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Judiciary Committee
February 04, 2010

[LB842 LB843 LB860 LB889 LB905 LB1033]

The Committee on Judiciary met at 1:30 p.m. on Thursday, February 4, 2010, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB905, LB889, LB1033, LB860, LB842, and LB843. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Mark Christensen; Colby Coash; Brenda Council; Scott Lautenbaugh; Amanda McGill; and Kent Rogert. Senators absent: None. []

SENATOR ASHFORD: (Recorder malfunction)...firearms. Christina Case is legal counsel. She's here. []

CHRISTINA CASE: No, I'm actually... []

SENATOR ASHFORD: Legal...huh? []

CHRISTINA CASE: Committee clerk. []

SENATOR ASHFORD: She's committee clerk. Didn't you go to law school over the lunch hour? (Laughter) []

CHRISTINA CASE: That's why I was a little late (laughter). []

SENATOR MCGILL: We don't have...shall we wait for our legal counsel? []

SENATOR ASHFORD: Why don't we...but let me just...we have the first three bills--one by Senator Dubas, one by Senator Christensen, and one...another by Senator Christensen. How many are here to talk about either LB905, LB889, or LB1033? Okay. That's not so bad. How about LB860? Okay. LB842? And maybe the numbers aren't...but they're indicative. (Laugh) []

SENATOR MCGILL: Indicative of how many are testifying (laugh). []

SENATOR ASHFORD: They're indicative for (laugh) LB842 because I don't remember the numbers either. LB843, how about LB843? Okay. We will use the light system and some of you are familiar with that. We ask that, other than the introducer, we ask that you confine your testimony to the lights, meaning that it's approximately three minutes not counting the questions that you might get. When the orange light goes on, we'd ask you to start summing up, and when the red light comes on, it's trouble. So...but, seriously, we like to keep the testimony going and give everybody a chance to talk and get out of here at a reasonable time. So with that, Senator Coash is here from Lincoln. Now, we do have a quorum so we can begin. First bill is LB905, Senator Dubas. []

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SENATOR DUBAS: (Exhibits 1 and 2) Thank you, Senator Ashford, members of the committee. For the record, my name is Annette Dubas, A-n-n-e-t-t-e D-u-b-a-s, and I represent District 34. I'm going to be just very short and to the point with my bill. I don't intend to stay around to close. I've got some other obligations in my committee hearing, and I believe there may be one or two testifiers at the most who I'm aware of who will come forward and speak to the bill. And I also have a couple of copies of some newspaper articles that will reinforce why I introduced LB905. It's basically to amend existing Statute 28-1212.04 to include cities of the first class. As I said, the newspaper article will demonstrate why cities such as Grand Island, unfortunately, are subject to gang violence as well as cities like Omaha and Lincoln. I'm sorry to say that it's just not something that is exclusive to the Omaha and Lincoln area, and that's why we're looking to expand this statute to allow cities such as Grand Island to be able to access the existing statute. So with that, I'm going to close. If you have some questions, I'd be happy to answer them, but I think people behind me will... [LB905]

SENATOR ASHFORD: Senator Rogert. [LB905]

SENATOR ROBERT: Thank you, Senator Ashford. Senator Dubas, thanks for coming in today on this bill. Last year we crafted this language in the section that we're working on, and we were very careful to make sure that we weren't, you know, charging somebody with a Class IC felony if they're shooting a coyote out of a truck out in Hall County, for example. But Grand Island came up specifically in our discussions, and the fact that there is drive-by shootings and gang violence that are going on in Grand Island. And I'm glad you're bringing this to us, and I hope that we can make this part of our process for the year and take care of the problems you're having out there. [LB905]

SENATOR DUBAS: I knew that that was discussed last year, and I did convey that to the law enforcement when I visited with them, and I think we have constructed this bill in a way that, hopefully, will alleviate those fears for the more rural areas that do have hunting. [LB905]

SENATOR ROBERT: Super. Thanks. [LB905]

SENATOR ASHFORD: And I would just like to commend your police chief in Grand Island for the work he's been doing in all sorts of areas and the county attorney, and these are issues that need to be addressed, but throughout the whole gamut of law enforcement, I think Grand Island has really been exemplary. So thank you for that. Any other questions of Senator Dubas? Thank you. [LB905]

SENATOR DUBAS: Thank you. [LB905]

SENATOR ASHFORD: Any testifiers on...well, I think I see the police chief from Grand Island (laugh). [LB905]

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STEVEN LAMKEN: (Exhibit 3) Members of the Judiciary Committee, my name is Steven Lamken, L-a-m-k-e-n. I am the police chief in Grand Island, and thank you very much for the kind remarks, Senator Ashford. Some days... [LB905]

SENATOR ASHFORD: Well, they're well deserved, Chief, so. [LB905]

STEVEN LAMKEN: Some days I don't feel like I'm doing that well of a job (laughter). [LB905]

SENATOR ASHFORD: And I'm sure you don't, but we get a lot of good, positive feedback here and appreciate it. [LB905]

STEVEN LAMKEN: I will be very brief also. I'd like to thank you for your time in receiving my testimony. I am testifying in support of LB905 and state statute 28-1212.04 provides for felony penalties for discharging firearms from or in the proximity to a motor vehicle for Douglas and Lancaster Counties. LB905 will expand the statute to include the first-class cities in the state. We in Grand Island have the same concerns and problems with criminals shooting firearms in Grand Island as does Omaha and Lincoln. There were at least nine offenses in Grand Island in 2009 where shots were fired from inside or near a vehicle; shots were fired in the direction of people or structures, or to intimidate people. Each of these offenses constituted a dangerous and reckless act of violence and in more than one offense, the homes of uninvolved citizens were struck. The passage of LB905 will provide law enforcement and prosecutors an additional weapon to use against criminals who recklessly place the safety of our community at risk. I request your support of LB905 and thank you for your consideration of this request. [LB905]

SENATOR ASHFORD: Thank you, Chief. Any questions of Chief Lamken? Seeing none, thank you, sir. Any other proponents? Opponents? Neutral? Neutral. [LB905]

JORDAN AUSTIN: Thank you, Mr. Chairman, members of the committee. I come before you today to testify on behalf of the National Rifle Association in a neutral capacity. This language was adopted last year. We didn't take a position on it. It seemed like the Legislature went to great efforts, like Senator Rogert said, to make sure it didn't affect, you know, hunting or lawful discharge provisions. And we feel this bill is in line again, and didn't think us to take a position either way should, hopefully, not affect or take away from the heart of the bill. But I'd be happy to answer any questions and appreciate your time. [LB905]

SENATOR ASHFORD: Well, you never know but yeah. Thanks, Jordan. Any questions of Jordan...? Jordan, give us... [LB905]

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SENATOR LATHROP: I don't know that you said your name, did you? [LB905]

JORDAN AUSTIN: I'm sorry, Jordan Austin. [LB905]

SENATOR ASHFORD: Jordan Austin, okay. [LB905]

JORDAN AUSTIN: Sorry about that. [LB905]

SENATOR LATHROP: I knew that, but I just didn't know that it was on the record. [LB905]

JORDAN AUSTIN: For the record, yeah. I might have forgotten. I apologize. [LB905]

SENATOR ASHFORD: Rolls right off the...anyway, thanks, Jordan. Any questions of Jordan? Seeing none, thank you. [LB905]

JORDAN AUSTIN: Thank you, sir. [LB905]

SENATOR ASHFORD: Any other neutral testifiers? [LB905]

ANDREAS ALLEN: (Exhibit 4) I'm Andreas Allen from Omaha. I'm president of the Nebraska Firearms Owners Association. Senator Ashford and members of the committee, on behalf of the membership of the Nebraska Firearms Owners Association, we do not object to the clarifications made in LB905. The language this bill is meant to correct does not pertain to the legal use or possession of firearms by the citizens of Nebraska, and we thank you for your time. [LB905]

SENATOR ASHFORD: Thank you. Thanks for coming down and for testifying. [LB905]

ANDREAS ALLEN: Um-hum. [LB905]

SENATOR ASHFORD: Seeing none, thank you. Senator Christensen and Senator Lautenbaugh have joined us, and Senator Council is here, and Senator Lathrop, so we're all...got us all here. Let's go on to...Senator Dubas waived her closing, so the next bill is Senator Christensen, LB889. [LB905]

SENATOR CHRISTENSEN: Thank you, Mr. Chairman, members of the Judiciary Committee. It's terrible when your notes say something different. (Laughter) [LB889]

SENATOR ASHFORD: Where did you think we were? Banking or...? [LB889]

SENATOR CHRISTENSEN: Government, Military and Veterans Affairs is what I typed in here, so it took me by shock here. [LB889]

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SENATOR ROBERT: You're not going to blame that on your staff; you did that yourself? [LB889]

SENATOR CHRISTENSEN: (Laugh) Just missed that one. I'm Senator Mark Christensen, C-h-r-i-s-t-e-n-s-e-n. I represent the 44th Legislative District and I'm here to introduce LB889. LB889 would strengthen Nebraska's self-defense laws by amending what many call the Castle Doctrine and its philosophy into statutes. Castle Doctrine primarily pertains to the rights to use force, even deadly force, when protecting yourself, family and others in your home. The philosophy also extends to your place of work and your vehicle. Currently, many Nebraska residents are unclear as to the rights to use force or deadly force in self-defense because they believe our statutes are complex, weak, or lack clarity. Under our existing statutes, there are requirements to retreat and requirements to balance the choice of greater evils that cause uncertainty. In addition, the justifications for use of deadly force seem narrowly defined and may need to include other violent crimes. Finally, current law allows for civil remedies for an individual who broke into a home and was shot and injured, even though the homeowner was found justified in their use of force in court. The intent of LB889 is to address these issues, provide a clearer policy that strengthens an individual's rights to self-defense. I would like to touch on three major parts of this bill. The first major section and what I would call the heart of LB889 is found in Section 6 of this bill. It creates a presumption that the defender reasonably believed that the use of deadly force to protect himself, herself or someone else in his or her home, place of work, or occupied vehicle was immediately necessary. The presumption provides the person using self-defense an extra protection in court because prosecution has the burden to prove the nonexistence of the presumed fact. Second, LB889 would create the new term "forcible felony," and it is defined on page 2 of this bill for the purpose of self-defense statutes as forcible felony means a felony that the elements of which include the use and threatened use of force or deadly weapon against a person of another. Several other states define forcible felony in a like manner in broad terms. Other states use a long list of violent felonies to define them, while others do a combination of both. We left it in broad terms for discussion today. However, I do believe Nebraska residents deserve strong defense laws to secure their right to self-defense under Article I, Section 1 of the Constitution of the State of Nebraska. The third major change in LB889 would abolish any remedy of civil actions if the self-defense is found justifiable or presumed reasonable under the new Section 6 of this bill. I have a problem with...and most of the people I've talked to regarding this bill agree that we should not allow a criminal or family members to bring civil actions for injuries against a homeowner who are justified in their self-defense, especially when they're in their home, place of work, or vehicle. There are several changes in this bill that are recommended during the drafting of this bill for harmonizing and cleanup language. The next testifier following me is Jordan Austin with the NRA. After I realized my interim study, LR191, which I introduced last session to study the Castle Doctrine, and our self-defense statute was not going to be heard in Judiciary Committee, I

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approached the NRA for their expertise in this area. The NRA has worked with similar legislation in other states and Jordan will try to lead some better understanding as to why they recommended some of the changes found in this bill. However, I will try to answer any questions that you have. I thank you for your consideration of LB889. [LB889]

SENATOR ASHFORD: Any questions of Mark? [LB889]

SENATOR COUNCIL: I do. [LB889]

SENATOR ASHFORD: Yes, Senator Council. [LB889]

SENATOR COUNCIL: Yes, thank you, Mr. Chairman. Senator Christensen, I'm sure it doesn't surprise you that I have read this bill very closely and have a number of concerns about what is being proposed, and some of these questions will be directed to you, some will be left for others, and to the extent you can't respond, I'll ask whoever you consider may be able to respond. As I read one of the changes, it speaks to subsection (5) of Section 4. Which would be found... [LB889]

SENATOR CHRISTENSEN: Page 6. [LB889]

SENATOR COUNCIL: ...page 6. As I understand the rationale for that change, right, as I understand it, there's the addition of forcible felony among the reasonable belief that an actor is to have, correct? [LB889]

SENATOR CHRISTENSEN: Uh-huh. [LB889]

SENATOR COUNCIL: It currently is death, serious bodily injury, and not having been provoked...the use of force provoked. [LB889]

SENATOR CHRISTENSEN: Correct. [LB889]

SENATOR COUNCIL: Okay. Now you're adding...the bill proposes to add a forcible felony. Is that... [LB889]

SENATOR CHRISTENSEN: Yes, it is. [LB889]

SENATOR COUNCIL: Okay. I need to understand the intent and purpose behind that. What is it about the existing categories that you don't believe are broad enough to provide protection to an individual who is faced with a threat of imminent harm? [LB889]

SENATOR CHRISTENSEN: Well, if you wait until somebody has displayed their weapon, whether it be a knife or a gun or is physically attacking you, you may not have

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the opportunity to defend yourself. And the presumption that I have been after here is that you don't have to prove that they were coming after you, because they have broken into your home already before any of this is occurring. And maybe I'm not addressing... [LB889]

SENATOR COUNCIL: Okay, because the issue is, as subsection (4) currently reads, it says "the use of deadly force shall not be justifiable under this section unless the actor believes that deadly force is necessary to protect himself or...against death, serious bodily injury...serious bodily harm, kidnapping or sexual intercourse compelled by force or threat, nor is it justifiable if the actor, with the purpose of causing death or serious bodily harm, provoked the use of force." My question is what is being added by of committing a forcible felony? Because this section doesn't say that, you know, you have to be in your home, you have to be in your car. It just says that the use of deadly force is not justified unless you're trying to protect yourself against death, serious bodily harm. What does adding a forcible felony...what does it add that serious bodily harm doesn't cover? [LB889]

SENATOR CHRISTENSEN: I guess I'm not sure... [LB889]

SENATOR COUNCIL: Okay. [LB889]

SENATOR CHRISTENSEN: ...how to answer that. [LB889]

SENATOR COUNCIL: Okay. The other is subsection (5), which is on page 7, is proposed to be amended to provide that, except as provided earlier, a person may use force without a duty to retreat or surrendering property if they reasonably believe the circumstances necessitated the use of protective force. Why, in your opinion, is there a need to change the existing language of the statute? [LB889]

SENATOR CHRISTENSEN: Well, basically, it just turns it so that you don't have to prove that they are coming after you, that you have the right to defend your property. [LB889]

SENATOR COUNCIL: But this is the section that really begins to address the issue of retreating. Under your proposal, subsection (5) is amended to provide that, except as provided in some earlier sections, a person may use force without a duty to retreat or surrendering property if they reasonably believe the circumstances necessitated the use of protective force. So what this section is designed to do is to eliminate the duty to retreat or surrender property. [LB889]

SENATOR CHRISTENSEN: Correct. [LB889]

SENATOR COUNCIL: And my question to you is, you know, what is it that is so

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compelling with regard to property that if an individual has an opportunity to allow the property to be taken and have the police involved to recover the property, instead of here almost encouraging the use of deadly force? [LB889]

SENATOR CHRISTENSEN: Well, I guess I always like to defend my property and I look at it this way. If someone has broken in, they've already committed a felony. I should be able to defend my place immediately, should never have to leave anything. Because once things are taken, you know, if you do retreat, then you have the...it could be damaged property come back, it could already...you know, there's so many things that can happen there. I just think you should be able to stand up, defend yourself, protect your property. Because...and quite often a lot of these break-ins are at night and it's dark. You may not even be seeing the person but for this part you're talking about retreating. You know, I just don't think you should ever have to retreat from your own property; that you should be able to defend it if you choose to. [LB889]

SENATOR COUNCIL: Okay. So then that would be the answer to, I would imagine, to Section 6, the new section which allows for the use of deadly force if the actor knew that a forcible entry or removal had occurred. [LB889]

SENATOR CHRISTENSEN: Uh-huh. [LB889]

SENATOR COUNCIL: So that would cover the situation, a homeowner comes home...I guess let me preface this. I mean I think people have a right to be safe in their homes. And while I personally don't believe in arming myself with a firearm, others do, and in their home they have a right to do it. But my concern is I think this bill goes a little too far by, for example, if I have reason to believe...I come home and I have reason to believe that my home has been broken into and I go and I look outside and there's somebody who's just walking out of my yard, under this bill, because I have a reason to believe that an unlawful entry has occurred at my home and though I'm under no threat of serious bodily harm to myself because I see the actor walking off my property, under this bill I'd be authorized to use deadly force. [LB889]

SENATOR ASHFORD: Maybe what we could do, maybe...is Jordan coming up next? [LB889]

SENATOR CHRISTENSEN: Yeah, he's next. [LB889]

SENATOR ASHFORD: Maybe what we should do is defer to Jordan just a bit here and then, Mark, you can think about some of this intent language and come back and... [LB889]

SENATOR CHRISTENSEN: Okay. [LB889]

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SENATOR ASHFORD: ...on your closing. Does that make sense? [LB889]

SENATOR CHRISTENSEN: Sure. [LB889]

SENATOR COUNCIL: I'll defer to you, Mr. Chairman. [LB889]

SENATOR ASHFORD: Okay. Good. Or maybe not good but (laughter) but let's do it... [LB889]

SENATOR COUNCIL: But I'm just...this is Senator Christensen's bill, not Jordan's bill. [LB889]

SENATOR ASHFORD: Oh, I know, and I'm not...I just...I think what we need to get some technical information and then Senator Christensen can think about some of the broader intent issues and we can address them that way, so. Okay, thanks, Mark. Proponents? Jordan. [LB889]

