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Transcriber's Office

Judiciary Committee
January 25, 2012

[LB802 LB804 LB805 LB806 LB839]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, January 25, 2012, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB839, LB806, LB802, LB804, and LB805. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Colby Coash; Brenda Council; Burke Harr; Tyson Larson; Scott Lautenbaugh; and Amanda McGill. Senators absent: None.

SENATOR ASHFORD: Good afternoon, everyone. Welcome to the Judiciary Committee. We have five bills today, beginning with LB839. Senator Council will be introducing that bill. For those of you who have not been here before, and that's a few maybe, but we do have a light system. We ask you to keep your testimony to three minutes. The yellow light will indicate when we'd like you to sum up your comments. If there are questions, obviously, you go beyond the three minutes. But if you would kind of pay attention to the light system, that would be helpful so we can get through all the bills in an expeditious manner. As I say, we have five bills, but the first one is LB839. Senator Council.

SENATOR COUNCIL: Thank you, Mr. Chairman, members of the Judiciary Committee. I'm Brenda Council, last name spelled C-o-u-n-c-i-l, and I proudly represent the 11th Legislative District in Nebraska. And I appear before you this afternoon for purposes of introducing LB839. And the intent of LB839 is really rather direct and simple and that is to make it absolutely clear what triggers particularly a school employee or a school district to report allegations of child sexual abuse. Under the current statute, the provision requires a report when, for example, a school employee has reasonable cause to believe. I undertook some research to determine what other states did in the case where there's an allegation of child sexual abuse in a school setting and whether or not that required some determination if there were a set of facts that would support a reasonable belief that a crime had been committed or was being committed. I looked at Wisconsin law and Illinois law, and they had a separate and distinct requirement that governed the reporting of an allegation of sexual abuse of a child in a school setting, and that's what you see before you in LB839. It was taken from Wisconsin and Illinois law and drafted to fit the situation here. And what it mandates is, upon receipt of a mere allegation of child sexual abuse, school personnel are required to report within 24 hours, and they cannot delay reporting while they conduct any independent investigation, whether that's for purposes of determining if there are a sufficient set of facts to warrant the conclusion or for disciplinary reasons. It makes it absolutely clear that it must be reported within 24 hours. And again when looking at various reporting requirements in other sections of the statute that deal with abuse or neglect of animals, for example, the triggering event is a reasonable suspicion. And in those section of statute we define reasonable suspicion to be a set of facts that would lead a person of ordinary care and prudence to conclude that a crime had been committed. LB839 removes any question

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that it is not for the district to determine whether there are a set of facts; that the mere allegation alone triggers the requirement to report, and the report must be made within 24 hours. If there are any questions, I'll entertain them now, but I think there are a number of individuals who are here today to speak on this bill. [LB839]

SENATOR ASHFORD: Senator Lathrop. [LB839]

SENATOR LATHROP: I do have a question, Senator Council, and I appreciate the bill, the purpose of the bill, and the reason for the bill. I'm wondering why we would limit it to an allegation that it was a school employee only though. Couldn't we broaden it so that if somebody said another student did something or my uncle did or...is there a reason to limit it? [LB839]

SENATOR COUNCIL: Well, in this particular instance, again, I was looking at how they would address it in the school setting and that's where it was taken from. I have absolutely no concern about broadening it. In fact, I think there may be some who are here to testify that says that it shouldn't just be limited to sexual abuse and the provisions in the statute that define inappropriate sexual conduct, that it should be even broader to include all of the definitions within child abuse. [LB839]

SENATOR LATHROP: And it can be broad enough to be not just school employees... [LB839]

SENATOR COUNCIL: Correct. [LB839]

SENATOR LATHROP: ...but other students... [LB839]

SENATOR COUNCIL: Correct. [LB839]

SENATOR LATHROP: ...family, relatives, strangers. Okay. [LB839]

SENATOR COUNCIL: Absolutely open to making this the best possible bill that we can make it. [LB839]

SENATOR LATHROP: Okay. Thank you. [LB839]

SENATOR COUNCIL: Any other questions? [LB839]

SENATOR ASHFORD: I don't see any. Thanks, Senator Council. We're going to start with the proponents, those who support Senator Council's bill first. So, Brenda, come on up. How many do we have that wish to speak on this bill? A couple, Senator Chambers, okay. Come on up, Ernie. Yeah. Yes, can we have...Evan, would you get the...I'll be right back. I've been summoned. [LB839]

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BRENDA BEADLE: Good afternoon. My name is Brenda Beadle, B-e-a-d-l-e. I am the chief deputy in the Douglas County Attorney's Office and I've been an attorney about 20 years. I am a member of the board of directors of the County Attorneys Association and I am here on behalf of the County Attorneys Association in support of LB839. First of all, I'd like to thank Senator Council for introducing this bill. LB839, as indicated, specifically addresses sexual contact and abuse cases that are reported in schools. I guess I would agree with Senator Lathrop that, you know, broadening it. I don't think we should limit it to just in schools. And I think the way the statute is written currently does include everybody. It specifically says "any person shall report." So I think we've got that covered. I understand I guess the desire to cover specific sexual cases, but I agree or believe that they're included under the child abuse as well. It does spell out clearly in LB839 who and when one needs to report any of those types of allegations that are made in schools. Also most importantly, it provides the guidance to the schools as to who is to investigate the allegations, and specifically that's law enforcement. I think that's one of the most important portions of this bill is that it does take it out of the schools to interpret or to actively investigate cases or allegations and to find what they deem to be reasonable cause. I think that this statute, as Senator Council indicated, takes it out of their hands and they have to just turn it over to law enforcement, who should be investigating it to begin with. I believe that Nebraska statute, again as written, has broad language now that covers any person. So I would love to work with and I know other county attorneys have indicated they would love to work with Senator Council and anyone else to help maybe to add some provisions to this. One of the things...I guess one of the questions that we would have or I would have is when this specific part of the statute talks about who reports, it talks about the party that it's reported to and the superintendent. And I guess I would ask why we would limit it to that and not include any persons, like the principals or any HR parties. Anybody who has any kind of allegation like that shall report it as the statute is written right now, and that could be a number of individuals within the school setting. I think in reality that one of the last people to end up hearing about it is the superintendent, but certainly the principals and the HR people know about it ahead of time and I believe should report it immediately. I don't know why we would have...if we're having them turn it over for investigation, why we would wait 24 hours if they're not doing their own investigation. I guess I would suggest that maybe we make it immediately upon since they're not investigating it. And one crucial thing that's an obvious concern with us or from a law enforcement perspective is when individuals participate in a criminal investigation prior to law enforcement becoming involved, that obviously can impede the investigation. So we like that the language tells them that they're not supposed to investigate, they leave that to law enforcement. But one thing I think would be helpful is having their determination with regard to the employment status of the personnel come after the law enforcement investigation because I can tell you that firsthand that we've had a number of cases where the school starts doing their own investigation, whether they think it's for employment purposes or to actually see if the allegations are reasonably true, that

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impedes the law enforcement investigation because now they've gone, they've done their investigation, they've interviewed witnesses, they've contacted the suspected perpetrator. And now when law enforcement finally gets involved, some of the evidence can be destroyed, people tipped off, that kind of thing. So we certainly would like to add language that spells out the order of which investigation should occur. We again... [LB839]

SENATOR ASHFORD: Brenda, I'm going to see if we have any questions. [LB839]

BRENDA BEADLE: Okay. [LB839]

SENATOR ASHFORD: Yes, Senator Council. [LB839]

SENATOR COUNCIL: I do. And for the record, thank you, Ms. Beadle. And Ms. Beadle and I have had a brief conversation as to the types of revisions and amendments to make this bill much tighter and address some of the issues that were raised. But in that context I just want to point out to you that the bill does require that the school employee to whom the allegation is reported and the superintendent. So whoever gets the allegation, whoever receives that allegation is to report it. So I think that addresses one of the concerns you raised. And if it doesn't, you know, please indicate and we'll work to address it. But you also said there was another concern that you had. [LB839]

BRENDA BEADLE: Yes. I guess when...if I have a situation where a child reports it to a janitor or a teacher, a lot of the teachers feel like they're reporting it when they report it to the principal. And maybe, given their position, they're less likely to be the one to call the police because of the protocol maybe that's been put upon them. And so I guess if they drop the ball or if they, for whatever reason, feel they can't feel comfortable doing that, I think they should be responsible and they should definitely call. And the statute, as it's written right now, requires them to. But I want something in between that's a safeguard. If they don't do what they're supposed to do, I want the next party, if they're higher up, a principal so to speak, if they're reported to that they should have that same obligation. That they shouldn't just sit on it... [LB839]

SENATOR COUNCIL: Okay. [LB839]

BRENDA BEADLE: ...and expect the superintendent to get it. I think anybody who has that information should make sure that it's reported. [LB839]

SENATOR COUNCIL: Okay. So the situation you're addressing is one where the child reports it to the janitor and the janitor says, I'm not reporting it to the police. They report it to the principal. The way the language is drafted right now it doesn't necessarily require the principal to report because that principal wasn't the one to whom the allegation was first reported. So we can address that. [LB839]

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BRENDA BEADLE: Exactly. And I believe the statute, the current statute that we have... [LB839]

SENATOR COUNCIL: Statute does, right, right. [LB839]

BRENDA BEADLE: ...does require it because it just says "any." [LB839]

SENATOR COUNCIL: Okay. [LB839]

BRENDA BEADLE: In Nebraska, it's one of the few, I mean, it's one state that does allow...it forces anyone with that information to report, which is a good thing. [LB839]

SENATOR COUNCIL: Okay. Thank you. [LB839]

BRENDA BEADLE: Any other questions? [LB839]

SENATOR ASHFORD: And this only applies to a school...this doesn't apply to post high school. This is just any school prior... [LB839]

BRENDA BEADLE: Yeah. It specifically addresses schools, which... [LB839]

SENATOR ASHFORD: ...79-101 so. Is that right, Senator Council? [LB839]

SENATOR COUNCIL: Yes, schools. [LB839]

SENATOR ASHFORD: Yeah, yeah. [LB839]

BRENDA BEADLE: But you know... [LB839]

SENATOR ASHFORD: So it doesn't apply to the university or... [LB839]

SENATOR COUNCIL: Well, it... [LB839]

BRENDA BEADLE: And I think the original statute as written applies to schools. It should apply to any party. It should apply to clergy, priests, you know, we see all kinds. So again, and I talked to Senator Council about whether we really need a separate whole section that talks about sexual abuse because I think it's already covered as it is, but maybe incorporating or bringing them together and tweaking. [LB839]

SENATOR ASHFORD: Okay, I gotcha, okay, thanks. Thank you. Any other questions? Yes, Senator Harr. [LB839]

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SENATOR HARR: Thank you, Senator Ashford. Hello, Ms. Beadle. How does a principal know if the janitor reported it or not? [LB839]

BRENDA BEADLE: To them? [LB839]

SENATOR HARR: Yeah. Well, let's say in the situation you just gave the janitor reports to the principal. Do both of them have the duty to report then or is it the principal only if the janitor doesn't report? [LB839]

BRENDA BEADLE: Right. You know, I guess as the statute... [LB839]

SENATOR HARR: Or how would you like to see it? [LB839]

BRENDA BEADLE: As the statute is written right now, any party shall report. So if a janitor gets the information, I believe that the janitor is required to turn that over and make that call to law enforcement or CPS immediately. [LB839]

SENATOR HARR: Okay. [LB839]

BRENDA BEADLE: If they go then and report it to the principal, and I think what's happening is that any of the like teachers and janitors, if they report it to the principal, they feel that they've reported it and then it's now up to--because they have their own protocol in their place--and then it's up to the principal. [LB839]

SENATOR HARR: Yeah. [LB839]

BRENDA BEADLE: I just don't want to see the principal excluded from responsibility if they're the ones carrying that information and the others feel that they've already reported it. [LB839]

SENATOR HARR: Okay. [LB839]

BRENDA BEADLE: Now I guess what I'd like to see and what I believe the statute currently says is that anyone with that information reports it to the police. I don't think they should have to feel they have to go up the command within the school. [LB839]

SENATOR HARR: Okay, that's fair. And then it's often reported to CPS, right? [LB839]

BRENDA BEADLE: Yes. [LB839]

SENATOR HARR: And one of the problems that I've heard is that CPS will tell the party who made the report. So they'll say the principal called on that and/or the janitor called or whomever that is. Are they restricted from saying who made the report currently

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under the statute or is it just protocol, to your knowledge, if you know? [LB839]

BRENDA BEADLE: You know, I think that it can be anonymous. I'd have to...I don't want to misspeak, though. [LB839]

SENATOR HARR: Okay. [LB839]

BRENDA BEADLE: I'm not positive on that, if it's a call in to CPS anonymously or not, whether... [LB839]

SENATOR HARR: And that's one of the problems we're running into I think as we make this obligatory. It can oftentimes cause more harm because the principal says I have to report it and then it ruins the relationship with that school. [LB839]

BRENDA BEADLE: With who? The school and whom? [LB839]

SENATOR HARR: The school and the alleged perpetrator if it's a parent. [LB839]

BRENDA BEADLE: But if it...if it's a parent? I'm not following you. [LB839]

SENATOR HARR: Okay, so if... [LB839]

BRENDA BEADLE: The dynamics within the school between the teacher and... [LB839]

SENATOR HARR: Yeah. If the alleged perp is a parent, let's say, or a grandparent and justifiably so the principal and/or teacher...and teacher should report it. But under this, CPS then will turn around and say, hey, we got a report from your teacher, a teacher at the school or principal at the school, and then that creates friction in that school. And so I think one of the important things we do while we're amending this and cleaning it up is to make sure that that remains...whoever reports it remains anonymous is the only point I'm trying to make. [LB839]

BRENDA BEADLE: To the perpetrator only you mean because obviously it can't remain anonymous if they're going to go out and investigate. [LB839]

SENATOR HARR: They'll investigate but anonymous who reported it, if it's a teacher that reported it; if it's the principal that reported it; if it's a janitor that reported it. [LB839]

BRENDA BEADLE: Yeah. [LB839]

SENATOR HARR: All you have to know is that there was a report that it occurred. [LB839]

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BRENDA BEADLE: Right. [LB839]

SENATOR HARR: And I don't think CPS needs to say who made that report. [LB839]

BRENDA BEADLE: Who reported it. Eventually, though, if it goes to court and obviously as you know... [LB839]

SENATOR HARR: Fair, yeah, fair. [LB839]

BRENDA BEADLE: ...the witnesses are going to be called. And I guess at the risk of protecting the... [LB839]

SENATOR HARR: And by the time there's an arrest... [LB839]

BRENDA BEADLE: Pardon me? [LB839]

SENATOR HARR: By the time there's an arrest I think it's pretty obvious that relationship is probably over. [LB839]

BRENDA BEADLE: Right and that's okay. [LB839]

SENATOR HARR: But the issue is when there's an investigation and it turns out that, well, it was just little Johnny, you know, imagining something, it creates a problem within that school. [LB839]

BRENDA BEADLE: Yeah. [LB839]

SENATOR HARR: And that's all I'm trying to say is I think while it's in the investigation stage CPS should be required to keep the reporter anonymous. [LB839]

BRENDA BEADLE: Yes, and I'd have to look into that further I guess. [LB839]

SENATOR HARR: Okay. [LB839]

BRENDA BEADLE: Yeah. When you're weighing the interest, though, of the kid who, you know, if it ruffles feathers of people that are...grandpa did it or he's alleging and he's imagining it, I hope that they understand that schools have to take such an allegation so seriously that they have a requirement to report. [LB839]

SENATOR HARR: And I would agree with that, but that doesn't always happen. [LB839]

BRENDA BEADLE: Yeah, I appreciate that. [LB839]

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SENATOR HARR: Yeah. [LB839]

SENATOR ASHFORD: Thank you, Brenda. [LB839]

BRENDA BEADLE: Thank you. [LB839]

SENATOR ASHFORD: I'm sorry, Senator Lautenbaugh. He has a question for you. You have to remain. [LB839]

SENATOR LAUTENBAUGH: Just one question. [LB839]

BRENDA BEADLE: Oh, I'm sorry. Yes. [LB839]

SENATOR LAUTENBAUGH: I didn't get my hand up quickly enough. Thank you for coming down today and testifying. So...and I apologize if Senator Council covered this in her opening. I was stuck out in the hallway for a moment. Is there anything in law that prohibits the reporting now? [LB839]

BRENDA BEADLE: No. In fact, the law is that they shall report now. [LB839]

SENATOR LAUTENBAUGH: So what is it we're actually trying to address here? I'm having trouble following. [LB839]

BRENDA BEADLE: You know, I think some of the things that we could address is specifically what we find I think most disturbing or troubling is the order in which they do. They do their own investigations right now. And if they get an allegation and they want to determine whether it's true or not, they go about and start doing their own investigation. Not all schools do that. Some immediately report like the statute requires them. But it doesn't specify anywhere in the statute that they have to do it immediately and not do their own investigation. And we tried to train the schools as to the importance of letting law enforcement do their job and come into the school and do, you know, to preserve evidence. And a lot of times, of course, they're going to do their own investigation for personnel reasons. And so we just want...we would love it to be clear that they have to just turn it over to the police, let the police come in and do their investigation, and then worry about the personnel matter after that, which certainly the law enforcement matter could help them determine their personnel matter. So that was one of the things. I think that the way the statute is written now again covers sexual abuse, it covers schools as they are right now so we could probably just tweak the language in the current statute and add some of these important things. [LB839]

SENATOR LAUTENBAUGH: Thank you. [LB839]

BRENDA BEADLE: Thank you. [LB839]

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SENATOR ASHFORD: Thanks, Brenda. I think that does it. Thank you. [LB839]

BRENDA BEADLE: Thank you. [LB839]

SENATOR ASHFORD: Any other proponents for this bill, who support the bill? Yeah, John. Okay. [LB839]

JOHN BONAIUTO: Good afternoon. My name is John Bonaiuto, J-o-h-n B-o-n-a-i-u-t-o, registered lobbyist representing public school governing boards. And my legislation committee talked about this bill last weekend and made some language suggestions to Senator Council. The way they read the bill was that this was indicating more immediacy as far as reporting and that was understandable. And then we had a lengthy discussion about the investigation piece and how that might work. And I think that for school board members some of the concern was the same as the previous testifier had indicated, that at what point does the school get involved with their investigation, not to cause problems with the reporting. And so I think with just having that information shared with Senator Council and I know that one of my board members had a discussion with her, other than that we see the need to make sure that there is that urgency in making the report. With that, I'll conclude my testimony. [LB839]

SENATOR ASHFORD: Thanks, John. Duly noted. Any other...no, thank you. Any other supporters of the bill? Opponents? Neutral? John. Support. [LB839]

JOHN LINDSAY: Senator Ashford, members of the committee, my name is John Lindsay, L-i-n-d-s-a-y. I am here as registered lobbyist on behalf of Omaha Public Schools in support of LB839. OPS would like to thank Senator Council for introducing this bill. As you're probably aware, there's been some criticism of OPS, we believe some misinformation about it as it relates to the reporting of alleged abuse. And we are pleased that Senator Council has brought forward a solution to a problem that in concept OPS has supported for some time. The problem with the current law is that it requires districts to make a judgment. It calls on them to report when they have "reasonable cause to believe" that child abuse has occurred. This means that districts have to make a judgment. If they make the wrong judgment, children are at risk. But if they simply report everything without making a judgment, then those upon whom it has been reported would have reason to sue because a district reported without reasonable cause. Senator Council's bill takes care of that issue, takes that issue out of the hands so that judgment is not required at all. OPS now is reporting any allegation. We are doing what this law requires, and we are in strong support of LB839. [LB839]

SENATOR ASHFORD: The idea being that if they report to the police, report it, that that's their duty. Is that... [LB839]

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JOHN LINDSAY: Right. Right, it takes any judgment out. [LB839]

SENATOR ASHFORD: So there is no other duty. [LB839]

JOHN LINDSAY: Right. There's no duty to investigate as far as whether there's a reasonable belief or not. [LB839]

SENATOR ASHFORD: Senator Lathrop. [LB839]

SENATOR LATHROP: John, as I'm reading this, there is a prohibition in here that says "The school district shall not investigate the report for purposes of substantiating the allegation," which is fair direction to OPS or anybody else that they call the police, let them investigate. [LB839]

JOHN LINDSAY: Right. [LB839]

SENATOR LATHROP: But it says "the district may investigate the allegation for purposes of making a decision regarding the employment of the teacher...against whom the allegation was made." I suppose there's another reason which would be liability, right? [LB839]

