

vestigation, and I feel certain that any commission would poll each of these judges before making a selection. At the same time, it strikes me that perhaps a judge may be sitting on a commission selecting the person who will be sitting next to him, or close by in the same circuit and he could be very embarrassed, or perhaps there could be some animosity between the newly appointed judge and the one that was on the commission, because the sitting judge did not pick him in the first place.

I feel that the judges in the particular circuit or in the district where the attorneys are practicing would in fact review the work, as suggested by Delegate Smith, but I believe that the judge should be taken off the spot by not being on the commission.

I would, therefore, support this proposal and any proposal to keep any judge off the nominating commission.

THE CHAIRMAN: Delegate Mudd.

DELEGATE MUDD: Mr. Chairman, I yield three minutes to Delegate Marion.

THE CHAIRMAN: Delegate Marion.

DELEGATE MARION: Mr. Chairman, ladies and gentlemen, the evidence which we heard in our Committee was to the effect that a system such as this with a judge as the odd member of the nominating commission works.

There is no reason to assume that if it works elsewhere, it is not going to work here. There are many instances at bar associations, on the rules committee and elsewhere where judges serve with lawyers, and there is no reason to assume that here the judge is going to dominate more than we would expect him to dominate in these other instances.

I think it is important to get a third perspective in connection with the selection of the names which will be submitted as nominees. A layman can bring one perspective, and it is a valuable perspective; a lawyer can bring another perspective and I submit to you that a judge can bring still a third perspective on those potential nominees who are being considered by the commission.

For that reason, I urge that this Committee of the Whole support the Committee on Judicial Branch in its recommendation that there be a single judge on a commission where he will be outvoted by lawyers and laymen.

THE CHAIRMAN: Delegate Johnson.

DELEGATE JOHNSON: Mr. Chairman, I yield two minutes to Delegate Schloeder.

THE CHAIRMAN: Delegate Schloeder.

DELEGATE SCHLOEDER: Mr. Chairman, it seems to me that for three days we have been discussing a judicial article that would to a very great degree insulate the judiciary.

I gather from my conversations with supporters of the Committee's report that what we are trying to do is bring greater respect to the judiciary.

It seems to me that what we are doing here in this aspect of the majority report is just the opposite of that. We are bringing the bench down from the bench and into the arena that we have worked so very hard for three days to keep him out of.

As far as there being a third group of individuals, it seems also very clear to me that any commission could call before it any number of judges to testify, to advise in any way that they wanted.

It would seem to me that this is inconsistent with what we have been attempting to do for these three days as far as the judiciary is concerned, and for that reason, I would respectfully ask you to support this minority amendment at this time.

THE CHAIRMAN: Delegate Mudd.

DELEGATE MUDD: Mr. Chairman and ladies and gentlemen of the Committee of the Whole: May I say just this, which I omitted to say initially, that this proposal is not unprecedented. Three states which have recently adopted the plan, for which we are now here asking have provided that a judge not only be a member of the nominating commission, but that he serve as chairman of such a commission, and in another state, Colorado, a judge is the ex officio member of the commission.

I would like to reserve the rest of our controlled time for the other section.

THE CHAIRMAN: Delegate Johnson.

DELEGATE JOHNSON: Mr. Chairman, I yield three minutes to Delegate Bamberger.

THE CHAIRMAN: Delegate Bamberger.

DELEGATE BAMBERGER: At least for the moment I would like to join General Custer and the troops and leave the Indians, but I would like to be understood that I would like to be excused before we get to the final chapter.