

January 13, 1981

LB 122 - 133

RECESS

SPEAKER MARVEL PRESIDING

CLERK: Mr. President, Senators Sieck, Clark, Nichol would like to be excused until they arrive.

SPEAKER MARVEL: Clerk, record the vote.

CLERK: Quorum present, Mr. President.

SPEAKER MARVEL: Do you have some items to read in now?

CLERK: Mr. President, I do. I have a Reference Report from the Executive Board referring LBs 81 through 113. (Signed) Senator Lamb, Chairman. (See page 133, Legislative Journal.)

Mr. President, new bills: LB 122, title read; LB 123, title read; LB 124, title read; LB 125, title read; LB 126, title read; LB 127, title read; LB 128, title read; LB 129, title read; LB 130, title read; LB 131, title read; LB 132, title read; LB 133, title read. (See pages 134 to 136, Legislative Journal.)

SPEAKER MARVEL: I would like to alert you to the schedule for tomorrow. At eight thirty will the chairmen please make a note that we would like to meet in Room 1520 to discuss two or three items, one of them is the calendar; another has to do with the ending date as far as the introduction of bills is concerned. At nine o'clock the Legislature will convene, and at ten o'clock the Governor will come over and give us his State of the State message. So at eight thirty the chairmen at a caucus in Room 1520, nine o'clock we will convene and the Governor will be in at ten o'clock. Are we ready, Mr. Clerk? Senator Wesely. Senator Wesely, are you prepared to bring the Legislature up-to-date as to where we are at the moment and where we need to go in the immediate future?

SENATOR WESELY: Yes, Mr. Speaker, members of the Legislature, we have now taken care of three issues dealing with the Rules that were of some controversy and we are now left with the rest of the Rules of the blue book. We have dealt with Rule 7, Section 1; Rule 3, Section 11; and Rule 5, Section 5. We are now to the rest of the rules in the blue book and that is what is now open for discussion. We have a number of rule changes that have been proposed that are on the desk of the Clerk which we will go through in the order in which they have been

CLERK: (Read record vote as found on pages 908-909 of the Legislative Journal.) 25 ayes, 9 nays, Mr. President, 15 not voting.

SPEAKER MARVEL: The motion carried. The bill is advanced. Are you ready for the next item? We are going to continue on Select File. What we are trying to do in the meantime between now and noon we hope to have the priority list as promised for you. So we hope that everybody who possible will stick with us until we adjourn. Go ahead.

CLERK: Mr. President, Revenue Committee will meet in executive session Tuesday, March 17, at one-thirty in Room 1520.

Your committee on Judiciary reports LB 126 to General File with amendments; 129 to General File with amendments; 228 to General File with amendments and 242 to General File with amendments. (See pages 909-913 of the Journal.)

Senator DeCamp would like to print amendments to LB 273 in the Journal. (See pages 913-194 of the Journal.)

Your committee on Revenue reports LB 486 to General File and 412 to General File with amendments. (See pages 914-916 of the Journal.)

Mr. President, a new resolution by Senator Fenger and others. (Read LB 37 as found on pages 916-917 of the Legislative Journal.) That will be laid over.

I have a report of registered lobbyists. Your Enrolling Clerk has presented certain bills to the Governor. (Re: 55, 114, 128, 217, 246, 279, 388, 434, 462. (See page 917 of the Journal.)

Your committee on Miscellaneous Subjects recommends approval of certain gubernatorial appointments. (See page 918 of the Journal.)

Mr. President, LB 500, there are E & R amendments to the bill. Mr. President, there are E & R amendments to LB 500.

SPEAKER MARVEL: Before we proceed with that I want to introduce some guests who are underneath the South balcony from Chadron State College, 6 students, Angie Kolar from Neligh, Jim Stewart from Omaha, Laura Larson from Wauneta, Casey Frye from Lander, Wyoming, Gene Mohr of Stratton, Rhonda Hernandez of Scottsbluff. They have ridden four hundred and thirty miles on bicycles. If you would like to talk to them or see their equipment it is in the rotunda after 1:00 p.m. We welcome you to the Unicameral. Senator Beutler.

January 13, 1982

LB 126, 570, 801

SPEAKER MARVEL PRESIDING

DR. ROBERT PALMER: Prayer offered.

SPEAKER MARVEL: Record your presence please. Have you all recorded your presence? We need one more vote. Record the...

CLERK: There is a quorum present, Mr. President.

SPEAKER MARVEL: Do you have some items to read in?

CLERK: Mr. President, your committee on Government gives notice of public hearing for January 28 and 29. That is signed by Senator Kahle as chairman.

Mr. President, your committee on Judiciary gives notice of hearing for next Wednesday, January 20. That is signed by Senator Nichol as chairman.

Mr. President, Senator Marvel gives notice that LB 126 has been moved from Passed Over to General File.

Mr. President, new bill, LB 801 offered by Business and Labor Committee and signed by its members. (Read by title for the first time as found on page 256 of the Legislative Journal.)

SENATOR CLARK PRESIDING

SENATOR CLARK: We are ready for item #5. The first thing on item #5 is LB 570 withdrawn by Haberman.

CLERK: Mr. President, Senator Haberman moves to withdraw LB 570.

SENATOR CLARK: Senator Haberman.

SENATOR HABERMAN: Mr. President, members of the Legislature, there is an identical bill introduced by Senator Lamb that will do the same thing. There is no need to go through two hearings and printing and all of the expense when the bills are identical, therefore, I would like to withdraw mine and go ahead and let Senator Lamb's bill become the main bill.

SENATOR CLARK: The motion before the House is the withdrawal of LB 570. All those in favor vote aye, opposed vote nay. Record the vote.

CLERK: Senator Clark voting aye. 27 ayes, 0 nays, Mr. President, on the motion to withdraw the bill.

processing a twenty-eight cent check. I would be perfectly agreeable to accepting those amendments. I think they are good amendments and I would suggest we move it to Select File and we will put those amendments on it. Then you can still make your mind up on the Final Reading. Thank you.

SPEAKER MARVEL: The motion before the House is the advancement of LB 278 to E & R for review. All those in favor of that motion vote aye, opposed vote no. The motion is to advance the bill. Have you all voted? Record the vote.

CLERK: 25 ayes, 14 nays on the motion to advance the bill, Mr. President.

SPEAKER MARVEL: The motion is carried. The bill is advanced. The next bill is 349. Senator Haberman is absent so the bill will be temporarily laid over. Senator DeCamp, 126.

CLERK: Mr. President, LB 126 offered by Senator John DeCamp. (Read.) The bill was first read on January 13, 1981. The bill was referred to the Judiciary Committee for public hearing. It was advanced to General File, Mr. President. There are committee amendments pending by the Judiciary Committee.

SPEAKER MARVEL: Senator Nichol.

SENATOR NICHOL: Mr. President, members of the Legislature, as originally drafted LB 126 redrafted the definition sections of the criminal code to provide various provisions related to shoplifting. The original draft also contained mandatory and enhanced penalty sections which were not consistent with the penalty sections in the criminal code. The Judiciary Committee has adopted amendments which substantially redraft the bill. A new theft section entitled "Theft and Shoplifting" has been created with definitional sections which are consistent with current definitions in the criminal code. The amendments also strike all inconsistent penalty clauses in the original bill and insert penalty clauses which are consistent with the existent penalty provisions of the criminal code. I would ask for the adoption of the committee amendments.

SPEAKER MARVEL: All those in favor of the...I'm sorry. Okay, there is an amendment on the desk to the committee amendments.

CLERK: Mr. President, Senator Chambers would move to amend the committee amendments by striking subsection (2) of Section 3.

SPEAKER MARVEL: The Chair recognizes Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I hope you will turn with me to the provision that I intend to seek your help in striking. I am not opposed to the definition of shoplifting and all of the other things that are in the bill as amended by the committee amendment but here is what I am concerned about, and I am going to read the provision. "In any prosecution for theft by shoplifting, photographs of the shoplifted property may be accepted as prima facie evidence as to the identity of the property. Such photographs shall be accompanied by a written statement containing the following:" Then it gives various types of information and it offers this sentence to take away opposition. "The purpose of this subsection is to allow the owner or owners of shoplifted property the use of such property during pending criminal prosecution." Members of the Legislature, this means that if I am accused of a crime, the evidence can be consumed or disposed of and I would have no way of having that evidence which was being used against me brought into court. They could bring a picture and say this is it. We tell you to take our word that this is what Chambers stole. It has this much value and we want you to accept it. By being prima facie evidence that means I now must prove that I am innocent or prove that this is not the items stolen. But if I am an innocent person, what they are putting me in the position of doing is saying that actually I know it is not the property because I took it. And having taken it I know this photograph is not a proper representation. So they put you in a position of being unable to establish anything in the way of your innocence and I don't see that this provision is necessary to have a workable shoplifting statute. Most items that are shoplifted are not unique, meaning that there is only one of them and if this particular item which was lifted was offered in evidence it would hurt the merchant from whom it was taken, earrings, at the small end let's say, or a suit coat at the big end. Remember we're not talking about people going into warehouses and walking off with an entire section of garments. We're not talking about burglary where you break into a store and take large amounts of items. We're talking about what you would leave a store with concealed on your person somehow and I don't see the necessity of grafting this provision into the criminal law where the item which is to be the evidence does not have to be presented. I've never heard of a case of somebody being accused of assault with a deadly weapon where the weapon did not have to be produced but only a photograph. I think this is not a good thing to do. It was done obviously by request or at the request of the merchants. Nobody was able to demonstrate that absence of this provision would harm the prosecution of shoplifters in any way, shape or form. On the other hand, I gave a handout this morning that relates to

radar evidence but it contains a statement by a judge that I think would apply here. The judge in that case was saying that the safeguards of the rules of evidence must be thrown around the introduction of scientific evidence because although the advancement of science can bring push-button warfare to civilization it ought not be allowed to bring push-button justice. So despite the pressure of various special interest groups, to have the law modified in its general approach for their convenience I think it is necessary to maintain the integrity of evidentiary proceedings and I don't think it will place an undue burden on anybody and it certainly would accord with the rights that an accused person has in this society if we would require that the evidence on which a conviction is sought has to be produced in court. If I am accused of possessing narcotics for the purpose of sale or distribution, they have to at least produce a sample of the narcotics themselves. They can't come in with a photograph. So I think in this particular situation since the purpose is to give a definition of shoplifting, let us let the bill give that definition and don't try under the pretense of merely defining shoplifting to bring about what I view as a drastic and radical change in the handling of evidence and the means required by the state to obtain a conviction. So I am asking that you adopt my amendment which would only strike subsection (2), the portion that I read for you and so that it is crystal clear, it is about two-thirds of the way down the page and it would be lines 24 through 27, then it resumes the count from 1 through 11 and I think that will make it clear exactly what I am talking about.

SPEAKER MARVEL: Senator DeCamp, your light was on. Do you wish to speak?

