

the Committee on Judicial Administration said to its parent, the State Bar Association at that time. I am quoting from the report: "If arrest warrants are to be issued by judges only, it is, of course, extremely important that judges be at all times reasonably accessible to the police. This may not always be possible, particularly in rural areas of the State. Therefore, the committee recommends that judges of the district court"—I emphasize this—"judges of the district court be authorized to appoint commissioners whose duties generally would be to issue arrest warrants and to accept bail or collateral. It is hoped that the persons appointed to these positions would be lawyers or have prior legal training and it seems particularly important that the commissioners be appointed by and remain under the immediate supervision of the district court. In this way their work can be closely observed."

That report, ladies and gentlemen, was made in the State Bar Association at a time when it had the greatest attendance in its history in Atlantic City, and after the report was made—I made that report—the matter was put to a vote. There was but one single voice of dissent in a group of more than 400 people.

THE CHAIRMAN: Delegate Case, you have a little over a quarter of a minute left.

DELEGATE CASE: So you see, this matter has been before your Bar Association. It has been examined carefully. It has been accepted. I urge, therefore, that this amendment be rejected.

THE CHAIRMAN: Delegate Johnson.

DELEGATE JOHNSON: Mr. Chairman, may I answer Delegate Case, and still call on my next delegate under controlled time?

THE CHAIRMAN: After Delegate Mudd has called on somebody you may. You still have time.

DELEGATE JOHNSON: Perhaps I will use the opportunity then under controlled time to answer Delegate Case and call upon now and yield three minutes to Delegate Harkness.

DELEGATE HARKNESS: Mr. Chairman, Fellow Delegates: the hour is growing late, and I am sure we all do not want to hear too much more discussion about the matter. The minority report supports the minority position. Several delegates have spoken in behalf of the amendment. I think quite simply I want to say this: it

is hard for me to perceive how the appointment of a commissioner is a judicial function. It is true that the administration thereof in his duties may pertain to the judiciary. What the amendment provides by rule, that shall be spelled out, but the amendment further provides that the number, qualifications, tenure and compensation should be determined by the General Assembly or determined in a manner prescribed by law.

We feel that the appointment is strictly a legislative matter, and as Judge O'Donnell from the Supreme Bench in Baltimore said when he appeared before our Committee, that the entire subsection should be governed by legislation, not by the constitution.

One further point: here again we see creeping into section after section more power, unrestricted, being given to the judiciary. We feel that is unnecessary, that it is against the minority's philosophy of government because the best government is the government that is closest to the people.

I say very briefly in closing, we have three branches of government: The executive; let the executive execute. We have the General Assembly; let them legislate. In conclusion, let the judges adjudicate and not appoint.

THE CHAIRMAN: Delegate Mudd, you have left six and a half minutes to allocate as you wish.

DELEGATE MUDD: I would like to yield two minutes at this time to Delegate Lord.

THE CHAIRMAN: Delegate Lord.

DELEGATE LORD: Mr. Chairman, ladies and gentlemen of the Convention: I oppose wholeheartedly this amendment. I think the reasons will become clear if we look at the functions that are set out in section 5.11 to be performed by the commissioners.

"He shall exercise only those powers with respect to warrants of arrest, collateral, and incarceration pending hearing, and then only as prescribed by rule."

Now, these are functions in the absence of commissioners that would be performed and would have to be performed by the district judge in question. You must realize this and treat the commissioners and the judges as a unit; in the absence of the commissioner, the job would have to be