

tomorrow because although I anticipate that the session this evening will continue quite late, we certainly cannot finish, and it is imperative that we finish this week so that we will resume this session at noon tomorrow.

I have talked to representatives of both sides of the question on Amendment No. 5. All are in agreement that it would be most undesirable to have the matter of section 1.17 considered again tomorrow afternoon. Accordingly, the Chair proposes to recognize Delegate Powers for the purpose of moving a division of the question to separate consideration of section 1.17 from the rest of Committee Recommendation R&P-1 and then to recognize Delegate Powers to make that a special order of business for consideration at 2:00 P.M. on next Tuesday afternoon. This will give an opportunity to both sides in the dispute to consider the matter further, and I would have every hope that a reasonable solution could be arrived at which would secure the very decided approval of the Convention.

The Chair recognizes Delegate Powers.

DELEGATE POWERS: Mr. President, I move that section 1.17 of Committee Recommendation S&D-9 dealing with Committee Recommendations R&P-1 and R&P-2 be made a separate matter and that as such it be made a special order of business for Tuesday, January 2, at 2:00 P.M.

THE PRESIDENT: I think it would probably be desirable to put it in the form of two motions. The first motion would be to separate the question as to section 1.17 from the remainder of R&P-1 and R&P-2.

The Parliamentarian tells me that under the rules we do not actually need a vote. If I as Chairman conclude that the question can be separated, it can be separated at the request of any delegate. Delegate Powers requests that it be separated. It is obviously a separate question. Therefore, it can be separated.

The question arises on the motion by Delegate Powers to make further consideration of section 1.17 a special order of business on Tuesday afternoon, January 2, 1968, at 2:00 P.M. Is there a second?

*(Whereupon, the motion was duly seconded.)*

THE PRESIDENT: Are you ready for the question?

All in favor signify by saying Aye; contrary, No.

The Ayes have it, and it is so ordered.

Will the pages please distribute the amendment marked "AA". This is Amendment No. 9 on which we acted just before the dinner recess, to change section 1.12.

Delegate Grant, do you desire to offer your amendment Y?

Pages will please also distribute Amendment Y. Amendment Y will be Amendment 11.

The Clerk will read the amendment.

READING CLERK: Amendment No. 11 to Committee Recommendations R&P-1 and R&P-2, as amended by Report No. S&D-9, by Delegates Grant and Bothe: On page 4 immediately preceding line 45, section 1.18, Reserved Rights, insert the following new section: "Section 1. —, Restraint Pending Trial: A person awaiting trial shall be subject only to such restraint as necessary to insure appearance at trial."

THE PRESIDENT: The amendment is submitted by Delegate Grant and seconded by Delegate Bothe. The Chair recognizes Delegate Grant.

DELEGATE GRANT: This will be a matter that can be dealt with briefly. As reported out by the Committee to the Committee of the Whole, there was a provision proposed for the new constitution which essentially resulted in pre-trial release. The provision which was initially reported out was somewhat long and complex and for that reason was subjected to a great deal of amendment and finally was voted down.

The provision which was reported out said: "Section 5(b). An accused, except in cases punishable by death or life imprisonment, shall be entitled to release pending trial conditioned only upon such bail or other terms as are reasonably necessary to secure his appearance before the Court."

The amendment which I have proposed is the same thing expressed in some simpler terms. "A person awaiting trial shall be subject only to such restraint as necessary to insure appearance at trial."

The basic idea is to make the right not to be incarcerated without a trial a right instead of a privilege. As it is now, when a person is arrested and being held for trial, he can be released only on bail. There are some experimental projects being financed mostly by private money and foundation money which allow bail substitution.

However, the basic idea of trying to incarcerate somebody before the trial at