

DELEGATE CHILD: Mr. Chairman, Delegate Weidemeyer and I were the subcommittee which considered this matter. We had two questions to decide: One, should there be a jury of less than twelve. We considered this. In a criminal case, although the crime might seem to the public to be a very minor crime, to the individual who is being tried for that crime, it frequently means his whole career. If he has a criminal blot or conviction against him, he is barred from employment, and he is frequently barred from enlistment in the armed services. It is like a brand on his forehead and for that reason mainly, and from our research of the states which we considered were states of the same stature of Maryland, we found that most of our states contained this jury of twelve and we put it in there that way.

The second argument against a less than unanimous verdict was that there were so many hung juries. Delegate Weidemeyer has tried a few cases and I have tried a few. In my forty years in trying cases, I remember that I was connected with two cases in which there was a hung jury, one criminal and one civil. We called in and our chairman wrote to a number of attorneys in Baltimore City who had tried cases day in and day out, and they had had the same experience.

THE CHAIRMAN: You have one-half minute.

DELEGATE CHILD: Now the argument is advanced for the first time that a twelve-man jury is subject to jury tampering. It would seem to me you can tamper with six a whole lot better than you can tamper with twelve. I am against the amendment and urge the Committee of the Whole to vote against the amendment.

THE CHAIRMAN: Delegate Scanlan.

DELEGATE SCANLAN: I just want to support the amendment, to the extent that it proposes a less than unanimous verdict. I think Judge Child's comment about the six-man jury may be in order and I hope that when the question is put to the house, it will be divided so that we can vote first on the size of the jury and second on the question of whether jury verdicts should be less than unanimous.

The assembly tonight has a great opportunity to strike a blow for the integrity of the jury system and the judicial process without sacrificing any of the fundamental liberties that we have always guaranteed the accused. I think there are very few people in this room who, looking at the present statistics of prosecutions for crime,

and successful convictions which are going down in relation to the total number of prosecutions, would have to admit that the protections we now afford the accused perhaps have swung the pendulum a little too far. We have expended the protections of the exclusionary rules of evidence, we have protected self-incrimination in a fashion that was never imagined before. We have ruled out confessions which in no real sense of the term can be called compulsory. I mean by compulsory, forced or coerced confessions. We have made it much more difficult to have an arrest qualify as a legal arrest. I am not quarreling with any of these decisions. Perhaps each one of them and the principles enunciated are required under the great provisions of the Constitution. But on the other hand, the public has some rights, and in requiring less than unanimous verdict we are not sacrificing any fundamental Anglo-Saxon freedoms. As Senator James has pointed out, the mother country is already on that road.

Talk about jury tampering. It is more to it than that. Take the civil rights cases in the South. How many prosecutions have failed, with obviously guilty people because one or two men held out against the clear and overwhelming weight of the evidence. Whether they held out because of their cultural connections, and their sympathies with the accused or whether they held out because they were asked to, or forced to, or bribed to, I am not sure. But certainly here is an opportunity to prove that you do have some consideration for the right of the judicial and jury process. I think you will forgive me once again for quoting Justice Holmes, but his words sixty-five years ago are equally true today, and perhaps they apply with much greater force:

"There is more danger in this country today," referring to sixty-five years ago, "that a criminal will go free and escape justice than that we will be subject to tyranny." I suggest you can swing the pendulum a little bit back in favor of the public by voting for Judge Henderson's amendment.

THE CHAIRMAN: Does any other delegate desire to speak in opposition?

Delegate Grant.

DELEGATE GRANT: I would like to speak in opposition to this amendment for a very simple reason.

I do not think any five people should be entitled to send another man to death.