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Judiciary Committee
March 05, 2015

[LB195 LB254 LB327 LB620]

The Committee on Judiciary met at 1:30 p.m. on Thursday, March 5, 2015, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB620, LB195, LB254, and LB327. Senators present: Les Seiler, Chairperson; Colby Coash, Vice Chairperson; Ernie Chambers; Laura Ebke; Bob Krist; Adam Morfeld; Patty Pansing Brooks; and Matt Williams. Senators absent: None.

SENATOR SEILER: Okay, it's past the bewitching hour so we'll welcome you to the Judiciary Committee. I'm Les Seiler from Hastings, Adams County, and Hall County except for Grand Island, Chairperson of this committee. On my far right is Matt Williams from Gothenburg, Senator Adam Morfeld from Lincoln is next, Senator Bob Krist from Omaha is next, Senator Ernie Chambers from Omaha is next. Our legal counsel to start with is Josh Henningsen. Our far left is Senator Laura Ebke from Crete, Senator Patty Pansing Brooks from Lincoln, Senator Colby Coash from Lincoln, and committee clerk Oliver VanDervoort. Our two pages are Drew and Donald. We will take the bills in order, LB620. When you come up to testify, slide up to the mike because it's not for amplification but so that people can...the transcribers can get your testimony down pretty good. Try not to talk at the same time somebody is asking you a question. We had that yesterday and probably had a mess of a record by the end of the day. So try not to talk over each other. Testifiers, you need to hand in your testifying sheet when you come to the table. The clerk...pages will be more than happy to take those. Turn off your cell phones and I'll do the same. And we're ready to go. Senator Larson, you are up on LB620.

SENATOR LARSON: (Exhibits 1 and 2) Thank you, Senator Seiler and members of the Judiciary Committee. I passed out a handout and a letter for the record if Senator Seiler could please read that letter into the record. Good afternoon, members of the Judiciary Committee. My name is Tyson Larson, T-y-s-o-n L-a-r-s-o-n, and I represent Legislative District 40 from O'Neill. I come before you today to introduce LB620. The legislation I bring forward deals specifically with strategic lawsuits against public participation, otherwise known as SLAPP. A SLAPP is essentially a frivolous lawsuit that is intended to censor, intimidate, or silence critics by forcing them to defend a baseless suit. The burdensome cost of a legal defense alone in a SLAPP often achieves this goal and results in the abandonment of the criticism or opposition. Included is...and I handed...included I handed out...in the handout I provided are examples of various scenarios and lawsuits that occurred in Texas prior to this change in their law. Approximately 28 states and the District of Columbia have enacted statutory protections against SLAPPs, thus allowing defendants of a SLAPP to have the suit quickly dismissed and recover fees and costs. Early anti-SLAPP laws, which include Nebraska's current law, focused on lawsuits involving communications made to influence a government action. Later anti-SLAPP statutes have broadened the law to protect statements on matters of public interest or issues of public concern. More recently, certain states have gone a step further to include laws against cyber-SLAPPs, thus

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protecting free speech on-line. Subsection (3) of Nebraska statute 25-21,241, legislative findings and declarations already states the "strategic lawsuits against public participation, personal liability, and burdensome litigation costs significantly chills and diminishes citizen participation in government, voluntary public service, and the exercise of these important constitutional rights. This abuse of the judicial process can and has been used as a means of intimidating, harassing, or punishing citizens and organizations for involving themselves in public affairs." The intention of LB620 is to expand Nebraska's current anti-SLAPP law which originated in 1994 and to further protect our First Amendment right of free speech. The bill was drafted to model the anti-SLAPP law in Texas, thereby broadening the definition of communication, expanding the scope to matters of public concern, and providing an expedited dismissal process for frivolous lawsuits. Thank you, and I can try to answer any questions the committee may have. [LB620]

SENATOR SEILER: Any questions from the members? Seeing none, thank you. [LB620]

SENATOR LARSON: Thank you. [LB620]

SENATOR SEILER: First proponent. Proponent. Seeing nobody scrambling from their chair, opponent. Opponent. You better waive. (Laugh) [LB620]

SENATOR LARSON: Consent calendar. (Laughter) [LB620]

SENATOR SEILER: Do you want to give closing? Go ahead. [LB620]

SENATOR LARSON: I'll waive. [LB620]

SENATOR SEILER: Okay. [LB620]

SENATOR LARSON: Thank you. (Hearing continues below.) [LB620]

SENATOR COASH: Okay. We are going to open up the hearing on LB195 introduced by Chairman Seiler. [LB195]

SENATOR SEILER: Good afternoon, Vice Chairman Coash and members of the Judiciary Committee. My name is Senator Les Seiler, L-e-s S-e-i-l-e-r, representing District 33, and I'm here today to introduce LB195. LB195 is legislation that is a replica of the legislation that I introduced in 2013 in order to streamline the process for service of garnishment summons at financial institutions in Nebraska, except I brought an amendment at this time, AM499, to

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address some concerns of some of the financial people. A financial institution often has more than one office or branch where deposits can be received in the state. The legislation seeks to ensure that the main chartered office is designated by a financial institution in order to receive a summons for garnishment. And this location must be posted on the Nebraska Department of Banking and Finance Web site. That being said, if a service of summons is still received in an office other than the designated office, the office may choose whether or not to treat the summons as valid and processed. If the office who received it does not want to process it and it's not the one listed on the Web site, they may send it back and explain where the designated location for that institution is. The reason behind the requirement for designating an office in the state pertains to the need for consistency and uniformity in the treatment and handling of garnishment summonses. The way to designate a location is simple under the bill. The financial institution must file a notice of designation with the Nebraska Department of Banking and Finance, and the designation is then placed on the department's Web site. The financial institution may modify or revoke its designation by filing with the department, and the action is effective on the time of the post. The department must update its Web site within ten days of receiving notice, modification, or revocation from the financial institution. AM499 is a concession to some of the objectors and requires that all financial institutions place their designation on the Web site. We have added an option, designate an agent for process, for formal institutions...financial institutions that are out of the state. A technical correction has also been made to...conforming to other provisions of the law authorized by the use of a garnishment in any county within the state. And with that, it is my request that you advance LB195, AM499 from committee to General File. There will be other experts testifying as to the technical questions and amendments that you have. Yes. [LB195]