JOHN LINDSAY: Well, not just liability, Senator. The problem is in order to terminate an employee the case has to be built for that termination, which requires that sometimes not wanting to wait for a criminal investigation. You want to be able to do your investigation, be able to substantiate the report, and be able to get the violator out of the classroom. They're out of the classroom immediately, of course, suspended pending the investigation. [LB839]

SENATOR LATHROP: Do you think...I mean literally this wouldn't permit you to investigate for purposes of civil liability that you might be facing too. Here's my question and my thought and that is do we need to be clear in the bill, which I think is a great idea and I don't want my question to be interpreted as anything but support, but do you think we need to be clear in the bill about when you can do that investigation, you call the police? Because I've talked to people that investigate these and they say we don't want the police to be the fourth person to talk to the child... [LB839]

JOHN LINDSAY: Right. [LB839]

SENATOR LATHROP: ...because of the potential to suggest answers that the child then thinks are the right answers to give. But do we need to set out in the bill when you can do this investigation for purposes of your making the determination whether you can fire the guy or put them on leave? [LB839]

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JOHN LINDSAY: I don't think we'd have any objection to that. The more clarity, obviously, the better off we are. As I mentioned, we're in strong support that the first call is to law enforcement so that they can perform their functions. We would like to preserve our ability to investigate so that we might take action against and make sure that if those allegations are substantiated that that teacher does not teach. [LB839]

SENATOR LATHROP: Okay. [LB839]

SENATOR ASHFORD: I'm not sure, John. The language is mutual...it seems mutually exclusive. [LB839]

SENATOR LATHROP: I don't know when you'd start your investigation is my point. [LB839]

SENATOR ASHFORD: Yeah, yeah. [LB839]

SENATOR LATHROP: And it seems to me that the police ought to get a head start on the school district to some extent. [LB839]

JOHN LINDSAY: Agreed. [LB839]

SENATOR LATHROP: If the idea is to get the child to somebody who is trained in asking the questions and not suggesting the answers, to do it the correct way through law enforcement, that they ought to have a head start before the school district so that you don't make a phone call and then walk in and talk to the kid before the police get there and get them to the right child. And then we ought to make sure that you can investigate for other purposes as well. [LB839]

JOHN LINDSAY: Yes. And that's what I'm saying. I guess we're agreed on that. The law enforcement should have the first opportunity to investigate. [LB839]

SENATOR LATHROP: Okay. [LB839]

JOHN LINDSAY: I don't think there's any disagreement on that. [LB839]

SENATOR ASHFORD: Senator Council. [LB839]

SENATOR COUNCIL: And just to follow up, I don't know, Mr. Lindsay, if you were present during the deputy county attorney Beadle's testimony,... [LB839]

JOHN LINDSAY: Yes. [LB839]

SENATOR COUNCIL: ...but that's what she was suggesting, that the language be

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amended to limit the school district's ability to conduct an investigation until such time as it doesn't interfere or corrupt the investigation being conducted by law enforcement. It may be possible to say something to the effect that the school district's investigation shall be coordinated with law...but something so that you don't in any way corrupt the law enforcement investigation while at the same time being able to put the district in a place where, if disciplinary action is necessitated and permanent removal from the classroom is warranted, that that's not delayed any significant period of time. [LB839]

JOHN LINDSAY: Right. And that's...I guess that's what I'm saying. It's a clear way of saying it is law enforcement should have the first opportunity to investigate, should be allowed to investigate without interference. I guess what I'm saying is that we don't want our ability at some point, and this committee can determine that, at some point to do our investigation to make sure that that teacher...that administrative actions, whether that be against a teaching certificate or simply within the school, that those actions can be taken as well. But absolutely agree law enforcement should have first "uninterfered" with first shot. [LB839]

SENATOR COUNCIL: Thank you. [LB839]

SENATOR ASHFORD: Yes, Senator Lautenbaugh. [LB839]

SENATOR LAUTENBAUGH: Thank you, Senator Ashford. And thank you, Mr. Lindsay. Maybe I'm not understanding the current law correctly. But as I understand it, the school now is required, if they have a reasonable belief that something happened, to report it. Now I'm viewing that as when they have a mandate. Is there...has there ever been a case where they've been sued because their belief was found to be unreasonable but they reported it anyway? [LB839]

JOHN LINDSAY: I don't know that that question is ripe yet. I don't know that the situation has occurred because the belief was see if it's not...to establish that reasonable belief. And they operate very quickly on that, but I don't know if that's happened. The fear, the litigation fear is the teacher is suspended and it's typically the allegation itself and the suspension oftentimes can be a career-ending type of situation. A teacher is suspended, remains on indefinite suspension until an investigation can create enough evidence to have a termination hearing. And that's where at least the damage side of it would be. The liability side of it, like I say, I don't know that there's been a situation that would give rise to that. [LB839]

SENATOR LAUTENBAUGH: I guess the way I look at this, the existing law says if you have a reasonable belief you must do it. But I don't see that as requiring that threshold inquiry. And I'm trying to get my head around has anybody ever been held liable for just advising the police of something they've become aware of and it's found out to be meritless? [LB839]

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JOHN LINDSAY: And I honestly don't know that. [LB839]

SENATOR LAUTENBAUGH: Because I have trouble imagining that occurring in real life. I mean you report it to police and you didn't report it to the newspaper; you told the police. I mean I think you've answered my question, but that's what I'm struggling with here is I think they're protected already just by the fact it would be very difficult to say reporting any allegation would be unreasonable. I think what the existing law says is that if you have a reasonable basis you must report it. But I think if they have any basis they should at least say something. I don't see where there's liability attaching to that. [LB839]

JOHN LINDSAY: Well, there is...I think the question for the most part is moot. OPS is reporting all allegations. Any allegation is reported. [LB839]

SENATOR LAUTENBAUGH: Good. [LB839]

JOHN LINDSAY: So it's, say, it's not...like I say, the issue may be moot. This makes it even clearer. There's...it, I think, responds to any ambiguity, whether there is that ambiguity or in your mind not that ambiguity, this responds to it regardless and makes it absolutely clear. [LB839]

SENATOR LAUTENBAUGH: How long has it been OPS's policy to now just report every allegation? [LB839]

JOHN LINDSAY: I think since the most recent criticism. I don't know a date, but I guess it was last summer or fall when some of the allegations were surfacing. [LB839]

SENATOR LAUTENBAUGH: Thank you. [LB839]

SENATOR ASHFORD: Thanks, John. I don't see any other questions. Okay. Anyone else wish to testify on this bill for or against? Senator Council. Any neutral testimony? [LB839]

ERNIE CHAMBERS: Wait, you didn't say neutral. [LB839]

SENATOR ASHFORD: I'm sorry, Senator Chambers. I didn't see. You just came right up there. I didn't... [LB839]

ERNIE CHAMBERS: (Exhibit 1) Mr. Chairman, members of the committee, my name is Ernie Chambers. I'm from Omaha, Nebraska. The reason I'm testifying in a neutral position is not because I'm opposed to the bill, but some of the issues that have been raised by Senator Lathrop and the representative from the county attorney's office were

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those swirling in my mind. If we were here because of a close case, I would say maybe something needs to be done with the law. But you'll see on page 12 of this, this is documentation of the case that brought all this to the public. This man had been put on leave three times. OPS had investigated several times. And if they had enough evidence to investigate and then put him on leave, that certainly was enough suspicion to turn it over to law enforcement. In the same way that by cardinal law, Archbishop of Boston covering up for predatory priests and not reporting to law enforcement, the number of victims was multiplied into the hundreds. Over 550 filed; over \$85 million and counting has been paid out. By Joe Paterno not doing anything about reporting Sandusky, he was allowed, Sandusky, to have access to children, to have that cloak of respectability that Penn State gave and more victims were multiplied. By OPS not filing with the police immediately, an untold number of young girls were assaulted by this man. He now faces seven felony charges. The same allegations that were made which OPS felt did not rise to the level of suspicion convinced a judge to issue a search warrant, the county attorney to file charges, a judge to order the man to stand trial. So if under those circumstances OPS officials felt that there was no reason to report to the police, their intent was just to not comply with the law. And I think if I understood Senator Lautenbaugh correctly, I agree with him. When a complaint is made to law enforcement, there's not going to be liability attached by doing what the law requires. And today I'm not going to try to say everything I wanted to because the last time it created a problem. But I wanted you to see the evidence and the kind of case that had been presented. One young lady, two of them were victimized twice. They were suspended, they were called liars. And some of the girls said they're not going to complain because of what happened to these others. I'm working with a family right now whose daughter was exchanging written communications with this man, but she doesn't want to get involved because of what happened to the others. And she thinks if she goes on to school and wants to participate in athletics she won't be able to because people who make these complaints are punished and converted into the one who did wrong. Before you have to tell me to be quiet, I just want to point out that the principal who suspended these girls and called them liars said she would do the same thing again. And the Omaha School Board, knowing what she had done, endorsed what she did and approved of it. [LB839]

SENATOR ASHFORD: Are you saying, Senator Chambers, that you have no quarrel with the bill but you're testifying in a neutral capacity? [LB839]

ERNIE CHAMBERS: Here's part of the problem that I see. I think it narrows...the bill as drafted... [LB839]

SENATOR ASHFORD: Okay. [LB839]

ERNIE CHAMBERS: ...narrows who reports. The current law says or any other person after specifying so that meant if the janitor knew, the janitor has to report. This creates, I

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think, some ambiguity. Are you supposed to tell somebody who then tells somebody who then makes the report? The current law places the responsibility on whoever becomes aware, not only of an actual wrong; but if he or she observes circumstances that could lead to a child facing abuse, then that has to be reported too. [LB839]

SENATOR ASHFORD: Okay. I got it. Thank you, sir. Senator Council. [LB839]

ERNIE CHAMBERS: And being the gentleman that I am...(laughter). [LB839]

SENATOR COUNCIL: Thank you, sir. [LB839]

ERNIE CHAMBERS: Yes, ma'am. [LB839]

SENATOR COUNCIL: Thank you. [LB839]

ERNIE CHAMBERS: We lead by example. [LB839]

SENATOR COUNCIL: First of all, I would like to say that I appreciate those who came and testified on this bill, and I appreciate the questions that were raised with respect to the bill. And again, my intent in introducing this legislation was to make it perfectly clear as to what triggered the obligation to report. And in that regard, clearly it was my intent by the language that is found in subpart (2)(a) that the school employee to whom the allegation is reported being the person required to report to law enforcement. So if the janitor...if the student made the allegation to the janitor, it imposes an obligation on the janitor. But I certainly respect and appreciate the comments made by deputy county attorney Beadle so we'll make it even clearer. And getting back to the point that Senator Lautenbaugh was raising, you know, my intent was to bring urgency and immediacy to this. And that's why the bill provides that the report must be made within 24 hours. If you look at the current statute, implicit in it because there's no...it doesn't say immediately report. It says if you have reasonable cause to believe, you shall report or shall cause to have reported. So the fact that there is not an immediate time frame or it doesn't say immediately report that they've left this area of ambiguity as to whether or not the way the statute is written there had to be some determination of a set of facts that gave rise to reasonable cause to believe. The intent of the bill was to remove that and to say the mere allegation was enough to trigger the requirement to report, and that report had to be made within 24 hours. I don't have a problem making it immediately upon receipt of the allegation. But again as the current statute is drafted, Senator Lautenbaugh, you weren't in the room, the current statute doesn't require an immediate report. And that's where I think some of the disconnect has occurred because the statute makes reference to a reasonable cause to believe then you shall report. So to remove all of that ambiguity, that's why I put the 24 hours in. That's why I said any employee who the allegation was reported to. But I will take into consideration all of the suggestions that have been made. I appreciate the offer from deputy county attorney Beadle, from the

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NASB, from OPS to sit down and work with me to make this the best possible bill that we can to ensure that our children are protected. And with that, I'll answer any questions you may have. [LB839]

SENATOR ASHFORD: Any further questions of Senator Council? Thank you, Brenda. (See also Exhibit 2) Senator Lautenbaugh, LB806, is that correct, LB806. Okay, yeah. [LB839]

SENATOR LAUTENBAUGH: Okay. Thank you, Mr. Chair and members of the committee. This is a familiar bill to most of you, I think, as we tried to deal with this two years ago. And not being one who's willing to take no for an answer, I sit before you again today with essentially the same bill from two years ago. My opening on this is going to be very brief simply because you are familiar with this, and there are experts from the industry and otherwise following me to sort of give a refresher on this. What this bill would allow would be wagering at racetracks in Nebraska on what are known as historic horse races, historic not in the sense that they had any particular significance, just historic in the sense that they've already happened. And a brief thumbnail would be the details of each race, that would be...I think there's a few hundred thousand that could come up at random, the details regarding the specifics of any race are removed. Any information that would help someone incredibly, out of that many races, identify which one this was historically, if you will, and it is just in my mind another way to support the horse racing industry in Nebraska. I have always been very clear I am not a proponent of expanded gambling, far from it, but this is not that, in my mind. We allow horse racing and wagering on horse racing, and this is wagering on horse racing. The issue is different for me, though, in that the tracks exist because the people who are involved with them are in the business of racing horses. This is not an attempt to bring something else or to open the door, start down any sort of slippery slope. This is additional horse racing. We had discussions last time about whether or not this amounted to expanded gambling and if I was doing this because it would increase revenue to the racetracks then that, by definition, was expanded gambling, to which I said, well, then an advertising campaign, if successful, would be expanded gambling if it increased revenue. So I don't think that's the test we use. I think we have to look at this and be broad-minded enough to know that we are just talking about horse racing which has been around a long time but perhaps has suffered because it has not been allowed to progress with the technology. Our laws regulating horse racing in a lot of instances predate the Internet and several other technological advances that other forms of gaming in other states have managed to exploit, to horse racing's detriment. And make no mistake, when I say horse racing is different, I believe that for this very reason. Unlike other forms that for whatever reason we allow--the lottery, keno, that kind of thing--this business supports thousands of jobs in Nebraska. When you talk about...and I'm not in agriculture so I always sound foolish when I describe this, but whoever grows the hay, cuts the hay, feeds the horses, Tyson is already laughing. Sorry, I'm from Omaha. We don't have hay there. But the veterinarians, the trainers, the jockeys, the

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people who work at the tracks, this is literally thousands of jobs in Nebraska and we can make a choice to either help preserve that or allow it to go by the wayside too. And at this point, I will save the rest for closing because, like I said, there are knowledgeable people behind me, unlike me, who can shed more light on this. But I would take any questions you have now. [LB806]

SENATOR ASHFORD: I...the only...yes, Senator Coash. [LB806]

SENATOR COASH: Thank you, Senator Ashford. Senator Lautenbaugh, I just had a question about the Class III misdemeanor as part of making it...using a device for this kind of wagering outside of a racetrack a Class III misdemeanor. You put that in this bill for a reason. What is it that you're concerned will happen if we allow historic horse racing and don't have this misdemeanor provision in there? [LB806]

SENATOR LAUTENBAUGH: If memory serves, my goal was to make sure that we were as clear as could possibly be that this was to be done at the racetracks only, not elsewhere. [LB806]

SENATOR COASH: Okay. Then...thank you. There's a provision in here that says the county where the current track is gets the final say here. So just to be clear, Hall County has a track and if the Hall County...if this went through and the Hall County, County Commissioners said, you know what, we're happy with the kind of horse racing we have, we don't want to add historic horse racing, it won't happen unless the county where that occurs gives its okay. Is that correct? [LB806]

SENATOR LAUTENBAUGH: Yeah, there's an intent to preserve local control in this too. We're not trying to force anything down anyone's throats, far from it. [LB806]

SENATOR COASH: Okay. Thank you. [LB806]

SENATOR ASHFORD: Yes, Senator Larson. [LB806]

SENATOR LARSON: And Lynne might be a better person to ask this question to. How many states allow historic horse racing? Do you...any... [LB806]

SENATOR LAUTENBAUGH: I want to say two or three currently. [LB806]

SENATOR LARSON: Two or three currently? [LB806]

SENATOR LAUTENBAUGH: Others have had it in the past and...well, I'm not even sure that's correct. I know of two or three. I should stop with that. I was hoping you'd tell me where hay comes from but that's... [LB806]

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SENATOR ASHFORD: I don't see any other questions, Scott. [LB806]

SCOTT LAUTENBAUGH: Thank you. [LB806]

SENATOR ASHFORD: Any supporters or those who support the bill? Come on up and we'll go through the supporters. [LB806]

LOUIS CELLA: Thank you, Mr. Chairman, members of the committee. I'm here speaking in support of LB806. My name is Louis Cella. I'm with the Oaklawn Jockey Club in Hot Springs, Arkansas. When our competition went from competing against other racetracks to riverboat casinos, the support of horse racing cannot compete against games of chance. So in the 1990s, tracks across the United States, including here in Nebraska, tried to pass slots legislation. Most tracks failed, many tracks closed; Oaklawn was not one of them. We did not get slots. We did not get games of chance. What we did is we created a new pari-mutuel wager. Instant racing is pari-mutuel wagering on historic racing. The tote system is required. All wagers are pooled under the pari-mutuel method. But for the historic race, Nebraska follows this process today. Instant racing saved racing in Arkansas. Instant racing uses the same technology used in Nebraska. Instant racing uses self-service terminals all connected to a tote system, just like in Nebraska today. AmTote International already processes pari-mutuel wagers in Nebraska. AmTote provides the tote system for instant racing. The way it works, a patron walks up to a self-service terminal and places a wager. An historic race is assigned to that terminal. The patron views handicapping data. He chooses three horses he thinks will win and he presses the start button. The historic race is shown either in its entirety or the last furlong, but the player chooses. If he picks...if his picks match the order of finish of the historic race, he wins the pari-mutuel pool, just like today. When a player at Horsemen's Park or Hastings or Fonner wins a pick six or a show bet, he wins the pari-mutuel pool. There is no difference. Introduced in 2000, instant racing generates new pari-mutuel handle. This creates additional tax revenue for the state of Arkansas and it creates additional purse money. We employ over 1,200 full-time employees because of this. Instant racing will save racing in Kentucky. Kentucky authorized instant racing, which began last September at Kentucky Downs. They've already hired 120 full-time employees and they're already expanding their live racing season. It is interesting to try to compare a business in one state to perhaps another. Fortunately, we have Arkansas and Kentucky to compare in Nebraska and I'm quite comfortable applying those standards. Oaklawn's average handle on an instant racing terminal exceeds \$1,300 a day, at Kentucky Downs it's \$1,700 a day. So as an example, if in Nebraska they authorize five locations, for instance, with five terminals, that's going to generate an additional, a range, between \$1.2 and \$1.5 billion in handle and create thousands of jobs. Mr. Chairman, our industry is not asking for a handout, it's not asking for a tax break. Our industry is asking to let racing evolve like it has over the years and today that includes historic racing. Mr. Chairman, I'll be glad to answer any questions. I know I spoke rather quickly to come under the red light, but I'll be glad to

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answer any questions if there are any. [LB806]

SENATOR ASHFORD: Well done. Yes, Senator Larson. [LB806]

SENATOR LARSON: So Senator Lautenbaugh said two. Is it Arkansas and Kentucky? [LB806]

LOUIS CELLA: We currently operate in Oaklawn Jockey Club in Hot Springs, Arkansas, and Kentucky Downs in Kentucky. We're going to expand into Ellis Park in Kentucky in March, and we're in negotiations with four other racetracks in the state of Kentucky. In addition to that, they're pursuing it in the state of Florida and in the state of Illinois, and there's a great reason for that. [LB806]

SENATOR LARSON: Please, go ahead. [LB806]

LOUIS CELLA: Every one of those states are all trying to pursue slots, the tracks are,... [LB806]

SENATOR LARSON: Uh-huh. [LB806]

LOUIS CELLA: ...and Nebraska was no different ten years ago, five years ago. This is the alternative. If they can't get slots, racing is going to die, so they're going to try with instant racing. [LB806]

SENATOR LARSON: Okay. [LB806]

SENATOR ASHFORD: And these tracks that you...or not represent but that you are speaking about in Kentucky and in Arkansas, are they...do they run a full complement of races? How long are the meets? For example, how long is the meet at Kentucky Downs? [LB806]

LOUIS CELLA: Right. Thank you, Mr. Chairman. They operate year-around simulcasting. They have a very short live racing season. [LB806]

SENATOR ASHFORD: How long is it? [LB806]

LOUIS CELLA: Just...I think it's six days, two weekends. They're expanding to 12 days just with the business they've started. They anticipate expanding that. Ellis Park, that's operating...that's going to operate in...come March, operates year-around simulcasting now and I think it's around 60 days. Oaklawn Park, we operate year-around simulcasting and we're currently in our live season of 53 live days. [LB806]

SENATOR ASHFORD: Continuous in a row? Is that how you work it? [LB806]

