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Judiciary Committee
March 13, 2013

[LB204 LB462 LB473 LB543]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, March 13, 2013, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB543, LB462, LB473, and LB204. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Ernie Chambers; Mark Christensen; Colby Coash; Al Davis; Amanda McGill; and Les Seiler. Senators absent: None.

SENATOR ASHFORD: Welcome to the Judiciary Committee. My name is Brad Ashford. I am the Chair. Senator Les Seiler is from Hastings, over here to my left; Senator Amanda McGill from Lincoln; and then Senator Ernie Chambers from Omaha; and LaMont Rainey is my legal counsel, our legal counsel on the committee; and Oliver VanDervoort is the committee clerk. Phoebe is here. Hi, guys. Okay, so we're all set, ready to go. The first bill we have is LB543, Senator Chambers' bill. Senator Coash has just arrived from Lincoln, obviously from Lincoln but he's also from Lincoln. Let me ask the number of people in the audience who are in the room who are for this bill, LB543? Okay, and how many are against it? A few against it. Okay, so what we'll do is those that have not testified here before, there will be a...we ask you to confine your testimony to three minutes. There is a yellow light that comes on in front of the desk that it will tell you that we'd like you to sum up your comments. Now there's an expert here. We have the out-of-town rule that applies to expert witnesses, and I believe there's at least one that's testifying in a neutral capacity and we're going to allocate a few more minutes to that witness when we get to the neutral testimony. So with that, Senator Chambers, welcome, and LB543.

SENATOR CHAMBERS: Thank you, Mr. Chairman. Members of the Legislature's Judiciary Committee, I'm Ernie Chambers and I'm offering this bill. I'm going to try to set the example by not giving a lengthy lecture but to stick to my statement of intent so that the people who have come will have as much time as possible to say what they have to say, because you all will have access to me and can get at me whenever you want to. LB543 replaces the death penalty with life without possibility of parole, and the sentencing court may impose a requirement that restitution be paid, if that is possible. Section 1 presents findings that enumerate the problems in executing the death penalty and in subsection (2) are these words: The experience of this state with the death penalty has been fraught with errors, frustration, and delay due to the constitutional mistakes in the statutes, defective legal procedures and implementation of the statutes, lack of uniformity in application, and inordinately heavy expenditures of money and time. Subsection (5) gets to the substitute sentence: A maximum sentence of life imprisonment without possibility of parole is preferable to the current capital punishment scheme, by reflecting this state's desire to ensure the safety of its citizens, assist victims' families when possible, and yet preserve the state's values of human life, uniform fairness, and basic decency. Section 21 provides that for those under sentence of death on the effective date of this act, "it is the intent of the Legislature that such

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penalty shall be changed to life imprisonment without possibility of parole." And should the death penalty be abolished, the Legislature at the same time will do away with any method of carrying out an execution so all of that will be moot anyway. Pope John Paul called for abolition of the death penalty, as did the November 2000 annual conference of U.S. Catholic Bishops, whose chairman of the bishops' domestic policy committee said, "It is time to abandon the death penalty, not just because of what it does to those who are executed but because of how it diminishes all of us." And other religions and denominations have taken a similar position. The death penalty, in addition to its negative influence on public morality by diminishing the value of human life, has exerted a degrading influence on the state's highest legal office. This issue deals literally with life or death, so it's not a time to bite my tongue or pussyfoot around an issue, and I've been addressing what I'm going to read to you for some time and I intend to continue doing so. The Office of the Nebraska Attorney General disingenuously obtained from the Nebraska Supreme Court a death warrant setting an execution date for Carey Dean Moore, despite knowing the execution could not be carried out due to the legal unavailability of sodium thiopental, one of the three drugs mandated by law for use in lethal injections, which is the current statutory method of carrying out judicial executions. The AG's Office deliberately withheld this critical material fact from the Supreme Court, which naturally withdrew the death warrant, triggering an extraordinarily harsh rebuke of the AG's Office from the Douglas County District Court in its December 11, 2011, order dismissing the postconviction motion of Moore. This was a motion to try to have something done about what the Attorney General's Office did. And this is what the court wrote: Notwithstanding fairly persuasive proof that the Department of Correctional Services obtained controlled substances of unknown efficacy of a foreign distributor and manufacturer, not inspected, registered, or approved by the FDA or DEA, and a lack of transparency and candor even with the Nebraska Supreme Court and the Douglas County Attorney's Office by the AG's Office beginning in January...on January 24, 2011, and such acts require accountability. But such accountability is not available through the postconviction relief. So the key thing, the lack of transparency and candor, I say was outright dishonesty, untruthfulness, unreliability on the part of the Attorney General's Office. And at that time, I stated it then and I mean it now, he was running for another political office. He was doing all he could to try to have an execution carried out to assist him in his political ambitions. I wrote him a letter about it. I had a piece printed in the World-Herald. So what I'm saying is not new, but it might be news to the committee members. This...oh, and there's no statute of limitations that applies to ethical complaints against attorneys, including the Attorney General. This tawdry, inexcusable ambush of the Supreme Court and the Douglas County Attorney's Office by the Attorney General is but another substantive reason to eliminate the corrupting societal and ethical evils spawned by the death penalty. Sodium thiopental remains unavailable due to ongoing federal litigation. This has been called a sham or mock execution, and under international rules this constitutes torture. But I have done what I said I would do, restrict my remarks to my statement of intent. But if there's a question or two you feel you just have to ask me at this point to get it on the record, I'm prepared

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to answer. [LB543]

SENATOR ASHFORD: I don't see any questions, Senator Chambers. [LB543]

SENATOR CHAMBERS: Nor do I. [LB543]

SENATOR SEILER: I do. [LB543]

SENATOR CHAMBERS: Oh, I was looking in the wrong direction. [LB543]

SENATOR SEILER: No problem. Senator Chambers, I noticed in the fiscal note it says, "As of February 28, 2013, the inmate population was 147.56 percent of design capacity." Did you request that? [LB543]

SENATOR CHAMBERS: No. [LB543]

SENATOR SEILER: Okay. [LB543]

SENATOR CHAMBERS: But... [LB543]

SENATOR SEILER: ...what does that have to do with this bill? [LB543]

SENATOR CHAMBERS: Well, I'm not sure because I didn't look at the fiscal report. Are you sure it's on this bill? [LB543]

SENATOR SEILER: LB543. [LB543]

SENATOR CHAMBERS: Okay. Well, anyway, it shows that the Department of Corrections is well over the capacity and something ought to have been initiated by the Governor's Office and the Department of Corrections, but they refuse to do so and at some point... [LB543]

SENATOR SEILER: No, I understand. I've heard you make that argument. [LB543]

SENATOR CHAMBERS: Oh, okay. [LB543]

SENATOR SEILER: But I don't see what it has to do with this bill. [LB543]

SENATOR CHAMBERS: Oh, since I didn't make out the fiscal note,... [LB543]

SENATOR SEILER: Okay. [LB543]

SENATOR CHAMBERS: ...there should be some statement, perhaps, on what agency

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they got that from. [LB543]

SENATOR SEILER: Doesn't. [LB543]

SENATOR CHAMBERS: Oh, okay. Then I'm unable to answer. [LB543]

SENATOR ASHFORD: You're absolved. [LB543]

SENATOR SEILER: Okay. Thank you. [LB543]

SENATOR CHAMBERS: Okay. But there are not that many people on death row for sure. (Laughter) Okay. [LB543]

SENATOR ASHFORD: Thank you, Senator Chambers. [LB543]

SENATOR CHAMBERS: Okay. [LB543]

SENATOR ASHFORD: (Exhibits 1 and 2) Let's go to the proponents. Jerry Soucie is first. [LB543]

JERRY SOUCIE: (Exhibit 3) My name is Jerry Soucie, S-o-u-c-i-e. My office address is 1141 H Street. I appear here today on behalf of the Nebraska Criminal Defense Attorneys Association in support of this bill. I'm handing out to the committee a...basically a fact sheet regarding the status of the death penalty in Nebraska since it was reintroduced April...took effect April 20, 1973. I'm not going to make any of the moral or religious views. I deal with this in a much more practical way and that is that in 40 years with approximately 1,600 homicides, Nebraska has been able to carry out three executions. That is not what I would call a very effective or worthwhile expenditure of time and money by the state of Nebraska. But the issue I do want to address is that with the adoption of LB1, the decision in terms of whether to charge aggravating circumstances was passed over to the county attorney who files the charge. Back in 1999, there was a thing called a Baldus study--I had some involvement in getting that started, I think Senator Chambers is aware of it--which found that there was evidence of racial disparity in terms of the chargings and the dispositions of the death penalty. However, before LB1, any of that disparity would have come from the implementation of the death penalty by the sentencing panels. Since LB1, I think it has changed dramatically. Now let me be careful in what I'm saying here. I'm not saying the county attorneys in the state of Nebraska are a bunch of racists with sheets and burning crosses. That's not the point. The point is that what's happened since LB1 is that there is an incredibly, incredibly disparate application of the death penalty, charging decisions on Hispanics in particular and African-Americans as well. It is far out of range of what you would expect statistically, and I don't have a good explanation for it. The only explanation I have is that if you have a white defendant and you go in, you can, to the

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county attorney, somehow have that county attorney recognize the mitigating factors. But when you have a climate in this state where if you're Hispanic, even if you've been here since the Spanish invaded Mexico, you were viewed as a potential illegal alien. And I think that's what's going on. I think it's a perceptual problem in which if you are Hispanic, you don't get the right to mitigation that somebody of a different skin color would get. Thank you. By the way, I've represented many of these people in their death row case, so... [LB543]

SENATOR ASHFORD: Senator Chambers. [LB543]

SENATOR CHAMBERS: When you mentioned that you would not characterize the county attorneys in a certain negative way, but nevertheless you see this disparity, when the disparity is so great it doesn't matter what the cause might be when you see the actual effect in the real world. Would you agree with that? [LB543]

JERRY SOUCIE: I agree with that. It's called disparate impact versus discriminatory intent. That's the legal differences. [LB543]

SENATOR CHAMBERS: And the public at large or certain segments of the public might not be as charitable as you are in absolving the county attorneys of not having racial animus involved in their charging. I'm asking, do you acknowledge that certain parts of the populace may draw that conclusion based on the disparity? [LB543]

JERRY SOUCIE: I think it goes both ways. I think there's a segment of the population that is out-and-out, old-school racist, like you and I may remember from the '50s and '60s. But I think there's also a segment of the population that when they see that people of a different skin tone than theirs gets treated in a more advantageous and kinder manner than they do, I think that they would view it as discriminatory and racist, although their perception becomes reality in terms of impact. Yeah, I think we're on the same page. [LB543]

SENATOR CHAMBERS: Just two more questions: How long have you practiced law? [LB543]

JERRY SOUCIE: Since 1980. [LB543]

SENATOR CHAMBERS: In all of that time, have you seen any criminal statute of any type or variety which has been enforced in so few cases where that particular criminal law had been violated as is the case with the death penalty? [LB543]

JERRY SOUCIE: You mean in a discriminatory...you mean in terms of application? [LB543]

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SENATOR CHAMBERS: Yes. [LB543]

JERRY SOUCIE: Executions, it's one of the rarer ones I've ever seen; maybe campaign finance... [LB543]

SENATOR CHAMBERS: Okay. That's all that I have. [LB543]

JERRY SOUCIE: ...(laughter) because nobody ever gets charged with it. [LB543]

SENATOR CHAMBERS: Okay. Okay. [LB543]

SENATOR ASHFORD: Thanks, Jerry. [LB543]

JERRY SOUCIE: Thank you. [LB543]

JIM CUNNINGHAM: (Exhibit 4) Good afternoon, Senator Ashford and members of the Judiciary Committee. My name is Jim Cunningham and that's spelled C-u-n-n-i-n-g-h-a-m. I'm the executive director of the Nebraska Catholic Bishops Conference and I testify today on its behalf in support of LB543. My testimony is strikingly similar to testimony that you have heard from me in the past and I have submitted it. I'm not going to read the entire testimony. What we have suggested in the past is that a legitimate test for use of the death penalty is whether or not it's absolutely necessary; that is, are there absolutely no other means by which to defend society from an unjust aggressor. And in analyzing this question, the late Pope John Paul II himself responded from a global perspective that the cases of absolute necessity are extremely rare, if not practically not existent. We urge you, as policymakers, to consider LB543 from within this framework. We think a proper response to the test of whether the death penalty is absolutely necessary is unambiguously, no, of course not. The death penalty fails the test. In this modern era, this technologically sophisticated age, means of punishment and protection other than the death penalty are available and sufficient. The conditions necessary to justify using this means of last resort do not exist. Let's get rid of it. What's more, in this culture, which too frequently resorts to death and violence as a response to social problems, using the death penalty when there is no absolute necessity for doing so diminishes society even more and contributes even more to the growing disrespect for the dignity and value of every human life. The death penalty offers the tragic illusion that society can defend life by taking life. We understand and respect that many people have legitimate concerns and fears about the frequency of violence and heinous crimes in their communities. Legislators and society as a whole need to do all they can to deter and respond promptly to this violence that undermines a stable society. Moreover, the needs of victims and their loved ones must be addressed. Society must strive for ways to support them, compensate them, and help them heal. Nonetheless, much of the support for capital punishment, we believe, stems from a desire for revenge or a desperate attempt to balance the terrible damage wrought by a

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capital crime, and such feelings are understandable in the face of brutal and senseless violence inflicted upon innocent people. Just retribution is a legitimate desire. Nonetheless, it cannot be truly achieved under the veil of vengeance and its own form of violence. We urge a response that meets evil with justice worthy of our best nature as human beings, enlightened by faith and the possibility of redemption and forgiveness. All Nebraskans personally and collectively face the challenge of rejecting a culture of death and embracing a culture of life. This means overcoming all ways in which killing is proposed as a solution. We urge you to advance LB543 to General File so that the full Legislature can debate this important issue. Thank you. [LB543]

SENATOR ASHFORD: Thank you, Jim. Any questions of Mr. Cunningham? [LB543]

SENATOR CHAMBERS: Just a couple. [LB543]

SENATOR ASHFORD: Yes, Senator Chambers. [LB543]

SENATOR CHAMBERS: Mr. Cunningham, we meet again. [LB543]

JIM CUNNINGHAM: Yes, Senator. [LB543]

SENATOR CHAMBERS: How many years, roughly, have you and I gone through this effort to abolish the death penalty, if you can estimate? [LB543]

JIM CUNNINGHAM: At least 18. [LB543]

SENATOR CHAMBERS: And when do you intend to quit putting forth this effort? [LB543]

JIM CUNNINGHAM: As long as you keep coming with the bill, Senator, we'll be here to support them. [LB543]

SENATOR CHAMBERS: And, my friend, count on at least eight years perhaps. (Laughter) But here's another question. In view of the fact that if we go all the way back to the beginning when this state started executing, not just the relatively long period of time that Mr. Soucie mentioned when only three executions had occurred, and there have been literally hundreds of homicides, some atrocious, which if the death penalty were going to be applied as the way the statute lays it out, there would have been far more capital prosecutions that would not end in a plea bargain. The fact that there are murderers who have been more vicious in taking life than those on death row, yet they are in the general population, those on death row obviously haven't been executed yet, all these things would tend to indicate that they found already a way to prevent those who committed murders from committing additional murders without killing them. [LB543]

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JIM CUNNINGHAM: I believe that certainly underscores that consideration, Senator. I agree with you. [LB543]

SENATOR CHAMBERS: My final comment: As far as you giving the same basic testimony as you always have, the situation hasn't changed so the medicine prescribed need not change. And everybody has a favorite song and your testimony is one of mine. Thank you. [LB543]

JIM CUNNINGHAM: Thank you. Thank you. Thank you. [LB543]

SENATOR ASHFORD: Thanks, Jim. Yes, Senator Davis. [LB543]

SENATOR DAVIS: It's all right, never mind. [LB543]

SENATOR ASHFORD: No, that's all right. Jim. [LB543]

SENATOR DAVIS: I was just going to ask you, do you think that there's a racial element to the death penalty? We heard that testimony earlier. [LB543]

JIM CUNNINGHAM: I think that certainly there is evidence of that, yes. Now that...we have not addressed the death penalty from some of the practical consequences or some of the practical aspects. We've addressed it more in the context of the theological or the spiritual dimension, the religious dimension. But certainly some of the studies that have been rendered in Nebraska point in that direction unequivocally. I don't think there's any question about it. [LB543]

SENATOR DAVIS: Thank you. [LB543]

SENATOR ASHFORD: Thanks, Jim. [LB543]

JIM CUNNINGHAM: Thank you. [LB543]

CAROL WINDRUM: (Exhibit 5) Good afternoon, Senators. I'm Reverend Carol Windrum, C-a-r-o-l W-i-n-d-r-u-m, and I'm here today on behalf of Bishop Jones of the United Methodist Church, and I will read a letter from him addressed to you: As the bishop who leads the United Methodist congregations in Nebraska, I write to share the deep concern of my church about the continuing practice of condemning persons to death in Nebraska. The United Methodist Church's official teaching is clear that capital punishment should no longer be practiced or threatened. United Methodists are convinced that human life is sacred to God and should be respected by all humankind, including governments. When governments execute persons, our society is weakened because the value of life is cheapened. All of us are diminished when our state

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punishes in this way. We also share a deep concern for all victims of violent crimes and their families. We recommit ourselves to do everything possible to comfort and assist victims and their families as they cope with the aftermath of violence. We acknowledge that some persons have committed despicable crimes and deserve severe punishment. There are other ways of punishing such persons that fit the crime and still protect society. LB543 offers the possibility of life in prison without parole, which is a much more humane punishment than death. We believe the death penalty is sometimes applied to innocent persons, that it is applied more often to persons who are poor, and that racial bias far too often affects the judgment being rendered. While our legal system is one of the best in the world, it occasionally makes mistakes, and such mistakes should not be final and irreversible. In difficult economic times, the additional money spent on capital punishment should be redirected to more beneficial causes. We continue to pray for you to receive wisdom and courage as you lead our state. Sincerely, Scott J. Jones. [LB543]

SENATOR ASHFORD: Any questions? Thank you very much for coming. Lowen, Senator Kruse. [LB543]

LOWEN KRUSE: Right Reverend would be preferred. (Laughter) [LB543]

SENATOR ASHFORD: I was searching. I didn't want to just say Reverend as only half of... [LB543]

LOWEN KRUSE: (Exhibit 6) Hello to all. My name is Lowen Kruse, L-o-w-e-n K-r-u-s-e, Senator Ashford and Senators on the committee. I find that Senator Chambers likes to call you friend, but he puts you in very awkward spots. He's done that to me every session that I've been down here and he's doing it to you again. I do trust that you will put this out on the floor and force the senators to vote on whether to kill somebody or let them live, because that's what the vote is. And they need to do that. It builds character. You're sitting there at your desk, studying those buttons in front of you. However you push them, you are voting on whether to kill somebody. Like an emperor on the throne, thumbs down, send them to the lions; thumbs up, send them back to prison. And those on the other side, and I'm not going to say a lot today because it's being said by others very well, but they will talk about the person deserves to die. That doesn't have a thing to do with it, as far as I can see. The question is whether I deserve to kill somebody and whether Nebraskans deserve to have that upon them. We are talking about a statute that does not work, period. It compromises us. It does not deter, it does not punish. Thinking prison for life would be more punishment. Life is not the highest value, in spite of some of the things we talk about. Freedom is a higher value. We say that every time we send somebody off to war. We're talking about a statute that cannot be reversed or corrected. It made a little bit of sense back in the pioneer days when you stole a horse on one day and were hung the next day. It kind of connected them a little bit. But we've lost that. It is basically revenge and most countries gave it up a long time ago. It

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provides publicity. On the anniversary of the execution you get your picture on the front page of the paper. It increases violence and, frankly, it's from barbaric times. I passed out these points and the position of the United Methodist Church that the bishop referred to, and that's for your extended reading. One point of personal privilege: I was a part of that first statement in there. I helped form it and vote for it 32 years ago. And as Senator Chambers has indicated his hasn't changed, our position hasn't changed. It has not been reworked or revamped in 32 years. That's where we're at. And I commend you for giving good consideration to this again and urge that it be passed to the floor.
[LB543]

SENATOR ASHFORD: I don't see any questions. Thanks for your service, Lowen.
[LB543]

LOWEN KRUSE: Thank you. [LB543]

BILL THORNTON: Good afternoon, members of the Judiciary Committee. My name is Bill Thornton, B-i-l-l T-h-o-r-n-t-o-n. I'm here to testify in favor of LB543 to repeal the death penalty in Nebraska. For 30 years I had the opportunity to serve as a pastor here in the city of Lincoln and I presently teach at a Christian college that prepares young men and young women for the ministry near Omaha, Nebraska Christian College, as well as serving on a board of a local community development nonprofit here in Lincoln. However, today I'm speaking to you as a private citizen. Historically, the fundamentalists, the evangelical branches of Christianity, have actually supported the death penalty. I would include myself in that number, citing verses from both the Old Testament and the New Testament that seem to support such a penalty. However, I'm here to tell you that that is beginning to change. While many evangelicals continue to acknowledge that the death penalty was called for in the Bible in certain cases, the death penalty constructed in the Bible is very different than the system that is used here in the United States. Evangelicals are also becoming increasingly aware of the massive injustices carried out in the death penalty system throughout the years. Throughout the Old Testament, we find various laws that God established to ensure that the poor would not be unjustly treated in courts, that those innocent would never be executed, and that there would be fair application of the law and fair application of the death penalty. The death penalty in the United States has almost none of these safeguards. For example, according to biblical law, in order for the death penalty to be applied, there had to be at least two unrelated eye witnesses to the crime. In the United States, however, that standard of witness testimony is not required. I won't belabor you with the numerous injustices that have been carried out in the name of the death penalty. I'm sure you'll hear that from a number of others who will testify today. I will say this as a Christian, that God has made it clear to us, in Micah 6:8, that we are to act justly, we are to love mercy, we are to walk humbly with God. Finally, I'd like to say that as a Christ follower who believes that Christ died for all, that no person is beyond redemption, that I believe we should never advocate cutting someone's life short and thereby guaranteeing no

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chance for them to experience redemption. Thank you for this opportunity to testify. If you have any questions, I'd be glad to take those at this time. [LB543]

SENATOR ASHFORD: Nothing, other than the way...that last sentence you just read, I've listened to number of discussions about this issue and, from my first time here to where I am now, I've changed my views maybe like your church has over the years on this issue... [LB543]

BILL THORNTON: Uh-huh. [LB543]

SENATOR ASHFORD: ...for many of the reasons that have been mentioned by Lowen certainly, who is a wonderful advocate for this issue, but what you just said about redemption was very interesting. I don't know, maybe Senator Chambers has heard that. I've never heard it quite that way, that it cuts off or prevents or blocks the opportunity for another human being to seek or... [LB543]

BILL THORNTON: Exactly. [LB543]

SENATOR ASHFORD: ...or achieve redemption. I've never heard it put quite that way. But anyway, thank you for your comments. [LB543]

BILL THORNTON: Thank you very much. [LB543]

LAUREL JOHNSON: (Exhibit 7) Senator Ashford and the Judiciary Committee, my name is Laurel Johnson and I'm here on behalf of the Nebraska Chapter of the National Association for Social Workers. We'd like to go on the official record in support of LB543 to change the penalty of death from death to life imprisonment or life imprisonment without the possibility of parole. Of the six core principles of the NASW Code of Ethics that governs social workers, one speaks particularly to this bill and to the injustice that is the death penalty. That principle is dignity and worth of the person, and this means all persons, including the guilty and nonguilty alike who serve on death row. What message does a system of government send when we punish those who do wrong, even those who kill without respect for the dignity and worth of a person, by in turn taking a life? A cycle of killing to show that killing is wrong makes no progress in our justice system. And with a broken system, tarnished over and over again by inadequate evidence and wrongful convictions, with discriminatory actions manifesting in disproportional racial and ethnic disparities, it cannot be said in good conscience that the death penalty is serving justice. In social work, we talk about using the strengths perspective. This requires looking for positive things in what can sometimes seem like the darkest of situations. It means looking at a situation and each person in a situation, and realizing that no matter how awful the circumstances or how horrible of a thing they've done, that somewhere in the situation lies strength and somewhere in that situation lies the opportunity for good. I'm not asking you to free the prisoners on death

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row, nor am I asking you to forgive them or to like them. I ask that you consider them for what they are--people. They are people, and we, as a system of government and those people who are represented in the government, must honor their dignity and worth enough not to take a life, enough to show that we do not punish disregard for human life with more disregard for human life. With that in mind, I ask that you vote to change the penalty from death to life imprisonment or life imprisonment without the possibility of parole. Thank you for your consideration and I ask that you please advance LB543. [LB543]

SENATOR ASHFORD: Thank you. I don't see any questions or comments. [LB543]

LAUREL JOHNSON: All right. Thanks. [LB543]

SENATOR ASHFORD: Next proponent. John. [LB543]

