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Judiciary Committee
February 19, 2009

[LB260 LB274 LB307 LB429]

The Committee on Judiciary met at 1:30 p.m. on Thursday, February 19, 2009, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB274, LB429, LB260, and LB307. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Mark Christensen; Colby Coash; Brenda Council; Scott Lautenbaugh; Amanda McGill; and Kent Rogert. Senators absent: None.

SENATOR ASHFORD: Good afternoon, everyone. Welcome to the Ernie Chambers Judiciary Hearing Room. We are here today on four bills. LB274 introduced...will be introduced by Senator Christensen, who's at the desk now; Senator Christensen is also introducing LB429; Senator Rogert has LB260; and Senator Council has LB307. We will start with LB274, but first just a few ground rules. We have a number of...how many are here to testify on LB274? How about LB429? And LB260? LB307? Okay. When we get to LB260, we'll see where we are timewise and we'll...I will decide on the amount of time that we will allocate to each side of each bill, but we'll start with Senator Christensen. And those who are going to testify, we have a light system here that will indicate when the...your time to sum up arrives and the yellow light will go on. It gives you about a minute. You'll have three minutes each to give your testimony, other than the introducer. So with that, we'll start with Senator Christensen on LB274. []

SENATOR CHRISTENSEN: Thank you, Mr. Chairman, members of Judiciary Committee. I'm Senator Mark Christensen, C-h-r-i-s-t-e-n-s-e-n. I represent the 44th Legislative District. I'm here to introduce LB274. LB274 provides for more flexibility for Department of Correctional Services in the placement of inmates in the Work Ethic Camp in McCook. This proposal furthers the original intent of the Work Ethic Camp to reduce prison overcrowding, allow both probationers and inmates to avail themselves for short-term treatment programming available at that facility. Under the provisions of this bill, the director of Correctional Services is given the authority to assign a felony officer to the Work Ethic Camp if he or she believes that it is in the best interest of that offender and of society. Offenders convicted of capital punishment or crime under Sections 28-319 to 28-321 are not eligible for such placement. Currently under the courts or the Nebraska Board of Parole determines placement at the Work Ethic Camp. Such placements are to continue under this bill. I believe LB274 is an appropriate addition to the authority for the director to ensure the good work of the Work Ethic Camp is being used to its fullest. I encourage you to advance LB274 to General File and thank you for your consideration. I'd be glad to answer any questions. [LB274]

SENATOR ASHFORD: Any questions of Senator Christensen? [LB274]

SENATOR COUNCIL: I just have one. [LB274]

SENATOR ASHFORD: Yes. Yes, ma'am. [LB274]

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SENATOR COUNCIL: And, Senator Christensen, thank you for introducing the bill and I don't know if there's anyone from the Board of Parole who plans to testify but have you discussed the proposal with the Board of Parole and what, if any, concerns were expressed? [LB274]

SENATOR CHRISTENSEN: I guess I haven't personally with the Board of Patrol or... [LB274]

SENATOR COUNCIL: Board of Parole. Okay. [LB274]

SENATOR CHRISTENSEN: ...Parole, yes. [LB274]

SENATOR COUNCIL: Thanks. [LB274]

SENATOR ASHFORD: Thank you. Thank you, Senator Christensen. Any proponents on LB274? Bob. [LB274]

BOB HOUSTON: (Exhibit 1) Okay. Okay. Thank you, Chairman Ashford, members of the Judiciary Committee. My name is Bob Houston, H-o-u-s-t-o-n. I am director of the Nebraska Department of Correctional Services here. I'm here to testify in support of LB274. LB83 has been successful. Senator Synowiecki introduced LB83 in 2007. LB83 allowed the placement of inmates at the Work Ethic Camp facility and facilitated the potential parole of 100 percent of the inmates placed at the Work Ethic Camp. It also provided for immediate participation of parole violators into the program at the camp to address parole violation issues. LB274 builds upon the successes of LB83. The process and the intent of LB83 remains intact. The bill does not bind the Parole Board to parole decisions until after the program completion for some participants. It provides latitude to me, as director of the Department of Correctional Services, to place suitable offenders at the Work Ethic Camp. Approximately 50 percent of the current Work Ethic Camp inmates are from the metro area, Omaha, Lincoln, and can benefit from the structure of the work release or detail. LB274 provides an avenue for those inmates that need additional preparation time for reunification with their families and communities to participate in work release or work detail after they've completed the programming at the Work Ethic Camp. LB274 facilitates reentry in a more gradual manner. The bill allows inmates to establish community ties; earn money for necessary deposits, housing, rent, and other necessities; and allows an aftercare connection to be established. The Work Ethic Camp's regimented program provides needed education, treatment, programming services, structure, development of work ethic of its clients, and returns these clients to the community better prepared to succeed. This allows for successful reentry to the community. Work Ethic Camp benefits offenders, their families, the community. LB274 would allow the scope of that benefit to be enlarged and would be used to provide another tool to better prepare offenders for release back into the

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community as productive citizens. [LB274]

SENATOR ASHFORD: Thank you, Bob. Any questions of Bob? [LB274]

SENATOR COUNCIL: Just one. [LB274]

SENATOR ASHFORD: Yes, Senator Council. [LB274]

SENATOR COUNCIL: Mr. Houston, good to see you. [LB274]

BOB HOUSTON: Good to see you. [LB274]

SENATOR COUNCIL: And I appreciate your report of the success that you've been experiencing with the Work Ethic Camp and totally support all of the efforts to ease the transition of offenders back into the community. I just have a question. The statement in your testimony, that the bill does not bind the Parole Board to parole decisions until after program completion for some participants, could you explain that in a little more detail? [LB274]

BOB HOUSTON: Yes. Yes. Under LB83 the inmates, before they go out there, are set for what's called a parole hearing and what a parole hearing means is that if you follow the conditions and there's not other objections to this that are unforeseen, you're going to be paroled on that date. A hundred percent of the inmates that go out there have that parole date set so when they complete the program and walk out the door then they go right back to the community and under parole supervision. What this does is keep all that intact. And I have worked with the Parole Board on this and the Parole Board is supportive of it. What this would allow the Parole Board to do is one of two things. They can either go ahead and set that hearing date, okay, but they can put it, instead of five months out, they can put it nine months out and then they come back and go into a work release setting and then save the money and family ties and everything else and then go on to parole. Or what the Parole Board could do is we place an inmate out there towards the end of their sentence and then the Parole Board can see them after they come back from the Work Ethic Camp; say, you know, you're doing very well; and they can set them for as short as a 30-day hearing. So that's what it does. [LB274]

SENATOR COUNCIL: Okay. Okay. That's what I was concerned about, the flexibility in terms of it, because the Parole Board hearings, with the number of inmates who become eligible for those hearings, sometimes they get pushed out months and you're...and it's backlogged. I just wanted to be sure that this process wouldn't further burden that parole hearing process. [LB274]

BOB HOUSTON: Very good. Yes. [LB274]

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SENATOR COUNCIL: I thank you. [LB274]

BOB HOUSTON: Thank you. [LB274]

SENATOR ASHFORD: Yes, Senator Coash. [LB274]

SENATOR COASH: Thank you, Chairman. Mr. Houston, I had just a question just about the Work Ethic Camp in general. How many inmates is it designed to...can that camp accommodate at this time? [LB274]

BOB HOUSTON: Good question. The capacity is 100, and our average capacity before LB83, we averaged between 60 and 75 inmates, right in there. With the passage of LB83, we're able to bring it up to its capacity, which is 100, and we've gone past that to our...what we call our operational capacity, which is 129, and we've done that with no additional staff. What we'll do at no cost is to convert positions so that we can take our capacity, if need be, past 129. We can take it up to 200, as we've done to two other facilities, gone to 200 percent. So long answer to your short question, we could add 71 more inmates there, given that we have the resources that we shift out to the Work Ethic Camp. [LB274]

SENATOR COASH: If this bill were passed, do you think you'd have any problem finding those extra 71 inmates that will qualify for this program? [LB274]

BOB HOUSTON: No. No, we'll find them. With our classification system, we have a research-based classification system that's sensitive to both male and females, to the different needs and crime conditions of the genders. With that, we've been able to stratify our offender population that's kind of gravitating towards lower security community placement, which then draws them out onto parole, so. [LB274]

SENATOR COASH: So you've got inmates that would benefit from this, this program. [LB274]

BOB HOUSTON: Oh, yes. [LB274]

SENATOR COASH: Okay. [LB274]

BOB HOUSTON: Oh, yes. [LB274]

SENATOR COASH: Thank you. [LB274]

BOB HOUSTON: Uh-huh. Absolutely. [LB274]

SENATOR ASHFORD: Thank you, Bob. Thank you. [LB274]

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BOB HOUSTON: Okay. [LB274]

SENATOR ASHFORD: Any other proponents? Opponents? Neutral? Senator Christensen. [LB274]

SENATOR CHRISTENSEN: Might just touch a little bit on the successes of a Work Ethic Camp that has been out there. I've read a number of letters that, as I did when we done LB83 two years ago on the floor, from parents and from inmates themselves that said, you know, I've learned how to work, I've got self-confidence, I have learned how I can be part of society and it's been very beneficial. Thank you. [LB274]

SENATOR ASHFORD: Thank you. Thanks, Senator Christensen. Would you like to introduce LB429? [LB274]

SENATOR CHRISTENSEN: Yes. Thank you, Mr. Chairman, members of Judiciary Committee. Again, I'm Senator Mark Christensen, C-h-r-i-s-t-e-n-s-e-n. I represent the 44th District. LB429 would allow the Department of Correctional Services to enter into arrangements with school districts, educational service units, community colleges, state colleges and universities for employment of persons committed to the department. In addition, it requires such persons to be supervised. Currently, 83-183 provides the authority of the Department of Correctional Services to enter into arrangement with any other board or agency of the state, any natural resources district or any political subdivision except for political subdivisions connected with education. I introduced this bill to allow what was previously going on at the Work Ethic Camp in McCook since 2002. Prior to this, six months ago, prior to about six months ago, at this time Corrections stopped entering into these arrangements after reevaluating whether the Work Ethic Camp was included under the restrictions of Section 83-183. It was unclear if the passage of LB83 in 2007, which allowed inmates and not just probationers into Work Ethic Camp, changed their status. Several people from McCook and the surrounding area have contacted me considering introducing this bill that would allow them to resume the use of employment from the Work Ethic Camp for the educational subdivision in their area. Certain members of the McCook Chamber contacted me, along with some from the particular schools or ESUs who have had very positive experiences with the previous work arrangements. I believe you will hear a couple of these people testifying today. I believe LB429 is an appropriate bill to continue and expand the successful partnerships between the Department of Corrections and local political subdivisions. I encourage the advancement of LB429 to the floor. [LB429]

SENATOR ASHFORD: Thanks, Senator Christensen. Any questions of Senator Christensen? [LB429]

SENATOR LATHROP: Maybe just one. [LB429]

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SENATOR ASHFORD: Yes, Senator Lathrop. [LB429]

SENATOR LATHROP: What...we're now going to allow offenders around children so there's some safeguard in there? [LB429]

SENATOR CHRISTENSEN: Well, they have to be supervised. Most of it has been done in the off-season, I can't say it all has, but you got to understand the type of people that have been in this camp. This is not even a fenced facility. You know, this is minimum security. This is a volunteer program to go there. They know when their exit date is, as we heard, and we have just had no trouble. [LB429]

SENATOR LATHROP: So they'd be hired to paint the place, mow the lawn,... [LB429]

SENATOR CHRISTENSEN: Right. [LB429]

SENATOR LATHROP: ...things like that rather than... [LB429]

SENATOR CHRISTENSEN: Trim trees, things this way. They pick up trash in ditches but at schools, of course, where there could be kids, it's... [LB429]

SENATOR LATHROP: Okay. And I don't want to try to sensationalize this, I'm not, but we don't have anybody that has a history of involvement with children. [LB429]

SENATOR CHRISTENSEN: No. What's prohibited is the sexual predators, the murderers, things this way. [LB429]

SENATOR LATHROP: Okay. Okay. Good. Thank you. [LB429]

SENATOR ASHFORD: Thank you, Senator Christensen. Okay. Any proponent testifiers? [LB429]

WELDON SLEIGHT: (Exhibit 2) Senator Ashford, my name is Weldon Sleight, W-e-l-d-o-n S-l-e-i-g-h-t. I'm the dean of the Nebraska College of Technical Agriculture. Appreciate meeting with you today in support of LB429. We have been the...have had the opportunity of having offenders on our campus for the past several years, as have we also had them at the West Central Research and Extension Center at North Platte. They continue to work at the North Platte facility but, because of the interpretation of the law, they are no longer able to work at the college. These individuals have been well supervised. They are never allowed to interact with the students. They provide a great service for us but we think that we're also providing a great service for them that they are able to be involved in agricultural systems and building maintenance, as well as horticulture sorts of activities, building landscapes, trimming trees and tree removal and

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general grounds maintenance. We think it's a good partnership for us as well as the offenders so we would encourage during this time of a downturn in our economy that we be able to continue to practice what we've done in the past. Thank you. [LB429]

SENATOR ASHFORD: Thanks, Doctor. Any questions of the dean? [LB429]

WELDON SLEIGHT: Thank you. [LB429]

SENATOR ASHFORD: Good. Must have been good points. Next proponent. [LB429]

BRENT McMURTREY: Chairman Ashford, members of the committee, greetings. My name is Brent McMurtrey, M-c-M-u-r-t-r-e-y. I am the administrator of Educational Service Unit 15, which is headquartered in Trenton, Nebraska. We cover six counties in the southwest portion of the state. There are nine school districts, McCook Community College, and also Dr. Sleight's, the Nebraska College of Technical Agriculture within the boundaries of Educational Service Unit 15. I appear today to ask your support and advancement of LB429 to fix what I think was an unintended consequence of the law that changed, that prohibited or has at least ceased the practice of the offenders being allowed to work at school districts, community college and the campus in Curtis. The offenders have done a tremendous amount of manpower for the school districts, for the educational service unit itself, for the colleges, and I think that they, like Dr. Sleight said, they benefit from that. Part of the community corrections is to encourage pride in job and a job well done, and I think that this is an opportunity that they can do that. They are always supervised. The corporals are there with them. They're supervised. As Senator Christensen has discussed, these are folks who are nonviolent offenders and they do a great deal of service for the ESU, the school districts, and not only in ESU 15 but in the general area. So I would ask for your support and your advancement of LB429. Thank you. [LB429]

SENATOR ASHFORD: Thank you. Any questions? Okay. Thank you. See none. Any other proponents? (See also Exhibit 18) Opponents? Neutral? Senator Christensen waives. Senator Rogert. Before we get started, I would like to introduce the members of the committee, other than Senator Rogert from down in the southern part of the state, Senator...down at Tekamah or wherever. Senator Coash from Lincoln; Senator Christensen from Imperial; Senator Lautenbaugh from...and I know where Imperial is, Senator Lautenbaugh from Blair; Senator McGill from Lincoln; Senator Council from Omaha; and the Vice Chairman, Senator Lathrop from Omaha. With that, proceed. [LB429]

SENATOR ROBERT: Thank you. Well, good afternoon. [LB260]

SENATOR ASHFORD: The Vice Vice-Chair, Senator McGill. Go ahead. [LB260]

