

ALASKA CONSTITUTIONAL CONVENTION

January 6, 1956

FORTY-FIFTH DAY

PRESIDENT EGAN: The Convention will come to order. Chaplain Foss from Ladd Air Force Base will give the morning invocation.

CHAPLAIN HENRY A. FOSS: Eternal loving Heavenly Father, we raise our voices to Thee in gratitude for Thy protection and guidance in the days and years past, and we look up to Thee for guidance in the deliberations of this meeting which may determine the destiny of this Territory for the welfare of Thy people. May Thy Name be exalted and glorified for evermore. In His Name we pray. Amen.

PRESIDENT EGAN: The Chief Clerk will call the roll.

(The Chief Clerk called the roll.)

PRESIDENT EGAN: Mr. Cooper is ill.

CHIEF CLERK: Five absent.

PRESIDENT EGAN: A quorum is present. The Convention will proceed with the regular order of business. Are there any petitions or memorials or communications from outside the Convention? Mr. Marston.

MARSTON: Mr. President, I requested that the College here through the student body sometime ago to give me an expression of their opinion on when a man should start voting. I have a petition here signed by the majority of the students addressed to the Alaska Constitutional Convention. I wish to submit it.

PRESIDENT EGAN: You may submit it, Mr. Marston, and if the Convention would stand at recess for about one minute the Chair will also get a communication relating to that subject that arrived last evening.

RECESS

PRESIDENT EGAN: The Convention will come to order. The Chief Clerk may read the communications.

(The Chief Clerk read a communication from the President of the Associated Students of the University of Alaska pledging their support to and recommending any resolution of the Convention favoring an 18-year-old voting age in the future state of Alaska.)

PRESIDENT EGAN: The communication may be filed.

(The Chief Clerk read a communication signed by 121 students of the University of Alaska urging the Convention to set 18 as the minimum age required as a qualification to vote in the future State of Alaska.)

PRESIDENT EGAN: The communication may be filed. Are there other communications? Are there reports of standing committees? Reports of select committees? Are there any proposals to be introduced? Are there any motions or resolutions? Under unfinished business we have before us Committee Proposal No. 7. Are there any amendments before us at the present time?

CHIEF CLERK: We have Mr. Davis's which he asked to hold over until Mr. Buckalew and Mr. Hellenthal were here.

PRESIDENT EGAN: Mr. Davis, would you wish to present your amendment again at this time since Mr. Hellenthal and Mr. Buckalew are here?

DAVIS: I think yesterday I moved the adoption of the proposed amendment. I do not know whether there was a second to it or not.

CHIEF CLERK: Yes, it was seconded.

PRESIDENT EGAN: So we have before us Mr. Davis's proposed amendment. Would the Chief Clerk please read the proposed amendment.

CHIEF CLERK: "Section 7, page 3, lines 11 and 12, strike the words 'or information, which shall be concurrent remedies' on lines 11 and 12 and insert the following in lieu thereof: 'unless indictment be waived by the accused. If right to indictment be waived, proceedings may be by information.'"

PRESIDENT EGAN: Mr. Davis.

DAVIS: Mr. President, the purpose of the proposed amendment is this, as the section reads, the district attorney or the prosecuting officer, whoever he may be, may proceed in a criminal case either by indictment or information. I think as a matter of practice that he would proceed in all cases or nearly all cases by information. It is much easier for his office to do it that way. In my practice it appears to me that the grand jury serves a useful purpose. In some cases, not often it is true, but in some cases a person against whom criminal charges have been filed by the district attorney or by private parties, is released by the grand jury as there does not appear to be sufficient cause to hold him for trial. That of course is the purpose of the indictment. Now it is as pointed out yesterday, in many many cases, particularly in Alaska, a person may miss a grand jury and be charged with a crime and may have to wait a considerable period of time in jail before he can

have the matter heard by a grand jury. For that reason we have been allowing an accused to waive his right to a grand jury if he wants to, to waive his right to being indicted, and the amendment which I have proposed would preserve that same procedure which I think has worked very well. It will allow those who wish to have the matter heard by a grand jury, to have it heard by a grand jury. It will also allow the man who may be accused and who may want to waive the grand jury to waive and to proceed on information. Now I think the procedure we have had has worked very well, and I would like to keep it.

PRESIDENT EGAN: Is there further discussion of Mr. Davis's proposed amendment? Mr. Buckalew.

BUCKALEW: Mr. President, the Committee initially left the article by providing the requirement of the government to go by way of indictment unless the accused waives. Now as you all know, the first 10 amendments to the Constitution apply directly to Alaska now because we are a Federal Territory. For that reason the procedure we have today is carried out because we are complying with the Constitution. Now most states follow similar procedures we have lined out here in the article. I can see why the Federal government could have a provision against it requiring proceeding by indictment because at that time the only crimes against the United States would be serious crimes, and I suspect that the framers of the Constitution had in mind the particular crime of treason. Now if we change the article as Mr. Davis wants to change it, if a man picks up a \$56 radio, you have got to go by way of indictment. You have got to panel a grand jury. I think in Alaska it will be costly and expensive, and I think it is an unreasonable burden to put on the state, and I don't believe that it affords any additional protection to the accused. I think that historically in the Federal Constitution it probably served its purpose, but most of the states do not require proceeding by indictment. Now we have preserved the investigating powers of the grand jury. The only bad feature I can see about it, and I thought about it, Mr. Davis pointed it out to me, was that perhaps a grand jury would never be impaneled, but that is probably true, and probably you will never need a grand jury, and I can't see that it serves any useful purpose, does not afford any additional protection to the accused. In Alaska it is going to be costly and most of the states followed this particular provision.

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

R. RIVERS: Mr. President, I started the discussion on this point yesterday when I asked the Chairman of the Committee what they had thought about it and what their thinking was. The grand jury once a year investigates the jails and sometimes is useful where any particular fraud or general scandal has occurred, and I think they serve a useful purpose. Sometimes, as Mr. Davis said, the grand jury will bring in a "no true

bill" meaning they just refused to accuse anybody because the evidence is too flimsy. I like it the way it has been where the accused has the alternative of taking his choice, and the object of waiving an indictment by the grand jury is that if a man is accused, and you are not going to have a grand jury for six months or a year, so he says, "I want to get this over with." So he says to the district attorney, "File on information and we will fight it out on the information." That is the protection, so the grand jury does serve some useful purpose. That is my thinking in bringing it up.

TAYLOR: Mr. President, I think yesterday I made my ideas clear. I am against the use of a grand jury in criminal prosecution. I was in the United States Attorney's office for five years, and I've had quite a bit of experience with them. I have been on the other side of the fence for a good many more years. I would say retain the grand jury all right for investigative purposes of officials and public institutions, but why not proceed the same as most of the states do? Now we are trying to formulate a modern document, a modern constitution in this Convention. Just because a grand jury is a historical tradition dating from the time of the drawing of the Federal Constitution, why do we have to hang on to those old traditions that have outlived their usefulness? Let us make this modern and up-to-date, and I think that doing away with the grand jury will expedite the criminal procedure, will give a person what they are entitled to, a plain and speedy trial instead of a wait for a year or more sometimes before they can get the trial. I think that the grand jury is in the same class as the dodo; it's done for, it is gone and we might as well relegate it to oblivion where it belongs because it serves no useful purpose except for just investigative purposes.

PRESIDENT EGAN: Mr. Kilcher.

KILCHER: I think a nonlawyer should speak about this matter too, and I am very surprised that one time the dodo bird should be a symbol and the next time the eagle. I am also surprised that one day they are going to be rabid reformists and reject conventions when it is handy, and the next time we are frowning upon innovation when it is equally handy. I think that the grand jury essentially is an added protection to the citizens, specifically to the criminal cases. I am in favor of the amendment, and I think the cost angle when civic liberties are in question should not be mentioned.

PRESIDENT EGAN: Mr. Metcalf.

METCALF: I favor Mr. Taylor's viewpoint on the matter, and my observation in the law enforcement game for many years, there would be a terrific duplication of expense. Bring a big crew of witnesses in on a case and they sit around for a week or so and pay \$20 a day, and then the case is heard before the

grand jury and then they are sent back home again, and then maybe three or four months later bring them in again. You are going to be paying the bill for this duplication of expense. Therefore, I favor Mr. Taylor's viewpoint on the bill.