SENATOR DeCAMP: Mr. President, members of the Legislature, I would respectfully oppose the amendment but let me say I do understand Senator Chambers' concerns so I would like to try to give you a little background as to the issue and the reasons for the photographic evidence or the arguments. You be your own judge as to what you do, of course, but I think there are some sound arguments for this method. I passed out a sheet and you can see shoplifting in the State of Nebraska has never been defined as a crime incredible as that sounds. We don't have a crime of shoplifting as such. It is a very specific thing, it's a very...a thing we're all familiar with but incredible as it sounds, as I say, we've never actually said these things constitute shoplifting, blah, blah, blah. So the first half of the bill, particularly as we've worked with the committee and they have gone along with doing it, is to really clearly define what constitutes shoplifting and Senator Chambers, of course, has left that intact. Now the second part has

to do with a particular problem and that problem is shoplifting in the minds of so many is picking up the candy bar, the scarf or the earrings as he suggested but shoplifting is a pretty multibillion dollar business in this country and in this state. In fact, it far exceeds any amount you are going to lose by bank robberies right here in the State of Nebraska by many, many, many times. One of the problems is that professional shoplifters particularly deal with pretty high priced goods. They don't get the cheap earrings if they are getting earrings. They don't get the suit coat at the top end as my good friend Ernie suggested, they deal with a little heavier stuff and, yes, indeed, warehouses have been shoplifted some pretty heavy goods there. They would apply here. But let me read you a couple letters to show you some of the problems, what we are trying to correct. This one is from Sartor-Haman Jewelers. I've never been in that particular store but I understand they are a pretty respectable unit that has been here in Lincoln a good time. "Dear Senator DeCamp: I'm in favor of photographing of evidence held by the police department so we can recover our merchandise. We have numerous instances of merchandise that has been held for many months costing my company a great deal of money to loss of income by not being able to sell it. The most recent case we have had," and you can check with the police department on this by the way, "the most recent case we have had involved a theft of \$14,000 worth of rings by three out of state persons. The suspects were apprehended in western Nebraska after passing stolen credit cards. These people also held up a filling station in Geneva, Nebraska, and a gun store in Iowa. They were brought to Lincoln where two of the suspects were released for lack of evidence after about four months in the city jail and the third party was released on \$10,000 bail. The third party was a prostitute from Milwaukee, Wisconsin, with a line of previous offenses. The bail was only a small percentage of the \$10,000 and it was evident that the person would not return for trial. The county attorney office insisted that our merchandise be kept until it was certain that the individual would not return or be apprehended. My recollection was that our merchandise was tied up for over ten months at a time when interest rates were around 14%. This cost our firm at least \$1,500 or more by not having use of our merchandise. I, therefore, heartily endorse LB 126 in the photographing of evidence." Now the concept of photographing of evidence is not unique or novel. It is used in other states, Utah, Virginia, I don't know the whole list but they have developed this concept and photography is a pretty exact science. Now admittedly, admittedly a photograph is not identical to having right there the physical item but the elements in proving a crime go way beyond just proving the specific merchandise. Did so-and-so do it, so on and so forth? I think with the definition of

shoplifting as we have it with the merits on both sides of it, weighing the cases where the photographic thing would be used and remember this wouldn't be used in every case. I think if you weigh the things and you've got to conclude this is probably a fair and reasonable way to handle some types of evidence and so we would hope that the shoplifting aspect would be left in the legislation. I have more letters from Lincoln merchants, Omaha merchants. I'm not going to take your time and read them but they say basically the same thing. A fur coat ended up in one of them, you know, held up for a year and a half and then somehow came back and looked like it had been used for the last year and a half. It was about a \$7,000 fur coat, little things like this. The photographing of evidence, getting it back into the cycle of commerce is pretty important and indeed, as Senator Chambers suggested, it was requested by the merchants and let anybody not be deceived, this is a request from business and commerce groups in the State of Nebraska, business entities, particularly our retailers to do something about the problem of shoplifting and I don't think there is anybody in the room that would doubt that with some of the economic and hard times that are coming down the pike there is a tendency for shoplifting to increase. The sheet that we've passed out, for example, indicates that one of the biggest reasons for the failure of small businesses particularly is that shoplifting. And remember this, everybody in this room and everybody in this state pays for the shoplifting price. It is added on to the merchandise somewhere. We're all paying for it so I would encourage the Legislature to experiment and it is not that big an experiment. First of all, with getting the crime of shoplifting identified and defined for the first time, standardized so we know what it amounts to in this state and second of all, by having this auxiliary tool for the law enforcement, for the prosecution, for the attorneys on both sides to work with, to make the system run a little more efficiently. I would urge you to reject the Chambers amendment, at the same time I full well understand his reasons for offering it.

SPEAKER MARVEL: Senator Nichol, we're speaking to the amendment.

SENATOR NICHOL: Yes, Mr. Chairman, I would rise to oppose Senator Chambers' amendment as specifically pointed out by Senator DeCamp. If we like to have retail stores and retail merchants which we do as a convenience to us, it is necessary that they make a profit. When their profit is eroded by those who steal, you and I who don't steal make up for that loss of profit simply by making it easier for merchants to get a hold of their material especially when it is expensive as outlined by Senator DeCamp, fur coats, silverware, jewelry, things of that nature that do have a great value. Thirdly, when the

merchandise lies around in police stations or wherever they are kept, they do deteriorate. Thirdly, fashions in clothing and clothing has been a popular item that has been shoplifted lately. Clothing deteriorates simply because it goes out of style and when it is held up for a long time the merchant naturally loses on that even though he may regain his material. But lastly, I hardly think that narcotics are shoplifted so there wouldn't be any point in that inasmuch as retaining that or taking a picture of narcotics. Thank you.

SPEAKER MARVEL: Senator Kahle, still speaking to the amendment.

SENATOR KAHLE: Mr. Speaker and members, I had a number of calls from merchants in my own area so I feel I should try to represent them. Sure this is a merchants bill. It is also our bill because as Senator Nichol just said, we pay the bill and shoplifting as you've also been told is a tremendous racket these days. I guess it is the way we merchandise things maybe that has caused it to skyrocket when many of the goods are out where you can get your hands on them. The amendment of course that we are talking about deals with the picture or cameras that are used to watch shoppers. I think they have been the most successful to my knowledge in bank robberies for instance which is probably not like shoplifting and yet it is in a way. It is stealing. I know of several cases where the bank robber has been caught quite quickly because there was a picture of him and an identification almost immediately. I would guess in shoplifting that the picture certainly would not be the only evidence used. About the only thing you could probably prove with that picture and maybe Senator Chambers is right, there is that that person was in the store. You might not be able to prove that he stole anything unless there was some other evidence involved. So I don't think the picture should be the only evidence used in the accusation of someone of shoplifting but I don't know, and I know, Senator Chambers, you objected to having your picture on your drivers license and I don't know, you're photogenic enough, it shouldn't really make any difference but I don't know what your thing is about pictures. But I guess the only thing I could say in closing, and it is not a big thing. I think it is just one tool that could be used perhaps to... I think it probably deters shoplifting more than anything else because if there is a camera around, most stores at least have a huge mirror that they can kind of watch the aisles and even those I suppose are put there more for a deterrent than they are for any great usefulness but that camera up there, if you have an idea that you are being photographed, I certainly believe it would be a deterrent. And my last comment would be that the old adage that a

picture is worth a thousand words I think is very true. Thank you.

SPEAKER MARVEL: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman, members of the Legislature, as so often happens when I present a matter before the Legislature there are misconceptions and misunderstandings. I don't know whether it is because I don't speak English clearly or if it is because members of the Legislature are not accustomed to understanding English when they hear it properly spoken but the picture we are talking about is not of people coming into a store and stealing but of the item. The item need not be presented in evidence. The merchant can produce a photograph and say, "This is a picture of what was taken." I don't care, Senator Kahle, about them using photographs of people who were in a bank and accused of stealing. I'm like you, that wouldn't be the only evidence but that is not the photograph we're talking about and I don't think Senator Nichol was listening at all, to suggest that I was talking about narcotics being shoplifted. When you have people who don't understand the law talking about the law you run into these kind of things. The point I made is that in a prosecution for narcotics you cannot simply produce a photograph. You have to bring the evidence itself. Maybe I can make it clearer to those who are familiar with guns. If I am accused of shooting somebody with a gun, not only do they have to produce a gun, they have to establish that this is the gun. Now maybe that is clear. Even Daniel Boone could understand what I am talking about if he were here and I think he was sent to Congress at one point and I wish his spirit would walk the halls of this legislative body on occasion and whisper things in the ears of people because those ears don't understand when I speak outright. I can see that we are not looking at the issue at all. When we had the bill on shoplifting before the Judiciary Committee and the members know it, one of the main problems is that the stores don't prosecute and if the members of the committee deny that then I say they did not listen to what we were being told. That is one of the problems, they will not prosecute. Do you know what happens in Omaha now when somebody is accused of shoplifting because the store people will not show up to testify? The officer will not make an arrest unless somebody in the store says, "I am swearing out a complaint against this person right now and I am the complaining witness and you are arresting this person on the basis of my complaint, not because they shoplifted." In the past the officers would come into the store. They would say this person shoplifted and they would take them off to jail. Then when the trial date comes nobody shows

up as a complaining witness. The officer cannot be a complaining witness because he saw nothing. The merchants in this instance are making suckers out of the Legislature and causing the Legislature to do their flunky work to cover up the carelessness with which they conduct business. I was concerned about high speed chases on the interstate that would result from a person not having paid for gasoline before leaving a filling station and I thought it would be simple for the filling station attendant to require payment in advance but rather than take that simple precaution they say, well, what we can do is make the Legislature make the state patrol run down the highway and risk people's lives because we choose to be careless. And consequently a matter which could be handled through prudent business practices becomes a law enforcement function endangering the lives of people. We are altering the rules of evidence because merchants are careless and if you think that I am not telling the truth, talk to some of the county attorneys and I wish that some members of the Judiciary Committee, instead of just standing up and always saying we are for the heavier punishments, this and that, tell some of the other things that come forth during those committee hearings. But if they won't, there is a transcription of those debates, those hearings, and it is difficult time after time to stand on this floor and go through this kind of nonsense. It is futile. As for the people that Senator DeCamp was talking about who lost some rings, they certainly ought to be more circumspect in how they watch their products because I was in that store on one occasion if it is the one in Lincoln and you can't just walk in there and pick something up. Maybe my complexion is what would make it more difficult for me because I'm sure wherever I went they would watch me. But if they were sure that their rings were not going to be a part of a trial because the people had left, why didn't the dummies go down to the county attorney and say, since the people are gone, we withdraw any charges that we had and give us our merchandise back. Senator DeCamp read a letter which said that they knew that the individuals who took the rings were not going to show up for trial. If they know that there is going to be no trial, why don't they go down and tell the county attorney, give us our goods now, but they don't have to because they can come to the Legislature. There is one other thing and I know it is not going to make too much difference to the members of the Legislature because due process concerns, especially during the Reagan administration, have gone by the boards. Should it be enough for a merchant merely to accuse somebody who has possession of an item and say, that is mine? Suppose a person is accused of shoplifting, goes to trial, and they find out a mistake has been made and the item belonged to the individual who

was accused but the merchant has already been given that item and has sold it?

SPEAKER MARVEL: Your time is up. Senator Cope.

SENATOR COPE: Mr. President, members, as a retailer most of my life I think I understand the situation reasonably well. I oppose the amendment. I really don't see that the retailer, it should cost the retailer money for something that he has nothing to do with. In other words, he didn't ask anybody to shoplift in his store and it does cost him money if the merchandise that has been stolen is off the rack or off the shelf or out of stock for any length of time, particularly as Senator Nichol stated, in perishable merchandise such as clothing. Senator DeCamp mentioned the expensive items, the interest on the money, that he probably borrows to run his business. So due to that reason, I'm not going to reiterate all the others, I will oppose this amendment.

SPEAKER MARVEL: Senator Pirsch. The question has been called for. Do I see five hands? Okay, the motion before the House is, shall debate cease. All those in favor of that motion vote aye, opposed vote no. Okay, record.

CLERK: 25 ayes, 0 nays to cease debate, Mr. President.

SPEAKER MARVEL: Debate has ceased. Senator Chambers, you are recognized to close on your motion.

