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Judiciary Committee
February 06, 2008

[LB816 LB828 LB933 LB935 LB1014 LB1085]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, February 6, 2008, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB816, LB828, LB933, LB935, LB1014, and LB1085. 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: Good afternoon everyone. I think we're going to get started. There's oh my goodness, there's Kate, Ms. Bradley, how are you? I was going to say if the testifiers are, the ones I know anyway, are any indication, this is going to be a heavy afternoon. So we're going to get started. The other senators will come in, in the next few minutes, I'm sure. My name is Brad Ashford. You're in front of the Judiciary Committee. We have six bills today, all pretty much dealing with the court system. Senator Lathrop and I are here. Senator Lathrop, from Ralston, in Omaha and various places. Jonathan Bradford, my committee clerk; and Stacey Trout, legal counsel. The rules are pretty basic. We have a little light system up here that applies to everybody but Speaker Flood. (Laughter) And so after about three minutes we'll ask you to sum up, and there will be an orange light come on, and we'd ask you to start finishing your comments, and then the red light will eject you from your seat. (Laugh) Speaker Flood, LB...what? Nobody was listening. Because it was so funny they'd be in hysterics otherwise. LB1085, how many testifiers do we have on LB1085? Oh my. Okay, great. Speaker Flood.

SENATOR FLOOD: Thank you. Good afternoon, Chairman Ashford, members of the Judiciary Committee. For the record, my name is Mike Flood, F-l-o-o-d, and I represent the 19th Legislative District. I'm introducing LB1085 which is a follow-up to LB554, which as you know rewrote the Parenting Act last year. The proposed changes in this bill are primarily technical in nature and do not compromise the objectives of LB554. LB554 struck a balance between recognizing the importance of maintaining parent-child relationships, while at the same time protecting victims of abuse or neglect. And like the work leading up to the passage of that bill, the proposed changes contained in this bill have been a real collaborative effort. I appreciate the folks who took the time in the interim to meet and make the Parenting Act even better. Some of these people are here today and will provide you a background on LB1085. As I mentioned, most of the changes in this bill are technical in nature, but I do want to mention four of the more substantive changes. First, in Section 2 of the green copy this bill would limit the duration of orders obtained ex parte. Currently, ex parte orders issued under subsection (1) of Section 42-357 remain in force for ten days, or until a hearing is held. The green copies applies this ten day rule to the ex parte orders issued under subsections (2) and (3) as well. After further discussion and consideration, I will be submitting an amendment that applies this ten day rule to only subsections (1) and (3). In other words,

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the ten day limitation will apply to ex parte orders that restrain the transfer of property under subsection (1) and those ex parte orders that determine property...determine temporary custody under subsection (3). Second change, LB1085 at Section 8 of the green copy provides for a paternity proceeding and procedures in certain circumstances. This provision would allow an individual to file a complaint and have the prior determination of paternity set aside if a scientifically reliable genetic test excludes the individual from being the father. It would not allow for the retroactive modification of child support. One of the reasons to provide this procedure is to give an accurate medical history to the child. Third change, this bill, at Section 14 of the green copy, would require that the child information affidavit be offered as an exhibit rather than be filed with the court. This provision would help keep the sensitive information that may be contained in the affidavit private. The fourth and final change that I'd like to highlight is that this bill allows for the optional disclosure of information in the child information affidavit. The thought behind this change is that we do not want to increase the contentiousness of the hearings, nor do we want to require a reluctant victim of abuse to report instances of abuse before he or she may be ready. With that again, I'd like to thank everybody for their involvement with this bill. I know there are still some fine-tuning to do, and our work will continue after the hearing. I just want to say that after last year's passage of LB554, there were a number of practicing lawyers across the state that raised serious and significant concerns. I think those concerns have been addressed. A number of those practitioners are here today to share their support for the bill. I appreciate the way in which they handled the concerns that they had and the way that they brought them forward and sat down in a collaborative effort with everybody else. I also want to thank Senator Ashford for his leadership on this. He was the original legislator that brought the idea of mediation to the table 20 years ago, and Senator Lathrop for, in my opinion, helping find the solution and encouraging members of the bar to come to the table and find a mutually agreeable solution. The two of you have done a lot to help this process, and it is appreciated. And Senator Schimek prioritized this last year and has been supportive of the bill through the process. I will waive my closing and be happy to answer any questions. [LB1085]

SENATOR ASHFORD: Any questions of Speaker Flood? Thanks for your leadership on this, Speaker Flood. [LB1085]

SENATOR FLOOD: Thanks. [LB1085]

SENATOR ASHFORD: Any questions of Speaker Flood? Thank you, sir. [LB1085]

SENATOR FLOOD: Thank you very much. May I be excused? [LB1085]

SENATOR ASHFORD: You may be excused. Welcome to Senator McDonald, Vickie McDonald from St. Paul, Nebraska; Senator Pirsch from Omaha; and Senator Pedersen from Elkhorn, Nebraska. With that, how many proponents do we have? Okay. How

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about opponents? Opponent. Let's have the first proponent. And no particular order is required. Anybody just wants to step up? John, you want to go first here? [LB1085]

JOHN SLOWIACZEK: Good afternoon. My name is John Slowiaczek, S-l-o-w-i-a-c-z-e-k. I'm an attorney. I practice law in Omaha, Nebraska. My practice is devoted entirely to domestic work, divorce work, things of that nature. We have been using mediation in Douglas County, where I practice primarily, for approximately 15 years. We have been using parenting plans for approximately 10 years. They have proven to be very beneficial, very advantageous to the court system that we have. As you look at what was the old bill and now the new act that is being proposed, it has an impact on other parts of the state in large part because they're proposing some mediation that other parts of the state do not have, which we have mandatorily in our community. I think that the act that is being presented to the...to you today for consideration is a collaborative effort from a number of people to clean up the old legislation. Many of the attorneys weren't paying attention to what was happening last year. The bill was passed and threw the legal community into some shock waves. But what is now presented to you cleans up a number of the problems that we have in large part the confidentiality that Senator Flood talked to you about with regard to the affidavits are no longer going to be a matter of public record. So it gets rid of some of the acrimony that was in place. I know there are a few other changes with regard to education and things of that nature, for attorneys, which have been removed. But the bar association is very active, and the attorneys I work with look at this act and they look at what is being proposed as something that is a tremendous benefit to the old law. And although I think there are some things that can always be changed, there are some things that can always be fine-tuned as we go forward. I would encourage the committee to pass this bill onto the floor so that it can be considered and can become law. It's my understanding they're going to put the emergency measures onto it so that it can come into play. Does anybody have any questions of me? [LB1085]

SENATOR ASHFORD: I'm glad someone noticed the first bill anyway that passed last year. So actually what we do do, people do notice them after a while. I'm sure you did, John, notice them... [LB1085]

JOHN SLOWIACZEK: We do notice them, yes. [LB1085]

SENATOR ASHFORD: ...when you had an opportunity to look at it. Thank you. Thank you [LB1085]

JOHN SLOWIACZEK: Okay. [LB1085]

SENATOR ASHFORD: Any other proponents? Next proponent testifier. Hi. [LB1085]

JANE LANGAN: Hi, thank you. My name is Jane Langan. I am with Rembolt, Ludtke,

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LLP in Lincoln and I practice principally in the area of domestic relations law as well. I'd like to start by thanking Speaker Flood for meeting with the practicing bar and hearing our concerns about LB554 as it passed last year. He and his legal counsel and others met with us several times. We did work through what we believe is a compromise. And that's how LB1085 is before you today. The practicing bar did have sort of a shock wave go through it after LB554 passed. There were a number of concerns raised by a number of attorneys, mainly practical problems. I think people in general supported the spirit of the bill. And one of the principle notions of LB554 as we understood it was to support mediation. And I think you'll see throughout LB1085 that we have kept in the provisions relating to mediation. We understand that that is something that, although it is new and foreign to some practicing attorneys, it is something that can work. And those who aren't used to the idea can get used to the idea, and we can move forward with that. We did propose a change in LB1085 on the mediation side, simply allowing the parties to use a mediator that they agree to, if approved by the court, rather than requiring the parties to use a Mediation Center or a court conciliation program. Another provision of LB1085 that we support is that there are some revisions to the financial plan. One of the concerns that I had personally was with respect to child support. There appeared to be some inconsistencies between LB554 and the Nebraska child support guidelines because LB554 made reference to extracurricular activities and other expenses of the child, and education expenses, which are not generally covered by the child support calculations. Throughout these meetings with Speaker Flood and others we learned that part of the concern was that in cases where parties are awarded joint custody sometimes there is some confusion about who's supposed to pay what. And so this bill does sort of clean up when those matters that are generally outside the child support guidelines could be implemented. It also separates the financial plan from the parenting plan. And that's because generally those financial matters would not be something that the mediators would be handling. As Speaker Flood referenced, there are some differences purposed here with respect to the paternity statutes. He mentioned the ability to set aside a decree. I argued a case before the Nebraska Supreme Court this morning, and one of the other cases being argued was a case exactly on this point, where someone was at the age of...I think the child was 16 or 18, the father came in and found...presented evidence that he was not in fact the father and was trying to set aside the paternity decree. There is also a provision in this bill that allows for the court to terminate someone's parental rights in a paternity case. That had not been the case before, at least the court interpretation had been that they were not allowed to do that because there was no specific statute. LB1085 makes some revisions to LB554's provisions with respect to when the court can consider absence from the home as a factor when developing a parenting plan. The prior law said that...under certain circumstances it simply could not be considered. Under these revisions the court is allowed to consider those. It doesn't necessarily mandate any particular outcome, but it allows the court that discretion. I see that I'm out of time. I'd be happy to answer any other questions. [LB1085]

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SENATOR ASHFORD: Any questions of Jane? Senator Pirsch. [LB1085]

SENATOR PIRSCH: Now is there something else that you wanted to get to, though, before...I mean obviously the red light came on. [LB1085]

SENATOR ASHFORD: ...before the red light cut you off, do you have...did you have one other point hanging there? [LB1085]

SENATOR PIRSCH: Just in brief, is there a point that you didn't get to? [LB1085]

JANE LANGAN: Well, I was only going to mention that there is also a provision in here for coordinating orders. There was some concern among some of the people in the group that there are times when a district court in, say, Sarpy County would enter a protection order, and a district court in Douglas County would be hearing a divorce or custody, or parenting time related matter. And if in the protection order matter there was an order for no contact with the kids, and then the district court ordered some visitation, there was confusion about how that could be implemented, and was the person subject to arrest? And so there is a provision now to try to coordinate those orders. And if the court that is hearing the matter...when there is already an existing order, enter something inconsistent, there is a copy...there is a requirement that a copy of that order be filed in the first court of file, so that everybody could be on the same page. [LB1085]

SENATOR ASHFORD: What...would you say that again? What instance is that again, Jane? [LB1085]

JANE LANGAN: It's on... [LB1085]

SENATOR ASHFORD: No, that's all right. What is the...what is the practical point you just made? [LB1085]

JANE LANGAN: Oh. It has to do with coordination of orders among different courts. There are times, for example, that a district court in Sarpy County would enter a protection order... [LB1085]

SENATOR ASHFORD: Okay. [LB1085]

JANE LANGAN: ...in a case. And the protection order would have certain restrictions on seeing the children, for example. And then later there is a divorce or paternity case and an order that is entered there that is inconsistent. [LB1085]

SENATOR ASHFORD: And the protection order continues on. Is there...I don't know the answer. Does a protection order have a time? Doesn't it have a time line on it? [LB1085]

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JANE LANGAN: Yeah. Yeah, it lasts one year. [LB1085]

SENATOR ASHFORD: That's what I thought. Okay. Okay, so it would be within that one year there is another order entered. Okay. [LB1085]

