LATHROP: Good afternoon, good afternoon, I think we're gonna get underway. My name is Steve Lathrop. I represent Legislative District 12 in Omaha and I'm the Chair of the Judiciary Committee. If you meant to be at the Judiciary Committee, you're at the right place. If not, then you have an opportunity to find the right hearing room. On the table inside the doors, you will find yellow testifier sheets. If you are planning on testifying today, please fill out one and hand it to the page when you come up to testify. There is also a white sheet on the table if you do not wish to testify, but wish to-- but, but would like to record your position on a bill. For future reference-- I'm gonna say this now, they're having trouble-- we got a new sound system and we don't have sound panels. So we have to have people not talk unless you're speaking or at the mike because we're having trouble recording these hearings. So if you don't mind, avoid talk while people are testifying. For future reference, if you're not testifying in person and would like to submit a letter for the record, all committees have a deadline of 5:00 p.m. on the last work day before the hearing. Keep in mind that you may submit a letter for the record or testify in person at the hearing, but not both. And only those actually testifying in person at the hearing will be listed on the committee statement. We will begin bill testimony with the introducer's opening statement, followed by proponents of the bill, then opponents. And finally, anyone in the neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. We utilize on- deck chairs to, to the left of the testifier's table that's immediately behind the table. Please keep the on-deck chairs filled with the next person to testify to keep the hearings moving along. We ask that you begin your testimony by giving us your first and last name and spell them for the record. If you have any handouts, bring up at least 12 copies and give them to the page. That's these young folks here in the black vests. If you do not have enough copies, the pages can make more. If you are submitting testimony on someone else's behalf, you may submit it for the record, but you will not be allowed to read it. We will be using a three-minute light system. When you begin your testimony, the light on the table will turn green. The yellow light is your one-minute warning. And when the red light comes on, we ask that you wrap up your final thought and stop. As a matter of committee policy, I'd like to remind everyone that the use of cell phones and other electronic devices is not allowed during public hearings, though you may see senators use them to take notes or stay in contact with staff. At this time I would ask that everyone look at their cell phones and make sure

they are in the silent mode. Also, verbal outbursts and applause are not permitted in the hearing room. Such behavior may because to ask you to leave the hearing. You may notice committee members coming and going, that has nothing to do with how they regard the importance of the bill being heard, but senators may have bills to introduce in other committees or have other meetings to attend to. And with that, I'd like to have members of the committee introduce themselves, so we'll start with Senator Wayne.

WAYNE: Justin Wayne, District 13, which is north Omaha and northeast Douglas County.

SLAMA: Senator Julie Slama representing District 1, which is Otoe, Johnson, Nemaha, Pawnee, and Richardson Counties.

MORFELD: Adam Morfeld, District 46, northeast Lincoln.

PANSING BROOKS: Patty Pansing Brooks, Legislative District 28, right here in the heart of Lincoln.

BRANDT: Tom Brandt, District 32: Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster County.

DeBOER: Hi, I'm Wendy DeBoer. I represent District 10, which is northwest Omaha and the city of Bennington.

LATHROP: Assisting the committee today are Laurie Vollertsen, our committee clerk. She actually has Samantha Chavez, who is my administrative assistant, and Laurie's understudy today. Josh Henningsen is our legal counsel, and our committee pages are Ashton Krebs and Lorenzo Catalano, both students at UNL. And with that, we'll begin our hearings today. And the first hearing or the first bill to be heard today is LB881. And that brings us to Senator Hansen. Welcome, once again. Were you here yesterday?

M. HANSEN: I was.

LATHROP: Yeah. OK. Welcome back then.

M. HANSEN: Thanks. I'll be back two times next week, too. All right. Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Matt Hansen, M-a-t-t H-a-n-s-e-n, and I represent District 26 in northeast Lincoln. I'm here today to introduce LB881, which would prohibit courts from automatically deducting-- automatically using an offender's bond money to pay their

fine. This issue first came to, to my attention when an attorney in my district came to me because he had a client who was paid out of-- whose fine was paid out of her bond money without her knowledge or consent. A person pays a bond with the understanding that if they make the required court appearances, that money will return to them. This understanding is set in statute by Nebraska rights statute 29-901 which says, quote, the cash deposit shall be returned to the defendant upon the performance of all appearances, end quote. It only makes sense that once someone makes the required appearances, then they have fulfilled the conditions of their bond and the balance should be returned to them. In 2012, this body passed LB722, a bill that made a change that could allow court costs and fines to be automatically deducted from a defender's bond money. However, after looking at the legislative history, it's clear the discussion on this bill focused mainly on the benefits of the courts being able to automatically deduct court costs and not the fines. This makes sense since counties in the state have an interest in collecting court costs in an efficient way in order to operate, but fines go to the common school fund and not the counties or the courts. Following that bill in 2017, we passed LB259, that requires courts to consider an offender's ability to pay a fine and other defendants different opportunity-- and offers defendants different opportunities depending on the situation, including payment plans or community service in lieu of a fine. Thus, I think there is a conflict between these two statutes, which I'm trying to resolve here in LB881. Just because you are able to scrape together the amount for the bond doesn't mean you can actually truly afford it. For example, it may mean money posted by a family member who is under the assumption that will be returned to them at the end of the case. I believe that if you make the required court appearances, the bond money should be returned to the court-- should returned, and the court can then assess the offender's ability to pay. This bill still allows for courts to deduct court costs. This amount is usually a much smaller portion of the bond money and is not meant to be punitive to the offender. And I believe this was the intent of the bill we passed in 2012. I have testifiers behind me who can go in more detail with that. So for now, I will close and see if there's any questions.

LATHROP: OK. Thanks, Senator Hansen. Any questions for the introducer? Seeing none, you are going to stay around?

M. HANSEN: Yes.

LATHROP: OK. Perfect.

M. HANSEN: Thank you.

LATHROP: First proponent to testify. Good afternoon.

JOE NEUHAUS: Good afternoon, Mr. Chairman and members of the Judiciary Committee. My name is Joe Neuhaus, J-o-e N-e-u-h-a-u-s. I'm an attorney here in Lincoln and I am Senator Hansen's constituent who, who he mentioned had an issue with this. For the sake of brevity, I think it's-- I, I would be happy to answer any and all questions posed. I'll leave you with three points before I do, though. The first is that the way that this-- that the law was amended back in 2012 was improper in my opinion. I think what happened was we have mandatory language under 29-901 as clarified by State v. Zamarron, and I can give you a citation during, during question and answer period if you like, that it shall be returned essentially. It must be returned. Then there was an exception, but it wasn't, it wasn't done correctly. There's the mandatory language and then there's the permissive language. But there was no exception carved out. And the mandatory language was not abolished. So I think we have a very convoluted set of, of statutory law here. The other thing is that this, this is not money that belongs to the county at the time it's posted. This is a promise to appear. This is putting your money where your mouth is. A personal recognizance bond, for example, is done for those misdemeanors generally that are less serious in nature, where a defendant just promises in writing to appear. And then if he or she doesn't, then perhaps there's a percentage bond. The second point is that this doesn't take away judicial discretion at all, because I don't believe that judicial discretion was ever actually given to any legal effect. Third, I would just say that interestingly in the testimony for LB722 back in 2012, there was talk of being able to recup-- recuperate some fines in order to-- by the counties to, to have some revenue. As you'll see in a fiscal note, the Judicial Branch doesn't, doesn't receive any revenue from fines. So I think we have a confusing situation from LB722. Thank you and I'd be happy, happy to answer any questions.

LATHROP: Senator Wayne.

WAYNE: Is restitution considered a court cost?

JOE NEUHAUS: It, it is considered a, a penalty. There are only certain crimes that, that constitute a, a restitution. For example, if I steal

from you, I have to pay you back. And that's a court order, it's not, it's not a cost. Costs are, are essentially for a-- for a criminal case, it's-- it, it ends up being about $50, $14 of that goes to the Judicial Branch. I don't have the breakdown memorized. But and then there are a bunch of, a bunch of organizational buckets that, that those fines go into, including judge salaries and retirement funds from that. So, so, no, it is not a cost in, in the strictest terms.

WAYNE: So how would the court-- so the court can still order it? Just let me back up. So if-- underneath this bill, could the court and the person I would represent, I guess my client, could they agree to take it out of their bond?

JOE NEUHAUS: That's, that's a good question, because my, my intent originally when, when I was addressing this bill was that, that at the very least they'd be given in an opportunity to determine where that goes. Obviously, if they get that back and they pay it right away, that's-- that has the same effect as, as if it's being implied. But but as the law stands, it, it has to be returned to them minus these exceptions that aren't really legal exceptions, in my opinion. So, so I think philosophically speaking, yes, they should be able to ask for that. And for example, if, if-- let's say, there is a case where, where a defendant gets the money from, from a parent or from another loved one, a friend, that money belongs to them upon being posted as, as bond, and they would have to do what's called an assignment to, to get that back to, to the person who posted it.

WAYNE: Right.

JOE NEUHAUS: But that does belong to them. So I, I think ultimately the defendant should be able to determine where that money, which is just a promise, should go.

WAYNE: But underneath the statute, the courts wouldn't have authority to order that part of that bond go. Even if I agree to it, they wouldn't have the authority to do so.

JOE NEUHAUS: That's a good point. And I, and I think that can be certainly an amendment. My, my concern is that they were, they were never actually given ultimate discretion, which, which ends up being in, in probably 100 percent of the cases-- I haven't, I haven't done, you know, any data on it, but in the cases in which I've represented, represented defendants, it automatically goes to fines and costs. That's, that's what's done. And so there isn't even any discretion

anyway because it's automatically what the judges do. I'm, I'm all for judicial discretion, but I think it has to be granted in the proper way.

WAYNE: Thank you.

LATHROP: I don't see any other questions. Thanks for being here today.

JOE NEUHAUS: Thank you.

LATHROP: Good afternoon.

SPIKE EICKHOLT: Good afternoon, Chairman Lathrop and members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska as their registered lobbyist in support of LB881. We thank Senator Hansen for introducing this, for introducing the bill. I'm not gonna restate what Senator Hansen said or what Mr. Neuhaus said, but I would just highlight that this bill is consistent with some of the recent changes that this committee has done and what Senator Hansen and Senator Morfeld did with LB259 as far as determining the position of fines and directing courts to consider an offender's ability to pay, to provide for opportunities to pay by installments, and to provide for opportunities to do community service. And I think that this is consistent with the reasons that Senator Hansen said. The existing statutory scheme now it does allow, and if you look on page 3, lines 28-29, a person who has a bond posted could assign that bond to somebody else or to their attorney. In other words, they can sort of prevent or protect that bond and prevent the court from just taking it. But the way it works now is that the people who are not represented by attorneys who post bonds don't know that or the people who have like public defenders that do a lot of cases that simply don't have the time to do bond assignments for every case, they don't know that either. So the present system really hurts those people who are marginal. And many times, even though the bond might just be $2 or $300, that is what they need to sort of get by and they expect to get that when they conclude and resolve a case. To answer Senator Wayne's question, I think what Mr. Neuhaus said, I think the existing scheme regarding bond assignments would still work for restitution. And I do that now if we have a plea agreement, client's got to post a bond, he or she will just assign that bond to either the victim or to the clerk of the court to pay the victim or whatever it might be. But if there's anything that needs to be done with respect to the bill's proposal to make sure it doesn't prevent the court from having the authority to

use bond money to pay restitution pursuant to a plea deal or something similar, I think that would make sense. And I encourage the committee to advance the bill.

LATHROP: OK. Any questions for Mr. Eickholt? I see none. Thanks for being here today. Any other proponents wishing to testify on-- or in support of LB881? Anyone here in opposition? Anyone here in a neutral capacity? Seeing none, Senator Hansen to close.

M. HANSEN: Thank you, Chairman Lathrop and members of the committee. Just to kind of address questions that came up, it would not necessarily be my intent to prohibit defendants who wanted to use this bond money kind of at that moment. And I agree with Mr. Eickholt's concept that probably you could assign it to the court or another party that would need it. But if we need to tighten up language, I'm happy to work with committee and committee counsel. And with that, I'd yield to any questions.

LATHROP: Doesn't look like there are any.

M. HANSEN: Thank you.

LATHROP: Thanks for being here and thanks for introducing the bill. We do have one letter that was a neutral letter from Janet Wiechelman, Clerk of the District Court Association and the Clerk of the District Court in Cedar County. With that, we'll close the hearing on will LB881, and that will bring us to LB934 and Senator Morfeld. Welcome.

MORFELD: Thank you, Senator Lathrop, members of the Judiciary Committee. For the record, my name is Adam Morfeld, A-d-a-m M-o-r-f as in Frank e-l-d, representing the fighting 46th Legislative District here today to introduce LB934. LB934 is a simple bill. It would eliminate the requirement to take the bar exam in order to practice law for students who graduated-- graduate from an accredited law school in Nebraska. My purpose for introducing this legislation is threefold. First, an examination to test the competency to practice law or a [INAUDIBLE] field, field of trade should be one that's stimulates-- or excuse me, simulates the environment in which one would have to practice with the access to the tools to practice. The bar exam does not do that, in my opinion. Second, and less important, students often spend at least $4,000; close to $1,000 to take the exam and $3,000 for the prep course to take the bar exam. And often it ends up being around $6 to $7,000 after accounting for loans for the costs of living and expenses because most law students are not working

during this time because the bar exam review course is a full day course for about two months. Third, law students, particularly with students making at least a $60 to $120,000 investment in law school, should have-- those law schools should have the burden of graduating competent and qualified attorneys and raising the standards. If our institute-- and if our institutions, such as the court or bar association do not believe they are, the burden should be on those, those law, those law schools. To the first issue, the bar exam provides a poor simulation of conditions to practice law, becomes an exercise in cramming and memorization, a lack of access to resources to make informed decisions, and six hours of multiple choice examination. An exercise that results-- even some of my brightest fellow law students, and I was not one of them, that graduate in the top of their class, to readily admit that they had to guess at over half of the multiple choice questions and then wonder why they passed. I know that that was my own experience. And then if an attorney were to advise a client using similar methods, conditions and practices, they'd be committing malpractice and should rightfully be found guilty of it, in my opinion. As you can imagine, I've received a great deal of correspondence on this issue both for and against. The arguments and opposition can be readily broken down into two categories. One, I had to take it and so should everyone else. And we should have a way of weeding people out. And two, there's certain law schools that maybe they're concerned about and usually it's just kind of rivalries between law schools. With the exception of Dean Moberly and Bill Mueller, none of these attorneys have defended the bar exam as an adequate test of competency. Perhaps when the bar exam cost $250 and review courses were not $3,000 and a legal education was not $60,000 to $120,000 total, it might have been an acceptable rite of passage. If we are concerned about certain law students graduating unqualified future attorneys, then I believe the court and the Bar Association has an obligation to create more stringent standards for them and regulate them accordingly, not put the burden on the law students. To be honest, I had this legislation drafted as I've had for the last five years, and this year I had my doubts about introducing it because I know how challenging the status quo and a profession like that of the legal profession is an uphill and often lonely battle. I rarely ask for senators to cosponsor my legislation. It's largely a symbolic exercise in my opinion. Even so, I went up to the floor of the Legislature and casually asked fellow attorneys if they would cosponsor legislation like this. And to my surprise, many of my legal colleagues and senators from all across the political spectrum enthusiastically signed it and shared their own stories of dismay at

how the bar exam was more of a hazing than it was a true test of competency. It surprised me and also convinced me that this is a policy conversation that ultimately needed to be had and one that had merit. I want to emphasize that this is not to poke anybody in the eye. This is not to settle an old score with the bar exam, even though that would be fun. I have strong opinions about it, but my respect for higher education and my alma mater runs deep. My education and experiences at the University of Nebraska and the Nebraska College of Law have provided me with opportunities that I have today, there's no doubt about it. My respect for our democratic and legal institutions run equally deep. That's why I founded a nonprofit at our university that now employs 128 staff that serves thousands of Nebraskans every day, young and old, to teach them how to build and strengthen our democracy and civic institutions. But I also fear that if our institutions of higher education and even the court system to a certain extent do not become more mimble-- nimble, more thoughtful and dynamic about our access to certifications, and more readily willing to either radically reform or jettison vestiges of the past that are not effective, such as the bar exam, they will lose relevance and legitimacy. It's a fear borne not out of malice or lack of respect for our institutions, but one rather borne out of genuine affection for the preservation of institutions that have provided me with such rich experiences and opportunities. I urge your favorable consideration of LB934 and I'd be happy to answer any of your questions about the bar exam.