JOHN KREJCI: (Exhibit 8) Good afternoon, Senators. As usual, I'll be quite brief. We don't need to repeat all the arguments against the death penalty. My name is John Krejci, K-r-e-j-c-i, 4402 St. Paul Avenue in Lincoln. I represent Nebraskans for Peace in supporting LB543. Nebraskans for Peace has opposed the death penalty for many, many years, like many of these other organizations, and the best news, without repeating arguments, is that nationally and internationally we're moving away, even the United Nations came out recently with something against the death penalty. I have a quote here, but I will skip it. I don't...not to repeat the economic, psychological, political arguments against the death penalty; however, Nebraska shouldn't waste any more time and money on a failed law. Senator Chambers has inflicted kind of a legal Alzheimer's on the death penalty because the law is so tangled and obscure that it doesn't work, even the new way that they want to put people to death. The simple and wisest course is to abolish the death penalty and replace it with life in prison without parole. Thank you. [LB543]

SENATOR ASHFORD: I wonder if the debate is rather about whether or not we should permit the defendant to live as opposed to repeal the death penalty. I mean maybe that's...maybe that's...it's a different way of framing it. [LB543]

JOHN KREJCI: Everybody is for life. That makes sense. [LB543]

SENATOR ASHFORD: Well, I mean then you permit that person to seek redemption, but you also...that person is also alive, so if there is a mistake made then that person is alive and that sentence can be, obviously, repealed, expunged, whatever. So maybe it's not so much about repealing the death penalty as thinking about a proper sentence for someone who's committed, admittedly, a heinous act but at the same time permitting that life to exist for some of the reasons that have been stated. I've never quite thought about it that way but... [LB543]

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JOHN KREJCI: I'm going to testify on a bill later about redemption and rehabilitation... [LB543]

SENATOR ASHFORD: Okay. [LB543]

JOHN KREJCI: ...so that's certainly what we need to do. [LB543]

SENATOR ASHFORD: Yeah, I don't know. It's just sort of an interesting way to look at it I guess. Okay. Thanks, John. [LB543]

JOHN KREJCI: Thank you. [LB543]

MIRIAM THIMM KELLE: (Exhibit 9) Good afternoon. My name is Miriam Thimm Kelle, M-i-r-i-a-m T-h-i-m-m K-e-l-l-e. I'm supporting LB543. Today we talk about 31 years ago, where we were when my brother, James Thimm, was gruesomely murdered after months of torture. No matter how much times goes by, it always hurts to talk about this subject and the pain that he suffered. A few years ago I finally decided that enough was enough, and you debated it, year in, year out, up here anyway, so I might become involved, because more than 25 years later my brother's convicted killer is still sentenced to death and my family continues to be a victim of this system. When my brother was murdered, I thought I was supposed to support the death penalty, because that is what the state said was the right punishment. I loved him a lot. I thought whatever justice the state would offer would be the justice we should have. Little did my family and me know when Michael Ryan was sentenced to death we were sentenced too. Our sentence has been going on for over 25 years and there's been no execution. It's been about Michael Ryan and the legislative process. Jim is usually never mentioned, only the continual talk about what my family and what we need. Every appeal and on and on, everything about the horrible deaths again, year in, year out. If the execution ever comes, it will be another day about Michael Ryan and nothing about Jim. Last year, at the board, I asked several senators if we would stop the horrible details of Jim's death to stop the death penalty if Michael Ryan was ever executed. They weren't able to answer my question. Having seen what the death penalty has done to my family, I have since changed my mind and I would like the death penalty to be abolished. Death penalty supporters say that carrying out the death penalty is family closure. Closure is a myth. The death penalty does absolutely nothing for families except more pain. It prevents the state from doing other things that could help prevent violent crime or solve cold cases. You have an opportunity to end the cycle. You all can stop talking about Michael Ryan and start talking about families like mine. Lock the killers up and throw away the key, whatever you want to do. Spare the victims like me 30 years of pain for a false promise, wondering when it will end and what it would cost. Enough is enough. Please end the death penalty this year. Any questions? [LB543]

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SENATOR LATHROP: Thank you, Ms. Kelle, for coming back down again. I know it's not easy for you. [LB543]

MIRIAM THIMM KELLE: No. [LB543]

SENATOR LATHROP: We appreciate your testimony today. I see... [LB543]

MIRIAM THIMM KELLE: This year. Let's do it this year. [LB543]

SENATOR LATHROP: Thank you. Thank you. [LB543]

MIRIAM THIMM KELLE: Thank you. [LB543]

SENATOR LATHROP: We appreciate your testimony. [LB543]

MIRIAM THIMM KELLE: Thanks. [LB543]

SENATOR LATHROP: Next proponent of LB543, please. [LB543]

CURTIS McCARTY: (Exhibit 10) Good afternoon, Senators. My name is Curtis McCarty, C-u-r-t-i-s M-c-C-a-r-t-y. I'm from the state of Oklahoma. In 1985, I was falsely charged with capital murder. In 1986, I was convicted of that crime and sentenced to death. I spent the next 22 years in prison, fighting for my life. I had every opportunity to think about not only my own conduct that put me in such position to allow this prosecution, but I used that time also to think about subjects like the death penalty and law enforcement, the treatment and services that are provided to victims' families. The one thing that always stood out for me in all of those years was the reluctance of the Oklahoma legislature, the Oklahoma media to acknowledge simply the human condition. We are told that members of law enforcement are perfect, that they are infallible, that they never make mistakes, and I think that's probably the most tragic part of the entire process is that we have placed this onerous burden upon law enforcement to be perfect, to be superhuman, to be infallible. It's unrealistic and it's unfair to those men and women who have to report back to the government, they have to report back to the victims' families. If there was anything that I could urge upon this body today it would be simply that--to keep in mind the human condition, that the men and women of law enforcement need not accolades but they need our support, realistic support. They need proper funding for cold case investigation. They need proper funding and support in aiding the resolution of homicide cases, the prosecution of offenders, and the humane and just treatment of those offenders. I hope that in passage of this bill that the Nebraska Legislature takes the first step in changing the dialogue, the public dialogue, from one of punishment to that of prevention. Thank you very much. [LB543]

SENATOR ASHFORD: Yes, Senator Davis. [LB543]

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SENATOR DAVIS: Mr. McCarty, how many cases have been overturned through the Innocence Project? Do you have any idea? [LB543]

CURTIS McCARTY: I believe that the Innocence Project alone, just recently, secured the release of their 303rd client from wrongful incarceration using DNA testing. [LB543]

SENATOR DAVIS: So this is 303 capital cases then? [LB543]

CURTIS McCARTY: No, sir. I don't know the percentage of their...the capital cases to noncapital cases, but they do contain a number of... [LB543]

SENATOR DAVIS: But 303 innocent convictions. [LB543]

CURTIS McCARTY: Yes, which serves to underscore the point that I made that while my prosecution may have been the product of malice, in the majority of those cases it was not malice. It was simple error, wrongful identification, misplacement of evidence. There was no malice involved. They were good men and women simply trying to do their job and bring satisfaction to the law and to the victims' families, and errors were made. [LB543]

SENATOR DAVIS: Thank you. [LB543]

CURTIS McCARTY: Yes, sir. [LB543]

SENATOR ASHFORD: Yes, Senator Chambers. [LB543]

SENATOR CHAMBERS: Mr. McCarty, you mentioned you spent was it 22 years in prison? [LB543]

CURTIS McCARTY: Yes, sir. [LB543]

SENATOR CHAMBERS: And where were you housed during that 22 years? Were you in the general population? [LB543]

CURTIS McCARTY: No, sir. [LB543]

SENATOR CHAMBERS: Where were you? [LB543]

CURTIS McCARTY: Because of the nature of the charge, death penalty...or the nature of the sentence, I was housed at the Oklahoma State Penitentiary in a maximum security wing that was underground that was built especially for death row inmates because of their perceived dangerous nature. The confinement was 23 hours a day for

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22 years. [LB543]

SENATOR CHAMBERS: Now because of the way the system operates, maybe there wasn't a likelihood that you would have been executed early in the serving of that sentence, but there were points along the way when there was a chance that you could have been executed. Is that true? [LB543]

CURTIS McCARTY: Yes, sir. It was in fact probable that I was going to die on death row. [LB543]

SENATOR CHAMBERS: And had you been executed, an innocent man would have died, correct? [LB543]

CURTIS McCARTY: Yes, sir. [LB543]

SENATOR CHAMBERS: And nobody would know anything about your case. People would say innocent people are not executed. But you are a living exhibit of the fact that the system, rather than saying it worked after 22 years, it shows that for 22.5 years it did not work. [LB543]

CURTIS McCARTY: That's correct. [LB543]

SENATOR CHAMBERS: And now that you've been out...I won't ask that question. Thank you. Thank you. [LB543]

CURTIS McCARTY: Thank you. [LB543]

SENATOR ASHFORD: I don't see any other questions. Thank you, sir. [LB543]

CURTIS McCARTY: Thank you very much. [LB543]

SENATOR ASHFORD: Next proponent. Amy. [LB543]

AMY MILLER: (Exhibit 11) Good afternoon. My name is Amy Miller, A-m-y M-i-l-l-e-r. You're used to seeing me here in my paid capacity. I'm actually testifying on behalf of the Nebraska Innocence Project, for which I'm a volunteer board member. Our board president, Tracy Hightower-Henne, could not be here because of her trial schedule. We are 1 of over 50 similar projects of Innocence Projects across the country that are working to set free innocent people who have been wrongfully incarcerated, like Mr. McCarty that you just heard from. As of today's date, as Mr. McCarty pointed out, there are have been 303 innocent men and women set free by DNA evidence alone. I don't have the final figure for the non-DNA cases, which I realize I'll need to supplement my testimony. But I can tell you that 142 people have been set free from death row and

that's because there are many non-DNA cases where you find that there was an informant who lied or where you find that there was junk science of another sort, perhaps arson testimony or bite mark testimony. So we know that we've pulled from the fire 142 souls that were sentenced to death and were on death rows in America, but for the Innocence Project or a journalist student or a law school student came forward and was able to work on that case. People aren't set free from death row because the system worked. People are set free despite the system. We don't know the number of people that still are on death row or in prison for noncapital cases that are awaiting long sentences, but the Innocence Projects exist because America's justice system has failed. We are very happy that DNA testing is available in some of these cases, and that's our most powerful tool, but there are so many cases where DNA evidence will not bring the answer. You'll see on the second page of my testimony the national Innocence Project has crunched the numbers to find the four most common reasons why a wrongful conviction occurs. Eyewitness misidentification is the number one problem and this continues to be a real-life problem in Nebraska. You will find in the next months there will be a scholarly paper, which we will forward to the committee, issued that shows that Nebraska law enforcement have no uniform eyewitness identification techniques. There's no uniform policy and many of them are using techniques that have been explicitly shown to lead to misidentification. The second most common reason why people end up being wrongfully convicted is improper forensics, which happened in Mr. McCarty's case; false confessions, which happened in the Beatrice Six case; and informants and snitches, which is going to be a problem unless, of course, you pass LB267 to address that evil. These are real-world problems that we know exist in our own state. Nebraska's exonerations of the Beatrice Six remains the country's largest single set of exonerations across the entire nation. I have heard some debate that some people still think the Beatrice Six may have had something to do with it. DNA evidence proved they were innocent. The state of Nebraska has issued them pardons. The Attorney General has said they are innocent beyond all doubt. We urge you to abolish the death penalty because the system cannot otherwise be sure that we are not committing errors. [LB543]

SENATOR ASHFORD: Thank you, Amy. Senator Chambers. [LB543]

SENATOR CHAMBERS: I have done no research whatsoever, but in the news now is the case of the shooter in Colorado and there's discussion about whether or not he will be subject to the death penalty. And a point that is made repeatedly is that the three people on death row in Colorado all were sent there from this particular district where this man is being tried, which indicates to me that you have a prosecutor with a certain attitude and bent of character, because I'm sure there's more than one district in Colorado. And if you would look at Nebraska, you'd see there are certain parts of the state from which death row inmates do not come, and some of those parts of the state are where you might find the strongest support for the death penalty among the citizenry. So that indicates that there has to be a policy established which prevents

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these kind of disparities, and I've put forth efforts to do it. None of them has worked. One required a comparison by the Supreme Court of all homicides, whether a person got the death penalty or not, so that you could determine whether under similar circumstances there was a similar punishment. Well, the Supreme Court gutted that bill by saying, we will not look at cases where the death penalty was not imposed, we'll only look at death penalty...only cases where the death penalty was imposed. Well, you need to look at the ones where it was not to determine whether or not people committed similar or worse offenses didn't get the death penalty. But at that time, you had what in the literature in the old days was referred to as a hanging-and-flogging Supreme Court. So the term "Supreme Court" may carry a romanticized notion of people who are very fair and just. I said all that to get around to asking a question. Were there no Innocence Project, then some of the people who have been released as a result of their work very likely would have been executed. [LB543]

AMY MILLER: That's absolutely correct. And I'm sorry that I don't have this figure. Mr. McCarty's case from Oklahoma County, the capital county in Oklahoma, he is one of seven, eight, or nine people set free all because of the same one prosecutor who kept pushing forward false capital punishment prosecutions. So when you're talking about geographic disparities, you may have some poor counties that simply can't afford to prosecute, and you may have some counties where there is a politician who is prosecuting when he knows his cases are meritless and so that you have, for an example, in Oklahoma, one county contributing a huge number of innocent people walking out of death row after many, many years of having their lives ruined. And the Innocence Project movement, being a nonprofit movement in Nebraska--we're all volunteers, we still don't have a paid staff member--we get letters from men and women asking us to look into their cases and we are trying to move a teaspoon of sand off the beach every day while more people are pumped into the criminal justice system. If we can at least remove the death penalty, which is often used as a hammer to obtain these false confessions which are the third most common contributor to wrongful conviction, that's one less pouring in of part of the problem. And that's the reason why the Innocence Project thinks taking death penalty off the board means we'll be able to move forward with a little more confidence in the criminal justice system from here on out. [LB543]

SENATOR CHAMBERS: Thank you. That's all that I have. [LB543]

SENATOR ASHFORD: Thanks, Amy. [LB543]

AMY MILLER: Thank you. [LB543]

HARRY L. MUHLBACH: My name is Harry L. Muhlbach, spelled H-a-r-r-y, middle initial L., last name M-u-h-l-b-a-c-h from Lincoln, Nebraska, 5701 Vine Street. First of all, I want to thank all you senators for doing...working for the state of Nebraska. Specifically,

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I want to thank Ernie Chambers for staying with this. This...we're living in the twenty-first century but Nebraska is not keeping up with the world on the death penalty. Other countries have abolished it. There are ways of...people are saying, well, you got to kill the person to keep them out of society. That's not necessarily true. You can incarcerate them. One thing I want to say, though, is if they have a life sentence, that if for some reason down the line that they are determined that they were innocent, that our people that have the responsibility of releasing them is to say maybe we screwed up and not drag it out. The other thing is, there was a case in Texas where a murderer asked to be executed. He just said he wasn't going to deal with it anymore; the devil had destroyed his life. And so if...I might suggest that if somebody did want to be executed, that would be their own decision, because he felt that he could not be redeemed. And that has actually happened in the state of Texas. There's been so many errors over the years, especially on lineups. Now they've determined that lineups, when people identify a person in a lineup, there is quite a large error in that. I would have to say if I had to identify a black American, I would do terrible, and I'm not picking on them, and I would say the same way with a Mexican. And so there have been innocent people convicted just from identifying in a lineup. Now the other thing I want to say is that if when we execute an innocent person, that family that is a relative to that person is as affected as much as the person whose family had a murder committed against them. And so the devil is having...really enjoying this. He likes to test the Christians this way. Now I would never want to be the person that's okayed the death penalty on an innocent person and just one life is not worth it, to convict...to murder all the other innocents, to convict them and kill them. That's just that we're in the twenty-first century now. [LB543]

SENATOR ASHFORD: Thanks, Harry. Any questions of Harry? I don't see any. Thank you, sir. Alan, are you next or...no. Well, you're next after this. [LB543]

STACY ANDERSON: Thank you. Hello, Senators. My name is Stacy Anderson, S-t-a-c-y A-n-d-e-r-s-o-n. I did not actually plan to testify today but I felt like there was a piece...a pretty major piece that often gets talked about with the death penalty that's missing from this conversation. So I wanted to talk a little bit about deterrence. Often what I'm told by people is, well, we need the death penalty because that will deter another murderer from committing his crime. And I've been in this job for almost two years now and I have not...I've met with many law enforcement and to this date not one law enforcement officer has said to me, we need the death penalty to keep other murderers from committing murder. What they would tell you is needed is more law enforcement. People don't commit crimes when they feel like they're going to get caught. If you think about it just in terms of what we do while we're driving, we might drive a little bit over the speed limit, but as soon as a cop pulls behind us, we are on the line or below that speed limit. Police officers, criminal justice experts pretty much across the board believe that in order to deter murder we need murderers to feel like they're going to get caught. And as long as we have this low resolution of cold cases and as long as we continue to have all these unsolved crimes, we're continuing to tell

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murderers, oh, it's kind of a crapshoot whether you're going to get caught or not. And so what we need to do is start ensuring that murderers get caught, that the right person is brought to justice, and spending our resources on things that make our community actually safer as opposed to just feel a little better. The other thing that I would just mention here, and this was hit on just a little bit with the Innocence Project testimony, is the fact that prosecutors a lot of times will tell you, well, we need the death penalty in order to secure a plea deal, in order to get a confession from a murderer. Well, the death penalty was threatened in the Beatrice Six case and it is used often to get false confessions out of people. And so that argument that we need it in order to secure a plea deal falls through when you're talking about the fact that innocent people fall under that and it shouldn't be a negotiating chip on the table that can be used by prosecutors and interrogators to secure false confessions. So I'll take any questions you have. [LB543]

SENATOR ASHFORD: I don't see any. Thank you. [LB543]

STACY ANDERSON: Thanks. [LB543]

SENATOR ASHFORD: Alan. [LB543]

ALAN PETERSON: (Exhibit 12) Mr. Chairman and members of Judiciary Committee, I'm Alan Peterson. I represent ACLU Nebraska. Senator Ashford a moment ago suggested there might be a good reason to recast this debate, and that's what I have in mind today. And while it might seem a little tongue in cheek, it's not. I think Nebraska should have to apply to renew its license to kill. And to be helpful, I've prepared and have handed out an application form with just five questions. I won't have time to read all of it but some of it I will, and I would ask you to take a look because I don't think I've exaggerated in my posturing of what Nebraska would put on the application form. First of all, it just says date of application, today; name of applicant, Nebraska; age, 146 years. Number one question: Describe your prior license revocations. There's been two of them. Nineteen seventy-two, all the death penalties were thrown out by the U.S. Supreme Court because they were arbitrarily applied, and they proved it. The states reinstated the penalty, including in Nebraska, and in 1979 this Legislature was the first to repeal its death penalty that had been reinstated, but the Governor vetoed that effort. So there's two prior revocations. That's going to hurt on this license app. Number two: Please describe why you want or need the license to kill. And Nebraska's answer, well, our death penalty proponents in our state earlier thought it would deter homicide but almost all careful studies have shown that is false. Then there's the possibility for education: teach people, by killing people, not to kill people. But here in Nebraska we can't make that with a straight face so we drop it. We're down to revenge. That's where it really is. You call it retribution, you call it payback, it's not worthy of us and it takes so long. You lose all the fun and zest and interest in revenge, it takes that long. Third: Do you have the means to kill people if we renew your license? Answer, no. We're having

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trouble getting any drugs legally. We scored some in India but it turned out the feds...the federal authorities may just destroy or shelve those. We're trying to get some from sister states but not having any luck. So, no, we can't kill people even if you grant our renewal of our license. Fourth question: Is your vision good enough? I'm going to run out of time so I'm going to skip that one and leave it, if you would, to read. The final one: Did you bring your proof of insurance to cover any accidents? Well, no. We've paid a few million dollars for lifers who were wrongly sentenced when they were innocent, but we haven't had to pay so far for a wrongfully accidentally killed person under the death penalty. [LB543]

SENATOR ASHFORD: Any questions of Alan? Senator Chambers. [LB543]

SENATOR CHAMBERS: I had said I wouldn't take much time, but this is something that I've been wanting to discuss publicly. There is a man named Carey Dean Moore, whom you represented very effectively as long as you could. Then a point was reached when he just got tired. He said, go ahead and kill me. And some minister who had been advising him told him to go ahead and let them kill him. Carey Dean Moore, and you can stop me if I make an error, wrote to the Supreme Court and said any actions he had pending, drop them, don't allow anybody to file a paper in his behalf to prevent or delay his execution. Is that correct so far? [LB543]

ALAN PETERSON: Yes. [LB543]

SENATOR CHAMBERS: And an execution date was in fact set. [LB543]

ALAN PETERSON: Several times for him, really. Yes. [LB543]

SENATOR CHAMBERS: And a few days before the execution was to be carried out, I had written a letter to the Supreme Court, because no lawyer would have been allowed to file anything. I was not acting as a lawyer. I was not a party to the case. But on the basis of that letter and the arguments made, one of them was that there was a case with a fully developed record showing scientifically that execution was torturous; secondly, that no individual, even one convicted of murder and condemned to die, should be allowed to cause the Nebraska Supreme Court to abdicate its responsibility to be certain that the law is carried out properly and that the Supreme Court, on its own motion, could set aside the death warrant, at least until it reviewed that case was...that had been filed. And I had argued that they would be doing as the U.S. Supreme Court has done itself. When they have a case that will resolve similar questions in other cases, they put all those other cases on hold until they resolve this case that covers everything. And they withdrew the death warrant. And one of the judges told me that I made it possible for them to withdraw the death warrant because there was, in fact, no legal action pending. And in fact, the Chief Justice argued that the court was wrong to withdraw the death warrant because no action had been filed. But this was a situation

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where justice and the desire for justice on the part of a majority of the court prevailed over that notion that legalistic formality says that he must die even if the law is degraded and defeated in its purpose of bringing about justice. Is that correct so far? [LB543]

ALAN PETERSON: That is right, except that I'd say it was one of the noblest Opinions I've ever read from our court. [LB543]

SENATOR CHAMBERS: And one of the things that I wanted to get around to: The court said that even as we punish, we cannot commit an act, and I'm paraphrasing, as atrocious as the act that we are punishing. It was a plea for a humane, enlightened application of the principles of justice, that supposedly move this society, and the court struck down eletrocution... [LB543]

ALAN PETERSON: Right. [LB543]

SENATOR CHAMBERS: ...as a means. Now let me tell you how I found out. I was in a store shopping and a lady came...not lifting, a lady came over and she said (laughter)...she said, Mr. Chambers, thank you for what you did. I said, well, what did I do? She said, you saved that man's life. I said, who? She said, the one they were going to kill. I said, no, I just wrote a letter to them and they could still execute him. She said, no, I just heard on the news that they took away the death warrant. And she said, all those television sets, they're talking about it now. And I looked up and on the news they said that the death warrant had been withdrawn, and I had never experienced what I did then. I'm not a teary person, so it wasn't that. I felt like somebody had kicked me in my stomach. I didn't expect it; I hoped for it. It indicates that there are people, you and others, helped to keep Carey Dean Moore alive long enough for something to be done that ought to have been done. But as long as the death penalty remains on the books, we shouldn't have to have these kind of stratagems. Brilliant as they may be, luck played a part in that. It could have failed. So in all of the years that you have done what you have done, and you've seen motions you filed that should have been sustained but they were overruled, have you become discouraged and disheartened in the struggle? [LB543]

ALAN PETERSON: That's not in me. [LB543]

SENATOR CHAMBERS: Now there was a time, and this is one of those tautological statements, when we both were younger men than we are now, correct? [LB543]

ALAN PETERSON: Yes, quite a bit. [LB543]

SENATOR CHAMBERS: I see you rubbing your hair. [LB543]

ALAN PETERSON: Yeah. [LB543]

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SENATOR CHAMBERS: And I assure you, my friend, that as long as I have breath in my body and that my mind qualifies me to be considered sane, I will not quit. And as long as there's anything I can say or do that will help bring Nebraska to the point of civilization that other countries have reached, that's what I intend to do. And I know I speak for you too. [LB543]

ALAN PETERSON: You do. I think we ought to revoke Nebraska's license to kill. [LB543]

SENATOR CHAMBERS: And that's what we're attempting to do here. Thank you. [LB543]

SENATOR ASHFORD: Senator Coash. [LB543]

SENATOR COASH: Thank you, Senator Ashford. Alan, you've defended several people on death row. Is that correct? [LB543]

ALAN PETERSON: I was appointed several times on the Moore case. [LB543]

SENATOR COASH: Okay. [LB543]

ALAN PETERSON: I helped some of the other defense lawyers on three or four other death penalty cases, yes. [LB543]

SENATOR COASH: Okay. Either in the Moore case or the others, were you compensated for your work? [LB543]

ALAN PETERSON: Oh, about a third of it perhaps. [LB543]

SENATOR COASH: And... [LB543]

ALAN PETERSON: The federal court compensates, when I was in federal court, at a low rate but acceptable rate. The state courts, almost nothing, but that didn't matter. That's not... [LB543]

SENATOR COASH: Okay. [LB543]

ALAN PETERSON: ...why we do this stuff. [LB543]

SENATOR COASH: The reason I ask, Alan, is we often hear about the costs of the death penalty and we pay for both sides here. We execute somebody; we pay for that, we as in the taxpayers,... [LB543]