JANE LANGAN: Right. And those often go together. If someone is filing a protection order, usually some sort of dissolution will shortly occur. [LB1085]

SENATOR ASHFORD: Okay. Thank you. [LB1085]

JANE LANGAN: Thank you. [LB1085]

SENATOR ASHFORD: Next proponent. [LB1085]

AMIE MARTINEZ: Good afternoon. My name is Amie Martinez. I'm with the firm of Anderson, Creager and Wittstruck, here in Lincoln, as a private attorney. I practice primarily in the area of domestic relations as well. And I do want to take this opportunity to thank Senator Flood. He is accurate to say that we did sit down with him, and he was very receptive to our concerns about the practical implications of LB554. I think as a bar, and I'm not here to officially speak on behalf of the bar, but as a practicing lawyer it was our position that the changes in LB554 became a little bit unmanageable. And there were some concerns about issues that I don't think were anticipated at the time that the bill was put into place. I'm going to refer to a couple of changes that have not been referred to yet. Page 26, I believe you all call it the green sheet. Page 26 does put an effective date in, effective January...cases filed on or after January 1, 2008. That's helpful for us. It's been very confusing for the courts to know what cases are subject to the rules imposed by LB554. Page 27 there is a provision that allows the court to order children to attend a parenting class. You're probably all aware, but there are parenting classes that...in each area where parents go and learn to be grown-ups, essentially, where they learn to talk to each other nicely and try not to put children in the middle, and help them understand that there are impacts of a divorce on children that they can hopefully avoid. The court, according to LB554, has the authority to order children to do that. I think the sense was that sometimes that's inappropriate for the court to do that. But more importantly, generally, in divorces the court does not order the children to do things. The court orders the parties to do things in terms of visitation or support obligations, it's usually something that's imposed on the parties. Page 33 has to do with the child information affidavit. And Senator Flood did indicate that there were a couple of changes with that with regard to the first being an exhibit rather than a court filing. If you don't practice in that area, or are not a practicing lawyer, you may not understand that distinction. The documents that are filed as pleadings are public record. Those that are exhibits are a little bit harder to get to. We were very concerned about the information that's being required of children. For example, if you have a child that's left alone from 3:30 to 5:30, that that could be part of a public record that might expose that

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child to some risk. So there were some concerns about that. The provision also allows...the revisions allow that that exhibit would not be necessary unless it were a contested hearing, which helps us because in terms of expense about 90 percent of cases, and that's not based on any real statistic, only my own practice, but about 90 percent of cases settle. And in most of those cases you don't have to do a child information affidavit. That affidavit, the preparation of that can be very expensive and very costly to parties. So we were hoping to avoid that. The new revisions allow that it would be in contested hearings only, and not at a final hearing. That didn't seem to be clear initially. And then I think he also referenced that it was not disclosed...not required that you disclose all of the abuse for a number of reasons. I see I'm at of time as well. I'd be happy to... [LB1085]

SENATOR ASHFORD: Go ahead and conclude, if you have... [LB1085]

AMIE MARTINEZ: If you don't mind, thank you. And that's important for a couple of reasons. And again, practicing in this area you learn that when you deal with lawyers it's very common that you can try to get some things kind of settled, not in the back room, but more informally where you don't have to file documents and you don't have to put allegations out there that are unnecessary, because they tend to fuel the fire. They exacerbate situations where you don't need to do that. And by having the option to file the child information affidavit it helps with that. I believe the revisions also eliminate mandatory training for lawyers. I'm told by people in the know that the mandatory training for lawyers is probably unconstitutional. And I think we're trying to avoid any more problems, or any problems at all with the enforceability of these revisions. And the last thing I wanted to talk about was on page 35, there was a requirement in the original bill that the court could order a parent to complete treatment, or to take other mitigating activities, things to try to address certain problems with parties, whether it be mental health issues, or substance abuse situations. And this allows that it would be...the revisions allowed that it would be as a condition for visitation. So that it's not to say that you are to do it, as would be the case in a criminal situation, but only that if you want to have contact with your children this is what is expected of you from the court. [LB1085]

SENATOR ASHFORD: Okay. [LB1085]

AMIE MARTINEZ: Any questions? [LB1085]

SENATOR ASHFORD: Any questions? Seeing none, thank you. [LB1085]

AMIE MARTINEZ: Thank you very much. [LB1085]

SENATOR ASHFORD: Welcome, Senator McGill. Senator McGill, from Lincoln, has jointed us. So we're almost a complete team here. Next proponent. [LB1085]

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CASEY KARGES: Hi. I'm Casey Karges. I'm the executive director of the Medication Center, here in Lincoln, representing the six Mediation Centers across the state. And we're excited about the future of mediation, which was emphasized in LB554, and now in LB1085. We appreciate the collaboration that continues to take place with the principles of empowerment, self-determination, and safety for children. With LB1085 we appreciate the emphasis on the definition of mediator. As we move forward and we go down a road with mediation in Nebraska, I think it's very important, as Senator Flood has given a great explanation of his hope that we can get two people into a room, and those two people can see that as their relationship is breaking up, if they're going to be graded anything it's going to be on how they parent that child. And to go through this process of what we call interest-based mediation is really what he was defining. And so our hope is they continue to have mediator qualifications defined, it will be that interest-based mediation, and not an arbitration where two people would come to a person, that person would hear the two sides, and kind of give them their best guess of where it's going to end up. So as we move forward with this bill, I hope that we will continue to look at this as interest-based mediation. So the centers want to lift that off. Also, in adding beyond the court centered, court based Mediation Centers and conciliation courts, having other people being willing to mediate, we hope, and we're a little worried about the financing of that for the Mediation Centers. The Mediation Centers, probably 40 percent of our business, we work on a sliding fee scale. And so our worry, as mediations come to us and are referred to us, and some of them mandated for us to do, that we'll be able to keep our doors open. When we did our business plan our hope was that probably 50 percent of those would be willing to pay. If we're just going to get referred those that can't pay I think that would make a difference. And then we're going to need some more support down the road. But we'll work with those that help do that. So those are the two areas that we wanted to lift up. I appreciate all those working on the bill. [LB1085]

SENATOR ASHFORD: Thank you. Any questions? Thanks a lot. [LB1085]

SUZANNE CURRAN CARNAY: Good afternoon, Senator Ashford, members of the committee. Thank you for the opportunity to speak in support of LB1085. My name is Suzanne Curran Carnay. I'm an employee of Central Mediation Center. I work out of Kearney, the main office...excuse me, I work out of Grand Island. The main office is in Kearney. We're one of the six private, not-for-profit mediation centers that are approved by the Nebraska Office of Dispute Resolution. Our particular center covers 35 counties in south central and southwestern Nebraska. So we've got a huge chunk of ground that we cover. I would like to focus, first of all, in my appreciation of the work that's been done to refine and I think overall improve the bill, particularly in doing that being able to keep ahold of the soul of LB554, and that is to emphasize the best interest of the child, a little sort of slogan that we've developed--keeping the child at the center, not in the middle. But there are three areas, and I'm going to rely on Senator Flood's suggestion that there still needs to be some fine-tuning. So I would suggest that there are three

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areas that perhaps impact us as a mediation center that still need some fine-tuning. One is...has already been alluded to, the...that there is a certain inconsistency between the child support guidelines and the language of the statute. And part of that has been alluded to earlier. But another area where there is an inconsistency is in the definition of what joint physical custody is. And particularly as mediators that presents a very significant problem. We can help people to decide among options, but it's not appropriate for them to decide on which law actually takes effect. And certainly, as a matter of public policy, it's perhaps best not to have conflicting expressions of public policy as to what is...well, on anything, but particularly as to what is joint physical custody. So I'd say that's an area that at some point does need to be addressed, that inconsistency. Another area that as a mediator I have significant concern about, but again I think can be addressed with some fine-tuning, and that is the provision that the protections of the Uniform Mediation Act, which is primarily an expression of the privilege accorded to the mediation process, that that doesn't apply to unsigned agreements. And my concern as an attorney, what would I be arguing if I were representing somebody and this came up conflicting, you know, as a mediator, that someone is going to be taking notes, rejected drafts, whatever, that that's wide open as to what could be used at some future time in evidence. One of the cardinal issues in mediation is that it's private and privileged so that people can talk freely, they can discuss options. And if an unsigned agreement can be used...does not have that protection, I think it bodes ill for the process and perhaps opens up mediators to be hauled into court, which we really, really don't want to do. Lastly, I would echo Casey's concerns about funding. Just...right now I'm out of time. (Laugh) And I was going to tell you such a good story. (Laughter) [LB1085]

SENATOR ASHFORD: I want to hear it, Sue. Go ahead. [LB1085]

SUZANNE CURRAN CARNAY: Okay. I'm...right now I'm working on a case. I'm in Grand Island. The parties meet to mediate in Arapahoe. For those who are easterners, I'll tell you it's a long way out there. It costs my center over \$100 just in mileage every time I go out to mediate that case. And these are people of very limited means. We are not going to get paid by these people. Some of it is going to be covered by a grant. And we are concerned that if the Mediation Centers become, in effect, the legal aid equivalent for mediation that we will not be able to...and given the requirement that we have to provide mediation to anyone regardless of ability to pay, we're going to face some serious problems. So again at some point we feel that that needs to be addressed if we're going to be able to offer mediation to anyone who needs it. So thank you for the extra time. Are there any questions? [LB1085]

SENATOR ASHFORD: Any questions of Sue? Pete, Senator Pirsch. [LB1085]

SENATOR PIRSCH: And I appreciate your testimony here today. I'm sure you heard the testimony of the previous gentleman who also worked with the Medication Center in

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Lincoln, right? [LB1085]

SUZANNE CURRAN CARNAY: Yes, sir. [LB1085]

SENATOR PIRSCH: And you're in...which Mediation Center? [LB1085]

SUZANNE CURRAN CARNAY: Central Mediation Center, our primary office is in Kearney. We have... [LB1085]

SENATOR PIRSCH: Okay, great. Would you agree with...I mean, is that...he said the paradigm right now is he hopes to capture about half of his operating costs from clients. Is that kind of typical for the Mediation Centers? [LB1085]

SUZANNE CURRAN CARNAY: I think that is highly desirable. [LB1085]

SENATOR PIRSCH: Are you at that point, do you know? [LB1085]

SUZANNE CURRAN CARNAY: I honestly don't know. One of the things I really like about my job is I get assigned to cases, not to sending out or collecting bills. (Laugh) [LB1085]

SENATOR PIRSCH: Okay. Not the business, side. Yeah, very good. Thank you, I appreciate that. [LB1085]

SUZANNE CURRAN CARNAY: So sorry. [LB1085]

SENATOR ASHFORD: Thanks, Sue. [LB1085]

SUZANNE CURRAN CARNAY: Thank you. [LB1085]

SENATOR ASHFORD: Thanks for all your work in this area. You were one of the first. [LB1085]

SUZANNE CURRAN CARNAY: Thanks very much, I appreciate that. [LB1085]

SENATOR ASHFORD: Bill, are you the last proponent, Mr. Mueller? [LB1085]

BILL MUELLER: I think I may have seen one other hand. I don't know. [LB1085]

SENATOR ASHFORD: Okay. [LB1085]

BILL MUELLER: Mr. Chairman, members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Nebraska State Bar Association in

