

I think that we have to look at this in the light of the possibility that the judicial budget, the judicial package, may or may not be subject to legislative review.

There is some question in my mind, and I think in most minds, concerning to what extent the legislature is going to be able to cut or scrutinize or examine the judicial budget. In our view if the district courts are given carte blanche with respect to the selection of commissioners, there may in fact be no way that irresponsible action, if any, may be curbed.

The Committee of the Whole should know that a number of judges have expressed a desire not to see such matters as the selection of commissioners within their control, and prefer that it be and remain a legislative function.

In our view this will help keep the courts insulated from partisanship, without hamstringing their operations. We often asked with respect to clerks and commissioners whether or not, if these matters were left to the legislature, this would in any way impede the judicial administration and to each and every question along that line the judges responded emphatically no, that it would not.

For that reason, and for the reasons contained in the minority report, we would prefer to see the creation of the office of commissioner, and the tenure and the appointment of the commissioner established by law, or by the legislature.

Let me hasten to add that by the same token we sincerely believe and recommend to the Committee of the Whole that the power of the commissioner be determined by rule, as proposed in the majority report, so that if the amendment of the minority carries, as we urge this Committee to adopt, section 5.11 would read as follows:

"The General Assembly may provide for Commissioners of the District Court. The number, qualifications, appointment, compensation, and tenure of District Court Commissioners shall be prescribed by law. Commissioners may exercise power only with respect to warrants of arrest, bail, collateral, and incarceration pending hearing, and then only as prescribed by rule."

We think that this particular section is clearly divisible; the appointment and tenure is clearly a legislative function, and the power is clearly a judicial function. We urge the Committee of the Whole to give serious consideration to our position in this matter.

THE CHAIRMAN: Are there any questions of the minority spokesman as to section 5.11?

*(There was no response.)*

Any questions of the minority spokesman as to any portion of court structure, sections 5.01 to 5.11?

Delegate Scanlan.

DELEGATE SCANLAN: Mr. Johnson, I have two questions, one of which I asked the Chairman of the Committee, and one of which I neglected to ask him.

The first question, the one which I did not ask Chairman Mudd is, are there any precedents in other states for having commissioners appointed by the courts? I know that in the federal system, the United States commissioner is appointed by the President of the United States. My question is, is there any precedent among the other states for what is proposed here?

My second question is the same one I asked Chairman Mudd: what is the feeling of the minority with respect to permitting the commissioners to exercise other powers apart from those specifically listed, both in your proposal and in the majority proposal, provided that those additional powers are vested by rule? In other words, as the future indicates the commissioners can be trusted to do more, can this be given to them by rule without amendment of the constitution. Do you have any feelings about that?

DELEGATE JOHNSON: To answer your first question, we have not found any state constitution that provides for appointment by the judiciary of a similar function, such as commissioner, or for that matter, if it is analogous, which we think it is, clerks on the lower court. We have not found any states that provide it. We have only found a similar system existing in a federal system.

To answer your second question, we did not discuss this specifically in our minority meeting, but it would certainly be my view and I would be in favor of keeping it general, or perhaps even providing that the powers of the commissioners be general.

As far as I am concerned, personally, you could say commissioners may exercise those powers that are prescribed by rule, and I am certainly in favor of the court having the power to increase the power of the commissioners.

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