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Judiciary Committee
February 28, 2007

[LB36 LB37 LB38 LB214 LB377 LB533 LB552 LB659]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, February 28, 2007, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB552, LB659, LB36, LB37, LB38, LB533, LB214, and LB377. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Ernie Chambers; Vickie McDonald; Amanda McGill; Dwite Pedersen; Pete Pirsch; and DiAnna Schimek. Senators absent: None.

SENATOR ASHFORD: Let's get started. We're five, six minutes late. And I've been doing my homework in six minutes, so I apologize for starting late. But welcome all to the Judiciary Committee. We have almost a full house. Senator Dwite Pedersen from Elkhorn on my right; Senator Steve Lathrop from Omaha; Senator McGill from Lincoln; Senator Pirsch from Omaha; and of course, Senator Schimek from Lincoln; and I am Brad Ashford from Omaha. We have eight bills. What I'd like to do...most of you are very familiar with this committee, but just to see if we can join together like matters, I would like to take Senator Flood's bill, LB552, and Senator Pedersen's bill, LB659, together, meaning that Senator Flood will introduce his bill. Then Senator Pedersen will introduce his bill. And then all of the testifiers on either bill can testify at that time so that we can go through those two bills at one time. Then items 3, 4, and 5 are all being introduced by Senator Hudkins, LB36, LB37, and LB38. We will do the same thing with those, ask Senator Hudkins to introduce all three bills, and testifiers for those three bills will come up and testify on those three bills collectively. And then the rest of them, we'll see what happens, see what time it is. (Laugh) Sorry. But anyway, most of you are familiar with the light system. I'm not going to go through all that. Why don't we start with Senator Flood's bill, LB552. We do ask that the cell phones, including mine, either be on vibrate or turned off. You know, I got to be reminded of these things, Senator McGill; they don't come readily to mind. Anyway, Stacey Trout is legal counsel; John Bradford is committee clerk. And Senator Flood, Speaker Flood, would you go ahead and introduce LB552, please. Senator Chambers has arrived. Now we really can get started.

SENATOR FLOOD: Thank you, Mr. Chairman, members of the Judiciary Committee. For the record, my name is Mike Flood, F-I-o-o-d, and I represent District 19, which includes all of Madison County. And to be quite honest, I would rather you advance Senator Pedersen's bill than mine. But I will offer the following comments. And I'm in full support and have been communicating with Senator Pedersen and the chairman of this committee regarding the issue of judges salaries. But I'm interested in these issues today that propose to increase judicial salaries in Nebraska, because I have an interest in quality justice and a strong judiciary in Nebraska. I want to talk a little bit about the importance of fair compensation for judges. This issue is not unique to Nebraska. In his last two year-end reports, Chief Justice John Roberts, of the U.S. Supreme Court, has highlighted the problem at the federal level as he noted, quote, the American people and their government have a profound stake in the quality of their judiciary, end quote. I

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couldn't agree more. As you all know, our courts play a critical role in ensuring that we, as a society, are governed by the rule of law. We need to continue attracting high quality candidates for judicial positions in urban and rural Nebraska. And once good judges are appointed, we do not want to lose them. Low judicial pay directly threatens both of these objectives. In many respects, judges are like most of us, many of them have mortgages to pay and children to put through college. To attract and retain good judges we need to ensure that their salaries are competitive, and that isn't always happening in parts of Nebraska. Yet judicial service is public service, but this can not and should not be an excuse for inadequate pay. There is quite simply too much at stake to risk one branch of government because of low salaries. I'd like to once again add that Senator Pedersen and I have been discussing this issue, and I would defer to his bill, and encourage you to move on that bill with regard to the increase in judicial salaries. And I just can't say how important enough I think it is to maintain a quality judiciary and make sure our judges are well paid. Thank you very much. [LB552]

SENATOR ASHFORD: Thank you, Speaker Flood. Any questions of Speaker Flood? Thank you. Seeing none, Senator Pedersen, can you introduce your bill? [LB552]

SENATOR FLOOD: And I would waive closing on mine. [LB552 LB659]

SENATOR ASHFORD: Thank you. LB659. [LB552 LB659]

SENATOR PEDERSEN: Thank you, Senator Ashford and colleagues on the Judiciary Committee. For the record, I am Senator Dwite Pedersen, representing the 39th Legislative District. And I'm here today to introduce to you LB659. This bill proposes to increase Supreme Court judges salaries by 5.25 percent for the next two years. At the present time, Supreme Court judges earn \$126,846 per year. Under the provisions of LB659, that would be increased to \$133,505.41 on July 1, 2007, and to \$145,514.01 in July 2008. Although the bill only specifies salary increases for Supreme Court judges, other judges: district, county, juvenile, appellate, and workers' compensation judges would also receive an increase as their salaries are statutorily tied to the Supreme Court salaries. For example, the district judges earn 92.50 percent of what the Supreme Court justices earn, so their salaries would be adjusted accordingly. Just to put this salary increase into perspective, a Supreme Court judge in the state of Nebraska earns \$126,846.76 per year. It is my understanding that the dean of the UNL law school earns \$229,000 a year. The superintendent of the Lincoln Public Schools earns \$200,358. The superintendent of the Omaha Public Schools earns \$207,265. A state Deputy Attorney General's salary is \$128,750. Public defender in Douglas County earns \$131,127. Therefore I do not think that the 5.25 percent increase requested in this bill is unreasonable. Although it is not by any means a magic number, I believe that we have a responsibility to ensure that those we trust to serve us with our judiciary system are compensated accordingly. And I encourage you to take a serious look at increasing these salaries to bring their rate of pay more in line with the responsibility we have given

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them. I've been in the system, working with people in trouble with the law, for close to 40 years now. We are lucky in the state of Nebraska to have as good a bench as we have. If we are not going to pay our people who make the final decisions in lots of things that we do, then we are not going to get good decisions. We've been lucky enough to keep it where it's comparable to some others, however, the states around us are giving big, big raises to their judges. Ours deserve it. In one of the statements that Senator Chambers made some years ago, when we were talking about salaries for judges, was you get what you pay for. That makes a lot of difference. If I were a defense attorney making \$300,000 a year and the best attorney in town, and the courts wanted me, I would stay with my \$300,000, thank you. We need good judges. We've been lucky to have the ones we have, even though there's been some conflict with some, we need to keep what we got, and keep working on getting better. And that is, first of all, done with salary. If you've got any questions, I'd be glad to answer them for you. [LB552 LB659]

SENATOR ASHFORD: Thank you, Senator Pedersen. Senator Schimek. [LB552 LB659]

SENATOR SCHIMEK: Yes, thank you, Mr. Chairman. Senator Pedersen, I don't quarrel with your intent here. I was interested in the comparison to other salaries in other fields. But, I guess, what I'm wanting to know is, how did you settle on the 5.25 percent increase? [LB552 LB659]

SENATOR PEDERSEN: Well, like I said in my introduction, Senator Schimek, it's no magic number. But it's...we use that kind of compared to what some of the other states are doing around us, our neighbors, and what the raises have been in the past, and what we thought would be a fair amount to keep both the judges happy and us. [LB552 LB659]

SENATOR SCHIMEK: I would hope that when we take your bill to the floor that we would have some of those comparisons with other states available for us to see. [LB552 LB659]

SENATOR PEDERSEN: I do have them; I will get them to you. [LB552 LB659]

SENATOR SCHIMEK: Great, thank you. [LB552 LB659]

SENATOR ASHFORD: Thank you, Senator Schimek. Any other questions of Senator Pedersen? Thank you, Dwite. [LB552 LB659]

SENATOR PEDERSEN: Thank you. [LB552 LB659]

SENATOR ASHFORD: Do you wish to close? Well, you'll be here, so I guess... [LB552 LB659]

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SENATOR PEDERSEN: I'll be here. [LB552 LB659]

SENATOR ASHFORD: Next...first proponent of either LB552, LB659 or both. Hello, Judge. [LB552 LB659]

MARCENA HENDRIX: My name is Marcena Hendrix. I'm a judge in Douglas County; I'm a county judge and I'm president of the Nebraska Association of County Judges. And a very long time ago, I worked here also. So it's nice to be back here today. This committee and this body have been very fair and very generous with the judiciary in the past, and I want you to know that we all appreciate that a great deal. I'm here to speak today on behalf of the legislation which would increase the salaries for the judiciary. On behalf of the county judges, in the eight years that I've been a judge, we've accepted some additional jurisdiction and civil matters increasing the number of cases that we've taken. And a number of judges around the state who have jurisdiction over domestic relations have experienced an increase in their workload as well. And I want the committee to be aware of that. But as I said, I thank you in the past. And I would answer any questions that might have. [LB552 LB659]

SENATOR ASHFORD: Thanks, Marcena. Any questions? Yes, Senator Chambers. [LB552 LB659]

SENATOR CHAMBERS: Judge, would you agree that not all judges work equally hard at their job? [LB552 LB659]

MARCENA HENDRIX: I think that is probably true. [LB552 LB659]

SENATOR CHAMBERS: Are you aware, even if only anecdotally, that there are judges in some parts of the state who work shorter days than others? [LB552 LB659]

MARCENA HENDRIX: I've been told that. [LB552 LB659]

SENATOR CHAMBERS: So judges should not be paid by the number of cases or the amount of time they spend in a courtroom, but rather the nature of the work that's being done, its importance to society. And we just hope that some of those slackers might be dealt with. But the reality is that there's no way to really deal with them, is there? [LB552 LB659]

MARCENA HENDRIX: I don't know. [LB552 LB659]

SENATOR CHAMBERS: A judge sets his or her own hours of work, is that true? [LB552 LB659]

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MARCENA HENDRIX: In Douglas County, my docket is controlled, to a certain extent, by the institution. However, I often schedule cases earlier than when court traditionally commences. [LB552 LB659]

SENATOR CHAMBERS: But you can also leave earlier than other judges might leave, if you choose to, can't you? [LB552 LB659]

MARCENA HENDRIX: I suppose, if my caseload allowed me to do so, I could. [LB552 LB659]

SENATOR CHAMBERS: Well, regardless of the caseload, if you decided you're going to leave at three o'clock, who can stop you? [LB552 LB659]

MARCENA HENDRIX: Personally, I would not leave without my work being done. [LB552 LB659]

SENATOR CHAMBERS: Here's the question, not being disrespectful,... [LB552 LB659]

MARCENA HENDRIX: I understand. [LB552 LB659]

SENATOR CHAMBERS: If you wanted to leave at three o'clock, who could stop you? [LB552 LB659]

MARCENA HENDRIX: I don't think that anyone could. [LB552 LB659]

SENATOR CHAMBERS: Are there judges who leave at three o'clock? [LB552 LB659]

MARCENA HENDRIX: I've been told that. [LB552 LB659]

SENATOR CHAMBERS: Say it again? [LB552 LB659]

MARCENA HENDRIX: I've been told that. [LB552 LB659]

SENATOR CHAMBERS: How am I supposed to say that all of these judges deserve a salary increase, when there are judges shorting the state in terms of not working a full day? Other judges may know about it, they don't do anything. Judges are able to initiate complaints or grievances against other judges, but they're not likely to do that in this situation, are they? Let me ask you like this, are you aware of any judges ever having blown the whistle on other judges for not spending a full day on the bench? [LB552 LB659]

MARCENA HENDRIX: I don't believe that I am, no. [LB552 LB659]

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SENATOR CHAMBERS: Okay. I'm not either. But that's all I would ask. Thank you. [LB552 LB659]

MARCENA HENDRIX: Okay. Thank you. [LB552 LB659]

SENATOR ASHFORD: Any other questions of Marcena? Thanks, Marcena. [LB552 LB659]

MARCENA HENDRIX: Thank you very much. [LB552 LB659]

SENATOR ASHFORD: Next proponent. [LB552 LB659]

MIKE HEAVICAN: Mr. Chairman, members of the committee, thank you very much for your time and attention to this matter. Just a couple brief things. I'm Mike Heavican, the Chief Justice of the Nebraska Supreme Court. And I'm here, obviously, in support of both of these bills. [LB552 LB659]

SENATOR CHAMBERS: Excuse me, your Honor, would you spell your last name for the sake of the transcribers. [LB552 LB659]

