

stance? The implication of the question is that if it should be determined to be a matter of substance, then if the amendment is adopted the rule-making power would not apply, and it can then only be decided by the General Assembly.

My question is, is it quite clear to the Committee that this is a matter of practice and procedure, and not a matter of substance?

THE CHAIRMAN: Delegate Mudd.

DELEGATE MUDD: That would be my interpretation; it is practice and procedure, not a matter of substance.

DELEGATE DELLA: Mr. Chairman.

THE CHAIRMAN: Delegate Della.

DELEGATE DELLA: Will Delegate Mudd yield to a question?

DELEGATE MUDD: Yes.

DELEGATE DELLA: When the Court of Appeals was increased from five to seven, did the legislature not state how many judges should hear a particular case?

THE CHAIRMAN: Delegate Mudd.

DELEGATE MUDD: I think so, yes.

THE CHAIRMAN: Delegate Della.

DELEGATE DELLA: When the intermediate court was created, did the legislature say how many judges should form a panel?

THE CHAIRMAN: Could you indicate more clearly by the legislature saying so? Do you mean by constitutional amendment?

DELEGATE DELLA: By statute.

THE CHAIRMAN: I am not sure Delegate Mudd understood your prior question. Would you restate your first question?

DELEGATE DELLA: When the Court of Appeals was increased from five to seven, did the legislature not say that there shall be four judges to hear a case?

DELEGATE MUDD: My recollection, Delegate Della, is that it is in the Constitution.

THE CHAIRMAN: Delegate Della.

DELEGATE DELLA: Did the legislature not place in the Constitution that four judges shall hear a case?

THE CHAIRMAN: Delegate Mudd.

DELEGATE MUDD: That is in the Constitution.

THE CHAIRMAN: Delegate Della.

DELEGATE DELLA: That is right, and the legislature took it upon themselves to put that figure in the amendment.

THE CHAIRMAN: Delegate Mudd.

DELEGATE MUDD: Well, do you mean by the legislature, by the drafting of the constitutional amendment that was adopted?

DELEGATE DELLA: That is right.

DELEGATE MUDD: Probably so, but it is a constitutional amendment. It is not prescribed by law.

THE CHAIRMAN: Delegate Della.

DELEGATE DELLA: If they had that power then, was that abused?

THE CHAIRMAN: Delegate Mudd.

DELEGATE MUDD: Certainly not in my view.

THE CHAIRMAN: Delegate Della.

DELEGATE DELLA: Could it be abused today if this amendment is adopted?

THE CHAIRMAN: Delegate Mudd.

DELEGATE MUDD: The distinction I get, Delegate Della, is that the constitutional amendment proposed, with language suggested by the legislature, perhaps, was adopted with that language in it.

It was not a secondary thought or subsequent amendment by the legislature. It was part of the constitutional amendment creating the court, and not by action of the legislature, except in initiating the constitutional amendment.

THE CHAIRMAN: Is there any further discussion? Are you ready for the question?

The question arises on the adoption of Amendment No. 5 to Committee Recommendation JB-1 with respect to section 5.06. A vote Aye is a vote in favor of Amendment No. 5. A vote No is a vote against.

Has every delegate voted?

Does any delegate desire to change his vote?

*(There was no response.)*

The Clerk will record the vote.

There being 85 votes in the affirmative and 44 in the negative, the motion carries. The amendment is adopted.