ALASKA CONSTITUTIONAL CONVENTION

December 9, 1955

THIRTY-SECOND DAY

PRESlDENT EGAN: The Convention will come to order. We have with us this morning Chaplain Major Henry A. Foss of Ladd Air Force Base. Chaplain Foss will give the daily invocation.

CHAPLAIN FOSS: Eternal loving Heavenly Father, we raise our hearts in gratitude to Thee Who has been the guiding and sustaining force and power within our lives throughout the days and years of the history of our nation. We thank Thee for this occasion and this assembly which is gathered here for the transaction of this important business. We pray Thee that we may be guided by Thy Spirit in mind, in heart, in our deliberations and actions that may determine a course and path of life that may bring happiness and welfare for the common good of all concerned. We ask in His name and for His sake. Amen.

PRESIDENT EGAN: The Chief Clerk will call the roll.

(The Chief Clerk called the roll at this time.

CHIEF CLERK: Two absent.

PRESIDENT EGAN: A quorum is present. The Convention will proceed with the regular order of business. Does the special Committee to read the journal have a report to make at this time?

WHITE: Mr. President, the Committee to read the journal has read the journal for the 29th and 30th days, Tuesday and Wednesday, December 6 and 7, respectively, and recommends their adoption without change.

PRESIDENT EGAN: Mr. White asks unanimous consent that the journals of the 29th and 30th Convention days be adopted.

WHITE: I beg your pardon. Correction. The journals for the 28th and 29th days.

PRESIDENT EGAN: Mr. White asks unanimous consent that the journals of the 28th and 29th days be adopted by the Convention. Is there objection? Hearing no objection it is so ordered and the journals are ordered adopted.

WHITE: Mr. President, the Committee to read the journal has read the journal for the 30th day, Wednesday, December 7, and on page 2, sixth paragraph, in the middle of the page, beginning . Coghill", instead of "Administration Committee" say "Committee on Administration". Two paragraphs below that "Mr. Londborg asks that the consideration , strike "the". Three paragraphs below that is the same situation. "Mr. Londborg

moved that the", strike "the". Page 4, fourth paragraph, second line, after "12:15" insert o'clock p.m. The Committee to read the journal, Mr. President, recommends the adoption of the journal for the 30th day with these corrections.

PRESIDENT EGAN: Mr. White asks unanimous consent for the adoption of the journal for the 30th day, with the proposed amendments. Is there objection? Hearing no objection it is so ordered and the journal of the 30th day with the proposed amendments is ordered adopted. Are there any petitions, memorials or communications from outside the Convention?

CHIEF CLERK: No.

PRESIDENT EGAN: Are there reports of standing committees? Reports of select committees? Mr. Sundborg?

SUNDBORG: Mr. President, your committee to suggest arrangements for hearings during recess has had placed on the desk of each delegate a report which, since its preparation, has been approved by the committee chairmen. The committee chairmen asked that it be submitted to the Convention for such action as the Convention desired to take on it. I would like to say that this report and the arrangements suggested therein were compiled from the questionnaires which the members filled out and turned in to the Chief Clerk. Since the time that the report was prepared, we have made some slightly different arrangements respecting compensation and per diem than many members contemplated at the time they filled out the questionnaires and so it is possible there will be some changes which we will want to make in the schedule of hearings. I would like to explain that several principles which guided your committee in setting up this schedule of hearings were as follows: first of all, we scheduled delegates for hearings only in their home communities except in the case of those who are remaining in Fairbanks and who are here from other places and except that Mrs. Hermann, who is going to Nome anyway and who was elected at large in the Territory, would be scheduled for a hearing in that City. We also had the guiding principle that no delegate would be set down on the schedule for a hearing in more than one place. Since I know there will probably be several members who want to suggest changes in this as far as their own plans are concerned, I would like to suggest to the Convention that we take a brief recess during which those members could contact the Committee and then we will bring the resolution out on the floor and I will move its adoption with certain amendments.

PRESIDENT EGAN: If there is no objection the Convention will stand at recess for a few minutes. The Convention is at recess.

RECESS

PRESIDENT EGAN: The Convention will come to order. Mr. Sundborg.

SUNDBORG: Mr. President, I ask unanimous consent to revert to the order of business dealing with introduction of resolutions.

PRESIDENT EGAN: Mr. Sundborg asks unanimous consent to revert to the order of business of introduction of resolutions. Is there objection? If there is no objection it is so ordered.

SUNDBORG: Mr. President, I move and ask unanimous consent that a resolution consisting of the matter contained in the report to the Convention by committee chairmen, which was distributed to the delegates yesterday, be adopted by the Convention with the following changes: On the first page, item 1, after the word, "hearings" strike the words, "of not to exceed two days". On line 2 insert a comma after the word "Anchorage" and strike the word "and" immediately following. Change the period after "Fairbanks" to a comma. Strike all of the next line which is the first line of the second paragraph. In the following line, which is line 4, strike "Kotzebue and insert in its place "Unalakleet". In the next paragraph, second line, strike Unalakleet" and insert in its place Kotzebue". On page 2 the fourth item, strike "Kotzebue -- Mr. Cross" and insert "Unalakleet -- Mr. Londborg". In the last of the places shown for hearings, Fairbanks, strike the first name, "Mr. Barr". Item 5, second line, after the word "Convention" insert the words "if possible".. Mr. President, I would like to now read item 1 where we made several changes so all delegates will know how it reads if the changes are adopted.

> " "1. Hearings shall be held at Ketchikan, Juneau, Anchorage, Fairbanks, Wrangell, Petersburg, Sitka, Haines, Klawock, Nome, Unalakleet, Kodiak, Cordova, Seward, Homer, Palmer, Dillingham, Valdez and Nenana."

One additional amendment has just been called to my attention. On page 2, the third place name, Nome", strike the words "and Mr. Londborg". Mr. President, I move and ask unanimous consent for the adoption of the resolution as amended.

PRESIDENT EGAN: Mr. Sundborg moves and asks unanimous consent for the adoption of the resolution as amended.

KILCHER: I object.

SUNDBORG: I so move.

PRESIDENT EGAN: Mr. Sundborg so moves. Who seconded the motion?

WHITE: I second the motion.

PRESIDENT EGAN: Mr. White seconded the motion. When a person

seconds the motion they should also get up and address the Chair so it will be easier for the secretariat to see who it was. The motion is open for discussion. Mr. Kilcher.

KILCHER: Mr. President, I am sorry that I have to object. The reason is that in spite of having contacted the Committee of three on a matter of importance, no consideration has been given to my objection.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: I wonder if I could interpose that we did give consideration in the Committee to Mr. Kilcher's objection, and the Committee unanimously discarded it. We did give consideration to it, Mr. Kilcher.

KILCHER: I stand corrected. The Committee has adopted rules in putting up this report that have nothing to do with the need at hand in holding hearings, in my opinion. The Committee was led by its commendable desire of simplicity and savings. If we are not hypocritical about going to have hearings during this winter recess, we should have hearings where they are most needed, and the judge as to where the hearings are most needed, should be the delegate from his district. The delegate should have been contacted more as to their will and wishes. Those delegates that had two or three places of hearings should have been personally contacted as to which place they think is the most important or possibly which places are equally important. This has not been done for simplicity's sake and for matters of streamlining an arbitrary rule as set up by the Committee, to have one hearing or one delegate in his hometown, send him home, let him have a hearing and that should be enough. That is not logical. Namely, in my particular case, and I know of three or four others, cases, exceptions should be made. Personally, I know a hearing in Kenai is much more important for the sake of statehood, for the sake of ratification of the constitution, than Homer. I have a lot of time next spring and a lot of time during my stay in Homer area when I am home. I can influence these people, I can talk to them in small groups. I can have a hearing sure enough. But the place that needs hearings badly where people are utterly critical if not downright opposed to statehood are Kenai and Seldovia. I don't want to say I could influence them greatly. I would suggest that somebody be sent to Kenai, probably also to Seldovia. Maybe somebody should go down from Anchorage. If hearings are going to be held they should be held where they are needed, and if we spend 10.000 dollars for this Christmas recess you can spend another $500, for maybe ten extra hearings in places where they are badly needed, and one of them is Kenai. Somebody should be sent down there from Anchorage or Kodiak, I don't care. I would gladly go. It has been intimated in the Committee that once we delegates are sent home then it should be our duty to hold

further hearings. We may hold them. We are magnanimously given the freedom that we may hold other hearings for instance, Kenai and Seldovia. We may do that but without expense or prior notice. Why, they certainly need prior notice and certainly the expense to any hearing should be paid if the others are paid. If we are sent to one hearing in Homer and if we don't take that just as an excuse to go home for Christmas vacation we should also be paid the expenses to any other hearing held necessary.

COGHILL: I rise to a point of order. I believe this was thoroughly discussed yesterday on the other point of the recess. Therefore, I move debate be limited to five minutes.

PRESIDENT EGAN: Your point of order is out of order, Mr. Coghill. Mr. Kilcher has the floor. Mr. Kilcher, proceed.

KILCHER: From a financial point of view I could just as leave stay in Fairbanks. I have a lot of friends up here and interesting things to do. I would like to learn the country better. I could be well paid by per diem. I could stay here and get $300 pay for it. If I go home it will cost the Territory about $120 or $130, which is a nice savings. I don't see at all why a man should not be sent to another hearing place which costs the Territory possibly another $40 or $50. It is still much less than if a man stays here. I don't see why if I go home I should be penalized by spending a plane trip to Seldovia, which is about. $20 forth and back or a plane trip to Kenai which is about $30 on my own time and my own money just out of sentimental reasons when it is my duty as a delegate. I will do plenty as a duty of the delegate. I have done so before November 8 and I will do so after February 8, but if we are going to go to hearings where they are needed. I think we should get paid for it.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: I address two questions through the Chair to Mr. Kilcher? Mr. Kilcher, do you feel that a hearing in Kenai would be more desirable than a hearing in Homer?

KILCHER: It is equally desirable.

SUNDBORG: My second question was going to be, would you prefer we sent you down for a hearing in Kenai in place of Homer, if it is to be but one per delegate, which was our guiding principle.

KILCHER: I have many objections to your guiding principle for being an arbitrary one, but consequently I don't feel I can answer your question. They are equally desirable, there should be two hearings, possibly three.

PRESIDENT EGAN: Mr. Marston.

MARSTON: Before we send Delegate Kilcher down to Seldovia or wherever he is going, I want to know whether he is qualified to sell statehood down there, which he says he's going down there selling. I notice he said he never thought of statehood one way or the other before he was going to run for the Convention. So if he's going down there to sell statehood, maybe he has been converted. I would like to know.

GRAY: I move the previous question, Mr. Chairman.

PRESIDENT EGAN: Mr. Gray moves the previous question. Is there a second to the motion?

METCALF: I second the motion.

PRESIDENT EGAN: It has been moved and seconded that the previous question be ordered. All those in favor of ordering the previous question will dignity by saying "aye", all opposed by saying "no". The ayes nave it and the previous question is ordered. The question is, "Shall the resolution with the proposed amendments be adopted by the Convention?" All those in favor of the adoption of the proposed resolution will signify by saying "aye", all opposed by saying "no", and so the Convention has adopted the resolution as amended. Mr. Davis.

DAVIS: Mr. President, I think this is possibly a matter of personal privilege. At my own request I was not named as a person to hold, as to appearing on any of these hearings. For that reason I feel I am not entitled to travel either way or to per diem going to my home and back, and for that reason I would like to request that when the payroll clerk makes up the payroll that I not be given either travel or per diem.

PRESIDENT EGAN: The Chief Clerk will make a note as to Mr. Davis's request. Are there any proposals to be presented at this time? If not, are there any motions or resolutions to come before us? Is there any unfinished business? Under unfinished business we will revert to the reading of communications. We have one from outside the Convention. The Chief Clerk may proceed with the reading of the communications.

CHIEF CLERK: Letter from Mrs. Laura Jones. (At this time the Chief Clerk read a letter from Mrs. Laura E. Jones, 8th grade teacher in the Fairbanks schools, thanking the delegates for the invitation extended for her class to attend a plenary session and to be guests of the delegates at lunch.)

PRESIDENT EGAN: Were there 28 children in that group?

CHIEF CLERK: Twenty-eight.

PRESIDENT EGAN: That would be, if the Chair might say so,

that would be approximately -- it might be that each two delegates could take one of these children. I am just suggesting what might happen here, as we go down the alphabet, except in the case of Mr. Hinckel. The Chair notes there are two Hinckel boys on that list. Mr. Hinckel being of the same name, you would want to have your alphabetical listing changed. Is there any suggestion as to how we should proceed in this situation? Mr. Hurley.

HURLEY: Mr. President, I think your suggestion is very well taken, and I will move that two delegates take charge of one student for the luncheon.

PRESIDENT EGAN: Every two delegates will take --

HURLEY: What I mean is I agree in substance. I think it is a good idea.

PRESIDENT EGAN: Is it the general agreement that each two delegates will take one of these children to lunch here on a certain day? Does somebody want to suggest as to what day? Mr. Cooper?

COOPER: Mr. Chairman, I would like to leave the date open to the Rules Committee on the date that they will put the next committee report in second reading on the calendar, so that the plenary session will not merely be a formality that they attend, and in line with that, that it be done if possible prior to recess.

PRESIDENT EGAN: Mr. Riley then if there is no objection would your Rules Committee attempt to report back to the Convention tomorrow so that we might send some communication back to the classroom?

RILEY: I expect we will have matters in second reading perhaps through Monday as the calendar now appears -- perhaps beyond that, dependent on what comes in meanwhile.

PRESIDENT EGAN: Is there any other unfinished business? Mr. Kilcher?

KILCHER: I would like to rise to a point of personal privilege.

PRESIDENT EGAN: If there is no objection. Mr. Kilcher, you may rise to a point of personal privilege.

KILCHER: How long may I speak, Mr. President?

PRESIDENT EGAN: There is no specified limit as to how long you can talk.

KILCHER: I would hate to be interrupted by a motion to cut it

to five minutes, for instance. I don't intend to speak that long.

PRESIDENT EGAN: Mr. Kilcher, yesterday after the Chairman spoke, I don't mean to interrupt you, but it was called to the President's attention that we had adopted a resolution or motion that the tapes be cut off when the question of personal privilege, when a delegate rises to a question of personal privilege and owing to the fact that was brought to the attention of the President, he has no other alternative.

(At this time Mr. Kilcher spoke under the question of personal privilege.)

PRESIDENT EGAN: Mr. Kilcher, the Chair would like to additionally state that the remark was not directed at you particularly. It was something that the Chair feels that each and every delegate should recognize when he takes his feet at all times. Mr. Hellenthal?

HELLENTHAL: Mr. President, I should move, I believe there is no further unfinished business, I therefore move that we have a recess for a definite stated period of 15 minutes perhaps to get a cup of coffee. I move that we have a 15-minute recess.

PRESIDENT EGAN: Mr. Hellenthal moves and asks unanimous consent that the Convention stand at recess for 15 minutes. If there is no objection, the Convention is at recess for 15 minutes.

RECESS

PRESIDENT EGAN: The Convention will come to order. If there is no other unfinished business we will proceed with the general orders of the day. General order of the day is consideration of Committee Proposal No. 2 in second reading. The Chief Clerk may proceed with the second reading of Committee Proposal No. 2.

(The Chief Clerk read Committee Proposal No. 2 for the second time.)

PRESIDENT EGAN: Before we proceed the Chair would like to announce that the University expects at least 100 additional people for lunch and they would like to have the tables, to be able to come down and get the tables at 11:45. The tables would be returned to this room at 1:30. We now have Committee Proposal No. 2 before us. The proposal is open for amendment section by section. Mr. Taylor?

TAYLOR: Mr. President, I believe the President should call to the attention of the delegates that attached to the copy of the committee proposal which is on everybody's desk is a

commentary which has been prepared by the Committee for the benefit of the delegates in construing the meaning of each section of the proposed article. Of course, so many of the sections are self-explanatory, but some of them possibly need a little explanation, and for that reason this commentary on the various sections we felt would be helpful and it might be the means of perhaps enlightening the members so there would not be too much discussion or time taken up in the consideration of the proposal.

PRESIDENT EGAN: Thank you, Mr. Taylor. Are there amendments to Section 1 of Committee Proposal No. 2? Does everyone have the copy of the proposal and a copy of the commentary on the judiciary article before them? Is there anyone else who does not have a copy? Mr. Marston also needs a copy of the proposal and a copy of the commentary on the article. Are there amendments to Section 1?

MCNEALY: I have an amendment.

PRESIDENT EGAN: Mr. McNealy, you may offer your amendment.

MCNEALY: Mr. President, I offer this amendment now only to preserve the future race.

PRESIDENT EGAN: The Chief Clerk may read the proposed amendment by Mr. McNealy.

CHIEF CLERK: "Strike Sections 4, 5, 6, 9, 10, 11, 12, 13, 14."

HURLEY: Point of order. Mr. President. I understood we were considering Section 1.

PRESIDENT EGAN: Mr. McNealy, would you mind if your proposed amendment were held until we come to Section 4? If it is the wish of the Convention we will determine first as to whether or not there are amendments to each section. Are there amendments to Section 1? If there are none we will proceed to Section 2. Are there amendments to Section 2? Are there amendments to Section 3? Are there amendments to Section 4? Mr. McNealy's amendment may be made at this time.

CHIEF CLERK: "Strike Section 4."

PRESIDENT EGAN: Are you moving that the section be stricken?

MCNEALY: I wish to move the adoption of the amendment striking Section 4.

PRESIDENT EGAN: Mr. McNealy moves the adoption of the amendment striking Section 4. Mr. Davis?

DAVIS: I did not hear what he said.

PRESIDENT EGAN: He moves the amendment to strike Section 4. Is there a second to the motion?

SUNDBORG: Mr. President, I will second for the purpose of allowing Mr. McNealy to explain what his intention and purpose is.

PRESIDENT EGAN: Mr. Sundborg seconds the motion to strike Section 4.

MCNEALY: Mr. President, I am not going to take a great deal of time today as I understand the bill possibly will be continued in second reading until after the recess and very likely it will not be necessary for me to speak upon all these amendments because probably my thought is included in my motion to strike Section 4. It states that, "Justices of the Supreme Court and judges of the Superior Court are appointed by the Governor on nomination by the Judicial Council as provided in this article." Being an attorney, I know the background of the appointment system of judges. Being an Alaskan I have lived under the appointment system so long that I feel that I should have the right to vote for these judges. The thought behind this I believe and the thought of the Judiciary Committee no doubt is to keep judges out of politics. In my opinion this appointment method will bring judges into politics more so than an election by the people. For that reason and in regard to many other reasons which I do not want to take up the time of the Convention to discuss now, I am opposed to the appointment by the governor on nomination by the judicial council.