MIKE HEAVICAN: Absolutely, sure. Last name is spelled H-e-a-v-i-c-a-n, Heavican. Thank you very much. The other day I spoke to the Appropriations Committee and I talked about how our judiciary was a bargain, and that our judges were impartial and incorruptible. And I want to reiterate that for you here today. I think we deserve a decent pay increase. Senator Pedersen talked about of the comparabilities that we've done. We compare, I think, to all of the states around us, we're about in the medium range. We are aware that all of the states around us are asking for pretty healthy rate increases for their judges. So that's why we've come forward to you, and that has something to do with the 5.25 request, Senator Schimek, that Senator Pedersen has put out. Senator Chambers, I would like to respond to you and say that all of us, at least on the Supreme Court, want our judges to be putting in full days, full weeks, full months and full years, and we want to work very hard to make sure that they do that. We think that they deserve these kinds of pay raises, but I want you to know that we are going to be vigilant about judges who are perhaps not putting in the kind of time that the public deserves. Questions from anybody? [LB552 LB659]

SENATOR ASHFORD: Any questions for the Chief Justice? Senator Chambers. [LB552 LB659]

SENATOR CHAMBERS: (Laughter) Mr. Chief Justice,... [LB552 LB659]

MIKE HEAVICAN: I could have avoided coming down here today. [LB552 LB659]

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SENATOR CHAMBERS: ...Abraham Lincoln once said, plead not what you need not, lest you be called upon to prove what you cannot. You had said the judges in Nebraska are incorruptible. Is there a difference between being incorruptible and being uncorrupted? [LB552 LB659]

MIKE HEAVICAN: Well, I don't know. I perhaps should have looked in the dictionary before I came down and said that. And, of course, when I say they're incorruptible, of course, it's possible that there can be some corruption in our judicial system. But I make that statement or I made that statement comparing what I know as a former prosecutor about how rarely in Nebraska an instance of judicial impropriety rose to the criminal level. And I know around the country that is not necessarily the case. I know that some of my fellow prosecutors spend a great deal of time on public corruption cases, and I know that oftentimes those involve judges. It is so rare in the state of Nebraska that that happens in the history of the judiciary. And I think that we take our...I think we take our judiciary for granted a lot. And all of this relates to back to salaries and what we pay judges. Ultimately, if you don't keep those pay raises comparative with fellow states and with private practice and the kind of money that people earn around the judiciary, then the possibility for corruption increases. [LB552 LB659]

SENATOR CHAMBERS: Judge, I think that is a bad argument. (Laugh) I mean, you're being honest. But if the only thing keeping these rascals honest is that they're being paid a certain amount of money, they're not there then because they have a judicial temperament, they want to see justice prevail, but they're doing it like a hired gun. If you pay me enough money, I'm not going to lie, cheat, steal and be corrupted, but if you don't, then keep your eye on me all the time. [LB552 LB659]

MIKE HEAVICAN: You've hijacked my comments. Obviously, I don't mean to apply that judges are where they are only for the salary. But I think that in the long run there is a correlation between how well you compensate judges and the kind of respect that you give to the third branch of government. And I know that you have told me, personally, that you have a great deal of respect for the third branch, for the judiciary. But I would certainly, if I didn't make that clear, tell you that our judges aren't there just for the money, they're also there because of the public service, they're there because they want to do good. If they really wanted to do well, as well as do good, they would be in some other line of the legal profession. [LB552 LB659]

SENATOR CHAMBERS: With all due respect, Mr. Chief Justice, for some judges that's true, for others this is the best job they'll ever get in their life, because I've dealt with some judges who I think are totally incompetent. They've got a fellow names Empson, and if you just read the formal charges that have been brought against him, but the court wanted to save his chestnuts, he's still on the bench. There is one out in Norfolk who did some terrible things when he was a county attorney. But because I was involved in bringing the complaint against him, the court was of a mind to only suspend

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him for six months, when they should have gotten rid of him. And one of the judges dissented. So there is, not to the same extent, but a similar inclination among judges that you find among police. They close ranks, they cover for each other. Unless you find one that just cannot be defended, and he is so bad that he embarrasses other judges, they are really not in fear of being disciplined to any extent. That's my view. [LB552 LB659]

MIKE HEAVICAN: I understand that. I look forward to working with you and anybody else to making the judiciary system better. As you know, I'm new to the job. I'm aware that there are instances where judges do not perform as well as we would like them to perform. And I'm more than happy, as I said, to work with you and anybody else, particularly on issues of judges being at work a full day. [LB552 LB659]

SENATOR CHAMBERS: And having asked you those questions and exchanged views with you, so the record is clear on where I stand, I do believe that judges ought to be adequately compensated. Now, I'm not advocating what I'm going to say next. But if we had judges, at the trial level, who were really competent, they probably should get paid the most, because they're the entryway, they have to listen to every kind of case that comes and sort through and cull, do a lot of work, and sometimes work speedily. The appellate judges have more leisure, they can communicate with each other, they can get somebody else's opinion, and are not right there on the firing line, so to speak, having to do something right now. So whereas I'm very critical of individual judges, sometimes an entire bench, as might be the case in Douglas County on occasion, I do believe that the judiciary as an institution has to be held in the highest esteem and accorded that. And I wish the judges would all live up to it, so it's not so hard for people like me to do what I think needs to be done, but I'll do it anyway. In this society, you show how much you value a thing or the work somebody is doing by the compensation being given. Senator Pedersen is right, at one time I did say, you get what you pay for. I had to amend that to say, you get no more than what you pay for. So if we pay peanuts, as Armand Hammer said, you get monkeys. So if we're looking for highly competent, professional people, we would demonstrate that by the salary that we offer. So I'm in favor of and will support increases for judges, but I won't do it mindlessly, I'm not a sycophant or somebody who's just going to fall down in front of people who are called judges because I think they're a higher level of humanity. But I do think the raises are in line. I don't know if you're going to get it, but we'll just see. [LB552 LB659]

MIKE HEAVICAN: Thank you very much. And as I said, I look forward to working with you on those issues. [LB552 LB659]

SENATOR CHAMBERS: Excuse me. On those issues? You mean when we're trying to get you more money? (Laughter) [LB552 LB659]

MIKE HEAVICAN: Oh, I look forward to working with you...no, I meant on improving the

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judiciary, too. Certainly. Thank you. [LB552 LB659]

SENATOR CHAMBERS: Thank you. I knew what you meant. I can't help it. [LB552 LB659]

SENATOR ASHFORD: Well said. Any other questions of the Chief here? Yes, Senator Schimek. [LB552 LB659]

SENATOR SCHIMEK: I just can't help but reflect on this. And the argument that you get what you pay for or we need to compensate people so they won't be corrupted, I'm thinking, Senator Chambers, and Mr. Chief Justice, that as I look around at my legislative colleagues, I'm thinking well maybe we should all be corrupted and (laughter), you know. I wish that the public saw the argument. [LB552 LB659]

SENATOR ASHFORD: Under that standard, Senator Schimek, we are the most corruptible, and corrupted people on earth. I'm surprised we could even sit here and look at the public. [LB552 LB659]

MIKE HEAVICAN: That is a very good argument for you to make, next time around. [LB552 LB659]

SENATOR SCHIMEK: Thank you. [LB552 LB659]

MIKE HEAVICAN: And you're all to be commended for doing what you do for the salary that you get paid. [LB552 LB659]

SENATOR ASHFORD: Thank you, Mr. Chief Justice. Any other proponents? [LB552 LB659]

MIKE HEAVICAN: Thank you. [LB552 LB659]

SENATOR ASHFORD: By the way, Senator McDonald has joined us, welcome, from the 41st District. Good afternoon. [LB552 LB659]

LINDA CRUMP: Good afternoon, Chairman Ashford and members of the Judiciary Committee. My name is Linda Crump, C-r-u-m-p, and I'm the president of the Nebraska State Bar Association. And I appear today on behalf of the bar to support the increase in judicial salaries. I'm here today representing all the lawyers across Nebraska who practice in all the state courts. Your actions today with this request for these salary increases will assist the state in attracting and keeping the most qualified judges in the state. Your actions will affect current members of the judiciary. As the third branch of government, the Bar Association supports a strong, fair, and impartial judiciary. In order for us to continue to keep and attract judges in the future, we have to seek highly

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qualified lawyers to apply for judgeships, and there's a need to establish a level of compensation that's both appropriate and competitive. As the cornerstone of an effective judicial system, the state of Nebraska needs to recognize that the current judiciary and the future candidates for judgeships need appropriate compensation. Nebraska judges make the most critical decisions in both criminal and civil cases. The level of responsibility makes a strong argument for the compensation associated with all levels of the judiciary. On the criminal side, judges are integral in the determining of guilt and innocence, and the appropriate consequences. On the civil side, judges deal with the most important and often difficult aspects of an individual's life, family, children, housing, employment, individual rights and responsibilities. The gravity of these decisions that they have to make deserve appropriate compensation. And you've heard before that based on the information, Supreme Court justices, as you've heard once already, make about \$100,000 less than the deans in the law schools, and about \$50,000 less than some of the superintendents in the major metropolitan school districts. They are paid less than the commissioner of education and even public county attorneys. We did look at a survey, from the Center on the Courts, and it said that we rank about 33 out of 50 states on the level of compensation for our Supreme Court justices, and you know all those salaries are tied to what Supreme Court justices are paid. We get paid less than what's paid out in Iowa. And in an independent study, it did say that attorneys that are over the age of 50 were the most likely candidates that you're going to be finding to be a judge, make probably, on an average, about \$116,000 plus. And if we don't have really competitive salaries, we're not going to be able to attract those really talented lawyers that are out there. In conclusion, I'd say we want to support this increase. And I'd stand for any questions. We have great judges, and I hope we can keep and continue to get great judges. [LB552 LB659]

SENATOR ASHFORD: Thank you. Any questions of Linda? Thank you, Linda, for your testimony. [LB552 LB659]

LINDA CRUMP: Thank you. [LB552 LB659]

SENATOR ASHFORD: How many other proponents do we have? Great. Any opponents? Neutral testifiers? [LB552 LB659]

KAREN FLOWERS: Mr. Chairman, ladies and gentlemen of the committee, my name is Karen Flowers. I am a district judge here in Lincoln and president-elect of the Nebraska District Judges Association. I'm sorry Senator Chambers left. I wanted to remark on his insight with respect to the relative worth of trial judges, of which I am one. I'm here today on behalf of the association to ask that you advance to the full Legislature a bill that would increase salaries for judges. I don't want to repeat what those who have gone before me have already said. I just want to let you know that the District Judges Association echoes those remarks. We continue to believe that paying competitive salaries is necessary to attract good lawyers to the bench. Linda Crump mentioned the

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bar's survey. One of the actually most salient parts of the survey, that I think was done in 2004 perhaps, I think it's already two years old, said that 80 percent of the senior partners in law firms, and those are the experienced, successful lawyers, the people that you want to attract to the bench, 80 percent of them earn salaries above the current salary level for a district judge, 65 percent of them earn salaries above what we currently pay the Chief Justice of our Supreme Court. In fact, nearly half of them earn over \$150,000. And I say that to you because even with Senator Pedersen's bill, it would take two years to get the chief judge up to \$10,000 less than that. And we're talking about a survey that is already two to three years old. As others have mentioned, there are lawyers in the public sector as well who have salaries that exceed the current salary of judges on the bench, they include the Deputy Attorney General, Douglas County Attorney, and Douglas County Public Defender, and some staff of the Omaha City Attorney's Office. Earlier this week, the chief described Nebraska's judiciary as impartial and incorruptible. I think he's absolutely correct in that assessment. And having listened to the discussion between Senator Chambers and the chief, incorruptible was the correct word. People do go to the bench for more than money, they do. And I need to tell you this, because I've been here ten years now, and I've met most, if not all of them, they all work...they all do their best to do what's right for the people of Nebraska. And I will tell you that they'll continue to do that because there is more to this job than just the salary. But you do want to continue to attract people like what you have. Later on you're going to be probably more in tune to the workload that judges carry, because I know you have some other bills that deal with that coming up. The quality of Nebraska judges, in my judgment at least, all levels, is very high, it's outstanding. And I think it's important that we keep it that way. And to do that you need to assure that salaries do not fall further and further behind in the marketplace from which those judges will come. And that's, I think, what we're talking about with the bills that are before us. [LB552 LB659]