SENATOR CHAMBERS: Mr. Chairman, I read that the way of the transgressor is hard. That doesn't seem to be the case. This is a proposition which I think you've closed, some of you, your minds to because you are looking at shoplifting and not what I am talking about. I'm accepting the definition of shoplifting. Suppose these people that Senator DeCamp is talking about produce a photograph and they say this ring is worth \$50,000 and suppose there had been some embezzling within the company or within the store itself? Do you know that there are imitations of jewelry? Does that bother you at all? Does it bother you that there are what they call inside jobs and people on the inside will substitute items and they are not found out until an inventory is taken. Then they see the thing that is on the shelf does not have the value it is supposed to have. So the easiest thing in the world is to just produce a photograph whether it is for advertising purposes or whatever and say, this is what somebody stole. That becomes prima facie evidence. It takes the place of the item that is supposed to be stolen. There is no opportunity to inspect it, to make certain that this is the item that was stolen or anything

else. There is nothing in here that requires a verification of value of the item. If this involved business transactions, one of the first things you would be up here whooping and hollering about is that I want to have some way to be sure that I am getting what I am paying for. I don't want to buy a pig in a poke. I don't want to buy grain in the silo, all such examples as that but when it comes to the integrity of the law itself, the law which so often is criticized on this floor as being inadequate, then you will do the very things that degrade the integrity of the law that make it appear like a patchwork quilt. It does not give notice or prior warning after what is involved in the law governing the people in this state. And Senator DeCamp has done what the people who talk about shoplifting always do. They talk about billions of dollars of losses throughout the country and never break it down to how much is lost within the locality that they are talking about. Senator Cope will bring his vast knowledge and understanding as a retailer to talk about shoplifting but he will not talk about the legal issue that I am discussing here. We're not even talking about shoplifting. We are talking about legality in a rule of evidence and you don't even... John Dean and former Attorney General Mitchell were sitting down listening to G. Gordon Liddy or one of those nuts talking about all kind of programs they were going to use to sabotage this person and sabotage that person and even though Mitchell himself turned out to be a crook and a gangster he was puffing these great clouds of smoke, chuckling and saying, it is incredible, it is incredible! That is what I have to say here this morning. I know Senator DeCamp knows better. He knows he knows better too and that is why he put this separation clause, that if any part is found to be unconstitutional. He knows what the problem is but this is a sop to the merchants and if it is declared unconstitutional in court, what difference does it make? The chit is out there. I did your job for you. I carried your water. Now you come through like you are supposed to come through. You all know why some of this trash legislation comes through here. We joke sometimes on the floor about it being unconstitutional and say, well, let it go to court and be tried. Probably nobody other than Senator DeCamp could have gotten this thing through here. Senator DeCamp, you cause me to have such mixed emotions I see a good mind going to waste and a good mind lost is a terrible thing to lose. Senator DeCamp's knowledge as a lawyer lets him know that this is an abomination and it ought not to be done and the lawyers who sit in this body and are afraid to be on the Judiciary Committee because they know the Bar Association will make them be water carriers and they know they would have to confront these issues and don't want to ought to hang their heads in shame too, and maybe what I ought to do is join you and stop trying to uphold the legal system that bears

down oppressively more on me than anybody on this floor. It is not my legal system. When I went to Creighton they taught me about how white people have written laws and what the thing is supposed to do and here I see the ones who have told me so much about the law and respect for it are degrading that law itself.

SPEAKER MARVEL: Time is up.

SENATOR CHAMBERS: I ask that you adopt the amendment.

SPEAKER MARVEL: The motion before the House is the adoption of the Chambers amendment. All those in favor vote aye, opposed vote no. Have you all voted? Senator Chambers. Record the vote.

CLERK: 11 ayes, 24 nays, Mr. President, on the motion to adopt the Chambers amendment.

SPEAKER MARVEL: The motion lost. The amendment is not adopted. Senator Nichol. The motion is the adoption of the committee amendments. All those in favor of that motion... Okay, Senator DeCamp, do you want to speak to the committee amendments?

SENATOR DeCAMP: I will wait on the committee amendments.

SPEAKER MARVEL: Okay, Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman, I'm going to talk about this issue some more because I think it is important. There are many instances when people will stand on this floor and criticize the criminal code because they don't understand it. They will say, I don't like this so there ought to be a law against it and they pass a thousand laws. Then they turn around and say, get the government off people's backs. Irrationality. If this Legislature were composed completely of black people and I were the only white person in it I would say, and the black people controlled the society, I would tell those black people, I'd say, "Your Legislature is detrimental to the cause of black supremacy." The actions by which we are to be judged are in these laws that we write. They are not based on thought. They are not based on consideration of what we are doing. They are based on a few people yipity yapping behind somebody's heels and they draft a bill and put it in here and it runs right through the Legislature. When the so-called liberals in the Legislature try to bring a law to tax the corporations, it's a liberal's proposition, so it goes down the drain. Then when a man who could, as I say, he is such a pussyfooter, he could

run across a piano key that stretches from California to New York, he could dance across that all the way across the country and not strike a note, he is such a pussy-footer, will come in with the very same thing and all of a sudden there is a complete conversion of everybody and they turn around and, oh, this is a great proposition because politics has reared its ugly head and the function of law making as it is supposed to be goes out the window. If you read history as I have read history, you see that the people that you praise the most now are the ones who ran into the most opposition and hostility while they were doing the very things that you praise them for now. The inconsistencies that exist are almost mind boggling. There is a man over there named Stenberg I think who said the present Republican Party reminds him of the party of Lincoln which freed the slaves. Then here is Ronald Reagan heading that party now who says that schools that segregate and discriminate against black people can continue to get tax exemptions and he says the two are the same? That is ridiculous. Then we will sit up here, well I don't go through it, stand up here and go through prayers every morning about doing this and that mainly to discharge your responsibilities and obligations. Then a proposition that is totally out of step with what the law's purposes are will be run through. In law school they say that you compartmentalize the study of law because there is so many esoteric concepts that it would be difficult to get a grasp on the whole monster if you didn't break it up into small parts but in reality the law is a seamless web. You cannot strike one part of it without the vibrations being felt throughout the entire texture of the web. That is the way the law is but before this session is over we're going to have people jumping up here talking about the criminal code is bad here, the criminal code is bad there, and they don't even understand what they are talking about. Even the gods labor in vain against stupidity, said a German philosopher. I don't think stupidity is a play here in this Legislature though. If it were, I wouldn't feel the bitterness. I would just feel frustrated. I would feel like John Mitchell and just puff a pipe of smoke and say, "incredible, incredible," but I know there is a knowledge and an awareness here on the part of a lot of people of what is being done here but there is an unwillingness to face up to what our obligation is but I shall assume mine and even though you won't vote in the way that your best judgement tells you to vote, and I can't make you do that, I certainly can speak and you will have to listen if you stay in the chamber or keep your box on in your office and maybe that is the least that I can get out of this Legislature in addition to having a transcription of what I say on the floor of the Legislature. So, Senator DeCamp, because the committee amendment is so

much better than the atrocity that the original bill was, you again have put me in a bind. You know that on principle I will vote against the amendment but you know that I will counsel these other people to vote for it because this amendment is better. Do you all know what that law would have done? It would have put these people in jail who were stealing and I am surprised that Senator Cope will vote for the committee amendment. If you want to stop shoplifting, if you want to be hard on the thieves, if you want to do something to those who are robbing you of billions that you have to pay for, reject these committee amendments and you can stick it to them. I hate the original bill more than I do the amendment. You are compromising your principles if you vote for this amendment. You're not toughening anything for shoplifters. You're not even touching the penalty portion. People can still steal as they have always done. It doesn't require the merchants to testify. It doesn't change anything. All it does is takes an atrocious piece of legislation that has a number and somebody's name on it, guts it and puts something in it that the Legislature, beguiled by Senator DeCamp, the Pied Piper of the Legislature, he will get you to accept it and you will go for it and you haven't done anything. So go on and accept the amendment. I give you my permission and my blessings. Senator DeCamp, I'll leave you alone on the amendment but when it becomes a bill I might have a thing or two else to say.

SPEAKER MARVEL: Senator DeCamp.

SENATOR DeCAMP: Mr. President and members of the Legislature, I think Senator Chambers is one of the most valuable members of this Legislature. I have repeatedly stated that because he makes us all think and if we are going to move too fast he brings us words of warning and I thought he has brought us some good words of warning but I think we've got answers to most of his questions. Now, I am going to prove in the next thirty seconds that Senator Chambers is the only member of the Legislature in the twelve years I have been here now to ever use photographic evidence exclusively, exclusively in the Legislature to get around even legislative rules. I have on my desk handed out, a paper on LB 413 and I assume everybody else does. Look around on your desk. There is no identification and marking as legislative things require, initials on it or anything else as to who passed it out, where it came from, anything. But I know where it came from and so does everybody else because for the first time, the first time ever in the history of the Legislature, this is good, isn't it, Ernie? For the first time ever, there is photographic evidence as to who passed out this particular item and the photographic evidence because we

have additional information. We have knowledge of the price, quality, all these things. We know that this came from the man himself, Senator Chambers, because we have that photographic evidence. I'm not wanting to make a joke about this because it is serious. It is proof I think quite simply that photographic evidence at a time and at a place can serve a particular function and so let me quickly address the other issues Senator Chambers raised and raised by my good friends in the press over there. Why spend time, first of all, specifically defining shoplifting rather than just working on theft laws? Well just one quick example, you've got a lot of problems of proof because you have different types of activity go on in shoplifting than maybe just stealing something. For example, Johnny goes in, which he'd never do, and he goes to the counter where they have the \$14.95 pants and right next to it is the counter with the \$4.95 pants and he takes and he switches tags, \$4.95 over to the \$14.95 and vice versa. Therefore, when he goes to the counter he has paid something of value and you get into all kind of problems in the court on proof. Did he steal or didn't he? Well certainly he did. We all know he did but from a legal due process standpoint, he went through the process, his crime was in shifting so we have to define and set out elements like that. So there is a fundamental reason for getting exactly what constitutes shoplifting identified, separating it out as a crime, so on and so forth. Now as to the photographic evidence, Senator Chambers suggested that somehow we're just going to take a picture and wander into the courtroom and say, well, here is a picture of my forty-seven diamond rings worth \$208,000 that were stolen. Well it doesn't work quite that way. You've got to have satisfactory proof by backup witnesses of the value, of all these things, however, since Senator Chambers has raised the question, and as I say, he is valuable here, very valuable because he does raise questions, but since he has raised the questions as to the standards for the photographic evidence, I would be willing and am willing on Select File to put any reasonable standards that he thinks needs to be specifically written into the law on what evidentiary material is necessary for the photographic evidence. Additionally if you will read the bill, it doesn't say "must" use photographic evidence. That is merely a "may", an option. Now obviously any twit with even a half an ounce of brains isn't going to risk the entire case particularly on something pretty valuable by having just a incompetent photographic evidence without backup witnesses as to value and everything. So, Senator Chambers as I say, raises some good questions but I think there are adequate answers and nobody is going to vote for this bill because any Pied Piper or anybody else led them down any trail. I think the members of this Legislature recognize shoplifting as a serious problem. I think we know that we need to do something,

exact methods maybe we disagree on but if Senator Chambers wants to get with me and I know Senator Beutler has some of these same concerns as to just what the standards for the evidence or the photographic things are, be happy, and I think we can put whatever things he needs in there but we do want to keep the option for photographic evidence when necessary. So relying on my good friend who has pioneered the concept of photographic evidence here in the Legislature, I hope we will keep it in the bill.