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: This particular provision is exactly Section 16 and Section 17 of the Constitution of the State of Missouri. The provision in question that we are passing on now is exactly the Missouri provision. Now two things have been confused here. One is the right to waive proceeding by indictment and the other is requiring indictment in all felonies. Now I believe that a person can always waive proceeding by indictment against himself, but if there is any doubt about it I would certainly be in favor of that portion of Mr. Davis's amendment. However, to preserve the old system which Mr. Taylor truly says is antiquated, I do not think it belongs in a modern constitution, and that is why the Committee chose the Missouri form. The grand jury should certainly and definitely be preserved as an investigating agency. There is no question about it at all, and the Missouri provision does exactly that, but to require indictment in felonies is archaic, it is not modern, and I think it serves very little if any, useful purpose. I agree wholeheartedly with Mr. Taylor's remarks, and I note that Mr. Taylor was one of the most successful prosecutors that they ever had in the Third Judicial Division and he is likewise one of the most successful defense attorneys in Alaska, and I certainly think that great weight should be afforded to his analysis of the situation. He shows good sound judgment, and he obviously is leaning over to protect the citizen, and if he were looking at it in a narrow manner he might insist on the grand jury and the method of indictment because it does give some consolation to those evilly disposed.

PRESIDENT EGAN: Mr. Buckalew.

BUCKALEW: Mr. President, I think that probably we should advise the nonlawyer delegates that at the time the grand juries convene the prosecutor controls all of the proceedings. The prosecutor decides what witnesses shall be called. The accused does not have a right to be represented by counsel. It is a secret proceeding which is more or less geared and controlled by the prosecutor and most of the time it is something that is just sort of a rubber stamp deal, and actually I can't see that it affords an accused person much protection at all, and usually it works the other way because a prosecutor will convene a grand jury just to get the testimony of his weak witnesses under oath, and he might call a grand jury to more or less buck up some of his witnesses, and it can be used for all kinds of things, and I can't think of any of the various uses that I have seen grand juries used for that it affords any real protection to the accused, and I can see where here in Alaska, if we

followed this amendment, it would be awfully costly on a small state, and I figured that if it afforded any protection, regardless of the cost, I would vote for the amendment, but I can't see that it protects the citizens, and as I say, he has no rights before the grand jury, and as a matter of fact, I think it is more beneficial to the government than it is to the citizen. I can't see any sense in providing that the state be required to have it.

PRESIDENT EGAN: Mr. Hurley.

HURLEY: Mr. President, I would like to ask a question, perhaps of Mr. Buckalew. If the amendment is not adopted, under what circumstances would a grand jury be called? As I read it here, a judge having the power to try and determine felonies would have the right to convene a grand jury, is that true?

BUCKALEW: That would be your superior court which is your trial court. The only person who could convene a grand jury would be the superior judge, and I think the superior judge would convene a grand jury, certainly if there was anything unusual going on in his district or any other district, and I think too that if the prosecutor got out of hand and was running like a brush fire, that the court would probably convene a grand jury and require him to indict everybody by grand jury.

HURLEY: That was the second question I was going to ask you, that if, beginning the trial by a matter of information were being abused, you feel that the judge of the superior court having reasonable tenure would be interested in the well being of the area and would call a grand jury?

BUCKALEW: Here is another consideration, if the prosecutor can go in and file an information, he is not going to be rushing in there filing informations without merit because the first time he does and it is thrown out or the case does not go to the jury, he would stop that practice right quick, because it would be fresh in the public minds that he failed an information and two weeks later he was miserably defeated. I would imagine he would get the cure without the judge having to panel a grand jury.

PRESIDENT EGAN: Mr. Davis.

DAVIS: I guess I have the right to close. Nobody who has talked against the proposed amendment has disputed the suggestion I made that if we allow the alternative method, that indictments will not be used as a matter of practice, informations will be used in all cases. Now it is true that the investigative grand jury has been preserved in the bill as set forth here. However, an investigative grand jury will only be called under certain specific circumstances, and somebody is going to have to find conditions pretty bad before an investigative grand jury will be

called, whereas a grand jury which is impaneled regularly, once or twice a year in our division, has full investigative power as well as the power to consider indictments. The grand jury is there and may take any steps that it feels may be necessary toward investigation. It does not have to wait for a call. Now it is true that a grand jury may be somewhat expensive, and it is true also that a grand jury dates back to the early days. But it does not follow in my opinion that the fact that a grand jury is something historic, or means that the grand jury at this time should be scrapped. It has served a useful purpose and it does serve a useful purpose. Mr. Buckalew has pointed out that the grand jury is more or less under the control, that isn't the right word but at any rate the proceedings are under the control of the district attorney. There is no question about that and there isn't any question that each grand jury that sits returns some "no true bills". The present grand jury just finished sitting in Anchorage has returned probably 10 "no true bills". For those who are not lawyers, a "no true bill" means that somebody has been charged with a crime by the district attorney and the district attorney, with all the control of the proceedings before the grand jury, has presented all of his evidence to the grand jury and in spite of that the grand jury has said that there is no cause to hold this man for trial, and the man has been released without going through a trial to a regular jury. Certainly under those circumstances it can't be said that the grand jury serves no useful purpose. It serves a distinctly useful purpose, and not as Mr. Hellenthal said, only to persons evilly disposed. It might be me, it might be you, it might be anybody that was charged with crime and was not guilty of that crime and should be released by a grand jury when the evidence was produced before the grand jury. Mr. Buckalew, possibly inadvertently, mentioned another useful purpose that the grand jury serves when he says that the district attorney can get his weak witnesses on record. Certainly that is worthwhile to the government in a case where the government has a case that he wants to prosecute. To get his witnesses on record under oath certainly is of considerable value. I will agree in a minute that in most cases, under present circumstances, the defendants are going to waive the right to grand jury investigation and to indictment and to proceed by information because it is so much faster, but I certainly hope that we preserve the right to have the criminal matters investigated by a grand jury if the accused wants it done that way.

PRESIDENT EGAN: Mr. Kilcher.

KILCHER: Mr. President, yesterday we attempted an amendment to Section 11. I think it was prompted by Mr. Taylor, on line 12, page 4, I don't recall the amendment verbatim, but it had to do with punishment defined for officers that are infringing on civil liberties. Isn't that so, Mr. Taylor? So I can see a contingency between your amendment of yesterday and the question

at hand right now. I recall personally a situation eight or nine years ago that brought it to my attention forcefully how the grand jury can be utterly vital. I think the grand jury can to some extent come into play in situations that your amendment yesterday was trying to remedy. The grand jury in its investigative power as well as for the fact that it is sitting there as a panel sometimes is the only recourse for a citizen to get justice, to get redress from abuse in lower courts. It is the only place where a citizen who had a just case but who was refused to have his just case treated in the lower court, as it is now in the Territory, the commissioner's court, to appeal directly to the grand jury is the only way. If the commissioner refuses to have the case appealed in superior court, this is my personal experience, it is the only safeguard a citizen occasionally has when for any reason and very often for political reasons, a case is not dealt with properly. The grand jury can be appealed to directly, which is an invaluable right to the citizen.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: I would like to ask a question of Mr. Buckalew, if I may. I ask it out of pure ignorance as a layman. Where will we get our district attorneys or prosecutors under the state government?

BUCKALEW: From the way the constitution looks now, Mr. McLaughlin can probably answer it better than I could, I would say he would be elected from, what is this outfit, the boroughs.

SUNDBORG: I was wondering when we are a state and operating under this constitution, how will we get our prosecutors or district attorneys?

MCLAUGHLIN: This says the legislature shall prescribe them. I don't believe any one of the committee proposals makes any provision for the prosecutors. I presume the legislature will have to determine how the prosecutors are appointed.

SUNDBORG: What would be a logical method? Are there a number of choices?

MCLAUGHLIN: There are plenty of choices, elective, appointive by the governor, appointive within the borough.

SUNDBORG: I have another question. Will the state constitution and this material which we are going to have in our bill of rights be governing in the federal court in Alaska as well as in our state court?

MCLAUGHLIN: What is that again?

SUNDBORG: Will the state constitution and this material which

we are going to have in our bill of rights be governing in the Federal court in Alaska as well as in our state court? Presumably we will have a Federal District Court.