PRESIDENT EGAN: Mr. McNealy, in order to clarify a statement that you just made, the Chair feels obligated to state to the delegates that anyone who is under the impression that any official action has been taken that will hold any proposal in second reading is wrong. There has never been any action that will hold anything in second reading officially as you mentioned, Mr. McNealy. If it was your feeling it might be held until after the hearings recessed, no such action has ever been taken, and the Chair wants to clarify that point to all the delegates. Mr. McLaughlin?

MCLAUGHLIN: Mr. Chairman, as Chairman of the Judiciary Committee, I feel in answer to the argument presented here and the proposal to strike, I feel it proper to point out to the Convention that I, probably in this Convention, was the only elected judge present in this Convention. I was twice elected as municipal Magistrate for the City of Anchorage. I might point out, not in vanity or pride but as a factual argument that I never lost, and never won by less than double the vote of any other candidate. The last time I ran my recollection is that I won four to one. If any man should be in favor of the elective system, it should be I. I might point out that in terms of the elective system no member of the

Judiciary Committee and that consisted of two laymen, one of whom had spent 15 years in law enforcement activities, never questioned the impropriety of having elective judges in Alaska. Historically, at the time of the adoption of the Federal Constitution, I don't believe that any state of the Union authorized the election of its judges. They were all appointed. When the elective system came in it was approximately the middle of the l9th century. It was found inadequate because of the fact that we will be confronted here in Alaska with not a nonpartisan judiciary but a judiciary that in substance would be dictated and controlled by a political machine. I am a partisan myself, but I don't believe that our judiciary should be subject to the influences where they would have to go to any clubhouse to secure their nomination or have to secure funds and sometimes excessive and exorbitant funds for the purposes of being elected. I might also point out that one of the dangers of the elective system is the fact that a judge whenever he makes a decision, he has to keep peering over his shoulder to find out whether it is popular or unpopular. If we determine the validity of our laws in terms of popularity as the general acceptance, we are then not a government of laws on which we pride ourselves. It is not the function of the judge to make the law, it is his function to determine it, and the way to keep them independent is to keep them out of politics. Historically, in terms of this document here there is nothing in it that is radical. There is nothing in it that is theory. All of it has worked. California, in 1932, adopted what is known as the Missouri Plan. That is a system of selection. One reason why we did not permit the governor of the state to pick candidates and have them approved or ratified by the senate or house of representatives was that it was discovered under the California plan that there was a tendency on the part of the governor to always pick men of his own political party, subject to the confirmation, not of the senate, but a group called a "committee on qualifications". He would just present them with a long line of Democrats or a long line of Republicans. Does the system work? The system does work. The method by which we determine how the judicial council would be created was -- we followed the Missouri Bar plan that has been in effect (when I say Missouri Bar plan, I mean the Missouri Plan which is part of Article 5, Section 29, of the Missouri Constitution) since 1942 and my recollection is that it has been ratified by the voters three times in succession. The complement of our judicial council, that is three selected directly by the bar association, three appointed by the governor, and the chief justice being ex officio member. The constitution of our judicial council is exactly the same as that in the State of Missouri. We did not follow the New Jersey Plan although the New Jersey Plan which has been sponsored by Chief Justice Vanderbilt, who is Chief Justice of the Supreme Court of New Jersey -- Judge Vanderbilt is not opposed to the Missouri Bar Plan -- but frankly because of the complexities of the New Jersey judiciary, they

could not get it through. In New Jersey the governor appoints and his appointment is ratified by the senate. In every modern constitution, and when I say modern constitution, with the exception of Hawaii which evaded the issue, in every modern constitution -- by that I mean all our latest -- Missouri, the State of New Jersey, and Hawaii -- they all provide for appointive judges and not elective judges. Have we compromised? Yes, we have -- we have compromised -- we have accepted the Missouri Plan. That means in substance what happens is that three lawyers appointed by the bar association as under the Missouri Plan, and the three laymen as appointed by the governor and approved by the senate initially determine who the candidates will be. What is the theory? The theory is you have a select group. The lawyers know who are good and they know who are bad. The laymen represent in substance the public in order to protect them in substance from the lawyers, but they are confirmed by the senate for one reason. The laymen in the committee insisted upon it so that we would have a broader base and the governor himself would not necessarily be able to nominate to the judicial council, his own house. The governor is presented with two names, two or more names, Missouri says three or more. We figured because of the size of the Territory, initially it would be preferable to present two names. The governor has no other choice, of the two names presented, he takes one, fills the vacancy in the court. In terms of the general acceptance of this plan is it radical? Is it new? Is it theory? No sir. It has been approved by the American Judicature Society. It has been approved by an organization I know which is, forgive me, I know I might affront many members here, which is renowned for its conservatism -- the American Bar Association. It has been in substance approved by the Alaska Bar Association, and it has been approved by probably the organization in the field which is most zealous in its idealism, the American Judicature Society. There is nothing unusual, nothing new. What we are trying to prevent are some of the travesties which have existed in some of the states where our judges are picked and plucked directly from the ward political office. Many of the members compromised. We are not happy, in a sense, with the compromise, but the only system that has ever worked apparently in recent years, has been a combination of the appointive and the elective. I might carry on a bit and point out what happens in terms after the governor does appoint from the list presented to him as under the Missouri Plan. Roughly, three and one-half or four years later, the judge is required, every judge without exception, is required to go on the ballot for approval by the voters. Does he have to spend any money? No sir. What is the requirement? The only requirement on a nonpartisan ballot could be, "Shall Judge 'Blank' be retained in office?" The Missouri Plan provides and the New Jersey Plan in substance provides (my figures are rough), that roughly a year and one-half after appointment the judge will be put on the ballot to determine whether or not the public desires to retain

him. It was the view of the Committee that in order to attract good men to become candidates, the only way we could assure the attraction of good candidates was to assure them they would be in office at least for a period of three and one-half years. Why is that necessary? Because after a year and one-half a judge might make a very unpopular decision, and he would not be able to overcome that in terms of popular resentment, and he might be forced out of office after a year and one-half. It is not universally true, but generally your best practitioners in the law are also the men who have the best income and the best practice. A man with good income and good practice will not be attracted to the bench if he feels that after a year and one-half, he will hazard his whole career. He has already hazarded his private practice. He will hazard his whole career with the possibility of being rejected. Three and one-half years is a good inducement. If he is reelected after three and one-half years then under our terms, the terms of our proposal here, he will then sit on the bench for a period of ten years if he is a supreme court judge or he will sit on the bench for a period of six years if a superior court judge and then he will automatically go on another nonpartisan ballot to determine whether he shall be retained or not. That compromises the difficulty in the American judiciary system, and when I say compromise, it is the best compromise and the best solution to a vexing problem between those who feel we should have lifetime tenure so the judges can be absolutely independent or whether we should have short terms so the judges could be subject to popular will. The popular will should be expressed even in the control of the judiciary, but the way to control it is to put the judge on a nonpartisan ballot. It does not cost him a nickel. He is running against himself, he's not running against anybody else. In terms of whether or not the lawyers would pick the poorest or the best, my answer to that is the answer of Benjamin Franklin who in arguing for appointive system pointed out that it would be very advisable to have an appointive system under the Federal Constitution because of the fact that every lawyer, having determined that a judgeship was open, would promptly designate and recommend the most successful of his brothers in order to steal his practice. Do the lawyers, do they have a vested interest in the proposition? Definitely they do, but as craftsmen or professional men they know best, who is the most desirable. Will you get unanimity on that Judicial council? If the Alaska Bar Association or if any bar association in this Territory or in the United States can be used as an example, as long as you have three lawyers you will have three different opinions. It is probably the most democratic and probably the only efficient system that has yet been devised. It is not a crackpot idea, it has worked and regularly. State constitutional conventions have adopted it. In general I might point out this -- this conforms generally to all the recommendations of the American Judicature Society, all the recommendations of the American Bar Association. It conforms

to the theory under which the Missouri Plan was adopted, and if this is adopted this will be (Hawaii avoided it) the most modern, most liberal, most workable judiciary article of all the constitutions of all the 49 states. Is it theory? Is it social planning? It is based on practice. It is based on experience, and it conforms to very good theory.

PRESIDENT EGAN: Mr. Londborg.

LONDBORG: Mr. President, may I direct a question in order to get information? According to your proposal, the judiciary council submits nominations, not less than two. What happens if the governor refuses to appoint either of the two or three as the case may be, if they do not meet with his approval?

MCLAUGHLIN: Others can be presented.

LONDBORG: Would he have the right to call for other nominations or must he stick with those originally presented?

MCLAUGHLIN: In theory the governor would be required to stick with those nominated.

LONDBORG: May I ask this, just for lack of information on my own part on the Bar Association who and how do people get into that? I take it they have to be lawyers.

MCLAUGHLIN: They would have to be lawyers, Mr. Londborg. There was no attempt made -- if we had started to define everyone's qualifications -- much of this will be left to the legislature, but normally that means lawyers.

LONDBORG: Then I'd like to ask this question, is it true that the judiciary council is composed of a majority of lawyers?

MCLAUGHLIN: That is true.

LONDBORG: That is counting the supreme court judge?

MCLAUGHLIN: That is true. I might point out that in Missouri, the appellate Judicial Commission (this is the Missouri Plan) consists of seven members, the chief justice, three elected lawyers,and three laymen appointed by the governor, and these are the ones that designate for the governor. They have subordinate commissions, the circuit Judicial Commission consists of two lawyers, two laymen,and the president and judge of the court of appeals.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: I have a question, Mr. President, that I would like to present to any member of the Judiciary Committee. That is this that I want to state first that I am very favorably

impressed with this particular section. The appointive power however clearing through the governor -- in most of the state impeachment clauses -- the two or three highest elective officials or any elective officials being impeached in ordinary procedure, the impeachment springs from the house and is tried by the senate with the chief justice sitting or some of the other supreme court justices sitting as the presiding officer of that body. Now we have a situation here, I am just wondering why the appointive power of the governor is invoked in this particular clause, because it would seem to me with the judicial council and the recommendations such as they have made, it might be best to submit the recommendation directly to the senate. The governor, if he were in a position where he is being impeached, would then have on the presiding bench on the body that was impeaching him a justice whom he had named for appointment and I wonder what the thinking of the Judicial Committee on that is.

MCLAUGHLIN: It is my understanding that Mr. Rivers has some potential objection to the appointment of the nominees to the bench by the governor. Is that right, Mr. Rivers?

V. RIVERS: No, it is more a question to get explanation on the floor as to what would happen in a case like this. I have a good deal of regard for the section you folks have drawn up. I regard it very highly as a layman, but I did want to find out what your thinking was as to why we had to clear the judges through the governor in any event. Why didn't they spring from this appointive and recommending body directly to the senate for confirmation rather than clearing through the governor in any instance, because there might be a conflict of interests if these supreme court judges were called to sit upon the trial of a man whom they had received their appointment from.

MCLAUGHLIN: The thinking of the Committee, Mr. Rivers, was that we wanted something that had precedent and that worked. It has worked in Missouri, it is working in a limited sense in New Jersey, it is working in California. That is, we wanted a practical precedent for it. We did not want to experiment. We did consider the possibility that the judicial council do it, but we wanted some participation by the executive in it, and in fact one of the laymen insisted, on the Committee, insisted that not only the governor appoint the laymen to the committee but they be ratified by the senate so we would have a full participation in the process. As you know, under the model state constitution, the chief justice runs for election and he designates the judges. It was the feeling of the Committee that that would be too much of a closed corporation, that is the chief justice appoints, in lieu of the governor, under the Missouri Plan, but since it had been untried,.the Committee didn't want to consider it. The fact of the matter is, there are many problems that we cannot anticipate, all

the problems that will arise, but we took the best available everywhere and we applied it and when the problems arise, then we will attempt to solve them.

PRESIDENT EGAN: Mr. Smith.

SMITH: I believe the mover of this amendment intimated that the Committee had based their favoring the appointive system on the basis that it would take the judgeships out of politics. I don't know what the Committee's thinking has been, but I certainly would not defend either the appointive nor the elective on the grounds that it would take the judgeships out of politics. I believe the political implications would be equal in either case. However, the appointive system does have the advantage of being selective as to the qualifications of judges. Quite often under an elective system a man is elected on his personal charm or his popularity and quite often his qualifications are not closely examined. Therefore, I would oppose the amendment.

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: Mr. President, in regard to a question submitted by Mr. Rivers. Now I believe Mr. McLaughlin touched upon that, but I believe Mr. Rivers loses sight of the fact that the governor does not select any appointee that the only ones he can appoint to either the supreme court or the superior court are those men who have been selected by the judicial council, so the governor does not have any choice in the selection of the candidate for office. He merely appoints. I don't believe that that would create such a feeling of gratitude towards the governor from a man that was appointed to the supreme court or to the superior court that it would cause him to be derelict in his duties. Also I would like to point out that over many years there has been a great controversy in the legal profession throughout the United States. The American Bar Association Journal, which I have been receiving for some 27 years, periodically comes out with articles by various practicing attorneys and by judges, leading men in the profession, who have felt that a distinct change should be made in the selection of the judiciary. When the Missouri Plan was adopted, I believe it was in 1945, it was felt that there was a distinct improvement in the methods of choosing judges, that it abolished the necessity which had prevailed for many years of having to get out into the rough and tumble of a political fight, to spend money, perhaps depend upon certain groups for the support to get elected to a judgeship. Now in this particular instance we have got away from that necessity. We have the laymen and the attorneys -- and coming back to this attorney -- I might mention to the Convention that the attorneys now are organized in a body known as the Alaska Bar Association. It is an integrated bar, an official body of the Territory. Any person seeking to practice law in the Territory

of Alaska, before he can practice,must be a member of the Alaska Bar Association, and he is bound by the actions of the integrated bar, so it is through the integrated bar that these names are selected. It is a democratic election among the attorneys for the selection of these judges. I think Mr. McLaughlin has elaborated upon that as to the selection and the lawyers would know possibly who would be the most able sitting on the benches. The less lucrative practice the man has, the more he would like to see the able man who has been making the money step up there,he might get some of his practice. That is true. It was not original with Mr. McLaughlin. Thomas Jefferson or Benjamin Franklin said that. I feel that in view of the historical matters of selection of judges, which has not met with the approval, that we have before us now an article which we hope will be adopted as it is into the constitution, and I know that if this article is adopted by this Convention and becomes a part of the constitution that every university in the United States that has a law school and all law societies that have the opportunity of reading this article can honestly say that they have perhaps the most progressive and most modern and up-to-date system of selecting the judiciary of any state in the United States, and I would like to see this adopted by this Convention without one syllable or a comma or a period left out, just as it is. Mr. McNealy says, "Well, we have had judges appointed here for many years. I would like to protect those men." Perhaps Mr. McNealy has practiced under those appointed judges so long he is like the prisoner who after many years begins to love his chains.

V. RIVERS: May I ask a question of Mr. Taylor?

PRESIDENT EGAN: You may, Mr. Victor Rivers.

V. RIVERS: Mr. Taylor, if the governor does not appoint and the appointment springs from judicial council, why is not only one name recommended to him instead of two?

TAYLOR: It is to give a choice.

V. RlVERS: He has a choice power and appointive power?

TAYLOR: That is correct. I might say that there will be legislative act to implement these sections that are in here. He will have to appoint because it devolves upon him. There can be three to give him a choice if he wants them, according to what the legislature says.

MCNEALY: Mr. President, this matter I wish to assure the delegates is not personal with me, and if you will bear with me for a couple of minutes I am going to make the whole pitch, .so to speak, on this particular amendment. If this amendment fails then I am going to ask unanimous consent to withdraw all the

other suggested amendments for the purpose of saving time of this Convention, because if all the amendments were considered and argued upon, and I were fortunate enough to have a second, this discussion could go on for days and even weeks. I offer this amendment. I am not sold on the bill as it is. I am not particularly sold on the matter of the election of the judges by the public. I owe it to other attorneys who have asked me to offer this amendment and to laymen who feel that they should have the right to vote for all the offices that they possibly could vote for under a system of state government. I did not start in the law business as of yesterday. I have been admitted to the bar almost 27 years, and I did not have the funds to attend a university and the prior four years then I spent in the law office, and that was a continuous four years of work in a law office, so for more than 30 years I have been depending upon the law for my bread and butter, and on the point of having a successful practice, why that certainly should not prevent me from being one of those appointed if I ever desired to be a judge, which I don't think I could afford to because of probable pay scales, so I'll probably be appearing before the judges as long as I'm able to get around, possibly as long as old Judge Grigsby down in Anchorage or our Dean here, Julien Hurley. Now as far as your election of changing judges in office, I want to call attention to another old saw which has been in effect since time when the memory of man runneth not to the contrary and that is that judges never die and they very seldom retire. In this matter of running against the record, I want to argue that point just a minute. To say that the voters are going to have an opportunity now, it's going to be put on the ballot shall Judge So-and-so be reelected. Well, I can think of this situation, I am concerned about this. Judge So-and-so has been appointed, and he serves and he is on the supreme bench for ten years or is on the superior bench and has served for six years and then he runs against his own record. All of the attorneys that are practicing before this judge learned over this period of six or ten years that Judge So-and-so is a stinker. He comes down with some of the lousiest decisions. He steps on this fellow and that fellow, he does not follow the law. He hands down decisions that are unfair to people. Now, all of the lawyers know this situation, but the general public does not know. The general public does not pay too much attention to judges and what is going on in court unless it is your case that is before the court, so the time eventually rolls around -- the six or ten years -- and old Judge "Stinker" comes up to run against his record. So then the lawyers, if they can do it -- Mr. Taylor, to digress a minute, mentioned the American Bar Association. I am not a member of the American Bar Association. Never have been and never will be. If my memory serves me correct, there are probably only about 30 per cent of the lawyers in the United States that do belong. I am not going to state why I do not belong and why the other 60 or 70 per cent don't -- but the fellow comes up. The lawyers

then look over those now that belong to the American Bar Association at least, and possibly under our Alaska Bar Association, I haven't seen the Canon of Ethics adopted, or to be adopted, but if the members of the American Bar, under the Canon of Ethics, can do this, can get out and bring to the public's attention that Judge So-and-so should not be reelected, (and I question under the Canon of Ethics of the American Bar will allow it) then the lawyers carry on a campaign in the newspapers and over the radio and say that Judge So-and-so is no good and urge the public to vote against him. Now, I am speaking from years of experience as to how the public in general feel about the attorneys and I am in hopes that the Alaska Bar Association will so regulate our own ranks that the attorneys will be considered as professional men and not shysters in the future. But in carrying on this campaign with the general public, unless their minds are changed, they are going to say, "What is the matter, this bunch of lawyers here are trying to get rid of good old Judge Whoozit." So Judge Whoozit comes out, he doesn't have to spend any money campaigning, all he's got to do is tell the reporter, "This bunch of lawyers -- I have stepped on their toes in trying to carry out the laws as written and this bunch of lawyers are trying to sabotage me." Judge Whoozit will go back into office by the biggest vote that it is possible to give him. The only ones who will ever vote against him will be the lawyers and there's not enough of them in the Territory to have an effect on the election. If I were a judge and wanted to be continued in perpetuity in office, then I would want the attorneys to come out and recommend against me. Now, and as I said before, I am going to withdraw these others and this will be my last time on the floor if you will bear with me just a few more moments. Now, I would like to speak personally of the matter of politics involved. I don't think that running for a judgeship either, should be a popularity contest. But here we have three laymen appointed by the governor, three lawyers appointed by the bar association. I am looking ahead to a situation of this kind that will arise where a governor appoints three laymen, now the governor appoints these three laymen and they are beholden to the governor. The governor, be he Republican or Democrat, tells these three laymen, Here is Jones and Smith here now, they have been good party workers, they helped get me into office. Now, I want you three laymen on the board, Jones and Smith should be rewarded, so I want you to come up with their names." Then the three lawyer members don't agree. They want two different members to be appointed, so they come up with two. The three laymen members say to the governor, "What are we going to do?" The governor says "hang tough. Now, we have precedent for that. Take your Employment Security Commission here in the Territory, which is one of these two and two deals, two from labor and two from management, and they have not been able to agree on one single solitary important problem under the Employment Security Commission, and it is questionable that they ever will be able to.

