

March 5, 1980

LB 605

like, could conclude that, in fact, all the parameters are present for determining that this crowd has gathered for the purpose...for the purpose of engaging in disorderly conduct, or in participating in the course of disorderly conduct. Mind you, the conduct itself does not have to be disorderly. All it has to be is they have to be there with a purpose of doing it. It doesn't have to be disorderly. There is quite a difference between stopping the commission of an offense and stopping people who have not committed any offense but may intend to do so, or have a purpose of doing so, or it looks to some outsiders that they have a purpose of doing so. So the police officer asks the crowd to disperse. It doesn't disperse, and all kinds of arrests occur. Now, I think that frankly this bill goes too far. Senator Nichol indicated that Senator Chambers' remarks to a large extent were addressed to the urban areas and to the kind of police misconduct that occasionally does occur in an urban area, and Senator Nichol indicated that such kind of misconduct is much less likely to occur in a rural setting. I don't have as strong a sense for rural Nebraska as Senator Nichol would have. On the other hand, I do know that police mistakes happen irrespective of location. Why? Because policemen are human beings. Just like we all make mistakes here, policemen will make mistakes. And one incident that came to my mind as Senator Nichol was talking was the situation in Gordon, Nebraska, involving an Indian woman, Joan Yellowbird, who apparently was kicked in the abdomen by a Gordon policeman during a melee, resulted apparently in a miscarriage. She ultimately sued the police officer, and as I recall, the City of Gordon, and recovered a half a million dollar verdict in the United States District Court here, which would indicate that there was certainly some type of police misconduct occurring. Well, the truth of the matter is police people do make mistakes, and it seems to me that with LB 605 even as amended we give the police officers an additional tool to make mistakes. In the end, I frankly don't think that we really need the measure. We do have state statutes which deal with breach of the peace and that require an ongoing offense, not an offense coming into being but an ongoing offense before it can be stopped. But basically speaking, American jurisprudence says that criminal conduct can be penalized when, in fact, there is an ongoing offense. If you only have a bad purpose or a bad motive, you customarily can't discontinue...you can't criminalize that conduct until at least the bad purpose or the bad motive or the bad intent has manifested itself through some type of an overt act. LB 605, as amended, truly ought not to be advanced. It probably is not a good

7776