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General Affairs Committee and Judiciary Committee
September 25, 2009

[LR199]

SENATOR KARPISEK: Okay, I think we're going to get started. If everybody can find a seat, figure everything out. Okay. Number one, it says, promptly begin at 1:30. So we haven't done that, but that's all right. I would like to say right away that I hope to be out of here by 5:00. We are not going to use the light system today so everyone has time to say what they want to say. I would ask that you not repeat anymore than you have to. Hearing the same thing over and over gets old for everyone. However, we want to give everyone a chance to voice an opinion, share ideas if they'd like to. So be as brief as you can and I will start off with just some of the housekeeping things. This is an interim study for LR199. And it is a joint hearing between the General Affairs Committee and the Judiciary Committee. My name is Senator Russ Karpisek of Wilber and I am the chair of the General Affairs Committee and I will be chairing today's hearing. General Affairs Committee members who are here today are Senator Coash of Lincoln who is also on the Judiciary Committee; Senator Price of Bellevue who I didn't recognize today because he has hair; (laugh) he was bald all session, seriously; Senator Dierks of Ewing. Judiciary members who are present are chairman Senator Ashford of Omaha; Senator Lathrop of Omaha; Senator McGill of Lincoln; and Senator Lautenbaugh of Omaha. And we also have Senator Loudon of Ellsworth. I appreciate Senator Loudon being here today. Whiteclay is located in his legislative district. Josh Eickmeier is the General Affairs Committee legal counsel; LaMont Rainey is back there, he is Judiciary Committee legal counsel; and Christina Case, Judiciary Committee clerk will be recording all of this. If you plan on testifying in any capacity please pick up a sign-in sheet that is on the table at the back of the room at the entrance. Please fill out and sign in the sheet before you testify. When it is your turn to testify give your sign-in sheet to Christina or to a page and this will help keep us make an accurate public record. If you have any handouts we'd ask that you make 15 copies for the committee. If anyone needs copies please raise your hand and we'll have one of the pages help you out. When you come up to testify please speak clearly into the microphone. Please tell us your name and spell your first and last name. Again, we're make a record and we want

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to make sure that we have it all down. Also, please tell us whom you are representing if anyone. Please turn off all your cell phones, pagers or anything else that beeps. Please keep your conversations to a minimum or take them out in the hallway. And I thank you for your cooperation. Although this isn't a hearing like on a bill where we have proponents and opponents, this is generally just a thought-sharing process to try to come up with some ideas on the Whiteclay issue. I will ask that the crowd not cheer, boo, anything agree or disagree. Keep your comments to yourself please or we will have you asked to leave. I think it would be helpful to begin the hearing with some background. I would ask Hobie Rupe, executive director of the Liquor Control Commission to testify first, followed by Frank LaMere and we will then open it up to the public. Again, thank you everyone for being here. I'm glad to see to see a good crowd. And we're all there to try to make a difference. There's a lot of ideas, hopefully we'll get some good ideas. And this won't happen overnight, folks, but hopefully we can start a road map and get some things changed for the long run. And again, thank you for being part of that process. Hobie, whenever you're ready. [LR199]

HOBIE RUPE: (Exhibit 1) Thank you. Once again, my name is Hobie Rupe. I have the privilege of serving as the executive director of the Nebraska Liquor Control Commission. You should have being passed out copies of a PowerPoint that I prepared. I thought we were...knowing myself and computers I always make sure I have copies because I've had computers crash when I thought they would be available or not. And what I'm going to testify to right now is just giving an overview of the situation in Whiteclay right now, at least from the licensing and the taxation purposes, just so you're fully advised of what's going on the in the community. Currently, there are four Class B liquor licenses in the unincorporated village of Whiteclay. A Class B liquor license privileges are beer only, off sale only. So there is no legal place to buy hard spirits in town. There's also no legal place to drink on licensed premise as a bar or restaurant. These are all Class B's and they are limited to only beer. Let me show you. I go through an indication. Jumping Eagle Inn is the oldest of the two currently. It's history is in the proposal, I'll go through it. They've been licensed prior to 1988. And 1988 is when we

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started doing...we totally revamped the licensing system electronically and tracking. And so any of those records are help, prior to 1988 are held in the Historical Society's records. So since 1988, there's been only a couple major issues with that license. One was they changed from a partnership to an individual. One of the people who had been a partner stayed on as an individual licensee. There was a sale on extended credit in 1992, and there was one sale of alcohol to minors in 2002 and they were suspended for a certain amount of days for both those violations. State Line Liquor, this is Clay and Daniel Brehmer. They've been licensed since 2002. They bought out a previous licensee at that location. There was a hearing before the commission on sell/serve intoxicated in 2006. They were found not guilty by the commission. I think at this point as an aside, just if you hear it come up, if you're aware, selling to intoxicated is not a statute, it's a rule of the commission. It's not designed to keep somebody who might be over the legal limit of alcohol from driving. It's sort of a reasonable manner, reasonable bartender test. Has to...is this person showing signs of intoxication, where sort of the decision should be shifted from that person continuing to consume alcohol. Those cases are somewhat relatively hard to prove. They're easier to prove in a bar where you can show the change in behavior. We give a laundry list of, you know, signs to look at when somebody is visibly intoxicated. But the key thing is if you look at any of the literature, any of the training programs you're trying to see is the person changing while they're consuming in front of you. Since these are all off sale stores it's a little hard to show that condition. And I also must admit that part of the problem with cases specifically in Whiteclay regarding sales to visibly intoxicated is because people who are chronic alcoholics, which many of the customers in these stores are, present differently. You know, everybody depending upon blood alcohol has a lot of factors in how you present. And one of the biggest ones is your own resistance. And so if you're used to drinking a lot you will show signs of visible intoxication much later than someone who is a casual or a nondrinker. Third licensee is Arrowhead Inn. Current owner is Jason Schwarting. They've been licensed since 2006. Mr. Schwarting bought his father out, who had bought his grandfather out. This was a case for awhile Arrowhead Inn was not open for about a year and a half. Mr. Jason Schwarting, while he was working as an

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employee of his father, sold alcohol on credit. They were suspended for that per our penalty guidelines. When he then applied for his father, there were certain concerns that were raised, the first one the reason dad was been selling was because he had been convicted of a felony of selling...he was selling trucks in South Dakota or buying trucks in South Dakota and not paying the Nebraska sales tax on them. And so we were concerned that there was a strawman, it was a purchase for somebody who was unable to have a liquor license because if you're a convicted felon you can't have a liquor license. We also were concerned that given the fact that he had himself sold to an individual prior when he was an employee. In that case, in looking at some of the allegations that certain licensees were trading alcohol for sex or other favors, the Nebraska State Patrol took a cooperating individual who is a Native American, woman, who went into the place where supposedly these were taking with the thought that if it was happening he would proposition her. He did not proposition her for that. He did...when she said, I don't think I can pay for enough, his response was, well, just pay me tomorrow, which is extended credit. But...so where was a wired investigation on that one. But again, the fact that Jason had already shown once a failure to comply with the act, the commission decided not to grant him a liquor license. That was appealed to the District Court of Lancaster County. The commission was reversed and the trail...it's de novo on the record. The judge made certain factual findings that disagreed with the commission's factual findings. And based upon the factual finding an appeal was not brought up because, as you're all aware, fact finding is one of the more difficult ones to win on appeal because they'll generally give deference to the finder of fact, which in this case was the district court. The other one is D&S Pioneer Service. They are the newest licensee. They bought out an existing licensee who had been there for many years. The commission did bring them in for a hearing prior to, making sure they were cognizant and aware of the issues that were surrounding Whiteclay. They had already taken certified training courses from the commission and, you know, came forth as good license, you know, as no (inaudible) on their record, nothing too...that would invalidate them as a potential licensee. The next thing you'll see is sort of the gallonage consumption in Whiteclay. The commission, as you're aware, collects the excise tax at

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the wholesale level from the wholesalers. And so we know how much gallons are being sold. At the request of the Legislature, in the early 2000's, we requested that those wholesalers started keeping track of the overall gallonage. What you're seeing there is the last five years, which shows that every year the last five years there has been a decrease in the consumption rates at the sale. We don't have the 2009 numbers yet but it appears to be keeping up with the normal trend. And one thing I want you to remember, during 2005-2006 there was a decrease, there were only three licensees there at that time instead of four licensees. The state excise tax is on the next page that you have in front of you. In 2008, the state collected \$122,544 in excise tax. That is remitted on a monthly basis from the wholesalers. It's at 31 cent per gallon. The next page is the federal excise tax, that sort of tracks the same. Their tax rate is a little bit higher. They tax on the barrel, so we had to convert it into gallons. The next one you'll see is the retail ranking. That's how many number of cases sold in 2008 in Whiteclay. You'll see the Arrowhead Inn is far and away the leading retailer in the number of sales. And we're able to tell that because, you know, not by information the licensees have given us but by information we're able to acquire from the wholesalers. They know how much beer they've sold to those individual licensees. You'll have to ask somebody else but it's my understanding that Arrowhead Inn is the closest to the Pine Ridge Indian Reservation of the four. The next one is a little bit different. You always hear the language when people are throwing around how many cans of beer are sold in Whiteclay. You know, we don't keep of cans. We keep track of gallons. So it's generally done in a simple mathematical way, how many gallons are in an ounce. Generally, they go 12 ounce cans because that's what most people consume, 12 ounce cans is the normal serving size. Whiteclay has a little different perspective. These are the two best selling beer brands in Whiteclay. You'll see one is Hurricane, those are sold 15 to a case. And they're not 12 ounce cans, they're 24 ounce cans. They're the big cans. The second best seller is Camo Black Ice. Those are sold 12 cans instead of 15, they're 24 ounce cans as well. The one thing that both those products have in common is they're what is called a high gravity beer. I had the opportunity earlier this week to have a discussion with some members from TTB and one of their beer guys. I said, okay, now

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what is high gravity? What is the term for? What is it? It has just to do with the way it's produced. It's the gravity point of liquor...of how much...the point they take the malt when you're making. What in essence it is a faster, cheaper way to make alcohol. You turn out a lot of product quickly with that because you're at the mash point when you're starting the fermentation of beer, that's where the high gravity point come in at. These products range anywhere from roughly 5 percent alcohol up to almost as much as 10. I think some of them are in that range. Most beers that people think of when they think of say a Budweiser is right around 5 percent. Your light beer is a little bit less. Some of your more craft beers are very much in the same range. You'll have some craft beers, some Belgium style ales, which are 9, 10, 11 percent as well. Supposedly someone made a beer recently that was close to 20. I'm not sure how you would do that without making it...the generally accepted level of how much alcohol you can make through the brewing process without really altering its flavor from being a beer is roughly about 12 percent. But there's people out, mad scientists doing all sorts of things like that. So that's sort of just an overview from the licensing structure. I sort of hit on one issue. Whiteclay does present a couple of interesting enforcement issues to the commission. For one thing, I will say that the commission does work very closely with members...with the Nebraska State Patrol. We...anytime we get a report, either if we get it, we send it to the Patrol. If the Patrol has one, they're making us aware of it, investigating allegations. One of the big ones a couple years ago we had an allegation that there was some dock sales taking place at 3:00 in the morning. What a dock sale is, is somebody is selling basically in the back of a pickup truck. In an attempt to do that, the Patrol surreptitiously was able to place a wireless camera which was able to observe all four of those licensees. Within a couple of months somehow it was compromised because I think it was broadcast in some way and somebody else was able to pick it up. But during the time before it was compromised the Patrol brought no cases forward of finding evidence of that taking place at that location. The reason the commission brought it to us, we...someone who had formerly been in the wholesale area in South Dakota had contacted the commission. he seemed like a valid source. We discussed with the Patrol and the main theory was if the allegation, you know, you either prove it or you disprove

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it. When you get an allegation you go forward, you try to say what's going on. In that case there was a lot of effort extended by the Patrol. Nothing came up. These places are subject, much like any other licensee, in fact maybe more so than other licensees, to visits by investigators. There will be premise inspections they'll look through it. The other problem of the enforcement standpoint is it's a very insular, it's a small town, people are regulars, people know when Patrol guys show up it's probably not too long before they're made. That's not only in Whiteclay. A lot of small towns in Nebraska if somebody shows up, you know, who's outside, you know, they try to see who they are first. But it has posed at least some enforcement problems for the Patrol. I know that the Colonel is here, he might be able to address some of those more clearly. I was just going through how we work. When we get complaints we forward them to the Patrol who is assigned as our investigative wing. I guess without continuing to talk and bore you, if you have any specific questions, I'd be happy to answer any right now. [LR199]

SENATOR KARPISEK: Thank you, Mr. Rupe. Any questions? Senator Lautenbaugh. [LR199]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. Thank you for coming today. How do you account for the downward trend at this point? [LR199]

HOBIE RUPE: I think there's a lot of reasons why you're probably seeing a downward trend. I think the enforcement, as I said the Patrol does do enforcement, is probably keeping up. I think the efforts of some Nebraskans for Peace and other people have somewhat shone a light onto it. Maybe people who have bought there may not want to buy there. But honestly, unfortunately, I think a lot of it they've just shifted their purchasing. You know, they're...Rushville, Gordon, Chadron, all those...probably not only beer but they can acquire hard liquor at that point. And so if you're causing too much problems at Whiteclay, they might just be shifting it. There's not a definite reason. I think it's a host of all those factors. But that would be my best guess. But it has been a very steady trend downward over...since we started documenting it. [LR199]

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SENATOR LAUTENBAUGH: Thank you. [LR199]

SENATOR KARPISEK: Thank you, Senator Lautenbaugh. Senator Dierks. [LR199]

SENATOR DIERKS: Thank you, Mr. Chairman. Does the Liquor Commission place a limit on the amount of alcohol that can be in beer? [LR199]

HOBIE RUPE: No. There's not a limit. And that is not really an issue from the commission right now, it's actually statutory limit. The...Nebraska taxing of alcoholic liquor is based not on a percentage but based upon a source. Beer, which includes any beverage obtained from...by fermentation with grain, barley, hops, throwing things in water, is taxed at 31 cents a gallon. Wine, which is other than farm wineries, which is any alcoholic beverage obtained from fermentation of fruits or juices, is taxed at 95 cents gallon. And then spirits, which are acquired by distillation rectifying, are taxed. And so it's based upon basic definitions of the core of the act, it's based upon it. For instance, in a lot of other states hard ciders like corn, you've probably seen some of those which are very similar to beer, under our statutory schemes are taxed and distributed as a wine because their alcohol is being derived from a fermentation of a fruit rather than a grain. So there's no limit within the statute. That's how our statute sets out those different categories. [LR199]

SENATOR DIERKS: Hobie, how do other states handle that? [LR199]

HOBIE RUPE: Very differently. Some states follow our model. Some states base their taxation rate upon the percent of alcohol. They'll have, you know, either it's a certain percentage or they'll have bands, like something between 10 percent or less will be taxed at that which would be mostly beers but could include some light wines which would also come in at that point. And so they do a lot of it differently in that respect. We sort of pretty much follow very similar to how the feds break it down on categories. So

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different states, you know, that's the beauty for regulators and probably the consternation of other people is that with the Twenty-First Amendment there's 50-plus different ways that people regulate because each of the acts can do it pretty slightly differently. There's no one consensus. [LR199]

SENATOR DIERKS: Thanks, Hobie. [LR199]

SENATOR KARPISEK: Thank you, Senator Dierks. Senator Price. [LR199]

SENATOR PRICE: Senator Karpisek, thank you. Hobie, quick question. You said that was a commission ruling on serving the obviously intoxicated? [LR199]

HOBIE RUPE: Um-hum. [LR199]

SENATOR PRICE: Do you provide any...do you have a package or do you provide actual formalized training on that? [LR199]

HOBIE RUPE: The rule is in our rules and regulations. It very much mirrors, that's where we got it from in the first place, your normal alcohol training programs, like TIPS or ServSafe, They're very much, you know, where you're looking at changes in volume of voice, appearance, dishevelled clothing, strong odor of alcohol, bloodshot watery eyes. The key problem is that it's designed primarily for somebody who is, you know, the average bartender. It's not designed for somebody like say the Nebraska State Patrol who has in-depth training in looking for signs of intoxication. But their training is more for is somebody over the legal limit of .08, whereas the rule... [LR199]

SENATOR PRICE: But it's not a formalized training that's documented and that's reoccurring, like a continuing education requirement that they have to maintain or they lose their licensure? [LR199]

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HOBIE RUPE: No. As you're aware, there is no mandatory server training course in Nebraska. A couple of years ago the Legislature did give the commission the authority to certify training programs. They didn't make it mandatory. What the commission has been doing on those lately, especially since the commission is designed to progressive discipline, try to bring a licensee back into compliance, they utilize that training as...the Supreme Court said we can place reasonable restrictions on a licensee. So if somebody comes in for a first offense on sale to a visibly intoxicated or sale to a minor often not only along with a 10- to 14-day suspension, which they can pay off as a fine, the commission is also ordering that they and their servers must complete one of the certified training programs within 60 days. So we try to...we're using that mechanism as a targeting for locations to come in and show a failure to comply with the act, at this point there is no statute which mandates training. [LR199]

SENATOR PRICE: Thank you. [LR199]

SENATOR KARPISEK: Thank you, Senator Price. Senator Louden. [LR199]

SENATOR LOUDEN: Thank you, Senator Karpisek. Well, thank you, Mr. Rupe, for some of your information you have. I was interested in you say they couldn't find anything conclusive on dock sales or they did investigate, see if there were dock sales? [LR199]

HOBIE RUPE: They investigated, they couldn't find it. That was where because...if you're trying to do night time surveillance up in that area, I think it was the Patrol's position they would stick out like a sore thumb. And so they had some individuals pose as Nebraska Public Works employees. They placed a hidden camera observing the locations where the sales were supposedly coming from so that we could keep track on them. Because at 3:00 in the morning, you're never going to know when to do it. The source that came before the commission couldn't tell us a day. We ask, do you know what day they're doing it? Well, no. Do you know how they're doing it? Well, no, they're

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pulling up in pickup trucks and they're doing dock sales, they're selling out the back door, out the front door. [LR199]

SENATOR LOUDEN: Now how much can you...can a liquor establishment sell like that without having to register with the state? [LR199]

HOBIE RUPE: Well, anybody who sells has to have a license with the state. There is a statute, a quantitative sales. Much like, as you're aware, there's the Keg Registration Act where you have to fill out the form. Anytime you're getting more than 9 gallons, I'm sorry, more than 20 gallons which works out to just over eight cases at one time, the licensee is required to fill out a gallonage sale to make sure it's not being sold for resale. So that's sort of the same thing. The licensee, if they're selling more than that at one time to one person, there's a requirement that they document that. [LR199]

SENATOR LOUDEN: In other words, if I...for my branding or something, if I wanted to go in and buy ten cases of beer then, the guy that I bought it from would have to fill out some kind of a form? [LR199]

HOBIE RUPE: Yes. [LR199]

SENATOR LOUDEN: Okay. When you talk about using some of your information here, the amount of sales estimated, number of cases sold in Whiteclay nearly 150,000 cases. How many...do you have any information on how many trucks haul that in or how often that's delivered into Whiteclay? [LR199]

HOBIE RUPE: I believe those are...the wholesalers who currently supply Whiteclay are based out of Scottsbluff. You'd have to ask them particularly. I know that they are generally making multiple trips a week. [LR199]

SENATOR LOUDEN: Someone in Scottsbluff? [LR199]

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HOBIE RUPE: From Scottsbluff, yes. [LR199]

SENATOR LOUDEN: I mean are we talking about, you know, if it's 150,000 you're talking about, what, 3,000 cases a week. How many cases can you put on a truck at a time or something like that? [LR199]

HOBIE RUPE: You'd have to ask...I think there's some people from the industry. I'm not exactly sure how much beer one of those trucks have. They are different sizes. I'm aware that they do make multiple deliveries per week. [LR199]

SENATOR LOUDEN: Well, what I was wondering with this surveillance it wouldn't be that hard, you could set it (inaudible) where they turn off the road and count the trucks going there. [LR199]

HOBIE RUPE: Yeah, exactly, yeah. [LR199]

SENATOR LOUDEN: You'd have some idea how much was going up to Whiteclay. And I'm wondering, you know, when you say 3,000 cases a week, that's got to be carried back out of there, because most of that is all off sale liquor. [LR199]

HOBIE RUPE: It's all...it's only off sale liquor, it's only off sale beer. [LR199]

SENATOR LOUDEN: It's got to go out in packages or someplace. How many people does it take to haul 3,000 cases beer a week out of a place like that? [LR199]

HOBIE RUPE: This was one reason why we took the complaint that there might have been dock sales very seriously and looked into it and worked with the Patrol because in a lot of ways that's one the logic disconnects is how much can be going out the front door. During the time before, you know, the camera was unable to find any time...any

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evidence of those sales at that time. [LR199]

SENATOR LOUDEN: Is there any such thing that some of that beer never gets to Whiteclay? [LR199]

HOBIE RUPE: No, I don't think so. The beer has to be delivered to the retail location, it's documented, the tax is paid by the wholesaler. I don't think that given, for instance, both those wholesalers have pretty much the most to panhandle. If they were delivering to a non retail licensee, they're going to lose their liquor license. So I'm not sure they would be willing to do that. I mean, you know, which is one reason why if we're tracking it, we stay at that level because there's a duty for them to report that gallonage to us. [LR199]

SENATOR LOUDEN: Then you're confident that there is a very accurate correlation between your paperwork and your actual deliveries. [LR199]

