

January 9, 1989

LB 267-278
LR 4

Transportation Committee will meet in Executive Session upon adjournment.

Reference Committee, now, in 2102.

SPEAKER BARRETT: Thank you. The Legislature will continue to stand at ease while the Referencing Committee meets. We are not adjourned.

EASE

SPEAKER BARRETT: Announcements, bill introduction.

CLERK: Mr. President, a series of announcements. First of all, Executive Board would like to announce the makeup of the Building Maintenance Committee. Senator Conway has been selected as Chair with membership consisting of Senator Beyer, Senator Korshoj, Senator Scofield and Senator Warner. And with respect to the Education Commission of the States, which is also an Executive Board appointment, Senators Baack, Dierks and Withem have been selected to serve.

Mr. President, announcement from the Speaker, and that is that there will be a Committee Chairpersons meeting on Wednesday morning at eight-fifteen in Room 1517; Committee Chairpersons meeting at eight-fifteen Wednesday morning in Room 1517, as offered by the Speaker.

Mr. President, I have received a Reference Report referring bills up through 237. (See pages 122-25.)

Mr. President, new bills. (Read LBs 267-278 by title for the first time as found on pages 125-28 of the Legislative Journal.)

Mr. President, I have a new resolution by Senator Bernard-Stevens, LR 4, asking the Legislature to approve a gift from the Nebraska Game and Parks Foundation to the Games and Parks Commission of certain real estate located in Lincoln County. That will be laid over, Mr. President. (See pages 128-29 of the Legislative Journal.)

Mr. President, I have a hearing notice from the Transportation Committee for Tuesday, January 17. That is signed by Senator Lamb as Chair of the Committee.

January 30, 1989

LB 70, 187, 208, 267, 338, 378, 421

LB 267 General File, and LB 208 General File with amendments, those signed by Senator Chizek. Health and Human Services Committee reports LB 187 to General File with amendments, LB 338 General File, and LB 378 General File with amendments. (See pages 49S-99 of the Legislative Journal.)

Mr. President, Senator Hall offers notice of hearing as Chair of Revenue. Senator Pirsch asks unanimous consent to add her name to LB 70 as co-introducer.

Mr. President, Senator Smith has amendments to be printed to LB 421. (See pages 500-501 of the Legislative Journal.)

Mr. President, the last order of business are motions from the Credentials Committee as well as an accompanying report to be inserted in the Journal. (See pages 502-13 of the Legislative Journal.)

PRESIDENT: Senator Warner, Senator Jerome Warner, your light is on and I failed to call on you. Senator Warner, please.

SENATOR WARNER: Mr. President and members of the Legislature, I just wanted to indicate that handed out to you this morning was the report of the Credentials Committee relevant to the 17th Legislative District contest and appropriate motions reflecting that conclusions of the Credentials Committee have been filed with the Clerk, and I assume the Speaker will place those on the agenda for tomorrow.

PRESIDENT: Thank you. Senator Emil Beyer, I haven't heard your resonant tones of your voice this morning, would you like to rise and say something about adjourning until January 31st at nine o'clock in the morning.

SENATOR BEYER: Mr. Speaker and colleagues, I move that we adjourn until nine o'clock on January 31st.

PRESIDENT: You have heard the motion. All in favor say aye. Opposed nay. We are adjourned. Thank you.

Proofed by:


LaVera Benischek

SPEAKER BARRETT: Thank you, Senator Peterson. For the record, Mr. Clerk.

CLERK: I have nothing at this time, Mr. President.

SPEAKER BARRETT: To General File then, LB 267.

CLERK: LB 267, Mr. President, is a bill introduced by Senators Abboud and Kristensen. (Read title.) The bill was introduced on January 9, referred to Judiciary Committee, advanced to General File. I have no committee amendments, Mr. President.

SPEAKER BARRETT: Thank you. Senator Abboud, to introduce 267.

SENATOR ABOUD: Mr. President, colleagues, this is a relatively simple bill. A lot of times you wonder when is daytime and when is nighttime. Within the parameters of law enforcement, there has been different viewpoints as to when is daytime and when is nighttime. What this bill does is clearly define for the citizens of this state when search warrants can take place. At the current time, there is confusion, confusion among law enforcement officers. The federal government decides that for daytime search warrants, the hours for daytime search warrants should be between 6:00 a.m. and 10:00 p.m. I have handed out a copy of a federal search warrant, and if you will note towards the bottom of the first page, it specifies when a daytime search warrant can be subpoenaed upon an individual, between 6:00 a.m. and 10:00 p.m. Now in order to get a search warrant, a law enforcement individual first goes to the county attorney, and then after that, he goes before a county or district judge and requests a search warrant. They have to have probable cause. They have to present enough evidence before that judge in order to get that search warrant. Now some states have said, it really doesn't make any difference between daytime and nighttime. I did a little research on some of the states, the surrounding states, and I found that, for example, in the State of Iowa, they don't make any distinction between daytime and nighttime. They go before a judge and they just say, we need a search warrant. Here is the evidence. This individual is selling drugs or has been involved in a murder and we would like a search warrant. And the judge doesn't specify daytime or nighttime. Now when I was approached by law enforcement officials to introduce this bill, we talked about that as just doing away with all daytime/nighttime because it really doesn't, I feel, doesn't make much sense anymore. Maybe in a time when