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ALAN PETERSON: Yeah. Yeah. [LB543]

SENATOR COASH: ...the citizens. [LB543]

ALAN PETERSON: Sure. [LB543]

SENATOR COASH: But they also have to pay to defend it. Is that correct? [LB543]

ALAN PETERSON: Yes. [LB543]

SENATOR COASH: That's the reason for my question. [LB543]

ALAN PETERSON: Yes, you do, and you do have the very fine Commission for Public Advocacy that handles a lot of the cases now, but you pay them, of course, for all these cases that they do. [LB543]

SENATOR COASH: And all those attorneys through the... [LB543]

ALAN PETERSON: Yeah. [LB543]

SENATOR COASH: ...Public Advocacy Office are... [LB543]

ALAN PETERSON: Sure. [LB543]

SENATOR COASH: ...paid for by tax dollars. [LB543]

ALAN PETERSON: Yeah, and the prosecutors and the expert witnesses, uh-huh. [LB543]

SENATOR COASH: And that's all tax money that goes to defend those cases. [LB543]

ALAN PETERSON: Sure. The Legislature four years ago said it voted not to study the actual cost. And so in my rather sarcastic note, I said what they said is, well, just give us a book of blank, signed checks and as the costs come up we'll pay them or we'll give you the account number of our General Fund and in the future you can just take it out of there, we don't want to know. [LB543]

SENATOR ASHFORD: Just for the record, this committee didn't support that position. [LB543]

ALAN PETERSON: I understand that. [LB543]

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SENATOR ASHFORD: And I believe Senator Lathrop was in the vanguard of that effort. [LB543]

SENATOR LATHROP: It's how I remember it too. [LB543]

SENATOR ASHFORD: Is that correct, Senator Lathrop? [LB543]

SENATOR LATHROP: Well, I know I was in the middle of it. [LB543]

SENATOR ASHFORD: Yeah. I thought you were in the vanguard but maybe you were in the middle too. I'm sorry, Senator Coash. I was just recalling. (Laugh) [LB543]

ALAN PETERSON: It's expensive business to do this and it's more expensive than a life without parole would be. Yeah. [LB543]

SENATOR ASHFORD: Senator Davis. [LB543]

SENATOR DAVIS: So on that issue, do you have...can you give us an idea how much the cost is? [LB543]

ALAN PETERSON: You know, no. Other states have found more than a million bucks on average. It depends on how you look at it. Since '59, we've killed three people. If you put in all the money that's been spent on all the death penalty cases, it probably would be over a million. It's certainly in the hundreds of thousands per person. But the Legislature didn't authorize an official study and so we don't know. It's a lot. [LB543]

SENATOR DAVIS: Thank you. [LB543]

SENATOR LATHROP: There was a study by North or South...from a university in North or South Carolina I know that we looked at the first year I was down here... [LB543]

SENATOR ASHFORD: North Carolina, I believe, was... [LB543]

ALAN PETERSON: Yeah. [LB543]

SENATOR LATHROP: ...that showed what the cost is for all the lawyers... [LB543]

ALAN PETERSON: Yeah. [LB543]

SENATOR LATHROP: ...and all of the appeals and the whole proposition. [LB543]

ALAN PETERSON: Right. [LB543]

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SENATOR LATHROP: And then having them on death row for 22 years and then putting them to death, many of whom never get put to death, and... [LB543]

ALAN PETERSON: Right. [LB543]

SENATOR LATHROP: ...and the cost is...of the institution is very, very, very... [LB543]

ALAN PETERSON: Yeah. And if you include all those, of course, it's huge per actual execution. [LB543]

SENATOR LATHROP: Yes, several times more than just leaving them there for life. [LB543]

ALAN PETERSON: Yes. Thank you very much. [LB543]

SENATOR ASHFORD: Senator Christensen. [LB543]

ALAN PETERSON: Oh, excuse me. [LB543]

SENATOR CHRISTENSEN: Thank you, Chairman. Al, part of the debate on the floor always is that if they remove the death penalty they will then challenge life without parole. Do we ever see challenges on any of the others or is...can they not challenge life without parole? How would that be? [LB543]

ALAN PETERSON: I know of no successful challenges of that sentence on the grounds that it's too cruel and unusual. [LB543]

SENATOR CHRISTENSEN: Well,... [LB543]

ALAN PETERSON: No, I mean everybody appeals or can appeal... [LB543]

SENATOR CHRISTENSEN: Right. [LB543]

ALAN PETERSON: ...no matter what the sentence, so I can't say there won't be appeals... [LB543]

SENATOR CHRISTENSEN: Right. [LB543]

ALAN PETERSON: ...but nothing like death penalty litigation. The Moore case, which is sort of average in a way, I must have filed at least ten legitimate lawsuits, some of which he won, some he lost, and those were all paid for. And that's not unusual because you've got...there's two separate state remedies and then there's at least one federal remedy. And if you win any one of those, it starts over again. And that's what happened

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with Moore. He won a resentencing and then the whole thing started over again. So I was on that for 24 years or so and Jerry Soucie has been on it for a while and there were about eight or nine attorneys before me. It's ridiculous. [LB543]

SENATOR CHRISTENSEN: Well, I...you know, that's one of the things that I've listened to on the floor and I've even stated that will we not just see everybody trying to appeal that level. I know they won't do it on inhumane... [LB543]

ALAN PETERSON: Yeah. [LB543]

SENATOR CHRISTENSEN: But will we really see a reduction in state costs, things that way? [LB543]

ALAN PETERSON: Yes, because, look, a life sentence without parole, those words "without parole," that's for the judge, the judge that's doing the sentencing, to kind of say, hey, Pardons Board, I don't want you to commute this sentence. That's all that is. Otherwise, it's the same as a life sentence. Life sentences have never been successfully challenged so, no, there wouldn't be litigation like capital litigation, absolutely not. [LB543]

SENATOR CHRISTENSEN: Okay. Thank you. [LB543]

SENATOR CHAMBERS: One other question. [LB543]

SENATOR ASHFORD: Senator Chambers. [LB543]

SENATOR CHAMBERS: You, in a sense, Mr. Peterson, are our resident expert. There have been situations, as you pointed out, where an issue would be raised and there would be a win, then it goes back again. There would not even be as many bases to appeal even a life without parole sentence as there would be to appeal a death sentence. Is that correct? [LB543]

ALAN PETERSON: Absolutely. There's just nowhere near as many arguments. That's correct. [LB543]

SENATOR CHAMBERS: And have you read opinions, and this is a rhetorical question because all of us interested in this area have read them, where judges in court, they'll go out of their way to say that the death penalty actually skews the system. It takes more of their time. They're required to be extraordinarily careful, even though I think they don't come up with the right conclusion anyway. But they have acknowledged that death is different from any other punishment, and because of that, more time is given at every stage in the proceedings, which means more moving parts. And at any place where the parts move, you may find a basis to reverse... [LB543]

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ALAN PETERSON: Yeah. [LB543]

SENATOR CHAMBERS: ...even if you don't turn the person loose, and as you say,... [LB543]

ALAN PETERSON: Right. [LB543]

SENATOR CHAMBERS: ...start all over again. [LB543]

ALAN PETERSON: Yeah. [LB543]

SENATOR CHAMBERS: But with these other types of cases that don't involve death, the courts have even said it's not the same, because they're dealing with those kind of cases now... [LB543]

ALAN PETERSON: Yeah. [LB543]

SENATOR CHAMBERS: ...with life sentences. And as you pointed out, the kinds of appeals don't take place and some of them can be dismissed without even a hearing because there's no validity to the issue raised. So you can file any appeal you want to, but it doesn't even mean you'll get a hearing necessarily. [LB543]

ALAN PETERSON: That is right. [LB543]

SENATOR CHAMBERS: Okay. Thank you for answering the question. (Laughter) [LB543]

ALAN PETERSON: Thank you, gentlemen. [LB543]

SENATOR ASHFORD: Thank you, Alan. [LB543]

ALAN PETERSON: You bet. [LB543]

SENATOR ASHFORD: Next proponent. How many other proponents do we have for this bill? How many who are for the bill? Okay. Do we have...I think we have no more. How about opponents, those against the bill? [LB543]

DON KLEINE: Good afternoon. My name is Don Kleine, K-I-e-i-n-e. I'm the Douglas County Attorney and I'm appearing on behalf of the Nebraska County Attorneys Association, which opposes this bill. First of all, I think that it's important to acknowledge I think this is a...it's a good thing to debate this issue. This is an issue that the people of the state of Nebraska need to decide. And for that reason, I think it's good to have this

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debate. The County Attorneys Association is opposed. We feel that in certain unique circumstances in the state of Nebraska, that we need to have this ultimate punishment on certain unique cases. Certainly I can talk about my experience in that regard. I've tried probably as many first-degree murder cases as anybody has in the state in my 28 years as a prosecutor. Two of those cases, the jury and the three-judge panel found that the defendant deserved the death penalty, and these people are on death row. Both of those individuals killed children; one killed two children. Arthur Lee Gales killed Latara Chandler, raped and strangled her, and then killed her little brother, Tamar. And then Roy Ellis killed Amber Harris. In both of those cases, they had a pretty significant history also. So it's not something that I know prosecutors in Nebraska use as any kind of a tool. It's not used in...and I think there's some statements...that there have been some misstatements made. It's not used in an interrogation process; it can't be used in that regard. Our interrogations at this time are all videotaped. You can't interrogate somebody and make them an offer to get them to say something. It makes it an improper statement or admission by the defendant. I'd be happy to answer any questions. The cost factor one of the senators brought up I think is an interesting factor. I think it's...certainly the penalty isn't something that's going to be litigated on a continuous basis historically, if somebody is sentenced to life without parole. But to say that there's not going to be a lot of costs involved in somebody who gets sentenced to life without parole is a little disingenuous. Certainly the person is going to appeal every issue that they can, and rightfully so, with regard to that sentence also and they're going to go back on constitutional issues about their counsel also, about having ineffective assistance of counsel, which always seems to be the manner in which defendants then, you know, continue to litigate their case even after they've been convicted. My time is about up. I'll be happy to answer any questions I can. [LB543]

SENATOR ASHFORD: Senator Coash. [LB543]

SENATOR COASH: Thank you, Chairman. When you have a crime that the death penalty is eligible for you to seek, do you have to,...do you take into account the cost that your office will have to incur to seek the death penalty before you make that determination? [LB543]

DON KLEINE: No, I consider the evidence. That's what we base our decision-making process on. If the evidence exists that there are aggravating circumstances, as the Nebraska law allows, and you're well aware of what those aggravators are--were there multiple murders committed at the same time, does the person have a significant violent history, was it a law enforcement officer, you know, on and on, those different aggravators that can apply. If the evidence supports those aggravators, then I'll have to make a determination if those aggravators should be filed in this case. If this is a case I feel it's an appropriate measure, and then the jury, after they find the person guilty of first-degree murder, has to decide if the evidence supports those aggravators. And then if those aggravators...if they support those aggravators, then the three-judge panel has

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to make that determination if those aggravators outweigh any mitigators that the defendant puts on in, of course, the sentencing hearing. And the three-judge panel has to unanimously decide that they outweigh the mitigators before the death penalty exists or it can be put in place. That's the process. But certainly those factors, the biggest factors that are weighed are the evidence--what does the evidence substantiate in this case. And that's the most important factor. [LB543]

SENATOR COASH: But even if you can...feel like you've met the burden of all of those aggravators and the evidence is there, so you still have to make a decision if you're going to push forward with that or not. [LB543]

DON KLEINE: Absolutely. [LB543]

SENATOR COASH: Isn't that correct? [LB543]

DON KLEINE: Right. [LB543]

SENATOR COASH: So are there times when you'll see those aggravators as...and you feel like you've got a good case but you still choose not to move forward in that way? [LB543]

DON KLEINE: There may be a case where you might have one aggravator and it may not be a substantially weighted aggravator. And then it's...and there may be mitigators. So we...I don't make a decision just on if there's an aggravator we have to file that and we have to try and seek the death penalty. No. I think there's discretion still on our part in weighing those, that the evidence exists and supporting aggravators, what kind aggravators are there, if we should move forward. And I don't do that unless we feel it really qualifies for that kind of case. [LB543]

SENATOR COASH: But you don't ever think, jeez, my county board is going to...because when you go for this, you've got to be prepared to pay for expert witnesses and... [LB543]

DON KLEINE: Well, I don't think that that should be a factor. I mean it's based on what the evidence is and, in my opinion and in my discretion, is this a case that merits that potential punishment with a jury and a three-judge panel. [LB543]

SENATOR COASH: So the short answer to the question was you don't look at costs as a factor of whether or not... [LB543]

DON KLEINE: No. [LB543]

SENATOR COASH: ...you even... [LB543]

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DON KLEINE: No. [LB543]

SENATOR COASH: Okay. Thank you. [LB543]

SENATOR ASHFORD: Senator Chambers. [LB543]

SENATOR CHAMBERS: Mr. Kleine, we have talked on issues other than the death penalty from time to time and have agreed, haven't we? [LB543]

DON KLEINE: Absolutely. [LB543]

SENATOR CHAMBERS: You're here representing the Douglas County attorneys association today. [LB543]

DON KLEINE: Nebraska County Attorneys Association. [LB543]

SENATOR CHAMBERS: Nebraska. [LB543]

DON KLEINE Right. [LB543]

SENATOR CHAMBERS: Did you draw the short straw? [LB543]

DON KLEINE: Not...no, not necessarily. I wouldn't say that. [LB543]

SENATOR CHAMBERS: Okay, not necessarily. Okay, now there was a case that came up after I managed to get the Legislature to say that people with certain mental deficiencies would not face the death penalty, and a person who fit that description was sent back--I don't remember if it was for resentencing or how--to Douglas County Court and you were in the position of the prosecution and you did not insist that the death penalty remain in place. Do you remember that case? The guy's name was Voyal (phonetic) Watson. [LB543]

DON KLEINE: I sure do, and we agreed. I mean I saw you, we talked about that, I looked at it, and the standard that the law allowed with regard to his mental state, I thought that you were right. [LB543]

SENATOR CHAMBERS: And have I said before where you're concerned in public, as today, that if I were ever accused of a crime that would go to court, I would rather you prosecute me than anybody else? Have I said that before? [LB543]

DON KLEINE: Yes, you have. [LB543]

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SENATOR CHAMBERS: And have I stated that I think you're a very competent and capable prosecutor? [LB543]

DON KLEINE: I believe so. [LB543]

SENATOR CHAMBERS: So I was asking to have the best take the case. That's what it would amount to, wouldn't it? [LB543]

DON KLEINE: Yes, sir. [LB543]

SENATOR CHAMBERS: And then I also had said that if you looked at the case and determined that there was not a basis, you would not prosecute me just because of who I am. I've said that too, correct? [LB543]

DON KLEINE: Right. [LB543]

SENATOR CHAMBERS: That's to let people know that we're not forever antagonistic toward each other because you're the prosecutor and I'm always trying to get rid of the death penalty. Are you aware of any cases which, in your opinion, may have involved as bad a homicide, if not worse, as or than some of those for which people are on death row now? [LB543]

DON KLEINE: You mean in my county or that I've heard of in other places? [LB543]

SENATOR CHAMBERS: Across the state. [LB543]

DON KLEINE: Throughout the state? [LB543]

SENATOR CHAMBERS: Yes. There's one guy, he beat his wife to death. They knew she was alive because blood was all over the house. Then he put her...he wrapped her up in barbed wire, put her under a vehicle and set it afire. And they knew that she was alive at the time because in the autopsy there was soot in her lungs, which would have indicated she was breathing. [LB543]

DON KLEINE: Breathing, right. [LB543]

SENATOR CHAMBERS: And he was convicted of manslaughter and the judge inappropriately sentenced him, so he might have gotten even a lesser sentence than what had originally been imposed. And you may not remember that case, so I will ask it theoretically. Do you think there are people who did not get charged or tried for a capital offense, meaning with the aggravating circumstances, whose case would have merited that kind of a trial had the aggravators that were present been lodged? [LB543]

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DON KLEINE: Well, it's possible. I mean there... [LB543]

SENATOR CHAMBERS: Let me ask it a different way. [LB543]

DON KLEINE: I don't like to comment on cases that I don't know what the fact...okay. [LB543]

SENATOR CHAMBERS: Do you think there are people on death row who committed crimes that were not any worse than people who are currently in the general population of the prison? [LB543]

DON KLEINE: Oh, that's possible. [LB543]

SENATOR CHAMBERS: And it's likely, too, because it's very unlikely that the few people on death row committed crimes that are so much different and more heinous than all the other crimes of all those other murderers who are in the general population. [LB543]

DON KLEINE: Sometimes people don't get convicted of crimes that they should be convicted of. [LB543]

SENATOR CHAMBERS: And some are not charged or they're allowed to cop a plea. [LB543]

DON KLEINE: Right. [LB543]

SENATOR CHAMBERS: Now there are a couple of questions that I want to ask, and since you don't have a lot of people on your side testifying, I want to (laughter) offer you an opportunity, if you need to, to present your case. Let me see if I can find something here. (Laughter) [LB543]

DON KLEINE: I'm sure you will. [LB543]

SENATOR CHAMBERS: Oh, all right. [LB543]

SENATOR ASHFORD: Take your time, Senator Chambers. [LB543]

SENATOR LATHROP: Not only do you not have a lot of people, he can't think of anything. [LB543]

SENATOR CHAMBERS: There are...there are some poor counties, and I know this for a fact, where they will not try to get a death penalty because they acknowledge they can't afford it. They will not seek it. Are you aware of any counties like that? [LB543]

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DON KLEINE: I'm not. [LB543]

SENATOR CHAMBERS: Okay. [LB543]

DON KLEINE: I'm not, but I don't disagree with you. That very well could be possible. [LB543]

SENATOR CHAMBERS: Okay, because some... [LB543]

DON KLEINE: I mean it depends. You know, every county elects a county attorney also and you have 93 different county attorneys in place that... [LB543]

SENATOR CHAMBERS: Don't steal my thunder. Here's my next question. [LB543]

DON KLEINE: Okay. [LB543]

SENATOR CHAMBERS: Are you aware that there are county attorneys who don't believe in the death penalty and, therefore, would never try to seek one? [LB543]

DON KLEINE: I don't know the answer to that but I'm sure there could be. Everybody has a personal opinion that... [LB543]

SENATOR CHAMBERS: And I've had some tell me. I've had some tell me--and I'm not lying, you can poll all of them... [LB543]

DON KLEINE: No, I... [LB543]

SENATOR CHAMBERS: ...and some of them might still be in office--Ernie, you'll never have to worry about a case coming from me because I don't believe in the death penalty and I won't see it. Now if the death penalty were to be abolished, do you think that the system of criminal justice would fall apart and murders would become much more common than they are now? [LB543]

DON KLEINE: No. [LB543]

SENATOR CHAMBERS: The people who commit murder, and I'm not talking about for hire where they do calculate, do you think they even know whether there's a death penalty or not? Does that enter into their calculation do you think? [LB543]

DON KLEINE: I think there are times when it can or does with regard to even I've heard of people living in states on border states where one state has a death penalty and one doesn't, and that was a factor as to where they were talking about committing a murder.

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[LB543]

SENATOR CHAMBERS: Well, but they were calculating. [LB543]

DON KLEINE: Right. [LB543]

SENATOR CHAMBERS: Now in Nebraska, do you think that...and I know these are theoretical questions so if you don't even want to answer you don't have to. I will make a statement. I don't believe people who are committing these murders even think about the death penalty. Not only do they not know whether there's a death penalty or not, but when I've had one of these bills, I've gotten calls and letters, and I've kept some of them, praising me for reinstating the death penalty. First of all, I was not reinstating it, because it was already there, and I'm against the death penalty anyway. But I don't know how they read about the bill but they apparently thought the death penalty had been removed and that my bill was to reinstate it, which to me indicates the public doesn't even know. And it appears to me that as long as a death penalty is on the books, even if it never results in an execution, people are satisfied. They're not clamoring for executions. They just say, we want the death penalty, keep the death penalty. And if you ask them, name a case where somebody should have gotten the death penalty and didn't, they couldn't even tell you that. So as a prosecutor, you are in a position where you play the hand that you're dealt and you will look at a case and determine whether or not, based on the law, that's a case where you ought to let the court know that you're going to seek the death penalty and these are the aggravating circumstances that would justify it. Correct? [LB543]

DON KLEINE: That's right. That's right. [LB543]

SENATOR CHAMBERS: Are you the individual who, in a very recent case, was going to use exceptionally heinous and cruel as an aggravator and some competent people you hired in your office demonstrated their competency by doing some research and indicated that maybe that's not a good aggravator to try to gain success on? [LB543]

DON KLEINE: Yes, that's true. I mean, we had some issues or questions about that aggravator in some...in a particular case, whether the evidence fit that and whether the law was such that we could use it. [LB543]

SENATOR CHAMBERS: And you decided not to use it. [LB543]

DON KLEINE: That's right. [LB543]

SENATOR CHAMBERS: Okay. Which again shows that you're not just trying to get anything in that you can get in because the law says that you can. Have you stated what you needed to state to carry out your duty to the...that organization whose name I

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won't even mention anymore? [LB543]

DON KLEINE: Well, the other thing I'd just like to state is that, you know, I meet with victims' families way too often, on practically a weekly basis. And I think it's...one of the things that I stress with them about the criminal justice system generally is that they shouldn't weigh their son or daughter's or mother or father's life with what happens to the defendant anyway, so that they understand that from the very beginning; that it's not a situation where they're going to walk out of the courthouse, no matter what happens, and feel that somehow the scales now have been...are equal based on what happens to the defendant; that they shouldn't do that to themselves, number one, with regards to what the value of their son or daughter or the victim's life was compared to what happens to the defendant. So I think that's important that people recognize that. [LB543]

SENATOR CHAMBERS: Mr. Kleine, were you requested to come today by the County Attorneys Association? [LB543]

DON KLEINE: Yes. [LB543]

SENATOR CHAMBERS: You didn't volunteer. [LB543]

DON KLEINE: Well, I said I would. [LB543]

SENATOR CHAMBERS: But they requested it. [LB543]

DON KLEINE: Yes. [LB543]

SENATOR CHAMBERS: They know the respect that I have for you and they know that when there's somebody who has treated me and handled cases in a way that's appropriate, I'm not going to deal with that person the way I deal with some of them, because some of them come here with unclean hands and they know that I know and they also think I know more than I do. (Laughter) But don't let them get the impression that because you came here and kept me low-key that the same is going to happen for them. When they come, all bets are on again. (Laughter) [LB543]

DON KLEINE: All right, Senator. [LB543]

SENATOR ASHFORD: Senator Seiler. [LB543]

SENATOR SEILER: Yes, Mr. Prosecutor, there's two parts of the law that bother me a lot and that's the aiding/abetting law and the felony murder. Have you ever used the death penalty in any of those situations or do you know that prosecutors do? [LB543]

DON KLEINE: Well, I think, yes, I have. The felony murder rule, as I said, the...I know in

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both cases the young lady was sexually assaulted at the time that she was strangled or murdered, so that qualifies as felony murder. And usually in those cases it's been charged in the alternative where both, it's charged as a felony murder and a premeditated, deliberate, intentional killing, which we can do. [LB543]

SENATOR SEILER: Okay. [LB543]

DON KLEINE: So certainly. [LB543]

SENATOR SEILER: Okay. The one that bothers me is where the kid is driving the car and there's a murder inside the store and they charge him with felony murder. [LB543]

DON KLEINE: Certainly there's been situations where...if that applies, but it's not a death penalty case. [LB543]

SENATOR SEILER: Okay. That's what I wanted to know. [LB543]

DON KLEINE: All right. [LB543]

SENATOR SEILER: Thank you. [LB543]

DON KLEINE: Sure. [LB543]

SENATOR CHAMBERS: One other. [LB543]

SENATOR ASHFORD: Senator. [LB543]

SENATOR CHAMBERS: Mr. Kleine, I'm trying to be as fair with you as I think you've been. And I don't want to keep saying that because it seems like I'm trying to cheese up to you because maybe there's some murder or other that I didn't think much of at the time that may be found out and I'll be prosecuted. But you are the one who I mentioned when I was offered a bill to repeal that exceptionally heinous, cruel, and so forth aggravator. You were not the one who represented the County Attorneys Association. Since it was your case and you were the person who decided to forgo using it, what would be your opinion? I want you to have an opportunity to give it as to whether or not the death penalty proceedings or system would be weakened if that particular aggravator were to be repealed. [LB543]

DON KLEINE: Oh, I don't think...I don't think it would have a tremendous impact on...there's other aggravating circumstances obviously. [LB543]

SENATOR CHAMBERS: So if it's repealed, you could still do your job. [LB543]

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DON KLEINE: We could still do our job. The question always with that, as you've highlighted, is the question of what...how do you determine what those words mean. [LB543]

SENATOR CHAMBERS: And if it is used and a jury determines that it applies, then it could spawn litigation because it's not just the words but the application they make also. [LB543]

DON KLEINE: It would and it has, right. [LB543]

SENATOR CHAMBERS: Okay. And that's all. [LB543]

DON KLEINE: All right. [LB543]

