

you have not. It may well have been just the day before, the week before, last month, an identical case came up, marked unpublished, was presented before the court and the opinion came out unpublished and the attorney general knows this, knows what the court's feelings are in this matter and you are at a disadvantage.

I know that one of the objections to publishing all the cases would be that we would run out of room. However, I think it would be far better to run out of library space, but enable all of the attorneys to have the advantage of knowing what opinions were coming out of the courts and not just restricting it to the state's attorney and the attorney general.

DELEGATE JAMES (presiding): Chairman Mudd.

DELEGATE MUDD: Mr. Chairman and ladies and gentlemen of the Committee; I rise in opposition to this amendment. I readily admit and agree that the proponent of the amendment has an arguable point and he has discussed the matter with me and I am personally sympathetic with the problem. However, I do not believe that it is necessary to try to correct this, as well as some other minor problems in the constitution.

The pertinent provision of the present Constitution is that provision shall be made by law for publishing reports of court orders, the court of the term of appeals and intermediate court of appeals, which the judges thereof respectively shall judge as proper for publication.

The proposed amendment of course goes much further than the present constitutional provision and is designed to make obligatory that all opinions, however inconsequential and of no new matter be published.

We feel that this is not a matter that warrants constitutional stature and sympathetic as we are with the problems posed by this amendment, we do believe it can be accomplished much easier than adding this new section to the judicial article, and I therefore oppose the amendment.

DELEGATE JAMES (presiding): Delegate Willoner.

DELEGATE WILLONER: Mr. Chairman, while I agree with Mr. Mudd, that was a 1966 amendment giving the Court of Appeals the discretion whether or not to publish the opinions, it was in the 1951 Constitution that carried over in the suc-

ceeding Constitutions, and as a result, we have written published opinions of the Court of Appeals.

In 1966, they changed that and in 1966 and 1967, we did not have the published opinions of the Intermediate Court of Appeals. I frankly do not know anything that the Court of Appeals has failed to publish. The point simply seems to be that if we do not provide this in the constitution, they will not be published. It is a very simple question and I think the Convention ought to answer it affirmatively.

*(At this point, President H. Vernon Eney, Chairman of the Committee of the Whole, resumed the Chair.)*

THE CHAIRMAN: Delegate Marvin Smith.

DELEGATE M. SMITH: May I suggest to my brother here, Mr. Chairman, that actually the 1966 amendment simply made provision for the court of special appeals. Prior to 1966 the provision read, "provision shall be made by law for publishing a report of all causes argued and determined by the Court of Appeals, which the judges shall designate as proper for publication."

You know, sir, and I know that for many years it was customary on the part of the court to designate a number of cases not to be reported, and such was the case up until some ten or fifteen years ago. I submit to you, sir, that this is not a matter of the Constitution but a matter for the General Assembly and the bar association.

THE CHAIRMAN: Is there any further discussion? Delegate Case?

DELEGATE CASE: Mr. Chairman, ladies and gentlemen of the Committee of the Whole: Since the focus of this argument has been placed on the court of special appeals, and because I had made some part in the creation of that court, I should like to perhaps neither speak for nor against the amendment but to set the record straight and tell you exactly what the facts are.

It is true that the court of special appeals did not publish a number of its opinions in the past. The reason for this was that the cases that come before that court, as you all know, are all criminal cases, and these cases generally speaking are what we lawyers call fact cases. That is to say, they involve no new and novel question of law, but only questions of fact.

At the outset, the judges of that court, with the idea of saving the state money, did not publish some of these opinions, be-