MCLAUGHLIN: It will not unless it is appealed. Normally I will say this -- no, it will not apply. They will use the substantive law, which is the Constitution of the United States in cases in the Federal courts, but normally it does not apply.

SUNDBORG: The guarantees we think we are writing into our state constitution would not be guarantees of the liberties citizens if the rules of the procedure in the Federal courts were at variance with them?

MCLAUGHLIN: These are protections for the people of the state. If you are unfortunate enough to appear in the United States District Court for the District of Alaska, which will be established on statehood, then your rights will be determined under Federal law, and those cases as Mr. Hellenthal mentioned, one out of a thousand I guess, that is what it will be in the United States District Court.

SUNDBORG: Would there still be a Federal grand jury?

MCLAUGHLIN: Yes, there would.

MARSTON: Could I ask Delegate Davis a question?

PRESIDENT EGAN: You may, Mr. Marston.

MARSTON: Mr. Davis, if a man goes afoul of the law and the D.A. charges him with breaking the law, he throws him in jail, then can that man require a grand jury hearing or does he have to go up for trial, wait there for a year or two years like they do in Anchorage now to have a hearing? Does he have to wait in jail or can he have a grand jury hearing and get out?

DAVIS: Under the present circumstances, the district attorney files or somebody files a complaint usually with the commissioner's office. If it is a felony case which we are talking about here, a felony case being any case that any matter that is punishable by imprisonment or death, anything more than a petty crime, if it is a felony case, the United States Commissioner holds a hearing, which we call a preliminary hearing. At that hearing the United States Commissioner decides whether or not there is reasonable cause to hold this man. Now, as a matter of practice, in most cases the United States Commissioner holds that there is reasonable cause, some cases, no, but most cases, yes. In case the United States Commissioner holds there is reasonable cause to hold the man for crime charged, then the matter goes to the grand jury. Now there is a short cut of that procedure. The district attorney, if he wishes, may bring the matter directly before the grand jury, or for

that matter the grand jury may on its own motion indict someone, usually not, but it could. Now, if the grand jury finds that there is no cause to hold the man for the crime, it renders what is called a no true bill and the man is released. If it finds that there is cause to hold him for trial, and as I pointed out awhile ago, usually it does, if it finds that there is just cause to hold him for trial, he is sent for trial to the district court. However, the provision as it now stands allows the man to waive the preliminary hearing I talked about. It also allows him to waive the right to trial by grand jury, and I suppose under present circumstances that at least half of the people accused waive the right to grand jury. Now I may be wrong on my figures, but at least a substantial portion of them do. Now Mr. McCutcheon has just pointed out to me here, and this may be what you were really asking about, as to whether a man can require immediate action by a grand jury. He cannot. The grand jury only meets as called by the district judge. In Anchorage that is twice a year. In some other divisions it may be different, it depends on what the case load is. The judge in our area calls the grand jury twice a year. Now if a person is accused of crime and he does not wish to waive his rights to have his case heard by the grand jury, then he has to either make bail or sit in jail until the grand jury meets, and at that time if the grand jury releases him, he is released. If the grand jury binds him over to the district court for trial or indicts him, he stands trial in the district court. Have I answered the question?

MARSTON: Will your amendment preserve the grand jury if it is passed, or will it destroy it?

DAVIS: As I intend it, it will preserve the right to grand jury in all cases where a man is accused of a felony. It will give the man the right, if he wishes, to waive that right and to proceed without an indictment.

MARSTON: Mr. President, may I speak on this? I had a case of an Arctic friend of mine who came afoul of the law and landed in the jail, and I took him out, got his bail, and the grand jury was good enough to send for me to talk for him. If that man had had to sit there for trial he wouldn't have had the money to fight it, he would have lost his job and been a derelict on the shores of white man's civilization. I went before the grand jury. They found what I learned was a no true bill handed to him, and he is a free citizen, has his job and is doing all right. On that basis I am going to vote for Mr. Davis's amendment and preserve that grand jury.

PRESIDENT EGAN: The Chair would like to say that under the rules each delegate has a right to be heard twice, except the maker of the motion. Now, Mr. Davis can still close this argument if he so chooses. Mr. McNealy.

MCNEALY: Mr. President, I feel that this grand jury situation is important enough to possibly take up a few more minutes of the time of the delegates here but again, I don't think that it is something that I am not too strongly persuaded for or against the amendment. I only speak to point out one or two things. There are at least four of us here who have been United States attorneys and have handled the matters before the grand juries and are conversant with them. Just mentioning briefly, as Mr. Buckalew spoke there, the United States attorney or any prosecuting attorney before the grand jury, if he really wants an indictment, in I would say 99 out of 100 cases he could secure the indictment because you can furnish hearsay evidence to the members of a grand jury. You can present letters and affidavits and evidence of that nature which you could not get into evidence in the trial court before the petit jury so it has that disadvantage there, and I think every prosecuting attorney I know, including myself, has submitted evidence at times to the grand jury thinking later on he could back that evidence before a petit jury, and on occasion you fail, and the petit jury releases them where the grand jury indicts. On the other hand, I don't want to say anything about the cross angle today because I was nailed to the cross of gold yesterday. The only thing at all that I could speak in favor of the grand jury for is simply this, that occasionally our appointed prosecutors become a little overzealous and want to secure a number of convictions and in some of those instances a grand jury will return a no true bill. Even more important I think is the fact that during the time I was in office, they had citizens here who came in with the complaints against others and in three or four instances that I remember distinctly, they were prominent citizens of the town here. Charges were filed against them and it was presented direct to the grand jury, that is the charges were labeled for the grand jury, and the grand jury heard the evidence and returned a no true bill, and it was under the secret indictment procedure which the grand jury is allowed to use. In other words, the secret indictment may be returned or the hearing held secretly before the grand jury, and in these four or five instances that I call to mind, they were more or less prominent citizens of the town who were not criminally inclined, and the jury returned a no true bill, and it was a secret indictment in three cases the parties did not even know the charges were filed before the grand jury. Had we not had the grand jury system and had a complaint been filed against these people, it would have hit the front pages of the local papers and probably would have done great harm to the reputation of these few people where it was not warranted, and for that reason alone, it would be the only reason. I think the ordinary criminal is, or the person charged with a crime is well protected by the system of information but the only thing that could offset that would be if the state prosecutors are elected and not appointed by the judicial council then it may be that since they are elected officials they may not be so prone to jump out and start prosecutions under information. In closing, I

could only say, and I have not added a great deal, but there is simply the question of whether the grand jury system, the perpetuation of it in order to protect a few, whether it is worthwhile for that or whether it is not.

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: Mr. President, I believe we have all strayed away from the subject before the Convention. I think it was as to whether or not we would prosecute by information or by grand jury, but now we've got to arguing about whether a grand jury should be retained or not and I think a number of us have made it very clear we are not in favor of the retention of the grand jury. If we are going to retain the grand jury I am in favor of Mr. Davis's amendment. It does protect the accused to a considerable extent, but I would much rather see an amendment offered here that abolished the grand jury for the investigation of felonies and the return of true bills or not true bills.

PRESIDENT EGAN: Mr. Hilscher.

HILSCHER: As a layman I am learning a lot about the law business in this discussion. I can understand now why every attorney has walls covered with books, and I would like to suggest, Mr. Chairman, that this matter be laid on the table, and I so move that this be laid on the table until all of the 17 attorneys can be put into a small room and come out with something that is understandable to the lay people. I for one feel completely confused with all of this discussion, and I think I am of reasonable intelligence. I would like to suggest that all of these attorneys who have gone to college for five years to become attorneys and to confuse the public get together.

PRESIDENT EGAN: Mr. Hilscher are you moving to lay this motion of Mr. Davis's on the table?

HILSCHER: I am moving to lay this motion on the table.

PRESIDENT EGAN: It is undebatable. Is there a second?

LAWS: I second the motion.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Davis be laid on the table?" All those in favor of laying the proposed amendment on the table will signify by saying "aye", all opposed by saying "no". The "noes" have it and the motion has failed of adoption. Is there further discussion of the proposed amendment? Mrs. Hermann.

HERMANN: I yield to Mr. Robertson.