JORDAN AUSTIN: Good afternoon, Mr. Chairman. My name is Jordan Austin, A-u-s-t-i-n, and I'm here on behalf of the National Rifle Association. Senator Council, I will happily address some of the concerns you had. I will give a brief testimony about our support for this bill and some reasoning behind it, and then I will address any questions you might have. I am representing the National Rifle Association and I'm here in support of LB889. We feel this legislation is vitally important to the citizens of this state. It all began this summer when the article came out in the Omaha World-Herald discussing self-defense and Senator Christensen's interest in this bill. It prompted me to start looking at the statute and reading it and then thinking about it, reading it again and wondering, you know, I wasn't quite sure what I had looked at yet. You know, it was comprehensive, it went across multiple sections of statute, and it didn't read very clearly. And for someone like myself, who reads bills frequently, I can only imagine the difficulty that an average citizen would have trying to figure out what their self-defense rights were. So I felt it would be important to address that and Senator Christensen, you know, like he said, sought out our input and I've been happy to help out. In a broad sense, this bill covers three major areas of improvement. It eliminates the self...or, excuse me, a duty to retreat and public areas. It builds a presumption into state law as to your ability to use force, with force, including deadly force inside your home, and it provides civil liability protection. And, in general, in a national sense, 25 states currently have Castle Doctrine laws with no duty to retreat. Several states still currently have legislation pending that are pursuing language similar to what Nebraska has, including presumption, civil immunity and such. I think it's important that we clarify this for the purposes of the citizens of this state. Some might ask why we feel this is necessary. I've had instances in other states where I've been running through the same problems with state prosecutors determining the law, they felt was fine, no changes need to be made, and then, you know, only coming to see that several major cases have developed in

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those states addressing issues such as use of force within your home and also civil liability. So those specific cases I think will have cast a new light on the self-defense argument and I think I can elaborate on those as well. There is a specific premise noted, this...the case of State v. Urbano addresses what a citizen's rights are in regard to self-defense. And what has happened in this state is the rights have gotten turned around where the defendant has a burden placed on him to prove his actions were justified and then the state has the burden to prove his actions were not justified. In State v. Urbano, it specifically says that justifications for the use of force in self-defense are statutorily defined and the defendant bears the initial burden to produce evidence which supports a claim of self-defense. So it's up to the individual to prove they're innocent, and then the state has to prove they're guilty, and I think this bill changes that by putting the burden back on the state with this presumption that's there. The presumption provides that they will...they don't have to prove the burden that their justification...their actions were justified. Excuse me. When these actions are taken within your home, the presumption protects you. And I think we're putting the rights back with the homeowner and the citizen. I will cut it short there and start addressing some questions, if that's the will of the committee. [LB889]

SENATOR ASHFORD: Yes, Senator Council. [LB889]

SENATOR COUNCIL: Thank you. Thank you, Mr. Austin. I'm going to begin with the last point with regard to the issue of prosecution of individuals who claim that the...self-defense as the reason for using deadly force. And did you testify that it's your experience or you have information that prosecutors are having concerns about how to apply the doctrine or that individuals are being prosecuted and during the prosecution then have to bear the burden of proving that they were acting lawfully in self-defense? [LB889]

JORDAN AUSTIN: Yes, it was brought to my attention by a recent Omaha World-Herald article. I believe one of the county prosecutors here in Lancaster County said that the burden of proof only rests on the state to prove the guilt of the homeowner, and the case law that I cited states the exact opposite, based on how statute reads, that the burden of proof relies on the homeowner to prove his actions were justified and then the state proves they were not. So it was a...it seemed to be contradictory but the case law seems to prove the reasoning behind what we were doing in the statute, which is changing that and putting it back on the state. [LB889]

SENATOR COUNCIL: Okay. Well, then I guess...and the question I'm asking is even in the conversation with the Lancaster County Attorney, was he or she dealing with a specific...a particular case or give you a particular example? [LB889]

JORDAN AUSTIN: They did not. It wasn't a conversation we had. This was a statement they made in the newspaper and so... [LB889]

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SENATOR COUNCIL: So we don't know what the context...the entire context of the conversation was. You were... [LB889]

JORDAN AUSTIN: The article was dealing with the self-defense legislation we're discussing today, LB889. [LB889]

SENATOR COUNCIL: Because at least in my experience with actual cases, a couple of summers ago a gentleman who owned a business in my district was, in the course of a robbery in his store, shot and killed the two perpetrators. He was never arrested. He was never charged. Just on the basis of what he related occurred, it was declared self-defense without any prosecution. And I guess that's the concern I'm having. I'm not aware of any cases in Nebraska where a homeowner or a business owner or a car driver, a automobile operator has been placed in that situation. And I'm just asking the question, if you are aware of any of those instances occurring? [LB889]

JORDAN AUSTIN: I am, yes. I'm glad you brought that up. As I mentioned, Wisconsin is another state where I work and we're pursuing similar legislation in that state. [LB889]

SENATOR COUNCIL: I'm saying Nebraska. [LB889]

JORDAN AUSTIN: Yes. [LB889]

SENATOR COUNCIL: Okay. [LB889]

JORDAN AUSTIN: I'm getting that. But I'm...I've been attempting to find any cases in Nebraska, like you said, that will be relevant where a need has arisen, and, you know, currently there...we haven't located anywhere that a situation like this has occurred. But to give you a parallel, if that's appropriate, the same argument was made in Wisconsin. You know, at the time we couldn't find any cases. There was nothing and people asked if there was a need. And then an individual, in State v. Huggett, a man...long story short, there was a relationship between a man, his wife, and she had a previous boyfriend. He didn't like the husband. At the time, it was a dating relationship. He made verbal threats all day long on cell phone messages, text messages, voice messages, came by the house that evening, kicked in the front door, charged the man, he retrieved a revolver, shot him in the stomach and was charged with second-degree intentional homicide. The ruling was that the force did not justify or warrant because the intruder wasn't armed, even though he had made threats and was coming at him in a threatening manner after forcibly entering the home. He was still charged with this homicide crime and I think that carried, you know, not only, you know, this homicide charge. I mean we, you know, in talking with the attorney in that case, a charge like that can unravel someone's life. This was a firefighter from Minneapolis who lived in Wisconsin. I think the fee to just start and hire an attorney for that is around \$65,000, at least up there. He was put on suspension

from work. He just watched his life just kind of unravel in front of him. His relationship with his wife kind of started falling apart. Instances like this, if you don't take the steps to clarify law, make it clear that something like that couldn't happen, I think this was a clear instance where everyone thought everything was fine. We proposed legislation we thought would be a more detailed solution and even in the cases it was presented, the law was out there pending, the defense counsel alluded that, you know, he thought that, you know, if that law had been on the books, this might not have happened, he wouldn't have been charged with this crime. So I think in some instances even if there aren't laws out here currently we can be preemptive by passing legislation to prevent such an instance like that from happening and perhaps, you know, ruining someone's life when they...when they're taking someone's life. I mean it's a very serious issue when you take someone's life, especially when they're entering your home. It's going to...it's going to affect you in a very deep way no matter what the instance is going to be, and it can have serious effects. [LB889]

SENATOR COUNCIL: Okay. Well, I appreciate you enlightening us about the unfortunate situation that happened in Wisconsin. My question to Senator Christensen was why is it that removal of a duty to retreat is an improvement. [LB889]

JORDAN AUSTIN: The duty to retreat currently exists outside your home, you don't...and on your property. If I...let me look at the language correctly. It says within your home and your place of business you have no duty to retreat, but it's not specific as far as your property. You could be outside on your lawn or anywhere on the property you own. You could be in your vehicle. So as it reads now, you know, if someone was in your car and carjacked you, your immediate...you know, your first response would have to be to run out of your car and give the car to them. [LB889]

SENATOR COUNCIL: So then if the duty to retreat doesn't exist if you're in your home, in a dwelling, wouldn't an easier way to address this is to add your vehicle rather than to eliminate the entire duty to retreat? [LB889]

JORDAN AUSTIN: I think by eliminating it we're providing uniformity where you just don't have a duty to retreat anywhere you have a, you know, legal right to be. I think the consistency there is...would be welcomed by the citizens of Nebraska here. I don't think anyone wants to feel a need for flight. It puts you at substantial risk to injury, you know, either by your assailant or, you know personal injury, whether it be, you know, trying to run. And there's a lot of snow out here and ice. You could slip and fall, injure yourself pretty substantially also. So I think the uniformity of removing all duty to retreat would be an easier fix or solution. [LB889]

SENATOR COUNCIL: So you're saying that the citizens of the state of Nebraska do not understand that a duty to retreat that currently exists is...imposes on them a duty to safely retreat, a duty to retreat if they reasonably believe, because that's going to be the

standard throughout here under this bill, is a standard of reasonableness. So you're saying that Nebraskans are incapable of determining that it would be reasonable under a particular set of circumstances to avoid a situation as opposed to utilizing deadly force. [LB889]

JORDAN AUSTIN: I think a reasonable belief allows them to make that assumption for themselves. If they would rather, you know, take flight and run away, they have that option. You know, you always have the option to take, you know, choose lesser force in any situation and, you know, this gives you the ability to analyze it. The reasonableness allows you to analyze the situation and use the appropriate level, and if flight is the appropriate level at that time then you're entitled to do that. [LB889]

SENATOR COUNCIL: The question I asked Senator Christensen about the way the bill is drafted, it says that if an actor knew that his or her home had been unlawfully entered, but at the time that they are in the home there's no one present in the home, they look out the window and they see someone leaving the home, and according to the language here it says that in that situation all the actor had to have was a reason to believe that a forcible, unlawful entry had occurred. They'd be justified in using deadly force in that situation. [LB889]

JORDAN AUSTIN: And your specific question was... [LB889]

SENATOR COUNCIL: Yeah, that the actor... [LB889]

JORDAN AUSTIN: ...is that the intent? [LB889]

SENATOR COUNCIL: ...the perpetrator is still on the property but, clearly, leaving the property. Is it the intent here that in that situation use of deadly force is warranted? [LB889]

JORDAN AUSTIN: Oh, I think the intent, as it was written, and you bring up an interesting situation, but the intent is if you come home and encounter where that situation had occurred, you come home and you realize an unlawful entry had occurred. Now if you're in the home, you realize it had occurred and you see someone leaving and you're leaving your home, they're not at that point...well, they could be but at this point you have to make a reasonable determination and belief that they're posing imminent threat or great bodily...imminent...they're posing a threat of imminent death or great bodily harm to you. And if they're leaving your property and haven't directly, you know, made a threat towards you, you know, I would have reason to believe, they're outside your home and they're on your property, it would not apply there. You would expect to be...use a certain amount of reasonableness and I think in any situation any person wouldn't just start shooting at someone leaving their home and shoot them in the back. I mean that is not a reasonable level of force to address that situation. [LB889]

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SENATOR COUNCIL: Well, I'm glad you have that confidence. [LB889]

JORDAN AUSTIN: Now but one doesn't know whether or not that person is going to turn around and get their buddies and say, hey, you know, no one is here, everyone come back in. So you don't know that and that's why you have the added level of protection. You don't know if they're going down the street to get the van to pull it up there. Your reasonableness would probably not warrant you shooting at someone who is walking away from your house, but it's going to give you reason to be aware and to use the right amount of force if they do come back and you're prepared for it at least. [LB889]

SENATOR COUNCIL: But if you read this section, it says that an actor is...this goes to your presumption, Mr. Austin, an actor is presumed to reasonably believe that the use of deadly force is immediately necessary when the actor knew or had reason to believe that a forcible, unlawful entry or removal had occurred. [LB889]

JORDAN AUSTIN: So we're talking... [LB889]

SENATOR COUNCIL: So I mean, so here you have a...you're granting a presumption that it's reasonable in a situation where you come home and it looks like someone has burglarized your home and you look out and you see an individual leaving your property. If someone exercises deadly force in that situation, under this amendment it's presumed that he or she reasonably believed that deadly force was necessary and immediately necessary, not just necessary, immediately necessary. [LB889]

JORDAN AUSTIN: And if someone breaks into your home, there is a concern that that person was there to do you harm. That's why we are making that specific presumption, that if someone is breaking into your home they are making an immediate threat, whether or not you're there or not. So if you encounter them when you come back in, that's why this force protects you. And the presumption is there to enhance that. That person could be leaving. They could be coming back. You're not aware of that but you want to have that absolute presumption. If you engage that person outside your home, you know, what that's doing is, you know, they could either turn around and meet force with you or they could start running away. So at that point, as they're running away, they're retreating from you, you know, I don't think deadly force would be warranted because in that instance you might be provoking and you might change and take yourself out of the presumption where you would provoke an attack, and there's specific language in there that removes that. [LB889]

SENATOR COUNCIL: But it would be in conflict, Mr. Austin, because this section said an actor is presumed to reasonably believe, so the presumption is that it's reasonable under that circumstance. It's the exact opposite of the situation you gave with regard to

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the Milwaukee case. There...in this case, he's presumed to be acting reasonably if he shoots the person in the scenario I've given, and it's up to the state to prove that it wasn't. So the presumption there is that it's reasonable, even though the underlying reason for the section as it exists and the purported amendments is that people have a right to protect themselves. I don't disagree with that. I don't dispute that. But I don't understand why we can't appreciate and understand that one of the factors that everyone should take into account, because I'm going to tell you if I have a threat of serious bodily harm coming towards me, I'm going to use whatever force I need to protect...but that's the criteria--serious bodily harm, a threat of serious bodily harm, a reasonable belief that I will be seriously harmed. But in the situation here, where we're talking about a forcible entry that has occurred and the presumption is that, you know, I need to immediately resort to deadly force, I have a serious fundamental problem with. I'll leave it at that, Mr. Chairman. [LB889]

SENATOR ASHFORD: Thank you, Senator Council. Any further questions of... [LB889]

SENATOR LATHROP: Can I just ask one? [LB889]

SENATOR ASHFORD: Sure. Senator Lathrop. [LB889]

SENATOR LATHROP: In this list, and I'm looking on page 6 right around paragraph (4). We're replacing...there's a list of the kinds of things that you can currently use deadly force for including kidnapping, sexual intercourse compelled by force or threat. What are we picking up as a crime that justifies use of force when we change the standard and we're deleting kidnapping, sexual intercourse compelled by force, and we're replacing it with forcible felonies? What felonies are we talking about besides, presumably forcible felony would include kidnapping and sexual intercourse compelled by force, but what other felonies are you talking about? [LB889]

JORDAN AUSTIN: Well, I think Senator Christensen alluded to that and somewhat in his testimony and I'd be happy to elaborate. The definition that is used on the... [LB889]

SENATOR LATHROP: I read the definition. [LB889]

JORDAN AUSTIN: Yeah. [LB889]

SENATOR LATHROP: It really doesn't help me much. [LB889]

JORDAN AUSTIN: Okay. Well, then... [LB889]

SENATOR LATHROP: Because I'm wondering what felonies, what crimes would you put on that list if...because a judge is going to have to look at this and say, well, is that a forcible felony or isn't it, and what's that list going to look like... [LB889]

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JORDAN AUSTIN: Well, the list... [LB889]

SENATOR LATHROP: ...besides kidnapping... [LB889]

JORDAN AUSTIN: I think this is limiting, in a sense, where you could add other things to it. I mean right now we have, you know, the short list, you know: kidnapping, sexual intercourse compelled force by threat. Well, you could have, you know, various...well, actually there's a list that I have here I can, you know, share with you. Well, I could... [LB889]

SENATOR LATHROP: I'm just curious. Does it include burglary? [LB889]

JORDAN AUSTIN: Yes, I mean because what... [LB889]

SENATOR LATHROP: So...well, we had a...here's my question and I'm just trying to get to what we're doing in terms of expanding the protections for the homeowner. If someone commits a burglary, that's just entering your home. You don't have to use a crowbar and come through the window to do that, right? You can commit burglary by going into somebody's garage, opening the door that you don't have permission to go through, and you've committed a forcible felony. Is that right? [LB889]

JORDAN AUSTIN: Burglary, yes, I believe the case, that would cover forcible felony. [LB889]

SENATOR LATHROP: Okay. So somebody that comes into your garage, for example, to steal your snowblower, all of the things that are now going to apply, the presumptions that are contained in this bill and the use of force are now okay, that would be one of the felonies. [LB889]

JORDAN AUSTIN: At that point...and the point of the presumption, and if I get off your point stop me, but the garage, most garages are attached to your home, there's a door there. If you encounter someone who's in your garage, you don't know at what point, you know, if that person is just in there to steal some things or if they're going to come into your home at that point. [LB889]

SENATOR LATHROP: I understand that. [LB889]

JORDAN AUSTIN: Yeah. [LB889]

SENATOR LATHROP: I'm just trying to understand if a judge is trying to interpret this new law, what are the list of forcible felonies? Obviously, if somebody is in there to kidnap, hurt somebody inside, a rape... [LB889]

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JORDAN AUSTIN: Robbery would be included there, so you have basic robbery. [LB889]

SENATOR LATHROP: Robbery is...robbery, by definition,... [LB889]

JORDAN AUSTIN: Uh-huh. [LB889]

SENATOR LATHROP: ...involves the use of deadly force or the threat of it, right? [LB889]

JORDAN AUSTIN: Yes. [LB889]

SENATOR LATHROP: Okay. And a burglary involves just entering the dwelling against permission. [LB889]

JORDAN AUSTIN: Yes, that will be included. [LB889]

SENATOR LATHROP: Any other felonies that you would include in that list? [LB889]

JORDAN AUSTIN: Yes, there's a number of them. I mean just based on what the legal counsel here has (inaudible) you have murder in the first degree, manslaughter, you know, various degrees of assault. [LB889]

SENATOR LATHROP: I get the homicide. [LB889]

JORDAN AUSTIN: Yeah. Kidnapping, stalking, various degrees of sexual assault, domestic assault. [LB889]

SENATOR LATHROP: Did you say stalking? [LB889]

JORDAN AUSTIN: Yes. [LB889]

SENATOR LATHROP: So if somebody is stalking another person, that's a forcible felony? [LB889]

JORDAN AUSTIN: Well, if they're doing the forcible felony in a way... [LB889]

SENATOR LATHROP: I'm not arguing with you. [LB889]

JORDAN AUSTIN: Yeah, but... [LB889]

SENATOR LATHROP: I'm just trying to get your list, Jordan, so I know what this is

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doing to the law. [LB889]