SENATOR COASH: Thank you, Senator Seiler. Senator Krist. [LB195]

SENATOR KRIST: One of you said yes, so that's okay. Just run me through a situation where this is going to hurt or help. [LB195]

SENATOR SEILER: Okay. Let's take First National Bank of Omaha has other outlets across the state. But they want to receive all of their garnishments for...summonses at a certain bank. They post that on the Web site. If you're filing a summons or a garnishment to collect, you look on the Department of Banking's Web site. It tells you exactly where to go. Otherwise, what's been going on in the past is they'll try and grab an account in their locale. Or they may send out 25 of these to 25 different banks saying, do you have any money? This will uniform it and make it a lot easier on both the people filing the summons and also the people running the bank... [LB195]

SENATOR KRIST: Okay. [LB195]

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SENATOR SEILER: ...because they'll all come through a central organization. [LB195]

SENATOR KRIST: Thank you. [LB195]

SENATOR COASH: Thank you, Senator Krist. Any other questions for Senator Seiler? Seeing none, we will open up the testimony, and we'll start with testimony in support. Welcome, Bob. [LB195]

ROBERT HALLSTROM: (Exhibits 1 and 2) Thank you, Senator Coash, members of the committee. My name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as registered lobbyist for the Nebraska Bankers Association in support of LB195. I think Senator Seiler has gone through fairly thoroughly both the original green copy of the bill and the proposed amendments that we've worked together with the State Bar Association and the debt collector representatives. I believe they are on board with the changes that have been made. The green copy was originally introduced to only apply to in-state headquartered institutions. Those that had some objections to the bill wanted greater uniformity. And so the amendment would apply both to in-state headquartered and out-of-state headquartered banks. We also had a provision in there originally that said it only applied if you had more than one office. Again, for uniformity they even wanted one-location banks to register so there's a single database at the Department of Banking Web site for them. We had no objections to that. And AM499 would accomplish that purpose as well. As Senator Seiler suggested, this bill originally came to us from bankers who would like to have a single location for the receipt of summons and garnishment interrogatories. Many times, particularly without state banks, they may have multiple locations but they may have a division or certain personnel who have been trained in the receipt and the answering of garnishment interrogatories. So they may very well, if they get them at multiple locations, have to bundle them together and send them into that central location under the current system. This will just simply say you can designate that site. You get them where you want them at the headquartered bank and move on about your business. It should streamline the process both for the financial institutions who are doing the work and responding to the interrogatories and for the attorneys and the debt collection agencies that are filing the actions. So it should be a good situation for both. The other thing that we're doing in the amendment, and it's somewhat technical with regard to the amendments to Section 25-1010, a number of years ago I think perhaps the Bar Association came in and changed the law so that when you got a judgment in one county, previously you had to transcribe a judgment to execute a garnishment in another county. The law was changed back I think in about 2008 or 2009 to provide that that judgment could be executed upon in any county in the state. Unfortunately, Section 25-1010 was not similarly amended at that time. So we have a technical amendment on page 1, line 9, that removes the language "and within the county where the action is brought" so that judgments can be executed upon and garnishments issued once the judgment is entered effectively in any county in the state, which was intended under that other change of the law. I'd be happy to address any

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questions but would encourage the committee to advance LB195 with the amendment that I've submitted for your consideration. Thank you. [LB195]

SENATOR COASH: Thanks, Mr. Hallstrom. Any questions from the committee? I don't see any. Appreciate your testimony. [LB195]

ROBERT HALLSTROM: Thank you. [LB195]

SENATOR COASH: We'll take the next testifier in support of LB195. [LB195]

KATIE ZULKOSKI: Good afternoon, Senator Coash, members of the committee. Katie Zulkoski, Z-u-l-k-o-s-k-i, testifying on behalf of the Nebraska State Bar Association. Just wanted to come up here and confirm what Mr. Hallstrom said, that the amendment, AM499 to LB195, we do think strengthens the bill. And we appreciate Senator Seiler working to have that...to offer that amendment to the committee. [LB195]

SENATOR COASH: Thanks, Katie. I don't see any questions. Next testifier in support. Seeing none, we'll move to opposition testimony of LB195. Okay. We'll close that and go to neutral testimony. [LB195]

EDWARD HOFFMAN: Good afternoon, Senators. Ed Hoffman, I'm an attorney here with the law firm in Lincoln of Cada, Cada, Hoffman, and Jewson... [LB195]

SENATOR COASH: I'll have you spell your name, Ed. [LB195]

EDWARD HOFFMAN: H-o-f-f-m-a-n. [LB195]

SENATOR COASH: Thanks. [LB195]

EDWARD HOFFMAN: And I'm here testifying on behalf of the Nebraska Collectors Association as a neutral with regard to this bill. Any questions for me? [LB195]

SENATOR COASH: So that's your testimony? [LB195]

EDWARD HOFFMAN: It is. [LB195]

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SENATOR COASH: So you don't like it, you don't not like. You just wanted to be on record? [LB195]

EDWARD HOFFMAN: Yes. [LB195]

SENATOR COASH: Okay. So if we pass...I'll ask this. Is it the amendment that made you neutral? [LB195]

EDWARD HOFFMAN: Yes. [LB195]

SENATOR COASH: Okay. Senator Williams, you have a question. [LB195]

SENATOR WILLIAMS: I'm mystified. Why would this not help the collectors in the state, having a one-stop shop? [LB195]

EDWARD HOFFMAN: Well, you know, I guess...I can't speak as to the entire association. Understand I'm here to testify in a neutral capacity. I think the amendment did change the position of the association from an opponent to neutral. For myself, I think having one location will, in certain instances, be helpful. [LB195]

SENATOR WILLIAMS: So from your perspective, as an attorney that deals with these things, this would be helpful. [LB195]

EDWARD HOFFMAN: I think in certain instances that's correct. [LB195]

SENATOR WILLIAMS: Thank you. [LB195]

SENATOR COASH: All right. I don't see any other questions. [LB195]

EDWARD HOFFMAN: Thank you. [LB195]

