

THE PRESIDENT: Delegate Marion, do you yield to a question?

DELEGATE MARION: Yes, sir.

THE PRESIDENT: Delegate Johnson.

DELEGATE JOHNSON: I am sorry I have not had a complete opportunity to adjust to the amendment, but I want to ask is it in anyway a change in substance or in any way a change of an understanding of any colloquy that existed either in the Committee of the Whole or in the Convention?

THE PRESIDENT: Delegate Marion.

DELEGATE MARION: No, it is not intended at all to change the substance of the section, and if you refer to the various colloquies you had with Chairman Mudd and with the Chair on the use of the words in this section, it is not intended to change any of the questions and answers in those colloquies.

THE PRESIDENT: Delegate Johnson.

DELEGATE JOHNSON: Again, please understand that I have not had a full opportunity to completely comprehend this amendment, but would this amendment not, perhaps, give rule-making power in the Court of Appeals and matters governing the administration of the courts that is not otherwise provided in Article 5?

THE PRESIDENT: Delegate Marion?

DELEGATE MARION: I do not see that, Delegate Johnson.

THE PRESIDENT: Delegate Marion, I think it might be helpful if you would read the sentence as it would read when amended.

DELEGATE MARION: The sentence would read: "The General Assembly, by law, shall have concurrent power to regulate the matters enumerated in this section, except when these matters are specifically required by this Constitution to be prescribed by rule."

THE PRESIDENT: Delegate Johnson.

DELEGATE JOHNSON: Would or would not if this amendment is adopted, would it give to the Court of Appeals concurrent rule-making power in areas in Article 5 where we have specifically recited that the legislature shall have that power, and, in other words, exclusive power not subject to rule-making power, and, therefore not concurrent?

THE PRESIDENT: Delegate Marion?

DELEGATE MARION: I do not believe so. This section, as it is written, gives the Court of Appeals the power to prescribe rules in the first sentence in three specific areas.

The next sentence which this amendment is designed to clarify simply gives the General Assembly the authority to act by law, a concurrent power to act by law in those three areas, except when any of those things that might be taken to be encompassed within the three categories of the first sentence are spelled out elsewhere in that article and are specifically required to be prescribed by rule, and in those instances it says, the Court of Appeals, by rule.

I see no way that it could entitle the Court of Appeals to have a jurisdiction to do by rule what we say the General Assembly is to do by law elsewhere.

THE PRESIDENT: Delegate Johnson.

DELEGATE JOHNSON: Does it not say what you purport it to say without the amendment?

THE PRESIDENT: Delegate Marion.

DELEGATE MARION: If you are asking me is it not true that it makes no substantive change, I would say yes.

THE PRESIDENT: Delegate Johnson.

DELEGATE JOHNSON: No further questions.

THE PRESIDENT: Delegate Weidemyer.

DELEGATE WEIDEMEYER: Delegate Marion, the first sentence of section 5.03, which confers upon the Court of Appeals the power to prescribe rules is a new departure, as far as I can recall constitutionally, because the Court had no power to prescribe rules before. Their only power was that derived from act of the legislature. Now specifically in the first sentence this gives it to them constitutionally, and we definitely understood that it was to be a concurrent power of rule-making.

When you put in "The General Assembly shall by law have concurrent power to regulate matters subject to rule, except when these matters are specifically required for this Constitution to be prescribed by rule", are you not then deleting and cutting out the concurrent power of the legislature with the Court of Appeals that we definitely understood in the Committee of the Whole.