SENATOR CLARK PRESIDING

SENATOR CLARK: Senator Hoagland. Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, just a couple of things. We know that my identifying myself with a photograph in here is not the same as evidence in a court and it is only for the purpose of identifying me, not to establish that somebody did anything that would be a crime for which they could be punished. But if there are things like Senator DeCamp mentioned where two items are very similar and they are placed side by side and tags can be easily interchanged, those are poor business practices. Everything mentioned as an example on the floor to justify photographing the evidence and bringing it in is based on a poor business practice. You don't put two things that are disparate in value side by side and have tags that are easily interchanged. You pay the cost of your carelessness. That is in one sense the underlying basis of competition. You let the market determine the value if you have an uncontrolled market or unmanaged. Now in this particular bill Senator DeCamp had talked about the steps you would have to go through to establish certain things before this photograph could be used. You wouldn't just trot down to the court with it. Not based on the law. This law doesn't require what lawyers refer to as foundation. All you have to do is come in with a photograph and a piece of paper with certain allegations on it and drop them in and based on the law, without the requirement of foundation, that becomes acceptable as prima facie evidence of the item that was taken. Maybe I ought to stop doing these things because they will try to constitutionalize up this bill now but it was one that made me so indignant I had to speak but on some of these monsters I'm going to let them go on through. Then when they are struck down I'm going to have sent a statement in a sealed envelope to somebody and then I will cackle in the same way I did on the bank bill where nobody except a few thought that a veto had been announced.

SENATOR CLARK: Senator Nichol, closing on the committee amendments.

SENATOR NICHOL: Mr. Chairman, I think we've enjoyed all the debate we can stand so I simply ask for the adoption of the committee amendments.

SENATOR CLARK: The question before the House is the adoption of the committee amendments. All those in favor vote aye, opposed vote nay.

CLERK: Senator Clark voting yes.

SENATOR CLARK: Have you all voted? Record the vote.

CLERK: 30 ayes, 1 nay on adoption of committee amendments, Mr. President.

SENATOR CLARK: The committee amendments are adopted. Now we are on the bill. Senator DeCamp.

SENATOR DeCAMP: I think we've run this one through. Let's vote.

SENATOR CLARK: Senator Koch.

SENATOR KOCH: Mr. Chairman, members of the body, I can't allow LB 126 to move on without making some remarks that are somewhat personal but if you think LB 126 is going to solve the problems of shoplifting, I think we are deceiving some people. I am going to support the bill but we have a very high drug problem in this state regardless of what we think and it spews itself all over the state as well. I was talking to Senator Wagner a moment ago. I knew about the thing going on in Ravenna several months ago and again it comes from a personal experience from central Nebraska, young people hooked on drugs walking into stores and picking up all kinds of things, then fencing them to someone intermediate and then it was finally fenced in Ravenna, Nebraska, and this I can get by affidavit. So what is happening is it's not really the poor folks that are doing this, it is some of the white collar people who can afford it, even afford the habit. I'm just saying to you that young people between the ages of sixteen to twenty-one or even older than that are in those stores picking up whatever they can and they know what the value of it is because they have to fence it to keep up a habit that costs great sums of money. So oftentimes we take the easy way, passing LB 126 which we believe is going to solve the problem. And I submit to you the greatest problem we've got in the State of Nebraska today in terms of shoplifting could well be, not because you are poor and you want something material but because of a terrible habit of drugs. We do a lousy job of getting

to the source. I'm not talking about the young people. I'm talking about those who buy it and make tons of money from it, hundreds of thousands of dollars and there are some cases prominent businessmen so I put this only in the record and I hope somebody will think seriously about it because I don't think 126 is going to solve very much. Thank you.

SENATOR CLARK: I would like to introduce for you before we take the vote on this, from Howard Peterson's district from Hall County, Platte Valley Academy Government Class, 16 students, three teachers. The teachers are Jim Murray, and Mr. and Mrs. McKey. I think they are in the North balcony. Will you raise your hands. Will the Legislature welcome them. Welcome to the Legislature. The question before the House is the advancement of the bill. Is there any further debate? All those in favor vote aye, opposed vote nay.

CLERK: Senator Clark voting yes.

SENATOR CLARK: Record the vote.

CLERK: 32 ayes, 2 nays on the motion to advance the bill, Mr. President.

SENATOR CLARK: LB 126 is advanced. LB 448. The Clerk would like to read in first.

CLERK: Mr. President, real quickly Senator Beutler would like to print amendments to LB 126 in the Legislative Journal. (See page 289 of the Legislative Journal.)

Mr. President, Senator Koch would like to print amendments, the Education Committee, excuse me, would like to print amendments to LB 259 in the Legislative Journal. (See page 289.) And, Mr. President, I have an explanation of vote from Senator Wesely. (Re: LB 664.)

Mr. President, new bills: (Read by title for the first time, LBs 837, 838. See page 289 of the Legislative Journal.)

Mr. President, your Enrolling Clerk respectfully reports that she has presented to the Governor for his approval LB 664.

Finally, Mr. President, Senator Beutler asks unanimous consent to add his name to LB 259 as cointroducer. (See page 290.)

SENATOR CLARK: No objections, so ordered. I would like to introduce to the Legislature, Mr. George Hefner from Coleridge, Nebraska, and his wife Kay. It is a brother of Senator Hefner. They are under the North balcony. Will you stand and be recognized please. Welcome to your brother's playhouse. We will

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SENATOR CLARK: The motion lost. The next amendment is amendment number two of Senator Vickers to Section one. He wants to read a few things in first.

CLERK: Mr. President, very quickly, new bills: (Read by title for the first time, LBs 895-914 as found on pages 343-347 of the Legislative Journal.)

Mr. President, I have a hearing notice from the Public Works Committee for January 29, February 10, 11 and 17. That is signed by Senator Kremer as Chair.

Mr. President, Retirement sets hearings for Wednesday, January 7 and Revenue sets hearings for January 25, 26 and 27, signed by the respective chairmen.

I have a reference report referring LBs 848 through 880.

Mr. President, your committee on Enrollment and Review reports that 511 be reported to Select File with amendments, 192 Select File with amendments, 231 Select File with amendments, 454 Select File, 304 Select File, 69 Select File with amendments, 139 Select File, 139A Select File, 305 Select File, 239 Select File with amendments, 410 Select File with amendments, 278 Select File with amendments, 126 Select File with amendments, all signed by Senator Kilgarin.

SENATOR CLARK: We are now ready for the second Vickers amendment to Section one.

CLERK: Mr. President, the amendment reads as follows: On page 2, line 13, strike the word "life" and insert "safe yield."

SENATOR CLARK: Senator Vickers.

SENATOR VICKERS: Mr. President, since that is more of a technical one there the following amendment on Section two would be more applicable to take up and I think the Clerk has other amendments on Section one so if you would want to skip over this and go to the other amendments that are on Section one, that would be fine with me. You have other amendments and I think Senator Beutler and some other people might have amendments on Section one if you want to go ahead and take those up at this time.

CLERK: So are you withdrawing. . .you don't want this one then, Senator?

SENATOR VICKERS: That one is more of a technical one. It

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LB 126, 139, 139A, 572
659, 764

Senator Barrett to whom we referred LB 659 instructs me to report the same back to the Legislature with the recommendation it be advanced to General File. That is signed by Senator Barrett, Mr. President; also LB 764 advanced to General File, also signed by Senator Barrett.

Mr. President, Senator Beutler would like to print amendments to LB 126 in the Journal and I have an Attorney General's opinion addressed to Senator Kahle. That will be inserted in the Journal. (See pages 473, 474.)

Mr. President, I have a report of registered lobbyists for the week of January 20 through January 28.

SENATOR CLARK PRESIDING

SENATOR CLARK: We are ready for Select File. The Speaker has an announcement.

SPEAKER MARVEL: If you want to take a sheet of paper with you and sit down and be comfortable for a minute and I will read off the bills that we will be processing in a few moments. The first bill is LB 572. The second one is LB 139, 572, 139, 139A, 305, 449, 450, 263, 212, 370, 353. Okay, 212 will be crossed off.

SENATOR CLARK: The first bill is LB 572.

CLERK: I have no E & R, Mr. President.

SENATOR CLARK: Senator Kilgarin.

SENATOR KILGARIN: I move we advance LB 572.

SENATOR CLARK: You heard the motion. All those in favor will say aye, opposed. The bill is advanced. LB 139.

SENATOR KILGARIN: I move we advance LB 139.

SENATOR CLARK: No E & R amendments?

CLERK: No, sir, no E & R.

SENATOR CLARK: You heard the motion. All those in favor say aye, opposed. The bill is advanced. LB 139A.

SENATOR KILGARIN: I move we advance LB 139A.

SENATOR CLARK: You heard the motion. All those in favor say aye, opposed. LB 139A is advanced. LB 305. I think we

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LB 278, 126

SENATOR CLARK: Is there any discussion on the Goodrich amendment? If not, all those in favor vote aye, opposed vote nay. Record the vote.

CLERK: 27 ayes, 0 nays, Mr. President, on adoption of the amendment.

SENATOR CLARK: The amendment is adopted.

CLERK: I have nothing further on the bill, Mr. President.

SENATOR CLARK: Senator Kilgarin.

SENATOR KILGARIN: (Mike not on.)

SENATOR CLARK: You heard the motion to advance the bill. All those in favor say aye, opposed. The bill is advanced. LB 126.

CLERK: Mr. President, LB 126, there are E & R amendments to 126, Mr. President.

SENATOR CLARK: Senator Kilgarin.

SENATOR KILGARIN: I move the E & R amendments to LB 126.

SENATOR CLARK: You heard the motion. All those in favor say aye, opposed. The E & R amendments are adopted. Anything further on the bill?

CLERK: I have several, Mr. President. The first is by Senator Beutler found on page 289 of the Journal.

SENATOR CLARK: Senator Beutler.

SENATOR BEUTLER: Pat, I have a second amendment up there, do I not?

CLERK: Yes, sir.

SENATOR BEUTLER: I would withdraw the first amendment then.

CLERK: Mr. President, Senator Beutler would then move to amend. The amendment is on page 472 of the Journal.

SENATOR CLARK: Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, to refresh your memory, this bill has to do with shoplifting. It is the shoplifting bill. It more explicitly defines the different shoplifting offenses and then it allows for photo-

graphic evidence, that is it allows the prosecution to take a picture of the evidence and submit that at the trial instead of the actual stolen property. And the reason for the rule supposedly is that they want to get the property back to the store owner so that he can go ahead and sell that property and the property is not sitting on his inventory for a long period of time. Now by and large this is what is done anyway. The property is given back in a very reasonable period of time and I am sure that not very many stores have a large amount of property at any one time in the possession of the county attorney. At any rate, the point of my amendment is not to do away with photographic evidence but to try to help to ensure that the defense has a reasonable opportunity to inspect that evidence before it is photographed and given back to the store and sold to a third party purchaser for values, sold to a customer and then is lost to the whole process. And the example to which I have never been given a reasonable reply goes something like this. Let's say your seventeen or eighteen year old son or daughter goes into a jewelery store and steals a ring, a ring with a clear stone, and she is arrested and the shop owner says she just stole a diamond ring. And her defense is that it wasn't a diamond ring, that she was over at the counter where the fake rings were and that little clear stone was a piece of glass and she was not guilty of a larceny, she was guilty of petty theft. She made a mistake but it wasn't larceny. It wasn't subject to a felony penalty. The store owner comes in, he says, she stole a diamond ring and that is enough to convict a person if the jury believes it. I want to see that the defense attorney has a reasonable opportunity to appraise that ring and to find out, in fact, if it was a diamond ring. I want to give him the opportunity to come into court with an appraiser and say, it was not a diamond ring. It was a glass ring. But that opportunity may not be there as I understand it, if the ring is gone. And remember the ring is not just going back to the store but may be sold and then the ring will never be able to found. So what the amendment says is that prior to allowing the return of the property that the alleged shoplifter be given a reasonable opportunity to inspect and appraise the property and may file a motion to retain the property if he believes that the photographs will be misleading. Now remember that the photographs, there are not very many requirements about these photographs. They don't have to be in color, they don't have to be in any particular size, they don't have to tell the size or the shape of the object involved and those types of facts may be important depending on the type of a defense that is presented in the court and the defense may be legitimate. If you are accused in court of hiding something under your coat, maybe the object

was so big it couldn't possibly have been hidden under the coat you had that day. Maybe it is a false accusation and that is the only way you can prove it. A photograph will not show that. So I suggest to you that perhaps a little more caution and giving the defense an opportunity to inspect the property would be in order and would be fair. Thank you.