LATHROP: Not any questions on the bar exam about the bar exam.

MORFELD: Probably wouldn't pass again unless I took a $3,000 course.

LATHROP: Senator Slama.

SLAMA: Thank you, Senator Morfeld. Though I have no questions about the bar exam, I may later on. So we're not the first state in the country to propose this concept. Correct?

MORFELD: We are not.

SLAMA: No. Wisconsin implemented this, correct?

MORFELD: Yeah, and I think Wisconsin's actually-- I need-- I didn't delve into legislative history. My understanding is that this has been in effect in Wisconsin for a long time.

SLAMA: Sure.

MORFELD: And in fact, a lot of other states had this for a long time. But the trend was to require the bar exam issue.

SLAMA: And Wisconsin really hasn't ran into, in your research at least, any negative repercussions from implementing this policy?

MORFELD: So I, I looked at some of the data that I could find on attorneys being disbarred, action taken against attorneys, things like that. They weren't much different than Nebraska or any other state in terms of percentage of attorneys. As far as I could see, there's not a ton of great data out there on that. But, you know, I visited Wisconsin several times. Their civil institutions seem to be doing well. I don't think there's any chaos in the courtroom. And I think Wisconsin's a fine state to practice law.

SLAMA: All right. Thank you.

MORFELD: Yes.

LATHROP: Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you for bringing this, Senator Morfeld. I guess to clarify some things for me, wouldn't the courts. Does the Supreme Court set the rules for this? Is this the proper venue for the Legislature to come in and say attorneys shouldn't take a bar exam?

MORFELD: Yeah, so that's a great question. So the courts would say this is not the proper venue. The reason why I brought the legislation is because we have authorizing legislation that gives the court the power to regulate this. And so when I see authorizing legislation that's currently in law, that tells me that we have the power to regulate. Otherwise, the court would have struck that down a long time ago and said, hey, why are you saying that we even have the authority. We by virtue and the inherent powers of us as a separate but equal branch have the authority to do this. So I, I appreciate that the court has some precedents that they've created, that says that they have the ultimate say and who can practice law and who can't. But I also want to point out there's a statute on the books that gives them the authority and they have not struck down that law as unconstitutional.

BRANDT: Can you tell me what their position is on this?

MORFELD: I cannot tell you their position. I would imagine it's not enthusiastic and it's likely in opposition.

BRANDT: All right. Thank you.

LATHROP: I think that'll do it. You, of course, will stick around.

MORFELD: No questions, Senator Lathrop?

LATHROP: Not from me.

MORFELD: No bar exam questions? All right.

LATHROP: No.

MORFELD: If you don't mind, Senator, I'm gonna sit back at my desk.

LATHROP: That's fine.

MORFELD: I won't ask any questions or make faces.

LATHROP: That's fine. Proponents, if any, that wish to be heard? The opponents are enthusiastic and it looks like we've brought the whole bar with us. Seeing no proponents, we'll take opponent testimony. Opponents? It is hard to hear in here. And by the way, while she's coming up to testify, if you can't hear in the back while someone's testifying, just kind of wave your hand or something and I'll make a point to have them speak up or speak more clearly or slower. The sound is really bad in here until we get the sound panels returned. Welcome.

CAROLE McMAHON-BOIES: Thank you. Good afternoon, Senator Lathrop and members of the Judiciary Committee. I'm Carole McMahon-Boies, and I'm the administrator for the Attorney Services Division of the Judicial Branch. So I oversee admissions, MCLE, and licensure, essentially overseeing attorneys throughout their practice from admission to retirement. A look at those that have not passed the bar over the last five years raises a substantial concern about the inadequacies of attorneys we will now have to license under this legislation. A passing score on the Nebraska bar exam is a 270 out of possible score of 400. And what the exam tests is minimum level of competency to practice law. In general, Nebraska lawyers do better than the national average on the bar exam. Over the last five years, the high score in Nebraska averages 345, with the highest score being earned a 364.

Requiring the exam and monitoring how law schools in our state are preparing students to become attorneys provides us valuable information in regulating the practice of law, the low scores earned over the last five years exhibit the problem with not requiring a bar exam. The lowest score we have over that time is a 270-- 217, which is 53 points under the acceptable level of competency. Someone who performs that poorly now would be licensed under this bill. The average low score for each exam period over the last five years is 225. That translates to someone scoring a 56 percent on an examination to determine professional competency. We would regularly be licensing attorneys who perform 45 points below an acceptable level of competency when an admission candidate performs poorly on the bar exam, it's a good indicator the person won't pass the bar exam. If you don't pass by the second time, statistically, you're not going to pass in Nebraska. The results of a study on how failing to pass the bar exam correlates with the likelihood of attorney discipline is published in St. John's Law Review in 2017. Twice as likely you will have a bar disciplinary complaint filed against you if you don't pass them the first time around. That goes up each time and three times likely to have if you've taken the bar exam three times. We have a very reliable test since 2013 and Wisconsin has had the Seventh Circuit question what they've done indicating that it constitutionally violates the Commerce Clause. Thank you.

LATHROP: Hang on a second. Let's see if there's any questions for you. OK, now you can go. Thank you for your testimony. Next opponent.

MARY J. HEWITT: Chairman Lathrop.

LATHROP: Good afternoon.

MARY J. HEWITT: Good afternoon, Chairman Lathrop. I'm Mary Hewitt, Mary J. Hewitt from Lincoln. I'm the chairman of the Nebraska State Bar Commission. And I appear before you today in that capacity, I was appointed to the Nebraska State Bar Commission by Justice Kenneth Stephan in 2009 and reappointed by the Supreme Court in 2015. In October 2019, I became the chair. Other commissioners include Tanya Hansen of Grand Island, William Acosta-Trejo of Omaha, Tom Strigenz of Papillion, who is here today, Bruce Hart of Cozad, and Brad Holtorf of Fremont. We are all veterans of at least one state's licensing exam. We all knew the bar exam was looming on the horizon when we enrolled in law school, and yet we persisted. We believe the bar exam is some evidence that those who have passed are minimally competent. The bar exam is intended to enhance the quality of professionalism in Nebraska

and thereby protect the public by identifying folks who are not prepared for entry level practice. Education alone is not enough. Bar exams focus on basic knowledge, but they also test skills in judgment a new lawyer needs in the early stages of a career. The bar exam is not a super all time final exam, but it is designed to test a taker's ability under pressure to recognize what is at stake and demonstrate lawyerly reasoning to come to a sound resolution of the problem. In other words, lawyering. The Nebraska State Bar Exam has four components. The multistate professional exam is a two-hour standardized ethics test which is given twice a year. The 23rd-- in 2013, the Commission recommended to the Supreme Court that we adopt the Uniform Bar Exam, which added a multistate practice exam which is designed to test practical skills. The 200 question multiple choice test is commonly known as the multistate bar exam. The practice test is an opportunity to do something an entry level lawyer might be called on to do like write a brief utilizing a packet of research materials or draft articles of incorporation or various pleadings. The practical portion of the test is what's new about the bar exam, since many of you may have taken it. Otherwise, the other three components have been part of the test since 1991. Nebraska was an early adopter of the UBE and to date 36 jurisdictions are administering the same test. The UBE is given over two days. There are three hours allotted for the practice test, three hours for the short essay test, and six hours for the standardized multiple choice test. The neat thing about the UBE is its portability. If students take the UBE in Nebraska and score at least our cut score of 270 points over the three components, a taker is eligible for licensure in 20 other states including the district of Columbia so long as he passes a character and fitness inquiry. The chance to provide students with more opportunities for employment was very persuasive to us. If Nebraska adopts the diploma privilege, graduates of Nebraska law schools will be hostages here and students who want to relocate will need to take a bar exam anyway. Iowa considered implementing a diploma privilege in 2014, and so did Indiana in 2017. And both states rejected the idea partly because of this immobility reason. Students are expected to take a test. It's been part of the bargain for 100 years. Anybody who graduates from any professional course of study expects to take a state licensure exam and the public expects them to for their protection. The Bar Commission objects to this legislation. Thank you.

PANSING BROOKS: Thank you, Miss Hewitt. Any questions for her? I guess I have a question. So you heard Senator, Senator Morfeld talk about the issue of cost and how much the costs have risen since we all went

to law school. Has the Bar Commission looked at any of that information, looked at how to make it more accessible to all students? How to-- you know, when I took the bar exam, they did have the multistate clear back then, and it-- I had to learn whole new practice areas. I had to learn classes that were not offered to me in law school. Now I don't know if that's still true, but at that point, we had to-- all of a sudden teach ourselves whole new areas of law that we're going to be tested, that we were going to be tested on, on the bar exam in Nebraska. So I mean, I can-- when Senator Morfeld came to us, you can see a number of the lawyers did sign on to this because we felt it was worthy of a discussion. And you all may be dismayed that we even thought that this should come forward, but it is worthy of discussion. It is worthy talking about the fact that students are paying so much money for education, then they have to pay money to take this exam, and no one in their right mind would do it without the BARBRI course. So I'd like you to speak to that issue--

MARY J. HEWITT: Sure.

PANSING BROOKS: --and to whether or not the Commission is doing anything about those costs for students.

MARY J. HEWITT: No one has ever asked us to.

PANSING BROOKS: OK.

MARY J. HEWITT: But beyond that, we don't have any control over any of that. As far as I know, the BARBRI is offered by some entrepreneur who comes here and, and sells the idea to students. We have addressed costs in other areas. We've reduced the fee for taking the test with your laptop, for example. We, we understand that fees may be a barrier for some students and so when we identify a fee that we have some control over, we're happy to take a look at that.

PANSING BROOKS: So if an organization is coming in and saying, we want to provide a course, you have no say over what's provided or what, what they're doing?

MARY J. HEWITT: I don't believe we do. I believe that's a relationship between the law schools and the BARBRI or whoever is offering the programming. And for what it's worth, the multistate multiple choice test tests very core classes, evidence, civil procedure, torts,

contracts, real property, and conflicts. Stuff that everybody should have had.

PANSING BROOKS: There were two courses, I can look it back up, but there were two courses that were not even offered at Nebraska. We had to teach ourselves as we were studying. So anyway.

MARY J. HEWITT: And then the essay test combines all of those things and throws in sometimes family sorts of things, and wills and estates, and stuff like that that captures some of the more elective programs. The research I've done about the Wisconsin privilege suggests that 60 hours of the 90-hour curriculum is prescribed. So--

PANSING BROOKS: OK. Well, thank you. Maybe--

MARY J. HEWITT: --there are, there are ways, there are ways to address the curriculum shortcomings.

PANSING BROOKS: I'm just wondering if there might be a way for Bar Commission to address the needs of students who are struggling to make ends meet. And if we think this is so important to the practice of law, then we might find some, some law firms that would help, help pay for the, for the cost of the course and the exam. I just think that that's-- Senator Morfeld has brought up some, some very valid points in that regard. Thank you.

MARY J. HEWITT: Um-hum. Sure.

PANSING BROOKS: Any other questions? Back to you.

LATHROP: Senator DeBoer.

DeBOER: I do have one topic I'd like to, to ask a little bit about with respect to-- so I graduated from law school at Lincoln, but I took the bar exam in Missouri is where I went, and at that time, we did have the MPT or whatever, the multistate professional where you did the, the sort of write a brief type thing.

MARY J. HEWITT: Um-hum.

DeBOER: It was a long time ago, I'm trying to remember back, but with respect to the multiple choice question portions and some of that, I do have-- then I went on to become a, a teacher, and I do have some pedagogical concerns about the, the pedagogical efficacy of a multi-- or a multiple choice examination to test someone's ability to do a

very dynamic job. And I'm struggling with this one. I, I really am, because I don't see how multiple choice questions-- when I, when I give my students multiple choice questions in a class, I know that it's kind of a silly exercise, right? Essay tests are a little bit more useful, but multi-- you know, multiple choice, I don't know. So-- you know, talk to me about what you think is, is what gets itself done by giving students 200 multiple choice questions because multiple choice questions just really aren't that valuable in a classroom setting for evaluating whether or not people have internalized material. So it seems even less so on determining whether or not they're going to be able to do the work of a lawyer, which does not to my recollection, and I only practiced for a short time and it was many years ago, it does not often require me to determine without looking at case law or something else who takes in a complex will case and, you know, whether the rule against perpetuities applies or-- I don't even know if these are things we still talk about in law school, you know, some of those kinds of things. You know, I'm, I'm just-- speak to me about what pedagogical purpose you see in giving a multiple choice question to students.

MARY J. HEWITT: Well, for starters, nothing about wills is on the multiple choice part of the test. And I'm not a testing scientist, I'm not a statistician. I, I don't know that anything I would struggle to tell you about all of that would be very meaningful. So I would encourage you to be in touch with the National Conference of Bar Examiners, which is ironically headquartered in Madison, Wisconsin, where they don't require the test and they've got gobs and gobs of test taking scientists on their staff. And they are always at work to reassure states that the multiple choice portion of the test is valid. So I honestly, I, I think it's a better use of your time to get the research from the folks who gather it.

DeBOER: OK.

LATHROP: Very good. I see no other questions. Thanks for being here today.

MARY J. HEWITT: Thank you.

LATHROP: Anyone else here to testify in opposition?

TRICIA FREEMAN: Good afternoon, Senator Lathrop, members of the Judiciary Committee. My name is Tricia Freeman, T-r-i-c-i-a F-r-e-e-m-a-n. I am the chair of the House of Delegates for the

Nebraska Bar Association. And it's that hat that I wear today. But I also come with the experience of being a past commissioner and chair of the Nebraska State Bar Commission, having served in that capacity after being appointed by the Supreme Court from 2004 to 2016. The Bar Association opposes this legislation. And I would note a couple of things. First of all, the Bar Association mission statement is to work for Nebraska lawyers to help them achieve the highest standards of competence, ethics, and professionalism, and to protect and promote administration of an access to justice. We accomplished that mission through our many values, one of those being service to fulfill our obligation to our members, the profession, the courts, and the public. So our position on this bill, I think falls squarely within our mission as well as our values. We are certainly sensitive to the issue of student debt and what impact that has on students' ability to take the bar exam and to engage in practice that they might not otherwise be able to choose because the debt is too much and they have to have some sort of a job that's going to help them to pay that debt. And I think the Bar Association certainly is-- certainly open and would welcome conversation with regard to those issues and what we can do in that fashion. In addition, we're sensitive to the issues of having lawyers drawn to rural practice areas. And I think that we have some initiatives that deal with that. But none of that overrides the protection of the public, which is the purpose of the bar exam. We know that it shows that persons who are going to practice have a minimum competence in order to perform the basic tasks, tasks you would expect a first-year associate to be able to perform. And so it's that basic competence that I think is demonstrated by the exam itself. I don't know that I can answer your question directly, Senator DeBoer, but I think I can maybe shed a little bit of light on that. The exam itself, it has three different means by which it tests. There is a 200 question multiple choice. There is also a six question essay and a two problem performance test. The point of those three components of the exam is to test from a variety of different avenues, if you will. So it's the recollection of information and the, the ability to be able to problem solve. It's being able to write in a fashion that you would expect a lawyer to be able to write. And it's also to be able to do the basic functions that you would expect for a lawyer to be able to perform. When the bar, the bar exam before that didn't include the performance test, and now adding that performance test, the data provided from the National Conference of Bar Examiners when the court was determining whether or not to adopt that, the UBE, was that the passage rate is not likely to change, but who passes will change because of the different means of testing on that exam and what that

looks like as a whole. So I don't know that I can answer that directly, but I do believe that that perhaps shed some light and it's all scaled one to another to kind of level out any discrepancies. So--

LATHROP: Thank you. Any questions? Senator Pansing Brooks.

PANSING BROOKS: I just can't help playing devil's advocate. Along those lines then, we're, we're weighing the value of an education at the University of Nebraska Law School. Because we think that they are not actually pulling-- are not-- we're not graduating students who can write, who can think, who can do all the things that you just listed. And we have to have this test on a certain day to really prove that, that they have graduated students of value that are going to be actually competent lawyers within the profession. Is that what you're saying?

TRICIA FREEMAN: I don't know that I'm making any statement with regard to the value of the education that's provided by the law schools.