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support of LB1085. We do thank Speaker Flood for...and his staff, Matt Boever, for sitting down with us and literally going line-by-line, word-by-word through last year's LB554. I believe very strongly that what you have in front of you today, as LB1085, is an improvement and an important improvement over last year's LB554. And we will certainly work with the Speaker and Ms. Carnay to address any other issues that we may need to address here. We certainly don't want there to be a conflict in the definition of joint physical custody. And we do want protections being afforded by the Mediation Act to agreements that are not signed. There is one remaining issue that we have spoken to the Speaker about, and he wanted us to point out to the committee, on page 10 of the bill it is current statute 42-371. And the issue here is how does a party go into court and have a child support lien released or subordinated? Last year's LB554 amended this section of statute in an effort to make it more user friendly for someone to come in and get a child support lien released or subordinated. The difficulty is I don't think that the language of LB554 works. I think that maybe there was an "and" instead of an "or". And also since LB554 was passed, we really have focused on a question of, yes, we want to make it user friendly to release these liens, but we want to make sure that the person who has the lien is protected. Again in Nebraska once child support is ordered paid you, you have a child support lien on the person who's charged with paying you property. And in order for that to be released a court has to act. So we are continuing to look at this. And we are trying to balance having a procedure that is user friendly, and yet we need to protect the person who has that lien and not just let the person who owes the money come in and release a lien without there being a basis for that. We will continue to work on that, and we will work with committee counsel to resolve that issue. We need to get this resolved. Happy to answer any questions you may have. [LB1085]

SENATOR ASHFORD: Any questions of Bill? Thanks, Bill. [LB1085]

BILL MUELLER: Thank you. [LB1085]

SENATOR ASHFORD: Any other proponents? Opponents? Good afternoon. [LB1085]

DEVIN SANTO: (Exhibit 1) My name is Devin Santo. I live in Omaha, Nebraska and I'm representing the Fathers' Rights of Nebraska. I hear glowing reports of what this bill will do, but I hear the reports from the other side, the ones that are affected by it the most. And I can tell you that if the intention is to decrease litigation, this is not it. The only way you're going to decrease litigation is by making things fair. Under the current system, well, under these particular sections, for example, Section 9, domestic...intimate partner abuse, you're going to increase litigation. You're also going to make more people offenders. Economic abuse, emotional abuse, you're going to make more people offenders. And what ends up happening is their legitimate rights are taken away, rights to their children, rights to their property, rights to their home, Second Amendment rights. And I just found out, you know, I just found out about that today. If you're ever, you

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know, given a domestic abuse protection order, you can't...you're branded like a criminal for the rest of your life. You might not even be able to get custody of your children, even if something horrible is going on, on the other side. Ladies and gentlemen, until we make it fair, until we take the power struggles out of it, I'm sorry, but it's going to increase litigation. And the people that are really hurting from it are the families and the children. Do you have any questions? [LB1085]

SENATOR ASHFORD: Any questions of Devin? Seeing none, thanks for your testimony. [LB1085]

DEVIN SANTO: I have a sheet I'd like to give. I don't know where to give that to? [LB1085]

SENATOR ASHFORD: Well, we'll take it and... [LB1085]

DEVIN SANTO: Okay, I have copies for each. But it's objections to it. We're willing to move to a neutral position if these are considered. We have serious reservations towards it, but we are willing to consider going to neutral. [LB1085]

SENATOR ASHFORD: Thank you. Thanks, Devin. Any neutral testifiers? Come on up. First of all, Senator Chambers has joined us, from Omaha. [LB1085]

DEBORA BROWNYARD: (Exhibit 2) Senator Ashford, members of the Judiciary Committee, my name is Debora Brownyard, B-r-o-w-n-y-a-r-d. I'm here in the capacity of director of the Office of Dispute Resolution, State Court Administrators Office. I'm here to testify in a neutral capacity. I just want to bring to your attention a couple of items in LB1085. And I do have copies of the testimony that I can provide as well. First, I want to thank Senator Flood and Matt Boever of his office for assisting us in a collaborative effort to work on these amendments in LB1085. I really appreciate the efforts of the attorneys and the other participants in that collaboration. First item, there's three items I want to key on. The first is that LB1085 proposes to outright repeal Section 43-2927 of the Parenting Act, 2007. And that's the section that requires mandatory education for judges and attorneys and mediators about domestic intimate partner abuse. Mediators continue to need that education and still need to be mandated to have that education and to do the screening. And so I would suggest that a technical amendment be made so that the parts of that particular section be struck that reference judges and attorneys, but the parts referencing mediators remain in. Second is in regard to Section 18 of the bill, on page 48. This section adds language to enlarge the scope of approved mediators that courts may mandate parties to adding that. In addition to the conciliation court in Douglas County and the ODR Mediation Centers, that judges may also order people to attend...to go to an approved mediator that the parties agreed to. For ease of conversation, I'll use the term private mediators. In this state my concern is that in this state there's no credentialing or certifying entity that oversees private

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mediators. Currently, my office, the Office of Dispute Resolution and the centers that I approve have internal policies and procedures, as well as standards and ethics for mediators that mediate as affiliates of the Mediation Centers. Douglas County Mediation Office has a similar policy and protocols. The private mediators, though, that mediate don't have any oversight or credentialing entity. So any one of us, no matter what our profession or background, could hang out a shingle and say that we are a mediator. And so one thought to address this, I agree in theory about the idea of private mediators working in this field. But one possibility to address this, and I've talked with the Senator and ran this by the bar, would be to reference that the Office of Dispute Resolution would create policies and protocols for the oversight and guidance of private mediators. I have one more point, if I may. [LB1085]

SENATOR ASHFORD: Okay. [LB1085]

DEBORA BROWNYARD: Okay. [LB1085]

SENATOR ASHFORD: Just one though. [LB1085]

DEBORA BROWNYARD: Just one. The third is as a technical amendment we request that state court administrator instead of being mandated to create rules, that it be made a discretionary item. Because we really think the statute is thorough enough that we don't need to add another layer of bureaucracy. [LB1085]

SENATOR ASHFORD: Thanks, Debora. Any questions of Debora? Doesn't seem so. So thank you. [LB1085]

DEBORA BROWNYARD: All right. [LB1085]

SENATOR ASHFORD: We will note your points. Yes, sir. [LB1085]

CHRIS JOHNSON: (Exhibit 3) Good afternoon, Mr. Chairman, members of the committee. My name is Chris Johnson. I'm a private attorney in Hastings, Nebraska. I've been practicing for about 15 years, primarily in the areas of family law. Prior to my locating to Hastings, Nebraska, I worked as a student with Steve Floodman also in the area of family law. That is what I do probably 95 percent of my practice. I'm a former chair, vice chair, member of the executive committee of the family law section for the state of Nebraska, and I travel the state. So I'm in a lot of these smaller localities that we're talking about and have met, of course, a number of comrades and as we go about trying to work with families and solve their problems, it's something that we do together. I am a family law practitioner because I like to do family law, I like to help families, I like to help them with their problems and see if we can't come to reasonable solutions that address everyone's interest. Last year, LB554 taught us to pay attention to legislation that is pending. LB1085 is a compromise bill, which I participated in helping to point out

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the practicing bar's concern to Senator Flood. And I'm pleased that he listened to comments and has come forward with LB1085 to address some of the concerns that were made known to him. I'm not here today to speak in opposition to LB1085. I believe it is a bill that needs to pass. But I believe it can also be made better and can be made better rather easily. I have written a letter that I have submitted to all of the members. I hope you have that. I'd like that to be included as part of my officials comments. My apologies to Senator Chambers, I do not have an e-mail address for you, sir. Everyone else has a copy that I e-mailed them yesterday. And I also asked, I believe, Senator Ashford to make sure that everyone had a copy of my written comments. I'd like those to be considered as well. LB5... [LB1085]

SENATOR ASHFORD: Okay, hold on, time out. What are we talking about now? You've got one letter that...just so I'm clear that we've got everything you've asked for...you've given us. This is from Debora. Do you have some other letters that maybe you sent to out office yesterday? Is that what you're saying? [LB1085]

CHRIS JOHNSON: I sent an e-mail to each of the senators yesterday. [LB1085]

SENATOR ASHFORD: Okay. [LB1085]

CHRIS JOHNSON: Each of you should have that. I also sent a hard copy to yourself, Senator Ashford. [LB1085]

SENATOR ASHFORD: Oh, okay. [LB1085]

CHRIS JOHNSON: And asked that you make the hard copies available to all the different committee members. [LB1085]

SENATOR ASHFORD: I will do that. I just wanted to make sure. [LB1085]

CHRIS JOHNSON: So, hopefully, you have everything. LB554 was a very large, very far-reaching bill. LB1085 tries to address a lot of the concerns the practicing bar had. It also was a far-reaching bill and covers many, many topics. For that reason, I put comments in writing because I'm not going to have time to go through them all today, so that you can consider those. With Section 1 of LB1085, there are some things I wish you'd consider. Section 1 states what is going to be required in an initial complaint. One of the things that is required to be put into an initial complaint is whether or not custody, visitation, access to the child, etcetera are going to be contested issues. What will happen is right from the beginning, as a practicing attorney, all of us will put into our complaints what the very first pleading that child custody is going to be a contested issue, and visitation is going to be a contested issue. And when someone is handed that document by a sheriff and they read it, they will get upset. The anger will increase dramatically, making the ultimate purpose of LB554 mediation, coming to terms, getting

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families to work together more difficult to accomplish. And so I would ask that you take a look at Section 1 and my written comments that I've submitted. I believe very easily that you can strike certain portions of that so that peace is easier to achieve. And I believe that's what we all want as practicing attorneys. We want our families to get along. This is one of the ways, I think, you can help us do that. I see that my red light is on. Again, I ask that you read carefully my written comments. I'm certainly happy to answer any questions one might have about my written comments, even if it's not today, please feel free to call me. I will call you back. I call my clients back. I'll call you back as well and I'll get to you as quickly as I can. [LB1085]

SENATOR ASHFORD: Thank you, Chris. Any questions of Chris? Senator Lathrop. [LB1085]

SENATOR LATHROP: I just got maybe one or two. You've given us, and I haven't seen the letter, but you've given us a letter with your concerns. And you told us that you participated with Senator Flood in an attempt to accommodate the bar's concerns after LB554. Did you present these same concerns that you've outlined for us in the letter I've yet to see? Did you present those to Senator Flood? I mean, are these the things that you presented and you didn't adopt? Or these are things that you didn't have a chance to present to him? [LB1085]

CHRIS JOHNSON: There is a mix there, Senator Lathrop. Certainly, some of the ones that I'm putting before the committee today are ones that were discussed when we had our number of meetings that we had. And we had...we had several sessions of attorneys from, I'm going to call it the practicing bar from across the state that would get together without meeting with Senator Flood. There was two of those I participated in. I think there was a third that I was not able to participate then. And those were with Mr. Mueller as well. After those three meetings, Senator Flood, as I recall, requested that he meet with four members of the practicing bar and four members of the strongest proponents of what was LB554 last year, the Domestic Violence Coalition. It was after that meeting with Senator Flood and four members of the practicing bar and four members of the proponents, what was LB554 at that time that I believe LB1085 came into being. [LB1085]

SENATOR LATHROP: So these things were put into the process. As I understand, you presented them at least when the lawyers met to figure out what you wanted to take to Senator Flood? These just didn't make the cut? [LB1085]

CHRIS JOHNSON: I think that... [LB1085]

SENATOR LATHROP: And you still want us to consider them? There's nothing wrong with that. I'm just trying to get a sense of... [LB1085]

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CHRIS JOHNSON: I think that's true. But I don't want to speak for the different meetings. Okay? Some of these comments... [LB1085]

SENATOR LATHROP: Okay. [LB1085]

CHRIS JOHNSON: ...are my own. The comment that I make to you in the later part of the letter about when the court is empowered to consider alimony, child support, day care, these things on a temporary basis, my comment was we should also empower and let the court know through language in the statute, that it's empowered to consider how are you going to take care of the marital expenses that are out there? You have child support that's ordered, you have alimony that's ordered, but you have nothing that says what anyone is to do with that money. Yet we know there are marital bills out there. So maybe that's something the Legislature could look at, telling the court, you can also take a look at that. [LB1085]