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LOUIS CELLA: Yes, sir. [LB806]

SENATOR ASHFORD: Okay. Okay. I think that's... [LB806]

LOUIS CELLA: Mr. Chairman, just to clarify, it's Thursday through Sunday. It's not... [LB806]

SENATOR ASHFORD: Okay, but I mean it's a meet. [LB806]

LOUIS CELLA: That's right. That's right. [LB806]

SENATOR ASHFORD: So it's... [LB806]

LOUIS CELLA: That's right. [LB806]

SENATOR ASHFORD: ...53... [LB806]

LOUIS CELLA: Correct, Mr. Chairman. [LB806]

SENATOR ASHFORD: ...racing days in the meet. [LB806]

LOUIS CELLA: That's right. [LB806]

SENATOR ASHFORD: Okay. Senator Larson. [LB806]

SENATOR LARSON: So because of the simulcasting, you've actually been able to, in some places, expand the number of days that have been running because of the purses have become larger. Is that what I... [LB806]

LOUIS CELLA: Well, simulcasting and instant racing is a little different. [LB806]

SENATOR LARSON: No, but because of the...I'm just trying to get...because of the whole historic horse racing, you've been able to move from 6 racing days to 12. Is that the conclusion that you're... [LB806]

LOUIS CELLA: Not because of simulcasting,... [LB806]

SENATOR LARSON: Okay. [LB806]

LOUIS CELLA: ...because of instant racing. As an example, in Kentucky Downs, they've only been operating since September. [LB806]

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SENATOR LARSON: Okay. [LB806]

LOUIS CELLA: Their business was so great since September that they actually are generating so much more purse money that instead of the 6 days they've now applied for and received 12 days. Ellis Park, as an example, looking at the Kentucky Downs numbers... [LB806]

SENATOR LARSON: Because of the historic horse... [LB806]

LOUIS CELLA: That's right. Yes, sir. [LB806]

SENATOR LARSON: ...because...that's what I was getting to,... [LB806]

LOUIS CELLA: That's right. Yes, Senator. [LB806]

SENATOR LARSON: ...because of the historic horse racing. [LB806]

LOUIS CELLA: That's right. [LB806]

SENATOR LARSON: Thank you. [LB806]

SENATOR ASHFORD: Senator Lautenbaugh. [LB806]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. Thank you for coming today, sir. You were talking about the amount of jobs that were created in, I think, Arkansas and Kentucky. You were talking about those are the ones that are directly related to historic horse racing. Is that correct? [LB806]

LOUIS CELLA: Yes, sir. [LB806]

SENATOR LAUTENBAUGH: That makes no attempt to take into account the thousands of jobs attendant with horse racing that we're saving by saving those industries in those states. [LB806]

LOUIS CELLA: Senator, that...there's probably no other sport that has a great...as great a trickle-down theory with employment as horse racing. Not only if you have your purses up that you're able to race more days, you have the grooms, you have the valets who work with the jockeys, you have the trainers and all of his assistants, you have the owners that supply that, you have the trackmen that work around the track. It goes all the way down to the trucking that transport the horses from track to track, to the farms, to the laborers all the way down. That's exactly right, it is in the thousands of jobs that will be maintained. They've been maintained in Arkansas and it's a sigh of relief in Kentucky. [LB806]

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SENATOR LAUTENBAUGH: Thank you. [LB806]

SENATOR ASHFORD: I don't see any other questions. Thank you, sir. [LB806]

LOUIS CELLA: Mr. Chairman, thank you. [LB806]

SENATOR ASHFORD: Any other supporters, proponents? Good afternoon. [LB806]

GREG HOSCH: Good afternoon, Senators, Mr. Chairman. My name is Greg Hosch, H-o-s-c-h, Omaha, Nebraska. I'm the general manager of Horsemen's Park in Omaha. I oversee Lincoln Race Course here in Lincoln and also Atokad Downs in South Sioux City. Like to thank the committee for taking the time to conduct this hearing, hear our testimony, and go on record thanking Senator Lautenbaugh for introducing LB806 for which I'm testifying in favor of. LB806, in a nutshell, could change the face of the racing industry in this state forever. LB806 will save the thousands of jobs that are already associated with the industry in this state, and LB806 will create hundreds of new jobs if you see your way to pass this. LB806 would authorize the Racing Commission to regulate pari-mutuel wagering on historic races and ultimately allow the five thoroughbred tracks and one quarter horse track to conduct pari-mutuel wagering on historic races. You know, when the State Fair went to Grand Island, I'm not sure anybody thought of the consequences of the racing industry. Unfortunately, the racing industry kind of got left behind, a 90-year-old industry, but the horsemen were able to secure a three-year deal with the University of Nebraska to continue on live racing for three years here in Lincoln. Those three years are up October 1 and our industry cannot afford to lose this Lincoln racing market. It's the second largest market and without it the industry as we know it cannot survive. Our only chance is to build a new racetrack here in Lincoln to replace the old one and to preserve the racing industry. The fact is horse racing, like the rest of the world, has not been immune to the economic woes of the last three years so we unfortunately need some form of ancillary revenue to get this track built. We think pari-mutuel wagering on historic races can generate the additional revenue that we need to build this racetrack. If we build a new one-mile racetrack here in Lincoln, the city, the county, the state, the breeders, the farmers, and the horsemen will all win. In closing, I'd just like to say that I believe this is the shot in the arm that will jump-start our whole industry, so we ask that you pass LB806, give us a chance to create some new jobs and preserve the jobs that we already have and preserve the horse racing industry in this state. Thank you. [LB806]

SENATOR ASHFORD: Thank you, sir. Senator Lautenbaugh. [LB806]

SENATOR LAUTENBAUGH: Thank you, Chairman Ashford. These aren't slot machines we're talking about, are they? [LB806]

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GREG HOSCH: That couldn't be further from the...absolutely not slot machines. I know you'll hear that the...that...you know, the old walk like a duck, talk like a duck or whatever, however that goes, but this is pari-mutuel wagering just like we have. It's not a random-generated number like slot machines are. These are...if you walked up...the original version of the instant racing machines are the same as the self-serve terminals that we have in our establishments today. You walk up, you pick your numbers, you bet it. You can walk up to that same self-serve terminal and get a quick pick. You can just hit the quick pick and it will give you some numbers. So it's definitely not a slot machine. [LB806]

SENATOR LAUTENBAUGH: Now you could make them look like slot machines. [LB806]

GREG HOSCH: Well, sure you can put a little... [LB806]

SENATOR LAUTENBAUGH: You can make it look like a '57 Buick, couldn't you? I mean... [LB806]

GREG HOSCH: Well, absolutely if you wanted to. [LB806]

SENATOR LAUTENBAUGH: But that doesn't make it a Buick. [LB806]

GREG HOSCH: Correct. [LB806]

SENATOR LAUTENBAUGH: Okay. [LB806]

GREG HOSCH: You could put a little rouge on the old pig and make it look like whatever you want it to look like. [LB806]

SENATOR LAUTENBAUGH: Fair enough. [LB806]

SENATOR ASHFORD: Yes, Senator Larson. [LB806]

SENATOR LARSON: What do...when they go to place their bets, do you give the bettor any information in terms of the... [LB806]

GREG HOSCH: You can. You can, I do believe. I do believe that you can pull up information. You don't get the name of the horse but you can see some records of the horse. If you want to bring that up, you can maybe see the record, correct. [LB806]

SENATOR LARSON: I'm trying to...I mean I've been to the races, live races, and I see the cards. They run, you know, their last three workouts they've run these times. Is that type of information available or similar types of information available when you go to

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that... [LB806]

GREG HOSCH: Not as a handout but I do believe you can bring it up on the machine and see some pertinent... [LB806]

SENATOR LARSON: Yeah, not as a handout but you can bring it up on the machine... [LB806]

GREG HOSCH: Correct. [LB806]

SENATOR LARSON: ...and see. So...and that essentially really makes it a lot different than slot machines or that concept. [LB806]

GREG HOSCH: It's a little bit more of a game of skill than, you know, would...there's more skill to it than a slot machine, absolutely. [LB806]

SENATOR LARSON: Obviously, any course that's been running fast times could have a bad day but... [LB806]

GREG HOSCH: Of course, we all have bad days. [LB806]

SENATOR LARSON: We all have bad days. But it's not just a pure numbers game where 1 in 300,000 wins X amount of dollars. [LB806]

GREG HOSCH: Correct. That's...the slot machines operate under a random number that's generated and they're, you know, geared to pay back 92 percent. You could, you know, you could continually win on these machines if you can pick the right horse. [LB806]

SENATOR LARSON: Okay. Pick the right horse. Thank you. [LB806]

GREG HOSCH: No different than what we do right now. [LB806]

SENATOR ASHFORD: Okay. Thanks, Senator Larson. I don't see any other questions. Thank you. [LB806]

GREG HOSCH: Okay. Thank you. [LB806]

SENATOR ASHFORD: Other proponents? Senator Lautenbaugh is gone. There were some amendments. Someone told me at some point there are some amendments. I don't know, maybe there are...are not. Let's go to the opponents. Do we have any opponents, those who don't like the bill? [LB806]

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DAVE WIMMER: (Exhibit 3) Mr. Chairman, members of the committee, my name is Dave Wimmer. I live up in West Point. I'm here in opposition to LB806 and I've been in private business in West Point for 42 years in the meat-processing business, making hot dogs basically. I'm also here as a board member of Gambling with the Good Life and, as I said, I am opposed and I would encourage your opposition to this. I want to talk about it a little bit from a business vantage point. If you have an employee with a gambling problem, whether it has to do with horse racing of any kind or any other type of gambling, you've got a less than focused employee. I've had them and, from a business vantage point, it's a detriment. If you have an employee that has a family member or child with a gambling problem, you certainly have also a less than focused employee, and we've had that in our business over a period of time. We don't have gambling handy in West Point, but we've got gambling problems in West Point and it's troublesome as a business owner. The people who wager in any format basically leave money in those establishments that isn't going to get shared in any other business in the community of any substantial way, and I look at it as basically a direct competition and not particularly good competition with the other businesses in any community. The other thing I guess I've been told, as I anticipated coming down here, is that perhaps primarily or partially due to term limits, the average age of this group is getting younger. I think my average age is getting older, I'm pretty sure of that. And I guess I would just point out that the things that we do here, you do here are going to have an impact quite a ways into the future. And I would challenge the people here to go into a wagering establishment, whether it's a track or a casino or a keno parlor, and just hang around for a while and just kind of observe and see what's going on there, and then ask yourself when you come out if that's really the thing that is good for Nebraska, to make that easier, to make it go faster. Is that what you want your kids to be able to do when they get old enough to go do that type of thing, in my case, my grandkids to go do when they get old enough? And as I said, the actions that are taken here don't go away. They have a lasting impact and so those are things I guess I would just encourage this group to think through as you make these decisions. So thank you. Any questions? [LB806]

SENATOR ASHFORD: Thank you, Mr. Wimmer. Yes, Senator Larson. [LB806]

SENATOR LARSON: Thank you. Mr. Wimmer, you bring up the point that, you know, the gambling causes your employees to be distracted, correct? [LB806]

DAVE WIMMER: Uh-huh. [LB806]

SENATOR LARSON: What about if the employee is having marriage problems or problems with their children? Does that cause distractions in the business? [LB806]

DAVE WIMMER: Well, it certainly does, Senator, but there isn't a place where they can go and buy marriage problems. [LB806]

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SENATOR LARSON: So should we outlaw marriage in the state as well? [LB806]

DAVE WIMMER: Well,... [LB806]

SENATOR LARSON: ...I mean...I mean it's... [LB806]

DAVE WIMMER: ...you'll have to take that up with my wife, but... [LB806]

SENATOR LARSON: ...it's the same...I'm just saying it's the same type of concept. I mean I'm newly married actually but does that...I mean the problems persist I mean whether it's...any problem can cause distractions within a business, whether it's marriage or whether it's gambling or any type of problem. So I just wanted to ask you that question, if you actually...if that does cause problems within your employees, because I'd guess that it does obviously. And second of all, you said that, you know, a lot of this money that goes into horse racing or betting doesn't come back to the local communities. Correct, you said that? [LB806]

DAVE WIMMER: Yes. [LB806]

SENATOR LARSON: Well, I actually am familiar with West Point and I have some family that runs Scribner Grain, actually,... [LB806]

DAVE WIMMER: Uh-huh. [LB806]

SENATOR LARSON: ...and I represent a very rural district. Would you say that, you know, it's a very agricultural heavy district, correct? [LB806]

DAVE WIMMER: Yes. [LB806]

SENATOR LARSON: Lots of corn, some hay, not as much. In my district we have a lot of hay. You know... [LB806]

DAVE WIMMER: Not a lot of horses, though, eating that hay. [LB806]

SENATOR LARSON: Not a lot of horses. Cuming County is much more of a beef county. [LB806]

DAVE WIMMER: Yeah. [LB806]

SENATOR LARSON: But at the same time, you do have a lot of agricultural products in terms of... [LB806]

DAVE WIMMER: Absolutely. [LB806]

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SENATOR LARSON: ...corn and wheat. Do horses eat any of that, those types of products? [LB806]

DAVE WIMMER: Well, I think we know they do, certainly. [LB806]

SENATOR LARSON: They do. And therefore, I would say that, in essence, I mean obviously those products go into a lot of things. But it could be said, if you follow the line down, that this type of industry does actually come back to your local West Point economy in one way or another. Correct? [LB806]

DAVE WIMMER: I can't really agree with that in terms of West Point itself, no. [LB806]

SENATOR LARSON: They don't eat...horses don't eat corn or they're not buying or... [LB806]

DAVE WIMMER: I don't think we have...I don't think we have... [LB806]

SENATOR LARSON: I'm just saying... [LB806]

DAVE WIMMER: I don't think we have any race horses in Cuming County. [LB806]

SENATOR LARSON: No race horses in Cuming County. [LB806]

DAVE WIMMER: Not to my knowledge. [LB806]

SENATOR LARSON: But you're still providing products that those race horses might eat or, you know, I think Beemer has a large grinding...who's the company that grinds hay in Beemer? [LB806]

DAVE WIMMER: Yeah. [LB806]

SENATOR LARSON: I'm blanking on it. [LB806]

DAVE WIMMER: I am too but they're there, yeah. [LB806]

SENATOR LARSON: They're there. [LB806]

DAVE WIMMER: Sure. [LB806]

SENATOR LARSON: And, you know, that's another large industry I mean that could...there's all these industries, I think Senator Lautenbaugh was getting to, that it's not just the people that work at the tracks. It trickles down so much farther. And I think

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the concept of you saying that this isn't trickling down to West Point or our local communities is false because any community that's an agriculture community, you know, maybe that kernel of corn is going someplace else or whatever, but it trickles down all the way through agriculture. And so I just wanted to correct that for the record. I think it does help our local economies in terms of, as long as we're an agricultural economy, it's definitely trickling down to us somewhat. And to say that your employees are caught up in gambling problems, there's no difference in gambling problems compared to marriage problems or your kid flunking out of school or anything of that nature. I mean your employees are going to be worried about one thing or another. I feel it's unfair to pick out just one thing compared to another thing. And if you want to outlaw gambling, let's outlaw marriage, let's outlaw all of it that causes distraction among the human mind. [LB806]

SENATOR ASHFORD: Dave, how long has Wimmer's...how long have you guys been there? Forty-two years you've been. Did your father...did your... [LB806]

DAVE WIMMER: Seventy-seven years. [LB806]

SENATOR ASHFORD: That's what I... [LB806]

DAVE WIMMER: Yes. Uh-huh. [LB806]

SENATOR ASHFORD: ...so that's a while. [LB806]

DAVE WIMMER: Yeah. [LB806]

SENATOR ASHFORD: Congratulations. [LB806]

DAVE WIMMER: Yeah. Thanks. [LB806]

SENATOR ASHFORD: Yeah, that's a good deal. [LB806]

DAVE WIMMER: Anything else? [LB806]

SENATOR ASHFORD: No, I just think it's neat you've been there 77 years. [LB806]

DAVE WIMMER: All right. Thank you. [LB806]

SENATOR ASHFORD: Thank you. Any other opponents? [LB806]

JOHN DITTMAN: Good afternoon, Senators. My name is John Dittman, D-i-t-t-m-a-n. I live in Lincoln, Nebraska. I'm representing myself, Cornhusker Bank, which I am Chairman and CEO, and Gambling with the Good Life. I'd like to speak in opposition to

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LB806, which allows horse racing premises to install and operate instant racing terminals. What are instant racing terminals? Well, they're simply...I know they get upset when you say this but they really are just simply video gambling machines which, in essence, are slot machines. You put money into the machine and you win or lose up to three times a minute, meaning that you can lose a lot of money really fast. As Warren Buffett has said, gambling is the most regressive tax known to man. There are only two winners, the gambling company owners and the government, and the people lose. In the long run, the only winner actually is the gambling company owner because the revenue from the casinos creates a negative impact on net state revenues because they divert resources from forms of spending that are more economically productive for their governments. I am so proud to live in a state that does not have casinos or racinos. And in these difficult times, this is the last thing that we need. As a bank owner, I have observed when sudden financial problems occur for individuals that 10 to 20 percent of the time it's due to problem gambling issues. Unfortunately, this creates problems for others beside the gambler himself, including its impact on his or her family. Why would we want to increase this problem, including its impact on innocent young people? Thank you very much for your efforts to build a state that is the envy of our nation, one with a budget surplus and with no racinos, one that promotes hard work, saving, deferred gratification, personal responsibility, and building wealth the old-fashioned way, by earning it. By expanding gambling, I firmly believe that it will take us down the wide and well-worn path that is a proven dead end for our state. Please do not go this direction, and vote against LB806. Thank you. [LB806]

SENATOR ASHFORD: Thank you, John. Senator Larson. [LB806]

JOHN DITTMAN: Yes. [LB806]

SENATOR LARSON: Do you buy stocks? [LB806]

JOHN DITTMAN: Yes. [LB806]

SENATOR LARSON: What do you look at when you buy stocks? [LB806]

JOHN DITTMAN: What do I look at when I buy stocks? [LB806]

SENATOR LARSON: What do you look for in a company? [LB806]

JOHN DITTMAN: Well, I look for the stability of the earnings,... [LB806]

SENATOR LARSON: Past performance? [LB806]

JOHN DITTMAN: ...the quality of the assets. [LB806]

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SENATOR LARSON: Past performance,... [LB806]

JOHN DITTMAN: Yes. [LB806]

SENATOR LARSON: ...the possibility for growth, things of that nature, correct? [LB806]

JOHN DITTMAN: Yes. [LB806]

SENATOR LARSON: Have you ever been to a horse race? [LB806]

JOHN DITTMAN: Yes. [LB806]

SENATOR LARSON: Do you get the ticket or what they give you when you come in, it shows the past performances and training results and everything of the horses? [LB806]

JOHN DITTMAN: I've not bought that before, no. [LB806]

SENATOR LARSON: It's not...you don't have to buy it. They give it to you. It says, you know, this horse has been training at X and it got this place in this race and whatnot, you know, kind of, you know, this is how the horse has performed in the past and, you know, and then you make your bet on that horse essentially. How is buying stocks really any different than gambling for, you know, rich people? I mean you buy...you research the company, you buy...you look at the past performance and then you guess on whether or not the company is going to grow in value or decrease in value, if you're going to short it. And how does that differentiate between gambling? [LB806]

JOHN DITTMAN: Well, I wish Warren Buffett was here but... [LB806]

SENATOR LARSON: No, I'm not asking Warren Buffett. I'm asking you. [LB806]

JOHN DITTMAN: ...but, yeah, I would say there are a lot of differences. Obviously, when you're buying stocks you're buying an asset. It's an investment. You can buy and sell. [LB806]

SENATOR LARSON: Is there a possibility that you will lose that asset? [LB806]

JOHN DITTMAN: Of course. [LB806]

SENATOR LARSON: There is. [LB806]

JOHN DITTMAN: Yes. [LB806]

SENATOR LARSON: And is there a possibility that you will make a lot of money off that

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asset? [LB806]

JOHN DITTMAN: Of course. [LB806]

SENATOR LARSON: And is that a possibility with, you know, when you research your horse, is that the same possibility, that you can lose your asset that you're investing? [LB806]

JOHN DITTMAN: Of course. [LB806]

SENATOR LARSON: Is there a possibility that you will gain that asset...make money off that asset? [LB806]

JOHN DITTMAN: I think a very, very small,... [LB806]

SENATOR LARSON: And are you...and you're researching the same type amount... [LB806]

JOHN DITTMAN: ...small chance. [LB806]

SENATOR LARSON: Correct. [LB806]

