

1 to me an unfair handicap to the appellee.

2 THE CHAIRMAN: This would require the concurrence
3 of four in the decision, regardless of the quorum.

4 MR. MILLER: Yes, but if there were five judges
5 who heard the case, there would be at least the chance of
6 picking up one more, better than if there were only four.

7 THE CHAIRMAN: Any further discussion?
8 Mr. Clagett?

9 MR. CLAGETT: As a practical matter, doesn't
10 it really mean that at least five judges would always sit
11 and in all probability the full court, unless there was
12 some good reason for one of the judges to be absent?

13 THE CHAIRMAN: You mean the court couldn't sit
14 in panels of less than five?

15 MR. CLAGETT: Exactly.

16 THE CHAIRMAN: Any further discussion? Are you
17 ready for the question?

18 The question arises on the motion to substitute
19 five for four in the third line of Paragraph B. All those
20 in favor please signify by a show of hands. Contrary?

21 The motion is carried 17 to 3. Any further