SENATOR LATHROP: Okay, we'll take a look at the letter. I appreciate you coming in. [LB1085]

CHRIS JOHNSON: All right, thank you, sir. [LB1085]

SENATOR ASHFORD: Thanks, Chris. Thank you. Speaker Flood has waived, so that concludes the hearing on LB1085. Senator Avery is next. So you're able to work around your other hearings? [LB1085]

SENATOR AVERY: (Exhibit 4) That's an open question, Mr. Chair. I'm still working on that. So I might as well tell you up front that I probably will not be staying for closing because I have other obligations. Thank you, Mr. Chairman. My name is Bill Avery, A-v-e-r-y. I represent District 28, here in Lincoln. I have a few...a handout here, if the pages would please help me. The green copy of LB816 that you have before you would add a judge to the Third District, Judicial District of Lancaster County. This bill as introduced would simply increase the number of judges in Lancaster from seven to eight. After meeting with the Chief Justice, I have agreed to offer an amendment for the committee's consideration. You should have that, it's a three page amendment, number 1773. Instead of simply adding a judge, the amendment would move Seward County from the Fifth Judicial District into the Third. This amendment would do the same thing for the county court in Seward County. I have discussed this with the judges in Seward County. I've talked with Senator Adams, and I've also talked with the judges in Lancaster County. This is a compromise, and you know how compromises are. Everybody walks away a little bit unhappy, but you hope that nobody is completely unhappy. I'm sure you'll hear testimony after I am finished that will reveal that unhappiness and perhaps some support for what we are trying to do. This move should ease some of the burden currently shouldered by the Third Judicial District. One area of concern is that the Third District hears all the cases in which the state is involved,

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including administrative appeals cases. Many of these state cases tend to be rare cases, or cases of first impression. I am not a lawyer, by the way, so some of these terms are not exactly familiar to me, but I do know what cases of first impression mean, I think. These are cases without any existing case law or precedence. And these cases take a good deal more time to be heard in a careful, thorough, and responsible manner. Other states have recognized the uniqueness of judicial districts in which the State Capitol is located, often by allocating additional judges on top of the number deemed necessary by ordinary court caseload statistics. The Third Judicial District should receive another judge to help the court better manage its growing caseload. I should point out that some of the...there is some sharing of judges already with Lancaster County in order to help with their caseload. Another point of significance is the fact that the caseload in Seward County is relatively low compared to other jurisdictions. Statewide caseload average, I think, is somewhere around 700 cases; Seward handles about 316 cases, at least that was last year. This bill will provide some relief for Lancaster County without the cost of adding a new judge. With that, Mr. Chair, I would entertain any questions, and then ask to be excused for other business. [LB816]

SENATOR ASHFORD: Any questions of Senator Avery? Welcome, Senator Schimek. You just came right in. I didn't see you come in. Senator Schimek is here from Lincoln, so we're all here. I don't have any questions. Any questions of Senator Avery? Thank you. [LB816]

SENATOR AVERY: There will be others who can answer any of those questions that you might have much better than I. [LB816]

SENATOR ASHFORD: Well, it's fairly straightforward what you're planning or you're requesting we do. I'm sorry. Senator Pirsch...Senator Schimek. [LB816]

SENATOR SCHIMEK: I would just like to make a comment, if I might, Mr. Chairman. I'd love to have a question for you, Senator Avery, based on the grilling that I just got in your committee. (Laugh) [LB816]

SENATOR AVERY: But you didn't get it from me. [LB816]

SENATOR SCHIMEK: No, I didn't. Thank you. [LB816]

SENATOR ASHFORD: Why would you bring this bill to us, Senator Avery? (Laughter) No, I'm just... [LB816]

SENATOR AVERY: Because of compelling need. [LB816]

SENATOR ASHFORD: Knowing that this committee, knowing that this committee killed an identical bill last year. No, I'm kidding. [LB816]

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SENATOR AVERY: The compelling need, sir, the compelling need. [LB816]

SENATOR ASHFORD: All right, thank you very much. [LB816]

SENATOR AVERY: Thank you. [LB816]

SENATOR ASHFORD: Any...how many proponents do we have? Chief Justice can go next in protocol. He's almost a member of the Legislature. He came one day and spoke to us very well, so... [LB816]

MIKE HEAVICAN: Thank you very much. I am Mike Heavican, the Chief Justice of the Nebraska Supreme Court. And that's spelled H-e-a-v-i-c-a-n. Senator Avery introduced this bill on behalf of the district court judges of Lancaster County. And we from the Supreme Court said that we could not support just adding a new judge to the system which costs, in the district court, about a quarter of a million dollars a year. We think this is a...not just a resource problem, but an allocation of resources problem. And generally this afternoon you're going to hear a number of bills that have to do with allocation of resources. The Supreme Court wants the whole system to be a little more flexible so that we can get resources to areas that we need the most. We think that the Lancaster County district court and the county court do a great job. They have great judges, and they have a significant caseload. We think that moving, however, Seward into the same district as Lancaster County will relieve many of those problems and essentially would add, maybe not a whole judge to the district court, but pretty much the equivalent of a district court judge to the Lancaster County bench. And the same for the Lancaster County county court bench. So we are supportive of that on the court. We would not be supportive of simply adding new judges. So this is a movement of resources kind of bill. I'd be happy to answer any questions that anybody has. [LB816]

SENATOR ASHFORD: Any questions of the Chief? Thank you, Chief. [LB816]

MIKE HEAVICAN: Thank you very much. [LB816]

SENATOR ASHFORD: Any other proponents? Opponents? Neutral? [LB816]

BILL MUELLER: Mr. Chairman, members of the committee. My name is Bill Mueller, M-u-e-l-l-e-r. I appear here today in support of LB816 as introduced, adding an additional judgeship to Lancaster County. I was not aware that there was going to be an amendment moving Seward County into Lincoln. I don't know that I've ever heard of that alternative here. (Laugh) The bar has not had a chance to look at that. We certainly will. We do believe that Lancaster County does need a judgeship. We know that the judges here work hard. Because all the administrative appeals are filed here, as of the current time, that does affect their caseload. I believe that your next bill is to spread those

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administrative appeals around. But again, we do introduce, or we do support LB816 as introduced. We do not have a position today on moving Seward into this. We will talk more later on the bill about how judicial resources are allocated. Currently, if there was an opening in the Fifth District, which is where Seward is located, the Judicial Resources Commission and the Supreme Court could move that judgeship into Lincoln. That would be one way to address this. But we will look at this amendment and we will get back to the committee. Be happy to answer questions you may have. [LB816]

SENATOR ASHFORD: Any questions? Yes, Senator Pirsch. [LB816]

SENATOR PIRSCH: Just briefly. I don't know if you can answer these questions, but they might help clarify things with respect to the caseload now currently in Lancaster County, and I'm sorry, I didn't catch that, what is it currently, approximately, or do we know? [LB816]

BILL MUELLER: I know that there is a judge here, who will follow me, who I am sure has all the numbers. I don't have those in front of me. [LB816]

SENATOR PIRSCH: You bet. [LB816]

BILL MUELLER: Judge Burns is here, and if he wasn't going to testify, I think I've just volunteered him to. (Laugh) [LB816]

SENATOR ASHFORD: He hadn't raised his hand, so...but that's all right. Thanks, Bill. [LB816]

BILL MUELLER: Okay. Thank you. [LB816]

SENATOR ASHFORD: Judge. You actually have the numbers and everything? You didn't even know you were... [LB816]

STEVE BURNS: I do have some. Good afternoon. I'm Steve Burns, B-u-r-n-s. I'm a district judge in Lancaster County, Nebraska, the Third Judicial District. I do have some remarks and I...we just found out yesterday of the proposed amendment. And so I guess what I'm going to do is to say that I'm here on behalf of the district court judges and we are testifying in favor of the bill as originally proposed. We have some serious concerns about the amendment that's being proposed. And I'll bring those up as we go through it. Senator Pirsch, I can answer your question. Right now we have 822 cases per judge per year in Lancaster County, average being about 700 throughout the state. We appreciate very much the various bills that are being submitted which recognize the significant need that we have in Lancaster County, Nebraska for an additional judge. And we don't have a desire to come up with a solution that's more costly than it ought to be, but we also don't have a desire to come back here and pester you every year for

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some additional need that we have. Because the various bills that have been proposed seem to recognize a need and those folks who understand our situation seem to recognize a need, I'm not going to spend time on that, unless you have some questions. I do want to pass on to you, though, what I think is a fairly dramatic piece of information. And that is when we look at our caseload we find that on the average with our current caseload we have 1.84 hours per case available and that is if you assume that we do nothing else but decide cases that are presented. That means we don't do drug court, that means we don't participate in the pilot projects that we have such as the indigent litigant project, or such as working on putting cameras in courtrooms and things of that nature. We simply eliminate all that, we have 1.84 hours to spend on the average case. It makes it very, very difficult to do the type of cases that we have when that is the time that we have available. Obviously, without assistance we're going to have to make some decisions as to what of those special matters that we are also taking on we continue to be able to do. Being in the seat of government, it seems that the pilot projects and things of that nature seem to come our way. And we are more than happy to participate in them to help with the efficiency of government--to participate in committees and things of that nature that work to improve the judicial system. We want to be able to continue to do that. The bill that you have coming up next, LB828, is obviously an effort to try to address some of those needs. And while we think it is...we are very appreciative of your willingness to do that, Senator Ashford, to put that bill forward, we don't think that it's going to have as much impact as it needs to have in order to give us the time that we need to be deciding these cases. The bill continues to allow cases to be decided or filed in Lancaster County. I don't know that you can get away with that...away from that, because this is the seat of government. This is where the specialized attorneys are who handle those types of cases, this is where the government attorneys are located. So we are concerned that that's probably not going to have as much of an impact as we and probably you would hope that it would have. The current bill that I'm here to talk about is for adding the eighth judge. In the...the concern that we have with the amendment that is being presented is found in the constitution at Article V, Section 21. And that article or that section requires that a judge be subject to a retention vote in the district where that judge was selected. Now this, so far as I know, is the first time that there's been a proposal made to move a judge with a county. There's been a number of situations where there's been counties that have been moved around between districts. I guess my time is up. [LB816 LB828]

SENATOR ASHFORD: Go ahead. We didn't give you your one minute sum up time, Judge. [LB816]

STEVE BURNS: All right. I apologize. But our concern is what do we do with Judge Gless in that situation, or what does Judge Gless do? Is he to be voted on for retention in the Fifth District, where he was selected, which I think is what the constitution suggests? And how do those retention votes occur when you're trying to move a judge? I think it's not as simple as doing that. We'd like it to be. (Laugh) We certainly would

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appreciate the help. But we are concerned about that. We're also concerned that it is not adding an additional judge. By the time you figure travel time and the caseload that Judge Gless will be bringing with him, we're perhaps getting a third to the maximum of a half of an additional district judge at this point in time. And with that, with my time up, I again want to thank you very much for your willingness to recognize our need and to try to address it, and we appreciate your efforts in that regard. And I'll answer any questions that you might have. [LB816 LB828]

SENATOR ASHFORD: Any questions of Judge Burns? Senator Pirsch. [LB816]

SENATOR PIRSCH: Just briefly. Thank you very much for being here. With respect to the 822 cases, and the average district 700 cases, do you know, is that the highest in the state, I would imagine? Or do you know? [LB816]

STEVE BURNS: It is not. It is not. No, I think there's at least one other district that has higher numbers than we have. [LB816]

SENATOR ASHFORD: Thank you. Thanks, Judge. [LB816]

STEVE BURNS: All right, thank you very much. [LB816]

SENATOR ASHFORD: Will you be testifying on LB828, or you already fulfilled that obligation? [LB816 LB828]

STEVE BURNS: Unless you have questions of me, I would...I think I've already fulfilled that. [LB816 LB828]

