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LB 921

"neither/nor". It's necessary to state it in the negative.

SENATOR CHAMBERS: Let me get with you then. Okay, starting in line 19: "A district court may vacate or modify its own judgment or orders after the term at which such judgments or orders were made (a) for mistake, neglect or omission of the clerk or irregularity in obtaining a judgment or order; (b) for fraud practiced by the successful party in obtaining the judgment or order;" then we'd come to this language, "for newly discovered material evidence which could neither have been discovered with reasonable diligence before trial nor have been discovered with reasonable diligence in time to move for a new trial". I don't see the difference. But let me ask this, forgetting that I don't see the difference at this reading. The language that would be inserted is not designed to be different in purpose from the language which is in the green copy. Is that true?

SENATOR BRASHEAR: That is true. It's designed to establish the standard by which the district court would rule.

SENATOR CHAMBERS: Okay. Now let me ask you another question and this would be in the green copy since we're in this area and it's not being touched by your committee amendment. In line 19, I realize that the language stricken says, "shall have power to". That is stricken and we're putting in "may". When you use the construction "shall have power to vacate" can be construed to mean "may". It shall have the power, but it does not necessarily have to exercise it in that way. Mr. President, did you tell me I had one minute yet?

SENATOR CUDABACK: In five seconds, Senator.

SENATOR CHAMBERS: Okay, then I'll figure I got a minute. Why do we put "may" instead of "shall"?

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: And I may have an idea for an answer, but I want something in the record on this point, or should I wait until we get to the bill itself? Let us go ahead and get the committee amendment out of the way. Then I won't be mixing that