PANSING BROOKS: But if we're saying that, that we can only determine that somebody is able and capable of practicing law in Nebraska if they pass, if they can pass this exam on a certain day, then you're not giving the three years-- in my opinion, the three years of work and testing and mentorship and all of the work that those students do at the law school is being dismissed. Those three years in favor of exactly what happened on that one specific day by that examination that was created by people that aren't even members of our state bar generally. I mean, you all may look at it, but I'm just-- here's the devil's advocate, because it clearly is. If we trust our law schools to be providing the education that we want and we expect, which I do believe in Nebraska's education, then Senator Morfeld's point is if you've graduated from a certified school in Nebraska, why isn't that sufficient? They're the ones that have tested every day. They have listened to the students every day. If they have passed them on, why is that not sufficient? Why is this one test determinative of, of what is truly necessary to practice law in the state?

TRICIA FREEMAN: And what I would say to that is-- again, I'm not gonna comment on the quality of the education, but I also think that-- or I think back to when I went to law school many years ago and people since then have asked me what can you help me or tell me about that's gonna prepare me for law school? And I usually tell them there's not much that I can tell you that's going to prepare you, because each experience of a student in law school is an individual experience, we

all have different experiences to different classes. And I think that that's unique and individual. But what I think the bar exam does is it helps to normalize that individual experience in establishing the basic competence of each of those individual experiences. To say that each of these people has at least this level of competence that we can ensure the public then prepares them to practice law for people who are gonna seek out their, their service.

PANSING BROOKS: Thank you.

LATHROP: Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Miss Freeman for testifying today. Would an analogy be, I go to an accountant, and my accountant is not a CPA, but he is an accountant. If I chose to go to a CPA, I could find somebody that was a CPA. For these states like Wisconsin that do not have the bar exam, would the lawyers-- and I, I guess I'm asking this for my own benefit. You could go to an attorney, or you could go to an attorney that advertises that they pass the bar association, which to me would indicate that they have a higher level of-- maybe they are more competent, maybe they aren't. But just the same with my accountant, I assume a CPA has passed that very difficult test and therefore they have more value to the system. Would that be an accurate portrayal if we had a system that didn't have the bar exam?

TRICIA FREEMAN: Potentially. You know, I guess I think about an individual who doesn't take the bar exam, they still have the same J.D. degree that anybody who has, you know, graduated from law school has. The difference being that there are different things in different professions they can do. They just can't practice law. I would assume that there are certain things that a CPA can do that perhaps someone who has an accounting degree can't do. And so I think that the breadth of what is available at that, at that point, I think is different. A person who has passed the bar exam is licensed to practice. They can advertise that they're licensed to practice. A person who has the J.D. degree, but that is not licensed can't. Which doesn't subject them then to-- you know, the rules of ethics and things like that, because they're not licensed where a person who is licensed would be subjected to that. There is that oversight, I think in addition, that is offered. So that would be a difference.

BRANDT: All right. Thank you.

TRICIA FREEMAN: You're welcome.

LATHROP: I see no other questions. Thanks for being here today.

TRICIA FREEMAN: Thank you.

LATHROP: Welcome.

ELIZABETH NEELEY: Thank you. Good afternoon. My name is Elizabeth Neely, E-l-i-z-a-b-e-t-h N-e-e-l-e-y. I'm the executive director of the Nebraska State Bar Association and here today in opposition of LB934. So law student debt and access to lawyers are issues that are both very important to the Bar Association and we very much appreciate the Legislature's consideration of these issues. However, to Senator Brandt's earlier point, it is our position that the Nebraska Supreme Court, not the Legislature, has the exclusive power to fix the qualifications for admission to the bar. And if the Legislature does feel strongly about moving forward with diploma privilege, it can certainly encourage the court's consideration. But we believe that the Legislature does not have the authority to enact it. In 2015, our Association actually established a committee to examine the bar admissions process in Nebraska. And the committee identified the purpose of the bar admissions process as being fourfold: first, to demonstrate that the applicant is competent and has the minimum knowledge, skills, and judgment needed to practice law; second, to protect the public from incompetent or ethical attorneys; third, to influence the courses students take in law school; and fourth, to prepare the applicant for a career that requires immense preparation and is subject to intense scrutiny. And while not specifically part of the charge, the committee did consider the subject of diploma privilege. And while reduction of student debt is a very worthy objective and certainly one that we would advocate for on behalf of our membership, the underlying premise of diploma privilege model is that any person who graduates from law school should be presumed to be competent for admission to the bar. And while this may be true for many or maybe most of our students, the committee felt that the additional steps required by the bar admissions process serves to protect the public by requiring a demonstration of a minimum level of competency and serves to strengthen the public trust and confidence in the legal profession. I thought it might be argued here today that diploma privilege may assist Nebraska with its shortage of lawyers in rural Nebraska. And perhaps it would. It has not, however, done so in Wisconsin. I brought with me an article from 2016 that discusses the lack of lawyers in rural areas, discusses the problem of law student

debt, and applauds the state of Nebraska for their role in providing student load debt relief for lawyers practicing in rural areas of the state and encourages Wisconsin to follow Nebraska's lead on that. The last point I want to make is in closing, I'm providing a letter written by Richard Moberly, dean of the University of Nebraska College of Law, in his personal capacity discussing potential unintended ways the diploma privilege could hurt law schools, law students, and the citizens of Nebraska. And he's provided a very comprehensive statement. And I appreciate your consideration of his remarks. Senator Brandt, to your earlier question, the dean's letter outlines the case law and constitutional provi-- provisions outlining our argument for a separation of powers issue. Senator Pansing Brooks, you had a really great question about-- you know, what are law schools and what's the legal profession doing about the student debt issues? UNL, I'm happy to report, has the lowest debt load of any school in the top 100 of law schools nationally. The Creighton University School of Law dean is here and I think he'll be addressing you also. I'm very proud that Creighton has a accelerated program so that students can finish law school in two rather than three years. They're also providing bar prep as part of the law school curriculum now. So I do feel like they are taking important changes to reduce the debt load that Senator Morfeld has raised.

LATHROP: Very good. Are there any questions for Liz? Seeing none, thanks for being here.

ELIZABETH NEELEY: Yep. Can I-- I, I know I'm out of time, but I'd just like to comment one more thing if you'd give me ten seconds.

LATHROP: Sure.

ELIZABETH NEELEY: Your question earlier, Senator Pansing Brooks, about kind of the, the role between the law schools and can't we assume that everyone's doing great and that we can just allow all these people in? I think that the bar exam also creates some accountability. So right now, we know what the bar passage rates are for Creighton and for the University of Nebraska College of Law. If we had diploma privilege, we wouldn't. So if they sink down to 30 or 40 percent, we wouldn't know and we wouldn't have that accountability of knowing or having that measure that we know that our law schools are providing high quality legal education. So just wanted to share that thought.

PANSING BROOKS: Thank you.

LATHROP: OK. That does not look like it's prompted any questions so--

ELIZABETH NEELEY: OK.

LATHROP: --thank you for being here.

ELIZABETH NEELEY: Thank you.

LATHROP: Anyone else here to testify in opposition? Anyone here in a neutral capacity?

VINCENT LITWINOWICZ: [INAUDIBLE]

LATHROP: Oh, I'm sorry. Did you want to testify in opposition or neutral?

VINCENT LITWINOWICZ: Neutral.

PANSING BROOKS: Neutral.

LATHROP: OK, come forward. And if you move that chair for him, that'd be great. Good afternoon.

VINCENT LITWINOWICZ: Good afternoon, Chairman Lathrop and good afternoon, committee. My name is Vincent Litwinowicz.

LATHROP: Can you speak up just a little bit? This is not a good, a good room for sound.

VINCENT LITWINOWICZ: My name is Vincent Litwinowicz, V-i-n-c-e-n-t, my last name is L-i-t as in tango w-i-n-o-w-i-c as in Charlie z- as in Zulu. And I, I really liked all of the testimony, very interesting arguments. And I learned a few things that I want to speak about because I want to, I want to pass the bar and I actually want a degree. I want-- I mean, so that's interesting without going to law school. It's been done elsewhere. I'm on disability. I had a career. I don't now. And if I can get over this fatigue, I'm pretty sure I think I could do it. And so I want to be able to-- and I don't want a set of multiple choice questions. If I have to, I want to talk to somebody and do a verbal test. I don't know what they do in California. I really only saw the bill this morning, but I was passionate about it because I'm looking for a career and I want to, I want to-- I know there's gonna be severe antagonism from law schools in the state notwithstanding. As a person with disabilities that would like a career for himself, I would like the chance to get to pass the bar and

to get a certification in that respect if I, if I choose. Now I would like to, I would like to be in civil liberties or civil rights as part of the team, not a litigator. And so I don't think personally it's a problem as far as I'm concerned. So as far as the degree of apprenticeship I would get is really self-evident. So I would like the chance to do it and I would like the certification. So I would like to have the equivalency of passing the bar and I, I can't afford a law school and I think that's about all I have to say.

LATHROP: So you're suggesting sort of the California thing where you don't go to law school, but you take the bar exam?

VINCENT LITWINOWICZ: It was brought to my attention. I think it used to exist in my home state. I know it did in lots of states previously. So, yeah, since I only saw the bill this morning and I was looking for a career anyway. Because I changed my diet, the fatigue is a problem, but I've lost 150 pounds and maybe I can get out of here, this wheelchair. So I would like the potential. When I saw it, it was-- it became-- I was attracted to it like a magnet because I would like to be able to do it. And intellectually, even though I have cognitive issues that I'm now taking Alzheimer's drugs that enhanced me greatly, I would like the chance to do it if I can.

LATHROP: OK.

VINCENT LITWINOWICZ: Thank you.

LATHROP: I do not see any questions today, but thanks for your testimony and thanks for being here.

VINCENT LITWINOWICZ: Thank you. And rhetorically, I would like to ask the question. Would you support it? Thank you.

LATHROP: Yeah, I appreciate that.

VINCENT LITWINOWICZ: All right.

LATHROP: Thanks for your testimony.

VINCENT LITWINOWICZ: Thank you.

LATHROP: Anyone else here to speak in a neutral capacity? Good afternoon.

JOSH FERSHEE: Good afternoon. Chairman Lathrop and members of the Judiciary Committee. I'm Josh Fershee. I am the relatively new dean at Creighton University School of Law. And I thank you for the opportunity to speak to the Judiciary Committee on the diploma privilege bill that you are considering. First, I want to thank the committee and the bill's sponsors for considering ways to positively impact legal services and access to justice. It's critically important that we continue to work for more equitable and more just society, and I appreciate the opportunity that we have to discuss ways we can do that. I come to you with no clear opinion or agenda as to the merits of the bill at this time because-- but I do think it's a worthwhile conversation and a decision worth considering. Part of the reason that I can't give you my opinion on it right now is that I've not had the opportunity to research the proposal as it would affect Nebraska. I've had the benefit of hearing from the broad range of stakeholders who this would impact. From the judiciary to practicing lawyers to law students, current and potential, I don't know what they think about this bill. As a side note, I have some sense of what my current students might think of this bill. I have also not had the chance to hear from legal aid from lawyers serving rural communities, from prosecutors and defenders. And just as important, I haven't had the opportunity to hear from clients, potential clients from around the state, from Scottsbluff to Grand Island to Nebraska City and back to Omaha. This bill would mark a significant change in how entrance to the legal profession is monitored and managed in the state, and it would mark a departure from how most of the nation does so. That may be a good idea. Staying the course merely for the sake of this is how we've always done it is not a sufficient answer. But change for the sake of change does have its own potential unintended consequences. And so as the committee considers the bill, I would ask that the goals and expectations of the proposal be very clear. And before enacting the bill, we should be clear that this proposal's likely to achieve those goals. Just as important, we should look at any potential negative impacts and make sure that we've effectively eliminated or at least mitigated those. So we don't have unintended harms. And I would also offer that if Creighton can be helpful in this process, I'm happy to do what we can to help as you consider how to move forward. I thank you again for considering ways to improve our state and access to legal services. I appreciate the opportunity to speak with you today. I will also take the opportunity to say how proud I am of our, our students and our institution. We really do have very good people who I think will make great lawyers regardless of how they enter the

profession. So with that, I'm happy to answer any questions if you have any and thank you again for, for considering this.

LATHROP: Very good. Thanks, Dean. Senator Brandt.

BRANDT: Thank you, Dean Fershee, for showing up today. And this is a real quick question. If we would go to this system, today we have two crack law schools, UNL and Creighton. What would stop somebody from setting up a diploma bill in Nebraska?

JOSH FERSHEE: Well, I, I think certainly, if I remember correctly, I think the bill is limited to accredited law schools. So the NBA would have some limit on that. And so I think there are ways to do that. I think that's one thing that the committee should consider are a variety of things. What's gonna be required? Wisconsin has certain required courses, for example, if, if you were to go this, this path. I think there's probably needs to be a little bit more robust bill in looking at ways to make sure what's happening. It would have an impact on legal education overall of how UNL and Creighton looks at things. I don't think it would fundamentally change what we do because we intend to make good lawyers that have people prepared to pass the bar. But it would shift the burden of, of at least one gatekeeping function. But that's manageable. Wisconsin has shown it can be done. And Wisconsin and Marquette are fine law schools and, and so it could be managed. I think the question is whether this is the best way to do it.

BRANDT: Thank you.

PANSING BROOKS: I have a question.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: Thank you for coming, Dean Fershee. I was just wondering, so if, if something like this did pass, how-- would you change some of, of the way that you teach? I mean, you sort of said you wouldn't-- you weren't sure much would change, but would you change the way some of-- would the courses necessarily change because you are teaching to Nebraska law, I presume, at Creighton and you are teaching to prepare students to become lawyers in this state, evidently, and also elsewhere if they need to-- if they want to move on. And of course, it would be-- it would remain optional under Senator Morfeld's bill. So I just-- I'm just wondering, you know, I think there's this fear that maybe the law schools aren't performing up to speed or that you're going to-- I mean, we heard the comment and

I thought it was a valid one that maybe the law schools would start slipping and not providing adequate academics, I guess, or, or adequate mentorship or adequate training for the lawyers. We're still practicing law, all of us. No one says that they're perfectly-- you know, I'm still practicing law. So-- but, you know, I'm just trying to figure out-- you heard those comments. Can you comment back on any of that and what you think? Do you think there is a risk that you'll all start-- that the University of Nebraska and Creighton law schools will start slipping and, and not preparing students as well as you are now to become lawyers ready to practice and represent clients in our state?

JOSH FERSHEE: No, I think there are some legitimate questions about whether the bar exam-- or whether diploma privilege is the right way to move forward. But no, that part of the concern is not one that I share. I, I can speak for myself personally. I've learned not to speak for my faculty without talking to them first. But I would say that I do think law-- legal education would change some. I don't think it would change fundamentally. But I think we probably would internalize some more of our own gatekeeping functions and figure out the best way we thought to ensure that our students were there. We're already doing a lot of that or we wouldn't be graduating the students. And that's why both for UNO and Creighton the vast majority of our students become licensed attorneys. And we have some who choose not to be because they don't take bar at all, because they're working in compliance or in other capacities. I-- but I do think that, that absent this gatekeeping function, if it weren't there, we'd probably have our own additional one to the ones that we already have. So I think it would, it would might evolve legal education, but I don't think it fundamentally change what we do, because I think to Senator DeBoer's point, one of the challenges the bar exam does present is that it is a gatekeeping function and has proven to be a valid one in a lot of ways. And so I don't dispute that. But it's not a test of whether you're good at practicing, practicing law. I mean, I teach business organizations and I used to not teach how to measure core because you would look up the bylaws and you would look up state statute. I would never have anyone measure-- you know, do it by memorization. And in fact, it would consider malpractice not to look it up. But then I found out the bar exam tested that we started talking about it, and so in a different way. But that didn't fundamentally change legal education either. And so that's where I would say I think we should be looking very closely if this gets us where we're trying to go. I'm less clear on that. But the criticisms

and, you know, as any good lawyer, it depends, I can come and make the argument for and against. And right now, I think that's the conversation we should be having.

PANSING BROOKS: That's what we're taught to do. Thank you for coming down on a snowy day.

JOSH FERSHEE: Thanks very much.

LATHROP: How many students did you have in your freshman class this year?

JOSH FERSHEE: One hundred and fifteen.

LATHROP: What percentage of applicants did you accept to get to 115 students?

JOSH FERSHEE: I believe it was about 52 percent, 54 percent. And you'll have--

LATHROP: So you could have--

JOSH FERSHEE: --to forgive me because I'm--

LATHROP: Creighton and could have accepted 300 people--

JOSH FERSHEE: Yes.

LATHROP: --into the freshman class.

JOSH FERSHEE: We, we could have accepted significantly more students.