They can't even agree, or haven't the last time I knew, on a bill which was passed in the last legislature hoping to break the deadlock by authorizing the four of them to get together and select a fifth member. So I can see an absolute stalemate in that regard. Going further, now currently the vast majority of states elect their judges. First I want to apologize to the Convention here about saying anything about Nebraska. That is where I studied law and where I was admitted to the bar, and being opposed to their unicameral system, maybe I should be opposed to the fact that they elect their judges. I have been an inactive member of the bar there for a great many years, and the other day I received a list of the judges that were still on the district court bench -- we called it district court there, not superior court were on the district court bench in Omaha. At the time I was there, in the late 20's and early 30's, we had 12 district judges in Omaha Douglas County, I should say. These 12 district judges ran for election every four years. I noted in the recent paper that I got from the Quarterly Law Review from the Bar Association that all 12 of these district judges are still on the bench in Omaha. They have been running for office every four years. They are good judges. The lawyers like them, the people like them. It is no argument that you are going to have inferior men on the bench simply because, if the judge is not a good judge, the people themselves are going to see that he is removed. Now, in closing, I believe it was on the floor that this constitution should be more or less of a fundamental document. I am in favor of a fundamental document. I believe that this judiciary article, with all due respect to the attorney members and the laymen members on the Judiciary Committee, that it could have been solved by saying, "There shall be a supreme court and such inferior courts as the legislature may establish from time to time", which would have taken care of the matter just as well. I assure you, ladies and gentlemen, I will not speak upon this subject again, and I thank you for this opportunity.

PRESIDENT EGAN: Mr. Ralph Rivers?

R. RIVERS: As a member of the Judiciary Committee, I would like to second the able presentation of our Chairman and to endorse the points brought out by Mr. Taylor. I was a member of the bar in Seattle when I was a young fellow, over 20 years ago, and there they had the election system. The judges had to file in a competitive political field every two years, and there was always that undercurrent that litigants were contributing to the judges' campaign funds. There was nothing improper for a person to contribute to the campaign fund, but there was an undercurrent of chicanery. It does not seem to be right that a man sitting on the bench should be the subject of contributions from various and sundry people, either presently litigants or people with cases pending. The best soap-box orator often times gets elected and your better

attorneys who have these qualifications we are all aware that are required would hesitate to throw their hats in the ring and get into that kind of a circus. I concur with Mr. Smith that this has the virtue of a screening process, an orderly screening process. We label it nonpartisan because the ability and qualifications should have nothing to do with the political party. But actually this is not only an approach at nonpartisanship although politics is bound to enter into it to a certain extent, this is a screening process which is the most important point involved. So I think that it is positive with some decency of approach and thinking the judicial council will seek for the best available timber, and we take a bow to the governor in taking his choice of two persons that are nominated, or three if we have that many to spare and are available to be nominated, but he has no alternative but to pick one of the names that are presented to him by the judicial council. There is the other point that there will only be six until a supreme court justice is appointed and the only chance for a deadlock would be on nominating two or three people for the office of supreme court justice. After that you have your seventh member and there will be no chance of a deadlock. I am willing to trust the integrity and good sense of the six people first appointed to judicial council to be able to agree on two or three nominations for chief justice, and I am willing to trust the governor to take his choice of those two or three names that are presented, so I see no serious problem of a deadlock in order to get the machinery fully implemented. I go along with Mr. Taylor that this Committee has given and taken and bumped its head, I should say the members have bumped their heads together. There has been some compromising and adjusting, but our composite thinking is better than the thinking of any one of the seven of us that constituted that Committee. I believe we have a constructive article, one of which we can be duly proud. So outside of letting the Style and Drafting Committee change a few commas, Mr. Taylor notwithstanding, and polish up a sentence or two, I hope it is adopted the way it is written.

JOHNSON: I move the previous question.

PRESIDENT EGAN: Mr. Johnson moves the previous question.

TAYLOR: I second the motion.

PRESIDENT EGAN: Mr. Taylor seconds the motion. The question is "Shall the --

SUNDBORG: Parliamentary inquiry, Mr. President. Is the matter of voting on the previous question debatable?

PRESIDENT EGAN: No, it is not, Mr. Sundborg.

SUNDBORG: I call for a roll call.

PRESIDENT EGAN: The question is, "Shall the previous question be ordered?" A roll call is asked for, the Chief Clerk will call the roll. Mr. Smith?

SMITH: May I rise to a point of information? The previous question would be the vote on the amendment?

PRESIDENT EGAN: The previous question would be the vote on the amendment. What you will be voting on now is whether you should order that previous question. Mr. Davis?

DAVIS: Mr. President, the amendment is only to Section 4, is that right?

PRESIDENT EGAN: That is right. We are not speaking of Section 4 right now, Mr. Davis. We are speaking as to whether we will order the vote on Section 4. The Chief Clerk may call the roll.

(The Chief Clerk called the roll at this time with the following result:

Yeas: 41 - Armstrong, Awes, Barr, Boswell, Coghill, Collins, Cooper, Cross, Doogan, Gray, Harris, Hellenthal, Hilshcer, Hinckel, Johnson, King, Knight, Laws, Lee, McCutcheon, McLaughlin, McNealy, McNees, Marston, Metcalf, Nerland, Nolan, Peratrovich, Poulsen, Reader, Riley, R. Rivers, Robertson, Rosswog, Smith, Stewart, Taylor, VanderLeest, Walsh, White, Wien.

Nays: 12 - Davis, Emberg, V. Fischer, Hermann, Hurley, Kilcher, Londborg, Nordale, V. Rivers, Sundborg, Sweeney, Mr. President.

Absent: 2 - Buckalew, H. Fischer.)

LONDBORG: Mr. President, I would like to change my vote to "no".

PRESIDENT EGAN: Mr. Londborg wishes to change his vote to "no".

CHIEF CLERK: 41 yeas, 12 nays and 2 absent.

PRESIDENT EGAN: So the previous question has been ordered.

JOHNSON: I request a roll call on the previous question.

V. RIVERS: Is a question of personal privilege in order at this time?

PRESIDENT EGAN: If there is no objection, Mr. Victor Rivers.

V. RIVERS: I just want to say that we are acting in final action now on the amending of a bill, rather the amendment of a proposal. It seems to me not only good courtesy but good judgment that the previous

question and final action should be used very charily. I can see using it late at night after many hours of debate, but it is hard for me to conceive foreclosing any member of this group from having their full expression of their views on the final action of any part of any proposal that comes up. It seems to me that it is very poor policy to exercise the previous question in a matter of prime importance that we are taking the primary action of amending. I have sat in a good many deliberative bodies. I have seen the previous question used to stop debate on minor points where you have something at issue which may have not been primary to the functioning of the body. But I seldom have seen the privilege of the previous question abused to stop debate on a final action of a measure that is coming up for either amendment or final passage. It seems to me that debate on these things of importance that are going to carry on for many years should not be limited to the expression of the opinions of a few. We are here for the primary purpose of considering all facets of all of these questions, and it seems to me that moving the previous question forecloses substantial consideration. I think there are men in this body who should not only express their views but to express their views for the record, should be heard in regard to what they have to say pro and con on this question. It is one of the fundamental questions involved as to whether or not we have the appointive system of judges. I might tell you I favor the appointive system of judges in the manner set up here. However, that is beside the point. It seems to me, in determining intent and determining the consensus of this body, the record should be complete. It seems to me that moving the previous question was entirely one of -- not a desire to foreclose the record but to foreclose many men who might have had some valuable comments to put into this record on this point. I just want to say at this point I am going to close my discussion on the previous question, but I just want to say in reading the handbook (the Hawaiian Legislative Handbook) in connection with judges, I want to call your attention to the first paragraph. Independence of the judiciary is a fundamental principle of our American court system. How to achieve that independence is a problem still unsolved. All agree that the first step is to find the right method of selecting judges which will insure a bench free from the influence and control of party politics, individuals or pressure groups." Now it seems to me this matter should have a more full discussion before action is taken on this particular amendment.

NORDALE: I would like to echo everything that Mr. Rivers says, and I believe that every paragraph of this constitution.is too important to preclude anyone from expressing his views. I would like to move to rescind the action on the previous question.

SUNDBORG: I second it.

PRESIDENT EGAN: It has been moved and seconded that the action taken to order the previous question be rescinded All those in favor of rescinding the action ordering the previous question will signify by saying "aye", all opposed by saying "no". The "ayes" have it and the action has been rescinded. We have before us Mr. McNealy's proposed amendment to Committee Proposal No. 2. Mr. Hurley?

HURLEY: Mr. President, in order that there will not be a feeling on the part of the 55 delegates that this is a courtroom and only attorneys are speaking, I would like to endorse in substance Section 4 of the proposal. I think Section 4 goes to the meat of the whole proposal and as such it will be necessary for us probably to digress into a great many other things that may have been taken care of in later sections. Generally speaking, I think that Mr. McNealy is extremely sincere in his objections to it, but I too have lived under an area where judges were elected to office from anywhere to two or four years. I too have found that those judges have stayed in office from anywhere to 20 to 40 years. I think that is a very substantial argument why a system that is prescribed here should be adopted. In other words, it is not an argument against it. The main argument against the running of judges on a open ticket in a prescribed time against other competition I think has been ably stated by Mr. Ralph Rivers, that it does degenerate, and I have seen it degenerate, into a question of whether a judge is capable of making his own decision on the litigants that are before him and whether he has in mind whether or not they will serve him well at election time. The only other thing I would like to say, besides endorsing in full, is that I would like at a later time, in Section 9 and 10, when we come to it, to offer some slight amendment.

PRESIDENT EGAN: Mr. Davis.

DAVIS: Mr. President, Mr. Hurley has a point here when he says that only the attorneys have been speaking in this matter. I am an attorney but I want to speak on this amendment because the matter is absolutely fundamental. If Mr. McNealy's amendment proposed to Section 4 should be adopted, of course the whole approach to the matter of the selection of the judiciary would be different. We would have to start out and do it all over again. Now that would be all right too. Merely the fact that the Committee has put in a proposal here is certainly not governing on this body. But at this time we are going to have to decide, by this body, as to whether it is the will of the Convention that judges be appointed, or as to whether it is the will of the Convention that judges be elected. After we decide that, one way or the other, then we can go into the other matters as to how they are appointed or as to how they are elected, in either case. Now historically, judges were

always appointed until some time after the adoption of our Federal Constitution, and our Federal Constitution included that procedure in providing that judges are appointed and, in fact, are appointed for life. And, of course, the theory behind appointing judges for life is that they are once appointed, completely independent, and over the years we have seen many times when a President attempted to what we might call, "pack" the Supreme Court. The President has appointed his man or his men with a particular idea in mind, and when those judges were appointed, I think invariably or at least almost all the time, the President in question has been badly disappointed to find that his man followed what he conceived to be the law and not the President's wishes. The lifetime tenure of judges has much to recommend it. On the other hand, the lifetime tenure of judges has the possibility of being abused. Any attorney who has practiced law has seen instances where a judge appointed for a lifetime, after serving for a length of time, becomes completely unresponsive to the will of the people, refuses to change with the times and the times do change. And for that reason, strict appointment with a lifetime tenure, has its disadvantages. With that in mind then, sometime shortly after the adoption of the United States Constitution, many of the states started electing their judges with the idea that the judges would be more responsive to the public will. And the pendulum, as somebody said awhile ago, swung clear over to the other side and we had very nearly all our judges except our Federal judges being elected by the people and for relatively short terms. I grew up in the State of Idaho and we had elective judges. Their terms, even the supreme court judge terms, were only four years. The judge ran every four years and inevitably it got into politics. In order to attempt to remedy that situation, the State of Idaho many years ago adopted a nonpartisan judicial ballot where the judge runs, not as a member of the party, but runs for the office. However, he runs against some other person who aspires to be a judge, and he runs every four years. The result was that the judiciary was not and could not be independent, depending on the whims of the time. depending on the decisions a man might have made, he was or was not retained, or depending on how popular his opponent might be, completely irrespective of qualifications. Now the elective system has much to recommend it, but likewise, it has much against it. In the creation and maintenance of an independent judiciary, and I believe without qualification, I believe I could say that all of us here want an independent judiciary, a judiciary that will not be swayed by the public will at any particular moment, a judiciary that will not be subject to political pressure, a judiciary that will not be subject to pressure from the executive branch of the government. I moved to Alaska some 16 years ago and from that time to this I have been operating under a judiciary which was appointive. However, appointed for a very short term of four years, and I am willing to state flatly in my opinion that system will not work. I have seen instances where judges were

appointed who had no qualifications at all to be judges. They were appointed either by reason of a compromise they were the only ones everyone could get together on -- or for some other reason. In at least one instance, I saw an instance of a judge appointed who was a good judge and who was doing a good job as judge. In the particular case I have in mind the judge made a decision against the United States of America, in my opinion a completely proper decision, but a decision against the United States of America. When he came up for reappointment at the expiration of his four years he was not. reappointed, and a judge was appointed who it was believed would follow what the government wanted, and I know that we do not want that. Now the plan which has been presented here is a compromise between the plan of appointing judges for long terms and a plan for election of judges. In my opinion it has the best features of both. Now Mr. McNealy said, when he was talking, that the fact that a judge may be appointed, may be elected rather, might be an entirely a good judge and that the fact that judges are elected is not any argument that the elected judges are inferior, and I will admit that in a minute, and I also will admit that the fact that judges are appointed does not necessarily guarantee that they are superior judges, but it seems to me that the plan which is set up here gives the best of the two systems with the result that when the procedure is followed we have taken the best means yet devised to appoint and select qualified judges and to keep judges free from outside pressures and to get rid of judges who are not able to properly do their job. I hope that Mr. McNealy's proposed amendment will be defeated.

PRESIDENT EGAN: Mr. Metcalf? If there is no objection, the Convention is at ease for a moment while the stenotypist changes her machine.

RECESS

PRESIDENT EGAN: The Convention will come to order. Mrs. Sweeney.

SWEENEY: Mr. .Chairman, in view of the fact that they are going to take our desks from us in a few minutes, I would like to move that we recess until 1:30 this afternoon and that Mr. Metcalf be the first speaker when we resume discussion.

PRESIDENT EGAN: Mrs. Sweeney asks unanimous consent that owing to the fact that the University people will have to get these tables out of here in a few minutes, that the Convention stand at recess until 1:30 p.m. and that Mr. Metcalf, who was recognized, have the floor at that time. Is there objection? Hearing no objection the Convention stands at recess until 1:30 p.m.

RECESS

PRESIDENT EGAN: The Convention will come to order. Mr. Kilcher?

KILCHER: Mr. President, I move that the Rule 35, pertaining to the previous question, be referred to the Rules Committee for further study.

HELLENTHAL: I second the motion, Mr. President.

PRESIDENT EGAN: Did you ask unanimous consent, Mr. Kilcher?

KILCHER: Yes.

PRESIDENT EGAN: Mr. Kilcher moves, seconded by Mr. Hellenthal, unanimous consent is asked that Rule 35 pertaining to the previous question be referred to the Rules Committee for further study. That does not mean at this time, Mr. Kilcher, but that they report at the next plenary session?

KILCHER: Yes.

PRESIDENT EGAN: If there is no objection, it is so ordered. Mr. Metcalf, I believe you have the floor on Mr. McNealy's proposed amendment.

METCALF: I am one of the lay members of the Judiciary Committee, and I wish to speak briefly, make a few remarks in opposition to Mr. McNealy's amendment. I would not argue that this proposal submitted Is perfect. Anything that is man made is certainly not perfect. For instance, you go up in an airplane and you don't know for sure you are going to get down in one piece or two, so there can be defects -- In anything that is man made. I am of the sincere belief that this proposal that the Committee has brought out as a result of the thinking of all seven members of the Committee is as near perfect and workable as possible. There is something that I would like to bring out that has not been brought out already. As an experience, I have had almost 15 years' experience in serving with the Justice Department, and as part of that I had charge of the jail at Seward for nearly 14 years where we had from 3 to 30 inmates in the jail. Here is an observation from having a ringside seat of all this activity going on and taking part in it. I wish to make an observation that there is a great lack of uniformity in the distribution of justice and it is also my personal observation that lack of uniformity is due to probable pressures being exerted. Perhaps people who are fortunate to be wealthy can employ extra good lawyers and put on a real good case before the court and jury and thereby a man with money gets a lighter sentence than the person who does not have money. That is my criticism of the judicial system lack of uniformity. To illustrate roughly, maybe I have seen a man get ten years for manslaughter for killing a man and another sentence maybe 15 years for just shooting a

leg off. There is lack of uniformity. So speaking sincerely from my heart, I would like to see, and I believe this proposal here does it, it makes the judiciary courts strictly nonparti¬san and as near independent so that they can be fearless and interpret the law equal to all and special privilege to none, and I am certainly in accord with the sentiments expressed by my fellow members of the Committee.

PRESIDENT EGAN: Is there further discussion? Mr. Barr?