HOBIE RUPE: I think there's definitely a correlation. The commission can keep track very clearly of how much liquor is going into those retail locations. After that is where it gets a little sketchy. [LR199]

SENATOR LOUDEN: Do you have a way of finding out, to see if that paperwork tracking is accurate? [LR199]

HOBIE RUPE: Yes. We often will do audits. And so far when we've done an audit on those wholesalers we've not noticed any discrepancies. [LR199]

SENATOR LOUDEN: You mean about like a grain elevator, you go there and they're supposed to have bought so much beer so they'd better have so much of it on hand and show where they sold, so that's the kind of audit you do? [LR199]

HOBIE RUPE: Yeah. When we do a check of a...yeah, we get reports under a

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three-tiered system. We know exactly how much product is being delivered to a wholesaler because we get those reports from the shippers. And so when we do an audit we will do what's called a, of course my mind is going on it, a perpetual inventory. So if we do an audit on a wholesale house they should have documentation. And the key thing on beer as opposed to liquor is the tax on that beer comes due and payable when it lands at the wholesale house, not when they sell it. Liquor is when they sell it is when the tax becomes due. But when it lands at the warehouse in the form of beer that's when the tax becomes payable. [LR199]

SENATOR LOUDEN: The wholesaler pays the tax, not the... [LR199]

HOBIE RUPE: The wholesaler remits the tax. [LR199]

SENATOR LOUDEN: ...not the tavern owner? [LR199]

HOBIE RUPE: No. The wholesaler remits the tax. And we can...so we know how much is going into those locations. After that, that's when the question begins. [LR199]

SENATOR LOUDEN: I thought this information was quite interesting. When you talk about the consumption going down up there, the sales going down, yes, I've talked to the...oh some of the sheriff's department and people like that up at Whiteclay. And the State Patrol has a bigger presence in there in the last few years. And of course, not only that, they've kept the jails pretty well filled up in Rushville. But that's developed another problem. We have to...when they have the beds all full at times they have to go someplace else. And as you say, what that's done is force the sales someplace else. And if you completely closed this whole situation up then in Whiteclay, I suppose those 150,000 cases of beer would have to come out of Gordon, Rushville and Chadron. Would that be a correct assumption? [LR199]

HOBIE RUPE: Well, what I can say from the documentation you saw that there was not

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a real decrease in the total number when they went from four licensees down to three. There was a certain amount there. You know, other individuals might be able to address it. But you know the large problem here is you have a high alcohol usage rate on the Pine Ride Indian Reservation. And so there's that demand. As long as there's that demand, you know, whether you have to work a little harder for the supply, it's going to be up to that person whether, you know, you make that decision. [LR199]

SENATOR LOUDEN: Do you have any information on what's sold on the other side of the reservation, in South Dakota? [LR199]

HOBIE RUPE: Not really. South Dakota has a very weird liquor setup. Their Liquor Department is two people in the Department of Revenue. And they're primarily looking at tax. Most of their licensing is based upon a more local taxation. So I'm not really sure. So what...we don't have really good numbers out of South Dakota. [LR199]

SENATOR LOUDEN: Then you have no idea how much beer or anything is being sold up at Scenic or Interior, on the other side of the reservation? [LR199]

HOBIE RUPE: No, no, I do not. [LR199]

SENATOR LOUDEN: And is there anybody that you work with ever come up with any of those? I mean you're doing your, I guess, highest level on the south side, trying to hold the dam back, but nobody knows what's happening on the other side of the country there. So that's what I'm wondering, if you have any conversation at all about what's going on on the other side of the... [LR199]

HOBIE RUPE: I've been attempting to and hopefully I'll have more information when we go in November. South Dakota is a member of the National Conference of State Liquor Administrators as is Nebraska. And we're trying to get that information. Part of the reasons why we have this detailed information was the Legislature asked us to start

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dividing this up, you know, back in early 2000 so we were able to keep track of that information. I'm not sure how South Dakota is taxing or tracking mechanism would work. But I will do my best to find out and make you more formally advised. [LR199]

SENATOR LOUDEN: Okay. Well, thank you for your testimony. [LR199]

SENATOR KARPISEK: Thank you, Senator Louden. Any other questions? Senator Coash. [LR199]

SENATOR COASH: Thank you, Chairman. Hobie, just a question. You mention your relationship the Liquor Commission has with the State Patrol. [LR199]

HOBIE RUPE: Yes. [LR199]

SENATOR COASH: As far as enforcement of the Liquor Control Act what resources does the commission have other than the relationship with the State Patrol? [LR199]

HOBIE RUPE: Formally, that's pretty much it. Up until 1987, there were 12 full-time liquor inspectors who were assigned to the commission. They were state deputy sheriffs. Back then, apparently, there was a push sort of to try to bring people with badges and guns underneath one agency. And this is all anecdotal. Back in 1987 I was still in college at Northwestern Missouri State University. They succeeded with the commission...with the Liquor Control Commission, failed with the Game and Parks people is the way somebody once described it. There were 12 full-time slot positions, they were deleted from the commission budget and they were transferred over to the Patrol. And since then the Patrol has been the primary law enforcement agency of the commission. Now that does not mean that's the only place we get law enforcement reports from. They are the ones who help us do investigations, background checks, you know, the job that used to be handled by the liquor agents. The commission can take any reports from any law enforcement officer at any time. So we get a lot of reports

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generated by both sheriff's offices and local police departments. But, you know, if you're talking about dedicated resources from the state, those are the dedicated state resources. [LR199]

SENATOR COASH: Thank you. [LR199]

SENATOR KARPISEK: Thank you, Senator Coash. Any other questions for Mr. Rupe? Oh, Senator Price. [LR199]

SENATOR PRICE: Senator Karpisek, thank you very much. Hobie, real quick, did the math, about 95 cases per day per store. Do we have numbers that you've collected for anywhere else in the state, how many gallons of beer are sold in Wisner, how many gallons of beer are sold anywhere? Or is this the only place actually collect data? [LR199]

HOBIE RUPE: This is the only place we have the connections because this is something beyond normally what the reporting requirements of the wholesaler is. The wholesaler is supposed to let us know how much they've sold. They've done this voluntarily at the request of the commission which we started collecting this information, I believe, it was at the request of Senator Preister when he was with the Legislature asked us to start doing that. And that's sort of reflected there as to the sales. If we need to look at that, we can look at that. We can get that other information but this is the only place we have that detailed of a snapshot. [LR199]

SENATOR PRICE: So we only have one data point to work off of to balance them, to use anything on. [LR199]

HOBIE RUPE: Um-hum, yeah. [LR199]

SENATOR PRICE: All right, thank you. [LR199]

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SENATOR KARPISEK: Thank you, Senator Price. Any other questions? Senator Lathrop. [LR199]

SENATOR LATHROP: I just want to ask maybe a simple and perhaps obvious question. And that is, the license of these four retailers does not permit them to sell alcohol to people on the premises for consumption on the premises. Is that right? [LR199]

HOBIE RUPE: That is correct. [LR199]

SENATOR LATHROP: So everybody who's buying at these four retailers are taking it from the retailer to someplace else to drink. [LR199]

HOBIE RUPE: That is correct. [LR199]

SENATOR LATHROP: Who here...I know you've been involved in this issue and so I'm going to ask you so that I don't ask everybody the same question until the right person gets here. But who's going to...who in the room is going to...can give us...speak with authority about enforcement on the reservation? So that I'm not asking the questions about enforcement on the reservation... [LR199]

HOBIE RUPE: I'm not sure. Perhaps Colonel Tuma might be able to give us that information regarding issues. As you're aware, a couple of years ago the Attorney General had gotten a grant in place for cross-deputization of tribal police to handle some of this. Because as I said, a lot of times it's an enforcement problem. You know, if the Trooper shows up, they're not seeing anything to close it down. I think there had been federal money that had been acquired trying to increase the number of law enforcement resources. You know, the tribe ended up not accepting that. I'm not sure if there's somebody from the tribe here or maybe Judy can testify as to why they didn't.

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But they might know what's going on in that regard. [LR199]

SENATOR LATHROP: Okay. And one last question. The reservation is a dry reservation, is that... [LR199]

HOBIE RUPE: The reservation is dry. [LR199]

SENATOR LATHROP: In other words, there's nobody that can sell and they're not supposed to bring liquor into the reservation. Is that correct? [LR199]

HOBIE RUPE: That is correct, correct. [LR199]

SENATOR LATHROP: Okay, thank you. [LR199]

HOBIE RUPE: And that's one of the problems we need to assail here. You can do a legal sale in Nebraska. I can go in and buy a six pack of beer and it's not a crime, I'm over 21 and I'm not intoxicated. But I cross into the reservation, I've just committed a crime on the reservation side. [LR199]

SENATOR LATHROP: Got it. Thank you. [LR199]

SENATOR KARPISEK: Thank you, Senator Lathrop. Any further questions? I will reserve the right to ask Senator...Senator...(laugh). I don't want to demote you, Hobie. [LR199]

HOBIE RUPE: I was going to say, don't promote me. (Laugh) [LR199]

SENATOR KARPISEK: ...to ask Mr. Rupe to come back at the end and maybe clarify anything. So we will do that. Thank you, Mr. Rupe. [LR199]

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HOBIE RUPE: Thank you. [LR199]

SENATOR KARPISEK: Mr. LaMere. I would like to say that we are going to have another hearing in Rushville. We don't have the date and everything quite finalized yet. But I think a lot of things will maybe come to show there. Maybe we'll have some different people, more boots on the ground that will be able to testify. We have very good authorities here like Mr. LaMere. Hopefully, there we can get some of the people who are actually involved in day to day problems there. We're going to wait just a second. We're getting some chairs out. We do have some e-mails and letters that we will be putting into the record. And can I have a show of hands to see how many people are interested in testifying today. About 15, so we will take more time with Mr. LaMere. I ask that you not take too long. It's a little different having so many senators, too, asking so many questions. So that's good. Mr. LaMere, whenever you're ready. [LR199]

FRANK LAMERE: Senator Karpisek and members of the committee, I just want to say "pee nu geegee" (phonetic). I want to say "pilamaya ye." I want to say thank you to you for your action that has brought us here today and that, of course, being LR199. I think it's going to give us a good opportunity to elevate this discussion to see what we can do when we put our minds together to make things a little bit better for our neighbors and for ourselves. Senator, I would be remiss today if I did not just make one acknowledgement. And we have many, many distinguished individuals here today. I think they are opponents and they are proponents and they are neutral people, but they are all Nebraskans. And I think it is important, you know, that I explain to all here that I welcome the input of those agree, who disagree or those who are simply here trying to find some things out. let us remind ourselves that most of us if not all of us were born in Nebraska and we're going to die here. And as long as we are going to be here together we ought to build some bridges, perhaps foster some understanding, try to make life a little bit better for each other, for our families, our extended families, our community and thereby making things a little bit better for the state. And I come here with that uppermost in my mind today. I am pleased that so many came here to speak about this.

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And irrespective of where they come from, it elevates this very needed and long overdue discussion about the issues at Whiteclay, Nebraska. Senator, Mr. Chairman, when I say that to you I want to point out something that we can all understand, I think, as we gather here, some of you new to this issue, some of you very much aware of this issue and the history of this issue at Whiteclay. I want to point out that we had some young people join us today. I've had a chance to know them for about the last two years. And we have some, I think some sophomores, some juniors and seniors from Creighton Prep in Omaha, Nebraska, who have taken a great interest in this issue. There are probably many reasons for that. They have a social conscience, they are committed to changing things and they also have ties to the Pine Ridge Indian Reservation as they are a Jesuit institution. And they are here today. And that gives me great hope and I share that because when you look at these young men here, and raise your hand and the teachers and young ladies with them, I want you to know that when we first came here to talk about the devastation, the catastrophic effects brought on the unchecked sale of alcohol from Nebraska onto the dry Pine Ridge Indian Reservation, when we first brought that issue to this forum, these children, the young men were children, they were 5 years old and they were 6 years old. And I am pleased to see them here because perhaps within years of their reaching maturity maybe they can see resolution to this issue. And I want to point that out to you. That's how long that this issue has been before us. And I'm going to say all of us, Natives, non-Natives, professionals, those who are not professional, those who have responsibility, those who don't have responsibility, those who work in the public trust and those who criticize those who work in the public trust, we've all sat on our hands in some way, shape or form. And we have let the travesty at Whiteclay continue. And I'm troubled by that. When I had a chance several days ago, last week, to get a copy of the legislative resolution 199 I was very pleased. And I will tell all of the committees that, that I'm very pleased with it. I read it again last night and early this morning. And what you seek to do in this body, and I won't go into it, but, (1) an examination; (2) an examination; (3) an examination; (4) an examination; (5) an examination. And then it goes into detail of what we're going to take a look at. Let us, senators, take a good, hard objective real look as

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you have noted and as you complete LR199 let us truly do those things. And I think those at Pine Ridge, those in Indian country will be very pleased with this document. And hopefully, we can see some good come from it. Nowhere, in taking a look at the document, did I see the term that I've raised to you many, many times, the term about begging the question. If you shut them down, they're going to move over here. If you shut them down, what are you going to do when the problem still remains at Pine Ridge? If we seek to do what we can under our purview and our laws, what if things don't change and we can't sober them up? We have found 100 different ways to beg the question for 11 years. We've not even got out of the chute, my fellow Nebraskans. We've not even got out of the chute. It is easy for us to beg the question. And there has been quite a lot of that. And I hope that as we proceed with LR199 that that be uppermost in our minds that we're...11 years is enough time for us to find ways that we shouldn't deal with this issue. It is time for us to examine the facts and see what we can do to make things a little bit better there. There are many, many approaches we could take to this discussion, Mr. Chairman. And we will hear that from those who have opinions about the issues at Whiteclay. And always when we have a chance to gather like this I can always read people's minds, non-Indian people's minds. And I can read Indian people's minds all the time. And mainly Indian people a lot of times and they'll say, well, how come he's dealing with that? What causes him to deal with that? He is not even a Lakota, he is not a Dakota, he is not Kota. Why is he, Frank LaMere, a member of the Winnebago Tribe of Nebraska? Why is he dealing with that? It's not his business. He doesn't even live here. You can see that in the documentary, that's said a number of times. Sometimes I say that I do have to question what brings me here, what keeps me here. Because there's many, many things that one would like to do and one should do. But I want to see this through and there's a reason for that. And I want to share this with you as senators by way of some history. I have been involved with the issues at Whiteclay, Nebraska, since 1998. And the reason that I am involved with the issue since 1998, it was about that year when I was contacted by the officials from the Oglala Sioux Tribe at Pine Ridge. And they said, Mr. LaMere, we know that you are very much involved with efforts to empower our people, you're very much involved politically

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with one of those parties, it makes no difference which party, but you are involved. And there is something going on in Nebraska that gives us rise to great concern here on the Pine Ridge, and that is the fact that we have been devastated by the impact of substance abuse--alcohol, drug abuse in and around our reservation. And we hear tell by the grapevine that some officials over there in Lincoln, Nebraska, from this Department of Human Services or Social Services or what they called themselves at that time, those who are charged in the public trust to deal with alcohol and substance abuse issues have some plans on the table for us, and we believe that this proposed change and the way that they're going to do things affects us because they are saying that Nebraska tax dollars should not be spent on institutions or with regard to substance abuse on these substance abuse centers that serve individuals from other states. And tax dollars should not be spent to serve through our substance abuse programs individuals from other states. And that didn't mean too much to me. I said, tell me what you mean because we have Colorado, we have Wyoming, we have South Dakota, we have Iowa, we have Kansas, what are you talking about. And it was their strong feeling from the Oglala Sioux at that time that it had nothing to do with those other states, had to do with Gordon, Nebraska, where the vast majority of those who come to the northeast Panhandle substance abuse center are people from Pine Ridge, hundreds if not thousands historically have come from Pine Ridge because that is the only facility that can treat alcohol abuse in and around that area. I have come to know the folks at NEBSAC. I have come to see their work. My own family have been there. So I know that they do good work. I always had questions about what kind of work they do. They do good work. And their money, their dollars were being threatened. And they said that they feel that they were looking at them because they have no political power, no ability to do things and so they would be the first who would be affected by any budget cuts. And then the individual from Pine Ridge who asked me to help at that time chided me, you're involved in many, many, many issues, here's a real issue. Will you be involved with it? And it...I said, yes, I will, I will. And I'll get involved with it but you follow it where it leads. If you're doing this for the people will undertake to try to change it, but you follow where it goes because we will see it to some positive conclusion. They assured

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me, yes, yes, we're going to do that. Senator Karpisek, those individuals have long since dropped off. But the issue that was raised that day 11 years ago remains as alive as important now as it was then. And it causes us to continue to try to work for positive change there. If some of you remember at that time I imposed upon then Governor Nelson and I said, look what's going on in northwest Nebraska, we're better than that. As Nebraskans we should take action to deal with the illegalities that surround the sale of alcohol from Nebraska onto the dry Pine Ridge Indian Reservation. We are not providing any kind of treatment there. This started out being a question about treatment. And what are we going to do, Governor? And the Governor agreed. And if some of you remember he put together perhaps scores of individuals at that time who had a number of meetings in Rushville--law enforcement, tribal leaders, agency heads from Nebraska, other interested individuals, locals from the Nebraska side and Pine Ridge, they came together to start dealing with the issues that we're talking about and you'll hear about even today. We had a couple successful meetings. Some of you may have even been to those meetings. I know the Indian Commission is here. They were at the meetings. We had a very successful number of months, perhaps even a year. And then as many of you remember, Senator Nelson was gone, Governor Nelson was gone and Governor Johanns came. And in 1998, for whatever reason, we didn't continue that collaboration that had started. And as a matter of fact, I think when we raised issues, I say this very respectfully but very truthfully, I think the reaction from our Governor at that time was that, well, what they need to do is they just need to sober up. A very simplistic answer to a very complex issue. And that was very short-lived. And we were waiting to see what our next move was going to be at that time in early 1999, when we had the brutal deaths of Hard Heart and Black Elk, who were beaten to death on the streets of Whiteclay and left just yards from the establishments that we are talking about today. And many of you know the history that took place in 1999, the many marches, the demonstrations, the anger, the frustration, the arrests that took place on June 26, 1999, the arrests that took July 3, 1999. And since then we have done the best we could to come back here, to remain objective, to have faith in the system, in this process to try to make things a little bit better there. I don't know just exactly what we have done. I think

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as you work to establish and to try to sort out and put all the facts on the table, I think we will truly get a good idea of how much alcohol is sold. I think that we'll get a good idea of where the sales are concentrated. I think we'll get a good idea of how we can, you know, work with the Oglala's perhaps in the future to see what we can do to stem the tide and the illegal flow of alcohol onto Pine Ridge and perhaps even prosecute those who bootleg, you know, and prosecute those who would sell knowing that they are selling to bootleggers. There is...those are the kind of issues I hope that you, you know, take time to examine and to explore as you approach your work. They...a couple of years ago I was up there on a weekend in the summertime, during the Oglala-Sioux Tribal Nation pow wow. And I've never had a chance to ever I think share this with anybody, so I would share with you today as you continue or as you begin your work. I had a gentleman at this gathering, it was a memorial for a couple young people who had purchased alcohol at Whiteclay and they had died the previous year. If you look at the documentary, The Battle for Whiteclay, you'll see that somebody from Senator Preister's Office makes mention of them. A young lady by the name of Little Moon, 14 years old, lost her life there. A young man by the name of Eagle Bull lost his life that time and four teenagers were injured. And they had illegally been able to get alcohol from Whiteclay. And that is a known fact. And they ended up running off the road outside of Whiteclay. And there were two deaths in that community. I was at the tribal gathering. And I had a message from somebody who said, Mr. LaMere, Mr. Eagle Bull would like to talk with you. And I was there for a memorial dinner for his son. So I said, well, of course I will do that. So he summoned, and I went to where he was, hardworking Oglala-Lakota man, committed family man as I remember. We had a chance to talk. And I didn't say much, I just listened to him. And he mentioned to me, he said, Mr. LaMere, I've kept track of those things you're trying to do down there at the border, at Whiteclay. I've kept track of these Nebraskan for Peace and what they're trying to do over there. And he said, I've always kind of looked at what you're doing and I've scoffed at it. I've always kind of looked at what the Nebraskans for Peace were doing and I was critical of it. I always kind of thought to myself, why are they doing these things? Are they trying to make a name for themselves? These are my thoughts that I

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have always had. And he said, but I'm here and I've asked you to come here today because I lost my son because of alcohol that he got from Whiteclay. And he said that parents, whether they be Native or non-Native, whether they come from Nebraska or South Dakota, Sheridan County or Pine Ridge should not have to endure what I endured. And what I endured was tribal law enforcement knocking on my door at 4:00 in the morning and saying, Mr. Eagle Bull, we have some very tragic news for you; there has been an accident and your son was involved and he has lost his life. And Mr. Eagle Bull then told me, he said, I was adamant, I said, no, no, no, not my son, it was not my son. My son has gone to bed hours ago. He is here. You must...there must be a case of mistaken identity. He said, you come in, officers, and we'll go and I will show you. And he opened that bedroom door and it was empty. That's the way he told it to me, he said it was empty. And he said that no parent, mother, father should have to experience that. And he said, it does little good for me now to come and to ask you anything because I've lost everything, he said, but I will ask that you continue your efforts there down at the border, that you continue with your work because no parent should have to experience that, and painfully many at Pine Ridge have experienced that. I don't know why he told me those things. Perhaps maybe it was so I could come and tell you. I've not visited with him. Perhaps sometime soon I'll go back and see how he is doing. But Mr. Eagle Bull's story, like Miss Little Moon's story is...that's just one of many. Since we've been dealing with this issue it is perhaps one of scores if not hundreds of tragic tails that come from Pine Ridge, that come because of the sale of...the unchecked sale of alcohol and the flow of alcohol from Nebraska onto Pine Ridge. And that causes us to continue in our work. Many people in Nebraska are aware of this, you know. And when we decide not to sugarcoat something we're probably all aware of it. When we decide not to beg the question we're probably all aware of it. I talked with one of my good friends over there, I consider him a friend, who's a commissioner over there in Sheridan County. And we talked years ago about the flow of alcohol and about bootlegging up there. And he give me an advanced tutorial one day in the Lakota language. And he said we were talking about bootlegging and the involvement in Sheridan County and what they know and what they don't know. And there's somebody who serves in a