SENATOR ASHFORD: Thank you, Judge Flowers. And I agree with you. [LB552 LB659]

KAREN FLOWERS: Thank you very much. [LB552 LB659]

SENATOR ASHFORD: Next, Loran Schmit. And I know this is an issue that you've talked about in the past. [LB552 LB659]

LORAN SCHMIT: Chairman Ashford, members of the committee, my name is Loran Schmit, L-o-r-a-n S-c-h-m-i-t. I appear today in support of both bills. I guess, I would suggest that perhaps it might...the number that is mentioned in Senator Pedersen's bill might be increased a little, I'm not sure. I want to just recite a little history. The first bill I introduced to increase judges salaries, my county judge in David City was earning \$500 a month. And he called me and he said, Loran, that's an adequate salary for me because I'm a bachelor and I don't have many needs. But, he said, we're never going to

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be able to attract good, young people to the bench unless you raise those salaries. And over the years I think that we have raised those salaries and done some good things. But I can also remember when we did not have a judicial system of which we could really be proud of. There were some weakened judges, and I think that today we have a good judicial system. I also want to point out what I've always said, and that is that, no matter how hard the Legislature labors to pass good legislation, unless you have an adequate and qualified judiciary, it doesn't make much sense. And so I just want to reinforce my support for these bills as a member of the public, and tell you that I hope the bills are advanced to the floor and become law. Thank you very much. [LB552 LB659]

SENATOR ASHFORD: Thank you, Loran. Any questions of Loran? I would say, too, I think the work that you did over years, when I was here, in support of judges has had a direct impact on the quality of our bench. So you should be proud of the work that you did. [LB552 LB659]

LORAN SCHMIT: Well, I'd just like to say this, I really think that maybe I didn't have much impact on many pieces of legislation, but I'm about as proud of what I did... [LB552 LB659]

SENATOR ASHFORD: You did have impact on that, though. [LB552 LB659]

LORAN SCHMIT: ...I was proud of the work I did on judges salaries. Thank you. [LB552 LB659]

SENATOR ASHFORD: Yes, you did. Thank you, Loran. Any other testifiers? That concludes...well, no. Senator Pedersen. I keep forgetting that. [LB552 LB659]

SENATOR PEDERSEN: Any of the issues we have, we can talk in Exec. Thank you. [LB552 LB659]

SENATOR ASHFORD: Okay, thank you. That closes the hearing on the first two bills, LB552 and LB659. We're now at LB36, LB37, LB38. Senator Hudkins. How many testifiers do we have on those three bills? Okay. I am, unless there's an objection...can we find Senator Hudkins? [LB552 LB659 LB36 LB37 LB38]

SENATOR LATHROP: Senator Hudkins. [LB36 LB37 LB38]

SENATOR HUDKINS: Thank you, Senator Lathrop. And my sign-in sheets are forthcoming. Could I introduce all of these at the same time? [LB36 LB37 LB38]

SENATOR LATHROP: We will, I think, permit you to do that. That looks good to me. Yes. In fact, we were going to take them up all at the same time, so that would be a

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good way to do it. [LB36 LB37 LB38]

SENATOR HUDKINS: Thank you. Well, I am Senator Carol Hudkins, H-u-d-k-i-n-s, and I represent the 21st Legislative District. I have introduced LB36, LB37, and LB38 for the purpose of ensuring that a bill was available for the Legislature to consider when the Judicial Resources Commission concluded their business concerning judicial needs in the state. In 2006, the commission conducted a judicial workload study of the three judicial systems in Nebraska: county courts, district courts, and separate juvenile courts. In early 2007, the commission held a public hearing concerning requests for judicial resources. LB36 represents the outlined needs set forth in the workload study concerning county courts. LB37 represents the needs for district courts; and LB38 represents the needs of the separate juvenile courts. Since the introduction of these bills, the commission has held their public hearing. After the public hearing, the body voted, and the results of that vote, I believe, have been forwarded to the committee. If you don't have the minutes of that meeting, I would be happy to provide you with a copy at a later time. I have also had the opportunity to visit with Chief Justice Heavican, of the Nebraska Supreme Court, regarding this issue. It's my understanding that the court has reviewed the recommendations of the study and of the commission. As a result of their consideration, they have formed a Judicial Resources Committee in concert with the Nebraska State Bar Association. They are going to review judicial resources, with a specific look at the judicial boundaries of the various court systems to determine whether it would be possible to redraw judicial district boundaries to alleviate the need in some areas for new judicial resources. I am impressed with Chief Justice Heavican's actions in this area. And if you consider that the combined cost to the state and county is approximately \$250,000 a year for a new judgeship, that's a lot of money. If it's possible to reallocate resources through changes in judicial district boundaries, that is a very prudent and responsible response to maintaining an efficient, effective, and responsive judiciary for the citizens of our state. I would encourage you to vote to review the various options that are available to this committee in allocating scarce judicial resources. So if you could move a judge from this district, for example, to another judge, maybe that will solve our problems. And I believe that that would be consistent with good public policy in an effort to maintain an efficient, effective, and responsive judiciary throughout the state. [LB36 LB37 LB38]

SENATOR ASHFORD: Thank you, Senator Hudkins. Any questions of Senator Hudkins? Right, okay. Just a second. So we're on the second one now then? Senator Hudkins, would it be all right if we just... [LB36 LB37 LB38]

SENATOR HUDKINS: I just introduced all three. [LB36 LB37 LB38]

SENATOR ASHFORD: She did it all, I think. Yeah, I think. Yes, I got every word. No, it was wonderful, no it was wonderfully done, Senator Hudkins. You didn't have any notice of that. We just decided to let you do that. So thank you. Proponents? [LB36 LB37

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LB38]

SEAN BRENNAN: Good afternoon. My name is Sean Brennan, B-r-e-n-n-a-n. I'm here on behalf of the Lincoln Bar Association in support of LB37. We urge you to advance LB37, but in doing so we ask you to also consider the recommendations of the Nebraska Judicial Resources Commission. They met and made a recommendation, on January 8 of this year, to add an eighth judgeship for Lancaster County District Court or the Third District. And so that is not included in LB37. We'd ask you to add it to LB37. The commission's recommendation is recent and relevant, and based on the statistics and factors that are mandated by this Legislature in the legislation creating that commission. In fact, the Legislature is not permitted to create a new judgeship without such a recommendation. That has occurred. And you are now empowered to add an eighth judgeship to the Third District, and we ask you to do that. The Lincoln Bar Association agrees that there is an immediate need for an eighth judge in the Lancaster County District Court. The practicing bar here recognizes that there is a need for additional judicial resources in all of the courts of Lancaster County, that includes the county court, as well as the juvenile court. Our comments here, with regard to the need for an eighth judge in the district court, stem from the unique role that we have observed that the Lancaster County District Court serves. There are at least 97 separate legislative provisions that require judicial review of administrative actions that must occur in the Third District, in the Lancaster County District Court, and not anywhere else in the state. And the cases that stem from these legislative provisions are often matters of first impression, they're often matters involving complex litigation, and they're often matters that consume considerable time and resources. And this special caseload that is added onto the normal caseload that all district judges experience is unique and one that is not adequately addressed in the weighted caseload analysis. And it is for that reason we think that you should consider the recommendations of the Judicial Resources Commission and advance LB37 with an addition to add an eighth judgeship for the district that includes Lancaster County, it's limited to Lancaster County. Thank you. [LB36 LB37 LB38]

SENATOR ASHFORD: Any questions? Are you also testifying on LB37 and LB38 or just on... [LB36 LB37 LB38]

SEAN BRENNAN: Just on LB37. [LB36 LB37 LB38]

SENATOR ASHFORD: Or, I'm sorry, on LB37, and not the other two? [LB36 LB37 LB38]

SEAN BRENNAN: That's right. [LB36 LB37 LB38]

SENATOR ASHFORD: So the way the bar in Lancaster County would rate the necessity would be district court first? Is that what you're saying? [LB36 LB37 LB38]

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SEAN BRENNAN: Well, the Lancaster...the Lincoln Bar Association sees a need for judicial resources in all of the courts in Lancaster County. I was asked, by the Lincoln Bar Association, to appear before you to urge the advancement of that bill. [LB36 LB37 LB38]

SENATOR ASHFORD: Okay. So you're not necessarily commenting on allocation? [LB36 LB37 LB38]

SEAN BRENNAN: Well, I think, I already commented that there's a need in the county court, and juvenile court as well. [LB36 LB37 LB38]

SENATOR ASHFORD: Okay. I'm not trying to trap you. I'm just trying to find a...thank you. Any other...thank you for your comments. [LB36 LB37 LB38]

SEAN BRENNAN: Thank you. [LB36 LB37 LB38]

GARY LACEY: Good afternoon. My name is Gary Lacey. I'm the county attorney in Lancaster County, Nebraska. I'm here representing myself. I work on the fourth floor of the Hall of Justice. Across the hall from me is the separate juvenile court of Lancaster County, Nebraska. In my terms as county attorney, I've seen the most important function I serve is to...is the cases that we file in the Lancaster County separate juvenile court. No cases, I don't think, are as important to the people of this county, and to the citizens of our state as those which protect children. We file a huge number of abuse and neglect cases. I'm told, I haven't checked the figures, but I'm told that the county attorneys office in Lancaster County files more...at least as many, and maybe more abuse and neglect cases in Lancaster County than does the Douglas County attorney in Douglas County. And the populations seem to be...Lincoln has about half as many people as Douglas County does. Generally, the courts in Lancaster County start at 9 o'clock in the morning, and if there is a jury trial going on, there is usually a 15 minute break at mid-morning, and then there is an hour and a half off for lunch, at 1:30 the cases start up again, there's a mid-afternoon break, and then generally at 4:30 in the afternoon or 5 o'clock the courts recess. I know from personal experience that the judges of the separate juvenile court in our county start court as early as 7 a.m. And I have lawyers who are frequently in court at 7:30 in the morning, and they don't take any mid-morning recess, and they don't take...they do take an hour for lunch, and they don't take any afternoon recess. Every 20 minutes, unless there is a trial set, you have a case before the court. And those always involve kids. Kids deserve to have a speedy trial. They're not guaranteed a speedy trial by the constitution. But kids who are usually not represented by anybody, and are at the will of the courts, deserve to have their cases handled expeditiously. And I notice that the Supreme Court has now established a commission which is trying to streamline and make the courts more friendly for kids. We have three of the very best juvenile court judges there are in this county, two women

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and a man. I have...I could not find one thing wrong with any of them; they are outstanding people and they work hard at what they do. Now, maybe they don't get here at 5:30. I'm told Judge Merritt, of the district court, of Lancaster County sometimes gets here at 5:30 in the morning. But I'll tell you, they're here all the time, and they're in court all the time. And they're doing the best for kids all the time. And I think they need some help. And if you don't give it to them, the kids in this county are going to suffer for it. And I'm hoping that extra judgeships floating around out there in the west will come to roost here in Lincoln, because our judges in the separate juvenile court need it. [LB36 LB37 LB38]

SENATOR ASHFORD: Senator Lathrop. [LB36 LB37 LB38]

SENATOR LATHROP: Can I ask you just one question? [LB36 LB37 LB38]

GARY LACEY: Yes. [LB36 LB37 LB38]

SENATOR LATHROP: Your testimony just a moment ago was that you were...that Lancaster County has the same number of filings in juvenile court as Douglas does? [LB36 LB37 LB38]

GARY LACEY: The same number of abuse and neglect cases, I'm told. Now, maybe they...I'm sure there are some judges here that will be able to reinforce that, but that's what I'm told. [LB36 LB37 LB38]

SENATOR LATHROP: You're probably going to have a close enough answer for me, but are you qualifying the answer? Do we have an equal caseload between Douglas and Lancaster, generally, with a disproportionate number of judges? [LB36 LB37 LB38]

GARY LACEY: You have a disproportionately high number of judges in Douglas County, compared to what our...the number of judges we have here and the number of cases we file. And I think the number of cases filed in Sarpy County would be less than we file here, on the basis of the number of judges we have. [LB36 LB37 LB38]

SENATOR LATHROP: Okay. And I'm looking, I don't want to hold up the afternoon. But I want to ask you this question, why do you think they're filing as many cases in Lancaster County, in juvenile court, as they are up in Douglas County, where the population is significantly greater? [LB36 LB37 LB38]