BARR: Mr. President, we have heard from several able attorneys whom I consider experts in the judiciary. I am certainly not an expert. However, we must bear in mind that the courts are established for the benefit of the public and I am a member of that group. I would like to speak from that viewpoint. Now the chief value of a judge on the bench to the public is the work he does, the decisions he renders. He should have in qualifications, first, ability and experience. Secondly, he should have integrity and a willingness to render impartial decisions. Of course the first, the ability, is without value unless he also has Integrity. We have before us two methods of selecting the judges -- by appointment or by election by the people. Now, I will not deny that a little political consideration at least, might enter into both methods. Of course, our interest here is to select that method with the minimum of political consideration or partisanship of any kind. Under the proposed method in this Committee Proposal, whereby he is appointed by the governor, I would like to point out that two candidates are submitted by the judicial council and the governor ^ approves of one and disapproves of the other. In other words, that is tantamount to appointment by the judicial council with approval by the governor since he has only two to select from. If anyone is going to appoint the judges, it certainly should be the experts who understand his duties more than any other group. On the other hand, if he has to campaign in election (and If he expects to win he will have to campaign vigorously like any other candidate), some campaigns cost quite a bit of money, he may accept campaign contributions which in itself is perfectly correct as long as they are contributions and not payment, and there will be certain groups backing him and others against him, certain individuals likewise. When he is elected he may be Impartial, it is hoped he will be. But he has les3 a chance to be impartial after being backed or opposed by certain people, and I would not like to put the judge in the position of having that tension of feeling that he should be grateful, even if he does nothing about it. Another thing, during the campaign If he expects to win, he is going to have to make speeches to the people to point out why he should be elected. He might even be asked to make campaign promises. He will be asked to make statements which might amount to commitments. Then after he is on the bench he can't forget those statements. He is supposed to live up to them. That is not right. A judge should be free in every way, after he is on the bench, to render a decision. Now in examining these two

different methods of selecting a judge — first, if he is appointed by a judicial committee and approved by the governor, he should have these two qualifications -- ability and integrity. It is certain, almost 100 per cent certain, that a man with ability will be selected. If he campaigns and that election goes to the people, that is not so certain because the candidacy will be open to any attorney. There are attorneys of all degrees of fitness for that office, of course. On the other hand, if the judicial council appoints a man there is no guarantee of his Integrity but certainly these people are well acquainted with him and there is a greater guarantee than if he were selected by popular vote. So in balancing one method against the other, in my own mind I would say that by election you have no guarantee whatever of ability. You do have nearly 100 per cent guarantee if appointed. In integrity, you have no guarantee whatever of integrity in election. In appointment you have some guarantee of integrity. I believe that this Committee report that outlined the system of selection of our judges which is just about as perfect as can be, it's not perfect, nothing's perfect, but I think it is a system we want in the Territory.

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: Mr. President, at this moment we are at the heart of the problem of creating an independent Judiciary. Some of us have not always been proud of segments of the legal profes¬sion in Alaska, but at this moment I am very proud of this Committee of five lawyers and two laymen who have recommended this plan and this proposal to us. If this proposal is adopted, I shall be and shall continue to be proud of not only the legal profession in Alaska but of the Alaskans who in their search for an .independent judiciary have drawn the very best from the studies and the constitutions of 48 states and have rejected the poor and the second rate. I hope that In substance that this proposal will be adopted by this Convention.

SUNDBORG: Mr. President, may I have permission to address a couple of questions to the speakers who have spoken on this issue just for the purpose of clearing up a few points?

PRESIDENT EGAN: If there is no objection, Mr. Sundborg, you may address the questions.

SUNDBORG: I was wondering, Mr. McLaughlin, if you know whether

in states which do have a plan such as this, which I understand is generally designated as the Missouri Plan, In such states as a matter of practice, does the electorate ever, or very often, vote out of office a judge who is in office when the question comes up?

MCLAUGHLIN: As a matter of fact I will refer you back to the sheet that was prepared for this Convention by the Public

Administration Service and I believe that in there they specifically point out that in Missouri, they have, in fact, repudiated judges at the polls. Is that a startling thing? It is indeed. My own state (the State of New York--when I say my own state, where I am also admitted in addition to Alaska) between the time of the adoption of the constitution until very recently, I think they had 17 attempts at removal of judges and only twice did they succeed, and I am sure by that time the man was in a padded cell. Does it work? Yes. They do repudiate them at the poll. In Missouri, yes, they did repudiate them at the polls.

SUNDBORG: Thank you. Now, Mr. Taylor, earlier in the Convention I happened to watch one of the television programs when the Judiciary Committee was holding a meeting, and as I remember it, you spoke quite strongly in favor of electing judges. I take it from your remarks today you have been won around to the other view that it would be better to appoint judges. Is that correct?

TAYLOR: No, that is incorrect, Mr. Sundborg, because I introduced a proposal here which to a great extent is embodied in this now and I was in favor of the Missouri Plan. In fact, when I was running for the legislature, I was very emphatic in my stand upon the adoption of the Missouri Plan or something close as possible to it.

SUNDBORG: I see. Mr. McNealy, I was wondering in case your motion should prevail to strike this and other sections, do you intend to substitute anything else in their place or would you just leave that part of the constitution silent?

MCNEALY: It would be necessary to rewrite a section covering elections rather than appointments.

HINCKEL: May I direct a question to Mr. McLaughlin?

PRESIDENT EGAN: If there is no objection, Mr. Hinckel, you may address your question to Mr. McLaughlin.

HINCKEL: Was consideration given to appointment by the judicial council with the governor to have veto power?

MCLAUGHLIN: Consideration was given to the appointment by the judicial council with the governor to have veto power, but it was believed that in order to balance up the powers that the governor have some choice in the matter, that is, the executive branch have some election in the matter. As I say, the Committee was reluctant to recommend anything of a material nature which did not have prior precedent and the benefit of experience so that we could adjudge its value.

PRESIDENT EGAN: Mr. Kilcher.

KILCHER: Mr. President, am I correct that the amendment to Section 4 is now under discussion? If Section 4 should stand as written would that imply in line 17, page 2, "judicial council as provided in this article," if you accept that would that preclude any change in Section 6? Could we amend Section 4 again in some other manner?

PRESIDENT EGAN: Section 4 could still be amended, Mr. Kilcher, if this motion of Mr. McNealy should fail. Inasmuch as Mr. McNealy's proposed amendment would delete Section 4, if there was some other amendment offered to Section 4 or 6 it would stand and be a proper subject for the Convention. Is there anyone else who has not spoken yet on the proposal who would like to? Mr. Londborg?

LONDBORG: I am getting more and more sold on the idea of the appointment of judges. However, there is a matter in another section that may make a difference in the voting, and I am wondering if it would be in order to submit an amendment to Section 10 on page 3.

PRESIDENT EGAN: Mr. Londborg, it will be in order, properly so if you so feel, after this particular amendment on Section 4 is dealt with, unless by a two-thirds leave of the Convention you are allowed to explain what your purpose was and the Convention would feel that it was in line. If you were speaking in the nature that it might affect your decision as to how you will vote on the proposal of Mr. McNealy's.

LONDBORG: Well, it would as far as pertaining to Section 4, because leaving Section 4 as it is would call for nomination by the judicial council. Now if you feel that that could be perhaps amended later, I would hold my amendment in Section 10 until that time.

PRESIDENT EGAN: It could be amended later if you so choose to offer an amendment.

LONDBORG: Otherwise, I thought I would offer them now.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: Mr. President, I wonder whether in view of Mr. Londborg's state of mind, which I think may be that of many of us, if Mr. McNealy might consent to withdrawing his motion to amend, by striking only Section 4, and would agree to make his motion which would cover all the sections he mentioned and which covered the issue of the appointive as against the elec¬tive selection of judges at the time we reach the sections, which would be Section .14, so that we could proceed and see exactly how we would change the sections about the appointment of judges, if we do intend to change them, and then we can decide whether we want that system, or whether we want the

system of elective judges, rather than try to decide it now before we have gone into Sections 3, 6, 9, 10, 11, 12, 13, and 14, which I understand Mr. McNealy also would strike.

PRESIDENT EGAN: Mr. McNealy, would you care to answer Mr. Sundborg's question?

MCNEALY: Mr. President, as I have stated, and I still feel the same way, if Section 4 should by any chance, if my amendment be adopted, then it would require, certainly, further work on the other sections. However, it was my intention, I'll put it this way, when the amendment is defeated, then it is my intention to withdraw my amendments as to the other sections and leave them open for any action on the floor as to those further sections.

SUNDBORG: As I understand it, Mr. President, Mr. Londborg was saying that his vote on the motion now before us, namely to strike Section 4, might depend to considerable extent upon what we might do about some later section here which we would have reached and dealt with, if we could proceed in the manner just suggested to Mr. McNealy.

PRESIDENT EGAN: Mr. Sundborg, it sounded to the Chair like that before Mr. Londborg sat down, that he felt that if it would be proper that he offer a different amendment to Sec¬tion 4 if this motion of Mr. McNealy's failed, it would be in line with his thinking.

LONDBORG: Mr. President, I would have no other offer as far as amendment for Section 4. Mine pertains to another section. However, it may influence my voting on this matter of the motion that you have before the house.

SUNDBORG: Mr. President, is it not true that if we should now vote, either rejecting or accepting Mr. McNealy's amendment to strike Section 4, that we could not again later vote on that same matter?

PRESIDENT EGAN: We could not vote on that same matter, Mr. Sundborg, unless, of course, by a two-thirds majority vote of the Convention you can almost do anything. But there could be other amendments offered to Section 4. We could not vote on the out and out matter to delete the entire section, no. Mr. Taylor.

TAYLOR: I think Mr. Londborg's question was not answered, because it was specifically understood that at the time we entered into the consideration we were only acting upon Section 4 and not upon 9 and 10 -- 10 especially Mr. Londborg mentioned, as he might want to make a change in that one, and I think if Mr. McNealy's motion failed or if Mr. McNealy's motion carried, 8, 9, etc. will be out of the proposal anyway.

PRESIDENT EGAN: Mr. Smith hasn't had the floor yet. Mr. Smith.

SMITH: I would like to request and ask unanimous consent that a two-minute recess be called, and I believe this matter could possibly be straightened out.

PRESIDENT EGAN: If there is no objection the Convention will stand at recess for two minutes. The Convention is at recess.

RECESS

PRESIDENT EGAN: The Convention will come to order. We have before us Mr. McNealy's motion to delete No. 4 from the proposal.

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: The Chair would like to state at this time that this morning Mr. McNealy, when he first brought up the question of second reading, when he first proposed his amendment, he stated that he was of the feeling that second reading of proposals was going to be held over, that all proposals were going to be held in second reading until after the hearings recess. The Chair informed him when he sat down that such was not the case and then Mr. McNealy took the floor later than that and gave his argument. In the opinion of the Chair that did not preclude Mr. McNealy of his right to close the argument, if he so chooses. The Chair would like to call to the attention of all the delegates at this time that each delegate is entitled to speak twice on any question without further leave of the Convention. He should speak once, only once without leave of the Convention until all the rest of the delegates who wish to be heard, are heard. Then he is entitled to speak again. The mover of the motion is always entitled to the final say if he so chooses. Mr. McNealy, at this time, in the opinion of the Chair wishes to make a closing argument, it is his privilege. Mr. Victor Rivers,

V. RIVERS: Mr. President, point of order. In speaking, you do not include the matter of personal privilege or the asking of questions?

PRESIDENT EGAN: That is right, Mr. Rivers. If a person rises and wishes to ask a particular question, that is not counted against his time on the floor. Mr. Kilcher?

KILCHER: Mr. President, point of information. Does this imply that the previous question could not be asked either before each delegate has had the floor once?

PRESIDENT EGAN: No, it does not Imply that, Mr. Kilcher. The previous question can be asked for at any time that a delegate

he so chooses. However, in going into the Robert's Rules of Order, the brown book where everything is explained explicitly — it goes much further than these books that we have — and on the question of the previous question, Robert's Rules of Order goes into that in a quite lengthy order, and it gives the chairman of any parliamentary organization considerable latitude as to how he shall treat the question at the time it is put. In other words, in general procedure some judgment is left to the chairman as to whether he will allow immediate closing of debate without having information made available to the assembly, and that is precisely what was done this morning because maybe the Chair felt that some members did not realize they were closing debate when there were other members on the floor who were seeking that privilege. If there is no further debate on this motion — Mr. Robertson?

ROBERTSON: Mr. Chairman, inasmuch as I am one of the advocates of this proposal, I staunchly advocate it now but I would like to again emphasize that Section 4 is the keystone of the entire structure of this proposal, and I would like to also state and call it to the Convention's attention that we had the advice on several meetings of Mr. Elliott on this proposal, and it was only drawn and prepared after consultation with him and a good deal of investigation, and I suggest to the Convention that it guarantees a strong, fearless, independent judiciary, and I hope that Mr. McNealy's amendment may be voted down.

PRESIDENT EGAN: Is there further discussion of this proposed amendment by Mr. McNealy? If there is none, then the question is, "Shall Mr. McNealy's proposed amendment, the deletion of Section 4 from Committee Proposal No. 2, be adopted by the Convention?"

JOHNSON: I request a roll call.

PRESIDENT EGAN: Mr. Johnson requests a roll call vote. The Chief Clerk will call the roll. Mr. Londborg?

LONDBORG: I would like to express my privilege of not voting in this matter.

PRESIDENT EGAN: Mr, Londborg requests the privilege of not voting on this matter. The Chief Clerk will call the roll.

COOPER: Mr. President, before the roll is called, as I understand the rules, any five delegates can now request any other delegate to state his reason for not voting. If there is doubt in any one delegate's mind, I would like to know what the doubt is, if there is still a doubt, possibly something over¬looked, that wasn't brought on the floor. I would like to know. I am one, I would like to have four others.

PRESIDENT EGAN: You are asking Mr. Londborg why he is not

voting? Mr. McNees, Mr. Hellenthal, Mr. VanderLeest, Mr. Knight, Mr. Poulsen, Mr. Hinckel, Mr. Stewart (These men raised their hands) — yes, we have five.

LONDBORG: Well, as I understand it, Section 4 is basic and it is hard to be divorced from the remaining sections of the article and it seems that the entire matter should be voted on finally as a whole, and I would like to find out after we read through these and approve each section if the whole proposal then is voted upon in our deliberation and adopted by a majority vote or not.

PRESIDENT EGAN: Mr. Londborg, after all the amendments have been proposed, defeated, or accepted by this Convention, then we go back and vote on the whole Committee Proposal. The question will be in third reading after it passes second reading, the whole proposal will be voted on. It will not be adopted by the Convention until it is voted on in its final form in third reading.

LONDBORG: In voting in final form in third reading it would still take a two-thirds to put it back in second reading for amendment, right?

PRESIDENT EGAN: That is correct under the present rules, Mr. Londborg.

LONDBORG: Therefore I don't know if I can vote for or against Section 4 being deleted or left in until I find out what the other sections are going to contain.

PRESIDENT EGAN: Mr. McCutcheon?

MCCUTCHEON: The thing Mr. Londborg fails to realize is the fact that before he is required to vote on this in final passage that there will be one more copy of this document come to your desk which will include all the amendments that have been put in it. Then you will have it up in third reading. If you decide to put it back in second reading again, give notice of one day and you can return it to second reading for further amendment if necessary.

LONDBORG: By a majority vote?

MCCUTCHEON: Yes sir.

LONDBORG: Well then, I'll vote.

MCCUTCHEON: But you must give notice of one day and take action the next day in order to return It to second reading for specific amendment.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: Mr. President, I certainly differ with Mr.

McCutcheon in the interpretation of the rules in that matter.

A motion to rescind, if notice is given for only one day, takes only a majority vote. But a motion to put a matter back in second reading after it has gone to third certainly always takes a two-thirds vote.

PRESIDENT EGAN: Mr. McCutcheon probably meant a motion to rescind.

SUNDBORG: What would you rescind in the case that you are thinking of?

MCCUTCHEON: He could request a rescission on a specific item.

SUNDBORG: The Convention might rescind its action for example, on what it did on Section 4 but that would not put this article back in second reading and permit any other change to take that place without a two-thirds vote.

PRESIDENT EGAN: Mr. Londborg.

LONDBORG: Mr. President, I have been asked to state my reasons and it seems to me that if I vote against Mr. McNealy's proposal or if his proposal fails, that it remains on an appointive basis, we cannot go and amend it to be on an elective basis as he suggests, and it may be that certain articles following Section 4, it may be that some of those articles as they are now would force me to vote Section 4 to be deleted, as they are now.

PRESIDENT EGAN: Of course, Mr. Londborg, would that not be true of any amendment that was proposed at any time to any pro posal? None of us will know exactly until we get through.

LONDBORG: That is why it seems to me that after all the sections are voted upon, would it not be the procedure then to vote on the proposal as a whole before it goes to third reading?

PRESIDENT EGAN: When you vote on the proposal as a whole it is in third reading, but after other amendments are adopted it does not preclude further amendment to the proposal in second reading because an amendment might be adopted now. A different amendment could be offered to that same section at any time, Mr. Londborg, so long as we are in second reading. Mrs. Nordale?

NORDALE: I think maybe what is troubling Mr. Londborg is that he fears that if an amendment Is adopted later in the proposal that is not consistent with something we have been over, that he cannot go back and make it coincide, but until we are all through, he can go back to Section 1 or 2 and change them to coincide with what happens later.

MCCUTCHEON: Question.

PRESIDENT EGAN: The question is, "Shall Mr. McNealy's proposed amendment deleting Section 4 from Committee Proposal No. 2 be adopted by the Convention?" The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result

Yeas: 2 - Laws, McNealy.

Nays: 51 - Armstrong, Awes, Barr, Boswell, Coghill, Collins, Cooper, Cross, Davis, Doogan, Emberg, V. Fischer, Gray, Harris, Hellenthal, Hermann, Hilscher, Hinckel, Hurley, Johnson, Kilcher, King, Knight, Lee, Londborg, McCutcheon, McLaughlin, McNees, Marston, Metcalf, Nerland,' Nolan, Nordale, Peratrovich, Poulsen, Reader, Riley, R. Rivers, V. Rivers, Robertson, Rosswog, Smith, Stewart, Sundborg, Sweeney, Taylor, VanderLeest, Walsh, White, Wien, Mr. President.

Absent: 2 - Buckalew, H. Fischer.)

CHIEF CLERK: 2 yeas and 51 nays and 2 absent.

PRESIDENT EGAN: So the motion has failed. We now have before us Section 5. Mr. McNealy?

MCNEALY: At this time I would move and ask unanimous consent that the balance of my amendments as to further sections be withdrawn from consideration.

PRESIDENT EGAN: Mr. McNealy moves and asks unanimous consent that the amendments he offered to other sections be withdrawn. Is there objection? Hearing no objection it is so ordered. Mr. Victor Fischer?

V. FISCHER: I still have one question on Section 4 if I may ask the Chairman of the Judiciary Committee.

PRESIDENT EGAN: If there is no objection, you may address your question to the Chairman of the Judiciary Committee, Mr. Fischer.

V. FISCHER: In Section 4, it states the justices of the supreme court will be appointed by the governor. In Section 2, there is a reference to the supreme court consisting of three justices, one of whom is chief justice. Who appoints the chief justice?

MCLAUGHLIN: I believe that is covered further. Actually, he

is appointed by the governor. It is covered In some future provision. There is a phrase --

PRESIDENT EGAN: Section 9 would probably take care of that. Mr. Victor Fischer?

V. FISCHER: Upon further reading I notice on page 4, on line 3, it generally, in that top there, it refers to the judicial council submitting to the governor nominees for appointments to fill initial vacancies including the office of chief justice. It is segregated in the initial appointment.