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public trust I thought he said...what he said to me was really telling about the state of the situation in Whiteclay and at Sheridan County. He said, there's a word we use here in Sheridan County and the Oglala's in this room would understand it. He said, there's a word we use, it is a word, it's called "sinte." It's a word that means something here to certain people. And I didn't know what that word meant. I know that in South Dakota there's a college called Sinte Gleska College, Spotted Tail College. But I didn't understand what he was talking about. And I said, well, what is that? What is that about? He said, when those drivers come from the Pine Ridge Indian Reservation into some of the establishments in Sheridan County and Rushville, perhaps other places, if they have done a good job in making their deliveries, if they are timely in delivering this alcohol onto the Pine Ridge Indian Reservation the store owners give them sinte. I said, what is that? He said, to give them a sinte, which is a tail, which is as long as that case is going out the door. I'm going to put a tail on it for you and that's going to be perhaps a jug, a bottle of whiskey or what have you. Now if we have commissioners who are aware of these things, then I would guess that that county and those who work in the public trust must be aware of it. I would guess if they're aware of it that a lot of us perhaps are aware of those things. What we have I think, folks, is an unwillingness to act because it doesn't affect us every day in our different districts. You know, and out of sight, out of mind. And it's something that just doesn't...we're not faced with it every day. And there's not a willingness...and I'm going to be honest with you, and I wouldn't if I was less than honest with you I wouldn't be, I think, a good person. I don't know whether there's the political willingness to get things done. As I told the students at Creighton Prep the other day, sometimes there's a great truth that stands before us and we choose not to act because we are concerned about what our husband, our wife, our boyfriend, our girlfriend, our neighbor, employer, employee, constituent...we're afraid of how they may see us. So what we seek to do is we seek to maintain the status quo and do nothing. And I told them the other day and I challenged these young men the other day, when that great truth stands before you act, act because you're not going to have another opportunity, it's going to be taken from you, it's going to be taken from you. You're not going to have it. We are at a point in time I think when we're going to have

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that great opportunity to act. I think the time is now. We need not beg the question. Let's get about doing those things that we as Nebraskans know we have to do. We are better than this, all of us. One overriding consideration, as I get older it gets a lot simpler as some of you about my age probably know, it gets simpler. I have a senior in high school this year and I tell her the same things I told her when she was in the first grade and kindergarten. People say, well, what do you want for her? Where is she going to go to college? What do you want for her? What do you want her to be? I say the things that I want for her they are the same things I wanted when she was in kindergarten. I want her to be good to people. She don't have to be wildly successful. Be good to people. If you can make a difference and make somebody's life a little bit better I would want you to do it. As you get older it gets simpler. We've got to be good to people, those who want to, you know, make things better, those who want to help themselves. And the other thing that gets so simple as you get older and as I reach my mid-50's and a little beyond, Senator, and all of you Nebraskans gathered here and everybody in the public trust and everybody who has an ability to change something, I want to tell you I have the strong belief that next month or next year or the year after or perhaps a lot of years maybe on this side of "Tunkasila's" creation, maybe on the other side of "Tunkasila's" creation I believe there's going to be a reckoning, I truly believe that. And when that reckoning comes, whether it's next week, next month, next year, a generation from now, I want to make sure that I'm on the right side of the ledger sheet that they had no voice and he sought to give them some voice, that they were not empowered and he sought to empower them, that they were being victimized and they were being bullied and he sought to stand up for them. I want to be able to do that. That opportunity rests with all of us I think right now at Whiteclay, Nebraska. We are talking about very real people. We are talking about a people who 20 percent of their children suffer from fetal alcohol syndrome. We're talking about people of an 80 percent unemployment rate. And we talk about the most disaffected people in all of the United States of America. And you know who can make the greatest positive impact sitting right here, right in this room, and we've sought not to do it. And it's going to be important that we get that done as soon as we possibly can. There has been a lot happened at Whiteclay over the years. And I

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have done everything that I could constitutionally. And using those constitutional rights given us to come here to try to make things better, to act. And even I'm an equal opportunity antagonist, as many of you know, arrested by the Nebraska State Patrol in 1999. Arrested by the Oglala-Sioux's in 2007. And might get arrested by somebody else before it's all done because that is the kind of commitment that I think that I have and I hope that we all have. There's some great truth that we need to act on there at Pine Ridge. And I think that we as Nebraskans are the ones who need to get it done. I thank you for your indulgence. I seek not to preach to you, I seek not to chastise you. And to be quite honest with you with regard to issues of change up there, we as Nebraskans have probably tolerated much. I've probably tolerated more than anybody. On day one when this happened in 1999 I remember thinking and perhaps even telling somebody, if I had any nerve should take a sledgehammer, go knock down the doors. But I chose, because that's the way we do things, chose to build collaboration, to build some bridges, to do things very legally and to ask and to implore Nebraskans to act on our behalf, to act on behalf of Native people. And it's 11 years later. I probably would have been better off knocking down those doors a long time ago. I would have got out of our institution five or six or seven years ago. But maybe something would have changed over there. And I say that to you symbolically. We have a chance now to knock down some doors, to overcome some barriers there. And this is the way that we have chosen in this country and in this state to do things, to sit, share ideas, agree to disagree but do what we can. But I just say to you, Senator, that it is very important that we act. And I hope that we would do that. I thank you for your time. And any questions or comments I'd certainly appreciate. [LR199]

SENATOR KARPISEK: Thank you, Mr. LaMere. Any questions? Senator Louden.
[LR199]

SENATOR LOUDEN: Yes. I understand...thank you for being here, Mr. LaMere. And I understand you're from Winnebago Reservation. [LR199]

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FRANK LAMERE: Yeah, yeah. [LR199]

SENATOR LOUDEN: And that's, you might say, clear across to Lincoln, Nebraska from the Pine Ridge Reservation. [LR199]

FRANK LAMERE: Um-hum. [LR199]

SENATOR LOUDEN: I live closer to Pine Ridge Reservation than you do, I guess. I'm about 50-some miles away. [LR199]

FRANK LAMERE: Yep. [LR199]

SENATOR LOUDEN: I agree with you that, you know, there's been problem there and we have to have cooperation, we have to work with it. But I would like to point out that we also would probably have to have cooperation on reservation or from someone from that side of the line. As you mentioned the bootleggers, and I'm close enough up there I know what bootleggers do. I know how much money they make. I know how they operate. And until that is addressed, that's a serious problem. They've not only got into liquor, they've also got into drugs. You're well aware that here last, what, about last June or so there was four or five Native Americans that were charged with distributing drugs on the reservation. And to me that's a terrible thing. That didn't come out of Whiteclay. That came from someplace else. So Whiteclay has been, what, center of the target for several years. And also I presume you're old enough to remember when there was a time when you didn't sell liquor to Native Americans. And I think that was in the early fifties. So most of this has come about since then. Because up until then Whiteclay was more of a trading store with staple foods and that sort of thing. And then it got into be a liquor establishment in the fifties and sixties. I remember that was one of the most lucrative liquor licenses that you could possibly get was to have a liquor license in Whiteclay. And that's the reason they ended up with four of them there for God sakes in this little bitty town. Nonetheless, I think you're right, we have to do something. I think it

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can be done. But I would point out that it isn't just from Nebraska's side and what we can do to shut down Whiteclay. We have Scenic on the other side of the reservation. Nobody seems to talk about what happens there or Interior. How much liquor is coming in from Rapid City down the other side, you know, from the reservation, out through Caputa and down through there. I don't know if you've ever traveled that road. I've had friends that lived by Caputa there. So it's just like going from Chadron to Pine Ridge, across through there on that Squaw Butte road. So we have to have cooperation all the way around in there. And how do we go about getting that from the other side of the border? [LR199]

FRANK LAMERE: Last Friday night, late Friday night, I had an opportunity to talk to Governor Rounds in Aberdeen at the South Dakota Film Festival. They were showing this documentary about Whiteclay. I took the liberty of inviting him here. Took the liberty of inviting him to Rushville when you have the second hearing. He begged the question and he begged off. I think there's not political will. It doesn't impact us directly. I think what Governor Rounds did is probably what a lot of people are going to do. I believe that Nebraskans can only do what we can do. And the rest of it, we can get all the way to the end. We...there's only certain things we can do. We can carry out the law. We can strengthen the laws. And we can go after bootleggers and let it be said very publicly get after the bootleggers, especially Native bootleggers, hit them harder than you hit somebody else because they should know better. [LR199]

SENATOR LOUDEN: Yeah, but they're not bootleggers until they get on the reservation. See when they're in Nebraska they're just citizens hauling beer. But when they get on the...when they cross the line then they're bootleggers. And that's where it has to be something done on that side of the line. [LR199]

FRANK LAMERE: I agree. I think maybe perhaps law enforcement from the elevation of this discussion, I would hope that those kind of opportunities to discuss these things, you know, that we can have them. I truly understand what you're talking about. And

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when we were here at a hearing one time before, one of the lobbyists made mention, he beat on the table and he said, not one thing has been said about personal responsibility. And I agree with him. But we can't get there. You know, how can we talk about personal responsibility of those that Oglala's when we can help them with that personal responsibility. We don't give them one dollar. We don't give them any encouragement. Sometimes I don't think we enforce our laws to help them do what they want to do. And they want to make our people well. Senator, I did some research the night before last to update myself a little bit. Do you know that Budweiser spends, and it's probably more now, but you know the news people can research this, spent \$13 million a year on their plow horses. They massage them every night and they give them the best food and they march them up and down the streets of America. You know how much money Budweiser sends to Pine Ridge for treatment? There's 250 stable of Clydesdales in this country. You know how much money goes to deal with issues regarding fetal alcohol syndrome, healthcare for our elders, healthcare for our children? Nothing, nothing. And that's not...I'm not going to make any judgments but those are the kind of things we should lay on the table. And it's about money, it's about power, it's about corporate greed. Whoever out there controls alcohol in Sheridan County controls much. I believe they control county government. I believe they control tribal government. I believe that they even control things in Lincoln. But it's so preposterous that nobody would even think to...would even think to talk about that. It is...alcohol at Pine Ridge is a commodity, it's a trade good. I want my lawn mowed, I don't have to pay anybody to get lawn service. I'll just have...I'll give you a few cases of...it's a commodity. We have to take a good hard look at the economics there and take a good hard look on what alcohol does. Alcohol controls everything--jobs, political office, but we've not even mentioned that. And it's going to take good comprehensive look. But personal responsibility, yes, we've got to have it. Bootleggers, let's get after them. [LR199]

SENATOR LOUDEN: Has the tribe started a hospital or a facility to treat alcohol there on the east side of Pine Ridge there? And how is that coming along? Is that finished? Is that operational or what are they doing with it? [LR199]

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FRANK LAMERE: You know, I believe it's operational. We have somebody from Pine Ridge here who can speak to that. But I think it's operational. [LR199]

SENATOR LOUDEN: Okay, I'll ask them then. Because when you talk about Budweiser, they do have programs. I'm wondering if anybody has applied to Budweiser for any kind of grant money for anything like that. [LR199]

FRANK LAMERE: Well, we should...maybe perhaps that's something that we have to do. And I'm sure that's something we will do. [LR199]

SENATOR LOUDEN: Okay, thank you. [LR199]

FRANK LAMERE: Thank you. [LR199]

SENATOR KARPISEK: Thank you, Senator Louden. Any other questions? Seeing none, thank you, Mr. LaMere. [LR199]

FRANK LAMERE: I've taken way too much of your time. Thank you very much. Good luck in your work. [LR199]

SENATOR KARPISEK: Thank you. [LR199]

FRANK LAMERE: And let us not beg the question. Thank you. [LR199]

SENATOR KARPISEK: Thank you very much. I will say that we will invite all the many South Dakota officials to the hearing at Rushville. I do hope that they attend, at least some of the local ones. It is a two-state problem. We've got about two hours left. So after those first two people, I'm going to try to pick it up. So I don't want to cut you off but we're going to try to move a little faster. Thank you. Please state your name and spell it.

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If you can wait just a little bit, they're going to get some chairs out for the young gentlemen. Senator Lathrop has a great idea and I brought it up a little bit at the beginning. We know there's a problem that's why we're here. We'd like to hear some solutions. And in the next couple of hours I hope that we hear some solutions. So please. [LR199]

LELA SHANKS: (Exhibit 2) Good afternoon to both Chairman and to all of the committee members. My name is Lela Shanks. I live at 2761 Randolph Street in Lincoln, Nebraska. And thank you so much for having this hearing and for giving me an opportunity to share some ideas about the problem. I think the solutions will come when we claim the problem. So I'm really just going to speak briefly to you about claiming the problem. I'd like though first to answer Mr. LaMere's question on why are you here. Well, DNA proves that when we look at each other we are seeing 99.09 percent of ourselves so that's why I'm here. As a member of Nebraskans for Peace, I've been aware of the human devastation wrought by the liquor stores in Whiteclay for many years. And I am so thankful that you are holding this hearing finally. Nebraska is a great state but we can be greater, more humane and more just. Whiteclay is to Nebraska what Katrina is to our nation. In our great state we have thousands of citizens proclaiming their belief in the sanctity of all life, especially the sanctity of unborn life. But what about the born life among us? Would we sit by and continue to do nothing if the daily devastation was taking place among the dominant culture? Can we really afford to value private enterprise over human life? The question has been raised about personal responsibility and what about the other state involved. In an organized society we have a dual responsibility. And of course, first and foremost the first responsibility is to ourselves and for ourselves. But secondly, we have a responsibility to the group and the whole. And government is the primary entity through which we work in an organized society to fulfill this responsibility to the group. And it seems to me that the question here today is, what can this group representing the larger state, what can it do? Not what can another state do, but what can this state do? What can this state begin with? After centuries we have not yet fulfilled our responsibility as a government nor as a state

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to our Native citizens. I urge this committee through this study to first own and claim our Katrina which is Whiteclay. And I recommend and that you recommend doable, viable and creative solutions with appropriations if necessary. But first we have to claim the problem and own the problem. Thank you. [LR199]

SENATOR KARPISEK: Thank you, Ms. Shanks. Any questions? Seeing none, thank you. If we could have could have Father Merkel go next. He needs to get going. Thank you. I appreciate that. Father. [LR199]

THOMAS MERKEL: Good. Thank you for the opportunity to be here today. I'm Thomas J. Merkel and I live at 7400 Western Avenue, in Omaha, Nebraska. But my experience going back relative to Whiteclay and the Pine Ridge Indian Reservation, the Lakota people, and the Oglala Sioux Tribe, is that I've lived on the Pine Ridge Reservation for ten years during the school years of 1986-1987, 1990-1993, and 1997-2003. So over a 17-year period of time I've had the opportunity to witness the devastating effect of alcohol abuse on the Pine Ridge Indian Reservation. And as an educator, in that context I can say that there was no student in our school or schools, 600 students, who wasn't in some way affected by either their own alcohol abuse or that of a family member. It's true that alcohol does come onto the reservation from many different points. As I'm sure many of you know, the Pine Ridge Indian Reservation is a landmass that is the same size as the state of Connecticut and there are 26 points of entry into the Pine Ridge Indian Reservation. And yet if you step back and you look at the devastating effect of alcohol abuse on the Pine Ridge Indian Reservation, there is absolutely no doubt that a good portion of that alcohol ends up being purchased in Nebraska, in Whiteclay, and carried onto the reservation. So my first point is simply this: Alcohol abuse affects every person on the Pine Ridge Indian Reservation. There is no one who is immune from that. Second, if I could use Mr. Rupe's figure that he gave us, and I believe, Senator Price, you were doing the math on this, as well, that if you do the math on 150 cases sold in the four establishments in Whiteclay per year, that would be roughly--and you have to forgive me because I was just kind of jotting this out

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myself--but let's say it's 3,000 cases per week. There are four establishments; 750 per establishment per week; each day, 108 cases per day per establishment. Take a day and divide it into a 12-hour day, which I think is rather generous, and now you're selling 9 cases per establishment per hour. It means that you have one case walking out the door every 7 minutes. Every 7 minutes in each of those four establishments somebody is buying a case of beer and taking it out the door. Now I know that you realize that, of course, it doesn't happen that way; that there's no way that there's a steady stream of people that are going through Whiteclay and purchasing a case of beer every 7 minutes. It doesn't happen that way. I think, Senator Loudon, you seem to have a great grasp of this because you talked about the bootlegging issue and also Mr. Rupe talked about the efforts to try to stop dock sales. The only way that number of cases can be sold from four establishments over the course of a year is if there is some type of large sale being made to an individual who either carries that alcohol somewhere in the state of Nebraska or perhaps, and most likely, back onto the Pine Ridge Indian Reservation. So then when you get to the issue of a solution, I would say as Nebraskans we should be concerned with our own laws. We should make sure that we are enforcing our own laws. If there is a rule that if you purchase over eight cases in a single purchase that you have to have paperwork documenting that, we should be able to see that. If we know that alcohol is being sold to minors or people who are intoxicated, we ought to be able to restrict or rescind the liquor licenses of those establishments. It seems to me, as a citizen of Nebraska, that that's our role. Our role is to make sure that we Nebraskans follow our own law. And this prescinds anything that I believe would be conceived to be a moral issue: that basically we have four off-site liquor establishments in a town of 14 people that sells alcohol primarily to people of the Pine Ridge Indian Reservation, many of whom have a predisposition to alcoholism. My three points, simply this: I was there for ten years; alcohol abuse affects every person on the Pine Ridge Indian Reservation. If we do the math, the only way that much alcohol gets sold out of four establishments is if there is a large sale happening and, chances are, that those large quantities are bootlegged across to the Pine Ridge Indian Reservation. Our role ought to be, third, to enforce the law and make sure our laws in Nebraska are enforced relative to sales of

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larger quantities of beer and making sure that it's sold in a way that's legal. I'd like to thank you for the courage you have in trying to address this issue. I recognize that it crosses many jurisdictions and it's a hard issue to resolve, but I thank you for your willingness to look at it, to study it, and to work with other organizations on the Pine Ridge Indian Reservation, in the state of South Dakota, and within our country to find a resolution to this problem. Thank you. [LR199]

SENATOR KARPISEK: Thank you, Father. Very good. Senator Ashford. [LR199]

SENATOR ASHFORD: Thank you, Senator, just very briefly. Father, thank you, and thank you for what you're doing at Prep and involving the students, and thank you for your service to our state and by the years you spent at Pine Ridge. You've sold me. I mean, we need to address the issue and I think there are many things we can do. We can most definitely restrict the amount of alcohol, or beer in this case, that is sold by an establishment. And I'll tell you right now, I support that and I think we should do it, and maybe there are other things we should do. But until we get the attention of the entire state this isn't going to change. So your...that's a significant concrete idea and I think we ought to do it. I think we ought to do it soon and move on from there. Thanks. [LR199]

SENATOR KARPISEK: Thank you, Senator Ashford. Any other? Senator Dierks. [LR199]

SENATOR DIERKS: Thank you. Father, both Frank LaMere and Lela Shanks talked about our responsibility. In your years as a counselor or a pastor to these people on that reservation, how would you describe the way the responsibility is laid on from generation to generation, and what about the very youngest? How soon do they get this responsibility (inaudible)? I have a feeling we're dealing with more than just alcohol consumption. We need to talk about responsibility and what is right and what is wrong. [LR199]

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THOMAS MERKEL: Well, in my experience on the Pine Ridge Indian Reservation I have baptized young children. I have visited people who have been sick in the hospital. I have buried elders, sometimes being the victims of alcohol-related accidents or alcohol-related violence. So I've seen, you know, what I think you refer to as a span of generations that exist on the Pine Ridge Indian Reservation, though my primary experience is working with students who were anywhere from the age of 4 years old in our Montessori program to 18 years old in our high school. And generally speaking, in terms of their ability to take personal responsibility for an issue, I think that has to probably be seen in a wider context of a situation where there's 80 percent unemployment, a high rate of disease, the mere fact that there are issues of addiction to alcohol or drugs. All those circumstances serve to weaken the possibility of personal responsibility. I don't know that there's anything in particular in a person who's Native or a person who's a non-Native, a person who's white or a person who's not white, that leads them to be in a position to take more or less responsibility. I think it really comes more as a result of the kinds of circumstances that persons are raised in and how they're able to adapt and respond to that. There are...so I would hesitate to make any kinds of statements about personal responsibility related to a class of people. I know many persons of my own race who are quite responsible, demonstrate tremendous personal responsibility. I know many Native people, from my experience on the Pine Ridge Indian Reservation, who demonstrate tremendous personal responsibility. But there are, of course, in my race as well as the Lakota, many people who are irresponsible. So how has that changed throughout the years and throughout the generations? I think there's probably always been...you know, if you can imagine, a fair number of people who don't demonstrate personal responsibility. And beyond that, I would say that there are probably some social factors that make it more difficult today than perhaps in the past. [LR199]

SENATOR DIERKS: Thank you. [LR199]

SENATOR KARPSEK: Thank you, Senator Dierks. Senator Lathrop. [LR199]

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SENATOR LATHROP: Father, I'm going to ask you some questions if I can, because you've spent some time there. And I had an occasion to go up and take a tour of the reservation and Whiteclay about a year ago, and it is...it's every bit as bad as people have described, and depressing to see in real life, and so I appreciate the problem. And we have been asked to come up with a solution because we can all appreciate that there's a problem, but it's the solution that seems so elusive. And as I toured Whiteclay and as I toured the reservation, I'm struck by--and as we listen to testimony today--we heard people talk about the bootleggers. These are people that pull up to a liquor distributor or a retailer in Nebraska, load the trunk of a car or a pickup truck, and drive onto the reservation which is a dry reservation, and then sell it. Is that right? [LR199]

THOMAS MERKEL: Correct. [LR199]

SENATOR LATHROP: And what everybody on the reservation apparently knows is who's selling it and the fact that it's going on. Is that right? [LR199]

THOMAS MERKEL: Sure. [LR199]

SENATOR LATHROP: So if we shut down the four...I think this is the biggest brainteaser for legislators and for people dealing with policy, because if we shut down--if we could and if it was lawful--if we shut down the four retailers right there in Whiteclay, it doesn't make the problem go away on the reservation though, does it? [LR199]

THOMAS MERKEL: I don't believe so. [LR199]

SENATOR LATHROP: So the problem is, is that somebody, who can drive a car somewhere into Nebraska or into someplace in South Dakota, loads it up, and they're bringing the alcohol into the reservation, where it's sold out in the open and nobody does anything about it. Is that true? [LR199]

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THOMAS MERKEL: Correct. [LR199]

SENATOR LATHROP: So the solution...and I'm reminded of a problem that we had in front of the Judiciary Committee a year ago when people wanted us to make it against the law to go into South Dakota and register their car. It's a problem. It's cheaper up there; people want to register it. And we can't make it against the law to do something that's going on in South Dakota, and so it's hard for us to pass a law in Nebraska that makes it unlawful...it's impossible for us to pass a law in Nebraska to make it unlawful to do something in South Dakota. [LR199]

THOMAS MERKEL: [Correct.]