ROBERTSON: I am in favor of Mr. Davis's proposed amendment. I personally don't try very many criminal cases, although, during

the many years I have practiced law, I have defended a good many of the accused. I have watched for the past several years down in the First Division, and it seems to me that the use of an information against the accused is being greatly overdone and being done without entire fairness to the accused. And after all, when a person is accused of a crime, he is not guilty of a crime until he has been convicted, and it seems to me that at the very least, the accused ought to have the privilege or the right of saying whether or not he demands that he be indicted before he goes to trial, and I think that Mr. Davis's amendment as I understand it, will continue to give the accused that right unless the United States attorney and the other officials can talk him into the waiving of the right of indictment, he can still stand on his constitutional right that a grand jury must first indict him before he can be brought to trial before the petit jury, and I think it is a great thing to the accused to have this amendment put in the constitution.

PRESIDENT EGAN: Miss Awes.

AWES: As Chairman of the Bill of Rights Committee, I was asked a lot of questions yesterday, and I also got up and talked on practically every section that was discussed. For that reason I thought I would get up and just say that I don't want it implied that because I am not talking today that I do not favor the section as it came out of the Bill of Rights Committee. I do favor the way it stands. I agree with everything that Mr. Buckalew has said because I felt that he and some of the others on the Committee knew more about criminal law than I did. I preferred to let them speak, but I don't want it implied that I do not favor this provision. I do.

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: There is one thing I think should be cleared up, and it came up in connection with Mr. Sundborg's question. He asked about the Federal grand jury, and the answer was that the Federal grand jury would be continued for the very few criminal cases that arose in the Federal District Court that will exist after the state is created. I want to point out, though, that under the Federal Constitution the only crimes for which one is indicted are capital or other infamous crimes. That is what the Federal Constitution says. The Davis amendment, though, would permit the accused to insist on an indictment for any felony. It goes far beyond the Federal Constitution. If the amendment passes, there will certainly be an amendment to at least draw it into line with the Federal Constitution and restrict it to capital or other infamous crimes. I am reading from the United States Constitution. Secondly, if the Davis amendment passes, we are going to have to change line 25 on page 2 which says that any nine of the twelve may find an indictment or true bill. Under the Federal Rules and under the rules that now apply in Alaska, twelve reach a true bill. This Davis amendment

would certainly give consolation again to the person who is evilly disposed. The prosecution has got to get nine votes out of twelve to give him a bad time, whereas under the present ruling 12 out of 23 will suffice. Again, as I pointed out, it is far broader than the Federal Constitution, far broader than most states in the Union. It is true that sometimes a zealous prosecutor goes a little wild and prosecutes a little too much, but the petit juries usually pick him up. But on the other side, the person evilly disposed when he is accused of crime, delay is what he wants, delay, delay, delay, and he will get it under the Davis amendment. He will get opportunities for delay he did not have before. He will have opportunity for confusion he did not have before. You have got to weigh these things in the balance. Sure, some are going to be hurt on one side, some on the other, but balance the thing out. The Davis amendment is going to benefit more evilly disposed persons than it is going to aid the good people. An innocent man has little to fear in a court. Now there are exceptions to that, and I have argued about them sometimes as a lawyer. But in the broad general picture, under our American form of government and under this proposed article in the constitution, the innocent man has little if anything to fear. There is no sense of making it easy for the other minority who do not respect the laws. Now, this matter of information that might sometimes be abused by a young prosecutor, the information as we all know, we know it in Alaska because it is contained in the Federal Rules of Criminal Procedure which permits the prosecutor to proceed by means of an information in certain lesser crimes. They are not infamous crimes or capital offenses. They are only under the Federal Rules as the indictment preserves. The instances where the information have been abused are very, very few, and certainly under the state where the prosecutor will be far more amenable to the people than he is now, where they are picked in federal circles in peculiar fashion, certainly in the new state the information will not be abused.

PRESIDENT EGAN: Mrs. Hermann.

HERMANN: Mr. President, I thought I would stay out of this hassle, but I feel constrained to stand and say I approve of Mr. Davis's amendment, and I also have had a considerable volume of experience as a defense attorney. I have had no other experience except as a defense attorney, though not all of my cases have been as a general rule in the criminal courts. I also have seen the misplaced zeal of some of our district attorneys that Mr. Robertson mentioned, and my 20 years experience as an attorney in the courts of Alaska, exclusively, have given me no reason to have too much reverence for district attorneys even though I have one in the family, and I think very highly of him. The fact of the matter is that I have seen a great many innocent people plead guilty rather than wait for the grand jury to meet. I have also seen innocent people convicted, not a lot of them, but I have seen it

enough to know that it is done and that our system of justice as it now stands is far from perfect. I keep hearing that they have to wait a year for a grand jury or maybe six months. We are speaking of the grand jury system as it exists in the Territory of Alaska. We are writing a constitution for the State of Alaska. There is no reason on earth why a grand jury cannot be called to be available any time that there is business to be considered and that the indictments by grand jury can be preserved in that way. It is true that now we have a grand jury once or twice a year, in Juneau only once a year. But it is entirely within our powers to place a grand jury that is on permanent call, not on a permanent salary or permanent basis but is available at any time that business should be placed before it, and I see no reason whatever to abandon the grand jury in this system of justice. I know myself from personal experience that every time a grand jury is about due to be called I have a great rush of calls from the district attorney offering me all kinds of inducements to waive presentment by the grand jury and let my clients plead on information. There is another evil in the information system if it is overused that has not been mentioned here. I don't know if it exists all over the Territory, and again, we are speaking of the Territory and not of the State, and that is the fact that people who are asked to waive indictment are expected to plead guilty in our division, not expected to stand trial, and I have known them to be denied the right to waive indictment unless they would agree to a plea of guilty. Now those things are all things that we have to consider. It is true that most people who come to stand before the bar of justice come because they have committed some crime, but there is also a considerable volume of people that appear to be tried that appear in court that are unjustly called there. Mr. McNealy himself gave you some examples a few moments ago of situations of that kind. I don't believe in protecting the guilty but I do believe in considering them innocent until they are proved guilty. I have from personal experience found that the grand jury protects the public, not the criminal nor the alleged criminal, but the public as a whole. For that reason I am going to vote for Mr. Davis's amendment.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: Mr. President, I was not going to say anything on this subject, but I also agree with the Davis amendment. I think it should be pointed out that the degree of secrecy involved that can be had in a grand jury where a person is innocent does not subject him to the blasting of the press that he might be submitted to if he goes before a petit jury on an information. Even though he be acquitted, he is bound to get a considerable amount of adverse publicity. For that reason I also will favor the Davis amendment.

PRESIDENT EGAN: Mr. McCutcheon.

MCCUTCHEON: Mr. President, I served some time in the Department of Justice as a law enforcement officer. I also had the occasion to put in a short stint of duty on a grand jury. I have had occasion to observe the actions of a grand jury, both first hand and second handily. Some of the assertions that Mr. Rivers makes is not a fact. The secrecy of a grand jury is secret only to a few. The actions of the grand jury very frequently are public and become public by word of mouth to the detriment of many people's reputation, and it is true that a grand jury does not protect the public from an overzealous prosecutor. An overzealous prosecutor can present such types of evidence as is necessary to bring in a true bill and injury may be given thereby to people's reputation and their business. One thing that has not been pointed out here to those who are not versed in the matters of grand jury and the function in which they perform is that the grand jury does not try anything. A grand jury only hears the evidence that is presented by one person, the prosecutor, and decides whether there is sufficient evidence to bring it to trial and court, and there is reasonable chance for the government to win a conviction. I am against Mr. Davis's amendment.

PRESIDENT EGAN: Mr. Metcalf.

METCALF: May I direct a question to the Chairman of the Bill of Rights Committee? Delegate Awes, what is the procedure followed in Canada? Do they use the grand jury system there?

AWES: I don't know. Maybe somebody else knows.

PRESIDENT EGAN: Does anyone know what the system is in Canada? Mr. Davis.

