

I would like to go back to the amendment offered by Delegate Bennett. It was withdrawn. Would you like to offer it again?

DELEGATE BENNETT: Yes, sir, I would like to have this amendment voted on. I was inclined before lunch to withdraw it and try to handle the matter some other way. I was influenced partially in my—

THE CHAIRMAN: Just a second. Let us wait to see if we are proceeding on the amendment. This is the amendment marked 40, and then withdrawn. Please now mark the Amendment No. 43.

The amendment is offered by Delegate Bennett. Is there a second?

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

THE CHAIRMAN: The Chair now recognizes Delegate Bennett to speak to the amendment.

DELEGATE BENNETT: I explained it earlier this morning, so I do not need to go into it again. I have given some thought to withdrawing it. This provides for a poll by lawyers to influence some of the members of the Convention to vote for the committee report who might not have been willing otherwise to vote for it.

I do not want to do anything in the world to endanger the report of the majority of the committee; but, on the other hand, I look still with considerable dismay and concern at this provision authorizing a secret ballot by the lawyers on whether or not a judge should be retained.

This is arrogation that arrogates to the judges, to a select few, the privilege of passing upon the qualifications of these people which, as I say, I do not think is in good taste. I do not think it can be objective. I do not think that the lawyers, necessarily, are any better able to judge on the broader performance of the court than are any other people, and moreover, I think the presence of this proviso in the Constitution is a good letter on which those who object to the Constitution can base their objection. They are going to say that this Convention is dominated by lawyers, that they have provided privileges and opportunities for themselves that are not justified, and therefore they are going to campaign against the charter. I would not want to see anything of that kind done.

I ask you to influence the matter, consider the influence of this, and consider

what would happen if polls would come out and say that 52 percent of the lawyers of the district object to the judge, and 48 percent favor him.

What do you suppose the attitude of that judge is going to be when he is re-elected, as surely will be the case, despite this poll. There is a small chance he would not be re-elected, no matter what the poll says. Suppose it comes to a very close vote?

Does that not mean the judge is going to be something more of a problem than he was before to the lawyer?

I think that the whole situation will be much better if this were left discretionary, or if it was left to a poll by the bar association.

With those few remarks, I leave it in your hands.

Thank you very much.

THE CHAIRMAN: Delegate Mudd.

DELEGATE MUDD: Mr. Chairman and Ladies and Gentlemen of the Committee:

There is very little more I could say with reference to this amendment than I believe I said this morning when it was first proposed, and I believe discussed briefly before it was tabled until this time.

I suggested to the proponent that I do not see some of the problems with reference to this poll which he apparently anticipates if it is a secret poll, and the disposition of the lawyers who may have been less than enchanted with the record of the incumbent, the disposition of the individual lawyers is not known and cannot be determined.

I fail to see how that could be used in the manner that the proponents suggest. I have noticed to the extent of my ability here from the debate around the strong feeling of some of the delegates at least that this poll is a valuable contribution in the overall recommendation of the commission.

I think perhaps that is particularly true with populous areas where there are a great number of lawyers and contrary to the situation that might exist in sparsely settled areas, few of the voters may have personal knowledge of the incumbent.

Again, may I say that I feel that some obligation evolves upon the members of the bar, as officers of the court, to give the voters there who are interested their view as to the talent or lack of talent of the incumbent judge.