JORDAN AUSTIN: ...but the forcible felony, in a way where they're inflicting...they're abiding by the definition so that might have come out the wrong way. The forcible felony when they...the threatened use of force with a deadly weapon against another person. So I apologize. I didn't mean to include that. This was just a basic list put together of felonies throughout the state and... [LB889]

SENATOR LATHROP: But the forcible felony doesn't require the threat of harm. [LB889]

JORDAN AUSTIN: It does under the... [LB889]

SENATOR LATHROP: It's a different...there's a comma used here. There's the force of threat of harm or a forcible felony, right? [LB889]

JORDAN AUSTIN: No, the forcible felony definition says, include the use or threatened use of force or a deadly weapon against another person. So it would...so these have to involve, you know, the threat of force or a deadly weapon. So the deadly weapon doesn't have to be present but the threat or use of force. So, yes, under that stalking would not be included but you have, you know, threatened force against individuals. [LB889]

SENATOR LATHROP: But the force doesn't...the threatened force doesn't need to be deadly. Maybe I can put it differently. If an ex-husband goes into his ex-wife's home and is screaming at her, a typical domestic argument, and he's saying things while he's mad at her about what he's going to do to her, that would be a sufficient threat of force. Is that right? [LB889]

JORDAN AUSTIN: I would think so, but I think she has to...well, if he's just threatening her verbally... [LB889]

SENATOR LATHROP: Right. [LB889]

JORDAN AUSTIN: ...with threatening violence, threatening actions against her so, you know, claiming I'm going to, you know, go home and get a gun and shoot you. Is that kind of what you're saying? Because something like that, I mean that would be a significant threat, where he's threatening violence with a weapon. [LB889]

SENATOR LATHROP: So if he says, I'm going to...in a fight with his ex-wife, I'm going to go home and get a gun and come back, that's enough? [LB889]

JORDAN AUSTIN: Yeah. I mean I would think that significant of a threat... [LB889]

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SENATOR LATHROP: And I'm not...I want you to know I'm not arguing with you...
[LB889]

JORDAN AUSTIN: Yes. [LB889]

SENATOR LATHROP: ...or trying to tear this apart. I'm just trying to understand what we're doing in terms of expanding when deadly force can be used. [LB889]

JORDAN AUSTIN: But I think, you know, the threat of that and the fact that he's leaving the property, I don't think the force will be warranted. If he said, I'm going to go out to my car and get one or he had one immediately present, I think the difference between that and...in fact, the example I used is probably poor now that I think more about it because there's no immediate threat there, and because the gun is at home. If he has to leave and go back, there's no immediate threat of injury. The threat would be if he had the gun present and said, look, I have a gun with me, I'm going to shoot you. There is the immediate threat of bodily harm. [LB889]

SENATOR LATHROP: But the definition of forcible felony doesn't include the immediate...the threat of an immediate use. It just says the threatened use of force. Doesn't say "immediate." Your intention is for it to say immediate? [LB889]

JORDAN AUSTIN: Well, I would think as it applies, you know, in different situations, perhaps an immediate threat might not be relative everywhere. I mean the point you just made and what we talked about as far as him making a threat that he intends to follow through on, then maybe immediate would not be a good term to put in there because the threat is still viable and the actions will still be followed through on. So she, at that point, has to be able to take appropriate action, especially if he's sincere about it.
[LB889]

SENATOR LATHROP: Okay. Okay. I think I got it. Thanks. [LB889]

SENATOR ASHFORD: Jordan, I think that there...as many different situations as you can think of, I mean we could sit here all day and we could think of potential altercations or situations that can occur. The problem we have and the challenge we have is to write laws that are reflective of what's really happening out there and what's actually going to do some good and have a public good. I get the part about immediate threat of force. I understand that if someone is immediately threatened with force that that's something that this committee needs to think about, I mean what should be the standard to be able to defend yourself from an immediate threat. And if that's the intent, and I realize there's a lot of language, as Senator Council pointed out, there are numbers of different...there's changes in existing law and then there's new language, so there's quite a bit for us to sort through. But if the intent of the bill is to address the issue of

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someone is an immediate threat, that they could be killed or injured or their children could be killed or injured, that's something that the committee...well, we'd examine anything we're given, but that's something that is worth consideration. If it's...the further you get away from that, that immediacy to basically the old comment, well, taking the law into your own hands--I'm going to get this person, I know they were in my...that this person was in my house, I think they're carrying off the television set, I'm going to blow them away. I mean I...you know, that's another...that's an extreme example on the other side where I wouldn't think that we would want to give someone the ability to just do that. So it's really...it's really...as far...without, you know, so it really is trying to find those lines, wouldn't you agree? I mean there's many different kinds of cases or circumstances that could occur here. [LB889]

JORDAN AUSTIN: There are, and I think the importance of this legislation is what we want to accomplish. I mean obviously there's been some concerns on some terms or usages and what we want to do is three fundamental things, which was provide the civil protection, build a presumption in the home that's specific for your home, and remove the duty to retreat. I mean that is... [LB889]

SENATOR ASHFORD: Right, but we have to be... [LB889]

JORDAN AUSTIN: I mean that's the intent. [LB889]

SENATOR ASHFORD: ...we have to be pretty clear to prosecutors... [LB889]

JORDAN AUSTIN: Exactly. [LB889]

SENATOR ASHFORD: ...and to judges if we're going to make policy in this area, and this is a pretty tricky area. The duty to retreat in and of itself, that concept is a difficult concept to understand because it's hard to understand when it applies and when it doesn't, and I think that is tricky. It becomes less tricky when you're, as I say, when you're confronted with an immediate threat and with, at least as Senator Lathrop implies in his question, some ability to carry out that threat. Now that doesn't mean they have to necessarily have the gun pointing at you but there could be some other circumstance that would be similar to that. And the challenge for us is to try to draw those lines and that's...and words have many different meanings, so... [LB889]

JORDAN AUSTIN: Yeah, I would agree with you and I think, you know, some of the language we chose in my, you know, we can work with it. You know, the committee obviously, you know, we'll work together to come up with what the best solution would be and we can help in any way. [LB889]

SENATOR ASHFORD: Yeah. Is it the intent here is to...is the sense that...well, let me give you an example to just clarify in my mind. Let's say that there are a series of

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robberies that have occurred in the neighborhood, and we've had this happen in Omaha quite a bit where there have been a rash of burglaries, not robberies but burglaries, and there's fear in the neighborhood. There's fear that, you know, they are going to be next or whatever it is. And those fears are legitimate and they're real and they're visceral and people have them. If you, you know, and if someone...if someone...where does...where do we draw the line? If someone comes to the house and maybe it's a process server, for example, and we could think of lots of examples, but a process server forcibly knocks on the door, you know, kind of makes a lot of noise, is disruptive but has somewhat of a legitimate...has a legitimate purpose to be there. If that person, let's say, in the house is very elderly, is frightened that something may happen, is there...what happens in that case under this statute? If there's a gun...if the homeowner takes, you know, fires at this person or shoots at this person at the door, is that...is that...is there a presumption? There's no presumption there, is there? [LB889]

JORDAN AUSTIN: No. No, because the person has not, you know, unlawfully or forcibly entered. They're outside the door. You cannot shoot through the door to... [LB889]

SENATOR ASHFORD: It has to be...what if it's a meter reader, somebody that comes into the house and reads the...? [LB889]

JORDAN AUSTIN: Well, I mean they wouldn't...they're not allowed as far as I know, they can't enter your home without, you know, your permission or come inside without, you know, someone being there. [LB889]

SENATOR ASHFORD: So is it the... [LB889]

JORDAN AUSTIN: They don't have access to your house. [LB889]

SENATOR ASHFORD: So is the justification for being in the house itself, that's the trigger event? It's the fact that they're uninvited, they don't have any legal right to be there? They...is that what...that has to happen first, that person has to be in there because they don't have...they're in there for some purpose other than a legitimate purpose and that's the threshold question? [LB889]

JORDAN AUSTIN: Correct. Yes. [LB889]

SENATOR ASHFORD: Is that what you're saying? Okay. Let's say that threshold is met, and to Senator Lathrop's example is a good one, probably a common one, where there's a...the two people know each other. Person comes in the house, comes in there and starts to threaten. At what point...it's not a burglary, it's just a yelling match, an altercation. At what point does that homeowner have a right or a presumption that they're... [LB889]

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JORDAN AUSTIN: And in that instance, I don't believe the presumption would apply and... [LB889]

SENATOR ASHFORD: Where does it...at what point does it apply? Is it the yelling? [LB889]

JORDAN AUSTIN: No, the presumption deals specifically with, you know, if someone unlawfully or forcibly enters. So if you have an altercation that's in the home, that person was not there unlawfully, they were invited in at some point or allowed in and it was determined it wasn't illegal action, otherwise I believe, you know, law enforcement would have been called or whatever the situation may be where the person...it went from being a lawful possession to a trespass at that point, and there's a fine line... [LB889]

SENATOR ASHFORD: Well, if they said get out of here, they don't get out of here, they don't leave, get out, I don't want you in the house, get out of here, at what point...at what point does the homeowner have a...where does the presumption apply under this? [LB889]

JORDAN AUSTIN: Oh, I think just the basic self-defense statutes there described outside of the presumption would cover it there. [LB889]

SENATOR ASHFORD: It's not the presumption. They wouldn't have a presumption to use deadly force then. [LB889]

JORDAN AUSTIN: I think, based on the way the presumption is written and how it's intended to apply, it's meant to apply specifically so that...well, let's see, the...yes, so the presumption does apply here. The use of deadly force... [LB889]

SENATOR ASHFORD: Is justified. [LB889]

JORDAN AUSTIN: ...is justified and...because you're in your dwelling place or work or occupy a vehicle, covers those areas, and you're attempting to remove the actor against their will or, you know,... [LB889]

SENATOR ASHFORD: They're shouting, they want them out, say leave, they don't leave. Can you shoot them? [LB889]

JORDAN AUSTIN: Well, I think you have to address the reasonable force... [LB889]

SENATOR ASHFORD: Well, I'm not... [LB889]

JORDAN AUSTIN: ...and I don't think in that instance, yeah. [LB889]

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SENATOR ASHFORD: Is there a situation...and this is not...I'm trying to understand this. [LB889]

JORDAN AUSTIN: Yeah. [LB889]

SENATOR ASHFORD: Is there a situation where the yelling, the altercation within the house, where does that...when does that rise to the level of the presumption, the presumption is that you can use deadly force? When does that happen in that... [LB889]

JORDAN AUSTIN: Just based on my reading of this, the presumption wouldn't apply in that situation because just the basic self-defense right, as he escalates it from yelling to violence, you have a self-defense right if you're facing imminent death or great bodily harm, so... [LB889]

SENATOR ASHFORD: So let's say they shove the person, the owner is shoved. At that point does deadly force...because you're in a house, they've been asked to leave, there's a shoving goes on. Does the owner of the house then at that point have the right to...not to retreat but to...does the presumption apply then? [LB889]

JORDAN AUSTIN: You have the right to use deadly force as you reasonably believe it necessary, and in that instance... [LB889]

SENATOR ASHFORD: But there would be a presumption that that was a justifiable use of force if there was shoving going on? [LB889]

JORDAN AUSTIN: I mean at that point you have an unlawful...if you've told them to leave then your (inaudible) look at it as an unlawful entry. They're still there. They're remaining there. Perhaps, you know, the entry could be expanded upon or that term to include...I'm not sure how the phrase would be if they were told to leave and then invited back. Maybe it could be expanded upon to include that instance, you know, if it wasn't specifically addressed. I would think it needs to be. If that does...if that is elevated and told to leave, threat is there, violence is engaged, I would think that a presumption should apply there. I mean I think you're entitled to that. You're in your home. That's where the presumption needs to apply. [LB889]

SENATOR ASHFORD: So it's the in your home that sort of gives it the special sort of categorization. [LB889]

JORDAN AUSTIN: Exactly, and that's the intent of what we want to do. [LB889]

SENATOR ASHFORD: Okay. And so...and I certainly understand if someone attacks the home, the owner, if that person then uses a knife or some other weapon to attack

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the homeowner at that point, I assume under the intent of this bill, would say absolutely that person has the...there's a presumption that using deadly force is justified in that case. There's no duty to retreat. [LB889]

JORDAN AUSTIN: If you...if they have a knife or present a weapon of any sort? [LB889]

SENATOR ASHFORD: Yeah. [LB889]

JORDAN AUSTIN: Yes. I would think, yeah, there's absolutely no duty to retreat. [LB889]

SENATOR ASHFORD: So it's a little closer call if it's yelling and verbal abuse but probably? [LB889]

JORDAN AUSTIN: Well, I mean if we're talking about, you know, like the example you used where you have, you know, a man, you know, and a woman altercation, you know. [LB889]

SENATOR ASHFORD: Or just two people that know each other but it rises to the level of the owner saying get out of the house, you know, get out of here, I want you out; they don't leave; there's a witness, you know, so it can be established that he said leave. At that point they don't leave, they continue to yell and scream at each other or whatever it is, at some point there is...deadly force can be used somewhere in there. [LB889]

JORDAN AUSTIN: The deadly force could be used but we're talking about a reasonableness of that force and, you know, unless you have that fear, and again we're talking about, you know, taking someone's life which is a very serious thing and... [LB889]

SENATOR ASHFORD: I get that part. [LB889]

JORDAN AUSTIN: Yeah, and most people aren't going to do that. I would think if you're looking for a specific answer, yes, I think that would apply. If it rose to that occasion, you will be entitled to use deadly force in that instance if you had fear for your life, and you would be entitled to, and that's the intent of this. You know, I think there's multiple scenarios we continue to come up with which, you know, would turn to a gray area, but, you know, when we look at all the states where we built these presumptions in there, there aren't...you can come up with many examples. And when we're doing right to carry in this state and concealed carry, that...those all came up also and none of this had really come to fruition. You know, we come up with all these scenarios and... [LB889]

SENATOR ASHFORD: And I, Jordan, I get it. I don't have a problem with a concealed

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weapon. What my concern is, is just when they can use...when an individual can use deadly force under this statute, and that's what I'm...I think we're just trying to find some...I get the point that when the concealed weapon bill was passed there was quite a bit of discussion about, well, look, these guns are going to be used all over the place, there's going to be...and I don't think that's happened. The permit to purchase system, there was all sorts of bad things going to happen...were going to happen with that too. That didn't happen. So I mean...but this is a situation where we're...this is an intense kind of situation that we're trying to deal with here, so. [LB889]

JORDAN AUSTIN: Yeah. Well, I think the...I think what you were saying, I mean it applies specifically in the areas we're talking about. We want it to apply specifically to homes. You know, the Castle Doctrine, in itself, the definition refers to a man's home is his castle and we want to provide them with as much protection as we can there and that right and that presumption within their home. [LB889]

SENATOR ASHFORD: But if they are justifiably in the home, for some reason, law enforcement obviously is excluded here by specific language,... [LB889]

JORDAN AUSTIN: Correct. [LB889]

SENATOR ASHFORD: ...but if there's some other justification, then maybe or maybe it does not apply, depending on what actions occur, but once in the home that presumption, it begins to apply, can apply more easily than under current law. [LB889]

JORDAN AUSTIN: Correct. [LB889]

SENATOR ASHFORD: Wouldn't that be a fair comment? Okay. That's all I have. Yes, Senator. [LB889]

SENATOR COUNCIL: Just real quick, and to clarify, Mr. Austin, you've named...you stated on several occasions three objectives. I guess I need it to be clear that I agree that there needs to be some work in the third area, and that is if a homeowner is determined to have been justified in using force in a situation civil liability should not follow, I mean if that justification has been determined. But I have real problems with the other two reasons and...or the other two objectives. And Senator Ashford began to hit on it and maybe I could follow up on it. I was talking to you about section...this new Section 6 that causes me a lot of problem. And Senator Ashford gave you a hypothetical. And I know, everybody, we can all come up with some scenario, but this is particularly troubling to me because Senator Ashford's hypothetical involved a neighborhood where there have been a rash of home invasions or a rash of burglaries. And one day you're in your home and you look out and you see someone you don't know approaching your home, coming up on to your porch, and because of all of the home invasions, the burglaries that have been occurring in the area, you have reason to

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believe that an unlawful entry is about to occur. Under this language of Section 6, you'd be authorized to use deadly force, even though that person was outside your property. Now may have been on your property but not inside your home. Under this language, it says that that person is presumed to have been reasonable in his or her belief and on that basis their use of deadly force is justified. And in my opinion, that is totally unnecessary. It says you're presumed to reasonably believe that the use of deadly force is immediately necessary for the purpose of protecting the actor against the commission of a forcible entry if the actor knew or had reason to believe that attempted unlawful entry was occurring or had occurred. And the reasonable belief here would be based upon what's been going on in the neighborhood, so the actor knew or had reason to believe that an attempted unlawful entry was occurring because of what's been going on in the neighborhood, but it was the process server. Because the...it's not so much tied to a fear of imminent harm, deadly or otherwise, is just to the act of an attempted forcible entry. And I don't want to speak for Senator Lathrop, but I think that's part of the question that he was asking, that the way this is...the way this is drafted, and it's drafted to promote the use of deadly force where there is in many instances no threat, real or otherwise, of serious bodily harm. [LB889]

JORDAN AUSTIN: With all due respect, I might have to disagree with the interpretation of that. It's intended and worded in a way where it's talking about, you know, if the actor is unlawfully or forcibly entering. So it's talking about someone...so if someone is just walking up to your house, they're not forcibly and unlawfully entering. You know, they're within their lawful rights to walk up to your house, you know, and knock on the door. [LB889]

SENATOR COUNCIL: With all due respect, Mr. Austin, the language says the actor knew or had reason to believe that attempted unlawful entry was occurring. That's your...I'm reading your language. [LB889]

JORDAN AUSTIN: Exactly, attempted. So in the process of attempting to enter the home. [LB889]

SENATOR COUNCIL: But it says all I have to have is a reason to believe that. It doesn't mean that it's occurring. It just says I have to have a reason...I have a reason to believe that an attempted unlawful entry is occurring. And what I'm suggesting to you is there may be no attempted unlawful entry occurring which would, in your view, justify it, justify the use of deadly force. This says all I have to do is have a reason to believe that it's occurring. [LB889]