SENATOR COASH: Thank you. Any other testifiers in a neutral capacity? Seeing none, Senator Seiler, do you want to close? Senator Seiler waives closing. And we'll close the hearing on LB195. [LB195]

SENATOR SEILER: Senator Morfeld, you may open with LB254. [LB195]

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SENATOR MORFELD: Thank you. Senator Seiler, members of the Judiciary Committee, my name is Adam Morfeld; that's A-d-a-m M-o-r-f-e-l-d, representing the "Fighting" 46th Legislative District here today to introduce LB254. LB254 was brought to me by the Uniform Law Commission whose members include former Nebraska Law School Dean Steve Willborn, Larry Ruth, and the Legislature's own Joanne Pepperl. The Uniform Unsworn Foreign Declarations Act was promulgated by the Uniform Law Commission in 2008. If adopted in Nebraska, it would permit unsworn declarations that are made under penalty of perjury in state court proceedings. This would be allowed for citizens located outside the United States in lieu of affidavits, verifications, or other sworn court filings. It also harmonizes state and federal treatment of unsworn declarations since federal law has allowed an unsworn declaration executed outside of the United States to be recognized as the equivalent of a sworn affidavit since 1976. To give you a little background, if you're going to offer an affidavit prepared in the United States, you would appear before a notary public. And the notary public would put their seal and signature to the fact that the person appeared before them and swore to the fact that matters contained in the affidavit are true. When that person is outside the United States, it becomes more problematic. Currently, a person would have to appear before a United States consular or consular's office in a foreign country where the equivalent of a notary public puts their stamp and seal on the statement. Since 9/11, the consulars' offices have become much more restricted and, as a result, it has become much more difficult for people in other countries to finalize an affidavit or statement that would be used in state proceedings. This legislation brings the state practice in line with the federal practice. There's a representative from the Uniform Law Commission here today to testify and explain more fully why this bill is needed. I'm happy to answer any questions, but I may have to go to Health and Human Services shortly because I'm second up there. [LB254]

SENATOR SEILER: Any questions? Seeing none, thank you. [LB254]

SENATOR MORFELD: Thank you. And I'll likely waive closing depending on where I'm at. [LB254]

SENATOR SEILER: Okay. [LB254]

SENATOR COASH: Welcome. [LB254]

JILL ACKERMAN: (Exhibit 1) Thank you. Good afternoon, Senators. Good afternoon, Senator Seiler. My name is Jill Ackerman. I'm here as a member of the Nebraska Uniform Laws Commission and here to testify in support of LB254, the Unsworn Foreign Declarations Act. I think Senator Morfeld gave a good summary of the act. I think perhaps it might be helpful to give a couple different types of scenarios where this would benefit our citizens of Nebraska.

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Today, in a world of deployment of many of our members of the military, no longer may be they living on major bases that would have notaries that are available for ease of documenting and verifying affidavits. In this matter, they could execute a declaration sworn under penalty of perjury that the information is true, and that could be used in certain legal proceedings here in Nebraska. They're used...many times affidavits are used in summary judgment proceedings. They're also used in guardianship proceedings, probate proceedings to attest to the information that is set forth in that document. It also would help our people that are now doing business internationally. No longer may they be doing business in a major city in China with a consulate. They may be some of our agriculture people out in the remote parts of China working that may need to execute an affidavit of a declaration. This again would facilitate that. I would be willing to entertain any questions that you may have further about this. [LB254]

SENATOR SEILER: Senator Krist. [LB254]

SENATOR KRIST: We heard...thank you for coming. Thank you, Chair. [LB254]

JILL ACKERMAN: Thank you, Senator. [LB254]

SENATOR KRIST: We heard some testimony in a bill just recently on notarization of real estate packages when somebody happens to be out of the country. So if I were traveling abroad and my house was for sale and they needed me to respond to that in terms of accepting a bid, yea or nay, how does that relate to this particular scenario? [LB254]

JILL ACKERMAN: This, under the bill as it's structured right now, it would be...you could do...it appears that you could go ahead and use the unsworn declaration on the bid. A lien you could not. Under the exclusion in this bill, you could not use it to effect a lien on your property. [LB254]

SENATOR KRIST: So I can sell, I just can't...I can sell or I can buy, but I can't lien. [LB254]

JILL ACKERMAN: As the bill is structured right now. [LB254]

SENATOR KRIST: Okay. All right. Thank you. [LB254]

SENATOR SEILER: I have a curious question. [LB254]

JILL ACKERMAN: Yes. [LB254]

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SENATOR SEILER: You may not know the answer to this. Have they eliminated the military officers from being notaries? It used to be that your military rank, you were allowed to, in an overseas scenario, be able to notarize. [LB254]

JILL ACKERMAN: I don't know the answer to that. [LB254]

SENATOR SEILER: Okay. Just curious. Thank you. [LB254]

JILL ACKERMAN: Any other questions? Thank you very much, Senators. [LB254]

SENATOR SEILER: Next proponent. [LB254]

KATIE ZULKOSKI: Good afternoon, Chairman Seiler, members of the Judiciary Committee. Katie Zulkoski, Z-u-l-k-o-s-k-i, testifying in support of LB254. This is, I think, the second time this bill has been introduced. And we thank Senator Seiler and Senator Morfeld for introducing the bill and the Uniform Laws commissioners for addressing this issue. This is an issue we think is important, and this is a helpful solution. [LB254]

SENATOR SEILER: Yes, Senator Krist. [LB254]

SENATOR KRIST: Thank you, Chair. Katie, you said the second time it's been. Why didn't it succeed the first...? [LB254]

KATIE ZULKOSKI: It was voted to General File, and it just didn't have a priority and didn't... [LB254]

SENATOR KRIST: Just didn't get to it. Okay. Thank you. [LB254]

SENATOR SEILER: Seeing no further questions, any further proponents? Any opponents? Anybody in the neutral? Senator Morfeld waives. Senator Williams, you're on deck with LB327. [LB254]

SENATOR WILLIAMS: We could set a new record today. [LB327]

SENATOR SEILER: You've got four minutes to do it. [LB327]

