

power to establish or to make the rule to establish these panels. I think the practical effect would be that the legislature, having heard the testimony about the need for judges, about the workload in that court, would, by law, establish the number of judges and say that they shall sit in three, four, two, whatever number of panels they think should be established on the basis of testimony here today. If that is not workable, if after the court has operated for six months and finds that it really does not need that many panels, or it needs more panels, the court by its rule could change the number of panels established by the General Assembly.

THE CHAIRMAN: Delegate Mudd.

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

A provision in the recommendation submitted to this Convention which requires that the intermediate court may sit in divisions, as prescribed by rule, is consistent with our overall concept of the efficient functioning of courts within this four-tier system.

The majority report requires the chief judge of the Court of Appeals to assume complete responsibility before the administration of the courts; within the rule-making power, the courts may be administered within such limitations and suggestions as the court in its wisdom provides by rule.

There may be some apparent reason that the legislature at the time it adds judges to this court may have ideas as to how the divisions may sit or operate, which might not subsequently appear to the court to be implemented by rule. To me that is inconceivable.

Furthermore, the power of the legislature to prescribe at the time it expanded the manpower of that court as to how these divisions might operate could, I respectfully suggest, interfere and disrupt the orderly housekeeping, for want of a better word, of the overall court concept, and of course, particularly at this expandable court level of the intermediate appellate court, which this majority report of the Judicial Committee contemplates must be expanded to take care of an increasing caseload at that level.

We, therefore, feel that adoption of this amendment is inconsistent with the recommended procedures in other jurisdictions, especially the appellate level, and is inconsistent with the overall concept of the

court structure as contemplated and recommended by the Committee on the Judicial Branch. I shall, therefore, vote against the amendment.

THE CHAIRMAN: Does any other delegate desire to speak in favor of the amendment?

*(There was no response.)*

Does any other delegate desire to speak in opposition to the amendment?

*(There was no response.)*

The question arises on the adoption of amendment —

Delegate Bamberger.

DELEGATE BAMBERGER: May I ask if the Chairman would yield to a question?

THE CHAIRMAN: I am sorry. Delegate Mudd, do you yield to a question?

DELEGATE MUDD: Yes, sir.

DELEGATE BAMBERGER: I understood your opposition to the amendment was premised on the fact that it took away from the Court of Appeals the power to decide how the Intermediate Court of Appeals shall sit. Does it do that?

DELEGATE MUDD: It could, if the action of the General Assembly was the last expression of opinion as to how the court should sit.

THE CHAIRMAN: Delegate Bamberger.

DELEGATE BAMBERGER: May I speak to the amendment?

THE CHAIRMAN: You may, sir.

DELEGATE BAMBERGER: It does not take away the power of the Court of Appeals to decide the panels in which the court of special appeals shall sit. It takes it away as long as it would take the Court of Appeals to meet after the legislature had done something.

I want to make it clear that I do not intend to take that power away from the court. I just think that the legislature, when it is going to be asked to establish the number of judges in a court, ought to be able to say something about whether they all sit together or whether they sit in panels.

I do not think the legislature should be the only body that decides that. I think the court ought to have something to do with its own housekeeping. I just do not think it ought to be exclusive.