JORDAN AUSTIN: Exactly, and the reason to believe is...will provide you with the determination but not the absolute finality that you have to know, you know, when you have a reasonable belief, it allows room for error in an instance where you might make poor judgment in an instance like that. But you could be making the correct belief that

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that was the person, as they break into your home. You had the right belief and you acted appropriately in what you saw and determined as being an appropriate level of force and that level was met, because that person was armed and was coming in to rob your house. [LB889]

SENATOR ASHFORD: Let's say they weren't armed. That's the... [LB889]

SENATOR COUNCIL: That's the point I'm making. [LB889]

SENATOR ASHFORD: That's where I'm...that's where I'm having some...if they weren't armed or they weren't exhibiting a weapon, they were simply...and it could be interpreted as coming at the house in a menacing...you think it's a menacing manner somehow, stride up to the house, you know, there's fear in the neighborhood of things happening, there's pounding on the door. I don't know what the circumstance would be necessarily but there is no weapon exhibited. Is that...is that the kind of imminent fear of bodily harm or that would justify it? [LB889]

JORDAN AUSTIN: I mean you have to look...you have to look at it from a... [LB889]

SENATOR ASHFORD: Or is there a presumption in that case, I guess? [LB889]

JORDAN AUSTIN: The presumption applies there. I mean you have to look if there's...you know, at what point, you know, does...why would it be necessary for someone to go up and start pounding on a door in a neighborhood where there's a string of violence going on? I mean you should... [LB889]

SENATOR ASHFORD: It could be a detective. [LB889]

JORDAN AUSTIN: You should never be going up, I mean that's just a plain simple fact, you shouldn't be going up and pounding on someone's door. There could...you just need to assume, even without the Castle Doctrine in place, that something bad could possibly happen to you. [LB889]

SENATOR ASHFORD: Right. And I...and it's not...it's not... [LB889]

SENATOR MCGILL: But is it worth it? [LB889]

SENATOR ASHFORD: Senator McGill. [LB889]

SENATOR MCGILL: Is it worth shooting and killing them over? [LB889]

JORDAN AUSTIN: I'm sorry? [LB889]

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SENATOR MCGILL: Is it worth shooting and killing another human being over,...
[LB889]

JORDAN AUSTIN: Well, you... [LB889]

SENATOR MCGILL: ...them coming and pounding on your door and seeming like a threat, even if they're in a neighborhood where they theoretically shouldn't? You should be committing that, doing that anyway, regardless, but is it worth shooting another human being over? [LB889]

JORDAN AUSTIN: Well, the person is not going to use that level of threat unless they feel it necessary. You know, they're going to use a reasonable belief to use that.
[LB889]

SENATOR MCGILL: But how...people define what's necessary differently in a fear situation like they're talking about. [LB889]

JORDAN AUSTIN: Well, the...I mean the situations you're making, you know, they just don't occur. They haven't happened. And if... [LB889]

SENATOR ASHFORD: Well, there haven't been too many, and I think that's probably what we're struggling with a little bit, is that, or I'm struggling with, is that there haven't been a lot of these cases, period. That doesn't mean it can't happen and I understand that. But there haven't been a lot of cases so we're kind of struggling with what is a case. You know, has there been an example in the law where someone has been convicted in Nebraska of, you know, not retreating, let's say, and using deadly force where that, you know...and that's I think what we're trying to...is there really a need to take it any further than where it is. I do get the part when someone, when there's a weapon exhibited and the duty to retreat becomes murky. But in some of these more tangential cases, it becomes harder to see the need. [LB889]

JORDAN AUSTIN: Well, the instances you brought up, I mean this forcible felony language, the presumption language, it exists in I would say almost all the cases in the states where they've passed this. And if these instances, these concerns, you know, were relevant and these were frequent occurrences where someone's life was taken by just walking up to someone's house, you know, it would be a point of concern. Media would pick up on it. It would be discussed and states, you know, if they saw it as a problem, would repeal these statutes, and that hasn't been the case. It's never been expressed where this has been such a need and such a pressing issue where, you know, there's been a rash of people walking up, you know, to check someone's meter and they're blown away. I mean it's just not happening. There are not scenarios that are reasonable to assume. [LB889]

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SENATOR ASHFORD: You know and also...and I get that, but I...and again, on the...and then I will end it with this and get on with this. You've been up there longer than what I thought you would be. But I appreciate your candor in the answers and I understand why the...your policy reasoning behind this, these statutes. But even in the case of concealed weapon laws, one of the justifications was we want to be able to protect ourselves as citizens and, as Senator Council suggests, that is a right. We have that right to protect ourselves. But that hasn't happened either in Nebraska. We haven't had situations where people have been...at least that I'm aware of, where concealed...someone with a concealed weapon permit, you know, utilized a weapon to protect themselves or family members. Thank God, I mean that they don't need to do that but...so sometimes these issues that we're dealing with don't happen very often, but I grant you when someone is in imminent threat of violence they should be able to protect themselves but.... [LB889]

JORDAN AUSTIN: And like I said, if there are specific details that are concerns of the committee and things, they've been voiced now, you know, we will be happy to work with you, find solutions and work with it. I think everyone in this room who is going to testify after me will agree that we need to make some changes, put them in place and make things clear. And if there's tweaks that need to be made here or there, you know, we'd like to work with the committee to get to a point where we can...we can establish these provisions. [LB889]

SENATOR ASHFORD: Right, and I appreciate that, Jordan, and you've always been certainly willing to work with us and we appreciate that. Thank you for your testimony. Any other proponents? Yes, sir. [LB889]

STEVEN WOLF: (Exhibit 5) Good afternoon. My name is Steven Wolf and I'm a resident of Omaha, Nebraska, and I appreciate this opportunity to provide testimony in support of LB889. I want to thank Senator Mark Christensen for introducing this bill and any other senators who cosponsored this important piece of legislation. While I applaud the existing statutes that enable Nebraskans to defend themselves, their families, and other innocent people against violence and perpetrators of crime, current Nebraska law simply does not do enough to protect the rights and property of law-abiding citizens in our ability to avoid becoming victims of crime. In fact, existing law leaves the door open for innocent, law-abiding citizens to have to defend themselves a second time against civil litigation by the perpetrator of violence and crimes or by the perpetrator's representatives. This is simply wrong for a law-abiding citizen who has been cleared of criminal wrongdoing by our justice system in the act of self-defense to then be subject to harassment or further financial or property taking by a perpetrator through civil action. I respectfully ask that you consider these three key additional points in supporting of improving Nebraska law along the lines of what is commonly known as the Castle Doctrine. These three key points essentially amount to our current law's weakness in the concept areas of retreat, the philosophy of mens rea and actus reus, and the rights

of law-abiding citizens to prevent themselves and others from becoming victims of crime. Under the concept of retreat, the law currently favors the criminal, particularly in matters of a perpetrator being in the home or other dwelling or place of business without the express invitation of the owner, whether through forced entry or not. Simply put, a person's home is their castle and once the perpetrator crosses over that threshold into a person's property, be it in their home or other personally owned dwelling, by all rights, this should be their sanctuary from anyone or any unwanted exposures from the outside world. In essence, when a law-abiding citizen enters their home or personally owned dwelling, they have retreated as far as they reasonably must or should from harm. Right now, Nebraska law does not fully recognize nor respect that a person's home is their full retreat. The right to property is one of the strongest pillars of individual liberty and law regarding the founding of this great nation. What if there are other family members, children, or invited guests who have every invitation to be inside this retreat, are being subjected to the invasion of this retreat by a perpetrator whose full criminal intent is not known by the innocents authorized to be there? This point leads to the next aspect of Nebraska law that provides an advantage to criminals and leaves innocents vulnerable to further violence and unjust actions. What if a perpetrator is already occupying a retreat before an innocent crosses the threshold or enters the retreat uninvited through by any means while the innocent is at home? While it may be appropriate to wax philosophical about the guilty mind and the guilty action in the Chambers of this Legislature, it is entirely too much to ask an innocent, law-abiding citizen who in an instant finds themselves or their loved ones and other guests that were invited into their retreat and then confronted by an uninvited perpetrator who in a split second could inflict violence, bodily harm, and death upon those innocents. [LB889]

SENATOR ASHFORD: Steve, thanks. I'm going to ask you to sum up. You'll probably get some questions and you can... [LB889]

STEVEN WOLF: Okay. I think in summary, I think that...I think there can be more that can be done with this law. I would agree, just based on what I just heard before, I do personally have concern and would encourage consideration of further amending this bill on that whole issue of the threshold. I don't think it's proper and right, even if you're paranoid or whatever, that if someone is pounding on your door that you start firing through that threshold. I think the bill should be amended that if that threshold is crossed that, you know, we should look at the ability of that person to defend their property. The other thing I want to point out, and it's submitted with my written testimony, if you look at the crime statistics here in Nebraska, roughly anywhere from 23 percent over the last five years, 23 percent and upwards to 47 percent of the homicides committed in this state were done so without the use of guns or knives. So, you know, for a citizen in their home to sit there and wonder whether or not a shouting match is going to turn to violence, I mean bottom line, if someone is where they shouldn't be, a person has a right to defend their castle. [LB889]

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SENATOR ASHFORD: Thank you, Steve. [LB889]

STEVEN WOLF: Yes. [LB889]

SENATOR ASHFORD: Senator Council. [LB889]

SENATOR COUNCIL: Yes, thank you, Mr. Wolf, for your testimony. I just have one question. Was I correct in hearing that your basic premise on the retreat doctrine is that a person should not be expected to retreat if they're in their home? [LB889]

STEVEN WOLF: Exactly. [LB889]

SENATOR COUNCIL: That's what the current law says. [LB889]

STEVEN WOLF: Well, that's not my understanding of what it says and as I even heard some of the discussion here already. So for example, if you're in your home and you think the situation is escalating to a point of violence, somehow or another I'm supposed to second guess whether or not that person is going to pick up a lamp and bash my head in with it or that I should, based on my concern of a threat of violence or death, be able to defend myself. So I think there's entirely too much burden on a law-abiding, innocent person in their home to sit there and fathom what the person may be about to do to them, and to the point that it may be too late for them to in fact properly defend themselves. [LB889]

SENATOR COUNCIL: Okay. Can I read a section from the current law? [LB889]

STEVEN WOLF: You certainly may. [LB889]

SENATOR COUNCIL: "The actor," which is homeowner, "shall not be obliged to retreat from his dwelling or place of work." [LB889]

STEVEN WOLF: Okay. I'm great with that. [LB889]

SENATOR COUNCIL: That's the current law. [LB889]

STEVEN WOLF: I'm great with it. [LB889]

SENATOR COUNCIL: That's the current law. [LB889]

STEVEN WOLF: Okay. [LB889]

SENATOR COUNCIL: Okay. Thank you. [LB889]

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SENATOR ASHFORD: Any more questions of Steve? Thank you, Steve. [LB889]

STEVEN WOLF: Thank you. [LB889]

SENATOR ASHFORD: You've been...you got up first and then sat down, so it's your turn. [LB889]

GUY HIELSCHER: (Exhibit 6) Not a problem. Not a problem. My name is Guy Hielscher. I'm from Alliance, Nebraska, G-u-y H-i-e-l-s-c-h-e-r. Society is in a constant change of evolution or change. As it evolves, it becomes necessary that we reexamine past laws and make necessary changes to ensure the ability of common, decent, law-abiding citizens to safely work and live. Society has changed and so have the criminals and their activities. As a police officer in the late seventies and early eighties, I can't remember ever investigating a home invasion or a carjacking, yet these crimes are in the papers almost on a daily basis. A gang was usually a group of guys or people that got together and talked about sports or other interests, cars, maybe shared a beer or two. Today we see frivolous lawsuits over the tiniest infraction. The get-rich-quick or spin-the-wheel-of-fortune attack on the actions or inactions of others is almost criminal in its own right. The common people of Nebraska need the right to protect themselves, their loved ones, and their property. We shouldn't have to fear reprisal in the criminal or civil courts. LB889 goes a long way toward making that possible. Why should I, the victim, have to prove that I retreated as far as possible and that there was absolutely no other course of action that I could have taken before employing deadly force or taking some kind of forceful action against a perpetrator? In the heat of the moment, if I failed to find or recognize another course of action that availed itself, what happens then? It's easy for an attorney or a court later on to examine what took place and make other assumptions on what maybe I should have done. I've heard concerns that if LB889 was passed that it will somehow create free fire zones in homes or businesses; that people will possibly shoot first, ask questions later, things that we've discussed here today, maybe even killing a loved one. Tragedies like this do take place. They take place all the time. But we cannot legislate good judgment and we can't legislate common sense. When attacked, most people fight back only as a means of survival. They're not really considering what the law is saying. They're going to do whatever they need to, to survive. They're going to protect themselves and their loved ones as best as possible. I'm asking for your support of the bill and I want to thank you all for hearing me out and especially you, Senator Christensen, for introducing it. [LB889]

SENATOR ASHFORD: Thanks, Guy. Any questions? Did you come all the way in from Alliance? [LB889]

GUY HIELSCHER: Yes, I did. It's important. [LB889]

SENATOR ASHFORD: Thanks for coming. Other proponents? Yes, sir. [LB889]

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BILL SCHULTZ: (Exhibit 7) Good afternoon, Senator Ashford, members of the committee. My name is Bill Schultz, spelled B-i-l-l S-c-h-u-l-t-z. I am a lobbyist for the Nebraska Marksmanship Association and also represent the Eastern Nebraska Gun Club and the Nebraska Council of Sportsmen's Clubs. I am pleased to rise in support of LB889. This law would permit law-abiding citizens to use force, including deadly force, against an attacker in their homes or any place outside of their homes where they have a legal right to be. I'm going to kind of cut this short and not read all of the stuff that I have written; again, copies for the record. LB889's intent is to address self-defense, not criminal violence. Rather than regurgitate all of the other three possible points that there are that need to be discussed, LB889 is common sense, and a common sense to self-defense bill which has been passed in various forms in the past few years with overwhelming bipartisan support from various state legislatures. The members of the Nebraska Gun Club, Eastern Nebraska Gun Club, members of the Nebraska Marksmanship Association, and the members of the Nebraska Council of Sportsmen's Clubs collectively and overwhelmingly support LB889. This is good commonsense legislation. We urge you to pass it on to General File and support its passage. Thank you. [LB889]

SENATOR ASHFORD: Thanks, Bill. Any questions of Bill? Seeing none, thanks. Other proponents? How many other proponents do we have? Okay. [LB889]

ANDREAS ALLEN: (Exhibit 8) My name is Andreas Allen from Omaha, Nebraska, last name is A-l-l-e-n. Senator Ashford, Judiciary Committee, I am speaking on behalf of the membership of the Nebraska Firearms Owners Association in support of the advancement of LB889. The NFOA is the largest firearm owners' organization in the state and represents the concerns about legislative issues of its members as they have been voiced to the leadership of our organization. First, let's separate some fact from fiction. This bill has nothing to do with a lot of the things that have been said about it in the press. It is not a bill that encourages make-my-day situations. It does not encourage people to shoot thy neighbor. This bill is simply clarifying when a person can defend themselves with the appropriate level of force. It does not remove the requirements for using deadly force. It simply clarifies some situations, rather than relying on prosecutorial discretion, by giving clear guidelines for what is self-defense. This bill does this in three basic parts. First, it recognizes that when an intruder breaks into your home you are under immediate danger of bodily harm and you have the ability to resist with whatever means is appropriate and available to you, including deadly force if you determine that is necessary. This is not a new idea but one that has been around for thousands of years, even being spoke of in the Old Testament of the Bible where, in Exodus 22, it states: If a thief is caught while breaking in and is struck so that he dies, there will be no blood guiltiness on his account. Second, it removes the second guessing of whether if a person had the ability to retreat. After the fact, we all have the ability to see things that may have been done differently in any given situation. By

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having the requirement for someone who is not present and not under the stress of a situation to later decide if someone should have known that they could have retreated and did not does not recognize the true gravity of that situation. Anyone who has studied self-defense knows that the best action to take when attacked is to react to the attacker violently. Then, once it is possible to do so, separate from your attacker, not to try to run away, then, when you cannot, fight, because that delay will put you at a distinct advantage (sic). That will get you injured or killed. I'm going to skip over the last paragraph there, and I hope that the Judiciary Committee will join us in support of this commonsense bill. [LB889]

SENATOR ASHFORD: Thank you. Any questions? Thank you, sir. All right, last proponent, and then we'll go to the opponent testimony. [LB889]

CHRIS ZEEB: Good afternoon, Senators. My name is Chris Zeeb, Z-e-e-b, also with the Nebraska Firearms Owners Association, and I'm going to cut it really short and just try to...threw everything away that I was going to say because it's already been said and I'll just touch on a couple of things that were brought up here. First of all, I'm a use of force instructor for civilians. I teach concealed carry and I also go further and teach individuals even in more detail when they can use force. And I don't care if this Legislature said today you can shoot somebody over your car, I'm never going to tell anybody that's a good idea. It's just not reasonable. Senator Lathrop, you were talking about inserting the word "immediate" there. I would ask that you use the word "imminent," because if it's immediate it's too late. [LB889]

SENATOR LATHROP: I was just trying to find out what we were talking about... [LB889]

CHRIS ZEEB: Right. [LB889]

SENATOR LATHROP: ...with forcible felony because it's a little vague. I don't know what that list looks like, which is...I appreciate your comments. [LB889]

CHRIS ZEEB: Right. But, yeah, if you were facing an immediate attacker with a knife, you're being stabbed and it's too late. Senator Ashford, you talked about a shouting match and there's been a lot of talk here of guns and knives and weapons, and I just want to point out that hands are a very deadly weapon and you can ask any police officer and you watch any police officer who stops you during a certain...just simple traffic stop. They are watching your hands because hands kill people and it's not just the weapons. Someone doesn't have to be...have a weapon to be a deadly threat to you. A baseball bat, a beer bottle, anything that can be picked up as well as someone can strike you one time in one spot and you're dead. You're done if they've had that training. Senator Ashford, you also asked a question, has anybody been convicted of not retreating in the state? I've researched every self-defense case I can find here and the answer to that question is no. However, there are people who have been wrongly