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SENATOR WILLIAMS: Well, thank you, Chairman Seiler and members of the Judiciary Committee. My name is Matt Williams, M-a-t-t W-i-l-l-i-a-m-s, and I'm here today to talk about LB327, which would allow garnishees, who are typically banks and other financial institutions, to deduct a fee from any garnishment responded to by the financial institution. The bill would also clarify that a garnishee, if it fails to answer, is liable for the amount of the judgment or the value of the assets held by the garnishee, whichever is less. For those of you who have been on the Judiciary Committee in the past, this is not a new issue. For those of us who are new on the committee, the concern that has been raised by the Nebraska Bankers Association is that judgment creditors or debt collectors are issuing garnishment summonses and interrogatories to financial institutions in a good number of cases looking for assets without a good reason to believe the financial institution has assets in its possession as required by state law. Financial institutions are required by law to respond to these requests within ten days or be responsible for the full amount of the claim or the amount of the property held by the garnishee. Under current law, financial institutions do not receive any reimbursement from the party benefiting from the garnishment to offset the expense of responding to garnishment interrogatories. The Nebraska Bankers Association has proposed legislation in the past to address no-account garnishments, known as fishing or shotgun, by bill collectors. Testimony from the past suggests that 25-30 percent of garnishments result in no-account status. It is estimated that in another 50-55 percent of garnishments, the amount of the judgment is greater than the funds held in the account. In a nutshell, those bills would have required bill collectors to pay a fee to the financial institutions for the cost of garnishment summonses and interrogatories. Those bills were opposed by the Nebraska Collectors Association. With this bill, I believe the Bankers Association recognized that an up-front fee from the judgment creditor had been tried, so they tried to approach the issue from a different perspective. This bill would not result in reducing fishing expeditions by judgment creditors. What it would do is allow financial institutions to collect a fee from the account holder pursuant to an agreement with its customer to offset the cost of responding to garnishment summonses and interrogatories prior to remitting the funds in the account to fulfill the judgment. In situations where there is no account or a no-asset account, the financial institution would continue to eat the cost under LB327. However, in situations where there are funds in the account, the financial institution would be reimbursed pursuant to the deposit agreement between the financial institution and its customer. I certainly have a suspicion the bill collectors will oppose this legislation as well. However, if they oppose an up-front fee that has been suggested in the past, then they are going to oppose collecting a fee from the account held by the financial institutions, then the banking industry would appreciate hearing what suggestions they have so that banks can be reimbursed for helping them get paid. I wanted to just take a minute because I think we talk about garnishments and garnishees and all of that. And maybe, in fact, probably most of you around the table don't realize what a bank really does in these situations. The bank is the one party that has no involvement. You have a situation where someone has created a debt. Oftentimes, they're a medical bill that they have left unpaid. And eventually that bill gets turned over to a debt collector. And the collector goes through a process

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of approaching the court and eventually gets to the point of issuing a garnishment. Our bank received...our little bank sitting in the middle of Gothenburg received three garnishment orders last week. Typical garnishment order, the first thing a bank has to do is determine if you have an account. And in the garnishment order that you receive from the court, you get the name and you get the Social Security number. So you need to run a check on both of those. And if you don't have the account, you still have to fill out the forms, send them back to the court. That's not a great, big process, takes 10 to 15 minutes total time. The other side of the coin is when you do have the account, and in our case...and it coincides with what the testimony has been. We've looked at this. About 25 percent of the garnishment requests we have are no account. In the ones that we do have an account, the first thing that we do, again, is go to the signature card to confirm that the person is an owner of the account. Then we are required to search the account to be sure that there are no funds in the account that were received from federal benefits, meaning are there funds in the account from Social Security? Are there funds in the account from railroad retirement? We have to determine those because those are not allowed to be garnished. Then we go through the process of determining and filling out the forms that are sent back in and take the money out of the account because we are liable, as you heard in my testimony, for that. We fill the forms out. We send it back to the court. But we don't send the check. We hold that check until we hear back from the court again, which generally takes about a month. And then we send in the check. And then maybe the most disagreeable thing that we are caught with doing is we are the one that gets the call from the responsible party saying, why did you steal money out of our bank account, which we had nothing to do with. This process at that point takes somewhere in the range of 30 to 40 minutes every time. We average in our little bank about eight of those a month. I would suggest banks like First National Omaha that was mentioned would have hundreds of these, and that's why Senator Seiler's bill is so important, because they do have a group of people that that's what they do is concentrate on. This is an issue. It's an issue with the fishing expeditions that go on with sending out blanket shotgun approaches. And I would suggest that this is a way to solve the problem. So I would be happy to attempt to answer any questions. And we have at least a couple of people that are going to be testifying. Thank you. [LB327]

SENATOR SEILER: Senator Krist. [LB327]

SENATOR KRIST: I read the bill after I was approached by a lobby today, and then I made a couple of phone calls. And I want to go back to what you...how you introduced this. And I think that was very fair and I commend you on bringing the history to us, and the background. Here's my problem. The strongest lobby in this room is probably a banker. The second-strongest lobby in this room is probably a bill collector. There is no lobby here for the citizen to say, I'm the person who can least afford to pay a fee to offset the silliness. So I would go back a few years to say that the two strongest lobbies need to figure out who needs to pay the fees. The collector is not doing it for their health. They're getting paid to collect the fee as I would understand the process. I'm having a hard time saying that the person who is now in a collection mode for

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obvious bad luck reasons or health reasons or whatever it might be is now going to get stuck with the fee. The second part of it is the fee is going to be paid first before anything else potentially is expended. That just means that the collector or the healthcare provider or the person who is really owed the money is going to get less. But the collector is still going to make money as I understand the process. So from the very get-go, I just have to say from the citizens' standpoint that we need to reverse this train and talk to lobbies and figure it out. Your challenge is a valid one and I appreciate that. If this won't work, then tell us what will. What will work is the collector not fishing but understanding that he is making a legitimate attempt to collect the debt for the person who is owed the money. And within the fees of collection, they need to make sure that they're reimbursed for their effort and you are reimbursed for your effort. And I just spouted off, so I'll just give you any time you need to respond to that. [LB327]

SENATOR WILLIAMS: Well, I agree with your assessment of the situation. But the debtor that is involved, even though it would be a fee that eventually would hit them, received some benefit in this transaction. They were involved in either receiving medical care or something. The party that had no involvement with this is the financial institution. [LB327]

