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act or a course of action and if the intruder goes beyond the scope of consent then the consent is ineffective.

SENATOR JOHNSON: Thank you. Now another portion of the amendment provides that if a commercial use is made of a photograph taken of an unnamed individual as a member of the public, then that is not an invasion of that person's privacy. What do you mean by a member of the public? Let me give you an example. If a Schlitz Beer Company goes to a Nebraska football game and takes a photograph of five cheering members in the crowd and then uses that photograph to advertise its own wares, is Schlitz beer exempt from an invasion of privacy or is it not?

SENATOR LANDIS: I believe in that instance you are talking about a jury question as to what would be a member of the public and therefore would be decided in a court of law, however, distinguish between a situation in which there is a shot of a crowd when you can barely make your own face and impression out and the place where there are three or four people only, I think that when you are talking about the public you are talking about a large number of people and when there are only two or three people that is really not a member of the public. It is, however, a matter for a jury to decide.

SENATOR JOHNSON: All right. Now finally, Senator Landis, you have a provision in here which says that all applicable privileges, and you are going to add the word "and defenses", from all common-law states shall be recognized as applicable privileges and defenses to an action under our new right to privacy statute. Now how is a court to choose between privileges and defenses? I mean it may well be that some state has a more liberal defense, so to speak, to an invasion of privacy than does another state. How would the court make that weighing process? How would it choose?

SENATOR LANDIS: That is one of the mysteries of the judiciary, Senator Johnson. I wish I could say. There is a direction in this bill and I have to confess it is in there on purpose to make our court look to other jurisdictions that have a history of the application of the right of privacy for guidance as to when a genuine defense or privilege can be used. It is actually a call for them to examine broadly the privileges and defenses that exist elsewhere. I do not read that every defense, every privilege and every state is in there. However, I do say that there is a very strong direction that they need to examine the whole area of privileges and defenses and if there is an intent there it is that they make a wide ranging