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SENATOR ROBERT: No worries. Good afternoon, folks, Chairman Ashford and members of the Judiciary Committee. My name is Senator Kent Rogert. I represent the 16th Legislative District. I'm here today to introduce LB260, legislation that establishes the Nebraska Claims for Wrongful Conviction and Imprisonment Act. This legislation seeks to provide a statutory avenue for persons wrongfully convicted, incarcerated and released to be able to file a claim in the district court in the county where the conviction occurred and to provide evidence based on grounds not inconsistent with innocence that the claimant is entitled under the act to receive compensation and immediate services upon release as well as reimbursement for those services. Under Section 3, the evidence on grounds not inconsistent with innocence includes a pardon, a statute or application that violates the U.S. Constitution, or a judgment of conviction that was vacated or reversed. A statute or application that may violate the U.S. Constitution refers to a very narrow percentage of cases in which there is a finding that the criminal statute upon which the conviction was based was found later to be unconstitutional. The difference between a vacatur and reversal pertains to the posture of the judgment. A court, on direct appeal, can reverse the judgment of a trial court, but a court in a postconviction proceedings cannot. The judgment is no longer under review and the only remedy is vacatur; however, the effect is basically the same. If a court determines a favorable judgment on the claim based on innocence, compensation shall be no less than \$50,000 a year, incarcerated; and an additional \$50,000 served on death row--an amount that was recommended by the U.S. Congress and endorsed by the former President. I want to make sure that it's important to note that this will apply to individuals whose pardons were vacated and...or reversed orders were made not grounds inconsistent with innocence under Section 3, such as those referred to as the Beatrice Six and at least one judicial order vacating a first-degree murder conviction. Upon a court decision, this amount reflects compensation for immediate services upon exoneration and release, including housing, transportation, and subsistence, reintegrative services, mental and physical healthcare costs, in between the release and the date of the award, as well as consideration of economic and noneconomic damages as a result of the incarceration. The amount may also include child support payment debts, tuition and fee reimbursement for education, reimbursement for vocational rehabilitation programs and employment skills development training, attorneys' fees for the claim, for up to five years of physical and mental healthcare through the state employee group and health insurance program, which is offset by any employer amount provided. Successful claimants shall receive up to two years of immediate services needed upon release, including housing, secondary or postsecondary education, vocational training, transportation, subsistence, monetary assistance, reintegrative services, and mental, physical and dental healthcare. These needs are determined by the Department of Health and Human Services or a judge when a conviction is vacated. LB260 requires that the Nebraska State Pardons Board provide a copy of the act to persons with a full pardon of innocence; that a court who has reversed a criminal conviction or vacated a judgment of conviction to provide a copy of the act to the defendant; and that the Court Administrator's Office provide a notification of rights under

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the act to persons pardoned and granted judicial relief on grounds not consistent with innocence. Currently, there is a three-year statute of limitations for individuals who have been convicted, incarcerated, and released from custody prior to the effective date of that act; and a two-year statute of limitations for a claim to commence within two years after a grant of pardon or judicial relief under Section 3. We have included a one-year extension to that three-year statute of limitations in the event that the individual did not receive a copy of the act. Additionally, LB260 has provided a process for persons to petition the district court for an order on the expungement and sealing of records, data, and forensic samples, including DNA records and profiles, as a result of the pardon based on innocence from an erroneous felony conviction or an order vacating or reversing that conviction. It is my sincere hope that Nebraska join the 25 other states that have statutes that compensate the wrongly convicted. An innocent person that is wrongly convicted and incarcerated for a crime is subjected to the pain involved, and the separation of family and relationships and community ties, a loss of livelihood and the ability to find work when released after years of being isolated and sequestered from the rest of society. Reintegration into society upon release is difficult, regardless; but even more difficult when we have robbed that person of their life, their happiness, and their trust in a system that may have crippled their chance at a fair shot in life out of no fault of their own. The psychological and emotional harm associated with up to 20 years of being subjected to punishment without just cause, and the aftereffects that include a devastating loss of livelihood and relationships, and the ability and time left to rebuild the proper economic value of their life, as well as substantive and psychological elements, is more than enough reason to consider this piece of legislation. I will close my opening but...and defer many technical questions to the folks that are coming behind me that are experts in research in the field. [LB260]

SENATOR ASHFORD: Thank you, Senator Rogert, and thank you for bringing this to us. Any questions of Senator Rogert? Yes, Senator Christensen. [LB260]

SENATOR CHRISTENSEN: Thank you, Mr. Chairman. Do they have any direction right now if they're wrong? Can they sue now or there's just no way, if they're released, how does it work right now? [LB260]

SENATOR ROBERT: Under most instances they would be able to bring suit against the state. [LB260]

SENATOR CHRISTENSEN: And how frequent is this? Do you have any numbers or statistics that way? [LB260]

SENATOR ROBERT: Well, no. It's fairly infrequent as of yet, but it is our belief that with the advancement of DNA research and exoneration that there will most likely be more of these coming in the future. And with the recent...it's fairly well-illustrated by the recent release of the six folks in the Beatrice case. [LB260]

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SENATOR CHRISTENSEN: Correct. Thank you. [LB260]

SENATOR ASHFORD: Yes. Senator Lautenbaugh. [LB260]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. Thank you, Senator Rogert, for bringing this bill. I believe this is the right thing to do. Would it apply to all convictions that are set aside; not just cases where there is prosecutorial misconduct, but even cases where the prosecutors are just wrong? [LB260]

SENATOR ROBERT: We...yeah. Only those, I believe, felony convictions where evidence was entered that was determined to be incorrect or false. Could you restate your question? [LB260]

SENATOR LAUTENBAUGH: There wouldn't have to necessarily be prosecutorial misconduct, would there? [LB260]

SENATOR ROBERT: No. [LB260]

SENATOR LAUTENBAUGH: Just the wrong result is all the matters, right? [LB260]

SENATOR ROBERT: Right. Yes. Anything that would have resulted in the wrongdoing. [LB260]

SENATOR LAUTENBAUGH: I noticed that you do make a provision for an award of attorneys' fees,... [LB260]

SENATOR ROBERT: Yes. [LB260]

SENATOR LAUTENBAUGH: ...which we don't traditionally do in the law in general. [LB260]

SENATOR ROBERT: Right. [LB260]

SENATOR LAUTENBAUGH: And I'm not saying it's the wrong thing to do. I'm just asking what was your rationale in this case for doing it? [LB260]

SENATOR ROBERT: Well, I think the rationale would be based upon the fact that they wouldn't have needed attorneys' fees to begin with. They were brought...they were most likely--not necessarily--but they were, we would assume through their overturning of their conviction, that had there not been something go wrong, they would have not needed to contact an attorney for any purpose. [LB260]

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SENATOR LAUTENBAUGH: And you're now adjudging this to kind of a civil rights claim where there are attorneys' fees routinely awarded? [LB260]

SENATOR ROBERT: Correct. [LB260]

SENATOR LAUTENBAUGH: And these individuals might not have attorneys' fees upon exiting jail, hire a lawyer anyway? [LB260]

SENATOR ROBERT: Absolutely. [LB260]

SENATOR LAUTENBAUGH: Again, thank you bringing this. [LB260]

SENATOR ASHFORD: Senator Lathrop. [LB260]

SENATOR LATHROP: I do have a couple of questions and maybe they're more scenarios, and if I should ask somebody else I'd be happy to do that, just because it... [LB260]

SENATOR ROBERT: Ask me and I'll let you know. [LB260]

SENATOR LATHROP: Okay. The first question I have, though, is whether or not this is modeled after anybody else's? [LB260]

SENATOR ROBERT: Yeah. It's modeled after some of the...several of the states have very similar language to this. I think this one comes off of maybe a New York statute, I believe. [LB260]

SENATOR LATHROP: A New York statute? [LB260]

SENATOR ROBERT: Yes. [LB260]

SENATOR LATHROP: So the process that you've set up in the statutes is something they've tried in New York and that's what we're... [LB260]

SENATOR ROBERT: Yes. [LB260]

SENATOR LATHROP: There's a difference between somebody who is wrongfully convicted and somebody who has had their conviction reversed. [LB260]

SENATOR ROBERT: Correct. [LB260]

SENATOR LATHROP: We're only applying or providing for a remedy for someone who has been wrongfully convicted versus someone who, for one reason or another, has

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had their conviction reversed. It may have nothing to do with... [LB260]

SENATOR ROBERT: Correct. They would have...it has to be...yeah, it would have to be we absolutely show evidence that it was not them that did it. So if they... [LB260]

SENATOR LATHROP: That's part of the case that they have to make,... [LB260]

SENATOR ROBERT: Right. [LB260]

SENATOR LATHROP: ...is that not only has my conviction been reversed but I didn't do it. [LB260]

SENATOR ROBERT: Right. That's why it has to...that's why you need a pardon and you need to go before a judge; not just one or the other. [LB260]

SENATOR LATHROP: That's what I was looking for. Thanks. [LB260]

SENATOR ASHFORD: Senator Council. [LB260]

SENATOR COUNCIL: Yes. And I, too, thank you for bringing this bill forward. And during your testimony you indicated that the amount of the award, the floor, no less than \$50,000; that that number was a number that's consistent with the number that...an amount that's consistent with an amount that Congress has been considering? [LB260]

SENATOR ROBERT: Yes. There was a resolution a couple years back that was put out by the House of Representatives and the Senate, jointly signed, and by the President. And that's where they recommended that if states try to do this, that would be a number. Don't know if that's the right number for Nebraska or not, but it's where we started with. [LB260]

SENATOR COUNCIL: All right. But at least in terms of that resolution which was passed by Congress and endorsed by then-President Bush, that at a minimum, wrongfully convicted individuals should be eligible for at least \$50,000, and then it could be additional above and beyond that amount based upon the factors such as child support payment, attorneys' fees, and other items that are set forth in the bill. Correct? [LB260]

SENATOR ROBERT: Yes. If throughout the process of the hearing, the judge determines that they were out of more than the \$50,000 a year, they could definitely go up from there. [LB260]

SENATOR COUNCIL: Okay. Thank you. [LB260]

SENATOR ASHFORD: Thanks, Senator Robert. And I think this is a very meaningful

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bill. It's something we need to do as a state. I think the question is how do you do it and how do you calculate the compensation. I'm sure we'll be hearing on that. This is also retroactive...has retroactive impact? [LB260]

SENATOR ROBERT: Yes. [LB260]

SENATOR ASHFORD: And that's somewhere in here? [LB260]

SENATOR ROBERT: Yes. [LB260]

SENATOR ASHFORD: Okay. Thanks, Senator Robert. [LB260]

SENATOR ROBERT: There's one word: prior. In there it says prior convictions. [LB260]

SENATOR ASHFORD: Prior. Good. Prior is a good word then. Thank you. All right. Okay. Let me ask everyone, how many proponents are there? (Laugh) How many opponents? We've got a few. Okay, here's what we're going to do. We're going to have the proponent testimony to three...I'm going to go to three o'clock, and we'll see how we're doing and I'll make a determination at that point as to whether we'll go beyond that. And then, of course, the opponents will have the same time. And then we may have neutral testifiers. We'll see. So let's have the proponents. [LB260]

REBECCA MURRAY: (Exhibit 3) I have some written testimony, as well (inaudible). My name is Rebecca Murray, M-u-r-r-a-y. Members of the Judiciary Committee, I come before you today in support of LB260. I'm an assistant professor of sociology in charge of the criminal justice policy track at Creighton University. I'm also acting as president of the Nebraska Innocence Project. In both my capacity as researcher and as a volunteer, I have witnessed the stories of how those, whose lives have been irretrievably broken through errors in the criminal justice system, have suffered. You'll hear some of their stories today so I don't need to retell those. But I've also worked with many practitioners within the criminal justice field; many people who do have a sense of justice and are willing to do what is right. However, we need to also be willing to do what we can to help repair the devastation that these errors have caused. The issue, of course, has undoubtedly been brought to light by the case of the Beatrice Six, and, in fairness, it is unlikely that the bill would sit before you today were it not for this case. And because of this highly unusual case, there have been claims that this bill cannot move forward because the case for innocence for these six folks has not been adequately made. First, we at the Nebraska Innocence Project, and at Creighton University, grieve very much for the death of Helen Wilson and for her family. Her life was lost tragically and no one wants to take away from this. However, the time for questioning innocence of these individuals is not at the passing of this bill; in fact, it is imperative that we keep in mind that our charge is not to determine absolute innocence here. The innocence of these six was uncovered by what was termed one of the best task forces in the state of

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Nebraska, and was solidified in a pardons hearing when Assistant Attorney General Corey O'Brien noted that it was not just beyond a reasonable doubt but beyond all doubt that these six had nothing to do with Ms. Wilson's murder. At that pardons hearing where innocence was determined, it is also important to note that not one voice was raised in protest. You have all been provided with a memo that Mr. O'Brien sent to the Pardons Board which outlines this particular case about innocence of the Beatrice Six. It's also important to remember that this bill is not just about the Beatrice Six. Wrongful convictions are rare, and this case is even rarer still. But it is, first and foremost, ethical and right for the state to own up to its responsibility for what happened to these six and perhaps others that may come after them. They face a long road of recovery, which will be attested to today. We Nebraskans helped to support the system that was responsible for their injustice, and we should also have the courage to face the damage that it has caused. This bill will also allow lawmakers to give an equal opportunity for those who may have been wrongly convicted rather than allowing only those with means to file and win lawsuits to receive any benefit. This will give some measure of predictability for any future wrongful convictions. And finally, this bill can be seen as an investment by the state in the individuals we have wronged. It is in no one's interest for those who have been wrongly convicted to go without healthcare, education, and without an avenue to becoming a citizen who invests in his or her community. Some of the Beatrice Six are trying hard to make a difference and they are doing so now. We have a chance to help these and any future wrongfully convicted individuals lay a foundation that will ultimately make our system better. [LB260]

SENATOR LATHROP: Thank you. Are there any questions? I don't see any. Thanks for coming down. We appreciate hearing from you. I'm going to exercise the Vice Chair's prerogative--come on up--and suggest, since Senator Ashford didn't, that as you listen to other people testify, if you are going to say the same thing you can just put your name on a list as a person that opposes or supports, as the case may be, so that we're not having duplicate testimony. Welcome. [LB260]

JOSEPH WHITE: My name is Joseph White. I'm not a politician. I may have fought 20 years to prove the truth that I was put in prison for a crime I did not commit. I worked everyday to earn the money to hire lawyers. I've spent over \$50,000 in attorney's fees, and I still owe \$40,000 in attorney fees just to prove my innocence. I've got a doctor's bill from two hours in the emergency room. Because I don't have a job, I don't have insurance. I got a \$3,000 bill just because I had a slight chest congestion. I lost 20 years of my son's life. When I was arrested, they took the father away from his baby. When I reunited with my son four months ago, it was just before his 21st birthday which was just three days ago. My parents have supported me for 20 years. They were 50, they're retirees. They don't have the money to support me now. I've got no home, except for what they give me. I have no retirement. I can't get back what I've lost. I can't go back and teach my boy how to ride a bicycle or how to drive a car. All I'm asking is for the dignity to be able to support myself. I can't find a job because I've got a conviction on