SENATOR KRIST: I understand. [LB327]

SENATOR WILLIAMS: That's the difficult part. I think this has been a very frustrating issue for some. It's frustrating when people come to the table to...under the spirit of cooperation and negotiation and then simply don't. And that's where we've been so far. And I have been, throughout my life, been able to find commonality with people, find the areas of agreement and then use those in a way to create something to move forward in a positive manner on. We failed in this case. And that's where we are. And that's why I think the bill, the way it stands now, pushes us to move forward in that direction. [LB327]

SENATOR KRIST: Okay. Thank you. [LB327]

SENATOR SEILER: Any further questions? Seeing none, thank you. Further proponents. [LB327]

ROBERT HALLSTROM: (Exhibit 1) Chairman Seiler, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you as registered lobbyist for the Nebraska Bankers Association in support of LB327. As Senator Williams has indicated, this bill is fairly simple and easy to understand in terms of allowing a financial institution, upon receiving garnishment documents, to take their funds off the top, if you will, if they have a contractual agreement or arrangement with their customer to collect a garnishment fee in the event that they have to provide that service on behalf of the debt collector or the attorney who has filed the

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garnishment. One other thing that the bill would do is the current law basically says that a garnishee who fails to answer is liable for the full amount of the garnishment order or the amount of property held by the garnishee. This bill would clarify that by saying, "whichever is less." I believe that I understand that the courts would not likely say that a financial institution that had \$500 in the bank and had a garnishment and a judgment for \$20,000, that if they failed to answer that the court would make them responsible for \$20,000 when they only had \$500 in the bank to begin with on behalf of that customer. But I thought, nonetheless, we ought to clarify that by saying, "whichever is less." I'm not sure the debt collectors want to clarify that. Perhaps they'd like to see banks pay \$20,000 when there's only \$500 that was ever in their possession. Be that as it may, that's one thing that the bill would do in addition. To understand the situation, I think I'd go into a little bit of the mechanics of a garnishment. There are two obligations: one by the party filing the garnishment, the other by the financial institution that's receiving it. On the front end, the person filing the garnishment is supposed to have good reason to and does believe that the garnishee has property of the judgment debtor. As Senator Williams suggested, our banks indicate to us that about 25 percent of the garnishments do not have accounts. Some of those cases may be legitimate. We thought they had an account but they moved their money. But in many cases we're seeing all the banks in a particular community receiving a garnishment when they don't likely have money in every financial institution in that town. We did come forward years past with a fee designed to address those shotgun activities and we would certainly be willing to entertain that as an alternative. And the fee that would be required would probably be less than the garnishment fee that the bank is contracted for with its customer. So another issue I'd like to touch on, you may hear some suggest that the banks are not freezing the account but they're taking their garnishment fee off the top to begin with. I can suggest to you that in all the educational training that we do, we make sure that the banks are aware that their obligation is to freeze the account, send the money to the court, and be done with it. As you might expect, in those cases, if you have no money in the account and the account has been zeroed out, the customer is not going to put more money in and you've probably lost the customer account relationship as well. The final thing that I'd say with the Chairman's indulgence, if it's suggested that we're doing that, one of the possible explanations is the fact that there is federal court law from the Sixth Circuit that probably applies in the Eighth Circuit that does allow under federal law for national banks to take money out of the top before they freeze the account as proposed under LB327, but state banks are not supposed to do that. I've got some survey results in my testimony. Be happy to address any questions that you may have. [LB327]

SENATOR SEILER: Questions? Seeing none, thank you. [LB327]

ROBERT HALLSTROM: Thank you. [LB327]

SENATOR SEILER: Further proponents. Seeing none, opponents, opposition. [LB327]

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TESSA HERMANSON: Good afternoon, Chairman Seiler, committee members. My name is Tessa Hermanson, T-e-s-s-a H-e-r-m-a-n-s-o-n. I'm an attorney in Grand Island, Nebraska, and I'm here today on behalf of the Nebraska Collectors Association in opposition LB327. I would like to thank Senator Williams for his explanation of the past, the problems that they had and that this bill does or does not address. And that was helpful to hear because when I was approached about it, I thought they were still trying to fix this shotgunning thing that we keep hearing about, this fishing expedition. And obviously the bill does not do that. I do want to address a couple housekeeping concerns I have with it. On page 2, line 9, under 25-1010, in LB195 that was heard before this, they take that phrase out. They take it out here but then put it back in. I think it should just come out completely. On page 4... [LB327]

SENATOR KRIST: Chair. Can you give me that again, please? Line... [LB327]

TESSA HERMANSON: Sure. Page 2, line 9. [LB327]

SENATOR KRIST: Line 9. [LB327]

TESSA HERMANSON: And this just conforms with LB35 that was passed in 2009. On page 4, line 28, they use the term "judgment creditor" there. I think it's a little too restricting. We should say the "affiant," the person who's signing the affidavit, does have good faith reason to believe that they have property. I would suggest that change. And then I want to address the "whichever is less" provision that Bob just talked about. It's on page 4, line 14. Unlike what Bob suggested, I never expect in a garnishee liability action to have a bank pay for more than what was in the account. I don't think they should have to pay the amount of the judgment. My concern with making it clear or saying in the statute "whichever is less," then I fear that garnishees won't answer. They won't file answers and we won't get a response because, well, I don't have anything in their account, I'm not going to file an answer. We're going to have to have this garnishee liability hearing for the judge to just say, well, they're not liable. They need to have the incentive to answer. Then the judge can have the discretion to decide which is fair. The judges have always decided that the lesser amount would be the fair amount. That's my perspective on that. With regards to the fee, it's not that we as collectors don't think that they're providing a service. I don't think this compensates them for what they're complaining about that's being done. But Senator Williams had asked for solutions and/or suggestions. I think the problem that we have is the fee that they're taking is not reasonably related to the service that they're providing. Wells Fargo charges \$125 to do this process that Senator Williams described. Pinnacle Bank charges \$50. Some of the smaller banks are charging \$25. My suggestion would be set an amount. You know, if we want to put it in here they can take \$5, \$10, \$20 off the top of the account if they have it and have the banks charge that, have them fill out on the garnishment interrogatory the amount that they're taking and give the consumer... [LB327]