JOHN DITTMAN: Yeah. [LB806]

SENATOR LARSON: But you're researching the same type of information, the same concept of information that's provided. [LB806]

JOHN DITTMAN: Yes. [LB806]

SENATOR LARSON: Thank you. [LB806]

SENATOR ASHFORD: I don't see any other questions, John. Thank you. [LB806]

JOHN DITTMAN: Okay. Thank you. [LB806]

DAVID BYDALEK: Senator Ashford, members of the committee, my name is Dave Bydalek, for the record that's B-y-d-a-l-e-k. I'm the executive director of Family First, and I'd like to point out when it comes to gambling Family First has never introduced legislation to get rid of gambling which is currently legal in Nebraska. Rather, our greatest concern is with addictive forms of casino-like gambling, specifically with video gambling terminals. Experts on gambling addiction say that video terminals are especially dangerous because they offer gamblers a very fast, highly stimulating way to play. Faster play also means that bettors lose more money because each bet a gambler

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makes is, on average, a loser. So more bets translate into larger losses. If this bill merely dealt with issues related to live horse racing in Nebraska, I wouldn't be here. However, we believe that the historic racing terminals contemplated by LB806 fall into the category of a video gambling machine, the type of which are very addictive and destructive to businesses and families. In fact, when the governor of Wyoming vetoed an historic racing bill in 2005, he stated that anyone who has actually observed these machines cannot deny that the machines are entirely designed to operate exactly like a slot machine. He went on to say that the machines are designed specifically to provide instant, quick action gambling gratification. Depending on the machine you play, the machines provide you with rolling video tumblers, flashing lights, and audio features that are virtually identical to what you would find on the floor of any casino in Las Vegas. Senator Lautenbaugh's point is well taken. This may technically not be a slot machine, but I would submit that it doesn't have to be a slot machine to constitute an addictive form of video gambling. Additionally, there's an existing Nebraska Attorney General's Opinion which has determined that wagering on the results of previously run horse races, via instant racing terminals, is not a permissible form of gambling in Nebraska. Likewise, the attorney general of Maryland has found that these machines don't constitute pari-mutuel betting and the Wyoming Supreme Court held these machines were essentially slot machines attempting to mimic pari-mutuel wagering. Finally, we understand the desire to help these people involved in the racing industry. However, we believe that LB806 will actually result in making the machines, not the horses, the main attraction and in the long run be ineffectual in helping horse racing. And we, therefore, urge the committee to indefinitely postpone LB806. [LB806]

SENATOR ASHFORD: Let me just ask, I understand your point about the mechanical aspect, but the evidence in Arkansas and Kentucky and other areas seems to say that there's an extension of...this form of gambling goes in and there's an extension of the number of horse races. The meet gets longer, so to say,... [LB806]

DAVID BYDALEK: Uh-huh. [LB806]

SENATOR ASHFORD: ...and appears to be more than just coincidence that that happens. There seems to be some sort of a cause and effect. What do you think about that? [LB806]

DAVID BYDALEK: Well, yeah, and in terms of Arkansas, in terms of Arkansas, I'm not aware of any studies that have actually looked into maybe whether there's some secondary effects that aren't... [LB806]

SENATOR ASHFORD: You know, fair enough, fair enough, but let's just assume that there is a cause and effect there; that machines go in, whatever, more people show up and there's more money in the pot, which I think is one of the arguments being made for this, and that the meets will get...will go...increase. [LB806]

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DAVID BYDALEK: Uh-huh. Well, if you make that assumption, yes, I could see a benefit to some people. But you know, I'm also aware of a study by a professor from Ball State, and I didn't bring it with me but I could surely give it to the committee. They studied the effects of racinos in West Virginia over a period of about 18 years, and the study found that while there was a slight impact, positive impact in employment, the actual average wage of people in the state went down, so lower wages, maybe a little bit more employment. But the result of the study is, he said, you know, the claims that this was an economic boom really weren't justified and policymakers need to determine all the factors involved in doing this. [LB806]

SENATOR ASHFORD: And I...that's...I understand but if you...if you...if there is a cause and effect, if the...or if we believe, and the evidence would suggest that there might be or is, or whatever, a cause and effect and these machines are calibrated so that it is not like a slot machine. There's a time period that elapses. If it would...some suggestion that it's a furlong, which is... [LB806]

DAVID BYDALEK: Uh-huh. [LB806]

SENATOR ASHFORD: ...I guess a few hundred yards. I'm not sure what a furlong is but... [LB806]

DAVID BYDALEK: Uh-huh. I'm not either, Senator, so... [LB806]

SENATOR ASHFORD: ...but a couple hundred yards, something like that, that you have to watch that part of it and there is a process whereby you can look at statistics and so forth and so on about the particular race, that does make it different, doesn't it? [LB806]

DAVID BYDALEK: To an extent. I guess it's been a while since I've been in the races. How many races are usually part of a set? [LB806]

SENATOR ASHFORD: Oh, eight to ten races or whatever. [LB806]

DAVID BYDALEK: Maybe eight to ten. If you look at the bill, it talks about the duration of the game. You can either watch the whole race or you can watch a portion of the race. I'm aware that when you actually go to a race there's a period of time between races. Say a guy goes and wants to go to these video racing terminals. He might choose to watch the last furlong, but he doesn't have to wait between the time he watches that last furlong... [LB806]

SENATOR ASHFORD: Oh, it's definitely quicker than live. It's definitely... [LB806]

DAVID BYDALEK: You could probably...you could do 30, 40, 50 races maybe. [LB806]

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SENATOR ASHFORD: It's definitely quicker than live racing. I'm not arguing the point with you. I'm just trying to think about the difference between and, if there is a difference between this type of machine and a slot machine, what is the difference. The other point that's made in your data which I absolutely do agree with and that is that gambling does have an impact on homelessness. I think that that is accurate. I think that it's accurate in Omaha. [LB806]

DAVID BYDALEK: Uh-huh. [LB806]

SENATOR ASHFORD: I think that relates more to the casino, casinos in Iowa. [LB806]

DAVID BYDALEK: Right. [LB806]

SENATOR ASHFORD: And I'm just trying to ferret through this idea that these machines are like the slot machines in the Iowa casinos because I think it has had an impact in Omaha, but I think that's more... [LB806]

DAVID BYDALEK: Well, and...right. And once again, I'm not saying...I'm not arguing that they're exactly like slot machines. I'm arguing they are a video form of gambling with the types of bells and whistles that are designed to keep people at that terminal and keep betting on... [LB806]

SENATOR ASHFORD: Well, what about...then I'll stop this, but what simulcasting is you look when you go into a track that has simulcasting and no live racing, those races are maybe not as fast as the historic race machine would go but they're going all the time. [LB806]

DAVID BYDALEK: Uh-huh. [LB806]

SENATOR ASHFORD: They go from track to track to track, I think. And those, you can wager on those, not maybe as quickly as these but...so I'm just trying to parse that out. [LB806]

DAVID BYDALEK: Point well-taken, but I think when you go to that video terminal, you're still talking about a much faster rate of play. I mean I've got a bunch of kids. To say that bells and whistles...and we got a Wii and Nintendo and stuff like that. They'll sit there and they'll do it all day. I'll do it. I'll play Mario Kart. I mean there's something about the video nature of games that keeps people there and it's an addictive form. [LB806]

SENATOR ASHFORD: Betting more than they...what you're basically saying, I'm not arguing with you at all. [LB806]

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DAVID BYDALEK: Yeah. [LB806]

SENATOR ASHFORD: I'm trying to understand. Your basic argument is that it is the chance that an average person would bet more money at any given time because of the rapidity of these particular events... [LB806]

DAVID BYDALEK: Right. [LB806]

SENATOR ASHFORD: ...and that that...the opportunity lose money is greater. You're going to do it more often when you're there. Is that essentially what...I mean I'm not saying you're right or wrong. [LB806]

DAVID BYDALEK: Yeah. [LB806]

SENATOR ASHFORD: I'm just trying to understand. [LB806]

DAVID BYDALEK: Yeah, that and the point you make in terms of if there's a cause and effect, I mean I don't think we have to look at live racing, just horse racing, but you look at the dog tracks or other forms of live racing where they've brought in video forms of gambling. That's deflated or actually led to the demise of the live racing, you know,... [LB806]

SENATOR ASHFORD: Oh, I think that did happen. [LB806]

DAVID BYDALEK: ...be it dogs or... [LB806]

SENATOR ASHFORD: I think that has happened in Iowa. I just...anyway, I appreciate...I don't want to prolong this too much. [LB806]

DAVID BYDALEK: No. Right, and really I think the Attorney General's Opinion, you can take it or leave it. It's just an Opinion, but... [LB806]

SENATOR ASHFORD: Right. [LB806]

DAVID BYDALEK: ...I know Jay Bartel wrote the Opinion and if you look at it, he seems to say that you got a hurdle there in terms of the constitution... [LB806]

SENATOR ASHFORD: In Nebraska. [LB806]

DAVID BYDALEK: ...and that's another thing to think about. [LB806]

SENATOR ASHFORD: In Nebraska. Okay. Yes, Senator Larson has a question.

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[LB806]

SENATOR LARSON: You referenced a Ball State study, what they did in West Virginia, correct? [LB806]

DAVID BYDALEK: Yeah, by a guy named...I think it was Professor Hicks. [LB806]

SENATOR LARSON: And you said that it did increase jobs in the state, correct? [LB806]

DAVID BYDALEK: He said there was a 1.1 percent increase. And I'd have to look at the study again... [LB806]

SENATOR LARSON: No, I'm not asking you for the specifics. Essentially, he said it did increase jobs but the average income statewide went down? [LB806]

DAVID BYDALEK: And I would, once again... [LB806]

SENATOR LARSON: Statewide, correct? [LB806]

DAVID BYDALEK: I don't...I can't tell you if it was statewide or not. I can actually get the study for you, Senator. [LB806]

SENATOR LARSON: That would be great I mean because...I mean when you comment, you know, that, oh, we added jobs but the average income statewide went down, that...you're making the assumption that, oh, we've added jobs but, you know, they're...and it's the horse racing industry's fault that the income statewide...I mean the concept. I mean the way that you phrased it... [LB806]

DAVID BYDALEK: Right. And I don't want to misstate it. [LB806]

SENATOR LARSON: ...was disingenuous, I think, towards the industry. [LB806]

DAVID BYDALEK: Well, I would apologize for that so... [LB806]

SENATOR LARSON: And my second question, my second question is, what are the bells and whistles that these machines have that...I mean what are the...what are the bells and whistles? [LB806]

DAVID BYDALEK: Well, actually, I've got some pictures of the video from... [LB806]

SENATOR LARSON: Please explain. [LB806]

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DAVID BYDALEK: I don't have... [LB806]

SENATOR LARSON: You're on my time so please explain. [LB806]

DAVID BYDALEK: I don't have the...I didn't bring pictures with me because I didn't think that would be an appropriate thing to do. But in terms of... [LB806]

SENATOR LARSON: But what are the...how are they attracting people? [LB806]

SENATOR ASHFORD: Time out just a little bit. Let...just time out. [LB806]

SENATOR LARSON: No, but... [LB806]

SENATOR ASHFORD: Deep breath. [LB806]

SENATOR LARSON: ...but how are they attracting... [LB806]

SENATOR ASHFORD: Okay, Senator Larson and then response, okay. [LB806]

SENATOR LARSON: Yeah, how are they attracting people more? [LB806]

DAVID BYDALEK: Well, and what I'm going off of, too, is descriptions like the governor of Wyoming talking about the video tumblers, the flashing lights, the audio sounds. I mean it's things not unlike you see with the Wii and the Nintendo and the video games you play at home that make it more enjoyable to play the game. And, Senator Larson, I apologize if I...I don't want to misstate that study and I will get that study for you. The net effect was he said there was a slight increase in the number of jobs, I think 1.1 percent. And the average wage, and I will look and will get that study for you,... [LB806]

SENATOR LARSON: Yeah. [LB806]

DAVID BYDALEK: ...the average wage did decrease significantly and I don't know if it was in that area, that community that had the racinos, or whether it was statewide. [LB806]

SENATOR LARSON: That would be great. [LB806]

DAVID BYDALEK: But I will definitely find that for you. [LB806]

SENATOR LARSON: Yeah, that's all I...okay, thank you so much for your answer. [LB806]

DAVID BYDALEK: Right. [LB806]

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SENATOR ASHFORD: Thanks. [LB806]

DAVE BYDALEK: Thank you. [LB806]

SENATOR ASHFORD: Next, next opponent. How many opponents do we have? A few more? Okay. [LB806]

AL RISKOWSKI: Good afternoon, Senator Ashford and committee. It's been a while since I've been here. Al Riskowski, it's R-i-s-k-o-w-s-k-i, with Nebraska Family Council. We, too, is supportive of families. And just for the record, once again just wanted to make aware of the Attorney General's Opinion that was put out in 2010 that called these instant racing terminals perhaps slot machines, not only that but in the Attorney General's report also indicated that it would impact...well, let me read it from this. Finally, LB1102, which was the bill that was introduced in 2010, if it becomes a law wagering on not only historic horse racing through IRTs, as approved under the legislation, then the state, absent a judicial determination--that is, that this would be unconstitutional--would be obligated to negotiate a compact with any Native American tribe seeking to conduct this form of Class III gaming on Indian lands located within the state. So not only would it affect the machines indicated throughout the state but also on...Native American tribes would also be given the opportunity to expand this type of gaming in the state. The other point that I'd like to make is the fiscal impact on the state of Nebraska that is reported on this bill, LB806, and that is just simply that while the bill, LB806, does indicate three places where the receipts will go, that is probation program, one-third violence prevention, and one-third compulsive gamblers, the actual General Fund of the state of Nebraska will lose money in 2013 in regard to this bill. So actually, the General Fund of the state of Nebraska will be a negative to our General Fund and so the question is, do we want to provide additional gaming to simply support these three positions or are we really trying to help the state of Nebraska, which this does not. So thank you for your time. [LB806]

SENATOR ASHFORD: Any questions of Al? Seeing none, thanks. [LB806]

AL RISKOWSKI: Okay. Thank you. [LB806]

SENATOR ASHFORD: Other opponents? Good afternoon. [LB806]

LORETTA FAIRCHILD: (Exhibit 4) Good afternoon, Mr. Chairman and members of the committee. My name is Loretta Fairchild, L-o-r-e-t-t-a F-a-i-r-c-h-i-l-d. I earned my Ph.D. in economics from Cornell University in Ithaca, New York. One of my areas of specialization is public finance, which is the study of where the government gets its money and what it does with it. I was born in Nebraska, grew up on a small wheat farm outside Chappell in the Panhandle, and I have lived and worked here for all but nine

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years of my life. I have no ties to the gambling industry. The pressures of the special interests on each of you are very loud and persistent, but I am here to speak on behalf of the well-being of all the citizens of the state whose voices are seldom heard, and I urge you to lay aside the focus of the special interests and use sound economic analysis as the basis for all of your decisions. As you already know, LB806 is simply the latest attempt to bring casino-type gambling into Nebraska and give profits, in this case, to the horse racing industry. I will address two basic economic principles that will clarify why doing this will cause serious damage to Nebraska's economic growth, even though the owners of the new video terminals will likely make very high profits. My first point will be any expansion in gambling in the state creates extra costs that greatly exceed the extra benefits. Second, there is no inherent economic reason why the horse racing industry should receive special treatment. So let's look at the first point. How do the extra costs and extra benefits of new casino-type gambling compare? This question was first answered back in the 1990s, when many states first began jumping on the casino bandwagon, hoping for the promised economic development. Forty Nebraska economists, who can't agree on much of anything else, all signed a petition declaring that the extra costs will always exceed the extra benefits, in their entirety, from expanding gambling. Why is this true? And why do the research reports funded by the gambling industry paint a rosy economic picture instead? Economics is grounded in the concept that analysis of any change must consider all the extra costs and all the extra benefits, to the extent possible. However, for new gambling the benefits are clear and easy to measure because they go mainly to the owners, but the costs are very widespread out into the community and the economy as a whole, so it takes more work to estimate them, but they are very real. Nonindustry-funded research over the last 25 years has shown over and over in many states that for every \$1 of extra benefits the combined extra costs will always run in the range of \$2 up to \$6, and the extra... [LB806]

SENATOR ASHFORD: Ms. Fairchild. Ms. Fairchild, I don't want to...because I really don't like stopping people but the three minutes are up. And so what I think we'll do is ask you, do you have written comments? [LB806]

LORETTA FAIRCHILD: Yes, I do. [LB806]

SENATOR ASHFORD: Because we can get copies of those and... [LB806]

LORETTA FAIRCHILD: May I make my last point? [LB806]

SENATOR ASHFORD: Do you want to conclude? Sure, if you wouldn't mind doing that. [LB806]

LORETTA FAIRCHILD: I'm sorry, I didn't realize that the time limit was just three minutes... [LB806]

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SENATOR ASHFORD: No, I... [LB806]

LORETTA FAIRCHILD: ...or I would have been more brief. May I talk about... [LB806]

SENATOR ASHFORD: No, and it was not...I'm not critical. I just want to keep the standard the same is all. [LB806]

LORETTA FAIRCHILD: May I present my second point on why the horse racing industry doesn't need special benefits or not? [LB806]

SENATOR ASHFORD: Well, let me ask you, let me ask you this. What is your second point? [LB806]

LORETTA FAIRCHILD: My second point is that we... [LB806]

SENATOR ASHFORD: That way it's outside the three minutes and then you can... [LB806]

LORETTA FAIRCHILD: Thank you. [LB806]

SENATOR ASHFORD: Yes. Okay. [LB806]

LORETTA FAIRCHILD: I appreciate that. [LB806]

SENATOR ASHFORD: Okay. [LB806]

LORETTA FAIRCHILD: I am sorry. [LB806]

SENATOR ASHFORD: No, don't apologize. [LB806]

LORETTA FAIRCHILD: The point is that Nebraska's economy and voters are very committed to a straightforward, capitalist, free enterprise system. One of the basic principles of that is that each company must compete for consumer dollars on its own without any special favors from the state that are not given to competitors, and I will stop there. [LB806]

SENATOR ASHFORD: Thank you for your comments, Ms. Fairchild. [LB806]

LORETTA FAIRCHILD: Thank you. I would welcome questions. [LB806]

SENATOR ASHFORD: Any...yes, Senator Lautenbaugh. [LB806]

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SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. Thank you, ma'am. What special favor, in your mind, is racing asking for here today? [LB806]

LORETTA FAIRCHILD: The expansion of video gambling into the state. [LB806]

SENATOR LAUTENBAUGH: So asking... [LB806]

LORETTA FAIRCHILD: And that the terminals would be located in the racetracks. If we wanted to have them, which we don't, there's no groundswell of interest in this outside of those who will benefit, it would make more sense to put them in lobbies of hospitals in rural areas or let them be used for school fund-raising in counties in rural areas where the property tax base is greatly declining. [LB806]

SENATOR LAUTENBAUGH: So what you're saying is these people asking to conduct their business in a different way from what they currently are... [LB806]

LORETTA FAIRCHILD: Uh-huh. [LB806]

SENATOR LAUTENBAUGH: ...is some kind of special favor that we should turn away. [LB806]

LORETTA FAIRCHILD: Yes, it is a special favor. [LB806]

SENATOR LAUTENBAUGH: And that's consistent with good capitalism, in your mind. [LB806]

LORETTA FAIRCHILD: Yes. [LB806]

SENATOR LAUTENBAUGH: Thank you. [LB806]

SENATOR ASHFORD: I don't see any other questions. Thanks, Ms. Fairchild. [LB806]

LORETTA FAIRCHILD: Uh-huh. [LB806]

SENATOR ASHFORD: We have your testimony so thank you. [LB806]

RICHARD HALVORSEN: My name is Richard Halvorsen, R-i-c-h-a-r-d H-a-l-v-o-r-s-e-n. And I wasn't going to speak today but I've seen an attempt to say...state that gambling is no different than investing. I'm sure Mr. Buffett's mentor, Mr. Graham, is probably rolling over in his grave right now. I can think of several examples so, for one thing, if I bet...buy a stock and lose 500 bucks, you the state and the federal government will let me deduct that from my income. If I lose 500 bucks on a bet, I'm out of luck. Second thing is, yeah, past...you get to do view past performance of horses and you can view

