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Floor Debate
January 26, 2012

[LB276 LB310 LB426 LB446 LB459 LB801 LB841 LB942 LB986 LR19CA LR40CA
LR383 LR384]

SENATOR GLOOR PRESIDING

SENATOR GLOOR: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the fifteenth day of the One Hundred Second Legislature, Second Session. Our chaplain for the day is Pastor Marta Wheeler, the Giltner United Methodist Church and Phillips in Giltner, Nebraska, Senator Dubas' district. Would you please rise.

PASTOR WHEELER: (Prayer offered.)

SENATOR GLOOR: Thank you, Reverend Wheeler. I call to order the fifteenth day of the One Hundred Second Legislature, Second Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

CLERK: I have a quorum present, Mr. President.

SENATOR GLOOR: Thank you, Mr. Clerk. Are there any corrections for the Journal?

CLERK: I have no corrections, Mr. President.

SENATOR GLOOR: Are there any messages, reports, or announcements?

CLERK: Your Committee on Enrollment and Review reports LB459 to Select File with Enrollment and Review amendments. Banking Committee chaired by Senator Pahls reports LB942 to General File. Education chaired by Senator Adams reports LB446 to General File. Transportation chaired by Senator Fischer reports LB801 to General File, and LB841 to General File. Hearing notices from the Natural Resources Committee, a series of hearing notices. New resolution, Senator Flood offers LR383, which will be laid over, congratulates Judge John Gerrard for his...on his confirmation to the United States District Judge for the District of Nebraska. That's all that I have, Mr. President. (Legislative Journal pages 351-354.) [LB459 LB942 LB446 LB801 LB841 LR383]

SENATOR GLOOR: Thank you, Mr. Clerk. We'll now proceed to confirmation reports. Mr. Clerk.

CLERK: Mr. President, the Natural Resources Committee reports on an appointment to the Game and Parks Commission. (Legislative Journal page 304.)

SENATOR GLOOR: Senator Langemeier, as Chairman of the Natural Resources Committee, you're recognized to open on the confirmation report.

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SENATOR LANGEMEIER: Mr. President and members of the body, our first confirmation report is for Mr. Ron Stave who is a reappointment to the Nebraska Game and Parks Commission. His home town is Waterloo, Nebraska. We had a hearing January 19, 2012, where he did attend. Mr. Stave is a reappointment to a nine-member commission representing District 2. He did appear before the committee. He practiced law for 37 years at a private practice and now is a retired attorney. His education: He has a bachelor's degree in education from the University of Omaha and graduated from Creighton Law School. His previous membership activities: He's been on the Game and Parks Commission since 2007 where he currently served as vice president and last Saturday the commission elected him chairman for the coming year. He served on the UNO Maverick's Board of Directors and he serves on the King of Kings Lutheran Church Board as a director. The committee advanced the request unanimously. We'd ask for your confirmation for Mr. Ron Stave to the Game and Parks Commission. Thank you.

SENATOR GLOOR: Thank you, Senator Langemeier. We move to discussion. Senator Pirsch, you are recognized.

SENATOR PIRSCH: I'll waive.

SENATOR GLOOR: Seeing no further senators wishing to be recognized, Senator Langemeier, you're recognized to close on your confirmation. Senator Langemeier waives. Members, the question is the adoption of the report offered by the Natural Resources Committee. All those in favor vote yea; all those opposed vote nay. Have all voted who care to? Record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal pages 354-355.) 32 ayes, 0 nays, Mr. President, on adoption of the confirmation report.

SENATOR GLOOR: The report is adopted. We move to General File. Mr. Clerk.

CLERK: Mr. President, LR19CA, a proposed constitutional amendment originally offered by Senator Avery. It proposes an amendment to Article IV, Section 5 of the Nebraska Constitution. The Legislature discussed the resolution briefly yesterday. Mr. President, there are pending Government, Military and Veterans Affairs Committee amendments to the LR. (AM866, Legislative Journal page 907, First Session, 2011.) [LR19CA]

SENATOR GLOOR: Senator Avery, would you take just a couple of minutes to refresh the body on the specifics of LR19CA? [LR19CA]

SENATOR AVERY: Yes, I will. Thank you, Mr. President. Good morning, colleagues.

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LR19CA clarifies constitutional language dealing with impeachment. Current language allows for impeachment only for offenses committed while in office. This bill will put additional language in the constitution that will allow offenses committed and the election for office to qualify as grounds for impeachment. The argument is simple. Offenses committed while in pursuit of public office should be treated the same as impeachable offenses committed while in office. Yesterday, questions were raised about the precise wording of the proposed amendment. Most of those questions implied that the language was too broad, especially as it relates to the word "misdemeanor." I anticipate more questions on that today and I am prepared to answer them and I look forward to it. I would remind you that there is an amendment from the committee, AM866. That amendment simply changes a few words so that the bill would read: "any misdemeanor in pursuit of such office." With that I will entertain any questions and happily answer them. Thank you, Mr. President. [LR19CA]

SENATOR GLOOR: Thank you, Senator Avery. As the Clerk and you mentioned, there is a committee amendment from the Government, Military and Veterans Affairs Committee. Senator Avery, in your opening, did you also cover that overview? [LR19CA]

SENATOR AVERY: I did, Mr. President. [LR19CA]

SENATOR GLOOR: Thank you, Senator Avery. Members, we now move to discussion on the amendments to LR19CA. Are there members who wish to be recognized? Seeing none...Senator Carlson, you're recognized. [LR19CA]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I'd like to direct a question to Senator Avery, if he would yield. [LR19CA]

SENATOR GLOOR: Senator Avery, would you yield? [LR19CA]

SENATOR AVERY: I will. [LR19CA]

SENATOR CARLSON: Senator Avery, I'm trying to get the bill up on my gadget here, but...and I don't have it yet, but some of the things that were talked about yesterday, I do have a concern. And we both remember we used to be told by Senator Chambers that the Legislature can do anything it wants to do. And I liked your description of what would be the case in a misdemeanor, gross negligence, and so forth, all that. I don't understand why something similar to that can't go right into the bill itself. But in this portion of statute, misdemeanor is defined generally as...and include that strong language, and I think that just clears everything up. Why can't we do that? [LR19CA]

SENATOR AVERY: Senator, we can and I have given some thought to it and had a conversation last night with Senator Seiler in which he suggested we might want to do

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that. I'm uncertain whether or not we can do it on General File, but I would be certainly willing to work between General File and Select File on coming up with some language that would do what you're talking about. [LR19CA]

SENATOR CARLSON: Well, thank you. That would be my concern, and with the help of Senator Seiler and you work on something on Select File that would address that, then I am in support of the bill and the amendment. Thank you, Mr. President. [LR19CA]

SENATOR GLOOR: Thank you, Senator Carlson. (Visitors introduced.) Senator Nelson, you're recognized. [LR19CA]

SENATOR NELSON: Thank you, Mr. President and members of the body. Senator Avery and I were having a discussion yesterday and ran out of time and I would like to continue that for just a little bit to perhaps get some answers from Senator Avery to questions that I have...still have in my mind. I do appreciate the handout here from Senator Avery. If you have an opportunity to read that, colleagues, I think it goes into some detail and makes it a little clearer about the gravity of the offense that needs to occur. And I should say that suggestion from Senator Seiler that perhaps we ought to take a look at putting precise language into the amendment, that has merit and I would subscribe to that. But if Senator Avery would yield to a question or two, please. [LR19CA]

SENATOR GLOOR: Senator Avery, would you yield? [LR19CA]

SENATOR AVERY: I will. [LR19CA]

SENATOR NELSON: Thank you, Senator. I think I expressed some reservations yesterday about extending this to the pursuit of office. And could you explain to me why you feel it is necessary? We have someone who is elected and perhaps there might be some element of neglect or dereliction of duty in pursuing that office, but why does that have to be handled then as an impeachment? Why can't it be handled in the regular course of dealing with misdemeanors in seeking an office? [LR19CA]

SENATOR AVERY: Well, it would not actually have to be handled through impeachment unless they win the election. And we had the unfortunate circumstance develop where the crimes that were committed in pursuit of office actually were committed by a person who was elected, and only held accountable for those crimes because he happened to sign his A&D filings after he took the oath of office. So technically, the crime of false representation occurred, or false reporting occurred while in office. And had he signed those papers prior to taking the oath, there had been no recourse. [LR19CA]

SENATOR NELSON: Well, my recollection is that that was not his first time of election

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to that office. He was up for reelection, was he not? [LR19CA]

SENATOR AVERY: No, he was not. He was...that was...he had run for the office before but he had never been elected. [LR19CA]

SENATOR NELSON: All right, I stand corrected then. I was thinking that he was reelected. So this is an instance that where he ran for the office the first time and then because of the fact that he committed an act that was...came under the category of misdemeanor, then he was able to be impeached. What about the situation where someone is reelected and has committed an offense during the election? Aren't they already a civil officer? [LR19CA]

SENATOR AVERY: Yes, they are. [LR19CA]

SENATOR NELSON: Okay. So that could be handled just... [LR19CA]

SENATOR AVERY: That could be handled in the normal course of impeachment law as it is in the constitution now. [LR19CA]

SENATOR NELSON: In your handout, at the last paragraph there, you list three categories of conduct constituting impeachable offense. And number two is a simple neglect of duty committed for a corrupt purpose. That seems to me is an area where, as I expressed yesterday, we could find people that might latch onto that person's...saying if they were unhappy with the fact that this candidate get elected to office... [LR19CA]

SENATOR GLOOR: One minute. [LR19CA]

SENATOR NELSON: ...and then looking to see if they can find something during the course of the election that they could constitute a simple neglect of duty for a corrupt purpose. Do you have any problems with that language? [LR19CA]

SENATOR AVERY: No, this actually has longstanding in Nebraska law. If you go to the first paragraph on that handout, you'll see that we're quoting here from a case, State v. Hastings, Hastings was the Attorney General at that time, and that's 1893. What we're talking about here are standards that have been in place for more than 100 years in this state when it comes to impeachment. All I'm trying to do is extend that to the period of time when a candidate is seeking the office. And should they be elected then, and they have committed crimes that the Legislature self-determines to be impeachable, then we would have the authority to do that. [LR19CA]

SENATOR GLOOR: Time, Senators. [LR19CA]

SENATOR NELSON: Thank you. [LR19CA]

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SENATOR GLOOR: Thank you, Senator Nelson and Senator Avery. Senator Lathrop, you're recognized. [LR19CA]

SENATOR LATHROP: Thank you, Mr. President and colleagues. You have received a handout from Senator Avery on the definition of misdemeanors in impeachable cases and I want to tell you, I listened to the debate yesterday. I didn't see this one coming. It's a very simple change to the constitution and when I read it I thought, well, why don't we include felonies? Why are we just...why do we just have misdemeanors? And what about somebody that's speeding on their way to a campaign event or gets a DWI? And I had all these questions and so I visited with Senator Avery and I think this is important because we're having a discussion today about whether you can commit a crime to get yourself into office and still hold that office, or whether that's an impeachable offense. And Senator Avery's handout is instructive, and I'd like to talk to you about it kind of from a lawyer's point of view. I sit on the Judiciary Committee. Years and years ago when I first started practicing I did some criminal defense work. All the misdemeanors were handled in county court, the felonies were handled in district court, and so when I saw the constitution...the constitutional provision we were going to change with this amendment, I had concerns. I'm thinking as a lawyer would, well, misdemeanors, we shouldn't even be impeaching people for misdemeanors. The point of this handout, and to correct a lot of confusion that I think is going on with you, as it was with me before this handout, is as used in the constitution misdemeanors has a different meaning than what we use in the criminal law. In the criminal law a misdemeanor is a criminal offense punishable by less than a year in jail. But as used in the constitution, it has a completely different meaning and I would encourage you to read this handout. Senator Nelson, I think, suggested, well, maybe...or maybe it was Carlson, suggested that we should jump in maybe and change the criteria, or how serious the offense must be before we engage in an impeachment proceeding. We tried that once before many of you got here. Pat Engel offered a bill to try to address that very subject matter, and it is fraught with...it is fraught with difficulties, and I don't think it's necessary. As used in our constitution, misdemeanors is a term of art, a term of art. Which is to suggest that it has its own meaning as it is used in the constitution which is different than what lawyers, maybe what all of us here, generally think of as a misdemeanor. It's not the traffic infraction, it's not the DWI, and I'm not going to read Senator Avery's handout, but I would encourage you to do that. So what we are doing is adding to the list of things that could get you impeached engaging in the kind of activity that would fall in this criteria in the term of art. And I think that's a right thing to do. And I think if we go back and look at the Hergert case, and I wasn't here for that. I'm not an expert on it and...but what I can tell you is, that people shouldn't be able to commit serious crime to get themselves elected. People should not be able to commit serious criminal acts to get themselves elected and that's what we're taking up today. A yes vote on LR19CA is a vote to say we're going to stop and not allow somebody to hold office if they committed a serious offense in order to get there. And how can we argue with that principle? That just makes

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perfect sense. So I would encourage you to not get hung up on the... [LR19CA]

