

as contraband and disposed of pursuant to the laws related to contraband. Senator Von Minden, suppose the person is found not guilty, then this would still say that the mere fact that the arrest was made and this device was taken it is to be disposed of as contraband, even if the officer made a mistake and what was seized is not what he thought it was. The fact that it was seized pursuant to this provision of law will allow them to say it is contraband and keep it. And I know there are people on this floor who will say, "Well, the judge will understand what we meant when we passed this law even though we didn't say it." The reason judges and courts are often criticized is because they are more careful in their consideration of the law than lay people are. When judges are asked on the one hand to fill in for lapses of the Legislature to make a bad law good, then on the other hand condemned for properly interpreting the law as being people who are legislating instead of merely interpreting the law, then the judges are put in an impossible position. If the judge acts to correct deficiencies of the Legislature, the Legislature thinks that is all right, but if the judge properly does his job and strikes down these deficient laws, then the Legislature wants to holler the judges are legislating. There are other problems with this bill, too, and when we had abortion bills that were unconstitutional, I made the mistake of standing up here and offering amendments that would try to make the law conform to what the Constitution required. You want this bill. I am going to let you have it. I have got to speak against this amendment and I have got to tell you that you have serious constitutional problems with the whole bill and it is not based on the mere fact that the FCC has preempted this area. That has nothing to do with it. It has to do with fundamental interpretation of criminal statutes. Patrick Henry and all the others who are called Founding Fathers of this country were concerned about the types of conduct that were defined as criminal and the punishments imposed. So they set constitutional limits on what the Legislature, whether it is federal or state, can do. It is necessary to have constitutional restraint because Legislatures not only are composed of people who are emotional but they are composed of garden-variety, run-of-the-mill people who may not read very well, who may not understand, who may be bigoted, who may be whatever the people are who sent them here, and Legislatures are to be composed of those. The people in America have the right to send those kind of people to the Legislature but the job of the courts is to correct the illnesses that those types of Legislatures enact into law.

SPEAKER MARVEL: You have one minute, Senator.