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arrested, charged, and had to go...not only is their life turned upsidedown because they've had to take another human's life, but they faced humiliation in the media. Senator Council mentioned a case in her district, and I think I might know the case. Might have been the Midwest Grillz store... [LB889]

SENATOR COUNCIL: Yes, sir. [LB889]

CHRIS ZEEB: ...that you were talking about. And in that particular case, the news media drug the store owner's name through the mud for a week about a double homicide with an assault weapon. Okay? When the truth came out in that case, that the store owner defended himself, where do you think it was in the newspaper or on the 10:00 news? It wasn't. His life is turned upside down from having to take another person's life, drug through the mud in the media, and everything. You're going to be looked at differently by your friends, your coworkers, everyone else. The last thing anybody wants to do is use deadly force and, with that being said, I'll leave it at that. If you have any questions, be happy to answer them. [LB889]

SENATOR ASHFORD: Any questions? No. Thanks. [LB889]

CHRIS ZEEB: Okay. Thank you. [LB889]

SENATOR ASHFORD: Is there any opponent testimony? Opponent. [LB889]

ROBERT SIVICK: Good afternoon, Senator Ashford and his colleagues. My name is Bob Sivick, that is S-i-v-i-c-k, and I am the county attorney for Howard County, Nebraska. I appear here today on behalf of the Nebraska County Attorneys Association, which is opposed to the passage of this bill. I know that you've discussed this for quite awhile and most every point has been touched on in great detail, but I do just want to review a few of the reasons why the County Attorneys Association is opposed to this bill. The first is this bill would repeal the duty to retreat. As the law presently stands, it is entirely reasonable. It simply requires people to retreat if they can do so with complete safety and it doesn't require them to retreat in their home. The law, as it stand, does not...does not say that people have to give up their homes or endanger themselves when faced with a threat. They can use deadly force and people have used deadly force. So I don't know why that...why it's necessary to repeal that, the duty to retreat, but this bill does that. The other thing that I don't think has been discussed is 28-1414 is repealed by it, which is...refers to mistake of law. I don't...in my practice, a lot of what I do is traffic cases and oftentimes I'll have people come into my office and they'll say, I was cited for having no proof of insurance, I didn't know, I just bought this car, I didn't think I had to have insurance until I got it registered, until I got it licensed. Because you go to the county treasurer, you give them your proof of insurance, and people think that for that first 30 days they're entitled to drive around without insurance. Well, of course, that's not true. It's illegal. That's not a defense in that type of situation, but 1414, which

also states is not a defense in the application of deadly force, that's been repealed. So what this will create is a situation where we don't allow people to assert mistake of law as a defense in a traffic case, but we're going to allow them to do that when they kill someone. The third thing is, and this has also been touched on, it removes that laundry list of instances where deadly force is justified--death, serious bodily injury, kidnapping, rape--and replaces it with the term "forcible felony." And I know Senator Lathrop talked about this at length. As I was sitting there, there are a lot of things and I'm sure there are things that I won't think of for a week or a month from now that could come under the term "forcible felony." I just think it's a bad idea. I think it adds uncertainty and I think it adds the ability for people to get away with killing people when it's not justified. I'm just going to talk about a few things in general. The county where I come from is rural, it's politically conservative, it has a great deal of...a great many sportsmen, a lot of hunters. There isn't any opposition to law and order or hatred of firearms, and I think that that's also somewhat true in Nebraska. Likewise, the members of my association cannot be characterized as being soft on crime. I don't know of anybody in this state or elsewhere who's languishing in prison because they've been arrested, prosecuted, convicted, or imprisoned for a justified use of force in defending themselves or their homes. This bill appears to be a solution in search of a problem. It's going to create more problems. It's going to make it more dangerous to be a police officer, a utility worker, or the guy down the street who has Alzheimer's who tends to wander around on occasion. We have enough people in this state who are killing each other. This bill will make it easier for people to do that and, quite frankly, I don't think that that's sound public policy. Thank you. [LB889]

SENATOR ASHFORD: Thanks, Bob. Any questions of Bob? Senator Council. [LB889]

SENATOR COUNCIL: Yes. Thank you, Mr. Sivick. I just...I'm sitting here thinking because I've expressed my concern. My concern with the bill is eliminating the duty to retreat and the new situation where force is required. I simply don't understand the reason for changing from the list of offenses coupled with my reasonable belief that I'm going to suffer deadly...serious bodily harm is not enough. Like I said earlier, I think it's a legitimate issue that needs to be addressed about civil liability immunity from someone who has used force or deadly force in a justifiable manner. But the issue about the retreat that I have some problems with removing it in its entirety, number one, I'll reemphasize the point that the current law doesn't require you to retreat in your own dwelling or in your own place of work. Number two, is it not possible that by removing the duty to retreat, in a lot of these gun violence situations where, if you have a duty to retreat...we have these competing gang situations. One gang member pulls a gun and instead of taking the opportunity to retreat because the duty of retreat applies outside your home, any public place. Correct me, please tell me if I'm not correct. [LB889]

ROBERT SIVICK: You're correct. [LB889]

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SENATOR COUNCIL: Okay. Situation in the parking lot of a fast food place: gang member A pulls a weapon out and, rather than members of gang B simply retreating, they start firing at each other. [LB889]

ROBERT SIVICK: Yeah, it's like the beach at Normandy, yeah. [LB889]

SENATOR COUNCIL: Without the duty to retreat provision, you're not...those folks could argue self-defense. [LB889]

ROBERT SIVICK: Right. Absolutely. [LB889]

SENATOR COUNCIL: And then oftentimes use that to, I guess what do I want to say, escalate rivalry activity. Is that... [LB889]

ROBERT SIVICK: And... [LB889]

SENATOR COUNCIL: I make...I make no bones about my desire to reduce and eliminate gang violence and a lot of the gang violence that occurs is with weapons. It's with handguns. It's with short shotguns. It's not with fists. It's not with knives. It's with firearms. And without the duty to retreat being imposed, we would have...I think you'd see prosecutors, at least in areas where you're seeing growing gang violence--and the first bill we heard here says, you know, it's not just in Omaha, Lincoln, Bellevue, it's Grand Island and going across the state--without that duty to retreat, don't we place ourselves in a position where we could see more of these acts of gun violence? [LB889]

ROBERT SIVICK: We do, Senator Council, and I am, my jurisdiction is a rural county but only 20-25 miles to the south of me is Grand Island and there is a great deal of gang violence there. So I can conceivably see this happening in my county some time in the future. I did want to address some of the things you said. The way the bill is written, it will create a number of defenses to unjustified killings. We have a lot of good criminal defense lawyers in this state and I'm not faulting them. That's their job. And this will give them a plethora of ways to get an acquittal on a case that perhaps they shouldn't. I also wanted to go ahead and talk about civil liability, and I just want to preface my remarks by saying I'm not speaking on behalf of the County Attorneys Association. They don't take any position on civil liability. But I will tell you as a prosecutor, there are lots of reasons why I decline to prosecute or why I dismiss or reduce a case. I do it because the burden of proof I have is very great, as it should be, and I may not, when I decline to prosecute someone, I may not take the position, well, I think that this person is pure as the driven snow and he or she is completely innocent. I may decline because I just don't think I have enough evidence to get a conviction. I may have witnesses who are very shaky. I may have witnesses who are uncooperative. And again, I'm speaking on behalf of myself, not the association. What this bill will do is it will wipe out civil liability when the assumption is that this person has been found innocent, and that's not the case in

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every situation. And the last thing I wanted to talk about is I know I said it's not sound public policy to craft legislation that encourages people or that makes it easier for people to kill each other. It's also not sound public policy to craft legislation that encourages the machismo and the testosterone that we see in gang warfare. Look, retreat in a public place, that's not asking too much. Yeah, you may not be a man in front of your thug buddies but that's for the best, the public's best interest. [LB889]

SENATOR COUNCIL: Thank you. [LB889]

SENATOR ASHFORD: Thank you, Senator Council. Senator Lautenbaugh. [LB889]

SENATOR LAUTENBAUGH: Thank you, Senator Ashford. Thank you for coming today, Mr. Sivick. You weren't implying there that somehow the gang members are going to take their signal from what laws we pass here in this area, are you? (Laughter) [LB889]

ROBERT SIVICK: No, I would imagine the gang members are not watching this on television right now. [LB889]

SENATOR LAUTENBAUGH: Understood. [LB889]

ROBERT SIVICK: But what I will say is that the lawyers who are defending gang members... [LB889]

SENATOR COUNCIL: Defense lawyers will. [LB889]

ROBERT SIVICK: ...will take their lead from this legislation. [LB889]

SENATOR LAUTENBAUGH: Thank you. [LB889]

SENATOR ASHFORD: Thanks. Are there any other opponents to the bill? Do we have any other opponents in the room other than the testifier here? Okay. Welcome. [LB889]

TODD SCHMADERER: Thank you. Good afternoon, Judiciary Committee. I will be brief. I am Deputy Chief Todd Schmaderer with the Omaha Police Department. For the record, it's S-c-h-m-a-d-e-r-e-r. It's been thoroughly debated here today. In the interest of time, I just want to go on the record and say the Omaha Police Department is opposed to this bill for a couple reasons. One, we feel it addresses a nonexistent problem. Nobody here today could give us one example what would push this bill forward. I can't think of one either. And the second area, the opportunity for abuse, mistakes, or wrongful situations have been laid out pretty clearly here. And for those reasons, the Omaha Police Department is against this bill. [LB889]

SENATOR ASHFORD: Thank you. Any questions of this witness? Thank you, sir. Any

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neutral testimony? Senator Christensen, would you like to sum up here? [LB889]

SENATOR CHRISTENSEN: Thank you, Mr. Chairman. Want to thank everybody for the questions and discussion. I, you know, agree with Senator Council that there's a couple things maybe we can tweak and do, you know, and even looking at maybe if there is no immediate threats and was leaving, that we'd take care of a situation this way. Go back to Section 6 a little bit that Senator Council worked on quite a little bit here and maybe I'm misreading this but, you know, I guess where I see where we have the actor is presumed to reasonably believe the use of deadly force is immediately necessary, an actor of (sic) a third person met (sic) immediate (sic) death or serious bodily harm, then there's two conditions with an "and." Both must be present. And I was wondering if we were missing that word "and" in there. And then the next sections deals with what it does not apply, and maybe I wasn't understanding the questions. I thought that was part of what we had a lot of discussion here on. And again, I'd be willing to work with Senator Council and the committee on addressing any of the concerns on this bill so that we can make the law better. Thank you. [LB889]

SENATOR ASHFORD: Thank you, Senator Christensen. And that concludes the hearing on this bill. Thank you all for...all the testifiers for their getting to the point. (See also Exhibit 14) And let's move on to the next bill, which is Senator Christensen again. Mark. [LB889]

SENATOR CHRISTENSEN: Thank you, Mr. Chairman and fellow Senators. My name is Mark Christensen, C-h-r-i-s-t-e-n-s-e-n. Currently, Section 18-1703 prohibits cities and villages from regulating ownership, possession, and transportation of concealed handgun of a concealed handgun permitholder. LB1033 would amend this section by adding "registration" after term "ownership, possession," and "transportation," preventing cities and villages from requiring registration of concealed handgun and concealed permitholders. Since the passage of LB430 there has been confusion, especially in the city of Omaha, regarding the city handgun registration ordinance. Questions whether Omaha's registration applies to concealed handgun holders, especially a permitholder...resides outside of Omaha, have arose giving need for clarification of the original intent of Section 18-1703. And after...what I might give a little more background. When we were finishing LB430, there was an agreement made between...city of Omaha was there, city of Lincoln was there, the NRA was there, I was there, and there was discussions on we were opening this up so you could carry across the state and know what you could go, because the city ordinances prohibited in different areas and it was difficult to know where you could carry. And with this registration that Omaha is working with, means if I'm a permitholder, I got to have a permit or register that gun before I can come in. We've got one town isolated that we don't have the freedom to move in. And that was an agreement when we worked on the different ideas with the parks, the different ideas. With the registration of the guns, in the meeting that we had, said it would apply to everything but the concealed; that it was

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open. And there's been some confusion there and that's why I bring this bill; try to hopefully clean this up so we can put this concealed to rest. If there's any questions, I'd be glad to address them. [LB1033]

SENATOR ASHFORD: Senator Council. [LB1033]

SENATOR COUNCIL: Yes, thank you, Senator Christensen. I know that those issues were discussed when we talked about LB430, and, you know, I've already asked the question with regard to this in connection with the purchase certificate versus the concealed carry permit, and I appreciate the edification I received that day. So I understand, you know, the difference between the two. But in this instance, I don't know if there's someone from the Omaha City Prosecutor's Office, because the...what I understood to be a violation in Omaha is possession of an unregistered handgun. And so if your handgun isn't registered somewhere in the state of Nebraska, you're in violation of a city ordinance. And I guess I'm asking why should Omaha be deprived of enforcing that ordinance or is this a totally different issue other than having properly registered your weapon? Because, correct me if I'm wrong, I can go get a...I can go take the training, have the background check, and have a permit to carry a concealed handgun and not own a handgun. [LB1033]

SENATOR CHRISTENSEN: Yes. [LB1033]

SENATOR COUNCIL: Okay. So but if I purchase a handgun and, with the bill that was introduced earlier, if I have gone through all that and I have a carry concealed permit, then that the bill...the other bill that's being considered is that I can use that carry concealed permit in lieu of a handgun purchase certificate. [LB1033]

SENATOR CHRISTENSEN: Correct. [LB1033]

SENATOR COUNCIL: But however way I acquire this weapon, aren't I required to register it? [LB1033]

SENATOR CHRISTENSEN: Well, when you go in to buy a gun, no matter where you're going to buy them, they're going to do the call-in check to see if you're able to do it. At that point in time, everything is recorded and done right there. [LB1033]

SENATOR COUNCIL: But you're not buying...all these weapons aren't being purchased from registered firearms dealers. If I come to you and I say, you know, Senator Christensen, I'd like to purchase, you know, that Colt .45 you have, is there anything that prevents you from selling that to me? [LB1033]

SENATOR CHRISTENSEN: I guess I don't think so but I don't know for sure. I can't answer that. [LB1033]

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SENATOR COUNCIL: Okay. So if you sell that to me and the city of Omaha has an ordinance that says I have to register that weapon in order to possess it, I don't see how my carrying...my having a concealed handgun permit should relieve me of the obligation to register that. [LB1033]

SENATOR CHRISTENSEN: But the problem comes in on the backside that we had with LB430. You can go across the state anywhere with a concealed handgun, being a permitholder, until we get to Omaha, and all of a sudden we got to notify them, come up and register it or take a trip without it to go get registered for. It's very awkward and I don't think people know it. I think we're putting innocent people in... [LB1033]

SENATOR COUNCIL: Okay. Well, maybe the short answer to my question is there's no place else in the state of Nebraska where you're required to register a handgun. [LB1033]

SENATOR CHRISTENSEN: I guess I can't answer that. [LB1033]

SENATOR COUNCIL: Okay. Well, that's the... [LB1033]

SENATOR CHRISTENSEN: I think every... [LB1033]

SENATOR ASHFORD: Yeah, well, I think the point is, and someone else can talk about this, the point is in Omaha, one of the purposes of having a registration of a firearm is to be able to trace that firearm in a case of a use of a firearm in some sort of an offense. I mean there's...and I believe at some point, maybe it was about 20 years ago, Omaha did amend their...maybe there's an Omaha police officer back here who can talk about that. There were some amendments to the Omaha ordinance that made it even more specific to address some of those issues, but they had their reasons. The council apparently had their reasons for the registration law and they've changed it a couple of times but whatever that is I'm not certain. But anyway, any...how many...I guess that's it, Senator Christensen, for your comments. Do we have...how many proponents do we have? All right. Why don't we go through the proponents. And then how many opponents? Okay. [LB1033]

CHRIS ZEEB: (Exhibit 9) Good afternoon, Senators. Name is Chris Zeeb, Z-e-e-b, concealed firearms instructor here in the state. And I'm sorry, you know what, can I have my copy back there? (Laughter) Just one. Thank you. I'm a concealed firearms instructor in the state and, as I hope I clarified for you last time, Senator Council, every firearm sale from a dealer is documented on an ATF form and that's how they are tracked. City of Omaha is the only city in this state that requires registration of a handgun, and I can guarantee you the criminals aren't coming down and registering them. If you look at the law that was passed last year, and I've attached that law,

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18-1703, and I've also attached a memo that I came across from the city of Omaha law department clarifying the issue, the city of Omaha cannot enforce an ordinance against a concealed carry permitholder as it applies to the ownership, possession and transportation of a firearm. Let me tell you what I have to teach people in concealed carry class. Here's what the law says, folks. The state...the city can't regulate it. However, the Omaha police believe they can, therefore, you better go register it. Otherwise, if you're stopped by an Omaha police officer and as you immediately inform them, as you're required to do by law, that you're carrying, they will confiscate your firearm and cite you for unlawful possession of an unregistered firearm in the city, even though you're a completely law-abiding citizen throughout the state. I did contact the Omaha police chief about two weeks ago and I gave him all of this documentation and asked him to please educate his officers on the fact that this is the law, and he has...they have submitted it to their law department for another review. I honestly hope that they do the right thing but I'm not going to hold my breath on that and that's part of the reason why this bill is here today. You know again, we are talking about the people who go out and buy a firearm to protect themselves. They go through multiple background checks and they go through a training class and everything. They should not have to go register their handgun with the city of Omaha police. The last issue that becomes of this, we honor other states' permits. So if someone who has an Iowa concealed carry permit drives into the city of Omaha, legally they can carry there with that Iowa concealed carry permit. However, as soon as they inform that Omaha officer that they're carrying, there again, they'll be cited for transportation of an unregistered firearm and their firearm will be confiscated and they'll never see it again, all because they were following the law. But apparently the Omaha police don't want to play by those rules. They have set their own rules. And that's all I have, if you have any questions. [LB1033]

