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Judiciary Committee
January 22, 2014

[LB672 LB730 LB748 LB769]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, January 22, 2014, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB769, LB748, LB730, and LB672. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Ernie Chambers; Colby Coash; Al Davis; Amanda McGill; and Les Seiler. Senators absent: Mark Christensen.

SENATOR ASHFORD: Good afternoon, everyone. Let's get started with LB769. Senator Crawford is here for her debut appearance before the auspicious Committee of Judiciary. Thank you, Sue. Welcome. [LB769]

SENATOR CRAWFORD: Thank you. Good afternoon. [LB769]

SENATOR ASHFORD: LB769. [LB769]

SENATOR CRAWFORD: (Exhibit 2) Good afternoon, Chairman Ashford and members of the Judiciary Committee. And thank you so much for your time. My name is Sue Crawford, C-r-a-w-f-o-r-d, and I represent the 45th Legislative District in Bellevue, Offutt, and eastern Sarpy County. We introduce LB769, an attempt to help parents and judges answer the following question: What does a child need when a parent is deployed? LB769 provides an additional option for parents and judges when determining the best interests of the child during the stress and uncertainty of deployment. In 2011, when then-Speaker Mike Flood brought LB673 to the Judiciary Committee, that bill made several changes to Nebraska's Parenting Act in recognition of the unique challenges that military families face as a result of deployment. Because of LB673, a military parent's status as a service member, mobilization, or deployment can no longer be sufficient grounds to modify custody or parenting time, nor can their failure to make their parenting time, because of a deployment or mobilization, serve as grounds to modify their custody agreement. Custody or parenting time plans cannot be altered during a military parent's deployment unless the change allows increased visitation time during military leave. And when a military parent returns home, she can request a hearing to reinstate the original custody arrangement so long as the court finds that arrangement to be in the best interests of the child. The bill I bring before you today, LB769, improves upon these important protections for the military parents with shared custody or visitation rights, that you have already passed, in two key ways. (1) Courts can grant orders to allow a military parent to present testimony and evidence by electronic or other means with advance notice of the request if the military parent is unable to attend the hearing due to deployment or mobilization. (2) The bill creates a process by which military parents can delegate some or all of their parenting time to a family member or another adult who has a close, meaningful relationship to the child if a judge finds this delegation is in the best interests of the child. The bill also allows military families to preplan for deployment by creating a delegation plan as part of their parenting plan

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during the mediation process. We started this process because of the impact deployments have on military families. However, we did not want to restrict judges' discretion and we wanted other parents to be able to use this tool as well. As such, we prepared an amendment which the pages are now circulating or have circulated. The amendment allows Nebraska families, regardless of whether they are members of the military, to create a delegation plan or option to delegate as part of their parenting plan. With the amendment, military parents still have the option to request a court proceeding to delegate their parenting time in the case of a deployment or mobilization. This trigger allows families in stressful situations, like deployment, where a delegation was not part of the original parenting plan, to adjust their plan accordingly. The amendment is the result of conversations we had with our Nebraska Bar Association's family law section. As part of our work on this bill, we also contacted the County Judges Association, the Mediation Center here in Lincoln, and several attorneys in the Omaha area who specialize in family law. I would like to spend a moment discussing the difference between a delegation plan and an option to delegate. An option to delegate creates a process for parents who know they will be absent for a period of time, like a deployment, but do not know specifically when this absence may take place. A delegation plan, on the other hand, creates a process for parents who know when, or the circumstances under which, an absence may occur. The nonparent delegate can be a grandparent, aunt, uncle, or a stepparent who has a preexisting significant relationship with the child. The bill uses kinship language we passed in Senator Coash's bill, LB265. The time this close relative or trusted adult spends with a child cannot exceed the parenting time or visitation granted under the existing parenting plan, except that a court may take travel time to transport the child into consideration. Regardless of the nonparent delegate chosen, the judge has final say over who the child spends time with and if the delegation itself is in the best interests of the child. When the military parent returns from deployment, this delegation ends. A delegation plan does not establish separate rights for the nonparent delegate nor does it alter the parent's duties to pay or receive child support payments under an existing child support order. LB769 does not address the amount of time a military parent receives in a parenting plan. Rather it addresses what can be done with that time that's provided. Whatever the time the military parent has available to him or her, this bill creates a process for a judge to allow the child to spend that time with extended family and kinship members if it's in the best interests of the child. Women in the military are more likely to be divorced than their civilian counterparts, and divorce rates for military families have increased since 9/11. Deployments, especially lengthy ones, can cause stress and anxiety for children and their families. These feelings are often magnified for children whose parents are separated or divorced. For military children with divorced or separated parents, deployment can mean their relationships with their military parent and their military parent's family ends or is substantially altered by their absence. These disruptions may have a profound and lasting impact on the child. Regular visits with a grandparent or other trusted adult can bring stability and consistency to a military child during this tumultuous time in their life. Allowing a military child to spend meaningful time with a

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family member or other trusted adult while their parent is deployed offers benefits for the nonmilitary parent as well. Delegation plans can offer respite for the nonmilitary parent who faces increased parental responsibilities as a result of deployment. Speaker Flood's bill received overwhelming support and recognized the unique challenges military families face in child custody issues. Nebraska law now contains many protections for children and their military parents. With LB769, we now have the opportunity to provide these children a safe and comforting environment that continues to foster the relationship between the child and their military parent's extended family during a lengthy separation. Amie Martinez will speak next to answer technical questions and, as a family law attorney, explain how this bill will work on the ground. Thank you again for the opportunity to appear before you today. I am happy to try to answer any questions that you have now, or I can wait until closing in case other people who testify can answer your questions. [LB769]

SENATOR ASHFORD: I'd just make one quick comment. I theoretically would have no objection to the idea. We...in the '90s, we passed the original Parenting Act which was my bill. It didn't call for mandatory mediation but it did require...or it provided for mediation as an option. I'm not convinced that we...that the Parenting Act has resulted in the kinds of results that are in the best interests of the children, generally. And I...that doesn't really necessarily have anything to do directly with this. [LB769]

SENATOR CRAWFORD: Okay. [LB769]

SENATOR ASHFORD: But as we proceed with other bills that deal with this, I'm concerned about parenting time, generally, in the process, and so; but I do see the overriding concern of military parents. Anyway, thank you. Anybody else? [LB769]

SENATOR CRAWFORD: All right. [LB769]

SENATOR ASHFORD: Amie, is Amie here? Amie knows probably, because she's been here, but we have a three-minute testimony rule. So the yellow light will indicate when it's time to sum up, and then the red light is an ejection thing. (Laughter) An apparatus will appear from the...sometimes, from the ceiling; sometimes...we just never know. Okay, thank you. [LB769]

AMIE MARTINEZ: Thank you. Good afternoon. My name is Amie Martinez and I appear before you as the president-elect of the Nebraska State Bar Association. And thank you to Senator Crawford for allowing me to speak this afternoon. I'm going to speak briefly just to the amendment as proposed to LB769. And let me start by saying, first, we understand the concern that's being brought forward with regard to military parents. And the basis for the requested amendment, at least from our perspective, is that we want to ensure that all children have the very best situation that's possible regardless of whether they happen to have the benefit of having a military parent or not. So the changes in the

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amendment are really intended to encompass all parents, to give them the option to delegate. And I think the senator spoke generally to the kind of situations that arise when a parent is not able to exercise their parenting time. And sometimes it's based on a myriad of factors, right? It's the fact that they're deployed or it's the fact that their work takes them away for the weekend or other circumstances. When that kind of situation happens, if you have a situation that is less than harmonious in a divorce, which is frequently the case, and let's not forget paternity cases where folks have never been married in the first place and have never had that relationship, we get into a situation where children are not allowed to go see sometimes their half-sibling or their grandparents that they've lived with while they lived with or spent time with their mother or with their father during that parenting time. And as a result of that parent's inability to exercise that particular visitation--and I say visitation but we really try to call it parenting time, because I'm a firm believer that you don't visit your children; you have parenting time with your children--and when they're not able to go see the family that they're used to just because their noncustodial parent isn't there, that's hard on children. And we wanted to ensure that they had the option to be able to see those folks. So we've asked for some broadening of that language, and the senator has been kind enough to take that into account. I'm happy to answer any questions or to explain anything if anyone has any questions. I am a family law practitioner so I can... [LB769]

SENATOR ASHFORD: Senator Coash. [LB769]

SENATOR COASH: Thank you, Senator Ashford. Amie, Senator Crawford's bill is geared towards military parents. But as I was reading some of the...well, the language of the bill and some of the testimony we've heard, it occurred to me that this has...not under the current draft but this has potential for further-reaching applications. What about parents of children who are incarcerated? You know, one parent goes away for 1-3 and still wants to...I mean, it's kind of a similar situation. Do you see how...do you see any opportunity to apply that to that kind of scenario as well? [LB769]

AMIE MARTINEZ: Um-hum, we do. And that's a good question. And again, the amendment takes out the requirement really that it has to be just the military situation, Senator, so that if you have someone...typically, if someone is going to be sentenced to a period of 1-3 years, a party is going to have an opportunity to go into court and have something modified maybe on a more permanent basis. But, say, you get somebody who is a shoplifter or something happens and they go away for 60 days. There's not sufficient time to get into court to change that or to enforce anything. And so frequently kids will lose contact with that parent or their extended family for that 60-day period with no recourse. So this I do think allows for a very broad application, that it be applicable, an option for all parents. It's a good question. Thank you. [LB769]

SENATOR COASH: Thank you. [LB769]

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SENATOR ASHFORD: Senator Chambers. [LB769]

SENATOR CHAMBERS: This amendment does say that all of these delegations of visiting opportunities would be terminated upon the death of the one who had the right to visit. Suppose a person was--it could even be the parent who is deployed--a long-term coma. For how long would those delegated visiting rights continue? [LB769]

AMIE MARTINEZ: Well, two things, right? It's a good question, Senator. And if there were a death, then obviously the parenting rights, right, would terminate. So there would be no vehicle to get to that. So I would expect that a court would say it can't enforce it this way; whatever party is seeking to maintain some sort of contact is going to have to file their own action. And again, that's a more permanent situation, something longer, like what Senator Coash was speaking about, with the 1-3 sentence for example. A long-term coma, I'm not sure...I guess I haven't had that situation. My inclination would be, you still have a living parent, you're still going to have that vehicle to get there, and it may be possible, depending on where that person is hospitalized, that it's possible for the children to even go and see that parent. So I would expect that the delegation would remain in place during that period of time. [LB769]

SENATOR CHAMBERS: I had thought this former Israeli Prime Minister had died. But he had been in a coma either 8-10 years, so just...you...it goes on and on and on. As you pointed out, divorces can be acrimonious. The family with the child may not want to stay where they are located. They may not want to be tied to that person. They have no say-so as to whether medical assists to stay alive were in place, whether somebody had been granted the right to terminate medical services by the person before he or she fell into the coma, and that person would not want to terminate the life. So that person who is in the coma would be considered legally and medically alive. And in the same way that there are issues that haven't even occurred to me, because I just got the amendment, I'm not expecting you to give answers to every question that we give and give them definitively. But these kind of matters always are of concern to me. The more moving parts you put into these bad situations, the more outside people you involve, the more chance there is for aggravation and exacerbation to occur. So I haven't made up my mind how I will do on the original; but with this amendment, I certainly don't know. I just want you to be aware that my failure to ask a lot of questions doesn't mean I don't have them. I just haven't formulated. And I don't want to take a lot of time stumbling and fumbling here, trying to put what I'm thinking into the form of a question. That's all that I would have though. [LB769]

SENATOR ASHFORD: Thanks, Senator Chambers. Senator Lathrop. [LB769]

SENATOR LATHROP: Just a few questions sort of about the process. So if a military person is going through a divorce from a nonmilitary person, the military person, they can go to mediation, right? And as part of the parenting plan, the military person can

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say, I'm going to delegate my parenting time to my mother in the event I'm deployed overseas. That's the idea, am I right? [LB769]

AMIE MARTINEZ: Yes. [LB769]

SENATOR LATHROP: So the first question I'd have is, is the court to...if they don't agree, because sometimes they don't; they go and fight over custody, right? [LB769]

AMIE MARTINEZ: Um-hum. [LB769]

SENATOR LATHROP: And so you have no parenting plan that has been formulated by agreement of the parties but imposed by the court. Would the court impose a delegation plan in that instance; or are delegation plans only done by agreement of the parties? [LB769]

AMIE MARTINEZ: I believe the way...and I would defer to Senator Crawford on that, but I believe the intent and I believe the way it's drafted is that the court would have the opportunity to create a parenting plan that included for that delegation option. Just speaking to what Senator Chambers was asking or commenting on, was that there are a lot of moving parts,... [LB769]

SENATOR LATHROP: Right. [LB769]

AMIE MARTINEZ: ...and with families it tends to get bigger and bigger. And so as many of those options as the court can consider to try to loft out resolution for, the less there is to fight about and the less there is of people to be concerned about because they're not sure how to interpret that. So if that were an option, meaning there's a possibility that a parent is going to be deployed, that is something that in our world the court would need to know about and be able to plan for. [LB769]

SENATOR LATHROP: But wouldn't the court need to then have a hearing or have the trial include the suitability of the delegatee? [LB769]

AMIE MARTINEZ: I think the plan itself, as I understand it, would be a trusted adult that has a preexisting relationship with, a family member that has a preexisting relationship. And that would be something that would be...ideally, that would be the language that would be included in there where they're identified. I think there's a later portion in the bill that says you should identify them by name, who you intend that to be. So that would be known to the parties at the time of trial. In order to change anything, you would have to just...and not really a divorce primer by any means, but when you have an original action and there's a decree that's put in place that says this is the parenting plan, for anyone to come back and change it because of a ten-year coma or because of deployment, you have to be able to show that it was something that was not anticipated

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by the parties at the time of the original order. [LB769]

SENATOR LATHROP: Right. [LB769]

AMIE MARTINEZ: So if someone came back a year later and said: Now I'm being deployed like I knew 18 months ago I was going to be deployed; the other side would be able to say: But you knew about that at the time and you didn't ask us to take anything into account. So I think the court would lean towards trying to get that issue resolved at the outset rather than later. [LB769]

SENATOR LATHROP: Okay. So if we can't agree, I'm in the military, I fly jets and I'm going to be deployed, and I'm going through a divorce, I designate my brother, okay? If we can't agree on that as part of developing a parenting plan through the mediation process or by agreement, it now goes in front of the district court who, number one, has to decide whether Mom or Dad get the kid or the children... [LB769]

AMIE MARTINEZ: Or both. [LB769]

SENATOR LATHROP: Or both. And then in the event one of the people is in the military, they're going to have to say: And who do you pick to be the delegatee? Right? Who do you want to have...if you're deployed who do you want that person to be? [LB769]

AMIE MARTINEZ: Right. [LB769]

SENATOR LATHROP: They say: Well, I want my brother to do it. And then that soon-to-be ex-wife says: Well, I think he's a scoundrel; I don't want him to be around the kids and he shouldn't be around the kids and I think he's a terrible choice. So now we're going to have, in addition to deciding how we sort the time out between Mom and Dad, we've got to take up the suitability of the person that the military person designates. Right? [LB769]

AMIE MARTINEZ: Right. [LB769]

SENATOR LATHROP: And then what happens if I get deployed? And whether by agreement or by the court order, the person that has been delegated by the military fellow or member...and now they're off to the Middle East. And the brother or whoever the person is that's been delegated to have that parenting time starts saying negative things about Mom, or drinks and then drives the kids around, or does some of those things that cause all sorts of problems. Do we then have litigation between Mom and the person who is delegated--I'm going to use, I know it's not right, there's plenty of women in the military, but I'm going to use the dad as the military member. So Mom now brings some kind of a motion to jettison the person delegated while the military member is in

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the Middle East, his choice is under attack; and how does that litigation proceed?
[LB769]

AMIE MARTINEZ: Two things there. I like all these hypotheticals. [LB769]

SENATOR LATHROP: Well, I... [LB769]

SENATOR ASHFORD: That one is pretty...it could happen pretty quickly, I would think.
[LB769]

SENATOR LATHROP: I think that's a realistic what-if, so. [LB769]

AMIE MARTINEZ: And I think it's not unrealistic by any means. So let's say, from a court's perspective and from a practitioner and as a parent's perspective, I'd much rather have the court tell me ahead of time that your brother Jeff is going to be able to exercise the parenting time. The issue has been resolved. That's the answer; that's the court order. As opposed to later on when the decree comes down, then you decide that you want it to be delegated to Jeff instead of having him named earlier, and then having that issue where parents haven't had an opportunity to address that in court. So I think it actually heads off one level of concern to be able to briefly talk about that at the court...at the initial hearing. The second level then is sort of if there's problems, right; and it goes south and somebody doesn't like what somebody else is saying. [LB769]

SENATOR LATHROP: Before we go to the second problem, let me ask you this. What if Jeff, my brother Jeff is the person they delegate and we don't like him? Do we continue the hearing while I pick number two? I've got nine kids in my family and I start going through...(laughter), I start going through my brothers and the district court says, the oldest one in your family is not suitable. And I go, well, wait, I've got eight more, so let me bring...let's take up my oldest brother and we're going to decide whether he's suitable. I'm just wondering about, in the initial process, if there's not agreement and we have to litigate, does the military person bring in a list of people and say these are the people that I want and we're going to take up their suitability? And if you're doing discovery, if you're the representing Mom, you go, tell me everybody you intend to delegate this to because I want to do...I want to talk to my client and find out who you want to delegate before we get to trial so that I can find out if they're suitable or not.
[LB769]

AMIE MARTINEZ: Sure. And those are decisions I couldn't make but I can tell you that from a court's perspective whatever the issue is presented at that time, the court will decide. And as I understand the bill...and again, I'll defer to the senator, but there is a...the first delegatee and then an option. So there are two people that can be named. And there's no better time than when you're in front of the judge to get approval or denial of a particular party to have that issue resolved. So I guess if the party wants to

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say, look, these are my ten; can you give me at least two? That may be an option for them. In all practical purposes, I don't think that that would be very likely. But someone would say these are the people I want to delegate: My mother is going to be available and my sister, that's who's going to be available. And the court can say, you know what, I don't think either of those people are suitable; no plan for delegation is going to be approved as part of your parenting plan. [LB769]

SENATOR LATHROP: But you would agree we're expanding the divorce trial or the custody trial times two, because we're taking up Mom and Dad and now we've got to take up the suitability of the person the military guy delegates to. [LB769]

AMIE MARTINEZ: I see your concern and I can't tell you that it is not expanding the number of issues that would be addressed originally. I certainly wouldn't say times two. But I also think that if you...practically, just for everyone's benefit, this happens. Practically, parents are doing this anyway. It starts some fights. A lot of people are able to agree, but for the people that aren't able to agree this offers them an answer. And let's not forget the whole purpose in this is trying to make sure that these kids are able to see who they should be seeing. [LB769]

SENATOR LATHROP: Oh, I get that. Except I'm just trying to figure out how the fighting goes on,... [LB769]

AMIE MARTINEZ: Right. [LB769]

SENATOR LATHROP: ...because the process is of concern to us as well. [LB769]

AMIE MARTINEZ: Um-hum, sure. To us also. [LB769]

SENATOR LATHROP: Tell me about...the military person is now off in Iraq and the brother is now the delegatee, okay? Maybe we didn't know he drank that much, but he does. And he's driving the kids around while he's intoxicated, or he's bringing his girlfriend over in front of the young kids and spending the night, whatever might be the concern with the habits and the conduct of the person that was delegated by the military person. How does that litigation proceed? Because the parties...one of the parties is now in Iraq in my hypothetical. [LB769]

AMIE MARTINEZ: It would be...in your hypothetical, which can also happen, by the way, even if you have somebody that's not deployed but their new spouse is doing the type of "scoundrelish" things that you were talking about... [LB769]

SENATOR LATHROP: Right. [LB769]

AMIE MARTINEZ: ...and another parent doesn't like it. This does not create...again, as I

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understand it, it does not create any new course of action, can't be named as a party just because they're a delegatee--I'm not sure that's a word--but just because they are there to exercise that parenting time. So if a parent has a problem with the parenting plan in the lawsuit of you versus me, they have to go back in through that lawsuit and file for a modification. And that would be a material--theoretically--a material change in circumstances to be addressed by the court to determine if it's sufficient to modify the order. [LB769]

SENATOR LATHROP: Can brother Jeff enforce his right? [LB769]

AMIE MARTINEZ: No. [LB769]

SENATOR LATHROP: Can brother Jeff enforce his right? So my military person is now in Iraq and the mom in my hypothetical says, I don't care what that says; I'm not giving you the kids. [LB769]

AMIE MARTINEZ: Right. [LB769]

SENATOR LATHROP: There's no recourse. [LB769]

AMIE MARTINEZ: And don't kid yourself, that will happen. There will be a parent that says I'm still not doing it. [LB769]

SENATOR LATHROP: I know. [LB769]