SENATOR GLOOR: One minute. [LR19CA]

SENATOR LATHROP: ...term "misdemeanor." That's been in our constitution a long, long time. It has a meaning that the Supreme Court understands, and if we were ever to find ourselves in an impeachment proceeding on this floor, you, senators, would be provided with that criteria to measure someone's conduct. All we are doing here is saying, you cannot commit these serious kinds of crimes trying to get yourself elected and then continue to hold the office if we find out after the fact that that's what you did. This really is a response to maybe a hole in our process and I think it makes good sense. I think it is good law. It will have my support, particularly now that Senator Avery has clarified that misdemeanors is not the little petty things that we think of in county court, but it has a meaning that has been defined by our Supreme Court and I would suggest that we... [LR19CA]

SENATOR GLOOR: Time, Senator. [LR19CA]

SENATOR LATHROP: ...leave the standard alone and move LR19CA. Thank you. [LR19CA]

SENATOR GLOOR: Thank you, Senator Lathrop. Senator Avery, you're recognized. [LR19CA]

SENATOR AVERY: Thank you, Mr. President and thank you, Senator Lathrop for stating that better than I could. There is something to be said for legal training, I can see that. However, my training is not legal. I was a college professor and I have a tendency to sometimes talk around issues. But I do think that we have a clear definition of what misdemeanor means in the context of impeachment. In modern legal parlance, a misdemeanor refers to a minor crime. But that is clearly not what is intended in the constitution because it would be absurd if officeholders could be impeached for minor crimes but not for serious crimes. In fact, the word must be construed in historical context and I have provided you with that going back to 1893. And the historical context is a way of referring generally to any kind of misdeed as determined by this legislative body. So in a sense, the misdemeanor in the constitution relating to impeachment is more of a generic term that gives the Legislature wide latitude in deciding how to define it. The courts have given us instructions and guidance and that's pretty clear. If you go on this handout down to the third paragraph from the top, it reads that the phrase misdemeanor in office is that phrase...as that phrase is used in Article IV, Section 5, to define an impeachable offense is a term of art and the word "misdemeanor" in this phrase is not used as it is in the criminal context. I tried to make that point yesterday. Senator Lathrop made it very clear today. We're not talking about criminal code here in the strict definition of misdemeanor. Misdemeanor in the context of impeachment has a

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very long history in the legal documents of our state, in our constitution, and in the Supreme Court rulings. We have it clearly defined and they have set forth some pretty clear guidelines to instruct us. This is, I believe, a bill that we need to do. I think we do not need to worry that it would be used frivolously because any proceeding in impeachment would begin in this place right here. It would be us. We would be the people who would decide what is an impeachable offense and if we decide that the offense is impeachable, then we would bring charges and that would then go to the Supreme Court for a trial. So I think that we ought not to worry about the wording. If we want to add a little more specificity to the wording in the constitution, then I would be happy to work with anyone who wishes to work with me between General File and Select File to get that done. Thank you, Mr. President. [LR19CA]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Thank you, Senator Avery. Senator Carlson. [LR19CA]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. Senator Lathrop's description was very helpful. However, I would venture that there are a lot of attorneys in the state of Nebraska that don't really understand the difference in definition of impeachable offense and how misdemeanor is applied, and other ways that misdemeanor is applied. When Senator Lathrop summed up what he was saying, which was very good, he didn't use the term misdemeanor. And I may not have the words correctly, but it was, serious crime, or something like that to clarify how you knew this definition was supposed to be used. I could see if we don't further clarify this, that in an election my opponent might come after me because I got a ticket for reckless driving, not for alcohol, but because I was sleepy and tired and I got myself in a spot that I didn't mean to get into, and maybe it turns out to be a misdemeanor. And an attorney can jump on that and I'm in the midst of a legal battle for not good reason. And we don't want that. So I would say that Senator Avery is willing to work on this between now and Select File, I think some kind of specificity, as the word that Senator Avery used, would be important and it is important to me. Senator Seiler has agreed to work on it, maybe Senator Lathrop, but if that's not there on Select File, I'm not going to support this bill. So I hope that we can come up with something that will be satisfactory. Thank you. [LR19CA]

SPEAKER FLOOD: Thank you, Senator Carlson. Senator Wightman, you're recognized. [LR19CA]

SENATOR WIGHTMAN: Thank you, Mr. President and colleagues. If Senator Avery would yield, I'd have a few questions for him. [LR19CA]

SPEAKER FLOOD: Senator Avery, will you yield to a question from Senator Wightman? [LR19CA]

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SENATOR AVERY: I will, with trepidation. [LR19CA]

SENATOR WIGHTMAN: (Laugh) Thank you. I can see, already nervous and trembling over there. At any rate, I would ask you, everything that might possibly be an impeachable offense don't result in impeachment. I think we could safely say that. [LR19CA]

SENATOR AVERY: That is correct. [LR19CA]

SENATOR WIGHTMAN: Probably very few. [LR19CA]

SENATOR AVERY: The standard for impeachment is quite high, the threshold is high. It's been set high by the Supreme Court for a reason, that is to make it difficult, if not impossible, to impeach people for frivolous reasons. [LR19CA]

SENATOR WIGHTMAN: Senator Avery, could you tell all of us here on the floor where impeachment proceedings, obviously, at the state level they are all prosecuted, I think, by the Attorney General, is that correct? Except where the Attorney General himself is being impeached, which happened not so long ago. [LR19CA]

SENATOR AVERY: Actually I think what happens is that the process begins in the Judiciary Committee of this Legislature. If they decide to recommend impeachment articles, then we debate that on the floor. If we decide that there's enough evidence to prosecute, then the Legislature--I believe this is true--selects a prosecutorial team from the Legislature. I do not think the Attorney General prosecutes. [LR19CA]

SENATOR WIGHTMAN: Okay. I think that may be correct. Tell us at the local level, Senator Carlson brought up the question if he were...of course that would be running for a state office, but say you were a county commissioner or you were the mayor, where would that impeachment be handled? [LR19CA]

SENATOR AVERY: The impeachment that is defined in the constitution relates to state officers, not to local officers. In fact, county officials may be charged, tried, and removed from office in the manner of...it can be done through recall, it can be done by the county boards. They can decide that the behavior of a county commissioner is such that it rises to the level of unacceptability and they should be removed and the county commissioners can do that. There's a process for removing people from office at the local level. It is defined in the constitution...or I believe it's defined in statute in Chapter 23, Article 20, removal of county officials. The same...we have also procedures for removing officers at the city level and also removing officers at other levels of government, but that would not be impeachment in this body. [LR19CA]

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SENATOR WIGHTMAN: Are we talking here only about the impeachment of state officers, is that correct? [LR19CA]

SENATOR AVERY: That is correct. [LR19CA]

SENATOR WIGHTMAN: Actually out at the local level, recall is used probably 90 percent or probably much higher than that rather than impeachment proceedings. [LR19CA]

SENATOR AVERY: Right. The question came up earlier about felonies. If someone is convicted of a felony, they are no longer eligible to serve, so they are automatically removed by the fact that they've committed the felony. [LR19CA]

SENATOR GLOOR PRESIDING

SENATOR GLOOR: One minute. [LR19CA]

SENATOR AVERY: But when it comes to state officers, we don't have recall for state officers. We don't have recall for us. We can expel members of this body ourselves. We police ourselves. But we have to have in the constitution some means for holding state officers accountable since we do not have recall for that. [LR19CA]

SENATOR WIGHTMAN: Thank you, Senator Avery for those instructive answers, and I agree with Senator Carlson that Senator Lathrop's discussion was very helpful. Thank you, Mr. President. [LR19CA]

SENATOR GLOOR: Thank you, Senator Wightman. (Doctor of the day introduced.) Continuing with the discussion, Senator Lathrop, you're recognized. [LR19CA]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I just want to make an offer to...if the body will see fit to move this to Select File, I will join the others in assessing the standard found in the constitution for civil officers which is misdemeanors. I think that process would start by looking at exactly the...all of the opinions from the Supreme Court to determine what that criteria means, and then to determine whether or not we want to make a change to it. As I indicated before, I remember generally, Senator Engel offering a bill or an amendment to the constitution that dealt with the standard and I think it had to do with county attorneys. And we had this discussion previously about whether it should be misdemeanors or crimes involving moral turpitude and some other standards. I'd be happy to be involved in that discussion and to work on it. I do want to offer one other thing and that is, Senator Carlson suggested that if I were falling asleep on my way to a campaign event and I got a ticket, that I'd find myself in a legal tangle. First...my first response to that would be, that does not...that's not

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part...that wouldn't fit the definition of misdemeanor as it has been interpreted in our constitution by our Nebraska Supreme Court. The second thing I'd like to say is, when we talk about an impeachment process, that's not a process that's going on in the courtroom in the county where you commit this offense. It's something that happens on the floor of the Legislature initially, and then in the Supreme Court secondarily. So you're not going to get sued for this, you're not going to have some constituent try to throw you out of office if you are one of the civil officers elected in this state. This is a process that happens inside the Legislature. We will be well aware of the criteria and if we want to work on changing it as we move LR19CA forward, I'd be happy to be involved in that discussion because I think it's a worthwhile endeavor. But I don't think we should lose the opportunity to fix a problem not probably contemplated by those who put this section into our constitution, but something that history has told us should be addressed. And I think we move this to Select File, we have a number of people that are interested in it, and I'd be happy to be involved in that process. Thank you. [LR19CA]

SENATOR GLOOR: Thank you, Senator Lathrop. Senator Flood, you are recognized. Senator Karpisek, you are recognized. [LR19CA]

SENATOR KARPISEK: Thank you, Mr. President and members of the body. I remember in committee that we did have this discussion and being a year ago I don't really remember what it was that we came up with that got us all on board to think that we were going to be all right, but it was this exact talk about the concern on this bill. The reason I pushed my light was to talk about moving from General to Select File. I'm sure everyone recalls last year when I agreed to do something like that and absolutely got burned on it and I said I'd never do it again. However, I think today that we can move this bill and get it straightened out and, hopefully, get everyone on board and feel comfortable with it because I do believe that it is a good bill. But I don't think that we want to get in the habit of moving things from General to Select and work on it in-between. And in the future, I hope we don't again get into this habit. And if things start to go south by doing that, I will be one of the first to stand up and make sure that everyone knows that I'm not in favor of doing that. Let's try to get things done on General File, especially if it's controversial, get it worked out before we move it on. Thank you, Mr. President. [LR19CA]

SENATOR GLOOR: Thank you, Senator Karpisek. Senator Flood, you are recognized. [LR19CA]

SENATOR FLOOD: Thank you, Mr. President and members, good morning. This issue came up as a second-year senator in 2006, as it related to Mr. Hergert and his service on the Board of Regents, and I, like many of you, struggled with what is the meaning of the word "misdemeanor." And I think some of the debate here this morning is focused in on the fact that it has to relate in some way back to either the election of the office or the actual conduct while in office affecting the office. And Senator Carlson brings up a good

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point. And I can see...I had the same questions in 2006. Is any misdemeanor such as a reckless driving or, you know, think of all the different types of misdemeanors that are out there. You didn't...you failed to send in your water soil sample test to the NRD after being required to, it's a Class V misdemeanor. Does that mean you should be removed from office? And I think one of the balances we have to strike here is that when the citizens of the state for a constitutional officer or of a region or a district elects somebody to serve the people of this state, they have made a decision that should not be easily voided. And we want to respect what those citizens have said and we want to honor their selection of a officer. And so I think what Senator Avery here is doing is he's further defining what that is, and he's working as hard as he can, in my opinion, to match the language in State v. Hergert from 2006. And I think the Supreme Court set out a pretty good standard as to what the Supreme Court would consider as it relates to an impeachment. This is a serious step for government to take, that being the process of impeachment and then ultimately if there's a conviction in the impeachment, resulting in the loss of the office for the officeholder. I would like to stay very close to the court's rule in 2006 and not complicate it much further. I worry about putting additional language in the constitution. Now I'm not against it, but I'd be very concerned about just adding language to satisfy whatever immediate concerns we have. If we can draw it and put in a very good history, you know, what I want to do through my vote on this bill, is I want to respect and adopt with my vote the court's ruling in State v. Hergert, because I think they wrestled with the questions that we had, and they were ultimately charged and delivered with delivering an answer and they did that in their opinion. This is not something that I think we need to put belts and suspenders on. I think what he's doing already, Senator Avery, is framing it up for us. And you know, I know there's going to be more discussion between now and Select File, but I'd be real leery about really going, drilling down and trying to define what misdemeanors we're talking about. The court always says as it relates to obscene materials, you know it when you see it. And I know that's not a very...that's not a standard that you want to adopt, but I don't think you want to be so restrictive that you take things off the table but you don't want to put certain things on the table. And for that reason I'm going to vote for the bill in General File and I'm going to look forward to discussion on Select. But I want to reiterate where I'm coming from is agreement with the court's analysis in State v. Hergert, having lived through that as a member of this Legislature. And I think that set an appropriate boundary for where we should go as a Legislature as it relates to changing the constitution. Thank you, Mr. President. [LR19CA]

