

I am not sure. There will be some such general article.

DELEGATE DUKES: And it will be voted on as a whole?

THE PRESIDENT: That is correct.

DELEGATE DUKES: Then I will not offer my amendment.

THE PRESIDENT: Very well.

Again I have to point out to you that this is assuming the Convention either changes Rule 59 or suspends it.

DELEGATE DUKES: Yes, sir, I understand that.

THE PRESIDENT: Very well.

Apparently there are no amendments as to style except for the desire of Delegate Willoner with respect to section 1.05.

The question therefore arises on the adoption of the amendments to Committee Recommendations R&P-1 and R&P-2 proposed by the Committee on Style other than those with respect to section 1.05 as to which a separate vote has been requested.

Do you request a separate vote on 1.05, Delegate Willoner?

DELEGATE WILLONER: I do, Mr. Chairman.

THE PRESIDENT: Are there any other sections as to which any delegate desires to vote separately? If not, the Chair will submit to you, first, for adoption the amendments proposed by the Committee on Style with respect to section 1.05, and then, following that, submit to you on one motion the amendments with respect to all the other sections.

The Chair understands that Delegate Willoner desires to oppose all of the recommendations of the Committee on Style for amendments in section 1.05. Is that correct, Delegate Willoner?

DELEGATE WILLONER: That is correct, Mr. Chairman.

THE PRESIDENT: The Chair recognizes you to speak to the question. The question will now arise on the adoption of the committee amendments recommended with respect to section 1.05. Delegate Willoner is speaking in opposition to those amendments.

Delegate Willoner.

DELEGATE WILLONER: I may also say I am speaking on behalf of our Com-

mittee. In drafting this particular section, we followed as closely as possible the language of the Fourth Amendment to the federal Constitution.

The changes that have been made depart from that, and, as has been pointed out earlier in the questioning period, amount to a substantive change.

One of the intentions in drafting this as closely as possible to the Fourth Amendment language of the federal Constitution was to drag along the cases that have interpreted this language over the past two hundred years. While it is quite true that you may be able to more artfully draft this section, when this section has a history of some two hundred years it is important to keep it in as exact language as possible.

I might point out that the change "and to secure against unreasonable interceptions" perhaps broadens this much further than we intend to broaden it.

Since this language has no interpretation behind it, it might prohibit the testimony of conversations made in the presence of one individual. It could prohibit the recording of a conversation, for example, where a police officer would go into an interview, say, with a buyer of marijuana, and he would have this on his own person as corroborative of the testimony. This might conceivably prohibit that type of interception.

The language as drafted was extremely carefully drafted and it was checked over by at least two constitutional professors of law.

What happened was that "the right of the people to be secure in their persons, houses, papers and effects against unreasonable" is to be modified by "searches, seizures and interception of their communications".

In other words, that "interceptions of communications" refers back to the first four categories of "persons, houses, papers and effects", and this is the language that has been interpreted by the Supreme Court. We are really expanding it in a sense to make their decision somewhat easier.

Then we have added "or other invasions of their privacy" to include those concepts brought out since the Berger case. Unfortunately this amendment was put in without my being able to get ahold of the Katz case.

I understand the decision by Justice Black was based on the idea that interception did