we were more of an agrarian society and people had...when they went to bed at dusk and rose at sunset (sic), maybe those would apply but in today's society the way people stay up past ten o'clock, rise early in the morning with the electric lights, it doesn't really make a whole lot of sense to have any sort of distinction between the two. And maybe that is why the states of Iowa, Colorado, Georgia, Indiana, Washington, Kansas, Illinois, Kentucky, Connecticut, Wyoming, all have found that there really isn't any need to differentiate between the two, daytime and nighttime. And there is more states than that but I only had time to look up about 17 of them. So as a result, I thought, well, this makes a lot of sense. We should follow the federal law on this, the Federal Congress decided that the distinction should be between daytime...should be between 6:00 a.m. and 10:00 p.m. Now the reason this came up before law enforcement officials was because of a case that occurred before the Nebraska Supreme Court, the State of Nebraska vs. Holman and, at that time, the judge, I believe it was Fahrnbruch, he stated, basically, that the Legislature had specified this in a particular statute and, as a result, it was up to the Legislature to make the distinction. You know, I think it is important for the citizens of this state to know when a search warrant can...a daytime search warrant can be issued. More importantly, it shouldn't be a responsibility of the law enforcement official to determine when is dusk and when is dawn. By giving law enforcement officials, police, sheriffs, the distinct definite time in which an individual can have their house searched for a daytime search warrant I think is good, and I think it is something that is good law enforcement. With that, I would be happy to answer any questions if there were any. Thank you.

SPEAKER BARRETT: Thank you. An amendment on the desk, Mr. Clerk.

CLERK: Mr. President, Senator Chambers would move to amend the bill. (Read Chambers amendment found on page 602 of the Legislative Journal.)

SPEAKER BARRETT: Senator Chambers, please.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, this is a significant piece of legislation, and what it seeks to do is significant, and I think it bears on the best interest of the citizens of this state if we take prudent action. What

Senator Abboud did not do in his discussion was to tell you what the current law is. The current law does make reference to daytime, but it says that if, in the opinion of the judge, the public interest requires the warrant to be served other than at daytime, then the warrant can specify that it will be served at anytime, meaning it can be served at night. The reason for daytime serving of warrants has nothing to do with electric lights and people farming and things like that. The idea is that the state should not come in the dead of the night and terrify people with that dreaded knock or the kicking in of the door. So a distinction is made. In the ordinary course of events, daytime means the hours between sunrise and sunset which this state's Supreme Court logically and intelligently ruled, and based on Black's law dictionary, daytime is the period when without the aid of artificial light you can discern the features of a person. For the model penal code, the period of nighttime for the purposes of burglary would be one hour before sunset, one hour after...one hour before sunrise, one hour after sunset. That is when nighttime is. So the period between is daytime. I don't think we ought to artificially define this term. Rather than have the police disregard the clear statement in a warrant that daytime is when a warrant should be served and daytime means what the citizen understands it to mean, there should be some instruction of the police as to the meaning of daytime. My amendment would simply put a definition of daytime into the statute and it would track what the State Supreme Court said, that daytime will be the time between sunrise and sunset. If a judge can be shown that an emergency situation exists, the law as it stands now if you will read the top of page 3 of the green copy, this language is there, that it may be served at anytime. So there ought to be a distinction between the two. A warrant can issue for somebody if they have a traffic ticket, have not paid it, and did not show up for court. If you have an appearance for any purpose and don't show up, a warrant can issue for you, and I am sure we will all agree that the types of incidents for which a warrant can issue vary in seriousness. A person should not have to face the police kicking a door in after the sun has gone down on some trivial matter. If the police do have the type of situation where the public interest requires the warrant to be served at night, the judge will be shown that and the judge will make the determination. So since what this bill is attempting to do is define daytime, I hope that you will accept this amendment, and in the State of Nebraska define daytime to mean what daytime has always meant. The federal definition is artificial. It doesn't say anything

about local time. So if it is eight o'clock in Nebraska, it is earlier in California by two hours. So ten o'clock in California is twelve midnight in Nebraska. Ten o'clock in California may not have the sun setting as early before ten o'clock as it would in Nebraska. It stays daylight longer. In the summertime in Nebraska, the sunsets later in the evening than it does in the wintertime. So rather than set an hour by the clock when the period of daytime will vary, it would be better to do it as the State's Supreme Court did and let daytime always mean what daytime means, the period from sunrise to sunset, and I don't think law enforcement will be hindered in any way in carrying out its legitimate functions, but we should not have a warrant that is to be served in the daytime to be served at ten o'clock at night. I think that is unreasonable. I think we need to consider the citizens, and there have been warrants served at the wrong address. There have been warrants served improperly, and we need to consider the overall thrust of what these powers are that we give to law enforcement. So I hope that you will accept this amendment.

SPEAKER BARRETT: Thank you. Discussion on the Chambers amendment, Senator Abboud, followed by Senator Kristensen.

SENATOR ABOUD: Mr. President and colleagues, I rise in opposition to the amendment offered by Senator Chambers. I am afraid, Senator Chambers, you are confusing the issue a little bit. When it deals...well, first off, let's talk about that federal rule that you distorted. I have a copy that I am going to be sending around. The federal rule 41 states specifically that the term daytime is used in this rule between the hours between 6:00 a.m. and 10:00 p.m. according to local time. Now if you will look at page 3 of the bill, LB 267, I specifically state, "For purposes of this section, daytime shall mean the hours between 6:00 a.m. and 10:00 p.m. according to local time." So if a search warrant is to be issued out in Scottsbluff and it is eight o'clock, p.m., in Scottsbluff, that is when the subpoena can be issued, the warrant can be issued at that particular time according to the local time, Central or Mountain. I don't see a problem with that. The federal government hasn't seen a problem with that because they defined it according to local time. Now as far as if a search warrant is issued on an individual and that warrant is improperly issued, let's say they go to the wrong address, or the search warrant says we have the ability to search your house looking for drugs and, instead of finding the drugs, they find a murder

