

ment that belief that a man is innocent until presumed guilty?

What this Majority Report says in 5-B is that every man charged with a crime has a right not to be held in jail until he is found guilty.

It says that the General Assembly may never say that a man who is arrested and charged with a particular crime may not under any condition be released pending trial.

It does not take away any discretion from the court.

The purpose of bail is solely to assure that that person who is charged with a crime will not flee the jurisdiction, will not be unavoidable for the trial at which the State shall have its right to prove his guilt.

The court under 5-B is perfectly free not only to require the posting of property or money as bail, but also to exact other terms, for instance, reporting to a probation officer or reporting to the court at regular intervals.

THE CHAIRMAN: You have one-half minute, Delegate Bamberger.

DELEGATE BAMBERGER: Whatever is reasonably necessary in the mind of the court in the exercise of the discretion of the court to assure the people and the State that this man will stand trial for the offense for which he is charged. What this does say is that no man may be held in jail until he has a trial and is found guilty of the crime for which he is charged.

I urge you to reject the amendment and to support the Committee's report.

THE CHAIRMAN: Now, we have a period of uncontrolled and limited debate.

Does any delegate desire to speak in favor of the amendment?

Delegate Hardwicke.

DELEGATE HARDWICKE: Mr. Chairman, the trouble with section 5(B) is that it does not do anything that the proponents of it claim that it does. It does not have these guarantees in it and, as a matter of fact, on the very face of it, it opens up a new area of pre-trial punishment by the phraseology "or other terms as are reasonably necessary."

In other words, the bail requirement is still there and an additional area of penalty can be imposed by the "or other terms as are reasonably necessary."

I am reminded that in Julius Caesar's Gallic Wars, he goes on at great length into the fact that the ancient Germans had secured the appearance of the accused persons at a trial. The magistrates would hold their children as hostages. That was a very effective way, and those with a lot of children to spare might get off as well as the rich man might get off on the present bail bonding procedure.

I suggest that under section 8, the excessive bail provision, we have adequate flexibility to do by statute what section 5(B) claims to do by constitutional mandate. But section 5(B), I suggest, is another one of these false hopes that we have been asked to bat down again and again.

It does not give the hope to the poor man. It only sets up an additional restriction, an additional possibility of holding him, and I suggest, therefore, that section 5(B) ought to be stricken from this constitution.

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

*(There was no response.)*

Does any delegate desire to speak in favor?

Delegate Borom.

DELEGATE BOROM: Mr. Chairman, I want to speak against the Minority Report.

THE CHAIRMAN: Against the—

DELEGATE BOROM: Minority Report.

THE CHAIRMAN: Very well.

DELEGATE BOROM: As I listened to the arguments and read part (B) in section 5 and looked at section 8, I do think that there is a distinct difference between the two.

I think with part (B) of section 5 we do have a variation if we look at the terminology: "An accused, except in cases punishable by death or life imprisonment, shall be entitled to release pending trial conditioned only upon such bail or other terms as are reasonably necessary to secure his appearance before the court."

We have alluded to the fact that the man with money may be able to secure bail when a poorer person may not be able to.

One of the discretions that may be left to the court for the setting of the amount of bail to secure the accused's appearance