PRESIDENT EGAN: Are there amendments to Section 5? Mr. Victor Rivers?

V. RIVERS: I have an amendment.

PRESIDENT EGAN: The Chief Clerk may read the amendment.

CHIEF CLERK: "Page 2, line 8, strike the word 'ten' and insert in lieu thereof the word 'six'."

PRESIDENT EGAN: What is the pleasure of the body? Mr. Victor Rivers?

V. RIVERS: I move that the amendment be adopted.

PRESIDENT EGAN: Mr. Victor Rivers moves that the proposed amendment be adopted. Is there a second to the motion changing the word "ten" to read "six"?

SUNDBORG: I will second the motion, and I would like to ask the Chairman of the Judiciary Committee how the practice that is specified in the article embraced in Committee Proposal No. 2 compares with that of other states as to the length of time between these elections?

MCLAUGHLIN: As I presume, the question is, why did we determine that the judges of the supreme court should serve ten years. I personally voted for twelve. The Committee decided that ten was the average, and the Committee when it decided that ten was the average, followed the recommendation of the conference of the Chief Justices of the United States, at which they recommended that the term of judges of the appellate courts be not less than ten years. In fact, as I say, I reduced it two years, and Mr. Robertson decreased his an intangible amount, from lifetime to ten years. As the practice is in other courts, that is those which have revised their judiciary article in recent years, California, the supreme court has a term of twelve years. All justices of the supreme court, district court -- that is the Intermediate appellate courts — is twelve years, and the superior court*which is the trial court, is six years. In New Jersey, the supreme court judges hold for seven years

and upon reappointment, they hold for life subject to removal, that is during good behavior and until the age of 70. That is Article 6, Section 6, Subdivision 3, of the New Jersey State Constitution. In Missouri, the supreme court justices hold for twelve years, the circuit court judges hold for six years. That is under Article 5, Section 29, C-l of the Missouri Constitution, which has recently been amended. Under the Hawaii Constitution, under Article 5, Section 3, judges of the supreme court seven years, circuit court six years. It is the feeling of the Committee, because of the selective process, that is,, screening for initial appointment and the fact that four years thereafter, every judge, that is, a maximum of four years, every supreme court judge and every superior court judge would be up for re-election, that there would be enough of a public control over them that long terms would be more desirable. How do these compare with the United States? Generally throughout the United States the figures are being upped. They are giving longer tenure to their judges, but it was on the basis of the fact that the chief justices of each state court has recommended as a minimum judicial standard the figure ten, the Committee adopted that figure. As I say, many Committee members consented to reducing it because of the re-elective system process we have.

PRESIDENT EGAN: Is there further discussion? Mr. Victor Rivers.

V. RIVERS: Mr. Chairman, in adopting the Section 4 we adopted the appointive process for judges, and of course I think the meat of that whole thing settled down to the fact that it was not an appointive process so much, but how they were appointed. Now I did not notice very many of the law members referring to past history. There was some brief reference to it, but perhaps that is because we do not enjoy on this floor certain privileges of immunity. However, I think if we look at appointive systems as such, our experience as Mr. Davis pointed out has been very poor. Now we have adopted the appointive system and the only difference is the method by which we select the judges for appointment. We have had judges in the past in the Territory under this appointive system, of course they have handled both Federal and the Territorial business, we have had some fine judges. We have had some men that were average and mediocre and some that many people considered very poor, but we are setting up now an entirely new system of justices. We have had the situation in the past where to make an ordinary appeal from the ruling of one of these courts would cost anywhere from $2,000 to $3,000. You would have to go down and have your transcript made and have your attorney go to San Francisco and of course you were practically, if you were an average citizen, foreclosed from having an appeal, but at this time we are setting up a system of justice at which we will now have under our direct jurisdiction, or at least within reach, the judges whom we appoint to these various positions and they

are subject to put their name before the electorate in the first three years they are appointed. Now we ask that the judge sit inviolate in that position for ten years. If he is a good judge, a fair and just judge, it is my opinion that he should have no fear in going before the electorate, because it has been my observation that a man who sticks to his principles and does not compromise principles with expediency and is generally known to be honest will even be elected and reelected to political office. Six years is a term for which we elect a senator. It seems that these men if .they are good judges and there is no reason for recall, if the recall method as set up in here has failed to function, it might be very well to put their name before the electing body. They are appointed, we have given a strong appointive power to the judicial council. I am happy to see there is a certain layman representative group on that council. It seems that the least thing we can do now to offset this appointive power is to have a fairly strong or fairly liberal interpretation of the powers of electing these men as they run against themselves. It does not seem to me it is working any hardship on a man's tenure of office or on his feeling of security or on his ability to perform his duties by asking he get up and have his actions approved every six years without competition, by the electorate. It seems to me to be a much more democratic system of putting him in a position such that he's practically unremovable for—well, 20 years is probably the average productive life of a man who has gone through college and who has finally got himself in a position to be a judge. I don't expect his expectancy would be much more than ten years or possibly 15 years after he had become a judge, so we are practically giving an appointment in that position for life after he has once appeared before the electorate. I notice that Hawaii set up a period of seven years, quite evidently a compromise figure, because they ask the superior court judges, who are dealing with affairs much closer to the people, to appear every six years. As you know, the supreme court, as I visualize it here, will sit and act only on appeals from the court of lower decisions. There won't be a tendency to have this great wave of popular support swing for or against them after decisions in court because their decisions are so much fewer than the court's decisions that are made in the lower courts. I see no reason why we should not consider confirming these judges to offset the appointive power resting in the hands of a judicial council, consider letting their names come before the electorate every six years. It seems to me fair and somewhat considerably more democratic than keeping them in there for the longer period. I also want to point out that, as we start off in the statehood picture, as it is in many other layers of our society, we have a great many relatively new and younger attorneys and not very many of the more older, experienced, tried veterans to draw from. It seems to me that that is another good argument why we should have these people answer back to the electorate every six

years. It is not Imposing, in my opinion, any burden on them. If they are good judges, If they are qualified, if they are honest men doing a honest job, I should think they would be proud to put their name before the electorate. I see no reason to hold them back in this rarefied atmosphere of untouchability. I think the electorate should have the chance to express their opinion on them at least every six years.

PRESIDENT EGAN: Is there further discussion on this proposed amendment? If not, the question is, "Shall the amendment offered by Mr. Victor Rivers changing the word 'ten' to 'six', making it six years instead of ten years, for the supreme court justice to come before the electorate be adopted by the Convention?"

JOHNSON: Mr. President, I request a roll call.

PRESIDENT EGAN: Mr. Johnson requests a roll call vote. The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result:

Yeas: 11 - Cooper, Hinckel, Kilcher, Londborg, McNealy, Nolan, Peratrovich, Reader, V. Rivers, Smith, Sundborg.

Nays: 42 - Armstrong, Awes, Barr, Boswell, Coghill, Collins, Cross, Davis, Doogan, Emberg, V. Fischer, Gray, Harris, Hellenthal, Hermann, Hilscher, Hurley, Johnson, King, Knight, Laws, Lee, McCutcheon, McLaughlin, McNees, Marston, Metcalf, Nerland, Nordale, Poulsen, Riley, R. Rivers, Robertson, Rosswog, Stewart, Sweeney, Taylor, VanderLeest, Walsh, White, Wien, Mr. President.

Absent: 2 - Buckalew, H. Fischer.)

CHIEF CLERK: 11 yeas, 42 nays, and 2 absent.

PRESIDENT EGAN: So the motion has failed of adoption. Are there other amendments to Section 5? If not, proceed to Section 6. Are there amendments to be offered to Section 6? If not, proceed with Section 7. Mr. Sundborg.

SUNDBORG: Mr. President, I would like to ask a question of the Chairman of the Committee on the Judiciary Branch with respect to Section 7, if I may. Mr. McLaughlin, I notice that Section 7 appears to require that any person in order to be eligible for appointment as a Justice or judge would have to have been admitted to practice law in Alaska for at least five years, not necessarily five years preceding his nomination,

whereas he would have had to be a resident of Alaska for the five years immediately preceding his nomination. Is that what the Committee intended, or do you take that final phrase, "next preceding their respective nominations," as modifying both the admission to practice law and the residence in the state?

MCLAUGHLIN: I take it to modify both phrases. In fact, my recollection is that the Committee dropped out a comma, that is they wanted to have them both residents and admitted for the five years preceding their appointment.

SUNDBORG: I certainly believe as now written, it leaves that question very much up in the air, and it would be possible for a man who had been admitted at some time in Alaska for a period of five years, to be appointed even though they weren't the five years immediately preceding.

MCLAUGHLIN: That is true. Admission, you will note, Mr. Sundborg, that we say he has to be admitted to practice in the state for at least five years. He could have been ad¬mitted 20 years ago, left the Territory, heard there was a lush practice available In the town of Fairbanks and have re¬turned in the five years just preceding his designation. That is a minimum of five years' residence immediately preced-ing. The admission takes effect In the one point in time and is continuous thereafter.

SUNDBORG: No man is ever "un-admitted" from the bar?

MCLAUGHLIN: I don't think that he would be found acceptable to the judicial council.

SUNDBORG: That may be, but is there procedure for removing a man's right to practice before the bar of Alaska?

MCLAUGHLIN: There would, and that would be a subject for the legislature to determine, that is, the qualifications, who becomes an attorney is left apparently, under this constitution, and should be, to the determination of the legislature.

SUNDBORG: I am asking this quite as much for our guidance in Style and Drafting as for the information of the Convention here. What I want to know, and I believe you have answered it is, it is the belief of the Committee and the decision of the Committee that the five years provision should be immediately preceding nomination both with respect to practice or admission and with respect to residence.

MCLAUGHLIN: Yes.

HELLENTHAL: I have a proposed amendment to Section 7.

PRESIDENT EGAN: Mr. Hellenthal has an amendment to offer. The Chief Clerk may read the proposed amendment.

CHIEF CLERK: "Delete the period and add 'and who have practiced private nongovernmental law for said period.'"

ROBERTSON: Would the Chief Clerk please read that again.

CHIEF CLERK: "Delete the period and add 'and who have practiced private nongovernmental law for said period.'" It goes on to the end of Section 7. Delete the period.

PRESIDENT EGAN: Mr. Hellenthal, I think I know what you mean, but would the wording "nongovernmental", would that be the , proper — perhaps if there is no objection we will have a recess for two minutes. The Convention is at recess.

RECESS

PRESIDENT EGAN: The Convention will come to order. Mr. Hellenthal?

HELLENTHAL: Mr. President, I ask that the amendment that I offered to the Chief Clerk a few minutes ago be withdrawn and that the amendment that I have now left with her be considered in its place.

PRESIDENT EGAN: Mr. Hellenthal asks unanimous consent that his original amendment be withdrawn and that he be allowed to submit the amendment that is now before the Chief Clerk. Hearing no objection, it is so ordered. The Chief Clerk may read the amendment by Mr. Hellenthal.

CHIEF CLERK: "Line 4, omit period and insert a semicolon and then add, 'provided that time spent as an attorney for the United States, or agency thereof, shall not be construed as counting toward the five-year admission requirement.'"

DAVIS: I wonder if we may have that read slowly.

CHIEF CLERK: "After Line 4, omit the period and insert a semicolon and add, 'provided that time spent as an attorney for the United States, or agency thereof, shall not be construed as counting toward the five-year admission requirement.'"

HELLENTHAL: I move the adoption of the amendment.

MCNEALY: I second the motion.

V. RIVERS: May I ask the mover of the motion a question? I would like to ask if he is accomplishing his purpose here by only confining his exemptions to the employees of the United States, because we are going to have a great many prosecutors

under the state as I now see this setup. As I visualize your motion, it is to keep men who are prosecutors and have no other experience from going on to the bench, is that correct?

HELLENTHAL: In some instances, prosecutors, and in other instances, other governmental officials in different fields of the government.

V. RIVERS: If you have state prosecutors, this will not prohibit them. If they have nothing but five years of prosecution experience, they could still be appointed a judge.

HELLENTHAL: Yes, and so could an attorney general under this amendment, whereas the first amendment would have excluded the attorney general from going on the bench. Mr. Chairman, may I be heard in connection with the reason for offering the amendment?

PRESIDENT EGAN: Mr. Hellenthal, you may be heard.

HELLENTHAL: Some of us feel, based on experience in the Territory, that it is not wise that a person who comes to Alaska as an employee of the Federal government and who engages in governmental activity in which he achieves considerable prominence and who in many instances have never devoted themselves to the private practice of law at all should be elevated to the bench, and the proposal as it reads without the amendment would permit a man, say from Tennessee, that was nominated to a federal position in Alaska, perhaps say in the CAB and who achieved a great deal of notoriety but who had never once in his lifetime practiced law. That man would be permitted under the present reading of Section 7 to be eligible for the bench, and we feel that that loophole should not be left open because we have seen harm result to Alaska from that very circumstance.

PRESIDENT EGAN: Mr. Riley?

RILEY: I should like to address a question to Mr. Hellenthal. As I heard the proposed amendment, the next to last word was "admission". Had you not "eligibility" in mind?

PRESIDENT EGAN: Would the Chief Clerk read the amendment?

CHIEF CLERK: "Admission" is the word you had.

HELLENTHAL: Read the whole thing here.

CHIEF CLERK: "... provided that time spent as an attorney for the United States, or agency thereof, shall not be construed as counting toward the five-year admission requirement."

HELLENTHAL: Yes. The "five-year admission requirement" being

the language of the present Section 7, which reads as follows: "who have been admitted to practice law in the State for at least five years". That is the admission requirement under the present Section 7- We would not want to include federal time in that admission requirement.

RILEY: Mr. President, just to make my point clear -- I had in mind that you were referring back to eligibility for appointment.

AWES: I would like to ask Mr. McLaughlin a question.

PRESIDENT EGAN: If there is no objection you may ask Mr. McLaughlin a question, Miss Awes.

AWES: This requirement that a person who had been admitted to practice law, is that for five years? Is that Interpreted to mean that he has to be admitted and to actually practice?

MCLAUGHLIN: It was the Committee interpretation that admission to the practice of law did not necessarily imply any type of consistent regular practice, merely being admitted, nor did It imply that a person who was in a governmental service either in the United States or the Territory of Alaska should be precluded from appointment under the article. It was merely the technical requirement of having been admitted for a period of five years.

AWES: Well then, with Mr. Hellenthal's amendment, a person who has worked for five years in the government -- that five years would not count, but what about the man who is admitted to the bar and then goes out and gets a job as a salesman or is business manager of some company?

MCLAUGHLIN: Under the literal interpretation of this provision, a man who goes out and gets a job, and I will use another example, a man who is a mortician and practices as a mortician still under this article would be eligible for appointment.

PRESIDENT EGAN; Mr. Hurley?

HURLEY: Mr. Chairman, I think the amendment is discriminatory and unnecessary. The comment that was made by the mover of the amendment had reference to a situation which we will not have if this proposal is adopted. Under this proposal we will have a judicial council, which in my opinion should be given credit for being able to make decisions to the benefit of the Territory at large. I prefer, rather than to appoint an obviously discriminatory finger against some faction, to leave It up to the judicial council to act wisely In the matter.

HARRIS: Mr. President, I would like to agree with Mr. Hurley. This amendment seems discriminatory to the extreme. We have

set up in our judicial council a system where they have three lawyers plus the chief justice and if the four lawyers together can't keep the right type of judge in there, along with three laymen, there is something wrong about the judicial council setup as a whole.

PRESIDENT EGAN: Mr. Riley.

RILEY: Mr. President, as I read Mr. Hellenthal's proposed amendment, I see some merit if it relates to eligibility for appointment as a judge. But when he reiterates that his amendment looks only to eligibility for admission --

HELLENTHAL: It relates only to eligibility for judges.

RILEY: Yes, but the word "admission" relates back with admission to practice, does it not?

HELLENTHAL: I do not so read it, Mr. Riley.

RILEY: Let me continue in the hope you may correct me. As I read your proposal, your amendment, five years, or I should say service for the United States, "or agency thereof, shall not be construed as counting toward the five-year admission requirement." Now let us assume that a fellow has been practicing in private practice for 15 years. He was admitted initially after having served for five years, we will say, when he came to Alaska as an Assistant D. A., or whatever. Are we not throwing an unnecessary obstacle in his path toward eligibility?

HELLENTHAL: I don't think so, because Section 7 says that to be eligible for an appointment, then by Implication, to the office of justice or judge you must be one who has been admitted to practice law in the state for at least five years. Now, as to that class of individuals, and not the young lawyers who seek admission, as to that class of individuals, namely the justices or the judges, that five-year admission period will not include time spent in the federal activity.

RILEY: But you are speaking of admission initially to practice law.

HELLENTHAL: No, we are speaking to the admission requirement with regard to judges or justices. I think that is quite clear because the whole thing is tied In with eligibility for appointment as justices or judges.

RILEY: Shall we say admission for consideration for appointment? Does that bear on your point?

PRESIDENT EGAN: Mr. Riley, would you object to a five-minute recess at this time?

RILEY: I would appreciate it.

PRESIDENT EGAN: If there is no objection the Convention will stand at recess for five minutes.

RECESS

PRESIDENT EGAN: The Convention will come to order. We have before us Mr. Hellenthall proposed amendment to Section 7. Is there further discussion on the proposed amendment? Mr. Hilscher?

HILSCHER: Mr. President, as a layman on this thing, I am sure there are others who join me who would like to know what the arguments were within the Judiciary Committee on this particular item. The question must have come up and I would like to address that question with your permission to the Chairman of the Judiciary Committee.

PRESIDENT EGAN: You may Mr. Hilscher. Mr. McLaughlin, would you care to answer that question?