weapon. Well, that evidence that is gotten in that search warrant is thrown out and it can't be used against that individual in a court of law. The search warrant specifies what that law enforcement official can search for, period. Now what we are defining here, we are making it very clear to law enforcement officials when daytime is and when nighttime is. According to the case that the Supreme Court looked at, and I will quote from it, it stated that, "The Nebraska Legislature has chosen not to define the word 'daytime'. It is a simple rule of statutory construction which is not specifically defined." And I feel that it is the responsibility, as the court does, it is the responsibility of the Nebraska Legislature to define when is daytime, if we want to distinguish between daytime search warrants and nighttime search warrants. Now as I said, the State of Iowa has chosen not to differentiate between a search warrant during the daytime hours and the nighttime hours. They state that whenever there is a search warrant, you can go ahead and search that person's house at 2:00 a.m. in the morning and it would be considered a daytime search warrant. Now as far as kicking in the door on an individual, if you have a no-knock search warrant, I suppose you could do that. You could go ahead and kick in their door. In cases where there is drugs involved, and let's say like it is a crack house, they can go to a judge and request, because of the danger to law enforcement officials, they can go to that judge and say, we need a no-knock because the door is reenforced. We are in fear that if we knock on the door, we are going to get our head blown off. In that case they can get a no-knock. But we are not talking about that in this sense. That is something...that is a separate issue involved in a search warrant. That is a separate issue for the judge to determine. Now like I said, I had my options in introducing this bill to differentiate between the two. I could have taken the approach that Iowa, Colorado, Wyoming, and a number of other states have taken and not differentiate between the two, but I thought that the most prudent course would be to go ahead and keep it, even though I didn't see much of a reason for it, go ahead and keep it. We will follow the federal laws. That way when federal law enforcement officials work with state officials, they can work together and follow the same rules.

SPEAKER BARRETT: One minute.

SENATOR ABBOD: Thank you.

SPEAKER BARRETT: Senator Kristensen, please.

SENATOR KRISTENSEN: Thank you, Mr. President. I rise in opposition to this amendment. Contrary to what has been said this morning, I do believe it will be much more difficult for law enforcement to carry out their duties in search warrants under the Chambers amendment. And let me give you some examples of how that will be so. During the wintertime, if you go out and let's say it is a foggy day or it's a dark day out and sunset comes rather early, under the Chambers amendment, another element of proof is going to have to be...they are going to have to prove what time sunset was in exact terms. In other words, today it may be five twenty-six or five twenty-seven, and so how are they going to determine what time sunset really was? Are they going to the Omaha World-Herald? Are they going to go to the Lincoln Journal? Are they going to pull out their trusty little farmer's almanac and decide what time sunset was? All that does is just make another technicality in terms of proof and what is going to have to be shown ultimately in a motion for suppression if they feel they have been wronged by the issuance of a search warrant. This is just another element, another technicality to throw out those search warrants, and I don't think that is what people want. The reason the Nebraska Supreme Court came down and defined when this search warrant should be issued was because there was no direction from us as a Legislature. All this bill does in this provision is to define daylight being from 6:00 a.m. till 10:00 p.m. If it is outside of those, those are concrete terms, the violations will be easy to figure out. Something that was served after ten o'clock is in violation. Something before 6:00 a.m. is a violation and those should be thrown out, and rightfully so. As we look at what the Supreme Court finally told us, they said we don't want the police making up what time to serve search warrants, and I think that is right. We ought to do that, and in closing, really what happens is during the wintertime, you are going to give less time for law enforcement to carry out their obligations. In the summertime, they are going to have more time to do it, and law enforcement isn't a seasonal activity. The best thing for us to do is determine those set parameters, and if they are violated, throw out the warrants. Thank you.

SPEAKER BARRETT: Thank you. Senator Chambers, please, Senator Abboud on deck.

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

when I stated that this did not mention whether or not it was local time, I was referring to the copy of the U.S. District Court warrant that Senator Abboud handed out on our desk, and if you look at it, it does not say 6:00 a.m. to 10:00 p.m. local time. That is what I was reading, what I said, it says 6:00 a.m. to 10:00 p.m. and it doesn't say local time and, in fact, it doesn't, and this is what Senator Abboud put on our desk. Senator Abboud read from the Nebraska Supreme Court. He had the decency to let me have the case so that I can read the rest of what he didn't read because I am familiar with the case, but since he read specifically from it, that is what I want to do. On page 59 of the case, Senator Abboud read, "The Nebraska Legislature has chosen not to define the word 'daytime'. It is a simple rule of statutory construction..." And he stopped, and he stopped. Here is that entire sentence. "It is a simple rule of statutory construction that terms which are not specifically defined are to be taken in the sense in which they are understood in common language. Nighttime darkness is not commonly understood to be daytime. We hold that for the purposes of determining whether a search complied with the terms of a daytime search warrant, daytime extends from dawn to darkness." And I am telling you, the law that is on the books now distinguishes between daytime and other times. And the language of the law says, and Senator Abboud nor Senator Kristensen read this to you, "The magistrate or judge...". All right, I will read the whole sentence starting on page 2, in line 22. "The warrant shall direct that it be served in the daytime unless the magistrate or judge is satisfied that the public interest requires that it should not be so restricted, in which case, the warrant may direct that it may be served at anytime." Now why do we need this bill, why do we need to change the definition to one saying from 6:00 a.m. to 10:00 p.m.? Let daytime mean the daylight hours, and if, as Senator Kristensen says, you are in a time in the winter when nightfall comes early, just tell that to the judge or the magistrate and persuade him or her to allow it to be served at any time. And if the judge or magistrate cannot be persuaded, then it should not issue, but what they want to do is have a situation where a judge or magistrate would not allow the warrant to issue after dark because the issue is not serious enough to justify that. I am not talking about improperly seized evidence under a warrant where it specifies one thing and you get something else. I am talking about the time when it is served, and Senator Kristensen knows that there are relatively trivial situations for which a warrant can issue. So, if we

have a clear statement as to when daytime is, and the police think they have to serve a warrant outside of that time, let them persuade the judge or the magistrate. The U.S. Constitution, the so-called founding fathers who drafted it saw a need to see that the people are secure in their persons and their property.