SENATOR ASHFORD: My only comment, I would all...Don, you know, in all the times I've heard you testify before this committee, it's been several, and I would come to the same conclusion that your candor is incredibly important. And I think that the conversation that you had with Senator Chambers today, the 25 minutes or so that you went back and forth and discussed this issue, seriously, that discussion needs to be heard by all Nebraskans because it was a fair and balanced discussion and your answers were incredibly fair and balanced, as they always are. And I think all Nebraskans need to take 20 minutes or so and listen to what you said. Because no matter what we decide as a matter of policy, whether it's life imprisonment without parole as the maximum sentence, I know and every member of this committee knows that you'll carry out that policy, as you always have, whatever the policy that we've given to you before this. So, you know, I appreciate your comments and answers. [LB543]

DON KLEINE: Sure. Thank you. [LB543]

SENATOR ASHFORD: Senator Lathrop. [LB543]

SENATOR LATHROP: I'm going to maybe try to make a couple of points, Don. And I, too, have a lot of respect for the way you run your office and the way you take the responsibility of a prosecutor. You testified today that the cost isn't a consideration for you, as the prosecutor in the biggest county, the metropolitan county; that if somebody qualifies for the death penalty and the evidence supports it, that you'll attempt to secure the death penalty. [LB543]

DON KLEINE: The cost isn't a factor, right. I mean... [LB543]

SENATOR LATHROP: Right. You're going to do it if you think the evidence leads you to that conclusion. And that may illustrate really...somebody was talking about the discriminatory impact of the death penalty. And in fact, what we...what you learn when

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you look at the application of the death penalty is in those communities where they have the most resources, you're generally going to find more of the black population in the state--Omaha. Right? [LB543]

DON KLEINE: I would assume. [LB543]

SENATOR LATHROP: Yeah. And so when you get to further outstate Nebraska, and I know Richardson County faced this in the terrible murders down there in Rulo, it almost bankrupted the county. And so for some counties who are in rural Nebraska, which does not have the minority population, they do have to take the cost of the prosecution into account because it becomes, in some cases, a 20-year odyssey for the county to finance. [LB543]

DON KLEINE: Yes. [LB543]

SENATOR LATHROP: And as a result, you typically see or you may see a disparate impact, not an intentional discrimination but a disparate impact in the application of the death penalty just by virtue of the fact that they...that the African-American population is located in the county where we have the most resources to seek and secure the death penalty. [LB543]

DON KLEINE: Yeah, we're the largest county. [LB543]

SENATOR LATHROP: Right. You talked about meeting with too many families and I appreciate and I can only imagine the conversations you have to have, and I know that they have to be very, very difficult. But one of the struggles I have with the death penalty is that you meet with one family and you say, I can get it for you. And they may have some sense of satisfaction knowing that you're going to secure the death penalty. But there has to be a number of terrible homicides in Omaha or across the state where you have to look at another family and say, I know we have the death penalty in Nebraska, but it isn't there for you. [LB543]

DON KLEINE: First of all, I would never say to them, I could get it for you. I mean... [LB543]

SENATOR LATHROP: I don't... [LB543]

DON KLEINE: ...you know, I might be able to say... [LB543]

SENATOR LATHROP: ...I don't mean to imply anything about your character in a negative way, Don. [LB543]

DON KLEINE: No. No, I know. I know. But what I'm saying is I might say these...it looks

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like there's evidence that exists for aggravating circumstances and we may file those in this case, depending on if there's enough there that I think it's...the weight is something that's worthwhile to move forward on. But certainly there are other cases where that evidence doesn't exist and that's part of meeting with them early on and explaining. [LB543]

SENATOR CHAMBERS: Just one thing: Mr. Kleine, could you face the mike because it's going to be recorded. [LB543]

DON KLEINE: I'm sorry. I'm sorry. [LB543]

SENATOR CHAMBERS: Okay. [LB543]

DON KLEINE: Yeah. Is that...is just to let them know how the process works so that they understand, because some people think, well, if it's a first-degree murder then the death penalty applies, which isn't the case. You know, they're... [LB543]

SENATOR LATHROP: And in some respects though, and that's...I know that we don't have...we did a book one year and we don't have that right now in front of us, but I know that, and this used to be Senator Aguilar's argument in favor of repeal, are a homicide that happened I think in Grand Island or in Hall County that was terrible and he would describe it every year we'd debate the death penalty. And we do have people in the general population who have committed some of the most outrageous homicides, at least as bad as some of those of the folks who are on death row, yet they end up in the general population, never having been sentenced to death. And so in some respects, this is about the institution, not about your office... [LB543]

DON KLEINE: Right. [LB543]

SENATOR LATHROP: ...or about prosecutors... [LB543]

DON KLEINE: Right. [LB543]

SENATOR LATHROP: ...because, believe me, if there's a guy that I trust to apply a penalty fairly, it would be you. But the reality is, about the death penalty, the reality is, is that there are people who never get it who should, under whatever criteria we use, and we have people who get it, which is if somebody deserves it these guys do. But we have families that look to it and then are told it's not available for the loss of your loved one, even though they may expect that this institution, that we debate and we reaffirm every year or two down in the Legislature, is going to be there and it's not. And in some respects, I think as an institution, it fails those families whose loved ones are murdered in a terrible way and they are...and their defendant or the perpetrator of this terrible homicide doesn't end up with a death penalty. And so we have families that are told we

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may have this here on the books but it's not there for you. And I think that is one of the shortcomings of the death penalty, if you will, in that we think of it as the people who want to see the repeal are all sympathizers with these murderers. First of all, that isn't the case, at least for me. I appreciate that they're human beings and we can respect their life and that can certainly be a reason for opposing the death penalty, but there are others and one of them is a lot of people do just as bad things and never have to face the death penalty or there are families who spend 22 years, like Ms. Kelle who was here before, or a quarter of a century waiting for it to be carried out, and the guy who's in the paper is the murderer. And there just seems to be a lot of unfairness in the way it's applied, even though it's applied about as well as anybody could. [LB543]

DON KLEINE: Yeah, and I understand what you're saying. You know, I guess I'd like to, I think, or when it's up to that individual elected county attorney as to what they do, but I would like to think it's based on what the evidence is, and that's how we prove anything in any case. And so that's what I'd like to think it looks at. There may be the most horrific murder that's ever been committed and we might have a pretty good idea of even who did it, but we'll not be able to charge him because we just don't have the evidence. Same thing might apply with regard to the aggravating circumstance on a death penalty case, that there just might not be enough evidence to charge that aggravator but even though it was a very atrocious... [LB543]

SENATOR LATHROP: Right. I know along the way one time we had an amendment, and now I've been doing this for seven years and they're starting to run together. But one year we had an amendment that we were going to require that we compare this particular defendant to others who have committed first-degree murders. And that was opposed because, you know, that comparison wouldn't result probably. And you could always go into the general population and find somebody who did something just as bad, probably with just as clear evidence in some cases, as the guys who are looking at the death penalty, and mostly because they're being prosecuted in counties that have the resources to do it. [LB543]

DON KLEINE: And I know defense counsel, who do a very good job in representing their clients, do that. They bring up comparisons with regard to other cases where somebody has had a life penalty imposed versus a death penalty, and compared those fact situations to...and point those out to judges. [LB543]

SENATOR LATHROP: Thanks, Don. [LB543]

DON KLEINE: Sure. [LB543]

SENATOR ASHFORD: Senator Coash, then Senator Chambers. [LB543]

SENATOR COASH: Thank you, Senator Ashford. Senator Lathrop's comments brought

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up a quick question for me. You know, you said you don't take costs into account when you decide to go there. What about the families' wishes? Because, you know, we heard from a family member here who said, given the opportunity, when her brother's killer was going on trial, she would have said don't do this, don't pursue this. And you might find another family who says, yeah, I want justice, I want this guy to sit. Does that enter into the equation at all, just... [LB543]

DON KLEINE: I think that's a very good question because when I meet with a victim's family, I explain to them also that it's not the victim versus the defendant, it's the state of Nebraska versus the defendant, the people of the state of Nebraska. And so I'll visit with them, like I know Joe Kelly is here too, the same thing he would do; advise them of the situation; tell them I'm going to inform them if there's...what we're going to do, what we're going to charge, what if there's an offer of some sort of a plea agreement by the defense counsel that we're considering and ask for their input. But I don't put it...it's not something you put on them. It's not, okay, I want...I need you to make a decision here about what do you think should...what we should do in this case. That's our call. And so I certainly would ask for their input, I would certainly advise them of what's going on, but it's not something you put on the victim and say, okay, what should happen here. Again, it's our responsibility, knowing what the evidence is and what the law is, to make that decision, but certainly we want their input. But it's not, again, it's not the victim versus the defendant; it's the people of the state of Nebraska versus the defendant. So that's a good question because that does come into play. Certainly we would talk to the victim's family. We would let them know what's going on. We'd want them to be on board with whatever happens. [LB543]

SENATOR COASH: Thank you. [LB543]

SENATOR ASHFORD: Senator Chambers. [LB543]

SENATOR CHAMBERS: I don't recall the name of the case right now, but when the Supreme Court was gutting the bill that I had said that I had gotten passed where they compare homicides, then-Chief Justice Krivosha, I think that was the case, in fact did review homicides, because there was a companion bill that required the person who is an administrator for the courts to have prosecutors send in all of the evidence on the homicides where a death penalty was sought and where it was not. And he had the facts of these cases and he laid them out and he demonstrated case after case where the murder was a lot more atrocious, and in all the cases that he mentioned nobody got the death penalty. One of the cases that sticks out in my mind, the family's name was spelled N-o-k-e-s. Some pronounced it Nokes, some Nokish (phonetically). But there was a love triangle and the two wound up murdering the third party, cut the body up into pieces, wrapped them in butcher paper, and dumped them in a reservoir. And they didn't get the death penalty. And he had a case where a guy was killed. His head was cut off and part of the body in the trunk of a car, and the head, I don't know where it

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was. They didn't get the death penalty, those kind of atrocious cases; not where you say, *comme ci, comme ca*. And this was the former Chief Justice and he did it because he said, if all you're going to compare are cases where the death penalty is imposed, it's like saying you want to examine whether or not people being compelled to sit in the back of the bus are treated differently from those who are not. And instead of you comparing the situation of those who are made to sit in the back of the bus with those who are not, you're just going to compare those who are sitting in the back of the bus and say, well, all of them are treated the same way. Yeah, all of them are discriminated against, but what is the circumstance they face as compared to those who don't sit in the back of the bus? So the judges have skewed the system. And contrary to what you think, I know not all county attorneys try to do the right thing. I know there are some that overcharge, because I've read some of the charging papers and the facts that they allege do not even qualify as being a part of the case being brought. And one was out in Norfolk and I used to have to deal with him in a number of cases. So if I were ever pushed to say name some prosecutors, I could, but that's not what we're doing here today. But I know that they're not all doing like you do. I know there is racial discrimination because, not just where there are death penalty cases, I look at other cases that occur. I look at the way black people, nonwhite people, Latinos are treated, Native Americans in those other counties. There was one where I had to get rid of a bounty bill where a little sheriff named Story...and his eyes were so close together I used to tell him, I could take one finger and stick it in both your eyes at the same time. (Laughter) He had a bounty system because you would pay the sheriff so much for each meal. So what he would go out and do, a few minutes before midnight he'd round up as many Native Americans as he could. That was a day. He would keep them in jail past midnight, not feed any of them a meal, and let them out. Then he'd charge for meals for every one of them. That seems petty. That's what he was doing. And when I showed the Legislature and documented it, they passed a bill where that couldn't be done anymore. I don't know what the state of the law would be if I weren't here because, first of all, I will acknowledge that what I see is there and I will deal with it. Others don't even want to admit that this stuff exists and I've got to listen to it when I know that it's different. That's enough from me. Thank you. [LB543]

SENATOR ASHFORD: Thanks, Don. [LB543]

DON KLEINE: Thank you. [LB543]

SENATOR LATHROP: Thanks, Don. [LB543]

JOE KELLY: Members of the committee, my name is Joe Kelly,... [LB543]

SENATOR LATHROP: Hey. Hey, Joe. [LB543]

JOE KELLY: ...K-e-l-l-y. I'm the Lancaster County Attorney. I'm here for the Nebraska

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County Attorneys Association as well to oppose the bill. I think Mr. Kleine has covered a lot of those issues. You may want to ask questions about those. I thought I'd address two things based on some testimony I heard, then I want to talk about the bill itself, were you to repeal capital punishment in Nebraska. The first one, Senator Coash, on the cost, remember that as a result of the Rulo murders and some other cases like that in the late '70s and '80s, the Attorney General's Office formed that unit to prosecute cases on behalf of those county attorneys who were not either professionally equipped to handle it or if they didn't have the money. Likewise, the Public Advocacy Commission is funded by the state to defend in those particular cases. And a second point with regard to plea negotiations and the threat of using capital punishment, as a general point ethically, as a prosecutor, I am entitled to talk about the most serious crime for which I think I could convict an individual when I am discussing plea negotiations. Even if there were not a death penalty or, excuse me, yes, a death penalty, you'd still have life imprisonment. And so in cases where it was a borderline case between a second-degree and first-degree murder, there might be negotiations between the parties about what the appropriate charge is. But it isn't necessarily used as a hammer, as long as I have an ethical belief that I can prove that case at the highest level that I'm talking about. But we don't always use it that way. This summer I tried a first-degree murder case, inmate killing another inmate. I did not add aggravators to that case. I did not threaten to add aggravators to that case. I had a few that were very weak that didn't seem sufficient to me, so the issue was never raised in that particular case. It doesn't have to be used as any sort of a hammer. I'm running out of time. I wanted to say I'm not sure that I see a real difference between life imprisonment without the possibility of parole and life imprisonment based on the way our Board of Pardons has handled first-degree murders for as long as I have been prosecuting. And second, I am not convinced of the need to keep the aggravating circumstances in this process if we were to end up with life without the possibility of parole in life I and IA as the two possible penalties for first-degree murder. My light...yeah. Questions? [LB543]

SENATOR LATHROP: I do want to follow up on that. If we repeal the death penalty, just your legal judgment as someone who may have thought this through, if we repeal the death penalty and established a true life without the possibility of parole, do we need to go through all of this special process of charging them a process of aggravating and mitigating circumstances to fit a new category of punishment? [LB543]

JOE KELLY: Well, that... [LB543]

SENATOR LATHROP: Or is not taking a life allowing us to get away from that process of specially charging them and evaluating and having hearings on aggravating and mitigating circumstances? [LB543]

JOE KELLY: My preference was for the latter, as you have stated it. Senator Chambers, the drafter of this bill, obviously knows that there is a difference, because one could be

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paroled...excuse me, commuted to a term of years and then paroled. And under his bill, that would not be possible for a certain number of those first-degree murders. [LB543]

SENATOR LATHROP: And if we have that special category that would result from this bill, do we need to maintain the aggravating/mitigating circumstances to impose a sentence that has no possibility of parole or not? Is that something that's reserved just for death penalty? [LB543]

JOE KELLY: You would almost have to because you would have two different sentences, two different sentences. You'd have life where you could be paroled, and you would have life without parole, and if you were commuted to a term of years you'd have to jam out on the top end, half of the top end. So for a sentencing judge to make that distinction and decide which is which here, you'd have to have some formula in your statute. And that's why I'd have said, as I looked it, it seemed to me that life under present circumstances, with present Parole Board provisions, is sufficient in those cases if you no longer have capital punishment. [LB543]

SENATOR LATHROP: I don't think you answered my question. [LB543]

JOE KELLY: Okay. [LB543]

SENATOR LATHROP: Maybe you did and you didn't...or I didn't ask it clearly enough. Currently, to impose the death penalty we have to go through a process. We have to charge them and let them know in advance that they're looking at the death penalty. [LB543]

JOE KELLY: Yes. [LB543]

SENATOR LATHROP: So that's the first thing. The second thing is we have to go through a separate trial, if you will, on the aggravating and mitigating circumstances. That's the current model for imposing the death penalty. Do we need that for the new version or this...the replacement version of life? [LB543]

JOE KELLY: My answer, no. [LB543]

SENATOR LATHROP: Okay. So all we need to do, if we want to eliminate the death penalty, is say we're going to have a new category of life imprisonment and, by gosh, we mean what we say and you're not going to parole out. [LB543]

JOE KELLY: That would be a way to do it, yes. [LB543]

SENATOR LATHROP: Okay. Thank you. Senator Chambers. [LB543]

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SENATOR CHAMBERS: Now I'm not sure of the answer. And maybe you responded to his question. You had acknowledged that you have two categories under the bill, one life without the possibility of parole and there would be no consideration given to good time and those kind of things, then life which can be commuted to a term of years and that would be handled differently from the way this one, without parole. And I thought I heard you say that you would have to have a formula by which to distinguish the case where you got life from the case where you got life without parole. And the formula is the aggravating and mitigating circumstances, unless you know of a different formula which you haven't suggested. [LB543]

JOE KELLY: No. No. [LB543]

SENATOR CHAMBERS: What are you saying no to? [LB543]

JOE KELLY: What I'm saying is my preference would be not to have life without the possibility of parole and life as possible penalties... [LB543]

SENATOR CHAMBERS: Oh, so you mean just say... [LB543]

JOE KELLY: ...if you repealed. [LB543]

SENATOR CHAMBERS: ...you mean just say life. [LB543]

JOE KELLY: Yes. [LB543]

SENATOR CHAMBERS: And I want my colleagues to know that because that's what I used to put in the bills. In the past, I would say, we substitute a life sentence for...in exchange for death. Senator Beutler had come along and said, well, if you can make it seem like it's a stronger type of life sentence, there might be a chance. I said I don't want to do that, because if you have the death penalty still in place then you've added another penalty harsher than life but it's not death, so I will not put life without a possibility of parole as long as there's a death penalty too. So that's how that notion came into play. I would just as soon not have life without parole but say a life sentence. Then you don't have to have the mitigating or aggravating circumstances because you haven't created statutorily two different punishments that would occur in the case of a first-degree murder. We have to have a first-degree murder in either case, but the U.S. Supreme Court has said you've got to distinguish this higher level where the punishment will occur from what you might call the ordinary murder. So if we do away with life without parole, then we can get rid of the aggravators and mitigators, in my view. But if we maintain it, we've got to have a statutory guide for the judges to follow to distinguish one from the other. [LB543]

JOE KELLY: Yes. I agree. [LB543]

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SENATOR CHAMBERS: Okay. I just wanted that in the record. [LB543]

SENATOR LATHROP: Yeah, but it doesn't have to be the current model of aggravators and mitigators. [LB543]

JOE KELLY: I'd say no. I mean those are the aggravators... [LB543]

SENATOR LATHROP: That's something we reserve for death. [LB543]

JOE KELLY: Yes, those are developed. [LB543]

SENATOR LATHROP: And so some criteria for distinguishing what I would call death by incarceration from a standard ordinary life. [LB543]

SENATOR CHAMBERS: I've got the answer. [LB543]

SENATOR LATHROP: Life? [LB543]

SENATOR CHAMBERS: Life without possibility of parole. [LB543]

SENATOR LATHROP: Well, the point is that we need some criteria because that is a current...under current law, life sentences may be commuted and somebody may ultimately get out, if not just in theory. The penalty that we would be talking about as a substitute for death, which is essentially spending the rest of your life in prison till the day you die, that would require some criteria but not necessarily would we have to follow what we've used in death penalty cases, which is telling them that they're looking at this and having the same set of aggravators and mitigators and a second trial. [LB543]

JOE KELLY: Yes. Yeah, I agree. [LB543]

SENATOR LATHROP: Okay. Thank you. [LB543]

SENATOR ASHFORD: Thanks, Joe. Do we have any other opponents? Any neutral testifiers? [LB543]

RICHARD DIETER: (Exhibit 13) Mr. Chairman, members of the committee, thank you for this opportunity to appear before you to speak about the death penalty. My name is Richard Dieter, that's D-i-e-t-e-r. I'm the executive director of the Death Penalty Information Center, which is a nonprofit organization in Washington, D.C., that does research and collects statistics on the death penalty. I'm an attorney and an adjunct professor at Catholic University Law School. I'm here today to talk to you about the

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costs of the death penalty, which I realize is among the most mundane of the topics that you have already reviewed but one which I know you also bear a chief responsibility for reviewing and carrying out the shepherding of the state's revenue. So I think it's an important one for you. I have looked at, in my course of 20 years as director of the Death Penalty Information Center, what I believe is every study that has been done on the costs of the death penalty. And although this is a complex issue, because, after all, it involves the hours of the defense attorney and the prosecutors, the hours put in by the Supreme Court justices, the form of incarceration that you have on death row. All of these things go into the costs of the death penalty. Nevertheless, all of the studies that I have looked at over these 20 years have come to one conclusion and that is that the death penalty as a punishment is more expensive than a system where the worst punishment is life without parole. And I think that should make entire sense to those who have studied this punishment over the years, even though it's counterintuitive to many people. It's so expensive because every step of a death penalty trial and appeals and even incarceration is more expensive than the typical case. There is just more preparation you have to do if you're preparing for a death penalty trial, at least 1,000 hours of preparation if you're doing it right, and the same thing is true for the prosecution. They're preparing for two cases, for both conviction and for the sentencing process. And that will carry over through the appeals. There's going to be two issues that are appealed and all of these things have to be examined with utmost care because of what is on the line. And even incarceration, where people on death row have to be watched, have to be escorted, perhaps their meals are brought to them, perhaps they don't participate in work programs, but for whatever reasons even the incarceration is more expensive. And so all of this adds to the cost of the death penalty. The only place where the death penalty can save the state money is once an execution has occurred, because from that point on there is no more expense. However, the reality, as some have hinted out, is that the death penalty is being used less and less. It is used in only...only 15 percent of the people who have been sentenced to death since 1976, when the death penalty came back, have been executed. So, you know, for most of the death row inmates, that day doesn't come when the execution happens; and for those it does, the average time between sentencing and execution is 15 years. And no doubt you have cases that are even longer than that. So the savings isn't there. The time on death row is more expensive and it's almost as long as spending life imprisonment, all the other aspects are more expensive. So how much does it cost? Well, there have been a lot of studies. I think the best numbers that are out today, a study that was recently done at the Urban Institute which looked at a death penalty case from beginning to end, and by the end I mean, you know, through the appeals and time on death row, and looked at a life without parole case through the same time, not just the trials, not just the appeals, but even the 40 years that you may spend in prison in a life imprisonment case. And I do...I want to ask if... [LB543]

SENATOR ASHFORD: Let's keep on going. [LB543]

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RICHARD DIETER: ...if I should keep on going. [LB543]

SENATOR ASHFORD: Well, we could ask you a question... [LB543]

RICHARD DIETER: Yes. [LB543]

SENATOR ASHFORD: ...about what you think about these issues. [LB543]

RICHARD DIETER: Yes, I don't take too long though, I promise you that, not as long as the testimony that I gave. [LB543]

SENATOR ASHFORD: Well, when the red light comes on, we may ask you a question. [LB543]

RICHARD DIETER: Okay. Very good. [LB543]

SENATOR ASHFORD: Yeah. [LB543]

RICHARD DIETER: But just to say that the study that was done computed that the cost of a death penalty case is about \$3 million from beginning to end, and the cost of a life without parole case, about \$1.1 million, and that was a study. These things have to be state-specific, so I can't tell you exactly what it costs in Nebraska, but that was a study done in Maryland and it agreed in basic numbers with a study in Florida and one in Texas and one in North Carolina that was mentioned here earlier. So it's not too far afield to say that a death penalty case, in its entirety, is going to cost about \$3 million, which may or may not sound like a lot of money. Over the course of Nebraska's death penalty, they have had about 35 death sentences, so now what you are figuring the state has spent is upwards in the realm of \$100 million at three times each of the 33 death sentences. But of course, that hasn't resulted in 33 executions or 35 executions. In fact, it's resulted in three executions. And so now you start to see where some of the large numbers with respect to the cost of the punishment come in; that is, what is this state paying per execution? Because without an execution, the death penalty is somewhat meaningless. [LB543]

SENATOR ASHFORD: Let me ask you, do you... [LB543]

RICHARD DIETER: Go ahead. [LB543]

SENATOR ASHFORD: Do you have any further data on the cost issue? [LB543]

RICHARD DIETER: I do. [LB543]

SENATOR ASHFORD: Well, then why don't you go ahead and talk about it. [LB543]

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RICHARD DIETER: All right. The numbers are, you know, perhaps mind-numbing in a way, but I mean if you're going to do a trial, you're going to have to pay an attorney perhaps \$100 an hour to do 1,000 hours' worth of preparation, and there's going to be two defense attorneys so you're quickly up to \$100,000 each. And the prosecution is doing the same and they have two people. So, you know, you can see where a trial quickly gets to the hundreds of thousands of dollars. But most of these trials are not going to result in an execution, so what you have to take into account is all of this sort of inefficiency of the system, and that's where you get to these numbers that are like \$30 million per execution. That may sound a little extreme. In Maryland, which I think is a state comparable to Nebraska in some ways, they also have had the death penalty for as long as you have had. And they've had...the study was about 60 death sentences; \$186 million was spent and they've had 5 executions. Sure enough, it comes out to roughly the same--about \$35 million per execution. Of course, you can't put a price on justice, but \$30 million to achieve one piece of justice, I think it's... [LB543]