SENATOR CLARK: We have Senator Landis, Senator DeCamp and Senator Chambers.

SENATOR LANDIS: Senator DeCamp, call on him next.

SENATOR CLARK: Do you want to give your time to Senator DeCamp? While we are worrying here, I would like to introduce before they leave, 24 students, seniors from Palmer High School, Palmer, Nebraska, Gary Hoins and Dave Tickner are the sponsors. They are in the North balcony. Would you stand and be recognized, please. Under the North balcony we have two sisters of Senator Cope, Virginia Thiemann from Pawnee City and Betty Ayres from Lincoln. Would you stand and be recognized, please. Welcome, all of you, to the Legislature. Senator DeCamp is next.

SENATOR DeCAMP: Mr. President and members of the Legislature, I am going to oppose the amendment but I am going to say, Senator Beutler and Senator Chambers the other day raised some good points and I got worried. I got thinking, well if Senator Beutler and Senator Landis are right, maybe there is a danger of exactly what he described occurring. Maybe we have to have some additional protection and I thought, before I take any further action on this bill I am going to get some research done and I am going to find out what the law is and what the situation is because I am going to be the last one to participate in something that would take somebody's rights away or not give them a fair break. So I started doing some research and then I remembered some old rules in law school and of course Senator Beutler can confirm this. You have your procedural laws in a court and you have your basic substantive laws such as shoplifting is a crime, so on and so forth, killing people is a crime. Then you have the procedural laws, how you present your evidence in the court. Now I would like to hand out and it is being handed out to each one here, some existing law that is already on the books, some existing law that is the rule now. This is the procedural law and if Senator Beutler is going to have an amendment I would think he would want it to the procedural portions of the law but then if he were to say that, I would say, but we've already got it. And I would like to read to you, we already allow photographic evidence. That is already allowed and

used in the courts and probably we don't even need to put that in this bill. So why are we taking the time to even put photographic evidence into the bill? The reason is very simply because half a dozen different county attorneys on the subject of using photographic evidence, particularly on shoplifted merchandise, did not know or were not convinced they could affirmatively do it. There are all the procedures in the court right now for how to use it once it is photographic evidence once you decide to use it but they did not know whether they could do it in this limited area. So what we're saying, yes, indeed on shoplifting photographic evidence is allowed and then you've already got in your law and I will read it to you here, Rule 1007, 27-1007, laws you passed in here. "Testimony or written admission of party, contents of writings, recordings or photographs may be proved by the testimony or deposition of the party against whom offered or by his written admission without accounting for the nonproduction of the original." And then we go to 27-1008. It is right there. "Functions of the judge and the jury when the admissibility of other evidence of contents of writings, recordings or photographs under these rules depends on the fulfillment of a question of fact or a condition of fact," and of course Senator Beutler was raising that very thing. He said how do we know that is a glass diamond as opposed to a real diamond? How do we know the real value? That is it. That is what we are talking about. It depends upon the fulfillment of a condition of fact. The question whether the condition has been fulfilled is ordinarily for the judge to determine so I think the standard we've got is probably even more strict than what Senator Beutler is trying to offer. I'm saying that only an absolute total fool who intends to absolutely lose would even attempt to use photographic evidence without having one heck of a well documented case establishing the value, proving the validity with backup witnesses to certify things with possibly...

SENATOR CLARK: You have one minute.

SENATOR DeCAMP: ...with possibly an affidavit or whatever from the defense that they have had an opportunity to examine. What I am suggesting to you is the system we have now is better than what Senator Beutler is even offering. So at the very worst we've already got everything he wants and at the best we've got more. So I would urge you to reject the amendment. Go ahead with the bill in its original form and I think even Senator Beutler, once he sees this probably will go ahead with his amendment.

SENATOR CLARK: Senator Landis.

SENATOR LANDIS: Mr. Speaker, members of the Legislature, I support the Beutler amendment. It offers the defense a chance to examine, a chance to object and raise the specter that there is some misleading evidence that should not go forward, that there should be the opportunity to examine the real evidence and have that placed before the court. Why is this provision, the existing provision in LB 126 a problem? First, it moves us away from the best evidence rule. The best evidence rule says: As a policy when you have varying qualities of evidence to prove a fact you need not accept the inferior forms of evidence, you always try to get the best evidence and the best evidence is the physical testimony, the physical evidence of the theft. Secondly, a very strange thing is going to occur in this bill if we are telling judges to accept photographic evidence. What do you do about grand larceny where it is not shoplifting? Take a look at your definition section. This is where you alter tags. You put it in your possession, you put it under your coat, you are still inside the building. What happens when you steal the goods, you're a block down the street, they handcuff you and it is grand larceny? Does this rule apply? No, it doesn't. We've got a special evidentiary rule in LB 126 that applies if you get caught inside the store but need not apply in the event you are out on the street halfway down the block. The difficulty with LB 126 is that it tries to write evidence rules based on which crime you are charged with. John read a section of law that is a very good one and in there it said, let the judge decide. Let the judge decide if there is prejudice. Let the judge decide if it is good evidence. Let the judge decide if a photograph is a reasonable representation of the evidence. That is the way the law is now John tells us. We don't need a provision in 126 which can be used to bludgeon uncooperative county attorneys in using photographic evidence they may not wish to use or indicating to the court that somehow the Legislature mandates the use of photographic evidence. I don't think we will want to get into that business. I think we want to leave the business of the rules of evidence for a court to administer and not to create crime by crime, varying evidentiary standards and rules to apply. The rules of evidence as to what is hearsay, what is the best evidence rule, what is admissible and what is inadmissible should apply to each and every crime across the board. We shouldn't be juggling the rules based on which of the hundreds of crimes in our statutes you happen to be charged with. Senator Beutler's language is fair, it is reasonable and ultimately I have done research on this question too and there is little need for this provision. The prosecutor in this town says, I'm surprised you are considering it. I don't think we need it in state laws. As a matter of fact I think it kind of looks funny there. Secondly, there are a variety of kinds of cases.

Essentially they have very little commercial value case by case basis. The average capture has a good deal less than \$50 worth of value on them. Secondly, in Lincoln the vast majority of cases are disposed of within two weeks so business is not deprived of property for a long time. Thirdly, the business is returned to the commercial interest almost immediately. However, they are asked to segregate those goods in the event they are necessary at a trial. All of those factors tell us that the need for photographic reproduction is minimal in this town. It is available and can be used but should be subject to a collateral attack by a defense attorney and that is what LB 126 does. It is the only way in which this language can be acceptable I think to the body and I hope that you will adopt the Beutler amendment that allows the defense...

SENATOR CLARK: You have about thirty seconds.

SENATOR LANDIS: ...to observe, to examine it and if there is a problem with it, file a motion to retain the evidence before a court.

SENATOR CLARK: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I think that entire section is an abomination and ought not be put into the law. I don't know who prepared this handout for Senator DeCamp but they had more time to study than I did. I just got it. But the first portion does not even deal with our situation here. They are probably talking about the acceptance of hearsay evidence and for those of you who don't know what hearsay is, to make it as simple as I can, it is an out of court statement made by somebody who is not now in court and that statement is to be allowed to take the place of a person's testimony. In other words, it is a tale about a tale but the first part of Senator DeCamp's handout talks about the party against whom the evidence is offered acknowledging it or agreeing to it which is in the nature of a stipulation. We're not talking as in this provision 27-1007. Here is what it says. "Contents of writings, recordings of photographs may be proved by the testimony or deposition of the party against whom offered or by his written admission without accounting for the nonproduction of the original." So what it is saying is that if I am on trial and they want to offer a letter or anything in writing or a photograph against me then they don't have to worry about any problem of hearsay if I, the one against whom it is offered will accept the offering of it and not object which is not the case with 126. We're not talking about the party against whom it is being offered accepting it. So that provision has nothing to do with the situation we're talking about. 27-1008 is talking about proving the

contents of a photograph. Now there are two distinct things here, a photograph itself which may or may not exist and other evidence than the photograph to prove the validity of the photograph itself. You will notice if you read 27-1008, "When the admissibility of other evidence of contents of the photograph under these rules depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the judge to determine." So remember, we are not talking about the photograph itself but other evidence of the photograph. Then in the subdivision 3, "Whether other evidence of contents correctly reflects the contents." So we're not talking about the photograph itself but evidentiary related to the photograph. In LB 126 the photograph is to take the place of the evidence and remember, nothing in this handout that Senator DeCamp gave us talks about prima facie status for this evidence that he is talking about. In LB 126 once the photograph is offered then the defendant is presumed guilty and must prove his or her innocence. That makes the procedure backwards. In addition to that if you are talking about trying to spare the merchant, what you are really doing by adding Senator DeCamp's amendment to 126, is to create more expense. To prove that the photograph is valid you have to have a certification by the officer, a police officer. Well in the courts of today right now a police report is not acceptable evidence. It is hearsay. If it is objected to, it is inadmissible. So what you could do and what would have to be done is to call the police officer so that he could be cross examined. Then you have an additional aspect of hearsay in the photograph in its validity. You must present the name and address of the photographer so you have three elements of hearsay, the photograph itself, a certification by a police officer, a certification by a photographer. But what would have to be done is to produce these people in court as witnesses because the photograph becomes the evidence...

SENATOR CLARK: You have one minute.

SENATOR CHAMBERS: ...by which the conviction is obtained. So regardless of what you do with Senator Beutler's amendment I am going to move to strike that provision and I want the record to be crystal clear on this issue and I am going to have copies of the transcript made and I am going to make copies and distribute them to people around the state so that they can see how the law is perverted and corrupted for the sake of merchants. There should not be a consideration for an instant of amending the rules of evidence relative to hearsay simply for the merchants to put in an unnecessary piece of legislation such as this. So after you deal

with Senator Beutler's amendment I am going to make a motion again to strike that provision altogether. It is an abomination.

SENATOR CLARK: Your time is up, thank you. Senator Beutler, do you wish to close?

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, the proposed amendment is really a modest amendment. I hope you will take to heart what has been said by Senator Chambers and the best evidence arguments put forth by Senator Landis because the further we get away from the best evidence the more likelihood there is of fraud and the more likelihood there is of uneven or the non or injustice being the result of our judicial proceedings. But let me suggest to you that by encouraging county attorneys to carelessly use photographs that what you are going to see happen are a couple of things and the result may be worse than...may be considerably worse than what is happening now. You may see that defense attorneys will come in and contest the foundation being laid for the photograph, contesting that it does not reflect the article that was actually allegedly stolen and if they are not able to properly lay their foundation, then the photograph will be thrown out and then if the actual article is not there to be submitted into evidence, the whole case may be thrown out. And you may see some people who are actually guilty of getting off. The other thing you may see happening is defense attorneys coming in with the argument that it is unconstitutional, unconstitutional because they have not had an opportunity to inspect the actual argument or the actual stolen property. So I am just suggesting to you that the whole procedure is going to cause more problems than it solves. It is hard for me to imagine that any one store in any one county has more than...and there was no evidence of this on the floor of the Legislature, has more than a couple of articles that are being held for any period of time. So I am not sure that there is any reason for the change in the law in the first place. But in the second place, I suggest to you that the bad results may well outweigh the intended benefits of this kind of a change. Thank you.