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: It said that there can be no illegal searches and seizures. That is why you have to have a warrant specifically describing the person or thing to be seized or the premises to be searched. To have a situation such as this is to try to make inroads on that constitutional guarantee by maneuvering and manipulating the terminology that defines when a warrant can be served. Law enforcement will not be hurt by the amendment that I am offering. They might have to be more forthright and forthcoming to a judge or magistrate to persuade him or her to let them serve a warrant after darkness, and I don't think that is too heavy a burden to be placed upon them. This bill came to us not because there were a lot of warrants that needed to be served at night and judges and magistrates were not allowing it. The police did not serve a daytime warrant in the daytime. They kicked the door down at night.

SPEAKER BARRETT: Time has expired.

SENATOR CHAMBERS: That is how this came before us, one case, and I hope you will adopt the amendment.

SPEAKER BARRETT: Thank you. Senator Abboud, please. Senator Kristensen, please.

SENATOR KRISTENSEN: I just have a...Senator Chambers, can I ask you a question?

SENATOR CHAMBERS: Okay.

SPEAKER BARRETT: Senator Chambers, would you respond?

SENATOR CHAMBERS: Yes, I will.

SENATOR KRISTENSEN: If I was going to...if I was a law enforcement officer today and I was going to serve a warrant, when would be the last time today I could serve that warrant

under your amendment?

SENATOR CHAMBERS: Do you want me to say how you can find out definitely?

SENATOR KRISTENSEN: Well, how would you do that?

SENATOR CHAMBERS: Okay, you can get this morning's paper and it tells you the exact hour and minute of sunrise and the exact hour and minute of sunset, and that would be acceptable to make the case in court.

SENATOR KRISTENSEN: What happens...

SENATOR CHAMBERS: And you can also get the information from the weather services either by calling them or getting it on television where it is given.

SENATOR KRISTENSEN: Okay, and then if you go to trial with that, what sort of proof would you bring into trial to prove that?

SENATOR CHAMBERS: I think in the same way that newspapers that are popularly printed are allowed to establish the existence of a sporting event, and all you have to do is establish that it is a legitimate newspaper and it is printed, and that is accepted without further proof. I believe this would be, too, but you could get a statement in the proper form to have it accepted as evidence, you know the exceptions to the hearsay rule when you are not going to bring everybody into court who is in a position to establish the validity of something and make the point that way. There are numerous ways without too much inconvenience to establish when the sun sets and when the sun rises, and it has been done before. In fact, I had a ticket one time, and the issue was what time it was served, and the newspaper was used, and as a result of that, it never went to court.

SENATOR KRISTENSEN: Thank you, Senator Chambers. I think that points out the exact thing that I wanted to show this morning was that what we are going to have to do by this amendment, instead of just having set times, and I am not saying we are necessarily stuck on six till ten. If the body feels that they want to change some times, maybe that is something that the body wants to do, but the point is is that we need some specifics as to when those times are. Otherwise we are going to have to find

a newspaper, and I am not sure that there is any newspaper in Kearney County or many of the counties that carry sunrise or sunset. So then we are going to look for two or three newspapers, and we are going to have to save that newspaper, and we are going to have to show that was the newspaper that he looked at on that day, and all we do is create a ton of problems for us. And everybody here is so concerned about technicalities, technicalities. Here is one of those technicalities that will reach up and bite somebody, and it is very hard to explain to people, well, this thing was served at five twenty-six today, February 6th, but the Omaha World-Herald said it was... sunset was five twenty-four. Or they will pull out the Farmer's Almanac which maybe will be different, or some other newspaper may be different, I don't know where they get those from, and that is the exact argument that you will hear in court. The key is we need some specificity of time and some direction and something we can count on and say, look, this is either a violation or this is not in terms of when this thing is served. And if there are some violations, Senator Chambers brings in the Constitution, there is a whole variety of ways. This is certainly not an unconstitutional bill, and I would urge that we vote against the amendment.

SPEAKER BARRETT: Thank you. Senator Chambers, please.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I, at no point, said that the bill is unconstitutional. I said it is a way to try to make inroads on the constitutional guarantee against unlawful searches and seizures. Senator Conway just pointed out where the statute now says that to determine whether or not a person has their headlights on at the proper time, it would be one-half hour before sunrise, one-half hour... or one-half hour after sunrise to one-half hour before sunset. So it gives some wiggle room. But let me ask Senator Kristensen a question.

SPEAKER BARRETT: Senator Kristensen, would you respond?

SENATOR KRISTENSEN: Yes.

SENATOR CHAMBERS: Senator Kristensen, do you think for the purpose of a daytime warrant a 12-hour period is long enough for that warrant to be served, say from 7:00 a.m. to 7:00 p.m.?

SENATOR KRISTENSEN: I think a better time is maybe from

6:00 a.m. to eight or nine o'clock is probably more...if you are going to move the times, I would move them only back an hour or two.

SENATOR CHAMBERS: Well, let's take 7:00 a.m. to 8:00 p.m.