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SENATOR SEILER: Ma'am, just a second. Your red light is on. [LB327]

TESSA HERMANSON: I apologize, Senator. [LB327]

SENATOR SEILER: Go ahead, Bob. [LB327]

SENATOR KRIST: I interrupted you before. Go ahead and finish. [LB327]

TESSA HERMANSON: Thank you. And give the consumer the right to object to that, have a hearing. You know, right now if they object to a garnishment interrogatory, the judgment creditor goes in for the hearing. The banks could do the same thing. The consumer gets the right to object to the fee if they don't think it was...they didn't agree to it or it wasn't authorized. And they need to disclose that so there's not confusion to the consumer. I think that could be one potential solution. Thank you. And I can answer any other questions. [LB327]

SENATOR KRIST: So a follow-on question for you on that, that last issue, is it fair to say that the bank, before it executes, would have to have an agreement with its customer? In the event of a garnishment, this is the fee you will pay. [LB327]

TESSA HERMANSON: Yes. [LB327]

SENATOR KRIST: So you're not objecting so much the level of payment, it's just that that payment needs to be uniform or it needs to be...because in...and I checked with my source in the...most banks do have an agreement with its customers in the event of...you know, all that fine print that we don't read when we sign it. [LB327]

TESSA HERMANSON: (Laugh) Right, right. [LB327]

SENATOR KRIST: Right, so. [LB327]

TESSA HERMANSON: No, I think it's happening already, like Bob mentioned. And he said maybe that's more at a federal level than a state level. But, yeah, if we're going to allow this fee, you know, I would pose the: Why do the banks get their money first? Why do they get their money before the hospital that already provided the service or, you know, that sort of thing? But if we decide as a committee that they need to be compensated for this fee, then make it an amount that's reasonably related to the service that's provided and make them disclose what the fee is that they took out of the account so the consumer is not confused when we have the

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garnishment hearing and they say, I paid \$150 towards my judgment. No, you only paid \$100, \$50 went towards the bank. The court is not confused. Everyone is on the same page. And then give the consumer a way to object to that and be able to be heard on, you know, I didn't sign anything that said this fee or allows for this fee or whatever the situation is. [LB327]

SENATOR KRIST: One follow up. [LB327]

SENATOR SEILER: Go ahead. [LB327]

SENATOR KRIST: In years past, as it's been tried in different ways, obviously, as a collector, you're being hired by someone to collect a fee. Why isn't it just cleaner to say that the standard collection fee for any actual collection at a bank is a \$50 fee paid the collector and then we're done with this, which I think was tried before? [LB327]

TESSA HERMANSON: Well, again I think you have the problem of it not being related...the amount not being related to the service. I guess the other answer to that would be they have this duty. Employers, for example, have the duty to answer garnishment interrogatories. They're not getting paid for that. They have a duty created by statute that, at the time it was created, the Legislature didn't think that a fee was required. I'm paying court costs. I'm paying all sorts of fees to collect this. At some point that fee, those fees are so high I'm not going to be able to collect the bill and there's going to be a lot of unresolved...of debt, I guess. The other thing is that does, even if I...even if you charge me the fee up-front, that does get charged back to the consumer as a court cost. And then it's just more chasing the consumer for the debt. [LB327]

SENATOR KRIST: And I guess that's my point. If you're already handling the collection of the cost to collect the debt, then why isn't your spot the right one to attach it to and then we have this lump that the court looks at and says, these are my costs to collect the debt up-front? Bang, we're done. [LB327]

TESSA HERMANSON: I just...I would take the position that the creditor should not have to bear the risk of not recovering that cost. You know, it was the consumer who did not pay for the service. If that consumer files bankruptcy tomorrow and I have \$200 in court costs, I'm not going to collect it. [LB327]

SENATOR KRIST: Right. [LB327]

TESSA HERMANSON: So it does make some sense to me that we take it straight from the consumer so there's not imposing the risk on someone else. [LB327]

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SENATOR KRIST: Okay. Thank you. [LB327]

SENATOR SEILER: Senator Pansing Brooks. [LB327]

SENATOR PANSING BROOKS: Thank you. Hi. I just...I talked to some people too. So I guess my interest is in the question when...from what little practice in this area that we did, which is pretty much minimal, what about when you're trying to get property, personal property? All the way along people are paid. The sheriff is paid. The...so I don't...so in this regard, the bank has certain duties. They have to hold the money. They have to...there's a federal requirement that they have to check that it's not a certain kind of fund, that it's not a federal benefit. So it's my understanding though that if you were attaching some type of property, like a personal property like a car or something, the sheriff gets paid. All the way along, people are getting paid. In this instance it's not the same kind of thing because...but the bank has some duty to hold the property, to not let it get drained. So I'm just interested, what's your thought on that? [LB327]

TESSA HERMANSON: Sure. Executions where you might execute on personal property are not very cost effective. And they're not a method in which my client...or that I may have been aware of that is used very often because of some of the prohibiting costs. I do understand that they're providing a service. It still goes back to my solution...my proposed solution of, okay, they need to take an amount off the top of the consumer's account, let it be reasonably related to the service that's provided. And you know... [LB327]

SENATOR PANSING BROOKS: You mean before the action is filed or what? I'm sorry, I'm not...I'm confused when to take it. [LB327]

TESSA HERMANSON: Well, how this, how LB327 does it is when they receive the garnishment, they would take their fee... [LB327]

SENATOR PANSING BROOKS: The notice of the garnishment. [LB327]

TESSA HERMANSON: Yes. [LB327]

SENATOR PANSING BROOKS: Yeah. [LB327]

TESSA HERMANSON: When they receive a summons, they would take their fee that they've contracted with their client. If you decide that they do need to be compensated for the services, then just make that fee uniform. You know, Wells Fargo is taking \$125. I don't think what Senator Williams described is worth \$125. So what is it worth? If the average one...I mean

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they're plugging in six digits to look up an account. And he's right, when there's no accounts, that's much simpler than if there is an account. But decide that a fee of \$5 or \$10 is what they should be compensated for for these services. And I think that's something that the collectors could look at and get on board with. [LB327]