SENATOR CLARK: The question is the adoption of the Beutler amendment. All those in favor vote aye, opposed vote nay. Have you all voted? Once more, have you all voted? Record the vote. Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, I would like to request a Call of the House and a roll call vote please.

February 10, 1982

LR 218
LB 300, 775, 776, 826,
951, 952, 961, 126

SENATOR CLARK: A Call of the House has been requested. All those in favor of a Call vote aye, opposed vote nay. Record the vote.

CLERK: 13 ayes, 0 nays, Mr. President, to go under Call.

SENATOR CLARK: The House is under Call. All unauthorized personnel will leave the floor. All senators will be in their seats according to our rules and please check in. We have three excused. We are looking for sixteen. Will everyone that is sitting in their seats please check in. Senator Cope, would you please check in. Senator Schmit, Senator Newell, Senator Stoney. Senator Sieck, would you push your button, please. Senator Goodrich. We're going to look for Senator Stoney, Senator Schmit. We got to Schmit, now if we can get to Stoney. Senator Newell. We will tell you what we are going to vote on before we vote. Roll call vote, yes. Would all senators remain in their seats, please, so we can have a check. We will not start the roll call until all senators are in their seats. Senator Wagner, would you get in your seat, please. Can you find Senator Higgins? Do you want to start the roll call? The Clerk will call the roll. If we can keep it quiet so we can hear the response it will really help up here.

CLERK: (Read roll call vote as found on pages 621-622 of the Legislative Journal.) 26 ayes, 18 nays, Mr. President.

SENATOR CLARK: The motion passed. The amendment is passed. Do you have anything further on the bill? The Clerk would like to read some things in first.

CLERK: Mr. President, a special order announcement from the Speaker.

SENATOR CLARK: The Call is raised.

CLERK: Mr. President, Senator Fowler would like to print amendments to LB 218. Senator Fowler moves to place LB 300 on General File pursuant to Rule 3, Section 18(b). That will be laid over. (See page 622 of the Legislative Journal.)

Your committee on Banking, Commerce and Insurance advances 775 to General File; 776 to General File; 826 to General File; 951 to General File; 952 General File; 961 General File, all signed by Senator DeCamp as Chair.

Mr. President, the next amendment I have is from Senators Sieck, Lowell Johnson and Beutler.

SENATOR CLARK: Senator Sieck.

SENATOR SIECK: Mr. President, members of the body, this is an amendment I tried to attach to LB 247 earlier and we had some difficulty with it so we got together with several individuals and now come up with an amendment that many of us can live with. And what it does, it includes shoplifting electric services. In other words, out in the rural area a lot of us read our own meters and most of us do in other words, and if somebody tries to cheat on the power district it sets up a penalty for this and I feel this is needed because of the economic conditions we are in today, we need to have a little more teeth in the law to protect the electric service industry. So I move that we adopt this amendment.

SENATOR CLARK: Senator DeCamp.

SENATOR DeCAMP: Mr. President, just to say I have no objections to the amendment. This is the issue that was dealt with the other day for a couple hours on another bill and when some compatible language was worked out on the issue they chose to utilize this bill and I said as long as it doesn't unduly hamper the bill in any way I didn't care even though it is kind of a different area but it is fine by me as long as nobody objects.

SENATOR CLARK: Senator Sieck, do you have any closing?

SENATOR SIECK: I move adoption of the amendment.

SENATOR CLARK: The motion before the House is the adoption of the Sieck amendment. All those in favor vote aye, opposed vote nay. Record the vote.

CLERK: 28 ayes, 0 nays, Mr. President, on adoption of that amendment.

SENATOR CLARK: The amendment is adopted. I would like to announce 12 eleventh and twelfth grade students from Murdock with Ken Glantz as the teacher. They are in the North balcony. Would you stand and be recognized please. Welcome to the Legislature. Do you have anything further on the bill?

CLERK: Mr. President, Senator Chambers would now move to amend by striking Section 3, subsection 2.

SENATOR CLARK: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, this I know is an exercise in futility because not only is nobody listening really to what is being said but very few in the body even understand the type of law that we're dealing with. But I think it is a mistake when

you don't understand what you are doing with the law to enact it. Remember this is not a matter that has gone through a committee hearing that has allowed the county attorney, defense attorneys and whoever else may have an interest in it to come and give their thinking on the matter. I will give you an example of something that was brought to me after we discussed this bill the other day and I failed to strike this provision. A lady who has a job with the Legislature, she doesn't work for me by the way, had indicated that she took some gold watch bands of a friend of hers into Sartor Hamann or Sodom and Gomorrah or whatever the name of that store that Senator DeCamp told us about to have the value assessed or determined. Well while there the people in the store decided she shouldn't have these bands and she must have shoplifted them there and the police were called. Fortunately it was determined that she hadn't shoplifted them at all and I don't even know if the store carried those kind of watch bands and she wished that they had gone ahead and sued her and so forth. But here is the point. Had she left in indignation they could have gotten a description of her, produced a photograph and said this woman shoplifted a certain number of these bands from our store. That photograph becomes prima facie evidence of what was shoplifted. That is all that is needed to convict her unless she can prove that what they say in the photograph is not so. Well not having shoplifted anything, she can't prove anything one way or the other about what is contained in the photograph. So here she is brought to trial and made perhaps to pay a fine or whatever the punishment is for being found guilty on the basis of a photograph. And remember this, there is no place in the statute where a photograph is given prima facie status. As a matter of fact, the only item that is allowed that kind of status is found in 28-1117 or eleven seventeen and it is proof of the occurrence of a sporting event and it says the following: "In any prosecution under this article in which it is necessary to prove the occurrence of a sporting event, a published report of its occurrence in any daily newspaper, magazine or other periodically printed publication of general circulation shall be admissible in evidence and shall constitute prima facie evidence of the occurrence of the event." But it is not prima facie evidence of the offense that is charged. A newspaper of general circulation is entirely different from a photograph produced by a person bringing a charge against somebody else. The law should not be cluttered and distorted in the fashion that will occur if you leave this provision in the books. I know some people are trying to convey the image during this election year that they are pro business. This doesn't prove pro business. This proves a disregard for the integrity of the law

and the rules of evidence. It is not necessary to clutter the law in this fashion. So what I am asking that you do is to strike it. Consider the example that I gave you but separate that example from this form of the question. How could an innocent person prove anything about what is contained in a photograph? If you had no connection with the item how can you prove it? If you make an effort to prove anything then they will say, aha, you had to have been involved, otherwise you wouldn't know what you know about this item. They call that similar to a Catch 22 situation. I think it is not a tool that is needed by the prosecutors. As a matter of fact when you deal with the problem of shoplifting you are considering primarily carelessness by merchants, an unwillingness by them to show up to press charges oftentimes when a person is charged or picked up. So the problem can be dealt with already by more prudence on the part of merchants. Senator Koch touched on an aspect of it that is far more serious than anything that has been discussed on the floor in connection with the bill so far and that is trying to determine why these young people shoplift and most of the shoplifting that people are worried about is being done by younger people. They support dope habits and they do support fences. They get caught up in staying operations conducted by the state patrol and some sheriffs and the way those sting operations occur the state patrol will set up an operation in an area like Omaha, then put the word out, not to people who are suspected of being thieves but just put the word out in a community where kids are poor and don't have much money that anything they can pick up they can come and sell it here like at a service station. It might be located at 30th and Parker in Omaha, Nebraska, and the word is out in an impoverished neighborhood that anything you can steal, you bring it here and we will buy it. Those are the kind of problems that I think we ought to be considering to determine whether shoplifting is encouraged and the economic deprivation that people are suffering now is being exploited. What LB 126 is is a perversion of the law. It is a sop given to merchants who don't want to be held accountable for their lack of prudence and care in conducting their business. It will not enhance the enforcement of the law but it will dilute the integrity of it. So let me mention a couple of other items that I want in the record to vindicate my own intelligence and my own regard for the law. When you produce the photograph you have to have a certification by a police officer who may or may not know anything about the item itself but you have a piece of paper with his name signed to it and that is submitted with a photograph. In addition to that is a piece of paper with a name and address of somebody who alleges that he or she is a photographer. And this tale of a tale of a tale is offered in evidence to convict

somebody and the real piece of evidence on which the prosecution is based may be available but it need not be produced. There is nothing in the bill that says that the real piece of evidence is not accessible or easily available before you can use these photographs. It is up to the discretion of the one bringing the charge. So I would call in the police officer and make him submit to cross examination as I am entitled to do. I would call in the photographer and make him or her be subjected to cross examination as I am entitled to do. I would call in the merchant whose name is on this photograph certifying to one thing or another and cross examine him or her as I am entitled to do and I could run some people through the wringer under this bill who couldn't be wrung through the wringer under the law as it is now. Because if an employee witnesses shoplifting, the employee is the one who testifies. If the merchants name is on here certifying the value then I can haul his rear end before the bar of justice and run him through the wringer as the law, if you pass it this way, will enable me to do and don't think attorneys will not be cognizant of what I am saying and suggesting. And then when the merchants come trotting in here again saying it is so hard to prosecute shoplifting now because we've got to leave our businesses and go down there and we want the law changed, tell them no. You made your bed, now sleep in it. You were smarter than the legislators. You persuaded them to change the laws of evidence. They did it for you, now you live with what you have produced. But what I would suggest before we reach that spot is to simply strike this provision from this bill and let it be what it purported to be in the first place, establishment of the crime of shoplifting by defining and specifying the things that are included under that term. So I hope you will listen to what I have said. I hope that you will understand what it is that I am trying to do. It is not to make it easy for people to shoplift. It is not to encourage shoplifting. It is an attempt to maintain the integrity of the law. So I ask that you adopt this amendment.

SENATOR CLARK: Senator DeCamp.

SENATOR DeCAMP: Mr. President, members of the Legislature, Senator Chambers has a strange way of making it seem like everybody that is trying to stop shoplifting or the merchants who are the victims or the county attorney who might be in a position to having to prosecute a case, somehow when he finishes, they all appear to be the criminals, the greedy merchants, the Sodom and Gomorrah store and so on and so forth. Now, fellows, I think it is time we'd better start realizing a few things. Shoplifting does exist. It is the biggest, most costly crime in this state in terms of absolute dollars and it is done on a pretty wide scale both

here and other places and I don't know the perfect system to stop it. I don't know how to walk out there and say, okay, I have a bill now, LB 1218 that somehow is going to cure all the social ills that make young people or whoever go shoplift. I want to create a system that makes everybody happy and financially satisfied so they never shoplift. I don't have that bill. Maybe Senator Chambers does. What I do have is a proposal that clears up what exactly is shoplifting, it defines it so we know what we are dealing with. And what I have in there is a proposal for some of the way to present the evidence on it and for some of those people that are making it sound like it is mandatory, I suggest you grab your bill, read it and you will see the word is may, may use photographic evidence. Now Senator Chambers and others, photographic evidence in a courtroom is not the most novel concept that has ever come down the pike. In murder cases they rarely haul dead bodies into the courtroom and parade them around. They usually bury them and bring the photographs and the affidavits. In the case of hit and run drivers, you rarely drag the car into the courtroom, in the case of burned out buildings on arson, so the photographic evidence concept isn't like I am dropping a nuclear bomb on the whole judiciary system. It simply is one tool and clears up an area of presenting evidence on a voluntary basis and it is going to be protected with all the safeguards that exist now and as Senator Beutler's amendment certainly clarifies it even further for those that had concerns. So before you start feeling guilty as if you are all criminals for supporting legislation to stop shoplifting, I would submit to you that is what you are here for, to look at problems and shoplifting is certainly one of them and do what is reasonable legislatively to try to clear them up and I think the legislation I have proposed takes a couple big steps in that direction. And, Senator Chambers, when I get that magic combination to stop all shoplifting and all the other vices that people are subject to, I will introduce the bill but I doubt it is going to be for a while.