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past performance of stocks, and even brokers will say past performance does not indicate future performance. But at least the stocks have assets. Again, that's what Mr. Buffett looks at, the basic assets, saying, well, at least it's not going to go below this point because its assets are worth that much, whereas if you bet on a horse you don't have a piece of the horse. Your money is gone. And plus, gambling is a zero-sum gain. There it is. I bet. I either win, I get my money or my winnings back, or I lose and the company gets my money. So one of us loses. In investing that's not necessarily so. If I buy stock in XY bank and it goes up \$2 and I think, oh, that's it, you know it's...or \$5, whatever, that's how much growth it's going to go, you know, level out; and I sell it and it doesn't level out and it goes up \$2 more, I haven't lost \$2. The man or individual who bought the stock from me, he made \$2, you know, if he sells at that point, he's made \$2 and we both benefit and the economy benefits. So like I say, it's a pretty weak link to say that the gambling is like investing. Plus, there's no stock investors AA I think that I know of. All right, thank you. [LB806]

SENATOR ASHFORD: Thank you. Thanks for your comments. Any...I don't see any questions so we're good. [LB806]

RICHARD HALVORSEN: Okay. [LB806]

SENATOR ASHFORD: Next opponent. [LB806]

HANNAH BUELL: (Exhibits 5-7) Good afternoon, members of the Judiciary Committee. My name is Hannah Buell, H-a-n-n-a-h B-u-e-l-l. [LB806]

SENATOR ASHFORD: Well, welcome back. [LB806]

HANNAH BUELL: Well, thank you very much. And I am here representing Nebraska Family Council and I want to thank all of you for giving us your time today. And as senators that are concerned with the financial and social future of our state, I urge you to consider the evidence rather than interest groups that shows an extensive negative impact associated with allowing horse racing or instant historic horse racing in these terminals in our state. The National Gambling Impact Study Commission, in their final report, gave a recommendation that advises states to "refuse to allow the introduction of casino-style gambling into pari-mutuel facilities for the primary purpose of saving a pari-mutuel facility that the market has determined no longer serves the community." Now that's interesting because that was a national commission back in 1999 that did a study and suggested from the federal level that states not accept the proposal that is before you today. That's really interesting if all of the benefits that the proponents of this piece of legislation are saying are true. So what that says to me is that that's generally suspect if this commission found that that wasn't true. And in fact, Michael Hicks, who is a researcher at Ball State University, said in the Journal of Economics in 2009, he did a longitudinal study in West Virginia from 1978 to 2004 and in that study he found that

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counties with these basic...he calls them racinos but it's basically a racetrack that has these types of machines, they realized a one-time 1.1 percent increase in employment. Okay. So it's a one-time increase. But he also found that the average salary in those counties fell by as much as 2.9 percent, meaning that these are simply very low-income jobs. At that point, that was about minimum wage. The second point I wanted to make that is possibly a reason why they found that this was something they were not advising for states to enact was that as lawmakers you need to understand the social costs. Now there have been people that have talked about that today, but the fact is that these video machines are extremely addictive and I actually have a picture of what they look like here. I've given those to you as well. But basically, it's showing that a slot machine, whether it's called a traditional slot machine, a video lottery terminal, or an instant racing machine, is virtually the same thing. And as far as the psychological research goes, these are the most addictive forms of gambling to the point that they've been called the crack cocaine of gambling. It's very different than a once-a-week lottery. A good player can play about 12 hands in a minute, so... [LB806]

SENATOR ASHFORD: Hannah, let's see if there are any questions. Can we do that? [LB806]

HANNAH BUELL: Yeah, that would be great. You have my full testimony here too so... [LB806]

SENATOR ASHFORD: Correct, we do. Any questions of Hannah? I don't see any. Thanks, Hannah. [LB806]

HANNAH BUELL: All right. Thank you, sir. [LB806]

SENATOR ASHFORD: Yep. Next opponent. [LB806]

PAT LOONTJER: (Exhibits 8-13) Senator Ashford, Judiciary Committee, I thank you for opening this up today. Seems like we've been here, done that several times. I am Pat Loontjer. I live at 2221 South 141 Court in Omaha, Nebraska. I'm the executive director of Gambling with the Good Life, and this is a group that for the last 17 years, since 1995, has been opposed to expanded gambling. We've never tackled anything that was existing, we've never gone after horse racing. I personally like horses. But we are opposed to anything that would expand gambling. It's...our motto is enough is enough of what we've got into in this state, not that we like everything that's here but once it's in, it's extremely difficult to get it out and that's what this would be doing. This bill would be opening a can of worms that we'll never be able to close again. I brought a copy of the National Gambling Impact Study Commission report to show you. This was a two-year study done at great length and at great expense by the federal government, and Hannah shared with you the conclusion that a convenience gambling should not be expanded. It does nothing to help the economy, to help small businesses, or to help our

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families. And I think that's what we're mostly concerned about in this state, is the good life, where I have 5 children, I have 13 grandchildren. I appreciate this state. I appreciate the good life that it has offered us and I'd like to see it stay that way. What we found from our studies and from research is that years ago gambling was considered a vice, just like alcoholism and drug abuse. Now it's take the "b" out and they call it gaming, but it's an addictive product. And the gambling addiction that was treated now in Nebraska, and I have this for you, it's averaging \$28,000 per problem gambler that is being treated, and this is all at the expense of the state and for all of the people involved in that. So there's two copies there. And 60 percent of the revenue that comes from gambling comes from problem gamblers, so this preys upon the weakest in our society. Just like, you know, the quote from Mr. Buffett, it's a tax on the poor. And the people that get sucked up in this are just, you know, I have the latest article and this is concerning a Roman Catholic priest who embezzled \$650,000 from his parish. This was just in October but we have statistics of how many times that's happened even in the Omaha Archdiocese. I have a report for you on the impact of racinos, which is exactly what we're talking about today, and it tells what has happened around the country, the attempts that have been made, why they've been made, why they've failed, and we do not want to become one of these statistics. And we talk about the number of horse that would be benefiting from this. This is a Pennsylvania study that was done regarding the number of jobs that will or will not be created by something like this and it's very revealing. We have a quote here from Senator Karpisek who said, in March of '09, they don't want gambling, I guess, said Senator Karpisek after the committee did not allow this particular bill to get out of the starting gate, as he puts it. In 2010, we went through great length, I believe we went through an eight-hour debate, we had amendments after amendments after amendments that were added on to this. It was stopped in 2010. We hope that we don't have to go through this again. We hope the Legislature doesn't have to. You're on a short session; time is very valuable. And the people have spoken, 2006, against expanded gambling; 61 percent of the voters said no. I don't think that's changed at all. I see I got a red light. [LB806]

SENATOR ASHFORD: Thanks, Pat. Yes, Senator Larson. [LB806]

SENATOR LARSON: Do you consider gambling or expanded gambling or gambling in general a vice? Is that... [LB806]

PAT LOONTJER: Yes. [LB806]

SENATOR LARSON: What are other vices? What... [LB806]

PAT LOONTJER: Alcoholism, drug abuse. [LB806]

SENATOR LARSON: Cigarettes, cigars, smoking? [LB806]

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PAT LOONTJER: Could be. [LB806]

SENATOR LARSON: Are those? I mean I'm just asking, are those considered... [LB806]

PAT LOONTJER: Uh-huh. [LB806]

SENATOR LARSON: ...vices, addictive, addictive things of that nature? [LB806]

PAT LOONTJER: Those are addictive products. They're not good for the health... [LB806]

SENATOR LARSON: Should... [LB806]

PAT LOONTJER: ...and the well-being. [LB806]

SENATOR LARSON: You mentioned alcohol. Should we ban new types of alcohol in this state? [LB806]

SENATOR LOONTJER: No, but I don't think we should expand, and that's what we're talking about here. [LB806]

SENATOR LARSON: No, essentially... [LB806]

PAT LOONTJER: We're talking about expanding a vice. [LB806]

SENATOR LARSON: So should...and that's why I asked should we ban, you know, when there's a new type of liquor or a new drink? Should...that's essentially expanding it. [LB806]

PAT LOONTJER: I think there's a whole other category of people concerned about that issue that would be here to testify. [LB806]

SENATOR LARSON: That would be here, but I mean does the concept...I guess I'm trying to get if the concept is the same. Should we ban those types of things as well or... [LB806]

PAT LOONTJER: Well, you know... [LB806]

SENATOR LARSON: ...because you say we shouldn't expand... [LB806]

PAT LOONTJER: Right. [LB806]

SENATOR LARSON: ...on alcohol or cigarettes or cigars. So essentially you're saying,

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you know, stop this new gaming, so how does that flow into those other areas? Is it banning new types of cigarettes or new types of alcohol or (inaudible)? [LB806]

PAT LOONTJER: I believe the government as a whole and you as a particular senator, your role is to protect the citizens of Nebraska and to look out for their best interests. I don't feel that this bill looks out for the general well-being of the state. I think it would create more addiction, it would create more hardship, it would be more money out of the economy going to a particular venue. It would be people coming home without their paychecks. It could cause domestic abuse. I think there's a lot of ramifications that would go along with expanding gambling of this type. [LB806]

SENATOR LARSON: As long...as well as the expanded substance abuse of alcohol or cigarettes or cigars or anything of that nature as well. [LB806]

PAT LOONTJER: You know, I don't think any of them are good for us, but if someone comes before you and wants to lower the drinking age to 18, I would hope and pray that you would see that as not good for our state. [LB806]

SENATOR LARSON: What about the age to serve in the Legislature? [LB806]

PAT LOONTJER: (Laugh) You're awful young. [LB806]

SENATOR ASHFORD: That's a plus normally, Pat, as you...I mean I know. [LB806]

SENATOR LARSON: I'm old...I mean maybe that's a different subject. [LB806]

SENATOR ASHFORD: Thanks. I do have one question. Do the...and I assume and I'm not...that should something like this go on the ballot that you would oppose it and that would be fully...I understand that. [LB806]

PAT LOONTJER: Uh-huh. [LB806]

SENATOR ASHFORD: What do you think about putting something like this on the ballot? [LB806]

PAT LOONTJER: But this isn't a constitutional amendment, is it? [LB806]

SENATOR ASHFORD: No, but you could authorize it. I mean it could go on the ballot and it could be voted on. [LB806]

PAT LOONTJER: Oh, of course. [LB806]

SENATOR ASHFORD: And you would oppose it but... [LB806]

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PAT LOONTJER: Well,... [LB806]

SENATOR ASHFORD: I'm not, again, I'm not trying... [LB806]

PAT LOONTJER: Uh-huh. Okay. [LB806]

SENATOR ASHFORD: ...to trick you here with a question. I'm just trying to, you're right, our job is to assess and draw standards and draw lines all the time. I think that's very true and I think we do try to do that and...with some of these other things and certainly underage drinking. And we try all the time to think about ways to end drugs to kids, for sure to keep them away from those things. But I think to some extent when we get into these issues of what is or isn't it, it really is a community standard that we're trying to find. And you're arguing and you have always consistently argued that the community standard would...is X and that the people of the state don't want to have expanded gambling, and I fully understand that. I mean the vote before wasn't necessarily on a limited type of gambling. It was...I think wasn't it the vote on casino gambling or what was it? [LB806]

PAT LOONTJER: Well, casino was 2004 and the one that you have is keno. [LB806]

SENATOR ASHFORD: Video slots was...that was keno. [LB806]

PAT LOONTJER: It was converting keno to machines,... [LB806]

SENATOR ASHFORD: To machines. [LB806]

PAT LOONTJER: ...which I relate very similar to this. You're converting horse racing to a machine. [LB806]

SENATOR ASHFORD: But is it our job...and we can talk about it later because I want to field some questions, but is it our job to, for example, to keep an initiative like this off the ballot or should we put it on the ballot to try to ferret out what the community standard is? [LB806]

PAT LOONTJER: I think the state has spoken. They've spoken loudly. They've told you they don't want expanded gambling, you know? [LB806]

SENATOR ASHFORD: I get you. But when you add to it the preservation of an industry or the...or maybe the saving of an industry, whether...we can disagree on whether or not it can save it or not save it, but is...when you get to something like that should we not put it on the ballot and let the state decide whether or not they want to utilize something like this to help, to help the horse racing industry? [LB806]

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PAT LOONTJER: Well, I disagree because if it goes on as a constitutional amendment to allow this for the tracks then we're talking about five tracks here in a very limited industry, not thousands of jobs. I think that's never been proven. But you're opening up to Indian...Native American gambling. That can be unrestricted, untaxed. I mean it is a can of worms. The minute we change our constitution...we are protected by constitution right now against these machines. The minute we change that, we've opened the state wide open and, you know, look at California, how many Native American casinos, you know. [LB806]

SENATOR ASHFORD: Okay. So basically your argument is that it shouldn't go on the ballot because it is...because of the Indian gaming issue. [LB806]

PAT LOONTJER: No, that's not all. I mean it's a way... [LB806]

SENATOR ASHFORD: And other issues but that is an issue that you're concerned about. [LB806]

PAT LOONTJER: Yeah. Yeah, it's...in our opinion, it's a horse slot machine and we would definitely be opposed with anything. It's the crack cocaine, like Hannah said, it's the crack cocaine of gambling. [LB806]

SENATOR ASHFORD: I fully get that... [LB806]

PAT LOONTJER: We don't... [LB806]

SENATOR ASHFORD: ...and I respect that opinion. [LB806]

PAT LOONTJER: ...we do not want to see it on the ballot. [LB806]

SENATOR ASHFORD: I respect that opinion but I do respect what you're saying and I do think expanded gambling can be addictive and it can have a negative impact on a lot of people. I absolutely agree with you on that. What I'm trying to get at though is what is our role. It's to protect the citizens, yes, and we talk about that all the time, but at some point do we, when we get to something like this that isn't a slot machine, though it is...has some similar attributes to video something,... [LB806]

PAT LOONTJER: Walks like a duck, talks like a duck. [LB806]

SENATOR ASHFORD: ...but what it's...is our role...I guess my question, is it not our role to put it on the ballot and...? [LB806]

PAT LOONTJER: No. But, Senator, why do we need the Legislature then? Put

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everything on the ballot. [LB806]

SENATOR ASHFORD: Well,... [LB806]

PAT LOONTJER: Let the citizens vote. That's why you're here. You're here to receive the testimony. You're here to hear from your constituents. You're here to study the issues at great length and to make a decision. [LB806]

SENATOR ASHFORD: I mean that's fine and I'm just sort of trying to figure out what our role is in something like this when it is...when it does...does not seem to be a slot machine and it seems to...it may have a positive impact on an industry. And I realize there's disagreement about it and I fully respect your opinion about addictive gambling. I get it. [LB806]

PAT LOONTJER: Uh-huh. [LB806]

SENATOR ASHFORD: I'm just thinking about the issue of what our role should be in something like this. [LB806]

PAT LOONTJER: Yeah. But that was the same question in 2006. The keno industry swore up and down they were not keno slots, they were not keno slots. [LB806]

SENATOR ASHFORD: I know, but it wasn't related to horse racing, I don't believe, was it? [LB806]

PAT LOONTJER: Well, it was going to benefit the keno industry just like this is going to benefit the horse industry. You've got lots of industries that... [LB806]

SENATOR ASHFORD: But... [LB806]

PAT LOONTJER: ...and there's a lot industries that are suffering that really would like a government handout or would like us to change our laws to accommodate them, and you just can't, you know? [LB806]

SENATOR ASHFORD: I understand. I understand. I'm just trying to ferret out our role and I think it may be slightly different when you're dealing with an ag-based business, but that...we can talk about that. But I appreciate your comments. [LB806]

PAT LOONTJER: Thank you. [LB806]

SENATOR ASHFORD: Yeah. Any other questions? Yeah, Senator Council. [LB806]

SENATOR COUNCIL: I don't have a question. I just have a comment, because you

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made reference to it and a prior speaker made reference to the lottery and the difference between the lottery and horse racing or these historic horse races, and the comment being made in the difference between playing the lottery once a week and gaming, and I always hear this opposed to expanded gambling, but the last I checked, and just as a point of information for the record, the last I checked you can play the lottery every day and there are certain lottery games that you can play several times a day every day. [LB806]

PAT LOONTJER: Fifty dollar tickets. [LB806]

SENATOR COUNCIL: Pardon? [LB806]

PAT LOONTJER: For \$50 tickets now. [LB806]

SENATOR COUNCIL: Exactly. [LB806]

PAT LOONTJER: Yeah. Yeah. (Laugh) You're right. [LB806]

SENATOR COUNCIL: And I mean when we talk about expanded gambling,... [LB806]

PAT LOONTJER: Uh-huh. [LB806]

SENATOR COUNCIL: ...I mean I don't know how much more expanded you get than going from one drawing a week... [LB806]

PAT LOONTJER: Yeah. [LB806]

SENATOR COUNCIL: ...to drawings four days a week to playing it every day and... [LB806]

PAT LOONTJER: Yeah. But these, Senator, do you see how that expanded from when it was started in the early '90s? When that was sold to the idea of Nebraska it was a buck a ticket, just a buck a ticket. And it's grown and it's grown and it's expanded and expanded, and that's exactly what would happen here. If we allow this to happen with these machines coming in, that would open the door to the next to the next to the next. It's a can of worms that I don't think we want to visit. [LB806]

SENATOR COUNCIL: Okay. But I guess the point I'm making is that somebody apparently is not too upset with expanded gambling because that, the lottery, has just grown and grown and grown and expanded and expanded and expanded. And I guess that's the only point that I'm making. [LB806]

PAT LOONTJER: Uh-huh. Yeah. [LB806]

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SENATOR ASHFORD: And just to follow on that I think too, I mean if there was a hue and cry against the rapidity of the lottery now or the ability to play the game the way they do now, that there would be an effort to put something on the ballot to make it illegal, I mean the same thing we did with same sex marriage. I mean there was a hue and a cry and so it went on the ballot. I mean that's something we could have decided I suppose in this body but it went to...or parts of it, but it went to the citizens for a vote and they made their...they set the community standard, to some degree. [LB806]

PAT LOONTJER: But the example of the lottery is once something gets in, in a book, how do you roll that back? It's almost impossible. You know, Senator, we've looked into it together. [LB806]

SENATOR ASHFORD: Well, I don't think you do. I don't think you probably do but... [LB806]

PAT LOONTJER: It's just...it's almost impossible. And we see this as a gateway to further expansion of gambling... [LB806]

SENATOR ASHFORD: No, I get it and I appreciate... [LB806]

PAT LOONTJER: ...and we would be opposed to it. [LB806]

SENATOR ASHFORD: ...and I appreciate your consistency and your efforts always. [LB806]

PAT LOONTJER: It's only been 17 years. (Laugh) [LB806]

SENATOR ASHFORD: I know. Thanks, Pat, very much. [LB806]

PAT LOONTJER: Thank you, Brad. [LB806]

SENATOR ASHFORD: Does anybody else wish to talk about this issue? How many other...how many...come on up. How many other testifiers do we have here on this bill? I think this would be the last. (See also Exhibits 14-15) [LB806]

DENNIS LEE: Senator Ashford, members of the committee, my name is Dennis Lee and I come here really in my capacity as one of five members of the Nebraska State Racing Commission. I'm an attorney in Omaha and I've testified before this committee in the past on similar legislation. And in our capacity as racing commissioners, in our regulatory responsibility to the state and the industry as the Racing Commission, we try and do our best to monitor the legislation that's before this body and in doing so we anticipate getting questions from members of the body and being able to respond to

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those questions factually. We were aware, of course, that LB806 was introduced and a similar bill was introduced several years ago, and in conjunction with the introduction of both of those bills the commission has studied essentially what is going on in other states, most particularly, as Mr. Cella testified earlier this afternoon, is the historic racing that's being offered in the video terminals in Arkansas, Kentucky, being studied in Florida, also being studied in Oregon and now being studied here. One of the questions I think that was raised today and that we at the commission level have reviewed, and I being one of the three attorney members of the commission have also reviewed independently, is LB806 as it currently sits, is it constitutional. And the question is,... [LB806]

SENATOR ASHFORD: Dennis, just for the record, you're neutral? Is that what you're...you're testifying in a neutral capacity? [LB806]

DENNIS LEE: I'm neutral, yes. [LB806]

SENATOR ASHFORD: Okay, just so we can get it on the record. [LB806]

DENNIS LEE: And I had that on the sheet as well, Senator, [LB806]

SENATOR ASHFORD: Okay, great. Thanks. [LB806]