SENATOR LATHROP: And if we shut down the retailers, it doesn't solve the problem. And so what's the solution? [LR199]

THOMAS MERKEL: I guess I approach the issue in terms of what we can do and what our responsibility as Nebraskans is, and that's where I would go back to, saying we ought to enforce our own laws. We ought to make sure that there's adequate enforcement of our laws and that if there are violations of the liquor licenses, that they be revoked from those establishments. Does that solve the issues of the Pine Ridge Indian Reservation? No. I don't believe it will end the use of alcohol or the abuse of alcohol on the Pine Ridge Indian Reservation, but from the standpoint of our responsibility as persons in Nebraska, we won't be the contributing factor to that. [LR199]

SENATOR LATHROP: And that's a fair... [LR199]

THOMAS MERKEL: And that seems to be ultimately what we can control. [LR199]

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SENATOR LATHROP: Okay. [LR199]

THOMAS MERKEL: We might not be able to solve the issues of alcohol abuse on the Pine Ridge Indian Reservation, but we could eliminate that as a problem if we had effective law enforcement. [LR199]

SENATOR LATHROP: What you're saying is, morally we're doing something wrong in Whiteclay, and it's contributing to the problem, and we can... [LR199]

THOMAS MERKEL: Right. [LR199]

SENATOR LATHROP: ...and we can get ourselves out of that situation by passing a law restricting the amount of alcohol or prohibiting the bootlegging that's going on, whatever that might be. [LR199]

THOMAS MERKEL: Right. I... [LR199]

SENATOR LATHROP: But we recognize that until something changes on the reservation, that isn't the solution to the problem we're hearing today. [LR199]

THOMAS MERKEL: That's correct. [LR199]

SENATOR LATHROP: It's just our involvement in it or our participation. [LR199]

THOMAS MERKEL: I think we face a moral issue and we also face some legal issues in terms of whether...not us per se, but whether the persons who operate those four establishments in Whiteclay are doing so lawfully. And I think it's our responsibility to make sure that they are operating within the laws of the state of Nebraska. That's ours. And then the... [LR199]

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SENATOR LATHROP: And one last point, if I can... [LR199]

THOMAS MERKEL: Sure. [LR199]

SENATOR LATHROP: ...because I want to make sure everybody else has a chance to testify and I don't take up too much of your time. But in terms...your view is that it's an enforcement issue of laws that are already existing in Nebraska? [LR199]

THOMAS MERKEL: Yes. [LR199]

SENATOR LATHROP: Okay. Do you have a particular law or a rule that you think is being violated with some regularity? [LR199]

THOMAS MERKEL: The laws that...I mean, and I would not be able to give you, you know, let's say, a citation... [LR199]

SENATOR LATHROP: I don't expect you to give me a statute right... [LR199]

THOMAS MERKEL: ...but it would be sale of alcohol to minors, sale of alcohol to persons who are intoxicated, and a sale of a quantity of alcohol that requires paperwork that's not being done. [LR199]

SENATOR LATHROP: All right. Thank you, Father. [LR199]

SENATOR KARPISEK: Thank you, Senator Lathrop. Senator Ashford. [LR199]

SENATOR ASHFORD: I'm going to just...if I could just follow up. And I think what you're suggesting, and this bell just--Senator Lathrop has a tendency to do that in his questioning, but your answers helped--is a bell kind of went off in my head. But really what we're talking about is, we're complicit are we not? [LR199]

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THOMAS MERKEL: Yes. [LR199]

SENATOR ASHFORD: And that there is a moral duty of a community or of a state when they are complicit in a moral act, that we act. [LR199]

THOMAS MERKEL: Sure. [LR199]

SENATOR ASHFORD: And that in being complicit by not enforcing the law...it's the act of not enforcing the law that creates this moral dilemma, because we are, and in fact, complicit in what's happening. We can't change what happens on the reservation. You could and probably did, in many respects... [LR199]

THOMAS MERKEL: Right. [LR199]

SENATOR ASHFORD: ...change what was going on, on the reservation. But we as state legislators can't. But then lastly...lastly...and I'm not...I'll have to ask Hobie what the law is, and I get a little fuzzy on this, on the restrictions on the number of how much you can sell, beer, at one time, and how many...you know, much you can sell. But it's intriguing to me that...and I think it's important to think about putting restrictions on that. And that may or may not be a current law. I don't think there are any restrictions, I don't believe, on the number of cases somebody can buy. I think we ought to...that's an idea you've just given me. I think it's a great idea and I think we ought to pursue it, but I appreciate your testimony. [LR199]

SENATOR KARPISEK: Thank you, Senator Ashford. Anyone else? Senator Louden. [LR199]

SENATOR LOUDEN: Yes. Thank you, Senator Karpisek. Well, Father Merkel...is that right? Merkel? [LR199]

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THOMAS MERKEL: Correct, Senator. [LR199]

SENATOR LOUDEN: You've spent ten years up there so you probably pretty well know how things happen and how things are done in the Pine Ridge Reservation--you know, tribal government, otherwise, and so forth. I came down here seven years ago and we were discussing Whiteclay then, about like we were now, and there's been some advances made, because I think the Patrol now patrols that a lot closer. I think you have more arrests on intoxication. And by the amount of beer sales, they've pushed a lot of that out of Whiteclay. What I mentioned to them then, I questioned then the amount of beer that's sold through Whiteclay: How on earth are these people carrying it out, a package at a time? And I told them then, I said: Can't you find a way? That's got to be going out of there by the truckloads. It isn't going out of there under the arm. [LR199]

THOMAS MERKEL: Right. I'd agree with that analysis. [LR199]

SENATOR LOUDEN: And they said, well, we could probably count the trucks going in there. And I said...and it wouldn't be that hard to do. Now, the Patrol or the Liquor Commission said they've set up surveillance cameras, which I suppose is one way of doing it. But I still always questioned that does all of that beer actually go to Whiteclay, or is it bypassed, just used as a billing point, and does that beer then go straight to a bootlegger right onto the reservation? It's going someplace, and I don't think it's going out underneath somebody carrying it out, a six-pack at a time. [LR199]

THOMAS MERKEL: Right. [LR199]

SENATOR LOUDEN: And I brought it up, like I say, seven years ago, and I question why we can't find out more and why there isn't a better paper trail on that. The other thing I would like to ask you, since you were there ten years: How much do you think is coming in from... [LR199]

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THOMAS MERKEL: Can I just... [LR199]

SENATOR LOUDEN: ...Rapid City and Scenic and the interior? [LR199]

THOMAS MERKEL: Just to respond to your first point...I mean, I think your analysis is right. And I think to be able to get the information and the data, to be able to know the extent and the scope of the problem, is the right direction to go. And my understanding of what you're trying to do with LR199, is you're trying to be able to learn and have the information you need to make the right kinds of decisions, the right kinds of laws to try to correct a situation like this. So I think you're... [LR199]

SENATOR LOUDEN: I agree, we have to see that laws aren't being broken in Nebraska. I mean, I went to a parochial school, Franciscan nuns, and I said we prayed for peace for five years while I was there and that didn't work, and the same thing here. What we do in Nebraska for the beer side on Nebraska isn't going to help what the alcohol problem on the Pine Ridge. [LR199]

THOMAS MERKEL: Right. [LR199]

SENATOR LOUDEN: There's other people have to help also and we also have to know...have to have some idea what's coming in on the other side of the reservation to know what extent the bootlegging is done. Go ahead. I won't interrupt you anymore. [LR199]

THOMAS MERKEL: That's right. Well, I'm sure you had some great Franciscan nuns who helped you to achieve the state where you are in life today. But the...with respect to Scenic, South Dakota, I don't know that there's much that happens out of Scenic, to speak of. I mean, I know that there are a couple of bars, but generally speaking I don't think that there's much, at least...and my experience is six years' old on this because I

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haven't been on a daily basis on the Pine Ridge Indian Reservation since the summer or August of 2003. But not much happened in Scenic. Rapid City? Much more could happen in Rapid City with individual persons who carry alcohol onto the reservation. It's a point of purchase but I have a feeling it has not the same impact as Whiteclay. But again, I don't have the documentation on it, and I think a piece of what you're trying to do in LR199 is to get a handle on that. I mean, it seems like you have some data relative to the number of cases of beer. You know, people talk about the number of cans of beer that are sold in Whiteclay. That's nice, but a piece of LR199 is to work with these other groups and to learn exactly what's happening in other places. You know, in terms of an overall solution to alcoholism on the Pine Ridge Indian Reservation, or anywhere, I think we all know that it cuts across every racial category, every age category. It doesn't--alcoholism, drug abuse--doesn't discriminate. And so I don't believe that we'll ever completely eliminate the condition of alcoholism on the Pine Ridge Indian Reservation or amongst Native people, or even in Lincoln, Nebraska, or Omaha, Nebraska, or wherever it may be that we're talking about. It will always be there.
[LR199]

SENATOR LOUDEN: In other words, we'll probably have world peace before we get rid of alcoholism on the reservations? Is that a good assumption? [LR199]

THOMAS MERKEL: Chances are. But I think the thing that can...actually, I think the thing that can happen is, you know, if you look at a focused effort to educate, prevent, intervention, and treatment, and you work along that scale, that it can be reduced.
[LR199]

SENATOR LOUDEN: Well, I agree. That treatment facility that's going in now up there needs to be probably...instead of spending \$100,000 for cross-deputization, that nobody wanted to do, we probably could have used that money on a...to increase the treatment facility and a few things like that. Would you agree? [LR199]

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THOMAS MERKEL: Right. Well, I think it's got to be a multipronged approach. I mean, you know, on the one hand we can talk about the responsibility of persons in Nebraska or Sheridan County to enforce laws relative to the sale of alcohol, and another piece, of course, is enforcing open container laws in Sheridan County. But on the Pine Ridge side...you know, and this again, this is the value, I think, of being able to work on this issue across jurisdictions, but on the Pine Ridge side, being able to allow them to enforce their own tribal laws. The issue in terms of being able to allocate the resources to solve this one problem probably means they won't be able to solve all other issues that require law enforcement on the Pine Ridge Indian Reservation. But if a more...if they were able to dedicate more resources to checking vehicles that came from Whiteclay onto the Pine Ridge Indian Reservation, if people knew that you couldn't legally bring the alcohol through that one point, Whiteclay would dry up. [LR199]

SENATOR LOUDEN: Would it dry up or would they go on down there, probably north of Clinton someplace, and drive across? [LR199]

THOMAS MERKEL: Well, I think that if people knew that the enforcement was such that they were being checked at that one point, people would learn to go to another point. I don't think it necessarily solves the problem, but it ends up being able to show that the people of the Pine Ridge have a certain responsibility for enforcing their own laws, too, as a part of a wider solution. [LR199]

SENATOR LOUDEN: And it gets back to law enforcement on the Pine Ridge. [LR199]

THOMAS MERKEL: I think so. And ultimately...you know, I mean, if you really want to work through it and what helps to create the conditions where alcoholism is less likely to happen, I think you have to address the issues of poverty. To address the issues of poverty, you have to address issues of education. And it will be a generational effort to be able to make the long-term progress on those. [LR199]

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SENATOR LOUDEN: Okay. Thank you. [LR199]

SENATOR KARPISEK: Thank you, Senator Louden. Senator Dierks. [LR199]

SENATOR DIERKS: Thank you, Mr. Chairman. Father, just...I can't get away from this responsibility thing quite that quickly. I have to tell you that I was in South Dakota a year ago last summer, and I heard a man, a Native American by the name of Dr. Gerard Baker. He was the head park ranger for Mount Rushmore. And one of the things he told us when he got up to talk was: We must understand who we were, we must understand who we are, and we must understand who we want to be. So someplace in there, there ought to be some way to get some responsibility going someplace. Thank you. [LR199]

THOMAS MERKEL: Sure. That's very nice. [LR199]

SENATOR KARPISEK: Thank you, Senator Dierks. Any other questions? Father, thank you. You get it. You get the problem. You get what this study is and you had some solutions. I appreciate that. I would like to also compliment your students today for their being here and their behavior. Thank you. [LR199]

THOMAS MERKEL: Well, you're welcome. And I think that's the piece that I'm proud of when I look at many of these young men who...I don't know if you guys know or not, but we have a retreat today and they don't have school. So they're not...this is a day where they...they didn't get out of school to come here. They chose to come here on their own because of their own care and support of this issue and the people who it impacts. So it only serves to increase my pride in them for their commitment. So thank you. [LR199]

SENATOR KARPISEK: Thank you. Welcome. [LR199]

DONNA POLK-PRIMM: Thank you. My name is Dr. Donna L. Polk-Primm. I am the...
[LR199]

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SENATOR KARPISEK: Can you spell that for us, please? [LR199]

DONNA POLK-PRIMM: P-o-l-k hyphen P-r-i-m-m. I am the executive director of the Nebraska Urban Indian Health Coalition and we operate the Intertribal Treatment Center, and I'm also the treasurer of the Aberdeen Area Alcohol Program Directors Association. I really did not come here today to speak because I felt that there would be other people who have been really involved in this struggle a long time. But as you have talked about the problem of alcohol abuse and addiction, I thought it was important that I make just a few remarks regarding this problem. First of all, I left the hearing to talk with Terryl Blue-White Eyes, who is the executive director of Anpeta Luta, which is the treatment facility at Pine Ridge. And I don't attempt to speak for the people of Pine Ridge. I think only those people who live there on a daily basis and suffer through some of the problems that we're talking about should be here to talk about that. And Terry did say that had she known about the hearing, she would have traveled down here to talk about it. And I did tell her that you indicated there's going to be a hearing in Rushville, and given adequate notice she will be there. What is important for you to understand, I think, about the problem, is that it not only affects those people who live on the Pine Ridge, but people who live here in Nebraska. We attempt to provide residential treatment. We have a ten-bed facility. It costs us an average of \$4,000 per person for 45 days. We get no money from Nebraska state government. All of our money comes from the Indian Health Service. And we do have people who come from Pine Ridge because Pine Ridge itself has only a ten-bed facility. They treat people for 30 days and they alternate between adolescents and adults. So when you talk about a solution, may I suggest that perhaps, since I don't see that there's going to be any withholding of licenses at Whiteclay because of the financial interest, why don't you consider maybe using some of the tax money to provide treatment for those people who are seeking to change their lives in Nebraska, because that is Nebraska tax money or it's money that's paid to the state from the sale of alcohol in Whiteclay. Terry also wanted me to let you know that it's not only Native people who are adversely affected. She indicated that

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recently there was a hit-and-run accident when two Native young people were killed by a hit-and-run driver that they suspect to be a white person from the Nebraska side who probably was intoxicated. And since it was hit-and-run and they don't have the person, I don't think they can attest to that. But she thought it was important for you to know that certainly the problem is not just limited to Pine Ridge and she wanted me to express that to you. If you talk about using the tax money that's taken from the sale of alcohol, I would remind you that the state has used money from the tobacco settlement to deal with health issues, and so if you were looking for an example of how that could be, I would think that you could draw from that. And in conclusion I want to say that when I first moved to Omaha in the sixties, I lived in north Omaha. Now I live in west Omaha, and I can see a very different picture of the way alcohol facilities are licensed and how much tolerance there is for disturbing behaviors as it might affect surrounding communities. I read just recently where a license was denied to an establishment at 108th and Q. I'm also aware of the fact that Billy Frogg's in the Old Market lost its license because of the behavior of one of the employees. So I know that the Liquor Commission does have the authority and maybe the will to treat certain establishments differently than perhaps we're asking them to do in Whiteclay. And so with that I certainly thank you, and I find hope that because this hearing is held in Senator Chambers' hearing room, that there is hope that you all will act appropriately. Thank you. [LR199]

SENATOR KARPISEK: Thank you, Doctor. Any questions for the doctor? Senator Loudon. [LR199]

SENATOR LOUDEN: Yes. Well, thank you for your testimony, and thank you, Senator Karpisek. A few years ago when I first got into this kind of business and came down here, why, we had that hospital that closed in Rushville. And we looked into to see if we couldn't put in an alcohol treatment center in Rushville. I mean, there was Pine Ridge people; there was plenty of people there that was in need of it. And the problem we had was to getting professional people to work there. You couldn't get them. They said, no, if

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you want to do anything, haul them all to Scottsbluff where the professional people are. The one in Pine Ridge, now who are the professional people that service that? I mean, where are they coming from? Do they live there? Are the Native Americans or do they come down from Rapid City? [LR199]

DONNA POLK-PRIMM: You know, I can't tell you their ethnicity. I know that preference is given to people who are culturally competent, and some of those people are not Native. Many of them are. On my staff, I have Native people who are licensed. That's often an issue and we have attempted to work with the state of Nebraska regarding licensure issues. I know that Terry has been in the business a long time. She runs a creditable facility. But I cannot tell you the ethnic breakdown of the people who work for her, and often that's not as important as the skill that they bring to the job every day. [LR199]

SENATOR LOUDEN: Now if we get something started in Rushville, can you find us professional people to come there and service that if...? Because they were serious about that. I mean, here's this... [LR199]

DONNA POLK-PRIMM: Well, let me tell you something about that. We are an excellent facility. We have people...and we limit our clients to Native people. We have had people come as far as Alaska to our facility. And even though you might see some benefit to having a facility in Rushville, I would say to you that if you could help programs like mine, perhaps the program in Gordon--I think there's a facility there; perhaps Scottsbluff--that people will go where they can get help. And for many... [LR199]

SENATOR LOUDEN: Well, the one in Gordon is a satellite, more or less, of Scottsbluff. [LR199]

DONNA POLK-PRIMM: Right. [LR199]

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SENATOR LOUDEN: I think they get started there and then they finish up over there.
[LR199]

DONNA POLK-PRIMM: And for many of them, they want to get as far away as they can from the source of the problem to get the help that they need. So I can't promise you that I could get anything for Rushville. I don't know that. [LR199]

SENATOR LOUDEN: But that was our problem, was to get professional people interested in moving there. I mean, Rushville is at the bottom end of a small town, you might say, anymore... [LR199]

DONNA POLK-PRIMM: I've been there. [LR199]

SENATOR LOUDEN: ...and nobody...you know, who wants to move there? The amenities are very, very slim. And...but yet you have the facility there, it wouldn't take that much to get in operational for something like that--an alcohol treatment facility.
[LR199]

DONNA POLK-PRIMM: Well, Senator, let's talk. I left my address and I'll be willing to work with you and your staff on this project in any way that I can. [LR199]

SENATOR LOUDEN: Good. I'll see you and I'll give you my card then. Thank you.
[LR199]

DONNA POLK-PRIMM: Thank you. [LR199]

SENATOR KARPSEK: Thank you, Doctor. Any other questions? I love your idea. You must have heard me talk on public radio yesterday, because that was my idea. So I feel a little bit smarter today. [LR199]

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DONNA POLK-PRIMM: Thank you. [LR199]

SENATOR KARPISEK: Thank you. [LR199]

SENATOR ASHFORD: No, that was my idea. I was talking...(laughter). [LR199]

