

and I do not think it came out very well. The facts of the situation were fairly complicated. The facts were in dispute, and the law was in dispute. It was a murder case. The better verdict would have been manslaughter. The person was convicted of second degree murder.

But the situation was remedied by the sentence, so it was not the difference between acquittal and a conviction. However, I think the situation may not have arisen if the prosecutor were not expected to argue law, as well as fact.

DELEGATE JAMES (presiding): For what purpose does Delegate Anderson rise?

DELEGATE ANDERSON: I rise to speak against the amendment and in favor of the majority report.

DELEGATE JAMES (presiding): Delegate Anderson.

DELEGATE ANDERSON: Mr. Chairman, as the former state's attorney in Anne Arundel County for a number of years, and as a practicing attorney for a good many years, I would like to say that I found the jury system in the trial of criminal cases satisfactory, whether I was defending or prosecuting.

I think I can conscientiously say that during the entire period of time when I was state's attorney, I never knew of an innocent man convicted, or a guilty one escaping.

I think that the criminal law, and especially with a trained or experienced prosecutor, is comparatively simple. You can read the basic law to him, you can explain it to him. You can read it out of the book to him, and likewise the defense can do the same thing, and therefore I feel, speaking purely from experience, that I think it would be a mistake to take this provision out of our Constitution.

I have noticed people here in this Convention watching their personal and civil rights mighty carefully, and I warn them that this would be a grave mistake, both for the people as well as the accused.

DELEGATE JAMES (presiding): For what purpose does Delegate Sherbow rise?

DELEGATE SHERBOW: I am not really certain I accept the answer that was given by Delegate Moser —

DELEGATE JAMES (presiding): I do not believe Delegate Anderson is finished.

DELEGATE SHERBOW: I beg your pardon.

DELEGATE JAMES (presiding): Delegate Anderson, please finish.

DELEGATE ANDERSON: I have about finished. I will not take the time to detail those things that were mentioned by Delegate Moser, but I think I owe it to the people to say that I certainly hope that they will retain this privilege that they have in criminal cases.

DELEGATE JAMES (presiding): For what purpose does Delegate Sherbow rise?

DELEGATE SHERBOW: For the purpose of perhaps giving a different answer from the one given by Delegate Moser to Delegate Sollins' question. I call the Convention's attention to the fact that under section 5.01 of the judicial branch, we have provided that the judicial power of the State is vested exclusively in the unified judicial system. I would suggest that under the terms of that entire article, all judicial power being vested in the court, that the legislature would not have the power to vest a jury with the power to make itself a judge of the law in any case.

DELEGATE JAMES (presiding): Delegate Mason, do you wish to speak in favor?

DELEGATE MASON: Yes, sir.

DELEGATE JAMES (presiding): You may proceed.

DELEGATE MASON: I rise to speak in favor of the amendment, Mr. Chairman.

I have had the opportunity of trying to uphold this particular section of the Constitution on many occasions in the Court of Appeals, and in the federal courts, and we have been successful, so far, but I suggest that if the Supreme Court ever hears argument and receives briefs on this particular section, I feel that they will declare it unconstitutional.

Now, Maryland and Indiana are the only two states that have this particular section. This theory that the jury shall be the judge of the law has been decisively rejected by the Supreme Court and all the federal court systems.

The reasons for the unpopularity of this provision is its fundamental unfairness. It denies the right of the accused to be tried by the fixed law of the land, it fosters uncertainty in the law, it places the function of legal interpretation in the hands of persons who are unqualified for such a function. It fails to provide the accused of due notice of the crimes of which he is charged, and of which he may be convicted, or even