

DELEGATE GRANT: I will speak just briefly to this amendment. I hope that we do not get into forty minutes of debate again.

Essentially the amendment simply says that instead of the commissioners being limited to the four powers set forth—that is, arrest, bail, collateral, and incarceration pending hearing—they may exercise such power as prescribed by rule. It would appear unwise to fix for all time in the future that an officer set up by the constitution may issue only four pieces of paper. Times will change, requirements will change, qualifications of personnel will change, the necessities will change. This simply means that the commissioners will exercise such power as may be prescribed to them by rule of the court.

It would mean commissioners in rural areas may be required to exercise a very different power. It may mean a commissioner in a rural area would have to be of necessity of sufficient qualifications to issue a search warrant. The same necessity might not prevail in an urban area.

I would normally ask the Committee if they would accept this recommendation, but in view of the primrose path which I led Delegate Mudd down the last time I would not do that. I would simply urge you to vote to allow the commissioners a broad power.

THE CHAIRMAN: The Chair recognizes Delegate Mudd.

DELEGATE MUDD: Mr. Chairman, ladies and gentlemen of the Committee of the Whole: I appreciate the kind remarks of Delegate Grant and certainly I would be most grateful if I could, consistent with the Committee recommendation, concur in his proposed amendment.

We admitted in our initial presentation we were to the best of our ability recommending adoption by this Convention of an over-all judiciary article that did contain in some instances guidelines which we thought would be helpful in the administration and functioning of an efficient judiciary.

These limitations on the actions and powers of the commissioners, spelled out in the last sentence of 5.11, are intended to limit the function of these part-time non-lawyer members of the judicial branch so to speak, if we may put them in that category.

It is the considered opinion of the majority of the Committee on the Judicial

Branch that the functions and powers of these commissioners should be limited and that the best way to keep the uniformity and court structure within proper spheres of activity was to suggest guidelines to the court in rule-making power governing the function of the commissioners.

I, therefore, reluctantly oppose the position of my good friend, Delegate Grant, but must necessarily urge the defeat of this amendment consistent with the considered opinion and majority recommendation of our Committee.

THE CHAIRMAN: Is there any other delegate who desires to speak in favor of the amendment?

Delegate Clagett.

DELEGATE CLAGETT: Mr. Chairman, this amendment I think came as a result of questioning of the Chairman of the Committee yesterday afternoon. It is in line with the questions at that time with respect to qualifications. If the qualifications of the commissioners are to be set by rule, and we heard Delegate Case a few minutes earlier this afternoon indicate that before the Bar Association, the recommendation of the Committee was that where possible these commissioners would be lawyers.

Ultimately, as time and necessity dictate, the qualifications of these commissioners will be quite high. There is no reason to anticipate that they may not be sufficiently high to justify the responsibility of issuing search warrants.

I cannot but think in these terms. Where the case load on the district judge is going to be so heavy in a community that if you routed him out of bed at 2:00 P.M. or 3:00 P.M. in the morning in order to issue a search warrant and kept him up two or three hours, then put him on the bench at 10:00 A.M. the next morning, or earlier, he is going to be a rather sleepy judge. He is going to have a great deal of difficulty in properly administering the responsibilities of that court.

There is no reason in the world why the powers of these commissioners should not be flexible, should not be increased in addition to those specifically assigned in the constitutional language here. By confining to those powers only, we tend to strait-jacket rather than encourage flexibility. By this amendment I think we have the flexibility, but we have the same thought.

THE CHAIRMAN: Does any delegate desire to speak in opposition?