LATHROP: Right. And so part of the difficulty seems to me, and I think my, my feelings about this bill may be different than Senator Morfeld's. Part of the difference is, is that if you, if you let everybody in who wants in, a lot of people want to be lawyers, but they're not cut out for it or they don't ultimately have the skill set or the intellect to do the work, then you could let 300 people in, but we would have many of them not suited to the profession.

JOSH FERSHEE: There's no question that would be a risk for some places. I will tell you that where we are now, there are a variety of reasons and things that we look at with students. There's nobody--there's not a single person that we admit that we don't believe based on their test scores and their prior history, we believe that they can succeed both passing the bar and succeed as lawyers. There are people

who don't for a variety of reasons from illness to desire. But the skill set for the people that we're admitting is there. This would not change that function. And I will say I'm not overly concerned. Well, it is a valid concern because you never know who's going to be in charge of it. The, the people that I work with in the institution I represent takes very seriously who we let in even now and even with that challenge. And so we would certainly not look to say how many people can we admit now that we don't have to worry about the bar exam? That's not really a big part of what we're looking at. It's whether they actually have the skill set to practice law first. And so I, I think it's right that there could be a concern in some instances. I don't think either of our law schools-- I think we're very mission driven and focused. I don't think that would be a concern.

LATHROP: OK. I appreciate it. I don't see any other questions. Thanks for coming down today.

JOSH FERSHEE: Thanks for your time.

LATHROP: Anyone else here to testify in a neutral capacity? Seeing none, Senator Morfeld to close.

MORFELD: Thank you, Senator Lathrop. Just a few different follow-up comments. First, I respect everybody's opinion here and the comments that were made by everybody today. Just a few different things, this is not primarily about debt. I think that the debt aspect and how much it costs only amplifies kind of the absurdity of this, particularly if you, like myself, believe that this is not a good test of competency to be an attorney. Debt is important, though. The other thing that I would say is I think by implication it shows that there is a distrust of law schools to be able to produce qualified attorneys after three years of education or two years if they're on an accelerated program. You know, if, if we trusted their ability to do that, we wouldn't need an exam to verify that. In addition, I think part of it is, is, you know, with BARBRI, that comes up, I guess maybe you could regulate BARBRI. But the bottom line is, after you spend $60 to $120,000 on your legal education, there's no one in their right mind that's not gonna take the prep course for this exam that determines whether or not that $60 or $120,000 investment can be realized and you can get a job to be able to pay back that debt. And so I-- you know, I would encourage the bar association, the commission, the court system to think about coming up with an in-house free of charge bar exam prep course. If they believe that this is truly the test, that this is going to test competency and ensure that we have citizens that can be

confident in the practice of law, then they should take it so seriously that they'd be able to provide the resources for those students if they don't trust the law schools to be the, the ultimate arbiter of whether they're competent enough to practice law, then they should provide that service. Because if people don't think that there is a student loan problem, they can come over to my house at any time and check out my student loans and see that my student loans actually cost more than my home mortgage. So we can have a conversation about that. I'm happy to delve into the details of that and I know many of my fellow attorneys are experiencing the same thing. In terms of the low-cost education, I, I just want to say I don't know the numbers at Creighton, Nebraska law definitely is one of the lowest cost legal education, best value legal education and I'm proud of that, I'm proud what our Board of Regents have done. I'm proud of what our law school has done. But I will just note that I get really irked when people talk about how we've got the lowest cost education when we happen to be the least expensive out of a really inexpensive-- or excuse me, really expensive educational system. Nobody in my district-- the average person in my district cannot afford to go to college at the university, even at the lowest cost university, or at the law school without taking out significant loans. So the entire system is unaffordable. We just happen to be the least bad out of a really bad and unaffordable system. So I just have to get that out there. Second, if you look at the statute, and I'm just-- I would love to see the memo. I know there's a memo out there detailing the court's authority over this. But just in doing some research, you go to the citations of the court's authority to administer-- to have the sole power to admit persons to practice the law in the state and fix qualifications in the Nebraska Bar. You look at that-- you go to the statute, that statute's from 1866. We've changed our constitutions a few times. There's no explicit constitutional-- as far as I can tell, I can be told wrong, there's no explicit constitutional grant of power saying this-- giving this to the courts. And if you actually look at the court's case law and I went to the statute, I looked at the citations, I then went to In re Roseberry, I then went to the next case that In re Roseberry looked at In re Ybarra and then I went to the next case after that that it cites to, and lo and behold, it says this court is vested with the sole power to get persons who practice law in the state to fix qualifications to admittance for the Nebraska Bar, and then it cites the statute. So I, I appreciate that the court is a separate branch. I appreciate their power. I respect their power. But they're basing their power off the statute that we passed. And so I think that by implication, we have the power to take that away if we were the ones

granting it in the first place and they're citing it as to their power. That being said, I'm happy to look at any citations. I did pass the Bar Exam. But I was a BARBRI rep so I got the prep course for free, but I still have a $150,000 in student loans. So in any case, I rest my case.

LATHROP: We can't help you with that one.

MORFELD: I made my choices.

LATHROP: Yeah. That will close our hearing. We do have a letter in opposition from Richard Moberly. And with that, we'll close our hearing on LB934. And that will bring us to Senator Wayne and LB969. Senator Wayne, you are up.

WAYNE: I mean, it's really not that bad of a bill.

LATHROP: And it doesn't have anything to do with the Bar Association.

DeBOER: They might be interested, they might be interested.

LATHROP: Good afternoon.

WAYNE: Good afternoon, Chairman Lathrop and fellow members of the Judiciary Committee. My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent Legislative District 13, which is north Omaha and northeast Douglas County. Under current law, recorded interviews of a child victim or witnesses in which a-- in which children allege or describe sexual assaults or similar acts are subject to special protection and are only released or provided to limited officials or individuals. These forensic interviews are usually done by child advocates at Child Advocacy Centers. The forensic interview is, is a video or, or-- and/or audio recording, and the recording is provided to the police and to the prosecutor. Section 29-1926 provides that the defendants who are charged with the crime may petition the court for an order releasing such copy of the videotape recording of the interview to-- interview to them. LB96-- 969 would provide that the defendant may petition the court for a copy of the video recording to the defendant, the defendant's attorney, or the agent of the defendant's attorneys-- defendant's attorney. LB969 further provides after obtaining a copy of such recording, the defendant and their attorney may transcribe or replicate the recording for purposes of review or inspection by the defendant, an expert consultant acting on behalf of the defendant, or for any other purpose necessary for the

defense of the defendant. I realize that criminal cases involving child victims are different from any other case. This particular case in which the child victim gives a recorded interview in which they describe terrible things happening to them must have some kind of protection. I agree with the policy of keeping these recording subject to protective orders and, and limiting their distribution. But for the people charged with these types of crimes, they either go to prison, they go prison for life, near life, have their parents-- parental rights terminated, or and/or are required to register on a sex offender for the rest of their life. Because of these serious penalties, it is important that we preserve all their rights by which an, an attorney can adequately and properly defend those charged of these crimes. I introduced these bills on a half-- on behalf of numerous criminal defense attorneys and they'll be a couple following me that can give some better examples or some examples of what they deal with on a, on a day-to-day basis. And with that, I'll answer any questions.

LATHROP: I don't see-- maybe just by way of background. So the way this works, a child-- there's a concern that a child has been sexually abused. And when law enforcement gets wind of that, they take him to Project Harmony or a similar child advocacy center.

WAYNE: Correct.

LATHROP: I don't know how many people on the committee have toured Project Harmony or a similar place, but they have trained interviewers who are intended or trained not to suggest the answer to a child victim. Those are recorded. And your bill is about whether the defense lawyer can sit down with his client and show it to him and say this is what the victim had-- or this is what the victim has to say about it.

WAYNE: Correct.

LATHROP: OK. I understand the bill. I don't see any other questions. Are you going to stay and close?

PANSING BROOKS: Wait.

DeBOER: Wait.

LATHROP: Senator DeBoer.

DeBOER: That brings up a question for me. So this bill isn't about whether or not they can sit down and view the, the--

PANSING BROOKS: Video.

DeBOER: --forensics videotape, whatever. But it's about whether or not they can make copies of it, right?

WAYNE: Well, the purpose of the copy is, is-- the purpose of the copy is for their defense. So typically what happens now is you get a link to a cloud-- iCloud, let's say, for example, iCloud, and it's usually a one-time password. So you log in for you to view it and then you've got to contact him again and say, I need a new password so I can take it to my client. But oftentimes those clients are in prison. So you have to figure out before it expires when you can go see them, when can you sit down and review it. And so it becomes this delay in the ability to defend your, your client because you keep having to go through these hoops to view the same thing that you should already have access to.

DeBOER: So could it be fixed by having the period of time in which you can view it lengthened? Could we get rid of this whole bill by, say, instead of you can view it one time in a 24-hour period, you can view it in a two-week period?

WAYNE: But there's-- so in Douglas County in particular, the laptop is provided by the state. You can't-- I mean by, by the county. So I'm uncomfortable logging in on a laptop that's not secured by my security to show these things. So I would prefer to have my own that I can have a copy of a CD that I can keep in my safe in my office to where only I have access to it. I'm not saying it couldn't happen. I'm saying it's just the logistics of oftentimes watching these recordings with your client and then if I want to send it to an expert, there's problems with that, too. And there's a couple of attorneys who deal with it more. I haven't dealt with this in about three years. But it was very difficult after the court had gave me permission to review it. The amount of extra hoops I had to go through just to oftentimes sit down with my client. And quite honestly, it's not just about-- it's the way your client can actually see something and now maybe it's better that we, we don't go to trial, that we-- you own up to your punishment and you go forward. But oftentimes it's the difficulty in doing that.

DeBOER: But isn't there a logistical way to figure this out? I mean, there might be some more difficult-- I mean, it may be slightly inconvenient for you--

WAYNE: [INAUDIBLE]

DeBOER: --to do it this way. I don't-- so that's one thing. There might be a, there might be a compelling state interest in making things slightly inconvenient, but still readily accessible in order to protect those custodial or those forensics interviews from getting out. So I'm, I'm just trying to understand, is there a way that we could do this that would still allow you to view them without giving you the ability to copy them?

WAYNE: I'm open to the idea of having a conversation. I do think we have to be mindful, there are places that don't have Internet, there's county jails and places that-- my Wi-Fi, in fact, it doesn't work here, nor does my Sprint work in this building. So how do I if I have a client, how do I, how do I have access to watch that?

DeBOER: So it's a technological concern?

WAYNE: Well, in part.

DeBOER: OK.

LATHROP: I don't see any other questions. Thanks, Senator. First proponent.

JUSTIN KALEMKIARIAN: Thank you, Chairman.

LATHROP: Good afternoon. Yeah, welcome.

JUSTIN KALEMKIARIAN: My name is Justin Kalemkiarian, J-u-s-t-i-n, last name, K-a-l-e-m-k-i-a-r-i-a-n. I am here on behalf of the Nebraska Criminal Defense Attorneys Association. I am an attorney with the Berry Law Firm here in Lincoln. I thank you all for your time here today and for the attention to this matter. Thank you to Senator Pansing Brooks, who is-- who represents my district. I appreciate the comments that Senator Wayne made. And I want to address a couple of things Senator DeBoer raised. This is not-- this is more than just an inconvenience and it's more than a technological issue. I am currently representing a client in another county in a sexual assault case of a child where I was-- I asked for a copy of the video pursuant to Nebraska Rules of Discovery. And I was instead of giving-- given a

copy, I was given access to a portal that is managed by Project Harmony. I have a problem with that for a couple of different reasons: number one, logistically, it's difficult to review that with the client in jail. As Senator Wayne pointed out not all jails have good access to the Internet so it becomes difficult to meet with your client. But it raises additional issues: number one, the way that some of these orders are written by judges restricts me from sharing, from providing access to that to an expert, to a defense expert to review the questions, to review the answers unless that expert happens to be sitting right next to me in my office. Now I practice out of Lincoln, where we are-- where we do have access to some experts, but experts in this type of field are not on every block. So I currently have retained one out in the Omaha Council Bluffs, Bluffs area. So now one of us has to travel to the other, sit down next to each other. It's a huge inconvenience, but it's also about the Sixth Amendment right to counsel. Furthermore, not, not-- attorneys in other jurisdictions in the state don't have the same access to these types of experts. Somebody from a rural area might not have an expert within a day's drive, or within a half a day's drive. It presents a huge problem for that defense attorney. Furthermore, it raises issues related to, again, the Fifth and Sixth Amendment rights. Number one, the right to impeachment. So if I am given a-- if I'm given access to the video and I view an interview and then I later in the deposition get an answer that's different or at trial I get an answer that's different, it's very difficult for me to impeach the witness with access to a portal. I cannot provide access to a portal as I cannot offer it into evidence. I cannot play it in front of a jury very easily. And so we are talking about not just a mere inconvenience, with all due respect, Senator, we are talking about important, critical constitutional issues. And again, as Senator Wayne pointed out, there are protections in place for these already. I am regularly given copies of the videos in other jurisdictions. I am given a copy of the video subject to a protective order, which does not allow me to disseminate it to anybody outside my office. It does not allow me to disseminate it to my client. My client has to view it in my office. But my staff has access to it if we need to cue it up. And importantly, I can provide it to an expert. And so there are these protective issues in place. I certainly under-- may I finish my comment?

LATHROP: Just your last thought, yeah.

VINCENT LITWINOWICZ: Thank you. I can certainly understand the, the, the concern that these videos might get released. Number one, I'm not

sure that this is a huge problem. I am unaware of child advocacy videos ended up on YouTube from the district in Nebraska. Certainly possible. I'm not sure that this is, this is a problem that is worth curtailing constitutional rights for. Number two, there are already protections in place. These protective orders prevent me from disseminating even to my own client. I cannot give him or her a copy. And third, there are criminal, there are criminal repercussions for violating those protective orders. Currently, it's a Class I misdemeanor to dissen-- disseminate copies of this video. So in summation, we are asking that they support LB969. And I appreciate your time. I would-- I'm open to any questions.

LATHROP: We'll see, we'll see if there's any questions. Senator DeBoer.

JUSTIN KALEMKIARIAN: Yes.

DeBOER: Yeah. Your impeachment point is a very good one. I appreciate that. Typically, how do you use-- would you use a transcript for impeachment? Do you actually use the video or-- I mean, that's what I'm confused about, though. I-- it's a good point, I appreciate it being made. But but do you usually show the video or do you use the transcript?

JUSTIN KALEMKIARIAN: It can be done both ways. There's a-- there could-- depending on whether or not the child was actually testifying, sometimes there are video depositions that are done in the testimony. But sometimes it's, it's good to be able to actually see the child sitting there and it's important for the jury in, in a case of a jury case to see the child, body language, expression, and that sort of thing. So it can be done both ways. It can be done with a transcript. But to be honest, Judge, I have an order here that doesn't even prevent, doesn't even allow me to get a transcript without prior order from the court.

DeBOER: OK.

LATHROP: OK, thanks for being here. That was helpful.

JUSTIN KALEMKIARIAN: Thank you.

LATHROP: Next proponent. Any other proponents? No. Any opponents? Good afternoon.

PHILIP KLEINE: Good afternoon, Senator-- Chairman Lathrop, members of the committee. My name is Philip Kleine, P-h-i-l-i-p K-l-e-i-n-e. I'm a prosecutor with the Sarpy County Attorney's Office. I'm here to testify in opposition of LB969 on behalf of the state-- or on behalf of the Nebraska County Attorneys Association. The law currently allows a defendant to achieve everything that this bill is asking to do. However, the law, as it stands, balances the interests of the defendant against the interest of protecting children by allowing judges to do their job, which is to judge. Judges are in the best position to determine how sen-- this sensitive information is to be handled and how to balance that in the best interests of the child versus the defendant's ability to present a defense. Judges should decide how evidence is handled and disseminated on a case-by-case basis. The law currently provides defendants an avenue to ask the court on a case-by-case basis for an order releasing this evidence and determine the use of that evidence in regards to children discussing sexual assault and child abuse, and it's under 29-1926 Section (2)(b). This bill would give defendants unchecked and unfettered access to disseminate copies, create transcripts that cannot be used to impeach to whomever they choose without any oversight. We can't risk revictimized-- revictimizing our minors if access to these interviews is not controlled via court order. There's-- there has been improper use of these videos. State v. Armstrong is a case that's gone to the Nebraska Supreme Court due to improper use of these videos during trial. I've had instances where transcripts have been used to impeach individuals which you can't do. A transcript of the video is not a sworn statement. It's somebody else's interpretation-- being a court requires interpretation of what is on the video. And allowing access directly to perpetrators with no protective orders that have any actual substance is basically perpetuating, perpetuating-- excuse me, the criminal offenses revictimizing victims and granting defendants access to confidential material that they could use at their disposal for anything, be it sexual gratification or improper uses to intimidate kids. I've, I've been in situations where transcripts have been used that kids do not get to see beforehand. And they get told this is what you said. That kid doesn't know what he said unless you showed him the video. The video is the best evidence of what's going on, not a transcript or somebody else's interpretation of what it is. Other states have acted to protect minors-- minor victims in this arena, and challenges have been upheld in court systems because the material is so sensitive and should be handled with due care and caution as it is basically a verbal rendition of child pornography. This bill strips away the ability of the court to deal with these

issues and instead allows a defendant, again, unfettered access to the videos of child witnesses and victims. Section (c)(i) and Section (c)(ii) essentially make Section (b) irrelevant because Section (c) says it can go to a defendant, a defendant's counsel, or anyone that the defendant deems to be their agent. Section (c)(ii) says anybody from (c)(i) can transcribe that video and replicate it or the unbelievably broad portion of that, says they can do anything with it to help their defense. And I know I'm out of time, but I'd like to finish that last point, (c)(i) and (c)(ii) make the judge's, judge's discretion in the court order irrelevant.

