

DELEGATE MARION: I urge the defeat of the amendment.

THE CHAIRMAN: The Chair recognizes Delegate Hostetter for one minute.

DELEGATE HOSTETTER: I rise in support of the amendment. Delegate Kiefer stated that this would in no way change the situation one way or the other, but the remark I would like to refer back to at this time was one made by Delegate Willoner, and he stated this on two different occasions during the controlled debate, and that was that this provision, 5(B), would bring the present state of the law up to the level of a constitutional provision.

Now, what Delegate Willoner is saying is exactly what Judge Child and the spokesman for the minority said, that this provision is of a statutory nature and therefore has no place in the constitution. I believe we here are not a super legislature. I believe that 5(B) should be defeated, and deleted and I urge the passage of the amendment.

THE CHAIRMAN: The Chair recognizes Delegate Bard for one minute.

DELEGATE BARD: I should like to speak in opposition to the amendment because as I have studied it, it is concerned largely with pre-trial procedure. It does limit the power of the judiciary as it should in pre-trial procedure. It does protect the right of the accused and therefore, it does belong in the Bill of Rights.

THE CHAIRMAN: The Chair recognizes Delegate Carson for one minute.

DELEGATE CARSON: Mr. Chairman and ladies and gentlemen of the Committee, the words that have given me pause in the Majority Report are the words "necessary to secure his appearance before the court."

In many cases which I prosecuted I had the opportunity to see where individuals accused of crimes had actually made threats to witnesses that they were going to get them.

The federal courts take this into consideration in setting bond and I think they should. This is no argument against the poor because it cuts equally against those who have and do not have money, but I think it would be a bad thing to constitutionally prohibit the courts from considering when a man applies for bond, whether or not he is going to go out and get those who testify against him or get those who are already there.

I shall vote strongly in favor of the amendment of Judge Child.

THE CHAIRMAN: The time for debate expired, the time arises for a vote on Amendment No. 12.

DELEGATE JAMES: I would like to ask a question of the Chairman of the Committee.

THE CHAIRMAN: Delegate Kiefer, will you take the floor to yield to a question?

DELEGATE KIEFER: Yes.

THE CHAIRMAN: Delegate James.

DELEGATE JAMES: The question is, does the language "other terms" include incarceration?

THE CHAIRMAN: Delegate Kiefer.

DELEGATE KIEFER: The answer is yes.

THE CHAIRMAN: Delegate James.

DELEGATE JAMES: Would you object to a clarifying amendment contingent upon what the decision is here?

THE CHAIRMAN: I would assume he would have to see the amendment adding the words or including the words "incarceration" after "or other terms".

DELEGATE KIEFER: I have no objection and I do not think the rest of the Committee would, because I think that was part of the general idea.

THE CHAIRMAN: Delegate Bothe.

DELEGATE BOTHE: There is certainly no question but that the incarceration of the accused, who in the opinion of the court required that measure in order to be made to appear, is implicit in those words. I might say, Delegate James, that the statutes dealing with this subject use all the descriptive words and it was in the interest of brevity that we did not use all the terms which might be used, of which incarceration is one.

THE CHAIRMAN: In view of the fact that it seems to be clearly the intent, the words "or other terms" are intended to include incarceration, the Chair suggests it could probably be left to the Committee on Style and the Chair requests the Committee on Style to note on line 17 of page 3 of the committee report, such clarifying words as are necessary should be inserted to make it clear that the term "bail" or other terms was intended to include incarceration.