

Delegate Burgess.

DELEGATE BURGESS: Mr. Chairman and ladies and gentlemen of the Convention: I think we should consider that we have created a new set of courts. We have set down requirements for those courts. Those are the people who are going to be considering the question of bail.

We have set down stringent requirements for their particular right to sit in that office. Now we turn around and say we really do not trust their judgment after all.

Bear in mind that when the accused first appears before the judicial officer, he is not even sure of what his name is or where he lives or anything about him. There is no way to determine this on initial contact. He has to try to hope to make a good value judgment. There is no other way to do it, than to use his experience and common sense and sense of fair play.

If you think these judges are going to work hardships on the poor, do not worry about it. For example, a car thief will make bail bond. He will have the where-withal.

Releasing a man on personal recognizance would not be effected by section 8(A). He would be released on the promise that he would appear.

In fact many of these acts are set out just that way, there are alternate provisions given ranking from such things as personal recognizance on up to a security bond but there has to be somebody with the responsibility of exercising that judgment.

You have set up this four-tier system of courts. I suggest these will be the men on the firing line trying to make this judgment.

THE CHAIRMAN: There are a very few minutes left for discussion. I suggest that each subsequent speaker restrict himself to not more than one minute.

Does any other delegate desire to speak in opposition?

Delegate Chabot.

DELEGATE CHABOT: Mr. Chairman, all this material we have before us in this Declaration of Rights, and that we are going to be considering, consists of limitations on one or more branches of the government, limitations upon their discretions, standards which must be used in order to recognize their discretion.

The cognate provision of the present Constitution clearly is intended to and does put limits on the exercise of discretion by the courts of law.

That is the language that is used in Article 25 of the present Declaration of Rights. We have been told that without the language of section 5(B) the judge can constitutionally keep a person in jail until trial because the judge can predict that this person may jump bail.

I suggest we should therefore support the Committee in keeping 5(B).

THE CHAIRMAN: The Chair recognizes Delegate Johnson for one minute.

DELEGATE JOHNSON: Mr. Chairman and fellow delegates, to my mind this is the most dangerous provision before us, namely this section 5(B). There may have been a time and there probably was a time when a similar provision was necessary, but with the bail reform that has taken place, I submit to you that it is not only unnecessary but unwise to adopt a similar provision. I am very happy to note and gratified that Chairman Kiefer thought it would not make any difference either way.

To those of you who are on the fence, I strongly urge you to vote for the amendment. I have no idea what "other terms" means. I have no idea what the term "reasonably necessary" means, and I think this would just require a judicial interpretation from now until this section remains in the constitution.

I strongly urge you to adopt the amendment.

THE CHAIRMAN: The Chair recognizes Delegate Marion for one minute.

DELEGATE MARION: Mr. Chairman, Delegate Burgess said this reflected a distrust of the judiciary. I do not think adoption of 5(B) would reflect a distrust of our judiciary any more than would the adoption of section 3 which certainly restricts the judiciary by saying "no person shall be deprived of life, liberty and property without due process of law."

Those words are equally hard of interpretation and have been and will continue to be the subject of court determination.

They are important words. They are engrained in our Constitution and nobody would seriously consider taking them out.

THE CHAIRMAN: You have one-quarter minute.