SENATOR KRISTENSEN: I'd prefer not to.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I am going to write a different amendment. So I will withdraw the one that is there, and the amendment I would like...and I will sign it. Instead of having...I would strike six on line 4 and put 7:00 a.m., and in line 5, I would strike ten and put 8:00 p.m. Senator Kristensen and Senator Abboud, are you all aware of what I am offering as an amendment? Senator Kristensen, what I am doing, I withdrew the other amendment and I am offering one which would say in line 4 instead of 6:00 a.m., it would be 7:00 a.m., and in line 5, it would be 8:00 p.m. This would give them 13 hours during which to serve a daytime warrant. And if the judge feels that it should not be served at nighttime, it should not be served at nighttime. The judge or magistrate has not been convinced that the public interest requires a nighttime serving of the warrant. And at certain times of the year, to show the concession I am making to you by putting a specific hour, 8:00 p.m. will be a period when nightfall will have been upon us for sometime. So they will still have instances when although they know that the warrant is to be served at daytime, they can kick somebody's door in after darkness. Those are tactics designed to terrorize people and not to keep evidence from being destroyed or somebody from escaping, because if that were the situation, the destruction of evidence or the escaping of a person, the judge or magistrate would say serve the warrant at any time, which the law allows now. Sometimes there is a tendency to let law enforcement people come to the Legislature and simply say, we need this to fight crime, and the Legislature gives them whatever they ask for without serious analysis or questioning. Remember, members of the Legislature, one case is why this bill is before us now. I don't know when the section of statute that we are amending first entered the law books but, in all of that time, there has been no problem sufficiently severe to try to have a change, and it is being brought to us because somebody objected to the fact that the Omaha police kicked in the door after darkness when the warrant said it should be served in the daytime. We are making a policy decision here and I hope that you will adopt this

amendment. And so that it is clear, instead of saying between 6:00 a.m. and 10:00 p.m., it would allow the serving of the daytime warrant between 7:00 a.m. and 8:00 p.m.

SPEAKER BARRETT: Thank you. Discussion on the second Chambers amendment? Senator Abboud, followed by Senator Landis. Thank you. Senator Landis, please.

SENATOR LANDIS: Mr. Speaker, members of the Legislature, this is an interesting little discussion, kind of worth just paying a little bit of attention to because it is an interesting issue. You have got kind of a truth in labeling argument here because you have got something called a daytime warrant. That is what it is called. It is a daytime warrant, and I think there has been a couple of interesting arguments raised. I think Senator Kristensen and Senator Abboud are entitled to a good-faith argument that you don't want something that moves a couple of minutes every day, and you have got to be checking in the morning in the paper to see when you are entitled to do your business. That is a darn good argument. Senator Chambers has got a good argument as well, though. His point is that this is not an exceptional form of a warrant. The law provides for that. A judge could give a nighttime warrant. A judge could give a no-knock warrant for the breaking in of a door. This is regular business. This is just regular business. Now if it is just regular business, the question is, what are regular business hours? What is the regular business of serving this kind of a warrant if it is a daytime warrant? Now I don't feel compelled to follow just the hours of daylight. You and I know that there is a meaning to the word "day" that encompasses more than just the daylight hours. Did you have a tough day yesterday? How was your day? Well, that includes your working time. It certainly doesn't include just the daylight hours when you use day in that sense. Seven to eight I think is a fair figure. I will tell you what. You all go door to door when you run for office, and what time did you stop going to the door when you knew that you were imposing on people and creating a less than favorable response? When did you stop doing it? It was past sunset. It was sometime in the dinner hour or coming to the close of the dinner hour, but there was a time when you would agree that in the regular course of the business of politicking, you didn't go knocking on people's door because you weren't welcome. Now there is a time up to which you were welcome and a time after which you weren't welcome, and eight o'clock is pretty fair. That is a regular business hour, it

seems to me, for the conduct of normal business, not exceptional business which the law allows. This does not hamstring law enforcement from doing any exceptional kind of a work. It has the virtue of a specificity which Senator Abboud and Senator Kristensen have asked for. I think Senator Chambers has moved off what I think is an unrealistic point of view and that is just the daylight hours. It has that virtue, but remember two things. First, if there is any serving of a warrant outside this time, the law provides for a method to do it at three o'clock in the morning if you want it. There is no reason, this does not hamstring police in the normal course of events. If they have a good case, they can go in any time. They just have to get permission from a judge to do it. But if this is a regular course of business during what is called a daytime warrant, then it is fair to do that in a regular course of business. My guess is that you don't have a caller at your door at six fifteen that is welcome. Seven o'clock in the morning is real early around my house but I would recognize that as being legitimate. Eight o'clock is fair enough, too. I would not be intimidated by somebody coming to my door at eight o'clock. I would open my door. After that time, I would look through the peephole and I'd start wondering who was out there. I would tell my daughter not to open the door. I would get nervous about people too far into the evening coming to my door. There is just a sense of common sense here and I think seven to eight is pretty reasonable. That pretty well describes the time in which if somebody came to my door that I would think this is a legitimate call. And I think the public is probably entitled to that if we are going to use something called a daytime warrant. If that is our phrase, if that is what the law requires, if this is regular business practices, seven to eight for a call at the doorstep seems reasonable.

SPEAKER BARRETT: One minute.

SENATOR LANDIS: I am going to vote for the Chambers amendment.

SPEAKER BARRETT: Thank you. Further discussion. Senator Elmer, followed by Senators Abboud and Kristensen.

SENATOR ELMER: Thank you, Mr. President. I just would like to enhance my personal knowledge of this subject just a little bit. I wonder if Senator Chambers might yield to a question.

SPEAKER BARRETT: Senator Chambers, would you respond, please?

SENATOR CHAMBERS: Yes, I will.

SENATOR ELMER: Senator Chambers, you are well versed on these kind of things. Do you know in the issuance of a warrant if the judge would be more inclined to, and I don't know how I best want to say this, is there further criteria that the judge would use to issue a 24-hour a day warrant compared to a daytime warrant?

