

DELEGATE MARION: Yes.

DELEGATE JAMES (presiding): Delegate Weidemeyer, do you yield?

DELEGATE WEIDEMEYER: Yes.

DELEGATE MARION: Delegate Weidemeyer searched the Committee's memoranda for some explanation of the need for the exceptions which are spelled out in lines 47, 48, 49 relating to cases arising in the land or naval forces and the militia. Could you give me some reason why there is any need for such an exception in the constitution?

DELEGATE WEIDEMEYER: This is the exact wording of the federal Constitution, and it has held good since the adoption of it. I have heard no clamor for change, and ordinarily when a man is in active military service, he is subject to the jurisdiction of the military.

DELEGATE JAMES (presiding): Delegate Marion.

DELEGATE MARION: Is it not true, though, that the U. S. has an army and a navy and has by act of Congress a system of military courts in which those offenders are punished, and we have made no such provision for that as the judicial system of this state?

DELEGATE WEIDEMEYER: If those cases arise under the federal jurisdiction or the military forces, of course, they would be prosecuted under those federal laws. So, we can make an exception without violating anything.

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

DELEGATE KIEFER: For a point of clarification.

This language exactly parallels the Fifth Amendment language. While Maryland cases defining infamous crimes are not exactly the same as federal crimes, as far as we have been able to determine, there are no felonies in Maryland that are not infamous crimes. There are other serious misdemeanors which have been classified as infamous crimes. Therefore, this is a little bit more broad in granting a right.

On the other hand, under the federal rules and under Maryland rules, there is always a right of waiver. We are not doing anything but giving a person a right to be indicted by a grand jury in situations that parallel, we think, what the common law was. We felt that this ought to be put in now because the common law may not

be as clearly stated because we are eliminating some of the present declaration of rights.

DELEGATE JAMES (presiding): Delegate Marion?

DELEGATE MARION: Mr. Chairman, if that was in response to my question, I think it was—

DELEGATE JAMES (presiding): That was a supplementary answer.

DELEGATE MARION: I am still seeking an answer to my question. I appreciate the fact that this is language in the federal Constitution, but if it will have no application whatsoever to the State or cases arising in the State, and if we do not have an army or navy, why is there need just for the sake of carrying over the language of the Federal Constitution in the Maryland Constitution?

DELEGATE WEIDEMEYER: Those cases you are worried about I think come under the federal jurisdiction of the military.

DELEGATE JAMES (presiding): Does the State have military forces?

DELEGATE WEIDEMEYER: In the army or the navy they have military courts and certain offenses which are offenses both under the federal law and under the Maryland law can be prosecuted by military court martial. They are in the military.

DELEGATE JAMES (presiding): Delegate Hardwicke, do you wish to ask a question of Delegate Weidemeyer?

DELEGATE HARDWICKE: Yes.

Delegate Weidemeyer, we passed S&E-2 last evening. The last sentence of it provides that only a member of the militia may be subject to a military trial, and then only while in actual service.

Now if we adopt section 11, do you propose that we amend S&E-2 to conform, or would you propose that we amend section 11 to conform to S&E-2 or would it be exactly the same thing?

DELEGATE WEIDEMEYER: No, I do not think we need it. I think they agree. I might say that the Committee in passing this clearly intended that our grand jury procedures as we now know them would not be disturbed. These would be placed in the constitution, especially when we are not adopting the language of Article 21, Declaration of Rights, which I said by implication gave the right to the grand jury. We have always had it so that this