

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

DELEGATE KIEFER: Yes.

THE PRESIDENT: Delegate Hardwicke.

DELEGATE HARDWICKE: For the purpose of clarifying the two issues that are before this convention, first of all "shall not be violated" in line 31 means not only shall not be violated by the government or by the State, but also shall not be violated by private individuals, is that correct?

THE PRESIDENT: Delegate Kiefer.

DELEGATE KIEFER: I think that is a hooker.

No, not necessarily. We are talking about personal rights here, Delegate Hardwicke. We are talking about the framework of government. We are talking about a situation where we are establishing certain basic rights that no government can take away from its people. We are not talking about individuals versus individuals, so this does not apply to individuals.

THE PRESIDENT: Delegate Hardwicke.

DELEGATE HARDWICKE: Then, Mr. Chairman, you mean "shall not be violated", and it is implicit that this means by the State?

THE PRESIDENT: To make your question more pointed, when you use "State" you do not limit that necessarily to the State, you mean any governmental agency or state agency. Is that correct?

DELEGATE HARDWICKE: Yes, Mr. President.

THE PRESIDENT: Delegate Kiefer.

DELEGATE KIEFER: Are you asking me? What are you asking me?

THE PRESIDENT: Delegate Hardwicke.

DELEGATE HARDWICKE: I am asking you whether or not when we read "shall not be violated", we should in our own mind understand that that means "shall not be violated by the State or any of its instrumentalities or agencies"?

THE PRESIDENT: Delegate Kiefer.

DELEGATE KIEFER: Certainly, that is my understanding of what the Fourth Amendment does and it is my understanding of what we are doing here by the present declaration of rights.

We are not adding anything here with respect to individuals versus individuals.

That gets away completely from the concept of what a bill of rights is.

THE PRESIDENT: Delegate Hardwicke.

DELEGATE HARDWICKE: May I ask a second question of Delegate Kiefer?

THE PRESIDENT: Proceed.

DELEGATE HARDWICKE: Delegate Kiefer, as I understand the point that was made by Delegate Willoner, if we accept the Committee on Style and Drafting's recommendation with regard to taking "and to be secure against unreasonable interceptions of their communications" and placing it separately in this line, it then will not relate back to "persons, houses, papers and effects", and is thus a broader guarantee, is that correct?

DELEGATE KIEFER: You might want to direct that question to Delegate Willoner, but that is my understanding. We want the "unreasonable invasion of privacy" to relate back to the first four items which the President in his explanation stated.

I think President Eney stated the position of the Committee accurately, and I do not think there is any question about that. I think that is why Delegate Willoner made the amendment, for the purpose of getting back to what the Committee's original understanding was or is.

THE PRESIDENT: Delegate Willoner, would you take the floor to respond further to Delegate Hardwicke's question?

DELEGATE WILLONER: The question is somewhat difficult to answer, because it obviously would have to refer back at least to "persons".

The problem that we are confronted with here is that there has been some argument that an interception of communication is not a search or seizure, and that is why there is a comma after "and interception of their communications", because the three categories, "searches, seizure and interceptions" have always been tied in with invasions of privacy, and that was the purpose of it.

The purpose of the amendment, according to Chairman Eney, was to broaden this, to broaden it beyond "persons, houses, papers and effects". I am not quite sure how he contemplated that.

The difficulty, as I see it, Delegate Hardwicke, is simply that there are areas where you may have an interception of a communication which is perfectly admissible as