

or the part of the actor. There have been cases in which, for example, a woman at home in an apartment that she shares with somebody or whose husband, let's say, is off on the night shift is surprised and thinks that her husband is home early from the night shift. The lights in the bedroom never go on. What you have is an intruder. The intruder gets into bed. An amorous event occurs. She thinks it's her husband and, in fact, it's a total stranger and a...an individual and that too would be the actor's deception as to the identity of the actor. So those are situations in which it would be not be necessary to establish a physical resistance to the rapist and still preserve the possibility of a conviction for rape. This bill was supported, as I said, by those who were there testifying. It was not everyone who was...not everyone who was there to testify in favor got a chance to. Susan Jacobs, the Department of Criminal Justice at the University of Nebraska at Omaha, Assistant Professor, was there to testify in favor of the measure but she had to leave early because it was late in the day and the Judiciary Committee has a long hearing schedule. She couldn't be present. Let me tell you the National Victims Center was called about this change in the law. Said that over ten states have made this change in which there is not a necessary show of physical resistance and the National Victims Center has heard no problems of an overutilization or some rise in appealed and overturned rape convictions. There was not a known problem with the application of this rule. Understand that I think one of the most pernicious things that occurs is the law placing a woman in the Catch-22 that says you must physically resist and yet we do know that there are rapists to take the physical resistance as an incentive to increase the violence of the exchange and I don't think it's the goal of the law to put a woman in a situation which, to preserve her right to get a rape conviction, she has to place herself at additional risk in the event she has to fight off a rapist and, with that, I would ask for the adoption of AM1339.

PRESIDENT ROBAK: Thank you, Senator Landis. Senator Brashear.

SENATOR BRASHEAR: Madam President, members of the Legislature, this is the first time I've spoken on the crime bill and maybe I shouldn't speak. I'm not going to speak to the Landis amendment because I've learned that you don't have to speak to the amendment. I'd just like to share a brief point. In my professional life I'm a lawyer. Criminal law is one of the most highly technical, complex, difficult subjects of areas of study