SENATOR ASHFORD: Chris, let me...can I just follow up just a bit? I think there...help me out here. I mean I understand what you're saying and I get what you're saying, but if it appears every expert in the area of, you know, of interdiction of criminal activity, especially violent criminal activity using a firearm, tells me that what is critical is that they be able, this law enforcement and experts in this area, it's critical that they be able to, when they arrive at a scene of a shooting or if they apprehend somebody with a...confiscate a firearm or whatever it is, it's absolutely critical to their investigation that they at least have some indication of who owned that gun. It helps them solve crimes. [LB1033]

CHRIS ZEEB: Uh-huh. [LB1033]

SENATOR ASHFORD: For the life of me, I don't know...do you have any opposition to the state requiring individuals, if they have notice of a firearm being stolen from their premises, that they notify the law enforcement that that firearm has been stolen? Does that...does that... [LB1033]

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CHRIS ZEEB: Senator Ashford, I don't think that you'll find any law-abiding gun owner who's not going to immediately report their gun stolen, if that's the case. [LB1033]

SENATOR ASHFORD: Now wouldn't it be...but that doesn't happen, but we have so many guns that are confiscated on...900 guns confiscated in Omaha last year. Those guns are used illegally by people who should not have them. They are used in...can be used in the commission of a crime, in a retaliatory shooting, whatever it is. That's not your fault that those guns are used illegally and that's why we enhanced the penalties fairly dramatically for gun crime, is to try to, you know, at least to have some impact on those kinds of crimes. But law enforcement...the one thing we don't have here in the state is the ability to ask law-abiding citizens or gun owners to please notify law enforcement when a gun is stolen. I think that's one of the reasons for the Omaha ordinance, is so that if a gun is confiscated, firearm is confiscated, and I realize there are other weapons used and I know hands can be lethal. I'm not attacking the guns here, Chris, but guns are used, illegal firearms are used on the street in Omaha every day in a very reckless manner and in an illegal manner, and law enforcement needs to try to find out where those guns came from so that they can trace, you know, the chain of ownership or the chain of that gun. [LB1033]

CHRIS ZEEB: Well, let me...can I respond to your comment here? [LB1033]

SENATOR ASHFORD: Yeah. I mean I just don't know how else you'd do it. [LB1033]

CHRIS ZEEB: Me... [LB1033]

SENATOR ASHFORD: I mean...and my last point being that there are guns that are transferred outside of a federally licensed gun dealer. I mean that... [LB1033]

CHRIS ZEEB: Yes, there are. However, if I were to sell a firearm to Senator Council, as she expressed interest in a Colt .45, I would have to make sure she had a handgun purchase permit before I sold it to her and... [LB1033]

SENATOR ASHFORD: No, you wouldn't. [LB1033]

CHRIS ZEEB: Yes, you do, a private citizen does. It's in the law... [LB1033]

SENATOR ASHFORD: Well,... [LB1033]

CHRIS ZEEB: ...that before you receive transfer of it you must have a handgun purchase permit. [LB1033]

SENATOR ASHFORD: Does that apply to gun show as well? [LB1033]

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CHRIS ZEEB: It applies to any private sale. The only exemption... [LB1033]

SENATOR ASHFORD: Okay. Well, you might...that might be right. But all right, let's...I'll give you that. [LB1033]

CHRIS ZEEB: Okay. [LB1033]

SENATOR COUNCIL: Only exemption is to a family member. [LB1033]

SENATOR ASHFORD: Okay. All right. [LB1033]

CHRIS ZEEB: Is to an immediate family member or etcetera. [LB1033]

SENATOR ASHFORD: All right. [LB1033]

CHRIS ZEEB: I don't have opposition to registering handguns necessarily. I think a lot of people do and several of mine are. But the ridiculousness of what you have to do to get it, let me tell you what happens, is I go into Scheels in Omaha out on Dodge Street and I decide to purchase a handgun. I pay for the handgun. They won't give it to me. I have to take the receipt, drive it to Omaha police headquarters,... [LB1033]

SENATOR ASHFORD: Right. [LB1033]

CHRIS ZEEB: ...stand there for an hour or two to get through it, and then drive back and pick up my gun. Do you know what I and most people do? We drive over to Sarpy County and purchase it at Cabela's or The Bullet Hole where registration is not required. [LB1033]

SENATOR ASHFORD: But you're still supposed to register it when you come back into Omaha, aren't you? [LB1033]

CHRIS ZEEB: I don't live in Omaha... [LB1033]

SENATOR ASHFORD: Oh, okay. [LB1033]

CHRIS ZEEB: ...but I only transport in Omaha. [LB1033]

SENATOR ASHFORD: Uh-huh. [LB1033]

CHRIS ZEEB: And there again, that affects me. You know, I live outside of Omaha, I don't live there, I don't have to register there, but if I'm a concealed carry permitholder and if I carry that gun into the city of Omaha and I'm stopped for a headlight out or

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something, I immediately inform the officer, guess what happens? And that's not right. [LB1033]

SENATOR ASHFORD: I get your point and I understand what you're saying and I understand these are law-abiding citizens and they're not going to use that gun illegally. I get it. But the problem...the problem that I have been concerned with for three or four years now is helping law...on this very point--helping law enforcement discover how that gun got to where it got at a crime scene. That's a big problem. And I guess I'd ask, you know, the help of the proponents of this bill and the last bill, because I know...I know you do care about this issue. Help me figure out how we can give law enforcement the ability to track that firearm, give them the...because then maybe the registration thing wouldn't be as necessary. I don't know, but I... [LB1033]

CHRIS ZEEB: I wish that was an easy question to answer, I really do, but what happens is, as happened here in Lincoln, the Scheels store was burglarized and those guns all ended up in Arizona and all over the place, and so... [LB1033]

SENATOR ASHFORD: And that's a problem. And...but that's a problem I think we need to solve in this state and I think if there's another way to do it other than individual ordinances dealing with registration, if there's a way of tracing...helping law enforcement trace those illegal...or guns that may not have been illegal, that became illegal once they got in the hands of a gang member, whatever it is, we need help to how to figure out how to do that, so. [LB1033]

CHRIS ZEEB: I agree and I just ask in return with this bill, just make it right for the law-abiding citizens and ask the... [LB1033]

SENATOR ASHFORD: Okay. Well, maybe we can make a deal. I don't know but...(laugh) [LB1033]

CHRIS ZEEB: ...ask the Omaha police to honor what the state law is. [LB1033]

SENATOR ASHFORD: Okay. All right. Thanks, Chris, very much. [LB1033]

CHRIS ZEEB: Okay. All right. Thank you. [LB1033]

SENATOR ASHFORD: Other proponents? Jordan. [LB1033]

JORDAN AUSTIN: Good afternoon again, Mr. Chairman, members of the committee. My name again is Jordan Austin, last name A-u-s-t-i-n. I'm speaking on behalf of the National Rifle Association. We would like to speak in support of LB1033. I believe it's correcting and making right the legislation that was passed last year, which was to establish uniform standards for permitholders throughout the state. It seems that's being

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ignored currently and, you know, like the senator said and like Chris said before me, it was the understanding within the bill that, you know, there would be uniformity, it would not be burdensome to people, they wouldn't have to...they couldn't be in violation of a local ordinance as they traveled throughout the state. An instance, you know, that occurred to me and I want to touch on, Chris touched on a number of things that I was going to mention, but would be the gentleman who was here from Alliance earlier who, you know, would have traveled considerable distance. If he was, you know, an owner of multiple handguns, before he even came to Omaha the first time and was going to carry there, he would likely have...under...if the law would have...if...we need to apply it as it is and the registration is required. He would have to register each one of those guns depending on which handgun he decided to carry at that time. And he couldn't just come and reregister one every time because even if he was pulled over, as was said, he could be in violation of that. And I think this...just by allowing this to continue, it goes in the exact opposite direction of what we were trying to do last year, which was consistency and uniformity. So I would encourage this bill to be passed or perhaps the Omaha Police Department to recognize the law that was passed last year and allow citizens who aren't from Omaha... [LB1033]

SENATOR ASHFORD: And it's not really the police anyway. It's the city council and the prosecutor and the city attorney. And I think the police are just following the... [LB1033]

JORDAN AUSTIN: The instructions. [LB1033]

SENATOR ASHFORD: ...what they're told to do. [LB1033]

JORDAN AUSTIN: I retract that. And hopefully the individuals involved in implementing this policy would recognize the state law. [LB1033]

SENATOR ASHFORD: Yeah. And I'd ask you, as I asked Chris, to help me figure out a way to trace firearms. [LB1033]

JORDAN AUSTIN: Any normal police investigation, if they uncover a firearm, they can trace that firearm. There's a process to... [LB1033]

SENATOR ASHFORD: Well, they can trace it up to a point but if they can...but if there are guns that are transferred outside of the normal course, if that gun is registered, if that gun is registered with the Omaha police division and that gun is...and it happens all the time, they can. It may not be...it may not be a federal firearm sale. It may not...it's a sale between two individuals, it's not registered anywhere. That sale just occurs. You know, I just need...we need to figure out a way to be able to trace, you know, all these weapons so if they're...stolen weapons are used in crime in Omaha every single day and we need help, we need help to...and the police...not we don't need help, police need help to...and prosecutors need help to get the bad guys who are making these

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guns available to kids. There are thousands and thousands of guns illegally possessed in Omaha that we...we need help. We need to get those guns off the street. The police need help to do that. It's not about law-abiding citizens. [LB1033]

JORDAN AUSTIN: I mean I believe it's not about the registry either. The registry hasn't been helpful. [LB1033]

SENATOR ASHFORD: Oh, I think it does. They do...they can go to the registry, they can find out who registered that firearm. They check the registration information and they can go to that owner and say, we found your gun at a...I mean and that...then they can build that evidence on how did that gun...was it stolen, did you give it to a friend. And then they can maybe...these kids are getting guns and they're 13, well, they're 12, they're 11, they're 10, they're getting guns. They cannot have a gun. (Laugh) They are illegally possessing those guns. They're getting them. They make law-abiding gun owners look bad, in my view, and I've been on this issue for years and that's the thing that just drives me crazy, is that these people that are law-abiding... [LB1033]

JORDAN AUSTIN: Well, if I can comment on that... [LB1033]

SENATOR ASHFORD: And I'll shut up, but I... [LB1033]

JORDAN AUSTIN: Yeah. [LB1033]

SENATOR ASHFORD: ...but that's just something that I'm concerned about. [LB1033]

JORDAN AUSTIN: If I can comment on that, let's say a firearm was discovered at a crime scene. They take the serial number, make, model, they contact the manufacturer, the manufacturer says it was sold to this gun dealer, that gun dealer checks their record, said it was sold to, you know, Tom Smith who lives in Omaha. [LB1033]

SENATOR ASHFORD: Right. [LB1033]

JORDAN AUSTIN: Well, if that was the case in Omaha, the Omaha Police Department would have a record of that. But let's say Tom Smith sold it to someone else outside of Omaha. Well, then... [LB1033]

SENATOR ASHFORD: No, they wouldn't. But I realize there are gaps. [LB1033]

JORDAN AUSTIN: But registered or not,... [LB1033]

SENATOR ASHFORD: Right. [LB1033]

JORDAN AUSTIN: ...it would probably stop there. So in that respect, the registration

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isn't accomplishing anything. [LB1033]

SENATOR ASHFORD: But reporting a stolen weapon, Jordan, honest to goodness, reporting a stolen weapon to somebody in authority, that does make...could make a difference. And even if it made a difference where we got one guy that was illegally providing firearms to kids, which, my goodness gracious, it happens. They have people coming into Omaha with truckloads--my friend in the police division maybe can talk about this--truckloads of firearms. Now they may or may not be Omaha, you know, residents that had their guns stolen, but they were most likely stolen from somebody and that's how they get those guns and that is a fact, and it goes on in every city. It's not your problem. I understand that. But you could help us find a solution to that. And it just...it isn't just in the federal...the federal registration. It's being able to report a firearm to the police to say my gun is gone or...well, you get the point. I mean... [LB1033]

JORDAN AUSTIN: Well, I think one of the things you can show is, you know, and a position we've taken, I think this goes several years back, is, you know, increased penalties for illegal crime with a firearm. [LB1033]

SENATOR ASHFORD: We did that. (Laugh) We did that. [LB1033]

JORDAN AUSTIN: Exactly. And stop me if I'm wrong and correct me, for the first time in a number of years there's been actually a decrease in crime in Omaha. [LB1033]

SENATOR ASHFORD: And that could have something to do with it. [LB1033]

JORDAN AUSTIN: It could. [LB1033]

SENATOR ASHFORD: And...no, I'll give you...I'm not...listen, I'm not saying you're wrong or right. I'm not. I'm just saying help us try to figure out a way so people will report stolen firearms. Maybe the enhanced penalties have made a difference. I think they have to a certain extent. I also think the street intervention has made a big difference, which you supported, and I think that's good stuff. But reporting stolen firearms is a big deal, I think. [LB1033]

JORDAN AUSTIN: I think requiring it, and we went through this on your bill a number of years back... [LB1033]

SENATOR ASHFORD: (Laugh) I know we didn't agree. [LB1033]

JORDAN AUSTIN: And we didn't and, unfortunately, we're still not, because requiring it, and most folks, like Chris said before me, are going to report it. You know, most firearms are significantly valuable and people declare them on their insurance for just that reason. You know, NRA provides insurance to our members, up to a certain

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amount, for firearms, you know, theft and things like that, so people are going to report those because they genuinely care about it and they would like to see it back. [LB1033]

SENATOR ASHFORD: No, I... [LB1033]

JORDAN AUSTIN: And we don't just want...but the concern is if...and we went through this, is when you require that, when you make a victim of a crime a criminal by requiring it, I think... [LB1033]

SENATOR ASHFORD: Well, you can make it an infraction. I'm not so...I'm not so concerned about making someone a criminal. I want to find out when the gun...where the guns are (laugh) so we can...so that we can get them off the street. [LB1033]

JORDAN AUSTIN: And a lot of the problem might be the guns are coming in from outside areas, which could be a significant problem, I mean, and that's... [LB1033]

SENATOR ASHFORD: A lot of them are coming in from outside. [LB1033]

JORDAN AUSTIN: ...that's something we try to work with law enforcement, we want to find a solution. Unfortunately, to this point there's...the best we can come up with is the increased penalties, and we have seen a reduction in crime here so if we can encourage that, if this continues throughout a number of years, then we...then this Legislature did take the right steps by passing that legislation. [LB1033]

SENATOR ASHFORD: I think we took the right steps but I think you have to have a holistic approach to this and it's got to be...everybody has got to be on-board. And I understand you oppose that and I respect that, but I think that's part of it. But anyway, thanks. [LB1033]

JORDAN AUSTIN: Thank you very much. [LB1033]

SENATOR ASHFORD: Whew, I'm sorry. (Laughter) Do we have a bill in here on reporting stolen firearms? I don't think we do so I went beyond the...my portfolio. Okay. [LB1033]

ANDREAS ALLEN: (Exhibit 10) Andreas Allen, president of Nebraska Firearms Owners Association. I'm going to just skip off my written... [LB1033]

SENATOR ASHFORD: Okay. [LB1033]

ANDREAS ALLEN: ...just to try and...we've had a couple of points brought up. Omaha is the only city in the state that has a mandatory registration. In fact, any other city in the state, by our current law, is barred from setting up a registration similar. So it's

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Omaha's, because of its wanting to trace, has been allowed an exemption there because they had something that was a historical fact. This is reasonable, but we've got questions about when and who and so forth, and that just needs to be cleared up because our members are concerned. They don't want to take and come in. You know, as somebody, as they were saying, you know, people that own thousand-dollar firearms are generally going to report them stolen, and that's what a lot of our members carry, and they don't want to come into Omaha and have it confiscated because they felt the state law had protected them, where the city is saying it goes the other way. So we're at the same time of wanting to report that thousand-dollar firearm stolen, we need to be able to protect it when we're... [LB1033]

SENATOR ASHFORD: Would you...would you object if we said if you have a concealed weapon permit you're not required to register in the city of Omaha but you are required to report your firearm stolen? Would you agree to that? [LB1033]

ANDREAS ALLEN: Depending on how it's worded, I'd have...you know, I encourage anybody... [LB1033]

SENATOR ASHFORD: Think about it. Think about it. [LB1033]

ANDREAS ALLEN: ...anybody that has anything stolen to report it. [LB1033]

SENATOR ASHFORD: You're not under oath or anything so just think about it. [LB1033]

ANDREAS ALLEN: But my...the problem that I've had with...and I remember the bill from a couple years ago. I've seen bills from other states and so forth. The big problem that I've seen with all of them is it places the person who didn't know their firearm was stolen... [LB1033]

SENATOR ASHFORD: No, only if you know is all I'm asking. [LB1033]

ANDREAS ALLEN: It gives them a point where... [LB1033]

SENATOR ASHFORD: I got you. All right. Thank you. Thanks for your testimony. [LB1033]

ANDREAS ALLEN: Uh-huh. [LB1033]

SENATOR ASHFORD: Next proponent. Opponent? [LB1033]

TODD SCHMADERER: Good afternoon again. I am Deputy Chief Todd Schmaderer with the Omaha Police Department, here on behalf of the police department and Chief

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Alex Hayes. We are opposed to this bill and the reason the city of Omaha has the gun ordinance is because the Omaha Police Department, by nature of our population and urban environment, we are the ones who are dealing with the gun crimes on a daily basis. And the gun registration that we have in place allows us, it gives us a tool, it's an investigative tool so that we can follow up on these crimes. And the quicker that we can make an arrest, the quicker that person does not commit another crime. So it goes towards our crime rate also. We do feel that this extra layer of accountability that goes towards the gun registration is a valuable tool for us. And I'll conclude and try and answer any questions I can. But with the CCW registration comes responsibility and accountability. We don't see the harm in asking for that same responsibility and accountability for our gun registration in the city of Omaha, especially if it's a tool that we say helps us fight crime. [LB1033]

SENATOR ASHFORD: Thanks, Don (sic). Yes, Senator Coash. [LB1033]