GARY LACEY: I don't know about the previous Douglas County attorney. I know the one now is very, very oriented toward protecting children. And that's always been my highest priority in Lancaster County. And I think the only place the courts can really help anybody, when it comes to the criminal justice system, and generally helping people, is when they're young. [LB36 LB37 LB38]

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SENATOR LATHROP: So your answer would be you're filing more perhaps than...
[LB36 LB37 LB38]

GARY LACEY: I file every, single case that...where a child is neglected. And that means if the parents fight with each other in front of the child, they're going to get filed on, even if the Department of Health and Human Services doesn't do it or it's not their priority. They told me several years ago, cases of children who see their parents involved in a domestic dispute before them were not priority for the Health and Human Services. Well, I was elected here to protect children. And I don't care what the priority of the Department of Health and Human Services is. I know what it does to a child to see...to be present when their parents are yelling at each other or worse yet hitting each other or shooting each other or God knows what else they do to each other, shooting each other up with drugs. So I think it's very important for this Legislature to make sure that the separate juvenile courts, and the juvenile courts that are headed up by county judges outstate are adequately staffed. [LB36 LB37 LB38]

SENATOR LATHROP: Agree. Thank you. [LB36 LB37 LB38]

SENATOR ASHFORD: Thanks, Senator Lathrop. How many years have you been...25?
[LB36 LB37 LB38]

GARY LACEY: I've worked in the county attorneys office since 1975. [LB36 LB37 LB38]

SENATOR ASHFORD: I was trying to date myself. [LB36 LB37 LB38]

GARY LACEY: And I've been the county attorney... [LB36 LB37 LB38]

SENATOR ASHFORD: How long have you been county attorney? [LB36 LB37 LB38]

GARY LACEY: I've been county attorney since 1990. [LB36 LB37 LB38]

SENATOR ASHFORD: Okay, I thought it was...that's a long time, because I think I worked with you for most of those years, back in the seventies. [LB36 LB37 LB38]

GARY LACEY: And it's good to have you back. [LB36 LB37 LB38]

SENATOR ASHFORD: Well, I'm glad you're here, and so you'll probably be a proponent for LB377, which adds a Lancaster County juvenile court judge? [LB36 LB37 LB38]

GARY LACEY: Absolutely. [LB36 LB37 LB38]

SENATOR ASHFORD: Okay. Good for you. Any other questions? Thanks for your

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service, Gary. [LB36 LB37 LB38]

GARY LACEY: Thank you. [LB36 LB37 LB38]

JEAN LOVELL: (Exhibit 2) Good afternoon. I am Jean Lovell, L-o-v-e-l-l, and I'm a county court judge in Lancaster County. So you'll get to hear from the perspective of what we call the people's court. I'm here today to specifically support LB36, which is the bill that would allow this committee to create new judgeships in the county court. And I'm asking you to follow the recommendations of the Judicial Resources Commission by adding a county judge in the Lancaster County Court, the Third Judicial District. And the commission went on to recommend that an empty seat in the 12th Judicial District, that was created with the death of Judge Wallace a couple of years ago, be moved to the Lancaster County Court. I'll give you a little bit of history about what's happened in Lancaster County. In 1985, when the municipal and county courts were merged, we had 44,000 cases filed. We had 6 full-time judges, and 50 full-time employees. As of the weighted caseload report, which the new caseload report which I've given you copies of the bottom line from that final report, in 2005 our caseload had gone up 45 percent. We still had 6 judges, and we had 47 employees. So our number of employees went down, the number of judges stayed the same, and our caseload went up 45 percent. During that period of time, the population of the county increased 31 percent. And during that same 20 year period we've added additional district court judges and juvenile court judges, but we've never added any county court judges. We've known for some time that we were going to need additional help in the county court, and we were encouraged, a couple of years ago, by Chief Justice Hendry, to wait for the completion of the workload assessment to make this request. Well, the assessment has been completed. The final report shows that the Lancaster County court is 29.74 percent understaffed. It shows that we have the greatest need of any trial court in the state. According to that report, we should have 7.78 judges to adequately do the work of 6 judges. Now some people will say that report is too conservative. I would say that it's the most conservative of estimates that you'll get. But under any standard, we believe our need is the greatest. The old workload assessment, which showed that we need 8.87 judges, and if you just look at the number of cases per judge, in 2005 we had an average of 10,739 cases per judge in Lancaster County, that's for the 63,000 cases that were filed. And how do you handle that many cases per judge? You do it by taking shortcuts and short changing the public. We have arraignment courtrooms where we don't have enough room for the people to appear. We'll have to have anybody with friends and relatives asked to wait outside the court until all the defendants could be seated. And we're in a real crisis. I see my time is up. I'll be happy to answer any questions, if I can. But I would strongly urge you to consider the recommendation of the Resources Commission and move the 12th District open seat to the Lancaster County court. [LB36 LB37 LB38]

SENATOR ASHFORD: Thank you, Judge Lovell. Any questions? I guess that's it. Do

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you have any questions? Thanks, Judge. [LB36 LB37 LB38]

JEAN LOVELL: Thanks. [LB36 LB37 LB38]

SENATOR ASHFORD: That's okay. I think we know. You can sign...you can do that later. [LB36 LB37 LB38]

BRUCE BAKER: I apologize. [LB36 LB37 LB38]

SENATOR ASHFORD: No, no. I didn't say anything about the sign-up sheets, so it's my problem. [LB36 LB37 LB38]

BRUCE BAKER: (Exhibit 3) Good afternoon. Senator Ashford, members of the Judiciary Committee, I am Bruce Baker, B-r-u-c-e B-a-k-e-r. I'm a resident of Lincoln for 25 years, and I've had the honor of serving as a volunteer on the local Foster Care Review Board for the last 6 years. And I want to speak in favor LB38, to increase the number of juvenile court judges in Lancaster County. My comments have been typed up and passed around for the members of your committee's convenience. First, I'd like to say the judges of the separate juvenile court of Lancaster County and indeed the judges from the juvenile courts across the state are doing their best to help children achieve a safe, permanent home in a timely manner. I think it is important, however, to acknowledge that there are a number of things that hamper these efforts. The Foster Care Review Board tracks children in out-of-home care and reviews their cases. On February 4, 2007, there were 1,067 children in foster care from Lancaster County or 356 children per judge. This does not include children under judicial supervision but placed in the parental home. There are other things to consider as well. For example, 25 percent of the Lancaster County children who entered care due to abuse or neglect have been in care for two years or more, 42 percent of the Lancaster County children who entered care, due to abuse or neglect, have been in four or more placements. This number of moves adds additional trauma to children already traumatized by abuse or neglect. Thirty-two percent of the Lancaster County children who entered care due to abuse or neglect have been removed from the home more than once, which means their families likely have more entrenched issues and are less amenable to change. There are a number of children who, due to the Governor's initiative, have recently transitioned home. These children remain under judicial supervision for a period of time, but are more reflected in previous statistics. Additionally, judges are dealing with caseworker turnover, evidentiary issues due to the contract system, where in many cases persons with little training or understanding of individual family dynamics are asked to submit evidence. Each of these issues beyond the court's control impacts evidence. I see my lights are moving, so I'll... [LB36 LB37 LB38]

SENATOR ASHFORD: No, just...you've got... [LB36 LB37 LB38]

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LEGAL COUNSEL: One more minute. [LB36 LB37 LB38]

BRUCE BAKER: Okay. Thank you. Judges are also... [LB36 LB37 LB38]

SENATOR ASHFORD: And we have your statement, too, if you're...don't worry. We'll...we have this to look at, too. [LB36 LB37 LB38]

BRUCE BAKER: But I do want to give an example of why judicial time is so very vital. The department was going to send a child home; the father had serious anger control issues. In its review, the board recommended that progress on this issue needed to be documented before considering reunification. The judge questioned the HHS caseworker who said that the father was enrolled in anger management classes. On further questioning by the judge, it was determined that the father was signed up for classes, but had not yet attended any of the class sessions. The judge ruled that the child should not go home and advised the caseworker to provide proof of positive changes on behalf of the father before asking the court to return the child home. Because there is insufficient time, there are many of these continuances. The dockets are filled for the judges for the next two or three months, so this becomes problematic. A hearing that could not be completed in February, due to time constraints, may not be able to be rescheduled until May or June. The board is aware of some children lingering in foster care for considerable lengths of time awaiting decisions to be made regarding their cases. Providing sufficient numbers of judges for juvenile cases is one of many steps necessary to improve Nebraska's child welfare system. The Foster Care Review Board supports this measure, LB38, which would provide an additional judge for Lancaster County. And I do represent all the volunteers of the 12 Lancaster County Foster Care Review Boards in coming before you this afternoon. And I'd be happy to answer any questions you may have. [LB36 LB37 LB38]

SENATOR ASHFORD: Thanks for your service and your testimony, Mr. Baker. Any questions of Mr. Baker? Thank you, sir, very much. [LB36 LB37 LB38]

BRUCE BAKER: Thank you. And I'll complete this and leave this with you. [LB36 LB37 LB38]

SENATOR ASHFORD: Yes, we have it. Next proponent. [LB36 LB37 LB38]

TONI THORSON: Good afternoon. I'm Toni Thorson. I am a juvenile court judge in Lancaster County so I'm here to talk to the committee today about our desire to have a fourth judge for the Lancaster County Juvenile Court. I'm not going to talk to you about the numbers because I think you can all look at the weighted case studies. And I guess I would just like to say that we do have some question about that because we're not sure that it adequately represents the fact that our cases are not usually concluded in a year and this was set up on a yearly basis. Some of our cases, unfortunately, take more

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than a year to conclude. But I guess what I would like to focus on more than the numbers is the fact that there are three of us that are in court basically all the time and we're scheduling cases as closely as we can. We're double booking, triple booking, quadruple booking trials to try and get these cases through on a timely manner. And we still have very long waits for families to get into court. And if we cannot conclude everything, as has been mentioned by the Foster Care Review Board individual, then it's continued over for another hearing. And I've checked today and to get an hour it would be at least into April to be able to hear that case further. These cases involve children and it's so important that we have a speedy response to their needs. That translates into real human issues in that if we cannot get these families in and get supervision over their cases, direct services to them, monitor their progress, children are going to be more likely to be out of home for longer periods of time. That has also a cost in terms of not just a human cost but also a financial cost because the longer children are outside the home and not returned then there's always the cost of foster care, casework time. There is an initiative, the Supreme Court initiative, Through the Eyes of the Child, that is going to try and get us to a point where we can implement best practices. We want to do that. The problem with the best practices is it requires a lot of judicial time, it requires conferencing, and it requires the court being able to be available for further hearings, scheduling things more frequently. We're already scheduling things, some cases every three months or even sooner to try and move cases along through the system. The other part is we have also the law violator part of our docket. We've focused today on the neglect side, but if you have a child that's committed a law violation and they don't get in front of us for six months, for some kids that's an eternity. I mean it's hard to have an impact on someone that's a young person when they're not in court immediately. We also have two problem solving courts which are family drug court and the juvenile drug court which I don't think is adequately represented in the time study either, and we devote time to those every week. Those are cases where we do see the children on a very frequent basis and have, I think, an impact in their lives. We'd like to be able to do that more for other children to have those cases quicker, have a faster impact, get their issues addressed sooner; but there's only so much time and we cannot schedule any more cases into a day than we are at this point. We feel there's a real need for the additional judge for the juvenile court and we request your support of that. [LB36 LB37 LB38]

SENATOR ASHFORD: Thanks, Judge Thorson. Any questions? And again I do have an amendment to address the juvenile court in Lancaster County issue coming up in a couple of bills here. [LB36 LB37 LB38]

TONI THORSON: Okay. No questions? And we do have...can I just say that we do have the same filings as Douglas County and we can get that to you. I mean we've tracked it since 1997 and we're on track to have 2,000 this year which is about the same that Douglas County is going to have. So I just would say... [LB36 LB37 LB38]

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SENATOR LATHROP: That leads me to this question, if I can? [LB36 LB37 LB38]

TONI THORSON: Oops. [LB36 LB37 LB38]

SENATOR ASHFORD: Oops. (Laughter) You were doing so well, Judge. [LB36 LB37 LB38]

TONI THORSON: I know. [LB36 LB37 LB38]