SENATOR GLOOR: Thank you, Senator Flood. Senators remaining to be heard: Schumacher and Avery. Senator Schumacher, you are recognized. [LR19CA]

SENATOR SCHUMACHER: Thank you, Mr. President and members of the body. When Senator Karpisek spoke he mentioned that he had some difficulty recalling exactly how we resolved the...some of these questions in committee. And I, too, have a little difficulty but I think most of it is coming back to me. The original draft seemed a little broad and

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the amendment proposed by the committee said, in pursuant of the office. So that it would be pretty clear that we were not talking about somebody who was driving recklessly and fast in order not to be late to a campaign event, as opposed to somebody cutting a crooked deal in order to get an edge on an opponent or hide campaign financing or do something crooked in order to get into the office. So it has to be the kind of act as some of the material that Senator Avery put out that is...has, as its intended result, the acquisition of the office. And, therefore, what most people would, as Senator Flood pointed out, consider to be, you see it, or you know it when you see it. It...the slight downside of all this is, I can see a situation where the general public does not understand misdemeanor as most lawyers understand misdemeanors, and that's a whole list of minor crimes that are in the red books. That in this particular case it means something quite different. I can see an ad before an election, a couple days out, if somebody happened to get picked up for a misdemeanor for speeding or something and somebody trying to say, look, if you vote him in, they'll just throw him out anyway. But, hopefully, our electorate is more in tune with its obligations to be informed than that. Thank you, Mr. Chairman. [LR19CA]

SENATOR GLOOR: Thank you, Senator Schumacher. The Chair recognizes Senator Avery. [LR19CA]

SENATOR AVERY: Thank you, Mr. President. I believe the process that we follow in getting an amendment on the ballot involves going to the Exec Board of this Legislature and deciding on the language that will describe what the amendment means and what it does. And there is probably room there for some discussion of misdemeanor that would clarify this for the voters, because the voters, of course, will not have had probably the opportunity to pay attention to the debate on the floor about this issue. But I am certainly willing to meet with Senator Lathrop and Senator Seiler and anyone else who wishes to join us in a discussion between now and Select File as to how we can make it clearer, draw the distinctions between the Criminal Code misdemeanor, and impeachment misdemeanor, as clearly as we can without cluttering the constitution. I think it's important that we maintain the integrity of the Hergert case and the way the Supreme Court interpreted that. I think it's important that we not deviate too far from what the constitution already says about impeachment and we'll keep that in mind when we discuss this between now and Select File. Thank you, Mr. President. [LR19CA]

SENATOR GLOOR: Thank you, Senator Avery. Are there other senators who wish to be recognized? Seeing none, Senator Avery, you're recognized to close on the committee amendment. [LR19CA]

SENATOR AVERY: Thank you, Mr. President. I want to thank my colleagues for what I think was an enlightened discussion of a very important issue. This is a gap in our constitution that needs to be filled. We should not have a process wherein someone can commit misdemeanors in pursuit of the office and then win the office and be

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unaccountable. If those misdemeanors had been committed while in office, they would be accountable. We need to make them accountable for the misconduct in pursuit of the office. I urge you to vote for the amendment and then the underlying bill. Thank you, Mr. President. [LR19CA]

SENATOR GLOOR: Thank you, Senator Avery. The question is, shall the committee amendment to LR19CA be adopted? Those in favor vote aye; those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LR19CA]

CLERK: 33 ayes, 0 nays on adoption of committee amendments. [LR19CA]

SENATOR GLOOR: The amendment is adopted. Discussion on the advancement of LR19CA to E&R Initial continues. Seeing no senators in the queue, Senator Avery, you're recognized to close. [LR19CA]

SENATOR AVERY: Thank you, Mr. President. I will waive closing. I think we've had a thorough discussion of this now. Thank you. [LR19CA]

SENATOR GLOOR: The question is the advancement of LR19CA to E&R Initial. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LR19CA]

CLERK: 34 ayes, 0 nays, Mr. President, on the advancement of LR19CA. [LR19CA]

SENATOR GLOOR: The resolution advances. Mr. Clerk. [LR19CA]

CLERK: Mr. President, the next bill, LB426 by Senator Cornett. (Read title.) Introduced on January 14 of last year. At that time referred to the Revenue Committee, advanced to General File. There are Revenue Committee amendments. (AM928, Legislative Journal page 931, First Session, 2011.) [LB426]

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Cornett, you're recognized to open. [LB426]

SENATOR CORNETT: Good morning, Mr. President and members of the Legislature. LB426 is a bill to provide clarification in state law as to when cities may utilize Sports Arena Financing Assistance Act. As you will recall, a few years ago Senator Lathrop brought us the Sports Arena Financing Assistance Act in order to provide local municipalities with the opportunity to utilize local sales tax dollars to build smaller sports facilities in their cities. Since the passage of the original bill, the city of Ralston has begun construction on their facility and to date, both Omaha Lancers and the Omaha Beef have indicated their plans to occupy that facility. It was the original intent to the legislation to provide cities with a tool. After the passage of the legislation, concerns were raised by the city of Papillion that provisions in the bill as passed would have

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prohibited the city from utilizing the Sports Arena Act. Specifically, there was a provision in the original bill that we are amending today that would have prohibited any city that had originally received a grant from the Local Civic, Cultural and Convention Center Financing Act from ever being able to utilize this new Sports Arena Act. In other words, we included language in the original bill that would have acted as a reverse poison pill to cities that have already obtained funding under the Local Civic, Cultural and Convention Center Financing Act whereby they can never utilize the Sports Arena Act. This legislation would correct the changes present in this bill, and would provide clear language that would prohibit cities from utilizing both, the Sports Arena Facility Financing Act and the Local Civic, Cultural and Convention Center Financing Act for the same project, but would still allow cities who have received the financing for a project under the Local Civic, Cultural and Convention Center Financing Act in the past, to choose to utilize Sports Arena Financing Assistance Act. I appreciate your consideration of LB426 and would be happy to answer any questions you might have. [LB426]

SENATOR GLOOR: Thank you, Senator Cornett. As the Clerk stated, there are amendments from the Revenue Committee. Senator Cornett, as Chairperson of the Revenue Committee, you're recognized to open on the committee amendment. [LB426]

SENATOR CORNETT: Thank you, Mr. President and members of the body. The committee amendment, AM928, would establish the city of a primary class cannot receive funding from the Local Civic, Cultural and Convention Center Financing Act if the city has applied for and received a grant of assistance under the Sports Arena Financing Act. This amendment imposes the same limitations on primary class cities as the current Convention Center Facility Financing Act currently provides. I would respectfully request your support of the committee amendment, AM928, and the underlying bill. [LB426]

SENATOR GLOOR: Thank you, Senator Cornett. (Visitors introduced.) Members, we move to discussion on the amendment, committee amendment to LB426. Are there Senators who wish to be recognized? Seeing none, Senator Cornett, you're recognized to close on your committee amendment. The question is, shall the committee amendment to LB426 be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB426]

CLERK: 32 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB426]

SENATOR GLOOR: The amendment is adopted. Continued discussion on the advancement of LB426 to E&R Initial. Seeing no senators in the queue, Senator Cornett, you're recognized to close on the advancement of LB426. [LB426]

SENATOR CORNETT: Thank you, Mr. President, and thank you, body. This bill

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basically tightens the language down that we currently have in state statute and I appreciate your support. Thank you very much. [LB426]

SENATOR GLOOR: Thank you, Senator Cornett. The question before the body is the advancement of LB426 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB426]

CLERK: 31 ayes, 0 nays, Mr. President, on the advancement of LB426. [LB426]

SENATOR GLOOR: The bill advances. Continuing with General File. Mr. Clerk. [LB426]

CLERK: Mr. President, on LB310, it's a bill by Senator McGill. (Read title.) The bill was introduced on January 12 of 2011, referred to the Judiciary Committee, reported to General File with Judiciary Committee amendments attached, Mr. President. (AM965, Legislative Journal page 956, First Session, 2011.) [LB310]

SENATOR GLOOR: Senator McGill, you're recognized to open on LB310. [LB310]

SENATOR MCGILL: Thank you, Mr. President. The Nebraska Legislature in 1978 found that there was a present and growing need to develop services to lessen and reduce the trauma of domestic abuse. It was at that time that the Legislature defined domestic abuse and created the Domestic Abuse Protection Order, which is one of the few options a victim of domestic abuse has within the legal system. The definition created in 1978 has remained unchanged even though our philosophical understanding of abuse has evolved. Part of the statute defines abuse as placing, by physical menace, another person in fear of imminent bodily injury. Since the time that this definition was created, court's have routinely interpreted this part of the definition to include threats by an abuser to harm his or her intimate partner. Courts could consider the credibility of the threat and the immediate needs of the petitioner. However, a June 2009 Court of Appeals opinion severely limits the trial court's ability to do this. The purpose of this bill is to restore the definition of domestic abuse to its original intent. It modifies the definition of domestic abuse, and the green copy of the bill does a few other things that we are striking out with the committee amendment. But these changes will allow a victim to once again apply for a protection order when there is a threat of bodily injury and if granted, the protection order limits contact between the petitioner and respondent reducing the chance that bodily injury will, in fact, occur. This restores the definition of "abuse" to the original intent of the Legislature when it passed the protection from Domestic Abuse Act. And with that, I ask for your support. Thank you, Mr. President. [LB310]

SENATOR GLOOR: Thank you, Senator McGill. As the Clerk stated, there are amendments from the Judiciary Committee. Senator Ashford, as Chairman of that committee, you're recognized to open on the committee amendment. [LB310]

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SENATOR ASHFORD: Thank you, Mr. President. Senator McGill has brought to us an important bill because the protective order process has, since we passed the original legislation, has become a significant part of a court's time. There are a tremendous number of protection order applications that are filed, and as Senator McGill has suggested is that the issues that arise from these kinds of proceedings are extremely difficult, and in some cases very dangerous kinds of things. All we've done in the committee amendments is take the recommendations from the counties and the bar associations...bar association to give the court really discretion over appointment of attorneys for indigent petitioners. We have struck some provisions that would...the provisions that would limit the court's discretion regarding what can be considered bad faith grounds for the purposes of ordering fees and costs, again giving to the courts the discretion rather than statutorily prescribing those particular matters. Again, the protection order statute is one we hear in our committee about...in our committee every two years or so. It's...it takes a lot of court time. I think we need to make sure that the judges in these amendments...in this amendment have the discretion that they need and that we narrow the scope to what is absolutely necessary as Senator McGill suggests to address the problems that underlie protection orders. Thank you, Mr. President. [LB310]

SENATOR GLOOR: Thank you, Senator Ashford. We now move to discussion. Are there senators who wish to be recognized? Senator Flood, you're recognized. [LB310]

SENATOR FLOOD: Thank you, Mr. President and members. I'd like to have a little discussion about the changes in the bill just so that I can get my hands wrapped around it. And one of the things that we have to remember, protection orders are an absolute necessity for somebody that has got somebody threatening their lives or they've got a pattern of abuse. And what I think I like about what Senator McGill is doing is that not in every case do you have somebody that says, I'm going to kill you, or I'm going to, you know, come over there and I'm going to physically assault you. That's not how they say it, but in those cases it's an easy call for a judge if there's evidence presented to the court. Sometimes an abuser will use economic violence, economic abuse or, you know, different types of ways to intimidate or harass or put fear in the mind of somebody, they'll put a note on their car, windshield, under the wiper. I mean, they can do things that have somebody living in absolute fear of their life without saying, I'm going to kill you. And I think that's where you want to go, am I right? And I guess, I haven't asked her a question yet, but I think...yeah, she nods yes, I accept that. At the same time we have to remember that when people get divorced and a custody fight is looming, sometimes issues that can be less than imminent danger, obviously, when people are going through divorce they don't like each other. There's a reason they're getting a divorce in most cases. And it's because Mom and Dad can't communicate, Mom and Dad can't cooperate as it relates to getting the kids where they need to go and raising the kids or making choices. And when you remove that imminent danger piece, are you

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making the protection order a weapon to be used by one party or the other against each other in a divorce proceeding, because if you get that protection order issued, for up to a year, one party is not going to have any contact with their children. It's a civil proceeding in the district court separate from a divorce proceeding. Now in divorce proceedings, we have restraining orders that don't have the force and effect of an actual protection order, but you can agree on visitation times, and you can restrain one of the parties from having contact with their kids. I'd just like to make sure as we walk down this path that we fully explore what imminent danger is and what it means to back off that language a little bit in this bill. And I'd like...and I know where Senator McGill is going because I've had cases before where I look at the statute and I look at the conduct, and the conduct doesn't rise to the level of the statute, but I know for a fact that this person in my office is absolutely scared for his or her life. And I appreciate that's where Senator McGill wants to go. I just want to make sure that we have our eyes wide open as we talk about protection orders because I think courts will tell you from time to time these are not used for the intended purpose, they're used to gain an advantage in some limited cases by either party. And usually what happens is, somebody files for a protection order, the other party files for a protection order against the other side and you have dueling protection orders and then you go to district court and the judge is the one hearing the divorce, and all this testimony comes in, and I've seen a lot of cases where the judge doesn't grant it. So I want to balance what Senator McGill wants with where I think we're going. And you know I have a experience as a small town practitioner, I'd be interested to hear what other folks have to say that are in the same spot, you know, that have had folks in their office and the issue of protection order comes up. So, I'd just like to have some discussion on this. Thank you, Mr. President. [LB310]

