

DELEGATE BOTHE: I am speaking now of the constitutional law and I wonder if you would answer the question, looking only to the ideal execution of the laws as set forth in their basic document, along with as it may be practiced in various parts of the State.

THE CHAIRMAN: I do not think you can limit the delegate's answer to a question.

Delegate Grant, you may answer the question.

DELEGATE GRANT: In the present state of Maryland law there is an unquestioned right to bail any time you can get the magistrate to come down to set the bail. The present state of the Maryland practice is that there is a good deal of common sense used as to when the magistrate is going to be available to set bail. This would bring what has grown up to be subversion of the law, in consonance with the law and instead of operating through the back door the judge could operate through the front door.

THE CHAIRMAN: Delegate Bothe.

DELEGATE BOTHE: Would then a court be able to determine that an individual's activity, while perhaps not criminal or dangerous, were nevertheless a disturbance to the public peace, and for that reason restrain him for whatever period the court could justify holding him pending trial on some offense of which he was accused?

THE CHAIRMAN: Delegate Grant, you have left time enough only to answer that question.

DELEGATE GRANT: I point out to Delegate Bothe first of all that this *Elwood v. Ocean City* case dealt with that point, and secondly that breach of the peace is a recognized criminal offense.

THE CHAIRMAN: Delegate Kiefer.

DELEGATE KIEFER: Mr. Chairman, because Delegate Child led the opposition in striking out this section and because of his interest in this I am going to yield to him.

THE CHAIRMAN: Delegate Child.

DELEGATE CHILD: Mr. Chairman, ladies and gentlemen of the Committee, I do not think we ought to prolong this matter any further. The amendment offered by Delegate Grant does not change the concept to any great extent.

The provision which we have later on in the constitution under section 8, which is the thrust of my entire argument, permits the legislature to pass, and they have already passed, any law in reference to the granting of bail which is necessary and proper.

The granting of bail, you can write statutes about, you can write words about, but in the final analysis it is a matter of sound judicial discretion by some judicial officer when application is made to him for bail.

There is no need whatsoever for section 5(b) in the constitution. The original language of section 5(b) developed here this morning was taken from, as I understand it now, the language of the federal statute, or an improvisation of the words in that statute, so the words are statutory. The arguments have all been made; the minority report was supported by nine members of the Committee, and, therefore, represents the majority of the Committee, and is really a majority report.

I urge the defeat of the Amendment.

THE CHAIRMAN: Does any other delegate desire to speak in favor of the Amendment?

Does any other delegate desire to speak in opposition?

*(There was no response.)*

Are you ready for the question?

*(Call for the question.)*

Delegate Dukes.

DELEGATE DUKES: I rise to speak against the amendment, but not for reasons consistent with Judge Child's. A long time ago a gentleman by the name of Oscar Wilde wrote a poem about lying in jail. Among other things it says, we know not whether the laws are right or whether the laws are wrong. All that we know lying in jail is that the days are long, and that each day is like an hour, an hour in which the minutes are long.

The purpose of bail now, tomorrow, and yesterday was to allow a man under our system of jurisprudence who has not been found guilty to go free until he is found guilty.

Delegate Grant said there were a couple of considerations about whether or not a man ought to be able to go free on bail. One had to do with the finding of guilt, and we did not reach it until a later date. The