SENATOR LATHROP: I'm one of the new guys, so maybe I can use this as an opportunity to educate me. If you have the same number of filings, the population in Lancaster County is much smaller... [LB36 LB37 LB38]

TONI THORSON: Right. [LB36 LB37 LB38]

SENATOR LATHROP: ...than it is in Douglas County. What accounts for the difference? And are you doing better for juveniles down in Lancaster because you're filing on them more frequently? [LB36 LB37 LB38]

TONI THORSON: Well, see, we're not the gatekeepers so we don't get to control the flow of cases. So, you know, that's a filing decision that's made by the county attorney and the city attorney. You know, I think in our situation we're a community that's...we're kind of an ideal size because we're not too big and we're not too small so that the kids that probably need some attention from the court are going to get noticed and they're probably going to get filed on. In a bigger place, maybe it takes a little longer for you to get noticed. We also have the ability to provide services because like some of the smaller jurisdictions I don't think have the services available to them. So we're kind of a middle size and I think that has an impact. And obviously there are filing decisions that are made by the county and the city attorney which we have no input into. And the other thing is I think Douglas County has a little different setup for their pretrial diversion program which I think may also impact the number of law violation filings that they have. [LB36 LB37 LB38]

SENATOR LATHROP: Okay, thanks. [LB36 LB37 LB38]

SENATOR ASHFORD: Thanks, Judge Thorson. You better... [LB36 LB37 LB38]

TONI THORSON: Leave now. [LB36 LB37 LB38]

SENATOR ASHFORD: ...leave now. [LB36 LB37 LB38]

TONI THORSON: Thank you. [LB36 LB37 LB38]

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SENATOR ASHFORD: Any other proponents? Proponents? Do we have any opponents? And a neutral is coming up after this. Good afternoon. [LB36 LB37 LB38]

PETE WEGMAN: Good afternoon. My name is Pete Wegman, W-e-g-m-a-n. I'm an attorney here in Lincoln with the law firm of Rembolt, Ludtke. I'm proud to say that I am a trial attorney. I'm here on behalf of the Nebraska Association of Trial Attorneys in support of LB36, LB37, LB38, and LB377. Our organization consists of more than 500 attorneys across Nebraska who regularly appear in all levels of Nebraska courts. I'll remind you of a couple of things that are in our state Constitution. Our Bill of Rights provides that the right of trial by jury shall remain inviolable. Section 13 of our state Constitution Bill of Rights provides, all courts shall be open, and every person, for any injury done him and his lands, goods, person or reputation, shall have a remedy by due course of law and justice administered without denial or delay. The right of an injured or aggrieved Nebraska citizen to seek justice in a court of law is a precious right and it is a powerful right. The courtroom is a great equalizer. We are all equal before the law. The right to trial by jury without delay is a fundamental cornerstone of this great democracy. We are blessed in Nebraska with an outstanding, hardworking judiciary. But due to population and demographic shifts, some of our Nebraska courts are becoming overwhelmed, and for some of our citizens justice is not being administered without delay. I have personal knowledge of the difficulty in getting civil cases to trial in the Ninth Judicial District, Hall and Buffalo Counties, because of overwhelming caseloads there. I have no doubt that justice delayed is clearly justice denied. We must continually assess our judicial system, its accessibility, its responsiveness, its openness to our citizens. When parts are not functioning as well as our citizens deserve, our citizens deserve changes. We trial attorneys believe that an active, open, accessible judiciary in Nebraska has served and will continue to serve our citizens well. There are simply times when we need more judges, and for several districts that time is now and has been so for some time. Our organization, on behalf of the thousands of Nebraska citizens that we trial attorney members are privileged to help with their problems every year, appreciate your support of these four bills and advancing them from committee. Thank you. [LB36 LB37 LB38]

SENATOR ASHFORD: Thanks, Pete. Any questions of, Pete? [LB36 LB37 LB38]

PETE WEGMAN: Thank you. [LB36 LB37 LB38]

SENATOR ASHFORD: Okay. Linda. [LB36 LB37 LB38]

LINDA CRUMP: Thank you. I'm back and I'm speaking in support of these bills for additional judges. My name is Linda Crump, C-r-u-m-p. Although I have prepared testimony, I'd just like to speak to you about a few things because you've heard some important things that these judges are bringing to you about how hard they work, how heavy the caseloads are, how in some areas it's a very different call that judges have

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and what they are expected to do that you won't find in other places. The bar studied this issue. We tried to put together a Judicial Resources Committee, knowing how precious the resources are. And again, as you heard from the last speaker, justice delayed is justice denied. This is about access to justice and trying to make sure the citizens of our state have the access that they need. The younger citizens, I think, are really critically harmed when we delay, and delay, and delay. We have a tremendous need. We have studied it, we've had other people study it. We're even trying to look at a way that we could create some different solutions. But the need is right now, and that's what I'd like to leave you with. No matter how create we're trying to become in solving this, we know how important this is. And who it impacts is the citizens of our state. If they can't get their issue heard, make sure that they can appear before a judge in these critical issues, we're harming the citizens of Nebraska. [LB36 LB37 LB38]

SENATOR ASHFORD: Thanks, Linda. Any questions of Linda? I guess, I have just a couple of questions. I know we...the resource problem appears very, very critical. [LB36 LB37 LB38]

LINDA CRUMP: Right. [LB36 LB37 LB38]

SENATOR ASHFORD: And I've had several conversations, one couple jogging with the Chief Justice there, which is the best way to...that's the only time I can really think. But basically it seems so glaringly more of a crisis than it was 15 years ago when I was...well, 18 years ago when I was on this committee before. And I know Senator Pedersen fights, and Senator Schimek have been fighting hard for all those years that they've been here, and others, to try to alleviate that. What is...why did it get so bad? What's... [LB36 LB37 LB38]

LINDA CRUMP: Well, we're a different state than we were a long time ago. If you just look at the influx of people that speak different languages, and think about that impact upon the court, if you're there, you want to make sure you can hear the issues in the language you speak or else you can't even have access. That in and of itself has a tremendous impact on the court system. Cases are more complex. We live in a more complex society. And you heard how hard judges are working and what's being filed. We're a more litigious society than we were before. So all of those have a great impact on what's happening within the court system. And so, you're right that you know we're in a different place. Years ago, when you did this, the need continues in what's happening. [LB36 LB37 LB38]

SENATOR ASHFORD: Well, it's much greater, the need is much greater. It's... [LB36 LB37 LB38]

LINDA CRUMP: The need is much greater. And let's take just some of the, you know, specialty courts, like the drug court. The impact that that kind of court can have is

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tremendous of really removing people from the system, so that you don't get the repeat offenders back and back again. But it takes more time and it takes different kinds of resources. We're trying to get smarter. [LB36 LB37 LB38]

SENATOR ASHFORD: Well, and I think you are smart. I know you're smart, and I know most of the people...all the people that have been up here today are smart. And it's an incredibly competent bench. And I've known that myself, it just is amazing. But you know, I was thinking the other...Senator Pedersen knows this probably more than anyone. But think we spend somewhere around \$1,600,000,000 a year on Health and Human Services and Corrections and Courts. And I think my number is about right in the state of Nebraska. That's half the budget. And, I mean, I don't want to...I know Senator Pedersen is a...and I don't want to talk about things that he knows so much about and I don't. But my gracious, goodness sakes, I mean, where we've come in the last 15 years. I mean, we have to take care of a whole new society. I just think we're in a crisis. I think we're in an incredible crisis. I mean, I'm just...it takes my breath away. And I just admire all the people in this room, and so many of the people that come to this committee, and I've seen them in the last two months, that deal with foster care, that deal with guardian ad litem situations. And I don't know. I mean, I'm just amazed. And... [LB36 LB37 LB38]

LINDA CRUMP: My last comment would be it's a statement about who we are as a country, a nation, and a state when we know how important it is to do this. And we will... [LB36 LB37 LB38]

SENATOR ASHFORD: I agree. But is it a statement about...I think it's a statement that we're a caring... [LB36 LB37 LB38]

LINDA CRUMP: Exactly. [LB36 LB37 LB38]

SENATOR ASHFORD: ...nation. But what does it also say about the fact that...is it that we have identified abuse where abuse didn't exist? Have we created too many crimes? Have we...what have we done? And we can talk about this later. But I just...we're at a real crossroads, where we're not going to have any dollars to spend on things like education and things like that because we're...you and your colleagues are being...are placed in a situation where they're dealing with some just really, really difficult situations. And it's a very costly process. And there should be many more judges. We should give judges...as we need more corrections officers, and we need more people in foster care, and we need more people dealing with welfare cases. I'm sorry to diverge, but thank you for your comments. [LB36 LB37 LB38]

LINDA CRUMP: That's okay. Thank you. [LB36 LB37 LB38]

PAUL MERRITT: (Exhibits 1-4) Senator Ashford, members of Judiciary, my name is

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Paul Merritt. I'm one of the district court judges for the Third Judicial District, which is commonly referred to as Lancaster County District Court, since our district consists solely of Lancaster County. Initially, I don't understand how all work as far as what bills get to do what. The Third Judicial District is not on LB37, but I've been told I should testify on LB37 because it can be changed when it goes out of here, and the same thing with LB377. So I'm basically a proponent for both of those, I think, for what we're asking for. I'm here on behalf of the judges of the Third Judicial District requesting that the committee send out a bill creating a new eighth judgeship for the Third Judicial District, District Court. Back on January 22, I delivered to each of your offices a summary report. And I don't know if I had to make a copy for an exhibit here, so I brought an extra copy, just in case I did. The report is fairly comprehensive. I just want to touch on a couple of the items this afternoon. Before I do that, I do want to make clear to each of you that we, and when I say we I'm talking about the district court judges in Lancaster County, we acknowledge that the new case filings per judge for calendar year 2006, as shown on page 3 of the summary report, shows that the Third Judicial District is fourth in the state in the filings per judge, behind the Fourth, Ninth, and Second Districts. We suggest, however, that your evaluation of whether a district court does or does not need a new judgeship should go beyond a mere, simple mathematical consideration of new case filings per judge. There are 12 district judge...excuse me, 12 district court districts across the state of Nebraska. Each district court judge has the same jurisdictional powers. However, where cases may be filed is a different story. As noted in the summary report, there are over, and as mentioned by Mr. Brennan, there are over 70 statutes that designate the Third Judicial District as the court having either exclusive jurisdiction over some issues or as an alternative to other district courts across the state. And in fact, these statutes turn the Third Judicial District into somewhat of an anomaly among the district courts across the state. Although the Third Judicial District consists only of Lancaster County, we handle cases that come from across the state and involve citizens from all over the state. I'll give you some examples. If a person wants her name to be placed on the general election ballot, she files suit in Lancaster County. If a company, not located in Lancaster County, claims that the Department of Revenue has wrongly denied it a refund of sales and use taxes totalling over \$2 million, it files its appeal in Lancaster County. If taxpayers from across the state want to try and stop a state board from dissolving Class I schools before an election is held, they file their case in Lancaster County. If a state department wants to determine the financial obligation of the Nebraska Excess Liability Fund concerning cases then pending in Dodge County, it files its suit in Lancaster County. If a doctor practicing in Central City, Nebraska wants to appeal a suspension of his license to practice medicine and surgery, he files his appeal in Lancaster County. If a taxpayer from outside Lancaster County wants to challenge placement of an initiative petition for local option gambling on the general election ballot, she files her suit in Lancaster County. In our opinion, these examples, which only refer to some cases handled by one of the judges on our bench over the past three or four years clearly show that the Third Judicial District is a statewide district court. As the summary report, I don't... [LB36 LB37 LB38]

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SENATOR ASHFORD: One minute. [LB36 LB37 LB38]

PAUL MERRITT: Hey, good, because I'm color blind, so I...but there's little things there to tell you the number, how much time you have left, good. (Laughter) Okay. As the summary report notes, this statewide aspect of the court located in the seat of government is recognized by some states. While we have not checked statutes in all states, the summary report shows that Iowa specifically provides that the seat of government...seat of state government is entitled to one additional judge, just from that mere fact. We suspect that part of the reason for this is the novelty and complexity of cases that are filed relating to the actions of the state, and the potential statewide application of decisions of the judges located in the seat of state government. [LB36 LB37 LB38]

SENATOR ASHFORD: Judge. [LB36 LB37 LB38]