SENATOR ASHFORD: Let me ask you this. I mean is it justice if you are...and then I can turn it over to my colleagues to ask questions, but justice is an elusive. It's sort of in the eye of the beholder a bit. But, you know, is there justice if you have 5 executions and 30 cases that are...at least were charged that way and didn't result in an execution for a variety of reasons? And then I think when Senator Lathrop and all of us were looking at the numbers of cases that did not...were not even charged in Nebraska as death, I think 200... [LB543]

RICHARD DIETER: Right. [LB543]

SENATOR ASHFORD: ...is the number that comes to my mind of cases. So when you were talking about justice in a way, if you're talking about...doesn't seriousness or comparability...comparability is a terrible economic term that shouldn't be applied here. But if you're trying to have justice be applied evenly across the board to the worst cases, well, if it's not the worst cases or if like cases are not resulting in the death penalty, you know, is it justice? And you know, that...I keep coming back to that issue. So cost...part of the problem with the issue with cost, to me, is, well, it's a real number. Whether it's \$3 million or \$30 million or whatever it is, it's a real number and it's a lot of money. But part of that is because we know that there are numbers of cases, 200 in Nebraska, let's say, or some number, but a lot of cases that are very, very difficult murder cases where the people are not on death row. So there's this sort of struggle with we've got to spend, you know, all this time and effort because we know there are lots of people out there that have done very, very bad things that are not sitting on death row. And there's an imbalance. There's an inequity. There's an unfairness. There's something in there that sort of...even though there's this concern or desire to have justice, you know, and we all know as a citizenry and I know that the people that are on death row, most of them, committed very heinous acts. But then there's this sense of

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doesn't justice have to be carried out in a just, fair, and balanced way? And the fact that there are some individuals who...many individuals who are not sitting on death row, who are not in a segregated environment, are not on death row, it just strikes...when we know, and I thought...I thought...and then I will stop. But when I thought Don Kleine, he said this before, and Joe Kelly as well when we've talked about this issue, I get this sense from both of them that they can certainly do their job as county attorneys very adequately if the ultimate charge is life imprisonment or some penalty of less than death, whether it's life imprisonment without parole, whether it's life, or whatever mitigating and aggravators you use. And we actually on this committee have had that discussion with life in prison without parole. So my...so there's this fundamental (laugh)...it's a gnawing when you get to this issue. Yes, there are very, very serious crimes being committed. Yes, those people who committed crimes that are IA felonies and they're on death row, yes, that's really bad. But at the same time, there are a whole bunch of people that committed some awfully bad acts out there that are not, and it really tears at, you know, your sense of fair...mine, anyway, and I think many on this committee have expressed over the years the same sense. So cost is a factor but cost is a factor because I think we're all struck by this imbalance and injustice that's out there because of the disparity in the sentencing. [LB543]

RICHARD DIETER: Yeah, I would have to agree, I mean, only to say from the cost perspective that all of those 200 cases which were deemed eligible for the death penalty, that started the death penalty costs ticking. Soon as a state says... [LB543]

SENATOR ASHFORD: Right. There all 200 of them have a death penalty cost. [LB543]

RICHARD DIETER: Yeah, even though only three resulted in execution. So there's money associated with that. And then the other quick comment would be that there is financial costs and then there is perhaps intangible costs. And you know, when a system appears to be unjust, appears to be unfair,... [LB543]

SENATOR ASHFORD: Well, it feels unjust. [LB543]

RICHARD DIETER: ...or feels unjust... [LB543]

SENATOR ASHFORD: Right. [LB543]

RICHARD DIETER: ...and risks occasionally, those are also costs, the risks of executing. And it's hard to quantify, but I think that's part of the whole calculus. My focus was to try to put some numbers on this, but I think the bigger questions are not just, you know, is the death penalty system fair and just but what else could be done because, after all, I think the justice system is really about making society a better place, a safer... [LB543]

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SENATOR ASHFORD: Safer. [LB543]

RICHARD DIETER: ...safer place and... [LB543]

SENATOR ASHFORD: Are we any...I mean are we any safer when violence continues and the death penalty...? How do we...we aren't, are we? Or are we? I don't know. [LB543]

RICHARD DIETER: And, yeah, oh, I mean that of course is a fundamental question. But again, looking at the money, \$30 million for an execution or \$30 million, say, for 60 more police officers on the streets or better lighting in crime areas or more teachers, that's a lot of money that might also...might actually reduce the level of violence. [LB543]

SENATOR ASHFORD: Oh, I know it will. Yes, Senator Chambers. [LB543]

SENATOR CHAMBERS: And the problem is that this society will say if you're going to kill somebody, we don't care how much it costs. But then if you mention things like you mentioned, education, even more police officers, that's when they want to get out the calculator and say, well, it would cost this, it would cost that. So only when it comes to trying to put somebody to death will this society, which is so budget conscious in every other way, will say we're not...we don't even care; if it costs \$3 million to kill one of them, do it; if it costs \$30 million and you do the best you can and you don't kill them, that's good enough. I think it was either Justice John Paul Stevens or Brennan, and maybe neither one of them, who said the problem with the death penalty is that there's nothing to distinguish the cases from those on death row from the cases of those who are not. And it is so arbitrarily and freakishly administered, it's the equivalent of being struck by lightning. And when that can be honestly stated by somebody who has reviewed case after case after case, and you're talking about a justice system, that to me is the greatest condemnation of the system. And at that time, they did say all death penalty cases...all death penalties have to go; there is too much discretion, no standards whatsoever. But then when the attempt was made to put standards in place, it sounded differently but the results were still the same. Your organization I've heard referred to and referenced in various Supreme Court decisions, statistics, conclusions, and information, just to let people know that you might have flown here on an airplane and you might have come at nighttime, but you're not a fly-by-night operation. (Laughter) [LB543]

RICHARD DIETER: Hope not. [LB543]

SENATOR CHAMBERS: And if we could get people to look at the factual presentations, they can be as emotional as they want to, but when we formulate the policy, do it on the basis of facts. Maybe a house made out of sticks or a house made out of straw is more appealing to the eye, is aesthetically acceptable because it blends with the background

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and everything that's here. But if there's a wolf, then you need a house made of stone. So the house of justice should not be stone in the sense of being unforgiving but being on a firm, solid foundation, one that is reliable, predictable, and dependable in terms of meting out justice in far more cases where it doesn't. And if it is a close case, then invoke that principle that's often stated but more often ignored: It would be better that 100 guilty people escape than that 1 innocent person should suffer. And it didn't say suffer death; it said suffer. And that should be the point and the philosophy because people know there's no perfection wherever human beings are concerned. But if in a society you can look at a justice system and say, if no place else, when you come here then there is going to be no respecter of persons...I use Daddy Warbucks is not going to get a better break than Little Orphan Annie. And Little Orphan Annie will not be treated worse because she has no parents, than somebody who has two rich parents. If the criminal justice system, especially the judicial part of it, could be perceived by the people as being fair, then I think that would radiate throughout the society because it would let people know that here's a standard we can look at and then maybe to the extent possible replicate it in other places. But when the place that is supposed to be the fountainhead of justice is tainted, then nothing else, nothing else will society believe in. And I may be going far afield, but as people begin to see the U.S. Supreme Court as a body which is politicized and even partisan in some instances, their cases don't carry the same amount of weight, even with the public, and I think that is tremendously regrettable. [LB543]

RICHARD DIETER: Well, just to reply shortly, we are asked to deal with a lot of other issues other than costs. Congress has asked us to prepare reports on innocence and race, and I think these issues are related. I think that we've heard of people who have been freed from death row. We've heard of instances of gross unfairness, perhaps racial bias with the death penalty. And the courts have responded by saying the death penalty has to be done better; we're not eliminating it, but it has to be done better. And frankly, that has increased the costs. That has increased the time it takes to get these cases... [LB543]

SENATOR ASHFORD: That seems like an odd concept, in a way, I mean the death penalty must be done better. I mean I don't know... [LB543]

RICHARD DIETER: But I think that's what, you know, when the Supreme Court was... [LB543]

SENATOR ASHFORD: That's what they're saying though. [LB543]

RICHARD DIETER: Yes. It was faced with basically DNA cases or, you know, there was a case last year, Troy Davis, in 2011. They said they had a special, extraordinary hearing. They didn't really know what to do with it because they're not, they don't feel, empowered to do away with the death penalty. So just again with respect to costs,

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because of all the concerns that have been raised here about the death penalty, it's costing more and that, if anything, is going to increase. This is not something that we're going to figure out how to do cheaply. If we did it cheaply, then I think we'd be embarrassed. [LB543]

SENATOR ASHFORD: I don't have anything other than just to say last time we debated this on the floor, Joe Kelly came in, we asked him the question whether or not he felt that the death penalty made society any safer, and he said, no, he didn't think it did. So there must be some other reason for it. And with the DNA exonerations that was mentioned earlier, of course that...there are many other cases that don't have DNA evidence, so I mean impliedly there are going to be other cases out there that are more difficult to disprove because you don't have DNA so... [LB543]

RICHARD DIETER: Exactly. And mistakes were clearly made in cases where DNA has exonerated people. [LB543]

SENATOR ASHFORD: Yeah, but if don't have that, then you know some of those... [LB543]

RICHARD DIETER: Some mistakes are still made. [LB543]

SENATOR ASHFORD: ...some of those mistakes have to have been made there. How can you have a system that's so full of holes? I mean that's rhetorical but... [LB543]

RICHARD DIETER: Yeah. And it's important to realize we've executed 1,320 people in this country just since 1976. A lot of those were before DNA was even on the scene. So if we're freeing some people now, the chances are we missed some earlier. That's a cost. That's, you know, a societal cost. [LB543]

SENATOR ASHFORD: Well, if you miss anybody... [LB543]

RICHARD DIETER: Yes. [LB543]

SENATOR ASHFORD: ...it's not a good...because there's no way to rectify it. [LB543]

RICHARD DIETER: No, it's incalculable. [LB543]

SENATOR ASHFORD: And so we're sitting here as policymakers to try to think about, well, how do you develop a system, to Senator Chambers' point, that's certain, that has some sense of uniformity? We talk about that in every other criminal law we deal with, is the consistency of applying this, that it's fair, that we have mandatory sentences for some gun crimes, for example, but, you know, we talk in terms of being able to apply those in a uniform manner. If you have a gun and use that gun in a commission of a

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crime, it's you're going to get a mandatory sentence. Well, you know, those are difficult debates but they're nowhere near as difficult as this debate where there is no way of rectifying the situation. So when we deal with those things, that's one thing. But then when we're dealing with this, where the same kinds of rules should be applied--uniformity, certainty, you know, justice, whatever that term really means because it means a lot of things to different people, and then the 200 and some people who committed difficult crimes. I don't know how you...there's no way, as us sitting here and looking at it, aside from the wonderful testimony we get on values issues, just trying to do a uniform proper system makes the job almost impossible when the evidence would indicate that it cannot be done. (Laugh) It cannot be done. [LB543]

RICHARD DIETER: And I think that's why justice... [LB543]

SENATOR ASHFORD: Yeah, so we can't do it. So why do we do it? I mean... [LB543]

RICHARD DIETER: Right. This is a...I mean... [LB543]

SENATOR ASHFORD: Yeah. Okay. [LB543]

RICHARD DIETER: ...Justice Blackmun was one of those who voted to support the death penalty in '72 and '76 and, you know, did that... [LB543]

SENATOR ASHFORD: But afterwards he said that it was the biggest mistake he made. [LB543]

RICHARD DIETER: Yeah. I mean he said he just couldn't tinker with it anymore. He felt like he was, you know, trying to get it right, and gave up and said I no longer shall do so. [LB543]

SENATOR ASHFORD: All right. Well, I think we've...well, it's good comments. Any other questions? [LB543]

SENATOR CHAMBERS: I just want to thank you for coming today. But, beyond that, all of the work that you have done. I've been aware of your organization for years but I never thought I'd be in the same room with you, so I consider it a privilege. And I'm not trying to stroke you. [LB543]

RICHARD DIETER: It's mutual, I assure you. [LB543]

SENATOR CHAMBERS: I want people to know, because I don't give out compliments usually. But anyway, well, when they're deserved I do, but around here they're not deserved very often. (Laughter) [LB543]

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RICHARD DIETER: I'm not so sure. [LB543]

SENATOR CHAMBERS: But seriously, to work in this vineyard where you might feel that no matter how much you come up with in terms of statistics, facts, case after case, it may not make any difference, you keep in mind, I suppose, but it may and somebody may be able to take this and do something with it. And I plan to try to do that. So I hope you never feel that the work you and your organization are doing is in vain, because it's not. [LB543]

RICHARD DIETER: Appreciate that. [LB543]

SENATOR ASHFORD: Thanks. Thank you, sir. [LB543]

RICHARD DIETER: Thank you. [LB543]

SENATOR ASHFORD: Do we have any other neutral testifiers? Senator Chambers, do you wish to...Senator Chambers closes, so that concludes the hearing. Yeah, I'll tell you what, we're going to go to...who is here on LB462? I don't think anybody is. This bill, I'm just going to introduce it. [LB543]

SENATOR LATHROP: Wait a minute. Alan is raising his hand. [LB462]

ALAN PETERSON: I'm not, but I know Mike Nolan was thinking of testifying (inaudible). [LB462]

SENATOR ASHFORD: Well, this bill is going to be laid over until next year, so I'm just going to...you're going to talk about LB462? Oh, you are, okay. [LB462]

SENATOR MCGILL: John? Of course John has something to say. [LB462]

JOHN KREJCI: The one about sex offenders in parks. [LB462]

SENATOR ASHFORD: No, that's not LB462, that's the other one. [LB462]

JOHN KREJCI: Yeah, that's the third one. [LB462]

_____: LB473. [LB462]

SENATOR ASHFORD: So if we could just quiet down just a little bit so we can proceed along here. LB462 is a bill relating to...quite frankly, it's an insurance liability issue when two political subdivisions join together to provide law enforcement services. The bill is going...nothing is going to happen with the bill. I'm going to ask that the bill just be...just sit here and that there is going to be work done over the interim, and we can take it up

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next year. So that would be my opening, and I don't think there is any...I don't... [LB462]

SENATOR LATHROP: Anyone here in support of... [LB462]

SENATOR MCGILL: LB462. [LB462]

SENATOR LATHROP: ...LB462, given the...? [LB462]

JOHN KREJCI: You don't mean LB462, you mean... [LB462]

SENATOR ASHFORD: Well, I think I do. [LB462]

JOHN KREJCI: It is...no, I'm sorry, it is LB462. [LB462]

SENATOR ASHFORD: Well, I think I mean LB462, John. [LB462]

SENATOR MCGILL: Yes. [LB462]

SENATOR LATHROP: Okay. [LB462]

SENATOR ASHFORD: But maybe I don't. [LB462]

JOHN KREJCI: I'm sorry. [LB462]

SENATOR LATHROP: Okay. Seeing none, anybody here in opposition? [LB462]

SENATOR ASHFORD: (Laugh) So... [LB462]

SENATOR LATHROP: Wait a minute. Are you guys here on LB462? [LB462]

ED MAHON: We are not. [LB462]

SENATOR LATHROP: Pardon me? [LB462]

ED MAHON: We are not. [LB462]

SENATOR LATHROP: (See also Exhibits 14 and 15) Okay, all right, and no one is here in opposition or in a neutral capacity? Seeing none, we'll close the hearing on LB462 and go to LB473 and Senator Bloomfield. [LB462]

SENATOR BLOOMFIELD: Are we ready? [LB473]

SENATOR ASHFORD: Yes, go ahead. [LB473]

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SENATOR BLOOMFIELD: Good afternoon, Chairman Ashford and members of the Judiciary Committee. For the record, my name is Senator Dave Bloomfield, D-a-v-e B-l-o-o-m-f-i-e-l-d. I represent the 17th Legislative District, and I'm here today to present LB473 to the committee for your consideration. LB473 is introduced on behalf of the children who live in South Sioux City, Blair, Omaha, and all other communities in Nebraska, especially those that border Iowa. LB473 seeks to amend the Sexual Predator Residency Restriction Act to allow political subdivisions to adopt regulations to restrict sexual predators from living within 500 feet from a park that covers at least 2,500 square feet. Current law allows political subdivisions to adopt regulations to restrict sexual predators from living within 500 feet from a school or a childcare facility. This bill does nothing more than add parks to the list of places that could be restricted. This bill is a modified version of a bill, LB508, that I brought in 2011 and that Senator Bob Giese carried in 2009. That was LB265. This year we sought the opinion of the State Patrol on the ways that we could make this bill the least restrictive as possible, which is why we identified a sexual predator of children as an offender who has been convicted of a crime, listed in Section 29-4003, which involved the penetration of, direct genital touching of, oral-to-anal contact with, or oral-to-genital contact with a person under the age of 13. It's my understanding that the committee may be preparing to look at sexual offender laws as a whole. And if that is, in fact, the case, I would be okay with the committee not taking immediate action on this bill, but I would ask that it be looked at in the overall review. And with that, I'll conclude my testimony. There are individuals here who will follow me that are probably better qualified to answer the questions you're going to have. But I'll attempt to answer anything you want to throw at me right now. [LB473]

SENATOR LATHROP: All right. [LB473]

SENATOR BLOOMFIELD: Thank you. [LB473]

SENATOR LATHROP: Very good. Senator Christensen. [LB473]

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you, Senator Bloomfield. I understand what you're trying to do. I like it. I have voted for several restrictions on sexual predators. But what I'm seeing is we keep adding more and more restrictions, and it ends up forcing more and more of them out in the rural areas. And I'm actually seeing more out in my area all the time, and I wonder if it isn't some of what we are passing. Would you like to...it...I'm making more of a statement than a question, but if you'd like to address it and you're willing. [LB473]

SENATOR BLOOMFIELD: No, and I would be more than willing to respond to that. I would rather have them living out in the country than I would within 500 feet of where the children are playing. [LB473]

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SENATOR CHRISTENSEN: Well, I appreciate your answer, and thank you. [LB473]

SENATOR LATHROP: Senator Coash. [LB473]

SENATOR COASH: Thank you, Senator Lathrop. Senator Bloomfield, can you...you're obviously trying to address a very specific problem that you're seeing in a specific community. I mean,... [LB473]

SENATOR BLOOMFIELD: Let me elaborate here a little bit, Senator Coash, if you don't mind. This was brought to me by the city of South Sioux two years ago, and previously to Senator Giese, and what happened was Iowa passed a bill that says 2,500 feet. So suddenly South Sioux City's--and there are people behind me with those numbers, I think--influx increased greatly because the folks moved over from Iowa into Nebraska, where it was less restrictive. [LB473]

SENATOR COASH: So Sioux City is a border community. [LB473]

SENATOR BLOOMFIELD: Yes. [LB473]

SENATOR COASH: So are people...the people that you're worried about, are they coming to Sioux City to hang out in your parks, or are they actually moving to Sioux City and living there? [LB473]

SENATOR BLOOMFIELD: I'm told that they have moved to South Sioux City and, with significant numbers, have moved from Iowa to South Sioux City, in particular, or Nebraska, in general. [LB473]

SENATOR COASH: Okay. [LB473]

SENATOR BLOOMFIELD: And I'm not even trying to keep them from moving there. I would just like to keep them from living within 500 feet of the park where they can sit up there and observe what's going on. [LB473]

SENATOR COASH: I just wanted to... [LB473]

SENATOR BLOOMFIELD: You know, some people take this to be that they can't visit the park or anything else. No, that is not the intent. This just keeps them from establishing residency there. [LB473]

SENATOR COASH: This is residency. Not that I want anything bad to happen to a child, but is there evidence that there's a problem in that community with people who have committed these crimes getting close to children in these parks and that's why we're

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targeting them? [LB473]

SENATOR BLOOMFIELD: I don't know, and perhaps some of the people behind me have those numbers if there is an increase of them living to that park. I think, since we already excluded schools and playgrounds, I think they thought that the park was maybe the next logical step. But the folks behind me may have a better answer to that than I do, Senator Coash. [LB473]

SENATOR COASH: I'm just trying to figure out if we're trying to prevent a crime, which is a good thing, or if we're responding to crimes that have happened that we think a law like this would have prevented, had it been in place. [LB473]

SENATOR BLOOMFIELD: I will ask you to ask the folks behind me that. [LB473]

SENATOR COASH: All right. Well, I teed it up for them and they can answer when they come up. [LB473]

SENATOR BLOOMFIELD: Okay. [LB473]

SENATOR LATHROP: Senator Christensen again. [LB473]

SENATOR CHRISTENSEN: Thank you, Chairman. If you're not trying to prevent them from visiting the park but you're trying to stop their residency, how are you trying to keep them away from the kids? [LB473]

SENATOR BLOOMFIELD: I'm trying to keep them from sitting in their home, observing the kids, which way the kids may leave when they go home from the park, you know, and just living there where they can watch the, for a better lack of terms, they can watch the desire of their lust. [LB473]

SENATOR CHRISTENSEN: Well, if they can visit the park, they could watch how they leave, too, couldn't they? [LB473]

SENATOR BLOOMFIELD: They could, if they want to go stand there all day. But I think maybe our local patrol would notice that, if you had this same guy hanging out there, day after day, where if he's sitting in his apartment it's not going to be quite so obvious. [LB473]

SENATOR CHRISTENSEN: Okay, thank you. [LB473]

SENATOR LATHROP: Senator Davis. [LB473]

SENATOR DAVIS: Just one question. And I might have missed it, Senator Bloomfield,

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but did you say that the Iowa law is 2,500 feet? That's where that came from? [LB473]

SENATOR BLOOMFIELD: I believe that is the current Iowa law. [LB473]

SENATOR DAVIS: You know, that's less than two...well, I mean, in our downtown area in Hyannis, the lots are 22.5 feet wide by 200 feet long. So, I mean, that's, like, very small area, hence, what was my question when I read the bill was, why such a tiny, little area? [LB473]

SENATOR BLOOMFIELD: Oh, you mean for the size of the park? [LB473]

SENATOR DAVIS: Um-hum. [LB473]

SENATOR BLOOMFIELD: That was because, when I originally brought the bill, a wise and learned colleague looked at it and said, if you don't put something in there stipulating size, some of our towns in western Nebraska will put a two-foot-square park in the corner of every city block, and that was to eliminate that possibility. [LB473]

SENATOR DAVIS: Okay. [LB473]

SENATOR BLOOMFIELD: So we're looking at a 50-by-50 square-foot place... [LB473]

SENATOR DAVIS: Um-hum. [LB473]

SENATOR BLOOMFIELD: ...and no, it's not very big, but that's why. [LB473]

SENATOR DAVIS: Thank you. [LB473]

SENATOR LATHROP: Okay, I think that's it with the questions. Thanks. [LB473]

SENATOR BLOOMFIELD: Thank you. [LB473]

SENATOR LATHROP: Are you going to stick around to close? [LB473]

SENATOR BLOOMFIELD: I will. [LB473]

SENATOR LATHROP: Okay, very good. First proponent of this measure may come forward to testify. [LB473]

ED MAHON: My name is Ed Mahon, E-d M-a-h-o-n, and I'm a lieutenant with the South Sioux City Police Department. [LB473]

SENATOR COASH: Go right ahead. [LB473]

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ED MAHON: Excuse me? [LB473]

SENATOR COASH: Go right ahead. [LB473]

SENATOR LATHROP: Go ahead, yeah, sure. [LB473]

ED MAHON: Okay. I'm here today to...in representing the city of South Sioux City and the South Sioux City Police Department in support of the bill, LB473. I'd like to thank Senator Bloomfield for bringing it forward. From the view in the city and the South Sioux City Police Department, it seemed important to continue to define different areas, and the addition of the parks would possibly address a concern that we get from parents and different citizens of the South Sioux City area. The further definition of the term predator would also aid us, possibly, in enforcement efforts. It's kind of a hot topic and an important problem in South Sioux. And any time that these problems can be further defined, it would help our standpoint as law enforcement officers. As far as the city of South Sioux, I can verify, through speaking with a deputy that is in charge, basically, of the tracking of the offenders on the registry, that South Sioux has an increased presence of sexual offenders into our city due to the differences of the delineations where they can live from Sioux City into South Sioux. We currently have, I believe, 51 persons in Dakota County and, of those, between 40 and 45 live in South Sioux. There is one termed as a predator. The deputy has advised me that between five and ten of them have talked to him, and they have moved into South Sioux due to our less stringent guidelines; that Sioux City's are more stringent and ours our less. So we do have an influx of some of the subjects on the registry coming into South Sioux. [LB473]

SENATOR LATHROP: Okay. Senator Chambers has a question for you. [LB473]

ED MAHON: Yes, sir. [LB473]

SENATOR CHAMBERS: Has there been...and maybe this is a question that Senator...well, I'm not sure, because there was some questions from that side. Has there been an increase in crimes against children committed by these people who come across the border? [LB473]

ED MAHON: No, sir. [LB473]

SENATOR CHAMBERS: There has? [LB473]

ED MAHON: There has not, sir, that I have documents of. [LB473]

SENATOR CHAMBERS: So why is it a problem in your city, the mere presence of them? Is it...how do you know who they are? How do you know somebody is on a

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registry? [LB473]

ED MAHON: The register is open to public view from a Web site from the State Patrol, I believe. [LB473]