AMIE MARTINEZ: Of course there will. [LB769]

SENATOR LATHROP: I know, which is why I'm trying to understand what the process is. [LB769]

AMIE MARTINEZ: Sure. [LB769]

SENATOR LATHROP: Let me ask one... [LB769]

AMIE MARTINEZ: And so that would be a contempt action should that parent, the noncustodial parent who has the delegatee, that person would have to file a contempt action and be able to do that. [LB769]

SENATOR LATHROP: When they come back from Iraq. [LB769]

AMIE MARTINEZ: Well, they can file it remotely, because the evidence that would be necessary is not from that person that's deployed. The evidence that would be necessary will come from the witnesses, including theoretically Jeff in our story. [LB769]

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SENATOR LATHROP: One broader question: Are we trying to...? I'm trying to figure out the purpose of having a delegatee, okay? They're my kids; I get them when the decree says. Right? I get my parenting time and now I'm deployed. What's the benefit in having a person that you delegate? And I don't mean to disparage anybody. But Jeff, my brother Jeff in our hypothetical, that maybe likes to drink too much and drive the kids around, he's not their dad, right? Is he saving the place? You're going to take up the time I would take up but I'm gone on a deployment? What's the point in this? [LB769]

AMIE MARTINEZ: Again, and I'll let the senator speak to that, but there's... [LB769]

SENATOR LATHROP: Because two parents, one of them is going to be around, and now we're going to delegate somebody to spend the time Dad would have spent with the children. Is that to save that time? To preserve that block or that schedule for Dad when he gets back? Or is there some benefit that we recognize in spending time with...because this bill would let me pick a stranger. [LB769]

AMIE MARTINEZ: Uh-uh. [LB769]

SENATOR LATHROP: I could say I'm going in the military and I want my kids to spend time with Les Seiler while I'm gone. And they go, well, I don't even know Les Seiler. [LB769]

AMIE MARTINEZ: But he's such a good guy. [LB769]

SENATOR LATHROP: That's what I thought when I picked him. [LB769]

AMIE MARTINEZ: Okay, let me...so basically two answers to that. One is it does not allow for a stranger and the language on that is clear. It has to be an adult family member of the child or... [LB769]

SENATOR LATHROP: Or. [LB769]

AMIE MARTINEZ: ...or a trusted adult who... [LB769]

SENATOR LATHROP: I trust Les. [LB769]

AMIE MARTINEZ: ...who...does that make him a trusted adult?...who has a preexisting significant relationship with the child. [LB769]

SENATOR LATHROP: Okay. [LB769]

AMIE MARTINEZ: So there is something that says you can't start building with the

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grandson that you've never seen before, right? You can't start saying that it's your neighbor's friend that wants to have time. So I think there are those constraints. Three things then. You said, what we trying...what's the goal, right? What are we trying to make sure that we can do? Not just a placeholder. First of all, with Skype, frankly, and all of the other technology that's out there, you have situations where these kids can still have contact with their parents. And they can do it sometimes daily, depending on where they're deployed, sometimes nightly, sometimes both, sometimes depending on where they're at. Let's say that they have to go down to Baton Rouge and you've got a grandmother that doesn't have anything going on and she can take the kid down for a weekend to spend time with that parent. That allows for that kind of contact. Secondly, it's not uncommon that these kids have siblings that are half-siblings, because Mom or Dad has remarried and has another family and they have children. So they've got a stepparent and they've got step-siblings that they need to have contact with and make them happy, and it's good for them. The third thing is extended family. Sometimes we have folks that live with grandparents or folks that live with brother Jeff who is not a scoundrel, and it is time because that's a relationship that they have. This tends to be...and a delegation tends to be for a noncustodial parent. So it's someone that you would expect to have less than half of the time a child is around, less than half of a two-week period--a week, for example--with that delegatee. But it really does serve a number of purposes to maintain their relationships. And again, it's not for the benefit of the parent as it is for the benefit of the child--the best interests of the child. Does that answer your question? [LB769]

SENATOR LATHROP: It sounds perfect in a perfect circumstance, right, in a perfect circumstance. I just don't know if it's going to lead to more grief in the process, but. [LB769]

AMIE MARTINEZ: And I think the idea is to try to avoid some of the grief and some of the heartache that comes when people aren't sure what's going to happen. And if they can plan for it, then it seems a whole lot more manageable, no matter what the answer is. But this does happen informally. And again, so that all children have the same benefits, it's nice to be able to formalize it. Does that answer your question...questions? [LB769]

SENATOR LATHROP: Yes. Thank you. [LB769]

AMIE MARTINEZ: Thank you, Senator. [LB769]

SENATOR ASHFORD: Yes, Senator Chambers, then Senator Seiler and... [LB769]

SENATOR CHAMBERS: I'll let Senator Seiler go first. [LB769]

SENATOR ASHFORD: Well, Senator Seiler and then Senator Chambers. [LB769]

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SENATOR SEILER: Okay. Amie, I'm having a little trouble. And I know this may have been drafted in a hurry, this amendment, AM1655. You go to line 10. You've tried the case now and you've submitted your evidence to me. I'm the district judge. And I sit down and it says I'm going to approve parenting time or a visitation plan. Then jump to line 16, and it says parenting time or visitation delegation plan. And then jump down to line 21, and it says just the delegation plan. Is there one plan that I put it all together, or am I talking about four different plans in the order? [LB769]

AMIE MARTINEZ: From a lingo standpoint, we refer to a parenting plan. And that came out of Speaker Flood's Parenting Act. [LB769]

SENATOR SEILER: Right. [LB769]

AMIE MARTINEZ: We have a parenting plan that's the umbrella that encompasses all these different provisions, right, transportation provisions, regular scheduled holiday, all those sorts of things. And this would be another provision. So it would really be a delegation provision in a parenting plan. So that may be something... [LB769]

SENATOR SEILER: Okay. What I wonder... [LB769]

AMIE MARTINEZ: ...that we can work with the senator on to try to tighten up a little bit. [LB769]

SENATOR SEILER: Right. What I just wondered is if when it says visitation plan, if you accidentally left out delegation there; and down here where it says delegation plan, if you left out visitation accidentally. Because it does refer to a visitation delegation plan, and I didn't know if those were separate plans or the same plan. [LB769]

AMIE MARTINEZ: You ever have that thing where you've read it so many times that it makes perfect sense to you and it doesn't...yeah, it doesn't read as clear as we might have intended. [LB769]

SENATOR SEILER: Okay, that's the only question I have. [LB769]

AMIE MARTINEZ: Thank you. [LB769]

SENATOR ASHFORD: Senator Chambers. [LB769]

SENATOR CHAMBERS: Suppose both parents are in the military to help. They get married, they have children, both of them are stationed at the same base. Then things go haywire and they're in the process of a divorce and one is deployed, and this one who is here in the states may wind up being deployed also. Is it your contention...is it

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your belief that the one who is in the states could say, I should be excused from being deployed because I have children or a child that I have to take care of? Would that be sufficient to nullify a deployment? Or moving that person... [LB769]

AMIE MARTINEZ: You're outside my bailiwick. I don't know the answer to that. [LB769]

SENATOR CHAMBERS: Okay. [LB769]

AMIE MARTINEZ: I'm so sorry. [LB769]

SENATOR CHAMBERS: No, you don't have to be sorry. I'm the one who asked the question. I'm sorry there's no answer right now, but somebody may come who would have one. Thank you. [LB769]

AMIE MARTINEZ: That may be. [LB769]

SENATOR ASHFORD: Thank you, Amie. [LB769]

AMIE MARTINEZ: Thank you very much. [LB769]

SENATOR ASHFORD: Next proponent. [LB769]

MARTIN DEMPSEY: (Exhibit 4) Chairman Ashford and committee members, thank you for the opportunity to express the Department of Defense's opinion for support of the delegation of parenting of LB769. My name is Martin Dempsey, M-a-r-t-i-n D-e-m-p-s-e-y. I'm a Department of Defense Regional Liaison for Military Families for the Midwest, working for the Assistant Secretary of Defense for Military Family and Community Policy. Based on the testimony so far, I'm really afraid to say anything without a flak vest, but I can't improve on anything that's been said already, only maybe to clear up a few things and also give you a few facts. And six years ago, when we implemented this initiative from the Secretary's Office, he had ten key issues. This ranked number three in his rank of ten key issues. Since then, 41 states have complied with this in full. We like to describe this as a six-legged stool, in that there's six elements of six different facts that we like to see done. Nebraska has already done five of those elements, so Nebraska looks very good. This is the last element or the last leg on the stool that we would like to see done to make it a complete package for the military families that deploy. Now I think I can answer a couple of questions if I may, Mr. Chairman. [LB769]

SENATOR ASHFORD: Yeah, just go right ahead and... [LB769]

MARTIN DEMPSEY: Senator Chambers, if two military people are married, divorced, both are deployed, it is law through the National Defense Appropriations Act that they

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have to have a contingency plan for child support to be taken care of, 100 percent. Otherwise, they're terminated from service. They don't have a choice. [LB769]

SENATOR CHAMBERS: Well, I don't mean just child support. But the visitation and parenting, that would be included in that? [LB769]

MARTIN DEMPSEY: Absolutely, by law, because we cannot rely on a military member to deploy at a moment's notice if we have to worry about the children being taken care of... [LB769]

SENATOR CHAMBERS: So if they don't... [LB769]

MARTIN DEMPSEY: ...so it's a written-out plan. They hand it to a deployment officer before they get on the plane. They take those children...or the sponsor, the delegate, comes to wherever they're located, picks the children up and takes them back home for the duration of the deployment. [LB769]

SENATOR CHAMBERS: Let me...I'm not sure that we're saying the same thing. Here is...A is the stay-at-home, B is the one deployed. [LB769]

MARTIN DEMPSEY: Um-hum. [LB769]

SENATOR CHAMBERS: B is deployed and designates a delegate to visit, and then A is deployed no longer where this delegate is. Then what happens? [LB769]

MARTIN DEMPSEY: There is a...if they are already divorced, there is a primary sponsor. That primary sponsor has the delegate in place in case of deployment. So they would go with that primary sponsor's choices. [LB769]

SENATOR CHAMBERS: When you say the sponsor, you mean the other parent or the third party? [LB769]

MARTIN DEMPSEY: No, the active duty service member that has custody of the children. [LB769]

SENATOR CHAMBERS: I'll chew on that a while and see if I can figure out what you said. [LB769]

MARTIN DEMPSEY: Now, in the event that they have joint custody, then they had to have already come up with that plan together to satisfy the Department of Defense's requirement to maintain active duty. [LB769]

SENATOR CHAMBERS: Otherwise...which one is put out of the service? [LB769]

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MARTIN DEMPSEY: Whoever has primary...whoever the primary support sponsor is. Whoever has custody of those children. [LB769]

SENATOR CHAMBERS: All right, then I'm B; A is deployed. I'm the primary support. And...say that again. Because it seems to me that federal law is trumping state law and forcing to exist a set of circumstances that may not be that way under state law. Which...you said that I, if I'm the one staying at home, I'm the one who would be put out of the service. Correct? [LB769]

MARTIN DEMPSEY: No, sir, that's not what I said. [LB769]

SENATOR CHAMBERS: Which...the one who is deployed would be put out of the service? [LB769]

MARTIN DEMPSEY: The one who is the primary sponsor and has responsibility for the children that does not comply with the NDA Act will be separated from service. [LB769]

SENATOR CHAMBERS: And if I'm that one and I'm the one in the states and I...I don't want to say primary sponsor. I'm the custodial parent. Is that the same thing that you're talking about? [LB769]

MARTIN DEMPSEY: Yes, yes. [LB769]

SENATOR CHAMBERS: As a custodial parent, if I do not comply with anything in that order, then I am the one who is put out of the service. [LB769]

MARTIN DEMPSEY: That's correct. [LB769]

SENATOR CHAMBERS: And if I'm put out of the service, all bets are off under that agreement that the Department of Defense required, isn't that so, and now we're thrown upon state law? [LB769]

MARTIN DEMPSEY: Well, I really don't want to get into state law versus federal law. But federal law is what the military member is required to do to allow the military member to do their job while deployed in a contingency operation. [LB769]

SENATOR CHAMBERS: Let's stop there. I got that. [LB769]

MARTIN DEMPSEY: Okay. [LB769]

SENATOR CHAMBERS: That's why you want this plan. But I am the custodial parent and I'm not going to agree with that, at all; then I am put out of the service. Correct?

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[LB769]

MARTIN DEMPSEY: Well, it has to be your plan if you're the custodial parent. [LB769]

SENATOR CHAMBERS: But if I decide I don't want to go along with it? [LB769]

MARTIN DEMPSEY: Then yes, you're separated. [LB769]

SENATOR CHAMBERS: Then I'm put out of the service. And here I am now the custodial parent and that deployed parent thought that there's going to be a visitation and all these other things. None of that was done pursuant to state law. It was pursuant to federal law. And now federal law no longer obtains because I'm not in the military anymore, so that deployed person has nothing as far as visitation or designating anybody. Is that correct, or am I incorrect? [LB769]

MARTIN DEMPSEY: Both. [LB769]

SENATOR CHAMBERS: Correct and incorrect? [LB769]

MARTIN DEMPSEY: Yes. (Laughter) [LB769]

SENATOR CHAMBERS: That's like Schrodinger's cat in the box, alive and dead at the same time. [LB769]

MARTIN DEMPSEY: The deployed service member has their normal visitation, whatever is worked out in the state divorce agreement. [LB769]

SENATOR CHAMBERS: So then there must be an underlying state agreement first. [LB769]

MARTIN DEMPSEY: Well, yes, sir. The military does not divorce people. They are all done at the state level. [LB769]

SENATOR CHAMBERS: And the federal law then is superimposed on top of this. [LB769]

MARTIN DEMPSEY: No, sir. It has nothing to do with custody. It has nothing to do with child rearing... [LB769]

SENATOR CHAMBERS: I'm not going to understand. I'll let it go. Thank you. [LB769]

MARTIN DEMPSEY: Yes, sir. [LB769]

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SENATOR ASHFORD: Thanks, Martin. Let me just try to understand. The military code has a variety of different provisions that deal with divorce and separation as far as how the military treats it. [LB769]

MARTIN DEMPSEY: Yes, sir. [LB769]

SENATOR ASHFORD: Okay, so this...41 states, there's model legislation that 41 states have passed a variation of so that the military can, in fact, have something to defer to, which is an underlying state law that deals with delegation. That's where the words "delegation" come from. Delegation is a military term or military code term. Is that...? [LB769]

MARTIN DEMPSEY: It's used often in the military. Yes, sir. [LB769]

SENATOR ASHFORD: Right. But I mean there's no state law. We don't use the word "delegation" when we talk about custody or... [LB769]

MARTIN DEMPSEY: Understood. [LB769]

SENATOR ASHFORD: Okay. And what I'm trying to get at...two questions, and I'll ask Senator Crawford. One is...well, I guess the underlying question: Why would the...were you aware that there is going to be an amendment that expanded this beyond the military situation? Or is that something you were not aware of? [LB769]

MARTIN DEMPSEY: Several states...yes and no, to answer your question. [LB769]

SENATOR ASHFORD: Okay. [LB769]

MARTIN DEMPSEY: I was aware that it can be done. I was aware this was going to happen. Many states in the past have done that because we've had the same thing as Senator Coash asked earlier. Well, if it's good for the military, isn't it good for everybody in the state? As we've said if you want to do that, we certainly aren't going to stand in your way. We like it. [LB769]

SENATOR ASHFORD: There's a big difference though, because in some sense...and Senator Chambers, at least what I got out of his questioning, in the military you don't have the freedom necessarily to...I mean, you're deployed under certain circumstance...and that may be the case in private employment, but you have more flexibility. If you're deployed or if you work for an employer that sends you to Alaska, I mean, you have more freedom, than would someone in the military, to just say I'm going home because I have got an issue with my children. [LB769]

MARTIN DEMPSEY: Yes, sir. [LB769]

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SENATOR ASHFORD: So I think there is a significant difference between the two and I don't understand why we're going beyond, but I'll ask Senator Crawford, why we would go beyond the military situation. I do understand the military situation as being unique because of the deployment, the arrangements underlying...and you're there. You can't just say, hey, I've got to go home because I've got a problem with my ex-spouse, correct? [LB769]

MARTIN DEMPSEY: Yes, sir. However, there have been in the past times when there has been an emergency... [LB769]

SENATOR ASHFORD: Well, emergency, but... [LB769]

MARTIN DEMPSEY: ...grave enough... [LB769]

SENATOR ASHFORD: Emergency, but not in the normal course. I mean, someone...there's a lot of anxiety, there's a lot of concern. That usually is not enough to say I need to go home; or is it? [LB769]

MARTIN DEMPSEY: Absolutely, because our paramount case is we have a mission to accomplish. [LB769]

SENATOR ASHFORD: Right. [LB769]

MARTIN DEMPSEY: And what brought to a head actually came out of the National Guard Bureau. The National Guard units were the first ones to raise their hand and saying we're having trouble here, we need help. [LB769]

SENATOR ASHFORD: Okay, and... [LB769]

MARTIN DEMPSEY: They brought it to the Secretary's attention and we took up as an issue of our own. [LB769]

SENATOR ASHFORD: Okay. I get why you're doing it. I understand the justification for it on the military side; I don't on the other. But anyway, thanks for your testimony. [LB769]

MARTIN DEMPSEY: Thank you. [LB769]

SENATOR ASHFORD: Okay. I think that's it, Martin. Thanks. Any other proponents? Opponents? Neutral? Senator Crawford, do you wish to close? I wish you would just address this, you know, why do we have...why is this... [LB769]

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SENATOR CRAWFORD: Sure. Absolutely. [LB769]

SENATOR ASHFORD: ...where did this come from,... [LB769]

SENATOR CRAWFORD: Absolutely. Right. Absolutely. [LB769]

SENATOR ASHFORD: ...because it didn't seem to come from Martin's shop. [LB769]

SENATOR CRAWFORD: Sure. Thank you so much and thank you for asking such great questions to the folks that came with more family law background and more military background. So let me just try to address a few of the issues as I understand them, and...so one issue that was raised was, you know, how many people are we getting involved in this process? And again the language emphasizes just two people. And I'll go back...I'll go, first, actually to the primary issue you were raising about, so what is...why is this important? And I think what... [LB769]

SENATOR ASHFORD: No, I understand why it might be important. But isn't the...I don't...I understand the importance of the delegation issue. [LB769]

SENATOR CRAWFORD: Sure. [LB769]

SENATOR ASHFORD: But when we're trying to...we're trying to focus on the Department of Defense and the military spouse issue, which seems to be very compelling. The other...I mean, to me. [LB769]

SENATOR CRAWFORD: Right. [LB769]

SENATOR ASHFORD: The other part doesn't seem to be as compelling to me on this one. [LB769]

SENATOR CRAWFORD: Sure. And let me explain that. This is an issue for situations like this with military custody. It's also an issue that you'll be discussing later when you talk about veterans courts. So one of the...anytime we try to talk about an issue where someone raises the question of why we might need to make special considerations for people who are in certain situations because they are being deployed or they're a veteran and have certain life background situations that we think impact the way they ought to be treated in the judicial system, that then raises the issue and that came...and that was an issue that we were trying to be very careful about, you don't want to write the language in such a way that then you preclude the ability of the judge to make similar kinds of arrangements if someone else before them has those kinds of conditions or situations as well. So just to take it to the other situation, say, a veterans court, you don't want to have language for a veterans court that then precludes a judge being able to provide other options for other people who come before them who have

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reasonable reasons why they have posttraumatic... [LB769]

SENATOR ASHFORD: But I don't think... [LB769]

SENATOR CRAWFORD: ...stress disorder. So the issue is to try to be very careful with the language... [LB769]

SENATOR ASHFORD: Senator, I don't... [LB769]

SENATOR CRAWFORD: ...so we're not just saying these folks. [LB769]

SENATOR ASHFORD: Let me just... [LB769]

SENATOR CRAWFORD: Yes, um-hum. [LB769]

SENATOR ASHFORD: But I don't see...on the veteran court situation...I know what you're saying, but on the veteran court situation those are relatively unique circumstances that states have recognized are somewhat unique to veterans--homelessness, you know, certain kinds of mental illness issues that come about because of being in combat and so forth and so on, that impact their ability to acclimate themselves. But I thought that...I mean, Senator Coash's question I thought was really quite good because you're dealing in there with an offender who is taken out of society. There...I'm not necessarily wanting to equate the two groups except to say there are many offenders who are veterans who have mental illness and are...you know, who are sincerely in need of some kind of help. So I see that special circumstance with the veterans court. [LB769]