PAUL MERRITT: Sir? [LB36 LB37 LB38]

SENATOR ASHFORD: I'm just going to ask you to... [LB36 LB37 LB38]

PAUL MERRITT: I have one paragraph. Can I read it? I don't want to get special treatment here. [LB36 LB37 LB38]

SENATOR ASHFORD: Okay. Yes, please read it. [LB36 LB37 LB38]

PAUL MERRITT: Well, no, I'm just saying we would like...this is the summary. Recognizing my limited time, which is gone, I wanted to conclude by saying that we believe that when you consider all of the information in the summary report provided to you today, you will agree that to provide all citizens of the state of Nebraska effective access to our system of justice, there's a need for a new eighth judicial judge in the Third Judicial District. I'll take any questions. I will mention that the Attorney General has provided a letter in support of an additional judge for Lancaster County district court. I don't talk for the Attorney General. I suspect it's for LB377, too. It just relates to Lancaster County court. And I'll just follow up on something that Judge Thorson mentioned, and I think that maybe Ms. Crump mentioned. We have a drug court in Lancaster County. That drug court takes eight to ten hours, per week, of a judge's time. And it does not interfere with any other work that we do. Sorry. [LB36 LB37 LB38]

SENATOR ASHFORD: Thanks, Judge Merritt, for your comments. And I appreciate the information you provided to me, and we'll get it to the committee. So thank you. Any questions of Judge Merritt? Thank you, sir. [LB36 LB37 LB38]

PAUL MERRITT: Thank you, Senator. [LB36 LB37 LB38]

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SENATOR ASHFORD: Chief. [LB36 LB37 LB38]

MIKE HEAVICAN: Mr. Chairman, committee members, thank you again. Mike Heavican, Chief Justice of the Nebraska Supreme Court, H-e-a-v-i-c-a-n. Speaking here, I guess, on a neutral basis. There are some things you ought to keep in mind as you are dealing with the very complex issue or issues of how many judges the state should have and where those judges ought to be located. Overall, the number of cases filed in the system has basically been flat, statewide, over the last five years, almost over the last ten years. It was actually down slightly in the last year. So please consider that maybe the problem here is not the number of judges in Nebraska, but where those judges are located. And, of course, as you all know, it is very difficult to make tough decisions like, should we move a judge from one place to another place? In that regard, there is an open county court judgeship in the 12th District, out in the Panhandle. It has been open for about a year and a half, almost two years, kept open deliberately because of the tough issue of, where should judges go in Nebraska? The Supreme Court would recommend to you that that county court judgeship be converted to a juvenile court judgeship, and that judgeship be placed in Lancaster County. You heard a lot of testimony about that today. But we have one condition we would like you to put on that. We would like you to take the separate juvenile courts in the state of Nebraska, which are located in Douglas, Sarpy and Lancaster Counties, and we would like you to make that one district. So that in the future, and even in the present, we would have more flexibility about moving juvenile court judges to where they are needed most. We think that this is a very efficient way to use judicial resources. So we would like you to keep that condition in mind. You also heard a lot of testimony today about the need for other judgeships in the state, particularly again in Lancaster County. At this point in time, you should be aware, and there's been testimony to this effect, that the Bar Association is doing a study. They have set up something they call the Structure and Administration Task Force; that was done sort of at the behest of the Supreme Court, and also the behest of the Judicial Resources Commission. And that commission is studying how to better use judicial resources in the state to include issues such as should boundaries be changed in many of the judicial districts, both on the county court level and district court level, and should there be a one-tier trial system in the state of Nebraska, as well as other complex issues involving judges? We would urge you at this point in time not to add any new judges or transfer any other judges, other than the one that we recommended, until that study has been completed and recommendations can be made from that study. And I'd be happy to answer any questions that you may have. [LB36 LB37 LB38]

SENATOR ASHFORD: Any questions of the Chief? Yes, Steve. [LB36 LB37 LB38]

SENATOR LATHROP: Did I just hear you say, your honor, that you want us to not add any judges? I mean, we're here on three bills to add judges, and you want us to wait

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until the bar is done with their study? [LB36 LB37 LB38]

MIKE HEAVICAN: Yes, absolutely. [LB36 LB37 LB38]

SENATOR LATHROP: Other than moving a county court judge from the 12th district to the juvenile court in Lancaster County? [LB36 LB37 LB38]

MIKE HEAVICAN: That's right. [LB36 LB37 LB38]

SENATOR LATHROP: And then you also want us to set up, as a separate district, the three juvenile court...the three jurisdictions that presently have separate juvenile courts? [LB36 LB37 LB38]

MIKE HEAVICAN: And make them into one district, yes. [LB36 LB37 LB38]

SENATOR LATHROP: Make them into one district. That's not in any one of these bills at present. [LB36 LB37 LB38]

MIKE HEAVICAN: That is not in any one of those bills. [LB36 LB37 LB38]

SENATOR LATHROP: Okay, okay. Just wanted to make sure I heard that right. [LB36 LB37 LB38]

MIKE HEAVICAN: Yep, that's correct. [LB36 LB37 LB38]

SENATOR ASHFORD: Thanks, Chief. Yes. [LB36 LB37 LB38]

SENATOR SCHIMEK: Thank you, Mr. Chairman. Mr. Chief Justice, what...can you tell us if we made that...those juvenile courts into one district, what kind of changes would we see right now, if that happened? [LB36 LB37 LB38]

MIKE HEAVICAN: I don't know that you would see immediate changes right now. But if you look at the...if you just look at the raw numbers of cases, you will see that it indeed is true that Lancaster Counties numbers are approximately the same as Douglas Counties numbers. They vary a little bit, year for year. Sarpy County has two juvenile court judges, neither of which have the numbers that the other two counties have. So it is just an effort, more for the future than the present, to be able to adjust those juvenile court resources more efficiently than we have in the past. I don't need to tell you that you're all facing budget problems. And increasingly your budget is eaten up by Medicaid and eaten up by education, and judicial resources gets squeezed, as do other resources. We want to look at this problem and be as efficient as possible as we can with it. The juvenile court system through the state is really the only part of the system that dramatically...not dramatically, but always seems to go up, up, and up. So we think

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that is one way to address that issue. [LB36 LB37 LB38]

SENATOR SCHIMEK: Thank you. [LB36 LB37 LB38]

SENATOR ASHFORD: Yes, Senator Lathrop. [LB36 LB37 LB38]

SENATOR LATHROP: I do have a follow up. Maybe you told us this in your testimony. When is the State Bar Association going to complete the study that you're talking about? [LB36 LB37 LB38]

MIKE HEAVICAN: We don't have a deadline on that. I don't think that they will have anything concrete for you for this legislative year, but for next year we hope that they do have something to recommend. [LB36 LB37 LB38]

SENATOR LATHROP: Didn't we just complete a Judicial Resource Study, somebody? I mean, I thought we heard testimony this afternoon already that there was a study done. Was that just on the workload? [LB36 LB37 LB38]

MIKE HEAVICAN: We had a workload study done. What we want this task force to do, and what they are doing, is looking at boundary changes, because what you're got, as I said, is you've got basically a statewide system with a flat number of cases coming into this system. You have to look at the tough issue of, do we need to move judges? Nobody ever wants to do that. I don't blame you. I don't want to do that. I did not want to come down here today and testify to essentially that effect. But we also want to look at an issue like a one-tier trial court, which many people think, I'm not going to come down on the side of that right now, but many people think that that would be a better use of judicial resources, particularly in the rural areas of Nebraska, where you have judges driving back and forth. The district court judges going one way, the county court judges going the other way. So we need to look at those issues. [LB36 LB37 LB38]

SENATOR LATHROP: Okay. That answered my question, and thank you. [LB36 LB37 LB38]

SENATOR ASHFORD: Chief, so I understand where we are, because I don't want to screw this up here. We have two judges that the court...spaces...two spots that your office, you're suggesting could be placed somewhere else, essentially. And the one that you've talked about today is juvenile court, and we've heard testimony about that. There is another one available to be reallocated as well. [LB36 LB37 LB38]

MIKE HEAVICAN: Possibly a district court judgeship again in the 12th District, in the Panhandle. We've had one resignation or retirement in that district. And we're anticipating there will be another one in the next month or so. [LB36 LB37 LB38]

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SENATOR ASHFORD: And...okay. So those are spaces, judgeships that either are vacant or will become vacant soon. [LB36 LB37 LB38]

MIKE HEAVICAN: That is right. [LB36 LB37 LB38]

SENATOR ASHFORD: And again, the only testifiers we've had here today are Lancaster County, except for Marcena, who's here from Douglas County, and I hope I didn't miss out on somebody else. [LB36 LB37 LB38]

MIKE HEAVICAN: You had somebody here from Kearney, too. [LB36 LB37 LB38]

SENATOR ASHFORD: And from Kearney. What is it...it appears as if the Lancaster County, even though cases may be flat, the Lancaster County situation appears somewhat, at least from the testimony, critical. Would that be a fair... [LB36 LB37 LB38]

MIKE HEAVICAN: I don't like to use the word "critical." [LB36 LB37 LB38]

SENATOR ASHFORD: Or relatively critical. [LB36 LB37 LB38]

MIKE HEAVICAN: Relatively critical (laugh). They're sitting back there waiting for... [LB36 LB37 LB38]

SENATOR ASHFORD: Or more critical. [LB36 LB37 LB38]

MIKE HEAVICAN: ...a good word. [LB36 LB37 LB38]

SENATOR ASHFORD: I'm just trying to...and if you don't want to get into that, that's fine. [LB36 LB37 LB38]

MIKE HEAVICAN: Well, again one of the things that you have to look at is numbers. Now, we had a lot of testimony about this is a lot more complex than numbers. But I think that's where you need to start. And one of the things you heard Judge Merritt, very candidly, say is there are other district courts that have higher numbers than Lancaster County does. And again, we think that a lot of those problems can be addressed by moving district lines, and maybe that can't be done in Lancaster County. But we would ask you to wait until this Bar Association study is done before you jump into that. [LB36 LB37 LB38]

SENATOR ASHFORD: Even on the second? [LB36 LB37 LB38]

MIKE HEAVICAN: Even on the second judgeship. [LB36 LB37 LB38]

SENATOR ASHFORD: All right, thank you. Any other questions? Thanks, Chief, for

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coming down and spending so much time with us. [LB36 LB37 LB38]

MIKE HEAVICAN: Thank you very much. I can't think of a better place to be. (Laughter) [LB36 LB37 LB38]

SENATOR ASHFORD: Any other neutral testifiers? Senator Hudkins waives. Thanks, Jim. All right. Senator Heidemann, you're up, LB533. [LB36 LB37 LB38 LB533]

SENATOR HEIDEMANN: (Exhibits 5 and 6) Good afternoon, Chairman Ashford and members of the Judiciary Committee. I am Lavon Heidemann, spelled H-e-i-d-e-m-a-n-n, representing Legislative District 1. I'm here to present LB533. First, I would like to address AM445, the amendment that has been drafted that I would like to include with this bill. This amendment would strike the provisions dealing with Section 29-4206, which addresses not only detainees or prisoners, but all defendants. There was an oversight on the language of this section when drafting this bill. I apologize for any confusion. With the amendment, this bill would take away the requirement of a consent and waiver of physical appearance to be given by a detainee or prisoner in order for an audiovisual court appearance to occur. Removing this requirement would allow for audiovisual court appearances to occur more frequently. Audiovisual court appearances may only be made in nonevidentiary criminal proceedings. If allowed to be utilized more frequently, the state could improve the safety of its citizens and also save money. In Johnson County there are numerous court appearances made by the inmates from the Tecumseh State Correctional Institution. There is a real security risk involved with transferring these inmates to the Johnson County courthouse in Tecumseh. Inmates are transported in vans to and from TSCI with two to four unarmed guards. The inmates are more than able to communicate the scheduled dates of times and appearance to others outside the institution. At any time during the transport there is a risk of violence occurring with these inmates or others that may act in a violent way on their behalf. Once they arrive at the courthouse, there is one armed deputy. There are no metal detectors, and the county cannot afford to put them in. So once they are inside the courthouses the opportunity for a security breach is quite prevalent. There is no fiscal note with this bill, however I do realize there would be a cost to equip the courthouse with all the necessary technology to make these audiovisual court appearances work. The cost would most likely be minimal, compared to the amount of money that could be saved on the transport of these inmates. The guards that transport inmates to the court are usually on overtime pay, because TSCI needs to remain fully staffed at all times. I would like to note that it would seem impractical to spend the money to invest in the technological equipment. I would think there would be savings in the transportation costs if there is not statutory change that allows for this kind of court appearance to be utilized on a consistent basis. There are at least 19 other states that allow use of audiovisual appearance in certain nontrial court proceedings. Eight of those make the courts responsible for deciding if such appearance would be made. One state, California, allows the Department of Corrections to make the arrangements for those