SENATOR GLOOR: Thank you, Senator Flood. Senator McGill, you are recognized. [LB310]

SENATOR MCGILL: Thank you, Mr. President and members of the body. I appreciate everything that Senator Flood had to say, and as we were trying to craft language here that brought the statutes back in line with how they used to be interpreted by the courts, we were careful about what language we tried to use. And I'll give you an example of...or one of the examples that I heard from folks coming forward and wanting this change to be made in light of this 2009 court decision. And that was that a gentleman had told his girlfriend that he was going to beat her with a 2x4. It was a threat but he didn't have it there. Well, she comes home one day and finds a 2x4 in her driveway. You know, that is a physical menacing thing, he's continuing to harass her. And we want to make sure that if it is an ongoing threat, as Speaker Flood was talking about, that we're able to capture that sort of behavior within a protection order because leaving that...saying the words and leaving the 2x4 didn't meet that imminent physical menace that he's going to hit her right then and there with that 2x4. He said it and then he left one there on her porch or in her driveway, and in my mind that fits what a protection

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order should be. By taking out the word "imminent" we did intentionally put in the word "credible" threat. So the statute as it currently reads is, placing by physical menace another person in the fear of imminent bodily injury. The statute would now read, placing by means of credible threat another person in fear of bodily injury. So we took out "imminent" because that is a right there in your face, they're going to hit you right now, and replace it with "credible" threat. If there's other language that would maybe be more fitting, more descriptive of what we're trying to get at, I'd be open to that. But that was the switch-off in words that we used. With that, thank you, Mr. President. [LB310]

SENATOR GLOOR: Thank you, Senator McGill. The Chair recognizes Senator Nelson. [LB310]

SENATOR NELSON: Thank you, Mr. President and members of the body. I have a couple of questions with regard to the amendments that Senator Ashford discussed and would he yield to a question or two. [LB310]

SENATOR GLOOR: Senator Ashford, would you yield? [LB310]

SENATOR ASHFORD: Yes. [LB310]

SENATOR NELSON: Thank you, Senator Ashford. I'm just wondering, the bill as originally introduced provided for appointment of counsel for the indigent person if the other party--responding party--was represented by attorney. Could you discuss why this was taken out? [LB310]

SENATOR ASHFORD: It was really a...primarily a cost issue, Senator Nelson, to be honest. [LB310]

SENATOR NELSON: Okay. [LB310]

SENATOR ASHFORD: And that, you know, the court would still have the discretion to address that issue but it's not a...would not be a statutory requirement. [LB310]

SENATOR NELSON: All right. And then the matter of bad faith. I don't get involved in these much, but who actually hears these cases? Is it a special...someone appointed specially, not a judge necessarily, as far as these protection orders? [LB310]

SENATOR ASHFORD: It's generally a district court judge or county court judge. What they've done in Douglas County is separated, I think, 50-50, 50 percent. We enlarged the jurisdiction of the county court a couple of years ago to enable the county court judges to hear protection order cases. So in Douglas County--I'm not sure about other counties--in Douglas County it's 50-50. [LB310]

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SENATOR NELSON: How do these get assigned then between the two courts? [LB310]

SENATOR ASHFORD: By the clerk. I don't know the process. I don't...I think it's a random sort of thing and a certain number are assigned downstairs and the other 50 percent are assigned upstairs, so. [LB310]

SENATOR NELSON: All right. Thank you very much. That answers it. Thank you, Mr. President. [LB310]

SENATOR GLOOR: Thank you, Senator Nelson. Senator Ashford, you're next in the queue. [LB310]

SENATOR ASHFORD: Thank you and again I don't want to belabor the point because Senator McGill has quite adequately described the reason for the change. The case that we're talking about, the Cloeter case, involved a succession of events that, in and of themselves, each individual event did not necessarily rise to the level of an imminent bodily threat and...but if you read the case, and examine the succession of events that occurred, I think one could reasonably see that this particular person was in fear, and justifiably in fear for herself and her child. And that the imminent bodily physical threat sort of language narrowed, as suggested by the Supreme Court when they overturned the lower court decision on the protective order, did...could in many cases put individuals and their children in jeopardy. We didn't have any opposition to this bill, and quite frankly, I think what we were doing was going back, as Senator McGill has suggested and Senator Flood acknowledges, going back to language or an interpretation of the statutory language which was in play prior to the Cloeter case. You're right, parsing language and getting the right language is challenging, especially in these kinds of cases where each case is a different story and each case can be harrowing, it can be less harrowing, it can be...some of these...and Senator Flood is absolutely right, some of these cases become weapons. These protective or protection orders become weapons for...in a case involving custody of children or the ability to see children. This really is an area where we have been...and this is the point. We could have, and Senator Nelson asked... [LB310]

SENATOR GLOOR: One minute. [LB310]

SENATOR ASHFORD: ...a very good question and that is, why don't we assign these cases to referees or mediators or whatever? And we exclusively do not assign these cases to mediators, and Senator Flood is, Speaker Flood is really the originator of the new Parenting Act. Because of the potential danger we assign these cases to district court judges and county court judges because they do, we believe, have the...it raises it to that level where we want the kinds of decisions that a judge would make. And I think that's why we have done that and not sent it into medication or some other referee system. I get Speaker Flood's point. I think we've parsed the words correctly here and I

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would urge the adoption of the amendment. [LB310]

SENATOR GLOOR: Thank you, Senator Ashford. Senator Flood, you're recognized. [LB310]

SENATOR FLOOD: Thank you, Mr. President and members. I want you to know I do support AM965 and I want to spend a little bit more time on LB310. What I think Senator McGill is getting at, and I appreciate, is that in some of these cases someone who is abusive doesn't need to say, I'm going to kill you, or I'm going to make this hurt. Sometimes they show up in someone's bedroom at 3:00 in the morning because they've got a key to the apartment and they just stand at the end of the bed and they want to talk about what's going on. That happens and that's scary and it's hard to explain why that was imminent threat, you know. Maybe it's a husband and wife going through a marital difficulty time and he's voluntarily agreed to move out of the house. He lives in an apartment but at 3:00 in the morning he shows up. He's been drinking and he shows up and suddenly turns the light on in the bedroom and says, I want to talk to you about this. Now that's unsettling, at the least, and it's scary sometimes when you're trying to communicate why you think you're in danger and all you've got is the facial expression you saw from the person that comes in the room. And that is where Senator McGill wants to go and I can appreciate that. I...when people come in and they say, let's talk about a protection order, I say, well, what has he or what has she ever said to you in terms of this imminent threat of danger? And they can't. And I say, does he ever say, I'm going to come and kill you? No. But I just know with his behavior or her behavior, it's both sides, that something really bad is about to happen. And they are literally in fear. And I leave on a Friday and I think, well, I've got a great weekend ahead of me and I think, that poor person has to sit in fear all weekend hoping to get to Monday and go back to work and get on a routine. So to that end, I think I'm going to support Senator McGill's bill today. I'd like just to have a little bit more discussion between General and Select File on, what are these parameters, credible threat? I appreciate the use of the word "credible." Someone in New York calls me up and harasses me in Norfolk and says, I'm going to come get you, well, they're in New York and I'm in Norfolk. I'm not too worried about an immediate danger, you know. And I don't think it's very credible depending on the situation, you know. So I think we have to put a lot of weight on the word "credible" and my vote for this is going to imply that "credible" is the standard the court has to assign value to, they have to find as legitimate, and a pattern of behavior. And I almost would be interested in having the language added that the court shall look at a pattern of behavior because one day it's the 2x4 laying in the living room. The next day it's no access to your credit cards and the third day it's...I mean, there's all sorts of steps that are taken sometimes by people that are very, very manipulative and they use their ability to be manipulative and use that against the victim. And oftentimes, there isn't physical violence until the very end of one of these relationships, and sometimes that's way too late because of the severity of the beating or the physical violence that occurs or the use of a weapon, whatever it is. But we have to balance the scales of

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justice out to make sure that these are used properly and that by removing "imminent" and using "credible" threat essentially, we're going down a path that judges will still want to see reliable evidence. Now I've had cases before where somebody comes in and they've owned brass knuckles for a long time and they come in and they throw their brass knuckles on the kitchen counter and they've done that for ten years... [LB310]

SENATOR GLOOR: One minute. [LB310]

SENATOR FLOOD: ...because they carry brass knuckles, or they have a knife on them because that's what they've always done. They throw it on the kitchen counter and then the other side says, well, wait a second, he's now putting his knife on the kitchen counter, and the other side says, well, I've always put my knife on the kitchen counter. Well, that's going to have to get sorted out by the court. And maybe when you put the knife on the kitchen counter and you move it across the table and you remind the other person that you have a large knife, that is a credible threat. I think it allows that evidence to come in. But let's be careful here because if we misstep on this, we're going to hear about it for a long time because courts have to weigh out the fact situations. Thank you. [LB310]

SENATOR GLOOR: Thank you, Senator Flood. Senator Louden, you're recognized. [LB310]

SENATOR LOUDEN: Thank you, Mr. President and members of the Unicameral. Would Senator McGill yield for questions? [LB310]

SENATOR GLOOR: Senator McGill, would you yield? [LB310]

SENATOR MCGILL: Yes. [LB310]

SENATOR LOUDEN: Senator, as I've looked this bill over, I presume you support AM965? [LB310]

SENATOR MCGILL: Oh, absolutely. [LB310]

SENATOR LOUDEN: Okay. And what it does, it takes, I guess in the words of a layperson as myself, it takes a ton of new language out of the original bill, is that correct? [LB310]

SENATOR MCGILL: Yes, it does. [LB310]

SENATOR LOUDEN: And then as I look it over there it kind of redefines physical menace, I guess, in the bill there, I think on page 7 or something like that. [LB310]

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SENATOR MCGILL: Yes. [LB310]

SENATOR LOUDEN: And then as I go through the thing where I've seen it has taken out some of the new language, am I correct to say that really the whole gist of this bill is it changes that if somebody violates a protection order, it moves it from a Class I misdemeanor to a Class IV felony. Is that kind of what the bill does with this amendment AM965 tacked on to it? [LB310]

SENATOR MCGILL: Well, the main gist is still the changing of the imminent...taking the word "imminent" out of the statute. That is the main gist of the bill but that is also a part of it. [LB310]

SENATOR LOUDEN: And so, well, as I see what the new language that has been stricken, the amendment and some of the old language that's been replaced, a lot of it is definitions, and the biggest change I see is like I say, the biggest change is where it changes from the Class I misdemeanor to a Class IV felony. That would actually be the biggest change and that is if someone violates a protection order, is that right? [LB310]

SENATOR MCGILL: That is one of the changes. [LB310]

SENATOR LOUDEN: Okay. Thank you. If Senator McGill would wish the rest of my time, I will give it to her and...if she so desires. Thank you, Mr. President. [LB310]

SENATOR GLOOR: Three minutes, Senator McGill. [LB310]

SENATOR MCGILL: All right, thank you, Mr. President. Thank you, Senator Louden. I just want to clarify a little bit that, you know, with...we got here because a court took a closer look at the language than perhaps previous interpretations had allowed. Obviously, this is a change in language but it's actually codifying the common practice found in many trial courts across the state, a practice which ended on June 30, 2009. And so previous to that ruling, many of the cases that we're talking about now, the hypotheticals, were generally accepted under a protection order. But since this court ruling, many of them are not anymore and they have...the courts have seen a drop in the number of granted protection orders, which coincides with this. I can't say that it was caused by this directly but it certainly coincides with it. And so many folks came to us and asking us to, you know, try to find language that went back to that generally accepted interpretation, you know, that course we're using when it comes to protection orders. So with that, I look forward to further discussion and even between now and Select File seeing if...I like Senator Flood's idea about the pattern of behavior because that is key in many of these cases. So perhaps we can include something like that, but hopefully we can find some good language moving forward that really gets to the intent of what a protection order is for. Thank you, Mr. President. [LB310]

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SENATOR GLOOR: Thank you, Senator McGill and Senator Louden. Senator Pirsch, you are recognized. [LB310]