SENATOR ASHFORD: Thanks, Senator...or Judge. [LB816]

REX SCHULTZE: (Exhibit 5) Mr. Chairman, members of the committee, my name is Rex Schultze. I'm an attorney in Lincoln, Nebraska. I'm here on behalf of the Lincoln Bar Association. I have some materials to pass out to the committee members and it may address somewhat Senator Pirsch's question. And once we get it passed out...while we're doing that, I will try to keep my comments brief because I think the written material I'm going to give you would be of some interest to you. This is the written material that was provided to the Judicial Resources Commission last year in support of providing an eighth judge to Lancaster County. The Judicial Resources Commission unanimously approved the addition of an eighth judge. I am appearing on behalf of the Lincoln Bar Association to support the bill as originally drafted. Obviously, as Judge Burns stated, we were unaware until yesterday of the addition of the Seward option. I would draw your attention to page 2 of the materials that I've provided. That would answer Senator Pirsch's question with regard to the 2006 caseload study. But I think it's important to note that with regard to caseload studies that the cases that the Lancaster County

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district court receives, notwithstanding the number of cases, are very complex cases often, particularly the administrative appeals from state agencies. If you would, page 3 of your materials, to page 4, at the bottom of page 4, I'd want to note to you this, since the seventh judge was added to Lancaster County, some 11 years ago, the population of Lancaster County has increased by over 36,000 people. That's the largest percentage increase of any county in the state of Nebraska. That's 36,000 additional people to be served. If you page through to the appendix of these materials, there are examples of statutes from the state of Arizona and the state of Iowa that indicate that population increases of 40,000 people would indicate that you need to add another district court judge. But I think the thing that the Lancaster County bar gives you is not only excellent judges, and we have judges we're very proud of, but we share our judges with the rest of the state. And unlike other states, like Iowa, Arkansas, Arizona, that have recognized that the seat of government needs an additional judgeship, our state has never done that. And as the Chief Justice pointed out, an additional judgeship, over and above the judgeships we have in the state, would cost a quarter of a million dollars. We understand that cost. But you know part of the things that we have to do in this state is while we don't want to spend extra money, sometimes we need to spend extra money to provide what our state needs. And if you take a look at pages 5 and 6 of these materials, and over into 7, you can see the additional things that the district court judges of Lancaster County are required to do by statute, but in addition to that the things that they do voluntarily that support not only the justice system in our state, but our law school, primary law school in this state, we have two of them--Creighton University Law School, wonderful law school, supported by the Douglas County Bar and judges, and we have the University of Nebraska Law School. We are the seat of government for trying out new ideas, pilot programs. If you take a look over on page 8 you'll see the pilot programs that the Lancaster County judges have supported. And then finally on pages 8 and 9 is a discussion of what is done in other states to provide a seat of government judgeship. So Lancaster County, our judges present a unique resource for this state. And I would encourage you to look through these materials. If you have any questions about them, the bar would be glad to answer them, I will be glad to answer them for you. But I would commend this information to you and have you consider that this is a very unique, unique district court judge seat. That the Third Judicial District is a unique judicial district, and we need what I would consider to be a seat of government judgeship for our county. Thank you. If you have any questions, I would be glad to answer them. [LB816]

SENATOR ASHFORD: Any questions? Yes, Senator Chambers. [LB816]

SENATOR CHAMBERS: Mr. Schultze, if this does not done, what will happen? [LB816]

REX SCHULTZE: Well, what will happen is, I believe, I think Judge Burns indicated that as their caseload gets greater the judges are going to be less and less willing to do those extra added things that they are called upon to do--the pilot program, the drug

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court, all of those additional things. Our judges work hard. I will tell you our judges work Saturdays, they're there at 6 in the morning, they're there until 6 at night. They're available to us as members of the bar. But they're just not going to be able to do those extra things, because they're going to have to deal with the caseload. I think Judge Burns indicated that on average they have 1.84 hours to deal with each case. That's not enough time to provide justice. [LB816]

SENATOR CHAMBERS: So then justice will suffer in Lancaster County, being realistic? [LB816]

REX SCHULTZE: Being realistic, I don't think justice will suffer because our judges will put in the time to provide it. But eventually they're going to run out of that time. But how justice will suffer is those additional things that our court is asked to do as part of the seat...being in the seat of government are probably going to become less and less. [LB816]

SENATOR CHAMBERS: Do you think the public cares? First of all, thank you, the public doesn't know any of what we're talking about. If they knew, do you think they would care? [LB816]

REX SCHULTZE: You know, Senator Chambers, I can't tell you whether the public would care. I would like to think the public would. Having been a former history teacher, I hope I would have taught my students to care. But whether they care or not, I believe the public benefits. [LB816]

SENATOR CHAMBERS: Has there been any indication that the public is exercised about what we're being presented with today that maybe judges are being asked to do more than might be considered reasonable? [LB816]

REX SCHULTZE: I think the public gets exercised in an indirect way, Senator, because they're impatient with getting decisions of their cases, or getting their cases handled, or getting a hearing before a court. [LB816]

SENATOR CHAMBERS: Well, maybe they could put a little sign in the courtroom, if you think it's taking too long for your case to be heard, contact your state senator. (Laugh) [LB816]

REX SCHULTZE: Well, maybe we should put one up like that, Senator. [LB816]

SENATOR CHAMBERS: I'm just kidding. But I wasn't trying to be facetious with those questions. I was wondering if because people do have contact with the court directly, although not a large percentage of the public, had there been anything in the way of a public, not outcry, but suggestion that judges may be overworked or that there's too

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much they have to do, and another judge or two might be needed? [LB816]

REX SCHULTZE: Senator, I'm not aware of anything like that, no, to answer your question directly. [LB816]

SENATOR CHAMBERS: It would shock me, but that doesn't mean what you're saying is not valid. But I found the public to be uninformed, misinformed, apathetic, unless something happens to that person specifically and individually. Then if it's taken care of, back to sleep they go. [LB816]

REX SCHULTZE: I can't disagree with that observation. [LB816]

SENATOR CHAMBERS: (Laugh) Okay. That's all I have, thank you. [LB816]

REX SCHULTZE: Thank you, Senator. Any other questions? [LB816]

SENATOR ASHFORD: Any questions? Thank you. [LB816]

REX SCHULTZE: Thank you. [LB816]

SENATOR ASHFORD: Any further testimony on this bill? Yes, sir. [LB816]

DEVIN SANTO: (Exhibit 6) My name is Devin Santo and I'm here as a citizen. I was going to go oppose the motion on grounds I'll speak about in a moment. However, I am now neutral because of the change or proposed change. Before we hire another judge I think it would be a good idea if we discern what...why the increase, not just population, but why is the increase of crime and civil things? I'm going to give a few suggestions as to what I think it might be. Sixty-three percent of youth suicides are from fatherless homes according to the U.S. Department of Health and Human Services Bureau of the Census; 90 percent of all homeless and runaway children are from fatherless homes; 85 percent of all children that exhibit behavioral disorders come from fatherless homes, that's according to the Center for Disease Control; 80 percent of rape is motivated with displaced anger come from fatherless homes, that's Criminal Justice and Behavior, Volume 14, page 403 through 426; 71 percent of all high school dropouts come from fatherless homes, National Principal's Association Report on the State of the High Schools; 70 percent of juveniles in the state operated institutions come from fatherless homes, U.S. Department of Justice, Special Report, September 1988; 85 percent of all youths sitting in prison grew up in a fatherless home, Fulton County, Georgia Jail Populations in Texas Department of Corrections, 1992. Nearly two of every five children in America do not live with their fathers, U.S. News and World Report, February 27, 1995, page 39. Children from fatherless homes are 33 times more likely to be seriously abused, 4.6 times more likely to commit suicide, 24.3 times more likely to run away, 15.3 times more likely to have behavioral disorders, 3 times more likely to be in state

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operated institutions, 10.8 times more likely to commit rape, 15.3 times more likely to end up in prison while a teenager, 73 times more likely to be killed, 73 times more likely to be killed, 71 percent, and as I mentioned earlier, 71 percent of all high school dropouts come from fatherless homes. Before we determine that we need more judges, I think that we need to look at what is causing our crime. We need to look at our inside, and invest \$20,000 to \$25,000 in a study of that matter before investing in a \$250,000 judicial appointment. Any questions? [LB816]

SENATOR ASHFORD: Any questions for Devin? Seeing none, thank you. Any other testifiers? That concludes the hearing...yes, ma'am. Sorry. [LB816]

SUSAN STRONG: I am Susan Strong, I'm a county court judge in Lancaster County. And I hadn't heard about the amendment. The county court hadn't heard about it until this morning. So you'll forgive my snow day attire. But as it pertains to the county court the amendment would bring in, we understand, Seward County into the Third Judicial District so that we could utilize the Seward County judge and have him visit and come to Lincoln a couple of days a week to help us out. We also feel that we have the caseload that requires an additional new full-time permanent judgeship in Lancaster County. But we've been told that that's not going to happen. And given that, we would generally favor the amendment as it pertains at least to the county court because we'll take any help we can get, basically. (Laugh) [LB816]

SENATOR ASHFORD: Well, thanks for your comments. Any questions? Senator Lathrop. [LB816]

SENATOR LATHROP: Just a quick one, Judge. Is it workable to have a judge come in? I mean do they just jump in somebody else's courtroom, or do you need a new courtroom if we have somebody from Seward coming in to Lancaster County two or three days a week? [LB816]

SUSAN STRONG: We already have Judge Rouse, from Seward County, coming in to Lancaster County at least one day a week, and now it's going to be every other week, it's going to be two days a week. We are able to operate that way. Staff is more of a problem than space on our level. So we would try to work that out with him to bring a stenographer with him. But we're already utilizing him as much as we can. And we would just welcome the opportunity to have him there even more. [LB816]

SENATOR LATHROP: Okay, thanks. [LB816]

SUSAN STRONG: So we would try to work it out is the answer, I guess. But there may be some... [LB816]

SENATOR LATHROP: I just didn't know if we were going to be talking about a

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courtroom next, if this took place, but... [LB816]

SUSAN STRONG: Well, what we have currently is we have six courtrooms and six judges. We also have a courtroom in the county jail, we call it courtroom number 10. And so we have an extra courtroom, sort of, for now. [LB816]

SENATOR LATHROP: If you want to hold court down at the jail. [LB816]

SUSAN STRONG: Yeah. We don't want to continue to operate out of the jail, but as it stands now we have enough courtrooms to house seven judges. When the new jail gets built, things may have to rearrange themselves, but... [LB816]

SENATOR LATHROP: Okay, thanks. [LB816]

SUSAN STRONG: Um-hum. [LB816]

SENATOR ASHFORD: Thank you, Judge. Seeing no other questions, thank you. [LB816]

SUSAN STRONG: Okay. [LB816]

SENATOR ASHFORD: That closes the hearing on LB816. LB828, it's mine. Mr. Vice Chair, can you take over, please? [LB816]

SENATOR LATHROP: Oh yes, certainly. (Laughter) I didn't mean to hesitate. I have to leave in ten minutes, but certainly. [LB816]

SENATOR ASHFORD: Oh, that's all right. Well, Senator Pedersen, is he here? [LB816]

SENATOR PEDERSEN: I'm out. [LB816]

SENATOR ASHFORD: You're out, too? Okay. (Laughter) Well, we may not be able to... [LB816]

SENATOR LATHROP: We may be done. [LB816]

SENATOR ASHFORD: I could ask myself questions. (Laughter) [LB816]

SENATOR LATHROP: That would be interesting. [LB816]

SENATOR ASHFORD: Yes, it would. Vice Chairman Lathrop, my name is Brad Ashford. I represent the 20th Legislative District in Omaha. And I'm here to introduce LB828 which is a response to some of the concerns that were raised primarily by Judge