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my record. I have no retirement. I have no equity in my home; I don't have one. All I have is a place to stay with my parents. I have no recourse in the state of Nebraska because the tort, Nebraska Tort Act bans legal action of this sort. It has to go federal. I have nothing except my pride to fight. I never gave up on the truth and I cleared my name. I've got bills to pay, no way to pay it. I don't know if this bill will help or not. [LB260]

SENATOR LATHROP: Thank you for your testimony and we appreciate very much you coming down and telling us your story. Are there anybody on the committee with questions? I don't see anything. We do appreciate you coming down here. Thank you. [LB260]

ROBERT BARTLE: Members of the committee, my name is Bob Bartle, B-a-r-t-l-e. I'm an attorney in Lincoln working with Mr. Smith, who you just heard from, and also probably Mr. Winslow, assisting Doug Stratton, the Norfolk lawyer who effectuated the release of Mr. Smith from prison because he felt that this was a case that had to be brought to the attention of the authorities. I'll be brief because our time is limited, but I do want to address one issue raised by Senator Rogert. And I thank you for introducing this bill, it's critical. I think someone asked, is there a tort claim, is there a remedy state-based in Nebraska currently? And I think you'll hear in even greater specificity from members of the Innocence Project, the experts in the area. But the remedy under either the State Tort Claims Act that would apply in the sense of any state actors involved in a wrongful conviction or the Political Subdivision Tort Claims Act that would be involved and implicated for county attorneys or county sheriffs involved in a wrongful conviction specifically excludes wrongful imprisonment. So unlike the 25 other states you've heard about, we don't have a state-based remedy. We don't have anything to examine on behalf of any civil remedies for clients of mine, such as Mr. Smith or Mr. Winslow. Rather, we must look to federal law, and I think you'll hear in greater detail that the heavy, heavy burden one has under a 19...what's called a Section 1983 civil rights claim against an actor, because you have to go well beyond the fact of just wrongful imprisonment, you have to actually demonstrate there was some type of malice, if you will, some type of intentional deprivation of civil rights of an individual as opposed to simply an honest mistake. That, as you might imagine, you don't have to be a lawyer to recognize that's a much heavier burden. So there aren't any remedies but for Mr. Rogert's bill and but for the state waiving its sovereign immunity, at least in a minimal way even if this act is not recognized in full, by allowing the State Tort Claims Act or the Political Tort Claims Act exemption to be remedied. I would be happy to answer any questions anyone might have. [LB260]

SENATOR LATHROP: Thank you. Senator Christensen has a question for you. [LB260]

SENATOR CHRISTENSEN: Thank you, Senator Lathrop. Thank you for testifying. Why if like the previous gentleman was wrongfully arrested would it still be on his record?

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[LB260]

ROBERT BARTLE: It's still on the record because we have separate records people. And let me add, there is a motion for the expungement of the record that is being filed by the Attorney General. Mr. Bruning's office has gone that step further beyond that task for us, and I do have copies of actual motions that will be filed by Mr. O'Brien on behalf of all six of the Beatrice Six to remove that. It takes that separate district court action to force state officials to take this off the record. So that expungement process is underway. [LB260]

SENATOR CHRISTENSEN: Is there not a way we could make that faster? [LB260]

ROBERT BARTLE: Well, to the extent it's addressed to you could streamline it probably. But that process, I believe, will be underway by Mr. O'Brien and I don't think that's going to be in any way contested. So there is a remedy available now, Senator Christensen. [LB260]

SENATOR CHRISTENSEN: Okay. Thank you. [LB260]

SENATOR LATHROP: Any other questions? Seeing none, thanks for coming down, Mr. Bartle. [LB260]

ROBERT BARTLE: Thank you, Senator Rogert (sic). [LB260]

SENATOR LATHROP: Next proponent. [LB260]

AMBER WEINACHT: (Exhibit 4) Members of the committee, My name is Amber Weinacht. My last name is spelled W-e-i-n-a-c-h-t. First, I would like to thank you for your time and consideration today. We are here today to discuss a very important matter, I think as everybody can see. Although I can't imagine that anyone here would be against LB260, I implore everyone to take into consideration all testimony given by proponents of this bill. I'm a paralegal student in Nebraska and have become familiar with this case after being assigned a term paper for one of my classes. I've spent probably over 80 hours total researching this case and it has affected me to the core of my being. I think that one of the most important things here is to not just look at the facts of the case, but the humans involved, the human beings, these real people, and what undeserved time behind bars has done to them and those that they love. In a recent interview, Heather Weigand of the Life After Exoneration Program has said that people who have been wrongfully convicted suffer the same effects as prisoners of war and torture victims. They are then revictimized, she said, when they are released back into society with little or no resources to help them. I have listened to Joseph speak about hurdles and finding work and the efforts he has put forth to simply convince people that he is not guilty, guilty of the crime that he was imprisoned for. He has no health

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insurance and what little savings he had when he was released has ran dry. He can't even afford to take his son out to spend quality time with him, which brings me to another issue. In all fairness, the Beatrice Six and others like them completely deserve to be compensated for their time and their losses. How much is it worth to watch your children grow up? And how much is it worth to be able to teach them life lessons? As you heard, Joseph missed 19 years of his son's life, and I simply cannot imagine what that's like. His son is suffering as well, trying to find a way to connect with the father he has never known. How much would it be worth to be able to say goodbye to loved ones that have passed away? These people lost not only their privileges in life, but their basic human, fundamental rights, things that the rest of us would sometimes deem as burdens. These people have lived through an absolute nightmare, and for anyone to suggest that they don't deserve to be compensated needs to take a good hard look at the facts. I am tired of hearing the state say that they don't know where this money is going to come from. I know that none of you can control that issue. But from my point of view, budget cuts have been made, and not only that, we've wasted how much money on a footbridge over the Missouri and a stadium that would only be used two weeks out of the year. The footbridge alone has, I believe, took \$20 million of federally allocated money, and I can only imagine what would be wasted through the stadium when we can put it to better use. I'm tired of watching the people in the state suffer while the politicians involved in popularity contests are spending like there's no tomorrow. Respect for the institution has been lost and we've got to bring back the integrity and fairness of this state and restore our citizens' faith in justice. Those involved in this case and others like them deserve all the help they can get. Let us treat them a little better than trash that has been discarded to the side of the road. [LB260]

SENATOR LATHROP: Thank you. Any questions? I don't see any. Thank you for your testimony. [LB260]

AMBER WEINACHT: Thank you. [LB260]

SENATOR LATHROP: Next proponent. [LB260]

RICHARD WIENER: (Exhibit 5) Good afternoon. My name is Professor Richard Wiener, W-i-e-n-e-r. I'm director of the law and psychology program at the University of Nebraska-Lincoln. I appreciate the opportunity to submit testimony, written and oral--the written is in the yellow folder--on behalf of LB260 today. First, I want to tell you why it's important to resist the temptation to respond on an emotional appeal on this particular issue. Assistant Attorney General O'Brien said the Beatrice Six, the five seeking pardons, were innocent not beyond a reasonable doubt but beyond all doubt. And DNA testing has in fact verified this. Helen Wilson's family was angry and sorrowful when they learned that those that they thought were the responsible for her mother's death were erroneously convicted. But emotions should not be the basis for making policy. Rather, facts and rational analysis should be the basis for making that policy. My

testimony this afternoon will address one simple but sometimes difficult issue to understand. I ask the question, do people falsely confess to crimes they have not committed? The answer is simple. Yes, they do. Estimates are about 4.8 percent of innocent people confess during interrogations; 25 percent of cases in which DNA evidence exonerated innocent prisoners involved false confessions. People confess for promises of leniency. They confess to avoid threats of serious consequences and many other reasons. Next, I want to tell you about the faulty interrogation techniques and false confessions that are produced by these results. Interrogators encourage and require details in confessions. Innocent defendants will sometimes make up stories or take the investigator's stories as truth to accommodate those demands. How does this happen? There are several common techniques. First, they tell suspects that the police have physical evidence. They tell them the reasons they cannot remember those evidence might be things like mental illness, drugs, alcohol consumption, and so forth. They tell suspects to imagine what might have happened and to envision the crime scene. Interrogators will sometimes supply their own vivid narratives to those testimonies. The Beatrice Six interrogations included showing pictures of the crime scene in challenging memories of the events, perhaps creating memories. People have self-doubt when they experience these sorts of interrogations. The self-doubt results from low self-esteem, depression, perhaps challenged intelligence, immaturity, stress, fatigue, alcohol and drugs, and a variety of other factors which were probably at play in the interrogations of Beatrice Six. Suspects do come to doubt their own innocence. They start off realizing that they are imagining events perhaps, but then in the end they come to realize that they come to think that those events actually happened, and they lose the ability to discern the difference between the events that they imagine and the events that actually occurred. This is an emotional time. It's a time of confusion. Graphic detail may produce vivid but false memories. So what is the effect of policy or what is the policy impact of these false memories? Jan Houseman, daughter of Helen Wilson, wrote a letter to the Beatrice Daily Sun on January 30, 2009, about LB260. She said while their merit...while there may be merit... [LB260]

SENATOR ASHFORD: Professor, Professor, I'm going to ask you to sum up, if you could. [LB260]

RICHARD WIENER: Okay. In the end, for the Beatrice Six there was physical evidence, DNA tests, that exonerate these defendants. It makes good sense to review the facts in this case from the perspective of all the victims' injustices, including not only the Wilson family, but also those that were falsely convicted but who are innocent defendants when analyzing the bill. [LB260]

SENATOR ASHFORD: Thank you, Professor. Hold up. There may be some questions that may ask you to complete your comments you were going to make. I don't know if anybody has that question. All right. You're fine. Thank you. Next testifier. Next proponent. [LB260]

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SENATOR LATHROP: I'm not sure you explained the light system at the beginning. [LB260]

SENATOR ASHFORD: I think I did, but did I explain it adequately to people? When the yellow light goes on, we ask you to start summing up. You have three minutes to give your comments, and then the questions after that, so. Thank you. [LB260]

ADA JoANN TAYLOR: Senator Ashford and committee members, my name is Ada JoAnn Taylor. I am part of the Beatrice Six. And no matter how much we get pardoned or cleared, that's how people are always going to remember us and assume who we are. The profound losses we've had, we've all lost family members that we couldn't go to funerals for. I had a brother that died fighting this government's war and was told that the military was not secure enough to support me...transport me to his funeral. He was my baby brother. I've got children. I've got one of my three children back in my life because she found me. I have a son out there that's 21 years old that nobody knows where he is because of this whole situation. I can't find him. I can't get him back. I can't bring back his childhood. I have trouble getting...I can't get insurance. I have doctors that I need to go to because I have a chiropractic problem due to being in the prison, due to injuries there. I can't obtain credit because I've never had credit and I'm 45 years old. People look at me and say, well, why haven't you had credit? It's hard to explain 20 years of your life when it was taken from you for a wrongful conviction. But this pardon and everything that has gone on, it's made my life a little easier, but people still look at me and say, oh, you're part of the Beatrice Six, you're unemployable, you're not good enough. But I'm just as good as anyone else that's out there. We've made our mistakes. We've been wrongly judged for that. I can't get housing because I don't have credit to even go get a loan for a house or an apartment or anything on that nature. I can't get a car for the same reasons. To be able to even think about retirement, that's not going to happen in my lifetime because I don't have the way to have a job to save for a retirement fund. There are things that need...that my family needs that I can never give them because of the losses I've had. There are things that could be replaced, but you can't replace my children. You can't give me back the childhoods of watching my children grow up. I'm thankful now that I have my grandchildren in my life, but it's hard to let them explain to a four-year-old where their grandmother has been. It's been hard to explain to my daughter where was I when she needed mommy, where was I when she needed me. It's hard to be there now, but I'm grateful for that. And I pray that this bill goes through and we get some compensation. Houses and cars can be replaced, but childhood and lives can't. Thank you. [LB260]

SENATOR LATHROP: Thank you for your testimony. Are there any questions? Seeing none, we appreciate your testimony. I know it was difficult for you. [LB260]

ADA JoANN TAYLOR: Thank you. [LB260]

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SENATOR LATHROP: Next proponent. [LB260]

RACHEL LEIGH MORGAN: Good afternoon. My name is Rachel Morgan. I am the daughter of Ada JoAnn Taylor. We lost many, many years and many, many memories, that's obvious. But my concern is for my mother at this time. She doesn't have a way to become a normal human citizen like everybody else has the opportunity to. Everybody looks at her and says, oh, I've seen your face in the paper, you're one of them people. And after taking her to my hometown last evening, she saw that there are people that are there to support her, but there's more against her than there is for her. But I just wanted to thank you guys for the opportunity for everybody to come and speak and to be for or against or...hopefully all for. But I just want to thank you for your time. Thank you. [LB260]

SENATOR LATHROP: Thank you. Are there any questions? I don't see any. Thanks for coming down. Good afternoon. [LB260]

REBECCA BROWN: (Exhibit 6) Good afternoon. Thank you for having me and thanks for the opportunity to speak before you. My name is Rebecca Brown. I'm a policy analyst with the Innocence Project. And I'd like to just start off by saying that, you know, my heart does go out to the Wilson family and we do want to acknowledge that, but we also do want to speak about some of the impacts that wrongful conviction do have on the victims who were wrongfully convicted themselves. The Innocence Project was founded in 1992 to exonerate the innocent using DNA testing. And since that time, forensic DNA testing has exonerated 232 people across the country. And we regard each exoneration as an opportunity to consider the compensation due to individuals who were wrongfully convicted, and like any system comprised of humans, the criminal justice system makes errors. And compensating the wrongfully convicted is not about the assignment of blame, rather it seeks to provide compassionate assistance to people whose lives have been devastated and whose losses are profound. And you know, you heard just from folks just now about what those losses are. And I've included in your packets some information about sort of the assessments that have been done by mental health professionals of the wrongfully convicted. And I'll just briefly tell you that here are some of their findings. The vast majority had enduring personality change, posttraumatic stress disorder, mood and anxiety disorders, chronic feelings of threat, feelings of hopelessness, purposelessness, social withdrawal, panic attacks, repeated nightmares, oftentimes recalling the outright terror of what prison did to them and their experiences within prison, and major adjustment problems when they get out. A lot of family members describe the fact that they don't even know this person anymore. It's a totally changed person when they come out of prison, a lot of the time, because of the social withdrawal that they had to have in prison to survive that experience. And these problems are so considerable and profound that many of the exonerated themselves have begun to form organizations to support each other that they have nothing when

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they come out. And I have also a letter in your packets from a group called AFTER. This is a group of exonerated men that have begun to talk about their experiences and they implore you to please pass this legislation. They wanted to come, they wanted to be here today and to tell you that, and that letter really describes their feelings about that. To provide adequate compensation, a framework really has to consider monetary compensation in addition to social services, which this bill does. We applaud this bill. And I should just add, to date 25 states, plus the District of Columbia, plus the federal government have enacted this legislation. There was a question earlier about whether civil redress will address this. It will not. You have to prove official misconduct that led to a constitutional violation. It's incredibly difficult to prevail under a civil claim. So please, you know, I implore Nebraska to join the other 25 states that have done this. I'm happy to answer any questions about any of the provisions contained in this law. But it's a wonderful law and we really, strongly support it. [LB260]

SENATOR LATHROP: Thank you, Ms. Brown. Any questions? I don't see any. [LB260]

SENATOR ASHFORD: Next proponent. [LB260]