SENATOR KARPISEK: Oh, no. You can ask Fred. [LR199]

SENATOR MCGILL: Good ideas always have a million parents, don't they? [LR199]

SENATOR KARPISEK: Fred had to remind me what my good idea was, but that's what it was. (Laughter) Colonel, welcome. [LR199]

BRYAN TUMA: (Exhibit 3) Good afternoon, Senator Karpisek, Senator Ashford, and members of the Judiciary and the General Affairs Committee. Bryan Tuma, superintendent of the Nebraska State Patrol. B-r-y-a-n T-u-m-a. Senators, for the sake of time, if you want me to read my statement into the record I'll be glad to do that. If you want me just to submit it as a part of the record, that would be fine and I'll certainly try to entertain any questions you might have. [LR199]

SENATOR KARPISEK: I think that would be fine if you would just submit it and get right to it... [LR199]

BRYAN TUMA: Okay. [LR199]

SENATOR KARPISEK: ...if that's all right with you. [LR199]

BRYAN TUMA: Yes. [LR199]

SENATOR KARPISEK: Senator Price. [LR199]

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SENATOR PRICE: Senator Karpisek, thank you. Colonel Tuma, the question comes to my mind, obviously we're dealing with multiple borders with jurisdictional issues. We're actually multinational jurisdictional issues here. In your estimation, I know that if in and around July, the end of June, if you're coming into Nebraska with a vehicle, there's a good chance you can be pulled over to check for illegal fireworks. [LR199]

BRYAN TUMA: That's correct. [LR199]

SENATOR PRICE: Do we have that ability for large sales of alcohol out of the state, or is that out of the purview of what we can do within the state? [LR199]

BRYAN TUMA: The problem with that particular issue is that fireworks are illegal if you bring them into the state of Nebraska. Here we have a commodity that's going out of the state. It's perfectly legal to buy it. Once it gets to the border of South Dakota, and particularly the reservation boundary, then it becomes illegal and we have no authority whatsoever to enforce that particular issue. We do work with the BIA and the tribal police up there. There have been some checkpoints established in the past. I would say that the results have been somewhat mixed, and I think you would have to talk to the South Dakota authorities about the problems they encountered with those checkpoints. But therein lies the problem. We have no jurisdiction with regards to the issue. [LR199]

SENATOR PRICE: And there's not really a reciprocal agreement we can enter into or some joint task force. And we are saying if we could tie that to an electronic system of sales and we could see the sales, we could see how much alcohol is moving out of the border. I mean, a lot of what we're talking about here when we talk about our moral obligations and our civic obligations and what we can do within the legal framework, we need more data points. The amount of beer that leaves a store, by gallons, leaves us with no data points. All we know is we have a problem. And we need to be able to gather more data to try to effectively create a program. And I just didn't know if we had

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agreements with South Dakota, the Bureau of Indian Affairs, so we could start to capture this type of data for multivaried locations. [LR199]

BRYAN TUMA: Well, regulation and licensing, I would separate that from what we do in terms of just general enforcement issues in the Whiteclay area. We do have what I would call a loose gentleman's agreement between the BIA, the tribal police, the Sheridan County Sheriff's Office in Nebraska, and the Patrol. We try to react to emergencies or calls for services as they come up. If there's a situation that requires assistance for additional officers right away, those agencies may not have what you would consider legal authority to act to make arrests, but they can sure respond and provide some kind of a backup capability for the officer if they're in trouble. That happens routinely. We've agreed to do that. We did try to get some cross-deputization agreements in place a few years ago. Quite frankly, that effort just fell short. We signed the formal written agreements, and in order to make that work we have to exchange the certification and credentials of our law enforcement officers. What happened was we couldn't get any of the tribal police certified to meet Nebraska requirements. So it fell short. It kind of withered on the vine. It went away. But that doesn't mean that we don't work and cooperate with those people. We do. We also have intelligence gathering capabilities. If we hear information, we vet that through various law enforcement sources. South Dakota, their Bureau of Investigation, our investigative services personnel. Our officers may hear information, get information. They collect that. They submit it in a format that it's captured within our intelligence gathering system, and we try to analyze that and get some feel for what it's telling us. The regulation and licensure issues, I've listened to this discussion this afternoon and the quantity of sale. That issue I think merits further consideration. And I hesitate to make recommendations because I don't want to get outside the scope of my responsibility, but there are some issues that I think we currently deal with, and that's we register kegs of beer in Nebraska. And that's been fairly effective. We have a program that we try to engage with called TRACE, which is really aimed at underage drinking, where we try to identify who procures the alcohol for underage drinkers. And that really becomes evident when you have arrests

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or you have accidents and young people are injured or killed. So we have that kind of a program. So I would say somewhere in there lies a couple of solutions that merit some further consideration. [LR199]

SENATOR PRICE: Thank you. [LR199]

SENATOR KARPSEK: Thank you, Senator Price. Senator Coash. [LR199]

SENATOR COASH: Thank you, Chairman. Thank you, Colonel. I was reading through your written testimony, and one section I wanted to get a little bit information. You write that there have been attempts to utilize undercover officers and informants on various criminal investigations, and that these attempts fall short and have historically been unproductive. Can you give me a sense of why the undercover attempts haven't worked as well as we wanted? [LR199]

BRYAN TUMA: Well, a couple of things. Yeah, we've tried to insert officers in an undercover capacity. And I think it's fairly obvious: We're strangers. We don't fit in. The other issue is the local establishments, they know who we are, and so any attempts to insert undercover officers has been relatively unsuccessful. Whiteclay is a very small community. If we go in and try to do any kind of surveillance activity, we're easily detected. That's not a problem. We've tried to use electronic surveillance techniques. Mixed results. Really not effective. And we have tried to use confidential informants in the past, but we've typically run into problems with either the information that those people bring us: we can't substantiate, we can't verify. People get nervous about being an informant. They don't want to continue because of the fear of retaliation and those sorts of issues. So we have really had mixed efforts, I would say, with getting results. We do get information from informants, and when we get that information we do try to follow up on it as best as we can if it's liquor violations or whether it's on some type of criminal activity or if it has some relevance to a...you know, we've had some homicides and serious assaults up in that area. And we've worked that information, not only for

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Nebraska violations, but if we feel it might help the South Dakota authorities we will give it to them, as well. [LR199]

SENATOR COASH: Thank you. [LR199]

SENATOR KARPISEK: Thank you, Senator Coash. Any other questions? I would ask: Do you think the cross-deputization would be worth another try? [LR199]

BRYAN TUMA: Well, I think it's worth some effort. But again, part of that process depends upon their officers being able to be recognized and certified under Nebraska law, and we have to do the same thing with respect to their certification requirements. We do have cross-deputizations in place in Nebraska with the Santee Tribe and with the Winnebago Tribe, and although we did have a cross-deputization agreement with the Omaha Tribe, but that was suspended last year. But we did agree, after a number of meetings and a lot of effort, we have a memorandum of understanding which simply means if they have an incident and they want our help, if we arrive on the scene, that they will recognize our authority for that particular event. Otherwise, we have no authority on the reservation except for the highway that runs through it. If they have a serious crime like a murder or a felony on the Omaha reservation, the FBI has to come in and investigate those situations. So we don't get involved. So if they ask us, we will come and they will recognize our authority. That might be a better thing to try and approach with the Pine Ridge authorities as opposed to a full-blown cross-deputization agreement. [LR199]

SENATOR KARPISEK: And then on the reservation they have their own police. Do they have county...like a sheriff? And then can their state patrol come in there or do they recognize that? [LR199]

BRYAN TUMA: I'm not real clear on that. I know they have a tribal police department and then they have the Bureau of Indian Affairs officers. And beyond that I'm not sure

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what other law enforcement agencies are on the reservation, or if they...you know, if the South Dakota authorities come in there at all. The FBI does have some jurisdiction with regards to certain crimes on the reservation, and typically if there's a serious crime up there, it's the Bureau that's doing the investigation. [LR199]

SENATOR KARPISEK: Thank you. Any further questions? Senator Ashford. [LR199]

SENATOR ASHFORD: I'm sorry. Go ahead. [LR199]

SENATOR KARPISEK: Senator Louden. [LR199]

SENATOR LOUDEN: Go ahead. [LR199]

SENATOR ASHFORD: Well, just on the roadblock situation or the...would that...could you be invited to participate in that activity? [LR199]

BRYAN TUMA: I think we've been asked to participate but we don't have any authority to do that. The other issue you get with the roadblock is... [LR199]

SENATOR ASHFORD: The authority... [LR199]

BRYAN TUMA: We have no authority to operate in South Dakota on the border there. And the other issue is... [LR199]

SENATOR ASHFORD: That would have to be then an agreement with South Dakota. [LR199]

BRYAN TUMA: Yes. And we don't have the authority to enforce... [LR199]

SENATOR ASHFORD: South Dakota law. [LR199]

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BRYAN TUMA: Exactly. [LR199]

SENATOR ASHFORD: Do you have authority to enforce Nebraska law in South Dakota? [LR199]

BRYAN TUMA: I don't think so, no. [LR199]

SENATOR ASHFORD: Well, I mean, if there's a violation of law that occurs in Nebraska, don't you have authority to apprehend? [LR199]

BRYAN TUMA: Well, if it goes across the border then we get into extradition issues and arrests, and if we have reciprocity with those states. Now with the Pine Ridge Indian Reservation, they're a sovereign nation so we don't have that ability. [LR199]

SENATOR ASHFORD: By agreement? By interlocal agreement can you not...? Can you not forge an agreement with those jurisdictions, possibly? [LR199]

BRYAN TUMA: Yes. Possibly. [LR199]

SENATOR ASHFORD: And that would be... [LR199]

BRYAN TUMA: Yes. [LR199]

SENATOR ASHFORD: And if we were to combine something like that with restrictions on an amount of sale or quantity, and we would then have a mechanism to check...well, the other mechanism is to check the records of the establishment, obviously. But another record would be to also have spot-checks on the border from time to time. [LR199]

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BRYAN TUMA: Right. And typically if you're doing that activity, the road check, you know you're blocking the highway, there's some issues with regards to blocking roadways and interfering. But... [LR199]

SENATOR ASHFORD: Well, I understand that. But I mean some way to...you know what I'm... [LR199]

BRYAN TUMA: Yeah. [LR199]

SENATOR KARPISEK: But the issue, you're not breaking the law if you're stopping them in Nebraska with a case of beer. [LR199]

BRYAN TUMA: No. [LR199]

SENATOR ASHFORD: Not unless we change it. [LR199]

SENATOR KARPISEK: Well, yeah. Right. Yes. Sorry. Senator Louden. [LR199]

SENATOR LOUDEN: Just, I guess, a question similar to Senator Ashford's. The Pine Ridge Reservation is similar to another country as far as... [LR199]

BRYAN TUMA: Yes. [LR199]

SENATOR LOUDEN: And if someone, if they're not paying their payments on their car or something like that, and they get on the reservation with it, you nearly either do extradition or not do anything at all. Because, I mean, they have...you have to wait until they come off of that reservation before you can arrest them for anything, unless the tribal police decide to hand them over. Is that correct? If you had a murderer in Sheridan County, and he escaped into the Pine Ridge and they decided to send him back, he would come back. [LR199]

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BRYAN TUMA: I've had this discussion with the U.S. Attorney in Omaha, and what I have been told by him is that there are some federal court cases which recognize this very issue. And it's: Can the reservation become a safe haven for criminals because of the issue of they're a sovereign nation? And based on his interpretation and his reading of those court cases, the answer is no. Now from a practical standpoint, unless it's a very serious crime, I would suggest trying to get somebody back to Nebraska for a relatively minor offense is going to be pretty difficult. But I am told that there is a process by which the federal government could probably invoke some sanctions and get those people extradited irrespective of the fact that it's a sovereign nation. [LR199]

SENATOR LOUDEN: One more question. Let's see how good your memory is. If you remember a few years back, I think it was in, oh, was it Merriman? No, it was Cody. Maybe one of those little towns up there, where the guy pulls in there and gases up his big pickup, you know, and then he run off from the gas station. And the guy that run the gas station took off after him, and they chased him. They chased him clear up in South Dakota. And then, of course, by then it was...the Indian police is who took over then, wasn't it, because they run this guy off in a ditch. [LR199]

BRYAN TUMA: I don't recall that, but. [LR199]

SENATOR LOUDEN: Okay. Anyway, just for Senator Karpisek, when he wondered how it works. The way they did it up there, the Indian police shot him and that's how it was settled. And I don't know if they had a, what do you call it, or... [LR199]

SENATOR ASHFORD: Well, that's one approach. [LR199]

SENATOR LOUDEN: ...a court hearing about it, at all, or anything. But anyway, this was the guy I think who was running the gas station in Cody there that didn't want to lose his \$40 or the gas or whatever it was. Thank you, Colonel. [LR199]

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SENATOR KARPISEK: Thank you, Senator Louden. One last question, Colonel. Would more money, obviously, make a difference for your patrolling? [LR199]

BRYAN TUMA: Let's see, 2005-2006, that time frame, the Legislature was visiting this issue at that time and there was some discussion as to what would help. The Legislature gave us \$20,000 in each of those two years to help us do some additional enforcement. We utilized a majority of that money for two issues: equipment and overtime for officers to go up and work in the Whiteclay area. We are putting together some documentation for both committees on Whiteclay to give you some historical facts and figures about what we've been doing. And my understanding is Pro (phonetic) is working with several of the state agencies that have some issues up there that we're putting that together for you. I think some of this information will come out in that document, but, you know, we did increase our overtime to allow officers in that area to work. We brought additional officers from not only the troop area, but other areas, to go up and work in the Whiteclay area. We made additional arrests. We made additional arrests. Did it help? I'm not sure. We bought some additional equipment, the surveillance equipment, to try and monitor things that were going on in Whiteclay. Quite frankly, that equipment is not there anymore because it really proved to be ineffective. We can watch the camera all day long. Everybody in town knows the camera is on the pole. We had technical problems because of the capability of the data line that we had it hooked up to, and it would have cost a near fortune to try and upgrade that data line. Then you have issues of vandalism and those other things. So, you know, that approach didn't really work. If you're offering money (laugh), you know, we haven't had a camp for two years, and I'm not complaining. I understand the budget issues. But we've been operating with fewer officers, and so I would say to give us money just for Whiteclay when we have so many other pressing needs, I'm not sure that's the best expenditure of dollars. But that's not saying we don't try to do what we can in Whiteclay, and we do respond to calls for service. When we hear of issues or a reported crime, we do respond to those. We do what we have to do despite the fact that we're short. But

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that's the way it is. We deal with it. [LR199]

SENATOR KARPISEK: Very good. Thank you. Thank you for your testimony, sir.
[LR199]

BRYAN TUMA: Thank you, sir. Thank you. [LR199]

SENATOR KARPISEK: Next testifier. I'm going to turn it over to Senator Ashford for a few minutes, please. [LR199]

CAMERON POPP: Thank you, senators. My name is Cameron Popp, P-o-p-p. I'm representing this sea of blue to my right. I'm here simply just to brief you on our efforts and where they've taken us in the past nine months, and where we kind of fit in, in this whole effort. I'd like to start by saying that the reason we're here has nothing to do with the fact that we go to a Jesuit school, and by that I mean they're not prodding us to come here. They didn't say, oh, join this club; do this. People often asked me, last year when I was working with this on a daily basis after school, they would treat it as if it was a project and as if it was some sort of school-related thing that I was required to do. And that couldn't be further from the truth. So I'd like to say that these young men that stand behind me, this is the morality that lies in their hearts. If you would have told me about Whiteclay nine months ago or a year ago this time, I wouldn't have known what it was. We found about it in our sociology class in December, and we were so appalled that we decided to form a group, and actually formed our own recognized group called Solidarity Club and met every day after school until the end of the school year up until May, from January to May, the whole semester. And we started out a little over our heads. We had nowhere to...we had no basis of where to begin, and we knew that there was...this was this gapping hole in Nebraska's fabric of the stereotype that we are a land of good, caring people, and we felt responsible for it as members of Nebraska and members of the human race. So I've just been listening to all these testimonies today and it just...it makes me laugh because I...we as a group have no investment in this. There's no

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monetary investment. There's no legal investment. This is simply a moral investment that we care about. So with that, it just kind of makes me laugh just to think about.... We started brainstorming and we split up doing a bunch of different things. We knew we wanted to let people know. And it really...this is a good day for me, to be up here right now. This is the fruit of a lot of labor to at least be talking to you about it and that you now know that Whiteclay exists. If this implodes on itself and tomorrow LR199 doesn't exist anymore, I will still sleep at night because at least I know that the senators and public leaders know about it. So there's that in mind. People would often ask us, well, what do you want to accomplish? What do you want to do? And that was one of it; that was one of the things we wanted to do was just let people know. Obviously, we wanted to do something about it, and I guess this is what it comes down to. Just a few things of what we've done. We created a video posted on YouTube. We had to cut it into two parts and I want to say the combined total views is somewhere around 3,000. It's only been up for a number of months--maybe six months. We also started a Facebook group which we relay all of our information through. We have an online petition that I'll mention later. And there's now...my most recent number is 1,800 people in that group, in nine months. That's quite an accomplishment. Granted, it's just a group, and granted, it's just a social networking site, but a number is a number of people that at least care. And the list of people that comment...you know, you can type in comments and things on the bottom of it. And there's a lot of Natives on Facebook and there's a lot of Natives that say, hey, you know, we totally agree with what you're doing. And there's a lot of people that say, hey, you know what, this is not...we disagree with this. And we expect that. If we don't have criticism, then we're not going the right direction. So I just...it's nice to be here and finally be not preaching to the convinced. Because many of the people behind me are convinced of all our views that we'd like to do something about this, and that it's, once again, a gapping hole in a moral fabric. So this is fun for me because I finally get to exercise my verboseness, so to speak. So there's the video; there's the Facebook group. Our other plans: We are planning to visit the parochial high schools in Omaha and tell them about this and get them behind us; have them sign petitions and say, hey, if you're behind us, supporting an effort to help the people on Pine Ridge and help the

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situation in Whiteclay, then we've got power in numbers. There's also a lot of...through this site, we get a lot of brainstorming. It's almost like...we get people from many different areas. If you would have drawn a circle around sort of our diameter of impact, it would have just encompassed...probably Creighton Prep, our school. And right now, it's probably out to...probably out to South Dakota. Rapid City, I'd say is the edge of this circle, in nine months. And we've gotten...there's people that have signed this petition from...I want to...where was that? Canada. People from the UK. We've...one of the leaders for the Girl Scouts of America started her own group and started relaying people in New York. Just recently, just logistically speaking, I had somebody, Julian (phonetic)...somewhere...I think he's from Nebraska, sent me a message. He's writing a letter to the Governor about using eminent domain to acquire this land and turn it into a federal park. That's a wonderful idea that could be looked into. And I said, well, you know, I don't know whether you'd want to exercise the statewide eminent domain or the federal eminent domain. I don't know where...he mentioned that the (inaudible) Natives could be employed on this acquired public land. So I guess that's really all that I'd like to say other than one more point. We visited Pine Ridge towards the end of last year because we'd heard all these things and we have, quite frankly, been working on it for an entire semester. And when we visited, we visited Whiteclay and we visited kind of the equivalent of our group, our core group of eight guys, but in Red Cloud Indian School on the reservation. And we went with them to Whiteclay and we kind of tossed around ideas. And there were some...the air was heavy when we first met because their experiences with Whiteclay and their families, and just personally, how they experience it. It's tragic. It's sad to listen to them and the things they had to say, and the impact that alcohol has on their lives. That's obvious to all of us. One thing that I noticed when we were talking to just Jesuits and people that were showing us around. They said that family ties are so strong on the reservation that oftentimes the police officers are somebody's relatives. And they'll have trouble arresting one of their cousins or one of the long-distant brothers, because as we all know, that family is very important in their culture. And that was kind of an underlying thing, that they're not so apt to go arrest something that they know is going wrong, because the world is...their little, you know,

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sphere of living on the reservation is pretty small. I'm sure they know what's going on and what's going wrong. So that's it. [LR199]

SENATOR ASHFORD: That was good, Cameron. Very good. Any...no one is laughing so you've made your point and you've made it very well and eloquently, and I congratulate you for your work. Scott? [LR199]

SENATOR PRICE: Senator Ashford, thank you. I just wanted to say: Well-done and it won't be forgotten. Thank you. [LR199]

CAMERON POPP: Yes. Thank you. [LR199]

SENATOR ASHFORD: Thanks, Scott. Cameron. [LR199]

CAMERON POPP: Oh, well. See, this is kind of an example. I printed out this poster, kind of a visual. We scanned the cover to this DVD that Mark Vasina made. All right. Joe, you're getting really close. It's just so you can all see it. [LR199]

SENATOR ASHFORD: Who made it? [LR199]

CAMERON POPP: We did. [LR199]

SENATOR ASHFORD: All of you made it? Who designed it? [LR199]

CAMERON POPP: Well, it's...we kind of...we're kind of infringing on copyright things here. (Laughter) But... [LR199]

SENATOR LATHROP: And making a record of it. (Laughter) [LR199]

CAMERON POPP: Yeah. But Mark Vasina, who made The Battle for Whiteclay, we

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canned the front of the DVD and "Photoshopped" it. [LR199]

SENATOR ASHFORD: Okay. [LR199]

CAMERON POPP: And our plan is to print out more of those, and that's what these guys are doing. This is the second generation. I'm a freshman... [LR199]

SENATOR ASHFORD: Will you get us a copy of that? [LR199]

CAMERON POPP: Yeah. Probably. And I don't know how you... [LR199]

SENATOR ASHFORD: Maybe. But if we're...(laugh.) [LR199]

CAMERON POPP: I don't know how you'd... [LR199]

SENATOR ASHFORD: (Laugh) [LR199]

CAMERON POPP: You could take a picture of it. I don't know if... [LR199]

SENATOR ASHFORD: All right. Okay. [LR199]

CAMERON POPP: But this...imagine every parochial school in Omaha with, you know, Duchesne, Marian, Mercy, Mt. Michael. Imagine all of those signed with kids who say... [LR199]

SENATOR ASHFORD: And you could move into public schools, and I'll bet you they would sign it too. [LR199]

CAMERON POPP: Eventually. [LR199]

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SENATOR ASHFORD: Good work, Cameron. Good work to all of you. Thank you for coming. We have...we're going to do about five minutes a speaker now, and then we'll.... Go ahead. [LR199]

LARRY BRADLEY: All right. Thank you, Senator. My name is Larry Bradley, 6068 Country Club Oaks Place. And some of you might know me. I noticed...well, I'm on the Environmental Quality Council as the minority populations representative, although I'll represent all folks in the state of Nebraska, all life forms in the state of Nebraska. And I noticed that part of LR199 was looking at secondary effects of Whiteclay and what it would have. I was raised by Oglala Lakota, and my stepfather is from the Chadron/Pine Ridge area. He grew up in Chadron/Pine Ridge in the late forties, fifties, and sixties. And just real quick, the secondary effects. One of the things my stepfather remembered when he was younger, that when there was a gunnery range on the Pine Ridge and that these particular Air Force jets would bomb the south unit of Pine Ridge. And once the outcrops would fall, there would be fossils to be collected and they would collect those fossils. And he remembers selling them to professors at Chadron State College. And they would take that money and then go to Whiteclay to purchase alcohol, and if they were old enough or not, it didn't matter, but that was what they would do. And so this is an example of a secondary effect, is where a natural resource on the Native American reservation would be infiltrated into the state of Nebraska, into a public system, public state agency of some sort, and then money taken and then used to buy alcohol illegally. This is all...it will be written up even further and more in-depth in my dissertation that will be done at the end of May, and I promise you that. Another secondary effect happened to be with my Native American grandmother, Alima (phonetic) Bear Robe Kills Crow, who at one time was at Whiteclay. Went to purchase groceries at the so-called grocery stores that were there, while there's people milling around to buy alcohol--and it's a very dangerous element. And a fight broke out, and a person came up with a beer bottle across my grandmother's face. She lost an eye. And ever since I was a little kid I remember she only had one eye, and that was the story of how she lost it: at Whiteclay, while purchasing groceries, someone "bottled" her. And they stole the groceries.

