

thing and I'll be glad to change that to a misdemeanor for him if he's worried. He said, did you hear what he said? He said if someone would unknowingly violate an injunction of the court, there would be, they would be guilty of a felony. The plain language of the statute says willfully, willfully, not any accidental or other violation. The statute reads willfully. Then he comes up with the idea that unconscionable is defined in his amendment on one hand and it's left wide open in my amendment. Now, I'm going to read you the two different definitions of unconscionable in the two acts and let you decide. In his act, in Section 4, it says, "An unconscionable act or practice by supplier in connection with a consumer transaction shall be a violation of this act. Then, two, it says unconscionability of an act or practice shall be a question of law for the court. If it is claimed or appears to be the court, if it is claimed or appears to the court that an act or practice may be unconscionable, the party shall be given a reasonable opportunity to present evidence as to its setting, purpose, and effect to aid the court in making its determination." Now, let's read the one in the Waldron proposal which is supposed to be undefined, in which it's supposedly to be defined in there. Now, here's what it says in Section 5 of my amendment. "An unconscionable act or practice by supplier in connection with a consumer transaction shall be a violation of this act. (Identical wording as in the other one so far.) Two, the unconscionability of an act or practice shall be a question of law for the court. (Identical language so far.) If it is claimed or appears to the court that an act or practice may be unconscionable, the parties shall be given a reasonable opportunity to present evidence as to its setting, purpose, effect...and effect to aid the court in making its determination." Absolutely identical language. That's where Senator Murphy's lets off. Right there. The identical language. And he says one is by far superior to the other. It might be the paper it is written on but it certainly is not the words. Now, mine goes on, (3), this is where we set out what the court can do in determining an unconscionability. It says, "In determining whether an act or practice is unconscionable, the court shall consider circumstances such as the following, of which the supplier knew or had reason to know." See, we're setting out certain things the courts are going to have to follow here and then we're setting out the provision the court's going to have to say or going to have to be proven the supplier knew he was committing an unconscionable act or he had reason to know. These are two things the courts are going to have to determine. Okay, (a), some of the things the courts are going to have to take into consideration. The court must take into consideration whether the seller took advantage of the inability of the consumer, reasonably to protect his interest because of a physical infirmity, ignorance, illiteracy, lack of education or experience, inability to understand the language of agreement or similar factors. What is this for? Well, this is for one thing, we have found in the State of Nebraska and other states that especially where you have minority groups in certain sections of the state, that you might have an English language contract when in fact the person that is signing the contract cannot read English. Now, he has to rely upon the verbal assurance of the seller of what the contract actually says. Well, if the verbal words that the seller told him, the guy agreed to obviously because he signed the contract, what if something is in the language of the contract was entirely different from what the individual says was in the contract. So, this would be unconscionable and also, so why, Senator Murphy, then and I'll go right into this other area. Senator Murphy said really, we're repealing under this law certain rules of evidence. Okay, sure we're repealing certain rules of evidence in this area because if this man that could not read that English language contract went to court and said this, all the judge under our present rules of evidence, and all you could bring in as evidence is the wording in the contract. Because the oral part of the contract or that part of the contract the individual entered into within their minds could not be entered as evidence in the