

Delegate Bennett, do you still desire to offer your amendment BF?

DELEGATE BENNETT: Yes, Mr. Chairman, if it is in order.

THE CHAIRMAN: The Page will distribute amendment BF. This will be Amendment No. 40.

DELEGATE BENNETT: Mr. Chairman.

THE CHAIRMAN: Delegate Bennett.

DELEGATE BENNETT: I think I can explain it.

THE CHAIRMAN: Just a second. I want to make sure it is distributed. The Clerk will read the amendment.

READING CLERK: Amendment No. 40 to Committee Recommendation JB-1 by Delegate Bennett: On page 6 section 5.21, Term of Office of Judge, strike out the sentence in lines 43 through 50, inclusive beginning with the word "The" in line 43, through the word "thereof." in line 50.

THE CHAIRMAN: The amendment is proposed by Delegate Bennett. Is there a second?

*(Whereupon, the amendment was duly seconded.)*

The amendment having been seconded, the Chair recognizes Delegate Bennett to speak to the amendment.

DELEGATE BENNETT: Mr. Chairman and ladies and gentlemen of the Convention, the purpose of my amendment is to strike out the proviso that the Court of Appeals shall make it mandatory to provide for a secret ballot as to whether a judge should be continued in office. My friends here have been enacting some pretty heavy stuff for lawyers. Lawyers are occupying or no doubt will occupy the dominant role in the nominating commissions and selections of lawyers. We have authorized the court by rule to determine the need for specialized courts. We have given a great deal of power to the courts in the administration of the court system, and we are feeding on pretty strong meat, it seems to me. I think that good sense and modesty, a sense of fitness of things would make the lawyers a little bit reluctant to set themselves up as judges exclusively as to whether a particular judge should be continued in office. That is bad enough, and it is lacking in modesty, as I say, but what it does in effect is hold a bludgeon over the court of the judge that may come up for continuance in office, and the judge, being

a human being and wanting to continue on, is going to encourage favor with the bar, and he is, I am afraid, going to destroy some of his own usefulness, because he will try to win the approval of the lawyers.

Moreover, and most importantly, we do not need to have this done by rule. Lawyers, any time they want to do so could hold their poll. They could make their views known and no doubt would do so.

Is this a matter of constitutional dimension, I ask you? Is this not perhaps exhortatory in nature. I think that it would be far more desirable to leave this matter to the sound discretion of the members of the bar, and I hope, therefore, that you will eliminate this provision and leave the judge in a degree of independence that is so necessary for success in his job.

THE CHAIRMAN: Delegate Mudd.

DELEGATE MUDD: Mr. Chairman, ladies and gentlemen of the Committee: This provision in our recommendation for polling lawyers and that the poll be published received careful and full consideration in our Committee. Delegate Proposal 5 as referred to our Committee in dealing with this matter made it permissive. The word was "may" and not "shall".

Initially the vote in our Committee on whether the provisions for the poll should be contained in the language of the recommendation of the study commission was very close. The closeness of the vote, however, as I recollect the discussion, was that if such a poll were permissive and not mandatory, the danger was greater; that it was great that it might in rare instances be used in an effort to dominate the thinking or guidance of the voters who would have an opportunity to vote Yea or Nay on the continuance of a judge in office.

After the word "may" was stricken and the word "shall" was added, the consideration by our Committee was by rather substantial vote to include this provision in the recommendation to this Convention.

We feel that in some areas here, we are arguing with respect to lawyers that they are dominated by judges. That was the thrust of the argument yesterday in eliminating members of the judiciary from the nominating commissions.

If I understand the thrust of the argument of Delegate Bennett in support of this proposal, it is that the judges will not only make no effort to dominate the lawyers, but will become subservient to their