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Another that's a secondary effect is my Native American aunt, Helen Iron Rope or Helen Kills Crow Iron Rope, a real warrior woman. By the way, she...well, she's passed away now, but her daughter, Susan Iron Rope, has done three tours of duty in Iraq. So it runs through the family. But she was a...Helen was...and my Aunt Helen was a warrior woman, and she would get in physical scraps with men or women on the reservation, it didn't matter. And fell in with drinking it up, drinking on Whiteclay. And at one point there was about two men and three women jumped my Aunt Helen, poured gasoline on her and lit her on fire, and they burnt up her right side. So where she used to be able to knock people out with her right hand, she learned how to knock them out with her left. And, you know, that's how strong she was as a woman. But I don't know if...you know, she ended up dying of sclerosis of the liver at Whiteclay. So that's secondary effects that personally has, I guess in a sense, affected me, but it affected my tiyospaye--my family. And it's very real. And so I guess when you're looking for solutions, I mean there's some hard-core solutions--as I'm getting a Ph.D. in geography--hard-core solutions, and some soft-core solutions. And I guess we only have a few minutes to speak at every speaker, but I'd be very welcome to talk to any of you senators for further...you know, do you have the right people in the right spot for the right job to accomplish these things and the Whiteclay problem. Senator Loudon mentioned Chadron State or Chadron or Rushville, and can you get people to move to Rushville--health professionals? Well, how about Chadron? If Chadron State perhaps collected fossils and paid for it so people could go buy beer there, then maybe they could also teach some of the professionals or aspiring medical people in that field, and also have Chadron be a bigger place and a more ideological place to have some of these treatment centers. Hard-core solutions. I'd say call in the FBI. If you can't settle this problem amongst yourselves, or at least the state of Nebraska, then you need help. And the Federal Bureau of Investigation needs to come in and help settle what the State Patrol cannot do as far as how they're getting this beer out the door and into the Pine Ridge Reservation. Also let the senators of South Dakota know, the state senators, and the town's outlying Pine Ridge, that it's time...just let them know that you're going to have to get ready to know that we're getting tough in Nebraska on Whiteclay, and that

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you're going to have to be prepared what's coming towards your side because we're no longer taking all your problem. [LR199]

SENATOR ASHFORD: Those are excellent comments. Any questions? Thanks. I would like to know your solutions when you get ready to get them to us. [LR199]

LARRY BRADLEY: Okay. Thank you. [LR199]

SENATOR ASHFORD: Thank you. Mr. Martin. I hope...did I...was that the right name? [LR199]

DUANE MARTIN: Yes. [LR199]

SENATOR ASHFORD: Because I know we've met. I just can't remember... [LR199]

DUANE MARTIN: Yes. [LR199]

SENATOR ASHFORD: Come on up because I know you said you had to leave, so let's...and I apologize for instituting the lights, but I want to get as many people in here before 5 p.m. as I can. So it's not a punishment to those who are remaining, but...okay? [LR199]

DUANE MARTIN: Good afternoon and good late in the evening. My name is Duane Martin Senior. I represent the Strong Heart Civil Rights Movement from the Pine Ridge Indian Reservation. My office is inside Hill City, which is treaty territory to the Lakota people. Today we heard a lot of public testimony understandings pertaining to the issues about Whiteclay. Very devastating. But one of the things that I want to get off on and it's up to you how you want to take it, okay, and I say it's up to you because I'm not here to discriminate anybody. I'm not here to sound racial towards you, but that's just the way I used the pronunciation of the English consonants to get the wording across. A

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few years back I got arrested again in Whiteclay, along with Frank LeMere and numerous other activists. The problem with that is it's never ever going to be resolved until you actually come from there. And the impact it really dishes out...and we could talk all day about it, but here's the problem on both sides. You've got the Lakota tribal over here, meeting the Oglala Sioux, in Caucasian terms. Then you've got the state of Nebraska. You've got the panel such as you guys representing the good state of Nebraska. Now these two entities will never ever come to a mutual understanding to solve the problem, because it's all vested on colonial enforcement. We all know that. That's the problem. Because it creates racial disparities, the differences. Law enforcement will never ever administrate its power in Whiteclay. To this Godforsaken day, as I'm talking to you guys, gangs are coming across, settling their differences. We had two incidents of shootings, okay? Why? Because they found a safe have where the tribal police can't get come across and arrest them, and the Sheridan County police department is actually 19 miles up the road. So it's going to be minimal time for him to get there. By then, boom, you have injured people. But I will say this, this afternoon. If this continues to go on, some innocent bystander or even one of the liquor establishment owners is going to catch a stray bullet, okay? And when this life becomes unperishable, then you're going to take the effect by going in and shutting it all down. Well, we shouldn't look at something like that, but it's happening. Pine Ridge is a dry reservation. We enforced that. Subsequently, our tribal police could not stand with us and help us monitor the cars that were bringing this illegal alcohol into the res, which is dry. But during the White Plume administration, we declared Whiteclay a public nuisance. I have current footage on my camera of what transpired over there. Both sides need to really look at why this problem occurs. Well, it's simple. It's a cash flow. It's business oriented. And the only business you're receiving, man, to get these beverages, is from my people, through certain benefits, whether it's TANF, Aid to Dependent Children, general assistance or tribal pay day, or even the Bureau. And this is all federal money. So these vampires over here, they love it. The dollar is valued in Whiteclay, circles around seven times before it leaves. Now you look at the interest, man. It devours. Man, that's wealthy. But yet the other side, Pine Ridge, is still

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devastated by the poverty. I don't know if a lot of you understand the ethnical side to it, and I'm going to say this, please. I have to say it and then break it down in my term. In our language they call it wokakeesia (phonetic). Wokakeesia (phonetic) is a symptom that comes from your teaching; not you in particular, but your ancestors--the infliction. You can use it through Christianity, the place of Catholics, you name it. That's the problem that was forced upon my people. That's why it is called colonial enforcement. Wokakeesia (phonetic) is to destroy and eliminate the people of its resources: oil, (inaudible), uranium, water, land. There it is. And neither of us will ever come to that consensus. Alcohol is the problem. As long as you continue to use it against them, you've got them. [LR199]

SENATOR ASHFORD: Thanks, Mr. Martin. [LR199]

DUANE MARTIN: The resolve. [LR199]

SENATOR ASHFORD: Thank you. And again...just conclude just because I want to give everybody a chance here. [LR199]

DUANE MARTIN: Okay. You all are coming back up to Rushville, right? Okay. I hope to see all of you guys up there because I'm going to try to bring my people in to show you guys what we're talking about, because it is your problem. [LR199]

SENATOR ASHFORD: I think we understand. Okay, thanks. Next testifier. [LR199]

ANTHONY HENDRICKSON: Hi. My name is Anthony Hendrickson. I'm the dean of the College of Business at Creighton University. I didn't organize with these folks to come, but I want to talk about free enterprise, because as Senator Lathrop pointed out, what we're really talking about here is not about affecting the reservation, but we're talking about free enterprise and business in the state of Nebraska. That's what we can really talk about, as the Legislature. We teach our students at Creighton that free enterprise is

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very important and it's great to live in the land of capitalism where you could practice business with very little restrictions. But we also teach them that business comes with personal responsibility and doing what's right. This is beyond the pale. This is predatory. There's no excuse. No one here believes anything but that it's predatory and so I won't reiterate all the things that we've said. But when I started thinking about this I tried to look at free enterprise, because I've been a champion of free enterprise. I happen to have a TV show every month with Ernie Goss. We are staunch champions of free enterprise, free markets. But along with that goes the responsibility that you must behave in a responsible manner. This is not that case. And so I tried to reconcile, why do I feel like they ought to do something here and restrict free enterprise? Well, I started looking at some other similar situations. Think about these. If we prohibit candy and pop sales in elementary schools, why? Well, because it's not good for kids and they're not able to make those decisions. That's prudent on our part. If I wanted to sell razor blades in the local mental health hospital, you'd probably pass a law and say I can't do that. It wouldn't be very responsible. If I built a pool in my backyard, a swimming pool, and my neighbor's toddler came over and fell in the pool and I didn't put a fence around it, I'm sure that I'd have some legal problems, both from a civil standpoint and probably from a criminal standpoint. We restrict those behaviors because they're legitimate and it makes the most sense. Now if we think about candy and pop restrictions and prohibitions in schools, does it make all of our kids healthy? Does it suddenly change them to make them healthy? No. We couple that with lunch programs and other things to try to change their behaviors, but in and of itself it doesn't make them healthy. Limiting...eliminating liquor sales in Whiteclay is not going to make people on the reservation suddenly not be alcoholics, but it's going to be the first step and it's the first responsible thing that we can do. My grandfather taught me that personal responsibility is having the character to do what's right regardless of what other people do. Our problem, as citizens of Nebraska, is we have some businesses that are in a location that are preying upon people in another state. They're still people. And really what we're faced with is doing what's right, and inconveniencing the 14 citizens of Whiteclay, that they might have to drive a little further for their liquor. And that's what it really comes down to. [LR199]

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SENATOR ASHFORD: Thanks, Dr. Hendrickson. That's very good, very succinct. Yes, Senator Louden. [LR199]

SENATOR LOUDEN: As you talk about that then, what should Iowa do with their casinos on the other side of the river then? Because we have some of these people from Nebraska that are addicted to gambling. [LR199]

ANTHONY HENDRICKSON: I, you know, speaking...I don't...I'm not in favor of gambling and several of my colleagues are against it, but that's up to the people of Iowa. I can't tell them exactly what they should do. [LR199]

SENATOR LOUDEN: Okay. But you're talking about responsibility. We have, north of Valentine, the casinos north of Valentine. We got Prairie Winds up there north of Chadron on the Pine Ridge Reservation. That casino runs bus service, what, three or four times a week from Scottsbluff up there to bring those people up there so they'll spend their money. And so then we have Whiteclay and, sure, there's four establishments there now. If we shut that down, the same way with the gambling people, they go a little farther. They go up to Deadwood, they used to before the one was in at Prairie Winds. Then you shut Whiteclay down, there's a market there. How...is all that, is that going to make the bootleggers drive farther or how is that going to... [LR199]

ANTHONY HENDRICKSON: It is, there's no doubt. We're not going to fix the problem, I don't think, any more than...let's go back to my analogy about prohibiting soda pop in elementary schools. Is that going to solve the problem of young people's nutrition? [LR199]

SENATOR LOUDEN: Yeah. [LR199]

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ANTHONY HENDRICKSON: No. But is it the first logical step that we should do that makes sense? Isn't it somewhat hypocritical to tell our students that they should eat healthy and provide them good meals and then we have pop and candy machines in there? [LR199]

SENATOR LOUDEN: In the school, yeah. [LR199]

ANTHONY HENDRICKSON: That makes no sense. And so all we're... [LR199]

SENATOR LOUDEN: But then you have your little store down the street from every school that they probably sell the pop and candy the same way. [LR199]

ANTHONY HENDRICKSON: You know, I don't disagree with you. [LR199]

SENATOR LOUDEN: So, I mean, where do you draw the line? [LR199]

ANTHONY HENDRICKSON: What...I think we draw the line at what we can reasonably do and it's reasonable...it's unreasonable for these businesses to operate. No one thinks...does anybody really think that it's logical that we're selling 3,000 cases of beer in a town of 14? I mean, clearly, there's something wrong here and we ought to just have the courage to say, that's wrong. There's nothing wrong with liquor sales but in this case it doesn't make sense. There's nothing wrong with pop, but it doesn't make sense to sell it in local elementary school. [LR199]

SENATOR LOUDEN: Well, I agree that 3,000, 3,000 cases a week of beer going out of there, and I've pointed that out several years ago there, that I can't believe that that much is being in there and actually sold there. And up to now, no one has really decided whether all that beer goes out the door or whatever happens. Thank you for your testimony. [LR199]

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ANTHONY HENDRICKSON: Thank you. [LR199]

SENATOR ASHFORD: Yeah, Senator Lathrop, go ahead. (Laugh) [LR199]

SENATOR LATHROP: I do just want to thank you. I thought on the way down here about all the people that might show up to testify. I never imagined that the dean of the business college from Creighton would be here. [LR199]

ANTHONY HENDRICKSON: I actually came because I think a lot of times I have championed free enterprise and there's a moral duty that goes along with champion more free enterprise, is to have the courage to stand up with the same voracity and say wait a minute, sometimes it's beyond the pale. [LR199]

SENATOR LATHROP: And I would say, hearing from you and from Creighton, and not to sound too weird about it, but it makes me proud to have graduated from the business college and from the law school. Because... [LR199]

SENATOR ASHFORD: Did you go to business college? [LR199]

SENATOR LATHROP: ...I do think...I do think...yeah, I got a business degree from this place in 1979. (Laughter) I just think it's...I think it's good that we hear from...we regularly hear from the Catholic Conference but it's good to hear from people who have both a business perspective but also bring a little morality to the question. So thank you for coming down. [LR199]

SENATOR ASHFORD: Senator Karpisek. [LR199]

SENATOR KARPISEK: Thank you also for being here and I'm right with you on staying out of business. However, I will agree there's a moral line. Do we do that? I used to be in the meat market. If someone that comes in weighs 500 pounds, do I not sell them a

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T-bone? Do we go to Omaha and do we go down the bad places and are we going to say who can and cannot sell alcohol? I'm sorry, I disagree with you on that one. I agree there's a moral line, but where do you draw it and... [LR199]

ANTHONY HENDRICKSON: You know, if this was 30 cases of beer I probably wouldn't be here. But at some point in time, it becomes beyond the pale and it's...I think it's unreasonable. And, frankly, I think that's part of the reason that we see these students here. I mean, let's face it, they're not near as mature and developed as the rest of us and yet they recognize that, wait a minute, something is beyond... [LR199]

SENATOR KARPISEK: That's why we're... [LR199]

ANTHONY HENDRICKSON: ...something really stinks here. [LR199]

SENATOR KARPISEK: That's why we're here. That's why we called this meeting, okay? [LR199]

ANTHONY HENDRICKSON: Right. [LR199]

SENATOR KARPISEK: So we understand that. Heart disease kills I don't know how many people. So I go back to my meat market days. Maybe we should shut down all red meat. I don't know. [LR199]

ANTHONY HENDRICKSON: I would be with you that that's probably not right. I'm a free-market person. I would say we don't need government there. I wish the real solution would be that we had moral business people that would simply say to themselves, I'm not going to open that kind of business in a town of 14 and sell to people and pray upon their deficiencies. [LR199]

SENATOR KARPISEK: I will agree with you on that. [LR199]

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ANTHONY HENDRICKSON: And unfortunately, sometimes in our society we have people that won't make good decisions and, unfortunately, we find ourselves in having to regulate their behavior because of that. That bothers me but sometimes that has to happen. [LR199]

SENATOR KARPISEK: Thank you. [LR199]

SENATOR LOUDEN: I'd have one. [LR199]

SENATOR ASHFORD: Yes, Senator Louden. [LR199]

SENATOR LOUDEN: It's been coming up, Whiteclay, a town of 14. Actually, Whiteclay is part of Pine Ridge. I mean they're less than a mile apart or whatever it is. There are street lights all the way from Whiteclay to Pine Ridge. [LR199]

ANTHONY HENDRICKSON: Right. [LR199]

SENATOR LOUDEN: You can walk back and forth at night and see your way all the way because there's street lights all the way. It isn't any different than having a liquor store down here on O Street someplace and living over here at, what, 15 or 20 blocks away. So you can't just exactly say that Whiteclay is a town of 14. Whiteclay is part of the Pine Ridge metropolitan area, if you want to call it that, but it's all part of the same little town area. The difference is the state line goes through it and on one side they sell liquor and on the other side they don't. [LR199]

ANTHONY HENDRICKSON: Right. And maybe the answer for us is to cede a portion of that town back to South Dakota so that then they can have this conundrum of what to do, but. [LR199]

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SENATOR ASHFORD: And I, Tim, isn't it? I mean...and to follow, this is...first of all, I think this is a great discussion. Everybody has contributed significantly, I think, and I'm learning a lot. You know, and I think the difference is the nature of the difference. I mean the Pine Ridge Reservation is not simply not selling liquor; you can't have liquor on the reservation. And then you have four...three, I guess, businesses across the line that...and I'm not at all suggesting Senator Louden's point is incorrect because it isn't, but that there is such a significant difference in laws and the repercussions of having this disparity is so huge, that combined with all the cultural and historic issues. This is a significant difference. And I agree with you. I sit here wondering how can these people be selling this? How can they be having...how can they be in business every day and with the...and sell to the people they know they're harming? And it just, to me, is just unbelievable to me. But I appreciate your comments and it's refreshing to have someone from your...from the business school talk about these issues as well. But thank you very much, Doctor. Any other questions? Okay. Next. [LR199]

ANTHONY HENDRICKSON: Thank you. [LR199]

SENATOR ASHFORD: Next testifier. [LR199]

MARK PENISKA: Good afternoon. My name is Mark Peniska. I'm vice chairman of the Nebraska Commission on Indian Affairs. I want to thank this group for their attention and I've sat on that side of it, being a former chairman of the Ponca Tribe and on the council. The days get pretty long, so thank you for your attention and your caring. I mostly just wanted to come here and thank the Legislature and thank this committee for looking to the Whiteclay situation. In the Ponca Tribe is kind of a saying that we're all related, and it's somewhat true. And I look at my brothers and sisters up there in Pine Ridge as relatives, too, and I just would ask this committee to look at them and the situation as you would your relatives if your relatives had a drinking problem and had the accessibility to drown their sorrows like that. I can also relate on a personal level. When I was younger and trying to raise a family of six, credit card debt and not enough

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money to make the...pay the bills and making too much to qualify for any assistance but not enough to make a living, I turned to drinking. I was able to get out of debt, stop the drinking, but one of the things that always was there was all my drinking buddies were still in the bars and taverns. And so I tried to go and not drink. Well, as you know, that didn't work. So I developed a new set of friends and I would say that's...this problem isn't solved, as others have said, just by stopping the sales, but that's a first step. Because the individuals have to have an accountability of their lives, and it's very hard up there. I was in Lincoln, Nebraska, with these problems. They're up there with unemployment, you know, a destitute life. People have a sense that they need to work, that they're worth something. And I guess I would say we need to look at stopping the sales of alcohol there, but we also need something...the tribal leadership there and the members, you know, need to look at...and it's not an easy task in solving your drinking problem, but they have to take accountability too. So it's not just an easy fix. But again, I just want to thank you for your attention and, the Legislature and this committee, for looking at the Whiteclay situation. [LR199]

SENATOR ASHFORD: Thanks. Any questions? Thank you. [LR199]

MARK PENISKA: Thank you. [LR199]

