

The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the bill passed finally.

Ordered, That the clerk return the same to the Senate with the information that the House has passed the same with amendment in which the concurrence of the Senate is requested.

BILL ON THIRD CONSIDERATION

The House proceeded to third consideration of SB 555, PN 1988, entitled:

A Joint Resolution proposing an amendment to the Constitution of the Commonwealth of Pennsylvania, further providing for trial by jury.

On the question,

Will the House agree to the bill on third consideration?

The SPEAKER. It is the understanding of the Chair that all amendments to this particular bill have been withdrawn. That being the case— It was the understanding of the Chair. Apparently I misunderstand just what is going on.

On the question, the Chair recognizes the gentleman from Philadelphia County, Mr. Cohen.

Will the gentleman yield.

Conferences must be held outside of this room; conferences must be held outside of this room.

The Chair recognizes the gentleman, Mr. Cohen.

Mr. COHEN. Thank you, Mr. Speaker.

Mr. Speaker, 30 years ago when Richard Nixon ran for President, one of his campaign themes was, "Bring us together." This bill has brought together more diverse groups than any other bill that I can recall in many, many years. This bill has created a common position for the National Rifle Association, the NRA, and just about every group of gun holders in the Commonwealth of Pennsylvania and the National Organization for Women and various groups of advocates for victims, and they all have the same position on this bill, and the position of these liberal, moderate, and conservative groups is they want this bill defeated.

What all these groups have in common is that they are groups of middle-class Pennsylvania citizens who recognize a proposal to dramatically increase the costs of the criminal justice system. That is what this bill does. It dramatically increases the costs of the criminal justice system and runs the real risk of driving a criminal defense of a middle-class person way out of a middle-class person's ability to afford it. It increases the costs of the criminal justice system by dramatically extending the amount of time any criminal trial will take.

It allows the district attorney to require a jury trial. As we all know, jury trials take a lot of time. They take a lot of time because, first, we have to examine dozens and dozens of people to see if they are qualified to be jurors and are willing to serve as jurors. That is an extremely time-consuming process. Then the lawyers for both sides have to make sure that not only are the facts presented so that a judge, who is learned in the law and has years of experience in the law, understands the facts, but we have to make the facts so clear that a jury of people, the vast majority of whom have never seen a criminal case before, now they have to be able to understand it. So it creates an additional phase of jury selection and it makes it much more time consuming for the material to be

presented because it has to be clear enough for a jury. The effect of this is that since lawyers tend to charge by the hour, the cost of a legal defense is going to go way up.

In addition, many lawyers are available for friends or family to handle simple cases for nothing, but the number of lawyers who will handle a very complex jury trial on a pro bono basis is very limited, so the vast majority of people who otherwise could get a free or an almost free lawyer, the number of people who can do that has gone way down and the cost for everybody else in securing a lawyer goes way up. And that is why the National Rifle Association is against it; that is why gun owners groups are against it; that is why the American Civil Liberties Union is against it; that is why various victims advocacy groups are against it; that is why the National Organization for Women is against it; that is why I think if just about any group of middle-class citizens were exposed to this bill, they would be against it. I say middle class, because middle-class people do not have unlimited financial resources and middle-class people do not have the constitutional rights to have the State pick up the tab for their defense. For a poor person the public defender will represent him or her, and we, the taxpayers of Pennsylvania, will pay for the increased cost of a public defender. We will have to hire more public defenders.

MOTION TO RECOMMIT

Mr. COHEN. For all these reasons, Mr. Speaker, I think this bill is unwise, and I would move that this bill be recommitted to the House Judiciary Committee for further study and public hearings.

The SPEAKER. The Chair thanks the gentleman.

On the question,

Will the House agree to the motion?

The SPEAKER. On the question of recommitment, the Chair recognizes the gentleman from Delaware, Mr. Gannon.

Mr. GANNON. Thank you, Mr. Speaker.

Mr. Speaker, I oppose the motion to recommit SB 555 to the Judiciary Committee.

We have studied this proposal; we have had public hearings on this. It is now time to move. It is something that has been demanded by the people of this Commonwealth on several occasions in the past. We have been blocked and thwarted by those who are opposed to it. It is time that the people have a voice in this chamber, and I would ask for a "no" vote on the motion to recommit.

The SPEAKER. The gentleman, Mr. Blaum.

Mr. BLAUM. Thank you, Mr. Speaker.

Mr. Speaker, I rise also to oppose recommitment.

This is a constitutional amendment which, if adopted, we can present to the voters of Pennsylvania. It is not new law. It has been the law since 1935, I believe. It was changed by the courts in court decisions and now the people have an opportunity to put it back on the books through amending the Constitution.

So I would ask that we oppose recommitment and put the issue to a vote before the members.

The SPEAKER. The Chair recognizes the lady from Philadelphia County, Ms. Josephs.

Ms. JOSEPHS. Thank you, Mr. Speaker.

I rise to support the motion to recommit. I do not like to disagree with my esteemed chairperson.

It is true we have looked at this piece of legislation, but that was before we began to receive the letters from the gun owners and the sportsmen's groups. I think it took them a while to kind of see what a danger this was to their members, and I think it is time for us to go back and perhaps get a much better feeling for what these groups feel are the unwise and bad public policy measures that will be put in place if we pass this constitutional amendment.

A constitutional amendment is a pretty serious thing. I do not see any reason why we should not restudy it. Our own Constitution makes it a complicated method to adopt it. The founders were very smart when they did that. Their message to us across the years is, do this carefully, and if you have so many diverse groups from every part of the political spectrum that say, no, this is not a very good idea, I think it is time that the committee do its work, come up with something better, or try and fix it in some way.

So I hope we can recommit it to Judiciary and work on it a little bit more.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the lady.

The Chair recognizes the gentleman, Mr. Tangretti.

Mr. TANGRETTI. Thank you, Mr. Speaker.

Mr. Speaker, I wonder if the chairman of the Judiciary Committee would stand for a brief interrogation.

The SPEAKER. The gentleman, Mr. Gannon, indicates he would be pleased to stand for interrogation. You may begin.

Mr. TANGRETTI. Thank you.

Mr. Speaker, I wonder if the chairman could comment about the fiscal note as it relates not to the cost of putting this item on the ballot but rather the cost of SB 555 overall.

Mr. GANNON. Mr. Speaker, I would suggest that the member interrogate the chairman of the Appropriations Committee on that issue, if he is available for interrogation.

The SPEAKER. The gentleman, Mr. Barley, are you willing to be interrogated on the issue before the House? The gentleman indicates he will stand for interrogation.

Would you repeat your question, please.

Mr. TANGRETTI. Yes, Mr. Speaker.

Mr. Speaker, I would ask the chairman of the Appropriations Committee what the fiscal note is relative to this Senate bill, not in terms of what it costs to put on the ballot as a constitutional question but rather what the total implications of this will be in terms of increased costs for the judicial system across this Commonwealth.

Mr. BARLEY. Yes; thank you, Mr. Speaker.

The SPEAKER. The gentleman, Mr. Barley.

Mr. BARLEY. Mr. Speaker, the issue that was presented to the Appropriations Committee in the request for a fiscal note was to analyze the cost of placing it on the ballot. At this time, the question before the committee is not the cost of implementation. We do not have a fiscal note that indicates the cost of implementation, because that issue, until and unless it is approved by the voters, is not an issue that needs to be addressed. We do not have that fiscal note. We are not required to have that. The fiscal note that we have is the fiscal note that does cover the costs of placing it on the ballot.

Mr. TANGRETTI. Thank you very much, Mr. Speaker.

Mr. Speaker, on the motion.

The SPEAKER. The gentleman is recognized for that purpose.

Mr. TANGRETTI. Mr. Speaker, respectfully, I would suggest that that is exactly the issue. Before anyone in this room should

decide whether this should be a ballot issue to amend the Constitution ought to know the financial implications of what we are voting on, and we do not know that. We have no idea, as evidenced by the response from the chairman of the Appropriations Committee, what the increased costs of this amendment or this bill are going to be to the judiciary. I think, by virtue of the comments that our colleague from Philadelphia made, it by its very nature is going to increase the costs substantially, and I do not think that the taxpayers of this Commonwealth would want any of us to cast a vote without knowing what that number is.

So I would support unequivocally the motion to recommit this and would do it with the understanding that we would know and be provided what the total cost would be for this. Thank you, Mr. Speaker.

The SPEAKER. The gentleman, Mr. Olasz.

Mr. OLASZ. Thank you very much, Mr. Speaker.

I rise to support the motion to recommit, and those of us from Allegheny County know the constant battle that goes on with the county commissioners and the judges, because they are not funded properly to conduct the judicial matters that appear before Allegheny County. In fact, the president judge had threatened to shut down the court system for underfunding. So I think it is extremely important that this be recommitted until we do have a fiscal note, because undoubtedly, it is going to have a severe impact on the Allegheny County court system.

Thank you, and you think about it, Mr. Speaker, before you vote on this one.

The SPEAKER. The gentleman, Mr. Birmelin.

Mr. BIRMELIN. Thank you, Mr. Speaker.

I am going to oppose this motion to recommit for two basic reasons. The first is that I conducted the public hearing on the House version of this bill — and I am not sure what the date was; I think it was about 2 months ago — and every argument that you have heard in every letter that you have received from every organization practically that one of the previous speakers has mentioned, we have already heard those arguments. The Judiciary Committee heard from all of these people with all of these arguments. The letters that you are receiving are nothing new. This was voted in a previous session, and that issue was raised then. It was raised again in the public hearing that I conducted through the auspices of the Judiciary Subcommittee on Crime and Corrections. Reverting back to the Judiciary Committee is not going to do anything other than delay the vote.

A second mention was made by one of the previous speakers that we could change or do something different to this bill. We cannot. If we are going to put this bill before you for a vote, we cannot change it, unless we decide that we are going to not only do it this session but the following session, because it was voted in last session. So it really needs to be identical to the language that was in the last session. That is what you are going to have before you if you give the full body an opportunity to vote on SB 555 today.

So I would respectfully submit to you that reverting back to or sending it back to committee is not going to do anything other than delay, but if that is what you want to do, is delay, then I would vote to recommit. But quite frankly, it is not a vote of substance. It is not going to amount to anything different being done to SB 555 other than a delay of time. So I would ask you to oppose that motion. Thank you.

The SPEAKER. The gentleman, Mr. Godshall.

Mr. GODSHALL. Thank you, Mr. Speaker.

I also rise and ask for a non-recommittal-to-committee vote. This issue has been with us now for the past 3 years. We passed this bill out of committee last year, or we passed this bill in this House last year by about a 3-to-1 margin. It is practically the same bill.

So I think we are ready to vote the bill. Putting it back into committee where it has been studied, where hearings have been held, serves no purpose at all. Let us vote the issue and get it done.

Thank you. I ask you to vote "no" on the rereference to the Judiciary Committee.

The SPEAKER. The gentleman, Mr. Gannon.

Mr. GANNON. Thank you, Mr. Speaker.

Just to reiterate the remarks of the other members who are urging a "no" vote on recommittal, I support them, and I ask the members to vote "no." This is a very important issue. Only sending it back to committee will delay. It will delay justice for crime victims throughout the Commonwealth. It is time to put this issue before the people, and I urge a "no" vote on recommittal.

The SPEAKER. The gentleman, Mr. Wogan.

Mr. WOGAN. Thank you, Mr. Speaker.

Mr. Speaker, I join Chairman Gannon and Representatives Birmelin and Godshall in vigorously opposing the motion to recommit this bill to Judiciary, but I think the members here should understand that there is no more time to deal with this issue. It will not merely be delayed, this issue; it will be dead if this bill is sent back to committee, and the reason is that we cannot entertain this bill in the fall because of the advertising requirements placed upon the Department of State by the Pennsylvania Constitution.

We need to get this in position before we break for the summer, and the best information I have is we are breaking for the summer after next week. So a vote to send this back to committee, an issue that we have been working on for over 3 years, is in essence a vote to kill this bill. It is not going to merely delay it.

If we are unsuccessful in keeping this from going to committee, what we will have to do is start all over again. Everything that was done last session, everything that has been done this session, it is all wiped out. This has been around long enough. We have got a safety feature. This is a proposed constitutional amendment. Our constituents will have the ultimate say this November, but they will not have the ultimate say if we kill this by sending it back to committee today.

I ask for a negative vote on the motion to recommit.

The SPEAKER. The Chair recognizes the lady, Ms. Boscola.

Ms. BOSCOLA. Thank you, Mr. Speaker.

I am strongly encouraging my colleagues not to recommit this bill today. When in this Commonwealth are the voices of the victims going to be heard and the people have their say?

We know what this bill does; we can debate it today. Please, let us just get this over with. Debate the bill today. Do not recommit. Thank you.

PARLIAMENTARY INQUIRY

The SPEAKER. The lady, Ms. Josephs, for the second time on the issue.

Ms. JOSEPHS. Mr. Speaker, a parliamentary inquiry, please.

The SPEAKER. The lady will state her point of parliamentary inquiry.

Ms. JOSEPHS. Does not a person have to, a State Representative, a member—

The SPEAKER. The lady will yield.

The meeting on the side aisles and in the back of the House, please break up.

Ms. Josephs.

Ms. JOSEPHS. Does not a member of this House under our House rules have to affirmatively indicate whether he or she is voting "yes" or "no," and indicate that in person — formally, of course — by pressing a button at his or her desk? But is it not required that we affirmatively vote either "yea" or "nay" under our rules?

The SPEAKER. Members in their seats are required to vote, if that is your question.

Ms. JOSEPHS. Is someone else allowed to cast the vote of a member who is not in his or her seat?

The SPEAKER. No.

Ms. JOSEPHS. Then how can we continue in this room assuming that each person who does not stand up is casting an affirmative vote under our House rules?

The SPEAKER. The vote that you are referring to as casting, a vote is not being cast by the clerk; he is simply recording it, which he has done every day that we have been in session. He records the vote. The method of voting has changed temporarily, and I believe it is within the rules, although the Parliamentarian is looking them up right now.

Ms. JOSEPHS. I have been assumed to have been voted "yes" on a number of measures today and yesterday.

The SPEAKER. You have been voted "yes," yes.

Ms. JOSEPHS. My question is, has my name been read into the record as having been voted "yes"?

The SPEAKER. Yes.

Ms. JOSEPHS. If I am not in my seat and not standing, does my name get read into the record as having voted "yes"?

The SPEAKER. I know you are here, because you are a conscientious legislator—

Ms. JOSEPHS. Hypothetically—

The SPEAKER. —and the answer would be yes.

Ms. JOSEPHS. Hypothetically, I am a terribly unconscientious legislator—

The SPEAKER. That will be in a brochure, I am sure.

Ms. JOSEPHS. It would be if one of your party would file and run against me.

The SPEAKER. You got me. But I will see what I can do to accommodate you the next time.

Ms. JOSEPHS. Thank you. It will get me invited to many more community meetings.

The SPEAKER. Yes.

Do you have any more questions to beat me up with?

Ms. JOSEPHS. I would like to debate on this motion, please.

The SPEAKER. The lady is recognized.

Ms. JOSEPHS. According to the way I interpret the Speaker's answer to my questions, we are now not only ghost-voting, we are massively ghost-voting, and we are ghost-voting without—

The SPEAKER. No; no. Do not take my remarks and go down a path that leads you to that conclusion.

Ms. JOSEPHS. I said my interpretation of your remarks. And I believe I have the floor. Am I still recognized?

The SPEAKER. You are recognized.

Ms. JOSEPHS. Thank you, Mr. Speaker.

I question the constitutionality and the legality of any votes we take under these circumstances. I still urge a vote to recommit, but

I question this, and I think what we are doing— I am very, very interested in the speaker before me talking about the people having their chance to voice their opinion when this question gets on the ballot. Well, I think long before this question, if and when it gets on the ballot, we are not following the rules that the people of this State assume that we are following when we are sitting in this room and playing these silly games.

I think whatever we do here is constitutionally suspect. I still urge a "yes" vote on Representative Cohen's recommittal motion, but I have very, very many grave doubts about the procedure that is happening here. Thank you, Mr. Speaker.

The SPEAKER. The lady, Ms. Josephs, in further answer to your question, it is my belief that if any two members demand a strict roll call, we will then be in a position where we will take a long roll call rather than the short roll call, and to offer you some comfort, I suggest you watch television and see that the Senate does this day after day after day after day, where they use a voice vote. This is not something that is newly discovered. And we have done it in the House on a number of occasions in earlier years.

PARLIAMENTARY INQUIRY

The SPEAKER. Ms. Josephs.

Ms. JOSEPHS. Sir, I am aware of what the Senate does. Of course, they have 50 people and we have a few more than that.

I have another parliamentary inquiry.

Under, well, it is under "Definitions" of rules. It says, referring to "Roll Call Vote," " 'Roll Call Vote' shall be a vote taken and displayed by and on the electric roll call board or in the event of a malfunction of the electric roll call board, by such method as shall be determined by the Speaker." Are you—

The SPEAKER. Well, that board has certainly malfunctioned; it is not here. And a method as determined by the Speaker, I am trying to do that, and I am flexible, and I am willing to— We have made one change at the suggestion of Mr. Lloyd yesterday.

