

I hope that this will be carefully considered and approved by this Committee.

THE CHAIRMAN: Are there any questions of the sponsor of this amendment?

Delegate Weidemeyer, do you have any questions?

DELEGATE WEIDEMEYER: No, I want to speak against it.

THE CHAIRMAN: Delegate Gleason, do you have a question?

DELEGATE GLEASON: Yes.

THE CHAIRMAN: State the question.

DELEGATE GLEASON: Delegate Henderson, am I reading this correctly, that this would authorize the General Assembly to provide in non-capital cases a jury of ten with a verdict of six?

THE CHAIRMAN: Delegate Henderson.

DELEGATE HENDERSON: No, it still retains the language of twelve. It requires a twelve-man jury but permits ten of them to bring in a verdict, either guilty or not guilty, as the case may be.

THE CHAIRMAN: Delegate Henderson, Delegate Groh—

DELEGATE GROH: Delegate Henderson, in criminal cases of course, we have the proposition that the State must prove the case beyond a reasonable doubt.

How do you reconcile the position that if two jurists are in doubt, you can still convict? Is that not violating the whole concept of reasonable doubt?

THE CHAIRMAN: Delegate Henderson.

DELEGATE HENDERSON: I do not think so. I think that is the way you must approach the thing, but there is certainly nothing in the doctrine in my mind which requires unanimity in that belief. If the majority of them feel either for acquittal or reversal, if the requisite ten agree, that it enough for the verdict.

It prevents the hung jury problem and it also avoids the question of jury tampering which has been one of the motives in England for its passage. It also avoids the question which I argued yesterday, that it prevents having a veto power in a very small minority.

THE CHAIRMAN: Are there any other questions of the sponsor of the amendment?

DELEGATE HARDWICKE: Mr. Chairman.

THE CHAIRMAN: Delegate Hardwicke.

DELEGATE HARDWICKE: I would like to ask this question of Delegate Henderson.

Mr. Chairman, I will preface the sentence by saying it may sound like an arguing question, but sincerely it is for information.

Before the Committee we had numerous witnesses who insisted that the common law privilege which is the unanimous verdict was intended to give an accused the protection with regard to all of the twelve jurors.

In other words, the reasonable doubt was with respect to all twelve, and if the doctrine related to that kind of unanimity, would you care to comment on that? In other words, is that the doctrine or is it not the doctrine?

Do you agree or disagree with those witnesses?

THE CHAIRMAN: Delegate Henderson.

DELEGATE HENDERSON: I do not agree. I do not think the doctrine of reasonable belief or reasonable doubt has any place in this problem of unanimity in the jury which goes back into history as I suggested yesterday. It probably went back to the time when you had conjuration, in other words you had to have twelve people to swear with you or else you were guilty which is just the reverse of what the situation became later when the jury became a fact-finding body and I think it is a very unfortunate medieval survival to acquire unanimity.

I suggested what the result would be, if it were required by the Supreme Court. You would not have any decisions at all.

THE CHAIRMAN: Delegate Blair, do you have a question?

DELEGATE BLAIR: Yes, sir.

THE CHAIRMAN: State your question.

DELEGATE BLAIR: Judge Henderson, how many other states have departed from the concept of the unanimity of the jury verdicts?

THE CHAIRMAN: Delegate Henderson.

DELEGATE HENDERSON: I have the information here which was prepared by the research department, Mr. Smock. It states here there are at least six states where the legislature provides for less than twelve. They are listed here as Iowa, Nebraska, Ohio, Missouri, South Dakota and Washington.

There are others, I think, which permit less than the unanimous verdict. Here is