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Merritt, last year, concerning the district judge issue in Lancaster County and now again raised this year by Senator Avery's bill. I have some testimony, but I'll just leave that aside. I did...I have the...what has just been handed to us, the Lancaster County and Lincoln Bar Association submission to the Resources Commission regarding this issue. What this bill does is essentially require that appeals of...agency appeals, administrative appeals be heard in the county or the district where the action occurred. The idea would be, and there...in discussing this matter with the Supreme Court, I believe there need be some technical amendments on...we may have stripped Lancaster County jurisdiction of all (laugh) administrative appeals, which was not our intent. But we can put that back in, obviously. The submission by Lancaster County really focuses on many things. And I think they've made the case to me anyway that they need some relief. But it goes into some depth about agency appeals and other agency appeals, and also references inmate appeals. On page 5 of the submission it indicates that preliminary figures for 2006 show that 154 agency appeals were filed in the Third Judicial District during that year. This compares to 135 agency appeals filed in 2005. And then it goes on to say, even more time-consuming our appeals from state regulatory agencies, including the Department of Banking and Finance, Department of Environmental Quality, Department of Health, Department of Revenue, Department of Social Services, and the Secretary of State. The records on appeal from these state agencies are often voluminous. And I think, as the committee recalls, last year when Senator (sic, Judge) Merritt came, he gave a persuasive argument, I think, that these cases are very time-consuming. I do understand the other side of the discussion that Senator or that Judge Burns brought up. And I think it's a good point, and that is that there is a certain expertise in Lincoln around governmental law and appeals. And I also understand that the Attorney General has some concerns that will be voiced, I believe, about the cost of sending Attorney Generals out into the state to hear appeals. You know, I just bring this to you as an option. I think it can be...it can work. I think we can look at ways of slicing and dicing the cases a little bit so that we can relieve Lancaster County of some of its most onerous cases, send them back to the districts where they emanated from, and that might give some interim relief. It may not, however, solve their long-term issues. But with that, I would defer to other testifiers. [LB828]

SENATOR LATHROP: Thank you, Senator Ashford. Are there any questions? Seeing none, are there... [LB828]

SENATOR ASHFORD: I'd waive my closing. [LB828]

SENATOR LATHROP: Okay, thank you, thank you. Are there proponents of the bill? That's LB828. [LB828]

JANICE WALKER: Good afternoon, Senator Lathrop, members of the committee. I'm Janice Walker, the State Court Administrator. And I'm here to testify in support of LB828 which, as Senator Ashford and some of the other testifiers earlier have described, is an

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intention to relieve the workload that is being currently experienced by the Lancaster district court judges. I have nothing further to add to Senator Ashford's comments, but I do speak in support of this as an option. [LB828]

SENATOR LATHROP: Very good. Thank you, Janice. Any one have questions for Ms. Walker? Senator Pirsch, do ahead. [LB828]

SENATOR PIRSCH: I don't know if somebody is going to be testifying to this after you. I guess the things that Senator Ashford talked about might be certain expenses that would not exist but for disbursing them back to the various districts. Would...and I guess in the analysis it would be...the overall costs would be which way makes more sense overall? I'm not sure, would you be in as position to address that at all, the possibility of the costs, or do you think somebody else could maybe testify to that? [LB828]

JANICE WALKER: I don't think I am in a position to address the costs at this point. I know that there is a concern by the Attorney General's Office, and I think they will speak to that. I think there would need to be a little more analysis done as to who would benefit from this change and who would actually have to expend more resources because of it. That sort of analysis has not been done but would need to be. [LB828]

SENATOR PIRSCH: Okay, thank you. [LB828]

JANICE WALKER: You're welcome. [LB828]

SENATOR LATHROP: Any other questions? Okay, thank you. Other proponents? Are there anyone wishing to speak in opposition to LB828? Seeing none, anybody in a neutral capacity? I was waiting for you to move after I offered up an opportunity for the opponents. (Laugh) [LB828]

DAVID COOKSON: Vice Chairman Lathrop, members of the committee, thank you. My name is David Cookson. I am the Chief Deputy Attorney General for the state of Nebraska. We're here today in a neutral capacity because it is within the Legislature's purview to decide where jurisdiction lies on appeals from rulings of state agencies or commissions. And it's a policy decision that's left to the Legislature to decide. We did feel it was important to make sure that the Legislature understood the practical impacts of parts of LB828. It is somewhat difficult to quantify what exactly it means for our office. We went through a process with...we have four bureaus--a criminal bureau, a litigation bureau, a legal services bureau, and a public protection bureau. Of those four bureaus, three have approximately 20 lawyers who handle administrative appeals or challenges to orders of the various state agencies and commissions. As we went through the bill and each of the sections we tried to come to a rough estimate of what it would take if we were to be not addressing most of the actions in Lancaster County as we do now with exclusive jurisdiction in almost every area. Because of the nature of the bill and the fact

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that a lot of these sections do allow for actions to be brought under the Administrative Procedures Act, which provides that the decision is appealed at the district court where the action occurred, we've always taken the position that because agency directors are the ones who make the final decisions, almost all of them are located in Lancaster County, that it is here. We have in the past had to litigate that issue, particularly with the Department of Natural Resources and Department of Environmental Quality whose decisions on permit applications actually affect persons out in the other 92 counties in the state. Sometimes we're successful in getting it transferred back to Lancaster County, sometimes we're not. So what we did is we tried to look at our caseload historically over the last ten years as best we could with our case management system. We don't specifically characterize every case under an administrative appeal. It really depends on how it comes in. Sometimes we get involved in these matters before they become contested case hearings or rules and regs, so the file is opened under a different classification, even though it ultimately becomes a litigation. So we came up with a ballpark figure of about 15 percent of the current attorneys handling these matters, which out of 20 attorneys comes out to 3, basically, a 15 percent number. It would be the equivalent of three full-time employees. And that would include the travel that goes with it. There's another indirect impact in that the judges in Lancaster County district court are experienced with the Administrative Procedures Act and the various constitutional provisions that affect agency decisions. And with that comes less of a burden on our resources in terms of educating judges. Clearly, we have outstanding judges in all judicial districts in Nebraska. And over time they will, too, become experts in this process. But right now when we go to a hearing in, for instance, with Judge Burns, a hearing that may take an hour would turn into a two-day trip if we're in Scotts Bluff County. And that, as you can see, can become a tremendous resource for us. There is finally, if I may, one technical thing we needed to point out, as we went back through this the third or fourth time. On page 38 of the green copy, line 13, this is a unique situation. It deals with the Department of Natural Resources designating the boundaries of refuge, wildlife refuges in Nebraska, Game and Parks. This is a very hotly contested issue. I think we currently have two matters that are pending in litigation--one in Garden County, and I believe the other is in Dodge County. This provides that a person, if they were not a resident of the county where the refuge is located, and were in fact a resident of another state could bring the action in the jurisdiction of their state. That is a slight problem because Nebraska cannot be sued. For instance with the Garden County case, one of the people involved in that case who has property abutting the wildlife refuge that is impacted by its boundaries is a professional musician from Los Angeles who happens to own a lot of nice hunting ground out near Lewellen. And that would be a problem for the state. We obviously, with our sovereign immunity, cannot be sued in a California state court. That was the one technical issue we located in the 170-some pages of the bill. So a very good job drafting the bill by legal counsel. Any questions? [LB828]

SENATOR LATHROP: We'll see. Does anybody have a question? Senator Schimek.

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[LB828]

SENATOR SCHIMEK: Yes thank you, Mr. Chairman. If such a system were to be put into place, I'm assuming that some of these counties would not get any cases at all. Am I right in my assumption? [LB828]

DAVID COOKSON: Generally, that would probably be the case. I think what you would find is agencies like DEQ, HHS, DNR have offices in other parts of the state. [LB828]

SENATOR SCHIMEK: Right. [LB828]

DAVID COOKSON: Those are, I think, where we'll find a significant...we would anticipate we would see more cases in Scotts Bluff County--Scottsbluff, Gering; Lincoln County--North Platte; Hall County and Buffalo County--Grand Island, Kearney; Madison County--Norfolk; Deuel County--Chadron, those are the places we expect we'll...or Dawes County, excuse me, we would see a lot more of those cases in those counties. If I may, one suggestion that I neglected to mention was we had talked to legal counsel about our concerns, and we've also talked to the Supreme Court. If it's possible one alternative that we might suggest would be to not only designate Lancaster County, which is Judicial District Three, but pick one of the neighboring judicial districts as a county that could have exclusive jurisdiction, which reduces some of the burden on travel. I think that the real concern for us is when I send one of the lawyers to Scotts Bluff County, I've basically lost the work that lawyer does for two days. [LB828]

SENATOR SCHIMEK: And that was actually going to be a question that I was going to do a follow-up with because it had occurred to me, too, you might be able to do that without making this statewide kind of effort. And then you would have the opportunity to have attorneys and everybody in that other county. And the one that comes to mind, of course, would be Douglas County. But you'd have that kind of built up expertise in that county (inaudible). [LB828]

DAVID COOKSON: Right, or Sarpy and Cass County, which is a judicial district in between Lancaster County and Douglas, would work as well. [LB828]

SENATOR SCHIMEK: Thank you. [LB828]

SENATOR LATHROP: Great. Any other questions? Seeing none, thanks for coming down again. [LB828]

DAVID COOKSON: Thank you. [LB828]

SENATOR LATHROP: Any one else testifying in a neutral capacity on LB828? Seeing none, that will close our hearing on LB828. We'll move on to LB1014. Senator Ashford,

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again. [LB828]

SENATOR ASHFORD: (Exhibit 7) Thank you, Senator Lathrop and members. My name is Brad Ashford, representing the 20th Legislative District. And I am here to introduce LB1014 which is somewhat of an omnibus bill which is the result of a comprehensive evaluation of our existing court system by the Nebraska Bar Association's Judicial Task Force...Judicial Structure Administration Task Force. The purpose of the task force was to make our court system more efficient, while at the same time ensuring that it remains accessible, fair and accountable to the public. The task force membership included judges representing all of the courts of the state, attorneys including Speaker Flood and myself and the public. Members were both geographically diverse and representative of a number of areas of the law practice. And in this regard, I do appreciate the work of our legal counsel and this committee for her willingness to participate... [LB1014]

(END OF TAPE 1, RECORDER MALFUNCTION, SOME RECORDING LOST)
[LB1014]

SENATOR ASHFORD: LB1014 makes the following changes to existing law--first, the Legislature would continue to have the authority to set the total number of judgeships and change the number or boundaries of the judicial districts. However, the change would be that the Supreme Court would have the limited authority to determine where a judicial vacancy should be filled after the Judicial Resources Commission determines that a judgeship should be moved from its current location to another location in a different judicial district. This change would take that responsibility from the Legislature and give it to the Supreme Court. Secondly, in an effort to manage existing caseloads there are a few recommendations. One, the district courts would no longer hold a new trial when hearing small claims appeals. Instead small claims court appeals to the district court would be treated as other appeals to appellate courts. In excessive sentence appeals no oral argument would be allowed as is the current practice in the court of appeals in the Supreme Court. And that, obviously, would take away the necessity of having retrials of these proceedings. Two, county courts and separate juvenile courts are given authority to appoint child support referees, and courts are given broader authority to appoint referees in civil equity matters such as probate accounting matters and quiet title actions. Referees could only be appointed when the caseload and time constraints require that such a referee be appointed. Three, all misdemeanors arising from the same incident as a felony would be required to be filed with the felony in the district court instead of the misdemeanor being filed in the county court and the felony being filed in the district court. Four, a matter that we looked at and actually discussed and voted upon, I believe in this committee, part of this, is permitting courts to use video conferencing and the telephone to conduct hearings. But no jury trial shall be so conducted by video conferencing or telephone. And we'll have to talk about this. And maybe there will be some more discussion about it. We have already moved a bill to the floor involving nonevidentiary hearings. And I don't think this committee...at