LATHROP: Doesn't (c)(i) require that they petition the court?

PHILIP KLEINE: Sure. But that, that also-- that still makes it irrelevant. Section--

LATHROP: But they don't, they don't get to (c)(ii) until they petition the court under (c)(i). Right?

PHILIP KLEINE: Well, then I, I guess I don't understand the point as the law is written of (2)(a) as well as (2)(b) because (2)(a) talks about no custodian of the videotape shall release or use the videotape without a court order. Section (c)(ii), if it's released under (c)(i) then (c)(ii) says well, there's no-- the court can't tell us how to use it because (c)(ii) says we can do whatever we want.

LATHROP: OK. Are you OK with this bill if it's amended and allows for the court to enter a protection order contemporaneously with authorizing the release?

PHILIP KLEINE: Well, I think the court has the authority to do that right now as it's written under (2)(a) and (2)(b).

LATHROP: Exactly. I think that's the point, isn't it?

PHILIP KLEINE: Well, I don't understand the amendment then, because the court under Section (2)(b) already may govern--

LATHROP: Well, right now, right now in Sarpy County, if you are a criminal defense attorney and you represent somebody in one of these cases and you want to get the video and, and share it with an expert that, that may be out of Philadelphia, can they do that? Can they share that or do the protective orders that are coming, particularly

out of your jurisdiction, prohibit the dissemination even to an expert?

PHILIP KLEINE: Well, that-- that's a fair question. There has been because defense attorneys are not willing to say who that is. And that's part of the problem. Under State v. Armstrong, it talks about what happened in that case is that it was released and it was used and the entire family looked at the video and then individuals testified. And I'm, I'm getting to your point, Chairman.

LATHROP: OK.

PHILIP KLEINE: The point is, when we-- when I argue against these orders of saying we're just gonna give it to an expert, defense counsel doesn't want to name who that expert is, which is the point of what the court's order in determining--

LATHROP: But they don't have to disclose, they will have to disclose an expert to you until they want to make him a, a witness. It could be a consulting expert and under the Rules of Discovery, they don't have to share that until they make a decision to actually call that expert. Isn't that true? I mean, I, I get your concern. I understand your concern completely, the idea and, and apparently this happened in Sarpy County where somebody got the video, shared it with the family and the family went and leaned on the kid. And that is nobody's intention. Right? But having just under the right of a defendant to defend themselves and have counsel in a position to be able to discuss the video with their client, which may result in the client rolling over and pleading or sharing it with an expert witness or preparing for trial and having access to it that doesn't require that they check in with a website that somebody can monitor.

PHILIP KLEINE: Well, I don't, I don't think that the website monitoring is true. They can't monitor [INAUDIBLE] portion--

LATHROP: OK.

PHILIP KLEINE: I mean, if you're bringing up that then I'm gonna address that portion, because they can't monitor what portions of the video that they're looking at, how long they look at it. They can monitor and see who accesses it because that's a code that you get. But prior to the CAC's, and it's not just CAC's videos that we're talking about, it's any video that contains a child victim or child witness talking about sexual assault or child abuse. So it's not just

CAC's, it's any video. And prior to the CAC's going to this, and I think at sometimes we still do get hard copies of these videos that do get released to defendants. So I have trouble with, with some of the testimony before me that said, well, we have to have videos, we never get videos. Well, that's all that's been done up until the past couple of months. And I, I know that courts can still and still do release actual hard copies.

LATHROP: But your concern is, your concern is that even with a protection order that says the defense counsel can have it, that defense counsel may violate the order and share it with somebody that's not within the protection order.

PHILIP KLEINE: Correct. I mean, that's the point of the judge, that's the point of the judge's discretion. The defense attorney wants to come up there and say, I need to give it to Shawn Cassell [PHONETIC], who's an investigator, to be able to have him view it to make sure what's going on. I think that needs to be done by the court so that we know who it's going to.

LATHROP: OK. OK. I, I-- this has been a good discussion. And I-- there's got to be a middle here because a, a criminal defendant ought to be able to prepare for trial and, and we want to make sure that it is not improperly used or shared with people who will further victimize a child.

PHILIP KLEINE: And I agree. I, I-- they still have access to it. I don't think anything's changed since 2015 when this bill was last amended. So I'm not sure what-- now the rush is here to change it.

LATHROP: Let me see if anybody else has questions, Mr. Kleine. I see none. Thank you for being here today.

PHILIP KLEINE: Thank you.

LATHROP: Good afternoon.

IVY SVOBODA: Good afternoon, Chair Lathrop and members of the Judiciary Committee. My name is Ivy Svoboda, I-v-y S-v-o-b-o-d-a. I'm the executive director of the Nebraska Alliance of Child Advocacy Centers. And I'm here to adamantly oppose LB969 on behalf of our seven Child Advocacy Centers across the state.

LATHROP: Ivy,--

IVY SVOBODA: Yes.

LATHROP: --can you talk just a little louder.

IVY SVOBODA: Sorry. Child Advocacy Centers help facilitate joint investigations of crime against children with law enforcement, the Department of Health and Human Services, and prosecution of the over 7,000 child victims of crime served annually by Nebraska Child Advocacy Centers. Over 60 percent of the children seen at the centers are under the age of 12 and well over 50 percent of the cases are child sexual abuse. One of the first services a victim of child sexual assault receives is a forensic interview, a recorded video of the child recounting their sexual assault in graphic detail, sensitive information that needs to be held in the strictest level of competence. Ninety-one percent of the child victims know their abuser. Our membership is worried about recordings being inappropriately shared and used to manipulate and coerce child victims. When forensic interview recordings have made it into the wrong hands, they've ended up posted on-line, they've been on YouTube, and they've been on Facebook, and even made it to the producers of the Dr. Phil show, and all of that across the nation. You wouldn't want someone you know or even your own child's disclosure of sexual abuse to fall into the wrong hands. For the past, almost 25 years, the Child Advocacy Centers haven't allowed anyone outside of the investigation and prosecution to have access to the forensic interview without it being with a court order. The convenience of what is outlined in LB969 should not outweigh the fundamental need for privacy and confidentiality of the child abuse victims. With that being said, we aren't opposed to releasing the video at all via court order to the defense as it's been done currently and in the past. Some of the concerns that were raised about the new on-line system from the defense, the system doesn't track IP addresses. It doesn't track what parts of the video has been scrubbed or certain segments have been watched over and over again or anything like that. Strictly, has the video been accessed the number of times the video has been accessed by any of the parties. I gained some information, we have over 660 users in Nebraska using the system already, 286 agencies, 52 percent of the users are CAC, 19 percent are law enforcement, 11 percent are from the department, 7.9 percent are prosecution, and 2.8 are currently using if from the defense. So 90 percent of those kids with these interviews, we have over 1,600 on there, are under the age of 15. So LB969 seems to completely eliminate the court's ability to restrict replication and oversee and regulate retention and distribution of the forensic interview recordings and

allows copying to whomever they please. I urge you to stop the advancement of LB969 to protect our nation's most vulnerable citizens. And I entertain any questions. Thank you to the committee.

LATHROP: I do have a couple of questions for you,--

IVY SVOBODA: OK.

LATHROP: --and I want to start by acknowledging the work that you guys do. As you know, you are in my district and blocks from my home and I'm impressed with what you guys do. And there's nothing about this-- the work of this committee that wants to interfere in that process or make it more difficult or further victimize the kids that you help. I want to start there. I, I do-- it, it does strike me, though, that this is about having some provisions perhaps in this amendment or an amendment to this bill that provide for the court to enter a protected-- protective order, which are common in, in court proceedings to limit what can be done with a copy of the video. Is your concern having a disc made at all? I mean, if I'm, if I'm accessing this through whatever portal, what's stopping me from-- I mean, if I, if I want to violate the order, what's stopping me from just using my phone and videotaping the video?

IVY SVOBODA: Well, that-- if you're wanting to prosecute-- so if that video were ascertained by somebody, you can see there's a watermark or there's protections within the system. There's a watermark that shows that this was inappropriately videoed over somebody else that had videoed it. And so they're sharing it inappropriately.

LATHROP: Right. OK. It sounds to me when I hear the criminal defense lawyers talk about it and, and I, I want to make sure that people that are, that are charged with crimes, are presumed innocent and that they get a fair trial. And in many cases, that means their lawyer has to have access to the, the evidence. They have to share that with their client at times so that they can discuss what evidence is-- they're up against. And more and more, we see experts entering the field and you probably run into them in your work that say there is a problem with the way this interview was done.

IVY SVOBODA: Um-hum.

LATHROP: That-- that's-- you guys go-- do a great job to make sure that doesn't happen, but there are experts that offer opinions on that topic. The ability of the criminal defense lawyer to share that with a

client to prepare for trial to make a transcript in their office if they need to, and to share it with an expert, we can agree is an important part of defending someone who is presumed innocent.

IVY SVOBODA: Yeah, absolutely.

LATHROP: OK.

IVY SVOBODA: We're not opposed to that.

LATHROP: And so our problem isn't so much whether they have access, but what happens, how they access it, and what they do with it once, once they have access to it.

IVY SVOBODA: Um-hum. And the comment--

LATHROP: Would you be more comfortable with this bill if it specifically provided that the court needs to enter an protective order as they authorize the release of this video to defense counsel that defense counsel can't share it with anyone, can't make copies and can't share it with anyone other than the defendant and/or any experts they may need in consultation or as a testifying expert witness?

IVY SVOBODA: Right. No copies, and-- but to have access to completely.

LATHROP: OK. I-- this seems like one where we can find a middle ground. I'm not-- believe me, I'm not-- I don't have a problem with your concerns. And I also respect the, the role of, of defense counsel in the constitutional trial process.

IVY SVOBODA: Absolutely. Right.

LATHROP: OK. Senator Pansing Brooks.

PANSING BROOKS: Thank you. Thank you for coming, Miss Svoboda. So did you just say that you have no problem with them having total access as long as they don't make copies?

IVY SVOBODA: To-- right. They can-- I mean, that's the way we do it now. We get a court order. And so then that's how we know to be able to give it to whomever we're told, because otherwise somebody could-- I mean, we don't know all the defense out there. So somebody could impose-- so we get the court order and then we release and set up the access for that.

PANSING BROOKS: OK. Well, I just thought we heard from Senator Wayne that it was very cumbersome that they had to apply and then try again another time when they could, could show it to somebody who's in prison, and that it was much more cumbersome than what you're saying.

IVY SVOBODA: They're given a web link and we can determine-- however it's determined, the length of time the Child Advocacy Centers are willing to provide that length of time that they could have access to the video. It's not just one time. It's as many times as you need to, but there's a certain time frame until-- then we close it out. That's the way we have it with anybody that accesses the system. But that can be extended and told we need more time to be able to-- or the case isn't resolved yet, that, that can be an open portal.

PANSING BROOKS: So what's the average length of time?

IVY SVOBODA: However long it takes to prosecute, possibly. I don't know the answer to the average length of time.

PANSING BROOKS: And, and, and what about the ability to have that portal open to an expert who is out of state?

IVY SVOBODA: As long as we have the name to be able to provide their-- so they can log in and password.

PANSING BROOKS: Who, who has the name, though?

IVY SVOBODA: The Child Advocacy Center so that that way they can provide the access to the system.

PANSING BROOKS: But you work directly with the prosecution. So that then becomes available to prosecution. Right?

IVY SVOBODA: It's not the prosecutor's system. And so the system resides with the Child Advocacy Centers. And so then they give access to prosecution, they give access to law enforcement, give access to the defense per the court order.

PANSING BROOKS: OK. But I guess I'm just interested because I can understand somebody wanting to keep their plan of how they're going to go forward quiet because they-- and so I do know that, that-- you know, the police are at the CACs wonderfully and, and are helping on some of those. But how, how do you keep that quiet then from the other side from laying out the whole plan and what they're trying to do to protect their own client and, and prove that they're innocent? How,

how does the CAC keep that from pros-- the prosecution knowing what expert is, is now being given access to this video?

IVY SVOBODA: I suppose you could put in the protective orders that the information is not shared with beyond the-- you know, beyond setting up the user with the Child Advocacy Center that that information is not shared. I think it's--

PANSING BROOKS: Could-- could you do that? Could you do that within your center? Could you-- is there a way to ensure, ensure that that information is not shared? Or is it--

IVY SVOBODA: Well, if the court order-- if, if the court-- when, when the court order comes in, that it needs to be shared with the defense, if it's says-- whatever it says we can, we can do because we just follow the court order.

PANSING BROOKS: Thank you.

LATHROP: I think that's all the questions. Thanks for being here today. I think we see you in the next bill as well.

IVY SVOBODA: Yes.

LATHROP: Is there anyone else here to testify as an opponent? Anyone else here or anyone here to testify in the neutral capacity on LB969? Seeing none, Senator Wayne to close. And as you approach, I do have one letter in opposition from Sara Boyd. Senator Wayne.

WAYNE: Thank you. I do want the committee to know and this committee was a part of that, we did increase the penalty for this situation in a witness tampering bill that came out of this committee. So typically in the past, it would have been a f4, Class IV felony. And if somebody were to in this particular case with a child-- sexual assault of a child, that has now increased to a f2. So it's a Class II felony. So we are-- we have helped limit what people can do with this type of stuff as far as influence children and in those kind things, we've, we've taken that approach. The second thing is, and Senator Chairman Lathrop hit on it, is-- and Phil actually argued and said he opposes these if we don't disclose the expert, that-- that's part of the problem. I, I may send it out to one or two different experts to get a feel to make sure my experts are right and just to figure out what's going on. I shouldn't have to disclose that that early in the part of the process. And we heard testimony that prosecutors oppose that. They

want to know who I'm sending it to, even though it's a part of my defense strategy for my client. That-- that's not how it works, that's not how the rules of evidence work, that's not how our criminal procedure works. So I do think this is a critical bill. I do agree that there's probably some middle ground that we can come to. And I look forward to working with the committee to resolve these issues.

LATHROP: Very good. I don't see any questions. Thanks, Senator Wayne.

WAYNE: Thank you.

LATHROP: That will close our hearing on LB969 and bring us to LB906 on a related subject. Senator DeBoer, welcome to the Judiciary Committee.

DeBOER: Good afternoon, Senator Lathrop and members of the Judiciary Committee. My name is Wendy DeBoer, W-e-n-d-y D-e-B-o-e-r, and I represent Legislative District 10, which includes Bennington and northwest Omaha. Today, I'm introducing LB906 on behalf of the Child Advocacy Centers. Nebraska's Child Advocacy Centers play a vital role in our child welfare system by working with children and families in highly sensitive an often, often crisis level situations including conducting forensics interviews of child victims as we've just talked about. LB906 updates our statutes to accurately reflect the current method of storing forensics interviews, which are now stored in a secure digital cloud. I think we've been referring to it as the portal. The bill also clarifies access to and confidentiality of forensics interviews among parties investigating and responding to child abuse and neglect. Under this bill, information obtained through the interviews may be shared with members of investigative and treatment teams to help provide collaboration among team members and clarifies access for the Department of Health and Human Services to help streamline their response to abuse and neglect. This is slightly different than the last one and, and is a different consideration. Here we're talking about whether or not access is available to the department, so thank you for your consideration of this legislation. I'd be happy to answer any questions you have now and there will be representatives from the Child Advocacy Centers, centers to testify after me and you can ask them questions as well.