DENNIS LEE: But is LB806 constitutional? And I believe, as I did two years ago, I believe that it is constitutional for one primary reason. The constitution is clear in that wagers may be placed only within the licensed racetrack enclosure of racetracks that are licensed by the State Racing Commission. In the bill that's before you today, LB806, it provides for the commission to authorize a certain number of terminals for historic racing at the different racetracks in Nebraska. The key is the facility is licensed as a racetrack enclosure, the funds that may be wagered would be in a mutual pool that would be tied in. Senator Ashford, you made a very good point earlier today that I was going to make as well and that was if you go to any of our racetracks today you can wager from 10:00 in the morning until 9:00 or 10:00 tonight on simulcast races from all around the country. The same situation is with respect to historic wagering. The one issue was, and we struggled with this too, I shouldn't say struggled, we analyzed this too and there was a comment made to me that I'll share with the committee, is the video slot or is the historic wagering terminal, is it a slot machine? Well, the difference is very subtle and very important as well. The difference is that in a historic racing terminal, the bettor has an opportunity to bring up the past performances of the horses that may be running in that historic race that's selected on the machine. Whether it watches a furlong or a half a mile or the full race, that's another issue. The bettor can then select any of those horses. Take that in comparison, and this is the big distinction, take that in comparison to a slot machine. You go to any of the casinos in Iowa and you put \$1 in a slot machine, the difference is you don't get to select your fruit. In the video, in the horse

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racing situation with historic racing, you get to select your horse. So from that standpoint, there is a difference. We believe it is constitutional. The one issue that I would raise... [LB806]

SENATOR ASHFORD: I'm going to have to ask you to sum up, Denny, if you would. [LB806]

DENNIS LEE: I will. The one issue that I would ask the committee to consider is that there's...funds on the taxes go to the Probation Program Cash Fund, the Violence Prevention Cash Fund, and the Compulsive Gamblers Assistance Fund. The commission would really appreciate this committee and the body considering formatting some element of the tax to our regulation of this, because at the present point we're not unlike any other state agency, we're somewhat cash strapped and short staff. And if we're going to regulate this in addition, we need to have some resources within which to do it. [LB806]

SENATOR ASHFORD: Okay. Thanks, Denny. Any questions of Dennis? I don't see any. Thanks for your comments. [LB806]

DENNIS LEE: Thank you. [LB806]

SENATOR ASHFORD: That will conclude the hearing on this bill and Senator Lautenbaugh has the next bill as well, LB802. [LB806]

SENATOR LAUTENBAUGH: I may even close on this one, Senator Ashford. [LB806]

SENATOR ASHFORD: Oh, you may. I always forget the closing part. Go ahead. [LB806]

SENATOR LAUTENBAUGH: But I'll be brief because we've got people here on other things. There's a part of me that just wants to start selling "what would Warren do" bracelets. We've heard the appeal to authority today repeatedly: Mr. Buffett thinks this about gambling. Mr. Buffett was a successful investor, remarkably successful investor. I'm not willing to sign away the rest of my life decisions to him, however, and I'm wondering how many of the opponents, if we were having a pro-life bill, would be coming in here citing Mr. Buffett's opinion on it, but that's a topic for another day. One of the speakers, one of the opponents said actions taken here don't go away. Well, they do sometimes, but certain things go away. Industries go away. This industry is going away and we've heard why. It's not that they can't compete; it's that we won't let them compete. They existed prior to the technology. The laws we passed were for a different time and they're struggling to compete with other types of gaming. But I think I distinguish this one from the other types of gaming in that this literally does employ thousands of people, we're talking from stableboys, I don't know if that's the term, to

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veterinarians at this point. And you know we have it pretty good here compared to other states but I'm just shocked when we can sit here and turn up our noses at some jobs, like, you know, the drama critic from the Times and say, well, that's an inferior job, it doesn't pay enough. It's better than no job, which is what we're flirting with when we so cavalierly turn away other projects that have been in the national news lately that we've somehow managed to get in the way of, our little state. And now we look at these jobs and say, well, nobody is going to miss them except maybe the people that have them. They might be put out by going on unemployment, but they aren't that great a job anyway; these people should be doing something better. And the people who come to these tracks should be doing something better with their money apparently, in our judgment, because we do know what's best for everyone in all circumstances. I think we need to reject that type of thinking in this area. And we heard a lot about casinos, which these aren't. In the past we've heard, well, look what happened with the dog tracks; they got rid of the dogs. Dog racing is not horse racing, folks. What you heard today was where these machines have been installed they didn't say, oh thank God, we can get rid of those pesky horses because now we have these machines. They increased their live racing days. That's what we want. That is where the jobs are. That is where the future of this industry is, hopefully. The proof is in the pudding. They didn't say, okay, fine, we're going to let the horses go by the wayside. They said, thank goodness, we can have more horse racing. And that benefits everyone involved in this industry, top to bottom. That's what we're after here. We aren't changing laws to accommodate these people. We're changing laws...well, we're specifically authorizing something that may already be authorized, by the way, in existing law. But if you're wrong, you could be prosecuted, so we've previously been told get specific legislative authority to do this and you're not going to be prosecuted for doing it. We've heard Mr. Lee say this isn't unconstitutional. He said the same thing two years ago. We learned two years ago that problem gambling actually associated with horse races is next to nil. That's not where this problem is. But we heard all about it again today and we heard about diverting spending, people spending for more desirable activities. I don't think that's our call in all circumstances. We heard about the revenue loss in the last fiscal note. You know what the revenue loss was? The concern was somehow that people were going to stop playing keno as much and lottery as much if we had these things, so we would lose the revenue from our take on keno and lottery. Think that through: We can't do this; it will hurt keno and lottery, and gambling is wrong. There's a disconnect here. This is an industry that benefits the state. This is an industry worth saving. These are jobs worth saving. These are people worth saving. I can't stress enough how important this is to save this industry. And we're not asking again for a handout. We're just asking us to get out of the way. I would be happy to answer any questions you might have. [LB806]

SENATOR ASHFORD: Does that engender any questions for Senator Lautenbaugh? Seeing none, LB802. [LB806]

SENATOR LAUTENBAUGH: Might wait a minute.

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SENATOR ASHFORD: Okay. Thanks, Scott.

SENATOR LAUTENBAUGH: Should I go on ahead?

SENATOR ASHFORD: LB802. Sorry. [LB802]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman and members of the committee. LB802 was brought at the behest of a deputy county attorney in Seward County. The concern is in some of the rural counties there may not be adequate deputies to protect and patrol the courthouses and the people therein. This causes concern among some county attorneys, as they have little to protect them from disgruntled individuals who are on trial, angry with paying child support, or any of the other many reasons that people might be angry at being at the courthouse in the first place. Current law prevents these county attorneys from carrying their personal defense weapons in a government building, despite both being appropriately deputized agents of a government agency, either county attorneys or Attorney General's Office employees, and possessing a valid Nebraska concealed carry permit. In essence then what this bill does, simply put, is allows county attorneys and Attorney General employees, if you will, attorneys, to have concealed carry, concealed weapons in the courthouse if they have a valid concealed carry permit. I'd be happy to answer any questions you might have and I will not belabor it at this point. [LB802]

SENATOR ASHFORD: Yes, Senator Coash. [LB802]

SENATOR COASH: Thank you, Chairman. Senator Lautenbaugh, does this in any way waive the requirement of taking the appropriate classes to get your permit,... [LB802]

SENATOR LAUTENBAUGH: No, not... [LB802]

SENATOR COASH: ...safety related? [LB802]

SENATOR LAUTENBAUGH: ...not at all. This would say that you still have to get your concealed carry permit, but even people with concealed carry permits, you can't carry it everywhere. There are places where you're prohibited from doing that, as you know. This would just allow county attorneys and Attorney General attorneys, if you will, to possess their concealed carry permits, if authorized, in the courthouse. [LB802]

SENATOR ASHFORD: Senator Council. [LB802]

SENATOR COUNCIL: Yes, thank you, Mr. Chairman. In your opening you indicated the justification for the bill was that in some counties there are not enough deputy sheriffs to provide adequate protection, yet the bill extends to the Attorney General's Office, where

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presumably there's plenty of protection. I don't understand the necessity. And then I thought I heard you say also that there's the opportunity to deputize county attorneys, so... [LB802]

SENATOR LAUTENBAUGH: No, if I said that, I misspoke. [LB802]

SENATOR COUNCIL: Okay. [LB802]

SENATOR LAUTENBAUGH: That's not...I wasn't speaking of deputies in the sense you're thinking. [LB802]

SENATOR COUNCIL: Okay. So...because I'm thinking, well, then deputize. But I guess I don't understand the need to, first of all, to extend it to the Attorney General and deputy attorneys general, and I'm also concerned about the slippery slope. I mean soon...it's very close to the argument that was provided when the bill was introduced to allow teachers to carry concealed weapons, because there's not enough protection for school teachers. I'm really very concerned about that because, I mean, if that argument holds for county attorneys, it arguably holds for teachers, it arguably holds for state senators. So... [LB802]

SENATOR LAUTENBAUGH: I would agree on the state senator part certainly. [LB802]

SENATOR COUNCIL: So I mean... [LB802]

SENATOR LAUTENBAUGH: To answer your question though, Attorney General's employees, Attorney General attorneys, if you will, office attorneys, do go out and actually prosecute cases sometimes. That's why...that was the point of including them, is that they are out there too. They're not just sitting upstairs all the time, is my understanding. I would still distinguish this from teachers though, and I don't remember where I was on that bill last year but...or whenever it was, but there is a lot more propensity to have violent, angry people around you in a courthouse, I would argue, hopefully than in a school. That's how I'd make the distinction and say I understand you're saying this could lead to the schools. I don't see it that way because there's a greater risk here to these individuals in this circumstance, in my mind. [LB802]

SENATOR COUNCIL: Okay. And I guess, well, the rationale that was given for the schools is that there is greater risk to them and you have more examples of greater risk to them than you would have to a deputy county attorney. I mean that's... [LB802]

SENATOR LAUTENBAUGH: Well,... [LB802]

SENATOR COUNCIL: And I have real problems with, you know, distinguishing who's at greater risk than someone else when it comes to public officials. [LB802]

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SENATOR LAUTENBAUGH: That's certainly true, but all we do here is line drawing. I mean somewhere we say this is acceptable risk and this is where we say we have to do something, so... [LB802]

SENATOR COUNCIL: All right. Mr. Vice Chair, thank you. [LB802]

SENATOR LATHROP: Very good. Any other questions for Senator Lautenbaugh? [LB802]

SENATOR LAUTENBAUGH: No one is left. (Laugh) [LB802]

SENATOR LATHROP: Senator Coash, do you have questions? [LB802]

SENATOR COASH: I'm good. [LB802]

SENATOR LATHROP: All right, thank you. Are there proponents here today for LB802 who want to be heard? [LB802]

ANDY ALLEN: Andy Allen from Omaha, president of Nebraska Firearms Owners Association. First I want to say I'm doing away with paper this year. You guys are trying to cut down on the amount of paperwork you guys have laying around. If we've got to communicate, I'm going to try and do it electronically to help save you that and support your efforts. Second,... [LB802]

SENATOR LATHROP: Very good. Why don't we have you spell your last name for us. [LB802]

ANDY ALLEN: A-I-I-e-n. [LB802]

SENATOR LATHROP: Okay. Very good. [LB802]

ANDY ALLEN: Our organization has been discussing this bill for some time. This is an unusual bill for us. It kind of hits along with Senator Harr's bill last year for police officers being able to carry at schools, which we decided to support. We look at whether it be the Attorney General, the assistant county attorney, whatever, they are part of law enforcement. They do go to places where bad things happen, you know. Yeah, they're not quite the same as police where they're actively at the scene of the crime when it's happening, hopefully the police are there when it's happening, but they are there still when people are having some of their worst days. So we've decided that we're going to support them. To talk a little bit about what Senator Council has, that's one of the big things that a small percentage of my members have had for questioning, is if we're going to let these people carry in these places why can't Senator Council carry to this

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place? I actually had a member that asked that. (Laugh) Why can't... [LB802]

SENATOR COUNCIL: You don't have to worry about me now. [LB802]

ANDY ALLEN: Why can't the Attorney General's secretary carry into one of those places? I've been in an usual situation. Usually gun things, when I talk to whether it's a D.A., a prosecutor, whatever, me and them don't 100 percent agree, I've been contacted by about a dozen D.A.s from throughout the state asking me to support this bill. I think that in our history of saying we're going to support the law enforcement personnel to be able to defend themselves, I think we need to continue that here. And that's why we're here to support. [LB802]

SENATOR ASHFORD: Thanks. Good to see you again. [LB802]

ANDY ALLEN: Uh-huh. [LB802]

SENATOR ASHFORD: Next supporter. [LB802]

MATTHEW MELLOR: Good afternoon, Chairman Ashford, members of the Judiciary Committee. My name is Matthew Mellor, M-e-l-l-o-r. I am the deputy county attorney in Seward County who approached Senator Lautenbaugh with the idea behind LB802. The U.S. Marshals Service, who is tasked with protecting the federal judges and prosecutors, compiled statistics for a report done by the Department of Justice, the Office of the Inspector General. In 2003, the U.S. Marshals Service reported 592 threats towards the federal bench and bar that had been reported to them. In 2009, that number had increased to 1,278. Now in 2007 the U.S. Department of Justice also conducted a national census of state court prosecutors. This statistical census included numbers addressing threats against prosecutors' offices around the country. Of the offices that reported back to the Department of Justice, 47 percent of the prosecutor offices had received either written threats, threatening phone calls, face-to-face threats, or had a staff member who were victims of battery or assault. The report also included statistics which showed that 21 percent of offices stated their chief prosecutor and 18 percent of their assistant prosecutors carried a firearm while on the job. There appears to be a growing trend throughout the country where judges and prosecutors are becoming more the targets of threats, even here in Nebraska. I picked out a few specific examples that would show that an awareness of courthouse security is emerging. York County, for example, has put a metal detector and guards while court is in session. In 2009, Dodge County installed a metal detector at the front doors; however, the county only funds that for two and a half days per week and that continues to be halftime to this day. During the first six months of that security issue, 3,675 items that were deemed to be weapons were confiscated. Now recognizing these security problems in the courthouse, seeing that my time is limited, I've also found that other states, such as Kansas, have recently passed similar pieces of legislation that allow prosecutors to conceal carry in the course

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of their jobs. Now Kansas has put a limit, as this bill has put a limit on, that each chief prosecutor in a jurisdiction has the option of writing a policy to allow or not allow that policy in their jurisdiction. So this bill is more or less creating the choice, an option for that. Now you've heard from the NFOA just a moment ago and I was informed that the National Association of Assistant United States Attorneys... [LB802]

SENATOR ASHFORD: You can finish, Matthew. Go ahead. [LB802]

MATTHEW MELLOR: Okay. I was given a copy of the letter and they said there were forwarding it to you, but it outlines further their stance in support of LB802 here in Nebraska, as they supported the bill in Kansas that passed in the recent years. [LB802]

SENATOR ASHFORD: Any questions? Senator Council. [LB802]

SENATOR COUNCIL: Thank you, Mr. Mellor. Don't we have a Nebraska Association of County Attorneys? [LB802]

MATTHEW MELLOR: We do. [LB802]

SENATOR COUNCIL: Have they taken a position on this bill? [LB802]

MATTHEW MELLOR: I did have communication with them and they've declined to take a position on this bill. [LB802]

SENATOR COUNCIL: Okay. Thank you. [LB802]

SENATOR ASHFORD: Here's my concern, and maybe, you know, we can...we don't have to talk about it all today, but my concern is it's in fact the nature of the people you sometimes do run into and they get angry and they...I know my son is a public defender and I get stories daily almost of some of the people he runs into, and he's been attacked and all the things that you've probably experienced as well. The concern I would have is that we don't overreact to those kinds of situations with the thought being, well, this person may be armed or...and that's a concern that I have, because it's such a common occurrence, at least in the Douglas County Courthouse where anger erupts. You know, how do you respond to that kind of concern? [LB802]

MATTHEW MELLOR: That we're overreacting or...? [LB802]

SENATOR ASHFORD: No, I'm not saying you are overreacting but that you could, you might, and that someone could be injured or killed I suppose,... [LB802]

MATTHEW MELLOR: Okay. [LB802]

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SENATOR ASHFORD: ...and they aren't armed or that sort of thing. [LB802]

MATTHEW MELLOR: Well, if I'm understanding your question correctly,... [LB802]

SENATOR ASHFORD: Sorry to be so vague,... [LB802]

MATTHEW MELLOR: No... [LB802]

SENATOR ASHFORD: ...but it's just the concern that you're using that force and that force is not necessary. [LB802]

MATTHEW MELLOR: Right, that maybe a county attorney gets into a situation, overreacts,... [LB802]

SENATOR ASHFORD: Right. Right. [LB802]

MATTHEW MELLOR: ...takes it too quickly. I think that goes back to the training. We're not asking that the county attorneys be exempt from any training on firearm use on situations that might arise. I've taken a concealed course myself. It addressed situations that, you know, if it's just a verbal situation there's no need to overreact. It just doesn't negate...this bill doesn't negate the training that would be required to be able to carry in these locations so that those who choose to carry don't overreact; that they go to their training and say if they're just yelling at me, it's just a verbal conversation at this point; we need to talk it down and not go beyond. [LB802]

SENATOR ASHFORD: Fair enough. Thanks, Matthew. [LB802]

MATTHEW MELLOR: Thank you. [LB802]

SENATOR ASHFORD: I don't see any other questions. Any other comments or anybody else testify for this bill? How about against it? How about neutral testimony? Any neutral testifiers? Senator Lautenbaugh, do you wish to close? [LB802]

SENATOR LAUTENBAUGH: Yeah, might as well since I'm opening again. [LB802]

SENATOR ASHFORD: Yeah. You're up the rest of the day actually, to be honest. [LB802]

SENATOR LAUTENBAUGH: Very briefly put, as this is going...the afternoon is stretching out here a bit, I do think this is important to consider. I think these people are not uniquely at risk but more at risk than teachers and otherwise, as we discussed. I think the adequate training for concealed carry holders would provide a measure of comfort, a substantial measure of comfort, and I hope we do consider this favorably.

