

This takes away that right. It also is not clear from the language whether or not the existing law, the common law in the State that permits the person to be released on bail at the discretion of the judge in capital cases, would apply.

I feel that this is restrictive in that sense. For that reason I might point out to you that the existing rules of course permit bail in all cases, except capital cases, and make it discretionary are far as capital cases are concerned.

I say that the Committee Report seems to say that they assume that with this language you will still have the existing rights. It would still be discretionary in capital cases, and you will have all the existing rights, but I urge upon you that there is grave question, whether you can have your cake and eat it too, in this situation.

Once you start spelling it out specifically it would seem to me it would exclude any other rights that you have today.

I think I would go along with this if it were broadened, but I think you are very much limiting the right which we do enjoy today by this section.

I might also point out that today, if you have the funds, you can get out on bail. This would mean that if you have the funds in the future, the judge could refuse to permit you to have bail if for some other reason he did not want you to get out, which is good in some respects, but not so good in others; and I can see it abused in several instances.

Thank you.

THE CHAIRMAN: The Chair recognizes Delegate James for three minutes.

DELEGATE JAMES: Mr. Chairman, fellow delegates, I have been very much interested in this subject since I began the practice of law in 1937.

I helped get a bill through the legislature before I even became a member, which provided for a waiver of indictment and trial on the presentation of information. My observation as a practicing lawyer and as a trial magistrate over this period is that one of the most discriminating things in the administration of justice is the requirement of bail or the alternative of incarceration.

This certainly means that justice must be administered upon an economic basis, and it defies the idea that every man is equal before the law.

We have been making some progress in this area. I initiated a bill before the Legislative Counsel several years ago, which ultimately was passed, to provide for release upon a man's own recognizance in a proper case. Prior to that the Court of Appeals passed a rule, but the Court of Appeals rule only applied to the Circuit Court. The real problem is before the courts of limited jurisdiction.

One of the problems in the administration of justice in the lower courts, even with the statute, is that because we have an inefficient system of administration of the court system, many of the judges simply pay no attention to the statute.

Now, if we had a constitutional provision which would really in a sense recognize our present practice, it would make the right of release more prominent, and at the same time reserve to the court the right to fix reasonable bail where it became necessary to require the person to appear. It seems to me that it would become imprinted upon the mind of all courts regardless of the administrative system that this was a right, of course subject to discretion, but a right to be utilized in a reasonable manner.

And I feel that it would provide a constitutional barrier against discrimination upon an economic basis.

THE CHAIRMAN: Delegate Child.

DELEGATE CHILD: Mr. Chairman, I allot five minutes to Delegate Sherbow.

THE CHAIRMAN: Delegate Sherbow.

DELEGATE SHERBOW: Mr. Chairman, ladies and gentlemen, I hope that you will vote for the Minority Report, or rather for the amendment.

All that the majority seeks to do is excellent but ought not to be written into the constitution as badly—and I use that word very, very carefully—as badly as section 5-B is written.

Let me start at the very beginning.

Even in capital cases bail is permitted, and I assure Delegate Bennett that writs of habeas corpus for this purpose are not restrictive where a defendant is concerned, because this is almost routine, certainly in Baltimore City. There are many instances involving capital cases where a wife in defending herself may have killed someone and the courts will release her even on her own recognizance.

Now, we have a statute. It is an excellent statute. I commend that the legislature has