SENATOR CRAWFORD: So we did...we wanted to be careful not to create a situation where it would create the impression that a judge could not...I mean, you know, we wanted to make sure it's a possibility for a judge to create a delegation plan if there's some other couple in front...you know, some other situation for a family in front of them where this is really important. And so Senator Coash raised the issue of there are other situations out there where this may be very important for the best interests of the child. And then we come back to I think the real key here is the best interests of the child. It's the best thing to do in a situation for the child. And it does get messy, no doubt. But it's already messy in these situations, right? So I think part of what we're trying to do is create a more ordered process amidst the chaos, right? And more predictability so that we are trying to tackle that messiness head-on with a set process, so that...and it gets handled before the deployment, not amidst that stress of deployment, in the deployment case. But I'm not ruling out the possibility there are other interesting situations in which people in Nebraska find themselves where they have to be gone, and it's a stressful situation when they're gone, and the judge should be able to work with those parents and provide a tool for them to use... [LB769]

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SENATOR ASHFORD: Can't you do that anyway under current law? [LB769]

SENATOR CRAWFORD: ...if it's the best interests of the child. [LB769]

SENATOR ASHFORD: Can't you do that under current law now? I don't know. Anyway, Senator Chambers. [LB769]

SENATOR CHAMBERS: This is a very contentious area. [LB769]

SENATOR CRAWFORD: I realize that, yes. [LB769]

SENATOR CHAMBERS: I've sat through some hearings which ordinarily I would have walked out of because of the disrespect that was being shown to some of the members of the committee. I wouldn't have even wasted my time. I'm not in favor of expanding any bill that is before us to reach out and pull in others where every one of these other areas have specific problems, specific difficulties. And I don't trust a judge to go through all this, because you don't have to be a Solomon to be a judge in Nebraska, or probably anywhere else. You know the Governor. You have friends on the nominating committee. And people should not be allowed to get the impression that there is some kind of vetting--I don't even like that word--but some kind of vetting process where you get the best person for this vacancy on the judiciary, and this person is learned in the law, has the proper disposition, is very patient, understanding, and knows how to remove himself or herself from the issue and look at it alone. There was a guy named Bacon, I don't know if he ate bacon or not, and he had Sir attached to his name--Sir Francis Bacon. And he mentioned that some people are like flawed mirrors. Some of these flawed mirrors give an improper or distorted image because of the way it breaks up the light and makes it refract, and what is standing in front of that mirror will not be reflected by the image in the mirror. And some people are like that when they're called upon to judge. They intermix with the issue to be judged certain characteristics of their own and there is not objectivity. And you wind up with a situation where an appropriate decision is not reached even though the one trying to render it did the best he or she could. I said all that to get back to my original issue. These problems are so, to my way of thinking, intractable, unsolvable, so you might try to put something out there to result in the least amount of killing, maiming, mayhem, or chaos. Even this military part, I don't understand all the ramifications of it, so I certainly wouldn't want to go beyond that and say we've got a model that might work in a military setting where the parties are not free to make decisions of their own. They've obliged themselves when they got into the military to give up certain rights and privileges and freedoms in order to be subjected to that military discipline. And you anticipate that certain things may occur, you hope they don't; but one of them might be deployment. But you know that that is part of the package. That's not the way it is in civilian life. You don't have to say, "Yes, sir; Sir, yes, sir," to anybody. And you may not be faced with a situation beyond your control where some

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outside agency can move you far away from where you want to be. Since the circumstances are so different, I wouldn't want to take that which is formulated for one bad situation and just say we're going to lift it and put it over here where there are bad circumstances and it may or may not fit. So I'm in a position where I won't, right now...if I was told I have to vote right now and I'd say, I don't want to vote; they say, well, you have to vote. I'd say, well, I'd like to do like the person who testified from the Defense Department; I'd like to vote yes and no. They say, well, you have to say one or the other. I'd say, well, if I must, then I'd say no. I'm not clear on how some of these things work. And had not Senator Lathrop broadened the field of inquiry, I wouldn't have even asked any more questions, because I told our first witness there are things in my mind that I have not been able to cause to coalesce to the point where I could formulate a question. But now there are many questions in my mind that I'm not going to spend time asking now. Maybe they'll be worked out when we're in Exec Session and maybe my vote won't even be needed. But right now, I'm...I'm through. Thank you. [LB769]

SENATOR CRAWFORD: All right, sure. And thank you for raising those issues and concerns. Let me try to just address a couple of them. And I realize that we will...I am open to having continued discussions outside of this hearing to talk about some of these issues. Just first on should it only be for military or should it be for others, we drafted the amendment to open it up to the possibility of it being others included. But that's the amendment and that's what the bar association of family law thought was appropriate. I think we should have some more discussions about that before you decide whether that's an amendment you want to adopt, or if you...you know, or if you think, no, really in Nebraska, the most appropriate thing is to keep it more narrow. We can have that discussion. [LB769]

SENATOR CHAMBERS: Is this your bill or the bar association's bill? Did the bar association... [LB769]

SENATOR CRAWFORD: No, this is our bill. We drafted it and then sent it to them to ask them for comments and input. [LB769]

SENATOR CHAMBERS: And this amendment is what they came up with? [LB769]

SENATOR CRAWFORD: So that's the amendment that we discussed with them back and forth. So... [LB769]

SENATOR CHAMBERS: But they're the driving force behind the amendment. [LB769]

SENATOR CRAWFORD: The amendment, yes; the bill, no. [LB769]

SENATOR CHAMBERS: And they practice in this area of the law. [LB769]

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SENATOR CRAWFORD: I assume so. [LB769]

SENATOR CHAMBERS: It could be something to be beneficial... [LB769]

SENATOR CRAWFORD: Exactly. I am not... [LB769]

SENATOR CHAMBERS: ...to one side or the other in what they're doing. [LB769]

SENATOR CRAWFORD: I am not a lawyer and they have that background. I'm just a humble part-time citizen legislator. So we thought it was important to get their input and that was their input, that from their experience on the ground this would be important to make sure this is available for other families that might be in this situation. And I am assuming that means from their practice, their experience, they see people who are in this situation and they see how messy that situation can be for people in multiple settings. And I think they are...and I understand that the bill is putting a lot of emphasis on the judge's ability to judge in the best interests of the child. That's true, I mean, and we have human institutions with flawed human beings in our institutions,... [LB769]

SENATOR CHAMBERS But here's what... [LB769]

SENATOR CRAWFORD ...so our purpose, as I understand it, is to try to create the best structures and laws we can to guide that process. [LB769]

SENATOR CHAMBERS: But here's what I'm getting to with what I said. Not that judges should not determine what's in the best interests of the child. We're bringing things that the ones bringing it don't even understand, cannot tell us what the ramifications are. Is somebody from the bar association going to come up here who had a hand in drafting this amendment? And I know they can't now because you're closing. [LB769]

SENATOR CRAWFORD: Right. [LB769]

SENATOR CHAMBERS: But if this were my horse, I wouldn't let the bar association put a jockey on it, then wash their hands and sit back and say, I hope they can carry it across the finish line on their bill, flying the American flag and we're all for veterans, which they couldn't get through on their own. [LB769]

SENATOR CRAWFORD: Well, I hope...I'll do my best to answer remaining questions that you have, and I'll be happy to have them talk outside of this hearing time on questions that you have. [LB769]

SENATOR ASHFORD: And why don't... [LB769]

SENATOR CHAMBERS: Okay. [LB769]

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SENATOR CRAWFORD: Because I...my sense is that people were, so far, the two people who testified I thought addressed most of the questions that were raised, other than the fact that life is messy. Right? I mean, which...it's true. [LB769]

SENATOR ASHFORD: I think Senator Davis would like to messy it up a little bit more...clarify it, I think. [LB769]

SENATOR DAVIS: Well, I apologize for not being here. I introduced another bill earlier. What do other states do? [LB769]

SENATOR CRAWFORD: Well, so there are multiple other states that are...you know, have passed similar delegation plans to address this very situation. And so we also, in terms of finding out what's happening or what, you know, works well or what could be potential issues, we have many other states to look to. [LB769]

SENATOR DAVIS: And have you done that, Senator Crawford, yet? [LB769]

SENATOR CRAWFORD: We have looked...part of pulling together this bill idea and the research that we did to pull it together was looking at resources from...there's a military section of the NC... [LB769]

SENATOR DAVIS: NCSL. [LB769]

SENATOR CRAWFORD: NCSL, thank you. And so we've talked to other people who have worked with those states. Martin Dempsey, also as a regional director, has worked with other states. So just trying to be in communication and see what the language is in other states. And we...I have not yet seen an empirical, you know, study over very much time, but I think that's in part because it's a newer idea that we're all working through. [LB769]

SENATOR DAVIS: And what are you going to do if you have two military spouses? [LB769]

SENATOR CRAWFORD: The situation in the...as I understand it, in terms of the state law situation, is that that's really the situation that would be addressed in the parenting plan discussion. So the parenting plan discussion with a judge would include the fact that both of these parents are in the military and they would have to decide what's in the best interests of the child in terms of delegation and parenting time, given that they're both in the military, and that would have to be that discussion that's had in that parenting plan discussion. [LB769]

SENATOR DAVIS: And just as an observation, if people are willing to work things out,

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they get it worked out. And if they are not interested in that, it never is worked out no matter what people try to do--just one of the ugly things about divorce. So I guess I share a little bit of Senator Chambers' anxiety over where we may be going by opening this door. [LB769]

SENATOR CRAWFORD: Right. And I guess the issue here again we come back to the situation of, where do you want this messiness to be addressed and resolved? Do you want there to be a process by which we have people who have legal representation helping them in resolving the situation? Do you want a situation whereby the parenting time that needs to be granted to both parties in the case, there's a tension to protecting that? Or do you want this fought, you know...or do you want this hashed out in the backyard with two people screaming at each other, right? I mean, I think the issue here is trying to create a legal structure in which this conflict can occur. Politics law is about conflict and it's about trying to be more constructive in resolving that conflict. And so our focus here is can we create a mechanism to try to resolve these very messy, conflict-ridden situations in a bit more constructive way. And again, our initial thought in this case was we really have children in this situation where a parent is deployed and that's a very stressful situation. But it is...other people who work in this law every day are telling us that there are other similar situations that we want to be attentive to; and so we wanted to be open to the possibility of amending the bill to include an option for that type of delegation to exist for those other situations, but again, only if it's part of the parenting plan, only if the judge determines it's in the best interest of the child. It's not something that's automatic. It has to be negotiated and it has to be determined by a judge. [LB769]

SENATOR ASHFORD: Thank you, Senator. [LB769]

SENATOR CRAWFORD: Thank you. [LB769]

SENATOR ASHFORD: (See also Exhibits 1 and 3) Okay. Let's move on to the next bill, Senator Avery, LB748. [LB769 LB748]

SENATOR AVERY: Good afternoon, Mr. Chair. My name is Bill Avery, B-i-l-l A-v-e-r-y. I represent District 28 here in south-central Lincoln. I bring to you LB748, which might be familiar to some of you because it is similar to a bill I introduced last year that came before this committee. I'm really committed to this issue and I'm bringing you an altered bill which addresses the concerns I heard from the committee last year. LB748 is designed to protect a woman who is the victim of sexual assault from further physical and psychological harm by her attacker. The bill terminates parental rights to the child that is a direct result of a first-, second-, or third-degree sexual assault. This is new language compared to the bill last year, and it's designed so that a person could not plead down from first, to second or third, and not...and perhaps then claim parental rights as happened, and you'll hear in testimony after a while. It also directs that the

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mother or guardian of that child may reverse termination with consent if the court finds it is in the best interests of the child. It includes language that says courts are not required to make reasonable efforts to preserve and to reunify the family if the biological father has been convicted of first-degree sexual assault. It amends the Parenting Act to include language that no person convicted of crimes under 28-319 or 28-320 shall be granted visitation or custody unless the biological mother consents to it. This is new language, and last year it was my understanding that the Attorney General supported incorporating this new provision in the Parenting Act for consistency. This bill asks the court to hold an action establishing paternity until an accused person has been found guilty or innocent, and it does not include any direction to the courts with respect to child support payments, which I think was an issue last year. The bill leaves that up to the courts. After I originally introduced this bill last year, I was contacted by an attorney in northeastern Nebraska who had a client facing this exact circumstance. This young woman chose to have a child conceived in sexual assault, and later the convicted rapist went to court trying to claim parental rights and visitation. So she is being subjected to, if the court rules in his favor, continuous emotional and psychological anguish by the man who attacked her. And she is here today to tell you her story. I also would like to point out that this legislation is at the head of the line nationally. This past summer a bill was introduced in Congress called the Rape Survivor Child Custody Act, following the horrendous news of some kidnappings by Ariel Castro in Cleveland, Ohio, where he kidnapped three women and held them hostage in his house for ten years, repeatedly raping them. But under Ohio law he was not barred by law from seeking visitation rights for his six-year-old daughter. Authorities say that he fathered that six-year-old with one of his victims. He was requesting visitation rights. Ultimately, the judge denied his request and Castro later killed himself. According to the Rape, Abuse and Incest National Network, there is a sexual assault every two minutes in this country. There's an average of 208,000 victims of rape and sexual assault each year. There are 32,000 rape-related pregnancies in the United States every year. If you look nationally, Nebraska is one of only...1 of 31 states that does not protect women from their attackers. In Delaware, the circumstances of a minor's conception are grounds for termination of parental rights. Kansas statutes presume that a parent is unfit to care for a child if the parent has been convicted of rape. Missouri and Nevada have similar laws. I urge you to support this bill. It is needed public policy. We must not have cases in our state where a person is faced with a choice between a lifetime tethered to a rapist or moving forward with a meaningful life for herself and her child. So I would invite you to carefully consider this again. With the changes we've made, we think it should be more easily passed on to General File and we urge you to do that. I'd be happy to take questions. [LB748]

SENATOR ASHFORD: Senator Chambers. [LB748]

SENATOR CHAMBERS: Senator Avery, I'd like to stay away, if I can, from the emotional elements of this. So if I frame my question in a very clinical way, then it's not

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to indicate that these circumstances when they occur are not horrendous. Several places in this bill indicate that a conviction is conclusive of one thing or the other. When that word "conviction" is used, does it include any appellate action which could reverse the...? Let me ask this: If the conviction is reversed by a higher court, then it...does it...is the law saying, despite that, due to the fact that an earlier conviction occurred, the conclusiveness aspect remains? Or if there is a reversal, everything goes back to square one? [LB748]

SENATOR AVERY: If there's a reversal, my intent would be that the terms of this would not apply. [LB748]

SENATOR CHAMBERS: Is that in the bill? I'm trying to find it. [LB748]

SENATOR AVERY: I don't believe it is. I don't think we dealt with the appeals. [LB748]

SENATOR CHAMBERS: But it would be your intention that if a reversal occurred...some of these cases go on for some time. You're not cut off by what happens at the state level. There could be a federal question raised of sufficient significance that a federal court may take it, and there could be... [LB748]

SENATOR AVERY: But this would apply only to state law, of course. [LB748]

SENATOR CHAMBERS: Say it again. [LB748]

SENATOR AVERY: This would apply to state law. [LB748]

SENATOR CHAMBERS: But a state conviction can be reversed by a federal court. There's the United States Supreme Court that can overturn anything that a state or any lower federal court does. [LB748]

SENATOR AVERY: If the committee would like to add an amendment that would address that... [LB748]

SENATOR CHAMBERS: I'm not going to be involved in amending. I'm just asking for your intent. If...how long after that conviction must the possibility of additional litigation be, before you cut off anything that might...let me ask it a different way. Some appeals take a long time to get resolved. How long...at what point will this termination be attempted: at the level of the conviction in the trial court, or after it has been appealed at least to the state Supreme Court? [LB748]

SENATOR AVERY: The way it is written and the way I intended it is that it would apply at the first conviction. [LB748]

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SENATOR CHAMBERS: Not even waiting for an appeal. [LB748]

SENATOR AVERY: No. [LB748]

SENATOR CHAMBERS: And if the appeal goes to the Supreme Court and the Supreme Court throws it all out and reverses it. [LB748]

SENATOR AVERY: Then that would trump the law. And that would trump the parental right decision of the courts. [LB748]

SENATOR CHAMBERS: But if the parental rights had been terminated...well, I'll talk to you about it away from the meeting here. [LB748]

SENATOR AVERY: Okay. [LB748]

SENATOR CHAMBERS: That's all I have. [LB748]

SENATOR ASHFORD: Thank you, Senator. Senator Seiler. [LB748]

SENATOR SEILER: Thank you. Senator Avery, are you going to have somebody from a county attorney testify today? [LB748]

SENATOR AVERY: I have only one person that I know of who is going to testify. [LB748]

SENATOR SEILER: Okay, then I'll ask you. It seems to me like this bill jumps right in on a biological father and is talking about the biological father and what Senator Chambers referred to as conclusive evidence found in the criminal case, in the civil case. And my...you know, that's why I wanted to talk to somebody that's tried one of these recently. But my memory of trying cases under 28-319 and 28-320 was you didn't necessarily prove up the biological father to get a conviction for sexual assault. And if you didn't, then how could that conviction be used as conclusive evidence in a biological civil case? [LB748]

SENATOR AVERY: Let me see if I understand what you're asking me. You're saying that you could have a charge of rape and there could be a conviction on the charge of rape, but there could still be a question as to who the biological father is of the child. [LB748]

SENATOR SEILER: That's correct, because they don't...they can prove the rape, but in order to prove the rape the testimony doesn't necessarily go out to the biological DNA. [LB748]

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SENATOR AVERY: Well, we do... [LB748]

SENATOR SEILER: They don't have to prove that. [LB748]

SENATOR AVERY: Well, we do have a DNA testing bill that I sponsored a couple years ago that requires all convicted felons to submit a sample for DNA testing. And that would be the definitive question about biological... [LB748]

SENATOR SEILER: You see, that evidence doesn't come into the rape case. That's not part of the rape case. The rape case is the act of what happened and the allegations, and now you're going to use that, and the DNA evidence is over here; and I don't mind the DNA coming into the civil case but I sure don't want to see the conviction come in without evidence of the DNA. And that's why I was hoping there was a county attorney. It's been a long time since I've tried a rape case, but it just seems like that conclusive evidence is a problem for me if there wasn't biological DNA included in the trial of the sexual assault. [LB748]

SENATOR AVERY: So are you saying then that the evidence submitted for the criminal case could not be used for a civil case? [LB748]

SENATOR SEILER: No, I'm not saying it couldn't be used. I'm saying it means the conviction may be brought in as evidence but not conclusive evidence because the DNA was never in the criminal charge. [LB748]

SENATOR AVERY: Sounds like a legal discussion. [LB748]

SENATOR SEILER: Well, that's why I was hoping you were going to say there was a county attorney going to appear. [LB748]

SENATOR AVERY: I don't know if there... [LB748]

SENATOR SEILER: And again, my trial may be dated, but that would be my concern. And thank you. [LB748]

SENATOR AVERY: Yes. Well, I would, just to elaborate, I would think that the victim of the rape would have a real interest in providing whatever evidence she could to establish the biological father conclusively; and DNA evidence will do that. You would already have the DNA evidence on the criminal side and she would, I'm sure, be easily persuaded to provide the DNA evidence for the child. [LB748]

SENATOR SEILER: I guess my point is the statutory language says biological father. It accuses him of being the biological father without any testimony. And then you're saying, but the criminal conviction is going to come back in here and be conclusive.

