson, D-o-u-g-l-a-s, Stevenson S-t-e-v-e-n-s-o-n. I serve as president of the Professional Surveyors Association of Nebraska. I've been a registered land surveyor in the state of Nebraska since 1992. I appear before you today in support of LB258 on behalf of the Professional Surveyors Association of Nebraska. LB258 is intended to allow the land surveyor to enter properties without threat of trespass so the line/corners can be located as per the deed or plat. This does not give the land surveyor free reign to enter property, damage property and abuse the rights of that property owner. We have to make a good faith attempt to announce and identify himself or herself and his or her purposes for entering onto such property to the owner of such property. But it gives us an avenue, if still denied access after this good faith attempt, to still enter the property, respect the property, do our job and not abuse the property owner's rights. Please allow me to relay a story that highlights the need for this legislation. In the spring of 2008, I was hired by the District Court of Furnas County to conduct a survey for a property dispute between two sisters involving property on the south side of the Republican River in Furnas County, Nebraska. The initial phase of this survey was to locate land monuments in four sections of the property south of the river, and identify the existing banks of the Republican River. During the course of the survey, it became evident that we needed to gain access to properties on the north side of the river so we could gain additional evidence on the river's meanderings in order to identify the river's movement from the original survey back in 1871 to present day. I approached the property owner on the north side of the river and explained what I was doing, why I needed to increase my search area to the north side of the river, and I asked his permission to access his property, and was denied. He was an older gentleman and he asked me to talk to his son. I visited with the son, explained what I was doing and why, and I again requested access to his father's property, and I was also denied at that time. His son's remark was, if he had caught us on the property he would have called the sheriff and had us arrested for trespassing on the property. The son did thank me for talking to him and asking permission first, but his mind was made up. Every monument a land surveyor sets will affect, at the very least, three people. This would or could inadvertently affect the property owner's ability to produce income, the county to tax fairly, or the property owner to simply enjoy his property. When a land surveyor is engaged to identify a deed

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 10, 2011

line or property corner, he does not do this solely for the advantage of his client. His purpose is to identify this deed line or property corner as accurately as possible whether it is to his client's advantage or not. In order for the land surveyor to retrace the deeds of property owners, it requires the land surveyor to search for land monuments not only on his client's property but also on the adjoining properties. If access to these monuments is denied, the line cannot be accurately identified, the property corner cannot be accurately placed, and we not only do a disservice to our client but we also do a disservice to every property owner in that area. [LB258]

SENATOR ASHFORD: Doug, I'm going to ask you to stop here, but we do have your statement. And the last paragraph refers to some handouts? [LB258]

DOUGLAS STEVENSON: Yes, and I have those here. [LB258]

SENATOR ASHFORD: And you have those, so we'll have those. Do we have any questions of Doug? Yes, Senator Lathrop. [LB258]

SENATOR LATHROP: What do you do now? If you don't get this bill through, tell me what the practice is now. [LB258]

DOUGLAS STEVENSON: Okay. Right now we make every effort we can to find the property owner or the person that's leasing or renting the property to gain that access. If we're denied, we might go so far as to get the county sheriff to try to gain access. If... [LB258]

SENATOR LATHROP: I'm not even talking about the denied part. I'll get to that in just a second. But you're doing a survey. Residential areas, is this a problem, or is this mostly an ag issue? [LB258]

DOUGLAS STEVENSON: No, this is a problem whether it's residential, in an urban area or a rural setting. Yes. [LB258]

SENATOR LATHROP: And if you, let's say you're going to...my neighbor wants to build a fence, so the surveyor has got to come out and figure out where the line is. That would be a typical urban example of what you do. [LB258]

DOUGLAS STEVENSON: Yes. [LB258]

SENATOR LATHROP: Are you...and now I'm down here all the time. So you want to get on my property to look for the pin. And I'm down in Lincoln here, and you're knocking on my door and no one is answering, are you just going to go onto my property now? [LB258]

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Transcriber's Office

Judiciary Committee
February 10, 2011

DOUGLAS STEVENSON: We have, yes. [LB258]

SENATOR LATHROP: Okay. I'm not going to rat you out. I figured that's what you were doing. So are you here because sometimes it's a problem when somebody says no, or are you here because sometimes homeowners aren't home and you want to be able to walk on the property, or both? [LB258]