SENATOR PIRSCH: Thank you, members of the body. I, too, am a supporter of the concept of underlying this bill, LB310, and I think it would be very advantageous between now and Select to actually include within the statute a definition of credible threats such that courts and prosecutors and everyone then will have a clear understanding of the standard that is being established. It's, obviously, somewhat of a lesser standard than imminent threat which requires a close proximity. And I think that as we can conceptualize, I think it's very possible that we all are on the same page in terms of what credible threat means. But I think as a matter of good practice, we should establish, if not in definition here, a very clear defined legislative history in terms of floor debate here what means. And I think it's very well to say that it may include a pattern of behavior clearly that's something that we want judges to have a glimpse into when deciding and when we define what credible threat means. And so I say that it...I'm not sure that it's wise to say that that's all encompassing that the past pattern of behavior is totally controlling. There may be a series of facts in this one incident that may be so compelling that you want that to...that a judge would clearly look at that and say it's a credible threat, notwithstanding no prior bad acts. But, certainly, that should be some information that the judge is capable of receiving and utilizing and determining what credible threat means. So on that basis, I'm optimistic that, you know, the issue in terms of this bill has been defined and that we'll be able to craft a solution. Thank you. [LB310]

SENATOR GLOOR: Thank you, Senator Pirsch. The Chair recognizes Senator Flood. Senator Flood, this is your third time. [LB310]

SENATOR FLOOD: Well, and this will be, obviously, my last time on this bill but I guess I would like to have a conversation with Senator McGill regarding the next steps on this bill. [LB310]

SENATOR GLOOR: Senator McGill, would you yield? [LB310]

SENATOR MCGILL: Yes. [LB310]

SENATOR FLOOD: Well, thank you, Senator McGill. I feel strongly this bill should move today. I was hoping that we could kind of--you and I--talk about the steps that we're going to take. Would you be willing to consider maybe in your language in the bill keeping "eminent" threat in there and then have the word "or" and then go "credible". [LB310]

SENATOR MCGILL: I like that. [LB310]

SPEAKER FLOOD: You could have both standards in there and maybe...and fit in the

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pattern. You know, if you do the "credible threat" part, kind of tie it to a pattern of behavior so that if we're using facial expressions or if we're using just the 2x4 sitting in the room with no word, it can be used as part of a bigger picture by the court to say, okay, there's a pattern here. You put your knife against the table the other day, you put a 2X4 there, you canceled all my credit cards, I mean, show different types of behaviors under the credible side. If you would be willing to do that and then define "credible," as Senator Pirsch talked about, I'd just like to see the definition. I don't know that necessarily we have to have it, but it would be nice to kind of talk about what "credible" looks like. And if we don't use it, at least we can put it on the record for legislative history. Would you be willing to kind of do those two things and then show it to some of us and let's talk about it? [LB310]

SENATOR MCGILL: Absolutely. And I'll work with some of the attorneys on the Judiciary Committee to come up with language for "credible" and such. I'm not an attorney, so I'll want some of their help on crafting that. [LB310]

SPEAKER FLOOD: Well, I think that would go a long way. And I'm not saying we have to have all of that in there. I'd just like to see some different ideas or an idea between now and Select File, so when it comes back we got a chance to talk about it. And I think this bill is a good idea. And I think it goes to an issue that exists. And that is if they don't come out and say I'm going to kill you or actually abuse you physically, it's hard to get the court to issue a protection order when someone that's a manipulator is manipulating. And that's where you're going. So I'm okay. Thank you, Mr. President. [LB310]

SENATOR GLOOR: Thank you, Senator Flood and Senator McGill. Seeing no additional senators in the queue, Senator Ashford, you're recognized to close on the committee amendment. [LB310]

SENATOR ASHFORD: I just think the language is just perfect the way it is, Speaker. (Laughter) But as always, those are great suggestions. No, I appreciate the discussion. And I would urge the body adopt the amendment and we can further parse out "credible threat" and define it more specifically to a time and place kind of sequence that Senator Flood is talking about and to clearly set forth the appropriate criteria. And obviously, Senator McGill is agreeable to that. So we can move forward in that manner and have...with some trepidation moving this to Select File with the proper language. With that, I would urge the adoption of AM965. [LB310]

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Thank you, Senator Ashford. You have heard the closing of the Judiciary Committee amendment, AM965. The question before the body is on the adoption of the amendment. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB310]

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CLERK: 37 ayes, 0 nays, Mr. President, on adoption of committee amendments.
[LB310]

PRESIDENT SHEEHY: AM965 is adopted. We'll now return to floor discussion on LB310. Seeing no requests to speak, Senator McGill, you're recognized to close.
[LB310]

SENATOR MCGILL: Thank you, Mr. President, members of the body. I thank everyone for a healthy discussion on the proper language to use in this situation and look forward to working on an amendment between now and Select File. With that, I urge your support of LB310. Thank you. [LB310]

PRESIDENT SHEEHY: Thank you, Senator McGill. You have heard the closing. The question before the body is on the advancement of LB310. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB310]

CLERK: 38 ayes, 0 nays, Mr. President, on the advancement of LB310. [LB310]

PRESIDENT SHEEHY: LB310 advances. Mr. Clerk, do you have items for the record?
[LB310]

CLERK: Mr. President, Urban Affairs Committee offers hearing notice; and new resolution, Senator Christensen, LR384; that will be laid over, Mr. President. That's all that I have. (Legislative Journal page 356.) [LR384]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We'll now proceed to the next item under General File, LB276. [LB276]

CLERK: Mr. President, LB276 is a bill introduced by Senator Council. (Read title.) The bill was introduced January 11 of 2011, referred to the Judiciary Committee. The bill was advanced to General File. At this time I have no amendments to the bill, Mr. President. [LB276]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Council, you're recognized to open on LB276. [LB276]

SENATOR COUNCIL: Thank you, Mr. Lieutenant Governor, colleagues. I would like to begin by reading from an editorial that was published in the January 15, 2012, edition of the Lincoln Journal Star, copies of which I have provided to each of you. And it states, "Today the Lincoln Journal Star editorial board once again presents our yearly agenda. Our aim is to be up-front and clear with readers on our priorities." It goes down and begins, "here's our list for 2012. Number one, The troubled reform of the child welfare

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system needs to be stabilized and given new direction." I want to specifically direct your attention to number two. "It's time for Nebraska to abolish the death penalty. The need has been clear ever since DNA evidence revealed that hundreds of people across the country were on death row because of wrongful convictions. It's impossible for humans to devise a system that eliminates the possibility of error. No one should be willing to execute an innocent person." In fact, no legal system is perfect. Human beings make mistakes. That is one reason we accept the notion that occasionally the guilty will go free and the innocent will be convicted. But I do not believe anyone accepts the notion that it is all right for a person to be wrongfully executed. So with the most respected judicial system in the world, how can we Nebraskans willingly embrace a system which cannot be reversed after it is imposed? And how can we as Nebraskans continue to believe that it is morally acceptable for the state to take a human life? The Lincoln Journal Star's editorial board is not alone in recognizing the need to repeal the death penalty. I would also like to take this opportunity to read to you from an editorial published in the Wichita, Kansas, Eagle, it was published March 11, 2011, and it's entitled "Rethink Death Penalty." It begins, Illinois' abolition of the death penalty this week ought to motivate Kansas to take another look at its own flawed death penalty law which has yet to be carried out after 17 years but is costing Kansans a bundle. Illinois, where 20 people were sent to death row and later found to have been innocent or otherwise improperly convicted, becomes the fourth state to abandon the ultimate punishment over the past decade and the sixteenth state without a death penalty. According to then Governor of Illinois, since our experience has shown that there is no way to design a perfect death penalty system free from the numerous flaws that can lead to wrongful convictions or discriminatory treatment, I have concluded that the proper course of action is to abolish the death penalty. Besides being less than 100 percent accurate, the Governor said, the law was being applied too arbitrarily from one Illinois case and county to the next. An issue in Kansas as well. If Kansas's death penalty isn't as seriously broken as the one now taken off the books in Illinois, it certainly isn't working. A dozen men have been sentenced to death in Kansas, and nine of those sentences stand but are far from being carried out. The state hasn't executed anyone since 1965. At a time when Kansas lawmakers should be eager to consider all options to reduce spending, a repeal of capital punishment should have an additional appeal. Death penalty cases costs the state a half a million dollars more each or 70 percent more to pursue than a nondeath penalty case. The editorial concluded, with a recent national poll showing that two-thirds of voters nationally wouldn't hold a vote to repeal the death penalty against any lawmaker, Kansas legislators shouldn't be afraid to consider whether capital punishment is right for Kansas. I submit to you, colleagues, I could go through this editorial and everywhere there's a reference to Kansas I could substitute Nebraska and it would apply equally. For example, look at our own flawed death penalty law which has not been carried out in 17 years. Same case in Kansas, same case in Nebraska. And while that editorial referenced what was occurring in Illinois, where 20 people had been sent to death row who were later found to be innocent or otherwise improperly convicted, while in Nebraska we don't have cases

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where innocent people have been sent to death row, we certainly have cases where innocent people have been wrongfully convicted and indeed the death penalty was used to accomplish those wrongful convictions. As stated in the Lincoln Journal Star editorial, the existence of the death penalty distorts the criminal justice system. The case of the Beatrice Six, who were released after serving time for a murder in which they were not involved, demonstrated how the threat of the death penalty can be used to wring false confessions from suspects. We also need only look at the case of the tragic death of the Murdock farm family, where confessions were coerced from two nephews of that farm family. And that wasn't enough that the coercions were confessed, we compounded that tragedy when the CSI investigator from Douglas County thought he need to buttress the case against these young men, who had been falsely charged, by planting blood evidence to link them to a crime that they had not committed. That planting of evidence resulted in the conviction of that CSI investigator, but it reveals the flaws in our criminal justice system. Our system is not an infallible system. Mistakes are made. And as was stated by the Wichita Eagle editorial board, it is free from the numerous flaws that can lead to wrongful conviction or discriminatory treatment. When last we discussed the death penalty, I reminded this body of an example of such discriminatory treatment and I trust that the individuals involved in the jury in this case, if you were to ask them, they would be the first to deny any discriminatory intent or purpose. But the flaws in the system, people are quick to say we have a jury system, we have a three-judge panel system. Well, the jury in Brittany Williams case failed her and her family when the jury in that case concluded that the perpetrator in that case had consumed enough alcohol that he couldn't form the intent to kill. [LB276]

PRESIDENT SHEEHY: One minute. [LB276]

SENATOR COUNCIL: Now that, in view of the evidence that he got up in his home, he dressed himself in Army commando clothing, got into his vehicle with a high-powered rifle, with a high-powered scope, drove to a location hundreds of yards away from the Taco Bell drive-through and waited till this innocent young woman pulled into the drive-through, who happened to be African-American, and this gentleman was mad at African-Americans that day because of a football game, and he took her life by blowing her head off. But the jury there didn't see any intent to kill. Our system is flawed. And finally, just as the Wichita Eagle said, substitute Nebraska for Kansas,... [LB276]

PRESIDENT SHEEHY: Time, Senator. [LB276]

SENATOR COUNCIL: Thank you. [LB276]

PRESIDENT SHEEHY: Thank you, Senator Council. (Visitors introduced.) Members, you have heard the opening to LB276. Members requesting to speak are Senator Flood, followed by Senator Harms, Senator Coash, Senator Ashford, Senator Nordquist, and Senator Council. Senator Flood. [LB276]

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SPEAKER FLOOD: Thank you, Mr. President. Good morning, members. You know, I want to start by saying I recognize and respect that each of you has your own deep-seated beliefs about whether or not the state of Nebraska should have the death penalty. And I've worked with folks in here that have opposed it at their very core. And I want to be clear, everyone is entitled to their own opinion on this. And I respect you regardless of whether you have my position or not. And I would hope, as Senator Council and I have had before and especially as your Speaker, that this debate will be on a high level and it will be on a high level especially in light of the fact that we are talking about a state action on whether or not a person should live or die following criminal conduct. There is no issue greater that we will work on as members in the Legislature but this one. And I intend to conduct myself, as I'm sure Senator Council will, in a way that certainly makes our points but understands the gravity of the situation. And we have enough new members and we haven't discussed this for two years. And what Senator Council did is she stood up, as she has done eloquently before, and she points out flaws in the system. I come from Madison County. And I'll tell you something, there were no mistakes made on what happened in that bank in 2002. Those three men walked in under the cameras with video surveillance and slaughtered five people. I'm not going to recount exactly how it happened. I think it speaks for itself. Some of those killers killed for sport and fun beforehand. And there's one of them sitting on death row, Jose Sandoval, who has at least seven murders to his name. These are vicious, obnoxious folks that have committed the most heinous of crimes and deserve the death penalty. No mistake was made on who did that in that bank that day. The process worked. Law enforcement responded. The county attorney took the case, jury was selected, separate trials were held, aggravators were found, in fact multiple aggravators on each one of those defendants, a three-judge panel was convened, Ring v. Arizona was followed, and death was the sentence. Three of those folks on death row are from Madison County. And if that doesn't impact your opinion of the death penalty, I don't know what does. Seven people were killed by Jose Sandoval. He is an absolute threat to public safety and, quite frankly, having him in the prison with folks like Mr. Dunster who's already killed before in prison, think about your prison guards, think about the safety of the other inmates. The death penalty, while a very serious state action, is a deterrent. I've referenced this before and I'm going to hand this out as soon as I get enough copies made, from the Honorable Paul Cassell. It's called "In Defense of the Death Penalty." And he's been at the faculty of the Utah law school. He was a U.S. District Court Judge for the District of Utah, and '07 he resigned his judicial position to return full-time to the Utah law school. And he talks about general and specific deterrence, which I think is something we have to think about. He talks about the fact that by imposing just punishment,... [LB276]