SENATOR PANSING BROOKS: I agree that there are lots of fees. But it also...there is some duty there. And I don't think that by statute we should be setting...we should not be setting these fees in statute. That's not part of what...I mean we don't want to do that. So that seems like it's up to the different groups to decide what that amount might be. It's also an agreement between the bank and its client. If I think it's too high, I can move to another bank. [LB327]

TESSA HERMANSON: Sure. And I would agree. I'm not sure why they're trying to put it into this statute when I think they're already... [LB327]

SENATOR PANSING BROOKS: Well, they're not putting an amount into the statute. [LB327]

TESSA HERMANSON: No, they're not. But they're right to take the fee at the time of the garnishment. You know, we're seeing that that's already happening. But when you involve it into the garnishment statute, if you don't want to put a fee, I mean there's still other issues that aren't addressed here: this disclosure of what it is; the confusion on the consumer, on the judgment creditor, on the court when we can't figure out where all of the money has gone. I mean if you're suggesting that you don't want a set fee in here and that you just let them take whatever authorized amount that they have, why...and I guess I don't understand why they would get it before a creditor who already provided a service in the past. So they're trying to get compensated for a service. My hospital is trying to be compensated for a service that they provided. Why do they get theirs first? [LB327]

SENATOR PANSING BROOKS: Thank you. [LB327]

SENATOR SEILER: Seeing no further questions, you may step down. [LB327]

TESSA HERMANSON: Thank you. [LB327]

SENATOR SEILER: Further opponents. Neutral. You may close. [LB327]

SENATOR WILLIAMS: Thank you. I appreciate your attention to delve into this topic. And I think we just learned some additional things that I think will be important for us going forward. And you know, when we're talking about these fees, I think most banks that I talk to would be in

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the \$20 to \$25 range, something like that. We're not talking major dollars. And if we're concerned about the consumer and the hospital, I think a legitimate question would be, what level of fee are they paying for the debt collector to start with? You know, there you're talking significant percentages of fees that reduce both what the hospital in the example that was given would get, and also what the debtor would show as far as fees. Nobody likes these, including me. But this is an area where banks are running into an issue. If we could find the level that...Senator Krist, I really liked your comment about, isn't this just something that could be simple on the front end? And that's what the initial proposal was. That's what was here last year and was objected to. So we came back with a different approach which was still objected to. So I would encourage the committee to look strongly at advancing LB327. Thank you. [LB327]

SENATOR PANSING BROOKS: I have a question. [LB327]

SENATOR SEILER: Yes. [LB327]

SENATOR PANSING BROOKS: Thank you, Senator Williams. I was just wondering, so are you having issues with getting the fee? Or is a court saying, no, you can't take that fee. Or what's the issue? [LB327]

SENATOR WILLIAMS: I think you have two things. And most banks are not charging a fee. There are some that are charging a fee. The most significant one that I have heard of is the one that's being thrown around, the Wells Fargo \$125 fee. Based on the information that a state bank is being told by their association, the first thing you have to have to have a fee is you have to have an agreement with the customer. And that would be in your contractual arrangement, in your signature card arrangement. And most banks do not have that. The second one would be you could only take... [LB327]

SENATOR PANSING BROOKS: If they don't have a contractual arrangement? [LB327]

SENATOR WILLIAMS: No. We don't have that portion in the contractual arrangement. There's not a specified...we would...in our bank, for instance, we do not have...we have a contractual arrangement with the depositor, but we do not have a portion in there where it defines that we would charge a garnishment fee. [LB327]

SENATOR PANSING BROOKS: So why not? [LB327]

SENATOR WILLIAMS: Because we've just never done it before. So we could go back and do that. But then the second part is of current law that we are understanding is you would still only

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be able to charge that fee if there were money in the account following the satisfaction of the garnishment. And the vast majority of the cases, the garnishment takes all the funds out of the account. So you're gone. [LB327]

SENATOR PANSING BROOKS: Okay. [LB327]

SENATOR WILLIAMS: So what this would do is allow...what LB327 would do would allow a bank, if they have a contractual arrangement first, you've got to have that, then they could take that fee first before they satisfied the garnishment. [LB327]

SENATOR PANSING BROOKS: And so right now you cannot contract to take that first, is that correct? [LB327]

SENATOR WILLIAMS: It's my understanding under current law, if you have a contract, you can take a fee, but it has to be if there is money left after the satisfaction of the garnishment. I think that would be a question that if you'd like to have Bob Hallstrom, legal counsel, direct, that's my understanding of it. [LB327]

SENATOR PANSING BROOKS: Okay. Just wanted to check. Thank you. [LB327]

SENATOR WILLIAMS: That's my understanding. [LB327]

SENATOR SEILER: Anything...yes, Bob. [LB327]

SENATOR KRIST: I appreciate you noting my comment. And my concern is that in most scenarios, the people that we're talking about, the citizens that we're talking about probably can least afford to be influenced again by another fee. [LB327]

SENATOR WILLIAMS: Agreed. [LB327]

SENATOR KRIST: So from the very beginning of this mess, and a lot of it is caused obviously by health or other issues for hospitals, for foreclosures and all those kinds of things, I go back to--I don't know whether it was last time or the time before--I go back to a piece of legislation that says at the time of the judgment the bank needs to be taken care of, the collector needs to be taken care of, and that the judge is able to look at things in a fair way and say there's a standard fee that's attached to these things. It means opening up this statute and doing a little more than what we're suggesting doing here. But my other...in the other committees that I have been on, in

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Urban Affairs, for example, and other places, it always seems that--and this is no criticism for a man who has spent his life in a bank--but it always seems that everybody wants to be the first one in line when there's a minimum amount of money left to pay out on a judgment. In this case, my comment goes the first person in line usually in most cases should be the citizen that is caught in this situation to help them out as much as possible, and then to be as fair as possible about all those judgments and fees in between and the money that is originally owed. So I think there's a point at which we can start to talk about this in Exec and get some more information about what's possible within the statute. It's been around the flagpole so many times. It really needs to be solved. I'm just not sure that that's the solution is all. Thank you. [LB327]

SENATOR WILLIAMS: Thank you. [LB327]