SENATOR CHAMBERS: So they have registered. [LB473]

ED MAHON: Yes, they have. [LB473]

SENATOR CHAMBERS: They're in compliance with the law, insofar as they registered? [LB473]

ED MAHON: Yes, sir, as it stands, yes, sir. [LB473]

SENATOR CHAMBERS: So despite what they were convicted of, they now are law-abiding citizens because they've done their time. [LB473]

ED MAHON: That's correct. [LB473]

SENATOR CHAMBERS: They've complied by registering. [LB473]

ED MAHON: Yes, sir. [LB473]

SENATOR CHAMBERS: And because they have complied with the law, they now are going to be prevented from living certain places, even if they have not committed that crime again. And if they were very young when they did it and a lot of mitigating circumstances which, rational people would know, does not indicate this person is likely to offend against a child,... [LB473]

ED MAHON: That's correct. [LB473]

SENATOR CHAMBERS: ...they're on the registry anyway. [LB473]

ED MAHON: Yes, sir. [LB473]

SENATOR CHAMBERS: So part of the problem is the standard set that would put somebody on that registry and, once they're there, then they're doomed and damned forever. But here's the question that I will ask you: If a person had been convicted of robbing a bank, should that person be barred from ever entering a financial institution again? [LB473]

ED MAHON: That would be for cooler heads than mine, sir. [LB473]

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SENATOR CHAMBERS: Say it again? [LB473]

ED MAHON: That would be not my decision to make, sir. [LB473]

SENATOR CHAMBERS: And this one isn't yours to make either. [LB473]

ED MAHON: No, sir, it is not. [LB473]

SENATOR CHAMBERS: It's ours to make. [LB473]

ED MAHON: That's correct. [LB473]

SENATOR CHAMBERS: And we don't have a law like that. We don't even have a law that says if a person once had an infectious disease he or she cannot approach a health facility if the disease has been cured. We don't even do that with them. But I think there's a fear of people who carry that label and perhaps the net has been cast too broad and caught too many fish, so I will look at the language of the bill. I know that you probably had nothing to do with drafting the language, but I'm going to show you where I see a problem: the very definition of park. Park means a parcel of ground or a facility established by a political subdivision for recreational use by the public that covers at least 2,500 square feet. A facility could be a building, couldn't it? [LB473]

ED MAHON: By definition, possibly yes. [LB473]

SENATOR CHAMBERS: And that building could cover this amount of space very easily. It could be a building that is an exercise place for everybody. They even have a bill going through the Legislature now where cities can get grants from the state to erect, help them build recreational facilities. If that facility were built for recreational purposes, this doesn't say a park where children go. It could be a place where only adults go. It could be a gymnasium where only big, strong men go. But one of these people could not live near that place, correct, based on the definition of park? [LB473]

ED MAHON: Quite possibly, sir, yes. [LB473]

SENATOR CHAMBERS: We have a problem different from that of people who see a problem and say we ought to do something about it. Well, they can buck it to somebody else, but the ones they buck it to may not see that the offered solution is of any value. It would mean far more to me if there were an upsurge in crimes committed by these people, but that's not the case. It's that vague fear that people have of a category of human beings who have been stigmatized and demonized. And, to be frank, I couldn't...there's no way I could support this bill the way it's drafted, and I don't know that there's a person in the world who is more concerned about the safety and well-being of children than I am. But I don't see that same concern shown in schools

where teachers are inappropriately dealing with children or in churches where priests are inappropriately dealing with children. And if there were an international organization, such as the Mafia or La Cosa Nostra, where the top officials and throughout they practice sexual abuse of children, everybody would say shut them down. If Apple turned out to be an organization where it was a front, and although they built computers and made all these advancements technologically, one of the main activities they're engaged in is the sexual abuse of children, they'd say shut it down. But not so with the Catholic church. And there's some multimillion dollar settlements right now being worked out in Los Angeles. And Bishop Roger Mahony, a cardinal, is going to go to Rome to help elect a pope after it's been shown, through the release of thousands of pages, that he covered up the sexual abuse by priests. He had shifted priests to other dioceses without notifying the people, and there were more victims created as a result. But because he wears the regalia of a church, nothing is done about it. We come here now. Maybe if these guys would become priests, then there would be no problem, correct? [LB473]

ED MAHON: Not in South Sioux. [LB473]

SENATOR CHAMBERS: Suppose a priest had been sent to that little area where you live, and he was sent there because he had committed sexual assaults against children. And the church is not willing to kick these people out of the priesthood, in fact, they've got to get their orders from Rome and Rome won't give the order. So you've got this priest, and then it's discovered that he was sent here because he had committed sexual assaults against these children. You couldn't arrest him. You couldn't do anything. [LB473]

ED MAHON: No, sir, I couldn't. [LB473]

SENATOR CHAMBERS: And there would be no law passed that said he couldn't live within wherever he wanted to live, go where he pleased. So some categories of known child molesters are actually shielded and protected. Then we have others who are defined a certain way and the offense that was labeled a sexual crime did not come close to sexually abusing a child, and that person can be banned from living in certain locations. When you were told about this bill, were you under the impression that the park could consist of a building? Level with me. [LB473]

ED MAHON: Initially, my thoughts are, is it a park, is a park and buildings anywhere on that park. As far as your being able to believe a park could be a building constructed by a political subdivision for recreational purposes, no, I was not aware of that, sir. [LB473]

SENATOR CHAMBERS: And it could...that...this definition would fit that. If they built a recreational facility and it covered this amount of distance, then it has been defined as a park in this bill. [LB473]

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ED MAHON: Quite possibly, sir. [LB473]

SENATOR CHAMBERS: And I don't want you to think that I'm attacking you at all. That's not my intent. I understand what you're trying to do, but I just don't agree with the approach that's being taken by this bill. And I don't have anything else to ask you, and I appreciate your coming. [LB473]

ED MAHON: Thank you, sir. [LB473]

SENATOR ASHFORD: Senator Coash. [LB473]

SENATOR COASH: Thank you, Senator Ashford. I wanted to go back to your testimony. You said that you currently have, what was it, 45 registered sex offenders in your community? [LB473]

ED MAHON: I think, I believe it's 51,... [LB473]

SENATOR COASH: 51. [LB473]

ED MAHON: ...if I heard the deputy correctly. [LB473]

SENATOR COASH: Okay, all right, so about... [LB473]

ED MAHON: Chief deputy. [LB473]

SENATOR COASH: We'll just call it 50. [LB473]

ED MAHON: Okay. [LB473]

SENATOR COASH: Do you know...Senator Bloomfield has really narrowed down the type of sex offender that he wants to impact through this legislation. [LB473]

ED MAHON: Yes, sir. [LB473]

SENATOR COASH: And it's sex offenders already defined in statute 29-4003, which is pretty grievous crimes against kids under the age of 13. Do you know--I mean, you've got roughly 50 registered offenders--how many of those 50 are going to fit into that very narrow category that's been carved out in this bill? [LB473]

ED MAHON: As of this morning when I talked to the deputy, I believe he has one that is listed as a predator on our rolls. [LB473]

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SENATOR COASH: Okay, so you've got one guy that you're worried about. I would guess your deputies know where he lives. [LB473]

ED MAHON: Yes, sir. [LB473]

SENATOR COASH: Does he...would he fall within the 500 feet, given his residence? [LB473]

ED MAHON: Well, as a matter of fact, he just moved out of state. And this gentleman, I believe, has just moved into North...South Dakota. [LB473]

SENATOR COASH: Okay, so he's gone. [LB473]

ED MAHON: So if his information is correct, yes, he's moved just recently. [LB473]

SENATOR COASH: Okay, let's say he didn't move. In the home that he lived in, the guy that you're really worried about, would he fall in that 500-foot radius of a park in your community? [LB473]

ED MAHON: I don't recall if where he lived would have been in where they would have made a park an area. I do not know. [LB473]

SENATOR COASH: Okay. The reason I ask is...and I...and this is the third time we've heard this bill, and I do applaud Senator Bloomfield for bringing a different approach. But if it's one guy, I would think you'd always know where he was. If you had all 50 of them fall in this category, maybe you'd struggle as a law enforcement agency to keep track of all 50. But I just want to get a scope of what we're trying to address with this bill. [LB473]

ED MAHON: Yes, sir. [LB473]

SENATOR COASH: And if it's just one guy who's now moved, I'm wondering if you're...where the concern lies after that. So thank you for coming all the way down. [LB473]

ED MAHON: Yes, sir. [LB473]

SENATOR ASHFORD: Senator Seiler. [LB473]

SENATOR SEILER: Officer, I don't expect you to answer this question, but I want to alert Dave that I'm going to ask him on closing. When you described a facility established by a subdivision, would that include your library on main street there? The reason I'm curious is because--like I said, you don't have to answer this--is because my

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name is on the cornerstone of that building. (Laugh) [LB473]

ED MAHON: Yes, sir. [LB473]

SENATOR SEILER: So I think the language is drawn a little too broad and Dave might want to tighten that down a little. [LB473]

ED MAHON: Yes, sir. [LB473]

SENATOR SEILER: Thank you. [LB473]

SENATOR ASHFORD: Wow, that's interesting. Well, thank you for your comments. Any other...do we have other proponents of this bill? Lash. [LB473]

LASH CHAFFIN: Good afternoon. My name is Lash, L-a-s-h, Chaffin, C-h-a-f-f-i-n. I'm a staff member at the League of Nebraska Municipalities. And the League supports the concepts embedded in LB473, and we certainly applaud Senator Bloomfield for bringing these forward. And it is my understanding as well that this committee may study these issues, and I would encourage you to bring some of these concepts into your study because, as the discussion has shown here, the definitions behind these types of ordinances are extremely complex. And I think every year more and more locally elected officials and law enforcement are starting to understand how complex these issues are. And, you know, and just another issue that might be brought to the table is local law enforcement has different databases than the State Patrol might have, and this is a great attempt. But even in Senator Bloomfield's bill, which we support, the concept of narrowing it down to somebody truly of a predatory nature, the local law enforcement may not have at their disposal the nature of the crime in the detail that the State Patrol might have. So if, in fact, you start to look at definitional issues, I would encourage you to hopefully--and the League would certainly want to be involved in this as well--come up with some definitions that give local law enforcement a very clear definition and a very readily accessible definition of who might potentially fall in a residential restrictive sort of situation. And I think those definitions become very, very important, but... [LB473]

SENATOR ASHFORD: Senator Coash. [LB473]

SENATOR COASH: Thank you, Senator Ashford. Lash, thank you for your testimony, but I am going to ask for some clarification. You said that you're not sure that local law enforcement has access to the data that they would need to understand the...well, they certainly understand the...they...it's public how long an offender is required to register on the registry. [LB473]

LASH CHAFFIN: Sure. [LB473]

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SENATOR COASH: But if...I would ask that you double-check and get back with me on your statement that law enforcement doesn't know the nature of the crimes. [LB473]

LASH CHAFFIN: They know...okay, here's a very specific example. And I was...I learned this, this morning, from a police department and a city attorney called me. The local offices don't always know the age of the victim, and the definition that's brought forward in this bill, in concept, I think is something that would move forward. But, however, the way we've written it, LB473 references the age of the victim. That may not be something that's readily accessible. [LB473]

SENATOR COASH: Okay. [LB473]

LASH CHAFFIN: The State Patrol would have that, but, say, the city of Lincoln, their staff might not have that readily available. They'd have to call. That's... [LB473]

SENATOR COASH: Okay, that makes more sense then. Thanks for that clarification. [LB473]

LASH CHAFFIN: Those...we needed something very...a lucid, clear, you know, identifier that local law enforcement can use, yes. [LB473]

SENATOR COASH: Okay, thank you. [LB473]

SENATOR ASHFORD: Yes, Senator Chambers. [LB473]

SENATOR CHAMBERS: I can't resist. When was the last time somebody referred to you as Lash LaRue? [LB473]

LASH CHAFFIN: Senator, it happens all the time. [LB473]

SENATOR CHAMBERS: Are they young? What is the...above what age? Below what age do they not? [LB473]

SENATOR MCGILL: I have no idea who that is. [LB473]

LASH CHAFFIN: The cutoff date is probably people in their 40's. [LB473]

SENATOR CHAMBERS: That sounds about what... [LB473]

LASH CHAFFIN: But I think there might be some sort of resurgence because I got it...some 20-somethings said something about it the other day. (Laugh) [LB473]

SENATOR CHAMBERS: They probably heard their daddy and mama talking about it,

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and say, who is that? [LB473]

LASH CHAFFIN: Well, they might have. And what use is a whip in a gunfight? You know, that's just not an effective tool. (Laugh) [LB473]

SENATOR CHAMBERS: (Laugh) Yes. But anyway, that's all that I have. And with reference to your testimony, it does help when people realize that we have to be very careful how we define terms, because this wouldn't just apply...even let's say there was a problem in that city, it's not just going to apply in that city. It applies statewide, and that's why we have to be careful in what we do as a Legislature. [LB473]

SENATOR ASHFORD: Thanks, Lash. Any other proponents? Any opponents? John. [LB473]

JOHN KREJCI: (Exhibits 16 and 17) My name is John Krejci, K-r-e-j-c-i. I come to oppose this bill, not that it's that bad. I agree with Senator Christensen that it just adds one little bit. But it's really part of really a war on sex offenders. We're not thinking of what's happening. We want to rehabilitate sex offenders, but we keep punishing and punishing. The sex offenders' recidivism rate is somewhere between 5 and 15 percent, much lower than others. We have all these myths about, you know, people hiding in the bushes and the terrible things that are going to happen to our kids in the park. I don't have any sympathy with sexual predators. I feel very strongly about the damage they do. But what we're doing is just piling on and piling on laws that make us feel good, but they're not going to really help. We need to rehabilitate sex offenders. I've put an article...first, I gave you a thing that I'm going to publish in the Nebraska Criminal Justice Review that spells out why we're doing the wrong things with sex offenders and some things we need to do. That article--you can Google it--"Sex Offender Exceptionalism and Preventative Detention," it really tells you what some of the problems are that we're doing and what we're really not doing. And really the bottom line, what I think we should do, a couple years ago we had an interim hearing on sex offender legislation. We have LB1199, which, you know, it's a really flawed bill. Nothing ever happened out of that interim hearing. And then we have the Adam Walsh Act, and there's a lot of, you know...I work with sex offenders and other offenders and, you know, they have to find jobs, they have to find housing, and we're making it harder and harder. And we really need to give them treatment and opportunities rather than to be more oppressive because, if we want to change it, we're going about it in the wrong way. And what I'd just like to encourage...I don't feel that strongly against this bill, but it's in the whole wrong direction and a wrongheaded idea. Maybe I would like to suggest that you have an interim hearing on sex offender legislation and look at what we've got and look at what we're doing, look at some of the problems, and then maybe address them in a more rehabilitative, rather than a punitive, way. [LB473]

SENATOR ASHFORD: Thanks, John. Do any...yeah, we are going to look at it this

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summer. We have a study coming back from UNO. It's about three months late, but...so maybe UNO can juice that up a little bit, but we need to get that back. [LB473]

JOHN KREJCI: That article in the...it's in a national criminal magazine. It's really...it's a long article and it's complex, but it's really well done. "Sex Offender Exceptionalism and Preventative Detention," it's in the Journal of Criminal Law and Criminology. [LB473]

SENATOR ASHFORD: Okay, thanks, John. Any questions of John? Thank you, sir. Any other opponents? [LB473]

ERIC BAIRD: Senator Ashford and Judiciary Committee, excuse me, my name is Eric Baird, E-r-i-c B-a-i-r-d. I come here not as a representative of any of the organizations that I work with but just as a civilian speaking about this bill. I don't have a whole lot left to say that I wanted to say, thanks to Senator Chambers and Coash for the opponent examination there. I do have a couple of comments to make about this bill. I come in opposition to this bill on principle alone for all residential restrictions because there's been no study that I've ever read that has actually shown any effectiveness to it. It's a symbolic law, not an effective law, and so it's just creating displacement of sex offenders that doesn't need to be done because it doesn't actually protect anybody. And what we talked about earlier in this hearing with the death penalty is what actually protects the public from future harm and crime, and this won't do it. But as far as laws like the registry go, I've spoken to many of you already. I don't ever believe that there is not going to be a registry. And if there is going to be, I'm going to advocate for the smartest one possible, And residency laws are the same way. A couple of the problems and the concerns I have with this is the definition of park, as Senator Chambers brought up, that I won't go into anymore because of that. Just this last Saturday there was a news article from The New York Times, talking about towns all around the United States that are making the smallest parcel of land parks so that they can drive out sex offenders. Now 2,500 feet might sound big, but they can define a lot of different things, like gyms and stuff, as parks in order to banish sex offenders from their entire town. There's a slippery slope of unintended consequences that go with the definitions that go along with a bill like this. I didn't print out a copy for all of you--you have a lot of papers on your desks already--but if you would like a link to that article, I could supply you with that, or LaMont, if you wanted him to (inaudible) it over. Another problem that I have--actually, the second problem that I have is the only other one I'll bring up--is the definitions of predator and sexual predator of children. I don't have a problem with how these are defined. The application of the definition, the appeals process, or the process of being labeled as such a predator or a sexual predator of children, is up to the State Patrol. If they are mislabeled, there is no appeals process except to appeal to the Superintendent of Public Safety, who is Colonel Sankey of the State Patrol. There really...you're appealing a decision of the State Patrol to the State Patrol, and there's no sort of recourse for a sex offender who should not be labeled a sexual predator but is being forced to move from their home already, anyway. And so there's...that's a larger

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issue involved in the sex offender registry, as executed by the State Patrol, that can have ramifications and unintended consequences because of a residency law like this. That's all I have. Any questions? [LB473]

SENATOR ASHFORD: Thank you. And again, I'd just remind everyone that the study that actually...the committee has worked hard on this issue, and the study is dealing with recidivism. In order to be able to make policy on issues like this, we really do need to have data. So who... [LB473]

ERIC BAIRD: In the last conversation I had with Dr. Sample is I believe you had a draft copy, you guys, of maybe December. [LB473]

SENATOR ASHFORD: Well, it's really...it has not...it isn't... [LB473]

ERIC BAIRD: The numbers aren't there yet. [LB473]

SENATOR MCGILL: It didn't have the statistics yet. [LB473]

ERIC BAIRD: Right. [LB473]

SENATOR ASHFORD: It doesn't have the data. And, you know, without the data, we're sort of...you know, we'll have to wait until we get that, so. [LB473]

ERIC BAIRD: Absolutely, and I look forward to coming back when there is another hearing about the larger issue itself. [LB473]

SENATOR ASHFORD: Okay. Okay, great. Thanks. [LB473]

ERIC BAIRD: Thank you, Senators. [LB473]

DANIEL KONECKY: Hello. And I know you've seen me before. I'll be brief. My name is Daniel Konecky, D-a-n-i-e-l K-o-n-e-c-k-y, and I'm here today because I just wanted to voice my opposition towards LB473, and any new legislation or residency restrictions regarding the topic, until LB285 may be revamped or at least kind of taken a second look at, maybe, mainly because I don't agree. I'm worried about the way the word aggravated is being used. It seems to me I've seen, like, two or three definitions. There's the one definition in the bill here, the State Patrol goes by another definition, and I just...it's very confusing. You know, to wake up one day and go from level 1 to a lifetime offender is pretty traumatic, and I don't want to wake up one day and go from being nonpredator to a predator, especially after not being in any more trouble since. I guess that's really pretty much all I had to say today, except that I am one of the offenders that moved out to the rural parts. I guess I grew up in a rural part, and then I lived in Fremont for a long time. But I did move back out to the countryside, partly

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because of LB285 and my worries about any new and changing laws that might reach back prior to my conviction, I guess. So that was all I had for you guys today, not a ten-minute speech like last time. (Laugh) [LB473]

SENATOR ASHFORD: No, that's fine. We're still, you know, we're on this issue. And when we get the data we will revisit the larger issues, as we promised we would do, so. [LB473]

DANIEL KONECKY: I just don't know if the State Patrol can...you know, where they can set the law. Like I said, there's two different definitions, and I'm sure there's another one out there somewhere, and I just... [LB473]

SENATOR ASHFORD: Well, we...the Legislature needs to resolve it, so thanks for your comments. [LB473]

DANIEL KONECKY: Thanks. [LB473]

SENATOR ASHFORD: The next opponent. Neutral? [LB473]

BRIAN KITT: (Exhibit 18) Good afternoon, Senators, and thank you for your time. My name is Brian Kitt, B-r-i-a-n K-i-t-t. The reason I'm coming in here with a neutral stance is I live in Omaha, and this bill will actually improve the situation in Omaha. If you're not familiar, Omaha has got an extremely restrictive residency law right now that just applies to everyone. And I want to applaud, Senator, for at least putting the language in here to try to narrow this down. This, you know, as much as I hate residency restrictions and I don't believe they work, at least Senator Bloomfield did try to narrow this down to just the target group that...possibly needing to be monitored better. The law in Omaha just blasts everybody. They don't care what you did; they don't care what you didn't do. But I wanted to tell you, from a sex offender, what these laws do to people. My life has been torn apart by this. How I got here, my dad used to kick the crap out of me as a kid. He used me as a punching bag all the time, and I went to our parish priest for help. And he's one of the parish priests that Ernie Chambers talks about...I'm sorry, Senator Chambers talks about. My parish priest introduced me to pornography at a very early age, and he taught me that pornography was how you deal with life's lemons and that if you looked at pornography everything would be better. And I learned that so well that, as an adult, I used pornography as a drug. And I'm on the sex offender registry for the rest of my life for using pornography as a drug. And I never meant to hurt anybody. I never meant to do anything. But every time laws like this come up, even though I knew this law wasn't going to affect me directly, I've had anxiety for weeks again. And people want to pretend like sex offenders are so dangerous. And if sex offenders are so dangerous, why do we get harassed constantly? I can't tell you how much I've been harassed since LB285. I've been egged so many times I had to buy a power washer to wash off my house. My cars have been egged. I could go into it for an hour of all the

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harassment I've received. But laws like this don't help. The laws that will help is educating the public, perhaps telling the public the truth about sex offenders, that most of them are not dangerous. The Department of Justice says 90 percent of all sex crimes are done by people with no criminal record. The Department of Justice says 90 percent of the people on the sex offender registry will not commit another crime. If you went to the Sunday paper and the crossword puzzle was 90 percent wrong, would you still do that crossword puzzle? Or would you just laugh at it and throw it away? We need to do that with the current sex offender law. We need to laugh at the sex offender law and throw it away because 90 percent of it is wrong, and you're destroying people's lives. And laws like this, even though they're targeted, some of these predators could have changed their life around. You don't know the circumstances these people had just based on the law. Like me, yes, I committed a sex crime, but it was because I was abused as a child. How many of these people that are going to be targeted by this law were not abused as a child, they carried out their cycle of abuse, just repeating what was done to them? Perhaps they've been treated and they're no longer a threat, but we don't know because, without looking at each individual person, you don't know that they're a threat. The law, as good as this narrowing down is, is not specific enough, and that's all I have to say for today. [LB473]

SENATOR ASHFORD: Thanks, Brian. Yes, Senator Coash. [LB473]

SENATOR COASH: Thank you, Senator Ashford. Brian, can you...what's going on in Omaha? What are they doing in Omaha? [LB473]

BRIAN KITT: In Omaha there's residency restrictions, and I don't have the law memorized. [LB473]

SENATOR COASH: With regard to residential restrictions with regard to schools, like,... [LB473]

BRIAN KITT: Yeah, it's terrible. I can't step foot in any school. I can't go with...I can't live within 500 feet of a school park, and there's quite a litany of items. [LB473]

SENATOR COASH: A park? [LB473]

BRIAN KITT: Yeah, parks are included in Omaha. [LB473]

SENATOR COASH: So if...and that's through an ordinance? [LB473]

BRIAN KITT: Yes, through city ordinance, and we tried to fight it last year and didn't have any luck. I know my friend Eric might have a little bit more information on the exact wording of the law than I do. [LB473]

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SENATOR COASH: Well, the reason I asked, if the ordinance says park, I don't know why South--not that I'm advocating for this--but if Omaha has got an ordinance that is more restrictive than the current law Senator Bloomfield is trying to do, I don't...I'm curious as to why Senator Bloomfield needs to bring this on behalf of his community, if they can't...if they can do, in fact, do what Omaha is doing, which I'm not aware of, but... [LB473]

BRIAN KITT: Yeah, I can't answer that. I just know that in Omaha, now, I am no longer allowed to live within 500 feet. And my charge was a porn charge. I had never touched anybody. [LB473]

SENATOR COASH: Well, that's just curious to me, but thank you for bringing that to our attention. [LB473]

BRIAN KITT: Um-hum. [LB473]

SENATOR ASHFORD: Thanks, Brian. [LB473]

BRIAN KITT: Thank you. [LB473]

SENATOR ASHFORD: (See also Exhibit 19) Senator Bloomfield, do you have any...you waive? Okay, let's move to Senator Larson's bill, LB204. Okay, LB204. [LB204]