PRESIDENT SHEEHY: One minute. [LB276]

SPEAKER FLOOD: ...civilized society expresses its sense of revulsion towards those

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who, by violating its laws, have not only harmed individuals but weakened the bonds that hold communities together. It was to control the natural human impulse to seek revenge and more broadly to give expression to the deeply held view that some conduct deserves punishment that criminal laws administered by the state were established. The death penalty is a deterrent, it's a specific deterrent when somebody thinks about committing an action. If I were to do that I would get put to death by the state of Nebraska. It's also a general deterrent. It governs our behavior daily. It governs the behavior of those who engage in criminal activity where they're working with guns. There's a reason some of these older gang members go out and find a 14 year old to commit some of the most serious crimes. [LB276]

PRESIDENT SHEEHY: Time, Senator. Time, Senator. [LB276]

SPEAKER FLOOD: Thank you, Mr. President. [LB276]

PRESIDENT SHEEHY: Thank you, Senator Flood. Senator Harms. [LB276]

SENATOR HARMS: Thank you, Mr. President and colleagues. I rise in opposition of LB276. And I agree with Senator Flood when he says that all of us have our own beliefs and thoughts about this. But every time I get up to discuss this my stomach churns. And let me just talk to you a little bit about why that is. First of all, 73 percent of the people in this great state, the last survey I looked at that was done when we had one of these debates, support the death penalty in this great state. We do have support for this. And Nebraskans want it, what people who commit heinous crimes treated appropriately. Do you realize that 34 states including the United States government and the U.S. Military have death as an available criminal punishment? The United States Supreme Court and the Nebraska Supreme Court have never questioned, have never questioned the constitutionality of death as a criminal punishment in cases meeting the requirements by the Nebraska current statutes. Life imprisonment, colleagues, just does not make it right when someone has imposed more than one murder or has committed heinous crimes. Let me give you some examples of that. Senator Flood deferred or referred to this particular individual, David Dunster was already serving a life sentence when he committed two murders. And while he was in prison he committed another murder. He didn't care about life. I don't think we should keep him in there. It's wrong. What about those who torture their victims to a point that it's just unbelievable? Harold Ote spent hours torturing his victim. After raping this victim vaginally and anally he stabbed her at least 15 times. He hit her on the head and hammered multiple times. And finally, he strangled her to death. What about Michael Ryan who took three days to torture his victim to death for his disloyalty to Ryan's cult. Before caving his chest in with a cowboy boot and killing the victim, Ryan shoved a large shovel handle into this man's rectum, lashed him with a leather whip, shot off his fingers and left his hands and his legs broken and then took a razor to try to carve the skin off. What about people who murder children? I have two of those in my community and I can tell you every time I discuss

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this on this floor it saddens me almost to the point I have difficulty getting through it. Raymond Mata killed a young boy. He kidnapped and killed this three year old Adam Gomez who was the son of his girlfriend. He cut this little boy's body up. He kept parts as a trophy. In fact, he cut the little boy's head off, wrapped it up in a tape and put it above his bed in the attic. Then he tried to flush the rest of it down the toilet and then he fed the rest to the dog. Jeffrey Hessler in my community kidnapped Heather Gomez, a 15-year-old who was finishing her paper route. He took her out to the country, he raped her in an abandoned building, half her clothes on, he tied her hands and he shot her execution-style. You know what he did when he went home, colleagues? You know what he did? He went to bed and he listened to the scanner and fell asleep. There was no remorse. He didn't care. Colleagues, I can go on and give you other examples. I won't do that. [LB276]

PRESIDENT SHEEHY: One minute. [LB276]

SENATOR HARMS: Thank you. The death penalty, according to what Senator Flood mentioned, I support what he said. The death penalty should be maintained for two reasons. First, as Senator Flood said, it is a deterrence. There are studies that have brought forward that show this. In the 2003 "American Law and Economic Review" they said, you know what, if you have the death penalty you will discourage at least 15 murders in your state. That's supported by a 2006 standard law review article that said the same thing, that it is a deterrent. People will not commit it knowing the fact that they could have the death penalty. So what I'm here saying to you in closure, colleagues, for the first discussion on this floor, and I'll be back, there are some crimes that are so heinous there's no other choice but death. And I just gave you some examples of that. What about the two children in western Nebraska that lost their lives? They never... [LB276]

PRESIDENT SHEEHY: Time, Senator. [LB276]

SENATOR HARMS: ...got the opportunity to grow up. They never got the chance to graduate. [LB276]

PRESIDENT SHEEHY: Time, Senator. Time, Senator. Senator Coash. [LB276]

SENATOR COASH: Thank you, Mr. President. I want to weigh in on this. I've been sitting on the Judiciary Committee since I've been here. And this issue has come up just about every year I've been there. And you certainly get to hear from folks that have the same viewpoint as Senator Flood, Senator Harms. But there's another viewpoint that doesn't get a lot of talk here and that is the viewpoint of the victim's. And I want to...I'm going to agree with Senator Flood on something. Jose Sandoval deserves the death penalty, but he will not get it. The victims of those crimes they deserve justice. And if the death penalty is the mechanism to that justice, they will be waiting because it will not

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happen. We are done executing folks in this state. You see what happens? This gets litigated and litigated and litigated. We get drugs, can't use the drugs, can't find the drugs to use to put this current law in force. And there's been a lot of talk about well, what about the victims? What do you think happens to a victim, their family when they see a date and they say, thank God, on this date I'm going to get some closure. I can finally go to sleep at night knowing that, although it won't bring my loved one back, justice has been served. Then that date comes, then that day goes. And in the media all we hear about are the murderers. We don't hear about the effect that all of these appeals have on the families. Senator Harms mentioned Michael Ryan. I had the privilege of speaking to his victims' sister. Here's what she said, every hearing, every appeal and every attempt to execute Michael Ryan puts him prominently in the news. And I tried to tell my son, even though the media in the state in effect make Michael Ryan a household name while his uncle remains in the background, practically forgotten. Every time state senators defend the use of the death penalty, they again recount the gruesome details of my brother's murder to their advantage with no regard for how it further traumatizes my family. If Jim's murderer had received life in prison without the possibility of parole over 25 years ago, we would likely have never heard of Michael Ryan's name again or ever seen his face. We would have been able to mourn Jim's loss as a family and recount our positive memories of him together. One of the most troubling things I've seen is that states spend an enormous amount of money, time, and resources trying to pursue execution while providing virtually no support to the families of the victims. This is one victim's viewpoint. I don't pretend to think that it is every victims' viewpoint. They want justice. They expect us to put mechanisms in place that allow for that justice to occur. And we as a state say we're going... [LB276]

PRESIDENT SHEEHY: One minute. [LB276]

SENATOR COASH: ...to execute you, but we never do it. And I don't believe we ever will. And so we'll talk about murderers, we'll talk about their crimes. And in the meantime the victims of these crimes wait for justice that will never come. Colleagues, I don't believe we will ever execute another person in this state whether or not LB276 becomes law or not. But the lawyers will be happy about it. And by the way, colleagues, we fund both sides of this, we defend them and we prosecute them. And it's Nebraska citizens who pick up the bill on both sides. Thank you, Mr. President. [LB276]

PRESIDENT SHEEHY: Thank you, Senator Coash. Senator Ashford. [LB276]

SENATOR ASHFORD: Thank you, Mr. Lieutenant Governor. I really don't believe I can do any better than Senator Coash. He has I think in a very effective way related the reality of the death penalty in this country. The...years ago, and I've had I don't know how many times I've voted on this measure. Personally, I favor the death penalty for the killing of a police officer, a prison guard, or treason. That's what I think is appropriate. I think those are clearly defined kinds of punishments that go to the order of our society. I

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voted that way years ago when the death penalty came up. We haven't had that specific measure before this body since that time I don't believe. But I could vote for that. The...John Paul Stevens, who recently retired from the U.S. Supreme Court, last year wrote in the New York Review of Books, an expose of the death penalty over the last many, many years and during his time on the Supreme Court. And Justice Stevens, and I commend this article and I'll hand it out later. But I commend this article to anybody that wants to wonder why we are where we are on death penalty cases. And Senator Coash has so very adequately and accurately explained why we are where we are. It may be that we may execute somebody in Nebraska in the next 10 or 15 or 20 years. It may happen, Senator Coash. I don't know. It may happen in the next five years. It's highly unlikely, however, that we will execute the 11 persons on death row in Nebraska, in fact it isn't going to happen for a variety of reasons. What Justice Stevens talks about is his career in the Supreme Court and the numbers of cases that he heard as a justice that went one way or another on a particular death penalty case, restricting the death penalty in a variety of cases, such as rape and juveniles, and narrowing the criteria that could be utilized in selecting a jury for a death penalty case. And he concludes after all of his years on the bench, and many of these cases since Furman v. Georgia, in the seventies when the death penalty was held to be unconstitutional, have moved us in that direction again, even though the court has allowed for death penalty cases since that time. The process has been generally to restrict the death penalty. So no matter how mad...and there is no more thoughtful and caring person in this body than Senator Harms. And he's right, there is no excuse on earth anywhere for the acts that were committed by, in the case in western Nebraska or in Norfolk. But if we're going to have a judicial system or a justice system in this state that has some degree of finality so that...and Senator Coash is absolutely right, we have heard the testimony from so many victims' families, obviously the victims are no longer with us, the families though are with us. And we have heard from so many of these victims' families who have said, please, please life imprisonment without parole, stop this. Clearly, the death penalty, as John Paul Stevens says, is a matter of political discourse. Politicians talk about it, others talk about it, the media spends a great deal of time on this issue as a particular execution gets closer... [LB276]

PRESIDENT SHEEHY: One minute. [LB276]

SENATOR ASHFORD: ...and then it is postponed, and it gets closer, then it's postponed. But as Justice Stevens concludes, that is not a reason for the death penalty in a free society. And we have to come up with a better one. There is no deterrence to the death penalty. Homicides in Omaha, Nebraska, do not relate to the death penalty whatsoever. Only 78 persons were executed last year in this country, despite the fact that there are thousands of people that have been convicted of very serious homicides. It just, as Justice Stevens so eloquently argues, does not fill the need of the victim, of course the victim is gone, the victims' families, it is expensive, it is much more expensive than a normal case. With that, Mr. Lieutenant Governor, I urge this body to

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advance this bill. [LB276]

PRESIDENT SHEEHY: Time, Senator. [LB276]

SENATOR ASHFORD: Thank you. [LB276]

PRESIDENT SHEEHY: Thank you, Senator Ashford. Senator Nordquist. [LB276]

SENATOR NORDQUIST: Thank you, Mr. President and members. I rise in strong support of LB276. And I think it's absolutely critical that as we have this discussion today that we try to set aside the emotion. We certainly as individuals know the pain that people in our state have gone through because of some actions of the guilty. And it's easy for us as individuals to seek retribution and revenge. But as a society we should not be going down that road. Government should not be in the business of revenge. This is a discussion about government being able to take the life of a human being. We heard discussion about the concerns over public safety. And while that certainly may be true, I think we need to look at our correction system and how we can make this system safer if there is concerns about public safety for two reasons. First, we know on average it's almost 16 years from the time of the sentence to execution, that those sentenced to death will sit on death row. So if there is that kind of concern for public safety, then we need to address it because they're going to be there for 16 years on average. Secondly, the study that our own state commissioned in 2002 to look at our system of sentencing, while we do a fairly good job, they did highlight that there is some discriminating nature in our system when it comes to sentencing the most culpable, sentencing the worst of the worst. We are not always sentencing the worst of the worst to death. So that means there are some remaining in our system that are not sentenced to death that are just as dangerous. So again, if we have people sentenced to death sitting in our system for 16 years and we have people who are just as dangerous sitting there with a life sentence and there's a concern for public safety, then we should be addressing that concern by reforms that are needed to our correction system. We heard a discussion about this being a deterrent. And there certainly are studies probably on both sides. There's evidence that...the numbers speak for themselves when you look at this as a deterrent, specifically when you break it down by regions in our country. The south has the highest murder rate in the country and they are responsible for 80 percent of the executions in the country. So, I mean, (laugh) 80 percent of the executions are happening in the area where have the most murders. Those are the facts. I don't...the facts show that this is not a deterrent. And I hate to make light of this issue by talking about the financial picture, but it's certainly something we have to consider as policymakers. When the bill came before us a couple years ago to move to lethal injection we were told that it would have a zero fiscal note, no cost to it. Well, we know that certainly wasn't the case. We've seen the costs add up over the past couple of years. And we can look at our neighbor of Kansas who's legislative audit said death penalty cases were 70 percent more expensive,... [LB276]

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PRESIDENT SHEEHY: One minute. [LB276]