DOUGLAS STEVENSON: Pretty much both. [LB258]

SENATOR LATHROP: Which is a bigger concern to you, the guy that says no? [LB258]

DOUGLAS STEVENSON: The guy that says no and the individual that comes home after the fact. [LB258]

SENATOR LATHROP: Okay. So somebody comes home and you're out there and you're with your equipment and you're walking around on his yard. [LB258]

DOUGLAS STEVENSON: Yes, right. [LB258]

SENATOR LATHROP: If you have somebody that says no, you want to go on and find a pin and you think it's on my land, and I see you get out of your truck and I say, stay off my property, what are you doing now? Do you have to get a court order of some type to do it? [LB258]

DOUGLAS STEVENSON: At that point in time, I'll do what I can to convince you that, one,... [LB258]

SENATOR LATHROP: And wouldn't have any trouble convincing me. But here's the...I appreciate this because some people have this, and we just dealt with this up in Ag Committee, believe it or not, which is the boundary fence and what happens when the tree falls. Can the neighbor go on the other guys property? And it's a problem because some people just plain don't want you there for a lot of reasons. [LB258]

DOUGLAS STEVENSON: Exactly. [LB258]

SENATOR LATHROP: For a lot of reasons. And, yeah, I appreciate your concerns. I also appreciate the concerns of the guy that says, stay off my land. (Laugh) So it will be an interesting discussion, I'm sure. [LB258]

DOUGLAS STEVENSON: Could I elaborate a little bit on that? [LB258]

SENATOR LATHROP: Yeah, I guess, briefly. I don't want to hold everybody up with my questions. I can probably catch you in the hall or somewhere. [LB258]

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Transcriber's Office

Judiciary Committee
February 10, 2011

DOUGLAS STEVENSON: Right. Yes, it is an extreme concern because without access to that property I can't do my job. And if I can't accurately set that corner or research for that monument on that property, I can't set that line and I can't set that corner with... [LB258]

SENATOR LATHROP: Okay. The guy who's going to say no to you, how do you think he's going to respond when you're on his land? [LB258]

DOUGLAS STEVENSON: Not very kindly. [LB258]

SENATOR LATHROP: No. I've seen people accidentally venture onto somebody's land when they're hunting, and those guys can get upset. I don't know if it's...yeah, okay. We may be giving you a license to go onto somebody's property to get hurt. But I appreciate what you're after. That's all I have. [LB258]

SENATOR ASHFORD: Yes, Senator Harr. [LB258]

SENATOR HARR: Yeah. I guess I...and I would...I asked Senator Krist this question earlier. You make an effort to go on my land and I say no. Under this bill what would happen? Would you still not be able to come on, as I read it? [LB258]

DOUGLAS STEVENSON: Under this bill, I should...hopefully, I have a copy of it or at least the bill number. I could give it to you and basically say, I can as per this statute; I do have that right. I do not have that right to damage your property. I have the right to go across your property, do my job, leave it as close to the same condition as possible. [LB258]

SENATOR HARR: Yeah. So I would lose...as a property owner, I'd lose my right to say no to you? [LB258]

DOUGLAS STEVENSON: In a sense, yes. [LB258]

SENATOR HARR: Okay. And then I have another question. I understand this is to make surveys and I understand the importance of that. I used to do some real estate law and I understand. But I'm not sure what to "conduct examinations or investigations," and then "(d) to perform tests." If I'm selling my land, I understand that, hey, come on, this buyer wants to know what he's getting. But for you to randomly go out and see, hey, I'm just going to go out onto your property and see if you have lead, maybe that makes sense. But I'm going to see what else is growing or what else he has out there. Let's see if he...perform tests. I'm going to go out there and see if he has mineral rights. I could go out to your land, under this you could come out to my land, perform mineral tests, not tell me you were ever there, and then you would now know that that land is worth a lot

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 10, 2011

more, or I could hire you to go test to see if there are mineral rights, buy that property with the mineral rights, and the owner would have no knowledge of that. [LB258]

DOUGLAS STEVENSON: Okay. I guess I would have to...on the testing part I'm not sure on. I guess I can't answer that definitively yes, no, or maybe. [LB258]

SENATOR HARR: What test would you perform? Let's start with that. [LB258]

