

second time was enough deliberation to establish premeditation.

Juries disregard that instruction, although there is no doubt that two shots were fired, and they were shot at the vital part of the body. So the juries do in fact disregard. I am not so sure that they are right in those circumstances.

I have abandoned a first degree count when I did not think it was first degree, even though under the law it was first degree.

DELEGATE BOTHE: You have not answered my question now. Do you feel that defense counsel and the prosecutor should be at liberty to argue law to the jury which is not the law of the State or of the land?

DELEGATE JAMES (presiding): Delegate Willoner.

DELEGATE WILLONER: No.

DELEGATE JAMES (presiding): Delegate Mentzer.

DELEGATE MENTZER: I would like to speak in favor of this amendment.

DELEGATE JAMES (presiding): Is there a series of questions?

DELEGATE BOTHE: I have one more.

Will you agree that this can be and often is the practice in the criminal courts of this State under the present provisions of the Constitution?

DELEGATE JAMES (presiding): Delegate Willoner.

DELEGATE WILLONER: No, I say it is not the practice. If somebody argues that which is not the law anywhere in the United States or in the State of Maryland, then you can object to that argument, and the judge will usually sustain your objection. At least, he always sustained my objections and arguments of law that were not sound, and I think that is an appropriate way of handling it.

DELEGATE JAMES (presiding): Delegate Mentzer, you wish to speak in favor of the amendment?

DELEGATE MENTZER: Yes. Mr. Chairman, I have never been a lawyer, and I have never served on a jury. I do not hope ever to be a lawyer, but I do hope to some time serve on a jury. When that day comes I know I will have enough trouble deciding on the facts involved.

I do not wish to decide on the law involved. As a non-lawyer I wholeheartedly support this amendment.

DELEGATE JAMES (presiding): Does anyone wish to speak against the amendment?

Delegate Stern.

DELEGATE STERN: Delegate Mentzer, one day you may want to decide the law if you are on the jury. We had a case in Prince George's County where a woman, the wife of a Congressman, went to each bedroom and shot and killed four of her children. She was found by the psychiatrist to be sane. The jury found here to be sane. At that point, I felt as defense counsel there were only two decisions that they could bring in, either not guilty, or first degree murder.

Under the Maryland law the jury compromised and I felt it was an excellent compromise. The jury found her guilty of manslaughter, and the judge sentenced her to ten years in prison for each of the deaths, to serve concurrently.

That woman has tried to commit suicide at least four times. Had they found her guilty, the judge could have sentenced her to death. Had they found her not guilty I am positive she would have been dead within a week by her own hand. The jury could not have brought in the manslaughter verdict if this were not in our Constitution. The jury would have either had to find her not guilty, and then tried to live with themselves knowing that she did shoot those four children, or found her guilty, and take the chance that she would be put to death anyway.

And perhaps, through the years that she is incarcerated for less than life imprisonment, she could be helped through psychiatric and mental care which she is now receiving, and then return to society.

Without that provision that woman would never have had that opportunity except to spend additional years, many years as an additional punishment instead of once being corrected mentally, and returned to her place in society.

DELEGATE JAMES (presiding): Delegate Sherbow.

DELEGATE SHERBOW: Mr. Chairman and ladies and gentlemen of the Committee: I had hoped I would not have to speak on this particular subject, because it was so simple and plain, but some of the non-lawyer members of the Convention have expressed to me the fact that they are still