

If the answers to those first two questions are yes, then the judicial officer is going to have to make a determination as to how he best can assure that this individual will appear before him at the time set for proper examination.

Now, this is not adjudication of guilt or innocence. It is merely a determination of reasonableness or probable cause.

It is not really that. It is in substance a value judgment at this time. A formal determination of probable cause, can be and usually is made at a later date, when this individual appears before the judicial officer.

At that time, he most likely will be represented by counsel. At that time, he can make a representation as to his innocence or his non-connection with the alleged crime, or the argument that no crime has in fact occurred.

There is no way for the judicial officer under the provisions, as I see it, in section 5-B, to make this value judgment. He is obliged to release this individual upon the setting of a dollar figure. Bail is not intended to be a form of punishment. It is not intended necessarily to be a form of protecting the public, although it does work that way.

A judicial officer has to make this consideration whether he does it consciously or not. It is a thing that he must consider. He has to weigh to some extent the rights of this individual, which must be protected, with the rights of the public in general.

If the man is a menace to himself or others, he has to make a judgment at that time. Somebody has to do it. The judicial officer has got to have that discretion or the system will suffer as will the public.

*(President H. Vernon Eney, resumed the Chair.)*

THE CHAIRMAN: Delegate Bothe.

DELEGATE BOTHE: Mr. Chairman, do I understand that as the leader for the majority report, we have fifteen minutes of controlled time and that that will be the only controlled opportunity to answer or to speak to the many issues that have been raised in connection with this recommendation?

THE CHAIRMAN: That is correct.

DELEGATE BOTHE: I will have to answer a question that was asked of Judge Child, and which we submit he answered correctly.

Delegate Clagett is concerned and certainly rightly, that the court would not under any conditions be entitled to incarcerate a person under the provisions.

That is absolutely not the intent of the provision at all. The intent is that an accused be held subject only to those conditions or terms, whatever they may be, and incarceration may be one of them, which will insure his appearance in court.

There is nothing in this proposal that will prevent the court from exercising discretion in determining whether or not the accused must be incarcerated or what terms must be set forth in order to assure his appearance.

It is merely the statement of a very fundamental principle that no person shall be held without justification. It is a very personal right that we are talking about here.

Judge Child mentions that he does not feel that this is the kind of a thing that the constitution should guarantee. I say that it is the most important thing a constitution can guarantee, and that is that a person will not be picked up off the streets and held in jail for an indefinite period, an innocent person, a person who is presumably innocent, for the simple reason that he does not have the money to pay a professional bondsman.

Now, I believe Delegate James was prepared to say a few words on this situation as it applies to the work of the General Assembly, and I will allot him three minutes for that purpose.

THE CHAIRMAN: I will come back to you, Delegate Child.

DELEGATE CHILD: I will allot three minutes to Delegate Groh.

THE CHAIRMAN: Delegate Groh.

DELEGATE GROH: Mr. Chairman, fellow delegates, my main reason for joining in on this minority report is the following: of course we do not have any constitutional guarantee in the Constitution now as to a right to bail. I feel that in putting in a provision like this, we are establishing this as a right. I feel that as a result the courts will construe this as pre-empting the federal Constitution and because of that, I think the language here is very limiting in that, as you will note, the language does not give the right in capital cases or in life imprisonment cases.

Today you do have a right to bail where the penalty might be life imprisonment.