LATHROP: We're, we're allowing HHS to have access?

DeBOER: Yes.

LATHROP: Is that what's happening?

DeBOER: This is a bill that would allow the department to have access in situation-- I mean, where they would need access to it.

LATHROP: And what do they need access to this for, do you know?

DeBOER: There are a number of situations where there might be a-- I can't remember the phrase, and you can ask the next testifier this, but it's a department instigated something, something. Sorry.

LATHROP: I'll ask the next person.

DeBOER: Yeah.

LATHROP: All right. I don't see any other questions. And I assume you'll stay and close?

DeBOER: Yes.

LATHROP: OK. Terrific.

DeBOER: Thanks.

LATHROP: We'll take proponents of LB906. Welcome back.

IVY SVOBODA: Thank you. So good afternoon, Chair Lathrop and members of the Judiciary Committee. I'm Ivy Svoboda, I-v-y S-v-o-b-o-d-a, executive director of the Nebraska Alliance Child Advocacy Centers. The Nebraska Alliance is a statewide membership organization dedicated to enhance Nebraska's response to child abuse and neglect throughout our 93 counties. I'm testifying in support of LB906 on behalf of our seven Child Advocacy Centers across the state. Thank you to--

LATHROP: Ivy, just a little bit louder for me.

IVY SVOBODA: Louder, sorry. Thank you to Senator DeBoer for working with the Nebraska Alliance on the bill. And thank you to the Legislature for your longstanding support of the Child Advocacy Centers. First, I'd like to say that this is a separate issue than Senator Wayne's LB969 in that the concerns are not the same, nor does it impact the same mechanisms. We're not talking about the same thing because this one is talking about the multidisciplinary team before court would be involved with the system. So Child Advocacy Centers firmly believe that we can best protect children and support families

when agencies and professionals share information on cases, policies, and promising approaches to work to minimize trauma to children and families. I'd like to make just three points. Senator DeBoer said that LB906 updates the statute to match current practice that the Child-- in the Child Advocacy Centers' use of technology. Over the past 25 years, we've moved from storing forensic interviews on VHS tapes to DVDs, now to a military grade secure on-line system. This system is built specifically for storage and authorized distribution of digital evidence. In conjunction with our national accrediting body, it's made available to the 880 CACs across the nation, already storing 28,000 forensic interviews. And currently we have over 1,600 child forensic interviews on the system in Nebraska. The second point I'd like to make is LB906 clarifies that the Child Advocacy Centers may use the forensic interview for purposes of supervision and peer review. This is a standard practice that the Child Advocacy Centers have been involved with well over ten years. All of our centers have peer review requirements in order to meet national accreditation standards. Each interviewer minimally participates in biannual sessions. So adding that provision to the statute will align Nebraska with such requirements. The third final point is that it clarifies access to the forensic interviews to be granted to the Department of Health and Human Services. With the passing of Senator Slama's human trafficking package of LB519 that also included Senator Pansing Brooks's provision. The definition of child abuse now includes placement situation to be human trafficked. So on these cases and on other law enforcement only, investigations the department is still responsible for determining the risk of harm to the child and needed social services for the family. The bill clarifies that the department, because consistently across the state this was not being granted to the department, that the department will have consistent access across all those jurisdictions to review the forensic interview. It creates a clear uniform statewide standard for the access to forensic interviews so that investigations can easily be coordinated. That-- I'd just like to thank you for and urge your support in LB906's advancement. I'd be happy to answer any additional questions. Any questions?

LATHROP: I see no questions.

WAYNE: I have a question.

LATHROP: You must-- oh, sorry, Senator Wayne, yes.

WAYNE: Sorry. So I was just trying, trying to understand this a little better.

IVY SVOBODA: Yeah.

WAYNE: So we're authorizing the release to help Human Services and anybody on the child abuse neglect investigation teams?

IVY SVOBODA: No, not anybody on the child abuse-- so number six on there talks about the information sharing about the forensic interview can be shared within that investigation team, not the forensic interview itself.

WAYNE: Can the forensic interview be shared?

IVY SVOBODA: Only with the department and law enforcement and those prosecuting.

WAYNE: So, so why is we trust prosecutors and not defense attorneys?

IVY SVOBODA: This is part of the child abuse and neglect investigation teams that's been around that, that coordinated effort since 1992.

WAYNE: So that doesn't answer-- kind of answer the question-- so-- but, but we're willing to-- or we're comfortable giving it to prosecutors, but not defense team. Is that--

IVY SVOBODA: The defense team thing is a separate issue than this, because this is about the child abuse and neglect teams and, and defense does not sit on those.

WAYNE: I understand that. I'm just trying to understand the thought process because the fear is that somebody is gonna put it out there in the public. Couldn't that happen from either side?

IVY SVOBODA: They do not have-- they have the same restricted access through the system.

WAYNE: All right. Thank you.

LATHROP: I think that's all the questions. Thanks once again for being here. We appreciate what you do and your testimony today. Any other proponents to testify in support of LB906? Seeing none, anyone here in opposition?

SPIKE EICKHOLT: Good afternoon, Chairman Lathrop.

LATHROP: Welcome.

SPIKE EICKHOLT: Thank you. Good afternoon, Chairman Lathrop and members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the Nebraska Criminal Defense Attorneys Association as their registered lobbyist in opposition to the bill. I did meet-- I have told Senator DeBoer that we'd be opposing her bill, and I met with her a couple of times to talk about the reasons why. The portion of the bill, or at least the general purpose of the bill the Bar Association is not opposed to, and that is to clarify that the recordings that the CACs, the forensic interviews that they do, can be shared with law enforcement agencies, the Inspector General and also Health and Human Services. That part we do not have a problem with. But what we concern-- what we're concerned about is that if you look at this bill, it's going to exacerbate the existing problem that we're already facing that the previous bill, LB969, was meant to sort of alleviate or remedy. If you look on page 6 of the bill, Section (5), which starts on line 21, the bill seemingly provides that to CACs are the statutory custodian of all these records. It's sort of permissive where they allow it and sort of at the CAC, Senator, may maintain a video recording of the forensic interview or may designate a law enforcement agency to do so. So it seems to me that the statute-- or excuse me, to us the statute is going to be placing sort of the authority for controlling dissemination of these videos to the advocacy centers. They do a good job, but ultimately they are always a witness for the state in these kind of cases. And that's problematic. More importantly, if you look at how the custodian is able to release the video recordings or provide access to, and begins on the bottom of page 6 of the bill and on a page 7. On page 7, lines 2 and 3, the video recording or forensic interview should not be released or used and that-- to another party-- to any other party, quote, without a court order. It's kind of a general-- I would argue it's a passive kind of reference. This doesn't repeal 29-1926 or 29-1912, which is the statutes that deal with discovery, but it doesn't reference them either. It just sort of says a general court order. And then if you look at the exceptions to this general prohibition, it lists the peer-- the release of peer review to law enforcement agencies, the Inspector General, and HHS. And missing from that designated list of who does-- is entitled to at least statutorily are people who are representing people who are charged with these kind of crimes. And I think that's problematic. In our

opinion, that's gonna exacerbate the existing problem we have where we have to jump through a series of hurdles or we get qualified, limited access to these things. And many of these cases, the forensic interview is critical. In many cases, that's the only evidence there is. There's no eyewitnesses, there's no admission, it's what the child discloses and states in the forensic interview. And that's really where the case begins and ends. And for the reasons-- and I know that Senator DeBoer would love that this bill was not linked to it, and I don't take any particular delight opposing it, but I fear it's gonna make the existing problem worse of the previous bill we heard for those reasons. And I'll answer any questions that you may have.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: I'm still trying to grapple with all of this. So number one, this video that's taken, even if somebody isn't charged, are they still gonna keep it or even if somebody isn't found guilty?

SPIKE EICKHOLT: That, that I'm not sure. I would-- I can't speak, obviously, for the retention policies or how they keep these things. I don't know. But that's another thing that we don't really have. If they are gonna be the custodian, I don't know what sort of retention policies they're gonna have, the integrity of it if it's going to be just kept under-- I don't know, if somebody is investigated but not charged or they still have a recording of the interview somewhere, I don't know what that means. HHS could probably investigate it because they can still put people in the child abuse registry who are not charged and presumably my quick answer is maybe this would allow them to do that. But I don't know. I should just simply say I don't know.

PANSING BROOKS: Well, I don't see anything where it says if, if the person is found innocent--

SPIKE EICKHOLT: All right.

PANSING BROOKS: --that the video should be destroyed. I mean, I just-- I don't know. I'm trying to see, otherwise then it's available for law enforcement to search that name, find that video, even though the person was released or found innocent, that would still be part of the [INAUDIBLE].

SPIKE EICKHOLT: That's right.

PANSING BROOKS: It seems-- I'm just trying-- on a cursory reading of this. OK, thank you, Mr. Eickholt.

LATHROP: It could become useful in a subsequent prosecution to--

SPIKE EICKHOLT: It could be. [INAUDIBLE]--

LATHROP: And a guy may get off on, on sexual assault number one, but sexual assault number three, and you find a pattern--

SPIKE EICKHOLT: Right.

LATHROP: --these interviews may become relevant.

SPIKE EICKHOLT: And you may want to keep them because you may have an incident where the very law-- or a very small child or very young child simply can't describe a, a perpetrator and there's numerous suspects. But then later on, they were able to link that suspect with a subsequent child--

LATHROP: Right.

SPIKE EICKHOLT: --and look back. So there may be an incentive to keep those. I don't know.

LATHROP: So let me see if I understand, your concern is that the defense lawyers aren't listed in the list of people who may have access to it.

SPIKE EICKHOLT: Exclusion of one is-- or the inclusion of one is exclusion of others.

LATHROP: So is that problem solved with the previous bill Senator Wayne introduced?

SPIKE EICKHOLT: Possibly. I think there's a way to mesh this. I proposed, and I don't think my proposal was welcome to include a paragraph E to provide for a defense counsel for example with somebody charged with a case arising from the investigation depicted in a forensic interview. You know, what, what we've put here-- you know, we had these hearings to talk about concepts, but the structure of a statute and the phraseology and the punctuation is important. We just had Senator Pansing Brooks bill dealing with a comma. So you never know how these things might end up once they're put in the statute

books that everyone sort of looks at anew. That's concerning because that's a conspicuous omission.

LATHROP: OK. I don't see any other questions. Thanks, I appreciate your testimony, as always. Anyone else here as an opponent? Anyone here in a neutral capacity? Seeing none, Senator DeBoer to close. And as you approach, I will read letters of support that have been sent in from: Dannette Smith, the CEO of the Department of Health and Human Services; Sara Boyd; Stephanie Luebbe, of the Nebraska Angels, Inc.; Dave Bydalek, from the AG's Office; Christon MacTaggart, from the Nebraska Coalition for Victims of Crime; and Dalton Meister, National Association of Social Workers of Nebraska. Senator DeBoer to close.

DeBOER: All right. Thank you very much. I think what we've discovered here is that between these two hearings, there's some middle ground that we probably should try to find and find the way to work this out. So probably what we'll try and do is, Senator Wayne, and I will probably try to get the stakeholders together and see if we can come up with something.

LATHROP: I think that sounds great.

DeBOER: All right.

LATHROP: It's the way we roll.

DeBOER: Any questions?

LATHROP: None. Thank you.

WAYNE: You got some zingers today.

LATHROP: Thank you. And that will close our hearing on LB906 and bring us to LB776. Also, a Senator DeBoer bill.

DeBOER: If it's okay with you after the opening, I'd like to sit there because I couldn't hear what--

LATHROP: No, that's fine.

DeBOER: --the testifiers were saying otherwise. Good afternoon, Chairman Lathrop and members of the Judiciary Committee, my name is Wendy DeBoer, W-e-n-d-y D-e-B-o-e-r, and I represent District 10, which includes Bennington and northwest Omaha. Today, I'm introducing LB776, a bill to allow the testimony of an expert witness regarding

eyewitness identification and memory. The goal of this bill is to prevent wrongful convictions in Nebraska and to support justice and public safety. If an innocent person is in prison for a crime he or she didn't commit, the actual perpetrator can go on to harm others. Eyewitness misidentification played a role in 70 percent of DNA exonerations, making it a leading cause of wrongful convictions in the United States. Luckily, there are practices that can protect against mistaken identification. Nebraska took steps to address this issue in 2016 when our very own Senator Patty Pansing Brooks authored a law requiring police and sheriff agencies to adopt key reforms for improving the accuracy of lineups. However, Nebraska is still missing a critical protection. Nebraska is the only state in the country that bars the use of eyewitness identification expert testimony. Last year, Louisiana passed a law allowing this testimony to be admitted at trial. And Nebraska is now the only state left that bars it. The ban dates back to a 1981 Nebraska Supreme Court decision State v. Ammons. At that time, the state-- the issue seemed straightforward and there was no doubt when an eyewitness picked someone in a lineup. Since then, 30 years of scientific research and exonerations of innocent people show us that the issue is a little more complicated than that. Factors that impact witness memory are often counterintuitive and difficult for jurors to understand. Expert testimony is valuable in providing jurors with the information they need to evaluate the accuracy of eyewitness identification. This bill would simply give judges the ability to admit testimony from eyewitness identification experts, just as they do for any other type of expert witness. At this point, I have an amendment which I would have you look at the amendment to the bill, which I'm offering for the committee's consideration. I want to thank the Nebraska County Attorneys Association, the Nebraska Criminal Defense Attorneys Association, and the Innocence Project for working together on language that all sides can agree on. That compromise language is reflected in AM2131, which has been passed out to you or is in the process of that. The amended version of this bill addresses the concerns that the opponents have presented. And I ask the committee only refer to this version of the bill, not the green copy moving forward. This is the bill going forward. LB776 is another important step in preventing wrongful convictions in Nebraska. I hope you will support it. I'm happy to answer any questions that you may have.

LATHROP: I see no questions. Maybe this one just so the record reflects this. This bill would be subject still to Daubert-styled hearings.

DeBOER: Yes, that's, that's precisely right.

LATHROP: This is just opening the door, but you still have to qualify the expert.

DeBOER: Right. There's a-- there's case law that suggests that these sorts of experts would not be permissible in Nebraska. This suggests that they are under exactly the same standards, just to make the record clear, as any other expert testimony would be allowed, they are not to be given additional deference nor lesser deference, but exactly the same as any other.

LATHROP: OK, good history. All right. Thank you.

DeBOER: Thank you.

LATHROP: I don't see any questions. We'll go to the first proponent.

TOM STRIGENZ: Good afternoon, Chairman Lathrop. Good afternoon, members of the Judiciary Committee. My name is Tom Strigenz, T-o-m S-t-r-i-g-e-n-z as in zebra. I am speaking in favor of this LB and represent on behalf of Nebraska Criminal Defense Attorneys Association. I will tell you, I'm also the public defender of Sarpy County. My wife is also an attorney, much more accomplished than I ever will be and does the civil practice. In this bill, you saw who supported, the County Attorneys, the Criminal Defense Attorneys, the Innocence Project. This bill is, is, is so important and, and I appreciate Senator DeBoer carrying the water on this one because anybody who's been in a trial, as very-- as a, a-- an attorney, a witness, a litigant, hopefully not a defendant, but there's nothing more powerful during the trial than a witness getting on the stand pointing up at somebody and said, that's the person who did it, or that light was red when the truck ran through the light. Eyewitness testimony is powerful testimony, some say the most powerful testimony, and it is wrong sometimes. And we're gonna have people talk about that after I, much-- again, much more accomplished. This bill just lets a jury get the facts and get, get expertise, get scientific knowledge for why an eyewitness testimony or memory might be wrong. And Chairman Lathrop, it, it does go through Daubert. So to anybody who doesn't know, I mean, the Rules of Evidence and experts are under the Rules of

Evidence under 702 and basically junk science is not allowed. Before anything gets to a jury, unless you think criminal defense attorneys specifically throw lots of things in the way sometimes at trials, we want to get it right and you want to get it right and you have a hearing before a judge, before any fact witness about what that expert's gonna testify to and the basis for that testimony. The 1981 Ammons case basically foreclosed that. And that's what this bill does, it allows a level playing field and it allows the evidence to be presented if it's not junk science. So there is, there is safeguards. You're not gonna bring just in some, some person coming in and saying that it's wrong. But the bottom line is this bill is needed. It's required to get correct decisions, to get it right, to get justice. And again, as a practicing attorney, as a practicing defense attorney, married to a civil attorney, I can tell you this, this bill will only better the judicial system. So with that, I'll, I'll submit.