SENATOR SEILER: Any further questions? Seeing none, thank you very much. The hearing is closed. Written documents will be submitted. Members of the committee, we have a problem. We have a lady that traveled from Omaha down here to testify on LB620. She was present here at the courtroom, was told...the hearing room--yeah, that's where my whole life was spent--the hearing room and was told to go to the library to make some copies. And while she was gone we closed the hearing. Ma'am, do you have written testimony? [LB327 LB620]

LAURIE FLYNN: Um, just (inaudible)...that I plan to say very quickly. [LB620]

SENATOR SEILER: Okay. I can let you submit your written testimony. I don't believe I can have your oral testimony because that part has been closed. [LB620]

SENATOR COASH: Senator Seiler, you can reopen the hearing and let her testify. [LB620]

SENATOR SEILER: Can I? [LB620]

SENATOR COASH: Sure. [LB620]

SENATOR SEILER: Okay, I'll reopen the hearing then. [LB620]

SENATOR KRIST: All in favor, aye. There you go. [LB620]

SENATOR SEILER: Okay. [LB620]

SENATOR WILLIAMS: You said LB620? [LB620]

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SENATOR SEILER: LB620. [LB620]

SENATOR PANSING BROOKS: LB620. [LB620]

LAURIE FLYNN: And I was only able to make one copy each because the copier broke while we were in there. [LB620]

SENATOR SEILER: (Laugh) You're having a good day, aren't you? Ma'am, state your name. [LB620]

LAURIE FLYNN: (Exhibits 3-10) My name is Laurie Flynn, L-a-u-r-i-e, Flynn, F-l-y-n-n. I live in Omaha. I am here as a proponent of LB620. In a long, drawn-out, false case that was eventually thrown out and all charges were dropped based on my attorney telling me a prosecutor decided a CPS worker, Angie Morehead's testimony just didn't add up. The government, the court did everything they could to threaten me to be quiet--I'm speaking of Judge Crnkovich's court--on stating I would be sued for slander and libel. And I was never sued because I was always telling the truth and they knew, they all knew that my documentation was impeccable. I had them tape recorded, videotaped, everything. And they couldn't sue me. Again, I always told the truth, as bad as it made them look. They never filed a lawsuit against me because it was well known on all sides. On all sides, I had impeccable documentation to prove whatever I said. They then tried to intimidate me using the laws in ways that were questionable and unethical, in my opinion. I was put under a gag order. Judge Crnkovich put me under a gag order for simply saying what they were doing up there. They made me sign a HIPAA agreement. I'm not a healthcare provider. I really wish somebody would have sued me almost because then I could have gone to court and proven everything. Tried to get my transcripts, Judge Crnkovich will not release the transcripts. They went so far as to subpoena my private e-mails with not only my advocates, but elected public officials. I believe the government acting under the umbrella of HHS plays dirty enough without the added bonus of being able to sue private citizens for simply speaking the truth. If they don't want to hear about it then they should stop doing things to people that require us going public to protect ourselves. I was passed around to three different judges in a six-month period, and they finally dropped the case because there was no case. And again, I was told by my attorney, while the CPS worker who is a government worker...doesn't add up. And I did pass around some of my court orders. They would hide them under...here's something that says miscellaneous docket. Good luck trying to find this in my case because Judge Crnkovich put it under miscellaneous docket. I've got where I asked for the transcript. She says, she can have them. A month later, she said I couldn't have them. If they're allowed to sue us when this harassment is enough, it's just not fair to us. And I would be willing to answer any questions. [LB620]

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SENATOR SEILER: Okay. Senator Krist. [LB620]

SENATOR KRIST: So because the subject matter was heard before, I need to ask you a couple of questions so we can all thread it together. You went to juvenile court. Crnkovich was the judge who heard. What was the... [LB620]

LAURIE FLYNN: The first judge. [LB620]

SENATOR KRIST: The first judge. What was the subject matter? What were you there for? [LB620]

LAURIE FLYNN: You know, I kept asking what am I charged with because I actually never was tried. I fired a therapist from Capstone in Omaha. [LB620]

SENATOR KRIST: Okay. All right. Now it's clicking. [LB620]

LAURIE FLYNN: Okay. [LB620]

SENATOR KRIST: So then Crnkovich, how many times were you in front of Judge Crnkovich? [LB620]

LAURIE FLYNN: Probably five or six. [LB620]

SENATOR KRIST: And then you went to which judge? [LB620]

LAURIE FLYNN: She assigned me to a judge in Lancaster County, Reggie Ryder. I wouldn't even know him if he walked by me because he declined the case, I guess. [LB620]

SENATOR KRIST: Okay. And then he, of course, or Crnkovich, referred it to...? [LB620]

LAURIE FLYNN: Well, no. Then she was done. And then it was Chief Justice Heavican who assigned it to a retired judge, Patricia Lamberty. [LB620]

SENATOR KRIST: And she dismissed it. [LB620]

LAURIE FLYNN: She dismissed it. [LB620]

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SENATOR KRIST: And where did she hold her court? Where did you appear before her?
[LB620]

LAURIE FLYNN: One time up in juvenile court, the very first time I went before her, and she sent my kids home within two hours. [LB620]

SENATOR KRIST: In Douglas County? [LB620]

LAURIE FLYNN: Yes. And the second time it was down not in the juvenile part of the courthouse. [LB620]

SENATOR KRIST: Besides the dismissal, was there any other documentation or apology issued from the bench or rationale or reasoning from the bench? [LB620]

LAURIE FLYNN: No. One of the reasons that Judge Crnkovich wrote down for taking my...for removing my child was that I didn't provide her a proper dinner one time. I put her in time-out in her room. And I only gave her a sandwich for dinner. She had eaten all day long and she didn't like what I made. [LB620]

SENATOR KRIST: I guess I need to go to jail. [LB620]

LAURIE FLYNN: June Cleaver probably needs to go to jail. [LB620]

SENATOR KRIST: (Laugh) Okay. Thank you. [LB620]

SENATOR SEILER: Any further questions? Thank you. [LB620]

LAURIE FLYNN: Thank you. Thank you for letting me speak. [LB620]

SENATOR KRIST: Thanks for making the trip. [LB620]

SENATOR SEILER: We'll close the record now. [LB620]