SENATOR NORDQUIST: ...Tennessee said 48 percent more expensive, state of Maryland said death penalty cases are three times the cost, Florida spends over \$51 million a year on death penalty cases, California spends \$137 million and said it would just cost \$11.5 million for a system without the death penalty. But much more important than that is if we are truly going to move forward to create a culture of life in this state, the culture that says every human life is precious and a gift from God, even those that trespass against us and trespass against society. They chose not to respect life, but it's up to us as policymakers to set the policy and say, yes, we as a state, we as a society are going to respect all life. [LB276]

PRESIDENT SHEEHY: Time, Senator. [LB276]

SENATOR NORDQUIST: Thank you. [LB276]

PRESIDENT SHEEHY: Thank you, Senator Nordquist. Members requesting to speak on LB276: Senator Council, followed by Senator Flood, Senator Krist, Senator McGill, Senator Harms, Senator Lathrop. Senator Council. [LB276]

SENATOR COUNCIL: Thank you, Mr. Lieutenant Governor. And I look forward to this debate and I anticipated what the arguments would be. And I respect the position taken by those because they have not wavered from their positions. We are quick to note the most heinous incidents of homicide in this state while ignoring the number of homicides in this state, which gets to the very point and establishes the arbitrariness and the capriciousness of the application of the death penalty in this state. The capriciousness is evident from county to county within the state of Nebraska whether a death penalty case is prosecuted or not. In many instances, and although I could not convince my colleagues let's study the cost of the death penalty, that drives the decisions on how people are prosecuted in this state. And we don't believe that the death penalty has an impact on the way justice is delivered. And let's talk about justice because, as Senator Coash stated, what this body ought to be seeking is a means of providing justice, justice to the victim, justice to their family. If you'll harken back to what Senator Flood said in his remarks about the death penalty and how we've got to where the death penalty is in this country, I hope you didn't ignore the use of the word "revenge" because revenge is not justice. And the death penalty, if that's how we view it, if that's how we intend it to be applied, is merely state sanctioned revenge. That's not justice. As Senator Coash said, if we're talking about justice, the death penalty more often than not results in justice denied. I find it interesting that both Senator Flood and Senator Harms made reference to David Dunster. Yes, David Dunster was on death row. Yes, David Dunster committed two homicides. Yes, David Dunster while he was incarcerated committed another. But David Dunster committed those offenses outside the state of Nebraska. And we're so

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concerned about the threat that these individuals pose inside and outside, someone should be asking, why did we accept a transfer of David Dunster into our penal system? He wasn't convicted in a court in Nebraska. But more importantly, ladies and gentlemen, David Dunster is dead. David Dunster died while sitting on death row. David Dunster joins a number of individuals who in this state have been convicted and sentenced to death and died while on death row. One of those individuals was the subject of a Nebraska Supreme Court on the whole issue of the death penalty, Mr. Palmer died on death row. We haven't executed anyone in this state in 17 years. The application of the death penalty in this state, if you don't believe it's arbitrary and capricious look at the numbers. Senator Ashford referred to the national numbers. Let's look at our numbers. [LB276]

PRESIDENT SHEEHY: One minute. [LB276]

SENATOR COUNCIL: There are already 11 people on death row in Nebraska. There are more than 200 people in our penal system who took the life of another. And if you really honestly believe that before those people committed the crime they stopped and thought, hmm, if I don't try to hide the body I won't get the death penalty, so I can kill them; if I don't try to torture them I won't get the death penalty, so I can kill them. John Joubert committed most of his offenses right along the banks of the Missouri River. Do you honestly think he thought about the death penalty? If he did, all he had to do was cross the South Omaha Bridge and go into Iowa where there's no death penalty. Law enforcement, criminal justice researchers all have established that the greatest deterrent of crime is the fear of getting caught, not their punishment. Senator Nordquist referred to the data. I've given it to you before. States with the death penalty have higher homicide rates than states without. [LB276]

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator Council. Senator Flood. [LB276]

SPEAKER FLOOD: Thank you, Mr. President, members. I want to correct something I think Senator Council said that David Dunster didn't kill anybody in Nebraska. On May 10, 1997, while a prisoner inside the state of Nebraska, he strangled his cellmate with an electrical cord and he strangled him until he died. And when asked about it he said, yes, I used an extension cord, wrapped it around his neck, and I won't read the rest. And he had previously been...he had previously killed one of his cellmates in the state of Montana, and his first murder was in the state of Oregon. So David Dunster did kill somebody in Nebraska and he belonged on death row. Senator Coash talked to you about the article that Senator Council sent out talking about the victims. And I really don't like to talk about everything that happened inside that bank because to a large extent he's right. We don't want to in any way, in a perverse way to make these folks public figures. But is Senator Coash against the death penalty or is he against the delay? Because, Senator Coash, if you're against the delay, you're part of government,

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I'm part of government. And government achieves our government goals when we pass laws and set up a structure that sentences of criminals are carried out. So if you're for the death penalty and against the delay, join us and let's work through this. Senator Coash also talked about, as I mentioned, that victims' family from Beatrice. Let me read you what Bill's son said, January 29, 2009, at the hearing on LB36 from Senator Council that would have repealed the death penalty. I'm going to read it in its entirety.

"Chairman Ashford, Senators, good afternoon. My name is Bill Sun and I am a victim. My father, Samuel Sun, was a victim. He was in the bank in Norfolk when those murders occurred. I think it's important that you know he's not just one of the "Norfolk Seven." His name was Samuel Sun. He was my father. He was a resident, a citizen of the state of Nebraska. I heard earlier, Senator Lathrop, I think you brought up the closure aspect, and actually I'm glad that you did, because you're right. It's not about closure. I don't wake up every day, thinking I hope the sentence is carried out so I can have closure. What gets me through every day is the hope that the system will work. The system, as it was in place at that time, allowed for the death penalty. As it stands now, we have no way of carrying that out." Remember, this was in 2009. "It is my hope that this bill be advanced to allow for the sentence to be carried out." This was my bill I guess on lethal injection. "Again, I'm not looking for closure. Nothing here, nothing that you can do will give me closure. Jose Sandoval and his associates murdered my father, Samuel Sun. They planned this in advance and they carried it out. They were caught in Nebraska. They were tried in Nebraska. They were found guilty by a jury of their peers, citizens of Nebraska. They were sentenced by a three-judge panel made up of judges from Nebraska. And I would remind you that, at that time, the death penalty was the ultimate punishment. It is unthinkable that Nebraska citizens can make a judgment, that judges can make a judgment, and then have the state ignore it by a loophole." That was Samuel (sic) Sun, the son of one of those killed in the bank. It was also brought up by Senator Nordquist and by Senator Council that this is about revenge. You find me a criminal treatise in any American law school that doesn't list the four reasons for criminal sanctions. And those four reasons universally accepted are: public safety, deterrence, retribution, rehabilitation. Why does anybody go to county jail? Why does anybody... [LB276]

PRESIDENT SHEEHY: One minute. [LB276]

SPEAKER FLOOD: ...go to prison? Certainly, it's for public safety in a lot of cases, but retribution is part of the criminal process in America. I've never denied it, I will never deny it, it's part of what makes the justice system work, because if there's not an element of retribution then citizens who don't believe in the rule of law, in countries like Somalia and other less developed countries, they take justice into their own hands and they take the life of somebody else, like Nebraska might have done in the 1880s when it was the Wild West. What I'm talking about here is a system that embraces justice, that embraces evidence, that embraces a process where the citizens can channel their disgust for the worst behavior through a criminal court process that renders the most

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ultimate penalty for those who deserve it. Thank you, Mr. President. [LB276]

PRESIDENT SHEEHY: Thank you, Senator Flood. Senator Krist. [LB276]

SENATOR KRIST: Good morning, Nebraska. Good morning, colleagues. I'd like to provide a little bit of a different perspective. I lived for most of my life under a different code, the Uniform Code of Military Justice. In that code it is referred to by those who know it well as guilty until proven innocent. You see, it's almost exactly the opposite of our system in the United States in the fact that when you are charged you assume that the individuals charged are charged for valid reasons and you ask for a court-marshal or a hearing to prove yourself innocent. The difference between the Uniform Code of Military Justice and what we're seeing today, at least with regards to the death penalty, is a lack of resolve. We have a law in the state of Nebraska that says for certain crimes, those crimes of heinous behavior, the result is death by lethal injection. We in the government have not done our job to make sure that that is executed in a proper, expeditious manner. So let's not confuse the argument. In most cases what I've heard so far it's not about whether it needs to be done, whether it should be done. This is like an abortion issue, folks, you're either pro or you are against it and I understand that. But most of the arguments that I have heard have been, oh my gosh, let's not carry this out for a long time, it will never happen in the state of Nebraska. Whose fault is that? That's our fault. Find the drug that we need to do what the law says we need to do, have the resolve to follow through. Then let's look at the statistics, then let's look at what happens in deterrence. Because I can tell you what happens in the Uniform Code of Military Justice as it applies to members of your military service when the punishment is carried out in an expeditious manner and the guns fire. There is a deterrence. And I know there are many of you sitting there saying, Senator Krist, (laugh) how can you be so callous? When you take the life of someone in a way that's been described, when you commit treason, as Senator Ashford said, in my former world it was swift, it was just, and it was a funeral possibly because that person created the same kind of injustice and they are also in the ground six feet under. It is not that the system is wrong. I believe sincerely in the death penalty for the most heinous crimes. And that is my belief and you can't change that. It's like many of you believe or don't believe in other things. It is our lack of resolve to follow through. And we're going to have this debate until the Attorney General and other folks in this state solve the problem. The problem is swift justice where justice has been found, where the penalty is death by lethal injection. Thank you. [LB276]

PRESIDENT SHEEHY: Thank you, Senator Krist. Senator McGill. [LB276]

SENATOR MCGILL: Thank you, Mr. President, members of the body. The problem is that people commit murders in the first place. And the problem is that we don't treat all of them the same way and we expect that something like the death penalty will deter them or I would argue that if somebody cuts off the head of a child and puts it up as a trophy and listens to a scanner they're certainly not thinking about the deterrent factor

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and what kind of crime (sic) they're going to get. They're out of their mind, they're screwed up individuals whom I can't even describe on the mike in a public manner and use the language that I want to use. But for those victims, and I've seen the video from the Norfolk bank robbery because I was a reporter during that time period. And it did change my mind for a while from being morally opposed to the death penalty to supporting it in some cases such as that bank robbery. But then I come here and I hear about all of the other murders that take place in Nebraska in which the people don't get the death penalty, and I look at the other states that don't have the death penalty and have lower murder rates, and it caused me to second guess that opinion I had, an opinion that was based on an emotional reaction to seeing that video. When at the end of the day for victims if your loved one's been murdered, they've been murdered. It doesn't matter if they were killed in a bank robbery or mutilated or shot in north Omaha or a victim of domestic violence, that family loses a loved one. What about the victims of all those other murders? They haven't gotten that same retribution or revenge of having that murderer be on death row, and they've still lost their loved one. If we really want the death penalty to be a deterrent we should just put it there for everyone who commits murder and have true justice for all those murder victim families. One thing that I think is very wonderful about Senator Council's bill is she has language in there to help victims' families with the pain and suffering that comes from the loss of a loved one. We could be spending all of this money and all of this time helping those families with counseling, helping them find some value moving forward in life instead of making them rehash over and over again the details of what happened to their loved one, as Senator Coash put forward. As much as we like to sit here and say we can speed up the process and do things to fix it, come on. Look at what's happening nationally and globally in terms of the death penalty. There are going to continue to be tons of lawsuits while we sit and let dozens of shootings happen in north Omaha, not doing anything to stop those problems, and those people aren't the type who are going to get the death penalty. We could be putting our dollars and our energy into different programs to help prevent violent crime and to help the victims truly cope with the experience that they've gone through. Thank you, Mr. President. [LB276]

PRESIDENT SHEEHY: Thank you, Senator McGill. Senator Harms. [LB276]

SENATOR HARMS: Thank you, Mr. President and colleagues. Senator Council, I just want you to understand that my comments today on this particular issue has nothing to do with you personally. And I have admired and respected you since you've come. You've been a great contributor. And so I think it's just the issue that we're at, this will be one that we will always probably agree that we will disagree. And probably tomorrow we'll be supporting some of the same legislation. So I appreciate you at accepting that. You know what, I talked to a lot of people in my community. And when we talk about the death penalty their first question to me is, why do we have so many appeals? If you really want to bring justice to this, you really want to move this thing along, you're so much concerned that we let these people stay on death row, maybe we ought to be