LATHROP: I-- oh, Senator Morfeld's got a question.

MORFELD: How do you feel about the law-- the bar exam? [LAUGHTER]

TOM STRIGENZ: I passed the bar exam, now I sit on the Commission. You probably saw me sitting up front, Senator Morfeld. But, but, Senator Morfeld, I am also from Wisconsin. I did not-- I didn't go there, I went to Creighton, but I, I understand.

LATHROP: OK, with that question, I think we're done.

TOM STRIGENZ: Thank you.

LATHROP: We'll take the next proponent. Good afternoon.

MICHELLE FELDMAN: Good afternoon. I'm Michele Feldman from The Innocence Project. And it's nice to see a lot of familiar faces. And I want to start by thanking the committee for doing so much work to prevent wrongful convictions. And Senator Morfeld, you helped pass one of the strongest protections against false jailhouse witness testimony, which is a leading cause of wrongful conviction. So we really appreciate that. And Senator Pansing Brooks, thank you for sponsoring the eyewitness ID law that we passed in 2016, which was really one-- part one of tackling the problem of eyewitness misidentification. So the 2016 law required that the Nebraska Commission on Law Enforcement and Criminal Justice adopt a written policy with four key best practices and that every agency that conducts lineups adopt [INAUDIBLE] policy with those four best

practices. So that's really how we prevent in the investigation an eyewitness misidentification. And this bill is about preventing the eyewitness misidentification from leading to a wrongful conviction in the courtroom. It's-- Nebraska holds the distinction of being the only state in the country right now of banning eyewitness ID expert testimony. And it's because of that 1981 Nebraska Supreme Court decision. It's-- so much has changed in our understanding of eyewitness misidentification now. We thought that it was straightforward and it really isn't. Science shows that when people are under stress, when there's, when there's darkness, when there's different situations going on, they don't always remember the person that they thought they saw. So all this bill does is, as Senator DeBoer said, it just puts-- it, it allows expert testimony. It's still up to the judge if they're going to admit it. And the jurors are ultimately gonna decide in that specific case if the identification is reliable. And it really comes into line with other states who have encouraged the use of eyewitness ID expert testimony because it helps jurors better understand the science behind eyewitness identification. And it gives them the information that they need to really accurately decide if the eyewitness identification was reliable. I just want to thank the Nebraska County Attorneys Association for working with us on this amendment, because I think all sides agree that we want accurate identifications and, you know, we want better information in the courtroom. Thank you.

LATHROP: I don't see any questions. Thank you for your testimony, Miss Feldman. Next proponent.

LINDSEY WYLIE: Eleven copies, but someone can have my 12th when I'm done with it.

LATHROP: Well, you're forgiven. Welcome.

LINDSEY WYLIE: Thanks. Hello, my name is Dr. Lindsey Wylie, L-i-n-d-s-e-y W-y-l-i-e, and I am a researcher at the University of Nebraska Omaha with expertise in psychology and law, including eyewitness memory research. I also have a JD but did not take the bar. Thank you for the opportunity to speak in support of LB776, but please note that I am currently speaking in a personal capacity and not for the University of Nebraska Omaha or the University of Nebraska. Mistaken eyewitness identifications can lead to wrongful convictions and other injustices. It is now well accepted that traditional trial safeguards, such as cross-examination of a witness, are ineffective at exposing the weaknesses of eyewitness memory. The National Research

Council suggested educational corrective safeguards, including expert testimony to supplement traditional reliance in cross-examination. The 1981 Nebraska Supreme Court case that has already been discussed deemed that eyewitness testimony on eyewitness issues was not necessary because, quote, the accuracy or inaccuracy of eyewitness observation is a common experience in daily life and not a proper subject matter for expert testimony. Since this time, however, research has indicated laypeople who are our potential jurors do not understand the unreliability of memory or the factors that contribute to reliable or unreliable identifications. To empirically test whether laypeople understand the factors that can affect eyewitness misidentification, researchers have surveyed potential jurors, community members, and experts to compare what they know. Researchers have found that laypeople only agreed with experts in a very small percentage, 13 percent of the knowledge items. Specifically, though, community members have misconceptions about the workings of memory: they overestimate the strength of the relationship between confidence and accuracy so that when they see an eyewitness who seems accurate, they assume that means-- sorry, confident, that they assume that that means they are accurate; they underestimate the damaging influence of suggested procedures such as biased lineups, biased lineup construction, and procedures like showups-- sorry, biased lineup instructions; they have limited knowledge on the various conditions such as cross-race identification, the weapon focus effect, and the role of other factors outside the control of the legal system; and they're not very good at distinguishing accurate from inaccurate witnesses. Taken together, the research suggests that the problems associated with eyewitness identification are not common knowledge for laypeople and that expert testimony can be necessary for triers of fact to assess the reliability of eyewitness testimony. Thank you.

LATHROP: I do-- hang on one second. Can I ask a question?

LINDSEY WYLIE: Sure.

LATHROP: If this bill passes, now somebody qualifies as an expert, perhaps yourself, you qualify as an expert, ultimately, do you render an opinion that, that the eye witness testimony of Josh here was inaccurate or do you simply testify about why eyewitness testimony is suspect and then the jury considers that, but you don't ultimately express an opinion about a particular witness?

LINDSEY WYLIE: Right. So it's up to the experts to just state the information and the facts about tying it to the specific facts of the

case. It's still up to the triers of fact, the jury, or the judge to make the final decision about whether--

LATHROP: So you might testify as an expert and say in this particular it's a holdup at the Kwik Shop. The eyewitness had a gun pointed at them, and that means that it's even more suspect, for example.

LINDSEY WYLIE: I, I would present research on the weapon focus effect and discuss how victims pay more attention to the weapon than the actual face of the perpetrator without tying that to the actual facts of the case.

LATHROP: OK. So you don't, you don't-- you may, you may address the circumstances of the witness, but not ultimately express an opinion about whether it's accurate or inaccurate in this particular case.

LINDSEY WYLIE: Correct, it's providing information so that the, the jurors can make a decision of whether that witness is reliable or not.

LATHROP: OK. I see no other questions. Thanks for being there, Doctor.

LINDSEY WYLIE: Thanks.

LATHROP: Anyone else here as a proponent? Anyone else here or anyone here in opposition? Anyone in the neutral capacity? Seeing none, we'll close the hearing with Senator DeBoer's close.

DeBOER: Thank you very much. I do want to say thank you to those who worked together on this amendment. And I would like to make abundantly clear that this language with the amendment is deemed acceptable to the groups. But I don't want to misrepresent that they are in favor, they might simply be neutral with this amendment and that going forward this is the amendment that will become the bill. Thank you.

LATHROP: OK. I see no other questions. Thank you, Senator DeBoer. That will close our hearing on LB776 and bring us to LB912. You know what, we may take just a two-minute break. Just so the staff can get up and stretch their legs, literally. We'll be back here at five till. Thank you.

[BREAK]

LATHROP: Are we on? We're back on. We will now take up LB912. That brings us to our own Senator Brandt. Welcome to your Judiciary Committee.

BRANDT: Good afternoon, Chairman Lathrop and the Judiciary Committee. I am Senator Tom Brandt, T-o-m B-r-a-n-d-t. I represent District 32: Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster County. Today, I'm introducing LB912. LB912 is a bill to allow for remote testifying in civil cases by telephone, video conference, and similar methods. Hopefully, they have reliable broadband connection to support this technology. The issue this bill addresses is, right now if you want to bring in an expert witness from somewhere like New York or would-- you would have to pay airfare, lodging, and any other cost associated with bringing that person to Nebraska. This issue is compounded in our rural communities. For instance, we had someone from North Platte wanting to come testify today on this bill. But they could not make the trip due to the weather. If this were a court hearing, we would have to reschedule or forgo their testimony. If we rescheduled, we would have to pay for airfare and lodging a second time. Yesterday, this bill had a fiscal note of $0. As of this morning, it now has a fiscal note of $190,892. The Supreme Court of Nebraska estimates a minimal fiscal impact and Sarpy County estimates a cost savings. All of our county courts should see cost savings as they will no longer have to provide transportation for inmates to testify in civil cases. The Nebraska Department of Corrections accounts for the entirety of the fiscal note. The Department of Corrections notes that they have-- or that they already have telephonic functionality at all facilities. They also have video conferencing capability everywhere except the Omaha Correctional Center. The Department of Corrections estimates the installation of videoconferencing technology will cost $4,000. This bill states they can use any medium available to them so they don't even need to install anything if they already have telephonic capability. Also, the bill states any cost incurred will be paid by the requesting party and not the court. The Department of Corrections also states depending on the number of witness examinations, a case manager would be required to facilitate the process. My question is, if the department doesn't know how many examinations they could have, how do they know they will need three full-time equivalents totaling $186,892? I look forward to listening to the Department of Corrections' testimony today and the reasons behind their fiscal impact. There are testifiers coming up after me that will do a much better job explaining the contents of

this bill and the reasons for implementing it. At this time, I will take questions from the committee if they have any. Thank you.

LATHROP: Senator Pansing Brooks.

BRANDT: Have, have you talked to anybody at the Department of Corrections. And I'm sorry, you may have just said that and I, I was--

BRANDT: That's right.

PANSING BROOKS: --trying to type--

BRANDT: We--

PANSING BROOKS: --my notes on this because I--

BRANDT: We didn't even know they were a part of this until this morning. And that's where this fiscal note came from. We were unaware that the Department of Corrections would even have a part of this bill. What this bill basically says is in a civil action currently in Nebraska for a witness, you have to appear in court. And this is a particular hardship in our rural communities because a judge may not be in court, but one or two days a month. And you look out the window here and guess what? We have a storm. You had everybody scheduled to show up and that person has to physically be in Nebraska, now you have to reschedule. And that's a hardship, and a financial hardship. And this is, if you brought-- the example I used was New York, if you had somebody from there and they could testify from the comfort of their office in New York to-- I'll use Fairbury, Nebraska, it's much more efficient and much more cost effective for everybody involved. Did that answer your question?

PANSING BROOKS: Yeah. So you just said it was for civil, but you have added criminal, right?

BRANDT: The criminal component was simply added into here because of the fiscal note. We're a little-- we're working on that.

PANSING BROOKS: OK. I just-- I, I can't even understand what the fiscal note has to do with anything.

BRANDT: And I'm not an attorney, but I cannot either.

PANSING BROOKS: OK. Thank you, Senator Brandt.

LATHROP: OK. Well, we, we trust you'll get to the bottom of that. And if you need our help, we're here.

BRANDT: All right. Thank you, Chairman Lathrop.

LATHROP: Thank you, Senator Brandt. We'll take the first proponent.

JASON AUSMAN: Good afternoon, Chairman Lathrop, members of the committee. My name is Jason Ausman. It's J-a-s-o-n A-u-s-m-a-n. I am here this afternoon on behalf of the Nebraska Association of Trial Attorneys. I personally have a law practice based out of Omaha, but represent folks from all over the state. The first thing that I would like to do is address your concerns, Senator Pansing Brooks. I heard today for the first time that there was some concern from the Department of Corrections. And I went back to make sure that LB912 said what I thought said. Currently, the law in the state of Nebraska says that a judge, in any case, civil or criminal, with the consent of the parties, may permit any witness who is to be examined by oral examination, to appear by telephone, videoconference, or similar methods with cost thereof to be taxed as costs. So currently by consent of the parties in a civil or criminal case, this method that we are seeking to include by a wish of just one party applies both civilly and criminally. So LB912 does nothing in my reading of the legislative bill, it does nothing to change the statute that currently applies to criminal actions. OK. So I don't know where the-- I don't know what the fiscal impact is and hopefully we learn about that later. But I don't think that the bill does anything to change or impact the criminal cases. Senator Brandt, thank you for introducing the bill. You've discussed some of the hardships faced by civil litigants in the state of Nebraska. Yes, there is airfare. A lot of times there's not only airfare into Omaha, Lincoln, or Denver, but then there's getting into a vehicle and traveling two, three, four hours to get to the site of the, the court proceedings. Not only that-- and those costs, by the way, are incurred for litigants all over the state of Nebraska in Omaha, Lincoln, or in more rural areas. But what happens, especially in, in rural communities, the experts that are coming to testify have to take days out of their schedule to come. There's a travel day to get here. There is a travel day to get a home. Typically, for maybe a half an hour or hour, two hours worth of testimony in court. And those experts, most of them charge by the day. It is not uncommon to see bills of $7,500 to $10,000 a day. And when we are coming to Omaha or even to Lincoln, sometimes we can take care of these issues in one day. In rural Nebraska, it's an automatic two

day. And then when we run into weather-related issues, or illnesses, those trials need to be continued. And that creates for stress on the courts. So what we hope this bill accomplishes is cost savings to civil litigants here in the state and to create for better efficiency with assistance. Be happy to answer any questions.

LATHROP: I don't see any questions. I may just make a comment just for context. It's not uncommon to have witnesses and particular expert witnesses or treating physicians to appear by deposition, a video deposition. So one of the solutions to the problem that you're describing as we customarily go out and take a deposition of a treating physician and play that deposition at trial. And so the jump to just having them testify by videoconference is not new, new to the court.

JASON AUSMAN: That is a great point, Chairman Lathrop, I would say that in that context and it's something that I've used and I'm sure you've used in your practice as well, that takes two lawyers or sometimes more lawyers, depending upon how many parties there are to a given case to purchase plane tickets, hotel rooms, coordinate schedules and trying to get those schedules coordinated oftentimes leads to a request from one or more lawyers for more time and continuances with cases, too. So yes, those safeguards are still there. And in a perfect world, I'd love to have all of my witnesses live. But this gives us a solution on a, on a witness where we might be faced with the decision not to call that witness or to incur the additional costs to come in. And this gives us an option not only at trial, but with pretrial hearings such as Daubert motions, motions in limine, parties are forced to spend money to bring experts at times to have pretrial motions before we even get to the trial. And so this would offer a solution to that issue as well.

LATHROP: Very good. That did not provoke any questions so I think we're done. Thanks. So I appreciate your testimony and your expertise on the topic.

JASON AUSMAN: Thank you.

LATHROP: Anyone else here to testify as a proponent? Seeing none, anyone here to testify in opposition?

TIM HRUZA: Good afternoon, Chair Lathrop, members of the Judiciary Committee. My name is Tim Hruza, last name spelled H-r-u-z-a, appearing today on behalf of the Nebraska State Bar Association. Let

me first preface my comments today by noting that I have reached out to Senator Brandt and have spoken to the proponents of the bill about the Bar Association's concerns. And I also want to be clear that we do-- we're not here in opposite-- opposition to the idea of providing an outlet or an opportunity for this type of, of witness appearance at trial. Our concerns are twofold: first, we generally act to protect the resources of the courts as often as possible to ensure that there is a legitimate opportunity for access to justice. One of our concerns with this bill that was raised in review is the language in line 6 of page 3 that in civil actions would require a judge shall permit require the judge to allow a witness to appear telephonically or by other means. There is, there is a provision to allow that the costs of doing that are taxed to the person requesting it. But there is no, I guess, no provision related to instances in courts where we don't have that technology available. And there were some concerns raised about how that might impact certain courthouses across the state. The second thing, and, and maybe the one that raised the most questions of fairness or, or how this will impact parties on both sides of an issue in a court is the burden shifting provisions of the requirement in a civil case found on lines 12 and 13. As this is laid out and, and the previous testifier mentioned the current status of how these things are handled, this is an option that's available to litigants in cases right now. It's provided, though, at the discretion of the court and with the consent of both parties when it can be allowed. I think our concern is that in a civil action, this would require a judge to allow it and would require-- place the burden of proving that such testimony should not be allowed on the party who raises an objection to it. So whether it's on the basis of the reliability or the fairness of allowing somebody to appear like this, it places the burden on the objecting party. Which, again, we don't necessarily object to the idea of making this an option, I think our preference would be to allow it at the discretion of the court. And maybe one of the things that we've been discussing is even when another party objects to allow that to be, to be made in a pretrial motion setting to allow the judge to consider the issues of reliability and fairness and to make an order allowing that even over the objection of another party. We're working on language. I think that we can come to a compromise with this. And I look forward to working with Senator Brandt and the Trial Attorneys Association.