SENATOR COASH: Thank you, Chairman. Thank you, Mr. Schmaderer, for being here. Have you had a chance to see this memo from the Omaha City Prosecutor? (Exhibit 9) [LB1033]

TODD SCHMADERER: I have not. [LB1033]

SENATOR COASH: Okay. In this memo, this is from the city prosecutor to council member Chuck Sigerson and Warren Weaver, and I won't read the whole thing, but one of it says the bill passed, which is referring to LB430, with this new language and enacted into Nebraska law to take effect July of '09. The result of this change does render numerous city ordinances void as they apply to the possessor of a state concealed carry permit. They cannot be arrested or prosecuted for any act that would otherwise constitute a violation of a city ordinance as it pertains to the ownership. It looks like your own city employees have spoken on this and it's not filtered down to the Omaha city police or...? [LB1033]

TODD SCHMADERER: Well, I think we heard earlier that...wasn't that the same matter that was referred to our legal department? [LB1033]

SENATOR COASH: Okay. [LB1033]

TODD SCHMADERER: And I don't want to speak...if the chief has referred it to the legal department, there's obviously some issue that we take with that, and I can't really speak to that if it's pending their opinion. [LB1033]

SENATOR COASH: Okay. All right. Thanks. [LB1033]

SENATOR ASHFORD: Thanks, Don (sic). Senator Christensen. I guess we've got

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Senator Christensen. [LB1033]

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you for coming. I guess I'm going to read what was read on the floor and...talking about this. Says: The parties involved--the city of Omaha, Lincoln, League of Municipalities, Senator Ashford, Senator Fulton, and I--have come to an agreement that current language in Section 5 as amended on General File will accomplish the intent of narrowing the preemption section to concealed handgun permitholders only. To make it clear as possible, under the current language, Section 5 as amended in ER8052 and the other harmonizing sections, if you are not a concealed handgun permitholder as authorized in the Concealed Handgun Permit Act, you will not be able to carry a handgun concealed. You would be breaking the law and local ordinances against the carrying of concealed weapons. However, if you have a valid concealed handgun permit, you will be able to travel throughout the state and local ordinances pertaining to concealed handguns would not apply to you. Again, these local ordinances you see still would apply to those who do not have a concealed handgun permit. That was the agreement that was struck that I said in my opening was broke, and I went back and talked to some of the lobbyists and stuff that were involved in this from Lincoln and stuff, and they said they agree with what is read here, what I have stated. And so I think the intent is real clear. Then you come back and you read what is input in the Omaha statutes: It shall be unlawful for any person except an authorized law enforcement officer purposely or knowingly to conceal (sic) a weapon concealed on or about his person. On or after July (sic) 1, 2007, any person possessing a lawful permit issued by the state of Nebraska authorizing the carrying of concealed handguns shall not (sic) be permitted to carry such a concealed handgun permit (sic) in the city of Omaha as permitted by state law. I don't know how much... [LB1033]

SENATOR ASHFORD: I don't know if Don (sic)...or (laugh) I don't know if you have the answer, Don (sic), but if you do. [LB1033]

TODD SCHMADERER: You know, I...yes. [LB1033]

SENATOR CHRISTENSEN: ...how much clearer we can get. [LB1033]

TODD SCHMADERER: Well, thank you. I wish...well, I wish somebody from our legal department or city prosecutor's office was here, but they're not and I am and I can't really answer that. [LB1033]

SENATOR CHRISTENSEN: But this is signed by Marty Conboy, city prosecutor. [LB1033]

SENATOR ASHFORD: Yeah, but I...I don't think Don (sic)...Don is just trying to get bad guys off the street, I think. (Laugh) So thanks, Don, very much. Yes, Senator Council.

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[LB1033]

SENATOR COUNCIL: And, Senator Ashford and Deputy Chief, I think...and Senator Christensen, I think the issue is a narrow...a very narrow interpretation of the word "ownership," because registration is a condition, I mean it's one of the...registration is one of the conditions upon ownership that the city of Omaha imposes, and perhaps there needs to be a discussion with the city prosecutor's office. Because if you don't have a carry concealed permit, all of the other ordinances in the city of Omaha apply, whether you carry it concealed or not. If you just own a weapon, a firearm, all of those ordinances apply. I think there's been a misinterpretation of regulating ownership because the statute, LB430, says that no city...city, villages shall not have the power to regulate the ownership. Well, a condition, one of the conditions of ownership of a weapon in the city of Omaha is it has to be registered. So we may not...if we could get with Mr. Conboy or some others, you know, to read the ownership as broadly as I think the intent was from your agreement, you may not even need this bill. [LB1033]

SENATOR ASHFORD: All right. Thanks. Thanks, Don (sic), very much. I think that's it in a nutshell. Are we done? (Laugh) Any neutral testifiers? I don't believe so. Mark, do you want to close or do you... [LB1033]

SENATOR CHRISTENSEN: No. [LB1033]

SENATOR ASHFORD: Okay. Senator Lautenbaugh, LB860. [LB860]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman and members of the committee. This is an easily...it's a simple bill, but it's an easily misunderstood bill as well. It seeks to fix what I believe is a minor defect in the concealed carry law regarding the prohibition of issuing concealed carry permits to individuals having a minor misdemeanor crime of violence on their record. Currently, as written, the law prevents anyone with any crime of violence, felony or misdemeanor, at any time in their history from requiring a concealed carry permit. What this would provide is merely a ten-year look-back for misdemeanors--minor misdemeanor crimes of violence as long as they occurred over ten years prior to the application. The ten years brings it in line with what we require of law enforcement officers. It's where we draw the line, I guess, is what I would say here. You may think it's fine, but if there's any history, the law is fine as is. You may think we should look back 20 years; you may think we should look back 15--for law enforcement, we look back ten, so I don't know how to explain it any more than that. But that's the reason I brought the bill because actually I have a constituent who is... [LB860]

SENATOR ASHFORD: Well, a misdemeanor is not a felony so... [LB860]

SENATOR LAUTENBAUGH: Right. [LB860]

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SENATOR COUNCIL: If there's a crime of violence but no, that's...I mean...if I may... [LB860]

SENATOR LAUTENBAUGH: Yeah. Please. [LB860]

SENATOR COUNCIL: ...I mean, that's...it is an interesting point and, you know, one of the problems is, is that if a person has a misdemeanor crime of violence on their record, I think they can be considered for pardon after seven...five years. [LB860]

SENATOR LAUTENBAUGH: I'm not sure. [LB860]

SENATOR COUNCIL: Five or seven on a misdemeanor. And I find it curious that...I didn't think that law enforcement...you could be considered for law enforcement if you had a misdemeanor crime of violence on your record at any time. [LB860]

SENATOR ASHFORD: Well, a crime of violence on a misdemeanor level and Don's here and Mr. Lacey is here, I mean, they can tell us what those are, but I mean... [LB860]

SENATOR COUNCIL: Assault, the... [LB860]

SENATOR ASHFORD: ...assault. I mean, we have a lot of...we have a lot of juveniles in county court that get misdemeanor charges and... [LB860]

SENATOR COUNCIL: They hold it against them for the rest of their lives (laugh)? [LB860]

SENATOR ASHFORD: And they're held, you know, the rest of their lives, they have to deal with them. But... [LB860]

SENATOR LAUTENBAUGH: Right. So...and I just... [LB860]

SENATOR COUNCIL: I got your point. [LB860]

SENATOR LAUTENBAUGH: Yeah. I don't know what the right number is. I believe ten is reasonable. [LB860]

SENATOR ASHFORD: Yeah, I mean... [LB860]

SENATOR LAUTENBAUGH: I know in my particular guy's case, it was a 25-year-old conviction. [LB860]

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SENATOR ASHFORD: Well, maybe if it said if they successfully completed ten years, and successfully...I don't know, whatever, we can talk about it so. Thanks. [LB860]

SENATOR COUNCIL: You could use the pardon things. Ten years and no other contact with law enforcement and... [LB860]

SENATOR LAUTENBAUGH: I don't know how difficult it is to get to a pardon, so I hadn't considered that, but I was afraid it was too hard to be useful so (laughter)...so I didn't throw that in there, but I don't know what the actual procedure is. [LB860]

SENATOR ASHFORD: Thank you, Scott. [LB860]

SENATOR LAUTENBAUGH: Thank you. [LB860]

SENATOR ASHFORD: Gary, are you next? No. Any proponents? [LB860]

GUY HIELSCHER: (Exhibit 11) Again, my name is Guy Hielscher, G-u-y H-i-e-l-s-c-h-e-r. I guess I'm a proponent for this, and I'd ask for your support in this. The current Nebraska concealed carry law, an applicant cannot obtain a permit if he or she has ever been convicted of a crime of violence...that's ever. And I'm looking at misdemeanors here. Under a felony, they should never be able to receive this anyhow. I understand the concerns of a violent person having a concealed firearms permit. No one wants that. Should someone who once was convicted of something like this, and they've kept the straight and narrow...they've never had any other run-ins with the law; they've never been convicted again of it. For ten years, should they be restricted from it? In my own personal experiences, I had one particular applicant who went through my class who had been in a fight in World War II while in the service, had pled guilty so that he could get on a ship and ship out rather quickly. He'll never be able to receive a permit because of that. That crime of violence follows him down. There is a statute of limitations on that, and everybody argues that. But whenever you fill in the application, you are told that this is a firearms application, and you do not lie on it. When it asks you if you've ever been arrested and you put yes, then automatically, that opens up an investigation, and they look at that. And the law doesn't say in the last ten years. Other offenses like drug and alcohol, mental type offenses where they've been charged with something, mental incompetence or whatever, all of those have a ten-year ceiling, I really feel that we need to bring a ten-year ceiling to that crime of violence...misdemeanor crime of violence. [LB860]

SENATOR ASHFORD: Thanks, Guy. Any questions of Guy? Seeing none, thank you, sir. [LB860]

GUY HIELSCHER: Thank you. [LB860]

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SENATOR ASHFORD: Any other proponents? Okay. [LB860]

ANDREAS ALLEN: (Exhibit 12) Andreas Allen, president of Nebraska Firearms Owners Association. I'm going to jump off my thing here and make it quick because we're all getting tired. I'm just going to point out, we have a member in our organization that pled no contest to a bar fight back at the end of World War II or during World War II. And in the particular state where this happened, he can't get it (laugh) a pardon for it, so it is still on his record. If anybody was to dig back to 1943, they'd find it (laugh) so that's all we're asking is make the limit ten years. That's reasonable, and it matches with like everything else in the laws. [LB860]

SENATOR ASHFORD: Okay, thank you. Any questions? See none, thanks. Any other proponents? I don't think there are. Opponents. Neutral. Senator Lautenbaugh. You're introducing the next one, so you might as well... [LB860]

SENATOR LAUTENBAUGH: Yeah. I have a short closing. I wouldn't even walk up there, but I'm going to have a longer opening so. [LB860]

SENATOR ASHFORD: All right. [LB860]

SENATOR LAUTENBAUGH: I don't know how to belabor that point any. I mean, it's...in perpetuity seems unreasonable. I think ten years is reasonable. [LB860]

SENATOR ASHFORD: Well, 1943 is a long time ago (laughter). [LB860]

SENATOR LAUTENBAUGH: Yes. Actually, I think it was probably 1941 because I saw the movie but I mean...but... [LB860]

SENATOR ASHFORD: Isn't that amazing, Gary, how this brilliance just comes out? But 1943 is awhile ago. I mean, there's (laughter)... [LB860]

SENATOR COUNCIL: If I could...seriously, ask Senator Lautenbaugh to give consideration...a violent misdemeanor more than ten years and no other contact with law enforcement because, I mean, if you had a violent misdemeanor ten years ago and then a series of nonviolent misdemeanors, you probably would not be suitable for carry conceal. [LB860]

SENATOR LAUTENBAUGH: That may be covered elsewhere in the law that I sure would be happy to talk about. I don't want to say yes or no now because you'd be asking me to think on the fly so... [LB860]

SENATOR COUNCIL: Oh, no, I'm just saying that's something for your consideration. [LB860]

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SENATOR LAUTENBAUGH: Yes, I would surely do that. (See also Exhibit 15) [LB860]

SENATOR ASHFORD: Okay, LB842. [LB842]

SENATOR LAUTENBAUGH: LB842 amends the grand jury statutes regarding apprehended or in-custody death situations. This amendment allows for qualified government personnel to investigate and handle a grand jury thereby eliminating the costs associated with the appointment of a special prosecutor. A grand jury investigation is mandated by law when an individual dies while being apprehended by law enforcement or dies while in custody of the state. Currently, the county attorney handles the grand jury if the individual dies of natural causes while being apprehended or while in custody. However, if an individual dies from any other cause of death...suicide, gunshot, etcetera, the special prosecutor must be appointed to handle the grand jury investigation and proceedings. This requirement mandates the hiring of a private attorney to be a special prosecutor and the selection of a team of peace officers to investigate the death. The cost can be significant and come out of taxpayer dollars. County attorneys and local law enforcement are trusted members of the community and thoroughly capable of handling death investigations and grand jury proceedings. As such, LB842 takes out the special provision of Section 29-1401 which mandates the appointment of the special prosecutor for deaths that occur while being apprehended or while in custody of the state. And that really sums it up in a nutshell. It restores the law to its previous state. It comes down to whether or not we can make the decision that our local law enforcement officers can be expected to fairly prosecute officers of the law, if you will. I wonder if I said that right...our local prosecutors can be expected to fairly prosecute officers of the law. I think we have ample evidence in this day and age that that does occur. There are prosecutions going on for other things, and I'm not convinced, especially with the cost involved, that we need to create this special blanket exception for deaths while in custody. [LB842]

SENATOR MCGILL: Thank you, Senator Lautenbaugh. Senator Council. [LB842]

SENATOR COUNCIL: Yes, and Senator Lautenbaugh, I don't know if I've had a conversation with you, but I've had conversations with representatives, county attorneys, and the statement you made may be the case for the majority of the public, but we can't dismiss the fact that there is still strongly held belief by significant segments of the community who don't believe that that can be done from within the existing county attorneys' offices because of the relationships between the county attorneys' offices and the law enforcement. I mean, they have to work together on a day to day basis, and whether it's real or imagined, there is a concern that you don't have the degree of independence and scrutiny in these cases where individuals die under suspicious circumstances while in custody. I mean, and the current law, recognizes if it's not under suspicious circumstances, if it's natural causes, anybody in the county attorney's office

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can handle it. If the issue...it's like the ongoing debate in the city of Omaha as whether we need a police auditor or not. I mean, we have to deal with the fact that that's a concern that there are issues around whether or not there's enough independence in an investigation when the death occurs while in police custody or during an arrest. You know, the ideal would be we wouldn't have those situations, but we do so. [LB842]

SENATOR LAUTENBAUGH: I'm not sure what you're asking me, but I would say...(laugh) [LB842]

SENATOR COUNCIL: Well, I'm just tell...(laughter) well, I'm...I'm...I'm...the short of it is that you wouldn't introduce the bill, but (laughter) that doesn't (inaudible)... [LB842]

SENATOR LAUTENBAUGH: Well, we are where we are, Senator. [LB842]

SENATOR COUNCIL: ...I thought I made that pretty clear, but (laughter). [LB842]

SENATOR LAUTENBAUGH: I think that foursome has already teed off. I think we have to deal with the bill now so... [LB842]

SENATOR COUNCIL: Okay. Well, I tell you, I doubt if I'll be asking a lot of questions, but I hope there's no question as to where I stand on this bill. I... [LB842]

SENATOR LAUTENBAUGH: I would just say that we don't usually make a policy based upon perception, especially one that costs money. We try to deal with the reality of the circumstance, and there is a wide gulf between...it's not just deaths and suspicious circumstances. It's deaths that aren't natural causes, so I'm saying, there's a big difference in my mind. It isn't either suspicious or natural causes. There's a lot of area in between there, and I believe the existing law that this would seek to repeal is overly broad, to say the least, if it says if it's not natural causes, we have to have a special prosecutor. [LB842]

SENATOR COUNCIL: And I will only respectfully disagree. We spend an awful lot of money to deal with issues of concern whether real or imagined. If I hear transparency one more time and someone doesn't admit that that's exactly what we're talking about because of concerns of the public that we're not doing what we're supposed to be doing, and we spend an awful lot of money to convince them that we are, so...and I don't see this as any different than members of the general public who want to see their tax dollars being spent the way that we say we're spending them. And if it takes a little extra money to do that, to give them the confidence that individuals aren't being harmed while in custody, then I think we ought to go that extra step. [LB842]

SENATOR LAUTENBAUGH: Senator, you are always respectful when we disagree. I will give you that, and I would argue that maybe some of the steps that we've taken to

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address perceptions might not be realistic in our current budget environment either at the state or county level, so I think that's one of the bigger reasons for looking at this again. [LB842]

SENATOR MCGILL: All right, other questions? Thank you, Senator Lautenbaugh. Proponents. [LB842]

DON KLEINE: Good afternoon. My name is Don Kleine, K-I-e-i-n-e. I'm the Douglas County Attorney. I'm here to testify as a proponent for this bill, both as a Douglas County Attorney and for the Nebraska County Attorneys Association. First of all, I think that this statute that's in effect is a very important, very good law. I think the grand jury law is a very important law from all perspectives in clearing the air when we have a death that occurs in custody or while somebody is being apprehended. I think I've probably done more of these than anybody else in the state. Up until 2002 when the law was changed, I think I had done 44 different grand juries on in custody deaths or the course of an apprehension. The law was changed then to allow county attorneys not to do these anymore, but to have a special prosecutor, and I think that the cost involved...it's been about a little over \$100,000 for Douglas County over the last several years on these kinds of cases. And I think that actually we have very good people as prosecutors to look at these cases and would probably do a better job with the grand jury than the people that get appointed special prosecutors that we pay this extra money to, so it's a cost saving factor, and I think the prosecutions are there. The thing I'd like to state is that, you know, currently, our office currently has an Omaha police officer charged with a felony. We've had officers charged with sexual assaults, thefts. I mean, I guess from a prosecutor's perspective and a law enforcement officer's perspective, you know, I don't want to see no matter who it is, break the law or violate anybody's civil rights with regards to an arrest that's being made, obviously, an in-custody death. One of the interesting notes I'd like to make is that, you know, the law currently stands that we can do the natural cause deaths. Well, the only indictments that have come from a grand jury in recent history were done by a county attorney where several people were indicted from the Omaha Police Department jail for a death that was natural in causation. The fellow died of a bleeding ulcer, but there was an indictment on a case that myself and Jeff Lux are prosecuting by a grand jury because of the care that the person got while they were in custody. So I'd just like to point that out that I understand that there's a question, and I think...I would like to think that that question develops and has changed over the course of time where we have prosecutors involved that, you know, aren't going to...there's not a thin blue line with the prosecutors and the police department where we're going to look the other way if police officers do something wrong. And I think, at least in Douglas County, and I know in other counties, we have a history of prosecuting law enforcement if the evidence is there. I think this is a cost-saving factor, and I think it's an effective change in the law that will not only allow us to use resources for other things, but have a more effective prosecution of cases when law enforcement is involved in violating the law, and that's why I'm here as a