DOUGLAS STEVENSON: As a land surveyor I might have to do...it's kind of hard to say because if I refer back to that example I gave on the river survey, it started out as a simple accretion type survey where this river move is gradual over time. But then there was an instance where possibly an avulsion action, we call it, happened where the river moved suddenly. That's where I needed to access that property on the north side to look for that evidence of that activity, where there might be an old channel, cattails. [LB258]

SENATOR HARR: And this still goes to making the survey. [LB258]

DOUGLAS STEVENSON: Right. [LB258]

SENATOR HARR: So that's where I get in the what is to "conduct examinations or..." [LB258]

DOUGLAS STEVENSON: Right. Yes, exactly. [LB258]

SENATOR HARR: And what is "tests?" [LB258]

DOUGLAS STEVENSON: The testing though, I'm not...in my mind I don't know what that would be. [LB258]

SENATOR HARR: Okay. Well, in this scenario I laid out, would there be anything under the statutes to prevent you...me from hiring you to do that, to go do a mineral test without the knowledge of the owner? [LB258]

DOUGLAS STEVENSON: I have no way of doing that mineral test. I'm not a geologist per se. So I can't...I don't have the tools, I don't have the ability to do that. A mineral test, in my mind, would be... [LB258]

SENATOR HARR: But nothing would prevent you from going out and performing an examination or an investigation. You could dig up the soil, go down as far as you want, and then hand it over to somebody, as I read this statute. [LB258]

DOUGLAS STEVENSON: Yes, you're probably right. I guess, I...you're getting in an

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 10, 2011

area I'm not real familiar with. [LB258]

SENATOR HARR: Okay. I appreciate your candor. Those are my only questions. Thank you. [LB258]

SENATOR LATHROP: Thank you. Maybe one quick one just for my background. When you go out and you need to go on somebody's property, do you have a way to figure out whose property it is from some iPad, I mean, just in your truck can you go type it in and go, oh, that's owned by Burke Harr? [LB258]

DOUGLAS STEVENSON: No. Usually what we do is either word of mouth from the neighbors or go to the courthouse and go to the records. [LB258]

SENATOR LATHROP: Okay. So I was just wondering, like, you don't have a jump on people that are hunting? [LB258]

DOUGLAS STEVENSON: I wish, but no. (Laughter) [LB258]

SENATOR LATHROP: Okay. Well, the reason I ask is maybe the solution is to make you give notice to the landowner that you're coming and give him an opportunity to object. [LB258]

DOUGLAS STEVENSON: Right. [LB258]

SENATOR LATHROP: Okay, thanks. [LB258]

SENATOR ASHFORD: Thanks, Doug. Thanks for your comments. Any other testifiers? Proponents? [LB258]

TODD WHITFIELD: (Exhibits 8-10) Good afternoon, Mr. Chairman and members of the Judiciary Committee. My name is Todd Whitfield, W-h-i-t-f-i-e-l-d. I am a registered land surveyor in the state of Nebraska and I appear before you today in support of LB258. Current statutes provide right of entry for surveying permitted to county surveyors and state surveyors performing their official duties. Current statutes do not address the need for registered land surveyors in private practice this right to enter onto property to perform their job of gathering information and evidence for establishing of land boundaries to the best of their ability, as directed by the U.S. Department of the Interior and outlined by current survey methods published in the Manual of Survey Instructions for Public Lands first established in Nebraska in 1855. Through my current employer, we are often called upon to perform surveys in neighboring states in which we are licensed to perform these services, these states being Iowa, South Dakota, Kansas and Colorado. All currently provide an avenue for surveyors to lawfully enter onto private or public land, just as we are asking you to allow today. In conclusion, Mr. Chairman and

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 10, 2011

committee members, as you have heard in other testimony and stories submitted in earlier testimony, this is legislation that is necessary in order to provide surveyors from across the state with peace of mind in their actions. I hope the committee advances LB258. I have also submitted two letters of support, one from the Professional Engineers Coalition, and the Southeast Nebraska Land Surveyors Association. I would be happy to answer any questions you might have. Thank you. [LB258]

SENATOR ASHFORD: Any questions of Todd? I think you're okay. No more questions. Thanks. Any opponents? Neutral? Senator Krist. [LB258]