SENATOR CHAMBERS: Oh, I believe so because of the fact that the statute makes a difference, the judge recognizes that there is a difference, and in an emergency type situation, and I am trying not to use any legalese, where the good of the public requires that this warrant be served outside of daylight hours, the judge can be shown that. And nighttime warrants are not routinely given. So a lot of it is going to depend on what the facts of the case are, what the officers seeking the warrant can persuade the judge to do. But forgetting those differences in factual circumstances and examples, the idea is that a difference exists between a daytime and a nighttime warrant, and I think the situations differ when the nighttime warrant would be given, and I am calling it nighttime to distinguish it from daytime, but the warrant really would say at any time. It could be served in the daytime. With that failing, it could be served at night also.

SENATOR ELMER: Excuse me. I wonder if you might be able to cite an example of where a judge would issue a daytime warrant versus a 24-hour warrant?

SENATOR CHAMBERS: Let's say a bench warrant is issued because somebody didn't show up for trial, and it is not a serious offense and they don't think the person is a desperado and they have fled from the jurisdiction, there are some types of warrants or a search warrant that officers will carry around for a period of time until it is convenient for them to serve it, and I know officers on the police force. I am not going to try to itemize every kind of situation where one of these or the other would be served.

SENATOR ELMER: Wouldn't a bench warrant be an arrest warrant?

SENATOR CHAMBERS: Yes, yes.

SENATOR ELMER: Well, would be different than...

SENATOR CHAMBERS: And that is why I said, and also a search warrant. There are search warrants that are not always served as soon as they are obtained.

SENATOR ELMER: I see.

SENATOR CHAMBERS: And I know of officers, again, who carry them around, and I'd venture to say, anybody who has talked to law enforcement people would know that there are warrants which are served when it is convenient for the officer.

SENATOR ELMER: But then the warrant, itself, would state how long it was valid. They wouldn't necessarily carry it for a month or two and then execute it, would they?

SENATOR CHAMBERS: Well, who knows. There are different ways that warrants are written, and some, because they are written and authorized, are invalid. That is why the kind of questions you are asking are somewhat off the point of what we are talking about here. A warrant could issue to search a house, and they could search a garage, and there would be an argument as to whether it covered the garage. That is not what I am talking about. A warrant could be issued to search for drugs and, as Senator Abboud said, a weapon may be found, and that weapon would be suppressed. That is not what I am talking about. I am talking about what Senator Landis and I have been discussing, the period of time during which these warrants are served, daytime as opposed to nighttime.

SENATOR ELMER: Thank you very much.

SPEAKER BARRETT: Senator Abboud, please.

SENATOR ABOUD: Mr. President, colleagues, the idea behind this bill was to provide for distinct guidelines for law enforcement officials to use when issuing a daytime search warrant, and that was the purpose of the bill being introduced. I am going to be supporting the Chambers amendment at this time. I would have preferred to keep consistency with the federal guidelines and I plan on supporting the amendment, advancing the bill off of General File, and checking with other law enforcement officials to determine if this would be acceptable to them. So, at this time, I would urge the body to adopt the amendment. Let's move

February 6, 1989

LB 132, 147, 224, 265, 267, 397, 619
623

the bill on to Select File.

SPEAKER BARRETT: Thank you.

SENATOR KRISTENSEN: I think the Chambers amendment is a reasonable compromise, and it gets to the point of what we wanted to do, and I would call the question.

SPEAKER BARRETT: Thank you. That won't be necessary. Senator Chambers. No closing, thank you. The question is the adoption of the Chambers amendment to LB 267. Those in favor please vote aye, opposed nay. Voting on the Chambers amendment to LB 267. Have you all voted? Record, please.

CLERK: 25 ayes, 1 nay, Mr. President, on adoption of Senator Chambers' amendment.

SPEAKER BARRETT: The amendment is adopted. Anything further?

CLERK: Nothing further on the bill, Mr. President.

SPEAKER BARRETT: Senator Abboud. No closing. No lights on. Is there any discussion on the advancement of the bill? Seeing none, those in favor of advancing 267 to E & R Initial please vote aye, opposed nay. Have you all voted? Record, please.

CLERK: 27 ayes, 0 nays, Mr. President, on the advancement of LB 267.

SPEAKER BARRETT: LB 267 is advanced. For the record, Mr. Clerk.

CLERK: Mr. President, your Committee on Judiciary, whose Chair is Senator Chizek, to whom was referred LB 147 instructs me to report the same back to the Legislature with the recommendation it be advanced to General File; LB 224 General File, LB 265 General File, LB 397 General File. Those are signed by Senator Chizek as Chair. Natural Resources Committee whose Chair is Senator Schmit reports LB 132 to General File, LB 619 General File, LB 623 General File. Those are signed by Senator Schmit as Chair.

I have a confirmation report from Senator Schmit as Chair of the Natural Resources Committee; and a notice of hearing from the Revenue Committee signed by Senator Hall. That is all that I

February 8, 1989

LB 43, 80, 82, 92, 92A, 106, 113
116, 158A, 165, 166, 171, 172, 175A
177A, 177, 194, 200, 208, 238, 261A
267, 277A, 284A, 296, 312A, 312, 321
322, 353, 357, 369, 458, 459

PRESIDENT: Senator Nelson, would you object to the bracketing?

SENATOR NELSON: No. I just tried to get some attention on my mike. I didn't run up there at the front and no one asked me. I didn't say yes, I didn't say no, and it is all right with me to pass over the bill until February 22. As I've said many times, I'm willing to listen, I'm willing to learn, I'm willing to amend the bill as it is, but we're talking about a serious thing so I'm very willing.

PRESIDENT: May I ask, are there any objections to bracketing this bill until February 22? If so, now is the time to say so. If not, the bill is bracketed until February 22. Do you have anything for the record, Mr. Clerk?

