

I might further suggest that in my humble opinion, should the result of such a poll be the figures suggested by Delegate Bennett, with 52 favoring and 48 percent not favoring the incumbent judge, I would guess that that judge would not be returned, if the overall objective of this plan of ours is to obtain the best; and if I am correct in that view, I feel there is a useful purpose to be served by the poll. I would resist any effort to make it permissive, because I feel if it were permissive, then even if it did not occur, we would be subject to the criticism that it is there as a lever to use when and if it might serve the purpose of those in control, so I feel it should be mandatory or not at all.

THE CHAIRMAN: Do any other delegates desire to speak in favor of it?

Delegate Chabot.

DELEGATE CHABOT: Many people have indicated the sentiment for taking things out rather than putting them in. I find it difficult to see why this particular obligation of the bar, if there be such an obligation, must be mandated in the constitution. I do find great difficulty with the requirement to the poll. It seems to me that it can be misused in many ways. It seems to me that it opens to any dissident who is unhappy with the way he was treated in an individual case the opportunity to muster up some group who are willing to vote against the judge who can perhaps gather only a quarter of a third of the votes, far less than the majority.

I would suggest that Delegate Mudd might well agree that a judge who had a "No" vote in this secret poll of as many as one-quarter or one-third of the attorneys in his district would find that his usefulness as a judge has been seriously impaired, even though this did not at all indicate the general attitude of the lawyers in the area, even though this may have been a vote sponsored primarily by, as I say, one or two dissidents.

If we have as a number of the people here have suggested we will have within a short time, an integrated bar, and there is some feeling as to the qualifications of a particular judge, I am quite sure that there will be no difficulty in the absence of this sentence, of the bar association requiring members to poll their opinions is included; but this will occur when there is a real acknowledged feeling, when perhaps this judge is not worthy of continued sitting.

I suggest that is the appropriate way of handling the situation. I urge you to so vote.

THE CHAIRMAN: Does any delegate wish to speak in opposition?

Delegate Roscnstock.

DELEGATE ROSENSTOCK: Mr. Chairman, the only witnesses before our Committee who opposed the secret poll were some of the judges who appeared before us. If the speaker before had ever spent much time in the organized bar, he would find that the present sitting judge principle that was adopted in order to help a city judge through an election, had the mechanics of having a friend of that judge present to the bar association a resolution to back that particular judge for reelection. That association, by almost the unanimous vote, resolved to back him, and so advertised to the public that sitting Judge "X" should be reelected.

You know, it takes a great deal of courage in an open meeting of the bar association to say that Judge "X" might be honest, but he was not qualified, and sometimes I fear some judges of not the highest ability have been retained on the bench; whereas, in the secret ballot to be conducted by, we hope, the clerk of the Court of Appeals of Maryland, every lawyer will have to wrestle with his conscience, whether he should vote yes or no for the retention of Judge "X".

THE CHAIRMAN: The Chair recognizes Delegate Barrick to speak in favor of the amendment.

DELEGATE BARRICK: Mr. President and Ladies and Gentlemen of the Convention:

This procedure may be desirable in larger areas, but in the rural areas it will not work at all. In Frederick County we have some 45 practicing lawyers, and if we had a secret ballot as to whether or not to retain a judge, I could tell you how each member of the bar would vote, and I submit the judge could do likewise.

What I fear most is that he might guess wrong; I submit it will not be a secret ballot in smaller areas. I do not think it is needed, and it will not serve any useful purpose.

THE CHAIRMAN: The Chair recognizes Delegate Sickles.

DELEGATE SICKLES: Mr. Chairman and members of the Commission: