

DELEGATE CHILD: No. This section says that he shall be entitled to release.

DELEGATE JAMES (presiding): Delegate Key.

DELEGATE KEY: But as I read it, I see it says, "pending trial, conditioned only upon such bail or on other terms".

I am asking you, cannot those other terms be incarceration?

DELEGATE JAMES (presiding): Delegate Child.

DELEGATE CHILD: I would not say so, under this section.

DELEGATE JAMES (presiding): Delegate Key.

DELEGATE KEY: Why not?

DELEGATE CHILD: Well, the judge would name the conditions for release. If he could not meet them, then of course he would have to remain in jail.

DELEGATE JAMES (presiding): Delegate Key.

DELEGATE KEY: I wonder about the weight of the further statement, secure his appearance before the court.

DELEGATE CHILD: That is what bail is, to secure his appearance for trial.

DELEGATE JAMES (presiding): Delegate Key.

DELEGATE KEY: I am not talking now about the word "bail". I am talking now about other terms to secure his appearance in court.

DELEGATE JAMES (presiding): Delegate Child.

DELEGATE CHILD: Well, I did not write this section. That is one objection to it, that the terms there are ambiguous to me.

DELEGATE JAMES (presiding): Delegate Bamberger has been trying to get the floor. Judge Sherbow, I will recognize you next.

Delegate Bamberger.

DELEGATE BAMBERGER: Delegate Child, you say that under section 8, the General Assembly may provide lesser conditions than bail. It may, for instance, allow a person to be released without bail; that is, on his own promise that he will be back for trial. Is it not true that unless this section 5-B is included in the constitution, the General Assembly could also say that when a

person is arrested or indicted or charged with some particular crime, and any crime at all, not necessarily a serious crime, that he shall not be entitled to release on bail.

In other words, without stating that there is a right to pre-trial release, that the General Assembly could say, in certain crimes there shall not be bail?

DELEGATE CHILD: No, because you have already your constitutional provision which says, "excessive bail shall not be required." It has been in there since 1851.

DELEGATE BAMBERGER: Then I take it your answer is that section 8 gives an absolute right to bail and the only provision is that it may not be excessive?

DELEGATE JAMES (presiding): Delegate Child.

DELEGATE CHILD: Yes.

DELEGATE JAMES (presiding): Delegate Bamberger.

DELEGATE BAMBERGER: Why do you object to stating that explicitly in the constitution?

DELEGATE JAMES (presiding): Delegate Child.

DELEGATE CHILD: Because we do not need it.

DELEGATE BAMBERGER: Your only argument against section 5-B is, then, that it is unnecessary, that it is a right which the people have, and that we need not state it?

DELEGATE CHILD: No, sir. I said that this section goes too far. It has language in it which is dangerous and that section 8 is what we have. We have passed a very liberal statute under it; we have passed very liberal rules under it; and we certainly do not need two provisions on bail in the Declaration of Rights.

DELEGATE JAMES (presiding): Delegate Bamberger.

DELEGATE BAMBERGER: Section 8 prescribes a limit on the amount of bail. section 5 states a right to bail in certain offenses. What is it that is stated explicitly in 5-B which you say is not implicit in 8?

DELEGATE JAMES (presiding): Delegate Child.

DELEGATE CHILD: Well, for one thing, it is more restrictive in one way than section 8. Section 8 provides only that in capital cases a man, in certain circumstances, would be entitled to bail.