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least I do not support evidentiary hearings being conducted in this manner. So we'll...maybe someone will discuss this further, Senator Chambers. Five, presiding judges of the district court and county court in each judicial district will review the caseload of the two benches and create an annual plan on how to assign cases between the courts involving domestic relations matters and Class IV felonies. Again, this is taking district court cases and allocating them to county courts in the area of domestic relations and felony IV cases, pursuant to a plan that would be put together each year, annually, by the judges of that court. If and only if there is a disagreement by the judges of the county court in district court in a particular area, in a particular district, would the Supreme Court resolve that, that dispute as to how those cases would be allocated. And sixth, give this...this bill would give the Supreme Court the ability to set compensation for retired judges who return to the bench to hear proceedings on a temporary basis. That compensation is now set by statute. Finally, there are some amendments, I believe; are there amendments somewhere up there on LB1014? Okay, to LB1014 that changes the total number of judges from 125 to 124, which currently reflects the number of judges allocated throughout the state. And that would conclude my testimony, Senator Chambers. [LB1014]

SENATOR CHAMBERS: Any questions? Senator Ashford, is it anticipated or your desire that this bill be acted on this year by the Legislature? [LB1014]

SENATOR ASHFORD: There are parts of this, Senator Chambers, that I think should be done. And... [LB1014]

SENATOR CHAMBERS: Okay. That's sufficient. Thank you. How many are going to speak for this bill? Four. And you're not all going to say the same thing, I trust. (Laughter) Thank you, Senator Ashford. And while the first one comes up who's going to speak for it, any opposed to the bill? Any neutral? And unlike the persons who serve in this capacity, I'm not going to ask for any neutral testimony because there is none. Mr. Chief Justice. [LB1014]

MIKE HEAVICAN: Thank you, Senator. Again, Mike Heavican, Chief Justice of the Nebraska Supreme Court, here to speak in favor of the bill. I'll just say that as you can see a theme of many of the bills this afternoon is sort of flexibility and the use of resources in the judicial system. And we think that all of the provisions in this bill have something to do with flexibility and the whole system, in particular the Supreme Court's ability to use those resources more effectively. So we are supportive of this bill. And we thank the bar association for their heavy duty work in this area. Take any questions. [LB1014]

SENATOR CHAMBERS: Thank you. Any questions? Thank you. [LB1014]

MIKE HEAVICAN: Thank you. [LB1014]

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SENATOR CHAMBERS: Next. He stepped with alacrity, which I think is a good example. (Laughter) [LB1014]

JOHN GRANT: (Exhibit 8) Senator Chambers, members of the committee, my name is John Grant. I'm an attorney in private practice in Omaha. I'm a past president of the bar association and some how another I got saddled being the cochairman of the Nebraska Judicial Structure and Administration Task Force. I'm here testifying on behalf of the bar association in support of LB1014. And my testimony is intended to give you just a little bit of background about the task force and how it came up with these recommendations. Initially, in December of 2006, the National Center for the State Courts completed their judicial workload assessment for the state of Nebraska. That's a study that they do to review the amount of judicial resources needed here in our state. Their assessment indicated that several additional judgeships should be created, both district court, county court, and juvenile court. Because of the...the budget climate was not conducive to adding additional judgeships in Nebraska, the Judicial Resources Committee asked the bar association to undertake this study of judicial resources. We created this task force in January last year, 2007. As Senator Ashford has indicated, it included judges from all the courts, it included lawyers, it includes Senator Ashford and Speaker Flood. We had a public member also on this committee. We worked for nine or ten months to look at ways that our judicial resources could be utilized more effectively. And the results of that work were compiled into this report which I believe was sent to all of you previously, and I think we've provided you with another copy because we're so proud of it. Today speakers behind me, Mike Pirtle and Woody Bradford will describe in more detail the specific recommendations. But I wanted to give you some background on the task force itself. Our recommendations were presented to both the Nebraska State Bar Association House of Delegates, and to the Judicial Resources Commission. And the recommendations were approved by both of those groups. We appreciate your consideration of these issues. As I say, the speakers following me will give you a few more details about the proposals. I'd be happy to answer any questions, if you have any. [LB1014]

SENATOR CHAMBERS: Any questions? I have one. On the page with the three lower case Roman numerals, at acknowledgements, it's at the table of contents, "Error! Bookmark not defined." What does that refer to? [LB1014]

JOHN GRANT: I'm sorry, Senator Chambers, I don't... [LB1014]

SENATOR CHAMBERS: Okay. Table of contents,... [LB1014]

JOHN GRANT: Okay. [LB1014]

SENATOR CHAMBERS: ...where it says, acknowledgments. (Laughter) Oh, did I tell a

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good one, or that's just an inhouse...okay. [LB1014]

JOHN GRANT: I assume that's simply an error. I don't understand that. [LB1014]

SENATOR CHAMBERS: Okay. It's very provocative. Thank you very much. (Laughter)
Next. [LB1014]

MIKE PIRTLE: Good afternoon, Senator Chambers and members of the Judiciary Committee. My name is Mike Pirtle, P-i-r-t-l-e, and I am here testifying on behalf of the Nebraska State Bar Association. I am the current chair of the House of Delegates, and we are here in support of LB1014. I also served on the Judicial Structure and Administration Task Force and the Powers and Boundaries subcommittee that studied whether the judicial boundaries should be changed to allow for a more equitable distribution of judicial resources or whether constitutional or statutory changes should be granted to the Supreme Court so it had more flexibility in administering its current judicial resources. As you know, the Supreme Court is one of the three branches of government structured in a way that promotes independence from direct political influence. You are also aware of the rationale for the separation of powers and which, if it is to work as it is intended with the required checks and balances, requires each branch of government to be somewhat dependent on the others. However, approximately 90 percent of the judicial branch's administrative responsibility is court personnel, specifically judges, and yet the judicial branch has no administrative authority to reallocate its current judicial resources based on caseload need. Instead the judicial branch must gain the support of the Legislature and eventually the Governor to move a vacant judges position to a judicial district where there exists an immediate need for an additional judge to administer the caseload. As you know, this is not the case when the Legislature or the Governor needs to fill a vacant position or move a position from one office or division to another. In an effort to promote greater administrative efficiency in the judicial branch and at the same time maintain accountability to the legislative and executive branches, LB1014 would give the Supreme Court limited authority to manage its existing judicial resources by allowing the court to administratively move a vacated judgeship from one judicial district to another without having to go to the Legislature. The task force arrived at this recommendation after trying to manage the court systems' caseload through manipulating the judicial district boundaries. We did this by examining current caseload data through GIS mapping, prepared for us by the University of Nebraska Public Policy Center. However, after considering the different mapping scenarios against the core values the task force had established, the task force concluded that the 12 judicial district boundaries should remain in place and that caseload and judicial resources management would be better resolved if the Supreme Court had the authority to immediately move vacated judicial positions to a judicial district with a high caseload demand. More specifically, LB1014 provides that the Legislature would, by statute, continue to provide for the total number of judges and the creation of any new or additional judges. When a vacancy occurs and

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the JRC determines that the vacancy should be filled in the same judicial district where the judgeship was vacated and by the same type of judgeship that was vacated, then the JRC would notify the appropriate judicial nominating commission to fill the position in the same judicial district. This is the current statutory procedure and would not be changed. When a vacancy occurs...I see my time is up. I just have about three more points. [LB1014]

SENATOR CHAMBERS: Go ahead. [LB1014]

MIKE PIRTLE: Thank you. When a vacancy occurs and the JRC determines that (one) the vacancy should be moved to another judicial district; or (two) that the vacancy should be filled in the same judicial district where it was vacated, but should be filled by a different type of judgeship than the vacating judgeship then the JRC would report such recommendations to the Supreme Court. The Supreme Court, by a majority vote, would make an independent determination of where the vacancy should be filled, taking into account the recommendation of the JRC and all other relevant information. Annually, the Supreme Court would report to the Legislature the need to increase or reduce the number of judges, change judicial district boundaries, or change the number of judicial districts based upon recommendations provided to the Supreme Court by the JRC. Thank you for your time. And I'd be happy to answer any questions that you might have. [LB1014]

SENATOR CHAMBERS: Any questions? Mr. Pirtle, thank you. One question. Have you ever argued a case before the Nebraska Supreme Court? [LB1014]

MIKE PIRTLE: I have. [LB1014]

SENATOR CHAMBERS: If the red light comes on do they tell you, I'll give you a little more time? What do they say? [LB1014]

MIKE PIRTLE: Not very often, Senator. [LB1014]

SENATOR CHAMBERS: Well, here's why we're flexible, to use that term (laughter). No really, the U.S. Supreme Court and political theoreticians have pointed out that the Legislature is the only branch of government which is representative of the people, and as such we should extend more of an opportunity for the people to express themselves than may happen in the hide bound other branch of government. (Laughter) Thank you. [LB1014]

MIKE PIRTLE: Thank you, thank you, Senator. [LB1014]

SENATOR CHAMBERS: Next. [LB1014]

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WOODY BRADFORD: Senator Chambers, members of the committee, I'm Woody Bradford. I'm speaking in favor of LB1014. I happen to have been involved in the Judicial Structure Committee and the subcommittee. Page 20 of the bill deals with two things--one is that the district judges would review small claims appeals. And that streamlines that system. But those small claims appeals would also be reviewed de novo. Also at page 20 is sort of a cleanup which allows the bills of exceptions on appeal to be governed by the existing laws or rules, frankly, of the Supreme Court. At page 24, the bill allows permits...or permits county and separate juvenile court judges to appoint child support referees. The current law only permits district judges to appoint child support referees, even though the county and separate juvenile courts are required to establish, modify, and enforce child, spousal and medical support. Page 19 authorizes the courts to use video conferencing. Now understand this is for nonevidentiary and evidentiary hearings. However, the evidentiary hearings must be approved by the court and stipulated to by the parties that have filed an appearance. Such hearings would not include, not include jury trials. Basically, what you probably have is a motion practice here by video tape, which you might attach affidavits. This is often done in cases particularly that involve domestic relations. The last area, on page 7, encourages discussion between the benches for requiring presiding judges of the district court and county court in each judicial district to review the caseload for the two benches and create an annual plan to allow and assign between the courts cases involving domestic relations matters and Class IV felonies. There's been some discussion about Class IV felonies, but basically what this is designed to do is to cause the judges to talk to one another. And, hopefully, in producing their annual plan for review by the Supreme Court you'd have a situation in which if there was a problem in a particular area, for example lack of court availability or whatever, county court for a Class IV felony, that that could be worked out. We found that the most efficient way and probably the most economic way to bring access to justice in Nebraska was to have the district court and the county courts talk to one another about what they needed to talk about. The last one deals with the language for the Supreme Court to compensate retired judges at the same rate as anybody else. [LB1014]

SENATOR CHAMBERS: Any questions? Mr. Bradford, would you turn back to page 7? [LB1014]

WOODY BRADFORD: Yes. [LB1014]

SENATOR CHAMBERS: In the new language, beginning in line 12, it says, in an effort to equalize the caseload the presiding judges of the district court and county court in each judicial district may assign between the courts cases involving domestic relations and so forth. Now the cases will remain filed in whichever court they originally would be filed in,... [LB1014]

WOODY BRADFORD: That's right. [LB1014]

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SENATOR CHAMBERS: ...based on this language. Does this mean that the county court can assign cases to the district court and the district court can assign cases to the county court? [LB1014]

WOODY BRADFORD: I would think that that would be right. I think that there would be some dialogue between the two as to...if the county court had a matter, for example, that it didn't feel comfortable with, it could ask that it be assigned to the district court. [LB1014]

