with them and they do not have these tools to help them decide the case.

Another reason for deleting it is that this provision encourages inconsistency in results of criminal trials.

A final reason is that it does not mean what it says because in fact the juries are not really judges of the law in the true sense as the amendment suggests, but this has been somewhat curtailed in recent years. If it were given literal meaning, it is perfectly clear that it would violate the equal protection and due process law in the U.S. Constitution and therefore would be void. There is absolutely no reason for continuing this in the present day, particularly with all of the real protections that the Supreme Court is now requiring the states to afford criminal defendants.

We respectfully suggest that this archaic provision is unnecessary and that it harms the accused as much as it helps him.

DELEGATE JAMES (presiding): Does anyone wish to speak against the amendment? Delegate Willoner?

DELEGATE WILLONER: Mr. Chairman, when I spoke on this in presenting the Majority Report, I indicated to the body when I came down here that I thought this provision was archaic and outmoded until I began to do some research on it and began to develop some questions which I may add in discussing with Delegates Bothe and Moser have not been satisfactorily answered.

The case of *Sharp and Hanson v. The United States* is a case of first degree murder where the judge was precluded from instructing or refused to instruct on the issue of manslaughter. The Supreme Court held that this was appropriate since the evidence was only susceptible of one interpretation, first degree murder, and therefore a manslaughter instruction was inappropriate.

We in Maryland do not follow that practice. I contend that when the Commission took this out of the present Constitution, they gave this absolutely no thought at all. There is no research to explain why they took it out or how it was taken out.

In the area of eminent domain, the Commission proposal was such that we would have had to add the off-street parking and the urban renewal provisions of our present Constitution to have it comply with the rulings of the Maryland Court of Appeals. This body should be well aware, when they are taking out this matter that they may be substantially changing the law in this State and they do not propose to tell us how it is changed. I would agree that at one time it was a thorn, as they called it, a constitutional thorn. Judge Dennis wrote a law review article on it. What he was objecting to was that the State could not appeal. That is a doctrine foreign to us today; the State should have a right to appeal. But the procedural provisions were solved when the amendment permitting the judges to determine the sufficiency of the evidence was added to this provision. I would read to you what Judge Henderson said about this in 1947.

"At the 1947 session of the General Assembly the Junior Bar Association proposed an amendment to this provision of the Constitution eliminating the provision that the jury shall be the judges of the law, but the bill was defeated."

Possibly the proposal was considered too revolutionary or drastic. Doubtless many members of the General Assembly felt that the provision has not outlived their usefulness. I am not disposed to disagree with them. My quarrel is not with the provision, but with the procedural practice derived from it. Now as I understand it, and Judge Henderson will correct me if I am wrong, he did not like the procedure where you could not agree or the judges could not determine the sufficiency of the evidence, and I agree with him in that regard. The minority does not tell us the effect of it. There has been no research which has been developed which would tell what leaving this out would do to the law of Maryland.

DELEGATE JAMES (presiding): Delegate Henderson, do you speak in favor?

DELEGATE HENDERSON: I do.

DELEGATE JAMES (presiding): The Chair recognizes Delegate Henderson.

DELEGATE HENDERSON: Mr. Chairman and fellow members, since I have been quoted or referred to by Mr. Willoner, I feel that I must first try to make my position perfectly clear.

In 1947 I became interested in this subject. At that time I was serving on the Court of Appeals and I delivered a paper on the subject before a law club and became interested in the matter. Chief Judge O. L. Marbury and Judge Markell who were my colleagues on the court at that time urged me and I was asked by the executive committee to make a speech before the Bar Association at Atlantic City which I