GARY GRAYSON: Hello. My name is Gary Grayson and I represent Eastern Nebraska Community Action Partnership. We support LB260 because we know the barriers that people face on getting out of incarceration. I am one of those who was on parole. I did get out of incarceration and I was fortunate enough to get over those barriers. And we realize that a lot of times that these people being incarcerated like that, they come out and they face these great barriers and have no...they don't have the resources or the knowledge of the resources in order to utilize being able to transition into society. Some of the barriers that they will face...they face, that we face was housing and support system. The greatest is being in a support system. I had the opportunity to have a great support system, and that's why I'm sitting here now instead of sitting behind (inaudible) walls. I would hope that you guys would support this bill because I feel that...I wasn't one of the ones that was wrongly accused, but those people wrongly accused, I feel that they should be, they should be compensated some. It's our duty as a society to help these people get their lives back together. And that's all I have to say. [LB260]

SENATOR ASHFORD: Thank you. Thank you. I think you're all finished. Next proponent. [LB260]

MARY WINSLOW: I wish to say a few words to this committee... [LB260]

SENATOR ASHFORD: Before you do, and we are very interested, but first tell us your name. [LB260]

MARY WINSLOW: My name is Mary Winslow. And I am the mother of one of the victims in the case of the Beatrice murder of Helen Wilson. My son spent a lot of years

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in jail, sentenced to 50 years for a crime he did not commit nor was involved with. The investigation techniques used in this case were very questionable, if not illegal at the very least immoral. The FBI profile of the case was pushed aside and brainwashing techniques used to convince people to commit perjury and plea agreements to save their lives. The same brainwashing was used on the public and the members of the Helen Wilson family. The hate and bitterness they have harbored for 19 years is now hard to let go. This is very sad. I do believe that compensation should be voted in for people who are wrongfully convicted and sentenced for something they did not do, for those people who spend years of their lives away from family and friends and lose out on so much that can never be again given back or made up for. My son pleaded no contest to the crime. He received a very harsh sentence. It could have been much shorter had he been willing to commit perjury. He wasn't. I am very proud of him for what he stood for then and what he stands for now. My son, Thomas Winslow, and the other five, Joseph White, Ada JoAnn Taylor, Kathy Gonzalez, James Dean, and Debbie Shelden, did not deserve what happened to them, and the Wilson family did not deserve what happened to them 19 years ago at the hands of the investigators, the law enforcement, and the Gage County Attorney's Office. I sincerely hope and pray that no one will ever have to endure what these individuals and their families have suffered ever again for such a horrific miscarriage of justice. Thank you for allowing me a few moments of your time. [LB260]

SENATOR ASHFORD: Well, thank you for coming, Mary. Any questions of Mary? Seeing none, thank you. Next proponent person. [LB260]

TINA KAMINSKI: My name is Tina Kaminski, spelled K-a-m-i-n-s-k-i, and I'm Thomas Winslow's sister. I'm here to read a statement from him. He would have liked to have been here today, but he was not able to for fear of losing his job, which he could not afford to do: My name is Thomas Winslow and I am currently one of the inmates released from prison for the brutal 1985 murder of Helen Wilson. I was exonerated due to the DNA testing stated that I was wrongly convicted of this crime. During my time in prison, I went through many difficult things. I could sit here and explain them to you, many horrific things that I saw in prison. That's not why I'm here. What I'm here to do today is to share with you why I think this bill is important. Due to my wrongful conviction, 20 years of my life was taken. I can't get those 20 years back. All I can do is try to rebuild my life. I have got a job. It's not a great job. It's a job without health insurance. It's a job that barely makes the rent in my apartment. But I do it and I make it, but I know it's not a job I can spend the rest of my life at. I don't have Social Security. I don't have a retirement fund. Twenty years of a blank history between the time I went to prison and was released, I have nothing. All I have is what I build today and I'm trying my best. I've lost a lot in 20 years and I'm not asking you to give me back the 20 years because I know you can't. All I'm asking is for you to help me rebuild my life. I want to be able to go to school. I want to be able to get counselling. I want to be able to deal with some of the pain and issues, the lies, and the loss of people who took 20 years of

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my life. I need to be able to deal with those issues. I need insurance to do that or I need money to do that. I want to be able to help my mother who was there to support me for 20 years unconditionally. I want to just...I want to just be happy. I lost time with my father. I wasn't able to be there when my dad died. I just want to be able to spend time I have with my family and start to go from there. I'm not asking you guys for a handout. I'm asking you to give me a hand up and to continue to help me build my life because I've already started the process. All I need is the help to continue. [LB260]

SENATOR ASHFORD: Thanks, Tina. Any questions of Tina? Thanks for coming and thank your brother. Next proponent. Opponents? [LB260]

REBECCA BROWN: I would like to say just one thing. On that yellow packet, I've got those written testimony from Kathy Gonzalez and James Dean who were not able to be here. [LB260]

SENATOR ASHFORD: Okay. And that's...we have that in your...very good. Any neutral...opponents? Okay. [LB260]

SHAWN RENNER: Senator Ashford and members of the committee, my name is Shawn, S-h-a-w-n, Renner, R-e-n-n-e-r. I'm a lawyer here in Lincoln, Nebraska. I appear today on behalf of Media of Nebraska, Inc. For those of you new to the committee, Media of Nebraska, Inc. is a nonprofit corporation comprised of the members of Nebraska's print and broadcast news media. It's perhaps the case that my testimony ought to be characterized as neutral on the bill as a whole, but I wasn't sure so I do oppose part of the bill. The news media takes no position with regard to the general merits of the bill. The print and broadcast news media does oppose Section 12 of the bill, which allows and provides a mechanism for sealing or expunging records. I'd like to offer several reasons why the news media think that that's a bad idea, and in this case I think not workable. First, as those of you have been here a while know, any time there's a bill to seal or expunge records we show up and oppose it. It's a matter of principle for my clients. Once a record is a public record, they believe it ought to always be a public record. Second, as the testimony has shown, there was a lot of media attention to what's been called here the Beatrice Six. And you can expunge every record you can find, but that doesn't change the facts. There was a conviction; it was a wrongful conviction; there have now been pardons issued. All of those are facts and expunging records aren't going to change any of those facts. Those were all...all those events were reported on in great detail in the news media. I believe most of the newspapers in the state ran front page stories with regard to the recent exoneration, including full coverage of the Pardons Board hearing. And all those facts are public record out there and exist, and sealing records isn't going to change any of that. I think the bill is also unworkable. I'm not sure how this expungement can be accomplished, at least in the terms that it's stated in the bill. And I'd like to give you a couple of examples of that. The bill would allow a district court in Nebraska to enter an order that would seal

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or expunge, and this is the language of the statute, all records, data, and forensic samples pertaining to the erroneous felony conviction. It's not clear exactly what would be covered by that, but I can think of some things that are that a district court in Nebraska simply has no ability to deal with one way or another. For example, almost by definition in one of these cases there's going to be an opinion from the Nebraska Supreme Court or Court of Appeals that either finds a statute unconstitutional or finds a conviction should be reversed. That's a predicate for the actions that are taken here. I do not believe a district court in the state of Nebraska can order the Nebraska Supreme Court to obliterate one of its opinions or take it out of the books once they're published. That is a record that is there forever and I don't think a district court can do anything about it, frankly. I mean, I'm sure the Supreme Court could. Once those books are published, they're out there. My law firm owns the Nebraska reports, as does every law firm in the state, and I don't think you can send around a government official to clip an opinion out of a report that has been published and in existence and in private hands for a long time. Second, a number of these records are going to be in the hands of the federal government, the FBI particularly. I don't think a Nebraska court can order the FBI to do anything with its records, and the FBI will do what it does with whatever order it receives. I see my time is up. [LB260]

SENATOR ASHFORD: Well, just go ahead and sum up, Shawn. [LB260]

SHAWN RENNER: But the news media takes no position whatsoever with regard to the merits of the bill. It may well be that the Legislature decides that it's highly appropriate to provide compensation and my clients have no issue with that whatsoever. They do believe that the expungement provision in Section 12 is a bad idea though and asks you to amend the bill to delete that section from it. I'd be happy to take any questions. [LB260]

SENATOR ASHFORD: And your clients will know what the amount is when we determine...when and if we determine the amount. [LB260]

SHAWN RENNER: Sure. [LB260]

SENATOR ASHFORD: Thanks, Shawn. Any questions? Yes, Senator Council. [LB260]

SENATOR COUNCIL: Thank you, Mr. Renner, for your testimony. Would your organization be less opposed to Section 12 if it was more narrow in its scope in terms of expungement? And what I'm thinking about is that if an employer contacts the county sheriff and asks for someone's criminal record, everything that's on the record is sent to the employer. If something is ordered expunged from the record, then the only record that the county sheriff sends out is those items, those arrests, convictions or whatever that remain on the record. Is your organization opposed to removal from the county records of the statement of arrest and conviction? [LB260]

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SHAWN RENNER: As a matter of principle, my clients oppose taking any public record and making it nonpublic. They do that because they rely on those public records to do what they do, report on the news. An example is not coming immediately to my head that I can talk about in terms of past happenings, but I know there are instances where many years after the fact an issue realizes...in fact, the Beatrice Six is probably a good example, the DNA testing that came to light, the subsequent proceedings. Once that happens, my clients believe that those records ought to be public records, be available for public inspection. They believe that what's important is that the record be complete and that at the end of the day if someone has been wrongfully convicted, they have a record here from the Board of Pardons that says the state of Nebraska pardons you for what you've done, finds that you did not do anything at all, that you are in fact innocent, and that that's the record that matters. And I don't think there's a workable way of parsing out what public record should be left as public records and what public records should be taken off. And, Senator Council, to my knowledge there's not a single docket sheet or record or that sort of thing that an employer gets. Most of these are in computer databases in various agencies. It's not all within the control of the courts. The Department of Corrections has a number of records. The FBI has records. The Department of Justice has records. It's probably not realistically workable even if we could come up with a limited definition of the sort of things that would make these people that need these...that are requesting the expungement get them to the point where they can get jobs and those sorts of things. I think the best remedy for them is to say, I was wrongfully convicted, I did not do this, and here is the pardon record or the court record that proves that. And trying to go out of the state and collect every scrap of paper or every piece of electronic data that might relate to the conviction, even if you could do that, I don't think it accomplishes much, so. Yeah. I think my clients are opposed generally. [LB260]

SENATOR COUNCIL: Two points. I think it is possible. Human resource directors around the state, throughout the country use certain standard databases. Only certain people can access NCIC, and it's not your average employer. So NCIC is going to be out there and nothing you can do is going to change that. But there is a data source that employers routinely rely upon. And I appreciate your statement, but obviously you're not aware of the situation where the application says, have you ever been previously convicted. And there's no place for you to write "but yes, I was pardoned," and as soon as they hand them the application and it says "conviction," it goes over there. So yeah, right. I can walk around with the pardon, but if that application asks me to show...to admit that I've been convicted before, wrongfully or otherwise, that ordinarily eliminates those individuals from consideration from employment, so they don't have that next opportunity to say, oh, by the way, I was pardoned. And then if they've marked "no" on the basis of their pardon, they're eliminated from consideration because many employers consider that falsification of an application. So I think...you know, I appreciate what your organization's position is, but I think that maybe more narrowly defining, you

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know, what is to be expunged...I mean, I don't think any of the individuals who have been falsely convicted are suggesting that the fact that this occurred should be completely wiped and obliterated from anyone's mind, but it should not be maintained in a document that affects their ability to seek employment or to obtain employment. And I think that that's what...I don't mean to speak for Senator Rogert, but that's the intent of Section 12. So like I said, I appreciate and I would ask your organization to give some consideration to narrowing the...if we'd narrow the scope of record or definition of record so that your interests of report are protected. And you made the statement about everybody in Nebraska knows what's happened to the Beatrice Six. Some of these individuals have left Nebraska. They don't know what's happened. [LB260]

SHAWN RENNER: Senator Council, I'll be happy to work with the committee on any potential amendments and my clients are always willing to do that, and there may well be some middle ground, I don't know. I'm here today to... [LB260]

SENATOR ASHFORD: I think there probably is and I think Senator Council is making a good point. [LB260]

SENATOR COUNCIL: Thank you. [LB260]

SENATOR ASHFORD: Senator Lautenbaugh. [LB260]

SENATOR LAUTENBAUGH: Thank you, Senator Ashford. I might be beating a dead horse here, but it sounds like your argument is district court judge can't do this and it'll be ineffective. So why does your client care? That doesn't seem to be your client's concern. [LB260]

SHAWN RENNER: It's not. It's a practical example of why...of one of the reasons my clients think it's a bad idea. My clients care because public records are the bread and butter of their business. That's how they report on particularly the criminal justice system. And specifically in terms of news reporting, there is a privilege under Nebraska law and most laws, most states' laws to report from public records. If you accurately report what's in a public record, someone can sue you for libel, they will lose. And so there's a very definite business reason why my clients want public records because it provides them a meaningful way to report on the criminal justice system, and also provides them legal protection as long as they accurately report what's in a public record, they're not going to lose a libel suit. So that's the main reason that they always oppose efforts to make what were formerly public records not public because it removes one source, one important source that they use to gather news and report on news. [LB260]

SENATOR LAUTENBAUGH: And I understand that concern, I guess, as you have just articulated it. But can't you see that this might be a mechanism by which the state is

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trying to do what little it can to completely do away with a horrible wrong that was done?
[LB260]

SHAWN RENNER: I certainly do, and my clients do too. We take no position on the merits of the bill generally. And I don't...Senator Council mentioned the provision in the bill that allows a job applicant to say I was never convicted, we take no position on that provision whatsoever. The bill can say whatever it wants in that regard. What my clients oppose is the idea that somehow if we take records away, things didn't happen. That's just not the case. And if I can go back to the Beatrice Six, there's 20 years' worth of news reporting on that case. Those...all you got to do is Google...now, you could probably Google Beatrice Six, you probably don't even need the names of the individuals, but you'll turn up dozens of news stories. And none of those stories are going to go away. Every employer out there is going to be able to do exactly the same thing and find those stories. And so I am only questioning whether expunging the official records that belong to the state of Nebraska is an effective way of going about what you're trying to get at. [LB260]

SENATOR LAUTENBAUGH: Couldn't your clients Google this as well though? [LB260]

SHAWN RENNER: Sure. It's the records they need though to report on the actual, official workings of government. That's why we like public records to be maintained as public records. [LB260]

SENATOR ASHFORD: Okay. Shawn, thank you. Any other opponent, neutral, neutral? Is this opposition...how many neutral testifiers do we have? One neutral. How many...go ahead, sit down. How many other opponents do we have? Okay. [LB260]

STEVEN OLSEN: (Exhibit 7) Senator Ashford, members of the Judiciary Committee, I am Steve Olsen, O-l-s-e-n. I am from Scottsbluff. I am a lawyer. I represent members of the family of Helen Wilson, many of whom are with me today. We respectfully oppose LB260, and you wonder why we are here and why we oppose this bill. For 20 years this family has not had a voice, they've not chosen to have a voice or have their voice heard, and now they do. And the reason they do is because they believe they've been harmed as well. It started back at the time of the arrests and during the portion of the investigation phase of this situation, many of the Beatrice Six told stories that they were involved, that they participated in what happened to Helen Wilson, that they were there. They provided graphic details about what went on that evening. That continued throughout the trial in even more graphic description of how Helen Wilson spent her last moments and then died. It continued at the time of the sentencing. And it even continued well after the time of the sentencing into the 1990s when these people made efforts to talk to judges to tell them they were sorry for what they had done. And now 20 years later the family is to understand that they are innocent. But yet their testimony at trial, their untruths at trial all served as untruths against the system, the court, and this