SENATOR KRIST: It's not an easy question when you violate somebody's right to shoot somebody on your property, as we in the Wild West would believe that we all have. It's also not reasonable to say that a surveyor is going to go out on his own and decide to jump on someone's property without a contract. He's obviously not going to be expending his gas and his professional talent to be someplace that he's not contracted to be. It seems reasonable to me that a contract in hand and a change in the provision that says that I can be here because I'm a licensed surveyor and here's my license would not be inappropriate for the state of Nebraska as it is not...it is appropriate found in neighboring states. That's why I brought that before you and the peace of mind that the surveyors actually need to perform their jobs. Again, I believe that the surveyor is going to go out of their way to make notification and to have the documentation in hand. I don't know, I asked several times about the testing, and I was told there might be a request for a soil sample or there might be something else. I will find that answer for you to make sure, and if we need to strike it, that's great. I would ask you to take a look at this piece of legislation. And I'd be happy to help out in any way that I can because I am concerned with the safety of the professional surveyor who is called upon to do his job. With that, I'll take any other questions you might have. [LB258]

SENATOR ASHFORD: Any questions for Senator Krist? [LB258]

SENATOR LATHROP: Yeah, I appreciate your offer to work with us because I think this is a perfect example of what happens when you have eight people look at a bill and everybody has got a different perspective, because I'm not sure that this really goes very far to helping them with their safety, because I've seen some of those guys out there when you're on their land and they get mad. [LB258]

SENATOR KRIST: Right. It could be a situation in the future where this piece of legislation becomes something that they carry with them and say, this is my right, I'm not here to destroy, I will repair, etcetera, for the person who is confronting them. But I thank you for your time, Senator Ashford and committee. [LB258]

SENATOR ASHFORD: (See also Exhibit 5) Thank you, Senator Krist. [LB258]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 10, 2011

SENATOR LATHROP: Good to see you. [LB258]

SENATOR ASHFORD: Gentlemen, thank you. All right, Senator Lathrop, LB479. [LB258]

SENATOR LATHROP: Good afternoon to what's left of the Judiciary Committee, Mr. Chairman. My name is Steve Lathrop, L-a-t-h-r-o-p. I'm the state senator from District 12, and it's my pleasure today to introduce LB479. LB479 really is a simple bill that addresses a very complex, I think a kind of a complex issue. In its simplest terms, LB479 allows an 18-year-old to consent to medical care after a sexual assault. And, right now, that 18-year-old would have to contact...to get care, would have to have their parents contacted and the parents would have to consent to that care and treatment. We currently allow an 18-year-old to consent to the care and treatment of an STD. This is why I think it's important, and let me give you kind of the scenario, if I may, so that you'll better understand why I think this is important and that we not make 18-year-olds bring their parents in, initially at least, after they've been sexually assaulted. And the typical example that we talk about with this bill is the college freshman that leaves the small town and goes to Lincoln to go to the university or to go to Creighton, and maybe they're out one night and drinking a lot or doing the things that their parents may not necessarily approve of but certainly things that happen when freshmen go to the universities across this state, and then they're sexually assaulted. The difficulty with requiring that their parents be notified first is that they feel shame, they feel embarrassed, they feel like they might get in trouble if Mom and Dad knew that they were doing something or not being careful about protecting themselves from a sexual assault. There are a great number of mixed emotions that women have, in particular, after a sexual assault. And by allowing them to go get the care and treatment, they get into the emergency room. They get the care and treatment. They typically will be encouraged to contact their parents or they'll run into the good people over at the YWCA who will sit down, begin to do the counseling, talk to them about the importance of bringing in their support system, namely their parents, and also to help them with restraining orders and those kinds of things. It's important that they not feel constrained and show up so late that it's too late to gather the physical evidence necessary to prove a sexual assault. And in my judgment, this bill goes a long ways towards helping a small group of people, which is 18-year-olds. The other reason I think it's important in Nebraska is most states the age of majority is 18, and in Nebraska it's 19. So we sort of have that time where kids are going off to college but they're not considered legal adults yet, and so the bill addresses that. It's pretty straightforward. And I'd be happy to entertain any questions. [LB479]

SENATOR COUNCIL: Just a quick question. [LB479]

SENATOR ASHFORD: Yes, Senator Council. [LB479]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 10, 2011

SENATOR COUNCIL: Yes. And thank you, Senator Lathrop, for bringing the bill. And I guess I just, it's more of a comment than a question, and it refers to your concluding remark about the age of majority. I mean, we've already taken action in my two years here to lower the age of majority to address situations where youngsters are going away to college at... [LB479]