DAVIS: Mr. President, I almost wish I had not brought this matter up, but to my notion it is vital, and that is the reason I did bring it up and that is the reason I am speaking for the third time. I want to make it clear that I am not at all interested in those persons that Mr. Hellenthal has called, "those persons evilly disposed". Those persons can take care of themselves. I am interested in the occasional person who is charged with crime and who is completely innocent of that crime, and so far as I am concerned if even one person is charged with crime, who is innocent, and who may have the matter disposed of without having to stand trial, it's worth the cost, and it seems to be apparent here from everything that has been said that, in spite of the fact the district attorney controls the grand jury, in spite of the fact that he presents evidence that would not be received in a court at law, in spite of the fact that the grand jury hears only one side of the thing, the grand jury occasionally, and we might say even frequently, finds there is not cause to hold a man for trial who has been charged by the district attorney. That ought to be sufficient to show that the grand jury serves a distinct useful

purpose, not for those evilly disposed but for you and for me and for all of us. One further thing, unless I am badly mistaken, the United States Constitution, in the use of the word "infamous crimes" has exactly the same meaning that we are talking about in felonies. Certainly all federal crimes which we know as felonies are prosecuted by indictment, unless waived.

PRESIDENT EGAN: The Convention is at recess for a few minutes.

RECESS

PRESIDENT EGAN: The Convention will come to order. Will the Chief Clerk please read Mr. Davis's proposed amendment.

CHIEF CLERK: "Section 7, page 3, lines 11 and 12, strike the words 'or information, which shall be concurrent remedies' and insert the following in lieu thereof: 'unless indictment be waived by the accused. If right "to indictment be waived, proceedings may be by information.'

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

METCALF: Roll call.

PRESIDENT EGAN: The Chief Clerk will call the roll.

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

Yeas: 39 - Barr, Boswell, Collins, Davis, Emberg, H. Fischer, V. Fischer, Gray, Harris, Hermann, Hinckel, Hurley, Johnson, Kilcher, King, Knight, Lee, Londborg, McNealy, Marston, Nerland, Nolan, Nordale, Peratrovich, Poulsen, Reader, Riley, R. Rivers, V. Rivers, Robertson, Rosswog, Smith, Stewart, Sundborg, Sweeney, Taylor, VanderLeest, Walsh and White.

Nays: 12 - Awes, Buckalew, Cross, Hellenthal, Hilscher, Laws, McCutcheon, McLaughlin, McNees, Metcalf, Wien and Mr. President.

Absent: 4 - Armstrong, Coghill, Cooper and Doogan.)

CHIEF CLERK: 39 yeas, 12 nays, and 4 absent.

PRESIDENT EGAN: So the "yeas" have it and the proposed amendment is ordered adopted. Are there other amendments to Section 7? Mr. Buckalew.

BUCKALEW: After how that amendment carried, Mr. President, I

think we can strike all the preceding material. I think it is all superfluous. Starting with Section 7 , line 24. I think we ought to just strike all that down to Mr. Davis's amendment.

PRESIDENT EGAN: Are you so moving?

BUCKALEW: I so move. It is not written. I move to strike all of Section 7 commencing at line 24 and including all of the material down including line 9 on page 3 and ask unanimous consent.

HERMANN: I object.

V. FISCHER: I second the motion.

PRESIDENT EGAN: Mr. Buckalew so moves that the first paragraph of Section 7 be stricken from the Section. Mr. Fischer seconded the motion. The matter is open for discussion. Mr. Victor Fischer.

V. FISCHER: The reason for my seconding this motion is that during the recess it was pointed out to me by several people that they felt that this paragraph that is proposed to be stricken is strictly of a legislative nature, that the establishment of the procedure for the grand jury as to who calls it, its authority to investigate, etc., are generally established by the legislature, and generally not included in the constitution and certainly do not have to be in the constitution.

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: Mr. President, I believe whoever the informants of Mr. Fischer were were wrong, because, if this Convention does not provide for a grand jury in the constitution, the legislature would have no right to provide for a grand jury, and then, in the paragraph that would be left in Section 7, it says, to be prosecuted by indictment or information", you would have nobody to bring in the indictment.

PRESIDENT EGAN: Mr. Fischer.

V. FISCHER: Mr. President, I stand corrected. The suggestion that was made to me was that if the paragraph be stricken and merely provide that there shall be a grand jury.

PRESIDENT EGAN: Mr. Fischer, if you stand corrected, perhaps the Chair should declare a two-minute recess. The Convention is at recess.

RECESS

PRESIDENT EGAN: The Convention will come to order. Mr. Buckalew, did you have something to submit?

BUCKALEW: Mr. President, I did not get a chance to finish, but I was talking to Mr. Davis and I would think it would probably be better to offer another amendment and use almost the same language as found in the Federal Constitution.

PRESIDENT EGAN: Are you asking that your original amendment be withdrawn, Mr. Buckalew?

BUCKALEW: That is a good suggestion; that's what I'm asking.

PRESIDENT EGAN: If there is no objection, the original amendment offered by Mr. Buckalew, seconded by Mr. Fischer, will be withdrawn.

BUCKALEW: Can we have a two-minute recess?

PRESIDENT EGAN: If there is no objection, the Convention will stand at recess for 15 minutes.

RECESS

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

JOHNSON: I would like to revert to Section 1 for a very minor amendment. I have discussed the matter with Miss Awes, the Chairman of the Committee, and I believe she agreed that the amendment would be well taken.

AWES: Point of order. I am not objecting to the amendment, but I wonder if this is the time for it. We specifically delayed paragraph 7 yesterday, but we were in Section 12, I wonder if it would not be better to go through and come back.

BUCKALEW: I misunderstood the President. I thought you said there was nothing before us.

PRESIDENT EGAN: I meant we had not received the proposed amendment that had been spoken of. Mr. Buckalew.

BUCKALEW: Mr. President, I have an amendment.

PRESIDENT EGAN: The Chief Clerk may read the proposed amendment as offered by Mr. Buckalew, Davis, Hellenthal, Taylor, and McNealy.

CHIEF CLERK: "Section 7. Strike Section 7 as amended and substitute the following section: "Section 7. No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, unless waived by the accused, in which event the prosecution shall be by information. The grand jury shall consist of not less than twelve citizens.'"

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BUCKALEW: I move its adoption.

TAYLOR: I ask unanimous consent.

PRESIDENT EGAN: Is there objection? Mr. Robertson.

ROBERTSON: May we have it read again more slowly.

PRESIDENT EGAN: The Chief Clerk will please read the proposed amendment.

CHIEF CLERK: "Strike Section 7 as amended and substitute the following section: 'Section 7. No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, unless waived by the accused, in which event the prosecution shall be by information. The grand jury shall consist of not less than twelve citizens.'"

ROBERTSON: My only "objection" is it seems to me that the first "unless" should we except".

PRESIDENT EGAN: Would the Chief Clerk please slowly read that section again?

CHIEF CLERK: "No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, unless waived by the accused, in which event the prosecution shall be by information. The grand jury shall consist of not less than twelve citizens."

PRESIDENT EGAN: Is there a second to the motion by Mr. Buckalew?

HERMANN: I second the motion.

PRESIDENT EGAN: Mr. Robertson.

ROBERTSON: My only suggestion was that the first "unless" should be "except". I am not going to raise any objection to the amendment.

PRESIDENT EGAN: On that question and inasmuch as we don't have copies of this before us -- Mr. Barr.

BARR: I agree with Mr. Robertson. The wording is awkward there. Either one "unless" should be changed, it should be gone over.

PRESIDENT EGAN: The Chair feels the attorneys should get together and try to get this amendment

DAVIS: Mr. President, I realize it is awkward and I helped prepare the thing, but I think Style and Drafting can well take care of it without worrying about it here. However, this

amendment went in with my name on it and I did agree to the substance of it, but I did not intend we should drop the last three lines of the present Section 7, and I don't think any of us actually intended to drop that. The way the amendment reads it will drop, "but this shall not be applied to cases arising in the land or naval forces or in the militia when in actual service in time of war or public danger."

HELLENTHAL: Let us have a one-minute recess.

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

RECESS

PRESIDENT EGAN: The Convention will come to order. The Chair would like to bring to the attention of the delegates that as a result of the Hawaiian hearings we received two coconuts here. If it is the desire of the delegates at the 3:30 recess this afternoon, everyone can partake of these Hawaiian coconuts. The Chief Clerk will please read the proposed amendment as it is now offered as amended.

CHIEF CLERK: "Strike Section 7 as amended and substitute the following: 'No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except when waived by the accused, in which event the prosecution shall be by information, but this shall not be applied to cases arising in the land or naval forces or in the militia when in actual service in time of war or public danger.'" The grand jury may consist of not less than twelve citizens.'