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Well, there may have not been any DNA proven in that case, and so your conclusion that the biological father is one and the same I think has some evidentiary problems. But I'll talk to you later on that. [LB748]

SENATOR AVERY: Well, I think an amendment could handle that very easily. [LB748]

SENATOR SEILER: Yes. [LB748]

SENATOR AVERY: Yeah. [LB748]

SENATOR ASHFORD: Senator Davis. [LB748]

SENATOR DAVIS: Thank you. Senator Avery, on the bottom of page 4 where the new language is added in, it talks about, "If the family includes a child who was conceived by the victim." So are you talking about...I mean, the word "family" to me describes a man, a woman, and a child, or whatever. Is that what you're thinking of there? [LB748]

SENATOR AVERY: Um... [LB748]

SENATOR DAVIS: Bottom of the page, line (5). [LB748]

SENATOR AVERY: What was your question again; if the family what? [LB748]

SENATOR DAVIS: Well, it talks about family. So I guess my question is, are we talking about a married couple here or what are you trying to do with that word "family"? [LB748]

SENATOR AVERY: Is this case it would be the child and the mother, and... [LB748]

SENATOR DAVIS: Not the man. [LB748]

SENATOR AVERY: And this is designed to define the father, biological father, as someone who does not have parental rights; so no, I would not include the father in that definition of family. [LB748]

SENATOR DAVIS: Okay. [LB748]

SENATOR CHAMBERS: Senator Avery, you're aware that, see, because of who you brought to testify, I'm putting restraints on myself. That's why I said I'll talk to you later. You know that I have questions about these kind of proposals. Let's exclude the person who is here to testify. When we're asked to formulate a policy as legislators by way of enactment of a law, we have to look at what can be done under that law and not look at one case. Hard cases, as you're taught in law school, make bad law. I'm going to go to

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the bottom of page 4 in your bill, in line 25. "If the family includes a child who was conceived by the victim of a sexual assault and the biological father is convicted of the crime under..." the appropriate sections, "the biological father of such child shall not be considered a part of the child's family for purposes of requiring reasonable efforts to preserve and reunify the family." Can...under the law of Nebraska, can a husband commit sexual assault upon his wife that will result in the conception of a child? [LB748]

SENATOR AVERY: Yes. [LB748]

SENATOR CHAMBERS: If they were having problems, the two people, and an allegation were made that this child was conceived as a result of a sexual assault and that allegation was made sometime down the line, let's say after the child was born, then if this law were invoked and the woman just didn't want to have anything else to do with this person, this man, and didn't want to go into anything about who is appropriate to have contact with the child, who is more suitable, then if the sexual assault is alleged and, say, a conviction occurs, but in reality there was no sexual assault, once that person, even if it's the husband, is convicted, then that's conclusive for the purpose of terminating his parental rights. [LB748]

SENATOR AVERY: Unless the mother chooses otherwise. [LB748]

SENATOR CHAMBERS: She doesn't want...she wants to get rid of him. [LB748]

SENATOR AVERY: Well, the normal rules of evidence would apply in this case, as in all... [LB748]

SENATOR CHAMBERS: Well, men have been convicted of rape who didn't commit it. [LB748]

SENATOR AVERY: That is true. [LB748]

SENATOR CHAMBERS: And if...that's why I was talking about appeals. This would terminate the husband's parental rights upon being convicted in trial court without an appeal; and he would wind up going to the Supreme Court, and the Supreme Court would reverse the conviction. Let's say that there were substantive problems in the preservation of any biological evidence--the chain of custody was violated; substantive questions so that the court would overturn the conviction. That would not automatically restore his parental rights, would it? [LB748]

SENATOR AVERY: No. [LB748]

SENATOR CHAMBERS: And he would then have to go through whatever steps a person situated like that would have to go through to have parental rights restored,

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correct? [LB748]

SENATOR AVERY: That is correct. [LB748]

SENATOR CHAMBERS: Based on where we're kind of stumbling and fumbling here. The fact that a false charge were lodged could conclusively establish that the mother is unsuitable to be...to have parental rights; and her's could wind up being terminated as a result of this activity. Is that true? [LB748]

SENATOR AVERY: Well, I'd like to have a little bit more confidence in the court system to sort those things out and have some confidence that... [LB748]

SENATOR CHAMBERS: But at least you see that I have some serious questions about this whole thing. But in deference to the person you brought here to testify, I'm not going to ask those questions at this time. [LB748]

SENATOR AVERY: Well, the person who is here to testify requested to testify. She wants to tell her story. I didn't recruit that. [LB748]

SENATOR CHAMBERS: Well, however she came, I'm not condemning her. I'm not condemning you. I'm not criticizing anybody. I'm just saying the fact is that somebody is going to testify and you've already indicated circumstances that she has faced. [LB748]

SENATOR AVERY: Um-hum. [LB748]

SENATOR CHAMBERS: So because she is here, I'm...there are questions that I would ordinarily ask that I won't, just like on the other bill. I'm not satisfied with the answers I've gotten to the few questions I've asked, but I can continue that with you and with the committee members at a later time. I won't do it here. [LB748]

SENATOR AVERY: Well, you have enough lawyers on the panel and the legal counsel, I believe we can work out some amendments. [LB748]

SENATOR CHAMBERS: Enough lawyers to do what? (Laugh) [LB748]

SENATOR ASHFORD: That reminds me of a story, doesn't it, Senator Chambers? [LB748]

SENATOR CHAMBERS: (Inaudible) to do a lot of (inaudible) when you have lawyers. Okay. [LB748]

SENATOR ASHFORD: How many lawyers can you put on the head of a pin? Thank you, Senator Avery, for your testimony. We have a... [LB748]

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SENATOR AVERY: I think I will stick around because my committee is already finished. [LB748]

SENATOR ASHFORD: Do we have someone that would like to testify for this bill? Okay. Come on up. Hi. [LB748]

NOEMI MARTINEZ: My name is Noemi Martinez and I'm from Norfolk, Nebraska. [LB748]

SENATOR ASHFORD: Okay. [LB748]

NOEMI MARTINEZ: And I'm going to testify for this bill. [LB748]

SENATOR ASHFORD: Okay, please, just have a seat. [LB748]

NOEMI MARTINEZ: Thank you. [LB748]

SENATOR ASHFORD: Go right ahead. [LB748]

SENATOR CHAMBERS: And here's what I would like to ask. [LB748]

NOEMI MARTINEZ: Yes. [LB748]

SENATOR CHAMBERS: Everything that is said is recorded, and I don't know if it picked your voice while you were standing up. So if you, again, might state your voice (sic--name) for the mike and then spell it. [LB748]

NOEMI MARTINEZ: Okay. Yes. Yes. Hi. My name is Noemi Martinez. It's spelled N-o-e-m-i M-a-r-t-i-n-e-z, and I'm from Norfolk, Nebraska. I'm a victim of rape. I was raped by a coworker, and I have a daughter from this rape. This man is now fighting me for visitations of my daughter. And I know that Senator Avery tried to pass the LB182 last year, but it was killed. My lawyer and someone else did come to support it. Although no one voted against it, there were some flaws viewed and it didn't pass. I really hoped and needed that this bill would pass so that I wouldn't have to face this guy in court and be bullied by his lawyers. During the depositions that I would have with his lawyers, they would make fun of, smirk, and laugh at me, at my responses. And they would attack my parenting abilities. His lawyer told me that I wasn't giving enough reasons to why this man shouldn't have contact with my child. And when I met with my daughter's guardian ad litem, he had many unrelated questions and misconceptions about what rape is. And even though my perpetrator had already been found guilty, he insisted I tell him in detail what happened during the assault. He also had a list of men provided by my perpetrator and asked me very personal questions of what sexual acts I had done with each man

on the list. I didn't even know some of the men that were on that list, and I hadn't had any sexual interaction with any of them. I felt like it was a punishment for keeping my child, to have to deal with these bullies to me. Having to face this experience has made me realize how unfair the justice system is and how there is not that many laws to protect victims of rape and children that are conceived from rape. I think most women, or most victims from rape, choose to abort their babies; but those of us who choose to keep our child have to face the overwhelming fear of being bullied and being controlled by the rapist if he wants access to the baby. I don't think anyone who has been raped should have to deal with an ongoing contact with the rapist for life, if they decide to keep their child. Women who go through this have to think of what's best for their child and how it's not the child's fault. The child should also be protected from a man who is a sex offender. If someone who does not care about others' feelings and commits a crime...and I don't think it's safe for a child to be around them. The man who raped me would send me messages of how to fall down the stairs, beat myself in the stomach and text him back when it was dead. I put a restraining order against this man. And when my baby was five months old, he wanted his family to see the baby. Not knowing what rights I had, I let this man see the baby; but then it led to other family members and himself. He would always be a jerk to me and he bullied me until I sought legal help. I do hope that women who have to face this will start speaking out, because I believe it's a very important matter that needs attention for the sake of the raped women and the children conceived in rape. Many laws to protect raped women...I'm sorry. Maybe with laws to protect raped women there would not be so many abortions or children sent to adoption. In Nebraska, only if the sex offender is charged with first-degree sexual assault are women and the children both protected. In my case, he was charged with first degree and he pled down to third degree. I believe if the woman conceives a child from rape, the woman should have the right to decide if she wants her child to have contact with such an individual. I am really glad to say that Senator Avery hasn't given up and he's here today to address this important matter. I believe states should do what they can to help victims and to help them feel safe and secure, not to live with the fear of not knowing what hands their child's life will be if they have to let their babies in their rapists' hands. Thank you. [LB748]

SENATOR ASHFORD: Thank you, Ms. Martinez. Do we have any questions? Senator Chambers. [LB748]

SENATOR CHAMBERS: When you mentioned some of the things that this lawyer had done... [LB748]

NOEMI MARTINEZ: Yes. [LB748]

SENATOR CHAMBERS: ...and you mentioned a guardian ad litem who had been appointed for your daughter... [LB748]

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NOEMI MARTINEZ: Yes. [LB748]

SENATOR CHAMBERS: ...and the guardian ad litem was the one who was asking you these embarrassing questions. [LB748]

NOEMI MARTINEZ: Yes. [LB748]

SENATOR CHAMBERS: And who submitted the list of these people whom you did not know? [LB748]

NOEMI MARTINEZ: My perpetrator. [LB748]

SENATOR CHAMBERS: Was that list presented to you by a lawyer in the course of questioning you or anything? [LB748]

NOEMI MARTINEZ: I had to meet with him in his office for interviews. And even though my mom asked to be present when he would talk to me, he wouldn't let my mother in. And... [LB748]

SENATOR CHAMBERS: Here's what I'm asking: Was that person you met with a lawyer? [LB748]

NOEMI MARTINEZ: Yes, I think so. He's an attorney at law, I think. [LB748]

SENATOR CHAMBERS: I just have something here. It's from the Nebraska statute 7-105. [LB748]

NOEMI MARTINEZ: Yes. [LB748]

SENATOR CHAMBERS: It is the duty of an attorney and counselor: To maintain the respect due to the courts of justice and to the judicial office (sic--officers); to counsel or maintain no other actions, proceedings or defenses than those which appear to him legal and just; to employ, for the purpose of maintaining the cause confided to him, such means only as are consistent with the truth; to abstain from all offensive practices and to advise no fact prejudicial to the honor or reputation of a party or witness; not to encourage the commencement or continuance of an action or proceeding from any motive of passion or interest. In other words, in my view, there were violations of the Nebraska Rules of Professional Conduct that govern lawyers. Somebody...did you ever have a lawyer of your own? [LB748]

NOEMI MARTINEZ: Yes, I have a lawyer now. [LB748]

SENATOR CHAMBERS: Did that lawyer take...? I'm not going to put you through all of

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this, but let me just say what I think. [LB748]

NOEMI MARTINEZ: That's okay. [LB748]

SENATOR CHAMBERS: I have contempt for these men who take advantage of women. Lawyers can be slimy, sleazy individuals. I can't wait for the bar association to come up here and object to a bill that I'm presenting. And whoever is going to represent the bar is in the room and I'm going to ask that person about the testimony we've had and why they are so concerned about shielding lawyers from accountability for their misdeeds. I think what you've been through is something that should bring shame to the minds of anybody in this country who would hear that and know that members who are officers of the legal profession did these things and other members knew it and did nothing to prevent it. And before I say things that might make the situation you're facing worse, I'll save my remarks for that person from the bar association. But I hope he is in the room and I hope he heard it. And I don't want him telling me, well, I didn't hear it and I didn't understand. [LB748]

NOEMI MARTINEZ: Okay. Is there any questions I can answer for any of you besides that. No? Okay. [LB748]

SENATOR ASHFORD: No, but thank you, Ms. Martinez, very much. [LB748]

SENATOR MCGILL: Thank you very much. [LB748]

NOEMI MARTINEZ: Thank you for your time. [LB748]

SENATOR ASHFORD: Is that your daughter that's here with us? [LB748]

NOEMI MARTINEZ: Yes, that is my daughter. [LB748]

SENATOR ASHFORD: There she is. [LB748]

NOEMI MARTINEZ: Yes. [LB748]

SENATOR ASHFORD: Well, she's doing a good job. All right, do we have any other testifiers on this bill? Yes, ma'am. [LB748]

LIANE BODE: My name is Liane Bode and I came with Noemi to support her. I did have some statistics prepared, but Senator Avery went through some of those. I'm going to skip over that. I would like to respond Senator Chambers. I did know, right away...my name is Liane Bode. I'm a licensed independent mental health practitioner from Norfolk, Nebraska. I'm an interim instructor at Wayne State College and a doctoral student at USD, and I have 15 years of experience in clinical mental health as a clinical mental

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health practitioner, and I have been in private practice 13 years. And I've been supportive of Noemi through this, and I knew immediately that this guardian ad litem had treated her that way. [LB748]

SENATOR CHAMBERS: Excuse me. Could you speak a little louder? [LB748]

LIANE BODE: Yes. I'm probably speaking quickly. I'm racing that green light. [LB748]

SENATOR ASHFORD: No, no, just take your time. [LB748]

LIANE BODE: I knew immediately that Noemi... [LB748]

SENATOR ASHFORD: They seem intimidating but they really...they're just lights. [LB748]

LIANE BODE: ...that Noemi had been mistreated by the guardian ad litem. And interestingly, he is a lawyer, yes. And his office is across the parking lot from me, and it was all I could take to not storm across there and give him my two cents. But I called her lawyer immediately and they did direct...did some...they approached him about it. I don't know what happened after that. But we did talk with him. I didn't personally, because that wouldn't have been a good idea that day, probably. Some things that I have prepared to say: It's my understanding that a rape conviction is low, and generally a perpetrator will plead down; therefore, it would be rare that a perpetrator actually received first-degree sexual assault. This is the only time the parental rights are terminated. The mother and child conceived in rape then are protected under law from the perpetrator. I did read an article that was put together. It was from The Georgetown Law Journal from 2009. And what it talked about, many states streamline abortion for women who conceive in rape. Women who choose adoption have procedures for termination of parental rights of the father, if the mother places the child for adoption, regardless of a conviction in court. And I did call the Nebraska Children's Home, and they said they did not need a conviction; all they need is probably a police report, and they do not have to contact the father. And to me it seemed like the women who were not protected in Nebraska were the women who chose to parent their child. And I really looked into some of the things that were said about that. And women really do not feel that that child is a reminder of that rape. They usually feel that they are in partner with that child and they really view that child as something good came out of something bad. And then I would like to briefly talk about what a bind it puts a therapist in when you have somebody come in and report this, that you would need to tell them that if you did disclose a name you will not be protected in Nebraska if you choose to keep this child. And that's very hard for a therapist to have to work through that with the client. And so then I asked myself if this would happen to me, what would I do? Would I make a report? Probably not, because I would not...you know, watching what Noemi went through, and she has said, too, that if she would do this again she would not have

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disclosed. That's all I have today. Thank you. [LB748]

SENATOR ASHFORD: I don't see any questions, but thank you for coming today. [LB748]

LIANE BODE: Um-hum. [LB748]

SENATOR ASHFORD: Do we have any other testifiers for the bill or against the bill? Neutral testifiers? Senator Avery, do you wish to conclude? [LB748]

SENATOR AVERY: I appreciate the questions. They raised issues that I think need to be addressed. There may be some ambiguities in the draft that you have that could be made more clearly, and some problems that perhaps exist that we could work on. I would, though, that you not allow those ambiguities to scuttle the bill. I am convinced that there is enough talent on this committee and with the legal counsel that we can fix those things. It's a very important matter. It's a matter of public policy that we ought to be addressing. Thank you. [LB748]

SENATOR ASHFORD: Thank you, Senator Avery. Senator Chambers. [LB748]

SENATOR CHAMBERS: Senator Avery, I'm appreciative of the fact that the witness did come and that she did testify. These kind of experiences are horrendous. Having to relive them sometimes can be more traumatic than when it actually happened, so I applaud her for being willing to come, for initiating her coming before us. I think it took a lot of courage. And I applaud you for bringing the bill. And if there are concerns that I have, I will work with you and see what we can come up with. [LB748]

SENATOR AVERY: I appreciate that. I would just say that the lawyer for Ms. Martinez was here last year, but she had another commitment today or she would be here. [LB748]

SENATOR ASHFORD: Thank you, Bill. [LB748]

SENATOR AVERY: And if I had thought that county attorneys would help, I would have gotten one. [LB748]

SENATOR ASHFORD: Well, there is one in the room but I don't want to put any light on them. [LB748]

SENATOR AVERY: Thank you. [LB748]

SENATOR ASHFORD: Senator Kolowski. Proceed. [LB730]

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SENATOR KOLOWSKI: (Exhibits 5 and 6) Good afternoon, Chairman Ashford and members of the Judiciary Committee. My name is Rick Kolowski, R-i-c-k K-o-l-o-w-s-k-i, and I represent Legislative District 31 in Omaha. LB730 modifies the Child Protection Act to protect persons from any liability when reporting alleged child abuse or neglect to school officials. I have an amendment, AM1615, which specifies that a person will receive immunity from liability for reporting alleged child abuse to a school official if that alleged abuse occurred in the school. I also have an amendment, AM1651, that replaces the words "school administrator" with "school lead administrator," which is defined as superintendents, principals, and assistant principals, and chief administrative officers. I have included a copy of these amendments in your packet. I introduced LB730 after meeting with a family in my district whose experience compelled me to action. You received an e-mail on Tuesday that included a memorandum from my constituents detailing their story. Unfortunately, my constituents and their lawyer have made the tough decision to remain anonymous out of fear their name would be associated with this bill and it may prompt further litigation. They prefer to stay out of the public eye to protect their son, themselves, and the school he attended. I believe it is my duty as their representative to spend the remainder of my time telling their story. You have their story included in your packet and I encourage you to read along. I will move from paragraph to paragraph and jump around slightly. On their letter that was sent to me as Senator Rick Kolowski: The following is a summary of the basis upon which my wife and I are asking you to strongly consider amending Nebraska's Child Protective Act to protect parents from civil liability for reporting information about possible child neglect or abuse in a classroom setting to the appropriate school officials. As part of the background, our child was born with various learning disabilities, and also developed some serious health problems before our child was ten years old. Our child was placed in a teacher's classroom, hereafter titled Teacher A, designed to educate children with various learning disabilities. All of the children in this classroom have special needs in varying degrees. While our child was enrolled in Teacher A's class, we were told by persons inside the school that Teacher A engaged in numerous acts which, in our opinion, constituted verbal abuse, mental abuse, and potentially physical abuse. Out of concern for the safety and well-being of our child and the other children in that classroom, we reported this information to the school's principal. Upon information and belief, our report was one of several factors that led to Teacher A leaving the school. Teacher A later filed a defamation lawsuit against us based on the information we reported to the school principal. Unfortunately, because Nebraska's Child Protective Act did not provide parents like us with immunity for reporting information about possible misconduct in the classroom to a school official, we had to endure several years of costly litigation before the matter was finally resolved. On the advice of counsel, we are not at liberty to share the information about the conduct we were told that was occurring inside Teacher A's classroom. However, the conduct was such that, in our opinion, any parent would have been immediately concerned about the safety and well-being of the children in that classroom. Considering all of the children that had some form of learning disability, it was even more alarming to us. Next, communication to school officials. We

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reported the information we had learned about the problems in Teacher A's classroom to the school principal because we felt the principal was in the best position to consider the information reported by those with firsthand knowledge of Teacher A's conduct. Had we known of the other options available to parents to report this kind of information to the local authorities, and the protections that afforded us, we would likely have chosen that option. However, we don't think parents should have to hire attorneys or conduct legal research before they notify the appropriate school officials of a possible abuse or neglect occurring in classroom settings. We believe the best interests of the children in the classroom should dictate swift action by reporting the information to school officials without the threat of a lawsuit. In our case, although we satisfied those two prongs of the current Child Protective Act, we did not report our concerns immediately to either Child Protective Services or the proper law enforcement. We did what we think most parents would do, and we don't think the parents should be punished for communicating information about problems or even potential problems occurring in a classroom setting to appropriate school authorities. It is imperative that abuse in any of its forms get reported to Nebraska...and Nebraska should encourage this reporting by modifying the law to include a proper school official. Thank you for your consideration of this request. Concerned Parents. [LB730]

SENATOR LATHROP: Thanks, Senator. [LB730]

SENATOR KOLOWSKI: I believe... [LB730]

SENATOR LATHROP: Oh, I'm sorry, I thought you were done. Go ahead. [LB730]

SENATOR KOLOWSKI: I'm still finishing, a little more. I believe my constituents represent a majority of parents in this state who would report child abuse that occurs in a school to the lead administrator of that school because (1) they are unaware of the current rules of reporting abuse, and (2) this is a school issue, so they automatically seek the advice of their school administrator. Some of you may have concerns that schools choose to do their own internal investigations instead of notifying law enforcement. Still fresh in the mind is the incident of OPS several years ago when a school was notified of alleged sexual abuse, and instead of immediately reporting this to law enforcement, they conducted their own internal investigation. In 2012, Senator Council brought LB839 to this committee, which would require schools to report child abuse within 24 hours to law enforcement. Your committee at that time chose to IPP LB839, because you believed that schools are already required to do so in statute. Regardless of whether you have concerns with this legislation, parents should not have to hire attorneys to conduct...or conduct legal research before they notify the appropriate authority of alleged child abuse. Either we change this law, this year, to include school lead administrators as a third authority to which persons can report child abuse and not be liable, or at the very least, we require schools to publish in their handbooks the correct way to report child abuse. I have included that in AM1651, which

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again is in your packet. Thank you for lending your ears today. I would be more than happy to answer any questions. On that note, I would urge you to advance LB730 to the floor for full consideration to the Legislature. Senators, thank you. [LB730]