Ms. JOSEPHS. Thank you, Mr. Speaker.

The SPEAKER. The gentleman, Mr. Perzel.

Mr. PERZEL. Thank you, Mr. Speaker.

Mr. Speaker, I take exception to what was said by the gentlelady from Philadelphia. If anyone could pan the camera on everyone in this room, the room is absolutely packed. Almost every member of the General Assembly, everybody that I know, is sitting here in their seats. So I do not know why she would be making outrageous statements about people not being in their seats.

But having said that, I would like to request that we do a roll call of each member here on the "yeas" and "nays" on this particular motion to send this back to the Judiciary Committee.

The SPEAKER. The gentleman, Mr. Cohen.

Mr. COHEN. Thank you, Mr. Speaker.

Mr. Speaker, we have been given two arguments here. The first is that the arguments in favor of recommittal are the same arguments as you have heard for 3 years. There is a lot of truth in that. These arguments are what you have heard for a while, although they are heard now from a far broader number of people than they were heard from 3 years ago. But during those 3 years, one reason there are so many more people concerned about these arguments is, there have been no answers. How many new judges are going to have to be hired in Philadelphia, Pittsburgh,

Montgomery, Delaware, Bucks, Allegheny, Beaver, Washington, if just 5 or 10 percent of the trials that are now judge trials are going to be jury trials? We do not know that. No thought has been given to that question. There are no answers available. How many extra public defenders are going to have to be created throughout the Commonwealth if just 5 or 10 percent of the trials of low-income people, whose counsel is provided for by the State, are now going to be jury trials instead of judge trials? We have no answers to that. We have no idea what the costs are.

Secondly, we are told the time is short. Well, this is a continuing body. You know, we do not go out of existence at the end of 1998. We will come back in 1999 and 2000 and 2001 and 2002 and so forth. The Pennsylvania legislature has been around for over 300 years, and we are going to be around for a lot longer. There is absolutely no urgency in doing something which will dramatically raise costs — costs by the taxpayers, costs by prosecutors. You know, it takes more district attorneys to prosecute a jury trial than it does a judge trial. As Tom Tangretti yells out, this is tax and spend. We are driving up costs for the district attorney's office; we are driving up costs for the public defender's office; we are driving up costs for attorneys who are private attorneys who are hired by courts; we are driving up costs for individual defendants.

This is a very, very expensive proposed constitutional amendment. There is absolutely no urgency in passing it. The court, we were told by Mr. Gannon, changed the tradition in Pennsylvania in 1935, so now 63 years have gone by where you could not have prosecutors calling for jury trials. We have survived for 63 years. We can survive a while longer.

I urge support for recommittal.

The SPEAKER. The gentleman, Mr. Blaum, for the second time on the question.

Mr. BLAUM. Thank you, Mr. Speaker.

I believe it was since 1935 that the people have had the right to insist on a trial by jury, and it was only in 1982 when the Supreme Court ruled that a 1977 statute was unconstitutional or against the rules of the court that that changed. And what that change meant was that a criminal defendant who found a lenient judge could waive a jury trial, and the people through the prosecutor had no say in that, and if the jury trial was waived, then the judge would make the ultimate decision of guilt or innocence. All this is doing is returning to the way it was from 1935 up to 1982 in which the right to a trial by jury, if it is waived by the defendant, must be agreed to by the prosecution.

This bill is strongly supported by district attorneys throughout Pennsylvania as well as Attorney General Mike Fisher, and I would ask that we adopt the bill and vote "no" on the motion to recommit.

The SPEAKER. The question before the House is, should SB 555 be recommitted to the Committee on Judiciary? On that question, there will be a long roll call. You respond to it with a "yes" or a "no." We will go back over it a second time, and then that is it. So you have to make your vote on two rounds.

The clerk will begin the roll call.

On the question recurring,

Will the House agree to the motion?

The following roll call was recorded:

YEAS—74

Armstrong	Gordner	Melio	Smith, S. H.
Belardi	Gruitza	Michlovic	Staback
Caltagirone	Haluska	Myers	Stairs
Cappabianca	Hanna	Olasz	Steelman
Carn	Harhai	Pesci	Stetler
Carone	Horsey	Petrarca	Stevenson
Casorio	Hutchinson	Pippy	Surra
Cohen, M.	Itkin	Pistella	Tangretti
Colafella	James	Ramos	Thomas
Colaizzo	Jarolin	Reber	Travaglio
Corpora	Josephs	Roberts	Trello
Cowell	LaGrotta	Robinson	Veon
Coy	Leh	Roebuck	Vitali
Curry	Lescovitz	Rohrer	Walko
DeLuca	Levdansky	Sainato	Washington
Dermody	Lloyd	Santoni	Wilt
Evans	Manderino	Seyfert	Yewcic
Forcier	Markosek	Shaner	Youngblood
Gigliotti	McIlhatten		

NAYS—114

Adolph	DiGirolamo	Lawless	Rubley
Argall	Druce	Lederer	Sather
Baker	Eachus	Lucyk	Saylor
Bard	Egolf	Maitland	Schroder
Barley	Fairchild	Major	Schuler
Barrar	Fargo	Marsico	Semmel
Battisto	Feese	Masland	Serafini
Belfanti	Fichter	Mayernik	Smith, B.
Benninghoff	Fleagle	McCall	Snyder, D. W.
Birmelin	Flick	McGeehan	Steil
Blaum	Gannon	McGill	Stern
Boscola	Geist	McIlhinney	Strittmatter
Boyes	George	McNaughton	Sturla
Browne	Gladeck	Micozzie	Taylor, E. Z.
Bunt	Godshall	Miller	Taylor, J.
Butkovitz	Gruppo	Mundy	Tigue
Buxton	Habay	Nailor	True
Cawley	Harhart	Nickol	Tulli
Chadwick	Hasay	O'Brien	Vance
Civera	Hennessey	Orie	Van Home
Clark	Herman	Perzel	Waugh
Clymer	Hershey	Petrone	Wogan
Cohen, L. I.	Hess	Phillips	Wojnaroski
Cornell	Jadlowiec	Platts	Wright, M. N.
Corrigan	Kaiser	Preston	Zimmerman
Dally	Keller	Raymond	Zug
Dempsey	Kenney	Readshaw	
Dent	Krebs	Reinard	Ryan,
DeWeese	Laughlin	Ross	Speaker

NOT VOTING—8

Bishop	Kirkland	Rieger	Trich
Donatucci	Oliver	Rooney	Williams, A. H.

EXCUSED—7

Allen	Daley	Maher	Williams, C.
Bebko-Jones	Lynch	Scrimenti	

Less than the majority having voted in the affirmative, the question was determined in the negative and the motion was not agreed to.

On the question recurring,
Will the House agree to the bill on third consideration?

The SPEAKER. The gentleman, Mr. Perzel, is recognized.
Mr. PERZEL. Just for the record, Mr. Speaker, every single Republican was voted.

On the question recurring,
Will the House agree to the bill on third consideration?

PARLIAMENTARY INQUIRY

The SPEAKER. The Chair recognizes the gentleman, Mr. Sturla.

Mr. STURLA. Thank you, Mr. Speaker.

A parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. STURLA. Mr. Speaker, earlier it was stated that if we did not vote on this now, that it would not be able to get on the ballot for the fall, and I believe that is probably correct. My question is, I know under the Constitution that we need to vote on it in two consecutive sessions. The question is, if we vote on this, say, when we come back in November, we would have voted on it in two consecutive sessions. Now, it would not get put on the ballot for the voters until later, but would we meet our constitutional requirement by having voted for it in two consecutive sessions and would it in fact be valid to go before the voters at the next election?

The SPEAKER. It is our belief that, yes, that would be permissible. It could be voted upon as soon as a new session began, the voters in the next session.

Mr. STURLA. Okay. So—

The SPEAKER. A memorandum was distributed some 2 or 3 months ago by the Parliamentarian, I think, that covers that in more detail, and if you stop up to see the Parliamentarian or send someone up, we will get you a new copy of that memorandum.

Mr. STURLA. Okay. But it would still be constitutional and valid if we did it later?

The SPEAKER. Stop up and see the Parliamentarian.

Mr. STURLA. Okay. Thank you.

The SPEAKER. Or see Mr. Lloyd.

On the question recurring,
Will the House agree to the bill on third consideration?

Mr. VITALI offered the following amendment No. A2865:

Amend Sec. 1 (Sec. 6), page 1, lines 12 through 14, by striking out "Furthermore, in criminal cases" in line 12, all of lines 13 and 14 and inserting

Furthermore, in any criminal case in which the accused has the right to trial by jury, the Commonwealth shall have the same right to trial by jury subject to the approval by a judge of the court in which the case is pending.

Amend Sec. 2, page 2, line 6, by striking out "UPON" and inserting
(a) Upon the first passage by the General Assembly of this proposed constitutional amendment, the Secretary of the Commonwealth shall proceed immediately to comply with the advertising requirements of section 1 of Article XI of the Constitution of Pennsylvania and shall transmit the required advertisements to two newspapers in every county in which such newspapers are published in sufficient time after passage of this proposed constitutional amendment.

(b) Upon the second Amend Sec. 2, page 2, line 16, by inserting after "@Acprimary,"
primary,

On the question,

Will the House agree to the amendment?

The SPEAKER. On the question of the adoption of the Vitali amendment, the gentleman is recognized.

Mr. VITALI. Thank you, Mr. Speaker.

Mr. Speaker, what this amendment would do is to make the Commonwealth's request for a trial by jury subject to the approval of the court. Mr. Speaker, although I oppose SB 555, I think that this amendment will make it a little more palatable.

Mr. Speaker, I have tried criminal cases; I do have some experience with this. There are many circumstances under which a trial by jury would be less than fair and may work a miscarriage of justice. There are a couple of situations, Mr. Speaker, that come to mind. There are certain sets of facts and certain type defendants that would inflame the passions of a jury such that whereas a defendant did not violate the statute charged, the facts are such that with those inflamed passions, there would be a substantial likelihood of conviction.

You know, Mr. Speaker, a judge would be more likely to be more dispassionate and more objective and look beyond perhaps the disreputable nature of the defendant's character or the inflammatory nature of those facts and just render a decision based on the law at hand, and I think that is what we want and that is what this system requires, just a decision based on the facts at hand. And, Mr. Speaker, one of the type defendants that come to mind, frankly, are politicians, and yet, Mr. Speaker, that is not a theoretical argument, Mr. Speaker, because any of us can and have been charged with a crime, and we do not want to get into a situation where a jury is looking at facts, bringing biases they may have toward that category of defendant or others.

In addition to an inflammatory—

The SPEAKER. The gentleman will yield.

The conferences along the wall in the vicinity of the gentleman, Mr. Vitali, must break up.

Mr. Vitali.

Mr. VITALI. Thank you, Mr. Speaker.

So it would be incumbent upon the judge to evaluate the Commonwealth's request, and if there would be some likelihood that those facts might be inflammatory, he could turn down that request.

The second type case is a case that has a confusing or convoluted set of facts which might be difficult for a lay jury to follow, but a judge, being perhaps more learned and more fine-tuned in the intricacies of the law, could get beyond the confusing set of facts.

Mr. Speaker, there are other sets of circumstances where it would not be appropriate to have a jury trial even if the Commonwealth wanted it. Mr. Speaker, typically middle-class defendants — those who do not qualify for public defenders, yet those who do not have great wealth — are put to a great financial burden if they have to put on a jury trial, because jury trials and the time involved in them involve more attorney time and thus more expense than a nonjury trial.

Mr. Speaker, we do not want a situation where you have a defendant who believes in his case and who believes in his innocence but simply cannot afford the expense of a jury trial being coerced into a deal because the D.A. can say, listen, if you do not take this deal, we are going to take you to a jury trial. That we do not want. We do not want middle-class defendants or any

defendant pleading because of the costs associated with that, and there may be other circumstances where justice simply requires it.

Mr. Speaker, I think the purpose of the court system is to do justice. There are some cases where justice would not be served by having a jury trial, and that is why I think it is important to let a judge have the final say in this.

Thank you, Mr. Speaker. I ask for an affirmative vote.

The SPEAKER. The gentleman, Mr. Gannon.

Mr. GANNON. Thank you, Mr. Speaker.

Mr. Speaker, I ask for a "no" vote on this amendment. First and most importantly, any change in this bill as it is before the members today will put us back at square one with respect to the process of getting this very important constitutional amendment on the ballot so that the people of this Commonwealth can express their will as to what they want to do about this issue.

Secondly, this amendment will only instigate, propagate, and foment additional judge shopping by defendants. One of the problems that we have today is that the defendants intentionally shop for lenient judges who do not want to impose mandatory minimum sentences, who do not want to send criminals to jail, and who are of the ilk to think that in most instances, the perpetrator of the crime is the actual victim.

And thirdly, it is the judges' responsibility, and they carry it out very well in this Commonwealth, to temper the passions of the jury in cases where there may be some passion involved in terms of arousing the jury's or the community's passions against a defendant. The judges have control of that in their court. They advise the jury with respect to the deliberations on the facts and what the law is so that they arrive at a proper and just verdict.

With respect to costs, we never hear the mention of the costs to the victims and what this present system perpetrates on them, where justice is continually delayed by defendants continually going into court; at the moment the jury has been picked and they are ready to hear the case, they weigh the issue that they want to waive a jury trial. We have already gone to the expense of impaneling a jury, and now we have to go through the entire cycle again, and the crime victims are put through the ringer; they are put through the turmoil; they are put through the passions and the harm, the pain, once again as they wait for justice to be brought to that courtroom.

For those reasons and particularly for the first reason, that any change in this bill as it presently stands will put us back at square one, I urge a "no" vote on this amendment.

The SPEAKER. The Chair recognizes the lady from Philadelphia County, Ms. Manderino.

Ms. MANDERINO. Thank you, Mr. Speaker.

Mr. Speaker, I rise in support of the Vitali amendment, and I would like to make a few points in counter to a couple of arguments that have been put forth so far, because I think that they are arguments that we will hear over and over again as the various amendments are considered, but I view them in a little bit different light than the way they have been presented—

The SPEAKER. The lady will yield.

Please, take your seats. Staff people not involved in the issues before us, confer outside of this room.

Ms. Manderino.

Ms. MANDERINO. Thank you, Mr. Speaker.

Mr. Speaker, as I said, I see a lot of the issues that have been raised so far in opposition to the Vitali amendment, and which I am sure will be raised again in opposition to other amendments, to be

in large part red herrings, and in particular, one of the arguments that I know we will hear over and over again is this issue about judge shopping. I can tell you from listening to the testimony for the one hearing that was held in the House as well as having watched the testimony on PCN (Pennsylvania Cable Network) that was given in the Senate, that there are ways and there are counties in Pennsylvania who have procedural mechanisms in action, in place, in their counties today that effectively deal with the issue of judge shopping. So it is a red herring to raise that as the reason that we need this kind of change in our law.

But think about where the balance of power is right now. The issue of what crimes to charge a defendant with are solely within the realm of the district attorney's prerogative. The issue of whether to plea-bargain a case is solely within the realm of the district attorney's prerogative. I submit to you that we will see more cases where a Commonwealth would ask for a right to trial by jury not when the facts are so hideous and they think they will get some lenient soft-on-crime judge; rather, it will be when the facts are so wishy-washy that they are afraid that if they take it to a jury, they will lose the case. So what will happen, not to the 5 percent on any extreme of the cases, the hideous-fact patterns, but the 95 percent of the Joe Average Citizens who may unfortunately someday find themselves in front of a court of law, then all of a sudden they are in a position of saying not am I innocent or guilty, but rather since I do not have the \$15,000 or \$20,000 it might take me on a jury case instead of the \$4,000 or \$5,000 it would cost me to go nonjury, because even though I am not a wealthy man or woman, I am not poor enough for a public defender, now my options become, do I take the plea and serve the 1 year? Do I take the plea and have a criminal record because I cannot afford a jury trial?

The SPEAKER. The lady will yield.

If you must confer, please confer outside. It just is not fair to the people who are debating or making statements to have to fight not only a person from the other side of the issue but the noise of 200 of us chatting. Just listen for a moment and you will have a better understanding.

Ms. Manderino.

Ms. MANDERINO. Thank you, Mr. Speaker.

Thus, an amendment like this first amendment, the Vitali amendment A2865, which says we understand right now that the weight of power on charging and the weight of power on plea bargaining is with the district attorneys, so since we do not want to put the whole weight of discretion on whether to insist upon or whether to veto a choice of a defendant on jury or nonjury, let us at least make it subject to a judicial review. I think that is a balanced approach that our constituents deserve.