PRESIDENT EGAN: Mr. Buckalew, do you ask that the original amendment be amended by the addition of that section relating to land or naval forces or militia? Were there other changes in the first part?

BUCKALEW: Yes.

CHIEF CLERK: "Unless" was changed to "except when".

PRESIDENT EGAN: Does everyone understand the changes now that have been made, that are attempted to be amended to the original amendment at this time? Mr. Buckalew.

BUCKALEW: With the consent of my second I would like permission to withdraw the original amendment and have it printed.

R. RIVERS: Point of order. My understanding was that the original amendment was withdrawn.

PRESIDENT EGAN: It was not withdrawn, but it would be simpler

if they would withdraw the original amendment and then offer this as a complete new amendment.

BUCKALEW: Then I can have this amendment mimeographed.

PRESIDENT EGAN: You can have it submitted unless there is objection and the delegates wish it.

BUCKALEW: I don't think it is that long.

PRESIDENT EGAN: If there is no objection, the original amendment offered by the several delegates is ordered withdrawn. Would the Chief Clerk please read this amendment again.

CHIEF CLERK: Amendment offered by Mr. Buckalew, Mr. Davis, Mr. Hellenthal, Mr. Taylor and Mr. McNealy: "Strike Section 7 as amended and substitute the following new section: 'No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except when waived by the accused, in which event the prosecution shall be by information, but this shall not be applied to cases arising in the land or naval forces or in the militia when in actual service in time of war or public danger. The grand jury may consist of not less than twelve citizens.'"

PRESIDENT EGAN: Mr. Buckalew, what is your pleasure?

BUCKALEW: I move its adoption, Mr. President.

KNIGHT: I second the motion.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: Mr. President, I am worried by that word "may" in the last sentence. I am wondering if the lawyers gave consideration to that. Should it not say "shall"?

PRESIDENT EGAN: Is there an answer to that question?

MCNEALY: Mr. Hellenthal has written in the word "shall" and I suggested "may", and the only purpose of suggesting "may" was that some future legislature might feel that it was necessary to have possibly more than twelve rather than just have the number of twelve. With the use of the word "may" we felt they could increase it to 23, which is the actual number of the federal grand jury.

SUNDBORG: If we leave the word "may" in there, could the legislature not say we shall have a grand jury of seven?

HERMANN: No.

PRESIDENT EGAN: Mr. Poulsen.

POULSEN: Having Section 7 completely revised, is it not possible to have mimeographed copies for each one?

PRESIDENT EGAN: Mr. Poulsen, if that is your desire, it will be ordered. If there is no objection then, the particular proposed amendment will be held in abeyance until mimeographed copies are available. Mr. Hinckel.

HINCKEL: Point of information. I would like to know if that statement which says, "but this shall not be applied to cases arising in the land or naval forces," etc., what portion of the article does that pertain to, what does it cover?

BUCKALEW: It covers the whole section.

PRESIDENT EGAN: Mr. Metcalf.

METCALF: I am worried, too. In the original Section 7 it states a majority at which a grand jury may come in and come in with an indictment. Does it mean that the grand jury must be unanimous?

PRESIDENT EGAN: Mr. Metcalf, now that the question was raised, this is a long amendment, and the Chair has ordered that the particular proposed amendment be mimeographed and placed on everyone's desk. In the meantime it might be possible for the delegates, before this comes up again, to discuss the whole matter with the makers of this proposed amendment and we could proceed on with other sections of the proposal, if that is the desire, while we are holding this in abeyance. Is there objection to that? Mr. Barr.

BARR: Mr. President, I have an amendment I would like to make to this section which would just be an addition to the amendment we are now considering. What should I do about that? It is about four sentences but it is just lifted out of this present section. Therefore it is before us.

PRESIDENT EGAN: It could be, Mr. Barr, that the best way to handle that would be to confer with the makers of the original motion and if they would desire that your proposed amendment become a part of the amendment, why they might have it all mimeographed together and resubmit the amendment.

BARR: If not, if they would not agree to this and I still want to submit it, it would not be necessary to have it mimeographed?

PRESIDENT EGAN: If you have it in writing.

BARR: It is in writing.

PRESIDENT EGAN: Under those circumstances, the Chair would not

feel yours would have to be mimeographed. Mr. Londborg.

LONDBORG: In order to speed up the procedure afterwards, I would like to hear his amendment now and be thinking about it.

BARR: The new amendment does not make any mention of the investigating powers of the grand jury, and I have been told they would still have those powers under the Federal Constitution, but I believe it should be mentioned in our constitution because I think that is one of the most important duties of the grand jury. Therefore, I am going to propose later that we lift this language out of the present article and add it on to the amendment on Section 7, page 3, line 6, starting with the word "the".

PRESIDENT EGAN: If there is no objection we shall proceed with Section 12. Mr. Taylor.

TAYLOR: I don't believe that is necessary in there.

PRESIDENT EGAN: It is not before us, and at some recess prior to the time we take up Section 7 again, perhaps you might get together with Mr. Barr and the other makers of this particular motion and discuss the matter. We are now going to proceed to Section 12 until such time as we have a mimeographed copy of the amendment. Are there amendments to Section 12? Mr. Victor Fischer.

V. FISCHER: I have an amendment.

PRESIDENT EGAN: The Chief Clerk will read the proposed amendment.

CHIEF CLERK: "Section 12, line 19, page 4, after the word 'offenses' insert: 'when the proof is evident or the presumption great;'. "

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

V. FISCHER: I move the adoption of this amendment.

HELLENTHAL: I second the motion.

PRESIDENT EGAN: The Chief Clerk may read the amendment once more.

CHIEF CLERK: "Section 12, line 19, page 4, after the word 'offenses' insert: 'when the proof is evident or the presumption great;'. "

V. FISCHER: Mr. President, I have discussed this with a number of the members of the Bill of Rights Committee. The language in the Federal Constitution reads generally to the effect that

excessive bail shall not be required. A number of states have changed that language to provide more or less the language we have, that the accused may be released on bail except for capital offenses. But in practically every case where this new language is used, the words, "when proof is evident and the presumption great" and that is a necessary protection for the accused and we should follow the majority of the states in this case. It has proven a desirable practice. The actual determination of when a person is released on bail, if charged with a capital offense, is still up to the judge.

PRESIDENT EGAN: Miss Awes.

AWES: Mr. President, Mr. Fischer spoke to me about this before he introduced it, and I have only had the opportunity to discuss it with a couple members of the Committee, but it seems to me it would be a good amendment, and those members of the Committee which I talked to also felt that way.

PRESIDENT EGAN: Is there further discussion of this proposed amendment? Mr. Ralph Rivers.

R. RIVERS: I would like to speak for it. Quite often there is no need for denying a person charged with first degree murder bail if the court thinks he is close and is safe, and in a very close case he should be given bail.

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: The question is, "Shall the proposed amendment offered by Mr. Fischer be adopted by the Convention?" All those in favor signify by saying "aye", all opposed by saying "no". The "ayes" have it and the proposed amendment is ordered adopted. Are there other amendments to Section 12? The Chief Clerk may read the proposed amendment.

CHIEF CLERK: "Section 12, line 22, page 4, change the period to a semicolon and insert thereafter the following: 'That the accused shall, in no instance, be required to advance money or fees to secure the rights herein guaranteed, nor shall the accused be taxed with any costs of the prosecution.'"

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

TAYLOR: I move the adoption of the amendment and ask unanimous consent.

MCLAUGHLIN: I object.

PRESIDENT EGAN: Is there a second to the motion?

KILCHER: I second the motion.

PRESIDENT EGAN: The question is open for discussion. Mr. Londborg.

LONDBORG: May we have it read again?

PRESIDENT EGAN: Would the Chief Clerk please read the proposed amendment?

CHIEF CLERK: "Section 12, line 22, page 4. Change the period to a semicolon and insert thereafter the following: 'That the accused shall, in no instance, be required to advance money or fees to secure the rights herein guaranteed, nor shall the accused be taxed with any costs of the prosecution.'"

