

whether or not that in effect gives the General Assembly concurrent authority with the judiciary so far as the court system is concerned; that is, I think you suggested we remove the word "exclusively" and add "such other courts as may be established by the General Assembly."

I am asking you whether or not in effect by removal of that word you give the General Assembly the authority to create any court they want to establish, whatever rule, or whatever procedure they so desire for that particular court; is that correct?

DELEGATE JOHNSON: No, let me answer your question this way: When we suggested removing the word "exclusively" we meant it was consistent with our position that the legislature should be able to provide whatever other special courts may be needed.

As a matter of fact, as I indicated at the outset, we would be satisfied if the language were "and such other courts that are not inconsistent with the unified judicial court system." That is our position. I will make it plain as I can, but that is our position.

THE CHAIRMAN: Delegate Hargrove.

DELEGATE HARGROVE: My question is: Are there any other powers which the judicial system has which the General Assembly would have by virtue of their ability to create additional courts?

"Exclusively", as far as I can understand it, means all powers of the judiciary are in a court system of four tiers. When you remove "exclusively," you remove some powers. What powers are you removing, or are there any powers you are removing and giving to the General Assembly by the elimination of that word?

DELEGATE JOHNSON: I do not think we are removing any powers. It is my understanding, if my recollection is correct, that there is a Maryland case in point that held that although our present Constitution does not provide the word "exclusively," that by spelling out the number and names of the courts that is in fact what it means, that it is an exclusive court. So that at best the word is unnecessary in my opinion.

DELEGATE HARGROVE: The present Constitution does not contain the language "shall create any such courts as the General Assembly may desire." Every court in the State of Maryland is a constitutional court, as I understand it; is that correct?

DELEGATE JOHNSON: That is partially correct. There is wording to that ef-

fect, however, with respect to the creation of other intermediate appellate courts, I believe.

DELEGATE HARGROVE: Within our constitution.

THE CHAIRMAN: Delegate Raley, do you have a question?

DELEGATE RALEY: Delegate Johnson, I know what you are trying to get at, but the thing that bothers me here is I do not like to see the legislature forever excluded from being creative. For instance, somebody mentioned a family court. Maybe the judicial system by rule would not do anything about it. I think that the General Assembly which has the pressures of the people—

THE CHAIRMAN: Do you have a question, Delegate Raley?

DELEGATE RALEY: I have a question. I was trying to see if it could be that the functional divisions could be divided as divided now or as will be prescribed by rule only by the court, but could it be added also by law?

DELEGATE JOHNSON: That is a very good point, Delegate Raley. Perhaps the Committee of the Whole would be interested in knowing that an amendment along the lines you mentioned was short of a majority, but it was supported as I understand it by the entire minority plus. We originally suggested that the section with respect to functional divisions, section 5.08, read, the last sentence, "functional divisions of superior court may be established in any county prescribed by rule or by law."

The majority did not accept it and we did not file a minority report on this item because we believed that the judiciary should have certain procedural type exclusive rule-making powers.

If that is a valid concern of yours and of the Committee of the Whole, it can easily be corrected. I am sure it is a valid concern of yours or you would not have mentioned it, but if it is in fact a concern of the Committee of the Whole, an amendment providing for the establishment of functional divisions by rule or by law could be easily provided for and perhaps adopted by this body.

THE CHAIRMAN: The Chair does not want to prolong this session unduly. I would like to conclude this phase of it if possible. I will recognize Delegates Armor and Claggett in succession. If there are