However, my report is predicated on a committee amendment that will come in later which will meet the objections to the right of removal that have been raised during our prior discussion of the right.

The right to removal in criminal cases will be provided, as it is in present Constitution under, I believe, Article 5, section 8. In any event, it is in the judiciary article in the present Constitution. It was the intent of the Committee to maintain this as an absolute right in capital cases or the language we used is life imprisonment, or cases punishable by death, in the anticipation, I suppose, that we expect the legislature to abolish capital punishment within the near future.

In any event, we wished that to be an absolute right. We feel it is something this body must decide. It is an important right. It is a check on judiciary, or I should say, is a check on the prejudice that one might find in a serious case in a community as a result of pre-trial publicity, but it would be exactly the same way as it is now, and it is not meant to change the present state of the law at all.

The committee amendment which we will propose as far as civil trials are concerned will provide that the right of removal in civil trials will not be absolute. There will be a right of removal, but it will be subject to the regulation by rule of the Court of Appeals, to avoid the objections of those people who thought the right had been abused.

The question might be raised why this should be in the constitution. It was in the constitution, I believe as of 1805 by way of constitutional amendment. In any event, it has a long constitutional history. It has been changed at various times. In the Convention of 1851 it did apply to all criminal cases and that was found to be abused, and I think the constitutional amendment in 1875 allowed it only to be used in capital cases.

I might point out that the interpretations of the right of removal by the Court of Appeals has been extremely restrictive. It has prohibited the legislature from providing the right in criminal cases when they did, in fact, provide such a right. The Court of Appeals said the provision essentially preempted the field and could only be handled by way of constitutional amendment, and all our right of removal is historically based on constitutional amendment.

The concept that we are changing in the right of removal for civil cases, is that it will be subject to reasonable regulation. It does not preempt the field, as the present constitution and the legislature would have concurrent powers and could make what changes they wanted in that particular section, if they wanted to liberalize the right. They could not make it more restrictive or restrict the right.

As to juries being the judge of the law as well as of fact, that is a very interesting provision. I frankly came down here opposed to what has been called the constitutional thorn in the side of Maryland, or something to that effect, until I began to do some reading on the question, and it has a very fascinating history.

The right originally ended, I believe, around 1690 in England, although this continued into Maryland. They had this taint of juries. In other words, if a jury came in against a judge's instructions, the jury could be imprisoned for finding against the instruction of the judge. This was apparently felt to be harsh and was abolished.

Then, the question became: since you could only be found guilty by the jury, in other words, the judge could not find you guilty if you chose a jury trial, or could not direct a verdict of guilty if, in fact, the jurors had the right to disregard the judge's instructions, did they not have, in fact, the right; and a debate arose about this.

There is a memorandum that has been found pointing out that there was some confusion about this in the Colonies, or I should say, in the Americas, after we wrote our original 1776 Constitution, but the practice generally in the United States was that the jurors, in fact, did find the law and that the judge was primarily a referee. He did not have very much to do with the trial at all.

I must say, I was not too well prepared to discuss this today as I thought we would get to the right to know first, but I would like to read you a quote from the *Harvard Law Review*, No. 52, page 582: "No common law institution has more persistently served to dramatize the relationship of law and democracy than has trial by jury." It is therefore not surprising that the American courts during most of the whole of our history should have been confronted with the task of making the English jury effectively responsive to the demand of American democracy. The theory in fact, made the task unavoidable.

Theory as usual received expression by Jefferson when he wrote, "Were I called