

come to the end of the hearing and I think Mr. Thalken was responding to Senator Kilgarin. She had asked him some questions about the difference between use immunity and transactional immunity and this is one of the statements that he made. "In other words, if a person were granted transactional immunity for murder he could testify before whatever judicial body about a fellow conspirator or fellow accomplice in the murder and he couldn't be prosecuted for that murder. Whereas in use immunity," which is what the bill is interested in offering, "he could be compelled to testify about his accomplice but he still could be prosecuted for his part in the case. As the present statute under Nebraska law at the present time, if he were compelled to testify he couldn't be prosecuted for it." So it seems that what is being stated is that under the present law, once testimony is compelled, the person could not be prosecuted again or on the basis of having participated in that act about which the testimony was compelled but with the changes being offered by 525, the testimony could be compelled and a prosecution, nevertheless, could occur. So I have offered the motion to return this bill and strike the enacting clause. If you want to get a copy of the entire transcript of the entire hearing, you can do that but I wasn't able to get that out to all of you and I wasn't sure that you would want to read the whole thing anyway. But if you look at the statement of intent you will see that the aim is to allow a later prosecution growing out of the same circumstances about which the person has been compelled to testify and I will state what my belief on this matter is. The idea of crimes and punishments is a very serious matter. There have been safeguards presented in the U.S. and the state constitutions so that any person accused of a crime by the state must be convicted of that crime beyond a reasonable doubt and the state must prove beyond a reasonable doubt every element of the charged offense. The state failing to do that, the individual charged must be acquitted. If you take away the constitutional guarantee against self-incrimination, there should be no means by which the prosecution could then come back and prosecute you about any aspect of the transaction that you were required to testify on. Remember, if you refuse to testify once the grant of immunity has been issued, then you are cited for contempt and can be jailed until you purge yourself and this one final item on immunity. It is different from a plea bargain. A plea bargain is just what it says. Two people get together or two sides and try to arrive at a meeting of the minds or an agreement whereby each one gets something that he or she is seeking in exchange for something from the other, or giving up something to the other. Where immunity is concerned, once the prosecutor gets the court to agree to grant the immunity, you as the person being compelled to testify have no choice.