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talking about limiting appeals. I'm not an attorney and I don't know whether that's legal or not but it seems to me just as common sense. We would then be able to address these issue. These people would not be on death row for so long. We could move this process along. You know, when I think about the issues that we are confronted with I can't imagine what it would be like for me to go home and talk to Adam Gomez's mother and Heather Guerrero's parents, who by the way are wonderful people, and say, you know what, we've just taken care of the issue for the murder of both of your daughters (sic), we gave them life imprisonment. Somehow those crimes were so heinous I have...I find it hard to be able to...to even be able to do that. You know, colleagues, under the Nebraska law there is absolutely no difference between life sentence without possibility of, excuse me, without possibility or parole and life sentence for first degree murderers. Is there something wrong with that? I think there is something wrong with that. If life without possibility of parole were to replace death as a maximum punishment for first degree murder, the maximum minimal penalties for first degree murder would be exactly the same. What's wrong with that picture? There's a difference, there's a difference in the crimes. Under the current law, Nebraska...under the current Nebraska law, no prisoner sentenced to life imprisonment is eligible for parole. Life without parole will not stop the endless appeals and the cost of the state. And that's what I was talking about earlier. While a lot of authorities are saying, Nebraska, you give them too many opportunities for appeal. Why don't we limit those appeals so we can move this process along. With DNA today, there's no excuse for us putting someone to death wrongfully. We know that that's there. We know that is...I'm not sure it's completely foolproof, but at least it's there, we have that opportunity. I really believe, colleagues, that this issue is one that, as I said earlier in my testimony, that 73 percent of the people in Nebraska still support it. And if you go back to where I live in western Nebraska, I would say that that percentage is even much higher than that. They believe that if you take someone's life you should pay the penalty. And so I would urge you to not vote in favor of LB276 and not support the loss of the death penalty. Thank you, Mr. President. [LB276]

PRESIDENT SHEEHY: Thank you, Senator Harms. Members requesting to speak on LB276, we have Senator Lathrop, followed by Senator Nordquist, Senator Council, Senator Karpisek, and Senator Smith. Senator Lathrop. [LB276]

SENATOR LATHROP: Thank you, Mr. President and colleagues. Good morning. My instinct as a lawyer is to stand up and refute many of arguments that we've heard, to point out the breach in logic that follows support of the death penalty. I've done that. This bill has been before the Legislature a number of times since I've been here. And I've heard the same people make the same arguments and we'll probably see the same vote. So today I think I'll use my time to talk to you about my vote. You know, I watch, we begin every session with a prayer, and during election time everybody clamors to be labeled pro-life. What does it mean to be pro-life? I was raised a Catholic. My moral compass has been set by my faith. My faith teaches me to respect the dignity of every single life, not the ones that are politically popular, not to go with the majority, but to

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respect every single life. That's my moral compass. It means that I care about the unborn, it means I care about the developmentally disabled, it means I care whether somebody who is poor has something to eat, and it means sometimes when your moral compass guides you to a conclusion that is not politically popular sometimes it's hard to do. Colleagues, this is one of those moral issues. This is about life. It's about the dignity of every life. I do not defend the people who sit on death row. Their crimes are the worst and they're indefensible. But what we are going to decide today is whether we will continue to collectively kill another person. And I can't do it. My moral compass points in a different direction and I can't do it. It's not just the death penalty, it's the developmentally disabled, it's the poor, it's the hungry kid in north Omaha. And today it's the death penalty. To be pro-life means to respect the dignity of every single life, even the damned, even the person who's done something indefensible. And I can't go there with you. I'm going to vote for LB276 because I think it demonstrates and it's a statement of this body on where we're at, respecting the dignity of every life, even when that calls for us to do something that's hard to swallow. Thank you. [LB276]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. (Visitors introduced.) Senator Nordquist. [LB276]

SENATOR NORDQUIST: Thank you, Mr. President and members. I really appreciate the thoughtful comments we've heard today and certainly echo what Senator Lathrop has said. Certainly, the discussion here is about the value of life including those who have wronged us, who have wronged society, who have wronged vulnerable people in society. It's still a life that God created in His image. And I think that we should move forward with a policy to repeal the ability of our state government to take that life. I think the question we need to ask is, what's the net benefit to our state of having this policy? That should be the question we ask on every policy we have before us. What's the net benefit to us? And Speaker Flood spoke about essentially the four reasons for criminal laws: public safety, deterrence, retribution and rehabilitation. And we've talked about some of those. Certainly, rehabilitation is off the table given the fact that we're debating either a death sentence or life imprisonment without parole. So as we talked about the other three: public safety, we are no more safe with this policy. We are no more safe having these individuals sit on death row for an average of 16 years and having individuals who are equally as dangerous sit in our penal system. We are no more safe. We've talked about the data of deterrence, how states that have this policy aren't deterring murders from happening. So then it boils down to revenge and retribution. And it comes back to whether or not we are going to take revenge to the point of taking someone's life, taking revenge to the point of taking a life created by the Creator. That's where we're at. That's what this boils down to. Are you willing to say yes, I'm willing to do that, we as a state should do that, that the level of revenge rises to that level? I certainly don't. And I want to address the discussion we've had here about speeding this thing up. Folks, there is a gentleman that came before the Judiciary Committee and testified on this bill, testified on the bill to reinstate or to move to lethal injection, who

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had sat on death row for over 19 years in Oklahoma and was found innocent. That gentleman came here, testified. His life would have been taken from him by government and he was innocent. I don't want to speed this thing up. I don't want to make that mistake. I don't want to be guilty of taking someone's life who didn't commit the crime. And you may say that's rare. One time is way too many. On average, you want to limit the number of repeals? On average an innocent people takes at least ten appeals across this country to be found innocent when they are to have their innocence displayed. I don't want to limit appeals and I don't want to speed this thing up because I don't want our state ever to execute somebody who is innocent. Thank you, Mr. President. [LB276]

PRESIDENT SHEEHY: Thank you, Senator Nordquist. Senator Council. [LB276]

SENATOR COUNCIL: Thank you again, Lieutenant Governor. And, Senator Flood, I do stand corrected about the homicide that Mr. Dunster committed with his cellmate. But when we talk about what impacts people, I would be remiss if I didn't advise my colleagues that Mr. Dunster took the life of his cellmate. And he took the life of his cellmate after repeatedly telling the Department of Corrections officials to get the guy out of my cell because I'll do something bad to him. He warned corrections department officials that he would do something bad to his cellmate if he wasn't moved. I'm not saying that that condones his actions at all. But that puts in context what people are thinking when they do what they do. I appreciate Senator Harms's comments because I, too, have respect for Senator Harms. And I appreciate and understand the passion that he brings to this debate on the death penalty. But I will continue to disagree with that position. Senator Krist talked about swift and just. Well, sometimes those terms are incompatible. And one of the points that is overlooked when you look at what my bill provides for, a life sentence, and it says life without possibility of parole. Well, the reality is a life sentence in Nebraska is without possibility of parole. So it's just a life sentence. But the one thing about a life sentence is if you want swift that you can compare the number of appeals taken from a life sentence and compare them to the number of appeals taken with a death sentence. And you ask why. And the reason is exactly what I stated earlier. If you make a mistake, if our judicial system commits an error you can't reverse it after someone has been executed. So that's why there's the number of appeals that there are because this is the ultimate punishment. If you make a mistake it can't be corrected, you can't bring back the life of that person. Cited the case in Texas where a gentleman lost his entire family in a fire. He was the only one to survive. The state of Texas charged him with arson, with killing his family. He was sentenced to death. He maintained his innocence from the beginning. He was executed. It was subsequently discovered that the fire investigative methods that were used were inaccurate and in fact the fire was not caused by arson. But it was too late for him. Couldn't correct that error, couldn't bring him back. And that's the reason why there are so many appeals granted in death penalty cases, because it's the ultimate penalty. If we want to make it swift, if we want to reduce appeals, pass LB276. The punishment will be

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swift, the punishment will be just. And let's talk about the punishment being just. Unfortunately, ladies and gentlemen, there are 130 documented cases of innocent people being exonerated after having been sentenced to death. Senator Harms suggests that, well, with the advent of DNA we should reduce those incidents of... [LB276]

PRESIDENT SHEEHY: One minute. [LB276]

SENATOR COUNCIL: ...wrongful convictions. Unfortunately, Senator Harms, of the 17 wrongful...of the 130 wrongful convictions, only 17 involved DNA. The others were recantations of eyewitness identifications and a number of other reasons that led to the wrongful conviction. But the fact of the matter is that 130 people could have died for crimes that they did not commit. I don't believe that the members of this body or the people of the state of Nebraska want that kind of blood on their hands by maintaining a system that we have clear evidence is flawed. And when I get back on the mike I'm going to discuss it even further with regard to lethal injection. You may believe we have a method of execution but, ladies and gentlemen, I submit to you we do not. [LB276]

PRESIDENT SHEEHY: Time, Senator. That was your third time. Senator Karpisek. [LB276]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. This is probably the third, fourth time in my five years that we have talked about the death penalty. I agree with Senator Flood, I'm against the delay. I disagree with Senator Nordquist on pushing it out. And it is hard, it's hard on either side of this issue. Whichever side you're on is hard, whether you're on the side that may be 75 percent of Nebraska supports or not. And I'm used to being on a side in here that probably isn't as popular, so I know how it feels. When I first came here I, too, felt very solid that I supported the death penalty. In those first few days that we went over it really shook me to my core. I went home, I did a lot of soul-searching, thought about it, and I came down on the same side. Life is valuable and life is precious. So when someone takes someone else's life I don't believe that we can just let them sit out their life in jail. That might be a better life for some of them than they have outside. I don't think that's right. And for my dollar of tax money I'd rather pay more if the death penalty costs more, which I still have a hard time believing, but I'd rather pay that to keep it there. We hear that the death penalty is not a prevention. I agree with Senator Krist. If it was used quickly it might be more. My moral compass also comes down on many sides, the unborn, those that can't help themselves, the poor. Most of those people couldn't help where they are. They didn't do anything to get where they are. These people did. They made a conscious effort. Are they sick in the head? Obviously, obviously they're sick in the head to do something like that. I don't think that gives them a free pass, and I shouldn't say a free pass, sitting in jail for the rest of my life would not be a free pass to me. But I'll tell you what, I'd rather be alive and in jail than dead. Never been in jail,

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maybe I would change my mind. But I value my life very much. And anyone close to me knows that if I turn up murdered tomorrow I want that person dead. And I'll be waiting on the other side for them. Revenge and retribution, in my case you bet. If that's wrong, I apologize. Someone does something to me or my family, yes. I can't see saying, well, I understand, they didn't really want to do that. Some people feel that way, that's fine. Not me. There's all sorts of different things, the ways to think about the death penalty on, if it should be for police, prison guards, for treason,... [LB276]

PRESIDENT SHEEHY: One minute. [LB276]

SENATOR KARPISEK: ...for heinousness. Is a policeman or a prison guard, is their life more valuable than anyone else's? To me that's what that sounds like and in my opinion it is not. I strongly considered bringing a couple bills on appeals this year and a different means of the death penalty. I did not bring it this year. Speaker Flood has done a lot of work with lethal injection, maybe next year. But I think that we owe it to the citizens of the state to stand firm in this and carry out the punishment. Thank you, Mr. President. [LB276]

PRESIDENT SHEEHY: Thank you, Senator Karpisek. Senator Smith. [LB276]

SENATOR SMITH: Thank you, Mr. President. And, you know, I have the greatest respect for Senator Council and her passion and her commitment on this particular issue. And it wasn't very long ago that I, like other Nebraskans, was discussing this issue, debating this issue with friends and so on around the watercooler. And it's a much different thing to be discussing this on the floor of the Legislature. So I don't take it lightly. You know, it saddens me and frustrates me that due to bureaucratic regulations and hurdles that we cannot take the necessary actions to bring closure for the families affected by convicted and proven murderers, that we cannot enforce and apply the appropriate punishment and deterrence for proven murderers. Colleagues, I oppose this bill for these reasons, that the death penalty is an appropriate punishment, it is in proportion to the crime, that the death penalty is a deterrence. As Senator Harms earlier noted, studies suggesting a very strong correlation between the death penalty and deterrence. But what if, colleagues, what if only one innocent life is saved? That's enough. And finally, that life imprisonment simply is not sufficient, sufficient for proven murders that occur while someone else...while someone is already serving a life sentence, for proven murders of innocent children, for multiple proven murders, and for proven murders of the most horrific nature. Colleagues, we need to promote legislation that helps the good and the innocent in our society and the needy and that protects them. Colleagues, I, too, am pro-life. And the pro-life issue was raised. And I am proud to say that I'm pro-life. And I do not believe my position on this particular topic is inconsistent with my pro-life stand. Furthermore, I am not basing my opinion on what's popular or what is politically beneficial to me. Actually, it would have been much easier for me to stay seated and silent on this issue and then just to cast a vote. But I stand in

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opposition to this bill. And I ask my colleagues to please oppose LB276. Thank you, Mr. President. [LB276]

PRESIDENT SHEEHY: Thank you, Senator Smith. Mr. Clerk, do you have items for the record? [LB276]

CLERK: I do, Mr. President. An amendment to be printed to LR40CA by Senator Pirsch. Senator Brasch would like to add her name to LB986 as cointroducer. (Legislative Journal page 357.) [LR40CA LB986]

And a priority motion, Mr. President. Senator Wightman would move to adjourn the body until Friday morning, January 27, at 9:00 a.m.

PRESIDENT SHEEHY: You have heard the motion to adjourn until Friday, January 27, at 9:00 a.m. All those in favor say aye. Opposed, nay. We are adjourned.