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family. And we don't believe that the bill properly addresses the harm and damage and the injury that this family has suffered. And it allows people who chose a path, chose to tell lies, chose to do things that we understand why they did, and that is to reduce sentences. But they chose that path, and that path has caused injury to this family. And this bill does not properly address what that family can do. The court system does, and I would disagree with the others who came before you to tell you that the court system does not properly address it, because it does. And certainly you've heard testimony from people who criticize law enforcement. Those are perfect means for federal civil lawsuits. And in that lawsuit, the trier of fact is the sole judge of credibility and can determine in a way the claims of the Beatrice Six for the fact that they have been wrongfully imprisoned and also weigh in the other side of the case, and that is what they did, the lies they told, the positions they took during the trial to determine whether in fact compensation is proper and to what extent. I'm not here because the family is angry. I'm here because they've been injured, too, and their rights have not been addressed in this situation and the bill does not address them adequately. Thank you. [LB260]

SENATOR ASHFORD: Thanks, Steve. Any questions of Steve? Thank you, sir. Any other opponents? Janice has been raising her hand. Are you neutral person? Okay. Wait. There's another...I'm sorry, another opponent. [LB260]

SHANE WILSON: Good afternoon. My name is Shane Wilson. I am the grandson of Helen Wilson. There's been many people that come up and tell you that we can't use or we don't want to bring our personal feelings and that's hard, but I'm going to do my best and not do that. The problem that we have is trying to get rid of the idea that the Beatrice Six had something to do with this because of the testimony that was given. Well, let's just assume for one second that they didn't have anything to do with this. Let's assume that for one second. Where in the pardon hearings and all of those things has it proven that they had nothing to do with it? Corey O'Brien said beyond any doubt, which surprised the family tremendously after having personal conversations with him when he said the DNA only proves that they didn't rape her. It did not prove that they weren't there. That's where we struggle with this bill because the bill encompasses the pardoning. And what a pardon does...I don't have to probably tell you what a pardon does, but a pardon says that you are forgiven from this day forward. It does not, however, say that you didn't do what you were committed...what you were convicted for. The reality is the Beatrice Six, I would love to know whether they were there or not. Obviously, we would all want to...you know, would love to know that. But we don't because of the testimony, the perjury that was committed, we don't know the facts. The fact of the matter is, it is possible that those six were there because nobody has proven to us that they weren't there. Nothing in the court system has proven that they weren't there. All it proved is that they didn't rape my grandma. That's all it proved, because DNA proves that. But it does not prove that they weren't there watching, that they weren't a part of it, they didn't do anything to stop it, they didn't do the things that I guess I'd like to think I would do and anybody in this room would do, would try to stop

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such a horrific act. So, again, I just say that the fact of the matter is nothing has been proven that they didn't have anything to do with this crime. And we are...this bill will compensate them for that before they have to prove their innocence. I think this bill is a great...we support the bill, we really do in the sense that if you are truly wrongly convicted, I believe you deserve compensation. I don't want to lose that time with my kids, with my mom, my dad, my family. I love my family to death. You can probably see that because we're all here to support this. However, the bill has got a loophole where you could possibly have been involved in this crime and stand to earn \$50,000 a year, plus all of those things that we talked about. And so I strongly encourage you to consider that. It's a possibility that that could happen with this Beatrice Six. God Bless you. Thanks. [LB260]

SENATOR ASHFORD: Thank you, Shane. There may be questions, so just...seeing none, thank you for coming and thank your family for coming. Any more opponents? I don't believe so. Janice, do you wish to comment? [LB260]

JANICE WALKER: Senator Ashford and members of the committee, my name is Janice Walker, W-a-l-k-e-r. I'm the Nebraska State Court Administrator. I am testifying in a neutral position simply to ask some questions about some of the mechanics of how this process would work if the bill is passed into law. And I'd like to ask a question. Beginning on page 7, the last paragraph of the bill on page 7, it talks about the claimant acknowledging in writing that they've received a copy of this act on a form established by the Supreme Court. And then the next paragraph says, the Supreme Court shall enter the acknowledgement on the docket and the acknowledgment shall be admissible in any proceeding filed by a claimant under the act. I'm not sure what that means. I'm not sure how the Supreme Court would become involved in this process. This may...perhaps this should be the district court, not certain. Just something that I would like clarified. And then my last comment would be that the paragraph (6) on page 8 gives certain duties to my office to make reasonable efforts to locate everyone prior to the effective date of this act. And you will determine whether that's an appropriate function for our office, but I do know that we don't have anyone currently who would have the ability to do that. We have put a fiscal note on the bill to say we would need to hire a person to do that. [LB260]

SENATOR ASHFORD: To hire a person to do what now? [LB260]

JANICE WALKER: Well, it says, "The State Court Administrator shall make reasonable attempts to notify all persons pardoned prior to the effective date of this act or granted judicial relief, consistent with the criteria set forth in section 3..." [LB260]

SENATOR ASHFORD: Oh, to go back into the records, you're talking about. [LB260]

JANICE WALKER: Yes, to go back and try to locate people, so. [LB260]

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SENATOR ASHFORD: Okay. That's fair. Okay. Thanks, Janice. Any questions of Janice? Thank you. [LB260]

JANICE WALKER: You're very welcome. [LB260]

SENATOR ASHFORD: Good point. Senator Rogert. [LB260]

SENATOR ROBERT: Members of the committee, thanks for your close attention today. I particularly want to thank the families of Thomas Winslow and Helen Wilson and for Mr. White for coming down today. I will make an effort to summarize the information that you have received today. There's a pretty good pile of it, but I would like to reference everybody to a couple of things: the yellow packets, there's some good information in there; and the comments from Rebecca Brown, Rebecca Murray, Jeanne Burke are all well-researched, well thought out, and definitely will make you think whether we should do this, how we should do it, what we should do. And I have no problem making some concessions with the media groups and with Janice to try and clarify some language. But I think it's one of those things that we wish we didn't have to do, but we're going to have to address the issue somewhere along the line again. It may be six weeks from now, it may be six years from now, but it'll happen again. So as we move through the thought process, if you have any questions, please make sure you call my office and I'll direct you to the right direction, but thanks for your attention today. [LB260]

SENATOR ASHFORD: Kent, could we get a breakdown on the 232 exonerations? I'm sure those are somewhere easily accessible, but just to see what the nature of those crimes...I'm sure someone readily has it. I'd be interested in...they have it, the two ladies there have it, so. [LB260]

SENATOR ROBERT: Yep, they've got it back there. Real easy. [LB260]

SENATOR ASHFORD: (See also Exhibits 19 and 20) Okay. Thanks, Kent, and thank you all for coming. I know this is very difficult, but it's meaningful that you're here. Thank you. The next bill, last bill, LB307, Senator Council. Thank you, everyone, for coming. Senator Schmit is here. There you are. How are you? Father Peter is here, I see him back there. (Laugh) You're hard not to recognize, Father. All right. Senator Council is here to introduce LB307. Go ahead. [LB260 LB307]

SENATOR COUNCIL: Thank you, Senator Ashford, members of the Judiciary Committee. I appear before you this afternoon as the sponsor of LB307. As you all know, this is not the first time a bill of this nature has been presented to this body for its consideration. As with previous such bills, the purpose of LB307 is to remove life imprisonment without parole as a sentence for juveniles convicted of a Class I felony. In lieu of life imprisonment without parole, LB307 provides for a sentence of 50 years to

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life if the juvenile was at least 16 years of age but under 18 years of age at the time of the commission of the crime. If the juvenile was under 16 years of age at the time of the commission of the crime, LB307 provides for a sentence of 40 years to life. The practical effect of this legislation is that a juvenile under the age of 16 would serve 20 years before he or she is eligible for parole, and a juvenile between age 16 and 18 will serve 25 years before he or she is eligible for parole. Many have asked why this legislation is necessary. Well, there are a variety of reasons. However, I will limit my discussion in introducing the bill to what I believe to be the primary and compelling reason for this legislation. That reason is the volume of medical research that establishes that the human brain continues to grow and develop through adolescence. In fact, the areas of the adolescent brain that govern impulse control regulating emotions, risk assessment, and moral reasoning is still developing as late as age 20. It is the recognition of this fact that led to the establishment of a separate Juvenile Justice System, a system designed to take into account the lessened culpability of juvenile offenders and to consider their well-being. The fact that juveniles possess a diminished culpability led the U.S. Supreme Court to rule, in 2005, that juveniles could not be subject to the death penalty. The court in that ruling noted, among other things, that a lack of maturity and an underdeveloped sense of responsibility are found in youth more so than in adults and is more understandable among the young. Indeed, the very laws that prohibit the consumption of alcohol and the purchase of cigarettes by juveniles are premised on this very lack of maturity and judgment. Anticipating the arguments in opposition to LB307 it is to be noted that LB307 does not ignore the fact that some juveniles commit horrible crimes, subjecting the families of the victims to enormous grief, and therefore these juveniles should be punished for their actions. This bill contemplates such punishment, nor does the bill ignore the fact that there are some juvenile offenders that may never be able to develop into reasoning, functioning, contributing members of society outside of the prison setting. And that's because this bill does not guarantee parole, it just makes parole eligibility an opportunity. Of greater significance, however, is the fact that LB307 does not ignore the fact that juveniles are uniquely capable of rehabilitating themselves, of maturing and developing judgment. They are not incapable of redemption. And allow me to quickly illustrate this point by telling you the story of an African-American boy who had a tremendous learning difficulty as a child. He had such difficulty that he was labeled "dumb" and in fact even referred to himself as dumb. As a preteen his learning difficulties were compounded by the fact that he was unable to control his temper. Indeed, one day his failure to control his temper led him to thrust a knife at the stomach of one of his friends. But for his friend's belt buckle, that uncontrolled act could have resulted in his incarceration for his natural life if he resided in a state that sentenced juveniles to life imprisonment without parole. What would have been lost had that act been committed and had the sentence of life without possibility of parole been imposed? Well, let me tell you the rest of this young man's story. He matured both educationally and emotionally. He became an internationally renowned neurosurgeon. This boy I speak of is Dr. Ben Carson. Some of you may have heard of him. He was the first person to successfully separate Siamese

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twins joined at the head, a young man that many people wrote off as a juvenile, as someone who would never accomplish anything, could never learn, could never control his anger. But Dr. Carson's life, I believe, exemplifies the very redemption that juvenile offenders are being deprived of realizing under the current state of the law. And in fact, society is being deprived of the benefit of that redemption when we technically sentence them to death by incarceration. I would hope that this committee would embrace hope, would embrace redemption, would embrace opportunity and advance LB307 to the floor. There are numerous individuals here who have been involved with this subject far longer than I have. And any questions that I am unable to answer I'm sure they will answer for you. During closing, I would like to read into the record a letter I just received late last evening from the NAACP Legal Defense Fund. And with that, Mr. Chairman, I will close my opening. [LB307]

SENATOR ASHFORD: Well, that was a very good opening, Senator Council, to be quite frank, and may have been one of the best openings I've ever heard. Do we have any questions for Senator Council. Senator Lathrop. [LB307]

SENATOR LATHROP: I do, just one. Is this similar to what Senator Pedersen offered a year or two ago? [LB307]

SENATOR COUNCIL: Yes. [LB307]

SENATOR LATHROP: Same thing? [LB307]

SENATOR COUNCIL: Yes. It's to substitute the definitive sentences 40 years to life if you're under age 16, 50 years to life if you're between 16 and 18 at the time you commit the crime. [LB307]

SENATOR LATHROP: And that's what Senator Pedersen was doing before too. [LB307]

SENATOR COUNCIL: Yes, yes. [LB307]

SENATOR LATHROP: Okay, good, thank you. [LB307]

SENATOR ASHFORD: Thank you, Senator Council. Let me ask everyone, I have a list from Mel Beckman, and I know Mel is here, of people that want to testify. Is that...could you raise your hands, those who want...I know...okay. So that we've got an idea. I have a list. I'll go through the list, and then if anybody else wants to testify, obviously, they can. Senator, go ahead. [LB307]

LORAN SCHMIT: (Exhibit 8) Good afternoon, Senator Ashford, members of the Judiciary Committee. You gave me an inferiority complex, Senator, when you say that

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Senator Council gave the best opening you had ever heard. (Laughter) [LB307]

SENATOR ASHFORD: I said one. Of course, yours were always equal to that, but...(laugh) [LB307]

LORAN SCHMIT: Only (inaudible) Senator Chambers testified before this committee many times. [LB307]

SENATOR ASHFORD: Well, he did, and he had some also very good ones. But I...(laugh)...but... [LB307]

LORAN SCHMIT: Senator, I didn't want to say you were skating on thin water. (Laugh) [LB307]

SENATOR ASHFORD: Yes, I often do that, so thank you for saying that. [LB307]

LORAN SCHMIT: Anyway, my name is Loran Schmit and I'm appearing here today in support of LB307. Apologize to Senator Lathrop, Senator McGill and yourself, you've heard my testimony before and you've heard the story of Joe McDonald before. My concern is that as has so often happened, we are not always in position to make our case to the person who ought to hear it. But I do appreciate the opportunity to speak. LB307 recognizes that those individuals who are under 18 years of age or under 16 years of age do not have the mature judgment of older persons. Each of us can recall action during our youth that we would not have performed at a mature age. Fortunately, most of that youthful activity did not have tragic results. On those occasions when such action on the part of a person younger than 18 years of age resulted in the loss of life and a murder conviction, I believe that the young person committing that murder should not be treated as an incorrigible or a habitual criminal and be sentenced to life without parole. I would like to cite the case of Joe McDonald whose Aunt and Uncle live across the street from me in Bellwood, Nebraska. Joe's parents were divorced, and at the age of 16 he was living with his father in Omaha. After a night of drinking beer and using drugs, not an unusual activity for many young people, events took a tragic turn. Joe and an accomplice robbed an individual and placed him in his car trunk. Joe's story is that they then tried to unsuccessfully find the car keys to release the victim from the trunk but were unable to do so. They then tried to find some tool with which to open the trunk, but before they could do so the car was engulfed in flames and the victim died. Joe was charged with first-degree murder while his accomplice, a young man named Johnson, was allowed to make a deal if he would turn state evidence. Mr. Johnson wound up spending six months in a juvenile detention facility and was released. Joe was found guilty of felony murder and sentenced to life imprisonment without parole. I believe a major difference in the sentencing was that Joe McDonald was represented by a court-appointed attorney, while Mr. Johnson's parents were able to hire their own attorney. Obviously, Mr. Johnson's attorney, in the words that we have heard before in

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this committee, beat Joe's attorney to the courthouse. The disparity in the sentence imposed upon different individuals for similar, identical, or even the same crime is a serious blot upon our system of justice. And equal injustice occurs too frequently and the disparity...is the disparity in prosecution for crimes of equal severity. Prosecutors have broad discretion when deciding their course of action to follow in their decision to obtain justice for the victim, protection for the public, and the proper and fair penalty for the perpetrators of crime. I have much confidence in our law enforcement officers, the attorneys for both the prosecution and defense and in particular for members of the judicial system. They will in most cases perform their responsibilities within the parameters laid down by the Legislature. That is why legislators must use their best judgment in the enactment of the statutes and where inequality, injustice, or unfairness occurs the Legislature must make corrections. We recognize that... [LB307]