SENATOR LATHROP: Right. [LB479]

SENATOR COUNCIL: ...17 and 18 years old. So this is consistent. I mean, we've now given them the ability to rent that apartment and consent to their own medical care at age 18. So this would be perfectly consistent with that. But my question was, under the...so the hospitals and law enforcement were just operating on the basis of the age of majority,... [LB479]

SENATOR LATHROP: That's right. [LB479]

SENATOR COUNCIL: ...because the way the bill read, if the victim consented--and I know you're adding "domestic violence"--but if the victim consented, that's all that was necessary. But if the victim was 18, they were deemed not to be able to consent. [LB479]

SENATOR LATHROP: Right. [LB479]

SENATOR COUNCIL: All right. [LB479]

SENATOR LATHROP: And I should add that, and I hope Senator Lautenbaugh isn't watching this on TV. I'm a little embarrassed. There is what I consider to be an unnecessary immunity at the end of this bill. (Laughter) [LB479]

SENATOR LARSON: That was my next question actually. [LB479]

SENATOR LATHROP: And it really doesn't add anything to it, and I expect we'll need to amend that out just because... [LB479]

SENATOR COUNCIL: All right. [LB479]

SENATOR ASHFORD: Well, I was just going to ask what it does...yeah, what does it do? [LB479]

SENATOR LATHROP: Nothing. Nothing. (Laugh) It's bad policy. I also, before I sit down and turn it over to the witnesses, I want to thank the good people at the YWCA and to suggest to you that I sat down with the Catholic Conference and with Nebraska Right to Life to talk to them and make sure that they understood what the intent of the bill is,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 10, 2011

what the purpose of the bill is. And it is nothing more and nothing less than what I've described here today. [LB479]

SENATOR ASHFORD: Thank you, Senator Lathrop. Any other questions of Senator Lathrop? Seeing none, I agree this is a good idea. Let's see, proponents. Do we have some proponents in the front row there? [LB479]

NATALIA PEART: (Exhibit 18) Good afternoon, Senator Ashford, members of the Judiciary Committee, ladies and gentlemen. I am here today in support of LB479. I should probably also stop and tell you my name and spell it out. The name is Natalia Peart, N-a-t-a-l-i-a, last name Peart, P-e-a-r-t. I am the CEO of the Omaha affiliate of the national YWCA organization. In the Omaha office, our agency provides programs and services that include domestic violence and sexual assault crisis services, career and self-sufficiency programs, counseling services, education and prevention and training, as well as nonviolence programs. Last year, we saw more than 550 clients between the ages of 16 through 24 for our domestic violence and sexual assault advocacy services. Today, we are seeking a change in the law governing consent for healthcare services to allow 18-year-old patients to consent to their own treatment following intimate partner violence or sexual assaults. This change would allow them to consent to treatment and evidence collection without obtaining parental permission. While this bill would apply to all 18-year-old patients, both male and female, here are a few statistics using Nebraska college students to help frame the discussion. Seven hundred and sixty-three college students under the age of 19 become victims of rape every year in Nebraska. However, just less than 5 percent of college rapes are brought to the attention of campus authorities and/or the law enforcement. Many 18-year-olds may be in their first year of college and not living at home. They pride themselves on their independence, yet when they've been victimized by intimate partner violence or sexual assaults there is often shame and guilt associated with the incident. At the YWCA, staff have encountered a number of challenges in working with 18-year-olds not living with their parents. For example, there was a freshman who was sexually assaulted. She felt so ashamed and guilty about what happened that she did not tell anyone for weeks. If she had known that she could have received medical treatment confidentially she may have reached out to get help, but she was so ashamed and didn't want anyone to find out. She actually left the university following this incident and moved out of state. We are aware of a student who made a suicidal gesture following an unwanted sexual encounter. The student was more afraid of their parent's response than the sexual event. Other students that meet a partner on-line, and the relationship has become dangerous, often do not tell because they have used a forbidden on-line site. There are also a number of cases where getting consent is delayed or prevented because the parents are not easily accessible, such as international students that we've worked with. When a victim of domestic violence or a sexual assault goes to the emergency room, a YWCA advocate is also called in to provide emotional support, explain the criminal process of evidence collection, and help with any immediate safety

