

to reenact the second degree murder statute and we're going to leave out malice. That doesn't matter, the court has said the offense cannot exist unless malice is a part of it. So people can say, I want two offenses to come out of this one act, that's what I want. But what we want is different from what can be allowed under the law. There is such a thing as a lesser included offense but that's not what we're talking about here. We're talking about a situation where you cannot have the offense unless a gun is involved. And what people want to say, well, since a gun was involved I want to tack on a separate offense of using a gun. It's like saying if I stab somebody, ...well, I'm not going to give examples. This is one of those issues which I think people may vote on based on how they feel rather than what logic will tell them or what their own best judgment will say. Remember, the language is telling us that if the gun itself is a...is an essential element of the offense then the fact that the gun is used cannot be made a separate and distinct offense. That's what this says. If I am arrested for carrying a concealed weapon, I cannot commit that offense without a weapon. So the fact that I have the weapon cannot be turned around and made into a separate offense saying, he used the weapon to commit the weapon's offense. No, without the weapon the offense could not be committed. I don't know how to make it clearer than that. I support this division of the amendment.

SENATOR HALL: Thank you, Senator Chambers. Senator Bromm, your light is next.

SENATOR BROMM: Thank you, Mr. President. Senator Lindsay, are you somewhere in the Chamber? I would have a couple of questions, I think, perhaps.

SENATOR HALL: Senator Lindsay, if you would respond.

SENATOR LINDSAY: Yes.

SENATOR BROMM: Senator Lindsay, one of the things that, as a practical matter, I think once in a while I ran into many moons ago in the prosecution of crimes, sometimes you have evidence that someone has done something but it may not certainly be airtight. For example, you've been talking about the drive-by shooting situation and you may have evidence that a shooting occurred. You have evidence that one or more persons in the car had a gun and so you charge and you...and as the evidence