And the one other point I would like to make goes to the issue of why we cannot do any amendments because the time is running out. I bet many of you were surprised to start getting all of these letters about this issue. A couple of weeks ago I was at a meeting with the head of the Pennsylvania League of Women Voters or one of the officers, and she said to me, I do not know anything about this bill that is going on for right to a trial by jury; send me the amendment, and when I sent it to her, she wanted to know why the language of it being posted for a first time on the ballot had been deleted, and I explained it to her that, well, that must obviously mean that it was passed in at least one prior session and we are now on the second hearing, and let me go back and find out when that happened, because the League of Women Voters said, we never

even realized that it was happening. I went back, and it happened last session with little fanfare, with no public hearings, and with very little debate so that the interested parties were not aware of what was going on.

So I submit to you that because you are hearing about it, the opposition, for the first time today, that is because this is for the first time that the public is aware of it, and I really think that we owe it to our constituents to make sure that this is properly considered and will be available for proper debate. And you know as well as I do that for an issue when it goes on the ballot, the arguments for and against a very serious, complex, and intricate constitutional ballot will end up being sound bites, just like the 30-second sound bites that we have in our reelection campaign.

Last week before we came back to session, I was at one of my civic association meetings. Unbeknownst to either of us, an assistant district attorney from Philadelphia was there to talk about SB 555, and he stood up to proceed to explain from his perspective why this was a good idea, announced who the State Representative from the district was, and urged people to call me immediately and tell me to vote for it. So I stood up and I explained to the constituents that I was there, that I understood the issue, that I certainly welcomed their phone calls and letters, but I had to tell them straight out that unless I heard something new and earth-shattering that I had not heard before, I was going to vote "no" and there was very little that would change my mind, and I was asked why, and then I explained the issue from the perspective of the middle-class voter. After that meeting I had more than a dozen people come up to me and say, you know, when the district attorney first explained it, it sounded good and I thought, they are right and I should vote for it, but when I heard your perspective, I realized that there was a lot more to the issue than what they had presented and I trust what you are saying about the impact that it is going to have on me as a middle-class person, and I think you raised some really good points.

Well, I will be honest with you. I do not think I am going to be able to raise the money or raise those points and present them in 30-second sound bites this November, and I do not think you will be able to, too, and I think we are kidding ourselves and kidding the voters if we think that we have with due diligence debated this issue and will be able to present it in a way that voters will make an educated and an informed decision this November. I think it needs more light of day, and if it needs more light of day through this amendment process and a second bite at the apple, I think we should give it to the voters, and I hope that you will vote for all of the amendments that you deem relevant to making this a better bill.

Thank you.

The SPEAKER. The Chair thanks the lady.

On the question recurring,

Will the House agree to the amendment?

The SPEAKER. On the question, those in favor of the Vitali amendment will remain seated; the negative votes will stand until called.

(Members proceeded to vote.)

Mr. PERZEL. Mr. Speaker?

The SPEAKER. Will the clerk please yield.
Mr. Perzel.

Mr. PERZEL. I would just like to waive off for a moment, Mr. Speaker; just for about 1 minute. I am conferring with counsel here.

The SPEAKER. The clerk will continue.

(Members proceeded to vote.)

PARLIAMENTARY INQUIRY

Mr. PERZEL. Mr. Speaker?

The SPEAKER. For what purpose does the majority leader rise?

Mr. PERZEL. Mr. Speaker, a point of parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. PERZEL. Mr. Speaker, are we taking off of the voting roll the eight members that missed the motion to recommit on SB 555? Are they off the roll?

The SPEAKER. No; they are not automatically off the roll, no.

Mr. PERZEL. Can we ask to have them off the roll?

The SPEAKER. They can be challenged, of course, but they also could have been outside the door on one roll call and back inside for the next.

Mr. DeWEESE. Mr. Speaker?

The SPEAKER. Mr. DeWeese.

Mr. DeWEESE. A couple of those individuals did come back into the room. If some of the people are not going to be here for the rest of the day, then those people obviously will not be voting, but one or two or three of them did come back into the room.

Mr. PERZEL. Mr. Speaker, we do not really want to challenge votes, but as needed, we will have to do that. Thank you, Mr. Speaker.

The SPEAKER. The clerk will record the vote.

The following roll call was recorded:

YEAS-90

Armstrong	Fargo	McCall	Sainato
Battisto	Forcier	McGehean	Santoni
Belardi	George	McIlhatten	Seyfert
Belfanti	Gigliotti	Melio	Shaner
Bishop	Gordner	Michlovic	Staback
Caltagirone	Gruitza	Myers	Steelman
Cappabianca	Haluska	Olasz	Stetler
Carn	Hanna	Oliver	Surra
Carone	Harhai	Pesci	Tangretti
Casorio	Horsey	Petrarca	Thomas
Cohen, M.	Hutchinson	Petrone	Travaglio
Colaella	Itkin	Pistella	Trello
Colaizzo	James	Preston	Trich
Cornell	Josephs	Ramos	Van Horne
Corpora	Kirkland	Readshaw	Veon
Cowell	LaGrotta	Reber	Vitali
Coy	Laughlin	Rieger	Walko
Curry	Leh	Roberts	Washington
DeLuca	Lescovitz	Robinson	Williams, A. H.
Dermody	Levdansky	Roebuck	Wojnarowski
DeWeese	Lloyd	Rohrer	Yewcic
Donatucci	Manderino	Rooney	Youngblood
Evans	Markosek		

NAYS-106

Adolph	Eachus	Lucyk	Schuler
Argall	Egolf	Maitland	Semmel
Baker	Fairchild	Major	Serafini
Bard	Feese	Marsico	Smith, B.

Barley	Fichter	Masland	Smith, S. H.
Barrar	Fleagle	Mayemik	Snyder, D. W.
Benninghoff	Flick	McGill	Stairs
Birmelin	Gannon	McIlhinney	Steil
Blaum	Geist	McNaughton	Stern
Boscola	Gladeck	Micozzie	Stevenson
Boyes	Godshall	Miller	Strittmatter
Browne	Gruppo	Mundy	Sturla
Bunt	Habay	Nailor	Taylor, E. Z.
Butkovitz	Harhart	Nickol	Taylor, J.
Buxton	Hasay	O'Brien	Tigue
Cawley	Hennessey	Orie	True
Chadwick	Herman	Perzel	Tulli
Civera	Hershey	Phillips	Vance
Clark	Hess	Pippy	Waugh
Clymer	Jadlowiec	Platts	Wilt
Cohen, L. I.	Jarolin	Raymond	Wogan
Corrigan	Kaiser	Reinard	Wright, M. N.
Dally	Keller	Ross	Zimmerman
Dempsey	Kenney	Rubley	Zug
Dent	Krebs	Sather	
DiGirolamo	Lawless	Saylor	Ryan,
Druce	Lederer	Schroder	Speaker

NOT VOTING-0

EXCUSED-7

Allen	Daley	Maher	Williams, C.
Bebko-Jones	Lynch	Scrimenti	

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

On the question recurring,

Will the House agree to the bill on third consideration?

Mr. COHEN offered the following amendment No. A2868:

Amend Sec. 1 (Sec. 6), page 1, line 12, by inserting after "cases" in which the accused is charged with a felony

Amend Sec. 2, page 2, line 6, by striking out "UPON" and inserting (a) Upon the first passage by the General Assembly of this proposed constitutional amendment, the Secretary of the Commonwealth shall proceed immediately to comply with the advertising requirements of section 1 of Article XI of the Constitution of Pennsylvania and shall transmit the required advertisements to two newspapers in every county in which such newspapers are published in sufficient time after passage of this proposed constitutional amendment.

(b) Upon the second

Amend Sec. 2, page 2, line 16, by inserting after "@Aprimary," primary,

On the question,

Will the House agree to the amendment?

The SPEAKER. On the question of the adoption of the amendment, the Chair recognizes the gentleman, Mr. Cohen.

Mr. COHEN. Thank you, Mr. Speaker.

Mr. Speaker, this amendment limits the scope of this constitutional amendment to those cases in which the accused is charged with a felony. If the accused is charged with a misdemeanor, under this amendment, it is solely at the discretion of the accused as to whether or not to have a jury trial.

This would avoid to some degree congestion in the courts, it would save the taxpayers money, and it would be in the interest of

justice. It would, as will be pointed out, mean that this amendment will take effect later than it otherwise would, but I think the greater point would be, there would be a greater concentration of prosecutorial resources, there would be a greater concentration of public defender resources, there would be a lesser increase in the total cost to taxpayers throughout the Commonwealth of Pennsylvania, and for these reasons I would urge support of this amendment.

The SPEAKER. The Chair thanks the gentleman.

On the question of the Cohen amendment, Mr. Wogan.

Mr. WOGAN. Thank you, Mr. Speaker.

Mr. Speaker, I rise to again oppose this amendment, the first reason being, as before, if this amendment passes, this proposed constitutional amendment is dead; make no mistake about that. All these amendments will kill this constitutional amendment. This must be passed in two consecutive sessions of the General Assembly. It passed last session, and it needs to pass now. It cannot pass after the summer break or it is dead.

I also oppose this amendment on substance, because, Mr. Speaker, this really does wreak havoc with the Constitution. The Constitution gives the defendant the right to a jury trial not only in felonies but also in misdemeanors, and to be fair, Mr. Speaker, we need to give the same rights to the people, to the Commonwealth. The district attorneys represent the people of each county in our State. They should have the same right to ask for a jury trial in the event of a misdemeanor case.

This amendment is bad because it kills this proposed constitutional amendment, and it is bad in substance, and I ask for a negative vote.

The SPEAKER. On the question, the Chair recognizes the gentleman from Philadelphia County, Mr. Cohen, for the second time.

Mr. COHEN. Thank you, Mr. Speaker.

Mr. Speaker, the prior speaker misspoke. This amendment does not kill this constitutional amendment. This amendment delays the constitutional amendment. If we pass it with this particular language in it or any other language in that is different from the language that had passed in the prior session, this counts as the first year in which this constitutional amendment is presented, and in the next legislative session it would pass a second time.

This is a delay. Yes, it delays it, but it does not kill this constitutional amendment. It focuses it. It makes it work better. I would urge your support of it.

The SPEAKER. The Chair thanks the gentleman.

On the question recurring,

Will the House agree to the amendment?

The SPEAKER. On the question, those in favor will vote "aye" by remaining seated; those opposed will stand until their name is called. Just a minute.

Without objection — we will try this — without objection, the roll call from the last amendment will be taken. Anybody who wishes to change their vote from the last amendment, which dealt with the same subject, please stand, and we will indicate a change in the vote.

The clerk will acknowledge the changes.

PARLIAMENTARY INQUIRY

Mr. VITALI. Mr. Speaker?

The SPEAKER. Mr. Vitali.

Mr. VITALI. Parliamentary inquiry. I just want to understand what happened.

If I think what happened, I object to the procedure whereby we are simply going to start from the basis of the previous amendment's vote. I think that is inappropriate and biases the vote. If that is what we are doing, my parliamentary inquiry is, is that in order?

The SPEAKER. All right. I was trying to save time. I think the results will be the same, but I am not going to force-feed it.

Those members opposed will kindly rise.

The clerk will begin.

The following roll call was recorded:

YEAS—79

Armstrong	DeWeese	Lloyd	Sainato
Belardi	Donatucci	Manderino	Santoni
Belfanti	Evans	Markosek	Shaner
Bishop	Fargo	McIlhattan	Staback
Blaum	Forcier	Melio	Steelman
Boyes	George	Michlovic	Stetler
Caltagirone	Gruitza	Myers	Surra
Cappabianca	Haluska	Olasz	Tangretti
Carn	Hanna	Oliver	Thomas
Carone	Harhai	Pesci	Travaglio
Casorio	Horsey	Petrarca	Trello
Cohen, M.	Hutchinson	Pistella	Trich
Colaella	Itkin	Preston	Veon
Colaizzo	James	Ramos	Vitali
Cornell	Josephs	Reber	Walko
Corpora	Kirkland	Rieger	Washington
Cowell	LaGrotta	Roberts	Williams, A. H.
Curry	Laughlin	Robinson	Yewcic
DeLuca	Lescovitz	Roebuck	Youngblood
Dermody	Levdansky	Rooney	

NAYS—116

Adolph	Feese	Masland	Semmel
Argall	Fichter	Mayernik	Serafini
Baker	Fleagle	McCall	Seyfert
Bard	Flick	McGeehan	Smith, B.
Barley	Geist	McGill	Smith, S. H.
Barrar	Gigliotti	McIlhinney	Snyder, D. W.
Battisto	Gladeck	McNaughton	Stairs
Benninghoff	Godshall	Micozzie	Steil
Birmelin	Gordner	Miller	Stern
Boscola	Gruppo	Mundy	Stevenson
Browne	Habay	Nailor	Strittmatter
Bunt	Harhart	Nickol	Sturla
Butkovitz	Hasay	O'Brien	Taylor, E. Z.
Buxton	Hennessey	Orie	Taylor, J.
Cawley	Herman	Perzel	Tigue
Chadwick	Hershey	Petrone	True
Civera	Hess	Phillips	Tulli
Clark	Jadlowiec	Pippy	Vance
Clymer	Jarolin	Platts	Van Horne
Cohen, L. I.	Kaiser	Raymond	Waugh
Corrigan	Keller	Readshaw	Wilt
Coy	Kenney	Reinard	Wogan
Dally	Krebs	Rohrer	Wojnaroski
Dempsey	Lawless	Ross	Wright, M. N.
Dent	Lederer	Rubley	Zimmerman
DiGirolamo	Leh	Sather	Zug
Druce	Lucyk	Saylor	
Eachus	Maitland	Schroder	Ryan,
Egolf	Major	Schuler	Speaker
Fairchild	Marsico		

NOT VOTING—0

EXCUSED—8

Allen
Bebko-Jones

Daley
Gannon

Lynch
Maher

Scrimenti
Williams, C.

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

On the question recurring,
Will the House agree to the bill on third consideration?

The SPEAKER. The gentleman, Mr. Cohen, are you intending to offer amendment 2869?

Mr. COHEN. Mr. Speaker, I do not intend to offer the other amendments. The other amendments are basically rewordings of amendments that Mr. Vitali and I have introduced. I would yield to Ms. Josephs to—

The SPEAKER. The next member we have, we have two amendments from Mr. Walko.

Mr. COHEN. That is fine.

On the question recurring,
Will the House agree to the bill on third consideration?

Mr. WALKO offered the following amendment No. A2870:

Amend Title, page 1, line 2, by removing the period after "jury" and inserting

; and permitting jurors to take notes during civil and criminal trials.

Amend Sec. 1, page 1, lines 5 through 7, by striking out all of said lines and inserting

Section 1. The following amendments to the Constitution of Pennsylvania are proposed in accordance with Article XI:

(1) That section 6 of Article I be amended to read:

Amend Sec. 1, page 1, by inserting between lines 14 and 15

(2) That Article V be amended by adding a section to read:

§ 19. Jurors.

Jurors may take notes during any civil or criminal trial subject to rules adopted by the Supreme Court.

Amend Sec. 2, page 2, line 6, by striking out "UPON" and inserting (a) Upon the first passage by the General Assembly of this proposed constitutional amendment, the Secretary of the Commonwealth shall proceed immediately to comply with the advertising requirements of section 1 of Article XI of the Constitution of Pennsylvania and shall transmit the required advertisements to two newspapers in every county in which such newspapers are published in sufficient time after passage of this proposed constitutional amendment.

(b) Upon the second

Amend Sec. 2, page 2, line 16, by inserting after "@A Eprimary;" primary,

On the question,
Will the House agree to the amendment?

The SPEAKER. On the question of the adoption of the Walko amendment, the Chair recognizes the gentleman, Mr. Walko.

Mr. WALKO. Thank you, Mr. Speaker.

I offer amendment 2870 to permit jurors to take notes during any civil or criminal trial subject to rules adopted by the Supreme Court.

As we go to more and more jury trials in the criminal division, and also, as we have more and more complex litigation in the civil division, I think it is extremely important that we give jurors the ability to take notes and to enforce their ability to make decisions on these complex and detailed and lengthy trials. Therefore, I believe this would be very progressive and a very court-efficiency-oriented procedural change in the Pennsylvania Constitution.

Moreover, I believe that it is important that we do this in light of SB 555, which might be enacted and will lead to more jury trials in the courts of common pleas around Pennsylvania. I think that jurors should be able to take notes so that they can make judgments based on what actually was said rather than what they can recollect.

And moreover, I believe that if we are amending the Constitution, notwithstanding my hesitation about doing so in this sort of forum, but if we are amending the Constitution, I believe we ought to do it right and do a complete job.

Therefore, I would request a positive vote on amendment 2870. Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

LEAVE OF ABSENCE

The SPEAKER. The Chair returns momentarily to leaves of absence and recognizes the majority whip, who requests that the gentleman, Mr. GANNON, be placed on leave for the balance of today's session. The Chair hears no objections. The leave is granted.

CONSIDERATION OF SB 555 CONTINUED

The SPEAKER. The Chair recognizes the gentleman, Mr. REBER, on the question of the Walko amendment.

Mr. REBER. Thank you, Mr. Speaker.