SENATOR ASHFORD: Loran, I'll just ask you to sum up, if you would. [LB307]

LORAN SCHMIT: Glad to do that. [LB307]

SENATOR ASHFORD: With some trepidation I suggest that to you. (Laugh) But if you would. [LB307]

LORAN SCHMIT: No problem. I just want to close by saying that some years ago I corresponded with Judge Buckley, who presided over the trial, to find out if he would object if Joe's sentence were to be commuted to a definite period of time. As I recall the correspondence, Judge Buckley said he had no objection and commented that he thought the sentence had probably been already commuted. Joe has been a good prisoner. He has stayed out of trouble. And other persons who have committed similar crimes have served much less time. I hope the committee will consider this bill and advance it to General File. [LB307]

SENATOR ASHFORD: Thank you, Loran. Any questions of Loran? Thank you, sir. [LB307]

LORAN SCHMIT: Thank you, sir. [LB307]

SENATOR ASHFORD: It's never an old story...a story that's never...that's not...it's worth repeating every time. Thank you. [LB307]

LORAN SCHMIT: Thank you. [LB307]

SENATOR ASHFORD: Next proponent. I think...where's my list. Tiffany is here, so Tiffany is coming up. [LB307]

TIFFANY SEIBERT: (Exhibit 9) Chairman Ashford, members of the committee, my

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name is Tiffany Seibert, T-i-f-f-a-n-y S-e-i-b-e-r-t. I am policy coordinator with Voices for Children in Nebraska. And I'll try to be brief because of the two effective statements that have been provided before me. But our role here today was to really talk about what we know from scientific research about adolescent brain development and juvenile justice. Because we know that juveniles have an underdeveloped sense of responsibility and accountability because they are less able to understand the long-term consequences of their actions and suffer from emotional immaturity and impulsivity, we believe that in some cases crimes committed by these youth are not necessarily reflections of morally and irreparably depraved character. For that reason Voices for Children believes that the possibility of parole is appropriate. And to be very clear, the possibility of parole for these youth would not arise until these youth have spent more years in prison than outside of its walls in many of these cases. Our support for LB307 is not an attempt to diminish the severity of the crimes committed by some of these youth nor to dismiss the grief felt by the victims' families. We recognize that some youth may never be able to develop so that they are not a threat to public safety and must remain in prison. However, we support LB307 because, while it still allows for life sentences for youth, it also allows for the possibility for hope through reform and for the ability for these juveniles to become productive citizens. I urge you to advance LB307. And I'd be happy to answer any questions. [LB307]

SENATOR ASHFORD: Thanks, Tiffany. Any questions of Tiffany? Thank you. [LB307]

TIFFANY SEIBERT: Thank you. [LB307]

SENATOR ASHFORD: Father Peter, do you want to come up? I know you were on...you were a possible on the list. But I know you're clearly here, so...oh my goodness. You have many papers there, though. (Laugh) [LB307]

VAL PETER: No, no. I'm not going to do all of these. The green sheet. Thank you. Thank you, everybody. Mr. Chairman and everybody, my name is Val Peter. And I'm just going to be very, very brief. My job is to deal with a lot of troubled children and has been for 30 years. And I am in correspondence with all 24 of the people who are currently in our penal system without possibility of parole for crimes they committed as juveniles. And I'll just tell you two stories, and then I'll stop. Here's some more letters from them. When I asked them, which one of you in all honesty thinks that you might be deserving of parole, one of them wrote back and said, not yet, Father. (Laughter) Now that's pretty good, I think, don't you? And I know all the scientific evidence. I know everything else. But I also know, and I'm sure all of you senators do that the Board of Pardons doesn't pardon. I think you all know that. So what we have to do is we are hoping, and I'm not basing this on an appeal. A lot of people are basing it on appeal to justice. And I actually base it on appeal to compassion. Are there going to be some cases? Maybe they're very rare where you would really say, hey, I think this person, they've paid their debt to society, I really and truly think that they ought to have a

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chance for parole. My last story is it's out of Nebraska, it's in Iowa. Tracey Dyess, she was sexually abused by a whole bunch of people, the last one for four years, until she was 17 years old. She burnt down the house to get rid of him. Her trial was before his so they could not prove that he was the sexual abuser and she's going to jail forever and ever. And all I'm asking is, folks, would you give a possibility of compassion to somebody who just might possibly be needing it. There's a little P.S. Because if you did that, every one of these people, these are all the letters I got, every one of these people, almost all would do better in prison because they had some hope. Thank you, Mr. Chairman. Thank you, Brenda. Thank you, everybody. [LB307]

SENATOR ASHFORD: Father, let me just say this. I'm not sure the state of Nebraska can ever thank you enough for your life and your work. [LB307]

VAL PETER: Thank you very much. [LB307]

SENATOR COUNCIL: Thank you, Father. [LB307]

SENATOR LATHROP: Thanks, Father. [LB307]

SENATOR ASHFORD: Let me see here. This is...who's next? I have a list here. Someone come up. Mark, Mark is next. [LB307]

MARK RATHJEN: (Exhibit 10) Chairman Ashford and members of the Judiciary Committee, my name is Mark Rathjen, R-a-t-h-j-e-n. Thank you for allowing me the opportunity to voice my support for LB307. Unfortunately, violent crimes committed by juveniles is on the rise in our society and they deserve to answer for their crimes. But you take a child and condemn them to die in prison with no hope of being able to redeem themselves is inherently wrong. We parole or pardon people every day who have made similar mistakes as adults and don't even have the excuse of immaturity or youth as a factor. We give them a second chance. Why would we not give a person who made a terrible decision as a child the same opportunity to appear before the Parole Board and be judged on who they have become. In Nebraska alone there are already 24 such people serving a sentence under our present laws. And if we don't change these laws there will surely be more. Is it not the role of our penal system to not only punish but to try to rehabilitate offenders and give them a chance for redemption and to prove to society that they can become responsible citizens. If you take a teenager and sentence them to no hope other than to live and die in prison, what incentive as a society have we given them to even try to make themselves better? Yet they do. They grow up, they become adults. And they deserve the chance to not only be judged on what they have done but who they are now. I would like to read you a letter written by one of those 24 who is currently incarcerated under our laws. Hello, my name is Justeen Williams. I am a 32-year-old inmate serving life without parole at the Nebraska Correctional Center for Women. I was charged, tried, and convicted of murder when I

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was 17 years of age and am one of the 24 juvenile offenders in our state who has been given no hope of a future as a result of a terrible mistake I made as a child. The mistake I made haunts me every day. And my only hope is that somehow someone will find it in their hearts to give me and those like me a second chance. I made a horrific mistake because of circumstances I could neither control or understand at the time. And now find myself here with my whole life ahead of me but no opportunity to prove myself of what I can do or who I have become. I would like a chance outside these prison gates to show to society that I am not the same person I was as a child 15 years ago. As much as I would like, I cannot change the past, but I would like the opportunity for other troubled teens to learn from my mistakes. This is my dream. I am aware that "I am sorry" will not undo my mistake, but remorse has motivated me to give back to society by doing all I can to save someone who is troubled and headed down the wrong path. I have taken cognitive thinking, psychology 101, and other college classes since getting my GED in 1994. I am a member of the panel here at NCCW who speaks to two groups trying to help those who are lost or in need. I have a lot to give back if given the chance to share my story and my experiences from time served, and I know I can make a difference in others' lives because I can relate to their issues and problems. Unfortunately, there is only so much I can do from within here. I will not lose my hope and have faith that I will not be lost in the prison system and left to die here. I know the Lord has better plans for me. I was recently married in July 2008. And I hope and pray to be home with him and the rest of my family someday. This letter is from someone they say that there is no hope for, someone they say because of the mistakes you made as a child she is not deserving to even be heard, much less considered by the Parole Board. I have known her for six years. I accept her. I love her and respect her for who she is, and I'm proud to say that I am her husband. You'll never know her as I do or see the wonderful woman she has become because she has been denied the chance to prove herself. She's not 17 anymore and definitely not the same person she was then. We're not asking for a free pass or a pardon, only the chance for her and others like her to be heard and evaluated and to make sure that no one else is ever sentenced under such a law again. Please don't write off a child as someone who cannot change. They can and they do. And it is up to us to make sure they get the opportunity at some point to be judged on what they have learned and become. Thank you. [LB307]

SENATOR ASHFORD: Thanks, Mark. Thank you very much for sharing that with us. Yes, Senator Council has a question for you. [LB307]

SENATOR COUNCIL: Yes. Mark, a question in the form of a comment. I appreciate your appearing today. And if you could convey to Justeen that I have received her correspondence. And if you have occasion to...and I know Mel will, conversation with the other 24, I guess, I just want the record to reflect that I've received correspondence from nearly all of the 24. And didn't know whether it was appropriate to...I mean, they were written to me, personally. Didn't know whether they were appropriate to submit to the committee. But I'm offering to the committee, any of you who would like to read any

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of those. [LB307]

SENATOR ASHFORD: Well, it's certainly appropriate. And we will receive them. [LB307]

SENATOR COUNCIL: Thank you. [LB307]

MARK RATHJEN: All right, thank you. [LB307]

SENATOR ASHFORD: Thank you, Mark. Let's see, Gabriella is next on the list. So come on up. Good afternoon. [LB307]

GABRIELLA CULLIVER: (Exhibit 11) Good afternoon. Thank you, Mr. Chairman and members of the Judiciary Committee. I am here in support of LB307 as it is very personal to me. My brother, Luigi Grayer, has been incarcerated for 38 years in the Nebraska penal system. While growing up in north Omaha during the late 1960s and early '70s, there was so much going on in society. Drugs were being sold on street corners and out of buildings. Riots had taken place and much racial tension had built up from all sorts of events. Luigi started associating with older boys and began using drugs at the age of 14. Our parents tried to get help for him, for his drug problem, to no avail. February 2, 1971, and at the age of 15, Luigi was sentenced to life without the possibility of parole and sent to the Nebraska State Penitentiary. I was 14 years old at that time and I thought it was cruel that he was locked up in prison with grown men and not put in a facility where he could receive treatment for his drug problem. Teens under the age of 18 are not fully developed mentally, physically, or emotionally and to have a drug problem on top of that is much worse. He also had to learn to protect himself from the grown men in prison. While at the Nebraska State Reformatory, he quickly turned his life around by earning his GED, attending drug classes, and getting a certification in maintenance. Luigi played sports all of his young life up to adulthood and received many trophies that were sent home to our parents. I have seen Luigi grow up in prison. He is not the same person he was then. He is remorseful for the lifestyle he led at that time. He often mentors other inmates and encourages them to follow prison rules. And he encourages my children and our many nieces and nephews to live decent lives. Now, at the age of 53, he is no longer a threat to society but has become a financial burden. Many of his conversations these days are about his physical ailments and what he would like to do if he is ever released. Being incarcerated for so many years has been a lifetime for him, and he has missed out on the joys of being a youth in life. Through incarceration, he has missed births, baptisms, graduations, weddings, funerals, having a birthday party, the right to vote, and the ability to marry and have children, not to mention the simple pleasures of life. And in spite of that, he has learned to be a kind and caring man. When a child commits a terrible crime they should given appropriate punishment for their age. By the passage of this bill I hope that no more children have to go through what my brother has had to endure. Thank you and thank you, Senator

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Council, for reintroducing this bill. [LB307]

SENATOR ASHFORD: Thank you, Gabriella, for sharing that with us. Do we have any questions of Gabriella? Senator Council. [LB307]

SENATOR COUNCIL: I would just ask that, for the recorded record, Gabriella state and spell her last name. [LB307]

SENATOR ASHFORD: Yes, yes. [LB307]

GABRIELLA CULLIVER: I'm sorry. I'm nervous. Gabriella Culliver, and my last name is spelled C-u-l-l-i-v-e-r. [LB307]

SENATOR ASHFORD: Thanks, Gabriella. [LB307]

GABRIELLA CULLIVER: Thank you. [LB307]

SENATOR ASHFORD: Grace is next on the list. [LB307]

GRACE MANTICH: (Exhibit 12) Thank you to the Judiciary Committee. My name is Grace Mantich and I'm the mother of Douglas Mantich who is now serving a life without parole sentence in Nebraska. He was a 16-year-old boy when he was arrested for aiding and abetting four other men who were age 18 and older at the time of their arrest. He did not commit the murder himself. And he has been in prison now for 15 years. Doug knows that he was guilty for this aiding and abetting charge and is greatly remorseful for this action that he did as a 16-year-old. And he feels that he does not deserve a life without parole sentence, and I agree with him. And I ask that LB307 be approved by the Judiciary Committee. Doug has written a statement for the committee and I ask that it be entered into the record of this hearing. [LB307]

SENATOR ASHFORD: And it shall be... [LB307]

GRACE MANTICH: Thank you. [LB307]

SENATOR ASHFORD: ...part of the record. Thank you. Any questions of Grace? [LB307]

SENATOR COUNCIL: Grace, good seeing you. [LB307]

SENATOR ASHFORD: Thank you, Grace. Mona is next on the list. So... [LB307]

MONA SCHLAUTMAN: My name is Mona Schlautman, S-c-h-l-a-u-t-m-a-n. I lost my 15-year-old son, Jeremy Drake, to a homicide in 1992. I can say there's nothing worse,

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but even at the time I was glad I wasn't the mother of one of the boys that killed him. They were both arrested and convicted and I was glad of that. They certainly deserved very serious punishment. Over the years I have forgiven them and kept up a relationship with the younger, who was 17 at the time. Nothing will bring my son back, but forgiveness feels a lot better than bitterness or revenge. I have to say, Senator Council, that Think Big was one of my favorite books, I made my kids read it years ago. And one of them did a book report on it. And it's a very inspirational story. When there is no hope for a young person to even be paroled there is also little motivation for good behavior. I know that from being an educator. I taught high school and junior high and I raised four children. I agree with those who have spoken before me that a young person committing a serious crime should have the opportunity to rehabilitate and become a contributing member of society. And as Father Peter said, we need to be a people of compassion. And I do support LB307. [LB307]

SENATOR ASHFORD: Thank you. That's thoughtful. Do we have any questions? Thank you. Actually, Jim, I went by you. I'm sorry. Jim Cunningham. And then Peggy Adair, who may or may not be here, and Amy Miller. So I know Amy is here. Jim. [LB307]

JIM CUNNINGHAM: (Exhibit 13) Actually, I'm starting to get a little bit concerned about these lists that are flying around. [LB307]

SENATOR ASHFORD: Well, if I went down the list from the beginning to the end, the way I'm supposed to, I would be concerned if I were you. [LB307]