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[LB802]

SENATOR ASHFORD: Okay. Senator Council. [LB802]

SENATOR COUNCIL: Thank you, Mr. Chairman. I don't know whether you were in the room, Senator Lautenbaugh, when I asked a question about whether the Nebraska Association of County Attorneys had taken a position on this, but the response was that they had declined to take a position on it, and that's disconcerting to me. If the purported basis for the bill is the protection of county attorneys, particularly those in remote locations, that the association declined to take a position when I would think that the majority of members would be from other than the eastern part of the state, and that's...I'm questioning the necessity when the association itself doesn't see the necessity. And then Senator Ashford made a point that if you're going to protect county attorneys, what about public defenders and give them the right to carry concealed? I mean that's the troubling part of this, is who is or who isn't at greater risk and who should or who shouldn't be allowed to carry concealed? I guess it's no...I mean I...anybody who doubts, I don't support carry concealed, period, so I put that on the table if you didn't know. [LB802]

SENATOR LAUTENBAUGH: Your secret is safe with me, Senator Council. [LB802]

SENATOR COUNCIL: If you didn't, I don't think it's a secret. But I mean here we are... [LB802]

SENATOR ASHFORD: Strike all that from the record. I'm sorry. [LB802]

SENATOR COUNCIL: May I strike that? You know, here we are, you know, like you're at greater risk than this person or at less risk than that person. You're kind of law enforcement but you're kind of not. Again, my only point was that the level...that the degree of necessity when the County Attorneys Association themselves haven't taken a position on it, that's...and if you want to respond to that, please feel free to. [LB802]

SENATOR LAUTENBAUGH: Well, there are times when I'm at odds with organizations that I'm a member of as well. [LB802]

SENATOR COUNCIL: I mean, oh, no kidding? No kidding? (Laughter) [LB802]

SENATOR LAUTENBAUGH: And I hope they're okay because I haven't seen them today so...and I don't even know if it's at odds. I have no idea what the reasoning was. [LB802]

SENATOR ASHFORD: They're against this bill, by the way. No. [LB802]

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SENATOR LAUTENBAUGH: I assumed as much, but I would be happy to check out why. But again, you're right. I mean I think, and I'm now trying to be the mind of a crazy criminal in the courthouse and say, well, I'd probably rather shoot the prosecutor than my public defender. I mean I don't know how to make that distinction, but what we do here is make those distinctions. I mean there are degrees of risk associated with different jobs. Maybe we should carry, too, to be honest, or at least have the option to here. I don't... [LB802]

SENATOR COUNCIL: Please don't. [LB802]

SENATOR LAUTENBAUGH: Well, you don't have to worry about me necessarily. [LB802]

SENATOR COUNCIL: Yeah, I'm worried some other people who would. No, I'm kidding. [LB802]

SENATOR LAUTENBAUGH: Yeah. [LB802]

SENATOR ASHFORD: All right. Well, this is good. [LB802]

SENATOR LATHROP: Can I? I do have a question. [LB802]

SENATOR ASHFORD: Yes, Senator Lathrop. [LB802]

SENATOR LATHROP: Here's a concern or I just want to ask you about this. It looks like this becomes an exception to section (1)(a), which is where you can't carry a gun,... [LB802]

SENATOR LAUTENBAUGH: Right. [LB802]

SENATOR LATHROP: ...a concealed carry. And one of the places is a detention facility. I mean I appreciate what you're doing. Guy goes into the courthouse or wherever he's at, even if he's going into a place that has a sign and he's a county attorney or a prosecutor, I understand why he might want to do that. Is there a reason they carry a handgun into a detention facility? My concern there would be if you go through the front door and nobody has a gun, then no one can take a gun away from somebody. Do you follow me? [LB802]

SENATOR LAUTENBAUGH: I do indeed. I do understand your point 100 percent. [LB802]

SENATOR LATHROP: I get the going in the courthouse. In terms of the classes of people, I'm just going to make this comment, and that certainly prosecutors, people in

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the courthouse know who the prosecutors are and they ought to be able to carry a gun if they need to, to protect themselves. But if we make the list too long, and you haven't here, but if we do get to that place then the guy at the front door at the courthouse doesn't know who's in a class and who isn't in a class if it gets too broad. [LB802]

SENATOR LAUTENBAUGH: Right. [LB802]

SENATOR LATHROP: But I don't have a problem with a class but we should think through whether we want them going into the prison with a gun when even the guards don't have guns,... [LB802]

SENATOR LAUTENBAUGH: I would agree. [LB802]

SENATOR LATHROP: ...because they'd take it away and now they got the place under siege. [LB802]

SENATOR LAUTENBAUGH: I will agree 100 percent with that. [LB802]

SENATOR LATHROP: Okay. [LB802]

SENATOR ASHFORD: Thanks, Scott. Let me just ask real quickly, LB805, which is also Senator Lautenbaugh's bill, who is here to talk about it? And I'm sure...is that it? Why don't we just quickly take LB805, and we probably should have done that before, because we only have one testifier. Is that all right with you, Scott? [LB802]

SENATOR LAUTENBAUGH: Oh, absolutely. [LB805]

SENATOR ASHFORD: Okay. Let's do LB805 and I apologize for not doing that earlier. Okay. [LB805]

SENATOR LAUTENBAUGH: And I'll be remarkably brief about LB805. When we passed a fireworks bill a year or two ago, to my recollection, one of the requirements in there was the provision of a Social Security number. I think, as I understand it, that was meant to be removed by amendment but we did not do it. It isn't necessary for the Fire Marshal to adequately track fireworks purchasers...sellers, I should say sellers, not purchasers I guess, and this...they requested that I bring this to take it out. That's all this does. [LB805]

SENATOR ASHFORD: Okay, and the Fire Marshal is here so we can verify that. [LB805]

SENATOR COUNCIL: Before you leave, Senator Lautenbaugh, the permit is to sell, right, and I guess my question is other sellers, when we give them permission to sell

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products, don't we ask for their Social Security number so we can follow up to see whether or not they're paying the appropriate taxes or...? [LB805]

SENATOR LAUTENBAUGH: I don't know. I assume so in some circumstances, and I hate to sound like I'm passing off the question but this bill was not one of my passions, as you might imagine. This was just something I was asked to carry and then hopefully there's a good reason as to why we want to unwind that coming. [LB805]

SENATOR COUNCIL: Okay. But I think that that's one of the reasons, that if you're getting a permit to sell,... [LB805]

SENATOR LAUTENBAUGH: Uh-huh. [LB805]

SENATOR COUNCIL: ...which generates revenue, then... [LB805]

SENATOR LAUTENBAUGH: Oh, I see what you're saying, from the taxing. [LB805]

SENATOR COUNCIL: Yeah, right, that there needs to be a way for the Department of Revenue or someone to determine whether or not... [LB805]

SENATOR LAUTENBAUGH: I think that's a different permit and I would like the Fire Marshal to address that. That's a different issue, yeah. [LB805]

SENATOR COUNCIL: Okay. Okay, so maybe that's...okay. [LB805]

SENATOR ASHFORD: Okay. Let's go to the proponents, and I believe that's the Fire Marshal. [LB805]

JOHN FALGIONE: (Exhibit 16) Good afternoon. And just for off the record, Senator Council, I didn't deem this as a hostile area so I left my weapon off today, so... [LB805]

SENATOR COUNCIL: Oh, you do get to carry one. [LB805]

JOHN FALGIONE: Senator Ashford and members of the Judiciary Committee, for the record my name is John Falgione, J-o-h-n F-a-l-g-i-o-n-e, and I am the State Fire Marshal. I'm here today to testify in support of LB805. LB805 would amend statutes 28-1239.01 and 28-1246 by removing the requirement that applications provide...applicants provide their Social Security numbers on the listed fireworks license applications. Identify theft is a large problem and the requirement for submitting the Social Security number for a fireworks license creates a completely unnecessary risk. Additionally, requiring applicants to provide their Social Security numbers creates extra burdens on the agency to ensure the information is safeguarded after the submittal. The agency does not need this information and the applicants should not have to provide it. I

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want to thank the committee for the time and opportunity to testify in support of LB805, as well as thank Senator Lautenbaugh for introducing this legislation. I'd be happy to answer your questions that you might have. [LB805]

SENATOR ASHFORD: Any questions of John? Yes, Senator Council. [LB805]

SENATOR COUNCIL: Okay. This is new legislation. I thought we had existing legislation on selling fireworks. Am I...? [LB805]

JOHN FALGIONE: We do but it's in statute. This is just to clean up, you might say it's a cleanup because federally we don't have to have that information, we can't gather that information. It's just for the fireworks license for the display operators and for the stand operators. And like the display operators, they have to sign an attestation form. All that information is gathered that's needed, that's required by federal law, so we don't have any need to have their Social Security numbers. Now they have to go...you had a question earlier about the sales tax. That's completely separate. They have to go to Department of Revenue and get their sales tax application form. We have no jurisdiction, anything to do with that. [LB805]

SENATOR COUNCIL: Okay. Believe me, I can understand it for purposes...for people who are just, you know, exhibiting or displaying, like the people who come and get the permit to do the big New Year's Eve fireworks thing. I can understand that. But the section that talks about where you're..."any person to sell, hold for sale, or offer for sale as a distributor," you know, I guess I have a different position there as to their Social Security number because they're going to have to provide it to somebody. And I guess your issue is you don't do anything with it. [LB805]

JOHN FALGIONE: We're just offering a state licensure for it so... [LB805]

SENATOR COUNCIL: Okay. You're just offering the license to... [LB805]

JOHN FALGIONE: Now those people also, depending on where they...where their storage and stuff, they have to also be licensed with the ATF,... [LB805]

SENATOR COUNCIL: Okay. [LB805]

JOHN FALGIONE: ...the distributors and jobbers and such so...but not your retail people. Your distributors and jobbers in this situation are the people that generally are looked at as the suppliers to the fireworks stands. Now they may run their own stands but they're also going to have to have the fireworks stand permits as well for retail. It's a separate license. [LB805]

SENATOR COUNCIL: Okay. And for your purposes it's...the permit they get is to

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operate the stand in accordance with whatever fire... [LB805]

JOHN FALGIONE: For the retail end of it, yes. [LB805]

SENATOR COUNCIL: Okay. [LB805]

JOHN FALGIONE: Now the display operators are another...that's another breed of cat, so to say, because those folks are the ones that are putting on your big displays and they're handling Class B explosives. [LB805]

SENATOR COUNCIL: Those are frightening. [LB805]

JOHN FALGIONE: And we license, we test and evaluate and license those folks. They're the ones that have to sign the attestation form that they've gone through everything and they're citizens of the United States. [LB805]

SENATOR COUNCIL: Okay. [LB805]

JOHN FALGIONE: And if they're not then they so note it, which we did have one from a foreign country but his papers to work visas were all in order so he was legal to be licensed. [LB805]

SENATOR COUNCIL: Okay. And I guess I'm just wondering if the requirement for those who are selling is in there to provide another avenue for the Department of Revenue to determine whether or not appropriate taxes are being paid, but that's something we can... [LB805]

JOHN FALGIONE: There's no connection between Revenue and communication of that nature. [LB805]

SENATOR COUNCIL: Okay. But could the Department of Revenue access that information? [LB805]

JOHN FALGIONE: It's on-line who the distributors and jobbers and retailers are, yes. We have that information. It's on-line. It's open to anyone to see who they are. [LB805]

SENATOR COUNCIL: Okay. Thank you. [LB805]

SENATOR ASHFORD: Thanks, John. [LB805]

JOHN FALGIONE: Okay. Thank you very much. [LB805]

SENATOR ASHFORD: Senator Lautenbaugh. [LB805]

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SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. Simply put, I think that's the nub of it. The information, I didn't understand your original question, is corrected elsewhere in Revenue. This just places a burden on these folks to secure something that they don't need or want. Social is provided otherwise or tax ID number, depending on the entity, for tax purposes elsewhere. So sorry if I didn't understand what you were originally asking. [LB805]

SENATOR COUNCIL: Yeah, that's what I...I guess I don't have a problem with it for the exhibitors or displayers, you know, why do we need to have their Social Security number, particularly if they have to meet some other federal requirement because they're dealing with certain explosives. The people who are selling, generating revenue, to have that for purposes of the revenue, the Department of Revenue, for example, to have some way of cross-checking to determine whether or not, you know, income taxes are being paid or sales taxes are being collected, I don't see how that's...I don't see how that's problematic. Because they have to give their Social Security number, you know, to...if they're selling because they're going to be collecting income, they're going to be collecting sales taxes and they have some income tax liability associated with that. But we can discuss that after the... [LB805]

SENATOR LAUTENBAUGH: And...sure. As I understand it though... [LB805]

SENATOR COUNCIL: I don't have any problem with the displayers, yeah, you don't need their Social Security number. [LB805]

SENATOR LAUTENBAUGH: I mean Revenue doesn't have access to their files anyway. They have access to who has the permits, because everybody does. I mean that's the public record part. So the bill doesn't provide much of a cross-check and the Fire Marshal's Office just doesn't want the stuff, in my understanding. So in any event, I hope you look upon this favorably. Last but not least, may I continue, Mr. Chairman? [LB805]

SENATOR ASHFORD: Yes, sir. [LB804]

SENATOR LAUTENBAUGH: LB804, which I think has been dubbed castle doctrine light, and I apologize I will not be here to close on this it appears but I will get through the opening. What this was designed to do was address concerns that we had voiced as a committee with prior versions of the castle doctrine. It provides very clearly that the use of force is authorized, including deadly force, set forth on page 4 of the bill, the underlined section between lines 5 and 14, "is presumed to be immediately necessary to protect the actor or another person against death or serious bodily harm if the person against whom the force is used, at the time the force is used, is unlawfully and forcibly entering, or has unlawfully and forcibly entered and is present within, the actor's

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dwelling or occupied motor vehicle or is unlawfully and forcibly removing or attempting to so remove another person against such other person's will from the actor's dwelling or occupied motor vehicle." That's meant do deal with both carjacking circumstances and the more traditional castle--your own home. And it does provide for an immunity from civil liability if the actions are consistent with these exceptions to the criminal liability that would otherwise attach, simply put. I know the...I'm being followed I think by the gentleman from the NRA and others who will be testifying on this, but I'd be happy to answer any of your questions as well. [LB804]

SENATOR LATHROP: I have a few. Senator Lautenbaugh, the presumption, you call this the castle doctrine light, did the previous versions include an automobile? [LB804]

SENATOR LAUTENBAUGH: Some did, some didn't would be my recollection. [LB804]

SENATOR LATHROP: Okay. And the presumption that's created, is that a rebuttable presumption? [LB804]

SENATOR LAUTENBAUGH: As worded here... [LB804]

SENATOR LATHROP: You would anticipate a rebuttable presumption? [LB804]

SENATOR LAUTENBAUGH: Yes. Absolutely. [LB804]

SENATOR LATHROP: So what you get for this is just a jury instruction that says there's a presumption that this is the case but it can be overcome by evidence. [LB804]

SENATOR LAUTENBAUGH: That or presumably not even getting to the jury. If... [LB804]

SENATOR LATHROP: If there's not sufficient evidence to overcome a presumption,... [LB804]

SENATOR LAUTENBAUGH: Exactly. [LB804]

SENATOR LATHROP: ...but it's a rebuttable presumption. [LB804]

SENATOR LAUTENBAUGH: Yes, sir. [LB804]

SENATOR LATHROP: And I'm trying to think. I get the house thing, because somebody could be...somebody is coming into your house and they don't have permission, they're not there for the right reasons. What do you see is the primary difference between this bill, as a statement of the law, and where we're at right now? [LB804]

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SENATOR LAUTENBAUGH: If nothing else, it certainly lends clarity to what the rights are of individuals to protect themselves in their homes and their cars, and clearly delineates that this is not criminal conduct if these factors apply and there is immunity from civil liability of these factors apply as well. [LB804]

SENATOR LATHROP: If I am...I'm just going to give you a hypothetical. It's 2:00, I'm at the bar, just about to leave, and somebody pulls on the door and jumps in the seat next to me. They do not display a weapon. Would this presumption apply in that circumstance? In other words, does somebody entering the car have to even present any kind of a threat or just coming into the car without permission? [LB804]

SENATOR LAUTENBAUGH: Well, as the language states here: presumed to be immediately necessary to protect the actor or another person if the person against whom the force is used, at the time the force is used, is unlawfully and forcibly entering or has unlawfully and forcibly entered and is present within. I think the forcibly element there would address...I was sitting at a Walgreens one time in my car on the phone and some gentleman came walking out of Walgreens and got in the passenger seat. His girlfriend was in an identical car, three cars down. [LB804]

SENATOR LATHROP: Right. [LB804]

SENATOR LAUTENBAUGH: And when I said excuse me, the guy about jumped out of his skin because he was not expecting a male voice or me sitting next to him, you know? I would...that was not a forcible entry, in my mind. That was him getting in the car. There seems to be more of an element of struggle or force, I would argue, in this. [LB804]

SENATOR LATHROP: And you've given me the perfect situation, because I'm not sure what "forcible," because I think if you go into somebody's house, just under burglary statutes, if you go into their house, even if all you do is just lift the window and crawl through it, it may not involve much by way of force, or even opening a door you're probably forcibly and unlawfully entering, and I'm just wondering if that's enough. Maybe we can have LaMont look at how "forcible and unlawfully" has been interpreted so that we're not catching the guy that jumps in the passenger seat and gets blasted for opening a passenger door... [LB804]

SENATOR LAUTENBAUGH: Yeah. Yeah. [LB804]

SENATOR LATHROP: ...for a mistake in judgment. [LB804]

SENATOR LAUTENBAUGH: I would agree. [LB804]

SENATOR ASHFORD: Any other questions? I don't see any, Scott. [LB804]

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SENATOR COUNCIL: I have one. [LB804]

SENATOR ASHFORD: Oh, I'm sorry. [LB804]

SENATOR COUNCIL: And Senator Lathrop's question, Senator Lautenbaugh, kind of got to mine in what's the difference. Right now under current law if I come home and I find somebody in my house who has no permission to be in my house and that person puts me in fear of immediate bodily injury or death, under current law I'm justified in using force, up to deadly force, aren't I? [LB804]

SENATOR LAUTENBAUGH: I know that this lends clarity to that, but I understand the argument you're making though. [LB804]

SENATOR COUNCIL: But, no, it really doesn't, because under this one it says "unlawfully and forcibly" enters. I come home. I don't know how you got in my house, but you're in my house. Under current law, if I come in my house and I find you in my house, you don't have permission to be in my house and your presence in my home places me in fear of serious bodily harm or death, under current law I'm justified to use force, up to and including deadly force, aren't I? [LB804]

SENATOR LAUTENBAUGH: I don't see where that's as clearly stated as what we're talking about here. [LB804]

SENATOR COUNCIL: Okay. Well, right now it says that the use of force shall..."The use of deadly force shall not be justifiable under this section," and I'm at 28-1409, "unless the actor believes that such force is necessary to protect himself against death, serious bodily harm, kidnapping or sexual intercourse compelled by force or threat." So it says it's not justifiable unless I believe that, so if I believe that, it's justifiable. And it goes on to say that I'm not obliged to retreat from my dwelling. So if I come home, find you in my house, I don't know how you got in there but you put me in fear of serious bodily harm, death, sexual intercourse, I'm justified to use deadly force under existing law. So I guess I'm just wondering what the necessity is. In fact, I think that the proposed bill complicates things, because it talks about unlawfully and forcibly. So both of those have to be present to be protected here, where neither of those have to be present to be protected under existing law. [LB804]

SENATOR LAUTENBAUGH: Sure. And I guess, Senator, what I would ask is I would like the opportunity to compare the language of the statute, with it in front of me, to this and give you a more comprehensive answer than I'm fumbling with right now. [LB804]

SENATOR COUNCIL: Okay. And in addition, the...and I don't know whether they plan to speak, but the Lincoln Police Department has similar concerns or questions with respect

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to... [LB804]

SENATOR LAUTENBAUGH: Right. I understood they were going to be testifying as well from the letter,... [LB804]

SENATOR COUNCIL: ...with respect to how you, you know... [LB804]

SENATOR LAUTENBAUGH: ...if they're still here. [LB804]

SENATOR COUNCIL: Okay. Thank you very much. And I apologize, I have to step out for a minute. It's no disrespect to people who are testifying. [LB804]

SENATOR ASHFORD: All right. Proponents. [LB804]

DANIEL CAREY: (Exhibit 17) Senator Ashford, members of the committee, my name is Daniel Carey, C-a-r-e-y, and I'm a registered lobbyist here representing the National Rifle Association. We support this bill mainly for two points. Our first point is the fact this will allow an individual, not only in their home but in any dwelling or in their vehicle, to protect the life of themselves or their family, whether it be force that's put upon them for imminent death or rape or murder, whatever the case might be, but that presence would therefore necessitate deadly force and allow them to use it without fear of legal repercussion. And secondly what this bill does that we support is, as Senator Lautenbaugh mentioned earlier, on the civil proceedings. This would allow the individual to be free of fear from being prosecuted civilly after they've been cleared criminally by either the family or friends or someone who supports the individual who is, unfortunately, killed in this instance when they were using deadly force. So I'd like to open it up to any questions because those are the two areas in which we support it the heaviest because of this bill. [LB804]

SENATOR ASHFORD: Okay. Any questions of Daniel? I don't see any, Daniel. I think we're... [LB804]

DANIEL CAREY: Okay. [LB804]

SENATOR ASHFORD: I think we're all right. Would you comment real briefly though... [LB804]

DANIEL CAREY: Sure. [LB804]

SENATOR ASHFORD: ...on Senator Council's point? [LB804]

DANIEL CAREY: Yeah, I'd like to make two points actually. One was to Senator Lathrop's point where he asked about a person jumping in a car. By no means would we

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advocate someone using deadly force if you happen to hop in a car. I could easily see what happened to Senator Lautenbaugh happening to anybody anywhere in the United States. I think that we trust the common sense of our citizens, who throughout the state may have this instance happen to them, to not use deadly force against this individual. All we're advocating, and we've put the language in there that says presence or, you know, occupying the area, is that we're trying to allow for individuals to be able to react to the situation and not have to worry about whether or not that if they do have to use deadly force that they are then going to be prosecuted in a court criminally and potentially civilly from the action that just took place. [LB804]

SENATOR ASHFORD: And you think the presumption...go ahead, Steve, it was your question. [LB804]

SENATOR LATHROP: Well, here's my concern. I appreciate what you're trying to accomplish. I agree with your objective. I wonder if we're creating an unintended consequence in this respect. If we're not changing the rules with this and not to go too...well, let me go lawyer for a minute. We're not changing the rules on whether you can or you can't use deadly force. [LB804]

DANIEL CAREY: Uh-huh. [LB804]

SENATOR LATHROP: That isn't changing at all. And what we've done is we will create a presumption that says you're presumed to have been within the law to use deadly force. [LB804]

DANIEL CAREY: Uh-huh. [LB804]

SENATOR LATHROP: But if the county attorney saw, and we'll take Senator Lautenbaugh's real-life example, the guy jumps in the car, and under the bill you'd be presumed to have had the authority under the law to shoot the guy... [LB804]

DANIEL CAREY: Sure. [LB804]

SENATOR LATHROP: ...or use your weapon on him, but that presumption can be overcome. And so a jury gets instructed something like this. They'd be instructed on the law as it exists today and they would be told Senator Lautenbaugh is presumed to have had the authority, but if you find sufficient evidence to suggest that the presumption is not applicable you may ignore the presumption and proceed to decide whether he's guilty of using deadly force when he shouldn't have under our current criminal statutes. [LB804]