MCLAUGHLIN: Mr. President, if you will forgive me for digressing a moment, I was Just showing my fellow Delegate, Mrs. Wien, a letter from an unnamed Individual who said, "I was impressed, however, by the rather widespread feeling among many delegates that lawyers should be distrusted. Also, with the sentiment that all legislators, governors, and other elected officials cannot be trusted and must be hamstrung with restrictions." The discussion which took place In Committee on this article on Section 7, originally my recollection was that most members re-quested a practice requirement and a private practice requirement, and those members can contradict me if I do not state the facts accurately or completely, a private practice requirement of ten years. And there was Initially, which was taken from Missouri, a requirement that Justices of the supreme court had to practice law for a period, not had to practice law, but were required to be citizens of the United States for approximately 15 years and justices of the superior court had to be citizens of the United States for approximately 13 years. That was knocked out by the Committee and substituted merely the requirement that citizenship In the United States should be the determination. Originally the advocate of committee proposals was that there be a requirement of ten years' active private practice of law, and that in a sense is justified if existence in other states is justified. In New Jersey Article 6, Section 6, Subsection 2, provides that the supreme court justices shall be admitted to practice for a period of ten years prior to their appointment to the bench. Hawaii, under Article Section 3, has an admission practice for ten years. Most states have a requirement, generally statutorily or in their constitution, that judges be learned in the law, and as many of you know, in the State of Texas that means by judicial interpretation,

you don't have to know anything, but the argument finally, some of the arguments that were raised, where they pointed out that we had had In the Territory and more so In the United States, many examples of judges who had been appointed to the bench without any prior practice and without any experience with trial work, appearance in the court, or his background or training was limited let us say to prosecution of criminal cases and he did not have that breadth and 3cope which is practically essential to the efficient operation of a good trial court. Some members did object that there should be no requirement. One I specifically recall, did make the objection that since we were growing and would be a growing state there was a possibility that limiting, for example, the requirements to ten years or conditioning the requirements on ten years practice would mean that most of the lawyers in the community would be ineligible and that a select few would first occupy the supreme court bench and superior court bench. Another suggestion that was made was that there was a possibility that if the State of Alaska rapidly expanded, we might require those persons who need not be generally versed in the general practice of law but who would be essentially specialists. For example, the condemnation experts, if the calendars become blocked with condemnation and a rapidly expanding economy, we would not have a man available or specially versed in that field in the Territory, and the constitution would preclude us from introducing a good man. One of the arguments that was presented since the judicial council consisted of lawyers, they themselves, based on their own experience, might preclude the appointment of some novice without any prior trial practice, office practice, or experience in the courts. One of the problems that did confront us was the fact that under one of our original proposals a justice of the superior court couldn't acquire time, that is even though he sat on the superior court for 20 years, under the lesser qualifications for the superior court, he could never be elevated to the supreme court because service on the bench as a superior judge did nothing in favor of his practice time. Most of the members did confess a concern about judges who did not have in fact, training, background, and experience in dealing with clients or participating in the work of court. Does that answer your question, Mr. Hilscher?

HILSCHER: Mr. President, I would then assume from what the

Chairman has stated that it was the consensus of the Committee that possibly the judicial committee would be of sufficient experience to properly evaluate the nominees for the various judgeships that would be open?

MCLAUGHLIN: That is a difficult question to answer. Since the Committee ratified this article, they did not feel that everything should be left to the discretion of the judicial council. I prefer that the members of the Judiciary Committee speak for themselves, in that respect. I have a personal viewpoint that I think it improper for me to present.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: I would like to address an answer to the question of Mr. Hilscher to the effect that I thought and I thought the other members of the Committee thought, that the screening by judicial council would be a weighing of the qualifications of the persons nominated, and that if a fellow had been a prosecutor for five years, had never defended, had never engaged in private practice, the judicial council would not for a moment nominate him for a position on the bench. We encountered the proposition that Mr. McLaughlin mentioned, that if you require private practice, then the man that is sitting as a judge on the superior court bench is not making himself eligible to be appointed to the supreme court. We had the proposition that you might have a law school here some day with a prominent dean of a law school. Why shouldn't he be eligible, perhaps, to be on the supreme court? We thought that if a man is going to serve as attorney general, which is a very broad scope of civil practice, that he should be gaining time toward being eligible for appointment to the bench. When we got all through we just said well, we will just say they have to be admitted for five years and then let the judicial council decide what the qualifications are.

PRESIDENT EGAN: Is there further discussion? Mr. Doogan.

DOOGAN: Speaking strictly on the amendment that I think it pertains to, I can understand why they would like to have a man practice law for five years in the Territory, but I am concerned about the five years of residence. I can foresee several possibilities that would preclude many people from ever aspiring to be a judge of the supreme or superior courts. A man could practice law in the Territory for 20 years and never be a resident. The point I am making, I think that we as Alaskans tend to put too much on this business of residency. I think that this is a growing country, and I don't think we should be so selfish, I guess is the word, as to preclude other good men that could practice law in the Territory and do practice law in the Territory and yet never fulfill the residence requirement. The judicial council may find that among those men, that they consider some of them to be the best, that could sit as the judges of our supreme and superior courts, and I would like to ask Mr. McLaughlin why that residence requirement was put in there.

BARR: Point of order. Is Mr. Doogan now speaking on the amendment which I believe has nothing to do with residence? Practice only, what kind of practice.

PRESIDENT EGAN: Mr. Barr, Section 7 has to do with residence and the particular amendment, of course, is related to the extent that the Chair would hold Mr. Doogan was not talking strictly in opposition to the amendment. Mr. Hellenthal?

HELLENTHAL: With the consent of my second and In order to satisfy Mr. Riley's objection, we would like to substitute the word eligibility for "admission" In the last portion of the proposed amendment.

PRESIDENT EGAN: Is there objection to the substitution of the word eligibility for the word "admission" in the last portion of the proposed amendment? Hearing no objection It Is so ordered and the word "eligibility" is now contained in the proposed amendment. Mr. Cooper.

COOPER: Mr. President, yesterday during the meeting of the Legislative Committee we were searching for a definition for a word. I suggested "agency" and the definition of "agency" was so large, so engrossing, that it was not clearly definable as to U. S. or state agency. Now one of the consultants we have here, I spoke with him during the last recess, and there is a little doubt in my mind now if the words, "United States or agency thereof" is clearly definable. Just exactly how far reaching is the word "agency" or possibly this should be a matter of the Style and Drafting.

PRESIDENT EGAN: Would the Chief Clerk read the proposed amendment as it now reads?

CHIEF CLERK: "Section 7, omit the period and insert a semicolon and add 'provided that time spent as an attorney for the United States, or agency thereof, shall not be construed as counting toward the five-year eligibility requirement.'"

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Mr. President, I had just a brief conversation with the same consultant and the word "agency" generally deals with a branch of the government. There are instrumentalities which are not agencies. I think the RFC is a corporation, federally created. It is an instrumentality of the Federal government but perhaps not an agency. So if you would want to make it all-embracive you would say "agency or instrumentality of the United States".

COOPER: I would like to ask Ralph Rivers then, if supposing the Golden Valley Electric Association, a public corporation — I think that would be defined as a state agency?

R. RIVERS: Yes, that is not a federal instrumentality.

COOPER: Supposing that an attorney in this immediate area of Fairbanks were hired on a retainer basis to handle all their legal business. Would that exclude that attorney from eventually being admitted or having the eligibility to be appointed as a judge?

R. RIVERS: No. Your engagements on a retainer basis are not

employment and that would be one of several clients no doubt, and he would be in private practice.

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: Mr. President, as a former attorney for the Golden Valley Electric Association, I can say that it is not an instrumentality of the United States or an agency. It is a corporation organized under the laws of the Territory of Alaska, and the man under the circumstances, as related by Mr. Cooper, would be practicing law in the Territory of Alaska. He has his office here. He would be practicing law because he would not be able to survive very long on the small amount of money you get from the Golden Valley Electric Association.

PRESIDENT EGAN: Mr. Harris.

HARRIS: Mr. President, my quarrel would not be with the wording of Mr. Hellenthal's amendment. The quarrel would be with the amendment in the entirety. I can foresee several instances in where a good man might be disqualified. It is true we might disqualify a lot of people that would never want in as judge. On the other hand, if we have a good man, and with a provision of this type should in any way disqualify him from serving, then we are restricting our constitution and building up a clique withinside a clique. This discriminatory sort of deal is what I object to.

PRESIDENT EGAN: Reverend Armstrong has been trying to get the floor.

ARMSTRONG: I want to register my objection to the amendment on the basis that I think we're inserting it on the basis of prejudice we have at this moment which may not continue on for 20 or 30 or 40 years. What I would like to ask is, does this type of a regulation inserted in other constitutions of the state where they call upon federal attorneys to qualify in this way before they can work within the court system of their state. I ask that as a question while I am registering an objection.

PRESIDENT EGAN: Mr. Londborg.

LONDBORG: Mr. President, what I am going to say -- I rather hesitate to say it because some day I may need a lawyer, but we are setting up here, I believe, a good judicial council and so far as I see it, I think it is going to be fine, and I believe near infallible. It is one I believe we should have a lot of confidence in. I don't believe they should be restricted in any way to select the man they think is the best man to be the judge. Now according to this article or this section and the amendment, they are being restricted as to who they can put in or select as their judge. According to this

it seems that many are going to be barred from ever being a judge of the supreme or superior court. I would like to direct a question, if I may, and I would like to ask the judicial council if it was the feeling within the council that only lawyers make the best judges.

PRESIDENT EGAN: Someone on the Judiciary Committee like to answer that?

MCLAUGHLIN: Is that remark addressed to me?

PRESIDENT EGAN: The Chair did not quite catch who the remark was addressed to.

MCLAUGHLIN: Mr. Chairman, it was the unanimous, now that includes both lawyers and laymen, it was the unanimous opinion of the council that lawyers make the best judges. In fact, nearly every judicial reform instituted in the United States is directed toward removing laymen from the bench. Are there exceptions? There are definitely exceptions. That is, when I say exceptions, there could be exceptions -- I am thinking of Mr. Corwin who is probably still in existence as Professor of Constitutional Law at Princeton -- he is not a lawyer. I can think of other exceptions but generally the requirement that he be admitted to practice of law is the basic requirement that you be learned in the law. One of the objections that we have heard in our Committee universally and uniformly, is the complaint from people who have been dealt with by commissioners in the outlying areas -- the grounds that they did not receive even the form of a fair trial. The theory is as a lawyer, at least he is grounded in the traditions of the constitution and the law and he is more intent upon preserving liberties rather than the others. Is there a precedent for nonlawyer judges? Yes, but it was just abolished under the New Jersey State Constitution. The New Jersey State Constitution provided in one of their courts, Court of Errors and Appeals, approximately something like 26 judges, some of whom were laymen. In effect, what happened was the people appointed as laymen were, in fact, lawyers. The requirement that judges be lawyers is a minimal requirement that everyone in the Judiciary Committee agreed upon, and that was not solely the lawyers themselves.

LONDBORG: Mr. President, I did not want it to be felt that I

intended it against lawyers as such, but it does seem that we are restricting this judicial council which is composed of four lawyers and in that respect it seems they would favor lawyers, all things being equal, and I for one would say that a person would be a better judge if he were a lawyer, other things being equal. I happen to have the opportunity of serving for awhile as a United States Commissioner and I would have .given a lot for some law study or law practice that I could have used along with that work. But I am wondering if it may happen

that there be a dearth of good lawyers that want to be judges. Maybe the best ones don't want to be judges, then it would certainly seem better not to limit the judicial council so they can pick a layman who might be a better judge.

COGHILL: I would like to direct a question to the author of the amendment. Is it not true that in years to come, through the new State of Alaska that the problem of United States attorneys or agencies thereof in our area, will be diminished and therefore this would be a transitory measure instead of a constitutional matter?

HELLENTHAL: I hope that in the years to come that we will see a diminution of federal officials in Alaska, and I sincerely hope it will be accelerated but there will be many for many years to come, and I therefore feel that this is in order. I want to, just in closing, state the case that no prejudice whatsoever is intended by this amendment. If one were to propose that the suffrage, as has been proposed, be limited to those 20 or over in age, one surely could not say that the person who made that proposal was prejudiced against everyone under the age of 20, and no prejudice is intended here at all. It is merely this, experience has shown that people who have never practiced law and who have merely been in government jobs do not make good judges. Further, that those people as a class, at government expense, can draw on the resources of the Federal government to put themselves into positions of prominence, and thus it is pretty hard for a judicial council to resist their application for the bench, and I don't think those people should be put in an unfair position, especially when their experience does not qualify them, and experience teaches us that. Now, the university president would not be disqualified under this amendment because I doubt if he would be a federal official, but over and above that many university presidents are not qualified nor are deans of law schools qualified to be judges. A judge has to be a broad person with experience in all forms of activities, not narrow experience.

PRESIDENT EGAN: Miss Awes?

AWES: Mr. Hellenthal a few minutes ago asked that the amendment be changed by changing the word "admission" to "eligibility". By directing a remark to that change I don't want it to be implied that I approve of the idea of the amendment. I object to the amendment itself, both on the grounds that it is discriminatory and I think it is an unnecessary limitation on the activities of the judicial council. But it seems to me that with this recent change that it is more confusing than it was to begin with, because it says it shall not affect the five-year eligibility. When you read the section, there are two different five-year requirements, it does not specify which one it applies to.

PRESIDENT EGAN: Mr. McCutcheon.

MCCUTCHEON: Mr. President, I feel impelled to argue against this amendment, and I predicate my inclination on the fact that we are endeavoring, I think, to limit this council. As I read this measure, it indicates the council shall submit two or more, an unlimited amount of names, to the governor for choice. It seems to me that if an attorney could run the gauntlet of not only his own profession but the sympathies of the private citizen who is on that council, if he can run the gauntlet of the governor's search through the list of names, taking into consideration the quality of these people and is still eligible, then certainly he should be appointed. But one thing I think the body here has rather overlooked and that is, our legislature under the provisions of the constitution, may set up additional restrictions as matter of tenure and practice. Consequently, I am going to vote against the amendment.

PRESIDENT EGAN: Is there further discussion? Mr. Sundborg.

SUNDBORG: Mr. President, I feel very strongly that the proposed amendment is something that does not belong in the constitution of the State of Alaska, which we hope is going to be adopted and which will endure for many, many years, centuries. Who knows what the situation may be? Our grandchildren may all be working for "Uncle Sam" — we don't know. I think to put in something like this is certainly lowering the tone of the constitution and destroying part of its spirit, and I would urge all delegates to vote against the proposed amendment.

PRESIDENT EGAN: Mr. Barr, you have been trying to get the floor.

BARR: Mr. President, I concur with Mr. Sundborg's sentiments in this matter. I believe it should be left up to the judicial council, and I do not believe it has its proper place in this constitution. I can imagine that there are several cases that we can not envision right now where a man may be eliminated as a candidate for judge. For one thing, I believe a man who had practiced, who had been an attorney for five years In the Territory, two years of which he was working for the Federal government as prosecutor, I do not believe that he should be eliminated. Although in principle I believe in this amendment, I don't believe that a man sent here as an attorney for a federal agency should be allowed to be a candidate. However, I am confident that the judicial council would take care of such matters. I believe if the legislature wants to put a limit on the qualifications that is also correct.

PRESIDENT EGAN: Mr. Riley?

RILEY: Not withstanding Mr. Hellenthal's having acceded to my

suggestion as to a change in language, I feel obliged to record certain other sentiments. I find Mr. Armstrong's remarks quite persuasive and others have amplified on those, the question of the dignity of the document perhaps, or its misunderstanding in its reference to the United States, and for that reason I will be impelled to vote against the amendment.

PRESIDENT EGAN: Mr. Victor Fischer.

V. FISCHER: Mr. President, I fully concur with those who

have spoken so far against the amendment, and I would like to bring up another reason why I believe this amendment should be defeated, and that is if we start putting in this kind of a qualification against United States attorneys, the next thing we will be putting in all sorts of other prohibitions and opening the doors to all sorts of minor issues being brought into the constitution.

PRESIDENT EGAN: Mr. McNealy.

MCNEALY: Mr. President, I seconded Mr. Hellenthal's amendment if I remember right and therefore will speak a moment in favor of it. Our thought behind this is not clearly expressed. Possibly before this final adoption, something can be worked out. I am going to vote for the amendment for the reason that there is nothing better to vote for at the moment. The reason behind it that someone mentioned, one of the attorneys mentioned here, it was Mr. Hellenthal I think, that we have had experience in the Territory. Now so many of the delegates have never come in contact with this personal experience we have had with judges who have been elevated to the bench who have had no private practice before, judges who have merely been prosecuting attorneys or government attorneys and they go on the bench as narrow-minded men. I would even go further on this and say that county attorneys or state prosecutors who had no other experience in five years as state prosecutors should not be allowed on the bench because their minds are narrow. All they know is largely the matter of prosecution of criminal law and that alone does not make a good judge. A good judge is a judge who has had a wide experience both in civil and criminal practice, and that is the kind of judge to be proud of. The reason I am in favor further of amending this section here in some fashion is that as long as there is so much legislation written in the bill and so little that the legislature can do about it once this becomes a part of the constitution, then I don't believe a few more words constitutes an addition of legislation.

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: The question is, "Shall Mr. Hellenthal's proposed amendment be adopted by the Convention?" All those in favor of the adoption of the proposed amendment will signify

by saying "aye", all opposed by saying "no". The "noes" have it and the amendment has failed. If there is no objection the Convention will stand at recess while the steno- typist fixes her machine.

RECESS

PRESIDENT EGAN: The Convention will come to order. The

Chair would like to state that yesterday morning Mr. Buckalew called and said he was ill. He also called this morning and said he was ill and would be present again as soon as he is able to do so. He has been sick in bed for two days. Mr. Coghill?

COGHILL: Mr. President, I move and ask unanimous consent that if the calendar is not cleared by 5 p.m. that we recess and take the calendar up again at 7 p.m.

PRESIDENT EGAN: Mr. Coghill moves and asks unanimous consent that if the calendar is not cleared by 5 p.m. that the Convention recess until 7 p.m. and continue with the calendar at that time.

V. RIVERS: Objection, Mr. Chairman.

COGHILL: I so move.

MCCUTCHEON: I second the motion.

V. RIVERS: I state as my objection that the committees have had no chance to work yet today and we have, for one, in our Committee set up a meeting for 7:30 which will probably go on until about 11, and I don’t think this business of carrying this on can't be conducted and carried on until 9; 30 Monday morning in second reading or this particular position in which we find it at that time.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: Mr. President, It is my belief that unless we do something like what is proposed In Mr. Coghill's motion, the committees will not only have no chance to meet today but they won't have any chance to meet tomorrow or for several days. I think we must get to work and clear our calendar. I am in favor of an evening session.

RILEY: The reason I object to this motion is that we have several consultants in town who are on pretty tight schedules. One in particular is leaving tomorrow morning and is committed to spend the evening with one large committee, and there may be other similar instances.

AWES: I don't know if Mr. Riley was speaking of the Bill of

Rights Committee or not, but that is the situation on our Committee. We have a meeting set at 7 o'clock tonight to meet with one of the consultants who is leaving in the morning. I know personally I am on two committees and one has arranged a meeting for tonight and one has arranged a meeting for Sunday, and I think we should, if we can't leave our days open for the Committees, it is a good idea to leave evenings and Sundays, and I object to that.

PRESIDENT EGAN: In other words, there are at-least two committees meeting tonight, one at 7:00 and one at 7:30 and the consultant is leaving in the morning. Mr. Taylor?

TAYLOR: I believe that anybody proposing such a motion be made should be given a little longer notice, because arrangements have been made with the specialists to meet with these committees. It is very hard to make other arrangements when they obligated -themselves to do this. I think this motion should be voted down at this time.

PRESIDENT EGAN: Mr. Smith.

SMITH: Mr. President, I simply want to echo the sentiments expressed by Mr. Riley and Miss Awes. I also wanted to point out that it is not necessary that the consultants be in attendance at our plenary sessions. It is not only essential, it is vital that the committees be able to make full use of the short time which is left in which we can use the consultants, so I think it Is very important that the committees have that time this evening.