SENATOR LATHROP: Thanks. I have a question. I'm looking at your bill and I am reading it, and I don't see an immunity for reporting this; just a requirement where it now lists the school administrator as the proper person to report abuse to. [LB730]

SENATOR KOLOWSKI: Um-hum. [LB730]

SENATOR LATHROP: And if you read it literally, I think a physician who was aware of abuse right now would have to notify the proper law enforcement agency or the department on a toll-free number. And literally, if we passed this bill in the form that you presented it here, a physician, who is not even in the school context, would have the option of calling some school administrator to report this. And I don't see an immunity in here. And I realize we're just...where maybe the immunity is someplace else and says if you do... [LB730]

SENATOR KOLOWSKI: The amendment? Yes. [LB730]

SENATOR LATHROP: ...if you do something...well, show me, first of all, where the immunity is that you're talking about. [LB730]

SENATOR KOLOWSKI: We desire to add the administrator, the school administrator, to the current law, as you see on page 2, line 10 and 11: a school administrator or chief administrative officer of the school being added to that list. [LB730]

SENATOR LATHROP: So if somebody makes a report under 28-711, which is the section you're amending, are they granted an immunity somewhere? [LB730]

SENATOR KOLOWSKI: At the current time? [LB730]

SENATOR LATHROP: Yeah. [LB730]

SENATOR SEILER: (Section) 28-716 gives the immunity. [LB730]

SENATOR LATHROP: 28... [LB730]

SENATOR SEILER: I've got a copy in my packet. Maybe you don't have yours. [LB730]

SENATOR KOLOWSKI: Yes, I have that also; 28-716. [LB730]

SENATOR SEILER: Grants the immunity and refers to 28-711. [LB730]

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SENATOR KOLOWSKI: Shall I read that? [LB730]

SENATOR LATHROP: No, I've got it. I'm looking at it right here. [LB730]

SENATOR KOLOWSKI: Okay, thank you. [LB730]

SENATOR LATHROP: I didn't see that before. [LB730]

SENATOR KOLOWSKI: Yes, sir. [LB730]

SENATOR LATHROP: Okay, so that's where the immunity comes in. [LB730]

SENATOR KOLOWSKI: Right. Senator, at that time then reporting to either law enforcement or Child Protective Services fulfills that. But the school administrator is not in that loop at all, and I would say the vast majority of parents would not know that and they would go to their school administrator as the first person of contact. And that does not guarantee that person reporting that immunity at that time because they went to their school administrator. [LB730]

SENATOR LATHROP: But given what happened at the OPS school, is that the right person to be reporting it to? [LB730]

SENATOR KOLOWSKI: According to the law... [LB730]

SENATOR LATHROP: If you think a child's...but let's go back and talk about the problem OPS had... [LB730]

SENATOR KOLOWSKI: Um-hum. [LB730]

SENATOR LATHROP: ...because they had, I think it was at, like, Nathan Hale, or somewhere, wasn't it? [LB730]

SENATOR KOLOWSKI: I believe. Yeah, I... [LB730]

SENATOR LATHROP: There was some allegation of some...I don't know, what was it? Sexual abuse or something? [LB730]

SENATOR KOLOWSKI: Misconduct, yes. [LB730]

SENATOR LATHROP: And they reported it to the school. Didn't we decide then that it should be reported to somebody besides the school, so that it's not stuck inside the school? [LB730]

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SENATOR KOLOWSKI: Well, it should be reported to either Child Protective Services or the law enforcement officers. [LB730]

SENATOR LATHROP: Right, but some...but what you're doing is allowing somebody to give them a third option, which is a school administrator. [LB730]

SENATOR KOLOWSKI: Right. And if you do that, then you're not liable for legal action if you have reported that. Right now, the principal...and speaking as a principal in my past, to be out of that loop and to be contacted either as a third or fourth or fifth person after it's been out in the public or in other locations... [LB730]

SENATOR LATHROP: Who are you trying to immunize, Senator? Are you trying to immunize the school administrator that gets this information or the parent that reports it? [LB730]

SENATOR KOLOWSKI: The parents, sir. Yes. They don't know this unless it's in a handbook or very specifically notified to parents in either the parent handbook or a student handbook or whatever would be going home as far as notification on this. [LB730]

SENATOR LATHROP: And when I look at 28-711, as you've amended it, you haven't amended it to include just regular Joe Parent. All you've done is now allowed a physician, instead of reporting something to a law enforcement agency, he could literally pick up the phone and call a school administrator that has nothing to do with this and report child abuse. [LB730]

SENATOR KOLOWSKI: On the first page of that: Any person participating in an investigation or making of a report of child abuse or neglect. [LB730]

SENATOR LATHROP: When a physician, nurse, school employee, social worker, Inspector General, or any other person, okay. All right. Senator Coash. [LB730]

SENATOR COASH: Thank you, Senator Lathrop. Senator, a school administrator is a school employee, right? [LB730]

SENATOR KOLOWSKI: Yes. [LB730]

SENATOR COASH: And a school employee is already, under the law, a mandatory reporter. They are right here in line 4 of the current law, if you look... [LB730]

SENATOR KOLOWSKI: Reporting, yes,... [LB730]

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SENATOR COASH: Yeah. [LB730]

SENATOR KOLOWSKI: ...if they know of that situation, yes. [LB730]

SENATOR COASH: Right. So...but really, the catchall here in the current law, under your bill, is on line 5, "any person," right? It basically says any citizen that thinks a child has been hurt, has to report to somebody, right,... [LB730]

SENATOR KOLOWSKI: Um-hum. [LB730]

SENATOR COASH: ...or cause it to be reported to law enforcement or the department. So if we adopt your language here, it would make it permissible for if I think my neighbor is abusing his daughter I can call the administrator and I've met my obligation under the law. And I don't think that's...I don't think that's your intent here but I think that's maybe what would happen, because you're saying...because we've got one group of people who see abuse occurs and then we say, and this is what you have to do. And what you have to do is you have to cause it to be reported to somebody. And you're saying, well, you can report it the school administrator, but the school administrator may not have anything to do with the abuse, I... [LB730]

SENATOR KOLOWSKI: The current law says you must report it to one of the two places. [LB730]

SENATOR COASH: Yep. And you're adding school administrator. [LB730]

SENATOR KOLOWSKI: School administrator, yes. [LB730]

SENATOR COASH: But the school administrator may not be a part of what you're seeing there but you're allowing it to be reported. I think...I don't think that's your intent but I think that may be what's occurring here. [LB730]

SENATOR LATHROP: If the abuse was happening in school, that would be the logical person to report it to. [LB730]

SENATOR KOLOWSKI: Yes. [LB730]

SENATOR LATHROP: If the abuse happened at the... [LB730]

SENATOR KOLOWSKI: Outside...in the family or another person. [LB730]

SENATOR LATHROP: ...at a gym or at a...at the mall,... [LB730]

SENATOR KOLOWSKI: Um-hum. [LB730]

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SENATOR LATHROP: ...if the abuse happened at the mall and you pick up the phone and you call a school administrator, they don't...it doesn't even have to be the school administrator the kid goes to, under the bill. And I think that's the part where there's sort of a missing link is the connection between the school administrator and this particular act of abuse. [LB730]

SENATOR KOLOWSKI: Because this...I was keeping it within that family that reported in that school to that particular administrator, as the vast majority of parents I think would understand that's where they would go if they had an issue with their school. [LB730]

SENATOR COASH: But under the current law, if they went to the school administrator, who is a school employee, that school administrator has to report it to law enforcement anyway. [LB730]

SENATOR KOLOWSKI: Should, if...in threat of their license; you bet. [LB730]

SENATOR COASH: Sure. So I'm just struggling to understand why we need to add that, if...add school administrator to the list when we already have school employee as a mandatory reporter. I'll keep looking at it. [LB730]

SENATOR KOLOWSKI: Well, that's the only one they reported to, and that was the thrust of the person's libel suit against this family then. [LB730]

SENATOR COASH: Okay. [LB730]

SENATOR KOLOWSKI: It didn't go...in a perfect world I would probably look at...if you know of a situation like this, it would be excellent coverage to report it to all three aspects. [LB730]

SENATOR ASHFORD: Senator Davis. Sorry. [LB730]

SENATOR DAVIS: Senator Kolowski, I just need a little more information about this particular case so that I have a better grasp of it, because I think these gentlemen are making good points. [LB730]

SENATOR KOLOWSKI: Um-hum. Sure. [LB730]

SENATOR DAVIS: But in this particular case, your constituent reported the teacher to the principal at the school, which she thought was proper protocol and probably is the way all of us who have been involved in education know the chain of command. [LB730]

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SENATOR KOLOWSKI: Sure. [LB730]

SENATOR DAVIS: And then that instructor was moved out of the school. Is that what happened? [LB730]

SENATOR KOLOWSKI: Yes. [LB730]

SENATOR DAVIS: And lost her or his... [LB730]

SENATOR KOLOWSKI: She left. Right. [LB730]

SENATOR DAVIS: Was she fired? [LB730]

SENATOR KOLOWSKI: I would have to look at my background notes on that again, but she was fairly quickly released from that position. [LB730]

SENATOR DAVIS: I guess I'm struggling with how in the world she would consider that she would have any grounds for any kind of a suit against them unless there was something that was reported to the principal that wasn't quite true. [LB730]

SENATOR KOLOWSKI: I don't think it was a matter of the truth, because seemingly the actions did occur in the classroom, the negative actions on her part. The fact that she knew that they did not have...they didn't go to the proper authorities in reporting that, she had that family over a barrel, and therefore the lawsuit was brought. [LB730]

SENATOR DAVIS: But how can that be? [LB730]

SENATOR KOLOWSKI: That's why I think it's a gap in the structure or in the law that we're trying to bring forward, that this family pointed out to me that I didn't know. And even as a school administrator, I could not have quoted this to you, because we... [LB730]

SENATOR DAVIS: But see where I'm coming from, is if as a former principal you know all the process and the procedure that goes into moving somebody out of a school, and it is not an easy process. [LB730]

SENATOR KOLOWSKI: Yes. [LB730]

SENATOR DAVIS: You've got to really have the proof. It seems to me, if all the proof was there, I don't see where there is a basis for any kind of suit against these parents from this teacher. [LB730]

SENATOR KOLOWSKI: Because the original law...the law says, Child Protective

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Services or law enforcement. In my situation, Senator, it was...I had the advantage of having an SRO in my building, and so I...the Douglas County Sheriff was at our side when we had these kinds of incidents take place. So we were already reporting it directly to a law enforcement official; and through my counselors or school psychologists or whoever was uncovering whatever situation was going on, we were on top of it that way. Now did I know we were doing it okay? I'd have to look back and think about that compared to the all the incidents that we might have been dealing with over time. [LB730]

SENATOR DAVIS: Can I ask one of the attorneys that question? Is there an answer? [LB730]

SENATOR CHAMBERS: You mean about the lawsuit? [LB730]

SENATOR DAVIS: Um-hum. [LB730]

SENATOR CHAMBERS: In Nebraska, anybody can sue anybody, even God. (Laughter) [LB730]

SENATOR KOLOWSKI: We heard that, Senator. [LB730]

SENATOR CHAMBERS: And that's true. [LB730]

SENATOR SEILER: Service is tough, though. [LB730]

SENATOR CHAMBERS: So the fact that somebody files a lawsuit doesn't mean he or she is going to win, but the constitution makes the doors to the courthouse open to anybody who has a grievance--and I'm paraphrasing--of any kind. And nobody can shut the courthouse door in the beginning. That person who files the lawsuit is entitled to his or her day in court, and it's up to the judge to determine if there's any basis to proceed with the lawsuit. And if the judge says no, the person can appeal that. And maybe on the appeal the judge may have dismissed the action in an inappropriate way. There was a lawsuit filed against God in Nebraska and the lower court dismissed the case pursuant to the law which says if a defendant is not served within a certain period of time from the filing of the lawsuit the action is dismissed by operation of law. But the judge went a step further and said, dismissed with prejudice, meaning it couldn't be filed again; because in the court's opinion, that particular defendant could never be served. Well, the individual who filed the lawsuit had read the law and the law stated that under those circumstances the dismissal would occur by operation of law without prejudice; filed an appeal; and the appellate court vacated the lower court's judgment because it should not have been dismissed with prejudice. And that left the person in a position to refile the action if he or she chose. But that person, having made the point that was to be made, did not seek to file it again. And I'm saying this so people will realize anybody

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can sue. I could sue you, Senator, for looking at me in the wrong way. Now on the face of that, a judge may look at it and say this fails to state a cause of action and it's dismissed, but I would still have to be allowed to present to the court what my grievance is. So they could sue parents. [LB730]

SENATOR LATHROP: Maybe I can make this point. It looks like you're trying to provide protection if somebody complains to a parent...or to a superintendent or a school administrator. What you've done is created instead not a protection for the person that complains but a new class of people to report these to, and so...and without any relationship to whether the abuse is happening in a school setting. So now if I'm a physician and I learn that somebody is being abused in my...if I'm a pediatrician, somebody comes in, says, I've been abused by my next-door neighbor, the doctor, instead of calling law enforcement, could call the superintendent of the school. And so I think it's just a drafting thing. I get what you're trying to accomplish, but that's where I think the confusion has come in. [LB730]

SENATOR KOLOWSKI: And that's the challenge we had in trying to put this together. It was...there's so many entangling type of stories you can come up with, like that. We were trying to be as covering as possible but simplistic as possible. [LB730]

SENATOR CHAMBERS: But I think it ought to be drafted in the way that Senator Lathrop is talking about, but it should be kept in mind that expeditiousness is what we're interested in. Once this information comes to the attention of whomever is involved with the school system, that is to be immediately reported to law enforcement or the department so that it's not sat upon. I haven't said much because I was involved in trying to get the county attorney and the schools to do something about the fact that this guy had been suspended three times by the school for these kind of complaints. The principal put two of the girls out of school for filing the complaints; so there was a lot going on there. And when I talked to the county attorney about it, he said he would not charge those administrators and teachers who knew about it because they might not be willing to testify due to the possible incrimination. And I told him the most significant thing and the best thing in the world would be to see some teachers and administrators sit up in a courtroom and say, I refuse to answer the questions on the grounds that I might incriminate myself. It would show how wide-ranging the corruption was. And by the way, that principal was removed, but she was given another job with the other school system. So we have a very serious problem here and I don't want on your bill to rehash all of that, but there is a reason for what you're doing. There is validity to it. But Senator Lathrop had raised some issues...because I wasn't going to go after the bill here because it might seem like I'm opposed to the bill. But I think that the issues that have been raised are valid, but something can be done to work our way through that, I believe. [LB730]

SENATOR KOLOWSKI: And I'd be more than happy to work on any revisions that we

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might need to do. One of the...from a school perspective, if it's a child abuse situation, in general, I think our society would look at principals in those schools to hopefully protect children from such behavior. And so turning to a local...it wouldn't necessarily have to be the school that child attends. But if something was reported to a principal I almost wish there was a three-part process where you do file it with all three--Child Protective Services, law enforcement, and your local school district--so they would be aware of that. And then they would have to decide who's going to carry it from there to get to the bottom of the issue. And there would be no chance to hide it when you have three different parties, instead of a long, drawn-out school investigation into something, as we experienced some of that in OPS this last time. [LB730]

SENATOR ASHFORD: Yes, Senator. [LB730]

SENATOR DAVIS: One other thing, Senator, if you're going to rewrite it. In a lot of the smaller communities in Nebraska, it may be the school board member that it gets reported to. And so sometimes when that happens the school board member doesn't understand the law either and goes to the administrator. And so I just think it's something you need to think about, that the reporting isn't always going to come there. It may go to the school board member. In fact, I can tell you of specific cases where that happened. And then when board members would take that to the administration, they weren't necessarily interested in reporting it to the police either. So it's always a problem. But I would sure think about that when you're rewriting it. [LB730]

SENATOR KOLOWSKI: Sure. Appreciate that. I... [LB730]

SENATOR CHAMBERS: But I think when the law says any person or any other person, that covers the waterfront. But I'm willing to talk to my colleagues and to the introducer of the bill so that we can come up with something. But I don't want to create a maze or anything that will allow A to say, well, I thought B had, and I thought C...and this is what I think Senator Kolowski is getting at, that all of them will be implicated and they cannot say that there was no way to get this to law enforcement. But, in reality, if there's a genuine concern about the interests of these children and to have them protected, we shouldn't have to go through all these steps to get this matter, this type of matter, reported to the appropriate law enforcement officials. And if we're not careful, it's going to be like what happened to the Catholic Church finally. I know some Catholics here who are upset with the way I condemn...continue to condemn the church--and I will--for the sexual abuse of children. They've had broader examples, more examples of that, over a longer period of time involving all levels from the Pope on down, than any secular organization. And if it had been the Mafia, La Costa Nostra, or any other criminal family, that would have been a basis to bring them down. So finally, the UN got involved, and now the church is on the defensive because the UN is raising the questions. It shouldn't have to go to that. Children should mean more to us than that, and we should not be loyal, more loyal, to any organization which is going to perpetrate, cover up, and move

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people around who are going to do that, because the organization itself is violating the principles that would make us maybe feel loyal to that organization. But that's not what always happens. There are groups of Catholics, and now some orders of Catholic priests are getting involved, because they said it is shameful that priests did these things, that bishops covered it up, that archbishops knew and approved of transferring these people around. And Benedict XVI, when he was Joseph Ratzinger in Germany, knew about these kinds of things and had some of the worst child abuse going on and did nothing about it. And that's why some people objected to him being elevated to the position of Pope. And I don't care what a person's title is, whether it's a Boy Scout leader, a preacher--that means Protestant, Catholic, atheist--anybody who is going to abuse children have to be brought to book. And there's nothing that should protect them, not a Roman collar, not a Reverend, not any title in front of that name. And when it comes to public condemnation, they should get the strongest condemnation from everybody possible. But in most instances, or many of them, there's the protectiveness as occurred at Nathan Hale. People knew about it. This man, I will say again, was suspended three times, and they never fired him. They simply said, we're not going to renew your contract. So the school itself never took any definitive action against him. And the girls who complained were criticized, condemned. Two were forced out of the school and one was made to transfer because of the pressure that the school authorities at that school were putting on those children. And I was the villain, because at that time I had a cable television program. I talked about it. I wrote to Dr. Mackiel, sent material to the members of the school board, sent the material to the principal. And none of them wanted to do anything. And when some of the school board members said, well, maybe we need to change our reporting procedures, Dr. Mackiel said, don't change anything. And I got after him. And I'm not going to take credit, but I think that might have been part of the reason he abruptly decided to resign, because I started talking to some powerful white businessmen in the city and I let Mackiel know it and that he's not going to get away with this, despite all the other stuff he got away with. And if you look at the timing of when he left, the suddenness with which he left and the work that I was doing publicly, which in many cases was being condemned, you'll see that what I'm saying is plausible and it's credible. And I'm saying that it's true. So I appreciate what you're doing and I'll work with you to get whatever it is that might be needed to see that this thing is properly handled. [LB730]

SENATOR KOLOWSKI: One of the...and just you were speaking to the release of papers, the Chicago Archdiocese, the papers were just released yesterday... [LB730]

SENATOR CHAMBERS: Okay. [LB730]

SENATOR KOLOWSKI: ...and they're in the press all this week as far as the history and what's taken place there, another sad chapter in that whole saga. One of the aspects of notification that I did talk about in here, in my verbal comments, I think that's something that really needs to be looked at and it might be an important piece of what we keep in

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this desired legislation, that the notification in the handbooks is very particular and very precise. And I would say in most handbooks it's probably not there, so we'd have to do an analysis or do some boilerplate kind of work to make sure that whatever is published by a district as far as their curriculum handbooks or student handbooks, the materials that go home to parents, that it would have that in there so there's no question. [LB730]

SENATOR ASHFORD: And shouldn't that be reviewed by the department? [LB730]

SENATOR KOLOWSKI: Yes, absolutely. Absolutely. [LB730]

SENATOR ASHFORD: I mean, one of the things that has been frustrating...and I'm sorry, Senator Lathrop, I'll... [LB730]

SENATOR LATHROP: No, that's all right. [LB730]

SENATOR ASHFORD: But one of the things that has always been in all these issues where a child is in jeopardy or at risk or...and there are lots of these issues where it would be important for individuals to know what was going on for the protection of the child, the schools have been, in the years I've been back here, it is unfathomable to me, when we were trying to encourage...and OPS, quite frankly, was the one agency, the one school district that resisted all sharing of information on anything that was pertinent to a child. If we find out somebody is at risk, is in danger, is...for whatever reason, that information should be gotten to the people that can protect that child in real time. And every time we would bring up, over the years, in this committee, some of the time even when Senator Chambers wasn't here, because he brings this up when he's here and he has been here a lot, is we could never ever understand why information was...so that we can make decisions on things like this. [LB730]

SENATOR KOLOWSKI: Absolutely. [LB730]