Mr. Speaker, very briefly, I understand the motivations of the gentleman and I think they are honorable. The unfortunate part though, in my opinion at least, is that if in fact a juror needs a refreshing of his recollection as to what took place, whether it be by demonstrative evidence or by testimony, that is available under current law, under current procedure, both in the civil and the criminal arena. That is the reason why in the courtroom we have the court stenographer. That is the reason why during a court proceeding evidence that is admitted, evidence that is admitted — and I think that is important to emphasize — is appropriately categorized and exhibited and numbered and is also available for inspection by the jury. I think that is the only evidence that should be considered, not misconstrued handwriting, not inaccuracies that may have come about as a result of hearing impairment. All things of that nature could lead to extreme ambiguities, confusion, and outright distortions of the facts that were presented.

Let us rely on the recordkeeping that we currently have from time immemorial in our judicial system, and that being the notes of testimony and that being the evidence that is admitted in the trial.

Respectfully, I would ask for a defeat of the Walko amendment. Thank you.

The SPEAKER. The Chair thanks the gentleman.

On the question of the adoption of the amendment, the Chair recognizes the sponsor of the amendment for the second time.

Mr. WALKO. Thank you, Mr. Speaker.

I would only briefly counter the honorable gentleman's comments in that contemporaneously taken notes at the time testimony is rendered is extremely valuable. It helps the juror to understand the impressions that that juror got from the testimony presented. So it is not simply black and white, it is not simple hard documentation, but it is also a contemporaneous recording of that juror's impressions, and that is part of what the juror has to decide upon, issues of credibility and the like. Thank you, Mr. Speaker.

The SPEAKER. The gentleman, Mr. Masland.

Mr. MASLAND. Thank you, Mr. Speaker.

I rise to oppose this amendment.

The previous speaker mentioned this is a contemporaneous recollection of what you hear. Well, the problem with that is, while you are writing something down, you are missing something else that you should be listening to, if you are concentrating on doing one and not the other. It is just a fact of life. That is something that takes place all the time here on the floor of the House. I would not want to have to rely on my notes as I take them down as someone else is speaking. I think that is why we do have the stenographer.

Beyond that though, Mr. Speaker, this is not the appropriate amendment or the appropriate vehicle for this amendment. The Judiciary Committee has had no public hearings on this issue, and before dealing with something like this, of this nature, I believe that we should have the public hearings, like we have had on the issue in SB 555.

So I would urge a "no" vote.

The SPEAKER. On the question, the gentleman, Mr. Wogan, do you desire recognition? The gentleman is recognized.

Mr. WOGAN. Thank you, Mr. Speaker.

Very briefly, I will not go into the substance of the amendment. Representatives Reber and Masland have done that adequately — have done that excellently, I mean. But again, as with all these amendments, Mr. Speaker, this amendment, if passed, would kill this proposed constitutional amendment, despite what my colleague said from Philadelphia a few minutes ago.

Think about injecting some common sense into this for a second. The argument is that, no, it is not killing the constitutional amendment; we are just starting all over again. Well, I am also worried about cost; I am also worried about the few additional jury trials that may be generated by this. But let us think about what happened last year. This amendment was already advertised in newspapers in all of our counties which have newspapers across the State, and if they have two newspapers, I believe that advertisements have had to be run in those newspapers — two newspapers per county. Mr. Speaker, that would all be wasted if we passed this amendment, because we would have to start over from scratch today. If we change this, it is a different amendment, and all the advertising we did last session — when we were running, actually, in 1996; that is when it was advertised — what people sometimes forget, even in the General Assembly, is there are two advertising requirements, not just when it goes in front of the referendum, where our constituents will vote on whether they want this to become part of our Constitution or not, but it also is advertised in the prior session when we are running for reelection, and all of that is gone if we pass this amendment, and to think about it logically, what is to stop us next session, if you listen to the people who are trying to stop this constitutional amendment, what

is to stop somebody next session from amending this which has already been amended, because guess what? That starts all over again. We will never, ever amend the State Constitution if the proponents have their way.

This amendment, while it may have some merit, will kill this proposed constitutional amendment, and I respectfully ask for its defeat.

PARLIAMENTARY INQUIRY

The SPEAKER. On the question, Mr. Gordner.

Mr. GORDNER. Parliamentary inquiry.

The SPEAKER. The gentleman will state his point of parliamentary inquiry.

Mr. GORDNER. In regard to the last comments by Representative Wogan or by the previous speaker, what would happen if this amendment goes in? Would that in fact postpone this amendment, or could this amendment continue and be on the ballot in November?

The SPEAKER. It is my understanding, having looked quickly at the memorandum prepared by the Parliamentarian some time ago — pardon me — a memorandum prepared by Legislative Reference Bureau, a copy of which we would be pleased to share with you, that seems to indicate that — and I have not gone through it closely — but it seems to indicate that what would happen is that this would be starting over again. In other words, the amendments would have the effect of doing away with the first run that has already taken place, and this would be a brand-new amendment to be considered anew. It would be treated that way.

Mr. GORDNER. Mr. Speaker, even though in this case you are not actually amending the portion of the bill that deals with that constitutional amendment; you are just adding an additional constitutional amendment to it?

The SPEAKER. That appears to be the advice that this office has received.

Mr. GORDNER. Thank you, Mr. Speaker.

The SPEAKER. The gentleman, Mr. Clark.

Mr. CLARK. Mr. Speaker, if I might add to your observations.

If this amendment goes into the bill, that will place a question on the ballot which in fact asks two questions: number one, the jury trial question, and number two, the question as to jurors taking notes. We have found in the past that the videotaping of child testimony was stricken down by the Supreme Court because the question on the ballot asked two questions, so therefore, I think that if we ask the two questions, why, it will be struck down as being unconstitutional. Thank you.

The SPEAKER. The Chair thanks the gentleman.

On the question recurring,

Will the House agree to the amendment?

The SPEAKER. On the question of the adoption of the Walko amendment, those in favor will — On the Republican side — let us try it this way — on the Republican side, those in favor will rise; those opposed will remain seated, and we will get to this side in a moment. Those in favor of the Walko amendment will please rise on this side of the aisle.

(Members proceeded to vote.)

Mr. VITALI. Mr. Speaker?

The SPEAKER. Mr. Vitali.

Mr. VITALI. I think that fairness dictates consistency.

The SPEAKER. Thank you.

Those opposed on this side of the aisle will— We are searching, Mr. Vitali, for the perfect solution, so you have to give me some leeway.

Those opposed on this side, which is the preponderance of the vote, or pardon me, which is not, will please rise. Those who are opposed will please rise, on the Democrat side of the aisle; those who are opposed will please rise until their name is called.

(Members proceeded to vote.)

PARLIAMENTARY INQUIRY

Mr. DeWEESE. Mr. Speaker, point of parliamentary inquiry.

The SPEAKER. Mr. DeWeese.

Mr. DeWEESE. Is this a modification from your—

The SPEAKER. Yes.

Mr. DeWEESE. —original system?

The SPEAKER. Yes. I am just trying to expedite things. Rather than call out 80 names, I had none over on the other side of the aisle. They are all here; just look.

The clerk will continue.

The following roll call was recorded:

YEAS—70

Belardi	Gigliotti	Myers	Staback
Belfanti	Gruitza	Olasz	Steelman
Bishop	Haluska	Oliver	Stetler
Caltagirone	Hanna	Pesci	Surra
Cappabianca	Harhai	Petrarca	Tangretti
Carn	Horsey	Pistella	Thomas
Casorio	Itkin	Preston	Travaglio
Cohen, M.	James	Ramos	Trello
Colaella	Josephs	Readshaw	Trich
Colaizzo	Kirkland	Rieger	Van Home
Cowell	LaGrotta	Roberts	Veon
Coy	Lescovitz	Robinson	Vitali
DeLuca	Levdansky	Roebuck	Walko
Dermody	Lucyk	Rooney	Washington
DeWeese	Manderino	Sainato	Williams, A. H.
Donatucci	Markosek	Santoni	Wojnarowski
Evans	Melio	Shaner	Youngblood
George	Michlovic		

NAYS—125

Adolph	Druce	Leh	Saylor
Argall	Eachus	Lloyd	Schroder
Armstrong	Egolf	Maitland	Schuler
Baker	Fairchild	Major	Semmel
Bard	Fargo	Marsico	Serafini
Barley	Feese	Masland	Seyfert
Barrar	Fichter	Mayernik	Smith, B.
Battisto	Fleagle	McCall	Smith, S. H.
Benninghoff	Flick	McGeehan	Snyder, D. W.
Birmelin	Forcier	McGill	Stairs
Blaum	Geist	McIlhattan	Steil
Boscola	Gladeck	McIlhinney	Stern
Boyes	Godshall	McNaughton	Stevenson
Browne	Gordner	Micozzie	Strittmatter
Bunt	Gruppo	Miller	Sturla
Butkovitz	Habay	Mundy	Taylor, E. Z.
Buxton	Harhart	Nailor	Taylor, J.
Carone	Hasay	Nickol	Tigue

Cawley	Hennessey	O'Brien	True
Chadwick	Herman	Orie	Tulli
Civera	Hershey	Perzel	Vance
Clark	Hess	Petrone	Waugh
Clymer	Hutchinson	Phillips	Wilt
Cohen, L. I.	Jadlowiec	Pippy	Wogan
Cornell	Jarolin	Platts	Wright, M. N.
Corpora	Kaiser	Raymond	Yewcic
Corrigan	Keller	Reber	Zimmerman
Curry	Kenney	Reinard	Zug
Dally	Krebs	Rohrer	
Dempsey	Laughlin	Ross	Ryan,
Dent	Lawless	Rubley	Speaker
DiGirolamo	Lederer	Sather	

NOT VOTING—0

EXCUSED—8

Allen	Daley	Lynch	Scrimenti
Bebko-Jones	Gannon	Maher	Williams, C.

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

LEAVE OF ABSENCE CANCELED

The SPEAKER. The Chair returns to leaves of absence and notes the presence in the hall of the House of the gentleman, John Maher, and directs that he be removed from the leave list and placed on the master roll call.

CONSIDERATION OF SB 555 CONTINUED

On the question recurring,

Will the House agree to the bill on third consideration?

Mr. WALKO offered the following amendment No. A2871:

Amend Title, page 1, line 2, by removing the period after "jury" and inserting

; and permitting jurors to receive written jury instructions.

Amend Sec. 1, page 1, lines 5 through 7, by striking out all of said lines and inserting

Section 1. The following amendments to the Constitution of Pennsylvania are proposed in accordance with Article XI:

(1) That section 6 of Article I be amended to read:

Amend Sec. 1, page 1, by inserting between lines 14 and 15

(2) That Article V be amended by adding a section to read:

§ 19. Jurors.

Jurors may receive written jury instructions during any civil or criminal trial subject to rules adopted by the Supreme Court.

Amend Sec. 2, page 2, line 6, by striking out "UPON" and inserting (a) Upon the first passage by the General Assembly of this proposed constitutional amendment, the Secretary of the Commonwealth shall proceed immediately to comply with the advertising requirements of section 1 of Article XI of the Constitution of Pennsylvania and shall transmit the required advertisements to two newspapers in every county in which such newspapers are published in sufficient time after passage of this proposed constitutional amendment.

(b) Upon the second

Amend Sec. 2, page 2, line 16, by inserting after "a primary," primary,

On the question,
Will the House agree to the amendment?

The SPEAKER. The Chair recognizes the gentleman, Mr. Walko.

Mr. WALKO. Thank you, Mr. Speaker.

This amendment would allow jurors to receive written jury instructions during any civil or criminal trial subject to rules adopted by the Supreme Court.

My legislation was actually inspired by the recent Pennsylvania Supreme Court ruling that reversed a Butler County man's rape conviction because the trial judge gave copies of instructions to the jury. The majority in the Supreme Court case held that the submission of written jury instructions to the jury constitutes reversible error in this Commonwealth.

A rapist was set free. I think that is wrong, that is not a good Constitution, and I believe that given the complexity of jury instructions, written instructions, that jurors should be able to take them into the jury room.

AMENDMENT WITHDRAWN

Mr. WALKO. But in addition to having that strong belief, I also believe very strongly that this amendment will fail, and therefore, I would like to withdraw the amendment, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

On the question recurring,
Will the House agree to the bill on third consideration?

Ms. JOSEPHS offered the following amendment No. A2874:

Amend Sec. 1 (Sec. 6), page 1, line 14, by inserting after "accused."
The Commonwealth may not demand a jury trial
in a criminal case if the victim or the survivor of
the victim objects to a jury trial.

Amend Sec. 2, page 2, line 6, by striking out all of said line and inserting

(a) Upon the first passage by the General Assembly of this proposed constitutional amendment, the Secretary of the Commonwealth shall proceed immediately to comply with the advertising requirements of section 1 of Article XI of the Constitution of Pennsylvania and shall transmit the required advertisements to two newspapers in every county in which such newspapers are published in sufficient time after passage of this proposed constitutional amendment.

(b) Upon the second passage by the General Assembly of

Amend Sec. 2, page 2, line 16, by inserting after "@AEprimary,"
primary,

On the question,
Will the House agree to the amendment?

AMENDMENT WITHDRAWN TEMPORARILY

The SPEAKER. The Chair recognizes the lady.

Ms. JOSEPHS. Thank you, Mr. Speaker.

If it meets your approval, Mr. Speaker, I would like to start with the second in the numerical sequence, 2875.

On the question recurring,
Will the House agree to the bill on third consideration?

Ms. JOSEPHS offered the following amendment No. A2875:

Amend Sec. 1 (Sec. 6), page 1, line 14, by inserting after "accused."
The Commonwealth may not demand a jury trial
in a criminal case if the victim objects to a jury
trial.

Amend Sec. 2, page 2, line 6, by striking out "UPON" and inserting
(a) Upon the first passage by the General Assembly of this proposed constitutional amendment, the Secretary of the Commonwealth shall proceed immediately to comply with the advertising requirements of section 1 of Article XI of the Constitution of Pennsylvania and shall transmit the required advertisements to two newspapers in every county in which such newspapers are published in sufficient time after passage of this proposed constitutional amendment.

(b) Upon the second

Amend Sec. 2, page 2, line 16, by inserting after "@AEprimary,"
primary,

On the question,
Will the House agree to the amendment?

The SPEAKER. The Chair recognizes the lady from Philadelphia.

Ms. JOSEPHS. Thank you, Mr. Speaker.

Mr. Speaker, this is a victim's rights amendment. This is the chance to show that each person who votes for this really cares about the victims of crime.

Now, let me back up just a little bit. The claim has been made here many times that the prosecutor speaks for the people, and I would say that most of the time the prosecutor does speak for the people, for us collectively who need to bring the perpetrator of crime to justice and for the victim who has the same end in his or her mind. But there does happen occasionally when the victim of the crime disagrees with the prosecutor — for instance, a person, let us say a woman, who is the victim of severe physical, perhaps sexual assault by a person who knows her — a husband, a father, a boyfriend, maybe even another woman — who may not want the lengthy procedure of having to go through a jury trial, for many reasons. Maybe it takes longer to get to a jury trial, and during that time the perpetrator has access to this person and she may suffer more beatings; she may end up dead. Or maybe she just does not want to tell her story, which is humiliating. Perhaps this person has been a victim, let us say, of a sexual assault and just does not want to tell her story to 12 strangers, would much rather tell her story to a judge alone, and the prosecutor disagrees. The district attorney says to the victim, I think we ought to have a jury trial, and they cannot resolve it; they cannot resolve it. Under the constitutional amendment that many of you are prepared to vote for, that victim's wishes are disregarded and the prosecutor prevails.

My amendment allows the victim's wishes to prevail in the very few instances when a victim would disagree with a prosecutor. And I can tell you, in the course of speaking with the district attorneys, the representatives of the District Attorneys Association, when I asked them who prevails if there is a disagreement between the district attorney and the victim, first the answer was, well, that will never happen; that will never happen. When I pressed and said, hypothetically, Mr. District Attorney, if it only happens once in a century, someplace else, who prevails, the answer was, it is the prosecutor. The prosecutor can force a jury trial on a victim. If you vote for my amendment, the victim does not have to accept the judgment of the prosecutor in the rare instance in which that victim does not want to follow the judgment of the prosecutor.

Will this delay, this amendment? Will this make us spend a couple hundred, maybe \$10,000 out of our \$577-million budget, which is growing, because we have to do another round of advertising? I suppose so. But I want everybody who votes against this amendment to go back and tell some victim who finds herself involved in a jury trial she does not want that you did it to save money.

Please vote "yes" for this amendment. Thank you.

The SPEAKER. The Chair thanks the lady.

The Chair recognizes the lady from Allegheny, Miss Orie.

Miss ORIE. Mr. Speaker, as a prior veteran prosecutor, I think one of the issues that the previous speaker is missing regards the children, in cases where a child has been abused and the parent, whether it be one or the other, was a paramour to whatever parent there was, and these individuals have the right to choose whether or not it should go to the jury. You can even take it a step further where there is a survivor in regards to this, where it is a parent that killed the child, and you are letting the survivor, the mother or the father, whoever was involved with this individual, determine whether or not there should be a trial.