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 10, 2011

and support needs. Experts encourage victims of sexual assault to report the incident immediately. There are also certain guidelines that are given, such as not to shower, not to eat anything, not to go to the restroom, not to change clothes, etcetera. Yet the patients are expected to wait until the parent or guardian gives consent, which can sometimes mean hours or longer. By the delay in service, they sometimes change their mind and refuse treatment. They may refuse to report information to law enforcement or to be honest with their provider. YWCA client advocates have seen clients that were made to wait, refuse all treatment and leave. [LB479]

SENATOR ASHFORD: Natalia, could you just sum up if you would. [LB479]

NATALIA PEART: Absolutely. A delay in treatment can mean a delay in connecting them with area resources and support. This can lead to other physical and emotional trauma. In summary, intimate partner violence and sexual assault are already seriously underreported crimes. Lowering the age of consent to 18 will empower Nebraska's young women and men who may otherwise feel helpless after an assault by removing barriers to obtaining medical treatment. Thank you for your time and attention and for considering this bill. [LB479]

SENATOR ASHFORD: Thank you, Natalia. Thanks for your...oh, well there may be a question. I don't think there will be real tough ones but there may be one. Let me see. No. (Laugh) Thank you for all you do. [LB479]

NATALIA PEART: Thank you. [LB479]

SENATOR ASHFORD: Absolutely. Next proponent. [LB479]

JACKIE THIELEN: (Exhibit 20) Senator Ashford, members of the committee, ladies and gentlemen, my name is Jackie Thielen and I'm here today in support of LB479. I'm committed to this bill in part because of personal experiences as a care provider. I'm a nurse practitioner, and for the last 7.5 years have functioned as the clinical coordinator and a care provider for sexual assault patients in a busy emergency department. I wish I could tell you that there was no need for a specialized program nor for this bill, but sadly, the numbers and statistics say otherwise. With the 2005 Nebraska Attorney General's commissioned study indicating that one in eight Nebraska women have been or will be victims of sexual assault in their lifetime, it's clear that we as a community must focus not only on prevention but also on best care practices that support victims in the aftermath of this violent crime. Removing barriers such as the need for parental consent for 18-year-olds, a subset of those most likely to fall victim to this crime, is imperative. Let me recount to you a situation I have encountered all too often. A young adult presents to the emergency department having had the strength and wisdom to seek care after a sexual assault. Some of these patients have experienced both physical intimate partner violence and sexual assault, a situation not uncommonly seen

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 10, 2011

given that approximately half of domestic violence cases also include a component of sexual assault. Sadly, for those who are 18 years old, we must inform them that care cannot be provided and evidence cannot be collected without consent, and that consent must come from their parent or guardian. So following a crime in which they have been subjected to violence, dominance, and control in a horrific manner, we now again take control away from them by telling them they are not old enough to make this decision. How can we tell these 18-year-olds, who are making life-changing decisions of magnitude such as choosing careers, moving to another city or state, beginning college, that they must have parental permission for the care and evidence collection? Consider also that had they presented to an emergency department in any one of the states bordering Nebraska, this would not be an issue. Every single state surrounding Nebraska, and in fact every state in the U.S. except Nebraska and two others, allow 18-year-olds to consent for their own healthcare. Would you like me to summarize? [LB479]

SENATOR ASHFORD: That's startling, really. No, go ahead. [LB479]

JACKIE THIELEN: What I would like to say, and I won't read it, I will give you a copy of my testimony, is that there are some major repercussions for those who delay or don't come in and seek care. [LB479]

SENATOR ASHFORD: Well, I suppose the prosecution is almost impossible. [LB479]

JACKIE THIELEN: I'm a healthcare person and, of course, evidence is time-sensitive. And if it's lost, it's lost forever. However, without seeking care, in their displaced shame and guilt if they elect not to seek care, there are some life-threatening conditions that may occur including some diseases to which they may have been exposed and which, quite honestly, can be treated with common antibiotics, oftentimes a single dose, and it will prevent it. Injuries can go undetected and can result in permanent harm. I also have to tell you that in my experience oftentimes just the simple reassurance that they were in a vulnerable situation and someone took advantage of that vulnerable situation will allow them to reach out and to disclose what occurred, to go to those people who are most supportive, oftentimes their parents or other adults. I have witnessed people leave. I've witnessed people who can't disclose to their parents for whatever reason. I would like for them to be able to control when they disclose and in a situation of disclosure. [LB479]