CLERK: Mr. President, I do, thank you. Your Committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 92 and recommend that same be placed on Select File; LB 459 Select File; LB 458 Select File; LB 116 Select File; LB 267, LB 208, LB 92A, LB 158A, LB 175A, LB 177A, LB 261A, LB 277A, LB 284A, LB 312A, all on Select File. Those are signed by Senator Lindsay. (See pages 647-51 of the Legislative Journal.)

Mr. President, your committee on Transportation whose Chair is Senator Lamb reports LB 369 to General File with amendments. That is signed by Senator Lamb. Your Committee on Enrollment and Review reports LB 43, LB 80, LB 82, LB 106, LB 113, LB 165, LB 166, LB 171, LB 172, LB 177, LB 194, LB 200, LB 296, LB 312, LB 321, LB 322 and LB 353 all are reported correctly engrossed, Mr. President. That is all that I have at this time, Mr. President. (See page 651 of the Legislative Journal.)

PRESIDENT: Very good. We'll move on then LB 238.

CLERK: Mr. President, 238 was a bill that was introduced by Senator Hall. (Title read.) The bill was introduced on January 9, referred to Business and Labor, advanced to General File. I do have committee amendments pending by the Business and Labor Committee, Mr. President.

PRESIDENT: Senator Coordsen, are you going to handle those committee amendments?

PRESIDENT: Record, Mr. Clerk.

CLERK: 26 ayes, 7 nays, Mr. President, on the motion to advance LB 116.

PRESIDENT: LB 116 advances. LB 267, please. The call is raised.

CLERK: Mr. President, 267, Senator, I have no amendments to the bill.

PRESIDENT: Senator Lindsay, please.

SENATOR LINDSAY: Mr. President, I move that LB 267 be advanced.

PRESIDENT: You've heard the motion. All in favor say aye. Opposed nay. It is advanced. LB 208.

CLERK: Mr. President, LB 208, the first item I have are E & R amendments, Senator.

PRESIDENT: Senator Lindsay, please.

SENATOR LINDSAY: Mr. President, I move that the E & R amendments to LB 208 be adopted.

PRESIDENT: You've heard the motion. All in favor say aye. Opposed nay. They are adopted.

CLERK: Mr. President, Senator Wesely would move to amend the bill. (Wesely amendment is on page 704 of the Legislative Journal.)

PRESIDENT: Senator Wesely, please.

SENATOR WESELY: Thank you, Mr. President, members. On General File Senator Warner raised a question about when this bill would apply to those coming on the property, and we did work with his office. There are three various definitions of trespassing in the statutes, and this amendment would reference those statutory definitions of trespassing, so we would know in what instances an individual, as you recall under the bill if you're trespassing this bill would not apply. You would...dog involved, dangerous dog, if it attacked in defense of the

February 15, 1989 LB 57, 58, 70, 74, 94, 97, 115
116, 126, 133, 142, 156, 175A, 177A
208, 229, 230, 233, 251, 255, 256
261A, 263, 267, 273, 281, 284A, 295
338, 378, 391, 398, 416, 443, 458
459, 499, 502

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: Welcome to the George W. Norris Legislative Chamber. Please rise for the opening prayer. Our Chaplain for the day is Father Daniel Sieker, of Blessed Sacrament in Lincoln. Father Sieker.

FATHER SIEKER: (Prayer offered.)

SPEAKER BARRETT: Thank you, Father Sieker. Please come back again. Roll call.

CLERK: I have a quorum present, Mr. President.

SPEAKER BARRETT: Thank you. Corrections to the Journal.

CLERK: I have no corrections, Mr. President.

SPEAKER BARRETT: Any reports, messages, or announcements?

CLERK: Mr. President, your Committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 502 and recommend that same be placed on Select File, LB 281 Select File, LB 416 Select File, LB 443 Select File, those signed by Senator Lindsay as Chair. Mr. President, your Committee on Enrollment and Review reports LB 74 as correctly engrossed; LB 116, LB 175A, LB 177A, LB 208, LB 261A, LB 263, LB 267, LB 273, LB 284A, LB 338, LB 378, LB 391, LB 398, LB 458, LB 459, and LB 499, all reported correctly engrossed, all signed by Senator Lindsay. (See pages 746-47 of the Legislative Journal.)

Mr. President, a communication from the Governor to the Clerk. (Read. Re: LB 57, LB 94, LB 97, LB 126, LB 133, LB 229, LB 230, LB 233, LB 251, LB 255, LB 295, LB 58, LB 70, LB 115, LB 142, LB 156, LB 256. See page 748 of the Legislative Journal.)

February 24, 1989 LB 208, 238, 263, 267, 273

Journal.) 39 ayes, 7 nays, 3 excused and not voting,
Mr. President.

PRESIDENT: LB 208 passes. LB 238.

CLERK: (Read LB 238 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having
been complied with, the question is, shall LB 238 pass? All
those in favor vote aye, opposed nay. Have you all voted?
Record, Mr. Clerk, please.

CLERK: (Record vote read. See page 866 of the Legislative
Journal.) 47 ayes, 0 nays, 2 excused and not voting,
Mr. President.

PRESIDENT: LB 238 passes. LB 263.

CLERK: (Read LB 263 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having
been complied with, the question is, shall LB 263 pass? All
those in favor vote aye, opposed nay. Have you all voted?
Record, Mr. Clerk, please.

CLERK: (Record vote read. See pages 866-67 of the Legislative
Journal.) 46 ayes, 0 nays, 1 present and not voting, 2 excused
and not voting, Mr. President.

PRESIDENT: LB 263 passes. LB 267.

CLERK: (Read LB 267 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having
been complied with, the question is, shall LB 267 pass? All
those in favor vote aye, opposed nay. Have you all voted? Have
you all voted? Record, Mr. Clerk, please.