I think the same rights should be afforded to the prosecution as to the defense, and I would ask for a "no" vote in regards to this amendment.

The SPEAKER. The Chair thanks the lady.

The gentleman, Mr. Feese.

Mr. FEESE. Thank you, Mr. Speaker.

Mr. Speaker, I oppose the amendment 2875.

A prosecutor is a quasi-judicial officer. That means that the prosecutor's obligation is to not only pay attention to the rights and interests of the victim but also the criminal justice system itself as well as the defendant, and although a prosecutor listens closely to the victim and is always mindful of the victim's feelings and emotions, sometimes the prosecutor must make a decision based on what is best for the entire justice system, the interests of the public as well as the victim and as well as the defendant, and choose a jury trial even though the emotional victim does not want a jury trial. It happens in rare cases. It is a difficult decision, it is a difficult call by a prosecutor, but that is the role of a prosecutor, and this amendment would preclude the prosecutor from fulfilling his or her duties. So I oppose the amendment. Thank you.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the lady from Philadelphia County, Ms. Manderino.

Ms. MANDERINO. Thank you, Mr. Speaker.

Mr. Speaker, I rise to support the Josephs amendment. I think we need consistency not only in the process by which we are doing the votes on these amendments, but I think we need consistency in our rhetoric as well when it comes to such an important issue. The D.A.s either are for the victim or they are not for the victim. They either represent the victim or they do not represent the victim. They cannot have their cake and eat it, too. When it suits them to make someone look bad, as if you are antivictim because you just do not happen to agree with them on a public policy issue, all of a sudden they are the voice of the victims. But what comes down to the bottom line, win or lose, push or shove, it is my way or the highway when it comes to them, and if the victim is in the road, too bad.

This is our chance to say, if you are for the victim and you claim you are for the victim, you should be for the victim all the way; you should be for the Josephs amendment. Vote "yes."

The SPEAKER. On the question, the lady, Ms. Boscola.

Ms. BOSCOLA. It is not just the D.A.s Association or the district attorneys that are for this bill. There are victim advocate groups that are for this bill, and if this amendment goes in today, you are not for the victims, because you are going to kill the bill. I will tell you the groups that are for this bill today: The Coalition of Pennsylvania Crime Victims Organizations, the Pennsylvania Coalition Against Rape. How about the Pennsylvania Victim Advocate, Mary Achilles. Now, these are the people who are for this bill today. If you put this amendment in, the bill dies. It is not just the D.A.s; it is the victim advocate groups out there.

Please support the bill. Do not support this amendment.

The SPEAKER. The Chair thanks the lady.

The gentleman, Mr. Masland.

Mr. MASLAND. Thank you, Mr. Speaker.

I, too, rise to oppose this amendment, and I would suggest to the members that a negative vote does not, contrary to the maker of the amendment's position, mean that you are opposed to victims. We in this House have done a great deal on behalf of victims over the past two sessions, a great deal that we can be proud of. We have passed, as you all know, a victim's bill of rights.

Let me say that as a former prosecutor, there were a number of cases that because of the fragile state of a victim, I accepted a plea to lesser offenses. There were some cases that because of the state of the victim, I just nol-prossed the case, a rape case, just nol-prossed it, because we could not force that victim to go to trial. A D.A. will be very reluctant to force a victim against his or her will to go to trial. But that is why the D.A. is there; that is why you have the prosecutor, because you need someone who can make an objective decision.

We have a victim's bill of rights, but that does not mean that the victim is always right. The victim is not always right and may not have the overall interests of justice and the interests of the Commonwealth in mind, could easily be clouded by emotions, and I would suggest it would be a terrible mistake to say that the victim has absolute control. You need to be able to take a step back to try to look at some of these very emotional situations in the most objective stance that you can, and that is why I urge a "no" vote on this amendment. Thank you, Mr. Speaker.

The SPEAKER. On the question, Ms. Steelman.

Ms. STEELMAN. Thank you, Mr. Speaker.

I was going to let the attorneys fight this one out, but I am very much disturbed by some of the comments that have come up in this debate, and I am particularly concerned in fact by the remarks of the previous speaker, and what disturbs me the most is the tone of voice in which this former prosecutor deplored his inability to force a rape victim to go to a jury trial.

What is bothering me about the opposition to this amendment is that Representative Josephs is quite correct; if this amendment passes, there will be no way to prevent a prosecutor who may not be as sensitive to the victim's fragile state as the previous speaker from forcing that woman or that man or that child to go through a jury trial. I understand some of the things that have been said to the effect that the victim may not always have the larger justiciary interests of the State in mind, but I think it is extremely important that if we are concerned for victims, that we make certain that a prosecutor cannot force someone who has already suffered severe and criminal violation to be violated again by the public process of a jury trial. Thank you.

The SPEAKER. The Chair thanks the lady.

The Chair recognizes the gentleman, Mr. Masland, for the second time.

Mr. MASLAND. Thank you, Mr. Speaker.

This is a kinder and gentler Representative Masland here with a much calmer tone of voice. You may have already noticed that. Unfortunately, this will not be picked up by the stenographer.

It is not easy to be a district attorney. It is even tougher to be a victim. It is not easy to interview a victim, to go through a preliminary hearing, to prepare for court, and then take that victim up into a courtroom and explain to her that she is going to have to sit there on the stand and endure all kinds of unspeakable cruelty. I think that most D.A.s around this State, I would say most prosecutors in this country, who deal with these cases are very, very sensitive to the concerns and the needs of the victim.

And maybe I should not have said "forced"; maybe I should have said "asked or urged the victim to go to trial," because as a D.A., you do not want to have to go home at night and, from my perspective, look at my wife and realize that she, too, could be a victim of the scum that you just let off because you could not take that case to trial. That is what we are talking about. It is not easy, it is not fun, but we cannot, we cannot just take the job, the duty, the constitutional duty of the prosecutor away from him or her and say you no longer have that call.

Vote "no." Thank you.

The SPEAKER. The Chair thanks the gentleman.

Ms. Steelman, for the second time on the issue.

Ms. STEELMAN. Thank you, Mr. Speaker.

Unfortunately, I do not think that we can count on every prosecutor to exercise as high a degree of sensitivity as we might hope, and what I am still concerned about is that if we do not put the Josephs amendment into this bill, there will be an absolute ability on the part of prosecutors to force victims into a jury trial. The alternative, permitting victims to decide whether they want a jury trial or a trial before a judge, certainly does not and need not guarantee that a criminal will go free. What it will guarantee is that a victim will not have to endure the publicity of a jury trial.

I would ask you to consider the rights of victims and preserve the right of a victim to request a judge-only trial. Please, vote for the Josephs amendment.

The SPEAKER. The Chair thanks the lady.

Ms. Josephs, for the second time on the issue.

Ms. JOSEPHS. Thank you, Mr. Speaker.

Let me first address the passionate remarks of the lady from Lehigh — Northampton; forgive me. It is true, it is true that a number of victims groups have come out in favor of the bill as it is, the constitutional amendment as it is. Curiously, they are all the victims groups which are funded by various offices of the prosecution or by district attorneys. Of course, there is no connection between their stand and where their money comes from. I would not imply that. I am just pointing out that fact.

On the other hand, victims groups that do not get funding and support from prosecutors — including the National Clearinghouse for the Defense of Battered Women, the National Organization for Women, and Citizens for Consumer Justice — do not support SB 555, and by implication, would give the victim power to determine his or her own fate.

Now, the gentleman from Carlisle — I am going to have to do better with geography here, obviously — the gentleman from Carlisle spoke twice. The second time he was definitely a softer and gentler, kinder and gentler prosecutor. That is because of

Representative Steelman. What happens in a situation where there is no Representative Steelman, because it is in a courtroom in some remote place where the jury knows everybody, the victim is known by everybody, the perpetrator is known by everybody, and the first voice that is raised is the less kind and less gentle prosecutor, of the first version here, and that man or woman gets forced into basically being sexually exploited by this amendment or exploited by this amendment. You are a victim once; you try and vindicate your rights; you end up being a victim twice.

I am a veteran of the women's movement. I have been in it for more years than I am going to admit, in spite of my incredibly youthful appearance, and I remember a time when rape victims, particularly women, had to stand for questions of their private sexual behavior, who were made fun of, who rarely could get a conviction, and the women's movement moved us out of that era and taught us all that these kinds of sexual crimes were serious, deserved our serious consideration, deserved comparable sentences, and that the victim deserved the same kind of consideration as the victim of any other crime.

This is a step backwards from that; a "no" vote on this is a step backwards. It is a step into the era when rape victims were treated as if it was their fault, where there was no respect for their wishes, no understanding that they had a right to vindicate the wickedness that was done against them, and I, as I said before, want you to go back home if you are not voting for this amendment and explain to the next rape victim why you did not.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the lady.

The Chair recognizes the Democratic floor leader, Mr. DeWeese.

Mr. DeWEESE. Thank you, Mr. Speaker.

Quickly, this amendment would provide that the Commonwealth may not demand a jury trial in a criminal case if the victim or the survivor of the victim objects to a jury trial.

Mr. Speaker, my staff has informed me that I was reading 2874. I should be reading 2875. I apologize to the Chair and to the members. Since they are short amendments, the apology will also be short.

The amendment would provide that the Commonwealth—

The SPEAKER. Our recollection of you having apologized will also be short.

Mr. DeWEESE. Your repartee is keen as usual, sir.

I would like to go on record, Mr. Speaker, as reading the analysis of amendment A2875 that our staff has prepared. It only is one sentence. This amendment would provide that "The Commonwealth may not demand a jury trial in a criminal case if the victim objects to a jury trial." Now, I am bereft of a law degree; I am absolutely sterile of any pettifogging education; I am just a regular guy. But the amendment would provide that the Commonwealth, the Commonwealth, the district attorneys, may not demand a jury trial in a case if the victim objects to the jury trial. If the victim objects to the jury trial, I am with the victim.

I vote "yes" on the amendment. Thank you.

On the question recurring,

Will the House agree to the amendment?

The SPEAKER. On the question, those in favor of the amendment— We will go back to the last one. It moved fairly well. On the Republican side of the aisle, those in favor of the

amendment will please rise. Remain standing until your names have been taken by the clerk.

(Members proceeded to vote.)

The SPEAKER. On the Democrat side of the aisle, negative votes will please rise; negative votes will please rise.

The following roll call was recorded:

YEAS-84

Armstrong	Eachus	Lucyk	Santoni
Battisto	Evans	Manderino	Shaner
Belardi	Forcier	Markosek	Staback
Belfanti	George	McCall	Steelman
Bishop	Gigliotti	Melio	Stetler
Blaum	Gordner	Michlovic	Sturla
Caltagirone	Gruitza	Mundy	Surra
Cappabianca	Haluska	Myers	Tangretti
Carn	Hanna	Olasz	Thomas
Casorio	Harhai	Oliver	Travaglio
Cohen, M.	Horsey	Pesci	Trello
Colafella	Itkin	Petrarca	Trich
Colaizzo	James	Pistella	Van Home
Corpora	Jarolin	Preston	Veon
Cowell	Josephs	Ramos	Vitali
Coy	Kirkland	Rieger	Walko
Curry	LaGrotta	Roberts	Washington
DeLuca	Laughlin	Robinson	Williams, A. H.
Dermody	Lescovitz	Roebuck	Wojnaroski
DeWeese	Levdansky	Rooney	Yewcic
Donatucci	Lloyd	Sainato	Youngblood

NAYS-112

Adolph	Fairchild	Marsico	Schroder
Argall	Fargo	Masland	Schuler
Baker	Feese	Mayernik	Semmel
Bard	Fichter	McGeehan	Serafini
Barley	Fleagle	McGill	Seyfert
Barrar	Flick	McIlhattan	Smith, B.
Benninghoff	Geist	McIlhinney	Smith, S. H.
Birmelin	Gladeck	McNaughton	Snyder, D. W.
Boscola	Godshall	Micozzie	Stairs
Boyes	Gruppo	Miller	Steil
Browne	Habay	Nailor	Stern
Bunt	Harhart	Nickol	Stevenson
Butkovitz	Hasay	O'Brien	Strittmatter
Buxton	Hennessey	Orie	Taylor, E. Z.
Carone	Herman	Perzel	Taylor, J.
Cawley	Hershey	Petrone	Tigue
Chadwick	Hess	Phillips	True
Civera	Hutchinson	Pippy	Tulli
Clark	Jadlowiec	Platts	Vance
Clymer	Kaiser	Raymond	Waugh
Cohen, L. I.	Keller	Readshaw	Wilt
Cornell	Kenney	Reber	Wogan
Corrigan	Krebs	Reinard	Wright, M. N.
Dally	Lawless	Rohrer	Zimmerman
Dempsey	Lederer	Ross	Zug
Dent	Leh	Rubley	
DiGirolamo	Maher	Sather	Ryan,
Druce	Maitland	Saylor	Speaker
Egolf	Major		

NOT VOTING-0

EXCUSED-7

Allen	Daley	Lynch	Williams, C.
Bebko-Jones	Gannon	Scrimenti	

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

On the question recurring,
Will the House agree to the bill on third consideration?

The SPEAKER. The gentleman, Mr. Cohen.

Mr. COHEN. On final passage, Mr. Speaker, are we up there yet?

The SPEAKER. There are still amendments outstanding.

Mr. COHEN. Okay.

The SPEAKER. Ms. Josephs, you have further amendments?

Ms. JOSEPHS. Yes, Mr. Speaker.

The SPEAKER. The clerk will read the Josephs amendment.

On the question recurring,
Will the House agree to the bill on third consideration?

Ms. JOSEPHS reoffered the following amendment No. A2874:

Amend Sec. 1 (Sec. 6), page 1, line 14, by inserting after "accused"
The Commonwealth may not demand a jury trial
in a criminal case if the victim or the survivor of
the victim objects to a jury trial.

Amend Sec. 2, page 2, line 6, by striking out all of said line and inserting

(a) Upon the first passage by the General Assembly of this proposed constitutional amendment, the Secretary of the Commonwealth shall proceed immediately to comply with the advertising requirements of section 1 of Article XI of the Constitution of Pennsylvania and shall transmit the required advertisements to two newspapers in every county in which such newspapers are published in sufficient time after passage of this proposed constitutional amendment.

(b) Upon the second passage by the General Assembly of
Amend Sec. 2, page 2, line 16, by inserting after "@Aprimary,"
primary,

On the question recurring,
Will the House agree to the amendment?

AMENDMENT WITHDRAWN

The SPEAKER. On the question of the adoption of the amendment, the Chair recognizes the lady.

Ms. JOSEPHS. Thank you, Mr. Speaker.

This was or is a variation of my previous amendment, 2875, which was meant to take care of a situation not only when the victim is a survivor, has lived through whatever assault we are talking about, but also when the victim was not a survivor and when there is a survivor who could make a decision in the name of the victim.

I did not offer it first because it is a little bit more complicated. I can see that many of you care nothing for the victim or not much for the victim, so I cannot imagine any of you will care too much for the survivor of the victim.

I would expect the same vote as we had before. I am sorry, more for the victims than for the people who took this vote, but in consideration of time, I will withdraw this amendment. Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the lady.

On the question recurring,
Will the House agree to the bill on third consideration?

The Chair recognizes the gentleman from Delaware County, Mr. Vitali. Mr. Vitali?

Ms. Steelman, it is my understanding that you have filed a certificate for an amendment. The amendment, I am told, is not prepared; the amendment is not prepared. It is not available, of course, for duplication and distribution and will require a suspension of the rules when all of this comes about. Can you give us some— If Mr. Vitali is not here, you are up.

The lady, Ms. Steelman, withdraws her amendment.

The Chair recognizes the gentleman, Mr. Vitali, who indicates that he is withdrawing the amendment that he had prepared for this particular bill.

On the question recurring,
Will the House agree to the bill on third consideration?
Bill was agreed to.

The SPEAKER. This bill has been considered on three different days and agreed to and is now on final passage.
The question is, shall the bill pass finally?

Mr. James, do you desire to debate this bill on final passage?
The gentleman is recognized.

Mr. JAMES. Thank you, Mr. Speaker.

On final passage, while we are on the subject of district attorneys and prosecutors, earlier today, I, along with my colleague, Representative—

The SPEAKER. Will the gentleman yield.

This is the last vote today. There probably will be some four, five, or six speakers on it. Please extend to them the courtesy that they are entitled to; please.

Mr. James.

Mr. JAMES. Thank you.

Earlier today, I, along with my colleague, Representative Caltagirone, introduced legislation that would serve to protect citizens of this Commonwealth from unfair, abusive, and unethical conduct by district attorneys and their employees. We believe that we must strengthen oversight of prosecutors and shine a light on prosecutorial misconduct. We need to provide our citizens with some measure of recourse in the event that their rights have unfairly been violated.