PRESIDENT EGAN: Mr. Barr.

BARR: I might point out that it would make for more efficient operation if we held our plenary sessions during the daytime from many angles, taking into consideration transportation, etc., and if we have our committee meetings at night, in many cases a committee can meet in town without the necessity of traveling all this distance out here, and we should have quite a few committee meetings between now and our recess. The experts of course are available while they are here. That way we could have both plenary sessions and committee meetings.

LONDBORG: I believe the motion is relative to tonight. Two committees then at least have asked consultants to be present, and I think we ought to vote the motion down.

PRESIDENT EGAN: Mr. Coghill, does this discussion affect your feeling in the matter?

COGHILL: Mr. President, the reason for the motion is the fact that we are presently engaged in this proposal. It is fresh in our minds. I, too, am on two committees and one of

my committees is suffering quite badly from the lack of being able to meet in the morning. I had a schedule for this afternoon, a meeting for the Administration Committee, and again we cannot have that. Now if we could go ahead and clear up the business before us on the calendar then we would have tomorrow free to revert back to the committee work. I believe it is timely that we should try and clear the calendar as soon as possible.

PRESIDENT EGAN: Mr. Davis.

DAVIS: Mr. President, I think it should be pointed out that the calendar, as it now stands includes not only the matter in which we are now engaged, but also the suffrage matter which if we are going to clear it up tonight we are apt to be here until early In the morning.

MCNEES: I would be inclined to agree with Mr. Coghill except for the one point and that is relative to the need for the services of these consultants and a very limited time here.

PRESIDENT EGAN: Mr. King.

KING: Mr. Chairman, in our committee which I am on, Resources, we are taking every possible opportunity to meet with these consultants. We have a very large job to do and one of our main consultants is leaving in the morning, and we have arranged this for some time. We do need his services because we are taking several approaches to this subject, and these consultants themselves have different ideas, and we are certainly going to lose a lot by not being able to meet with our consultant tonight.

PRESIDENT EGAN: Mr. Coghill.

COGHILL: Mr. Chairman, with the consent of my second, in view of the committee hearings, I withdraw my motion.

PRESIDENT EGAN: If there is no objection Mr. Coghill, with the consent of his second, will be allowed to withdraw his motion. Mr. Sundborg?

SUNDBORG: Mr. President, we are now on Section 7, is that correct?

PRESIDENT EGAN: Yes, Mr. Hellenthal's proposed amendment on Section 7. The question is, are there other amendments?

SUNDBORG: I have another amendment.

PRESIDENT EGAN: The Chief Clerk may read the proposed amendment by Mr. Sundborg to Section 7.

CHIEF CLERK: "Page 3, line 2, following the word 'state' insert a period and strike the balance of the section."

PRESIDENT EGAN: Mr. Sundborg moves that on page 3, line 2, insert a period and strike the balance of the sentence.

V. FISCHER: I second the motion.

PRESIDENT EGAN: Mr. Victor Fischer seconds the motion. Mr. Sundborg.

SUNDBORG: Mr. President, if I may explain my thinking which led me to propose this amendment, we are setting up here a judicial council, a majority of whose members will be lawyers and all of these members will be selected by a very careful process. The duty of that council will be to nominate persons for appointment as judges and justices of the state. I think it is unnecessary and unwise to limit the field of persons who may be considered as candidates for justices and judges in the manner in which Section 7 would do as it is now written. I believe that all that is necessary as an absolute requirement of a person who might be nominated is that he must be a citizen of the United States and of Alaska and shall be a member of the bar. Beyond that leave it up to the judicial council. There would be many cases in the years to come when there will be a man who might make an excellent judge or justice who might have been absent for example, for one year out of the five years immediately preceding the time when he is considered for appointment or might have been a member of the bar of Alaska for perhaps only four years where he might have been a member of some other bar for 20 or 30 years before that and would be excellent timber for judge or justice. I think It would not be likely in many cases that such persons, unless they met the requirements which are set out in Section 7 a3 it now stands, would be proposed by the judicial council, but I believe that there would be cases when such men should be, and therefore I would like to leave it to the judgment of the judicial council in the years to come who should be nominated for judge and justice, as long as the man is a citizen of the United States and of Alaska and is a member of the bar.

PRESIDENT EGAN: Mr. McLaughlin.

MCLAUGHLIN: Mr. Chairman, not for purposes of expressing assent or dissent but merely for purposes of style of which the proponent is the Chairman, I would additionally suggest that to have the motion complete and that the words In the second line of page 3, reading 'have been", that the words be stricken and the word "are be substituted. That is merely for the purpose of completing the motion.

PRESIDENT EGAN: Would the Chief Clerk please read the amendment as offered by Mr. Sundborg.

CHIEF CLERK: "Page 3, line 2, following the word 'state' insert a period and strike the balance of the section.

MCLAUGHLIN: Forgive me, I withdraw my suggestion.

PRESIDENT EGAN: Is there other discussion of the proposed amendment? Mr. Doogan?

DOOGAN: I feel as Mr. Sundborg does and primarily I feel that here we are setting up a judicial council. Now this is not going to only happen in a judiciary committee, there are other things going to be recommended or be set up in the constitution to help the new State of Alaska get along, and I don't believe in setting up these councils, boards, or whatever they are, in trying to make things move along as rapidly and as expeditiously as they can, that we should in any manner tie their hands in the constitution. If their hands need tying it His going to be done by the legislature anyhow.

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: Mr. President, now this matter was argued quite long and perhaps vociferously in the committee. We had the advice of Mr. Elliott, and after searching the provisions of many other constitutions that have been adopted, we finally came up with what we considered the minimum qualifications for a judge as to residence and practice. Now that is all we are setting here is a minimum qualification. I think we should set a minimum qualification. The judicial council may or the integrated bar of Alaska may require greater or higher qualifications. Now take for Instance Hawaii who had this matter under consideration. Nobody is eligible to be a judge, either supreme court or district judge or superior court judge In the state of Hawaii, until they have practiced for ten years before the supreme court of Hawaii. Now that is the qualifications they have set upon the judges there in the constitution. We are only asking half of that, and this is much less than a good many. Nevada I think is 15 years’ practice before you can be a judge of the supreme court. We are only asking for five. I think it Is shortsightedness or possibly not acquainted sufficiently with the matter before to say this is discriminatory. Well, you have certain qualifications you set up for a doctor, do you not that's going to treat you for your ailments, but when you have a judge, he might be the deciding factor as to whether you are going to lose a lot of money or a lot of your property or whether you're going to maintain it, and don't you want then a man sitting on the bench that is versed In the law and sees that you get a fair trial before a fair jury and that it is conducted right? Why will you give less consideration to picking a man that is going to decide a case, maybe your life, or your liberty for many years? Would you give less consideration to that than you will to a man who is going to possibly treat you for some ailment? They established these

in all branches of you might say professional life. Mr. President, you know has been in the legislature, you know we have qualifications for an osteopath, for chiropractors. They must take an examination in basic science and many instances along that line that for those you might say, mediocre services, they establish a higher requirement than we would require here for a man sitting on the bench deciding whether you are going to the penitentiary or whether you're going to go free. I think we should at least maintain these minimum requirements that we have in this article.

PRESIDENT EGAN: Mr. White.

WHITE: Mr. President, I would like to rise in support of the amendment. I have gone along with this article so far because I think it is an excellent article as it tends to set up standards of excellence in performance of duties in this field, but I feel those standards have no bearing on this question. This question 'is as to regional residence. Alaska is known as the land of opportunity, and I would like to see it continue to be known as the land of opportunity. I think this particular question goes beyond this article. I think it will come up again and again, and I hope throughout the constitution we will put as few bars as possible in the way of people joining us up here in the work of developing this country, because of reason of residence. The standards as to performance, qualifications, education, training are fine in their place, but that has no relation to this subject. I think the amendment is a good one and I think that the philosophy behind it, I hope the philosophy behind it, will be carried through many other sections of this constitution,

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: Mr. Sundborg's amendment, supported by Mr. McCutcheon and Mr. White, seems to be predicated on the assumption that these are merely minimum qualifications and that the legislature may prescribe additional qualifications. I do not share that opinion. Section 8 provides that as to judges' eligibility qualifications are to be prescribed by the legislature, so I think we have this situation —that as to judges of other courts the legislature can prescribe additional qualifications, but since that power is not granted to the legislature as to the justices of the supreme court and judges of the superior court, that whatever we agree on here will be the qualifications which will not be subject to change by the legislature. I would perhaps go along with Mr. Sundborg's amendment if he would add after the word "state" in line 2, the words "and subject to further qualifications to be prescribed by the legislature." But unless those words are there,

I don't think the power would exist.

PRESIDENT EGAN: Mrs. Nordale.

NORDALE: Mr. President, I would like to point out something. In Section 13, dealing with the judicial council, It says,

"... the judicial council to be responsible for conducting studies from time to time for Improvement of the administration of justice, and make recommendations to the legislature. . ." so I favor the amendment because I feel that we should not restrict the judicial council In Its efforts to improve the administration of justice.

MCNEALY: I would like to speak only briefly against the amendment and call the attention to the fact that historically and lawfully here in the Territory the offices of treasurer, attorney general and other Territorial-wide offices require a residence of five years, and In going back over those, the reasons for that is not only that the incumbents or candidates for office become familiar with the Territory and the problems of the Territory but also that the people may have an opportunity to become familiar with the candidates for those offices, and it has worked out in my opinion, very successfully. We have that precedent to go by, five years for residence requirement for the Territorial offices, and like Mr. Taylor, I would hesitate that either any of my clients or myself would have to sit under a judge who had the life and liberty and property rights in his hand and who could, under this proposed amendment, have no knowledge of Alaska whatsoever.

PRESIDENT EGAN: Mr. Metcalf.

METCALF: Mr. Chairman, I wish to speak in opposition to Mr. Sundborg's amendment and call the members of the Convention, their attention to the section of the Missouri Constitution which was adopted with the revisions in 1945. It says, "The judges of the supreme court shall be citizens of the United States for at least fifteen years and qualified voters of this state for nine years just preceding their election." Speaking further on this matter, I believe we certainly should have these minimum requirements. The people up here In Alaska -- we live differently, think, differently from the people say in Nebraska or Kansas or the Middle West. From my experience of teaching school many years ago out Westward, some of these folks from the states come up to the Native villages, we thought when they first arrived they were a little queer, and for that reason I believe that due to our thinking and our living and our occupations are different from many states outside we certainly should have this minimum residence requirement.

PRESIDENT EGAN: Mr. Victor Fischer.

V. FISCHER: Mr. President, I do not believe the language of this amendment would carry with it the letting down of the standards for the selection of judges. The amendment would simply remove these minimum standards. I think that these standards as included here will not of themselves assure this

election of good judges. It will take a good judicial council to make a proper selection. You can have people with ten years' residence and ten years practice of law In Alaska and they still may not make good judges. The judicial council as presently set up in this proposal would be made up of at least three attorneys and the supreme court, a chief justice of the supreme court. Leaving out the lay members, could any one of the attorneys here imagine that if they were in a position of selecting the nominees, or even selecting the members of the judicial council, that they would select the kind of people or the kind of nominees who would select someone who would not make a good judge. I believe that this amendment is good. I don't think it will result in our getting judges who have no knowledge of Alaska or are not able to perform their duties.

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: Mr Chairman, may I ask Mr. McLaughlin a question? Do you regard the qualifications prescribed in Section 7 as minimum qualifications for justices of the supreme court and judges of the superior court?

MCLAUGHLIN: Mr. President, in terms of minimum qualifications if you will permit me Mr. Hellenthal, I shall say this. I don't believe that the legislature can change these qualifications or add to them. The judicial council as a matter of administration can do them, but I do not believe the legislature can actually change any of the qualifications set down.

HELLENTHAL: One more question, Mr. McLaughlin. Do you think the judicial council could say impose a 20-year requirement for residence?

MCLAUGHLIN: No. I do not believe the judicial council could impose a 20-year requirement for residence, but I think as a practical matter the judicial council could in itself say in the course of its discussion, "We don't think this man has been here for sufficient long time to make him qualify." But it could not establish a rule, nor could the legislature establish a rule limiting this section or changing the qualifications or in fact increasing them to make a man eligible for the bench. Does that answer your question?

HELLENTHAL: Yes.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: Mr. Chairman, I rise to speak against this amendment, feel that they have, as Mr. Taylor pointed out, set up minimum standards. As you notice, these judges are going to travel all parts of the Territory. They are going to be jockeyed around at the will of the supreme court if they are superior court judges. They are going to have to have, in the handling

of many of the court affairs, an intimate knowledge of the people and the country which they are trying to serve, seems to me that in all of our officers that have high powers and high policy-making powers we should have men who have had an acquaintance with and know the conditions of the country and the people, as well as of their particular professional subject. For that reason I feel it is basic that we have set up an absolute minimum here of requirements for residence in order to get acquainted with any substantial part of the Territory and its problems. As a judge I would like to see that he have at least a minimum standard of five years residence and of course, five years' admission to the bar.

PRESIDENT EGAN: Mr. Barr.

BARR: Mr. President, I have already spoken a couple of times on these judicial matters. I hesitate to speak again for fear someone might think I am an attorney. Actually I am not. I am speaking from the viewpoint of one who might in the future be judged by the courts. If I were to be judged by the court, I would consider that one of the qualifications of the judge should be a certain acquaintance with our conditions here in the Territory. Now I can envision a case coming up, perhaps a civil case involving a common carrier, engaged in transportation, operating trucks or buses or airplanes, and that particular industry confronted with problems which you would not find in other states, or perhaps a case involving the placer mining industry which is highly seasonal here in Alaska and has to overcome many difficulties such as transportation, which they do not encounter in the States. Also, perhaps the might be sitting on a criminal case involving a crime committed by a member of one of our Native races who resides in a remote area who has not had the advantages of the education that most of us have had. It seems to me that one of the qualifications of a judge, one of the most important qualifications, should be his acquaintance with our peculiar conditions in Alaska, and he can gain that only by residing here a certain length of time. Now I sympathize with those who say that Alaska should be a land of opportunity for the newcomers. I also believe in presenting them with plenty of opportunity. A man coming up here to engage in a trucking business or a news dealer, perhaps, could operate just as efficiently as one who has lived here for 50 years, but a judge sitting on a bench could not, and I do not believe that we should open up opportunities at the top for the newcomers, especially in as highly a specialized profession as the law. I believe that, as I stated, that one of the qualifications of a judge should be experience m the country. Otherwise he is not qualified to judge.

PRESIDENT EGAN: Mr. Hurley has been attempting to get the floor. Mr. Hurley.

HURLEY: Mr. President, I would like to call attention of the

group to a matter which I think is of some importance and that is that we have been engaged here for sometime in arguing the merits of what a judge's qualifications should be. It appears to me what we are really confronted with is whether or not we want the judicial council to make the decision on the qualification of the judge or not, I think we are attempting to be the judicial council, and I am in favor of the motion to amend, primarily for the reason that it eliminates three lines from our constitution and does not do any harm. I think that the minimum qualifications that .are stated here, if it were put to the members of the bar, they would readily agree that there would be very few cases where they would recommend a person to be a judge that had only those minimum qualifications. So in fact what they are saying is that the judicial council will submit names of people who have had more experience and more residence than that. So I think for the sake of the constitution being brief and to the point that we can eliminate those last three lines without hurting the meat in it.

PRESIDENT EGAN: Mr. Hilscher.

HILSCHER: Mr. President, I had to go "outside" this last weekend on some personal business, and I was astonished with some things I learned "outside". I had not been "outside" for sometime, and I was astonished to find out that the people in the States pull their pants on the same way we do in Alaska and that the people in the United States are probable no different than we are. Here we are building a little wall around our attorneys who may be available for the bench and I don't think there is any reason for it. Let me speak of a hypothetical case, I wouldn't want to use any names. In the Territory of Alaska a judgeship became available. An Alaskan was not picked for that position. A man was brought in from the "outside" and it is positively astonishing how quickly that man learned a lot of things about Alaska and how well in a few months' time he was regarded by all people in that area. I think we are placing an aura about ourselves trying to give ourselves a smoked salmon distinction which we are not entitled to. We are going to be a state someday and we're not going to be any different from anybody else. And I should imagine that probably some of the men could open the coats on their suit and on the label see "Hart, Schaffner & Marx" In here, and I think a lot of this stuff is entirely beside the point. I am heartily In favor of the amendment of Mr. Sundborg, and I believe it will do the Territory a lot of good when we became a state.

PRESIDENT EGAN: Mr. Harris?

HARRIS: Mr. Hilscher just stated that he saw no reason why we should be any different from anybody else. I don't either and the majority of the other state constitutions demand

a minimum requirement for their judges, and that is what we have done in this Committee in setting up what we figured was the minimum, the absolute minimum I might add, of what a residence of a judge should be. I am inclined to think that although we may not be different from the States in some things, in other things such as our weather and our climate conditions, which could come up into court, that a judge would necessarily have to understand and that was one of the big arguments for putting in the five-year requirement. I think it should stay in.

PRESIDENT EGAN: Mr. McNees.

MCNEES: I rise to speak in favor of the amendment. The government is big business. And if I were a businessman, as I am, had the wherewithal to do as I would like to do and pick the best possible manager, the best possible man for a position, I think I would want to be able to reach just as far as necessary in order to get that man. I would not want to find out that after I had found the good man, the man for the job, that I was unable to hire him for some other reason. Perhaps we could get together in our thinking. He would be willing to go to work for me. I wanted him to work in the worst possible way. I feel here that we are placing a restriction that has no business whatsoever in the constitution. I would like to say this about this document that the Judiciary Branch has presented to us for consideration -- that up to this particular point I have found no quarrel in my thinking whatsoever with it. At this point I do. I feel it is restrictive, and therefore I feel that I would vote in favor of the amendment at this point.

PRESIDENT EGAN: Does anyone else wish to be heard on the question? If not, Mr. Sundborg, you may close.

SUNDBORG: I agree with practically everything that has been said here by those who have been opposing the motion. That is, I believe we should have men who are acquainted with Alaskan conditions. I believe we should have men who would make good judges. I believe with other matters that have been brought up and I would be inclined to go along with them if we did not have here in our Judicial Article the provision that every man, before he ever could be appointed a judge, would have to be nominated for that position by a judicial council consisting mainly of attorneys. I might say, with respect to something that Mr. Hellenthal brought up, that my proposed amendment was not suggested on the predication that the legislature could or would establish further minimum qualifications., I believe that would be unnecessary, even if it were legally possible, that the judicial council itself is a body which should have pretty wide discretion In deciding who would make a good judge of the State of Alaska. It was mentioned here that in our Territorial experience that we have

had rather lengthy requirements on residence covering such positions as treasurer, auditor, attorney general and so on.

We have had Territorial officials who have gone to prison.