SENATOR ASHFORD: And it's been one of my largest frustrations. Yes, Senator Lathrop. [LB730]

SENATOR LATHROP: To this point in time we've been talking about how you sort of missed the mark. If you're trying to immunize somebody, this missed the mark. The problem is, I think, with all due respect, I think it's bad policy. We just talked about four reasons why we shouldn't keep the information inside the club. If we change this term "school administrator" to "bishop," you'd have a problem with it, and you'd have a problem with it because somebody in the parish or a priest could go to the bishop and say, this just happened. What you want it to do is get outside the organization. And this causes the information to stay within the organization, and I think that's bad policy in the end. What you want, if some kid is being abused, is for somebody other than people in the school to be aware of it. [LB730]

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SENATOR ASHFORD: Somebody ought to know it, right. [LB730]

SENATOR LATHROP: But going to the school administrator may be the end of it and it may never leave the school. And with all due respect, Nathan Hale,... [LB730]

SENATOR CHAMBERS: This is why I said (inaudible) get what he's after. [LB730]

SENATOR LATHROP: ...Nathan Hale is the perfect example. Somebody reports abuse. They go, well, I told the principal. Well, right now, they have to tell the cops. And now we're going to say, now we're going to go back to making it okay to tell the principal. We want it outside of the school. And so I think what we're doing is we're going into an area where we don't want to change the law. It is what it is for a reason, and it's so it gets outside the club, whether that's...this could be the CEO of a corporation that we put in there, the bishop of the church, or it could be the school administrator. But what we want it to do, which it does now, is it gets it outside the club where law enforcement can look at it and say, this needs to be investigated, get somebody on this, instead of having it be scuttled, have people paper over it, do a couple of suspensions and nothing happens, so. [LB730]

SENATOR KOLOWSKI: I understand that. I understand that. That was a risk we took. [LB730]

SENATOR CHAMBERS: And in fairness to this committee, I wasn't here, but I think...I'll tell you my brain cells are Teflon and nothing sticks, but the things that need to do. I testified on the need to do something but I didn't like the version that Senator Council brought--I think it was drafted by the schools--because it had people in the schools who saw it reporting to others and not going directly to law enforcement. And that was mentioned as a problem at the time; that it behooves the individual who is aware of it to report it to law enforcement and not go to a teacher. Even if they went to a teacher or something, it's on that person to report it to law enforcement. And nothing could take from that person the duty under the law to do so. And what the schools ought to do--I don't want to make it seem like I'm going against what I said about trying to get something done--but force the schools to put into this handbook the types of things that are necessary to achieve, what Senator Lathrop keeps emphasizing, and then require every school to inform all of its employees of these responsibilities in this area. And you used the term "boilerplate." Let it be in the formulation that's the same all over the state, and then somebody can't say, well, people in a small, rural community may not be aware of what to do. If everybody gets the same marching orders, then I think it's going to be harder to bottle it up anywhere and say, well, I told the principal. It has to be clear that the person who is aware of it, who has the information, has to report to law enforcement, because that's where we've got to get it, or to the department, then they move on it. [LB730]

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SENATOR KOLOWSKI: I don't disagree. Yes, sir. Senator Lathrop's comment about the church situation, that compared...a child may not go anywhere for worship so they're not in that situation but they are probably in school or homeschool. So the factor that up until age 16 or dropout age, whatever it might be, that's one of the anchors in the community that you know you have something. So I think to peel the onion, I think the information being published in handbooks is a very important part of this whole thing, whether we do anything with the principal or not. Then the possibility of the principal and being added to the triad now, to make it a triad, being added to that would be another aspect of this. Or reporting to all three would be a third point of this whole process to think about. So I'm just looking at that in the sense of fail-safes. There would be no place where the ball would be dropped, because then you'd have three groups of agencies looking at the alleged abuse and knowing that somebody has got to take care of it, because your job is on the line if you don't carry that out. [LB730]

SENATOR ASHFORD: Thanks, Rick. [LB730]

SENATOR DAVIS: I've got one more question. [LB730]

SENATOR ASHFORD: Yes, Senator Davis. [LB730]

SENATOR DAVIS: I'm looking at this statute on the immunity, "Any person participating in an investigation," etcetera, etcetera, and it moves on down here, "is immune from any liability, civil or criminal, that might otherwise be incurred or imposed, except for maliciously false statements." So, Senator Kolowski, this particular case, if you were to adopt this, it would protect...do you think this would protect these individuals from a lawsuit? [LB730]

SENATOR KOLOWSKI: Yes, the way we have it written at this time it would be to protect parents from going...adding the principal to the listing of who they could go to and having...if the parents would choose to do that. You interview 100 parents, you'll probably find 98 of them wouldn't know that they had someplace else they should go. It's just not known. And that's just not something they would consider or think about, because it's not published very well. So this gives more definitive routes to follow when there's a situation like this with a child in a community. [LB730]

SENATOR DAVIS: But coming back to the question that Senator Chambers answered for me, and back into the reference that I made earlier about school processes and procedures... [LB730]

SENATOR KOLOWSKI: Sure. [LB730]

SENATOR DAVIS: ...it's hard for me to see that (inaudible) would still be able to sue this

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particular individual even though it was...they might be immune, because they'll probably...I'm guessing this teacher accused them of making false statements. Am I right in that? [LB730]

SENATOR KOLOWSKI: Yes. [LB730]

SENATOR DAVIS: So are we still... [LB730]

SENATOR LATHROP: Still get sued. [LB730]

SENATOR DAVIS: Still get sued. So even if we do that, we may not prevent any attempt by someone to sue. See what I mean? [LB730]

SENATOR KOLOWSKI: Well, but the person's lawsuit was based on the fact that they went to the principal only, not to law enforcement or the Child Protective Services; and therefore, they went outside of the realm of the reportable persons to go to as instructed by the law as it currently sits. That's why adding the principal within the... [LB730]

SENATOR DAVIS: But did they...was there an award? Did they get an...were they required to make an award? [LB730]

SENATOR KOLOWSKI: I'd rather not say on that. [LB730]

SENATOR DAVIS: I guess what I'm trying to say is I don't think that you're going to protect them from a lawsuit, if that's what your objective is, because they could still say, well, it was a materially false statement; I'm going to sue those people. [LB730]

SENATOR KOLOWSKI: And the person would have the right to do that even if the principal is added. But then they'll have to defend that. But this case was very drawn out and very expensive because they had no protection with the principal at all. It got to be very lengthy. But I'm just picking it up for a constituent and trying to carry this forward, knowing that it's a maze. We're trying to get it through the maze and pick the very best route to go to keep this from happening to other families as they look into this. [LB730]

SENATOR DAVIS: This is the way the Judiciary Committee works. [LB730]

SENATOR KOLOWSKI: That's great. [LB730]

SENATOR DAVIS: Something that seems like a fairly easy thing becomes more (inaudible). [LB730]

SENATOR KOLOWSKI: No, no. That's why we brought it forward... [LB730]

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SENATOR DAVIS: It is. [LB730]

SENATOR KOLOWSKI: ...and I'd be more than happy to do what we need to do to make it better and seek your counsel on that. Thank you. [LB730]

SENATOR ASHFORD: Thanks, Rick. [LB730]

SENATOR KOLOWSKI: Thank you very much. [LB730]

SENATOR ASHFORD: Okay, do we have any who wish to testify on this bill, for the bill? How many for the bill do we have here, actually? [LB730]

JASON HAYES: I think it's just me. [LB730]

SENATOR ASHFORD: Just you. Well, that's all right. A solid... [LB730]

_____: For the bill? [LB730]

SENATOR DAVIS: For. For. [LB730]

SENATOR ASHFORD: How about against the bill? Go ahead. [LB730]

JASON HAYES: (Exhibit 7) Okay. Good afternoon, Senator Ashford and members of the committee. For the record, my name is Jason Hayes, J-a-s-o-n H-a-y-e-s, and I'm here today representing the 28,000 members of the Nebraska State Education Association. NSEA is testifying in support of LB730. We believe the changes proposed by Senator Kolowski here today will improve the reporting of child abuse in our state. The changes will protect those persons reporting the actual child abuse act, those parents, and school employees from possible exposure to liability from an alleged child abuser. People who report allegations of child abuse to a school official should not be later threatened or subjected to a defamation lawsuit. The law should be changed to permit those who make reports to school officials of child abuse to be safe from retaliation and costly, time-consuming litigation. Under LB730, evidence of child abuse should be presented to school officials so they may conduct an immediate investigation and then contact Child Protective Services as required by the law. We also support the proposed amendment, AM1651 and AM1615. And I'm happy to take any questions. And I know there's been some discussion since I wrote my testimony, but...and maybe I could address some of that. [LB730]

SENATOR ASHFORD: Well, let's...hold on. [LB730]

JASON HAYES: Sure. [LB730]

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SENATOR ASHFORD: Senator Chambers. [LB730]

SENATOR CHAMBERS: The thing that is to be avoided is any investigation being undertaken by the schools. They're not to investigate anything. They are a conduit. Once that information gets to them, they pass it on to law enforcement or the department, and those are the experts who make the decision. The school is not to investigate anything. And if they think that, they wind up where they were at Nathan Hale. There were county attorneys who were concerned about the way the law was written, which would allow time to pass while other actions were being taken, instead of immediately getting into law enforcement. So if your understanding is that what Senator Kolowski is offering is designed to give the school time to investigate, we'll look at the language; and if that's, in fact, what it does, then that's not good. And if that's what the people you represent in this organization think is going to happen, that's not good. There is not to be an investigation by the school people. That information is to be passed on right away. And I'm not trying to speak for Senator Lathrop, but when you put too many parts into it, there can be time elapsing with each successive action taken, then the feeling that somebody else has to be told. So promptitude is what is necessary. And the more I listen to what the understanding is that people have, maybe the more (laugh) I'm coming to what Senator Lathrop has said: Just leave the law alone and make people know what it is. Or if there's any changing in the law, make it clear that promptitude, promptitude, promptitude is what we want, not anybody to hold on to that information till a proprietary feeling develops. But let it be like a hot potato: it's given to me and I pass it immediately to law enforcement. And then it's on them to do any investigating. Once they have it, they can make the contacts, they can trace and walk backward, but it's not going to be sitting anywhere just sitting. [LB730]

JASON HAYES: Yeah. Senator Chambers, I definitely agree. And there's nothing in the law that says, you know, like the shopkeeper's privilege where they have to do an investigation before they contact law enforcement. This would be something that they...I...maybe the proper word besides investigation would be just to make them aware of it. But in law they are required immediately to pass that on to Child Protective Services. You are correct. [LB730]

SENATOR CHAMBERS: I understand. And hey, and I don't call myself chastising you, but since it was read into the record, anybody who would look at the record, I would want it clear to them that that word, if it's used, does not mean that there's going to be a process gone through by the school people before they turn it over to law enforcement. [LB730]

JASON HAYES: I agree. And I...you know, Penn State comes to mind when you raise that. [LB730]

SENATOR CHAMBERS: But I'm glad you came. [LB730]

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JASON HAYES: And if I... [LB730]

SENATOR ASHFORD: We're all glad. So, no, we're fine. Thank you. [LB730]

JASON HAYES: And if I may just address a couple of things with regard... [LB730]

SENATOR ASHFORD: Okay. [LB730]

JASON HAYES: ...to the amendments that was pointed out to me. In AM1615, it does specify a situation where the incident occurs at school; and then in AM1651, that would perhaps be the proper place to put "school board member" in there. [LB730]

SENATOR ASHFORD: Okay, good. Thanks. Thanks for coming. [LB730]

JASON HAYES: Okay. [LB730]

SENATOR ASHFORD: Let's go to the opponents now. Yes, ma'am. [LB730]

MARY BAHNEY: (Exhibit 8) Senator Ashford and members of the Judiciary Committee, my name is Mary Bahney, B-a-h-n-e-y. I'm here today representing the Nebraska Chapter of the National Association of Social Workers, NASW-NE, and the School of Social Work Association of Nebraska. We call ourselves SSWAN. Both of these professional associations of social workers have concerns about LB730 as it was originally written. The bill would add school administrators to law enforcement and the Department of Health and Human Services' toll-free hot line as the official recipients of reports of abuse and neglect of children. Our concerns are: a concern that the report of child maltreatment would not be made in a timely manner; the various levels of knowledge and training on the topic of child abuse and neglect held by the many school administrators across the state that may hinder the completion of the reporting process; the need for the person with the most firsthand knowledge to report incidents of child maltreatment to law enforcement and/or the state hot line; and the confusion that currently exists regarding the reporting process. As we have heard from Senator Kolowski's testimony, the origins of this bill came about from a family's confusion as to where to make a report regarding their child's situation, especially when their concern was regarding their child's teacher. Our concern is that allowing school administrators to be a proper place to make a child abuse referral could make the process of making a referral more confusing and possibly have serious unintended consequences. While the current system of reporting possible abuse and neglect situations is not perfect and no doubt needs to be better communicated to the general public, NASW-NE and SSWAN do not believe LB730 would clarify this process for the citizens of this state. Please, also be very careful as you consider amendments to LB730, so that any changes to the current reporting system do not have unintended consequences that would make

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circumstances less safe for our children. NASW-NE and SSWAN urge the members of this committee to be extremely cautious in allowing other than law enforcement and the trained persons who staff the hot line to be the proper recipients of reports of child abuse and neglect. Thank you for your time and consideration. [LB730]

SENATOR ASHFORD: Thank you for your time. Any questions? I don't see any. Thank you for your comments. [LB730]

MARY BAHNEY: You guys figured a lot of this out. Thanks. [LB730]

SENATOR ASHFORD: That's why we are the number one committee. We're number one. Lee. [LB730]

LEE POLIKOV: (Exhibit 9) Thank you. I have to agree. You don't get enough credit for how taxing and challenging the issues that are raised before this committee, even on a rather slow day, or it looks like the agenda is a slow day. Chairman Ashford, members of the Judiciary Committee, I'm Lee Polikov, L-e-e P-o-l-i-k-o-v, Sarpy County Attorney, and I wish to address you today on LB730. I should tell you, for those of you I don't know, there's a couple, I'm in my 15th year as county attorney in Sarpy County, and before that I spent 26 years as the chief deputy and counsel for the sheriff's office. And I'd like to read my brief comments because we're creating a record, and then certainly answer any questions. It is...oh, and I want to apologize to Senator Kolowski, because this came up so quickly I would have liked to have talked to him beforehand and worked out some of these issues that have come up, and I think we could have done that. But I have to say that, based on...and not seeing the amendments, I'd like to put this into the record. It is clear that the intention of the Legislature in 28-711 was to make everyone a mandatory reporter of child abuse. By doing so, a limitation on liability automatically attaches to the reporter and the reporter is protected. The proposed language is unnecessary and can create confusion. It exacerbates a problem prosecutors see in the existing law, which should clearly state that the reporting requirements should be immediate. The Legislature went so far as to mandate a 24-hour, 7-day-a-week toll-free telephone number so reports could be made without delay. I have personally handled two cases where a teacher, and a mandatory reporter, were indecisive and discussions with school administrators led to late reporting. Both children were allowed to return to a potentially dangerous environment after being specifically questioned at school about their injuries. There was a rather convincing pressure from law enforcement to prosecute a teacher and a principal for failure to report, but I chose not to do so because of the circumstances, and thought that the better result would be working with the superintendent to develop clear policies and procedures and implement adequate training to assure the immediate reporting of child abuse. When the abuser is a school employee, the temptation to investigate first is ever-present and such delays will be perceived as cover-up and could result in criminal liability for interference with the investigation and failure to report. The only change that should be considered is that we

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add the word "immediately" on line 10. [LB730]

SENATOR CHAMBERS: We don't allow demonstrations, but (applause). That would have handled it when they were talking it about that other year. [LB730]

LEE POLIKOV: You reminded me of that when we were here looking for some kind of quicker reporting requirement, because what we are faced with on the prosecution is the defense saying, well, we know we had to report, you shall report; but it didn't say when. And so we had to check with higher level supervisors, we had to check with board members, we had to check with the school attorney, and then we know things get really involved once that, so. [LB730]

SENATOR ASHFORD: And the schools need to be able to tell the parents that that's exactly what they should be doing,... [LB730]

LEE POLIKOV: Yeah. [LB730]

SENATOR ASHFORD: ...which is not the case, so. [LB730]

LEE POLIKOV: Yeah. In the case that Senator Kolowski faces, it would seem that actually the people should have reported it to the law enforcement and they'd still be in that same position because the Legislature can't stop people from filing a lawsuit... [LB730]

SENATOR ASHFORD: Right. [LB730]

LEE POLIKOV: ...and the costs that go along with defending even an improper lawsuit. That's just...that's the system we face. [LB730]

SENATOR CHAMBERS: May I? [LB730]

SENATOR ASHFORD: Yes. [LB730]

SENATOR CHAMBERS: I'm taking seriously the insertion of that word "immediately." And people can say, well, what does it mean? I'll tell them, look it up in the dictionary. Because the idea...courts have said nobody can be required to do that which is impossible. But by us putting that word in, we make it clear that whatever that means, it eliminates delay. [LB730]

LEE POLIKOV: Right. [LB730]

SENATOR CHAMBERS: It means right now. [LB730]

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LEE POLIKOV: You, like I, hear that phrase "best interests of the child," all the time. Sometimes it's hard to decide what the best interests of the child is, because of competing interests. But I think the Legislature long ago decided that the best interests of the child was immediate reporting. The sooner it got reported and investigated by proper authorities, the better it was, even if it was unfounded or not as serious, as many cases we face. That's the intent of the Legislature. It was proven by the 24-hour hot line. I think we should hold to that. And also the discussion earlier as was brought up by the person that was just here--I forgot her name--before me: We create confusion; we can't afford confusion. People need to know that everybody, the man on the street, is a mandatory reporter. Call law enforcement. And when we thought that was a little harsh, we said call this hot line, train professionals answering it. So, that's my...any other questions? [LB730]

SENATOR CHAMBERS: Just one other comment. By saying immediately, we'll also take some of these timid teachers and others off the hook, and they can say...because if a principal would say, well, why didn't you talk to me first? Well, the law says immediately. So they also now are in a position to move more expeditiously than right now they think they're entitled to do. So that's an amendment I'm going to offer and I'll talk it over with Senator Kolowski and see where we go. [LB730]

LEE POLIKOV: Good. And the County Attorneys Association will be glad to work with you, Senator. [LB730]

SENATOR CHAMBERS: Okay. [LB730]

LEE POLIKOV: Thank you. [LB730]

SENATOR ASHFORD: All right. Do we have any other testifiers? Rick, do you have a brief closing? [LB730]

SENATOR KOLOWSKI: Yes, sir. [LB730]

SENATOR ASHFORD: Not that your closing would, brief or otherwise, would not be wonderful. I'm just... [LB730]

SENATOR KOLOWSKI: I want to thank the committee for this time this afternoon. And just to reiterate, this is not about encouraging schools to do their own internal investigations. This is about parents having immunity when reporting to an appropriate school official. Schools are required by law to report within 24 hours. The judge overseeing my constituents would have dropped this case but they did not have immunity. The judge said he could not drop it because of the current immunity laws; only give immunity from liability by reporting to CPS and law enforcement. If nothing else passes, I hope we will be able to get this into all the school handbooks in a proper

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way and do the other things we need to do to move that along into a more tighter, secure situation for all of our children wherever they might be. And lastly, again the handouts that were passed out to you do have the amendments and other materials in that. If you need to look that over in more detail at your leisure, please do so. Thank you very much. [LB730]

SENATOR ASHFORD: Thanks, Rick. Good testimony by everyone. Thank you. Senator Chambers, you have the next bill, LB672. [LB730]

