

There has always been in the history of our country a premise which has given us all assurance and some degree of reliability; and that is that we delegate power, but we put a restriction on that power by granting powers to the other branches of government, and it is this provision that has been removed by the Majority Report.

Let me say in answer to a comment that was raised by a delegate earlier, if we could remove this provision, I would certainly be inclined to go along with their recommendation as far as noncompetitive elections is concerned, because that is not what bothers me. I have always felt that the election of judges did not lend itself to the political process, but we are talking about the selection of judges now, and that is a different matter.

The model constitution, which has been one of the justifications for the majority recommendation, has two provisions within it. One provision is pretty much along the lines of the majority recommendation, but the first recommendation is the recommendation that is before you today. One of the delegates rose on his feet here a short while ago, and asked the Chairman of the Committee if this commission will operate in the open, or secretly, and I take it the Chairman's answer was that there is no constitutional requirement that it operate openly.

The next question was whether the list would be made public, or would it be handled as a secret document, and I take it the answer is was that there is no constitutional requirement that this list be made public.

What kind of a government are we setting up?

The recommendation that is sitting before you at the present time provides for a commission. It has a commission extended from 3 to 5 members and it will operate removed from the bar association with lawyers and civilians who will recommend a list to the governor. If the governor for reasons of his own, and after all he is an elected man representing all the people, decides that there is one man that should be on that list that is not there, he should retain the right, and he would retain the right under this amendment to nominate him and appoint him; but we provide a further check in that whether he appoints outside the list or from the list, his nomination has to go to the Senate of Maryland, and there will be a hearing which will make quite clear if the Governor appoint outside

of the list, that he has appointed from outside the list, and he will carry the responsibility.

I submit to you that that is a better way. We are giving the majority of the Committee a unified system and the power to have these judges run in elections on a noncompetitive basis. Let's start thinking about the people and whether we are going to have some control over the judiciary.

THE CHAIRMAN: Your time is up, Delegate Gleason. Delegate Mudd.

DELEGATE MUDD: Mr. Chairman, ladies and gentlemen of the Committee of the Whole: This is another amendment designed to deprive the State of Maryland of the merit system or Missouri plan for the selection of judges, and which plan you have twice, by your vote, already sustained by a substantial majority.

The second time you sustained the position of the majority recommendation there was no alternative plan suggested. Here you have the alternative, appointment by the governor, with the advice and consent of the Senate. The alternative is a plan that Maryland abandoned more than a hundred years ago.

It is not clear from the second sentence of this amendment whether the list submitted is advisory or obligatory. I take it in the absence of such language that the list would be advisory only.

The check which the amendment proposes, appointment by the governor with the advice and consent of the Senate, is one that was submitted to our Committee. In fact, it was submitted by the spokesman for the minority, and I respectfully suggest to the delegates here that the spokesman for the minority who submitted this proposal as a delegate proposal to the Committee on the Judicial Branch, where it was debated and considered at length, now files a minority report, in which he does not support that matter of selecting judges.

Therefore, this amendment comes before you as a late thought of one delegate and unsupported, I assume, by the spokesmen for the minority, because it was not included in the minority report.

I have never been a member of the Maryland Senate, and I do not know for certain the procedure in the executive committee where greenback appointments are considered; but hearsay has it that a nominee for any position is subject to veto by the senator from whose district the nominee comes.