

case was not a criminal case. It was a case involving a quasi-judicial agency. In the proceedings before the Board, the witnesses in favor of the applicants and against the citizens were there and to that extent the counsel for the citizens and the citizens were confronted with the witnesses against them. However, they were denied the right of cross-examination and were required to call the witnesses as their own adverse witnesses when their case went on. The Court of Appeals struck down this practice, in a landmark case. It made clear by implication, I think, that the right of confrontation does not always necessarily include the right to cross-examination, whereas the converse of the proposition is different. The right to cross-examination always includes the right of confrontation. I think there is a difference and I would like to press our amendment.

THE CHAIRMAN: The Chair has already indicated the amendment is proper. The Clerk will read the amendment.

READING CLERK: Amendment No. 11 to Committee Recommendation R & P-1 by Delegates Adkins and Scanlan:

On page 3 section 5, Rights of Accused, in line 7 after the words "confronted with" add the words "and to examine under oath or affirmation".

THE CHAIRMAN: The amendment has been submitted by Delegate Adkins, and seconded by Delegate Scanlan.

The Chair recognizes Delegate Adkins.

DELEGATE ADKINS: Mr. Chairman, it does not seem to me that this amendment should take any lengthy debate. I take it that it is quite clear to members of the Convention and indeed to the Committee that the right of cross-examination is a valuable, if not one of the most precious of the rights in the trial of any justiciable issue. The sole purpose of this amendment is to make crystal clear that the right of cross-examination does continue to exist. The language of the amendment is the language of the existing Constitution. It is the language proposed by the Commission, for whatever additional strength, if any, that might add. It seems to me that there is no confusion, if you add this language "Confronted with" may, under the erosions of time and the judicial process, be interpreted to mean something other than confronted with the right to cross-examine. I would hope that without too much debate we could add this language simply to make crystal clear preservation of this right is intended.

THE CHAIRMAN: Delegate Kiefer.

DELEGATE KIEFER: Mr. Chairman, the Committee had considered this language and we were advised by our criminal law experts that the word, confronted, meant under oath, or affirmation. Apparently, there is some doubt about it. I am sure there is no objection to this amendment, and as far as I know, in talking to several members of the Committee, there would be no objection. If it will make it more crystal clear we would be in favor of the amendment.

THE CHAIRMAN: Is there any further discussion?

Delegate Marion.

DELEGATE MARION: Just a question of Delegate Adkins.

THE CHAIRMAN: State the question.

DELEGATE MARION: I was not clear how the colloquy you had with the Chair ended up as to whether or not your intention by this language was to get a pre-trial proceeding.

THE CHAIRMAN: He said no.

DELEGATE MARION: It would only apply then to at the time of trial. Is that the intention which you had in mind?

THE CHAIRMAN: Delegate Adkins.

DELEGATE ADKINS: It is certainly not my intention or Delegate Scanlan's to indicate that we should not have the right to cross-examination at the pre-trial. But we had not intended that the constitutional guarantee hearing provided would necessarily go to that extent. This is limited to the language of the proposal here, which is at the trial stage.

THE CHAIRMAN: Delegate Marion.

DELEGATE MARION: So it would be correct to say that it would not be your intention by this amendment to affect in any way the secrecy of grand jury proceedings by which witnesses do appear in a proceeding against the accused.

THE CHAIRMAN: Delegate Adkins.

DELEGATE ADKINS: All we are trying to do is to make quite clear that the word, confronted, as the Committee Report indicates, means confrontation with the right to examine, in the language of the proposal of the Committee. We are not attempting to broaden the Committee Report, except to make crystal clear the meaning of the word, confronted.