SENATOR CHAMBERS: (Exhibits 10 and 11) Mr. Chairman, members, distinguished members of this distinguished committee, I'm Ernie Chambers. I represent the 11th Legislative District. And I have a couple of handouts I would like you to have as I proceed. And I'm going to, for the sake of the record, start by reading actually my statement of intent. "The primary function of the Counsel for Discipline of the Nebraska Supreme Court is to investigate and prosecute violations of the Nebraska Rules of Professional Conduct. In July 2013, based on extensive media coverage, I filed a complaint ('Grievance') against a lawyer/legislator who pleaded guilty to aggravated drunken driving. He was sentenced to two days in jail (served under house arrest), one year of probation and a \$500 fine. The Counsel for Discipline declared it to be a rule that a first offense DUI does not constitute professional misconduct, hence, does not violate the Nebraska Rules of Professional Conduct and, therefore, 'decline[d] to investigate [my] allegations.' (Newspaper documentation of the facts was included with my complaint.) The Chief Justice of the Nebraska Supreme Court informed me that he was unaware of such a rule. In effect, an attorney is granted a 'free bite of the apple' when it comes to one of the most serious threats to public safety. This bill amends Section 7-105 which sets forth the duties of attorneys, by making it a duty of an attorney not to drive 'while under the influence of alcoholic liquor or of any drug' (see Section 60-6,196, Reissue 2010). This will not be the first time the Legislature has acted in the realm of setting a standard for the conduct of attorneys (see Section 43-3318 which mandates suspension of an attorney's license for non-payment of child support)." One thing I want to make clear, this is not about Senator Lautenbaugh, but it is Senator Lautenbaugh's action that brought me to the awareness of the fact that the Counsel for Discipline considers it not to be unethical or a violation of the rules governing attorneys on a first DUI. I have talked to people who work in this area, various organizations, counselors and others, and they say, without reference to Senator Lautenbaugh, when a person is caught the first time that usually is not the first time they've done it and it may not be the last. The reason I handed out this article dated Friday, July 12, 2013, page 4B, from the Omaha World-Herald is that it gives you some information. This charge that was made initially was a first offense DUI. Because Senator Lautenbaugh's blood alcohol level was almost three times the legal driving limit, the prosecutor raised it to aggravated first offense DUI. And you will see in the last paragraph of this article, "In 1993, a Chambers complaint led to the Supreme Court's publicly reprimanding former Douglas County District Judge Lawrence Corrigan, based on his arrest and conviction

for driving while intoxicated." No free bite from the apple for the judge. Judges and lawyers are held to a higher standard. They are not to do anything that brings disrepute on the profession, on the judiciary, or the system of justice. And to say that this conduct does not violate the Rules of Professional Responsibility indicates that something other than those rules must be put in place to make sure that these offending lawyers are handled in the way they should when it comes to ethical violations. The reason I gave you the cartoon, it appeared in the World-Herald. Jeff Koterba had drawn it August 22, 2013. It shows the facade of a court with the word "Courts" written over it, pillars being ripped to shreds by a car that went through that facade. And the way Mr. Koterba labeled the car was "Drunk Drivers." What I did was took the same identical cartoon and above the portal were the words "Nebraska Code of Professional Responsibility." The car smashing through is labeled on the back, "Lawyers," and on the side the original words "Drunk Drivers." This is not a joke. Those statistics I gave you, I did not fashion them myself. You can see the number and percentage of fatal alcohol-related crashes. And if you look at that final column in 2012, it seems that alcohol-related fatal crashes is on the rise. In 2011 it was 49; in 2012, 81. Alcohol-related fatalities, because there could be more than one person in the car, the number in 2011 was 51; in 2012, 87. Alcohol-related crashes as a percent of all fatal crashes: 42.6 percent. Alcohol-related fatalities as a percentage of all fatalities--the first one is the crashes; the line under it, the fatalities: 41 percent. Now this is a serious problem confronting this society. And I am outraged at the Counsel for Discipline. And when I called Chief Justice Mike Heavican, I let him know. He said: I didn't know about that. I said: Well, you ought to. The Counsel for Discipline has an official title--Counsel for Discipline of the Nebraska Supreme Court. So I and everybody else am entitled to believe that whatever rules are implemented by that Counsel of your Supreme Court is done with your knowledge and your approval, because under the constitution, you are the administrator of the court system. And this idea of placating these lawyers, protecting them, has to come to a stop. They are put on a pedestal. Only they can represent somebody in a legal matter, only if you are a member of the bar association. And you must be a member of the bar association to practice law. And to represent somebody without violating the law, you must be a member of the bar association. And the people who are given that exalted status have some responsibilities. And I'm going to read, because I want it in the record, the letter that I wrote to then-Chief Justice William Hastings, Chairman of the Judicial Qualifications Commission, dated February 18, 1993, regarding complaint against Douglas County District Judge Lawrence Corrigan of the Fourth Judicial District of the State of Nebraska. "Dear Chairman Hastings: Enclosed is a copy of an Omaha World-Herald article dated February 16, 1993, describing the incident upon which this complaint is based. Judge Corrigan, having indicated that he will plead guilty to driving while drunk, removed from dispute the factual basis of this complaint. I feel constrained to file this complaint, not merely because Judge Corrigan's inappropriate conduct has been publicized but because so many people have contacted me who themselves or whose family members/friends have been brought into court and treated rather harshly, in their opinion, for having been guilty of the same offense. Although the commission

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will make its own determination, I believe that Judge Corrigan violated the provisions of the Nebraska Constitution, Article V-30; Section 24-722 of the statutes; and the Nebraska Code of Judicial Conduct, Canons 1, 2A, and 4A(3)." Here's the letter that I got back from the Chief Justice--Chief Justice Hastings, not Chief Justice Heavican. "Dear Senator Chambers: I am in receipt of your letter of February 18, 1992." And his is dated February 18, 1993, which is a year to the day later. "A complaint against Judge Corrigan has been referred to the Judicial Qualifications Commission for action at its meeting this next month." If you go to the next page, the Nebraska Advance Sheets dated April 23, 1933 (sic), Notice of Reprimand. "Notice is hereby given by the Nebraska Commission on Judicial Qualifications in accordance with Rule 21..." and I can't read all this because of the copy, but anyway, "...of the rules of procedure of the Nebraska Commission on Judicial Qualifications that following a formal closed hearing before the commission a private reprimand was issued on April 14, 1993, to the Honorable Lawrence J. Corrigan, Judge of the District Court for the Fourth Judicial District, because of a finding by the commission that Judge Corrigan had violated Canon 2A of the Code of Judicial Conduct and had violated Nebraska Revised Statute 24-722(6) in that on or about February 6, 1993, in Omaha, Nebraska, Judge Corrigan was involved in an automobile accident resulting in his arrest and conviction for driving while intoxicated." No first bite from the apple, a free bite, for the judge. These lawyers protect each other. One of the reasons I think they took the disciplining of lawyers out from under the bar association is because of the complaints I was filing against prosecutors, lawyers who had engaged in public notorious misconduct. And people began to say that a part of the disciplinary process ought to be...and Senator Chambers. But I filed complaints before I became a senator. I criticized the fact that Jesse James should not investigate Frank James. And the jurors are the Dalton Brothers. That's the way I always went after them. So then they took it out from under the...out of the bar association. And in those days, judges of the Supreme Court talked to me, and it was explained to me what was being done and why. Now you can take my word for it or not, but I'm not like one of my colleagues who makes false statements to create a false impression to gain an advantage when a bill is being debated before the Legislature. I say what is on my mind and I back up what I say, and any consequences, I'm prepared to receive. And the Chief Justice can tell you, if he talks to you and tells the truth, that I was very upset about it. And at first I was going to write a memo and explain why the Counsel for Discipline is wrong to let lawyers, when it comes to a matter that is of such grave public concern, get a free bite from the apple. Almost weekly, sometimes there will be a period when almost daily, it seems, there is somebody involved in an accident that is alcohol-related. How did I get Senator Lautenbaugh involved? I filed complaints on other elected officials: Don Stenberg, as quiet as it's kept; Paul Douglas; and numerous judges; and Senator Council, because I don't play favorites. But the bar association does. Prosecutors do, but I don't. And when Senator Lautenbaugh came in my office...to show you how ungrateful I am, he came into my office July 10, 2013, to wish me a "Happy Birthday." And I said: You come bringing tidings of great joy, but the information I have to give to you will not bring you joy; I am going to file a complaint

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against you for your drunk driving. And he was surprised...no, I can't say he was surprised. Maybe he was feeling me out. He's never wished me good anything to my face. In that article, you will see, in the middle column, where I underlined it, "Chambers said that, when he notified Lautenbaugh about his plans to file the complaint, Lautenbaugh did not mention anything about having self-reported. Lautenbaugh said he could not remember when he made the report." He couldn't remember. There are things that he couldn't remember whether he drafted a bill. And I told people that had he indicated to me that he self-reported, I would not have filed a grievance, because I wanted it in the hands of the Counsel for Discipline. And had he self-reported, that would not have been necessary for me to do. So this comment about the self-reporting and my reaction to it was not in the first reportage. And I called the reporter and told her just what I'm telling you, that had he told me that, I would not have filed. And I don't believe he self-reported until after I told him. So when she asked him when he self-reported, that's when he said he didn't remember. You can confess to having reported yourself for a possible ethics violation and you don't remember when you made the report, and it was a matter of days? I think these lawyers are encouraged not to tell the truth. I think they are shielded and protected by other lawyers. And in the same way that it was stated that some banks are too big to fail, maybe there are too many drunk driving lawyers to punish them; so you give them a free bite from the apple. And that's all I'm going to say at this point because I will have an opportunity to close and I will know what my antagonist is going to say. The difference between the words "protagonist" and "antagonist": the protagonist, which I am, is the good guy; the antagonist is the bad one, which you will hear from shortly. And I don't want that individual to have any misperceptions about my attitude toward what they do in protecting and shielding lawyers. And I want him to choose his words well, because when I go after somebody, especially a lawyer as a member of the legal profession who is an officer of the legal system and a public citizen having special responsibilities for the quality of justice, I don't just give my opinions; I like to use the words that govern them. And I'll answer any questions that you have. I'd be delighted to do so. [LB672]

SENATOR ASHFORD: Senator Seiler and then Senator Coash. [LB672]

SENATOR SEILER: I just have one. When you read your intent, you said driving under the influence of drugs. Do you have an intent to exclude prescription drugs? Since I'm a diabetic and could have a reaction, I would be under the influence of a drug. [LB672]

SENATOR CHAMBERS: The language I took, that's why I referred to the DUI statute, was the language that's in the law right now. [LB672]

SENATOR SEILER: Oh, okay. [LB672]

SENATOR CHAMBERS: So any construction of that language would already be in the law. But if a person is driving under the influence of those drugs, whatever they are,

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then it's up to that person to demonstrate that he or she nevertheless was outside what the law called for. If a person knows that he or she has a bad reaction to a drug, prescription or otherwise, and drives, then that person is culpable, because if you place an action which could have bad consequences and you are aware of what those consequences are, and you nevertheless place the action, there doesn't have to be a conscious intent, as most people understand that word, to bring about that result. But intent is imputed because you knew what the outcome could be and you did it anyway. So maybe it would be reckless disregard. But I'm not a judge so I don't have to interpret or construe that. [LB672]

SENATOR SEILER: But you could get tied up arguing up a lighter bill and not eat, and then the drug takes over. [LB672]

SENATOR CHAMBERS: Say it again. [LB672]

SENATOR SEILER: You could get tied up arguing a lighter bill, and then you don't get to eat and the drug takes over. [LB672]

SENATOR CHAMBERS: Sometimes a comment is made and nothing can be said to improve on it. [LB672]

SENATOR SEILER: Thank you. [LB672]

SENATOR ASHFORD: Senator Coash. [LB672]

SENATOR COASH: Thank you, Senator Ashford. Senator Chambers, the section that you're looking to amend through this bill, 7-105, does that constitute the Nebraska Rules of Professional Conduct? [LB672]

SENATOR CHAMBERS: You're asking me would violation of that... [LB672]

SENATOR COASH: Well,... [LB672]

SENATOR CHAMBERS: Well, let me say it like this and see if it answers your question. This enumeration of these specific things can form the basis of disciplinary action if any one of them is violated. And the Counsel for Discipline is not in a position to say it does not violate the Rules of Professional Conduct, because one of those requirements is that you comply with all of the laws, which includes the constitution, statutory law, court opinions, and so forth. So these laws that specify the duties of an attorney, if violated, form the basis for a disciplinary action. And remember, I'm not saying how the person should be punished. I didn't say what should happen to the judge. I simply wanted to make it clear that the public should be aware that the entity whose job it is to discipline and monitor judges and their conduct will not let these kind of public misdeeds go

unnoted and unpunished. [LB672]

SENATOR COASH: The reason I ask, Senator, is there seemed to be a lot of things that anyone could do that would pose a public safety that are not enumerated in here--assault, domestic violence. And so I'm wondering how the Court of Discipline or under the Rules of Professional Conduct address other law violations that an attorney may get convicted of, like, let's say an attorney gets convicted of domestic violence. [LB672]

SENATOR CHAMBERS: It's spotty. It's spotty. The court can say that, well, we like Brad...Senator Ashford. So Senator Ashford hit his wife in the right eye with his fist, and that is domestic violence. But under the circumstances, when you consider all that he has to put up with down at the Legislature and how he has to show restraint there, when he got home he just couldn't take any more and the string broke. Now we're not going to approve of what he did but we're not going to discipline him in a way that would be unreasonable under all the circumstances. Ernie Chambers threatened to hit a woman. Now a man from the streets like Ernie Chambers, dressing like he dresses, looking like he looks, is enough on sight to intimidate somebody. So a threat from him may be more traumatic than if a blow had been landed by somebody else. So under all of the circumstances, considering being informed in the premises, Chambers should be suspended from the practice of law for a year so that he can give consideration to how he should comport himself when he's confronting somebody. In other words, they do honor persons; meaning they treat people differently. And I've read cases, many cases, involving discipline by the Counsel for Discipline, and you can see that they don't handle them the same way. But what lets them out from under it is to have this elastic language. Look at all the circumstances, consider this, consider that. One thing is present here that is a mitigator; it's absent over here. What's present over here is an aggravator; what's absent over there is the aggravator. So they can reach any result that they choose. In an exchange between myself and Senator Seiler, I quoted the following, which is a paraphrase of the Supreme Court, but a direct quote from some of its cases. They're construing a statute. "It is not within our province to read anything into the law that's not there or read anything out of the law that is there." And Senator Seiler added, "And then they'll do it in the next sentence." And that's what they'll do in the cases. So it depends on who it is that they're casting judgment on. But there are so many lawyers who drive drunk that it's hard to pick and choose; so they say, we'll give all of them a break. And I think the public will be as surprised as the Chief Justice was that a lawyer was convicted. He pleaded guilty. And then after you plead guilty, they convict you of aggravated drunk driving. And the prosecutor raised it to the level of aggravated drunk driving. And the rules that govern lawyers say there is a special duty on a public official who is a lawyer. There's a public trust. They're held to an even higher standard than an ordinary ragtag, bobtail, garden variety common lawyer. But despite all that, the Counsel for Discipline said, no, I won't even investigate your allegations, because under no circumstances where maybe somebody isn't killed, it's not a violation

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of the Rules of Professional Conduct for lawyers; what do you think we are, honest people? Any other questions? [LB672]

SENATOR ASHFORD: Senator Chambers, let me try to understand, because I...to be honest, I...this...I think you make a great point here, and what I'm trying to understand...because I was here, of course, as you, because you filed the complaint when Larry Corrigan was disciplined... [LB672]

SENATOR CHAMBERS: Um-hum. You can just ask me what you want to ask me. [LB672]

SENATOR ASHFORD: Yeah, but no, I want to just leave the context to this. I'll ask it. But when in that case there was action taken, because it was a Judicial Qualifications Commission, correct? [LB672]

SENATOR CHAMBERS: Um-hum. [LB672]

SENATOR ASHFORD: That's what happened. What you're saying is that the explanation to this case was we aren't going to investigate it because there's a rule that says...that indicates that we won't or can't or it's not... [LB672]

SENATOR CHAMBERS: That they won't. Any first offense DUI by any lawyer is not going to be investigated because it is not considered a violation of the rules. [LB672]

SENATOR ASHFORD: And that's an actual rule in the...? [LB672]

SENATOR CHAMBERS: It was adopted by the Counsel for Discipline because the Chief Justice didn't know anything about it. [LB672]

SENATOR ASHFORD: Huh. Okay. No matter how aggravating...to your point, no matter how aggravating the first offense may be. [LB672]

SENATOR CHAMBERS: Well, maybe if he ran over the Chief Justice or ran over some children. [LB672]

SENATOR ASHFORD: They would do it then if there...yeah. [LB672]

SENATOR CHAMBERS: But here's what I'm trying to get across... [LB672]

SENATOR ASHFORD: No, I see what you're...I think I see what you're saying. [LB672]

SENATOR CHAMBERS: Okay. You shouldn't have to do all these other extra things. It's bad enough that the city prosecutor, on his own, raised it to the level of aggravated

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first offense drunk driving, which means, even though it has to be called a first offense because there have been no convictions prior to that, he wanted to let you know this is not just somebody out there who's tipsy. And vehicles are considered deadly weapons. I don't know if Senator Coash is aware of this, but a person has been charged with attacking an officer with a deadly weapon for trying to run over the person with a car. What about all these slogans: Drive sober or pull over; If you drive drunk, you lose. Then they have a number: If you see somebody driving drunk, call this number and report it. If this were not such a serious thing, I meant it can literally be a matter of life or death, I wouldn't be as exercised as I am. I filed complaints before and the Counsel for Discipline decided nothing should be done, and I thought he was completely wrong, but I didn't react in the way I am now. This is a rule. Lawyers know that you can drive drunk and it's not a violation of the rules. What then should be a violation? Spitting on a judge? That's not endangering the public at large. Calling him an SOB? That's not endangering the public. What I'm talking about here... [LB672]

SENATOR ASHFORD: All right. No, I understand...I... [LB672]

SENATOR CHAMBERS: ...I'm saying this for the benefit of the public. [LB672]

SENATOR ASHFORD: Okay. [LB672]

SENATOR CHAMBERS: And the person who is going to come up here will know what I'm talking about, so he cannot say that he was ambushed because he didn't know how seriously I took it to be or why I said it was so serious. [LB672]

SENATOR LATHROP: Or she. [LB672]

SENATOR CHAMBERS: Say it again? [LB672]

SENATOR LATHROP: Or she. [LB672]

SENATOR CHAMBERS: Or what? [LB672]

SENATOR LATHROP: Or she. [LB672]

SENATOR CHAMBERS: Right. [LB672]

SENATOR LATHROP: Your antagonist may be a female. [LB672]

SENATOR CHAMBERS: Well, I was told... [LB672]

SENATOR ASHFORD: Well, moving on forward... [LB672]

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SENATOR LATHROP: We're going to find out. [LB672]

SENATOR CHAMBERS: ...I was told that they're going to oppose it. And the only one I recognize here from the bar association... [LB672]

SENATOR ASHFORD: They may not. [LB672]

SENATOR CHAMBERS: ...the lobbyist, was a man who told me that they were going to have to oppose it. Yesterday, he told me himself. So I figured he was going to be the one. But should he not be, sometimes men like to put other people in a...you know, in a tight spot that they don't want to be in themselves. Where I came from and where I grew up, that's called hiding behind a woman's skirts. I'm just saying what I say and to let you know the kind of man that I am and why some things bother me more than others. And not to personalize it too much, I know somebody who was killed by a drunk driver and I know other people who were injured, and I've seen much property damage done by drunk drivers. And the peculiar thing is, some doctors say it's because they're so limp. They demolished a car, knocked down a fence and one of those metal light poles, and didn't get hurt at all. But anyway, I've said what I've said, and I'll let it stand at that if you don't have any other questions. [LB672]

SENATOR ASHFORD: I don't see any other questions. Thank you. [LB672]

SENATOR CHAMBERS: Okay. [LB672]

SENATOR ASHFORD: Do we have any proponents? Any opponents? All right. [LB672]

AMIE MARTINEZ: All right. Good afternoon. My name is Amie Martinez and I appear before you as the president-elect of the Nebraska State Bar Association. I speak in opposition to LB672. And unfortunately for you all, our president G. Michael Fenner is unable to be here today, so it looks like you'll have to put up with the likes of me. We do agree on behalf of... [LB672]

SENATOR CHAMBERS: Excuse me. I didn't hear it. Why did you say he is not here? [LB672]

AMIE MARTINEZ: He's not able to be here. He has a conflict. [LB672]

SENATOR CHAMBERS: With me. But anyway, go ahead. [LB672]

AMIE MARTINEZ: We agree that drunk driving is a very serious issue, Senator. And our opposition is based essentially on two reasons: (1) the conduct addressed in the amendment is already codified as a criminal violation; (2) the amendment, in our opinion, would likely be unconstitutional if passed, as according to our resident expert,

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constitutional law professor and president Michael Fenner, it would violate the separation of powers doctrine. Let me begin by saying that as a bar association we very much agree that driving while intoxicated is conduct unbecoming to anyone, including lawyers. We in no way condone any such conduct. Such conduct is clearly proscribed by law for all people, including lawyers; and as such, the proposed language would be unnecessary and redundant. Having said that, as lawyers, we are additionally bound by a separate set of obligation and rules of conduct. Those rules are known as the Nebraska Supreme Court Rules of Professional Conduct. Said rules have been promulgated by the Nebraska Supreme Court and are enforced by the Counsel for Discipline within the Nebraska Supreme Court. As lawyers then, we are subject to discipline imposed and enforced by the judicial branch, and specifically the Counsel for Discipline. As such, it is our opinion that the particular provision as proposed would be in violation of the separation of powers doctrine in that it involves the legislative branch in the regulation and discipline of lawyers, which is the subject and sole province of the judicial branch. As some background, the primary function of the Counsel for Discipline under the auspices of the Nebraska Supreme Court is to investigate and prosecute violations of the Nebraska Rules of Professional Conduct. If an attorney has violated these rules, a complaint is filed against the attorney with the appropriate District Committee on Inquiry. Conversely, if the complaint against the attorney has not violated the Nebraska Rules of Professional Conduct, then disciplinary sanctions cannot be imposed. In determining whether a complaint should be filed against an attorney, a number of factors must be considered. In disciplinary matters, the Counsel for Discipline basically acts as a prosecutor carrying the burden of proof to prove the truthfulness of a complaint by clear and convincing evidence. There is a particular provision, Nebraska Court Rule of Professional Conduct 3-508.4(b), which states that it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in any aspect. May I have permission to continue? [LB672]

SENATOR ASHFORD: Why don't we go to the questions. Do we have any questions? [LB672]

SENATOR CHAMBERS: I would like to. [LB672]

SENATOR ASHFORD: Yeah, let me just ask one if I could, Senator Chambers. [LB672]

SENATOR CHAMBERS: Sure. [LB672]

SENATOR ASHFORD: (Section) 7-105 then, is that...are we intruding on...in the other provisions of 7-105, are we intruding on the separation of powers by at least delineating certain responsibilities of an attorney? [LB672]

AMIE MARTINEZ: I believe that the opinion of the bar association would be that it does.