HBs 2661, 2662, and 2663, Mr. Speaker, would establish clear standards of conduct for D.A.s and their employees and make them accountable for any misconduct. Our legislation makes it a punishable offense for prosecutors to engage in such actions as leaking information during an investigation, seeking an indictment of any person without probable cause, and failing to release information that would exonerate a person under indictment. It also defines such actions as intentionally misleading a court as to the guilt of any person and knowingly misstating or altering evidence as punishable offenses.

Mr. Speaker, this legislation would impose penalties such as probation, demotion, suspension, and dismissal of those found guilty of charges of misconduct, because concerns about prosecutorial abuses have been expressed by the American Bar Association, the Conference of Chief Justices, the ACLU (American Civil Liberties Union), and the National Association of Criminal Defense Lawyers.

Attempts at self-regulation by the courts without clearly defined standards have allowed prosecutors to abuse the system at will with little more than a slap on the wrist as a consequence for their unethical behavior.

Mr. Speaker, I am dismayed at what I believe to be the overwhelming amount of discretion and leniency prosecutors are given when it comes to prosecuting a criminal matter. Of one particular concern is how prosecutors determine what murder cases warrant the death penalty. In an opinion of the case of the Commonwealth of Pennsylvania v. Richard Buck, the court sharply criticized Philadelphia prosecutors for gamesmanship for refusing to submit a written statement of the evidence in which it relied to make the determination that a death sentence was warranted. The court, Mr. Speaker, ruled that "The Commonwealth may not give notice of aggravating factors that appear completely unfounded and then refuse to comply with the court's request to offer an explanation as to the basis for seeking the death penalty." This type of action, Mr. Speaker, is an example of prosecutions gone awry with unfair and unethical behavior by overzealous prosecutors seeking to win yet another death penalty conviction that looks good for their individual careers.

The decision of the Buck case established a balance in the system. The death penalty can no longer be sought at the discretion of prosecutors without credible aggravating circumstances. So the gamesmanship, grandstanding, and unethical conduct done by some prosecutors belittle our system of justice and insults the principles on which it was founded.

So, Mr. Speaker, when a district attorney can so horribly distort the system and use any means necessary to keep people in prison, regardless of substantial proof of their innocence, then something is wrong with our system. When a district attorney can distort the truth at will and face no penalty, then something is wrong with the system. When a district attorney can be so roundly criticized for misconduct or lack of attention in different cases and knows nothing can be done about it, something is wrong with our system.

And although this legislation, Mr. Speaker, is about SB 555, I should note that similar legislation about prosecutorial misconduct has been introduced in the U.S. Congress under the Murtha-McDade bill.

So, therefore, it is unfortunate that the notion of seeking truth and justice has been replaced by the desire to gain convictions by all means necessary. So it is imperative that we work to uphold the most important ethical mandate that prosecutors have, and that is to seek justice and not just convictions.

So, therefore, Mr. Speaker, I will urge the members to vote "no" on SB 555. Thank you.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the lady from Philadelphia County, Ms. Manderino.

Once again, please, the conferences should be held outside of these chambers.

Ms. Manderino.

Ms. MANDERINO. Thank you, Mr. Speaker.

Mr. Speaker, I, too, rise to oppose SB 555, and I ask members to think very seriously about how this bill is going to impact on the vast majority of their constituents who are middle-class people, because I think that is where the biggest impact of a bill like this and a change to our Constitution like this will be.

As I mentioned earlier, there are a lot of things that are already within the control solely of the prosecutor — what you are charged with, whether you are offered a plea, what the notions of the plea will be — and I really think that the balance of power is fair as is. And I ask you to remember that we are talking about all crimes that can go for a trial, not just the most heinous of crimes, not just mass murderers or serial killers or violent rapists, but the common kinds of things that you might see your constituent or, God forbid, your son or daughter in their teenage years involved in.

I went to college in a college town. We have a lot of college towns in Pennsylvania, towns where the regular townies or town population is small; whose population of their town swells during the school year; where antagonism between the college kids, the outsiders, the university teenagers is always tight and tension always exists between the townies and the college kids.

I think it is very likely that we will see scenarios where, God forbid, your son and his fraternity brothers, 20-year-old college juniors with a whole bright future ahead of them as premed majors, decide one night to have a little bit too much to drink, to walk down the street from the fraternity house, to break into the fence and trespass on the property of a prominent citizen and go skinny-dipping in his swimming pool. Well, guess what? This is an election year in that town and the D.A. is running for election, and what a better way to get votes than to take those three college bums, who are always violating our town rights, our property rights, and take what would be their next year's senior tuition on their way to medical school and make them or, more likely, their parents spend that tuition on a jury trial instead of on their senior graduation from college.

That is a more typical scenario of what I think can happen and will happen under SB 555 than any heinous or outrageous fact pattern that we can hear about. I think it is that kind of fact pattern that we need to understand we are impacting when we are voting for SB 555. I think it is for fact patterns like that and for the vast majority of our constituents, who are middle-class taxpayers, that we need to maintain balance in the system, and I submit the balance is maintained by leaving things as they are and not approving SB 555. Please vote "no."

The SPEAKER. The gentleman, Mr. Godshall.

Mr. GODSHALL. Thank you, Mr. Speaker.

This is really not my issue, and yet, to a degree, it is.

One of the speakers, the earlier speaker today from Philadelphia, talked about the sportsmen, and I want to address that issue, but, first of all, we all received a letter from our D.A.s and the president of the D.A. Association, Mike Marino from Montgomery County. The last paragraph of that letter says, "The Commonwealth, representing the people, is charged with seeking justice for the victim and keeping ordinary citizens safe" — "...is charged with seeking justice for the victim and keeping ordinary citizens safe. From our earliest roots in English common law 600 years ago, until 1973 when the state supreme court stripped it away without explanation, the Commonwealth has had the right, equal with the defendant's, to try cases on a level playing field. It's time to restore full justice in Pennsylvania." My constituents back home

are still concerned about crime, and that is what this is about, and it is about the victims.

Going back to what one of the previous speakers said from Philadelphia, he spoke about the sportsmen's groups and letters that were sent out. I have one of those letters here in front of me and unbelievably says, quote, "We believe this proposal is motivated solely by prosecutors' grudges over the loss of a few cases, only in Philadelphia, and we view it as one more attempt by Philadelphia's politicians to have their city continue to be the dog that wags the tail of Pennsylvania. Philosophically, we see no current circumstance that justifies changing a constitutional, human rights provision that has stood virtually unchanged since the first state constitution was ratified in 1776." Unfortunately, they do not have their history correct, because if they would, they would know that since 1776 to 1973, in criminal cases, jury trials were required.

The second group that was mentioned, as far as the NRA — and I am a life member of the NRA as well as some other members here are — I had a discussion with some of the people from the NRA today, and the letter that they sent out did not ask you to vote against this bill. It said they had some concerns. I have the letter in front of me. I addressed some of those concerns with the NRA today and I also addressed some of my concerns and the concerns of my constituents, and those concerns that I have are the fact that we are putting in place laws in this Commonwealth and laws are being ignored to the detriment of law-abiding citizens of this State, and maybe it is time we turn the thing around just a little bit.

There was an article in the Philadelphia Inquirer about 3 weeks ago, which I am holding here in my hand, complaining about the gun situation in Philadelphia. As many of the older members will recall, back in the early eighties, we passed a law in this State that said, if you commit a crime with a gun, you have a mandatory 5-year sentence. Then we found out that the courts, that the courts decided that the mandatory enforcement provision would not be and could not be enforced unless they found the gun to be operable at the time of the criminal activity, and indeed, even if it was the gun that was used in the criminal activity. We changed that in Act 17. We said that if you commit a crime with a gun, that you would get the 5 years mandatory, or a facsimile of the same; that you put somebody — a toy gun, in other words — that you put somebody in fear of their life by virtue of what happened with a criminal activity. This is what we did. We also said that if you carry a gun illegally in the streets of this State, if you carry a gun illegally, it is a felony. You are not entitled to carry a gun. If you are carrying without a permit, it is a felony; jail time.

In Philadelphia, when this situation took place, according to this article, both these gentlemen that were involved in the shoot-out had been stopped time and time again for gun violations, something that should have put them in jail. One of these gentlemen was shot and killed and other people were injured because the criminal justice system in Philadelphia, the court system, did not put these people away.

In this article it says that 80 percent of the people that commit a crime with a gun in the streets in Philadelphia — that only 20 percent of the people that commit a crime with a gun in Philadelphia are ever charged with that crime. Then it goes on to say that of the 20 percent, only 20 percent of those ever face jail time. That means four out of every hundred that commit a crime with a gun face jail time.

So this is the problem that we have today. This is the problem I discussed with the NRA. You know, why our people are not safe

on the street is because the laws that we put in place are openly being ignored by our legal system, and it is the judges that are the problem in this case right here.

What is happening in Philadelphia and also in other counties around the State, there is a charge. It is the charge of armed robbery. Well, what happens, as is mentioned right here in a specific case, a guy gets 10 to 20 months if he pleads guilty to the armed robbery, and the judge says, if you do that, we will drop the gun charge, which is 5 years mandatory. So there is no gun charge brought even though this legislature, this body, we said that if there is a gun used to commit a crime, you get 5 years and it is mandatory. It is not being observed.

So maybe with the passage of SB 555, we are going to change the way things are done, not only in Philadelphia but in Montgomery County and every other county in this Commonwealth. Let us look out for the cops, the people that are on the street, the D.A.s. Our men in blue deserve your support, and I am asking for your support for this bill. Thank you.

The SPEAKER. For the information of the members, the following members are noted and are in line for remarks: Rohrer, Josephs, Cohen, Tangretti, Olasz, Boscola, Dermody, Lloyd, and Horsey.

The Chair recognizes the gentleman, Mr. Rohrer.

Mr. ROHRER. Thank you, Mr. Speaker.

The SPEAKER. Conversations, outside.

Mr. Rohrer.

Mr. ROHRER. Thank you, Mr. Speaker.

I, along with all the other members, have sat here now for some time listening to debate on this issue. I did not stand when we had lengthy debate on recommitment, although my comments would have been apropos, I think, to that discussion at that point, but I do stand with numerous reasons why I think every member of this House should absolutely, seriously consider what they have thought about this bill and this proposed constitutional amendment, and I am going to give a couple of those reasons.

Two years ago when we voted on this the first time, I voted "yes." I am not going to vote "yes" this time. The reason for that is this: We deal with constitutional issues on a regular basis, yet I believe that we far too often do not consider with full diligence the impact of what we are doing relative to our constitutional oaths, which are to support and to defend that Constitution, and I believe that this proposed amendment falls into that category.

We have heard a lot of discussion today, a lot of it very emotional, with a lot of examples and illustrations of what could happen if we pass or if we do not pass the amendments as proposed and the bill as a whole. But I really have not heard very, very much discussion of the real issue. If we look at the real issue at hand here— Mr. Speaker?

The SPEAKER. It is difficult, Mr. Rohrer.

The conference along the wall, please break up. Members will take their seats or go outside of the chambers.

Mr. Rohrer.

Mr. ROHRER. Thank you, Mr. Speaker.

The problem, it seems to me, after talking with prosecutors, in looking at this whole issue, the problem that we are trying to address with this amendment is not, as Representative Godshall was talking about and trying to illustrate, we are not talking about a constitutional flaw or a deficiency; we are talking about a deficiency created by our judges. Even in the letter supporting this amendment, as we have all received from the Attorney General, he

cites, as well as your district attorneys and your prosecutors will agree, the problem is that our judges are citing a provision of Article V, section 10(c), that gives them the ability to implement rules of the court that override otherwise constitutionally guaranteed issues. That is the case here. The problem is not a deficiency in the Constitution, therefore to be corrected by an amendment. The deficiency is a judicial system and Supreme Court Justices who are exercising the provisions of Article V, 10(c), which are clearly in violation of the Constitution even though you find it in the Constitution because of the changes enacted in 1968.

The response of this legislature should be to correct the problem. The problem was Article V, 10(c) of 1968. We have the ability, as a legislature, to declare null and void those changes as enacted in 1968. That is what we are to do. Our constitutional prerogative, as a legislature, is to address those issues where other branches of government, executive and/or the judicial, go beyond constitutional authority. That is what we ought to be dealing with; that is what we ought to be discussing, because that is the root problem here.

Now, other than that, why should we not support the proposed amendment? I am not soft on crime; neither are most of us here, and to couch the need for SB 555 as the solution to crime softness is not legitimate, and I believe that the proposal itself violates constitutional provisions in at least three areas. This is one of them: Number one, the amendment says that the change is to affect Article I, section 6, which refers to trial by jury. If you read in our Constitution — and it does cite it right there — Article I, section 6, does talk about trial by jury, but it talks about the General Assembly. It talks about "Trial by jury shall be as heretofore, and the right thereof remain inviolate." It talks about this being the case in civil cases. This deals with civil cases; section 9 deals with criminal cases. The amendment reads, "Furthermore" — as contained in SB 555 — "Furthermore, in criminal cases the Commonwealth shall have the same right to trial by jury as does the accused." I believe, as I read the Constitution, that section 9 is what deals with criminal prosecution; section 6 deals with civil prosecution, and to attach this criminal case provision onto section 6 I believe addresses the wrong article and the — I mean, the right article but the wrong section and I believe therefore is improper.

I also look and say, if we were to include the proposed amendment and if you were to take and to attach that to section 9, which reads, "Rights of Accused in Criminal Prosecutions," where it does talk about a public trial and impartial jury, if you were to take the proposed amendment and attach it to section 9, you would absolutely attack and undermine the rights of the accused as called out in section 9. So you could not attach it to section 9 because it would detract from the right of the accused. No matter how you look at it, I believe it is wrongly stated; wrongly placed.

Secondly and perhaps the bigger area is that Article I, which is the Declaration of Rights, is a declaration of rights for the people. There is no right called out in any of the sections under Article I that deals with the guaranteeing of rights of the State. They are rights of the people that are guaranteed. We do not have the prerogative as legislators, as those who are sworn to uphold and to protect the Constitution, to even think about adding in to a section guaranteeing the rights of the people, to add in a right of the State. It is not proper. We cannot do this and maintain and defend our oath even to support the Constitution.

There was a statement earlier by my colleague over here, and I do not think he really understood what he said perhaps, but I quote

somewhere close, "You cannot take away the constitutional right of the prosecutor to prosecute the offender." The prosecutors have an obligation to prosecute the offender, but they have no constitutional right to prosecute the offender. The constitutional right is reserved for the citizen. There is an obligation to prosecute, but there is no constitutional right. To pass this amendment would in fact give a constitutional right to the State which has heretofore never existed. Our Founding Fathers never, never allowed for guaranteeing of rights of the State, only rights of the people.

And thirdly, I think as the amendment is written, it does not meet process muster when it comes to how this amendment has actually been passed. It is my understanding, when I read the section of the Constitution that deals with posting, that it must be read or posted before the general election in two different sessions and it has to be done in the same version. Now, I know that some perhaps may disagree, but if I read English, and I do, I believe it is what I read it to be. The rule regarding amendments is that "...the Secretary of the Commonwealth shall cause the same to be published three months before the next general election,..." and then the second go-around, "...shall cause the same again to be published..." in the same version.

Even though the underlined portion that would actually change the Constitution is the same under SB 555 as it was under SB 752 2 years ago, it is not identical. There are changes. It is not the same. Therefore, what was posted and published to the constituents 2 years ago is not the same as what is included or to be proposed to be published this go-around. I do not know how you look at it, but it is not the same, and therefore, it does not meet constitutional muster according to form.

We obviously— And there was a change made in here relative to posting in the primary election or municipal election. Some weeks ago I stood and questioned the ability to post or to publish prior to a primary election and to put the amendment before the people in the primary election. That made a change. That bill came back to the House. They took that out. They took it out in this one, because it is correct, it is not constitutional; it does not follow, but yet it still remains taken out here but appeared in the amendment, the first version in SB 752.

I think no matter how we look at it— And you might take some of these things that I have said and say, well, I do not agree with one of them or maybe I do not agree with two of them, but I do not know how else one can read English; I do not know how else one can interpret this. All we need is one violation of constitutional procedure or substance to prohibit each and every one of us from voting in favor of something as serious as changing the Constitution of the Commonwealth of Pennsylvania. I take that oath extremely seriously, and I believe that if we were to look at what we did, we must not allow ourselves, if we voted "yes" the first go-around, to be afraid about voting correctly this go-around. To make two mistakes is not what we are here to do. We are here to support this Constitution, and I ask my colleagues to consider these things as well as other things that were mentioned and to vote against final passage of SB 555.

Thank you.

The SPEAKER. On the question, the Chair recognizes the lady, Ms. Josephs.

Ms. JOSEPHS. Thank you, Mr. Speaker.

I wonder if I might interrogate the Parliamentarian.

The SPEAKER. No, you may not; no.

Ms. JOSEPHS. May I interrogate you then?

The SPEAKER. No.

Ms. JOSEPHS. Then I will interrogate myself, but I will play your part and your answers will not be as good as they would be.

The SPEAKER. You are not permitted, under the rules, to interrogate either the Parliamentarian or the Speaker. What you are permitted to do is make parliamentary inquiries if you have a question.