MARGIE MAGNUSON: Hi. Thank you. I know it's a really long day. My name is Margie Magnuson. I'm here on behalf of the Alcohol Impact Coalition, which is a coalition made up of 12 neighborhoods located in the older, more diverse part of Omaha that struggle with alcohol density and the social and economic problems that plague our neighborhoods. About three years ago, when we started on what we thought would be a simple, straightforward quest to bring awareness to our local and state leaders about the negative effects of the proliferation of alcoholics and what that has on communities, at that time it was pointed out to us that our concerns about alcohol density and the crime, social and economic effects these outlets have on our neighborhoods would be an uphill battle because of Whiteclay. While what is happening in Whiteclay is so much

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more dramatic and devastating than what we are seeing in our Omaha neighborhoods, we can draw parallels to this issue that's before you today. What the Alcohol Impact Coalition has seen in the short time that we have addressed this issue is what seems like a lack of concern locally and statewide for the health and safety of the communities when issuing liquor licenses. We have found that the mind-set of our state and local government seems to take lightly our public protests and even, at times, to ignore ordinances and rules just in a quest to be probusiness, a probusiness city, a probusiness state. Our coalition has nothing against promoting and fostering good and positive businesses in our community but not at the expense of our residents' health and safety. Neighborhood leaders in our communities have experienced firsthand that the liquor license system seems at times stacked against citizens, and it a little most of the time frustrating, disheartening to see our state officials take this mind-set of a probusiness. What has gone on in Whiteclay and what we're seeing in Omaha tells us that the proliferation of liquor licenses in our local, social, economic communities are like a stone around our necks. How can we ever hope to raise these struggling communities, like in north Omaha and on Whiteclay and the Pine Ridge Reservation, out of the mire of poverty, violence, and despair if we continue to ignore some of the reasons that add to their decline? We cannot let our first duty of protecting our residents' health and safety to be trumped by the needs of a business to make money selling alcohol. I really urge you to start to address this issue. I'm really pleased to have the Creighton dean here talking about that and to bring up the term "predator businesses," because that's what we're seeing and that's what we think we have in Omaha and what we have in Whiteclay. So I really appreciate your attention to this. Thank you. [LR199]

SENATOR ASHFORD: Hold on. [LR199]

MARGIE MAGNUSON: Sorry. [LR199]

SENATOR ASHFORD: Do we have any questions? Thank you. [LR199]

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MARGIE MAGNUSON: Okay. Thank you. [LR199]

JEFF MOHR: (Exhibit 4) My name is Jeff Mohr, the last name is spelled M-o-h-r, and I'm here today representing the over 500 members of the Nebraska Chapter of the National Association of Social Workers, and I will be very brief because I think just about everybody who has been up here has made the same points that I would want to make on this issue. It was very refreshing to hear a business professor say...something come out of the mouth of a business professor was going to come out of my mouth. That doesn't happen and I'm a professor at Nebraska Wesleyan, so I wish to...there was a business professor from Wesleyan here saying the same thing the gentleman from Creighton said. But I think all we're asking for, as social workers, is that, again, the issues that have already been mentioned: law enforcement, adequate law enforcement; that treatment be available to these folks; that this is a public health issue. And the other thing I think that's really important that was said today, and, Senator Ashford, you said this, was the intention of the...we need the intention of the entire state on this issue. I think that's starting to happen. I think the film has become to do that. The film, I can tell you, has begun to do that outside of the state of Nebraska and that's what really concerns me, as a citizen of this state for 46 of my 50 years that I've been alive, is that I have people...I got an e-mail from a person I've never met before in New York, and I think that one of the Creighton students actually referenced this person, e-mail saying, what can I do? This young woman and a friend of hers got in their cars, left New York City and drove to the Pine Ridge to see this for themselves, and she sent me this e-mail afterwards on how appalled she was about the situation. She says: Should I write Governor Heineman; should I write your state senators; who should I talk to; what should I do? If two young women in New York care enough to do that, I would hope the people of the state of Nebraska would care enough to address the issue. So I try to educate everybody I see and talk to about this. Most of them don't know about it. Most of them have never been up there. It's that remote little corner of the state where if one of my students tell me that they're traveling to the Black Hills, I said make sure you take this little detour through Whiteclay on the way up there because I want you to see that.

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And most people don't go that route, of course. Most people circumvent and go around the reservation, for whatever reasons. So again, I thank you deeply for taking on this issue. I hope we can come to some solutions and ideas that, if nothing else, that the state of Nebraska stops contributing to this problem. Again, we all know that that's not going to fix everything but it's going to make me, as a Nebraskan, and my fellow social workers, as Nebraskans, feel a lot better that we're not contributing to the problem in the way that we are now with the four dealers that exist in Whiteclay. And I thank you for your attention. [LR199]

SENATOR ASHFORD: Yeah, and I would just--just a second--it would to me that there are many legitimate businesses that are in this business that, because of Whiteclay and because of the fact that we may have to do something, that other liquor businesses may not like, you know, that may be...that may be what happens as a result of this being allowed to continue,... [LR199]

JEFF MOHR: Uh-huh. [LR199]

SENATOR ASHFORD: ...and which I think is part of your point. Isn't it? [LR199]

JEFF MOHR: Yeah, I think so. [LR199]

SENATOR ASHFORD: Yeah. Thank you. Any other questions? I'm sorry. Senator Louden. [LR199]

SENATOR LOUDEN: Yes, thank you, Senator Ashford. I was looking here at your paper that you have here. In the last sentence, you know, it said that, asking that the Nebraska Legislature uphold the law, and do you feel that the Nebraska Legislature hasn't upheld the law? I mean, we've shown there aren't any laws that's being broken right now. [LR199]

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JEFF MOHR: Well, I think...I think the law that I'm referring...that we're referring to by that statement, I believe, are the laws regarding liquor sales, regarding dealerships, regarding the things that have been mentioned previously about sale to minors, sales to people who are intoxicated, premises drinking. Those things are my examples of... [LR199]

SENATOR LOUDEN: Those have all been...those have usually been upheld and they've been addressed from time to time. [LR199]

JEFF MOHR: Well, I think you're... [LR199]

SENATOR LOUDEN: And we heard testimony earlier here, you know, that none of that was...some of that wasn't substantiated. The other thing, when you mention about...you mention about Nebraska contributing to the problem on the reservation with alcohol sales, how far away from the reservation should we go to curtail sales on the reservation? [LR199]

JEFF MOHR: Well, I... [LR199]

SENATOR LOUDEN: I mean Gordon and Rushville isn't that much farther. So happens that Whiteclay is part of...is part of the town in Pine Ridge, you know, and of course they've got their hospital, schools, and other facilities right there. It's... [LR199]

JEFF MOHR: Well, I think one of the things that might happen is if Whiteclay was shut down and people had to come...and people do, by the way. Native people drive to Rushville, Gordon, to my understanding, if they want to buy something other than beer. If they want to buy hard liquor, they do have to come that far. [LR199]

SENATOR LOUDEN: Unless they buy it off the bootleggers. [LR199]

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JEFF MOHR: Unless they buy it from bootleggers, true. So I just think we get caught up too much in this idea of if we shut Whiteclay down then it will just go down the road and down the road. I mean Frank LaMere has very eloquently talked about this in the past that, you know, if we have a crack house in Omaha and we shut it down and it moves to another crack house across town, we shut that one down too. We keep going. We don't stop at the one that's close by it or nearby. Again, I'm not trying to say that shutting down what goes on in Whiteclay is going to fix the problem, but if people are coming to Gordon or Rushville or Chadron or whatever, I think the people that live in those communities are going to demand law enforcement that...in a way that I don't think happens in Whiteclay because it's...because it's such a small place and it's in such an isolated, rural location. [LR199]

SENATOR LOUDEN: Now should they...what about...I keep asking, what about on the north side of the reservation? Nobody seems to have any idea at all other than Father Merkel I think said that he didn't think much happened there. The bars are there but he doesn't know. Evidently, he isn't there that much. How much comes down? You know, that road from Rapid City comes down past Caputa in there, and I know people in Caputa. I tell you what. You keep everything locked up if you live on that road coming out of Rapid City down there, so. [LR199]

JEFF MOHR: Yeah. I would love to know the answer to that myself, Senator. I really would. [LR199]

SENATOR LOUDEN: And as we're focusing on Whiteclay, should we be focusing on the whole perimeter of the reservation? [LR199]

JEFF MOHR: Yeah, except that you all don't have the authority to really do anything in South Dakota. I mean wish when I think Frank mentioned meeting with wasn't it the Governor of South Dakota that just sort of...? [LR199]

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SENATOR LOUDEN: No, but as a social worker, you would have some impact with people in South Dakota that... [LR199]

JEFF MOHR: Well, I would...we'd be more than happy to follow up with social workers in that area and ask the question and provide you with that information. I would be happy to follow up and do that. [LR199]

SENATOR LOUDEN: Okay. Well, thank you. [LR199]

JEFF MOHR: You're welcome. [LR199]

SENATOR ASHFORD: Thanks, Senator Louden. Any other questions? Thank you. [LR199]

JEFF MOHR: Thank you. [LR199]

SENATOR ASHFORD: Next testifier. [LR199]

PEG O'DEA LIPPERT: I'm Peg O'Dea Lippert, L-i-p-p-e-r-t, Papillion, Nebraska. On June...or July 1, we went out to the Pine Ridge to stand with the Nebraskans for Peace in support of the tribal elders for the blockade. Having never been in Whiteclay, we drove through Whiteclay where we observed numerous people standing and sitting on the premises with cans in their hand. Now we assumed that wasn't orange pop. We made a U-turn and came back to the South Dakota side. Very shortly thereafter, as you all know, Whiteclay is a very small town, you can see a car drive all the way through town--we saw a car come through town without stopping. This car was labeled Sheridan County Sheriff's car, and other people who were knowledgeable told us that that was the sheriff who was driving that car, and he came all the way through, made a left turn, as I recall. I turned and said to my husband, that is amazing; I have never seen a blind man drive a car through town before. That's it. [LR199]

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SENATOR ASHFORD: Any...Senator Louden. (Laugh) [LR199]

SENATOR LOUDEN: Yeah, I'll answer to that. First of all, the Sheridan... [LR199]

SENATOR ASHFORD: No, no, no, that's...you're not...that's not your responsibility. No, I'm sorry. [LR199]

SENATOR LOUDEN: (Laugh) The Sheridan County jail is probably full and this is the reason. If there isn't somebody that's really doing some depredation up there, they're probably not going to get arrested. I just noticed in the Sheridan County Journal the other day how many prisoners they had to take to Chadron because they're full. I think they got room for 20 people there and they're usually at 18 or 19. He goes up to Whiteclay and picks up three or four people for drinking with open containers out there, I tell you what, Sheridan County is going to be broker than what they are because they don't have the room to prosecute those. Every time they pick somebody up that breaks the law they have to be prosecuted or you turn them loose. So therein is part of the problem. They're in the process now of trying to find a way to increase the size of their jail so they don't have to haul them, to spend the mileage to haul them away. It isn't a matter of just seeing somebody breaking the law and picking them up and hauling them off. You have a problem there, what you do with them after you pick them up and take them back to town. [LR199]

PEG O'DEA LIPPERT: Well, that becomes a law enforcement issue then, doesn't it? [LR199]

SENATOR LOUDEN: Yes, it does,... [LR199]

PEG O'DEA LIPPERT: Yes. Yeah, and it's... [LR199]

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SENATOR LOUDEN: ...but it's also... [LR199]

PEG O'DEA LIPPERT: ...and a drinking on the premises is part of the law in Nebraska, as I understand. [LR199]

SENATOR LOUDEN: And it's all...it goes all the way through from your taxes to how you're going to fund it to what you're going to do with it. We heard Colonel Tuma talk about, you know, the overtime that he spent with people there. Every time the Patrol picks up people, they take them into jail. Now the state of Nebraska only pays jail fees up until some time in May or June because after that they run out of money. So we do... [LR199]

SENATOR ASHFORD: Okay. [LR199]

SENATOR LOUDEN: ...we have... [LR199]

SENATOR ASHFORD: Okay. [LR199]

SENATOR LOUDEN: ...a problem. [LR199]

PEG O'DEA LIPPERT: Well, yeah, there's a problem that needs to be addressed. Thank you. [LR199]

SENATOR LOUDEN: All the way through there. But it isn't as easy as it looked on the outside. Thank you for your testimony. [LR199]

SENATOR ASHFORD: Thanks. And actually, Hobie, can you come back now, please? No, okay, one more and then Hobie is going to come back (laugh) because we need to talk to him. Okay. [LR199]

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MARK VASINA: Chairman Karpisek and Chairman Ashford, thank you very much for this hearing, this opportunity to talk about Whiteclay. My name is Mark Vasina, V-a-s-i-n-a. I've been involved with Nebraskans for Peace for a number of years and I am the producer of the Battle for Whiteclay, the documentary about Whiteclay that's been rounded around for a little over a year now. We're showing it two times in New York City in the next month. We came back from the South Dakota Film Festival where we showed it to 150 people who were amazed at what goes on. I could talk forever. I want to say a couple of things directly related to some of the issues that have been brought up here. Some questions have been left unanswered. First of all, why Whiteclay? Why not north of the reservation? Why not other sides of the reservation? If you look at a map, Whiteclay is located within spitting distance of the largest community on the reservation. If you are in Pine Ridge town, Pine Ridge...the old Pine Ridge agency, you cross the line and you are literally in Whiteclay. People walk to Whiteclay. That's the population center, the county seat. There are border towns around the reservation sitting right on the border of Whiteclay, and there are some liquor establishments in those border areas, but you have to travel 30-40-50 miles to the interior of Pine Ridge Reservation to find a population density, a community of 50 or 100 or 400 people. Whiteclay has earned its reputation as the neon sign of racist neglect because of its geography and it, of course, lies on the other side of South Dakota border in Nebraska. That's really critical to what's going on. But there's a history behind that. Whiteclay was a place that purveyed alcohol in the 1800s to the Pine Ridge agency, which was first settled in the 1860s by the Oglala Sioux after they signed their treaties with the United States government. Whiteclay was carved out...the area around Whiteclay was carved out and given to the Pine Ridge in 1882 by an executive order of the President, President Arthur, in order to move the alcohol away from Pine Ridge. Admittedly, five miles back then is more...means more than five miles today, but it had the effect of stopping the immediate problem on the Pine Ridge, at the Pine Ridge agency. In 1904, Teddy Roosevelt, under pressure from settlers in that part of Nebraska, reversed that executive order--which had actually been codified into law in 1887, United States law--gave that back to Nebraska immediately, and this is

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documented in a great book by Stew Magnuson, The Death of Raymond Yellow Thunder. Immediately in 1904, alcohol immediately went up to that area along with the other settlers. It was not legal until 1953 to sell alcohol to a Native American anywhere in the United States, by federal law. Whiteclay was a site through the early part of the century into the '30s, '40s, '50s, I've talked to people now in their 60s or so who, as children in the '30s and '40s, went to Whiteclay where there were no licensed establishments, went to Whiteclay, went into establishments in basements or went and knocked on windows and alcohol was sold to them. This was all understood by Nebraska authorities, at least local authorities. It was all permitted, all looked askance, all of this took place. In 1953, alcohol became legal to be sold to Indians in America, licenses began. There were two bars in Whiteclay from the 1950s on until the late '60s, early '70s. They were...it was a wild west town. Murders happened. These bars finally converted to off-sale licenses in the early '70s and they added two more, and since then you've had the problems with the off-sale. The question of just closing these down and the problem moves down the street, down the road to Rushville, Gordon, where do you draw the line, let's be realistic. And this is the last comment that I want to make here. We are talking about a very complex issue. When we're looking at Whiteclay, we're looking at tribal relations with a recognized Indian tribe in another state. I've been to Russia on a business trip a few years ago and they have these Russian dolls. It starts out as a bowling...line the size of a bowling pin. You take it apart and there's another doll inside of there. You take that apart and you keep getting smaller and smaller dolls. Whiteclay, I don't know where Whiteclay is in this Russian doll scenario, but it's certainly not the biggest doll. We've talked about alcoholism and poverty and all those things, and colonial oppression and the history of colonial oppression and racism on Pine Ridge. Maybe that's a big doll, but Whiteclay is in there somewhere. And to say that we cannot deal with that because we can't deal with the big issue, I mean, my goodness, how many bills do you deal with in the Legislature, how many issues does law enforcement deal with that are stopgap measures, that are little fixes, that are first attempts to do things? We...that's not a reason not to do something about Whiteclay.

[LR199]

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SENATOR ASHFORD: I think your point is...and your point is understood and I appreciate your historical perspective. Any have any questions of Mark? Okay. (Laugh)
[LR199]

MARK VASINA: Thank you very much. [LR199]

SENATOR ASHFORD: Senator Louden. [LR199]

MARK VASINA: Oh. Oh, Senator Louden. Okay. [LR199]

SENATOR LOUDEN: Well, other than, yeah, you've probably described the situation better than anybody has this whole afternoon. You've been around and done some research on it. When you said 1860, I don't know if Pine Ridge Reservation was established in 1860 or not. I thought it was a little later than that because I thought...
[LR199]

MARK VASINA: Eighteen sixty-eight was the Great Sioux Reserve. [LR199]

SENATOR LOUDEN: ...the Horse Creek Treaty was about the late 1850s or 1860s there, so...but I think you explained it quite well. The question is, what can you do and where can you go from here? And you're right, I remember that, 1953. You know, before that, it's what I pointed out to one young person today when we were discussing, I said you...they couldn't buy liquor before that. And Native Americans come into town, I said the first that was gone in the grocery stores was the vanilla. And this wasn't a good deal, but that's what happened back then. It was probably an advancement when they were able to buy alcohol because then we didn't have people dying from drinking stuff that they shouldn't have been drinking, you know, at that...like we had back then. And as time went on, why, yes, I always questioned why we went from two bars in Whiteclay to four, but that was several years ago and that was, to me, was a problem right there.

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[LR199]

MARK VASINA: Well, there are mysteries like that. Why always four? Why not five, not six? Why not three or two? But when we're talking about drinking and the problems of Indians drinking and the different things that they drink, let's again not lose sight of an aspect of Whiteclay that is easy to ignore. It's easy to push it away. It's hard to get a sincere mind and heart around that, and that is this: We're not talking about four liquor stores that are operated by men of integrity who try to the best of their ability to obey all the laws about sales to minors, sales to intoxicated persons. You will hear...I tried to bring some people from Pine Ridge to this hearing so that some of you senators who are here and won't make it to Rushville could hear some of this, but I believe, Senator Louden, you said that it's been established somehow today that no laws are being violated by the liquor store owners in Whiteclay, and I'd have to say I could bring you account after an account of...by former law enforcement officers, by current law enforcement officers, by parents, all sorts of people that sales to minors are routine, sales to intoxicated people is routine. Sales in exchange for sex and sexual favors, prostitution of young women to the friends of liquor store owners in Whiteclay goes on all the time. And it's very tough for the people who are involved in this on Pine Ridge to come forward publicly and talk about these things. It's very important that our law enforcement agencies take very seriously the complaints that have been raised with them and do serious investigations. [LR199]

SENATOR LOUDEN: Well, that... [LR199]

MARK VASINA: Just doing a simple investigation and recognizing that, well, maybe the Indian kid that they brought in, he was a stranger, she was a stranger, maybe they were suspicious, law enforcement understands why that fail. That doesn't mean that laws are not being violated every day by these liquor store owners. [LR199]

SENATOR LOUDEN: Well, that was...your point is well taken. I visited with Terry

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Robbins and the sheriff and them in there quite regular, know them quite well, so I will check into it but I question whether it's as flagrant as you say. Thank you for your testimony. [LR199]

MARK VASINA: Well, I understand your questioning. And I've had conversations with Terry Robbins specifically about drinking on the premises, which the woman testified that she observed. Terry Robbins has said that he doesn't agree with the Liquor Control and the law, that if somebody pops a can and sits on the front steps of one of these off-sale establishments or stands in their parking lot he told me he doesn't believe that's premises drinking and he will not arrest a license holder for that. There has to be an effort by law enforcement to be aware and sincere and make real efforts, and I don't see it, I mean, with the county sheriff, yes. [LR199]

SENATOR ASHFORD: We get your point. Senator Lautenbaugh. [LR199]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. Thank you for coming today, sir. And I've been probably uncharacteristically quiet today, but I did want to react to something you said. And just as I understood it, in listening to my colleagues, I didn't hear them, those who said this, say we shouldn't close these down because it won't solve the whole problem. What I heard them say is there has to be some convincing that it will actually do anything at all. And that's what I think the problem is with the proximity and whatnot that I've heard them express concerns about. I've said nothing about that one way or the other, but that's the point I heard them making, at least from where I'm sitting, is that they wanted to make sure it was at least doing something. No one believes that anything...only one thing is going to solve the entire problem. So I don't want it to be misunderstood, what I thought they were saying at least. [LR199]

MARK VASINA: Right. No, I understand. And, you know, some people come up here and speak with real heart, like Frank LaMere. I tend to speak with my head and look at analyzing problems and I look for data and statistics, too, to back it up. People said...