SENATOR CHAMBERS: But it's not limited to that, based on this language. [LB1014]

WOODY BRADFORD: No. [LB1014]

SENATOR CHAMBERS: If the county court wanted to assign a number of cases to the district court, would the presiding judge of the county court discuss that with the presiding judge of the district court? [LB1014]

WOODY BRADFORD: Yes. [LB1014]

SENATOR CHAMBERS: Okay. And then they'd work it out from there. [LB1014]

WOODY BRADFORD: And they'd put...they'd have to put it in a plan that would go down to the Supreme Court. [LB1014]

SENATOR CHAMBERS: Oh, okay. So this is not then a hap hazard, random,... [LB1014]

WOODY BRADFORD: No. [LB1014]

SENATOR CHAMBERS: ...fly by the seat of your pants ad hoc arrangement? [LB1014]

WOODY BRADFORD: No. It would have to be...it would have to follow a plan that was submitted to the Supreme Court. And if there was an argument, disagreement, then you would have the Supreme Court make the decision. [LB1014]

SENATOR CHAMBERS: And by doing it that way litigants and their attorneys would have notice of how this particular procedure is going to operate? [LB1014]

WOODY BRADFORD: Yes. [LB1014]

SENATOR CHAMBERS: Okay. That's all I would have. Thank you very much. [LB1014]

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WOODY BRADFORD: Well, you're welcome. Thank you. [LB1014]

SENATOR CHAMBERS: I believe that that's the only...that's the final person who said he or she would testify? Senator "Bradford". (Laughter) I meant, Senator Ashford, I used to call him "Ash Bradford". (Laughter) It's Brad Ashford and I have to remind myself. [LB1014]

SENATOR ASHFORD: I used to take it in those days. Now I stand up and rebel from that. (Laugh) [LB1014]

SENATOR CHAMBERS: Now are you presenting the next bill? [LB1014]

SENATOR ASHFORD: I am, but I just want to make one point in conclusion, if I could, Senator Chambers? [LB1014]

SENATOR CHAMBERS: Okay. [LB1014]

SENATOR ASHFORD: And I would acknowledge the work that went into this, it was significant. There were numbers of issues discussed, and alternatives, and proposals that were discussed and put forward that were more radical in the changing of the court system, in my view. And the suggestions that have been made here, especially as it relates to the county and district court allocation of cases and the filling of judgeships seemed to be not radical. They seemed to be well thought out and maintain what people are used to, which is the court system that now exists, but with the ability to be more flexible and to utilize resources. And I really applaud the work of the people that worked on this. [LB1014]

SENATOR CHAMBERS: Senator Ashford, with the proposed amendments and the work having been done on this bill, if those amendments were adopted, would you be satisfied that the bill is in proper shape and could be enacted into law? [LB1014]

SENATOR ASHFORD: I would. I just have one question, and I have to look at it a little bit on the evidentiary issues... [LB1014]

SENATOR CHAMBERS: Okay. [LB1014]

SENATOR ASHFORD: ...involved in video taping. But other than that, I'm pretty satisfied with it, yes. [LB1014]

SENATOR CHAMBERS: Thank you. Any questions of Senator Ashford? Thank you, Senator "Bradford". [LB1014]

SENATOR ASHFORD: Yeah. (Laughter) [LB1014]

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SENATOR CHAMBERS: I mean, Senator Ashford. [LB1014]

SENATOR ASHFORD: I have to take it, I just have to take it and go on. (Laugh) LB933, is that the next one? [LB933]

SENATOR CHAMBERS: That's the next one. Before you start, Senator Ashford, how many will speak for this bill? Two. How many against it? How many neutral? There will just be two testifiers after you, Senator Ashford. [LB933]

SENATOR ASHFORD: Thank you. And I don't believe I will need to close, Senator Chambers. But I am Brad Ashford. I represent the 20th Legislative District and I'm appearing on behalf of...to introduce LB933 which is, quite simply, a bill that eliminates obsolete language regarding the education requirement of a clerk magistrate. Clerk magistrates are employees of the Nebraska Supreme Court and serve as clerks of county courts. They manage all administrative activities within the county court office, including case management, supervising employees and so forth. Current statute states that clerk magistrates will attend the first available institute on their duties as a condition of holding office, and that the Supreme Court shall provide for the establishment of that institute and other training courses. The institute and the annual training mentioned has been replaced by judicial branch education, which is mandatory for all judicial branch employees not just clerk magistrates. In addition, this section of statute refers to associate county judges. This position was replaced by the Office of Clerk Magistrate and is no longer in existence, so that language would be deleted. And this is really cleanup as it relates to training. And that would be my testimony. [LB933]

SENATOR CHAMBERS: Thank you, Senator Ashford. Any questions? Thank you. [LB933]

JUDY BEUTLER: Good afternoon. I'm Judy Beutler. I'm deputy court administrator in the State Court... [LB933]

SENATOR CHAMBERS: Would you spell your last name, please. [LB933]

JUDY BEUTLER: B-e-u-t-l-e-r. [LB933]

SENATOR CHAMBERS: Thank you very much. [LB933]

JUDY BEUTLER: You're welcome. I think the Senator has really explained everything about this bill, so I'm not going to repeat what he said. But it's just a cleanup bill. We now have a different way of educating these employees. We have a mentoring program and requirements with the judicial branch education. And this brings them in compliance with our judicial branch education requirements. [LB933]

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SENATOR CHAMBERS: Is there an age limit for a person seeking a position as a clerk magistrate? [LB933]

JUDY BEUTLER: I don't believe so. [LB933]

SENATOR CHAMBERS: Is there a mandatory retirement age? (Laugh) [LB933]

JUDY BEUTLER: No. [LB933]

SENATOR CHAMBERS: So somebody 70 or thereabouts could apply? (Laugh) [LB933]

JUDY BEUTLER: We...yes. [LB933]

SENATOR CHAMBERS: Thank you. That's all I would ask. [LB933]

JUDY BEUTLER: Are you interested? (Laughter) [LB933]

SENATOR CHAMBERS: Thank you very much. [LB933]

JUDY BEUTLER: You're welcome. [LB933]

SENATOR CHAMBERS: Next. There were two people? Oh. [LB933]

SENATOR ASHFORD: Wrong bill. [LB933]

SENATOR CHAMBERS: Okay. Then that ends the hearing on this bill. And Senator Ashford will present LB935. And how many will speak in favor of this bill? One, two. Anybody in opposition? Zero. Anybody neutral? You only have two who will follow you, Senator Ashford. [LB933]

SENATOR ASHFORD: Thank you, Senator Chambers. And this is the last bill and it's a very short introduction. My name is Brad Ashford, Legislative District 20 and I'm here to introduce LB935, a bill that would allow the Supreme Court to establish court rules regarding the service and delivery of court documents. Currently, Nebraska statute governs the delivery and service of court documents. And any changes must be done by enacting new legislation. Based on the findings of the Nebraska Supreme Court Committee on Practice and Procedure, the court intends to phase-in a system of electronic discovery and service which will greatly reduce costs and paperwork for both the courts and the general public. The general public will see decreased costs and increased efficiency. If this becomes law, the Committee on Practice and Procedure has rules ready for adoption by the Supreme Court, Mr...Senator Chambers. That would conclude my testimony. [LB935]

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SENATOR CHAMBERS: Thank you. I know there are no questions. Next. Did you have a question? [LB935]

SENATOR SCHIMEK: No. [LB935]

SENATOR CHAMBERS: Then I was correct, right? (Laughter) [LB935]

SENATOR SCHIMEK: I don't want you making assumptions, Senator Chambers. [LB935]

SENATOR CHAMBERS: I know what I'm doing around here. (Laughter) And if you would spell your last name when you give it for the sake of the record, we'd appreciate it. [LB935]

ROGER KIRST: (Exhibit 9) Thank you, Senator. I am Roger Kirst, K-i-r-s-t. I am a law professor at the University of Nebraska Law College. I do not appear in that capacity today. I appear as the reporter for the Supreme Court Committee on Practice and Procedure. In response to an inquiry from a lawyer about the topic, the committee...procedure committee addressed the topic that is the subject of LB935. Several years ago, the Legislature began the process of modernizing Nebraska procedure. At that time it was the recommendation of our procedure committee that the general topic of pleading should be moved from the statutes to rules promulgated by the Supreme Court. At the time we did that in order to keep the scope of the project manageable. We did not address everything in the change that could have been addressed, that is where there were statutes that seemed to be adequate and working properly, we left those topics covered by the statutes so that we only were drafting new rules where there was need to draft something new. This topic comes along now. It seems an appropriate time to continue the process we started earlier of moving another topic out of the statutes to a subject that would be addressed by the Supreme Court as a matter of rule. The basic topic is how you exchange papers between counsel during the course of the proceedings as the case goes on. Communication systems keep changing. We're no longer in a static system and it seems appropriate that this is something that would be better addressed in the rules. It's something that is generally addressed by the rules in most other jurisdictions, and this would simply give the Supreme Court the ability to handle it as a rule-making matter instead of having the Legislature get involved in it, it may become a continuous process. If there are any questions, I'd be happy to answer them. The written materials I've submitted include the report that we prepared and submitted to the Supreme Court. [LB935]

SENATOR CHAMBERS: Does any member have a question of Professor Kirst? Anyone have a question of Professor Kirst? (Laugh) Thank you, Professor. [LB935]

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ROGER KIRST: Thank you, Senator. [LB935]

SENATOR CHAMBERS: Next. [LB935]

MIKE HEAVICAN: Again, Mike Heavican, Chief Justice of the Nebraska Supreme Court, H-e-a-v-i-c-a-n. I suspect that this is patently obvious, but we do support this bill. And we appreciate Professor Kirst and all of the people on the committee who went to a great deal of effort to put it together. And it's again, an effort to sort of modernize the process. [LB935]

SENATOR CHAMBERS: Thank you, Mr. Chief Justice. Before you leave, are there any questions of the Chief Justice by any member of the committee? Thank you, Mr. Chief Justice. [LB935]

MIKE HEAVICAN: Thank you. [LB935]

SENATOR CHAMBERS: I don't want anybody to think that I'm the tyrant of the table. (Laughter) [LB935]

BILL MUELLER: Senator Chambers, members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Nebraska State Bar Association in support of LB935. The bar association did look at this bill and has looked at the report that Professor Kirst referenced that comes from the Supreme Court Committee on Practice and Procedure and the proposed rule. And we do support both the legislation and the rule. There are lawyers and judges on the Supreme Court committee that look at matters such as these. And we believe that the change they are proposing does make sense. As an example, in statute we don't refer to facsimile or e-mail and electronic service of documents, and this rule would actually refer to how you serve a motion or a paper on another lawyer via electronic means. And we think that it makes sense to include that in the court rule. Be happy to answer any questions you may have. [LB935]

SENATOR CHAMBERS: Since nothing of substance, different from what has already been presented, was presented and since there were no questions of the other testifiers, there will be no questions of you, Mr. Mueller. Thank you. (Laughter) [LB935]

BILL MUELLER: Thank you, Senator. [LB935]

SENATOR CHAMBERS: (Exhibits 10 and 11) Senator Ashford, were you going to... [LB935]

SENATOR ASHFORD: I waive. [LB935]

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SENATOR CHAMBERS: He waives. And now I return control of this powerful committee to its rightful Chairman, Senator "Ash Bradford". (Laughter) [LB935]

SENATOR ASHFORD: We're done. Everybody can leave. [LB935]

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Disposition of Bills:

LB816 - Held in committee.
LB828 - Held in committee.
LB933 - Held in committee.
LB935 - Held in committee.
LB1014 - Advanced to General File, as amended.
LB1085 - Held in committee.

Chairperson

Committee Clerk