

the case that I could not get instructions from a judge. Therefore, I intend to vote against this because I think it handicaps a person who is not a lawyer.

THE PRESIDENT: Delegate Moser.

DELEGATE MOSER: Mr. President, I know that the non-lawyers and the lawyers among us are all rather tired of hearing arguments over and over again on this particular subject. I rise, however, to speak against reinserting this provision in the constitution, and I have just three points to make.

In the first place, it simply is not true that a judge can direct a verdict of guilty in Maryland, if the juries-as-judges-of-the-law provision goes out. I call the attention of the Convention to section 1.07 on pages 2 and 3 of the R&P provision that you have in front of you, "Rights of Accused".

One of those rights, reading on page 3, lines 2 to 5, is to have a speedy and public trial by an impartial jury of 12 without whose unanimous consent he shall not be adjudged guilty.

This is a rather more stringent provision than the Sixth Amendment to the United States Constitution and I think goes further than it does. I think this more clearly than the Sixth Amendment would prohibit a directed verdict of guilty in a criminal case. I think under the Sixth Amendment this would also be prohibited, notwithstanding the arguments of Delegate Willoner.

Point two is that the so-called blackjack verdict which Delegate Willoner alludes to, would violate this provision guaranteeing a jury trial. It would also probably violate the due process clause.

Another point, which I think Delegate Smith made is the argument that it is necessary to put this provision in in order to allow the jury to ignore the judge's instructions. This is not true. A criminal jury can find an accused not guilty notwithstanding the judge's instructions.

The final point is that all of the other jurisdictions in this country, with the possible exception of Indiana, have found no problem without this provision in the constitution. I hope that we keep it out.

THE PRESIDENT: Delegate Dukes.

DELEGATE DUKES: I do not believe I have anything to say about the provision, but I think it is extremely important.

In the first place, Delegate Moser pointed out other provisions of the constitution which he maintains would prevent the problem many of us fear. The only requirement that requires a unanimous verdict has to be within that sphere dedicated to the jury. The jury is entitled to have its unanimous verdict in the area of finding of fact. I think the delegate is dead wrong that you cannot have directed verdicts: you have them in the federal courts every day, every week, or every month, and there are a number of annotations, all sorts of cases on it. There is no question in my mind whatsoever that you do have a directed verdict of guilty in the federal courts, and you do have it in some other states.

As to whether or not other states have a problem is not really our concern at this point. Other states have developed their own body of law, time by time, week by week, year by year. We are talking now about changing the status in Maryland and putting in this provision without any history whatever, without any body of decisions in Maryland.

I do not know whether or not the Maryland law would develop if this provision were left out so that we would not have the problems that many of us fear. I also do not know that it would not. I think there is a very good chance that we would follow the federal courts, and if we do we will have exactly the problem many of us fear that is, the type of thing where you have a directed verdict, where you have juries told what they can do and cannot do, and where you even have verdicts set aside notwithstanding the verdict when they come back, which is also done in the federal courts.

I do not know what to tell you, because you will get a lot of information here; you will get different opinions. You have a number of lawyers who stand up and say there is no problem, others stand up and say it is a problem, and obviously you cannot make a decision based on what we are telling you.

Therefore, all I can suggest is that if it is not any problem, if the juries are getting along all right as they are and if we are not having any trouble as we are not now, then I do not see any reason whatsoever to change what we have.

The word "archaic" means more than old. A Bible is old, lots of things are old. That does not mean they are out of date or do not work very well. There is no point in changing just because somebody tells you it is archaic. Wait until you hear some-