

Courts should be appointed by the courts and by the judges for whom they will perform judicial functions.

However, any doubts I may have had were completely resolved when I read in the papers a report of a hearing before the Judiciary Branch Committee of this body in which I understand it to have been testified by several clerks, not from Baltimore City, that they felt that people would not get fair justice if the clerks were not elected.

This statement, if it was made, completely shocked me. Certainly we do not want a bicameral judicial system in this state. Certainly we do not want a situation where a court clerk can say to the judge: the people elected me, you only ran against yourself, so you better let me make this decision.

I ask that you vote in favor of the amendment, and leave justice in the hands of the judges.

THE CHAIRMAN: Is there any further discussion?

*(There was no response.)*

Are you ready for the question?

*(Call for the question.)*

The question arises on the adoption of Amendment No. 55; the Clerk will ring the quorum bell.

The question arises on the adoption of Amendment No. 55 to Committee Recommendation JB-1. A vote Aye is a vote in favor of the amendment, a vote No is a vote against. Cast your vote.

Have all the delegates voted? Does any delegate desire to change his vote?

The Clerk will record the vote.

There being 48 votes in the affirmative and 83 in the negative, the motion is lost and the amendment is rejected.

Are there any further amendments to section 5.30? The Chair hears none. Are there any amendments to section 5.31?

Mr. Clerk, do you have any amendments?

Delegate Johnson, do you still desire to offer your amendment?

DELEGATE JOHNSON: Is that with respect to section 5.31?

THE CHAIRMAN: It is.

DELEGATE JOHNSON: It is my opinion it is not necessary at this time.

THE CHAIRMAN: Thank you, sir.

Is there any other amendment in section 5.31?

Delegate Willoner, do you still desire to offer your amendment CO?

DELEGATE WILLONER: I do, Mr. Chairman.

THE CHAIRMAN: The pages will distribute amendment CO. This will be Amendment No. 56: The Clerk will read the amendment.

READING CLERK: Amendment No. 56 to Committee Recommendation JB-1, by Delegates Willoner and Stern: On page 10 section 5.31 Rule-making power line 18 after the period insert the sentence: "However, a rule shall not supersede a law unless at least two years have elapsed since the effective date of the law."

THE CHAIRMAN: Amendment No. 56 having been moved by Delegate Willoner and seconded, the Chair recognizes Delegate Willoner to speak to the amendment.

DELEGATE WILLONER: I rise to oppose the exclusive rule-making power. I opposed it on a very strong basis. Essentially this amendment goes to the theoretical objection I have to the present section 5.31 and that is that historically, not in Maryland, but generally speaking, historically the law-making power lies with the representatives of the people in the legislature. Under the proposed 5.31 it is concurrent power and while this is a departure which is a concept of separation of powers in the State of Maryland, it has in fact in the past worked reasonably well in that the power to make laws by the court, they call it rule-making power, but I think it is law-making power, that this power be shared by the courts and legislature.

There is a technical fallacy that has been pointed out in one of the books that we received up at Goucher, "The Judicial Process in Maryland", by Dr. Elbert M. Byrd, Jr., where he indicates that there is a "see-saw" objection, theoretical see-saw, and I will read from that: "In theory this 'see-saw' appears to be quite possible, although practical and political considerations are likely to prevent its development."

It seems to me we should not risk this problem on the hope that practical and political considerations would avoid it. This would not affect it. But where the legislature acts and essentially overrules the rule, the legislature could not the next day come