SENATOR ASHFORD: Yeah, I mean there's nothing but compelling reasons to...any questions of Jackie? Seeing none, thank you for your...next proponent, please. [LB479]

EMERALD PORTER: (Exhibit 21) Good afternoon. My name is Emerald Star Porter, E-m-e-r-a-l-d P-o-r-t-e-r. Thank you, Senator Ashford and members of the Judiciary Committee, for providing me the opportunity to speak to you today about my support of

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 10, 2011

LB479. I am 19 years old and I am a survivor of domestic violence. In June 2009, my boyfriend at the time took my car keys from me and told me to get out of my car. I wouldn't because it was my car. Because I wouldn't get out of my car and give in to his manipulation, he took my car key and dug it into my back and left a pretty large cut that was an inch and a half long that I never went to the hospital to get stitches for. I was scared to tell my parents because at that point they were not aware of his rage or abusive behavior towards me. In November 2009, he grabbed me by my throat and lifted me off the floor and slammed the back of my head into the wall of my bedroom. After he had put me back on the ground, I felt very lightheaded, almost as if I couldn't breathe, and I was seeing spots of black from having my head slammed repeatedly so hard against a hard surface. I never pursued medical attention for this, when I should have gone to the emergency room believing I had a concussion. I now suffer from chronic migraines caused from this attack, and several times when they reoccur I have had to be hospitalized for the severity of the pain. In January 2010, he and I had another argument that caused him to break my finger to show me how he had power and control over me and the daily activities of my life. For nearly five hours, I was hesitant about going to the hospital because I was scared my parents would find out. Instead, I made the decision to drive to my aunt's house in Lincoln, Nebraska, thinking that she could take me to the hospital without having to notify my parents. We went to an urgent care, and because she was not my legal guardian, I still ended up having to call my mother and tell her. If the age had been 18 at the time, I could have sought out medical treatment immediately and would not had to have dealt with the stress and pain of a broken finger for five hours longer than what was necessary. My parents are now fully aware of the abuse I endured for several years and have been very supportive. At the time, I was scared to tell them what was going on and it kept me from reaching out to receive the proper medical treatment I needed for serious injuries. If in June 2009 I had been able to go to the doctor on my own, the hospital would have contacted the YWCA crisis hot line and an advocate would have come to the hospital to support me. I probably would have developed the courage to have told my parents sooner. I would have had someone to talk to and not had to have endured the pain and trauma alone. I, too, believe that with the support I probably would have found courage to end the relationship sooner. If nothing else, I certainly would have received the healthcare treatment I needed and might have been spared the continued physical pain and scars due to the lack of proper medical care. Please pass LB479 for those of us who suffer in silence out of shame or fear. Thank you for your time and consideration of this important bill. [LB479]

SENATOR ASHFORD: Any questions? Thank you for coming and sharing your experience with us. Any other testifiers, proponents? Katie. [LB479]

KATIE ZULKOSKI: Good afternoon, Senator Ashford and members of the Judiciary Committee, and my name is Katie Zulkoski, Z-u-l-k-o-s-k-i. My testimony is far less compelling than those that have gone before me, but we do want to be...I'm testifying on

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 10, 2011

behalf of the Bar Association, and we are here in support of this bill. We think this is an important extension of those age of majority changes that have been put in place earlier. [LB479]

SENATOR ASHFORD: Any questions of Katie? Thank you, Katie. Other proponents? Mr. Rogert. [LB479]

KENT ROBERT: Good afternoon. My name is Kent Rogert, R-o-g-e-r-t, and I'm representing nobody but myself today. But I wanted to come up and answer some questions, as it was my bill the last four years to address majority issues. LB226, we had last year, was an agreement between many, many, many parties. Before that, Nebraska was the only state in the Union that had the age of majority, 100 percent, at age 19 for all issues. Today, thanks to LB226, we moved it down to 18 for all binding contracts that are necessary for life--rent, utilities and those types of things. For medical care, however, we left it that if an 18-year-old is carrying with them a power of attorney from their parents that says they can have medical care, they can receive it. And the reason we left it at that was because, ultimately, until they turned 19, because of the way the rest of the statutes read, the parents would be responsible for the financial burden should they default on the payment. So that's why we left it that the parents had to at least consent to give them the medical care, and they could do it ahead of time and they could carry it around with them. This goes beyond that and I see it's a great idea because it's always troublesome for 18-year-olds to go get, or any young person to go get medical care if they have to tell their parents, because it might be, like Senator Lathrop said, they might have been out doing something they shouldn't have been. [LB479]

SENATOR ASHFORD: Yeah, I recall the bill. Yes, Senator Council. [LB479]

SENATOR COUNCIL: Well, then my question may not be for you, Senator Rogert, and it may be for the proponents, because who bears the cost of the forensic evidence collection or any concomitant medical care? [LB479]

KENT ROBERT: Well, probably their insurance, if they had it, their health insurance or the... [LB479]

SENATOR ASHFORD: But not for the forensic. You're talking... [LB479]

KENT ROBERT: But for the forensics, I imagine it would be the police department or the court system. [LB479]

SENATOR COUNCIL: Okay, if you could...yeah, I'm just thinking about the concomitant medical care. Thanks. [LB479]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 10, 2011

KENT ROBERT: Okay, thanks. [LB479]

SENATOR ASHFORD: Any other...were you neutral, Senator Rogert? What were you doing? [LB479]

KENT ROBERT: No. I'm just going to be neutral, but I'm for it. (Laughter) [LB479]

SENATOR ASHFORD: Okay. Any opponents here? Greg is here, but he's a witness or a watcher. Any neutral testifiers? Okay. Very good. Senator Lathrop. [LB479]

SENATOR LATHROP: (Exhibit 19) Just a couple things on close. First, there's a letter that we put into the record from a very good friend of mine, Kelley Keefe, that we want to make sure is part of the record. And in addition to Kelley's letter, let me address the question of cost, because that came up when we were talking about the bill, Senator. And if someone came into the emergency room...generally speaking, medical care is a necessity of life, as you know, and parents would be responsible for minors. What I understand is the practice is there are certain practices at the hospitals that typically they either have a fund that they can get these bills paid for or they write them off. If somebody gets care and they don't want their mom and dad to know about it... [LB479]

SENATOR COUNCIL: Yeah, that's what I'm concerned about. [LB479]

SENATOR LATHROP: ...for whatever reason, they have a way of dealing with it, or at least that's what I was told. [LB479]

_____: (Inaudible) [LB479]

SENATOR LATHROP: Yes? Okay. [LB479]

SENATOR COUNCIL: Okay. [LB479]

SENATOR LATHROP: There we go. Thank you for your courteous attention. [LB479]

SENATOR ASHFORD: Well, it's an important bill. Thanks, Senator Lathrop. [LB479]

SENATOR LATHROP: Yeah. And the folks at the Y are terrific to work with. [LB479]

SENATOR ASHFORD: I was going to ask them to tell you, how are...you're also coordinating the violence...all the groups that are working on...aren't you coordinating everybody in town on all these... [LB479]

NATALIA PEART: Well, we are certainly part of the Omaha, a lot of the Omaha groups that are working together. [LB479]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 10, 2011

SENATOR ASHFORD: But aren't you sort of doing a coordinating effort on... [LB479]

NATALIA PEART: Yeah, there are a number of our staff members who really work to help coordinate a lot of the other agencies. [LB479]

SENATOR ASHFORD: Well, and some of the intervention work that's going on. [LB479]

NATALIA PEART: Violence intervention and prevention work. [LB479]

SENATOR ASHFORD: And didn't you just go on the bank board or something? [LB479]

NATALIA PEART: The Federal Reserve, yes, I did. [LB479]

SENATOR ASHFORD: You went on the Federal Reserve. [LB479]

NATALIA PEART: The Federal Reserve. [LB479]

SENATOR ASHFORD: My goodness. Natalia was just asked to be on the Federal Reserve Board. [LB479]

SENATOR LATHROP: Is that right? [LB479]

SENATOR COUNCIL Cool. Cool. [LB479]

NATALIA PEART: The Omaha, Kansas City branch. [LB479]

SENATOR ASHFORD: (See also Exhibits 11-17) Be careful of our money or make sure interest rates stay low or whatever. I shouldn't ask you that. (Laughter) That's probably intervening. Okay, that concludes the hearing. [LB479]