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proponent. So I would be happy to answer any questions. [LB842]

SENATOR MCGILL: Senator Rogert. [LB842]

SENATOR ROBERT: Mr. Kleine, I wish it did. It didn't, and it's probably hard to determine. There is no fiscal note from your office here presented. Any idea on...you can explain to, you know, those who don't deal in the business, what kind of costs we're looking at when the special prosecutor is appointed and versus what you would...well, what would be the savings to your office? [LB842]

DON KLEINE: Well, I have statistics from Douglas County over the last five years, and it's about \$100,000 over the last five years with regard to special prosecutions. I certified yesterday six new grand juries for Douglas County. Four of those are natural causes; two are not. One is a state patrol officer was chasing an individual that collided with a vehicle at 72nd and Blondo and died. Another one is a guy who police were attempting to apprehend. He jumped out of the sixth floor of the Jackson Towers. So those will need special prosecutors. Then we have two other ones that haven't been certified yet that happened recently. One is an officer-involved shooting, and the other one is a young person that hung themselves that was on electronic monitoring in Sarpy County. So the cost will be substantial. I mean, this year in 2010, about like I said over the last five years it's been about \$100,000. [LB842]

SENATOR ROBERT: Okay, and we spoke about this a little while ago, and describe what would happen in your view if you had a conflict in your office, in your position? What would you do in that situation? [LB842]

DON KLEINE: Well, if there was a conflict with regards to...as an officer of the court as a lawyer and as a prosecutor, if there was a definite conflict of interest, then I'd have to declare that I had a conflict of interest, and we could get a special prosecutor. That could be the Attorney General's Office or...to handle that case. But it wouldn't be any cost to Douglas County then so... [LB842]

SENATOR ROBERT: It's not statutorily required, but you believe in your...as a member of the bar and...that you have taken an oath to say that your ethics provide that you would have to declare a conflict, and it would be done. [LB842]

DON KLEINE: Absolutely, and as I said, you know, we look at cases of prosecutions involving law enforcement officers on a daily basis. There are other cases, you know, it's interesting to me to note that...and that question brings this to mind, that if we have officer-involved shootings or arrests where there are injuries, substantial injuries, and the person doesn't die, you know, we look at those cases to make a determination if law enforcement acted properly. It's only the cases where somebody dies that we appoint a special prosecutor and certainly, we've had those recently also. [LB842]

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SENATOR ROBERT: Thank you. [LB842]

SENATOR MCGILL: Senator Coash. [LB842]

SENATOR COASH: Thank you, Senator McGill. Don, I have a similar question to Senator Rogert, and you said that regarding the costs. You said that you spent about \$100,000 in five years using special prosecutors, right? [LB842]

DON KLEINE: Right, right. It just depends on how many we have in those different years. I can kind of break those down to some extent. [LB842]

SENATOR COASH: That's okay. My question is, if it's a...you're still going to have cost even if you do it without the special prosecutor. I'm just wondering how much less that will be. [LB842]

DON KLEINE: Well, that...I only figured in the cost of paying the special prosecutor and that cost. There...there's the... [LB842]

SENATOR COASH: Okay, so the \$100,000 is...is just the cost of the special prosecutor. That's it... [LB842]

DON KLEINE: ...just the attorney fees. Right. [LB842]

SENATOR COASH: So that is the additional cost to the (inaudible)... [LB842]

DON KLEINE: Right. Yeah, I'm not talking...you know, I had the figures for jury fees and district court costs and the jury costs... [LB842]

SENATOR COASH: ...okay. Not the total costs of prosecution...because those won't change, correct? [LB842]

DON KLEINE: Those will still be...those will still be there, but I figured...I didn't want to mislead you. I...you know, those other costs will still be there. The \$100,000 is just the attorney fees for those special prosecutors, right. [LB842]

SENATOR COASH: I mean, it's just the special...okay, I understand. The special prosecutor. I get it. Thank you. [LB842]

SENATOR MCGILL: All right. I don't see any more questions. Thank you, Don. [LB842]

DON KLEINE: Right. Thank you. [LB842]

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SENATOR MCGILL: Next proponent. [LB842]

GARY LACEY: My name is Gary Lacey. I'm the county attorney in Lancaster County, Nebraska, and I come here representing the County Attorneys Association as well. I don't have much to say beyond what Don has already said except that Lincoln has experienced some difficulties in getting...well, not recently, but at least when the law first went into effect, getting people who were experienced enough to actually conduct a grand jury. And I say that because one of the early cases under this law in which a person was appointed to be the special prosecutor, the grand jury indicted the police chief and three police officers in the death of a person that was being apprehended. Those cases were all dismissed later on by a judge, and I can only think that the reason they were dismissed is because the cases should never have been indicted in the first place. And not only did that cause significant problems for police officers who were not guilty of any offense, but it ultimately cost the city of Lincoln expenses to defend those police officers in the criminal cases, and those expenses were substantial. The other thing that has...and this...I'm now talking only for myself, but the other thing that has constantly bothered me about the law is that no matter whether you are for it or against the grand jury system, the problem with grand juries is they're in secret, and when one of these cases gets publicized and an officer kills somebody in his line of duty, people want to know what happened, and they never do. It goes to a grand jury, and then it's secret. And my position has been that the grand jury...this law should be changed, so that you have transparency, Senator Council, and (laughter) that transparency would be the calling of a coroner's inquest. A coroner's inquest is public. A coroner's inquest is done by the county attorney, so the county attorney can...since the coroner in line in Nebraska counties is the county attorney, the coroner calls the coroner's inquest, and the coroner's inquest can actually indict somebody and have a warrant issued for the arrest. And it's all in open and it's all public, so you don't have people in whatever community that's interested in the death saying, well, you know, the prosecutor can...you know, they say that a prosecutor can indict a ham sandwich. That's what the word is. A prosecutor can indict a ham sandwich while a prosecutor cannot indict anybody if they don't want to indict anybody. So it would seem to me that this coroner's inquest would open up the whole process to public scrutiny and would be a lot better than the grand jury, but that isn't addressed by this law. [LB842]

SENATOR MCGILL: Any questions for Mr. Lacey? I don't see any questions for you. You're off the hook (laugh). Thank you, Gary. Next proponent. [LB842]

SEAN KELLEY: Good afternoon. My name is Sean Kelley, S-e-a-n K-e-l-l-e-y. I come today in support of LB842 on behalf of the Nebraska Fraternal Order of Police. We just wanted it on the record, and I'd be happy to answer any questions if you have any. [LB842]

SENATOR MCGILL: Any questions? Nope, thank you. [LB842]

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SEAN KELLEY: Thank you. [LB842]

SENATOR MCGILL: Any other proponents left? Anyone here in opposition? Anyone else here in opposition? [LB842]

AMY MILLER: (Exhibit 13) Good afternoon. My name is Amy Miller. I am the ACLU Nebraska legal director and I am here in opposition to LB842. Senator Council has already put her finger on the exact problem with the proposed change. Right now the public has the assurance that grand jury investigations are being conducted by experienced neutral individuals...officers from outside of the jurisdiction and a special prosecutor with experience. Removing that is not only going to harm the public's perception of the fairness of the process, but it also may impact the way that the individuals...the officer or the corrections officials who were present during the time of the death, how they're viewed as well. I want to suggest to you that although Mr. Kleine and Mr. Lacey speak about the fact there's no thin blue line in Douglas County and in Lancaster County, there may very well be in the rest of the state. If you look at the attached article which summarizes the problem of jail suicides in Nebraska, the ones with the largest number of problems are Dodge County, Platte County, and Scotts Bluff County. Jail suicides are particularly problematic and troubling because Dodge County, for example, has had four suicides in the same facility, and does not seem to be able to get their heads wrapped around the right types of policies for screening individuals who are experiencing mental health conditions. Now it does indicate...this article indicates that there is some positive news out there that the jail standards board is working on improving how correctional facilities are screening individuals' mental health conditions, but each time there is a serious interaction between the government and a citizen that results in someone's death, it is appropriate to have a neutral entity evaluating whether or not there was a policy level problem that resulted in that death. This is true as well in the situation where an officer shoots an individual, and I'll point you to Crofton, Nebraska, that two years ago had their chief of police indicted by a grand jury for having shot and killed an unarmed teenaged Native American boy. It's rare to see a grand jury come back with the finding that there was improper behavior on the part of a police officer, and I would like to suggest that that is because in some parts of the state, and it may be true in Omaha and Lincoln, that it is usually justified. But the rest of Nebraska does not always have that same scrutiny and a neutral grand jury process is necessary to ensure there is justice statewide. Thank you very much. If you have any questions, I'm happy to answer them. [LB842]

SENATOR MCGILL: Thank you. Any questions? Nope. Thank you very much though. [LB842]

AMY MILLER: Thank you. [LB842]

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SENATOR MCGILL: Is there any neutral testimony? All right. Senator Lautenbaugh. [LB842]

SENATOR LAUTENBAUGH: Thank you, Madam Chair. And just briefly, I don't plan on belaboring the points that are previously made for the reasons I already divulged and in my discussion with Senator Council as well. I just believe this would be the opportune time to repeal this based upon the environment we find ourselves in and the professionalism of the people we have handling our prosecutions. [LB842]

SENATOR ASHFORD: Okay, thank you. Thank you, Senator McGill, for subbing. [LB842]

SENATOR MCGILL: No problem, as the Vice Vice Chair (laugh). [LB842]

SENATOR ASHFORD: You're the Vice Vice Chair (laugh). Okay, thanks, Scott. (See also Exhibit 16) I guess you've got the next bill. Is it LB843? [LB842]

SENATOR LAUTENBAUGH: It's only about 4:00. LB843 amends the first and second degree arson statutes to encompass the damage of the contents of the building to achieve a more uniform application of the arson statutes. I will let the county attorneys following me explain this a little better if you have any questions. But very simply put,...oh, oh, okay. (Interruption) I'll let the gentleman following me explain this. What we're talking about here is apparently there's some confusion about whether or not you can be charged for arson if the fire you set doesn't actually burn the building but just contents. If the firefighters put it out before the building itself is involved in the fire then it may not be arson. [LB843]

SENATOR ASHFORD: Holy moly (laugh). Was that a real case, Senator Lautenbaugh? [LB843]

SENATOR LAUTENBAUGH: It was probably that 2007 Legislature. [LB843]

SENATOR ASHFORD: Did that actually come up in a...? [LB843]

SENATOR LAUTENBAUGH: I believe it has, and that leads to difficulty in charging the crime, obviously,... [LB843]

SENATOR ASHFORD: Okay. [LB843]

SENATOR LAUTENBAUGH: ...and prosecuting it, so I'd be happy to take any questions you might have. I'll probably let the witness testify and answer any questions you may still have on closing if I may. [LB843]

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SENATOR ASHFORD: Okay, thanks. Proponents. Good afternoon. Thanks for your patience. [LB843]

JOHN McCORMICK: Good afternoon. I feel bad that it has nothing to do with firearms, but (laugh) here we are. [LB843]

SENATOR ASHFORD: Oh, fire...there's fire involved at least. [LB843]

SENATOR MCGILL: Yes, fire and death (laugh). [LB843]

JOHN McCORMICK: My name is John McCormick. That's J-o-h-n M-c-C-o-r-m-i-c-k. I'm a battalion chief with the Omaha Fire Department. I'm the chief of the Fire Investigation Bureau. The Omaha Fire Department's Fire Investigation Bureau is in favor of LB843. We also have been working with the State Fire Marshal's office who has jurisdictions throughout the whole state as well as the Nebraska County Attorneys Association. Both are in support of this amendment also. With the passage of LB843, the Omaha Fire Department's Fire Investigation Bureau believes the amended arson statutes will achieve the goal of applying these arson statutes uniformly. Currently, Nebraska's first- and second-degree arson statutes cover intentionally damaging a building. There are situations where the inside or contents of a building are on fire, and the building itself is not yet damaged because of the quick response times or extinguishment by firefighters. However, the intent to damage the building is still there. Additionally, similar language is used in several other states' arson statutes to cover the damage of buildings or personal property in the building. Of the 24 states that we analyzed, 13 states have language in first- and second-degree arsons which include damage to personal property within a building. The amendments offered under LB843 would achieve the goal of applying the statutes uniformly and would also prevent arsonists from benefitting from quick work of firefighters in extinguishing a fire before damage to a building. [LB843]

SENATOR ASHFORD: Any questions? Senator Lautenbaugh. [LB843]

SENATOR LAUTENBAUGH: So the problem is, you got to just do it fast then, is that the deal? (Laughter) [LB843]

JOHN McCORMICK: Sometimes it is. If the person who intends to burn a building or cause damage or hurt somebody and sometimes you do get there quicker, they're intentionally trying to do harm to the building and sometimes it doesn't get it done. And arson is kind of a thing where it's kind of specialized, and it doesn't happen that often when it gets prosecuted. Not all the attorneys involved, either prosecutors or defense attorneys understand the laws that well, and sometimes they don't...so I think, yeah, like more of a...less of a gray area there, it'd be uniformly applied. [LB843]

SENATOR LAUTENBAUGH: And I didn't mean to imply when I looked around for

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county attorneys that it was only a county attorney who could address this, and I think you've done it amply, so I have no additional questions for you. [LB843]

SENATOR ASHFORD: John, how do you...what are some, just very quickly, how do you know whether there's been an arson situation? [LB843]

JOHN McCORMICK: How do you know if it's been an arson...? [LB843]

SENATOR ASHFORD: Well, what do you look....what do you look for? I've always sort of been interested in that. [LB843]

JOHN McCORMICK: There's...you have to investigate the origin and cause of the fire, you know, how it started and where it started, and, you know, after you eliminate all the accidental causes of the fire, witness accounts. There could be, you know, use of accelerants or, you know, which would be like flammable liquid or ignitable liquid or anything like...that's the most common. Somebody throws a Molotov cocktail and pours gasoline, that's (inaudible)... [LB843]

SENATOR ASHFORD: Well, what about if someone just throws a match in it? How can you tell? [LB843]

JOHN McCORMICK: Well, you would have to go to the situation where the fire started. You can determine that through fire patterns and different analyses and witness accounts, and you go there. And if you can...if there's no accidental causes, you know, what caused the fire... [LB843]

SENATOR ASHFORD: It just doesn't happen. [LB843]

JOHN McCORMICK: ...it doesn't happen. And you have to go through a whole series of events to get that. You just can't, you know, you have to eliminate all the accidental causes in the area, and so. [LB843]

SENATOR ASHFORD: How do you...what sort of training did you have to have to do this? [LB843]

JOHN McCORMICK: The Omaha firefighters...we are police certified, so we are police officers, and we can have powers of arrest and all that stuff as far as the criminal investigation goes. But as far as determining like fire analysis...there's years of experience on the fire department plus we all go to the National Fire Academy in Maryland in (inaudible)... [LB843]

SENATOR ASHFORD: How long do you...is that course? [LB843]

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JOHN McCORMICK: That's a two-week course, and then the state has continuing education. Regionally, you have continuing education and the National Fire Academy has other classes that you can attend, and ATF is involved also in different things. [LB843]

SENATOR ASHFORD: Continuing. How many arson cases are there in Omaha, for example, in a given year generally? I mean... [LB843]

JOHN McCORMICK: Our office, we investigate like this past year, we investigated 415 fires, our office, and out of those, probably 160, I believe, were arsons so that involved vehicles, houses, structures, anything... [LB843]

SENATOR ASHFORD: Wow. How many of those did...how many successful prosecutions did...? [LB843]

JOHN McCORMICK: Actually, arson is very tough to prosecute and get, you know, convict somebody. And the national average is around 13 percent, and we've got about a 22 percent conviction rate so. [LB843]

SENATOR ASHFORD: Thirty cases or so are...result in a... [LB843]

JOHN McCORMICK: Yeah, yeah. [LB843]

SENATOR ASHFORD: And are you often brought in to testify in civil cases because of your...due to your investigation? [LB843]

JOHN McCORMICK: Usually not so much in civil cases. It usually works like in a civil case if it has something to do with a toaster or something malfunction and started a fire or whatever. Insurance companies bring in their own private investigators, and they do that, and that usually goes to the civil side. We usually stay away from the civil side. [LB843]

SENATOR ASHFORD: But sometimes you're there so early that you can testify as to the condition of... [LB843]

JOHN McCORMICK: Yeah, but I have never testified in a civil case. [LB843]

SENATOR ASHFORD: But anyway, you have a lot of work to do, I guess, is my general conclusion. Okay, thanks, John. Any questions of John? [LB843]

JOHN McCORMICK: Yes, we do, yes. Thank you. [LB843]

SENATOR ASHFORD: Any other testifiers pro or con? Neutral? Senator Lautenbaugh,

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do you have any further comments? (Laugh) [LB843]

SENATOR LAUTENBAUGH: No, I think it was ably summed up. It's just sort of an oversight in the law that we don't cover contents, and I hope this corrects it. [LB843]

SENATOR ASHFORD: Right, right. It sounds like they do a lot of good work and so we need to address their issues. Thanks. [LB843]