Ms. JOSEPHS. May I make a parliamentary inquiry?

The SPEAKER. Of course.

Ms. JOSEPHS. Thank you, Mr. Speaker.

May I make one of the Parliamentarian?

The SPEAKER. No.

Ms. JOSEPHS. Is he not here? I cannot see around the pole.

The SPEAKER. No. The Assistant Parliamentarian is with me, but all questions are directed to the Speaker, even when you are debating. You know that. You do it all the time.

Ms. JOSEPHS. Mr. Speaker, actually, I rarely interrogate, but I will try and get this form right. You are absolutely correct.

Mr. Speaker, may I interrogate—

The SPEAKER. Thank you.

PARLIAMENTARY INQUIRY

Ms. JOSEPHS. Would you do me the favor to word this for me. I would appreciate that.

The SPEAKER. All right.

Ms. JOSEPHS. Point of parliamentary inquiry.

The SPEAKER. Point of parliamentary inquiry, and I say— now it is my turn— I say, what is your point of parliamentary inquiry?

Ms. JOSEPHS. My point is, I am trying— I have a question about the authority under which we are determining the "yea" and "nay" votes and the total of those "yea" and "nay" votes, and to that end, I think that we can agree that we are diverting some from the usual way in which we operate when we are in the chamber; that in the last 2 days we have sometimes done the roll call by calling each member for a "yea" or "nay," maybe one time, maybe more. I am sorry; I forget. We have sometimes asked the "yeas" to rise I believe regardless of their party, sometimes the "nays" to rise regardless of their party. Sometimes the "yeas" from the — and so on.

The SPEAKER. What is your point of parliamentary inquiry?

Ms. JOSEPHS. I do not remember having voted on any kind of temporary rules, so I am wondering—

The SPEAKER. There is provision — which I will have for you in a moment — that when the machines are inoperable or not available, which of course is the case right now, then the voting shall take place as determined by the Speaker. So based on that authority — and I will give you the cite on that in a moment — we have done what we have done.

Now, in the spirit of fairness or at least trying to be fair about it, I have said from the beginning that, let us hear suggestions if there are suggestions. Mr. Lloyd made one to me yesterday and it was implemented today.

The lady, Ms. Josephs, asked about a long roll call — I will call it a long roll call — and I pointed out to her that under the Constitution, any two members can demand a long roll call. That is still true; that is true now. It was 2 or 3 hours ago, and the Constitution has not changed, so it is still true, but that is my authority, and I am trying my best not to abuse it.

By switching, by switching horses from one caucus to the other, it was just in the interest of expediting the vote, because if the board were here and lit up, it would be all red and all green, depending on which caucus you are in, with the exception of 10 or 12 members on each side, and I was simply trying to take a shortcut so that you could get out of here early enough tonight to go to the Italian caucus dinner.

Ms. JOSEPHS. It is what — House rule by cuisine.

The SPEAKER. Yes. I also discussed these procedures with the floor leaders. I mean, it is—

Ms. JOSEPHS. I am not questioning your commonsense approach to this. I am just interested in what authority, since we all know that rules and statutes have very little to do with common sense.

The SPEAKER. Let me read this to you. I am on page 5 of our rules. Under "Definitions" is, " 'Roll Call Vote' shall be...taken and displayed by and on the electric roll call board or in the event of a malfunction of the electric roll call board, by such method as shall be determined by the Speaker," and I am relying on that.

Ms. JOSEPHS. Thank you, Mr. Speaker, and thank you very much for your guidance in the forming of my point.

May I make a point on final passage now?

The SPEAKER. Indeed.

LEAVES OF ABSENCE

The SPEAKER. But may I interrupt you.

As long as we have interrupted the flow, we recognize the majority whip, who asks that the gentleman from Berks, Mr. LEH, be placed on leave, and the gentleman, Mr. DeWeese, requests that the gentleman, Mr. ITKIN, be placed on leave. Without objection, both gentlemen are placed on leave for the balance of the day.

CONSIDERATION OF SB 555 CONTINUED

The SPEAKER. The Chair recognizes the lady.

Ms. JOSEPHS. Thank you, Mr. Speaker.

Again I stand here for the victim. We are about to approve something that will go to the electorate and may be part of our Constitution which takes us a giant step backward to the time when sexual assault victims and women victims were ignored, mistreated, and essentially put through another ordeal whenever they wanted to vindicate their rights. SB 555 does that.

I am not voting for it. I am with the victims groups who understand that victimized twice is worse than being victimized once. I urge a "no" vote on SB 555, and I thank you for your courtesy in listening to me. Thank you.

The SPEAKER. The Chair thanks the lady.

The Chair recognizes the gentleman, Mr. Tangretti.

Mr. TANGRETTI. Thank you, Mr. Speaker.

Mr. Speaker, I want to ask someone — and I am not sure who, since Chairman Gannon has been put on leave — either from the Judiciary Committee or someone else on that side of the aisle, what is the next step, assuming this is placed on the ballot and it is passed? Anybody?

PARLIAMENTARY INQUIRY

Mr. TANGRETTI. Well, let me make the inquiry of the Chair then, Mr. Speaker; a parliamentary inquiry as to the process. If in fact this is placed on the ballot and the electorate vote in favor of it, is there a necessity for the legislature to do anything further or does this become law of the land where D.A.s can in fact exercise their rights on this constitutional amendment?

The SPEAKER. It would become law; it would be the law of the land.

Mr. TANGRETTI. So there is no need for this legislative body to enact any enabling legislation.

The SPEAKER. I believe that to be true; yes.

Mr. TANGRETTI. Okay. May I interrogate then the chairman of the Appropriations Committee?

The SPEAKER. The question of a fiscal note, if that is what you are raising, has been determined earlier on this, I believe.

Mr. TANGRETTI. Well, not quite, Mr. Speaker. If I may ask my question. Thank you.

Mr. Speaker, would the chairman of the Appropriations Committee— First, let me remind him of my question in the Appropriations Committee yesterday when this was raised about a fiscal note of the costs associated with this being implemented as opposed to the cost of it being advertised, and at the time the chairman responded in front of all members as well as the executive director of the committee that a fiscal note in terms of the costs associated with advertising is all that is required now, but that when we do the enabling legislation that is needed, we would then have a fiscal note associated with those costs, costs increased to the courts, the D.A.s' offices, the public defenders, the judiciary, and the like.

In view of the fact that, Mr. Speaker, you have just answered the question associated with the fact that we do not need enabling legislation, I would suggest that this bill does not have a proper fiscal note; it does not properly reflect what the costs are, and I would ask the chairman of the Appropriations Committee to comment on that.

Mr. BARLEY. I am sorry. I am not sure what you want me to comment on. I mean, I may agree or disagree with your statements, but unless and until you ask me a question, I really do not have any comment on what your opinion is. You are entitled to that.

Mr. TANGRETTI. Well, then let me rephrase the question, if I may, Mr. Speaker. Would the chairman of the Appropriations Committee, in view of the fact of the Speaker's ruling or explanation that there is no enabling legislation needed to further this, agree that this does not have a proper fiscal note, in view of the fact that that is exactly what your answer was on the record yesterday in the Appropriations Committee?

Mr. BARLEY. My position is that today we are dealing with moving this issue to the ballot so voters can decide whether it will become a constitutional amendment. We have an obligation to certify the cost of that, which we have done in the fiscal note. We have met the obligation of the issue that is before us today.

Taking it a step further, we have made some preliminary inquiries of the cost of implementation. In the event that the voters would approve this and it would become an amendment to the Constitution, we have made a preliminary inquiry of the courts as to what the expectation of the courts and the Budget Office would be of the cost. They are — and I do not have this in a written fiscal

note — they are indicating that they believe it would be a minimal cost, but I do not have that in an actual fiscal note.

Mr. TANGRETTI. Mr. Speaker, I again — and no disrespect meant at all toward the chairman of the Appropriations Committee — would suggest that in view of the fact that his explanation yesterday relative to enabling legislation has been obviated by your answer today, it would seem to me to indicate that a fiscal note dealing with the implications by the Appropriations Committee in hand of every member before we cast a vote is proper and that this bill before us does not have that.

The SPEAKER. Is that an argument? a statement? I am not following. Are you asking something of me?

PARLIAMENTARY INQUIRY

Mr. TANGRETTI. I guess I am asking you whether in fact, Mr. Speaker, you feel that this bill is properly before us with a proper fiscal note. I make an inquiry of the Chair.

The SPEAKER. We had a fiscal note attached to this bill when it arrived on the floor. I do not believe it is proper for the Chair to pass as to the adequacy of the fiscal note. Our rules say there has to be a fiscal note. I do not think it is up to me to say whether it should be \$5 or \$5 million. That is not my area of expertise. It should be the area of expertise of your Appropriations Committee and the majority Appropriations Committee.

Mr. TANGRETTI. On final passage, Mr. Speaker.

The SPEAKER. The gentleman is recognized.

Mr. TANGRETTI. Mr. Speaker, I think by the questioning and answering of the past few minutes, one gets the flavor of what this is all about.

The fact of the matter is that this is a huge dollar expenditure on behalf of the Commonwealth that no one wants to talk about, no one wants to describe, no one wants to put in writing, and there are all kinds of reasons why we can skirt that or at least ostensibly skirt that.

Why would we not want to know what the fiscal implications of this bill are? Why is it when we asked the question at the Appropriations Committee yesterday, we get an answer that says, well, there has got to be enabling legislation and that is when we will do the fiscal note, and today when we find out there is no enabling legislation, well, we may have a fiscal note in the future at some time, maybe, and we are talking with the courts and there is an indication that it is minimal. That is not the way we should be doing business.

Now, we can argue the merits, the legal merits, of whether this is a good or a bad thing relative to the judiciary system, and I will be the first to tell you I am not qualified to make any of those arguments. But I think I know my responsibility as an elected member of this House, and that is to know what I am voting on and how much it is going to cost, and we do not know that; you do not know that. And for us to provide a constitutional amendment on the ballot for members, the voting population of this Commonwealth, without them knowing what it is going to cost is an outrage as well.

Now, I flirted with the idea of recommitting this to Appropriations for a fiscal note. We all know how that would turn out. It would be a long, drawn-out process and the votes would be essentially what they are on the other amendments, so I am not going to force the House to go through that process. But I want everybody to realize that in those campaign brochures and all of

that other stuff that we are going to be doing in this coming general election, that when opponents are raising and talking about victims and crime issues, they better be as well talking about the costs associated with that, which they have refused to do today, refused, disallowed, obfuscated, skirted, just generally did not want to discuss it for obvious reasons. If for no other reason, this bill should be defeated on that basis, because we do not know what it is going to cost.

So I would ask all of you to consider that. I would ask you to consider what transpired between myself, the Speaker, and the Appropriations chairman and realize there is no interest in providing that information at all, and think about that, not to quote my good friend that is chairman of the Transportation Committee, but think about that before you cast your vote on this bill.

Thank you.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Philadelphia County, Mr. Cohen.

Mr. COHEN. Mr. Speaker, today is not the end of this process. This bill will face the voters after we pass it. I would hope that as many people as possible would vote against this bill to send a message to the voters that there is considerable disagreement in the legislature over the wisdom of this proposal.

Representative Rohrer's point that there is a Declaration of Rights in the Pennsylvania Constitution and there is a Bill of Rights in the Federal Constitution and those are rights for citizens and not rights for government is a very, very profound point.

It is not the general principle of American government that every right a citizen has is held by the government. In any criminal case, the government has a duty to tell the defendant of any evidence showing the defendant is innocent; the defendant does not have a duty to tell the government of any evidence showing the defendant is guilty. And anybody who has had any experience dealing with the IRS (Internal Revenue Service), a citizen has a right to get endless information from the IRS. The IRS has the right to get only limited information from a citizen.

If the argument here is that every single right that is given to a citizen now has to be given to the government in order to be fair, we are radically changing democracy in Pennsylvania and we are radically changing the legal rights of citizens.

Mr. Tangretti's concerns about the fiscal costs of this amendment are very, very real. If we say that this amendment has only a very minimal cost, then we are saying this amendment has only a very, very minimal impact and district attorneys are never, ever, except under the most extraordinarily rare circumstances, going to ask for jury trials. Well, if that is true, then this is not a very significant amendment. But when we are urged to vote for the amendment, we are told about how terrible this situation is and how many, many more jury trials are needed. If many, many more jury trials are needed, we are going to pay an awful lot more money.

We have been given different dates as to when the Supreme Court invalidated the law that allowed the State to demand jury trials, but whatever the correct date is, there has been a massive increase in judges and judicial costs since then, and there is a potential for a far, far greater increase. I remember 30 years ago that there were only about 30 common pleas court judges in Philadelphia, and today there are close to 100 common pleas court judges in Philadelphia. If we are going to be looking to mandate jury trials, the day of 150 common pleas court judges in Philadelphia and 200 common pleas court judges in Philadelphia

and many, many more judges in Allegheny and many more judges in counties throughout the State cannot be very far behind.

This bill creates enormous numbers of jobs for lawyers. As a lawyer, I guess I should not be totally displeased with that. But the downside for the public is that this creates enormous excess costs for the public, and the very, very loose, slipshod manner of figuring out fiscal notes — our general belief here that any long-term cost is irrelevant; the only thing that counts are short-term costs that can be measured immediately — is very, very shortsighted.

Finally, Ms. Josephs' point about the victims deserves your consideration. Many victims do not want long, drawn-out trials in order to get every last drop of punishment. The punishment of a trial is a punishment for victims also, and punishing alleged criminals by a long, drawn-out trial is also a punishment of victims.

It is, I think, for all these reasons that a whole diverse monopoly of organizations from the ACLU to the gun groups oppose this amendment. They are right to oppose this amendment. I am not totally persuaded that all the citizens of Pennsylvania are going to vote for this amendment. Some constitutional amendments that have sailed through this House overwhelmingly have just passed narrowly or been defeated. My feeling is there is a reasonable chance this amendment will be defeated.

I would urge that we send a very strong message to the voters by having the maximum possible number of votes against this bill.

The SPEAKER. The gentleman, Mr. Olsz.

Mr. OLSZ. Thank you very much, Mr. Speaker.

I want to question the chairman of the Appropriations Committee similarly to what my colleague, Mr. Tangretti, did, if possible.

The SPEAKER. Mr. Barley, do you consent to be interrogated by the gentleman, Mr. Olsz? The gentleman, Mr. Olsz, may begin.

Mr. OLSZ. Thank you very much, Mr. Speaker.

The determination of costs, it is the usual procedure to make a study of all pertinent facts before you enter into a bottom line. Could you please tell me the number of jury trials in Allegheny County as opposed to the nonjury trials in Allegheny County?

Mr. BARLEY. No, Mr. Speaker. I do not have that number before me.

Mr. OLSZ. Mr. Speaker, that is why approximately 3 hours ago I had asked and requested a fiscal note, and along the same lines of argument, to me it is very unusual that we could make a determination—

The SPEAKER. Pardon me. The gentleman will yield.

Have you concluded your interrogation?

Mr. OLSZ. Yes. I am sorry; yes. Thank you very much.

The SPEAKER. The gentleman is recognized on final passage.

Mr. OLSZ. —that we could just arbitrarily sit in this room, the chambers, and make a decision when no one can tell us what the bottom line of costs will be.

As I stated 3 hours ago in this room, and I hope I gave you sufficient time to think about it, if Allegheny County was hanging on by its fingernails where the president judge was threatening to shut down the court system for lack of moneys to run a court system, please, someone in this room tell me, where in the world is that money going to come from when we have a county that is probably going to go out and sell apples to balance next year's budget, and the city is floundering; they have nothing left to sell. But somewhere along the line, someone please tell me what this is

going to cost Allegheny County in dollars and cents. There are no answers. Previous speakers have requested answers.

But this is being sold across this Commonwealth because of what, the Philadelphia courts? Someone else will probably speak to that situation later. But in the history and my lifetime, Allegheny County has never, ever suffered any embarrassment by any of those judges that sit on that bench, and I want you to consider that and think about it. Not one judge in Allegheny County or one case has ever been tainted in Allegheny County, and I think that is a tribute to the bench that we have in Allegheny County rather than having these horror stories thrown out in the hysteria, oh, we have got to correct crime.

One of the previous speakers alluded to a situation where the court threw out a case or erred in the sentencing. To the best of my knowledge, that was done by the district attorney and not by the judge sitting in that particular situation.

We have heard these horror stories about, oh, the courts, the courts. Well, if you want to sit still for a moment and keep your mouths quiet, I will give you a case of where the jury screwed up big time, and this happened in Allegheny County in a very high profile case out in western Pennsylvania that the victim was the son of a very, very close friend of mine.

The SPEAKER. Mr. Olsz, is your story relevant to the bill before us?

Mr. OLSZ. Believe me, it is relevant, because I want to point out how screwed up a jury can become.

The family was split into two cars. They were in the process of getting their gas tanks filled to go home when a gunfight erupted between two rival gangs. The baby was in his car seat in the backseat of the car when one of the slugs pierced the eye of this young baby — pierced the eye of a young baby. I was there within minutes with a grandfather who was trembling, saying, I was just holding that baby in my arms just a few minutes ago, because the police knew the close relationship that existed between me and the family.