DANIEL CAREY: Sure. And we're not trying to create any loopholes for individuals to be able to commit murder. [LB804]

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SENATOR LATHROP: No, no, no, I don't think you are. [LB804]

DANIEL CAREY: Yeah. [LB804]

SENATOR LATHROP: I don't think you are, but here's my concern. And I'm happy to work with you on this. [LB804]

DANIEL CAREY: Sure. [LB804]

SENATOR LATHROP: My concern is, is if the concealed carry guys have the class and they sit down and say, fellows, you're presumed to have authority to shoot somebody who's in your house, that you didn't let in, and what they don't understand is it doesn't stop them from being charged. It doesn't stop them from being judged by the same standard we use today. All it does is make them think that they're okay and, in reality, all they get is a jury instruction that says he's presumed to have had authority but if you find, Mr. and Mrs. jury member, that he didn't, you can ignore the presumption and go ahead and find him guilty. And here's my concern. I don't think you're changing the standard for when somebody can use the gun. [LB804]

DANIEL CAREY: Okay. [LB804]

SENATOR LATHROP: What you're doing is making somebody think it's okay when they're still going to be judged by the old standard, and to this point in time the castle doctrine bills that we have seen in committee have changed the standard in some respect... [LB804]

DANIEL CAREY: Uh-huh. [LB804]

SENATOR LATHROP: ...and not simply created a presumption that would make somebody with a concealed carry permit or otherwise have a gun think it's okay to do it. And that's my concern. I don't want a bunch of guys that have guns to think that now we've changed the rules and it's okay to do this, when in fact the same rules are going to apply, they just have the benefit of a presumption, which in a courtroom probably won't do them any good if they're Senator Lautenbaugh. [LB804]

DANIEL CAREY: Sure. And I don't want to create a law that essentially is either duplicative or ineffectual. I think that when he was speaking about the rebuttable presumption, I'll have to get clarification from my legal counsel because,... [LB804]

SENATOR LATHROP: Okay. [LB804]

DANIEL CAREY: ...again, it was my understanding, when drafting this language, that

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you know when we added the presumption by the homeowner or the vehicle owner, essentially the dwelling owner, that by having a person present in their dwelling illegally or unlawfully, that then there gave the ability to use deadly force and it was not a rebuttable presumption in a court of law. So again, I'll have to get clarification on that. [LB804]

SENATOR LATHROP: And certainly if it's a nonrebuttable presumption then you've significantly changed the rules. But if it's simply a rebuttable presumption... [LB804]

DANIEL CAREY: And I would think that our goal would be to have a nonrebuttable presumption because we want to be able to create an environment where these individuals are in their home, again, or their dwelling or their vehicle and not have to determine in a matter of seconds, when you're trying to protect yourself or your family, whether or not this person is there just to steal the tape out of your tape deck or they're there to, you know, rape your wife and kill both of you. [LB804]

SENATOR LATHROP: Right. [LB804]

DANIEL CAREY: That should be a decision that you should be able to look at afterwards and say, okay, I defended my life because I felt as though it was under duress or threat. [LB804]

SENATOR LATHROP: Uh-huh. [LB804]

DANIEL CAREY: So, yeah, I will get clarification on that but I wouldn't think that our goal... [LB804]

SENATOR LATHROP: And I'm happy to work with Senator Lautenbaugh and Ron on it,... [LB804]

DANIEL CAREY: Okay. [LB804]

SENATOR LATHROP: ...but I just want you to know what my thought process is... [LB804]

DANIEL CAREY: Sure. [LB804]

SENATOR LATHROP: ...because it may give a sense of comfort to people and they may think they're okay when, in fact, they're not... [LB804]

DANIEL CAREY: Sure. [LB804]

SENATOR LATHROP: ...under a particular circumstance. Thanks. [LB804]

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DANIEL CAREY: Yeah, no problem. And to what you had asked me, Chairman Ashford, and to, now that she's back in the room, Senator Council's point as to a person when they're in their home. At this point, as castle doctrine now states, unless you're under direct threat of death or bodily harm, my understanding of it is that you do not have the ability to use deadly force; that you have to be under direct threat of death or bodily harm; not just their presence in your home would necessitate the use or even allow the use of deadly force. [LB804]

SENATOR COUNCIL: May I respond? [LB804]

SENATOR ASHFORD: Sure. [LB804]

SENATOR COUNCIL: Reading the statute as it currently exists, it says the use of deadly force shall not be justifiable unless the actor believes that such threat is necessary to protect. [LB804]

DANIEL CAREY: Sure. [LB804]

SENATOR COUNCIL: So that's a reasonable belief. You know, I don't have to be under physical attack at the time. All I have to do is believe that I need to use this force to protect myself. [LB804]

DANIEL CAREY: Sure. [LB804]

SENATOR COUNCIL: And that's a reasonable belief. I guess arguably it could be an unreasonable belief. It's just a belief that I'm at risk of death, serious bodily harm, kidnapping, or sexual intercourse. [LB804]

DANIEL CAREY: I think what we're trying to do, and back to Senator Lathrop's point, is make clarification stating to the fact that just because that person is there, it doesn't give you the ability, at least in a court of law, which again would be a rebuttable presumption, in a court of law that that person, having been there, it would not give them a grounds for an argument in a court case for having killed this individual using deadly force, just for the fact that, you know, if you have a prosecution who's trying to make the case for the fact that if you kill this individual, that because you murdered them, how are they going to justify that. The justification shouldn't be laying on the citizen. It should be on the criminal for why were they there, not why did this citizen use deadly force when they were in a lawful place that they were allowed to be. [LB804]

SENATOR ASHFORD: And that's an absolute defense, not a presumption. [LB804]

DANIEL CAREY: Okay. Again, I apologize, I'm not an attorney, so... [LB804]

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SENATOR ASHFORD: I think that's the... [LB804]

DANIEL CAREY: Yeah. [LB804]

SENATOR ASHFORD: No, no, but then that's the problem I think we're seeing is just that. That isn't what that says. That's just...you know, that's the point, I guess. [LB804]

DANIEL CAREY: Okay. [LB804]

SENATOR ASHFORD: And we can think about it and figure out... [LB804]

DANIEL CAREY: Okay. [LB804]

SENATOR ASHFORD: Okay, good. Thanks, Daniel. [LB804]

DANIEL CAREY: Yeah, thank you very much. Appreciate your time. [LB804]

SENATOR ASHFORD: Yeah. [LB804]

ANDY ALLEN: Andy Allen, president of the Nebraska Firearms Owners Association. Last name is A-I-I-e-n. I don't have to get real into depth here on...you know what our position is. We've been here talking about this now, let's see, what is this, the sixth hearing in the last four years. This is the third bill dealing with it. First, I'd like to, even though he's not here, thank Senator Lautenbaugh. You know, we had a bill was it three years ago now, the first actual bill for this. It was very confusing. I understand a lot of you guys' comments. We were confused by it at points in time too. Last year we had another bill come up. That was really...Senator Christensen has worked with a lot of people throughout the state in helping get that bill written up and I'm bringing that up because that is the bill where vehicles first showed up, and that hits your question on the vehicle. That was added to that bill for the reason there were several truck drivers that live here in the state that park their rigs, of course, in rest areas or wherever is appropriate to sleep at night and they were concerned that, you know, hey, you know, yeah, Nebraska hasn't had a real problem with people breaking into trucks and attacking, but in some states, the rural areas, they've had issues with that. So there were several truck drivers that asked for that to be added and that's where that came into be. Let's see, the...let's see, I guess I'm going to try and address maybe the forcefully and illegally questions a little bit that Senator Council has, and that's just in the fact that, you know, we had testimony last year. You know, you're correct. The current law says if you believe that you're under imminent threat of...that you have...but, unfortunately, that's not what the courts have used as a standard. They have not used your belief as a standard. They've applied a different standard called the reasonable man standard, and we had an attorney that had come from the Supreme Court here last

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year that explained this. You know, the courts have gone what would a reasonable man in your position have felt. My question is, Senator Council, you were just happened to be coming home at 2:00 in the morning and that man is standing in your house. When you...where you were before that was at a family ceremony. We've had constantly shooting scenes in Omaha. You were there, where they were holding one of the candlelight vigils. I've been to them, we've all been, to support the family. We've unfortunately had that happen too many times. We've also had a couple times where, while that's going on, somebody else has come by and done another...pulled another shooting in that situation. So you've just come home from that and you're getting into your home and there's a strange man in your house. I have no doubt that you would be afraid for your life in that situation. What actions you may take, we all react differently. You know, those of us who talk about self-defense and so forth, we'd like to know what we'd do. In truth, you know, I've been in war zones. We don't know. You don't know what you're going to do until you're there. [LB804]

SENATOR ASHFORD: Allen, let's see if there are any questions. Yes, Senator Council, do you have a question? [LB804]

SENATOR COUNCIL: Just a comment: Mr. Allen, if I'm coming home from the bar at 2:00 in the morning, if somebody is in my house without my permission, I'm going to have a fear for my...I don't care where I'm coming from. If they're in my house at 2:00 in the morning and without my permission, they have no business being in my home at 2:00 in the morning. [LB804]

ANDY ALLEN: I agree they have no business. [LB804]

SENATOR COUNCIL: And then in terms of the automobile issue, again, under current law, "Subject to the provisions of this section and of Section 28-1414, the use of force upon or toward another person is justifiable when the actor believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by such other person on the present occasion." So if I'm a trucker sleeping in my truck and somebody comes into my truck without my permission, I think that most people are going to believe that they're at some risk of some harm to themselves, then the reasonable man standard, admittedly, but first of all we got to get through the prosecutorial stage. And at least my experience has been most prosecutors are going to conclude that a reasonable person under those circumstances, because I saw him to do it just as recently as the Walgreens situation, are going to say it was reasonable for that person to believe that he and the others around...it was reasonable for them to believe that they were in threat of immediate bodily injury. So I guess... [LB804]

ANDY ALLEN: That's a... [LB804]

SENATOR COUNCIL: ...I hate to keep saying that, you know, we've got these solutions

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looking for problems but... [LB804]

ANDY ALLEN: That's a pretty...that's a pretty easy one to believe that he's under the impression that he's under immediate bodily harm, because he was looking down the barrel of the shotgun. One of his bullets was found in the barrel of the shotgun so obviously that gun, at least at some point, was pointed at him. When you have a gun pointed at you, I don't think that a reasonable...I don't think an unreasonable person would not be in fear of severe bodily harm or death. [LB804]

SENATOR ASHFORD: And I think that's the point that we're making and I think we need to think about, as we look at this, that's the point. We're agreeing with you... [LB804]

ANDY ALLEN: Yeah. [LB804]

SENATOR ASHFORD: ...that you are under some reasonable fear, so... [LB804]

ANDY ALLEN: And back on the cars, right now when that trucker is in his truck, under our current statute he has a duty to retreat if there's the possibility, and then we throw in there's the reasonable man. Well, the reasonable man may think, well, could he have slipped out the passenger door? Could he have? You know, that brings in a whole lot of questions that the guy that was there in that situation, that was woke up after he's had an hour of sleep isn't going to have the time to think or do or react. He's got to...if he's going to defend himself, he's got to do it now or he's dead. [LB804]

SENATOR ASHFORD: Yeah, and I think those are...we'd agree with you probably on that. Okay. Good. Thanks. [LB804]

ANDY ALLEN: Uh-huh. [LB804]

SENATOR ASHFORD: Come on up. [LB804]

ROD MOELLER: Mr. Chairman, committee members, thank you. My name is Rod Moeller, M-o-e-l-l-e-r. I'm from Omaha, Nebraska. I have been watching the discussion on this topic for the past few years. Each year this important issue is brought up and heard and discussed. I've listened carefully to the concerns raised by the members of this committee. We may not all share the same overall opinions, but I believe there are some areas where we should be able to agree. Some of the concerns that were brought up about the language from last year's bill was that gangs on the streets might use the wording of the new bill to use as a defense. I think that the current bill that was introduced now, LB804 that we're talking about, I think that issue should be addressed, though it's silly to think that they would choose to use that as their defense. As I'm constantly told by the Omaha police, via the media, there's never any witnesses. So that

would be about the worst of all defense strategies to actually admit having done something. Also, it was raised about the concern about being shot in the back while exiting after stealing something. I think that's addressed by the language in this bill. Obviously, when somebody is exiting and they're back is to you, they're no longer a threat. Some of you are not shy about your negative views of guns and, I believe, gun owners. It's very important that you understand this point, though. This is not a gun bill. This is about the legal use of force. This is about the defensive use of force, whatever the tool. Of course, a gun is a very effective tool, but there are no references to guns in the existing law, nor are there references in this bill beyond the initial definition of, you know, somebody firing a firearm at you is considered a threat. That's in the definition section. This law applies to anyone using any tool. It could be a baseball bat that is kept by the front door or a knife in the kitchen. It applies to Grandma that uses that baseball bat or applies to the college girl that's been taking martial arts for several years, the young woman that has been through a weekend self-defense class. Anyone that has taken a self-defense class knows they use what is available and your body is potentially lethal when used in the right manner. I know it's easy to compartmentalize this as a gun bill when there's pro Second Amendment groups who are speaking in favor of this, but again it's not a gun bill. It's also important that you understand this point as well. The law does not affect how people behave in a critical self-defense situation. No parent will stop to think about what is legally allowed prior to saving their child, nor will they care at that point in time. Self-preservation is an instinct. The law is really about what happens after the fact, what will the courts do. Will they prosecute you for protecting your kids, for defending yourself? Will they welcome the filing of an opportunistic civil lawsuit? Will they agree that your life-threatening situation should become payday for the family of the one who perpetrated the attack? Will the Nebraska Legislature allow the victims of violent crime to become victimized again by our own laws; will this committee? In closing, I would like to thank Senator Lautenbaugh for introducing this bill. I believe he's done an excellent job of trying to craft some difficult language that addresses the concerns that have been raised by this committee in the past. And I also wanted to thank Senator Lathrop, for your show of willingness to work with the language of this bill to try to properly address some of the concerns. [LB804]

SENATOR ASHFORD: Yeah, I don't know but my guess is most of us agree with the Second Amendment. I think the question we're dealing with here is how do you craft a law that addresses the problems that you're raising, because I don't think anyone here is going to disagree that no one should be prosecuted for defending their kids in their homes. So I think we agree, I think, with that basic premise. I think the question is how do you...once we write one of these things then it's the law and then it gets interpreted many different ways. So that I think is the concern. [LB804]

SENATOR MCGILL: Well, it's that and showing us that there really is a problem, that people are being wrongly sued for protecting themselves. [LB804]

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ROD MOELLER: Well, and that has happened in a number of states and, quite honestly, I know that that's a repeated question, is show me an example here. But if we know that it happens around the country, do we really believe that Nebraska is so different from the rest of the country that... [LB804]

SENATOR MCGILL: It's still just a handful of, like, random cases though. And so for me, that's something where... [LB804]

ROD MOELLER: But the problem is the current... [LB804]

SENATOR MCGILL: ...you said you're trying to solve a problem, and I'm sitting here wondering how big of a problem this really is. [LB804]

ROD MOELLER: If you look at this...I do recognize that and I'm not an advocate of solutions in search of a problem. [LB804]

SENATOR MCGILL: Yeah. [LB804]

ROD MOELLER: But if you look at the language, at some point...and I don't know the history of this, I mean I doubt anybody in the room knows the history of this current language, but somebody at one time explicitly put in there that you may be open to a lawsuit. If you look at the existing language, somebody had apparently put that in explicitly stating you have no protection, that you are open to a civil lawsuit. [LB804]

SENATOR ASHFORD: And that question...and I think what I've...that's a good issue and I think that that can be addressed. I mean I agree with you that that is a...that that is a issue and so you're right. I mean should someone who's defending their family in a normal circumstance like that, it's not normal, when that happens should you be subject to civil liability or should there be an immunity created, and I think that's a responsible position to take and, you know, that we should probably craft some language on that. So I'm not necessarily...we're not necessarily...and I know you're not saying that, we're not necessarily disagreeing, so...but anyway thanks. Any other points or questions? Thank you. And you are here a time or two and we like it when you come, so... [LB804]

ROD MOELLER: Thank you. [LB804]

SENATOR ASHFORD: Any other proponents? Opponents? Chief. [LB804]

DAVID BAKER: (Exhibit 18) Good afternoon, Senators. Thank you for your time today. I know this has gone on quite a while so I'll try and be brief. Due to the limited time we have, I won't rehash Lincoln PD's argument nor Senator Council's comments on the ambiguity problems of the bill, except to say that the police department in Omaha shares those concerns. The issues that we have and the reason I'm here to oppose

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LB804... [LB804]

SENATOR COUNCIL: Excuse me. You still have to identify. [LB804]

SENATOR ASHFORD: Yeah, you have to do your... [LB804]

SENATOR COUNCIL: We all know you but you still have to identify yourself. [LB804]

SENATOR ASHFORD: You still have to. We know you but... [LB804]

DAVID BAKER: Oh, I'm very sorry. David Baker, deputy chief, Omaha Police Department, D-a-v-i-d B-a-k-e-r. [LB804]

SENATOR ASHFORD: Thanks. [LB804]

DAVID BAKER: One of the concerns that we have here, and I appreciate Senator Lathrop's questions on this, is I've looked over this fairly carefully, the chief of police has looked over it, as have the city attorneys. We've yet to find the word "rebuttable" in here. It doesn't appear that that's the case. What this does is appears to create an exception and the concern that the police department has is this exception in LB804 could be misused too easily to provide an otherwise illegitimate defense for a criminal homicide or assault. LB804 essentially lowers the bar for the use of deadly force. Senator Council has told us here what the current bar is. You have to be in fear of bodily harm. You have to be in fear of death. That's removed here, if you look at the exception. There's no rebuttable part in it, at least not in its current form, and the exception says "presence." Essentially what we have here is the threat of presence in your home, with nothing else. There's nothing here to say that if you shoot somebody who's exiting or leaving but they're still in your home that that is not part of the exception. It doesn't cover that. It appears to cover that type of thing. This essentially makes criminal trespass a capital offense, and that's what we're concerned about. We're also concerned about that this exception...and we understand and support the concept behind it. I don't want to come here and say people do not have a right to defend themselves in their own home. We strongly believe in that. We strongly believe in the Second Amendment and its application to individuals. However, in this particular case, it's far too easy to go over the lower bar in this type of situation, in a situation where you don't have witnesses where you could create evidence of a forcible entry, and it does appear in the forcible entry to be a little bit more than in burglary because it has to be forcible entry to the extent that it would constitute a tort action otherwise, evidently some damage of sorts. I could tear my screen, I could do whatever I wanted to do and then invite an ex-wife over. You can imagine what kind of problems we would have in landlord disputes and misunderstanding of this law in landlord disputes. I'm not saying the landlords can legally be in your house or in your rented apartment for whatever reason, but you understand where this could start to be a problem. We are in this bill giving our citizens

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or extending to our citizens the right of self-defense against mere presence. We're lowering the bar for killing someone, essentially up to that. We understand why it's there. Somebody stated earlier this is the defensive bill. It's more than that. It's more than just defensive against an attack. It's defensive against mere presence in its current form. We're happy to work with anybody to change that to make it less of a problem in a prosecution, but as it sits now this is an easy out in a prosecutorial environment to create the illusion, if it was or was not there, that there was force used to enter and this person should not be there. I did not invite this person in. It's you and me here and you're dead, and the evidence is not going to show one way or another what we talked about before, and that's our problem. I'll be happy to answer any questions. I'm sorry I ran over a little bit. [LB804]

SENATOR ASHFORD: Any questions? I don't see any, David. Thanks for spending the afternoon with us. [LB804]

DAVID BAKER: Thank you. [LB804]

AMY PRENDA: Good afternoon. I'm going to be brief. I'm Amy Prenda, last name P-r-e-n-d-a, with the Nebraska County Attorneys Association. They were going to send a letter in opposition but I'm not sure that you've received it yet. We just went through bills on Monday. I obviously am not a prosecutor, but their concern was that the language was a little bit too broad and would be difficult to prosecute under those circumstances, so I just wanted to make sure that we were on the record as opposing it as drafted currently. And I'd be happy to try and answer any questions you might have. [LB804]

SENATOR ASHFORD: Questions of Amy? Seeing none, thanks, Amy. Do we have any neutral testifiers? (See also Exhibit 19) Okay, that will conclude...Senator Lautenbaugh has waived closing. [LB804]

SENATOR COASH: He told me I could close for him and I'm going to waive on his behalf. [LB804]

SENATOR ASHFORD: Oh, okay. (Laughter) Well done. [LB804]

SENATOR COUNCIL: That's a good one. That's a good one. [LB804]

SENATOR ASHFORD: Thank you all. [LB804]