SENATOR LARSON: Thank you, Senator Ashford and members of the Judiciary Committee. My name is Tyson, T-y-s-o-n, Larson, L-a-r-s-o-n, here representing District 40 from O'Neill. And I am here today to introduce LB204. LB204 has two components to it. The first tightens up the reporting requirements for cases of animal abuse that require any person, not just a state official, who witnesses animal abandonment, neglect, or mistreatment to report the incident to law enforcement within 24 hours of reasonably suspecting a case of animal abuse took place. LB204 also requires that the individual who witnessed the animal abuse turn over any and all evidence they have including video, photographs, and audio recordings of the incident. An individual who fails to comply with these requirements would be guilty of a Class III misdemeanor which is the same punishment for those who fail to report cases of abuse of vulnerable adults or of children. The purpose behind this section of LB204 is to ensure that cases of animal abuse are reported quickly and accurately in order to stop alleged animal abuse as soon as possible. Right now only government agents have a duty to report animal abuse. This would expand that duty to any person who witnesses animal abuse within the first 24 hours of reasonably suspecting that abuse has occurred. Opponents of this bill are concerned that this bill will deter whistle-blowers from exposing animal abuse and mistreatment and will criminalize them for their actions. This is the exact opposite of what this part of the bill tries to accomplish. This bill, in fact, emphasizes the importance of reporting animal abuse immediately so that abuse can stop immediately and law

enforcement can investigate the issue immediately. This bill encourages those who witness these incidents to report them in a timely manner, protecting animals from further abuse and ensuring that evidence can be gathered efficiently so that animal abusers can be prosecuted. What this bill does discourage is someone holding onto evidence of animal abuse for days, weeks, or even months after the incident of the animal abuse has occurred. Individuals will go undercover to document alleged animal abuse over an extended period of time, hold on to footage documenting the alleged abuse, edit the evidence and then release it to the public without ever notifying authorities of the abuse. How would this help Nebraska's animals or our agricultural industry if documented abuse isn't reported as soon as possible. Per statute, any individual who suspects or witnesses abuse directed towards children or vulnerable adults is required to report it right away. Those who value animals as much as they value their fellow humans should want any abuse or mistreatment to be stopped as soon as possible and should want to see those animal abusers brought to justice. The second component of LB204 would make it a crime for any individual to falsely misrepresent himself or herself on an application or an agreement to be employed at an animal facility. In making that misrepresentation, the individual has to intend to damage or interfere with the operations of the animal facility either by causing economic damage to the operations property, including harm to its animals, or by causing injury to another person in the course of causing the economic damage. The penalty for violating this portion of the bill varies depending on the severity of the damage and harm caused by the individual's actions. Throughout the country there have been incidents of individuals either tied to animal rights organizations or acting on their own volition who gain employment to an animal facility with an intent to seriously harm the animal facilities' operations. These individuals who gain access to an animal facility have done things such as release animals from the facility's property, set fire or otherwise damage equipment or animals at the animal facility, or as mentioned above will film operations with the intent to release footage as propaganda without reporting potentially unlawful activities to the business owners or law enforcement. LB204 would deter those individuals from misrepresenting themselves to a particular employer to gain employment to then later use that employment to harm the animal facility. Last year I brought a bill similar to LB204 which would have made it a crime for individuals to interfere with the operations of an animal facility. Opponents to this bill were concerned that the bill was unconstitutionally vague and did not make exceptions to those activities that were protected by the First Amendment. Opponents were also worried that an individual wouldn't know what the penalty they would face for their actions. Taking those concerns into consideration, I modeled the penalty portion of this bill after the Animal Enterprise Terrorism Act which Congress passed in 2006. The severity of the penalty depends on the severity of the economic or bodily damage inflicted and each crime and its consequences are very specifically laid out in this section. LB204, like the Animal Enterprise Terrorism Act, also has a section specifically exempting activities that are protected by the First Amendment from criminal penalties. In Nebraska, we have every incentive to treat our animals well. And not only do farmers in this state believe that

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animals should be cared for as humanely as possible, but they also know that good animal practices result in a better product and promote the overall safety of the animal operation. I know that 99 percent of farmers in this state treat their animals well and with respect. And this bill's intent is to prevent the other 1 percent from giving those farmers and ranchers a bad name. Thank you and I'd attempt to answer any questions the committee may have. [LB204]

SENATOR ASHFORD: Senator Seiler. [LB204]

SENATOR SEILER: Maybe I missed it, Senator, but who do you make the report to? I don't see who you file a report. [LB204]

SENATOR LARSON: You have to report it to just a local police official. [LB204]

SENATOR SEILER: It doesn't say...I don't think your bill says that, unless I missed it. That's what I was trying...in your first part where you have to telephone as soon as possible, the report, I don't see where it says who you call. [LB204]

SENATOR LARSON: Right now, this section that we're changing just deals with government employees, who they have to report it to. [LB204]

SENATOR SEILER: It says any person who observes...you took out the words... [LB204]

SENATOR LARSON: And if it's not, I'd be happy to ensure that it... [LB204]

SENATOR SEILER: Take a look at it again. [LB204]

SENATOR LARSON: ...to the proper...and we'll look and I'd be happy to discuss it with you. [LB204]

SENATOR SEILER: Okay. [LB204]

SENATOR LARSON: But if it's not in there, then it would be an oversight on my part and I apologize, but we do need to make sure that these are reported to the proper law enforcement agencies as soon as possible. [LB204]

SENATOR ASHFORD: Senator Chambers. [LB204]

SENATOR CHAMBERS: I'm curious. (Laugh) Where did you get this language from? [LB204]

SENATOR LARSON: We became...last year I introduced a bill and it had...it raised

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several concerns and I... [LB204]

SENATOR CHAMBERS: But where did you get the language from? What organization is behind this? [LB204]

SENATOR LARSON: No organization. As I said, we drafted the penalties portion off the Animal Terrorism Act of the federal... [LB204]

SENATOR CHAMBERS: And this is...you're right. So this is about terrorism. [LB204]

SENATOR LARSON: No, this is not about terrorism. [LB204]

SENATOR CHAMBERS: Well, if you got it from the Terrorism... [LB204]

SENATOR LARSON: Last year, the ACLU expressed concern about certain portions of the bill being unconstitutional. [LB204]

SENATOR CHAMBERS: Well, why did you get it from the Terrorism Act if it's not about terrorism? [LB204]

SENATOR LARSON: I don't think the Terrorism Act necessarily deals with terrorism, Senator Chambers. [LB204]

SENATOR CHAMBERS: Oh. [LB204]

SENATOR LARSON: I think there's, obviously, a broad definition...there is obviously broad definitions of terrorism. [LB204]

SENATOR CHAMBERS: So a recreational facility may not have anything to do with recreation; or a swimming pool has nothing to do with swimming. But here is what I'm going to ask you. You're really concerned about groups, because you spent a little time in the beginning about your concern for animals and, you know, then all the rest of that was about these groups that are catching these big operators who are cruel to animals, who are vicious and ought to be prosecuted and put out of business and put in prison, and they're the ones you're worried about, aren't they? [LB204]

SENATOR LARSON: And I agree with you. No, I agree with you, those people that are vicious to animals need to be caught right away. [LB204]

SENATOR CHAMBERS: Then why are you going to make... [LB204]

SENATOR LARSON: What I disagree with is the fact that people aren't turning in that animal abuse right away and letting it to continue. They should report it just like they

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have to report, as I said, child abuse. [LB204]

SENATOR CHAMBERS: Okay. Okay, I heard you and I read it. Why is it a crime if you don't turn all the information you have, why do you have to give them all these documents and videos and so forth? Why do you have to give that to them? Why can't you just tell them? [LB204]

SENATOR LARSON: I think any law enforcement officer or anybody that is going to investigate the crime will want the evidence to be able to prove that those people are guilty. And if we want to...you know, if that's something that you want to work with, Senator Chambers, to... [LB204]

SENATOR CHAMBERS: Isn't that what police work consists of: getting the evidence, visiting the crime scene? [LB204]

SENATOR LARSON: We want to make sure that they have the evidence. And like I said, if you want to work to change... [LB204]

SENATOR CHAMBERS: Are you going to deputize these people then so that they're now part of the police force since they are supposed to collect all the evidence? [LB204]

SENATOR LARSON: No, I don't think you deputize them, but I think we need to make...if they're turning in animal abuse, we want to make sure that the police force does have the evidence that they have in order to prosecute those that are getting... [LB204]

SENATOR CHAMBERS: Well, when you report...when you make a report about possible abuse of a child or a vulnerable adult, all you do is call and make the report. You don't have to give videos or anything else. But let me ask you this, who asked you to bring this legislation the first time around? [LB204]

SENATOR LARSON: Nobody. [LB204]

SENATOR CHAMBERS: Nobody? Is that a name or is that to let me know that no person. [LB204]

SENATOR LARSON: No person. [LB204]

SENATOR CHAMBERS: Okay. Do you think this bill is going to get out of this committee? [LB204]

SENATOR LARSON: That's up for this committee to decide. [LB204]

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SENATOR CHAMBERS: I'm asking what you think. You have an opinion. [LB204]

SENATOR LARSON: I do not have an opinion. [LB204]

SENATOR CHAMBERS: You do not have an opinion. [LB204]

SENATOR LARSON: No. [LB204]

SENATOR CHAMBERS: Do you think I'll support this bill? [LB204]

SENATOR LARSON: I don't...I'm not inside your head, Senator Chambers. [LB204]

SENATOR CHAMBERS: You don't have an opinion. [LB204]

SENATOR LARSON: That is your opinion. I don't know what your opinion will be. [LB204]

SENATOR CHAMBERS: You don't have an opinion. I'm just trying to establish for my colleagues that you...it's hard to make you be forthcoming. And when you can come here with a bill like this and not have an opinion about what's going to happen to it, I have an opinion about every bill that I offer. Maybe you... [LB204]

SENATOR LARSON: I would like for it to get out of this committee, Senator Chambers, but I don't sit on this committee, so I won't have one of the eight votes. [LB204]

SENATOR CHAMBERS: What do you think are the odds of it getting out of here? Do you think it's got a 50-50 chance? [LB204]

SENATOR LARSON: I do not know, Senator Chambers, to be... [LB204]

SENATOR CHAMBERS: If it gets out, are you going to prioritize it? [LB204]

SENATOR LARSON: This year, no. [LB204]

SENATOR CHAMBERS: Then it doesn't need to get out anyway, does it? [LB204]

SENATOR LARSON: I would like to see it on the floor next year; as you know, we lay over bills, so it does come out, it will be placed on General File in worksheet order and it will be able to come up next year. [LB204]

SENATOR CHAMBERS: What happened to the bill last year? [LB204]

SENATOR LARSON: Last year the bill that I introduced I knowingly said that it probably

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wasn't as constitutionally sound as it... [LB204]

SENATOR CHAMBERS: It died? [LB204]

SENATOR LARSON: ...as constitutionally sound as it needed to be. So yes, it did die. [LB204]

SENATOR CHAMBERS: What happened to it? [LB204]

SENATOR LARSON: It died when the Legislature ended. [LB204]

SENATOR CHAMBERS: So if this died by any means necessary, you could offer another bill next year, huh? [LB204]

SENATOR LARSON: I could. [LB204]

SENATOR CHAMBERS: You enjoy this, don't you? Don't you? I've not seen anybody so cheerful as you are this afternoon. You're enjoying yourself, aren't you, at my expense? [LB204]

SENATOR LARSON: I enjoy my job, Senator Chambers. And I think you enjoy yours. [LB204]

SENATOR CHAMBERS: Okay. That's all I have. Thanks a lot. [LB204]

SENATOR ASHFORD: Thanks, Tyson. I don't see any other questions. [LB204]

SENATOR LARSON: Thank you. [LB204]

SENATOR ASHFORD: Okay, proponents? How many opponents do we have? Okay. Opponents? [LB204]

ANNETTE SWEENEY: I'm a proponent. [LB204]

SENATOR ASHFORD: Okay. Proponents first, and then... [LB204]

ANNETTE SWEENEY: (Exhibit 21) I also have a memorandum from Dr. Carolyn Orr. She is a certified professional animal scientist that talks about some of the people that you're talking about. [LB204]

SENATOR CHAMBERS: Did you want to sit, if you're going to testify? [LB204]

SENATOR ASHFORD: Okay, okay, I think we have to...you have to sit down... [LB204]

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ANNETTE SWEENEY: Okay. [LB204]

SENATOR ASHFORD: ...and give us your name and then we'll...you can talk about the document that you're handing out. Give us your name and then... [LB204]

ANNETTE SWEENEY: Okay. Good afternoon. My name is Annette Sweeney, A-n-n-e-t-t-e, last name is Sweeney, S-w-e-e-n-e-y. I'm a livestock producer and also former chair of the House Agriculture Committee in the state of Iowa. And I come to you today as a livestock producer and also the author of the bill that was passed in Iowa a year ago. And as a livestock producer I want to make sure that my animals are well cared for, and I also want to be assured that the people that I have coming on to my place, and also people in my neighborhood when they have someone come in to help them with their livestock, they are who they say they are. And throughout the United States we have quality assurance programs. And with the quality assurance programs that are implemented throughout the livestock industry, you have to go through, before you are hired in particular facilities, to the correct handling of the livestock. And at the end of your education, you sign an affidavit that says, I will treat those animals in the correct manner and a safe manner and the best manner possible for the livestock. You also sign an affidavit at the end saying that you will, if you see anybody mishandling deliberately the animals, that you are to report it immediately. So with this legislation that we have before you here, it gives a livestock producer the assurance that when they hire someone, they are who they say they are, they're going to treat your animals in the best possible way. And also this legislation tells us we want to stop animal abuse, not to let it go on, we want to stop it. And in Kansas, North Dakota, and also Montana, this legislation has been in place for the last 10 to 15 years. And as for constitutionality, it has met all possible requirements. So I ask for your vote positively to let it go on, and also let it be a priority for you for this legislative session on LB204. Any questions? [LB204]

SENATOR ASHFORD: Senator Christensen. [LB204]

SENATOR CHRISTENSEN: Thank you, Chairman. How similar is this bill to the one that you presented a year ago in Iowa? [LB204]

ANNETTE SWEENEY: What we passed in Iowa is we just kept it to the part of if you lie on a job application to gain access to the livestock facility, that is a crime. And then from...I wish we would have done the 24 hours that the senator has done in order to report it, because we want animal abuse stopped and the only way you're going to stop it is if you report it. [LB204]

SENATOR CHRISTENSEN: I agree with the reporting things that way, and I think I understand his intent in this bill, but have you seen in Iowa a lot of problems with people

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staging events and things this way that's... [LB204]

ANNETTE SWEENEY: Yes, sir. [LB204]

SENATOR CHRISTENSEN: ...referred to in this... [LB204]

ANNETTE SWEENEY: Yes, sir. [LB204]

SENATOR CHRISTENSEN: ...Carolyn Orr? [LB204]

ANNETTE SWEENEY: Yes, Senator. [LB204]

SENATOR CHRISTENSEN: Would you say how many cases? [LB204]

ANNETTE SWEENEY: There are three cases that I know, and I have spoken with people that were in a livestock facility where someone was hired under false pretenses, they lied on their job application who they were. They then went and abused animals themselves and they had the video camera in their granola bar in their pocket, videoing them abusing the animals without...you couldn't see their face, all you could see is their hands and their arms. And what gave it away was this person had a tattoo around her wrist and then they could track who that person was. And then all of a sudden the video was released. The video or none of the abuse was reported to any of the managers at that time and all of a sudden she quit; six months later you have a video and then all of a sudden it's blown way out of proportion where that person themselves from an activist group did the abuse. [LB204]

SENATOR CHRISTENSEN: That would literally just about shut down an operation by the time they fought that... [LB204]

ANNETTE SWEENEY: I'm sorry. [LB204]

SENATOR CHRISTENSEN: It would literally about shut down an animal operation or something that way if that type of abuse or video got released blaming that facility, it would just about ruin that farmer or animal producer and things this way. [LB204]

ANNETTE SWEENEY: Yes, sir. And that's the intent for some of the activist groups. Yes, sir. [LB204]

SENATOR CHRISTENSEN: Thank you. [LB204]

SENATOR ASHFORD: Yes, Senator. [LB204]

SENATOR DAVIS: I've got several questions and some observations and some

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comments because I'm a rancher from western Nebraska. And I have had very strict policies with regard to animal abuse at my ranch. [LB204]

ANNETTE SWEENEY: Me too. [LB204]

SENATOR DAVIS: When I'm not there, it doesn't always deter what happens. Sometimes it takes a long time for those people to come to me and tell me what has happened. So let me set all this down as a precedent. [LB204]

ANNETTE SWEENEY: Um-hum, okay, I'm a livestock producer too. I'm calving cows right now, or my husband is. [LB204]

SENATOR DAVIS: But what I'm wondering is, in my two cases, I've prosecuted two people for animal abuse that worked for me because I felt very seriously that this was a very important issue. The question comes down to what is going to happen to law enforcement? How are we going...are we going to overwhelm our law enforcement system in some respects because who decides what is abuse and who is? And if it's going to be the sheriff, you know, in Grant County, Nebraska, I'm going to tell you, everybody handles their animals differently. So if I've got five employees and they see somebody using a whip and they don't think that's appropriate, you know, are we going to overwhelm our law enforcement system? That's my first question. [LB204]

ANNETTE SWEENEY: Okay, I really appreciate that question. In Iowa we have to where you can report it to a supervisor and/or law enforcement, and then also the veterinarians can come and you can report it and then they can come in...and what has happened with Temple Grandin and another, Carolyn Coursey (sic), I believe, is another person that they have a review board. And some of the videos that have been shown lately have been of what we normally do and depicted very badly. And so there is a review board. And with the state of Nebraska, I'm not sure what your laws say that how you could address this, whether you could have a local veterinarian go out and look to see if the abuse is occurring or how you could handle it. But you could address that on, you know, you could have the vets, you could have your supervisors, you could have your law enforcement. [LB204]

SENATOR DAVIS: Okay. And the second part of the bill seems to me to address what I'm going to call industrial agricultural processes. And I'm concerned as much as I'm shocked and offended at seeing those films; and I realize they're very sensationalistic, I know what it's all about, it concerns me that the industry is going to try to suppress any kind of investigation because the only way we're going to stop animal abuse is for us as producers to say we're not going to put up with it. And sometimes it takes these kind of sensationalistic tactics to get that to happen. You know, when Temple Grandin started her work, I think people thought she was a little way out there. Now today we all respect what she has done and what she has implemented. [LB204]

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ANNETTE SWEENEY: Um-hum. Within the industry, I think that what I work and we have a large number of hog facilities where I'm from, and what has happened is that all the employees, all the managers have gone through strict quality assurance, what I talked about earlier, and I don't think this is going to shut it down because the people, the managers, and the people that own ranches, cattle, that they want the best thing to happen too, and I don't think it's going to suppress it at all. In fact, I think people are more forthcoming in seeing that...like the bill here that we have, in order...you need to report it within 24 hours or, you know, whatever time frame that you have, because I think people with this kind of legislation feel empowered that they want to stop the abuse because I've got something that will back me up. [LB204]

SENATOR DAVIS: But what I'm talking about, the second part of the bill, I'm talking about the people who go in with the intention of ratting out this company for its animal abuse. Maybe they went in with an agenda, perhaps they do; who get falsely hired. I'm a little bit concerned about that, that what that's going to do to us as an industry. [LB204]

ANNETTE SWEENEY: I would like you to read what Dr. Orr...in fact, Dr. Carolyn Orr was a classmate with Temple Grandin and she got her Ph.D. at the same time. And what we have seen, it's not a suppression of people saying that, you know, what the abuse is going on; is that it is a hidden agenda of what some of these groups want us to be and to be able to out-price the livestock facilities so then we have to keep closing them down. And in order for us to become... [LB204]

SENATOR DAVIS: I understand that. [LB204]

ANNETTE SWEENEY: Okay. [LB204]

SENATOR DAVIS: Do you think that the California barn would still be running if that hadn't happened...if that video hadn't been made? [LB204]

ANNETTE SWEENEY: With...? I'm sorry, I don't know which one you're talking about. [LB204]

SENATOR DAVIS: The...there's a...I can't remember if it was a feedlot or a sale barn or a packing house in California, a year or so ago, the video came out with regards to that. [LB204]

ANNETTE SWEENEY: I've talked to individuals that were directly involved with that particular video, and the cow that was down was put there the night before. [LB204]

SENATOR DAVIS: I would like to see that. [LB204]

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ANNETTE SWEENEY: Okay. [LB204]

SENATOR DAVIS: I've never seen documentation on that. If you've got that, I'd like to see that. [LB204]

ANNETTE SWEENEY: Okay. Yes, sir. [LB204]

SENATOR DAVIS: Thank you. [LB204]

ANNETTE SWEENEY: Yes, sir. I will. [LB204]

SENATOR LATHROP: Oh. Doesn't a requirement that you report it within 24 hours require that somebody...let's say that somebody who is an employee at some facility that would be covered by this act, and they become disturbed by what they see and they begin to build evidence. This would require that whatever you learn in the first 24 hours you've got to share with whoever we eventually require the report be made to, when they may actually be able to document this better if they have more time. In other words, we're making them jump the gun in some sense aren't we? [LB204]

ANNETTE SWEENEY: Abuse is abuse and when it happens it's abuse. And if they think that they need to build a case, if you see the abuse going on, it's happened. If they think it's going to happen again and they need to build a case... [LB204]

SENATOR LATHROP: Why the hurry? Why 24 hours? [LB204]

ANNETTE SWEENEY: Because when you see it happen, you should report it. We're asking people to report it. We want to protect our animals. We don't want it to happen again. [LB204]

SENATOR LATHROP: Okay, I think I get it. Senator Chambers. [LB204]

SENATOR CHAMBERS: It's a crime if somebody lies on an application to get a job in one of these facilities? [LB204]

ANNETTE SWEENEY: Yes, sir. [LB204]

SENATOR CHAMBERS: Is it a crime in Iowa if I lie on an application to get a job at a university as a professor and I lie on my application, is that a crime in Iowa? [LB204]

ANNETTE SWEENEY: Sir, I don't know that. [LB204]

SENATOR CHAMBERS: Are you aware of any other situation in Iowa where if you lie

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on a job application it's a crime? [LB204]

ANNETTE SWEENEY: No, sir, I'm not aware of that. [LB204]

SENATOR CHAMBERS: In most instances if you have lied and it's found out, you lose the job. Why is it a crime in this situation? [LB204]

ANNETTE SWEENEY: With this particular situation and what we passed in Iowa is...with...if you lie on your job application with the intent of causing harm to the facility. [LB204]

SENATOR CHAMBERS: So if you just lie, then that's not a crime? [LB204]

ANNETTE SWEENEY: That's a good... [LB204]

SENATOR CHAMBERS: If you just lie on your application blank, that's not a crime. [LB204]

ANNETTE SWEENEY: It should be, lying is wrong. [LB204]

SENATOR CHAMBERS: The lying itself is not a crime. You have to have the intent to do this other nefarious action. [LB204]

ANNETTE SWEENEY: Yes, sir. [LB204]

SENATOR CHAMBERS: How are you going to prove that is what somebody's intent was when they got the job? Maybe they lied to get the job because they had a felony conviction and they said I've never committed a felony. But then the fact...you find out that they committed a felony, but while on the job they happen to care about animals and they compile this information which is valid. [LB204]

ANNETTE SWEENEY: If it's valid, then prosecute. [LB204]

SENATOR CHAMBERS: Then they're not...but then that person hasn't committed a crime. If you lied to get the job, but you get valid information, then you're not prosecuted for lying, is that true? [LB204]

ANNETTE SWEENEY: I don't know, sir. That has never been proposed, or it hasn't happened. But if he compiles...if that person compiles the abusive information, then the abuse will be prosecuted. [LB204]

SENATOR CHAMBERS: But the person, is that person then going to be prosecuted for lying? The person lied...okay, let me make it simple. I lie. What kind of lie am I going to

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tell that would be prosecuted? I want to get a job in your operation and my intent is to prove what I've been told is happening there. So I say, I want a job. You say, why do you want this job? Well, I need some money; I want to go to school and I know how to do this kind of work so I'd like to get a job here. [LB204]

ANNETTE SWEENEY: Um-hum. [LB204]

SENATOR CHAMBERS: And the reason I'm wanting to work there is to compile evidence to document what I've been told is going on there that is harmful to these animals and I document it. Not only do I document it, I don't reveal anything in the first 24 hours. In fact, I go on for two or three weeks and I'm constantly videoing all of this abuse. And it's clear that the videos have not been doctored. The abuse occurred. Then the person who runs the operation say, well, you lied about why you wanted to come here. And I said, where was the lie? You told me you needed money, but your real intent was to get the job here so you could get this information. And I'd say, that's correct, that's why I wanted the job. But I was not going to tell you that I'm getting the job here to document the abuse going on in your facility. Now I didn't tell you the truth about why I came there, so I committed a crime by not revealing to you that I'm going to do this undercover work and turn you in? [LB204]

ANNETTE SWEENEY: Okay, the undercover work, if it is documented and turned into the proper authorities... [LB204]

SENATOR CHAMBERS: Not in 24 hours. [LB204]

ANNETTE SWEENEY: ...according to the bill, but if you had even up to 24 hours...I can't speak on your bill, but in Iowa if you document that abuse and it is abuse and you report it to the proper authorities without turning it to the news media, that's abuse. [LB204]