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currently in the state prison to allow how they wish, unless the court orders the inmate to physically appear. According to the Attorney General, our Attorney General Opinion 07001, there is no violation of the Sixth Amendment of the U.S. Constitution or its state counterpart, Article II, Section 11 of the Nebraska Constitution, if the waiver requirement is removed. This is because audiovisual court appearances are not allowed to occur for trials or for any other form of evidentiary hearing. The first person who approached me with this bill idea was the Johnson County public defender, Tim Nelson. I think he would love to be in here today, but unfortunately he's preparing for a jury trial and could not be here today to present anything to you. I tell you this because the public defender, the Johnson county attorney, and the judges in Johnson County all support this concept. I would encourage you to support this bill. If nothing else, please attend the trial run that you have been invited to by Judge Daniel Bryan, in a letter that was sent to Chairman Ashford, that will be entered into the record. Johnson County has borrowed equipment to have at the courthouse to give a pilot program, using audiovisual court appearances a try. There may be someone testifying after me who will talk more about this pilot program. The trial run for the audiovisual equipment is April 9 at 11:00 a.m., in the district court chamber at Johnson County Courthouse in Tecumseh. Thank you for the opportunity to present this bill. I will now try to answer any questions you might have. And I also would like to hand a letter of support from the county attorney from Johnson County, Julie Smith Hogancamp. [LB533]

SENATOR ASHFORD: Any questions of Senator Heidemann? Senator, was there some...were you thinking maybe that this bill would be held and you would do some work, experimental work on this? [LB533]

SENATOR HEIDEMANN: We would appreciate it if the committee would, so if it would be its desire to do that, and allow us... [LB533]

SENATOR ASHFORD: Just hold it now? [LB533]

SENATOR HEIDEMANN: ...and allow us time to continue on with the process and look into that, and see how this pilot program runs, and see how the trial part of it goes. [LB533]

SENATOR ASHFORD: Okay, okay. [LB533]

SENATOR HEIDEMANN: And then we can go from there. [LB533]

SENATOR ASHFORD: And look at it again next year, after you've had an opportunity to... [LB533]

SENATOR HEIDEMANN: If you would leave the bill here and just lie, I'm sure we... [LB533]

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SENATOR ASHFORD: Not do anything else to it, other than that? [LB533]

SENATOR HEIDEMANN: That would be our desire. [LB533]

SENATOR ASHFORD: (Laugh) Okay. [LB533]

SENATOR LATHROP: Don't often get that request. [LB533]

SENATOR ASHFORD: Thanks, Senator Heidemann. [LB533]

SENATOR HEIDEMANN: Thank you. I'm going to get back to Appropriations, so they don't spend anymore money than I would like. So I will waive closing. (Laughter) [LB533]

SENATOR ASHFORD: All right. Hurry up. [LB533]

SENATOR HEIDEMANN: Thank you very much. [LB533]

SENATOR ASHFORD: Any proponents? Yes. [LB533]

ROBERT HOUSTON: (Exhibit 7) Good morning, Senator Ashford, members of the Judiciary Committee. My name is Robert Houston, H-o-u-s-t-o-n. I'm director of the Nebraska Department of Correctional Services. I come before you today to express my support for LB533 proposed by Senator Lavon Heidemann. The intent of LB533 is to address audiovisual court appearances of inmate defendants. I was advised by Senator Heidemann that Heidemann is working on an amendment to the initial proposal, but I have not had an opportunity to read the proposed revisions. I have been advised that the intent of the bill, the amendment, is to allow judges discretion in allowing for audiovisual court appearances in lieu of physical court appearance. Our agency has worked with Johnson County district court on a demonstration of audiovisual equipment, as Senator Heidemann has discussed, to be used for the court with the Tecumseh State Correctional Institution. The Department of Corrections borrowed the...is borrowing the equipment for the demonstration for Johnson County. The defense attorney there has indicated that his opinion that many of the defendants or inmates would volunteer for court, opt for telecourt, rather than be subject to processes required for transportation to court. Just some commentary on that. The inmates have jobs, they get paid by the hour when they're in industries jobs. They have other activities that they're involved, programs they're involved with. I think a lot of them would opt for this. Utilizing audiovisual equipment by inmates for court appearances in Tecumseh would result in a cost savings, based on the number of travel orders to Johnson County. In 2006, it was projected that this would save us about \$8,000, and that's just for the TSCI alone, and that's just one year. There would be ongoing savings. The cost savings comes in staff

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required for transportation of offenders to district court, supervise them while in court proceedings, and transport them back to the institution. A small portion of this is the savings that comes from mileage to and from the courthouse. Most significant with this, which is what our real interest is, is public safety. Wherein some court proceedings, without transporting the inmate defendants outside the prison, decreases the risk to the public. When inmates are transported into the community, likewise there is staff safety gaining, and the prison staff would not be subject to the risk of further transportation of inmates. Thank you for this opportunity to discuss our perspective of public safety as it relates to LB533. [LB533]

SENATOR LATHROP: Any questions? Senator Schimek. [LB533]

ROBERT HOUSTON: Yes, Senator. [LB533]

SENATOR SCHIMEK: Thank you, Mr. Chairman. Good afternoon, nice to see you here. I can't tell you what it is about this that makes me nervous. And I'm going to maybe wait to let some of my lawyer colleagues address the issue for me. But this makes me nervous, frankly. And I'm thinking, well, you know, if you want to save money, why don't we just take them out and hang them and forget about the court altogether. You're not talking about huge amounts of money here. [LB533]

ROBERT HOUSTON: Well, I think we are, I mean, over time at one facility. We have ten facilities, and obviously the number...the transportation is a lot less at our smaller facilities. But you're talking several thousand dollars per year at each one of the facilities, plus the public risk. So it's not just the money, it's also about the public risk. We had a case down at Tecumseh, of course, Mr. McGuire, who was not out... [LB533]

SENATOR SCHIMEK: I remember that. [LB533]

ROBERT HOUSTON: And so those are the types of risk that we have in mind when we talk about this. There's a lot of processing of the inmates in and out, a lot of time that isn't covered by this \$8,000 that would be saved. And really, on the inmates end, and I can't...I mean the judges will use their discretion as to what would be appropriate for video. I witnessed this when I was down in Tulsa, Oklahoma, watched video court there. And it was almost interchangeable with having a person there. So I really can't speak to the court proceedings or the legal representations, those type of issues. That's not my area. I can really only speak to the public risk and some cost savings. [LB533]

SENATOR SCHIMEK: And maybe if I saw a demonstration, maybe it wouldn't make me so nervous, and maybe I'm just being overly cautious here. [LB533]

ROBERT HOUSTON: Yes. [LB533]

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SENATOR SCHIMEK: So I'll be willing to listen. But it does make me a little nervous. [LB533]

ROBERT HOUSTON: Okay. And April 9, I think, is the demonstration, so... [LB533]

SENATOR SCHIMEK: April 9? [LB533]

ROBERT HOUSTON: Whatever the date was that the Senator gave us. [LB533]

SENATOR ASHFORD: We have a letter here that we... [LB533]

ROBERT HOUSTON: April 9 is the demonstration, 11 o'clock. [LB533]

SENATOR SCHIMEK: Is that during session? [LB533]

ROBERT HOUSTON: I think it's on a break day, I believe. So the senator could be there. [LB533]

SENATOR SCHIMEK: Thank you. [LB533]

ROBERT HOUSTON: Good. [LB533]

SENATOR ASHFORD: Any more questions? [LB533]

SENATOR CHAMBERS: Before he leaves, what bill are you on? [LB533]

SENATOR ASHFORD: This is the closed circuit testimony bill. [LB533]

SENATOR CHAMBERS: I do have some questions. How are you, Mr. Houston? [LB533]

ROBERT HOUSTON: I'm fine, Senator Chambers. [LB533]

SENATOR CHAMBERS: That's like, shake hands, but protect yourself at all times. Are you in favor of this bill? [LB533]

ROBERT HOUSTON: I'm in favor of the bill. The way we look at is that it will help with public risk. And so... [LB533]

SENATOR CHAMBERS: Now, before you came here, the Tecumseh prison...the prison was built in Tecumseh. And those people, their leaders and everybody, wanted the Legislature to put it there. And Governor Nelson wanted to put it someplace else, but the selection committee put it in Tecumseh. Those people wanted it for the jobs. And

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now that there is some inconvenience, they don't like to assume that inconvenience, the burden of inconvenience? [LB533]

ROBERT HOUSTON: Well, I can't speak for them, Senator. [LB533]

SENATOR CHAMBERS: Well, I got here too late to ask them. But at least that question is out there, hanging now. And I knew you couldn't answer, but you're the only one before us, so I had to use you for the sounding board. [LB533]

ROBERT HOUSTON: That's okay. [LB533]

SENATOR CHAMBERS: Other than that, I don't have any questions, except that I want to thank you for what you did for that inmate and your staff that we were trying to transition into the community. So in case I forget to respond by letter, let it be known that I said it publicly and on the record that it was a very good thing that they did, and I appreciate it. [LB533]

ROBERT HOUSTON: Thank you, Senator, I appreciate it. [LB533]

SENATOR ASHFORD: Thank you, Senator Chambers. Thanks, Bob. [LB533]

ROBERT HOUSTON: Okay. [LB533]

SENATOR ASHFORD: (Exhibit 8) Any other proponents? Opponents? Neutral? Any...Senator Heidemann has waived, I guess. He was on his way back to Appropriations. Thank you. Okay. Who's next? I'm next. All right. Let me get my thoughts together here for a moment. [LB533]

SENATOR CHAMBERS: Impossible. (Laughter) [LB533]

SENATOR ASHFORD: I accept that, Senator Chambers. Can you be...take care of the committee? [LB533]

SENATOR CHAMBERS: Yes, I'll fill in. [533]

SENATOR ASHFORD: Thank you, Senator Chambers and members. I'm Brad Ashford, Legislative District 20, and I'm here to introduce LB214. And essentially, LB214 does three things. The first thing that it does do is it allows for the appointment of special prosecutors in county courts, similar to what was allowed in district court. This change is necessitated by current law, which requires that a district court appoint a special prosecutor in county court. And this would just clarify that inconsistency. The second piece of this would simplify the process of having judges help with the short-term needs of a given court, so it would allow county court judges to travel to fill the vacancies...or

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not the vacancies, but fill the needs of other courts that would...that need help. And it would repeal the series of statutes that are obsolete and conflict with other laws. So it's a cleanup, some cleanup provisions. But essentially the two major parts of the bill are the granting to the county court the ability to appoint a special prosecutor in an appropriate case, primarily in cases of conflicts with the county attorney, for example. And then secondarily, the process of allowing judges to go from jurisdiction to jurisdiction and provide services in a jurisdiction that needs some help. Those essentially are the reasons for LB214. I know Judge McDermott, I believe, is here to testify on the bill and can maybe add some more insight. [LB214]

SENATOR CHAMBERS: Oh, any questions? There's a question. [LB214]

SENATOR PIRSCH: Yeah. I tell you, somebody is going to testify here and... [LB214]

SENATOR ASHFORD: Well, Judge McDermott is here, and I think... [LB214]

SENATOR PIRSCH: I'll ask Judge McDermott. [LB214]

SENATOR ASHFORD: He can talk about both these things, I think has some personal knowledge of why we're here. [LB214]

SENATOR CHAMBERS: Why we're here? I've been wanting to know that. (Laughter) But anyway, thank you, Senator Ashford. [LB214]

PATRICK McDERMOTT: Good afternoon, Senator Chambers, members of the committee. My name is Patrick McDermott. I'm a county judge of the Fifth Judicial District. My office is in Schuyler. [LB214]

SENATOR CHAMBERS: And, Judge, as renowned as you are, will you nevertheless spell your name for the benefit of the transcribers. [LB214]

PATRICK McDERMOTT: I will. It's M-c-D-e-r-m-o-t-t. [LB214]

SENATOR CHAMBERS: Thank you. [LB214]

PATRICK McDERMOTT: Senator Ashford was kind enough to introduce this bill on behalf of the County Judges Association. I'm the legislative chair for that association. Each year it is our intention to come before this committee to try and make technical corrections to the statutes that would increase the effectiveness and the efficiency of the county court system. This bill contains three specific items that address that efficiency. Least important really is the cleanup. There are three provisions, 29-501 through 503, the purpose of which are really lost in antiquity. It may well have gone back to the old days of the circuit judges in this state, where they only went to communities periodically.