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[LB672]

SENATOR ASHFORD: (Section) 7-105 does? [LB672]

AMIE MARTINEZ: Yes. [LB672]

SENATOR ASHFORD: Senator Chambers, would you...? [LB672]

SENATOR CHAMBERS: So you're saying, based on what your president told you, that the existing Section 7-105 is unconstitutional. [LB672]

AMIE MARTINEZ: That is may be, yes. [LB672]

SENATOR CHAMBERS: Are you aware that lawyers have been disciplined and that section has been cited for violating these sections of statute? You're not aware of any discipline being imposed for a lawyer violating any of these provisions? [LB672]

AMIE MARTINEZ: As to 7-105, I personally am not. [LB672]

SENATOR CHAMBERS: You don't know. [LB672]

AMIE MARTINEZ: I don't know. [LB672]

SENATOR CHAMBERS: But if it were unconstitutional, it seems to me that a lawyer who is going to be brought up on charges based on it, would say, well, that's unconstitutional and the court would agree. But let me go a step further. Does the bar association feel that it's unconstitutional for the Legislature to have said...first of all, let me be sure what your president told you; that the separation of powers is breached if the Legislature enacts a law that would in some way discipline a lawyer or regulate...how did you say that, because I don't want to put words in your mouth. [LB672]

AMIE MARTINEZ: The judicial branch is that that enforces our rules and regulations, and we're all subject to the Counsel for Discipline, as you know, which is under the auspices of the Nebraska Supreme Court. So that's a judicial function as opposed to a legislative function. [LB672]

SENATOR CHAMBERS: Then you think it's unconstitutional, the provision of law that I cited, where a lawyer's license will be suspended pursuant to a statute if he fails to pay child support. That's unconstitutional too, isn't it? [LB672]

AMIE MARTINEZ: I don't have an opinion on that, I'm sorry. [LB672]

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SENATOR CHAMBERS: It would seem to be so and flow from what you just said, if a legislative enactment would result in discipline to a lawyer, and suspension of a license is a disciplinary imposition by the courts. Are you aware of that? [LB672]

AMIE MARTINEZ: I am aware of the provision, yes. [LB672]

SENATOR CHAMBERS: Okay. And if a statute mandates that for nonpayment of child support, that statute would be unconstitutional following the logic of your president, who is not here because he had a conflict. Isn't that correct? [LB672]

AMIE MARTINEZ: I can't speak to that, Senator, I'm sorry. [LB672]

SENATOR CHAMBERS: Okay. Are you aware that the Legislature can pass laws delineating the jurisdiction of courts below the level of the Supreme Court? Are you aware of that? [LB672]

AMIE MARTINEZ: Do you mean geographically? [LB672]

SENATOR CHAMBERS: In Nebraska, that what the courts can handle, what they are prevented from handling, can be determined by the Legislature. Are you aware of that? [LB672]

AMIE MARTINEZ: I'm unclear as to what you mean. [LB672]

SENATOR CHAMBERS: Okay. Well, I'll go further. Are you familiar with the rules of evidence? [LB672]

AMIE MARTINEZ: Yes. [LB672]

SENATOR CHAMBERS: Do they regulate what lawyers can present in a court of law? [LB672]

AMIE MARTINEZ: They...no, they don't regulate what lawyers can present. They regulate what would be deemed proper evidence before the court. [LB672]

SENATOR CHAMBERS: And if it's not...if it's proper, that means it's admissible. Correct? [LB672]

AMIE MARTINEZ: Correct. [LB672]

SENATOR CHAMBERS: And the Legislature made that determination, correct, by enacting the evidence rules. If the Legislature passes a law and say under no circumstances can hearsay be used, under no circumstances, not an excited utterance,

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not a last statement of somebody who is about to die, under no circumstances can hearsay be used, would that be unconstitutional? [LB672]

AMIE MARTINEZ: I don't have an opinion on that, but I don't... [LB672]

SENATOR CHAMBERS: Okay. I'm not going to push you beyond what you say because I'm not wanting to argue with you. I just want some things in the record. I don't think I'm getting anywhere with this line of questioning, because I'm not trying to embarrass you. But because you were sent here by your president, there are certain questions I had to ask to elicit certain responses from you, which can be reviewed by anybody who knows the law. So let me ask this type of question: Did you discuss your testimony that you would give with your president who is unable to be here because of a conflict? [LB672]

AMIE MARTINEZ: Yes, sir. [LB672]

SENATOR CHAMBERS: Yes? [LB672]

AMIE MARTINEZ: Yes, sir, I did. [LB672]

SENATOR CHAMBERS: Did he write any of what you presented to us here today? [LB672]

AMIE MARTINEZ: He did not. [LB672]

SENATOR CHAMBERS: Did he look at what you wrote? [LB672]

AMIE MARTINEZ: He did not. [LB672]

SENATOR CHAMBERS: Is what you wrote your understanding of what you and he talked about? Or you didn't discuss specifically what you would say here today, is that accurate? [LB672]

AMIE MARTINEZ: No, we did discuss it, Senator. And we discussed it as part of our legislation committee within the Nebraska State Bar Association; so there was a large group of people that talked about this and did discuss it. And certainly President Fenner's comments were as part of that conversation. And I did talk with him also. [LB672]

SENATOR CHAMBERS: And did you draw the short straw? [LB672]

AMIE MARTINEZ: I did not. I didn't realize that this was a short straw issue. I'm happy to appear before you today and I...and President Fenner would have been here.

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Certainly with his constitutional law expertise, I'm sure he would have liked to be here. But I don't consider this a short straw issue. [LB672]

SENATOR CHAMBERS: May I ask how you were selected? [LB672]

AMIE MARTINEZ: I am the president-elect. [LB672]

SENATOR CHAMBERS: Of what? [LB672]

AMIE MARTINEZ: Of the bar association. [LB672]

SENATOR CHAMBERS: Good for you. [LB672]

AMIE MARTINEZ: Thank you. [LB672]

SENATOR CHAMBERS: I'm not going to ask the questions that I would have if we were not in a setting like this. But I will say this: The reputation of the bar will be raised immeasurably by virtue of your being the president, just by virtue of your being the president. And I hope you will take that as something I'm saying sincerely so you'll believe me when I say my intent has not been to embarrass you. Mr. Mueller knows how I do and the way I question on these matters. Mr. Mueller knows, and those other people know, that you're not the only person who could have come here. And they know that they've had people who practice a long, long time, who have practiced before the Nebraska Supreme Court, who have appeared before this Legislature, and who could have engaged me in the kind of discussion they knew would be forthcoming. For you I have profound respect and I also tender my condolences. And that's all that I will have to say. [LB672]

AMIE MARTINEZ: Senator, I appreciate your remarks very much. And I did want to make sure that you knew, I wasn't sure that it was common knowledge yet, but the Supreme Court has invited the ABA Center on Professional Responsibility to come and consult with the court. And I don't know if you're familiar with that, but I'd be happy to talk with you afterwards about how they come in and study our practices and make recommendations to the court in terms of how some of these things can be addressed. Certainly issues like you're raising here today would be part of that conversation. I just want to make sure that you're aware of that. And like I said, I would be happy to stay after and speak with you about that, if that would be helpful. [LB672]

SENATOR CHAMBERS: With all due respect to you, Madam President-Elect, the Chief Justice can talk to me about that and he knows it. So I won't talk to anybody but him. But thanks for the offer. [LB672]

AMIE MARTINEZ: Okay. [LB672]

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SENATOR ASHFORD: Yes, Senator Coash. [LB672]

SENATOR COASH: Thank you, Senator Ashford. Amie, could the Supreme Court promulgate a rule saying that first offense DUI, for example, is grounds for discipline? Because what I heard from Senator Chambers was, in the absence of rule, there's...they're not going to take any...the court will take no action on a lawyer for a DUI. Could the court, by rule, put that into their Rules of Professional Conduct? [LB672]

AMIE MARTINEZ: And that's a good question, and I'll just tell you that having practiced for 20 years and appearing before the Supreme Court, it is not the Supreme Court that actually conducts the discipline. The Counsel for Discipline is in the Supreme Court Office but it is a separate entity to the extent that they have autonomy. Certainly they consult with the court. There is no rule written as such, at least that I could find. I'll defer if the senator has something else. But there is no rule that I'm aware of that says first offense DUI is not punishable by discipline. I think as a matter of practice that has been the case, that it, on one offense for a DUI, it routinely has not been practiced to be a complaint against an individual lawyer. Different for judges who are treated under the Judicial Code of Conduct. I don't believe that the Judicial Code of Conduct is...I can't speak to that because I wasn't prepared to do so today. But as far as our rules, the Rules of Professional Conduct that govern lawyers, sure, there are changes to that. Those rules tend to be very broad, as I read to you the portions of that one, not specific. It doesn't delineate, for example, domestic violence or various offenses. It simply says trustworthiness, those types of things. Routinely, there have been some things that are problematic: if you fail to file a tax return, you commit fraud, those kinds of things. Those are routinely enforced...or punishable offenses. But it's not a specific item by item. So could they do that? Yes, they could do that. [LB672]

SENATOR COASH: Would it make more sense? [LB672]

AMIE MARTINEZ: And can I say one more thing, Senator Coash? [LB672]

SENATOR COASH: Sure. [LB672]

AMIE MARTINEZ: It may even be that informally the court has the ability to say, look, Dennis Carlson, who is our Counsel for Discipline, we want you to prosecute all DUIs; we want you to consider those all as offenses that need to have complaints filed for them. I don't know that that's what they've said. I suspect it's not what they've said, or the Counsel for Discipline would heed that. I think that's part of why, and why I told the senator about this ABA coming in to conduct this study. It's important to have that reviewed and to see what other states are doing and what somebody coming in from the outside might suggest. I think the information is that...I believe the Counsel for Discipline contacted 24 other states to see what they do on first offense DUIs; and 19 of

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them treat them the same way that our Counsel for Discipline does, which is to not file a complaint based solely on that one event. [LB672]

SENATOR COASH: Is there anything in the rules that...as you explain it, the rules are broad. Is there anything in the rules currently that speak to a member of the bar's conduct when it pertains to public safety? [LB672]

AMIE MARTINEZ: I believe so. [LB672]

SENATOR COASH: Driving drunk would seem to compromise public safety. [LB672]

AMIE MARTINEZ: I don't know that it's those words. [LB672]

SENATOR COASH: You don't have to look it up. I'm just...I'm trying to find... [LB672]

AMIE MARTINEZ: Uh-huh. Can I...may I... [LB672]

SENATOR COASH: If you read Senator Chambers' statement of intent, he indicates that the Chief Justice informed him that there was the absence of a rule, which would make me think that there would be opportunity to have a rule should the rulemakers decide that that was an appropriate way to police their own. But I'll leave it at that. And thank you. [LB672]

AMIE MARTINEZ: Thank you. [LB672]

SENATOR ASHFORD: Thanks, Amie. [LB672]

AMIE MARTINEZ: Thank you. Thank you for your time. [LB672]

SENATOR ASHFORD: Senator Chambers. Or just a second, is there anybody else that would like to speak on this? Senator Chambers. [LB672]

SENATOR CHAMBERS: They may have wanted--by "they," I meant those people at the bar association--may have wanted the president-elect to have a baptism by fire. They know how I feel about these things. And even if the senators don't read, I'm going to collect cases where I got judges disciplined--I won't deal with the lawyers--judges disciplined. And they know what I will do. And by them saying, Counsel for Discipline and the rest of them, that the first DUI is not important enough to consider a violation of the Rules of Professional Conduct, then why should anything? And she's completely correct when she says they'll be disciplined for not paying their income tax. Who do they hurt by not paying their income taxes? It doesn't hurt any of us. We don't pay less because they pay theirs. We don't pay more because they don't pay theirs. Let me read something. I told you all that I want to deal with them with what they consider facts. I'm

very familiar with the code. See I even call...it's now called the Rules of Professional Conduct. It used to be called the Code of Professional Responsibility. And I know changes that they've made. They used to have a provision in the Code of Professional Conduct, a provision dealing with public prosecutors. They used to allow a person to appeal the dismissal of a complaint by one of their appellate groups. Those things are changed, because I would go beyond one of their little groups that they have you file what they might call an appeal to; so they got rid of that. I'm reading from the Preamble to the Code. "A lawyer's responsibilities," is what it's...and by the way, Section 7-105 is not unconstitutional and lawyers have been disciplined for violating provisions contained therein laying out the duties of a lawyer. And the Legislature can address what will be jurisdictional...a jurisdictional matter for a court. The Legislature can create lower courts. But anyway, (1)...and I'm not going to read every single one but those that I think are pertinent: A lawyer, as a member of the legal profession, is an officer of the legal system--they used to say an officer of the court; they changed that--an officer of the legal system and a public citizen having special responsibility for the quality of justice. (3) There are rules that apply to lawyers, even when they are acting in a nonprofessional capacity. (5) A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's personal affairs. (6) A lawyer is a member of a learned profession; a lawyer should further the public's confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular support to maintain their authority, popular support of those whose disciplinary entity says first offense drunk driving is a violation of nothing and we will not even investigate such an allegation. (9) Within the framework of these rules issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying these rules. I don't care if every other state says a first offense drunk driving is all right. These are issues that should not be resolved by means of a popularity contest. It's possible to have 49 fools and the fact that you multiply the number of fools does not make a foolish statement less foolish. (10) And this I want Mr. Mueller, if he's still here, to take especial note of, hiding behind a woman's skirts, of all things. See, you all don't talk like that, but I'm not like you all. I'm different. You've seen those players on the football field when they do something, (pounds chest), you know, come and get me; here I am. And that's what I tell them. I don't need a lot of company. I don't need a lot of help. If I think something should be done, I will beard the lion in his den. But I'm not dealing with lions; I'm dealing with sheep. If only for once, though, a flock of sheep could behave like a pride of lions. A flock of sheep led by a lion will defeat a pride of lions led by a sheep. (10) Under a lawyer's responsibilities...and if that expert in constitutional law wants to say that what the Legislature does violates separation of powers, this is something that will be in the record for his consideration. (10) The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely

in the courts, largely, not entirely, and the ones who drafted this knows it. (11) To the extent that lawyers meet the obligations of the professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice. But the government they know can regulate them. (12) The legal profession's relative autonomy...relative is not the same as absolute. I'm so frustrated. We're dealing with lawyers trained in the law. Maybe nobody cares except me. And that's why I have to work so hard and do the things that they ought to do in their profession if they're self-regulating. But if they don't do what they should, I'm going to do what I should. (12) The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar, the public interest, not the narrow, parochial, self-interests of the bar, such as letting a lawyer drive drunk and get a free bite from the apple. Is that in the public interest? Is that the example? Lawyers, that's why that expression was made, first thing we do, let's kill all the lawyers, but it didn't mean it the way most people take it to mean. Lawyers were viewed as the bulwark against chaos, anarchy, and utter confusion; and the best way to prevail or have those things prevail is to kill all the lawyers. It didn't say members of the bar association. Let me settle down here. Every lawyer is responsible for observance of the Rules of Professional Conduct. They're not hard to observe if you can drive drunk. A lawyer should also aid in securing their observance by other lawyers. You can drive drunk too. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves. (13) Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship. And the proper application of those rules mean that a lawyer can drive drunk and not be a violation of those rules. Why is the second drunk driving offense a violation of the rules but not the first? If I grope a woman the first time, is that okay; but the second grope? If I shoot at somebody but miss, is that all right? The only reason I didn't kill somebody, because my aim is bad or I got a shaky hand? What in the world are they doing here today? I know what they're doing and they know that I know. And I'm not being sexist. My mother obviously was a woman. In fact, I always add this to show how much I love women: I was born in bed with a woman. My sisters, two of whom have died, both younger than I; obviously women. I have a host of nieces. Women hold a special place in my universe. And when a man hides behind a woman--no slam against the woman--I cannot summon any respect. We have been in this Legislature and we've seen the bar association send males here to talk to us. But when it's me, they have a conflict. And this isn't the first time it has happened. There are other entities who send people here and they'll send an underling and I will tell the person that I'm not upset with you but your boss has sent you

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here so I have to use you as a sounding board, and there are things that I have to say because of the nature of these proceedings, so I'm going to say them to you. There's an issue before the Executive Board. Game and Parks sent two men. And I found out that one man had his little boy with him. See, he was savvy. He probably knew how I feel about children. And I'm not going to embarrass any parent in front of that parent's child. That child should not have a recollection of me as somebody who disrespected his father and embarrassed him, the way cops will embarrass us as black men. We cannot protect and defend our women. We cannot protect our children. And that's what they do to us, some of us. I want to stay here forever, but there's some things I will not take from anybody and the only way they're going to stop me from doing what I think is to take me out of here. I don't carry weapons. I don't bother anybody. But I hate to see those people who have power mistreat the powerless. I hate to see those organizations who are given a special status in this society misuse and violate that trust. And I get calls all the time, I mean literally, from parents who will say, my child was struck by a drunk driver and the courts let the person go. I say, they let him go; was it an accident? Well, they put him in jail but not for what they should have been. I say, what can I do? They don't know but they feel I'll find a way to do something. I get calls priests do not get. And if you don't believe it, I'll show you some of the letters that I get that they ought to be writing to you all, because they're from you-all's districts, not mine. But they know I will try. You know why I'm trying to do this? I'm trying to make lawyers better than what they are and I'm trying to make a reality of what they consider to be merely aspirational. These are to be rules and guides of conduct. Not mine. I didn't draft any of them. They did. Why isn't Dennis Carlson here? Why isn't the Chief Justice here to say Chambers lied when he said I told him I didn't know there was such a rule? And you all know that I'm not going to lie on the Chief Justice or anybody else. He's nothing but a man to me. Badges and titles mean nothing whatsoever to me. And that's why what I have to say about Mr. Mueller and the ones who sent him here, I say it to his face. I want him to know. It means nothing to me if he doesn't know. And I don't want somebody to filter what I say. I don't throw a rock and hide my hand. He's sitting here. He should have been up here. And after the president-elect spoke, he should have come up also, or he should have pulled his chair up and sat beside her. And he didn't do it. I'll tell you what my problem is. I take things too seriously. When people talk to me about ethics and morality, those things mean something to me and they don't mean anything to the people who are raising the issues, but they mean something to me. And you want me to tell you why? Because if those things were complied with, if those things were practiced, we would have a lot less cruelty, a lot less meanness, and far more compassion and concern and consideration for those who cannot help themselves. We would believe that we need to practice that thing that Jesus said: The strong should bear the infirmities of the weak. And although the question asked was not answered after Cain killed his brother and God asked him, where is your brother; Cain said, am I my brother's keeper? And God didn't answer. Those myths are put there that leave questions hanging in the air so that we will answer them. I am my brother and my sister's keeper. And I'm not going to keep you all much longer. But I want this on the record in case I die before I get

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home tonight. I'm not intending to but you never know. Pilate asked Jesus what is truth, and he walked out without waiting for the answer. So that question hangs in the air, and we answer it any way we choose. I don't believe that everything that I do is absolutely right. But I believe everything I do is absolutely right for me to do. And I will answer any questions you have, but I had to get that off my mind. And I had to force whoever came here to talk about the separation of powers when this issue does not involve that, and to show where the Legislature has passed laws relative to the regulation of lawyers and even judges. The judge that was disciplined that I read to you about was disciplined on the basis of what is contained in a statute. And the same provision of the Code of Judicial Conduct that I cited and the statute that I quoted were the same ones used by those who made the judgment. Does that mean that I'm smart? No, it means that I can read English and I understand it when I read it, and I can look at conduct and weigh it against what this language is and then apply the appropriate language. If anybody has a question, I'll answer it. If not, I'm going to hang it up. [LB672]

SENATOR ASHFORD: Any questions of Senator Chambers? All right. [LB672]

SENATOR CHAMBERS: Thank you. [LB672]

SENATOR ASHFORD: That concludes the hearings. Good evening. [LB672]