

contents of a photograph. Now there are two distinct things here, a photograph itself which may or may not exist and other evidence than the photograph to prove the validity of the photograph itself. You will notice if you read 27-1008, "When the admissibility of other evidence of contents of the photograph under these rules depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the judge to determine." So remember, we are not talking about the photograph itself but other evidence of the photograph. Then in the subdivision 3, "Whether other evidence of contents correctly reflects the contents." So we're not talking about the photograph itself but evidentiary related to the photograph. In LB 126 the photograph is to take the place of the evidence and remember, nothing in this handout that Senator DeCamp gave us talks about prima facie status for this evidence that he is talking about. In LB 126 once the photograph is offered then the defendant is presumed guilty and must prove his or her innocence. That makes the procedure backwards. In addition to that if you are talking about trying to spare the merchant, what you are really doing by adding Senator DeCamp's amendment to 126, is to create more expense. To prove that the photograph is valid you have to have a certification by the officer, a police officer. Well in the courts of today right now a police report is not acceptable evidence. It is hearsay. If it is objected to, it is inadmissible. So what you could do and what would have to be done is to call the police officer so that he could be cross examined. Then you have an additional aspect of hearsay in the photograph in its validity. You must present the name and address of the photographer so you have three elements of hearsay, the photograph itself, a certification by a police officer, a certification by a photographer. But what would have to be done is to produce these people in court as witnesses because the photograph becomes the evidence...

SENATOR CLARK: You have one minute.

SENATOR CHAMBERS: ...by which the conviction is obtained. So regardless of what you do with Senator Beutler's amendment I am going to move to strike that provision and I want the record to be crystal clear on this issue and I am going to have copies of the transcript made and I am going to make copies and distribute them to people around the state so that they can see how the law is perverted and corrupted for the sake of merchants. There should not be a consideration for an instant of amending the rules of evidence relative to hearsay simply for the merchants to put in an unnecessary piece of legislation such as this. So after you deal