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

TAYLOR: Mr. President, I offered that amendment because in a number of the constitutions it provides that the accused shall not be required to advance any costs or to secure the rights guaranteed him by the Bill of Rights. Our legislature a number of years ago enacted the statute that said the defendant would not have to pay any costs of the prosecution, and that was in effect for quite a number of years until such time as the Federal Rules of Criminal Procedure were put into effect of which we had no right to say whether it should be or not. The Federal Rules of Criminal Procedure provide that costs of the prosecution can be taxed against the defendant. Well, I know in a number of instances where that has been done. I know in one dismissed demeanor here recently, a man was brought from the Azores Islands as a witness in the case and testified in the matter, and the person who was convicted and was given 60 days of which 40 days was suspended, but they are saddled with a \$1,300 civil liability to the government, and it is not right. As soon as they get out of jail the district attorney starts to try to collect from them. When a man gets out of jail and gets a job they immediately want to get his money. I don't believe there should be any requirement of a person paying the cost of the prosecution, because sometimes in a felony case sometimes it would be thousands and thousands of dollars which would be the cost of the prosecution and the man might go to jail for a couple of years, he gets out and is saddled for the rest of his life with an obligation to the state. I don't think that should be. I feel that in all sincerity that we should have it in the constitution so that the legislature will maintain our present law which says a defendant will not be taxed with the cost of prosecution.

PRESIDENT EGAN: Mr. Johnson.

JOHNSON: Mr. Taylor argues that under Territorial law we had a statute which prohibited the assessment of costs against the defendant in the criminal case, and that that has been changed

by Federal Rules of Criminal Procedure. Well, if we become a state, there certainly would be nothing to prevent the state legislature from also passing a law prohibiting the taxation of costs against a defendant in a criminal case, because under our present setup there is nothing in the Organic Act that in any way covers it. So the legislature in passing such a law must have done so under the general police power. The state could certainly do the same thing, and the Federal Rules of Criminal Procedure would not apply except in federal cases. I believe that this matter could just as well be handled by the legislature and left out of the constitution. It would only cause confusion. I am opposed to the amendment.

MCLAUGHLIN: May I have the amendment read again?

PRESIDENT EGAN: The Chief Clerk will please read the amendment again slowly.

CHIEF CLERK: "Section 12, line 22, page 4, change the period to a semicolon and insert thereafter the following: 'That the accused shall, in no instance, be required to advance money or fees to secure the rights herein guaranteed, nor shall the accused be taxed with any costs of the prosecution.'"

MCLAUGHLIN: May I direct a question to Mr. Taylor?

PRESIDENT EGAN: You may, Mr. McLaughlin.

MCLAUGHLIN: Mr. Taylor, under that system -- I am not objecting to the theory. In substance, the constitution might prohibit any client from paying his attorney for representing him, but I am particularly bothered with the implication that this, in substance, sets up a public defender system because it does not require one to advance any fees to secure one of the rights guaranteed, the right of assistance of counsel. So, in substance, may we not be embedding in the constitution the public defender system which should be a matter for legislation?

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: I think that was taken care of not only by law but also by the rules of the court. The courts will not allow a man to be tried for a felony unless he does have an attorney, and if he does not have the money to employ an attorney -- and if he does not have the money to employ an attorney, he will have an attorney appointed for him, who will be paid out of the state or government funds.

MCLAUGHLIN: Does this require that he be a pauper? Under your provision he could be a millionaire and he would not be required to pay a nickel for counsel, and then the only way in substance he could secure counsel would be out of the public treasury.

TAYLOR: No, he has the right to have counsel. He doesn't have the right to have counsel appointed for him unless he is a pauper. If he can't pay for it, the government has to pay for it because a man can't be tried unless he has an attorney.

PRESIDENT EGAN: Mr. Buckalew.

BUCKALEW: I am going to vote against the proposed amendment because that would prohibit the courts from ever taxing the cost to wealthy accused, and it would be an unreasonable provision because then if the legislature wanted to give the courts discretion in certain cases to tax cost to the accused, they could not do it, they would be prohibited. Suppose that the accused is a millionaire and he's being tried for a particular crime that doesn't provide for a fine, only imprisonment, then the government perhaps, has gone to a \$3,000 or \$4,000 expense and they can't tax the cost to him when he has been convicted and it seems to me that when the government is the prevailing party, in certain situations they certainly should be allowed the privilege of taxing cost.

PRESIDENT EGAN: Miss Awes.

AWES: I would like to comment a little on Mr. Taylor's statements. He said that the Territorial legislature at one time had provided a statute similar to this and then the Federal Rules of Criminal Procedure provided that cost could be taxed and that they would override the Territorial law. I would like to point out that these Federal Rules of Criminal Procedure are rules for the Federal court and our district courts now are Federal courts, but when we get state law, those rules will apply only to the Federal District Court and not the state courts. Consequently, any law of the legislature will apply to the state courts. I agree with those who have stated that they believe this is a matter for the legislature. I think that if we adopt this we are writing legislation into the constitution.

PRESIDENT EGAN: Mr. Metcalf.

METCALF: Mr. Chairman, may I ask Mr. Taylor a question? In that phraseology just previous to Mr. Taylor's proposed amendment, it says, "to have compulsory process for obtaining witnesses in his favor", I was just wondering if Mr. Taylor's amendment were passed, if the defendant should have a witness down in the Azores Islands, would the state have to subpoena and have to pay his travel expenses up here for a trial?

TAYLOR: I think he would under the present way because if he can be taxed for the cost of bringing that witness back if the government subpoenas him, I think he ought to subpoena him himself because it would only be fair, because if the government brings him, the defendant still has to pay for it. Now, with

the new Federal Rules of Criminal Procedure, you can. If you are a pauper, you can require process to be issued for a man any place in the United States, any place that the process of the United States courts extend. So we could do that, but although you could, the legislature could provide that for a person without the jurisdiction does not have to come in. Of course you have your Territorial limitations if when we become a state, so that the process of a state court would only extend to the boundaries of the state. Of course now, under the new rules, the extent of the process will serve to any place where the American flag is flying. In fact, I had one fellow brought back from Germany awhile back to testify. If it is fair for the government to charge the cost of transportation for a witness, it is just as fair to have the man have the witness come himself. Now, I would also like to answer Mr. Buckalew. He is going to take one man, a millionaire in court, and I cannot conceive by any stretch of the imagination that a millionaire that is being tried for a criminal offense in the District Court, or a court of the State of Alaska is going to be satisfied with the caliber of attorneys that is usually appointed to defend a criminal. It is usually the young, inexperienced man, and they are thrown those cases. If a millionaire goes into court and wants a young inexperienced man to defend him, he ought to be convicted and he ought to pay a fine. I don't think that applies. Mr. Buckalew would see a thousand poor people suffer and have to pay the cost of prosecution because one millionaire might take advantage of something to save an attorney fee.

BUCKALEW: There is only one thing I want to say. Mr. Taylor's last recital was somewhat winning but I think quite inaccurate. It has been my observation in our District Court that if a man is charged with murder, that the trial judge usually selects only the oldest and most experienced attorneys. I have never seen the trial judge appoint a so-called young and inexperienced counsel to defend somebody in a murder trial. There is also another point I would like to make on this process which we are talking about, it might enlighten some of the other delegates. The accused does not have the right, for example, to subpoena people from all over the world where our courts have process. He has to make a certain showing in open court. He has to file an affidavit and convince the court what the particular witnesses are going to testify. I have seen cases where an accused would submit a list of 46 names to the court and want all 46 persons subpoenaed at government expense, and it ended up he didn't get one of them because the 46 witnesses could not testify to anything, so it is not a provision that is a blanket privilege that you can submit a roster to the court and have people brought back from Germany, the Azores, Japan and other places. There are certain limitations.

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: I think Mr. Buckalew realized when I said that it was a material witness that could be brought from any place. I don't say a man can say, "I want Johnson from the Azores", but it must be a material witness and he must show that he is.

PRESIDENT EGAN: Mr. McNealy.

MCNEALY: I am not opposed to the amendment except on the grounds I believe that as Miss Awes said, I believe it is a legislative matter, and I do want to call attention to the fact that we still have on the Territorial statutes, and the law is still there that says that the person convicted of a crime cannot be charged with the cost. However, we cannot apply it because the Federal Rules of Criminal Procedure now say that it can be. However, under our constitution here it is going to require that we continue the Territorial laws in force as state laws until amended or repealed, so that Mr. Taylor's amendment will be taken care of unless that law is amended or repealed, why we will have that law on the books because it is still there and still continuing in force until such time as it is removed.