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[LR199]

SENATOR ASHFORD: Well, we haven't seen any data... [LR199]

MARK VASINA: Well,... [LR199]

SENATOR ASHFORD: ...and that has (inaudible) me. I mean one of the things that is frustrating for me is I don't know where every... [LR199]

(UNKNOWN): (Inaudible.) [LR199]

SENATOR ASHFORD: ...it's anecdotal. We've got to have data. How bad is it? Let's find out how bad it is and let's correct the problem, and I think that's the point you're making. I see no data. I mean we see consumption, but consumption is consumption is...if you just look at consumption, you go, oh my God, how can anybody consume...you know, how can they sell that much beer? We just don't...we, for all the years this has gone on, it's very frustrating to not have better information. And I think that's...and, quite frankly, without that...and really, the burden is on the state. The burden is on the Liquor Control Commission. The burden is on the liquor industry, in my view, in my view, to come up with some kind of a response to this. This is clearly an abomination, so the burden is on them to come up with something instead of just sitting around and doing nothing, because it's an embarrassment. And I'll tell you, Senator Loudon has done a great job representing his district and he has come here today and he has talked from his heart about the challenges that he has in representing a district like he represents, which is sparsely populated, which is rural, which has poverty, which is trying to make it. And I'll tell you, I am embarrassed for this state and it is amazing to me, it is amazing to me that we don't have a response. It is amazing to me that after all these years that I've heard about this we do not have a response. And I, I'll tell you, I hope by the Rushville hearing we do have a response from the liquor industry, from the Liquor Control Commission, and I'll tell you, this...this...and it's not fair to Senator

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Louden to have to deal with this as a state senator without the support and help of this state government. And it's not just this state government. It's every state government going back years and years and years. That's all I have. [LR199]

MARK VASINA: Yes. Thank you. [LR199]

SENATOR KARPISEK: Thanks, Mark. Do we want to have Hobie come back up? [LR199]

SENATOR ASHFORD: Yeah. [LR199]

SENATOR KARPISEK: Please, quickly, just one more chance for us to ask Mr. Rupe any questions. [LR199]

HOBERT RUPE: Senator Ashford... [LR199]

SENATOR ASHFORD: No, I... [LR199]

HOBERT RUPE: No, I've got one thing to help you. [LR199]

SENATOR ASHFORD: Okay. [LR199]

HOBERT RUPE: The question earlier was, what's going on after the beer is going to different wholesalers? [LR199]

SENATOR ASHFORD: I just...the whole thing...here's my question. No, no, no, no, no, I get to ask the question. Here is my question. This can't go on and what are we going to do to change it? And I, you know, it's not...this isn't an indictment of you but this your responsibility in the Liquor Control Commission. It's a challenge. It's a difficult challenge. And it's not you but we as a collective, we as a people have to resolve this issue. My

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question is how are we going to do that? [LR199]

HOBERT RUPE: Well, that's what I was going to say. One thing you can help us by doing, the question has been about the bootleggers, how...are there bootleggers, are they going on? The Patrol has done yeoman's work in trying to find what's going on. One of the easiest ways to find that out is...despite many requests by both the commission and by the State Patrol, Revenue won't share sales tax records. [LR199]

SENATOR ASHFORD: Oh, come on. [LR199]

HOBERT RUPE: They won't. [LR199]

SENATOR ASHFORD: So do we have to...do we have to...then do we have to introduce a bill that requires Revenue to shares sales tax? I mean, I'm serious. Is that... [LR199]

HOBERT RUPE: Their word is they don't want to impinge upon the credibility of their sales tax collection receipts. I'm just saying, I mean that's my frustration. [LR199]

SENATOR ASHFORD: No, I...I mean I share your frustration. It's breathtaking, Hobie. [LR199]

HOBERT RUPE: No, I mean the commission has long been of the opinion that not every single can of beer is walking out through a legal one-on-one sale and we... [LR199]

SENATOR ASHFORD: There's no way it's walking out one on one sale. [LR199]

HOBERT RUPE: That's one reason why we...exactly. No, we're agreeing. It's not like we're arguing. I'm not trying to sound argumentative. I'm just saying... [LR199]

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SENATOR ASHFORD: No, you're not argumentative. [LR199]

HOBERT RUPE: Yeah. [LR199]

SENATOR ASHFORD: It's just very frustrating to sit here all day after all these years, and I heard about this in the '80s when I was here and it's the same issue. Okay. [LR199]

SENATOR LOUDEN: Are you...are you saying that, well, yeah, there's sales tax on beer. Is there sales tax on off-sale beer? [LR199]

HOBERT RUPE: Yes, all...you got to remember, beer is alcohol overall is one of the unique things which is taxed not once, not twice, but thrice at different levels of government. The federal government collects an excise tax. The state collects an excise tax which is remitted through the wholesale taxes. And then, because it's not a food item, it is subject to a sales tax. So if you have a location which has a retail license, you at least...I'm not saying you're going to be able to get a one-to-one corollary, but you should get some idea of their annual gross sales based upon their sales tax receipts which they're sending into the state government. They have to do it. I mean I own a small business. We have to pay taxes I think quarterly because (inaudible). [LR199]

SENATOR LOUDEN: Then you're saying the Department of Revenue won't release their...the sales tax that's collected by those...by those individual bars? [LR199]

HOBERT RUPE: We requested that information. The Patrol I believe has requested it. They asked for what purpose. We said we're trying to see what's going on and they said, we will take it...we will take it under investigation. And that's the last we heard of it. [LR199]

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SENATOR ASHFORD: What's the investigation? [LR199]

HOBERT RUPE: I don't know. You know... [LR199]

SENATOR LOUDEN: How long ago did that happen? [LR199]

HOBERT RUPE: I think the first time we asked for sales tax receipts was probably two and a half, three years ago. [LR199]

SENATOR LOUDEN: And they're still investigating it? [LR199]

SENATOR ASHFORD: How much investigation does it take to look for sales tax receipts in someone's records? [LR199]

HOBERT RUPE: Well, the... [LR199]

SENATOR ASHFORD: Hobie, this isn't...this is not an indict. I just...I just...we got to solve this thing. We got to solve it together. [LR199]

HOBERT RUPE: No, and I agree and, you know, as I said, that was one thing I was saying back there. You know, I think the commission and the Patrol with the resources have tried to do the...every...have tried to look into the issue as much as they can. And as Mr. Vasina has said, there are complaints. People will come forward and make some allegations regarding somebody sells to minors, somebody sells to somebody who's intoxicated. The problem then becomes the enforcement part. Because when we investigate those complaints, you know, we can't see what's going on. I would love if Mister...and I'm pretty sure, although I believe he's left, Colonel Tuma would love to have Mr. Vasina introduce the Patrol investigators to some CIs who will go in there and prove these allegations. The key thing, the way the commission tries to present itself

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overall is, you know, in the liquor industry we're the umpires. We're the black...you know, we wear striped shirts. We've got the industry mad at us on issues; we got the people who don't like the industry mad at us on issues. So we figure we're probably doing our job if we've got both sides equally made at us at times. The key thing that I did want to bring back is legislatively you do have a lot of power. You have to remember, the Twenty-First Amendment gives the individual states enormous powers in creating their statutory schemes for the sales and distribution of alcohol. I currently have the privilege... [LR199]

SENATOR ASHFORD: Do we have a...can we have a...do we have a list of things we can do? I mean it seems to me the commission needs to come forward with a list of initiatives that will address these concerns. [LR199]

HOBERT RUPE: Well, I, you know, the commission was very much behind the issue of the cross-deputization, the commission was of the opinion that if these things are happening, if you get more enforcement, enforcement which might be able...be able to not raise the red warning flags to bring forward, we can make sure, you know, the commission wants to make sure are they happening or they're not. If they're happening, we're going to stop it. If they're not, let's prove that they're not happening. You know, that's the key thing. We're not going in with the perception that these things are happening or that they're not happening, but we just need the proof to show. You know, the one issue that they brought up, alcohol is different. Alcohol is an individual...you know, this country has fought with alcohol different related issues throughout the entirety of its history. You know, we're the only major industrialized nation to ever institute a national prohibition. What's amazing is that when I heard from the economics guy is they're usually want us to deregulate and not keep people...but not he wants us to regulate. So I figure, once again, we must be doing our job. Sometimes he agrees with us; sometimes he doesn't. But, you know, we take our lead from the Legislature as well. You know, as you can see, we've done certain things through our rules and regulations. I brought a copy in that I gave to Senator Lathrop out in the hall of our

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quantitative sales requirements. You know, those mirror federal laws where the purpose of that, much like the Keg Registration Act, is just sort of try to track large-scale purchases of alcohol so we know that whether it's being sold for resale or they're being, you know, where are they coming from. A lot of the same information on one of those keg registration forms is what they're supposed to do. I would love for somebody to go in there buy...you know, to observe somebody buying 20 cases, leave, go in there, and ask for their report. If they don't have it, they're in violation of the act, not only our act but also federal law. You know, so there's not an easy answer. But I just wanted to put out that part of the thing might be legislatively. And if you want us to come forth with some more ideas, we will be glad to work with you. You know, the key thing you have to work at any time you're looking at doing legislation or rules, whatever you're going to apply is going to be a statewide impact. [LR199]

SENATOR ASHFORD: Well, but that's the point. I mean at some point the liquor industry has to stand up and say what's happening in Whiteclay can't happen anymore. And if it continues to happen, then other establishments who don't have these issues and other parts of the state that don't have these issues are going to be penalized for that and...because it is our state. It isn't someone else's state. It's our state. I mean that's tough. If we can't solve the problem...yeah, Senator Lautenbaugh. [LR199]

SENATOR LAUTENBAUGH: Thank you again for coming today. I understood earlier from your testimony of the four stores there you tried to provide the...deny the license for one of them. [LR199]

HOBERT RUPE: Yes. [LR199]

SENATOR LAUTENBAUGH: And you failed because the court disagreed. [LR199]

HOBERT RUPE: Well, the court disagreed, reverses, yes. [LR199]

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SENATOR LAUTENBAUGH: So you didn't fail but your decision was overturned.
[LR199]

HOBERT RUPE: Yes. [LR199]

SENATOR LAUTENBAUGH: And the granting of a license, this is something that we do, isn't it? [LR199]

HOBERT RUPE: That is correct. [LR199]

SENATOR LAUTENBAUGH: We set up the statutory regime under which you act.
[LR199]

HOBERT RUPE: Yes. Yeah. The key thing, and just to bring it up, it's always easier to stop a new license from going in rather than taking one away. It's not quite a property right, but the Nebraska Supreme Court has taken it so darn close it's nearly indistinguishable. That was one reason why the commission thought, when they had the opportunity to deal with the person who in the past had shown he was unable to comply with the act, we said no. The...you know, but the court, you know, made a factual determination, disagreed. You know, that's sort of bringing back a little thing, you know, it was brought up earlier, you know, how the commission does take away certain licenses. You've heard about the one at 108th and Q. Well, according to the information that came forward, that Mom was a straw person for her felonious son who wanted his bar. Felons can't have liquor licenses and one of the things is we do have to pierce that veil sometimes to make sure who the real person going to be running this bar is, what the purpose is. It's not easy. I mean I'll be the first to say, do I wish that there were five or six more liquor inspectors assigned to the commission by the Patrol? Yes. But (inaudible) almost every other regulatory agency wishes they had more inspectors or agents. [LR199]

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SENATOR LAUTENBAUGH: And I think...I guess I sense, I feel the same frustration Senator Ashford feels but I don't...and I don't think he's looking to you for the solution today as we sit here and, you know, we are dealing with something that is decades old and I don't pretend to know what the answer is either. So we all feel passionately about this but I don't think...I'm not saying it's up to you to figure it out. I think it's up for all of us to figure out something that might actually work and address the root cause of this. I just... [LR199]

SENATOR ASHFORD: No, I agree. I mean it's not poor Hobie's fault. [LR199]

SENATOR KARPISEK: And that's exactly why... [LR199]

HOBERT RUPE: (Laughter) I have broad shoulders. [LR199]

SENATOR ASHFORD: But I... [LR199]

SENATOR KARPISEK: That's exactly why we're here,... [LR199]

HOBERT RUPE: That's what executive directors are paid for. [LR199]

SENATOR KARPISEK: ...exactly why we're here, exactly why we've tried to bring in as many different groups as we can to try to help out and get some sort of answer that we can all go with. And a little bit today, and I knew it had happened, we kind of start taking sides and disagreeing. It's going to happen. You know, that's going to happen. But we need to do something and get together on it. And just to sit and argue who should do it and not to say anything bad to you, Senator Ashford, but to lob flaming arrows at the liquor industry isn't going to get us there either. [LR199]

SENATOR ASHFORD: Well, I don't think I was saying that. What I was saying, Senator Karpisek, was that the liquor...this is a liquor industry issue and when things run amuck,

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you know, people in the liquor industry that I know that are legitimate and work hard and are there, it's a legal business and they're responsible citizens and they give back to their community and I support them, but that's not what's going on in Whiteclay. That's a whole different kettle of fish. And I'm not throwing flaming...what am I throwing? [LR199]

SENATOR KARPISEK: Arrows. [LR199]

SENATOR ASHFORD: ...arrows at the liquor industry. [LR199]

SENATOR KARPISEK: Probably a bad... [LR199]

SENATOR ASHFORD: But I think the liquor industry does have a responsibility here to work with the Liquor Commission and the Legislature and with others to come up with a solution. [LR199]

SENATOR KARPISEK: And we have got...we've had meetings with them and we've got letters, and I think that we are moving that way, and I appreciate that too. [LR199]

SENATOR LOUDEN: One question I would like clarified: When Colonel Tuma does an investigation, the Department of Revenue would release sales tax figures to him or to the Attorney General? [LR199]

HOBERT RUPE: I would have to double-check. I know that when we sought them and I believe we were working with one of our investigators trying to get some of that information through Jerry Van Ackeren, who's my auditor, trying to get that, you know, we ran into road blocks. And I got to say, it's interesting how much they want us to help them close down bars who have had their sales tax permits revoked, but it sure seems a one-way street. [LR199]

SENATOR LOUDEN: Well, the reason I want that, I was working on this five years ago

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and I pointed out then that you've got to find a way to find out, have a paper trail, and I'm surprised that the Attorney General or someone couldn't get that information. Now either would he have to go and get some type of... [LR199]

HOBERT RUPE: For some reason, I think discussing this in the open might make a change of certain issues, but it would... [LR199]

SENATOR ASHFORD: Well, we can make a request from the...can't we? [LR199]

HOBERT RUPE: You can make a...yeah. [LR199]

SENATOR ASHFORD: And like Russ as Chair from... [LR199]

HOBERT RUPE: Yeah, I think as a legislative committee, you can make a request. [LR199]

SENATOR LOUDEN: Well, thank you for your testimony. [LR199]

SENATOR ASHFORD: I guess do you want to end it? [LR199]

SENATOR LAUTENBAUGH: Briefly, do you have any knowledge about the availability of liquor on the reservation right now and beer? Is it prevalent? [LR199]

HOBERT RUPE: I don't have any individual knowledge. It's all secondhand and anecdotal. You know, the... [LR199]

SENATOR LAUTENBAUGH: The perception I have today, though, is that it's easy to get on the reservation through the bootleggers. [LR199]

HOBERT RUPE: I think it's easy...yeah, I think it's easy to get through bootleggers, you

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know. [LR199]

SENATOR LAUTENBAUGH: So the bootleggers charging up a jacked up price from what they pay off the reservation for it. [LR199]

HOBERT RUPE: Yeah. [LR199]

SENATOR LAUTENBAUGH: And the reservation gets no revenue out of that. The bootleggers make all the profit. [LR199]

HOBERT RUPE: Yes. [LR199]

SENATOR LAUTENBAUGH: Okay. How long has prohibition been in effect on the reservation? Has that always been the case? [LR199]

HOBERT RUPE: I believe...I mean Mark might know this better. I don't believe that alcohol has ever been allowed on there. As (inaudible) nationwide prohibition ended in '34. The liquor control was passed in '36. There were federal regulations regarding that. I think it was always left up to a self-determination by the...I'd just say it was a federal law you couldn't sell up until '56 anyway. And so I think, you know, under their rights of self-determination, they've always chosen to not allow liquor sales on that. [LR199]

MARK VASINA: Could I quickly add one sentence to answer that? [LR199]

SENATOR KARPISEK: Yeah. [LR199]

MARK VASINA: It's always been illegal except for one brief period. In the early '70s, the tribe decided to try legalizing it and their experience was so disastrous they reversed back to being dry. [LR199]

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SENATOR KARPISEK: Thank you, Mark. [LR199]

HOBERT RUPE: Thank you, Mark. [LR199]

SENATOR KARPISEK: Any other questions, comments? If not, thank you everyone for coming. Thank you for your input. Diane? [LR199]

DIANE RIIBE: Can I just (inaudible) quick? [LR199]

SENATOR KARPISEK: Sure. [LR199]

DIANE RIIBE: (Exhibit 5) I just want to tell you a little bit of what we know--Diane Riibe with Project Extra Mile--just a little bit of what we know from communities that have actually looked at what are called alcohol impact areas, particularly out at the Tacoma Washington area. Those are areas where cities or communities have actually looked at areas where there are some great and gross impact from the use of alcohol, and they've ultimately been able to demonstrate those negative impacts and gone to their state and been able to limit the alcohol in those areas. And what they found in Tacoma particularly when they limited the alcohol in those areas, they found...and literally forbid the sale of alcohol in certain areas, they found a 35 percent decrease in emergency medical incidents, a 21 percent decrease in admissions to the local detox center, a 61 percent decrease in police service calls for liquor in the park, less trash and litter, and of course residents reported feeling safer, etcetera. There's additional research. I won't keep you. We've been here for a very long time. But what we do know is there is a direct link between the access of alcohol and, of course, the Native Americans are particularly sensitive to this. We have a duty and a responsibility. You've heard it all day today. We have to look at that and say we're responsible in Nebraska for what we sell, where we sell it, when we sell it, and how we sell it. That's our job. That's our job. We also know that Anheuser-Busch sells about 90 percent of all the alcohol there. One of the solutions that we talked about earlier was the particular product Hurricane. We know that Native

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Americans are targeted with that product, its 24-ounce cans. That's pretty silly. If the young students were here, they would call that a no-brainer. That product could be easily taken off the shelves. Would they go and find products elsewhere? Of course they would. But we know from all the data, when products are harder to get by those who are most sensitive to them, whether they're young people or people with problems, they're less likely to have those resulting problems in the future. It's important. It's an easy first step. Again, it's not the solution but it is an easy first step. We've done it in other products. We can talk about it longer. I won't keep your time, but there are some very quick, easy things that can happen pretty quickly. So thank you. [LR199]

SENATOR KARPISEK: Thank you, Diane. If you could get us those stats. [LR199]

DIANE RIIBE: Happy to do it. [LR199]

SENATOR KARPISEK: Okay. [LR199]

DIANE RIIBE: Happy to do it. [LR199]

SENATOR KARPISEK: Judi gaiashkibos. [LR199]

JUDI GAIASHKIBOS: Can I...can I...can I make one statement,... [LR199]

SENATOR KARPISEK: Yes, of course. [LR199]

JUDI GAIASHKIBOS: ...one statement for the record just to close? And I, too, like Frank LaMere and many of you, Senator Ashford, you were here years ago, I'll be beginning my 15th year as the director so I've dealt with Whiteclay for all these years and today I heard a lot of new, interesting testimony from a lot of places that we've never heard from, the business school, the dean of the business school, the young people from Creighton. And I think that's great and it's made people more aware and we thought

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about things in a different way. What I heard a lot today though was that the demonization of the victims, the people at Whiteclay or at Pine Ridge. The focus was put over on us. The burden of proof should be on the state. This is happening in our state, not at Pine Ridge. We know that we have problems as Indian people. We know that there's corruption. We know there's corruption within tribal government at Pine Ridge. But when we've been having these planning meetings, up to this point, I noticed then and I see today, as Senator Ashford has brought up the point, that there's something wrong with the picture and the picture. And the picture that what's wrong I think is the real powerful people that have an impact on this issue is the liquor industry, the liquor lobby, and they need to be a part of the solution. All of us can come together. We can do the right thing if we want to, and we must do the right thing. So there are many predators, many agendas today, many people, money, greed, that's what's driving all of this. And, Senator Karpisek, I would like to address the meat issue. We all must eat to live. That is one human basic need. Obesity, eating a T-bone steak, you might have a heart attack and wreck a car. But taking in a substance, 24-ounce can beers, we're going to go out and impact society at a much higher level. We're going to drive a car and kill people. That's a more reasonable...so that I think there is some difference between the meat industry and the liquor industry. [LR199]

SENATOR KARPISEK: Obviously, there's a difference. My point was where do we draw the line. [LR199]

JUDI GAIASHKIBOS: Okay. And then, Senator Loudon, you said about the jails at Rushville are overfilled, so perhaps some of this money generated could help us to still enforce the laws, don't allow the open cans, drinking on the streets in Whiteclay. Arrest the people; put them in jail. So if we need to use some of that money for that, then I'm all for that; for substance abuse prevention, I think that's another option. But we've got to not brush this under the rug because it's impacting the most vulnerable, but Nebraskans have to enforce the laws in Nebraska. So with that, I know everybody is tired. The Indian Commission is committed to being a part of the solution and we're not

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about trying to solve problems up at Pine Ridge. We're not here to address historic grief about why the first alcohol came to the reservation, so that the lands could be taken for economic opportunity for all of you and all of us. But let's all be a part of doing the right thing and honor the hard work of these children, past generations and future generations. That is all I have to say. [LR199]

SENATOR KARPISEK: Very good. Thank you, Judi. And with that, we will end this hearing on LR199. Thank you again, everyone. (See also Exhibits 6, 7, and 8.) [LR199]