CLERK: (Record vote read. See pages 867-68 of the Legislative
Journal.) 43 ayes, 4 nays, 2 excused and not voting,
Mr. President.

PRESIDENT: LB 267 passes. LB 273.

CLERK: (Read LB 273 on Final Reading.)

February 24, 1989

LB 74, 116, 208, 238, 263, 267, 273
344, 781

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 273 pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

CLERK: (Record vote read. See page 868 of the Legislative Journal.) 47 ayes, 0 nays, 2 excused and not voting, Mr. President.

PRESIDENT: LB 273 passes. LB 344 with the emergency clause attached.

ASSISTANT CLERK: (Read LB 344 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 44 (sic) pass with the emergency clause attached...excuse me, 344 with the emergency clause attached? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

ASSISTANT CLERK: (Record vote read. See pages 869-70 of the Legislative Journal.) The vote is 46 ayes, 0 nays, 1 present and not voting, 2 excused and not voting, Mr. President.

PRESIDENT: LB 344 passes with the emergency clause attached. This ends the Final Reading. Do you have anything for the record at this time? If not, we'll move on to special order, LB 781.

CLERK: Mr. President, LB 781...

PRESIDENT: Mr. Clerk, before you start, may I just say that while the Legislature is in order...in session and capable of transacting business, I propose to sign and do sign LB 74, LB 116, LB 208, LB 238, LB 263, LB 267, LB 273 and LB 344 with the emergency clause attached. Now on to LB 781.

CLERK: Mr. President, 781 was a bill that was introduced by the General Affairs Committee and signed by its members. (Read title.) The bill was introduced on January 19 of this year, Mr. President. At that time, it was referred to the General Affairs Committee for public hearing. The bill was advanced to General File. I do have committee amendments pending by the General Affairs Committee.

February 24, 1989

LB 74, 116, 208, 238, 263, 265, 267
273, 344, 360A, 765

SPEAKER BARRETT: LB 360A is advanced. For the record, Mr. Clerk.

CLERK: Mr. President, Senator Smith would move to withdraw LB 765. That will be laid over. I have a notice of hearing from the Rules Committee, signed by Senator Lynch as Chair. Your Enrolling Clerk has presented to the Governor bills read on Final Reading this morning, Mr. President. That's all that I have. (See page 875 of the Legislative Journal, re: LB 74, LB 116, LB 208, LB 238, LB 263, LB 267, LB 273, and LB 344.)

SPEAKER BARRETT: As a matter of general information, we will not be discussing 520 or 520A this morning. We will not be discussing LB 340, LB 147, or 147A. We are then at this point to LB 265. Mr. Clerk.

CLERK: Mr. President, 265, offered by Senator Chizek. (Read title.) The bill was introduced on January 9, referred to the Judiciary Committee. The bill was advanced to General File. I do have an amendment to the bill by Senator Chizek, Mr. President. That amendment is on page 739 of the Journal.

SPEAKER BARRETT: Senator Chizek, on your amendment.

SENATOR CHIZEK: Mr. President, colleagues, the amendment is on page 739. The amendment removes paternity matters from the expedited process required by federal law. The changes in the federal requirements permit the state to remove paternity matters from this expedited process. The judges and the Department of Social Services have excluded paternity because these actions don't lend themselves to the expedited process. Appointment of counsel, jury trial, discovery, blood tests, et cetera make paternity matters a poor candidate for the expedited process. LB 265 would, however, allow referees to handle paternity matters under direction of the district court. I would urge the adoption of the amendment.

SPEAKER BARRETT: Any discussion on the amendment to 265? If not, those in favor of the adoption of that amendment please vote aye, opposed nay. Voting on the amendment to LB 265. Please vote, if you'd care to vote. On the amendment to 265, please vote, if you'd care to vote. Record, please.

CLERK: 25 ayes, 0 nays on adoption of Senator Chizek's amendment to the bill, Mr. President.

March 3, 1989

LB 74, 91, 116, 208, 238, 263, 267
273, 344, 471, 628
LR 38-41

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: (Recorder not activated) ...hearty souls who are with us this morning as we convene this last day of the working week. Our opening prayer this morning by Chaplain Clarence Zwetzig of Bryan Memorial Hospital, here in Lincoln. Chaplain Zwetzig.

CHAPLAIN ZWETZIG: (Prayer offered.)

SPEAKER BARRETT: Thank you, Chaplain Zwetzig. We hope you can come back again. Roll call.

CLERK: I have a quorum present, Mr. President.

SPEAKER BARRETT: Thank you. Any corrections to the Journal?

CLERK: No corrections, Mr. President.

SPEAKER BARRETT: Any messages, reports, or announcements?

CLERK: Mr. President, a communication from the Governor to the Clerk. (Read. Re: LB 74, LB 116, LB 208, LB 238, LB 263, LB 267, LB 273, LB 344. See page 960 of the Legislative Journal.)

Mr. President, resolutions LR 38 and LR 39 adopted yesterday are ready for your signature.

Mr. President, your Committee on Government, Military and Veterans Affairs, whose Chair is Senator Baack, to whom was referred LB 471 instructs me to report the same back to the Legislature with the recommendation it be advanced to General File, LB 628 General File with amendments, LB 91 indefinitely postponed, those signed by Senator Baack as Chair. (See pages 960-61 of the Legislative Journal.)

Mr. President, I have two study resolutions, both introduced by Senator Rod Johnson. (Read brief explanation of LR 40.) That will be referred to Reference. (Read brief explanation of LR 41.) That, too, will be referred to the Exec Board. (See pages 961-62 of the Legislative Journal.) That is all that I have, Mr. President.

SPEAKER BARRETT: Thank you. While the Legislature is in