SENATOR CLARK: Senator Chambers, do you wish to close?

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I wish that for once on this floor I could stand up and engage in the generalities, the misinformation, the unfactual presentations that the rest of you can get away with. My only vindication is what is contained in the transcriptions of our debate which I do distribute to people to demonstrate the poor quality of discussion on this floor. Senator DeCamp misheard what I said if he thinks I said that county attorneys and merchants are criminals. I did not say that. It shows the poor thinking

which is occurring now, or the nonthinking and he said, "Don't feel guilty." I didn't say you are guilty of anything, I said you are uninformed and you are uninformed or you are misinformed if you are being misled. What I have said is that there are merchants right now when people are arrested for shoplifting who do not want to show up to prosecute and that was testified to before the Judiciary Committee. There are some county attorneys who will not file the charges now and that was testified to before the Judiciary Committee. So Senator DeCamp can stand up here and treat you like little children and beguile you and say, don't you all feel guilty, I'm going to spread my wings and protect you and save you from that terrible Ernie Chambers who is trying to prick your conscience and make you look at the law and have some respect for the law that you yourselves felt to be respected by the citizens. I had a couple of points that I want to bring out based on what Senator DeCamp was talking about. There was an experiment conducted by some students in an upper middle class neighborhood and an account of it was given in the paper the other day. The merchant who owns the store knew about it. These kids were standing right next to customers and stuffing their pockets, putting things under their coats and walking out of the store and they would get a few dirty looks but not one soul went to the merchant and said, you've got a thief there. And they would go out of the store, then they would bring it in and put it on the table of the merchant and then go and pick up everything they could again; not in an impoverished neighborhood where people supposedly have no respect for the law but in the upper middle class neighborhoods where the huge shoplifting occurs and not one of them said anything. So maybe what Senator DeCamp needs to do is not try to find a law to correct it but find a church or a synagogue or a temple to impart some morality in the people who habituate these upper middle class neighborhoods. That is how you talk about that but we're not even dealing with that this morning. We are talking about the integrity of the law and the system of producing evidence. All this nonsense he talked about is just that, nonsense, and you notice after I took apart the handout he gave you he left it, didn't he? He didn't try to justify it or explain it, did he? Because he does not understand it himself. Now I stand on this floor and I have to do more research, produce more factual evidence than anybody on this floor and it does no good because all you have to do is pretend it does not exist. But despite how hard my job is, it is no harder than an instructor who has very slow students that it is his responsibility to try to teach. So I will continue to maintain my high standard of research and accuracy and factual presentation and let Senator DeCamp and the others come up here and beguile you

and give you an excuse to do what you know ought not to be done. He talked about the production of photographs in murder cases. Sure photographs are used but he is giving it a status in this bill that it has in no other matter. He is making it prima facie evidence of what it purports to depict. There are no photographs that you can produce and say based on this photograph I want you to believe a murder has occurred. There has to be other evidence to establish that a murder has occurred, not just a death, but that criminal homicide is involved. And once you establish that there is a dead human body that is in that condition as a result of the illegal action of some other person you can then produce photographs to show what that human body looked like but the photograph does not prove the existence of the body and it is so frustrating to talk to grown people who go out and tell their constituents that they are informed and voting on issues and they cannot see something as clear as this is. But frustration is a part of being somebody who is enslaved by a desire to see the truth pervade.

SENATOR CLARK: You have about thirty seconds, Senator Chambers.

SENATOR CHAMBERS: If you don't adopt the amendment, it is not going to kill me at all as you know and I'll be back again to test the whole thing on Final Reading, but this one point and I will be through, Mr. Chairman. Senator DeCamp said that this provision has all the existing safeguards that exist with reference to photographic evidence now. It does not because it elevates it to the status of prima facie which no other photographic evidence has. So it is bad and I ask that you adopt this amendment.

SENATOR CLARK: The question before the House is the adoption of the Chambers amendment. All those in favor vote aye, opposed vote nay.

CLERK: Senator Clark voting no.

SENATOR CHAMBERS: Mr. Chairman, may I ask for a Call of the House because we are thin in numbers and I will get a roll call vote and we can handle it quickly.

SENATOR CLARK: Would you clear the board. All those in favor of a Call of the House will vote aye, opposed vote nay. Record the vote

CLERK: 8 ayes, 0 nays to go under Call, Mr. President.

SENATOR CLARK: We are under Call. All unauthorized

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LB 126, 115, 212, 575, 954

personnel will leave the floor. All senators will be in their seats. We need Schmit, Kremer, Warner, Wesely. Senator Chambers, did you want a roll call vote? Marvel, Hoagland, Warner and Wesely. Now we've got Warner. Are you ready for the roll call vote, Senator Chambers? Senator Chambers, are you ready for the roll call vote? The Clerk will call the roll.

CLERK: (Read roll call vote ad found on pages 624-625 of the Legislative Journal.)

SENATOR CLARK: The Call is raised.

CLERK: 12 ayes, 32 nays, Mr. President.

SENATOR CLARK: The motion lost. Is there anything further on the bill?

CLERK: I have nothing further on the bill, Mr. President.

SENATOR CLARK: Senator Kilgarin, do you wish to move the bill?

SENATOR KILGARIN: I move we advance LB 126.

SENATOR CLARK: You heard the motion. All those in favor say aye, opposed. The bill is advanced. LB 212.

CLERK: Mr. President, if I may right before we start on 212, Senator Rumery would make a motion to withdraw LB 575. That will be laid over. I have priority bill designations from Senators Goll, Higgins and Barrett. I have two Attorney General's opinions, one to Senator Lamb on LB 954 and one to Senator Landis on LB 115. (See pages 625-630 of the Legislative Journal.)

Mr. President, LB 212 does have E & R amendments pending.

February 16, 1982

LR 222
LB 126, 137, 139, 212,
212A, 215, 278, 304,
353, 410, 417, 421

PRESIDENT: Any discussion on the motion to appoint a committee of five to escort the Chief Justice into the Chamber? Hearing none, all those in favor then of the motion to appoint the committee signify by saying aye, opposed nay. Motion carries and the Chair appoints the following committee to escort the Chief Justice; Senator Nichol, Senator Vard Johnson, Senator DeCamp, Senator Cullan, and Senator Beutler. Those members would please follow Senator Nichol up the aisle and go to escort the Chief Justice. And now the Chair will read some matters in.

CLERK: Mr. President, new resolution, LR 222 by Senator Chambers. (Read.) Pursuant to our rules, that will be laid over, Mr. President.

Mr. President, your committee on Enrollment and Review respectfully reports they have carefully examined and engrossed LB 215 and find the same correctly engrossed; LB 304 correctly engrossed; LB 410 correctly engrossed; LB 278 correctly engrossed; LB 126 correctly engrossed; LB 212 correctly engrossed; LB 212A correctly engrossed; LB 353 correctly engrossed; LB 417 correctly re-engrossed; LB 139 correctly engrossed; LB 421 correctly engrossed; all signed by Senator Kilgarin.

Mr. President, your committee on Banking whose Chairman is Senator DeCamp instructs me to report LB 137 advanced to General File with committee amendments attached, Mr. President.

PRESIDENT: While we are waiting for the committee to come back, the Chair takes pleasure in introducing Bill Hefner, son of Senator Elroy Hefner. He is under the North balcony. Will Bill stand up and be recognized. Bill, where are you? Welcome to the Unicameral, Bill. The Legislature will be at ease until the committee returns. The Chair recognizes Sergeant at Arms, Ray Wilson.

SERGEANT AT ARMS: Mr. President, your committee now escorting his honor the Chief Justice of the Supreme Court of the State of Nebraska.

PRESIDENT: The committee will escort the Chief Justice to the podium. Chief Justice Norman Krivosha.

CHIEF JUSTICE NORMAN KRIVOSHA: (Gave the State of Judiciary Message as found on pages 689 - 703, Legislative Journal.)

PRESIDENT: The committee will escort the Chief Justice

February 18, 1982

LB 126, 421, 431, 571, 578,
652, 658, 773, 804, 855, 941

PRESIDENT LEUDTKE PRESIDING

PRESIDENT: Prayer this morning by the Reverend T. Daniel Casey, Pastor of Central Church of the Nazarene, of Omaha. That happens to be Senator Pirsch's Pastor.

REVEREND CASEY: Prayer offered.

PRESIDENT: Roll call. Senator Beutler and Senator Pirsch, do you want give us your lights? Senator Pirsch, do you want to....Senator Pirsch. Record the vote.

CLERK: There is a quorum present, Mr. President.

PRESIDENT: Quorum being present, are there any corrections to the Journal?

CLERK: I have no corrections, Mr. President.

PRESIDENT: Any other messages, reports or announcements?

CLERK: Mr. President, your Committee on Enrollment and Review respectfully reports they have carefully examined and re-engrossed LB 431 and find the same correctly engrossed. That is signed by Senator Kilgarin.

Your Committee on Banking, Commerce and Insurance whose Chairman is Senator DeCamp to whom was referred LB 941 instructs me to report the same back to the Legislature with the recommendation it be advanced to General File; 658 indefinitely postponed; 804 indefinitely postpone; and 855 indefinitely postponed. All signed by Senator DeCamp.

Mr. President, I have a series of Attorney General's Opinions. The first is to Senator Beutler regarding LB 126, one to Senator Vickers regarding LB 571, one to Senator Cullan on LB 421, one to Senator Howard Peterson regarding LB 652, and one to Senator Koch regarding LB 578. (See pages 735-743 of the Legislative Journal.)

Mr. President, Senator Newell would move to place LB 773 on General File notwithstanding the action of the Constitutional Revision and Recreation Committee. That will be laid over.

Mr. President, I have a report to the Legislature from the Little Blue Natural Resource Districts regarding payment of attorney fees. (See page 744 of the Journal.)

SPEAKER MARVEL: The motion is carried. The resolution is adopted. Okay the next item is #5, Final Reading. Under Final Reading the first item is LB 69 and Senator Marsh is excused until she arrives so we go to the next item. Next item is LB 126.

CLERK: Mr. President, I have a motion on the desk. Senator Chambers would move to return LB 126 to Select File for specific amendment. (Read Chambers amendment as found on page 1004 of the Legislative Journal.)