For your information, that case went to trial before a jury — a jury. Do you know what the jury handed down? Involuntary manslaughter; involuntary manslaughter for a man that was involved in a gunfight that had a record longer than a roll of toilet paper. The judge was furious. The judge was absolutely furious that his hands were tied. The jury spoke. That is the other side of the coin. Do you want to point out some other stories? Do not tell me that it is impossible to err. Everybody can make an error, but to try to sell this under the guise of the hysteria of, oh, we are letting criminals loose, no.

You ask yourselves why we elect people with honor to sit on that bench, and here you are trying to tell me, it is not an adjustment, but every judge that sits on that bench is a fixer? Shame on you. Shame, shame, shame on every one of you that will vote in support of this because you think that man up in the robes, sitting in the robes, is a fixer.

I hope in 3 hours' time you had an opportunity to digest what I have said about costs, et cetera. You think about that poor family that has been shattered as a result of a baby being killed in a gang fight, and a jury, the great jury, made up of common people, handed down an involuntary manslaughter case where the most that man can receive is 3 years. That is what can happen to a jury. And do not tell me — we are all 3 times 7 — that a jury cannot be fixed?

Wake up and think about it and vote against this bill. Thank you very much.

The SPEAKER. The Chair recognizes the lady, Ms. Boscola. Ms. BOSCOLA. Thank you, Mr. Speaker.

You know, juries are not infallible and neither are judges, and I do not think that that argument that was just told to us really is relevant to what we are trying to do today. The right of the Commonwealth to a jury trial has been in the histories of this Commonwealth for hundreds of years under English law, and it has its roots here in the Commonwealth. But what happened in 1973 was that the State Supreme Court — and I will tell you, I believe it was a liberal Supreme Court — stripped that power away, stripped that power away.

Now, the Supreme Court or the courts are supposed to interpret the law, and when they are not doing their job, what do we do as the legislature? We create laws, and we create laws to rectify the problems that sometimes the Supreme Court makes when they interpret the laws, and especially liberal interpretations.

Mr. Speaker, if we do not pass this bill today, the defendants — the defendants — have the right to control the process. They control the process. The victims are unempowered. They are powerless, the plaintiffs. All I want to do is create a level playing field here.

And, Mr. Speaker, you know, I am somewhat coming from experience, speaking from experience. I was a former deputy court administrator in the Northampton County courts, and in that role, a lot of times I was the one that assigned cases to judges and controlled the case-flow management aspect. There are times in the Commonwealth when a person, a defendant, goes and asks for a jury trial. They see who the judge is, a more liberal judge, and what happens is they then ask for a judge trial. If they were forced into a jury trial, I am assuming, a lot of times, and this has happened, that the actual defendant plea-bargains. So he pleads, because he knows he cannot win in a jury trial. So the arguments about the costs being escalated are not true, and in a lot of instances you would avoid a jury trial and a judge trial because they do not want to go to trial, so they plea.

Mr. Speaker, this bill is a really good bill, and what it does is send a strong, a very strong statement to the criminals out there, but it also protects the rights of the plaintiffs and protects the rights of victims. It is a good bill, and I encourage its passage today. Thank you.

The SPEAKER. The Chair thanks the lady.

The Chair recognizes the gentleman from Allegheny County, Mr. Dermody.

Mr. DERMODY. Thank you, Mr. Speaker.

Mr. Speaker, we have heard a lot of discussion today and a lot of debate on the number of hearings that were held on this bill for the last several years, and that is true; there have been several, and I have attended many of those hearings. But after attending most of those hearings, what became clear is the driving force behind this piece of legislation, and what appears to me, after all is said and done, the driving force behind this piece of legislation is the problem with the administration of the courts in Philadelphia, because what happens in Philadelphia, and you have heard— Well, what we just heard does not really describe what happens, but what happens there is what they call judge shopping. That is, a defendant would seek a jury trial and ask for a jury trial, would be brought into a courtroom, would be able to see who the judge is, and then ask, okay, I do not like this judge; I want a nonjury trial. However, in Philadelphia the case would not be able to proceed at that time, so you would have victims, witnesses,

everybody inconvenienced. The case would have to be postponed. That case in Philadelphia is sent to a different pile, a different set of judges, where the defendant is hoping to find a better judge, a better forum, and oftentimes, delay works in favor of the defendants.

I served as a prosecutor for 5 years in Allegheny County. I prosecuted rapes, homicides, and child abuse cases. In Allegheny County, a case is assigned to a judge. That judge, if the defendant asks for a jury trial and the day of that trial is scheduled, you go pick your jury. If that defendant then decides or for some reason wants a nonjury trial, you go to that judge, the very judge the case was assigned to, and you try your case immediately. There is no postponement, no delay.

I can assure you that in most of the counties of this Commonwealth, that is the way it goes. I can tell you in most of the counties of this Commonwealth, there is no problem. You are not getting calls from all your D.A.s saying cases are being thrown out willy-nilly because defendants are judge shopping or that the judges are lenient. I do not believe it is happening. Ask yourselves if it is happening.

Just because Philadelphia has a problem with the administration of their courts does not mean we should change our Constitution. It works. The system is working well in all of the other counties but for Philadelphia, and for that reason I think we all should be against this bill, because we should not treat this very lightly, amending our Constitution.

Let the rest of us go about our business. Let Philadelphia clean up the administration of their courts, and let the rest of us alone, please. Thank you very much.

The SPEAKER. The Chair recognizes the gentleman from Somerset, Mr. Lloyd.

Mr. LLOYD. Mr. Speaker, this issue was lost very early in the debate when the question got framed as, who wants to be on the side of the criminals? And when you state that as the question, there is no way that you are going to have anything other than a majority, and probably a very healthy majority, in favor of this bill. And we heard some examples earlier today about how somebody who had done something wrong might get prosecuted for a more serious charge than is justified, and that also will not cut the mustard, because you put the people who want to vote against this bill in the position of trying to defend somebody who has done something wrong.

I do not think that is what this bill is all about. I think this bill is about a safety valve to protect those people who are charged with crimes who happen not to be guilty. And I know that it is hard to imagine that the police ever arrest the wrong person or the district attorney ever indicts the wrong person, but it does happen, and I think historically what purpose was served by allowing a defendant to ask for a trial by judge was to protect the defendant in those instances in which he is indicted in an environment in which the people in the community are emotionally charged and cannot give him a fair trial and the judge, for whatever reason, refuses to grant moving that trial somewhere else or picking a jury from outside the area.

Mr. Speaker, there has been to the best of my knowledge no showing that we have had a significantly lower conviction rate since the time that the Supreme Court of Pennsylvania said that it was not constitutional for the legislature to try to impose this right and for the defendant to have to get the permission of the district attorney. We have no showing that that is the case. The letter I got

from my district attorney does not even pretend to make that argument. It cites the fact that we have got an administrative problem in some metropolitan counties, and so be it. Let them fix up their problem the way we fixed it up in the rural counties.

Mr. Speaker, I have not heard any complaint that cannot be addressed by a simple amendment to Title 42 or by a simple change in the rules of the Supreme Court or a simple change in the rules of the county court. We ought not sacrifice what I think is a necessary safeguard. We ought not amend the Constitution, and I think we ought to vote "no." Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman, Mr. Armstrong, who is the last speaker.

Mr. ARMSTRONG. Mr. Speaker, thank you.

Over 200 years ago our nation went to war with the mother country because of many abuses from the mother country, and one of those major abuses was the King's Court, and we established certain protections for people, realizing what those abuses could be, and we fought long and hard over that and spent blood, a lot of blood, to fight for those rights. We have also sent people to foreign lands to fight for those kinds of rights.

The SPEAKER. The gentleman will yield.

Mr. Armstrong.

Mr. ARMSTRONG. Thank you.

I did not really get into much of my speech, so I am going to start over.

Over 200 years ago— No, I am not going to— Come on now; come on. It was not that long.

Over 200 years ago our own people, our own ancestors, realized the problem with a court system that was out of control, that had too much power, and came in and usurped a lot of our rights, and we fought a long battle to obtain those rights and to put them down into our own Constitution to protect our people. We are elected, as Representatives, as guardians of those rights. Instead, what I fear today is what we are doing is stepping aside and allowing the courts to have a little bit more power, a little bit more right, to come in and, what the Representative from Somerset County said, to be able to have a little bit more edge, even to be able to prosecute innocent people, and that is what my fear is.

I do not want to defend in any way, shape, or form anybody who is guilty, and I think that is the way all of us are in this room. But for those of us who want to defend those individuals who may have been accused of something and it is totally wrong but yet we are going to give the courts a little bit more power to be able to prove their case, I think we are doing exactly what we should not be doing: we are stepping aside, and we are not being the guard of those rights.

I ask for you, although I think we probably all have our minds made up, but I ask for you to defend those rights, be the guardians today of those constitutional rights. Government already has enough power to prove cases and to prosecute and to indict, to convict. They do not need this extra right, this extra tool. Thank you.

The SPEAKER. The gentleman, Mr. Wogan.

Mr. WOGAN. Thank you, Mr. Speaker.

Mr. Speaker, I will be brief.

As was stated earlier, this bill merely levels the playing field between the prosecution and the defense. It only restores the system that we had in Pennsylvania from 1935 through 1982. It does nothing more than that.

And in the course of the debate this afternoon, it is amazing the distrust I have heard from certain debaters. I have heard distrust, first of all, of our district attorneys. Our district attorneys, the opponents of this constitutional amendment say, cannot be trusted; neither can our juries be trusted to do the right thing; and worst of all, they are saying, neither can the people of Pennsylvania be trusted to make the right decision this November. Are my ears hearing correctly? I trust the D.A.s of Pennsylvania, I trust the jury system in Pennsylvania, and I trust the people of Pennsylvania to make the right decision on this constitutional amendment in November, and we should let them make that decision.

And I am going to be a strict constructionist, because I heard some things from my side of the aisle that, quite frankly, do not make any sense, and I apologize, because I respect the gentleman. But number one, Article I, section 6, does not say "Criminal Trial by Jury"; it says "Trial by Jury." You cannot read what you want to read into the Constitution. Trial by jury in our Constitution as it has existed from our first Constitution, that provision deals with civil and criminal cases. You cannot throw that out by reading a word in there that is not there.

And the second point he made was, this is not any good because the Senate changed it. Well, Mr. Speaker, the Senate did not change the substance of this; the Senate changed what election the referendum would take place, and it is studied law in this State that as long as you do not change the substance of the amendment, it is good. This is still a good amendment. It has not been changed. The substance is the same as the last session, and it will be evaluated by the voters prior to the election. There is going to be more advertising in all the counties of the State that have newspapers. The same ads that ran in the summer and fall of 1996 are going to be run this fall.

But I also want to address that using the logic of some of the debaters here today, the State Constitution can never be changed using that logic. Well, we have an amendment process, and I read the material that the Judiciary Committee received after one of the public hearings, and I could not be in Harrisburg that day, but I did watch it on PCN. It was one of the more bizarre hearings that I have ever witnessed in my 17 years here, because I heard, number one, we do not have a valid Constitution here; we have not done anything right in this State since 1790, and my argument to these people, whom I regard as lunatics, is if this Constitution that we are operating under is invalid, then what is so wrong with amending it?

The people of Pennsylvania are represented, the victims of crime are represented, by the district attorney in each of our 67 counties in this State. They have the obligation not just to represent the victims of crimes that are before them, but they have an obligation to make sure that there will be fewer victims of crimes in their systems in the future, and one of the ways that they will do this is if we give them this tool.

I ask for an affirmative vote on this bill.

LEAVE OF ABSENCE

The SPEAKER. The Chair thanks the gentleman, and returns to leaves of absence and recognizes the gentleman, Mr. DeWeese, who asks that the gentleman from Philadelphia, Mr. DONATUCCI, be put on leave for the balance of today's session. Without objection, leave will be granted. The Chair hears no objection.

CONSIDERATION OF SB 555 CONTINUED

On the question recurring,
Shall the bill pass finally?

The SPEAKER. Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

We will do it in sections, as we have done it for the past two or three votes.

This section to the left of the Speaker, the Republican section, those voting "no" will rise. Others will please take their seats. "No" votes, please stand. The clerk will read the names; then please be seated.

(Members proceeded to vote.)

The SPEAKER. The members in the section to the right of the Speaker who are in favor of the bill on final passage will please rise. If you are in favor of the bill, the amendment, please rise; the amendment to the Constitution, the bill.

The following roll call was recorded:

YEAS—110

Adolph	Dent	Lucyk	Ross
Argall	DiGirolamo	Maher	Rubley
Baker	Druce	Maitland	Sather
Bard	Eachus	Major	Saylor
Barley	Egolf	Marsico	Schroder
Barrar	Fairchild	Masland	Schuler
Battisto	Feese	Mayernik	Semmel
Belfanti	Fichter	McCall	Serafini
Benninghoff	Fleagle	McGeehan	Smith, B.
Birmelin	Flick	McGill	Snyder, D. W.
Blaum	Geist	McIlhinney	Steil
Boscola	Gigliotti	McNaughton	Stern
Boyes	Gladeck	Micozzie	Stetler
Browne	Godshall	Miller	Strittmatter
Bunt	Gruppo	Mundy	Taylor, E. Z.
Butkovitz	Harhart	Nailor	Taylor, J.
Buxton	Hasay	Nickol	Trich
Cawley	Hennessey	O'Brien	True
Chadwick	Herman	Orie	Tulli
Civera	Hershey	Perzel	Vance
Clark	Hess	Petrone	Waugh
Clymer	Jarolin	Phillips	Wogan
Cornell	Kaiser	Platts	Wojnaroski
Corpora	Keller	Raymond	Wright, M. N.
Corrigan	Kenney	Readshaw	Zimmerman
Coy	Krebs	Reber	
Dally	Lawless	Reinard	Ryan,
Dempsey	Lederer	Rooney	Speaker

NAYS—83

Armstrong	Gordner	Michlovic	Stairs
Belardi	Gruitza	Myers	Steelman
Bishop	Habay	Olasz	Stevenson
Caltagirone	Haluska	Oliver	Sturla
Cappabianca	Hanna	Pesci	Surra
Cam	Harhai	Petrarca	Tangretti
Carone	Horsey	Pippy	Thomas
Casorio	Hutchinson	Pistella	Tigue
Cohen, L. I.	Jadlowiec	Preston	Travaglio
Cohen, M.	James	Ramos	Trello
Colaella	Josephs	Rieger	Van Home
Colaizzo	Kirkland	Roberts	Veon
Cowell	LaGrotta	Robinson	Vitali
Curry	Laughlin	Roebuck	Walko
DeLuca	Lescovitz	Rohrer	Washington

Dermody	Levdansky	Sainato	Williams, A. H.
DeWeese	Lloyd	Santoni	Wilt
Evans	Manderino	Seyfert	Yewcic
Fargo	Markosek	Shaner	Youngblood
Forcier	McIlhattan	Smith, S. H.	Zug
George	Melio	Staback	

NOT VOTING—0

EXCUSED—10

Allen	Donatucci	Leh	Scrimenti
Bebko-Jones	Gannon	Lynch	Williams, C.
Daley	Itkin		

The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the bill passed finally.

Ordered, That the clerk return the same to the Senate with the information that the House has passed the same without amendment.

ANNOUNCEMENT BY SPEAKER

The SPEAKER. If any of you— I am told that you can still go up and take a look at the House chamber by going up on the fourth floor. I have talked to three of our members who have been up there, and they each have come up to me and said privately that it is something that you should see. It is from the fourth floor, incidentally.

Mr. Pistella, would you take the microphone and just— If you are going up there, you have to use the elevators by the front door. Mr. Pistella.

Mr. PISTELLA. Thank you, Mr. Speaker.

As the Speaker had indicated, I did take the opportunity to view the chambers, which is actually a misstatement. If you go to the front of the Capitol Building as if you were entering from the main doors and you were to take, as you face the grand staircase, the elevator to the far right to the fourth floor, you will come out to a wooden-enframed construction entrance. As you walk through the doorway to the gallery of the chambers, you will find yourself no more than 7 feet from the ceiling.

What they have done is they have erected a scaffold. Now, you are all probably about as well versed in construction as I was, thinking it was something that you place next to your home to have work done. Instead what they have done is that they have erected a 40-foot floor so that they are now a matter of 10 feet from the ceiling, and what they are in the process of doing is to refurbish all of the chandeliers by taking them apart, rewiring each individual outlet. They are also working on the installation of the sprinklers. They are also refurbishing all of the woodwork and the gold gilding, and so it is impossible to conduct session there.

But if you go, you can see how adept they are at the work that they are doing and how skilled they are. It is really worth the experience to spend 5 minutes there. Thank you, Mr. Speaker.

The SPEAKER. Thank you.

You are conducting tours tomorrow, I understand.

Mr. PISTELLA. More than happen to, Mr. Speaker.