

THE CHAIRMAN: Delegate Mudd.

DELEGATE MUDD: As I recollect, the first part of your question was if we make it mandatory upon the governor to appoint and he fails to appoint, there possibly would be redress through the courts. I had a citation to a case a few days ago indicating that it would be possible.

The further thought of the Committee, if I recollect the last part of your question, was that in the remote event that the governor was unhappy with the list and ignored the appointment for that reason, then this was a method of insuring appointment from the list the nominating commission had prepared. That is the safeguard we were trying to give to the list, rather than allowing the governor to circumvent the list.

THE CHAIRMAN: Delegate Mudd, the Chair is in doubt as to your answer. If I understood Delegate Bamberger's question, were you saying that a court could or could not mandamus the governor?

DELEGATE MUDD: I said, Mr. Chairman, that on the strength of the citation that I used the other day, it has been done.

THE CHAIRMAN: What did they make the governor do?

DELEGATE MUDD: In that case — I have forgotten the citation, now — but there was a mandamus requiring him to make an appointment. I have forgotten the name of the case. It was many, many years ago.

THE CHAIRMAN: I wondered what would happen if he refused.

DELEGATE MUDD: I guess he would go to jail. I do not know.

THE CHAIRMAN: Delegate Pullen, do you desire to speak in opposition or in favor.

DELEGATE PULLEN: In favor.

THE CHAIRMAN: You may proceed.

DELEGATE PULLEN: According to my recollection, Delegate Grant the other day reminded our esteemed colleagues that a mandamus was issued, or whatever you call it, on the governor about 1964 or 1965 to perform his duties. My recollection also is that the Chairman agreed that that was done.

It seems to me that as a layman this is an answer to the problem, and not the assumption of the authority and duties and

responsibilities of the governor by the judiciary.

As a matter of fact, I think that the matter is not too great a problem, except for its being an invasion of the responsibilities of one branch of government by another. Therefore, I should like to support the recommendation.

THE CHAIRMAN: Does any other delegate desire to speak in opposition?

Delegate Wagandt.

DELEGATE WAGANDT: Would Delegate Mudd yield to a question?

THE CHAIRMAN: Delegate Mudd, will you yield to a question?

DELEGATE MUDD: Yes, Mr. Chairman.

THE CHAIRMAN: Delegate Wagandt.

DELEGATE WAGANDT: Did you consider having the nominating commission make the appointment, instead of the chief judge, in the case where the governor fails to act?

THE CHAIRMAN: Delegate Mudd?

DELEGATE MUDD: No. I recollect no discussion of such a proposal by the Committee.

THE CHAIRMAN: Delegate Wagandt.

DELEGATE WAGANDT: Would that be an acceptable compromise on this particular issue, or do you see some pitfall in it?

THE CHAIRMAN: Delegate Mudd.

DELEGATE MUDD: Well, personally I think it would be much better for the chief judge of the Court of Appeals to exercise that final authority than for the nominating commission to go beyond the purpose and intent that our recommendation thought should be the function that it should serve. The commission should make recommendations in the form of a list, and not exercise the appointive power.

THE CHAIRMAN: Does any delegate desire to speak in favor?

Delegate Gill.

DELEGATE GILL: Mr. Chairman.

THE CHAIRMAN: Delegate Gill.

DELEGATE GILL: Originally the intent of my amendment was to strike the last sentence in line 14, because it says,