SENATOR CHAMBERS: But why is it a crime if I turn it over to the news media? I'm not slandering you, because truth is a defense against slander. You actually did it. I can show that to anybody I want to. [LB204]

ANNETTE SWEENEY: Well, as soon as abuse occurs, you should be reporting it. [LB204]

SENATOR CHAMBERS: You make that a crime because you...what you really want is to keep it from being exposed. [LB204]

ANNETTE SWEENEY: No, sir. [LB204]

SENATOR CHAMBERS: Isn't that true? [LB204]

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ANNETTE SWEENEY: No, sir, not at all. [LB204]

SENATOR CHAMBERS: Well, we have a different view of what your intentions were. [LB204]

ANNETTE SWEENEY: Yes, we do. Yes. My intentions... [LB204]

SENATOR CHAMBERS: And I have a different view of what Senator Larson's intentions are. So since we're going to be in the business of divining people's intentions, I'm just letting you both know that I think your intentions are different from what you say. I don't think your intentions are to protect animals from abuse. You would want that abuse discovered by any means necessary and you would be happy to have it discovered. And you would even put into the bill that if this person has profited from this abuse, then you will get a percentage of what they profited from that abuse, just like any other whistle-blower. That's what you would be doing. [LB204]

ANNETTE SWEENEY: Well, a whistle-blower doesn't have to commit fraud or an illegal activity to be a true whistle-blower. [LB204]

SENATOR CHAMBERS: You're making it illegal. It's not illegal now. You want to make it illegal. If it is illegal now, why do we need this bill? It's not illegal. It's not fraud. [LB204]

ANNETTE SWEENEY: I want to protect our animals in order for us to be able to report it right away. [LB204]

SENATOR CHAMBERS: How is it a fraud? [LB204]

ANNETTE SWEENEY: And to empower people to report it. [LB204]

SENATOR CHAMBERS: How is it fraud if they come in and get this information and release it to the public, how is that fraud? [LB204]

ANNETTE SWEENEY: If they come in and they lie, that is fraud. That is fraudulent activity. [LB204]

SENATOR CHAMBERS: Who asked you to come here and testify, if I may ask? [LB204]

ANNETTE SWEENEY: I volunteered. [LB204]

SENATOR CHAMBERS: So you read about this bill coming and that's why you volunteered? [LB204]

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ANNETTE SWEENEY: Yes, sir. [LB204]

SENATOR CHAMBERS: Nobody contacted you? [LB204]

ANNETTE SWEENEY: I contacted Senator Larson's office. [LB204]

SENATOR CHAMBERS: And you wanted to come here and help him get his bill passed. Did you read his bill before you offered to support it? [LB204]

ANNETTE SWEENEY: Yes, sir, I did. And I applauded them for what he did for the 24 hours. [LB204]

SENATOR CHAMBERS: Well, how much different is his bill from your bill that you got in Iowa? [LB204]

ANNETTE SWEENEY: In Iowa, we talked about that earlier over here, I think it was Senator Christensen or Seiler, that in Iowa if you lie on a job application to gain access with the intent of committing fraudulent activity, it is a crime. [LB204]

SENATOR CHAMBERS: Well, yeah, but what constitutes fraudulent activity? You are trying to define what is legal as being fraudulent. [LB204]

ANNETTE SWEENEY: Don't we pass bills to define legalities? [LB204]

SENATOR CHAMBERS: I don't pass the kind of bills you're talking about. And if I was in Iowa, you wouldn't have got your bill passed there either. (Laughter) I guarantee you. Or as my friend from Louisiana used to say, I think you've gone to the great beyond, or wherever they go when they die. I "gare-on-tee" you. This is an atrocious bill. [LB204]

ANNETTE SWEENEY: I applaud Senator Larson for this bill, so we have a definite divide going on here. [LB204]

SENATOR CHAMBERS: Well, atrocious people often get applauded by other people. I've seen fist fights where somebody is being beaten into the ground to a pulp and people are applauding and urging it on. (Senator Chambers makes clapping sounds.) [LB204]

ANNETTE SWEENEY: Well, it's too bad that you have that type of an analogy. And for me this bill will help people to be able report animal abuse and it needs to be reported. [LB204]

SENATOR CHAMBERS: That's all that I have. Thank you very much. [LB204]

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SENATOR LATHROP: And we do that by making it a crime not to do it within a certain period of time. [LB204]

ANNETTE SWEENEY: It is lined out in the bill. I have to yield to Senator... [LB204]

SENATOR LATHROP: Let me ask a question. [LB204]

ANNETTE SWEENEY: Okay. [LB204]

SENATOR LATHROP: Once you got your bill passed in Iowa that said it is a crime to lie on an application to secure a job, did the applications for the meat processor change? In other words, in response to your bill, did now the application say do you intend to come here to do videos or otherwise investigate cruelty to animals? [LB204]

ANNETTE SWEENEY: That was in place before my bill passed. [LB204]

SENATOR LATHROP: So the applications ask you that? [LB204]

ANNETTE SWEENEY: Yes. [LB204]

SENATOR LATHROP: And you made it a crime to say... [LB204]

ANNETTE SWEENEY: To lie. [LB204]

SENATOR LATHROP: ...no, when the guy might be perfectly willing to work eight hours a day doing exactly what you hired him to do? [LB204]

ANNETTE SWEENEY: Well, that's fine if he was hired, you know, and... [LB204]

SENATOR LATHROP: But what makes it a fraud is the answer that they give on the application to work at the place where this is all happening. [LB204]

ANNETTE SWEENEY: Yes. Yes. [LB204]

SENATOR LATHROP: Got it. Okay. Oh, Senator Davis. [LB204]

SENATOR DAVIS: I just have one more question. In Iowa, any individual who sees animal abuse is obligated then to report that to the local authorities? [LB204]

ANNETTE SWEENEY: Right now, all we passed was lying on your job application. And with that we want...it's in statute right now, you're supposed to report it and we talked about that earlier, to your county supervisor, to your county sheriff, and also to the state

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vet. [LB204]

SENATOR DAVIS: You mean lying on the job application? [LB204]

ANNETTE SWEENEY: No, no, no, excuse me, of animal abuse. [LB204]

SENATOR DAVIS: Okay. Run that by me one more time. I'm not getting it. [LB204]

ANNETTE SWEENEY: It's on the book right now. If you have...if you suspect animal abuse, you are to report it to a county supervisor, a county sheriff, or the state vet; it's on the books right now. [LB204]

SENATOR DAVIS: And does that happen, do you know? [LB204]

ANNETTE SWEENEY: Yes, oh yes. And in fact, we just put together a coalition, an Iowa farmer coalition for care of animals, and our state vet, our secretary of agriculture, our animal rescue league person; and I apologize, I can't remember the fourth person on that, but they call in and say, hey, I suspect abuse at this possible. And then they have a group of people that go out and inspect to see whether actual abuse is happening. [LB204]

SENATOR DAVIS: And if it's not reported, it's a criminal offense? [LB204]

ANNETTE SWEENEY: If it's not reported? We don't have that on the books right now. [LB204]

SENATOR DAVIS: Because I think that's...unless I'm wrong, is that what this reads, Senator Larson? Which I think is in some respects laudable, but very complicated. Thank you. [LB204]

ANNETTE SWEENEY: Um-hum. [LB204]

SENATOR LATHROP: Senator Seiler. [LB204]

SENATOR SEILER: In Section 6, on page 10 of the bill, it talks about the report being made on preprinted forms. Is that something that's unique to Iowa? I don't know of any sheriff's department or police department or anybody like that that has preprinted forms for you to report on. [LB204]

ANNETTE SWEENEY: We do not have that in Iowa, sir. I would have to yield to Senator Larson. [LB204]

SENATOR SEILER: Okay, that's what I wanted to know, if you had those preprinted

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forms? Thank you. [LB204]

ANNETTE SWEENEY: Thank you very much for your time. [LB204]

SENATOR LATHROP: Okay, thank you. Any other proponents of LB204? Seeing none, is there anyone here in opposition? [LB204]

ALAN PETERSON: (Exhibit 22) Vice Chairman Lathrop and members of the Judiciary Committee, I'm Alan Peterson, A-l-a-n P-e-t-e-r-s-o-n, and I'm here again on behalf of ACLU Nebraska which tries to conserve the constitutional rights of people in this state. I have testified a long time, many years. I've never seen a more blatantly unconstitutional approach to lawmaking than this bill. Last year's was bad. This one...well, there is three reasons why you should kill this as quick as possible, humanely, of course. Number one, what is the need? We already have the federal act as to real terrorism which...and that's for people who get in or sneak in or come in at night and steal animals or destroy property on one of these factory farms. And that is being challenged on First Amendment grounds, but it has held up and there have been a few prosecutions under it. That ought to be good enough. Number two, it's already grounds to fire somebody if you find they lied on their application. And if you could actually prove some damages, I suppose you could bring a civil fraud case. So what is this add? I'm not too happy about the representation that this is to protect animals. I've handed out information including two blog histories of this ag gag movement which started in 2003 with the ALEC, A-L-E-C organization, financed in goodly part by the Koch brothers and other big industrialists. And the purpose was not to protect animals but to protect ag industrialists from whistle-blowers. There isn't any doubt about that. Iowa is the first state to pass one of these things last year. I wish I had been in the Iowa Legislature at the time to testify, but it passed. Nebraska's is far worse, far worse. In the rather lengthy letter, and I apologize for that, I almost wrote a brief on this because it is so bad. The second big problem--no need--but the second problem is, okay, it's going to blow up in your face, folks. If you claim somebody should have reported their reasonable suspicion immediately or within 24 hours, and that's a crime, what about everybody else on the whole factory farm? May I finish that point? [LB204]

SENATOR LATHROP: You may, go ahead. Consider it a question. [LB204]

ALAN PETERSON: Thank you. I quoted...for fun I quoted an old Bob Dylan lyric in my note to you which is appropriate and it is to the effect that, "They'll stone ya' when you try to be so good, they'll stone ya' just like they said they would, but you won't feel so all alone because everybody must get stoned." And that is what happens here. If the whistle-blower is going to be prosecuted, why wouldn't everybody on the whole place? In other words, this thing is a mess. And finally, if I can...ask me... [LB204]

SENATOR LATHROP: You may. [LB204]

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ALAN PETERSON: I'll finish quickly. It violates the First Amendment, freedom of speech and press, clearly. It's an attempt is to chill speech. It violates the Fourth Amendment. Reasonable search and seizures only can be done in this country under the Fourth Amendment. This takes your property, that is all your evidence, without showing a probable cause or a warrant. The Fifth Amendment, you've got to turn yourself in. If 24 hours passes and you haven't already reported it, you got to turn yourself in and file a report. That violates self incrimination, and it violates due process completely. You don't get any hearing or a notice before they take your property. This is terrible. This is just awful. And, frankly, it's disingenuous to say you're trying to protect animals unless you regard the Koch brothers as animals. Thank you. [LB204]

SENATOR LATHROP: Senator Chambers. [LB204]

SENATOR CHAMBERS: This is my first session back, and in the few days that I've been here, relatively speaking, I have never encountered so much trash legislation from ALEC and these other outfits, the Koch brothers. And what ALEC is, is an outfit that gives senators what they call a membership and will pay their way to be propagandized and they become little flunkies for ALEC. They bring bills that say Nebraska cannot obey federal laws that regulate firearms; federal law doesn't apply in Nebraska. They've got a bunch of lunatic people...a lot of people who are influenced by lunatics telling them that the U.N. is going to take away their parental rights. And they know this is a fact because it has happened in Germany; it has happened in Ireland; and each one who calls me names a different country. I say, well, the U.N. doesn't pass laws in America. Well they did in Germany. They did it in Ireland. I say, well how do you know? Well, I know. And I tell them frankly, as an elected official, if I let you believe that nonsense I'm not doing my job. You're running around here terrified, I want to let you know that is not going to happen in America. A bill was brought saying that the U.N. is going to take people's property without due process of law. This fits right in that lunatic category and that is why I asked Senator Larson where he got it. This didn't come out of his head. If this came out of his head, he couldn't have graduated from Georgetown or George Washington or wherever he said he graduated from unless he's fibbing about that. If this is what goes on in his head, then it is a lot of education wasted. And I've been making it clear to people that when these lunatic ALEC bills come to this community, I will see that everything that I possibly can do will kill it. And not because I have five votes, but to show my colleagues how nonsensical this is and how we will look as stupid as the ones who brought it; we'll look as crazy as the ones who drafted it; and we'll look as irresponsible as anybody who would pretend to take it seriously. We know what this is about. They have even had television programs about it. Maybe they don't know that some of us watch television. And the attempt is made to cover up and conceal animal abuse. That's what this is for, not to help animals. And to pretend that it is on the level of requiring a person to report the abuse of a child or a vulnerable adult is obscene. When you look at what is in this legislation...that is why I'm glad, Mr. Peterson, that you came

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and presented the information that you did. [LB204]

ALAN PETERSON: Thank you. [LB204]

SENATOR CHAMBERS: And that's about all that I have except that I want to ask you a question. How are you going to be able to continue...how long will you be able to continue performing the service that you do in the way you performed it by presenting this information to us today? [LB204]

ALAN PETERSON: I hope for many years, because it's really what I care about... [LB204]

SENATOR CHAMBERS: And I'm pulling for you. [LB204]

ALAN PETERSON: ...more than anything else at this point. [LB204]

SENATOR CHAMBERS: Okay, so eat an apple a day to keep the doctor away, eat your asparagus and your broccoli, and then if you have problems, talk to me and we'll work that out. [LB204]

ALAN PETERSON: I just want to say, I don't mean to show disrespect for any senator, but the product that was presented here, this bill, is rotten to the constitutional core. The bill deserves no respect, even though I do like and respect Senator Larson. This should be killed. [LB204]

SENATOR CHAMBERS: I find him to be very charming, very engaging, and he even makes me laugh. (Laugh) Thank you. [LB204]

ALAN PETERSON: Thank you, Senators. [LB204]

SENATOR LATHROP: Thank you, Senator Chambers. Thank you, Alan. Anyone else here in opposition? [LB204]

SENATOR SEILER: Senator Chambers, he's younger than you and I. (Laugh) [LB204]

JOHN HANSEN: Mr. Vice Chairman, members of the committee, the hour is late. My name is John Hansen, J-o-h-n H-a-n-s-e-n. I'm the president of Nebraska Farmers Union. We're the second oldest, second largest general farm organization in the state. We do not support this bill. We do not believe that there is a substantial problem that needs to be addressed above and beyond the federal law that exists today. In our view, this bill is a part of a national strategy on the part of large, vertically integrated, industrialized livestock production folks and we knew it would be coming to our state and you look at these kinds of things. We've seen in recent years efforts to do those

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things in order to be able to help their interests to identify and target and weaken corporate farming restrictions around the country. And so the same agenda, same players, same rhetoric, same talking points get used state after state, efforts to beat down local planning and zoning. And so when we saw this one first roll out, we knew it would come to a state like us because we're the largest red meat producing processing state in the country and it would be a matter of time until it showed up. And so it was no surprise. This approach, in our view, does not necessarily help protect animals at all. It really is about being able to get control of any kind of damaging video or materials as quickly as possible so you can disarm anybody who has that kind of information. It puts an honest employee, who for the very best of reasons, signs up, becomes active in the operation, is going along minding their business, and all of a sudden a problem happens and at the point that it happens if he turns it in within 24 hours and all of the proof that he has of it, then he has also put all of his fellow workers in a vice. He has put himself in a vice because then the presumption of innocence is gone as the employer can come back and bring charges against him and saying you lied on your application, and he said, I came with no such intent. And so then it's up to him with his very limited financial resources--a lot of rich folks don't work in hog confinement facilities--put him in a very difficult financial position to be able to prove what his intent was. And I think it's always very, very dangerous and extremely bad public policy, and certainly not constitutional--and Alan Peterson did a nice job of laying that out--to try to criminalize human intent. And with that I would close and be glad to answer any questions. [LB204]

SENATOR LATHROP: I see no questions. But thanks, John, for coming down. [LB204]

JOHN HANSEN: Thank you. [LB204]

SENATOR LATHROP: Anyone else here to testify in opposition? Yes, come on up. Are these folks with you? Are they watching or are they all going to testify too? You guys testifying or just...okay, anybody else going to testify? Okay, our last witness of the day. Welcome to the Judiciary Committee. [LB204]

KEVIN FULTON: Good evening, Senators. I'm Kevin Fulton, F-u-l-t-o-n. Whistle-blowing employees have played a vital role in exposing hidden problems in many industries, including agriculture. It is a process that should be encouraged. LB204 does not do that. It's not aimed at protecting animals. It does just the opposite. In many situations it will penalize whistle-blowers and it protects entities that are perpetuating animal abuse. The livestock industry has no intentions of stopping animal abuse. If they did, they would have taken action a long time ago. They only started doing some things recently because they've been exposed. They tend to defend it, displace blame, and deflect attention, and the evidence shows that in the media and how they react to this. And the reality is, you can't expose a problem if it doesn't exist. I make my living as a farmer and a rancher raising livestock full time in Sherman County. I'm a huge proponent of humanely raised livestock. And I feel that LB204 taints the reputation of the industry that

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I'm a part of. I feel it's a huge blunder for our industry and it tends to backfire on the consumer level. It is just yet another way to make the consumers feel they're being deceived. It makes us look guilty when we close the doors. If we want to send this message to consumer that we produce the best quality food and raised in a humanely and sustainable manner, then we need to start putting our money where our mouth is. We need to encourage transparency and accountability instead of eroding it with bills like this. In this regard, LB204 is a step in the wrong direction. It is a step backwards. I believe that, you know, the exposure to animal cruelty and inhumane conditions by investigators on factory farms in recent times has played a huge role in initiating positive changes in the livestock industry. It has prevented problems from escalating in many situations. We need to continue this process, not work against it. You know, if a lot of these factory farms had glass walls, we wouldn't be here having this debate. But the reality is, you have closed doors, and there's billions of animals raised in these factory farms that have no voice except by people that are willing to step out, go out on a limb, and say this is wrong and there is abuse here. And I don't think we should be trying to curtail that. On my farm, Fulton Farms, we're proud of the way we raise and care for livestock. We've hosted visitors from all over the world. And this includes ag and livestock organizations, animal welfare and advocacy groups, consumers, many individuals, including undercover animal investigators. Come to our farm, bring your camera, bring your videos, show the world what we're doing. People that have nothing to hide, hide nothing. Yes, Senator. [LB204]

SENATOR LATHROP: Senator Chambers. [LB204]

SENATOR CHAMBERS: What do you think is the benefit of the approach that you're taking? You can complete your statement. And then what is the benefit overall that you think is derived from the approach that you take? [LB204]

KEVIN FULTON: Well, I believe that people who eat the food that I produce deserve to know how it is produced. And I think if I show them that, then they become customers and we've even worked to develop markets here with several organizations in this state, humanely raised products, and we're moving forward. And so it's value-added. It allows young farmers to return to the farm and get into a livestock operation where they don't have to own a million-dollar factory farm and become a serf to some company like Tyson Foods. I think that's one of the big benefits. [LB204]

SENATOR CHAMBERS: And did you have any other points that you were going to make there? [LB204]

KEVIN FULTON: I might have. (Laugh) I don't believe that agriculture, specifically the livestock industry, deserves a free pass when it comes to accountability or transparency no matter how sanctimonious some people feel that their so-called mission of feeding the world has become, because it is not about that. And this is not about...this is not an

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animal rights issue. This is about human responsibility, responsibility of people that are caretakers of the animals to do what is right. And as a farmer and rancher, I've got employees and they come to me with their problems, but they don't always come to me within the first 24 hours or 48 hours. And what would they say if they came to me and I said, gee, you didn't tell me this problem, so you better just go back, keep your mouth shut, and go about your business, or I'm going to turn you in and then you're going to get charged with a criminal offense. I don't think that's a very good idea. [LB204]

SENATOR LATHROP: Senator Chambers. [LB204]

SENATOR CHAMBERS: I like, especially, what you said about those who have nothing to hide, hide nothing. The transparency is good. Bring your undercover people, let them find what they want to find and show the world. And my friend, if they do that, you'll find the world beating a path to your facility and I'd be one of the people. [LB204]

KEVIN FULTON: I appreciate that. Last year we saw the drones flying over our farm. We just waved at them. Take as many pictures as you want, I don't care. [LB204]

SENATOR CHAMBERS: Right on. [LB204]

KEVIN FULTON: Just try to get my good side. That might be hard to do. [LB204]

SENATOR LATHROP: Is that your family back there giggling about your good side? [LB204]

KEVIN FULTON: No, I don't know any of those people back there. (Laughter) [LB204]

SENATOR LATHROP: Senator Davis. [LB204]

SENATOR DAVIS: Mr. Fulton, how many employees do you have? [LB204]

KEVIN FULTON: Anywhere from one to up to as many as six or eight throughout the year. [LB204]

SENATOR DAVIS: Have you had animal abuse issues at your operation ever? [LB204]

KEVIN FULTON: No, no. Keep a pretty tight rein on that. We haven't. But that's not to say we couldn't have a problem. [LB204]

SENATOR DAVIS: Do you train your people? [LB204]

KEVIN FULTON: Yes, we do. [LB204]

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SENATOR DAVIS: Do you sit them down and talk about that? [LB204]

KEVIN FULTON: Yes, we do; yes, we do. [LB204]

SENATOR DAVIS: Good for you, I applaud you for that. [LB204]

KEVIN FULTON: Yeah, yeah. I'm the chairman of the ag advisory council for the Humane Society of the U.S., here in Nebraska, and we have a lot of farmers that are with that organization that are promoting--and the Nebraska Farmers Union as well--that are promoting humanely raised product, so. And I'm also not a part of the quality assurance program that is promoted by the industry groups. And I don't think that's what necessarily a...well, I'll just say I'm not a part of that. [LB204]

SENATOR DAVIS: Are you aware of fraudulent videos being made? [LB204]

KEVIN FULTON: No, I'm not. In fact, I'm friends with several people that have been undercover investigators that have released some of the prominent videos that have gone viral that you've seen. I've had candid conversations with these people; I've been invited into their homes. I've stayed with them. And I can tell you that these people are not anti-agriculture. They are concerned people that are against animal abuse just like I am. And I will, you know, put my farm on that. [LB204]

SENATOR DAVIS: Thank you. [LB204]

SENATOR LATHROP: Senator Christensen. [LB204]

SENATOR CHRISTENSEN: Thank you, Chairman. Did you say you're from HSUS? [LB204]

KEVIN FULTON: Yes, I'm a member of the HSUS, along with a number of other ag groups in the state. [LB204]

SENATOR CHRISTENSEN: I'm not sure how you worded it, I should have wrote it down. At the end you were talking about factory farms. [LB204]

KEVIN FULTON: Yes. [LB204]

SENATOR CHRISTENSEN: At the beginning you made statement about farms and the abuse that is there. And I guess I take a little offense. I'm a rancher. My place is open. I have no problem with people visiting. But I also know t if I abuse my animals, I ain't going to make money. There's not that huge a deal. So I think you're overexaggerating that there is a ton of this abuse. There is a number...you would probably call it a factory farm, hog facilities in my place, that yeah, they're metal buildings, they have doors open,

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you can sneak in and look if you really wanted to. I can walk up to any one of the them and knock on the door, they'll let me in. I've got to shower and go watch. That's the way they do business in my area. And some of these guys are in eastern Nebraska too. So is there some bad actors? I'm sure there is and I hope they get caught. But to categorize that most operations are bad, I take offense to because it ain't going to work. And the same as you see this legislation as trying to protect mega-farms or things this way, I think you're trying to categorize people into a lot of bad actors out there. And, you know, I guess I don't know how you would categorize a corporation farm, but I'm just a little offended on how you said some things and from what I know really goes on out there, because I visit a lot of different operations, so. [LB204]

KEVIN FULTON: I take a little bit of offense to you saying that I...I did not say that there was tons of abuse out there going on. So you're putting words in my mouth. So you're saying things that I didn't say. And so you misheard. There's abuse out there. I didn't say there was tons of abuse. I didn't say all the farms. And it has nothing to do between corporate or family farms. And I think that's important to understand. Abuse is abuse whether it's a family farm...most corporate farms are...or most factory farms are family farms. So we probably disagree on that; that's fine, but I didn't say some of the things you alleged, so...and I take offense to that. [LB204]

SENATOR CHRISTENSEN: Well, I don't think they're...I didn't try to put no words in your mouth. [LB204]

KEVIN FULTON: But you did. [LB204]

SENATOR CHRISTENSEN: I don't know how you stated it. It caught me off guard or I wasn't paying attention to it. [LB204]

KEVIN FULTON: Okay, all right. [LB204]

SENATOR CHRISTENSEN: But I do appreciate your saying you don't believe there is tons of offense out there because I don't think there is, because you can't afford it. So, we'll go on from there. [LB204]

KEVIN FULTON: Yeah. [LB204]

SENATOR LATHROP: Okay. Thank you for your testimony. I think that's it. [LB204]

KEVIN FULTON: Thanks for letting me. [LB204]

SENATOR LATHROP: Anyone else here in opposition? Anyone here to testify in a neutral capacity? And, Senator Larson, I saw just gave me the waive sign, so that will close our hearings for the day. [LB204]