SPEAKER MARVEL: The Chair recognizes Senator Chambers on a motion to return the bill.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, for those of you who may not be aware of what this bill is, it is the shoplifting bill. Its intent was to establish definitions of shoplifting and to determine those types of actions that are covered by the bill. Also added was a provision that careless merchants want. It allows a photograph to take the place of the evidence itself. My motion as I've made all the way across the board on this bill is to strike that provision. By striking it you will not hinder what the bill's intent is. You will not touch the definition of those things that constitute shoplifting, nor will you lessen any penalties. All that you will do is to maintain intact the current system of evidence gathering and presentation. There is no other situation in the laws of Nebraska where a photograph is prima facie evidence. Photographs can be used along with other types of evidence but when you accord it prima facie status you, in effect, shift the burden of proof from the state to the one who is accused. The accused must prove that something is not the case rather than the state having to prove that something is the case. If a person should falsely be accused of shoplifting and a photograph is offered there is no way for that person to dispute the value of the item contained in the photographs because he or she has no direct knowledge of it. Under the bill the photograph would be allowed in as evidence and for getting the status it is accorded, the photographer would have to give some kind of certification, the store owner would have to give some kind of certification and all those things are hearsay. So the defense would be entitled to require the actual attendance in court of the owner who has given a certification and the photographer which could extend the amount of time given and taken in prosecuting these matters and it could also be a burden on those who think this is going to be a boon to them. So I'm asking that you return this bill and strike this provision. By striking it you will not disturb anything in the law as it exists now. You will not change the nature of evidence or the presentation of it. But if you do not strike it you're making what would have to be described as a radical change in the law of evidence. So I am asking

that you return this bill and strike this provision. The other day, as a matter of fact, February 19th I gave you a handout which I am sure you have forgotten. Some of you may not even have read it but it contained an article that documented an incident that I had told you about during one of my earlier attempts to do what I am trying to do now. I will read the article because it is brief. It is from the World Herald, February 5, 1982, and it is dated-lined Chicago Associated Press: Three high-school students doing research on shoplifting stuffed their pockets at a suburban store in plain view of fifty customers. Nobody turned them in. They got one dirty look from a woman shopper but "the rest either walked away or looked away." Richard Barren, teacher of a Marketing class at Suburban Wheeling Highschool said Thursday, "I'm totally amazed that no one reported the incidents to the store manager who had given the students permission to carry it out." Barren said, "They must have collected about three hundred dollars worth of merchandise." He said, "there were more than one hundred customers in the store during that time and at least fifty of them saw the whole thing. Many of them were standing next to the shoplifters." This indicates that the public is not concerned about a careless merchant. The public will not turn in shoplifters. The public feels that merchants should put in place adequate systems of security to protect their own goods and should a merchant fail to do that, the public apparently feels that the punishment goes with the carelessness. He or she will have certain of his or her items appropriated without being paid for them. A second article on that attachment or handout discuss the case in Washington, D.C. where a murder had been committed and the gun used had been stolen from the headquarters of the National Rifle Association. A verdict was rendered against the National Rifle Association on the theory that they were careless about protecting their property. Such being the case they were held responsible for whatever was done of a detrimental nature with that property to some innocent party. So in the shoplifting article you see that the public is not interested in filling in the gaps in security left by careless merchants. In the second situation you see that the courts hold people responsible for their own property and what is done with it. So the Legislature ought not adopt the attitude that simply because an item is owned by a person, the Legislature should enact laws to make sure that person maintains possession and control of it even if he or she is totally careless and exercises not one iota of caution in protecting it. People are responsible for their own property. I'm asking that you return this bill, strike that provision so that the merchants will be put on notice that care is required in the protecting of their own goods, but more important than that, in my opinion, is to maintain

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LB 126, 259, 428, 609, 626, 774

intact the system of evidence that exists now.

SPEAKER MARVEL: Senator DeCamp.

SENATOR DeCAMP: Mr. President and members of the Legislature, we've spent so much time that I don't want to take time so I'll just say I respectfully oppose the amendments. I believe we've treated the issue before.

SPEAKER MARVEL: Okay, Senator Chambers, do you want to close on your motion. There are no lights up here. Do you want a roll call vote? Okay, call the roll.

CLERK: (Read roll call vote as found on page 1004 of the Legislative Journal.) 10 ayes, 33 nays, Mr. President.

SPEAKER MARVEL: The motion lost. Okay, we will now proceed with Final Reading. All legislators should be in their seats and the first bill to be read now is LB 126.

CLERK: (Read LB 126 on Final Reading.)

SPEAKER MARVEL: All provisions of law relative to procedure having been complied with, the question is, shall the bill pass. Those in favor vote aye, opposed no. Have you all voted? Clerk, record the vote.

CLERK: (Read record vote as found on page 1005 of the Legislative Journal.) 42 ayes, 2 nays, Mr. President, 3 present and not voting...3 excused and not voting, 2 present and not voting, Mr. President.

SPEAKER MARVEL: The bill is declared passed on Final Reading. The next bill is LB 428. Yes.

CLERK: Mr. President, if I may right before that, your committee on Enrollment and Review respectfully reports we have carefully examined and reviewed LB 626 and recommend that same be placed on Select File with amendments; LB 259 Select File with amendments; LB 774 Select File and LB 609 Select File, all signed by Senator Kilgarin as Chair. (See pages 1005-1006 of the Legislative Journal.)

I have a reference report referring gubernatorial appointments and I have an announcement from the Speaker regarding the scheduling of priority bills for special order consideration.

Mr. President, with respect to LB 428, first of all, Senator Johnson, I believe you had an amendment that you had printed

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LB 807, 126, 525, 375

diverse subjects as fluoride, NRDs and a wide variety of others. There is one provision for school districts and that has to do with the question of district elections or at large elections that appears in Chapter 5, Section 108, but generally speaking, I do not know of a school's power to place on the ballot educational questions for the decisions of the voting public. I do not know that there is an initiative/referendum form for schools generally other than for their form of governance.

SENATOR BEUTLER: Okay, thank you, Senator Landis. Again, I would encourage you to support the bill.

SPEAKER MARVEL: Senator Landis, are you ready to close?

SENATOR LANDIS: I will only make this offer to the body. In the event you have questions about 807, I hope that you will pass this bill along and bring them to me before Select File. I have indicated to all parties that on Select File whatever amendments are appropriate I will attach and in the event you have questions about it, I will make every effort to see that they are answered clearly by the time this comes up for Select File discussion. Thank you, and I move the bill.

SPEAKER MARVEL: The motion before the House is the advancement of LB 807 to E & R initial. All those in favor of that motion vote aye, those opposed vote no. Have you all voted? Clerk, record the vote.

CLERK: 34 ayes, 0 nays on the motion to advance the bill, Mr. President.

SPEAKER MARVEL: The motion is carried. The bill is advanced.

CLERK: Mr. President, if I may, I have a report of registered lobbyists for week of February 25 through March 4. (See page 1018 of the Legislative Journal.)

I have a study resolution offered by Senators Cullan and Koch. It would call for the Education Committee to conduct an interim study on the intellectual and mental capabilities and capacities of our youth. That will be referred to the Exec Board for reference. (Re: LR 241. See pages 1018-1019 of the Journal.)

Mr. President, Senator Cope asks unanimous consent to print a communication from the White House in the Legislative Journal. (See pages 1019-1020 of the Legislative Journal.)

Mr. President, LB 126, 375 and 525 are ready for your signature.

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LB 126, 375, 525, 877, 941

SPEAKER MARVEL: While the Legislature is in session and capable of transacting business I am about to sign and do sign engrossed LB 126, engrossed LB 525 and engrossed LB 375. The next bill is 941.

CLERK: Mr. President, LB 941 offered by Senator Clark. (Read title.) The bill was read on January 19 of this year, referred to the Banking Committee for hearing. The bill was advanced to General File, Mr. President. I have no amendments to the bill.

SPEAKER MARVEL: The Chair recognizes Senator Clark.

SENATOR CLARK: Mr. President, members, I can talk as long or as short as you'd like on this bill. What it probably should have been in the first place is a revisor of statutes bill. All this does, LB 87 of the '79 session was clearly amendatory. This section is 45-114 to 45-158 but instead they were placed in part (E) labeled "Collection Procedures." We have contacted the revisor of statutes on this and the revisor says the only thing that is needed is this particular bill for her authority to put in the statutes the way it should be in the first place. I would move for the advancement of 941 to E & R.

SPEAKER MARVEL: The motion is to advance the bill to E & R for engrossment. All those in favor vote aye, opposed no. Have you all voted? Clerk, record the vote.

CLERK: 31 ayes, 0 nays, Mr. President, on the motion to advance the bill.

SPEAKER MARVEL: The motion is carried. The bill is advanced. The next item of business, LB 877.

CLERK: Mr. President, LB 877 by Senator Rumery. (Read title.) The bill was first read on January 18 of this year. It was referred to the Public Works Committee for hearing. The bill was advanced to General File, Mr. President. I have no amendments to the bill.

SPEAKER MARVEL: Senator Rumery.

SENATOR RUMERY: Mr. President, members of the Legislature, this is a rather simple bill. It simply provides an opportunity for people who have drivers' licenses in Nebraska who are working outside the state or outside of the country, have an opportunity to renew that license without coming back to their home county to do so. The provisions are made that they can...and they can also do this ninety days ahead if they are here and they know they are going to be gone while their license

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LB 126, 375, 525, 686, 809, 869

SPEAKER MARVEL: Underneath the south balcony as guests of Senator Richard Peterson from Pierce, Nebraska, Mr. and Mrs. Bill Stanacek and daughter, Shannon, and Sue Wickman and Elisa Sorano who is an exchange student from Mexico. If you are in the room, will you please hold up your hands so we can see where you are. Yes.

CLERK: Mr. President, the Government Committee would like to hold an Executive Session underneath the north balcony upon adjournment today. That is the Government Committee. Senator Beyer would like to print amendments to LB 686 in the Legislative Journal. (See pages 1024 and 1025 of the Legislative Journal.) Mr. President, Senator DeCamp offers explanation of vote. And your Enrolling Clerk has presented to the Governor for his approval LBs 375, 525 and 126.

SPEAKER MARVEL: The next item is 869.

CLERK: Mr. President, LB 869 offered by Senator Stoney. (Read title.) The bill was read on January 18, referred to Miscellaneous Subjects, advanced to General File. I have no amendments on the bill, Mr. President.

SENATOR STONEY: Mr. President and members of the Legislature, I can spare you my speech if Senator Chambers would agree to spare you his, and maybe we could do something with this bill. He says, oh, no. Well, that doesn't surprise me. Ladies and gentlemen, what LB 869 attempts to do where LB 809 attempted to deal with the youth that would use altered identification in purchasing alcoholic beverages, in the case of LB 869 it addresses that person that provides through manufacture or production of this identification this illegitimate identification to youth. Now it is my understanding even here at the Nebraska State Fair there are youth who can through paying a certain fee purchase an identification that would verify that they are of legal age. What this bill would do as the other one would is to establish a minimum. There is no minimum at the present time. It is a Class III misdemeanor as it was in the instance referred to in LB 809. This would establish for a first offense a person that would be charged and convicted of this offense a 24 hours in jail, a \$100 fine. A subsequent offense and conviction would result in 48 hours or a \$500 fine. Ladies and gentlemen, this...well, I will leave it at that. I move that the bill be advanced.

SPEAKER MARVEL: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature,

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LB 672, 126, 375, 525

favor vote aye, opposed nay. Record the vote.

CLERK: 26 ayes, 0 nays, Mr. President, on adoption of Senator Beutler's amendment.

PRESIDENT: Motion carries. The Beutler amendment is adopted. Any further amendments?

CLERK: Nothing further, Mr. President.

PRESIDENT: Senator Goodrich.

SENATOR GOODRICH: I move the bill be advanced.

PRESIDENT: Motion to advance LB 672 to E & R for Engrossment. Any discussion? Who requests a machine vote? Senator Vickers, all right, machine vote has been requested. All those in favor of advancing LB 672 vote aye, opposed nay. Go to the board. Motion is on the advancing to E & R for Engrossment of 672. Have you all voted? Well, Senator Goodrich, do you want to close the afternoon out with a Call of the House to make sure everybody is here to say goodbye for the weekend, or.....?

SENATOR GOODRICH: Wait a minute, just a second, I think I have got a green one coming here. I need one more after this one too. Okay.

PRESIDENT: Record the vote.

CLERK: Senator Wesely, do you want....you do? Senator Wesely requests record vote, Mr. President.

PRESIDENT: Record vote has been requested, Mr. Clerk.

CLERK: (Read the record vote as found on pages 1145 and 1146 of the Legislative Journal.) 25 ayes, 13 nays, Mr. President.

PRESIDENT: The motion carries, LB 672 is advanced to E & R for Engrossment. Anything further to read in at this time?

CLERK: Mr. President, Public Works is going to hold an Executive Session underneath the north balcony upon adjournment. That is Public Works underneath the north balcony. Governor Thone has communicated to us that LBs 126, 375 and 525 were signed by me on March 10th, 1982.

Mr. President, Special Order scheduling by the Speaker.
(Re: LB 726.)