

THE CHAIRMAN: The amendment having been seconded, the Chair recognizes Delegate Johnson to speak to the amendment. Delegate Johnson, the Chair is not clear. Under the debate schedule, I had taken it that controlled debate was on section 5.19. Is that correct?

DELEGATE JOHNSON: My understanding, Mr. Chairman, is that it pertained to sections 5.15 through 5.19. I may be in error about that. However, I do not think that much controlled debate will be necessary.

THE CHAIRMAN: All right. Let me ask you, are there any other minority amendments to sections 5.16, 5.17, 5.18, 5.19?

DELEGATE JOHNSON: There may be, depending on the action of the Committee of the Whole with respect to section 5.15.

THE CHAIRMAN: I think we had better then consider this as controlled debate for the group of sections with respect to the related amendments, related in the sense of being recommended to Amendment No. 31, which would have the effect of eliminating a judge as a member of the commission. Is this correct?

DELEGATE JOHNSON: With all due respect, yes, Mr. Chairman.

THE CHAIRMAN: The Chair recognizes Delegate Johnson.

DELEGATE JOHNSON: Mr. Chairman, and ladies and gentlemen, in spite of the fact that I feel like General Custer at the last stand, when he allegedly said, "I can't understand any of this, they all seemed very friendly at the dance last night," this may be our last stand, and it is a very important one, and I urge you to give it the consideration that it deserves.

The purpose of the amendment with respect to section 5.15 and the following sections is to take the judge off the spot, if you will, and to remove the judge from what, by the actions of the Committee of the Whole we hope, will be an impartial nominating commission.

Let me tell you why in just a moment. First, by removing judges from the nominating commission, the judiciary itself is free from possible taint with respect to conflict of interest. A member of the commission may not be considered for appointment, for obvious reasons, and this is dealt with in a later section. The minority members of the Judicial Branch Committee feel that sitting judges should be kept off

the nominating commission because they will publicly be accused of attempting to stack the nominations with their friends, no matter how untrue this may be.

Not having a judicial member on the nominating commission does not mean that the Commission could not consult with judges during their deliberations; and indeed, I submit that they probably will, and with a great deal more freedom.

A second important attribute of this proposal is that an even number of persons would thereby be involved on the nominating commission. We are speaking now of section 5.15, and if this amendment is adopted, we would have six lawyers and six non-lawyers on the appellate court nominating commission. In our opinion, this might well require a greater effort to obtain a consensus among the members than otherwise would have been the case. The even number further would provide a check on any efforts a governor might make in stacking the nominating commission in his favor.

For these reasons, Mr. Chairman and fellow delegates, I urge the adoption of this amendment.

THE CHAIRMAN: Delegate Mudd.

DELEGATE MUDD: Mr. Chairman, ladies and gentlemen of the Committee of the Whole: I rise to oppose this amendment.

We have heard considerable debate on this article regarding the power of the judges, and now the indication is that the judges or a judge might try to dominate a nominating commission.

It was the view of the majority of our Committee and a view which I share that the usefulness of a judge on a nominating commission is very great. It seems to me that a judge is in a peculiar position to know best the abilities of the lawyers who practice before the bench. His evaluation of those who might be receptive to appointment is more valuable than that of associate lawyers, as well as laymen.

In our telephone conversation or conference of one hour with the nominating commission in Missouri, it is my recollection that the specific question was asked, whether there had been any effort there over the long period of years since this plan has been in effect in that State for the judge to dominate the commission.

The answer was in the negative.