

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE  
Transcriber's Office  
FLOOR DEBATE

May 22, 2003

LB 270

Apprendi, the New Jersey hate crimes statute was challenged because the judge was deciding whether or not the element of hate was involved after the decision of guilt or innocence, and the Supreme Court, in the Apprendi decision, and then reaffirming it in the Ring decision, has said that decision must be made by the jury, not by a judge, and it must be proven, the element of hate must be proven beyond a reasonable doubt. So we're...it's not a matter of making it more efficient, it's making it constitutional, in my opinion. I'm sorry I took so long answering.

SENATOR FRIEND: No, that's okay. That's fine. That's exactly what I was trying to get to and actually Senator Redfield had summed that up for me beforehand, so I probably didn't need to waste your time with it. Here's the...some of my concerns are the same as Senator Foley's. However, if I had...if I have problems with the direction this is going...and my problems can be summed up in this manner. If a father shakes a baby to death in his own home, is that any different than somebody else shaking a baby to death because they had some sort of idea that this baby was...deserved it because of a race, you know, that he had some racial problems, whatever the case might be? So I guess I see where Senator Foley is working. I think you had just mentioned on the record, Senator Brashear, that if Senator Foley has these issues, if we have these issues with it, we need to go back to the original hate crime law and deal with it from that standpoint. Is that correct too?

SENATOR BRASHEAR: I really...

SENATOR FRIEND: Is that?

SENATOR BRASHEAR: ...maybe I'm being a purist because it's to my advantage, but I truly believe that. If we don't want the hate crimes statute to be the law of Nebraska, then we ought to introduce a repeal of it. It's kind of like if you don't think we should have Campaign Finance Limitation Act you introduce a repeal of it. But what I don't think we should do is say to our children and grandchildren we have a hate crimes statute in Nebraska, and deliberately leave it broken. I just don't see that as my duty.