JIM CUNNINGHAM: I've got to make sure from now on I figure out the list and get included. Senator Ashford, members of the committee, good afternoon. My name is Jim Cunningham, C-u-n-n-i-n-g-h-a-m. I'm the executive director and registered lobbyist for the Nebraska Catholic Bishop's Conference and I'm here to testify on behalf of the conference in support of LB307. From the conference's perspective, reflective of Catholic teaching, there is no question that responsibility, accountability, and legitimate punishment are fundamental to the demands of justice and to a just society. Those who harm others or damage property must be held accountable for the hurt that they have caused. Therefore, in no way does our conference's support of LB307 have any intent or purpose of minimizing the seriousness of crimes or the concern and compassion unquestionably due to victims and their families. At the same time, Catholic Conference support for LB307 stems from the view that current Nebraska policy on life imprisonment without parole for juveniles should be reformed. Because in those instances in which this sentence applies it eliminates opportunity, not just opportunity for parole review but much more significantly all meaningful opportunity for redemption, rehabilitation, reform, and reintegration for those who lacked adult development, rationality and judgment when they committed crimes that led them to be punished as adults, and for whom, by virtue of their youth and immaturity, have an extraordinary

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capacity for change. From our perspective, LB307 does not cast aside or offend the balance between the necessity of responsibility, accountability and corrective punishment on one side, and efforts for healing, forgiveness, redemption, and rehabilitation on the other side. Rather, LB307 upholds and enhances that balance. Obviously, the possibility of parole following an extensive length of years is not a guarantee of parole. We think the clear context addressed by this bill justifies giving the Parole Board the opportunity to weigh all factors, including the adult individual presented before them, in order to make a just determination. Again, those who commit terrible crimes must be held accountable for them, but in a manner that reflects their particular capacity for redemption and reform. We urge the committee to advance LB307. Thank you. [LB307]

SENATOR ASHFORD: Thank you, Jim. Any questions of Jim? Seeing none, thank you. [LB307]

SENATOR LATHROP: Sorry, but (inaudible), wish we could have got you up, we just ran out of time. [LB307]

JIM CUNNINGHAM: I know, I know. Thank you. [LB307]

SENATOR ASHFORD: Senator Rogert, did you have a question? Okay, thanks, Jim. [LB307]

SENATOR LATHROP: Thanks, Jim. [LB307]

SENATOR ASHFORD: Let me see, is Peggy here? She was not...maybe was possibly coming. Amy Miller is next. How many other testifiers do we have? Are you proponents or opponents? How many opponents do we have? All proponents? How many opponents do we have? Okay. Amy. [LB307]

AMY MILLER: (Exhibit 14) Good afternoon, committee. My name is Amy Miller, it's M-i-l-l-e-r, and I'm legal director for ACLU Nebraska. I bring you two items. One is a glossy, well-prepared document from Equal Justice Initiative about the sentencing of children to die in prison. We call it life without parole, but it is...a life sentence means they will die in prison. I also bring you a much less glossy, much less attractive document but specifically about Nebraska. This is a national and international perspective. The one called "No Second Chance" was submitted to this committee last year with Senator Pedersen's bill. The figures have not changed in Nebraska, so I won't go over the statistics again. You will find, on page 3, the other states and the other countries that have abolished juvenile life without parole. I'd like to point out that as a lawyer it makes good sense for the Legislature to go ahead and pass LB307 because we treat children differently in all other areas of the law. We don't allow them to enter into contracts, they can't serve on juries, they can't legally drink alcohol, we don't allow

them to be drafted, all of which is because of the brain development issues that were discussed by our scientific evidence presented earlier. You've heard some of the stories. I want to point you to page 4, which is a short profile of Darren McCracken, who is the youngest lifer that we have in Nebraska. He was only 13 years old when he committed his crime. Darren has taken full responsibility for his crime. And in fact, when I sent him a copy of the report to get his permission to use his story, he said he thought I had been too sympathetic to his circumstances. But he was a child who was abused sexually, emotionally, and physically by his family. And when he snapped he shot his mother to death while she was sleeping. There is no excuse for that sort of crime, but Darren very well may be the sort of person the Parole Board would be willing to take a look at. And that is all that LB307 offers. I think it is very poignant that when he was convicted of his crime he was not old enough to go to a scary movie by himself. That is how different the law treats juveniles. Finally, the ACLU has a strong concern about the impact of having life without parole because of its disproportionate impact on children of color. If you turn to page 7, we have a graph that demonstrates in three different sections how people of color are treated by this bill. The first bar there shows the state population overall, that we only have a population of minorities of about 12.7 percent. And yet in prison, in general population, about 44 percent of people of color in prison. It is true that people of color are over represented, in general, in prison. But with juvenile life sentences over half of those children who are being sentenced to die behind bars are nonwhite children. We think that it is important to reform the system at this point in order to make sure that the disproportionate impact stops affecting our youth of color. [LB307]

SENATOR ASHFORD: Thank you, Amy. Any questions of Amy? Thank you. [LB307]

AMY MILLER: Thank you. [LB307]

COLEEN NIELSEN: Chairman Ashford, members of the Judiciary Committee, my name is Coleen Nielsen, C-o-l-e-e-n N-i-e-l-s-e-n, and I am the registered lobbyist for the Nebraska Criminal Defense Attorneys Association and I am here today to lend our support to LB307. And I'd be happy to answer any questions. [LB307]

SENATOR ASHFORD: Thanks, Coleen. Any questions of Coleen? Thank you. Seeing none, I believe...any other proponents? One more, I think, and then we'll go to the opponents. And I'd like to finish up around 4:30 or so, 20 of 5:00, see how it goes, because we want to have a little meeting of the committee after too. So go ahead. [LB307]

MARIAN KLOSTERMANN: Good afternoon, Senator Ashford and committee. I'm Sister Marian Klostermann and I have been volunteering, for 13 years, at the Omaha Correctional Center leading workshops, Alternatives to Violence Project. One of the 24 juveniles is now serving time for more than 20 years. He has done 17 workshops. He

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has led 14 of them. He has trained 33 young men to be facilitators. He is sought for counsel by many people. I just want to say that he has been rehabilitated and he is still with hope. And I know he has written to everyone of you. And so I want to testify that there is really rehabilitation. Thank you. [LB307]

SENATOR ASHFORD: Thank you, Sister. Any opponents? Opponents. Why don't we start with the opponents now and then are there any neutral testifiers? Okay. Good afternoon. [LB307]

SHARON HANKE: Good afternoon. My name is Sharon Hanke, H-a-n-k-e, and I am here again to beg you, as a victim, to not allow LB307 to pass. My sister, Sasha, at age 12, was brutally murdered by Sydney Thieszen, who was white, by the way, in 1987. It's been over 20 years, but to me it might as well have been yesterday. A violent crime like murder is not something you ever get over. It changes who you are, it changes everything forever, the way you live your life, the way you think, the way you go about your day-to-day life. Sydney might have been 14 when he brutally murdered my sister, but he did know what he was doing. He had been planning this for months according to the testimony of several classmates and friends of Sydney. He knew right from wrong and he had many other options. He chose murder. This was not a spur of the moment decision he made. This was carefully planned and executed. He took the time to steal a gun from a locked bedroom out of a locked gun case and hunted her down like she was an animal. He has vowed to kill the rest of the family when he gets out. Is this something...is this someone you want out on the streets living next to your wife and children? This is the type of person that LB307 will make eligible for parole and to be released into society. These are not children you want to release, these are killers. When these people were convicted of murder they were not sentenced without regard to their age or innocence. When a judge imposes a sentence they must consider age, mentality, education, experience, past criminal history, and the amount of violence involved, and other factors. After the conviction and sentencing the defendant gets a whole new set of appeals that goes on for what seems like forever. These killers have their cases looked at over and over again by the courts and their own lawyers. These people have been deemed to be the most dangerous and the most likely to kill again. That is why they got the second most severe sentence that the law currently allows. Society has the right to be protected from these people. And I believe it is your responsibility to uphold this law and to protect the people you serve. By making these killers' sentences shorter I believe you are cheapening the lives of our murdered family members. Sydney is only 1 of the 24-some that this bill will affect. How do you think society is going to react to having 24 killers set free? I am honestly afraid that Sydney will hurt someone again if he is allowed out. These killers were given a life sentence without parole for a reason. I wish just for one day you could walk in my shoes and feel the pain of losing a loved one to murder and then having to relive everything over again when a bill like this comes up or having to attend parole hearings on a yearly basis. I have to relive the horror and the agony that will bring you to your knees as you realize

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you've lost your loved one to such a violent crime. Why do I as a victim of such a horrific crime have to keep fighting bills like this to keep my family safe and these murderers behind bars? I'm begging you to take your positions very seriously and defeat LB307. [LB307]

SENATOR ASHFORD: Thank you, Sharon. Any questions of Sharon? Thank you. Next opponent. [LB307]

ANDREW STOCK: (Exhibit 15) Good afternoon. My name is Andrew Stock. I'm here in opposition of LB307. My parents, Wayne and Sharmon Stock, are murder victims of Jessica Reid, which is one of the women in the Correctional Center for life. She was 17 at the time she committed the murders. She was sentenced to life by Judge Rehmeier of district court, and was upheld by the Supreme Court. I believe the big issue with this bill is whether or not juveniles can be reformed after serving a sentence. I would contest that in Jessica Reid's case she had multiple opportunities. This wasn't anything new for her to be in the system. She had multiple opportunities through the juvenile courts. In 2004 she was placed on juvenile probation, which she violated twice and was placed under arrest both times. She was then placed in an Intensive Juvenile Sanctions program. In less than a year she was...she violated that program six times and was arrested six times in, I believe, about nine months, progressively getting worse and worse with her crimes. She was released from that program in February of 2006. By April 17, 2006, she murdered both of my parents. In the Supreme Court's ruling, which is attached after my front letter there, they wrote about the findings of the investigation. Jessica Reid wrote, I killed someone, he was older; I loved it, I wish I could do it all the time. Also found was a shell casing kept from my parents' murder scene with a note to her accomplice saying, in this bullet, well, Bunny, it's the only thing left and I loved it, but that is something we'll talk about one day. The investigation also revealed that this was a thrill kill. They did it for the rush and no other purpose, just for a rush of adrenaline. In a letter to Senator Ashford in support of this bill from the Human Rights Watch, which is posted on the Web, they say, the fact that juveniles are still developing their identity and the ability to think and plan ahead means that even a heinous crime committed by a juvenile is not evidence of an irretrievable, depraved character. The sentence of life without parole was created for the worst criminal offenders who are deemed to have no possibility of reform. Whether the crimes they commit cause undeniable suffering, juvenile offenders are not the worst of the worst. I would ask of you, after you read through my letter and the Supreme Court rulings, does Jessica Reid not sound like she's not the worst of the worst? We need to keep these people behind bars. She had the opportunity to be reformed. She had numerous agencies and people offering her help, yet she only became more aggressive. This is why I ask you today to vote against LB307 and leave it up to the courts. Thank you. [LB307]

SENATOR ASHFORD: Thank you, Andrew. Any questions of Andrew? Thank you, sir. Next opponent. [LB307]

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KIRBY DRAKE: (Exhibit 16) My name is Kirby Drake. I'm reading this for my brother, Kirk Drake. He had to leave: I am the brother of Sharmon Stock and brother-in-law of Wayne Stock that were murdered. My name is Kirk Drake and I am a longtime resident of Nebraska, Cass County and Lancaster County. I am here today to speak in opposition of LB307 on behalf of many family and friends. We do recognize the needs and hopes of the youth that have entered the state's legal punishment system. We also recognize the needs and hopes of the victims of their crimes. And we all are good and productive, law-abiding residents of the state and need protection, where we can live in society and justice and apply it, just not talk about it, so that innocent, decent, common persons have the right and same vigor...and we seem to protect the rights of convicted criminals of these horrible crimes. This bill comes across because of their age and incarceration of a set time limit that rehabilitation is guaranteed of felons. Who among us with common sense and in good faith can possibly claim this? Are you willing to put innocent people's lives in danger because we thought we would, should be rehabilitated after a certain number of years? While this is true that no one can read the future, we can read the present and the past. If they have done it once, they are very capable of doing it again. This bill will give a criminal conviction a second chance of life of victims and their cruel senseless acts not received. I'm going to...and Andy had repeated what I have done there before, so I'm not going to repeat that again about the heinous crime. But I am in a position that we need to be protected. And these kids did have choices. I teach baseball. I've taught baseball my whole life to kids and everyone of them are good kids. They make the same decisions. These kids could have made the same decision. [LB307]

SENATOR ASHFORD: Thank you, Mr. Drake. Any questions of Mr. Drake? Thank you, sir. Good afternoon. [LB307]

ELAINE SCHUMAKER: My name is Elaine Schumaker, S-c-h-u-m-a-k-e-r, and I wasn't planning to testify. I'm a supporter of the families...the victims' families that are here today. But as I've been listening I'd like you to know that we need to be, I say we, government, I work in the government, I'm a public health educator. I think all day long about what message are we giving to the community; how can we affect behavior change? This LB307 and frankly the bill before, it rewards bad behavior. If I were a teenager I would look at this bill and say, guess what, I can go out and I can commit a crime, 20 years, I'll get parole, cool; I'll get free housing, I'll get free food; I'll be out of the bad situation I'm in at home; 20 years, possibility of parole. And as I was listening to this and the bill before it, if I don't leave any DNA evidence maybe I'll get \$50,000 a year. What I'm here to say is to just caution you, as I look at what I do all day long, and think about the message we're giving the community and the message we're giving young kids and what they can do and what they can't do. As a citizen I go 25 miles an hour in the speed limit, I pay my taxes, I have a clean record, I've never shoplifted. But if I was young enough I could go commit murder, then I could get parole, and then maybe

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I could even get paid for it. So as a health educator I just want to caution you to remember the message we're trying to get out into the community to these kids. [LB307]

SENATOR ASHFORD: Thanks for your comments. Any questions? Thank you. Any other opponents? Okay. Yes, ma'am. [LB307]

KIMBERLY PANKONIN: Senator Ashford, members of the Judiciary Committee, my name is Kimberly Pankonin, P-a-n-k-o-n-i-n. I'm a deputy county attorney for Douglas County and I'm here on behalf of the Nebraska County Attorneys Association. We are opposing LB307. We are opposing this bill for two reasons: first of all, as there are laws in place already currently that I think take into account the issues that have been brought here before with the lack of maturity of a juvenile, the age of the juvenile, and I think, as the statement of intent from Senator Council, the mental and physical conditions of youths under 18; and secondly, I think there would be an incidental effect of enacting this law. We have a serious gang problem in Omaha with youths that are affiliated with these gangs. And I think this would definitely promote younger members of the gangs to carry out the shootings of these gangs. I've been a prosecutor for over 15 years. And in that time, in the last few years, and I think everyone here would know, the violence with the youths is unbelievable in Omaha. In that time, in dealing with witnesses, in dealing with cases and other police officers, more and more at this time youths in gangs are the ones carrying the guns. It's pretty common on the street. So that if the police stop these individuals, the young ones will take the charge; the older ones would get indicted and take a bigger charge. I think if you enact this law then you're going to see that the younger members, instead of just keeping the guns, are going to be the ones that are going to use the guns and shoot on behalf of their gang. Secondly, in talking about the laws already in place, there's laws in place that already take care of this and they do not need to be changed. First of all, there's a level of consideration, first with the county attorney's office, secondly, with the district court judges, and third with the jury, you know, the people that you represent here. And first off, when a juvenile commits a crime, we take these factors into consideration at the county attorney's office and take that serious. We look at the age, the mental, physical condition, the seriousness of the crime, and make that determination whether to go adult or juvenile. Then if we do go adult, we also take that criteria again in determining what level of murder to charge--first, second, or manslaughter. Secondly, the law is in place under the juvenile transfer statutes that a district judge then would review that decision and make a decision again using the criteria that has been discussed here in this chamber, whether the age, mentality, maturity of the juvenile, past attempts at rehabilitation. And they make the decision at that time whether they're rehabilitative, they're in juvenile court, or if they're past that and they should go to adult court. So there's a second layer. And lastly, if a juvenile, and we're talking about first-degree murder here. And if they are, there will be a jury trial where a jury then would review that decision too. This summer I tried a case of a 14-year-old who killed a 6-year-old. We filed that in adult court. We had a motion to transfer where a psychiatrist's testimony,

