

THE PRESIDENT: Delegate Willoner, do you desire to offer your Amendment L?

DELEGATE WILLONER: Yes, Mr. Chairman, if now is the time to bring up Amendment L.

THE PRESIDENT: Pages will distribute Amendment L, L for love. This will be Amendment No. 2.

The Clerk will read the Amendment.

READING CLERK: Amendment No. 2 to Committee Recommendation R&P-1 and R&P-2 as amended by Report No. S&D-9 by Delegate Willoner and others.

On page 2 immediately preceding section 1.06, Grand Jury Indictment, add the following new section:

“Section 1. Criminal Jury, Judge of Law and Fact.

“In the trial of all criminal cases, the jury shall be the judges of the law, as well as of fact, except that the court may pass upon the sufficiency of the evidence to sustain a conviction.”

THE PRESIDENT: The amendment submitted by Delegate Willoner and seconded by the co-sponsors, the Chair recognizes Delegate Willoner.

DELEGATE WILLONER: Mr. Chairman, this is something that has had much debate, and I do not intend to debate it again except that at the last vote it failed by two votes and three very important prominent people in this Convention were absent at the time. I should say it failed by two votes, and three very prominent people who wanted to have a say on this matter, which would have resulted in it being included in the constitution, were unable to do so.

As I have explained several times against those people in this body who thought this was something that should have gone out because it was archaic, it has been developed that this provision has meaning in our judicial system today, that it prevents at least three things: it prohibits judges from directing verdicts of guilty; it prevents blackjack instructions; and it permits inconsistent verdicts, practices which have grown up in our State and practices that should not be changed without a great deal of research and thought.

The opponents of this have never done that research, and have never told us what it would mean to change this provision. Therefore we, the sponsors of this amend-

ment, wish it to be included in the present constitution.

It is a right that has been a right of the people of this State since Maryland has been in existence, and we feel this should not be changed without a great deal of research and study to see how it would affect the laws of Maryland.

There are probably fifty or sixty annotations behind this particular provision. There are three major objections to it. Two of them have no merit at all. One is that it has prevented development of criminal law in this State. Please listen to this, because several lawyers honestly believe that it has and it did up until 1950 when it was amended and the clause “the court may pass upon sufficiency of the evidence to sustain a conviction” was added. That language has permitted the Court of Appeals to develop what evidence is necessary to establish what a prima facie case is in a particular crime.

Secondly, it is argued that the jurors cannot understand when the lawyers argue law to them. It is a very, very rare occurrence when the law really gets litigated. This is not the purpose of keeping this provision in, to permit the lawyers to argue except in the rarest of cases.

The point is that it prevents the judge from directing verdicts, a fear that I do not particularly have myself. It does prevent the judges from delivering blackjack verdicts, and the federal law in this area permits blackjack verdicts today, according to the last decision the Supreme Court has made concerning the subject.

I have not checked the other fifty jurisdictions, nor have the opponents of this. We do know that Massachusetts permits directed verdicts. I do not know what other states do. The majority rule seems to be that they do not permit directed verdicts.

This is an important right of our State. It should not be changed without knowing what we are doing, and I suggest that we leave it in.

THE PRESIDENT: Delegate Kiefer.

DELEGATE KIEFER: Mr. Chairman, Mr. President, ladies and gentlemen, I am not sure about my batting average, but one motto I have gone by for the last three months I am going to quote to you, *illegitimus non carborundum esta*, and I continue to go by that, bloody but unbowed.