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But we are all now governed by the Riverside decision, from the United States Supreme Court, that requires a county judge or magistrate to review the detention of any citizen that is held, and must do so within 48 hours. So that is the process which has supplanted those provisions. A second portion of this bill would allow for the trial court to appoint special prosecutors in light of a conflict with the county attorneys office. We have always had that power, but the ability to pay those special prosecutors reflected back to another statute. And that statute limited the power to a district judge. So it became necessary for the district court to make all those appointments. And a district judge may not be well acquainted with the bar, for instance, that practices juvenile law, would not know who the most competent attorney to take the job would be. Lastly, and this really relates to the request by the Chief Justice for a great deal of flexibility to respond to the needs of the courts with present levels of manpower. It is a portion of the statute that would allow county courts to hold court for each other. And a number of mechanisms would be involved. What this bill does is allow it, without going through the present process, which allows an application to the Chief Justice to appoint a judge to go sit outside his or her district. This would allow a county court judge, who finds themselves overwhelmed for any reason with work, to simply call a colleague, perhaps in a neighboring judicial district, to see if they could come in and assist on a very short-term basis, and with little or no notice. It's literally, if Judge Vampola in Fremont is very busy and he calls and I've just had a jury trial fall out, I couldn't get in my car and drive the 30 miles across a district line and work in Fremont and help Judge Vampola and help the citizens by getting through it. Let's get a judge where the people need judges and not worry about artificial barriers. That's really what this bill does, because I think as a practical matter that the judiciary needs to face the budgetary reality that maybe we need to do the work with what we've got. We need to be prepared not to do it like we did it last year, and do it in the same, comfortable courtroom that I'm used to. But if people need help in South Sioux City, then I need to get in the car and drive up to South Sioux City, do the work, and then go back to my own job. And if people need work, you know, when I get in trouble, I'm going to be calling Judge Rager, up in South Sioux City and say, come on down, Kurt, I'm in a jam now. But we need to be able to do that. And to make the system too structured means we can't respond. And most county judges, and I'm sure the district judges are exactly the same way, when one of our colleagues has a sudden illness in his family, there's no question but what we can cover each other, and somebody can free up to go take that judges load, so he can attend to his family. Our system needs to be responsive, not only to the citizens, but to each other, and we got to try and do it with the resources we have in our hands now and not be asking the citizens of this state to pay more for a system, until we have really used everything we've got, and done everything we can to get the job done. I would be happy to entertain any questions. [LB214]

SENATOR CHAMBERS: Senator Pirsch. [LB214]

SENATOR PIRSCH: Just kind of a clarification question. Currently, and you know I've

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practiced in Douglas County for a number of years, and I know not infrequently there would be a visiting judge, Judge Rogers, out in Madison County, what not. Was that always approved then by the district court, those appearances, when you were short? [LB214]

PATRICK McDERMOTT: No, we're talking about two different things. For me, for instance, to go sit in the Douglas County court, that is done by an order of the Chief Justice, who, as a request from the Chief Judge of the Douglas County court says, we need someone to cover a court today. There...actually, Ken Wade does it. He would poll the county judges and say, is there anybody who could get into Douglas County today and help? I e-mail or call Ken and say, I can move some cases; I'll go help. I'll get a letter...I will get an order signed by Chief Justice Heavican, appointing me to go in and serve. The other thing is, and it's been going on anyway, is that occasionally there is a conflict of interest by the prosecutor. Courts have just appointed the prosecutor, appointed a prosecutor, and most often they have just gone ahead and authorized payment, and nobody has balked. But it's not in the statute. We don't have that statutory authority. And you know, I don't want to ask some lawyer to work hard, and then have him turn around and say the county board refused to pay me because you, county judge, don't have that authority. So this is a cleanup of that, which I think was merely an oversight. Did that answer your question, Senator? [LB214]

SENATOR PIRSCH: Sure. Thank you very much. [LB214]

SENATOR CHAMBERS: Any other questions? Judge, you get an A. That was a good presentation. Your question was...the question put to you was answered directly, forthrightly, succinctly. And if you could pass that onto your colleagues when they come before us, it would be greatly appreciated, then when you return you're guaranteed an A plus. [LB214]

PATRICK McDERMOTT: I'll do it, Senator. [LB214]

SENATOR CHAMBERS: Okay. Are there any others who want to speak for this bill? [LB214]

SENATOR ASHFORD: I'd waive closing, Senator Chambers. [LB214]

SENATOR CHAMBERS: That ends the hearing on that bill. And now, Senator Ashford, is doing an encore. Oh, well let me...is there opposition to that last bill? Because I knew the bar wasn't going to oppose it. They're not. We're going to let Senator Ashford coalesce his thoughts, as he likes to say. And then when he's prepared, we're ready. [LB214]

SENATOR ASHFORD: I'm ready, right off the bat, Senator Chambers. [LB377]

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SENATOR CHAMBERS: LB377. [LB377]

SENATOR ASHFORD: (Exhibit 9) LB377, well, there's an amendment to LB377 which becomes the bill, members. Brad Ashford, District 20. The purpose of this amendment is to reallocate a judge, a district court slot, I think I'm correct in stating, county court slot in 12 to Lancaster County Juvenile Court. And this has been a work in progress, Senator Chambers, and members. And hopefully, the progress ends here and we have an amendment. There are two slots, apparently, that can be allocated, reallocated across the state, one...this is one of them. We're recommending that...this bill recommends that the slot be allocated to the Lancaster County Juvenile Court. And the other, as you heard the Chief Justice indicate that he would rather that the other slot remain where it is at this time, until the Bar Association study is completed. So with that, I would be happy to answer any questions. [LB377]

SENATOR CHAMBERS: Any questions of Senator Ashford? Thank you, Senator Ashford. Anybody speaking for this bill? Anybody? [LB377]

PAUL MERRITT: Senator Chambers, my name is Paul Merritt, M-e-r-r-i-t-t. I'm district judge here in Lancaster County. I don't know if I'm speaking for this bill. I already handed out the little piece of paper because I spoke for LB37. I think I need to respond because Senator Ashford has, to the comments made by the Chief Justice, that this second slot that's not there, but kind of there out of the 12th District. Number one, I should say I cannot follow what Judge McDermott...under what the senator just said. But to my benefit, Judge McDermott didn't have a chance to talk to me, to tell me how to do this right. (Laughter) So I'll live with that. I have to respond. Senator Ashford mentioned the Chief Justice's comments with respect to the second slot, I am going to bet that any study that's done by any organization in the next year is not going to say that Lancaster County should be added to any other district. It's going to say that Lancaster County and Douglas County should stay as they are. There may be allocations between the other 12 districts in the state, but I'm going to bet that they don't say that to these two districts. And if you wait for one year, then...for something that's not going to change, I just point that out, that's all I do. I have nothing else, Senator. [LB377]

SENATOR CHAMBERS: Any questions? Senator Lathrop. [LB377]

SENATOR LATHROP: Thank you. The second slot is actually anticipating the retirement of another judge out west? [LB377]

PAUL MERRITT: Yes, sir. We are... [LB377]

SENATOR LATHROP: That's not available for us to reallocate at this point in time, is it?

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[LB377]

PAUL MERRITT: I think that one slot has retired. We have been...the Chief... [LB377]

SENATOR LATHROP: That's...if we follow, I mean, this bill kind of directs that that one slot that's open goes to the Lancaster County Juvenile Court? [LB377]

PAUL MERRITT: As I understand it, Senator, the slot that is open right now, no doubt about, is where C.G...excuse me, Judge Wallace was, in Kimball. Judge Wallace died almost two years ago. That has not been filled. Judge Hippe has, as I understand, has entered his, from what the Chief said, his retirement notice. That opens up a district judgeship in the 12th District. There are four district...five district judges in the 12th District. I think the bet is that the Judicial Resources Commission will find that there is no need for five judges in the 12th District, only four. And so when Judge Hippe retires, and he has said he's going to, I just don't know the effective date, the Chief didn't say, we're waiting to see what, obviously, the Judicial Resources Commission will do. Regardless of what Judge Empson does, and I am led to believe that he is going to be another judge that will submit his retirement any day now, at least that's what I had thought. But I don't think that's going to change the fact that I don't think they're going to say that they need to have five judges out there. I think that starts getting in motion with the retirement of Judge Hippe. [LB377]

SENATOR LATHROP: Can we change that now or do we have to wait for this retirement to happen? [LB377]

PAUL MERRITT: I'm not allowed to give legal advice, and I don't know, sir. [LB377]

SENATOR LATHROP: I don't think that would be legal advice. [LB377]

PAUL MERRITT: Well, I don't know, it might be. But obviously you don't have a recommendation yet from the Judicial Resources Commission. And I think that is one of the things. What we are doing here is looking to what we thought was going to happen during this session when we were addressing all these issues. And we thought these types of things were going to play out during this session. [LB377]

SENATOR LATHROP: Okay. [LB377]

SENATOR CHAMBERS: And, Judge, since I am temporarily acting as chair, the committee will understand that you're responding to a question put to you for your opinion, and it won't be taken as legal advice. So you're free to answer that question, if you'd like to. [LB377]

PAUL MERRITT: And I appreciate that, Senator. And again, I think that we have looked

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at this as to what do we think is going to happen during the time of the session. With Judge Hippe retiring there can be a meeting before the Judicial Resources Commission. They can declare either there is or is not a vacancy in the 12th District and have that slot open up. Now, I don't know what their time frame is for doing that, Senator. I cannot believe it couldn't be done during the session. I just don't know what they're going to do on it. [LB377]

SENATOR LATHROP: Very good, you have answered my question. Thanks. [LB377]

PAUL MERRITT: Thank you, sir. [LB377]

SENATOR CHAMBERS: At some point, this is Chambers, you said Judge Empson. Did you mean Hippe again or Empson has tendered his resignation also? [LB377]

PAUL MERRITT: No, sir. I have been told...the Chief indicated that Judge Hippe has indicated he's retiring. And I have been led to believe that Judge Empson is going to be doing it very shortly also. [LB377]

SENATOR CHAMBERS: Judge Empson? [LB377]

PAUL MERRITT: Yes, sir. [LB377]

SENATOR CHAMBERS: Hallelujah! Excuse me. A spontaneous outburst can be excused. (Laughter) [LB377]

PAUL MERRITT: Isn't that a parenthetical, sir? [LB377]

SENATOR CHAMBERS: Are there any other questions of Judge Merritt? Thank you, Judge. [LB377]

PAUL MERRITT: Thank you. [LB377]

SENATOR CHAMBERS: Is there anybody else who is speaking for this bill? Anybody in a neutral position? Anybody hiding behind a post who'd like to say something? (Laugh) I guess, I would then ask the Chair, if he'd like to...would you like to close on this bill? [LB377]

SENATOR ASHFORD: No, I wouldn't, Senator Chambers. [LB377]

SENATOR CHAMBERS: There's nobody against it, and there's no neutral. [LB377]

SENATOR ASHFORD: No, I'm fine. I certainly think we should... [LB377]

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SENATOR CHAMBERS: Then that ends the hearing on LB377. And I return this onerous job to Senator Ashford. [LB377]

SENATOR ASHFORD: Thank you, Senator Chambers. And that concludes the hearings for today. See you tomorrow. [LB377]

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Disposition of Bills:

LB36 - Held in committee.
LB37 - Held in committee.
LB38 - Held in committee.
LB214 - Advanced to General File.
LB377 - Advanced to General File, as amended.
LB533 - Held in committee.
LB552 - Held in committee.
LB659 - Advanced to General File.

Chairperson

Committee Clerk