We have had some others who maybe should have gone to prison.

I believe we have suffered as a Territory because we have had high and lengthy requirements on residence and that we have made it impossible for the people to have a choice sometimes of who would be the best man for those positions when the people should have the choice, just as I believe here that the judicial council should have the choice of who would make a good judge. It has been mentioned that some of the states have very much longer residence requirements than is proposed in this act. I would like to suggest that it would not be appropriate to have longer ones in Alaska, and in fact I think we should have none at all. This is not Nebraska, Hawaii or Missouri or any of the states that have been mentioned. This is Alaska. It is a new country where, as has been said, we hope to attract a lot of additional people to help us in building a state. I believe we should not frustrate ourselves by putting in our constitution, provisions which at some time in the future might foreclose us from getting the very best man possible for a position of judge in the state.

PRESIDENT EGAN: The question is, "Shall Mr. Sundborg1s amendment be adopted?"

JOHNSON: Mr. President, I request a roll call.

PRESIDENT EGAN: Mr. Johnson requests a roll call. The Chief Clerk will read the proposed amendment.

CHIEF CLERK: "Page 3, line 2, following the word 'state' insert a period and strike the balance of the section."

(The Chief Clerk called the roll with the following result:

Yeas: 24 - Awes, Coghill, Cross, Davis, Doogan, Emberg, V. Fischer, Hilscher, Hurley, Kilcher, Lee, McNees, Marston, Nerland, Nordale, Peratrovich, Poulsen, Reader, Riley, Stewart, Sundborg, White, Wien, Mr. President.

Nays: 28 - Armstrong, Barr, Boswell, Collins, Cooper, Gray, Harris, Hellenthal, Plermann, Hinckel, Johnson, King, Knight, Laws, Londborg, McCutcheon, McLaughlin, McNealy, Metcalf, Nolan, R. Rivers, V. Rivers, Robertson, Rosswog, Smith, Taylor, VanderLeest, Walsh.

Absent: 3 - Buckalew, H. Fischer, Sweeney.)

CHIEF CLERK: 24 yeas, 28 nays and 3 absent.

PRESIDENT EGAN: And so the amendment has failed. The Chair would like to state at this time that Mrs. Helen Fischer., too, has been ill for the past couple of days and her doctor will not be able to say until Monday just when she can return to the Convention. Mr. Hinckel?

HINCKEL: In view of the arguments that have been presented during the discussion of this last section, I would like to go back to Section 5 and propose in line 6 to delete voters of the state" and substitute qualified electors". I so move.

PRESIDENT EGAN: Page 2, line 6, delete "voters of the state" and substitute "qualified electors". Do you so move the adoption of that amendment, Mr. Hinckel?

HINCKEL: I do.

PRESIDENT EGAN: Mr. Hinckel so moves the adoption of the amendment. Is there a second?

MCLAUGHLIN: Mr. Chairman, if I may suggest to Mr. Hinckel, I plan tomorrow morning to call a meeting of the Judiciary Committee, and could you withhold that until then and I will second any motion you make tomorrow.

HINCKEL: I will be happy to withhold it until then, but if there is no objection, may I make a short statement now?

PRESIDENT EGAN: If there is no objection, you may make a short statement now.

HINCKEL: My reason for it is that I feel that the present wording might be construed to mean that an election confirming the reappointment of a judge or the continuing of a judge would have to be a state-wide election, and I object to that. I think the judge should merely be confirmed by the people in his jurisdiction.

PRESIDENT EGAN: This proposed amendment will be offered to-morrow. Are there other amendments to Section 7? Mr. Cooper?

COOPER: Mr. President, I have an amendment to Section No. 7.

PRESIDENT EGAN: The Chief Clerk may read the proposed amendment offered by Mr. Cooper to Section No. 7.

COOPER: May I have a one-second at ease?

PRESIDENT EGAN: If there is no objection the Convention will stand at ease for one second. The Convention will come to order.

CHIEF CLERK: "Delete Section 7 and substitute the following: 'To be eligible for appointment, Justices of the Supreme Court, and Judges of the Superior Court shall be citizens of the United States and of the State of Alaska who have been admitted

to practice law in the State of Alaska, and shall be subject to eligibility qualifications to be prescribed by the Legislature.'"

PRESIDENT EGAN: What is your pleasure, Mr. Cooper?

COOPER: I ask unanimous consent that that be accepted, be adopted.

PRESIDENT EGAN: Mr. Cooper asks unanimous consent that the amendment be adopted.

JOHNSON: I object.

PRESIDENT EGAN: Mr. Johnson objects.

JOHNSON: I object temporarily on a point of information. Has that matter not already been acted upon under the Hellenthal proposal?

PRESIDENT EGAN: That is a different amendment, Mr. Johnson. It relates to this section but it is different than anything that has been suggested before.

JOHNSON: The subject matter is the same, isn't it?

COOPER: Mr. President, I would like to make myself clear —

PRESIDENT EGAN: Is there a second to your motion?

DOOGAN: I second the motion.

COOPER: During all the discussion previous to this point, the majority of the delegates wanted additional qualifications to be prescribed in some manner or some form. I believe those additional qualifications should be prescribed by the legislature which 50 years from this date could possibly change said qualifications without having to amend the constitution by the people of Alaska.

PRESIDENT EGAN: Is there further discussion of the motion? If not, the question is, "Shall Mr. Cooper's proposed amendment be adopted by the Convention?" The Chief Clerk may read the amendment again.

CHIEF CLERK: "To be eligible for appointment, Justices of the Supreme Court, and Judges of the Superior Court shall be citizens of the United States and of the State of Alaska who have been admitted to practice law in the State of Alaska, and shall be subject to eligibility qualifications to be prescribed by the Legislature."

PRESIDENT EGAN: The question is, "Shall the proposed amendment be adopted by the Convention?" Mr. Taylor.

TAYLOR: Point of information. I wanted to ask Mr. Cooper if under his motion that he contemplated that it be necessary for a man to have practiced law?

COOPER: If I might say to Mr. Taylor, I assume a man who had been admitted to practice law in the state would be capable of practicing law, and I would like to add one word in my proposal. It would be "and subject to further eligibility qualifications to be prescribed by the Legislature."

PRESIDENT EGAN: You ask that your proposed amendment be changed to that extent? Then how would the proposed amendment read?

CHIEF CLERK: "To be eligible for appointment, Justices of the Supreme Court and Judges of the Superior Court shall be citizens of the United States and of the State of Alaska who have been admitted to practice law in the State of Alaska, and shall be subject to further eligibility qualifications to be prescribed by the Legislature."

PRESIDENT EGAN: Is there objection to the inclusion of those words in Mr. Cooper's amendment?

HELLENTHAL: May I ask Mr. Cooper a question about his amendment? Would you object to leaving Section 7 in its present form, which has apparently been approved by this body, and adding the words, "and subject to further eligibility qualifications to be prescribed by the Legislature."?

COOPER: May I ask for a two-minute recess?

PRESIDENT EGAN: If there is no objection the Convention will stand at recess for two minutes. The Convention is at recess.

RECESS

PRESIDENT EGAN: The Convention will come to order. Mr. Cooper.

COOPER: In the last two minutes I have had an education. I ask unanimous consent that I be allowed to make further amendments to my amendment.

PRESIDENT EGAN: Mr. Cooper asks unanimous consent for further amendments of his amendment.

COOPER: In the last sentence, "and subject to further eligibility qualifications which may be prescribed by the Judicial Council."

PRESIDENT EGAN: You mean you want to add those words?

COOPER: No, I would strike the word "to" and insert "which may

be prescribed by the" and strike the word "Legislature" and insert "the Judicial Council".

PRESIDENT EGAN: The Chief Clerk will please read the proposed amendment then as it would appear.

CHIEF CLERK: "To be eligible for appointment, Justices of the Supreme Court, and Judges of the Superior Court shall be citizens of the United States and of the State of Alaska who have been admitted to practice law in the State of Alaska, and shall be subject to further eligibility qualifications which may be prescribed by the Judicial Council."

PRESIDENT EGAN: Is there objection to Mr. Cooper's offering that proposed amendment in its present form?

MCNEALY: I object to his changing the wording.

PRESIDENT EGAN: Do you so move, Mr. Cooper, that you be allowed to amend your original amendment?

COOPER: I so move.

LEE: I second the motion.

PRESIDENT EGAN: It has been moved by Mr. Cooper, seconded by Mr. Lee that the original amendment be amended to read as the Chief Clerk just read it, and if it is necessary the Chief Clerk may read the proposed amendment to the amendment once more.

(The Chief Clerk read the proposed amendment to the amendment once more.)

PRESIDENT EGAN: The question is, "Shall the amendment to the amendment as offered by Mr. Cooper be adopted?" Mr. McNealy.

MCNEALY: Mr. President, I would like to explain my objection to it before the vote. I was in favor of the amendment until "Judicial Council" was substituted for "Legislature". Now this body has, or will when this bill is passed, have taken away from the people the right to vote for the judges and has put the power of appointment of judges in the hands of a judicial council. Now, if we are going to continue to go along through here and amend and give greater powers to the judicial council. I fear we are setting up a board here which is comparable to some of the federal boards which I could name, but which I don't know whether the immunity of the floor would allow me to speak on them or not. We are setting up an arbitrary board here who, if we grant more powers than is already in this bill, then the only alternative I can see is that with other legal members, and I trust some of the lay members of this Convention, we can all get on this all-powerful board so we see that we get something in the way of judges.

PRESIDENT EGAN: Mr. McCutcheon.

MCCUTCHEON: Mr. President, I might suggest by way of information to Mr. McNealy, that there is a potential device that may be proposed by the legislative branch which would take care of this omnipotent board he is concerned about.

PRESIDENT EGAN: Mr. Kilcher?

KILCHER: I disagree with Mr. McNealy that the peoples' power would be restrained by the proposed amendment. As a matter of fact, the people would gain by this amendment because more of them would be eligible for appointment.

PRESIDENT EGAN: Mr. Gray.

GRAY: Mr. Cooper, I don't quite understand the meaning of your amendment. It seems to me that as long as the judicial council is the one that selects this person that they are within themselves, they have the inherent power for the procedure without being spelled out. I believe that the intent of your motion is already in the hands of the judicial council. I don't believe you have changed the wording as it stands without your amendment. Can you explain why it is different?

COOPER: Yes, I would like to explain that. As I see it, the way I understand my own amendment is that the judicial council is responsible for putting before the governor the names of two men in this particular case for the justice of the supreme court. Now, in addition to the qualifications that the judicial, council might consider important, they are already obligated that the qualifications of this justice of the supreme court will be a citizen of the United States and of the state and have been admitted to practice law in the state, and further, the judicial council will set up qualifications, further qualifications that he will have to be endowed with before he would be considered as a nominee for this position. I like it this way so that in the future, possibly 100 or 200 years from now, the qualifications may have to be upgraded or downgraded, and rather than have to take the constitution back to the people of the State of Alaska for amendment, it can merely be performed right within the judicial council.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: I would like to be heard on this. The amendment proposed by Mr. Cooper would not allow any downgrading. The constitution would say, the way I see he has it, they would only have to be admitted to practice. Under his setup, the judicial council could prescribe the five years’ residence requirement, they could prescribe practice requirement for, so many years and various other things, but as Mr. Gray said, they are going to be doing the appointing, they have the

inherent power anyway, subject to whatever minimum requirements we put in the constitution, the judicial council has full powers. I don't like, as Mr. McNealy suggested, to flag a rule-making power for the judicial council. Let them use their discretion but let them not make rules other than minimum requirements that are prescribed in this section.

PRESIDENT EGAN: Mrs. Hermann?

HERMANN: I am opposed to Mr. Cooper's amendment to his amendment. I am willing to support the amendment as long as it leaves the eligibility requirements in the hands of the legislature, but I am inherently opposed to building up strong appointive boards and any line of activity if it can possibly be avoided, and I don't have any particular reason to think that one that is composed principally of lawyers is going to be any better as a board than one composed entirely of laymen. I think that the original amendment is good, but the amendment to the amendment which changes the rule-making power, transfers the rule-making power to the judicial council instead of the legislature, is very bad, and it will not require any amendment of the constitution if the power is left with the legislature. If the legislature uses it unwisely next year we can throw the rascals out and elect a new one the next year and "undo the harm that they have done without a Constitutional Convention. I think the amendment has been greatly weakened by Mr. Cooper's change, and I wish he would rise up now and withdraw it.

PRESIDENT EGAN: The Convention will come to order. Mr. Marston.

MARSTON: I wish to go along with Delegate Hermann on her position right now, and I hope Mr. Cooper will do what you have requested.

COOPER: Mr. President, in lieu of the rolling pin, may I have a one-minute recess?

PRESIDENT EGAN: If there is no objection the Convention will stand at recess. The Convention is at recess.

RECESS

PRESIDENT EGAN: The Convention will come to order. Mr. Taylor?

TAYLOR: I move we adjourn until 9 o'clock tomorrow morning.

JOHNSON: I second the motion.

V. RIVERS: I object.

PRESIDENT EGAN: Mr. Taylor moves, Mr. Johnson seconds the

motion that the Convention stand adjourned until 9 o'clock tomorrow. Are there committee reports? Committee meetings?

The motion is not debatable but the Chair will entertain a notice of committee meetings.

DOOGAN: Point of order, Mr. Chairman. It seems to me there was a matter of recess declared for clarification and we were discussing an amendment.

PRESIDENT EGAN: That is right, but a motion to adjourn is in order. It doesn't mean you have to accept it one way or the other, but the motion is in order.

MCCUTCHEON: Call the roll.

PRESIDENT EGAN: The Chief Clerk will call the roll on the motion to adjourn until 9 o'clock tomorrow.

HERMANN: Maybe we should do something about arranging for transportation to town at this hour.

PRESIDENT EGAN: Has there been anything done about the arrangements for transportation back to town?

SERGEANT AT ARMS: There is a bus at 5:05 p.m.

V. FISCHER: Point of order. I would like to point out that an official hearing has been scheduled for 9:30 tomorrow morning.

PRESIDENT EGAN: Are there other announcements of committee meetings?

ROSSWOG: The Local Government Committee has scheduled a meeting for 7:30 tonight at Apartment 205 in the Northward Building.

PRESIDENT EGAN: There will be a meeting of the Committee on

Local Government at Apartment 205 in the Northward Building at 7:30 this evening. Mr. Coghill?

COGHILL: Mr. Chairman, your Committee on Administration, Committee No. II, will meet tonight at 8 p.m. here at the Convention Hall, pickup time about 7:30.

PRESIDENT EGAN: A meeting of the Committee on Administration at 8 p.m. in Convention Hall. Miss Awes?

AWES: Committee on Bill of Rights and Preamble will meet at 7 o'clock this evening in Apartment 1009 in the Polaris Building.

PRESIDENT EGAN: The Committee on Preamble and Bill of Rights will meet at 7 p.m. in Apartment 1009 of the Polaris Building.

BOSWELL: The Resources Committee will meet tonight at 7:30 in the Northward Building.

PRESIDENT EGAN: Resources Committee will meet tonight at 7:30 in the Northward Building. Mr. McLaughlin?

MCLAUGHLIN: Mr. Chairman, the Judiciary Committee will meet here tomorrow as soon as the bus arrives out here, and we request that Mr. Londborg, Walsh, Reverend Armstrong and Delegate Cooper attend.

PRESIDENT EGAN: Mr. McLaughlin, you would request that who attend?

MCLAUGHLIN: Londborg, Hinckel, Walsh, Armstrong and Cooper appear for the information of the assemblage. We have discussed the matter with everyone except Mr. Cooper. They had objections we wanted to explain or possibly amend to satisfy. We thought we would expedite the work of the assembly if we could satisfy them on what we feel are technical points.

PRESIDENT EGAN: Are there other announcements of committee meetings? Mr. McCutcheon?

MCCUTCHEON: No. VII, Legislative Branch, will meet at 803 in the Polaris Building at 7:30.

PRESIDENT EGAN: The Committee on the Legislative Branch will meet at Apartment 803 in the Polaris Building. Mr. Smith?

SMITH: I would like to ask that the Resources Committee get together for one minute immediately after adjournment of this session.

PRESIDENT EGAN: The Resources Committee will meet immediately after adjournment of this session. The question is, "Shall the Convention adjourn until –-" Mr. Rosswog?

ROSSWOG: Point of order. Can that motion be amended just for the time, because we are having a hearing of the Local Government Committee tomorrow morning? I would like to offer an amendment that the Convention reconvene at 11:00 tomorrow morning.

PRESIDENT EGAN: Would that be satisfactory with the maker of the motion that convening time in the proposed motion be set at 11 a.m. rather than 9 a.m.?

TAYLOR: The motion is unamendable, but I will change my motion to make it at that time.

PRESIDENT EGAN: Well, Mr. Taylor, in view of the fact that the hearing is being held In the morning, that was the reason

Mr. Rosswog made the suggestion and under those circumstances --

TAYLOR: Whatever time you want to amend it, is all right with me.

PRESIDENT EGAN: The proposed motion is that the Convention -- Mr. Victor Rivers?

V. RIVERS: I would like to state that the committee hearing which we are having on Local Government tomorrow may extend considerably beyond the 11 o'clock time. It was my intention that if and when we met tomorrow at 9:30, we would ask that our order of business be continued in second reading until 9:30 on Monday. Then we could adjourn and have our committee meetings and also have our hearing. I think the 11 o'clock hour is not a good hour.

PRESIDENT EGAN: How does that affect your feeling, Mr. Rosswog?

ROSSWOG: Mr. Chairman that would be perfectly all right.

PRESIDENT EGAN: The question is. "Shall the Convention stand adjourned until 9 a.m. tomorrow?" The Chief Clerk will call the roll.

SUNDBORG: Mr. President, before roll is called on that, I wonder if I may just give a point of information. There is a bus to town at 5:50 p.m. as well as at 5:05. That may influence somebody's vote with respect to adjourning at this time.

PRESIDENT EGAN: The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following re-sult:

Yeas: 30 - Awes, Barr, Boswell, Cross, Doogan, Gray, Hurley, Johnson, King, Knight, Laws, Londborg, McNealy, Marston, Metcalf, Nolan, Nordale, Poulsen, Reader, Riley, R. Rivers, V. Rivers, Robertson, Rosswog, Smith, Stewart, Taylor, VanderLeest, Walsh, White.

Nays: 22 - Armstrong, Coghill, Collins, Cooper, Davis, Emberg, V. Fischer, Harris, Hellenthal, Hermann, Hilscher, Hinckel, Kilcher, Lee, McCutcheon, McLaughlin, McNees, Nerland, Peratrovich, Sundborg, Wien, Mr. President.

Absent: 3 - Buckalew, H. Fischer, Sweeney.)

CHIEF CLERK: 30 ayes, 22 nays, and 3 absent.

PRESIDENT EGAN: So the Convention stands adjourned until 9 a.m. tomorrow.