PANSING BROOKS: I guess I have a question.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: So are you happy if he changes it to "may" in both instances or what--

TIM HRUZA: So one of the things that we've discussed and, and we're still working through some things on our end is just striking the current language related to with the consent of the parties. So the, the current status-- or the current statute reads that a judge in any case, with the consent of the parties, may permit any witness who is to be examined to appear telephonically or by video. Right now, then you can only make such a motion or request, such an order with both defense and plaintiff's counsel agreeing to the, the proposal. Our thought or the thing that we have discussed from the Bar Association's Legislation Committee is simply striking that allowing the judge the discretion based on what's available to the court, based on what the plaintiff or the defendant, whoever is bringing the witness suggests as the means to testify. It would also clarify in the bill that the judge can place parameters around how we do this. Senator Lathrop mentioned that we, we do it by deposition right now. We also do telephonic depositions pretty regularly as a course of practice. But there are, there are rules and ways in which we ensure that the person on the other end of the phone, typically of the court reporter present with the witness. There are some of those technical things that a judge could address in an order at the discretion and under whatever circumstances are presented.

PANSING BROOKS: So I, I guess I'm having trouble understanding because I understand that the-- what I do know is that the juvenile courts are using telephonic instances where they'll, they'll have the kids-- instead of bringing them over to the court sometimes they'll have the kids on a video screen. And I know that sometimes that's in the bigger cities. But how big a screen do you need? I mean, why, why wouldn't you be able to do this with just a, a good-sized monitor?

TIM HRUZA: Well, and, and like I said, from the technology standpoint, the bill isn't, isn't limited to simply video testimony. It would allow for telephonic testimony, too. From that end, and, and to the extent that that's available, it's not necessarily a concern. It's a-- our, our interest, I guess, is in allowing the judge to make the order in a way. This appears to read under the "shall" permit issue or language that if a litigant comes in and asks for a witness to appear by Skype or by, by iPhone, FaceTime, that the judge has to allow that without any discretion to say, hey, I'm not necessarily comfortable

with that method, but I'll let them call in if they are sworn in with a court reporter in Chicago, Illinois, where your doctor that's, that's testifying, your expert witness is located that can swear them in and ensure that that is the person that's testifying. So like I said, we are not-- I'm not appearing today opposed to the actual intent of the bill I don't think. It's, it's just the way that we do that. And then, again, this burden, the burden of proof and the way we're shifting that around was concerning to a number of lawyers that looked at this.

PANSING BROOKS: OK. Well, not to beat a dead horse, but the children that are appearing via video teleconferencing or whatever they're, whatever they're doing here in Lancaster County at times do not have a court reporter there beside them. So again, we're making rules that apply to some in our state and not to others. So thank you, Mr. Hruza.

TIM HRUZA: Yeah.

LATHROP: I got to ask, this, this decision to come in here opposed to the bill comes from the House of Delegates?

TIM HRUZA: The Legislation Committee at this point. We are still currently in our process of working through the final decision from the House of Delegates.

LATHROP: Is it my understanding the Bar Association will not come in, in support or in opposition if there is disagreement in the Legislative Committee?

TIM HRUZA: In the Legislation--

LATHROP: Like the fact that you're here suggests to us that the-- everybody on the Legislative Committee at the Bar Association holds the view you just expressed--

TIM HRUZA: If--

LATHROP: --or do you, do you [INAUDIBLE]--

TIM HRUZA: And frankly, if I, if I-- oh, sorry, excuse me.

LATHROP: --the supporters from the opponents and then make a decision about what you're gonna support or oppose?

TIM HRUZA: Typically, the Bar Association does not take a position when there is strong disagreement among factions. So for example, with the number of criminal bills that come forward, we typically take a stance, a default stance of monitor because we represent and have a number of members who are prosecutors and who are defense attorneys. It's simply depends. We look at everything with an eye toward providing access to justice, ensuring the resources of the courts and those sort of things. What I will tell you about this particular bill, Senator--

LATHROP: You, you did just say that it's made up of prosecutors and defense lawyers--

TIM HRUZA: Correct.

LATHROP: --which doesn't include plaintiff's lawyers.

TIM HRUZA: There are plaintiff's lawyers who are in the room. And I will tell you that one who is a member and my understanding, an active member of NATA, spoke with regard to this bill and I believe he was the one that made the motion that the Bar should take this position, not as a member of NATA, but as a member of the Bar Association, suggesting that the court's discretion should be preserved [RECORDER MALFUNCTION] that this, this bill--

LATHROP: OK.

TIM HRUZA: --goes a little further. And, and I can talk to you [INAUDIBLE]--

LATHROP: And, Tim, I appreciate the fact that you, on behalf of the Bar Association, are willing to keep talking to Senator Brandt and others. I have to make this comment, because I've been doing this for 40 years. And when I first started practicing, I remember calling Pat Bowman, who was an accomplished orthopedic surgeon in Omaha, to the courthouse, took an afternoon of this time up, and testified live for me for 250 bucks. Right. I can't get a doctor to come to the courthouse anymore. They won't. They, they refuse to come to the courthouse. You, you can subpoena me, but I'm not coming down there.

TIM HRUZA: Right.

LATHROP: And so now we have to do them and put them on videotape. Here's the problem, and, and this is a Bar Association issue or something they need to be cognizant of, and that is the cost of

litigation is getting out of hand. If I have a case and my client has and we're just gonna say injuries that have a value ultimately of $100,000 liability dispute, we need engineer experts and the guy who is the world's expert is in Philadelphia and the treating physician is in Florida. I can't try that case. I got to-- we got to get on a plane. We got to go out and take his deposition one day, come back to Omaha, get on a plane and go take his deposition in anticipation of or to offer it at trial assuming the other side will stipulate as to unavailability and then I've got to do the same thing with the treating doctor. And now for a case, $100,000 case, I may spend $15,000 rounding up the testimony of people who are in remote places or who are so expensive because of their expertise and what they do for a living that it costs an awful lot to get their testimony into the courtroom for people's consideration. This may be an imperfect vessel, but it, but it represents a significant problem. And defense lawyers face it, too, right, insurance, defense lawyers, those that do commercial litigation, criminal, criminal defense lawyers probably do as well. But we need to address this in ways that are thoughtful so that we can reduce the cost of litigation because the door to the courthouse is closed in many cases where the cost of litigation gets so high that you just say it ain't worth it.

TIM HRUZA: Right.

LATHROP: There's no net recovery for a client or you just go and I know your case has-- you know, we're fighting over $50,000 and the experts are on the East Coast.

TIM HRUZA: If I may, Senator,--

LATHROP: You may.

TIM HRUZA: --my first trial and when I was in private practice, it was a two week medical malpractice trial where we represented a plaintiff and I think we spent over $10,000 flying in an expert from Chicago to testify.

LATHROP: One guy?

TIM HRUZA: One guy. And, and so I, I know firsthand how that impacts not only my client, who unfortunately lost in that case, but also our practice and our ability to represent that client, bring the case forward. So I do want to be clear, we're not here in strong opposition. I, I intend to work on this bill. And then I would also

say to that-- again, the member of the Legislation Committee that spoke up most vocally and, and made the motion was a plaintiff's attorney who,--

LATHROP: Really.

TIM HRUZA: --who even-- who is a member of NATA and--

LATHROP: We won't make you out that person. But I'm sure, Mr. Ausman will be digging into that.

TIM HRUZA: The discussion then, the discussion then in the room revolved around ensuring that a judge had control over the fairness of both parties coming forward. This bill does place the preference and it does shift the burden to, to allow [INAUDIBLE].

LATHROP: I want to be, I want to be clear,--

TIM HRUZA: Yes.

LATHROP: --the costs can become a defense tactic, too.

TIM HRUZA: Very, very much so.

LATHROP: If you want to keep going, it's gonna cost you 20 grand to get to the courthouse and just leaving it up to people to agree when they have an incentive not to agree to price a litigant out of the courthouse is not-- we got to do something about it.

TIM HRUZA: I agree with you and I understand.

LATHROP: OK. OK. I'm done using this position to lecture the Bar. [LAUGHTER] Senator Slama.

SLAMA: Thank you, Tim, for coming out today. I would just like to add on to Senator Lathrop's comments, which I think were very well-founded. I am glad that Senator Brandt has brought this bill, because we see this issue disproportionately impacting our rural areas. Obviously, transport costs out to North Platte or Chadron are going to go up exponentially when compared to just bringing someone in from Omaha who may be based in Omaha. We don't have that luxury in a lot of our small towns. So I would really encourage your organization to consider this, work with Senator Brandt on some sort of compromise because it is a problem that needs to be resolved.

TIM HRUZA: Thank you, Senator. And we, we fully intend to. Like I said, I plan to work this out. I have to appear in opposition today and--

LATHROP: We'll be watching.

TIM HRUZA: We will do that. So--

LATHROP: OK. I see no other--

TIM HRUZA: Thank you.

LATHROP: --comments or questions. Any other, any other opposition? Anyone here in a neutral capacity? Seeing none, Senator Brandt to close. As he approaches, we do have letters of support from attorneys, Maren Chaloupka, who I know to be a lawyer in Scottsbluff, where the problem is probably even more acute; and Brock Wurl. Senator Brandt.

BRANDT: It'll be short. I know everybody here is disappointed, the Nebraska Department of Corrections was not here to testify. And with that, I would take any questions.

LATHROP: Yeah, we'll get to the bottom of that.

BRANDT: All right.

LATHROP: Yeah.

BRANDT: Thank you.

LATHROP: Thank you. That'll close our hearing on LB912 and bring us to our closer of the day, LB777. Senator DeBoer, once again.

DeBOER: It's DeBoer day in Judiciary, I guess.

LATHROP: Apparently, apparently. Senator DeBoer, you may open on LB777.

DeBOER: Good afternoon, Senator Lathrop and members of the Judiciary Committee. My name is Wendy DeBoer, W-e-n-d-y D-e-B-o-e-r, and I represent Legislative District 10, which is northwest Omaha and Bennington. Today I'm introducing LB777, which would make clarifications to the process of granting a set aside of a, of a past conviction. Current Nebraska law allows for the conviction of an offense to be set aside. A court may grant an offender's application for a set aside if the order will be, quote, in the interest, best

interest of the offender and consistent with the public welfare. The applicant for an order to be set aside-- or to set aside a conviction must have successfully completed the terms of the probation or paid any fine in full. A person's criminal record is not erased if they are granted a set aside, but the order setting aside the conviction noted within the person's criminal record. Criminal convictions can affect a person's ability to receive employment and a potential employer running a criminal background check will see both the conviction and the order to set aside that conviction. This can assist previous offenders in finding employment. LB777 clarifies that any criminal offense may be set aside provided that the applicant meets the requirements I have previously mentioned. Currently, some courts have argued that while felonies, misdemeanors, and infractions may be set aside, that traffic infractions are not eligible to receive a set-aside order, although the original intent of the set-aside legislation was that traffic infractions were also included. This bill would clarify that all offenses are eligible. So if you have any questions, I'd be happy to answer them at this time.

LATHROP: I see no questions. Thank you, Senator DeBoer. We will take the first proponent. Good afternoon and welcome. You waited a long time for this. I appreciate it.

RYAN SULLIVAN: It's, it's been an interesting afternoon. Members of the committee, my name is Ryan Sullivan, R-y-a-n S-u-l-l-i-v-a-n. I'm an assistant professor of law at the University of Nebraska College of Law, where I teach in the Civil Clinic and I supervise the Clean Slate Project, testifying today as a citizen, not on behalf of the University. In 2017, this Legislature passed LB146, which expanded set-aside relief to include infractions. Prior to that, a citizen could seek to set aside a felony conviction or a, a misdemeanor conviction. But because infractions were not specifically identified in the statute, courts felt they didn't have the authority to grant the set aside of infractions, even though infractions were a lower level offense. LB146 resolve that, so we thought. Soon after the bill went into effect, we observed a number of courts denying relief to individuals who were seeking to have a particular type of infraction set aside, a traffic infraction. These courts reasons that-- they reasoned that because traffic infractions were defined separately in the law and the set-aside law didn't specifically itemize traffic infractions that the courts didn't have authority to grant relief for traffic infractions. LB146 passed very easily because it made sense that if you could set aside a felony or a misdemeanor and then you

should be able to set aside an infraction, which is a lower level offense. The same reasoning applies here to traffic infractions, arguably, the lowest level offense. Since LB146 went into effect, we've collected data on the results. In Lancaster County alone, we have observed 85 denials of petitions of individuals seeking to set aside an old traffic infraction. And in almost all the situations, that denial resulted in lost employment opportunities. I've observed judges, multiple judges saying I'd love to help you, but the current law doesn't provide me authority to do so. This bill would make clear that all offenses at all levels would be eligible for this relief as long as the petitioner otherwise meets the criteria to the satisfaction of the sentencing judge. And I'll close by thanking Senator DeBoer for introducing this bill. And I'll thank the committee for giving it its due consideration. With that, I'll answer any questions if you have them.

LATHROP: Very good. I see no questions,--

RYAN SULLIVAN: All right. Thank you.

LATHROP: --but thanks for being here, Professor. Next proponent. Good afternoon.

ERIN OLSEN: Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Erin Olsen, E-r-i-n O-l-s-e-n. I'm currently participating in the Civil Clinic Program at the University of Nebraska College of Law as a, as a senior certified law student. Part of my work in the Civil Clinic includes working on the Clean Slate Project. I'm testifying and speaking in favor of LB777 as a citizen and not as a representative of the College of Law, Civil Clinic, or the University. Section 29-2264, which I will refer to as the set-aside law, provides a sentencing court authority to set aside a past conviction if certain criteria are met. The setting aside of the conviction helps citizens obtain better housing, better jobs, and has the potential for opening up other doors as well, doors that are traditionally closed to convicts. The Clinic has represented many Nebraskans over the years as part of the Clean Slate Project and has observed the amazing psychological benefits realized by having that brand of convict removed, our clients feel like full citizens again. Although the conviction still shows on their record, the record also reflects that it was nullified with some limitations. The set aside law has evolved over the past couple years through a number of positive amendments necessary to carry out the Legislature's original intent, which was to give Nebraskans an opportunity for a fresh start,

including those convicted of minor traffic infractions. Whether a Nebraskan is attempting to attain-- obtain a job through Uber or a delivery company as a side hustle to make ends meet, or they're applying to law school and they want to feel a little more competent about their application by setting aside a traffic ticket they got high school for failing to make a complete stop, this small amendment will make that possible. There are countless ways that LB777 can improve the everyday lives of the-- of Nebraskan citizens. I've only named a few. The passage of this bill will allow sentencing judges to set aside any type of offense from felonies, misdemeanors, and regular infractions, which are already permissible, to now include traffic infractions, the lowest level offenses. This just makes sense. Thank you, and I can take any questions that you might have.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: Well, we're just so happy that you're here, Miss Olsen, and we always love having students from the law clinic. So thank you for coming and you did a great job and we want you to keep it up. Thank you.

ERIN OLSEN: My pleasure. Thank you.

LATHROP: Senator Morfeld.

MORFELD: How excited are you about the bar exam?

ERIN OLSEN: Not very excited.

MORFELD: Oh, you should have testified in support.

LATHROP: But you know it's coming.

ERIN OLSEN: It is coming, yes.

LATHROP: All right. I'm pretty sure it's gonna happen.

ERIN OLSEN: Yeah.

MORFELD: What?

PANSING BROOKS: Oh.

LATHROP: OK. I think that's it.

MORFELD: Just savage.

SPIKE EICKHOLT: That was the Exec Session.

LATHROP: Yeah, yeah, yeah, we got done with our Exec Session. All right, let's not get too punchy,--

SPIKE EICKHOLT: That's right.

LATHROP: --just got one more witness-- or testifier.

SPIKE EICKHOLT: Thank you. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska and the Criminal Defense Attorneys Association as the registered lobbyist in support of the bill. I'm not gonna restate the reasons for the bill. The bill makes sense. It does further the intent of an earlier legislation. It was done, I think, last-- maybe not last year, but last session with LB146, and another bill, that I can't recall the number, also. But it's good, it broadens, and it clarifies when a person can get a set aside, which does provide meaningful, albeit, limited relief that enables people to get second chances and move on from their criminal past. I want to thank Senator DeBoer for doing the bill. And I'll answer any questions if anyone has any.

LATHROP: I do not see any questions.

SPIKE EICKHOLT: Thank you.

LATHROP: Thanks for being here, Spike. Any other proponents? Anyone here in opposition to testify or in a neutral capacity? All right, apparently, the Bar Association is not opposed to this so we can move on with close. Senator DeBoer, to close. She waives closing. That'll close our hearing on LB777 and our hearings for today. Thank you all.