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caseworker testimony was brought in for the judge to consider. And that case was kept in adult court. And then the jury also had those arguments that he could not have formed the intent because of the things that have been argued here today. And the jury of Douglas County found he was guilty of second-degree murder. So I implore you to defeat this bill, to not allow this bill to be taken. Murder is the ultimate crime here. And I think at the point that it's gotten to a level, it's passed all three levels, that at that time we have to protect society. We have to do that, making sure that he won't kill again. [LB307]

SENATOR ASHFORD: Thank you, Kimberly. Any questions of Kimberly? And certainly there's no question that Don's office and your office does an excellent job in what you do. But, Senator Council. [LB307]

SENATOR COUNCIL: Yes, thank you, Ms. Pankonin, for coming in. Are the factors that are considered by the county attorney's office weighted? [LB307]

KIMBERLY PANKONIN: Weighted? [LB307]

SENATOR COUNCIL: Yes, weighted? [LB307]

KIMBERLY PANKONIN: Certain weight to different factors? [LB307]

SENATOR COUNCIL: Yes. Yes. [LB307]

KIMBERLY PANKONIN: We take the totality. There might be something that's more compelling in a particular case. And that's what I think about these individuals. I think the scary part about this type of a bill is just putting it in a category because I think that you'd agree we've got, you know, 16-year-olds that are much more mature than possibly some 18- or 19-year-olds. And my fear is in this type of a bill, instead of going on a case-by-case basis as the law does right now, we can take all of those criteria on that particular juvenile and do it on a case-by-case basis. [LB307]

SENATOR COUNCIL: Okay. And where in the law is the criteria stated? [LB307]

KIMBERLY PANKONIN: In a transfer motion the criteria is specifically stated under 43-276. And there's a list of approximately eight factors that the judge has to consider. And then the last one is an open one, anything that the county attorney deems relevant. And those specifically do address age, maturity, attempts at rehabilitation, and things amenable to the juvenile. And there's also a provision that the case should be transferred to juvenile court unless the finding on these factors. So there's a presumption to transfer, unless there's compelling evidence otherwise. So there is a system in place to address those concerns. [LB307]

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SENATOR COUNCIL: Okay. And with regard to the bill as it currently exists, at least one of the documents that has been submitted suggests that attorneys have advised that the bill as written automatically means an individual who is sentenced as a 15-year-old gets out in 20 years. [LB307]

KIMBERLY PANKONIN: That's when they would be eligible for parole, correct. [LB307]

SENATOR COUNCIL: No. My question is, automatically gets out in 20 years, is that your understanding of the statute? [LB307]

KIMBERLY PANKONIN: The way I'm reading your bill here it says 40 to life. The way that I would take that, Senator, is that that's an indeterminate sentence, like what we would have. And then the Board of Pardons and Parole, would be eligible for parole after 20 years, but they would not have to until...they could keep them for life. [LB307]

SENATOR COUNCIL: Okay. [LB307]

KIMBERLY PANKONIN: That's how I read it. [LB307]

SENATOR COUNCIL: Okay. And so that...because that's one of the issues that needs to be addressed. Because there is this...and in fact I heard it on talk radio last night, not that that's any reliable source, but... [LB307]

SENATOR ASHFORD: It's not dispositive. [LB307]

SENATOR COUNCIL: Absolutely not dispositive. But there is this sense that because an individual is eligible for parole after serving one-half... [LB307]

KIMBERLY PANKONIN: Correct. [LB307]

SENATOR COUNCIL: ...of the lower end of the sentence,... [LB307]

KIMBERLY PANKONIN: Correct. [LB307]

SENATOR COUNCIL: ...that there is this belief that that means that they have to be released after serving one-half of their lower end of their sentence. [LB307]

KIMBERLY PANKONIN: No. If it was worded, Senator, if I may,... [LB307]

SENATOR COUNCIL: Uh-huh. [LB307]

KIMBERLY PANKONIN: ...if it was worded like for the Class I felonies, it would be 50 to 50, then they would be...that would be their minimum time... [LB307]

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SENATOR COUNCIL: Because 50 would be their max. [LB307]

KIMBERLY PANKONIN: Correct. [LB307]

SENATOR COUNCIL: But 50 to life is an indeterminate sentence. [LB307]

KIMBERLY PANKONIN: Correct. [LB307]

SENATOR COUNCIL: So after 50...after 25 years of the 50, they're eligible for parole, but there's no mandatory release associated with reaching that halfway mark. [LB307]

KIMBERLY PANKONIN: That is correct. [LB307]

SENATOR COUNCIL: Okay. And for example, with regard to the young man, unfortunately, that you prosecuted, lived in the neighborhood, the young woman who was the victim of that lived in my neighborhood. His grandmother had cried in my ears on a number of occasions about services for that young man. But in terms of parole determinations, are you familiar with the factor that the Parole Board considers as to whether or not an individual is eligible for reentry into society? [LB307]

KIMBERLY PANKONIN: No, I'm sorry, I'm not. [LB307]

SENATOR COUNCIL: Okay. Would you dispute that they take into consideration some of the same factors that were taken into consideration by the county attorney's office? [LB307]

KIMBERLY PANKONIN: I've never dealt with the Board of Pardons and Parole. I'm not sure what their criteria is. [LB307]

SENATOR COUNCIL: Okay. Thank you, Kim. [LB307]

KIMBERLY PANKONIN: Thank you. [LB307]

SENATOR ASHFORD: Thanks, Kimberly. Yes, Senator Lathrop. [LB307]

SENATOR LATHROP: I do have some questions, I think. You're talking about the considerations for a transfer. And you say, in effect, that they're already...those considerations are already taken and discretion applied by the county attorneys, then by the juvenile court, the district court judges, everyone considers where the juvenile should be charged. But ultimately you would agree with offenses as serious as we're talking about, the offense becomes the trump card. And we can have all the psychological and the age, and a person can be a straight A student. But if they commit

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a very serious offense we say they're not going to juvenile court on a very, very serious offense like murder because of the gravity of the offense. And that becomes the trump card. [LB307]

KIMBERLY PANKONIN: Senator, I know we had a case, and I think maybe you're familiar, and I know with Father Peter here, we had a 12-year-old that killed a member in his home, a foster child. And that case was considered by the county attorney's office, by Don Kleine. And in consideration of the facts in that case, we agreed to a transfer and worked with the defense attorney, Mr. Davis, with Father, and we did not keep that as an adult and that was a murder. [LB307]

SENATOR LATHROP: So on one occasion in a particular circumstance that involved a domestic homicide, the county attorney's office agreed to charge it in juvenile court. But as a practical matter, when you're talking about juveniles involved in murder, ultimately and historically the murders become the trump card, and all the other considerations about the juvenile are trumped by the seriousness of the offense. And I'm not critical about that, but just historically, we don't make a lot of transfers, make very, very, very few transfers to juvenile court for cases involving homicide or murder. True? [LB307]

KIMBERLY PANKONIN: That's correct. I mean, I would agree, Senator, because that's the ultimate crime. [LB307]

SENATOR LATHROP: Okay. So the idea that we have taken...sort of taken care of the problem presented by Senator Council's bill in the discretion exercised by the county attorney and the juvenile court and the district court is they try to sort out, given these standards, where it ought to be filed. The reality is and historically they end up in district court charged as an adult and then they go away to prison for their natural life. [LB307]

KIMBERLY PANKONIN: I would say from...it's definitely a huge criteria with the county attorney's office, the nature of the crime, seriousness, premeditated murder absolutely, with... [LB307]

SENATOR LATHROP: Kim, and I'm not critical of that. [LB307]

KIMBERLY PANKONIN: Right. [LB307]

SENATOR LATHROP: I'm just talking about historically. So as a practical matter, if it is a young person, a juvenile, and they commit murder, we say it's a murder. And to appreciate the gravity of the offense, we're going to charge them in district court as an adult. I don't have a problem with that, okay? [LB307]

KIMBERLY PANKONIN: Um-hum. [LB307]

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SENATOR LATHROP: And then they're sentenced like an adult, which can be a natural life sentence. My point is that as we talk about their maturity and whether or not they ought to be treated the same or whether...maybe they ought to be treated the same, but whether they shouldn't have an opportunity at some point, 40 years down the line, to stand in front of a Parole Board and convince them that they ought to have some opportunity at freedom, that's what we're looking at. [LB307]

KIMBERLY PANKONIN: Right. And I think that the third layer in this is, you know, of a jury. I think that you have to look at whether...why are they getting different treatment than somebody else that gives...commits first-degree murder. And I know that the argument is on their mental capacity. Well, you have a jury also that comes in. There's a third layer. [LB307]

SENATOR LATHROP: Yeah, I understand your argument. But you and I can agree that a jury, making a jury question out of their mental capacity means that they can't appreciate the difference between right and wrong or that they have diminished mental capacity other than by voluntary intoxication, right? So those are things where they can't form the requisite intent. And that's different than not having the good judgment to stop doing something before you do it. [LB307]

KIMBERLY PANKONIN: In the case I tried this summer, they brought up that. They brought up the same arguments of the development of a 14-year-old. So they went even beyond what you've said and made that an issue for the jury to determine whether this...the juvenile in this case, 14, 15... [LB307]

SENATOR LATHROP: And they ended up convicted. [LB307]

KIMBERLY PANKONIN: Yes. [LB307]

SENATOR LATHROP: And that's...that really...that makes that not a really helpful example because in the end when people talk about diminished capacity, it's not being able to appreciate right and wrong, and it's not a poor judgment that young people exercise versus somebody who's 25 or 30. [LB307]

KIMBERLY PANKONIN: I just think if they've gone through three layers, you know, three different types of consideration in times of this,... [LB307]

SENATOR LATHROP: Okay. [LB307]

KIMBERLY PANKONIN: ...at that time that those issues, then they deemed that they're an adult. [LB307]

SENATOR LATHROP: Okay. [LB307]

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KIMBERLY PANKONIN: And they should be treated as an adult. [LB307]

SENATOR LATHROP: Okay. I think I understand your testimony and I appreciate it. [LB307]

SENATOR ASHFORD: Thank you, Kimberly. [LB307]

KIMBERLY PANKONIN: Thanks, Senator. [LB307]

SENATOR ASHFORD: Thanks for your comments. That...I believe...is there neutral testimony out there? Okay. Senator Council, would you like to close? And then we're going to have an Exec Session for a brief time. [LB307]

SENATOR COUNCIL: (Exhibit 17) And, Senator Ashford, I will be brief. I want to state for the record I appreciate the testimony of both the opponents and the proponents. And I particularly want the opponents to understand and appreciate that this bill does not in any way intend to diminish the fact that young people have committed very serious crimes. But I did want to take the opportunity to address a couple of questions that were raised in the documentation. And I thank Mr. Stock and Mr. Drake for providing that information. And it led to one of the questions I asked Ms. Pankonin. In Kirk Drake's written comments he states, after talking with other senators and lawyers about LB307, although one could not tell it by reading it, if passed, Jessica Reid would walk out of jail in 20 years. That is simply not true. And that needs to be corrected. If this bill is passed and is passed with a provision that applies to Jessica Reid... [LB307]

SENATOR ASHFORD: And I might say. And let me just...and I made that to make that. But the Jessica Reid case is an extremely heinous case. And it may or may not differ from the others. But I think to some degree it was a very, very difficult case in and of itself, correct? I mean, this was a... [LB307]

SENATOR COUNCIL: Oh yeah. And...but...and it ties into Andrew Stock's testimony because...and I appreciate his writings here because I think it really captures what the bill is intended to do. Mr. Stock states, I have no doubt that there are some juveniles in our state system that can be rehabilitated and released. But I think we need to look at their prior actions to see how they perform with the opportunities given to them before they were placed in state custody on a case-by-case basis. It is my feeling that we should leave the process of releasing felons back into society to the Parole Board on a case-by-case matter and not make legislation that gives a get out of jail free card to every felon in our state correction system. Again, LB307 does not give anyone a get out of jail free card. Number two, all it does is provide an opportunity for parole, at which time the exact issues that both Mr. Stock and Mr. Drake have alluded to would be addressed by the Parole Board in determining whether that individual is a suitable

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candidate for parole. And I just want to make it clear that in introducing this legislation it is not my intent nor has it ever been my intent to just say that individuals should be released after...automatically released after spending a designated amount of time in prison. All I'm saying is that we should have the opportunity and those young people should have the opportunity to establish that they have been redeemed. And finally, and I won't read it, but I was asked to introduce into the record the letter I received, dated February 18, 2009, from John Payton, who is the president and director-counsel of the NAACP Legal Defense and Educational Fund. And their letter is offered in support of LB307. And it contains some of the information that other witnesses have testified to with regard to the issues of discrimination, as well as the issue of international law. And that's what I will end with. [LB307]

SENATOR ASHFORD: But just to...can I just...to amplify what you said, the Parole Board considers all facts of the case. They can look at anything, can they not? [LB307]

SENATOR COUNCIL: Yeah, they go back and look at the original crime itself. They have access to the original investigative documents with regard to the crime itself. They look at the inmate's participation or lack of participation in prison offered rehabilitation programs, drug counseling programs. They look at all of that information in determining and... [LB307]

SENATOR ASHFORD: Okay. Nothing is excluded. It's not...evidentiary issues are not raised. [LB307]

SENATOR COUNCIL: No. No. And quite frankly, I agree with Mr. Stock and Mr. Drake that through that process it may be determined that there are some people who deserve to remain in prison for the rest of their natural lives. And if that's the determination of the Parole Board, then that's what should occur. I would hope that the committee would advance LB307 to General File. I want you to know that there is a question about whether the bill would need to be amended to provide the opportunity for the 24 who are currently incarcerated to be eligible for a parole hearing. And if the determination is made that it needs to be specifically stated, then that amendment would probably be made on the floor. So I just want to alert the committee to the fact that the...particularly in view of where some of these young people have reached during the term of their...some of them are not young people anymore. Gabriella's brother I've known since he was a kid. And there's two years age difference between us. And so, you know, to be in... [LB307]

SENATOR ASHFORD: Pretty young. [LB307]

SENATOR LATHROP: Pretty young. [LB307]

SENATOR COUNCIL: Pretty young (laugh). Thank you, Mr. Chairman. [LB307]

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SENATOR ASHFORD: (See also Exhibits 21-31.) Thank you, Senator Council. That concludes the hearing. We're going to have a little Exec Session, not a long one but...because I've taxed the committee a lot today. [LB307]

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Disposition of Bills:

LB274 - Placed on General File.
LB429 - Placed on General File.
LB260 - Placed on General File with amendments.
LB307 - Placed on General File.

Chairperson

Committee Clerk