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: Is there further discussion? If not, the question is, "Shall the proposed amendment as offered by Mr. Taylor 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 proposed amendment has failed of adoption. Are there other amendments to Section 12? If not, are there amendments to Section 13? Mr. Robertson.

ROBERTSON: Mr. President, Section 13, line 25, page 4, after the word "jury" insert the words "of twelve", and I ask unanimous consent.

PRESIDENT EGAN: That is on line 25, page 4, Section 13, after the word "jury", Mr. Robertson?

ROBERTSON: Yes. Insert the two words, "of twelve" so it will read "the right of trial by jury of twelve is preserved."

PRESIDENT EGAN: The Chief Clerk will please read the amendment.

CHIEF CLERK: "Insert the words 'of twelve' after the word 'jury'."

ROBERTSON: I move and ask unanimous consent.

PRESIDENT EGAN: Mr. Robertson moves and asks unanimous consent that the proposed amendment be adopted. Is there objection? Mr. Londborg.

LONDBORG: Just for a moment. Does he mean to strike "not less than six"?

ROBERTSON: Oh no, the "except" will read after that. It will read, "In suits at common law, where the amount in controversy exceeds two hundred and fifty dollars, the right of trial by jury of twelve is preserved, except that the legislature may provide for a jury of not less than six in courts not of record."

TAYLOR: Mr. President, I would like to ask Mr. Robertson if he has lost sight of the fact that they should in the first suits, the suits of common law, that should be in the superior court because the exception then is made to trials in courts not of record, in the JP courts, so I think it should be a further amendment, and suits of common law in a superior court" where the matters exceed \$250.

ROBERTSON: I had thought, Mr. President, that the implication was that the superior court under the Judiciary Branch Proposal No. 2, I believe it is, will be a court in which you try commonlaw suits and that the exceptions of the jury to six is made for what I call the inferior courts. We did not use the word "inferior" in the judicial branch of the committee proposal, but I think it is already completely covered.

PRESIDENT EGAN: Is there objection to Mr. Robertson's unanimous consent request for the adoption of his proposed amendment?

TAYLOR: I object.

ROBERTSON: I so move.

HELLENTHAL: I second the motion.

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: One point I would like to raise, "I don't think the wording is proper "in suits of common law." Common law, unless preserved by statute, is abolished in the Territory of Alaska. I think it should be amended because if you adopt this amendment in the present form it doesn't mean a thing. In fact, the whole section doesn't mean a thing. I think in suits of the superior courts, it should be.

PRESIDENT EGAN: Mr. Robertson.

ROBERTSON: I rise to a point of order. Mr. Taylor has that part of the section and he should propose an amendment in line 1 of Section 13 to put in "the superior court".

PRESIDENT EGAN: Miss Awes.

AWES: I think that the whole purpose of saying "in suits of common law" is to distinguish between Section 1, criminal actions, and the right to trial by jury. Section 13 deals with other suits and I think the whole thing could be settled and I think it would be better to say in civil suits.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Mr. President, while we are discussing that I want to draw Miss Awes' attention, you say civil suits, we have the whole branch of equity acts which are civil suits. We have got to say "causes in law".

AWES: You say that the right to trial by jury is preserved, so it is only preserved to the extent that we have it now.

R. RIVERS: Well, that's possible.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Robertson 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 "ayes" have it and the proposed amendment is ordered adopted. Are there other amendments to Section 13? Mr. White.

WHITE: Mr. President, I would like to direct a question to the Committee. I assume that in the last sentence you intend that to be only in civil cases. Is it absolutely clear that, merely by virtue of being in this paragraph that sentence refers only to civil cases?

AWES: Yes, I think that is clear.

WHITE: There is no doubt about that?

AWES: I don't think so.

PRESIDENT EGAN: Mr. Kilcher.

KILCHER: I would like to address a question to Miss Awes. In Section 13 there is reference to a sum of \$250. I wonder if the Chairman would be in favor of an amendment there to strike the \$250 and substitute "sum set by law". I will tell you what my meaning is there. I think one of the reasons why courts are crowded nowadays in the Territory is that the antiquated sum set of a thousand dollars beyond which a commissioner's court can deal, a thousand dollars when that sum was set, 30 or 40 years ago, was a year's income. Nowadays it is a small sum. If we had it more flexible, as things are nowadays, the commissioner should be able to deal with sums set with two or three thousand dollars which would greatly relieve the burden of a clogged district court. Since we are not going to have a guaranteed constitutional convention in 15 or 20

years, I would leave the sum up to the legislature.

PRESIDENT EGAN: Mr. Kilcher, are you offering such an amendment, Mr. Kilcher?

KILCHER: Well, I wondered what the Committee thought.

AWES: The Federal Constitution provided \$20, which \$20 was probably as much then as \$250 is now. So we did, for that reason, increase it considerably. I can't say on this question of leaving it to the legislature, that my feelings are not too strong one way or the other. The only possibility of leaving it up to the legislature is that the legislature could raise the sum so high that it would, in effect, abolish the right to trial by jury without in so many words doing so.

KILCHER: I would like to make this amendment. It is short.

PRESIDENT EGAN: What is your amendment, Mr. Kilcher?

KILCHER: On line 24, strike "two hundred and fifty dollars" and substitute "a sum set by law".

BARR: I second the motion.

PRESIDENT EGAN: What is your pleasure?

KILCHER: I move it be adopted.

PRESIDENT EGAN: The Chief Clerk will please read the proposed amendment.

CHIEF CLERK: "Line 24, on page 4, strike 'two hundred and fifty dollars' and insert 'a sum set by law'."

PRESIDENT EGAN: Mr. Barr.

BARR: Mr. President, Miss Awes has just proved to me that we cannot state a certain sum in dollars and cents in the constitution. To say that the sum of \$20 as set forth in the National Constitution, and now of course we had to raise it to \$250 because of the change in the value of money during that time. It seems to me if we leave this up to the legislature, 50 years from now they can change their laws as they see fit or lower the sum as necessary. Another thing I have in mind is that if I remember correctly, the last session of the legislature passed an act empowering the cities to set up a small claims court which did not require a jury trial. In other words, if a man owed a store seven or eight dollars or a hundred dollars, the merchant could go the small claims court and get judgment, and it didn't clutter up the courts and would not have to go before a jury. As I remember the maximum was set at \$300. That is not an exorbitant sum, and if this amendment is adopted, then

of course the legislature is free to keep that maximum amount in keeping with the current conditions.

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

HURLEY: Mr. President, I will try to make this pertinent to the amendment. It occurs to me that there may be a period of time between the usefulness of this constitution and the time when the legislature may set an amount. In that respect, I wonder if it would not be wiser to set an amount. I am in favor of the general idea and then provide that it could be changed by law.

PRESIDENT EGAN: Mr. Davis.

DAVIS: Mr. President, it seems to me that we are trying here to set forth a bill of rights. We are trying to preserve the right of jury. If we leave the amount open we have not preserved anything because the legislature could, if it wanted to, only in suits involving a million dollars or more, is the right of jury preserved. I don't think that is what we intend to do.

PRESIDENT EGAN: Mr. Kilcher.

KILCHER: Mr. President, my consideration is purely one of economics, and as the past has seen inflationary tendency all over the world, and in this sense I trust the legislature more than I trust the economics of the world in general.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Kilcher 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 Chief Clerk will call the roll.

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

Yeas: 26 - Barr, Coghill, Collins, Cross, Emberg, H. Fischer, Hinckel, Kilcher, Knight, Lee, Londborg, McCutcheon, McNees, Marston, Metcalf, Nerland, Nolan, Peratrovich, V. Rivers, Robertson, Rosswog, Stewart, Taylor, Walsh, White, Mr. President.

Nays: 24 - Awes, Boswell, Buckalew, Davis, V. Fischer, Gray, Harris, Hellenthal, Hermann, Hurley, Johnson, King, Laws, McLaughlin, McNealy, Nordale, Poulsen, Reader, Riley, R. Rivers, Smith, Sweeney, VanderLeest, Wien.

Absent: 5 - Armstrong, Cooper, Doogan, Hilscher, Sundborg.)

CHIEF CLERK: 26 yeas, 24 nays and 5 absent.

PRESIDENT EGAN: So the "yeas" have it and the amendment is ordered adopted. Are there other amendments to Section 13? If not, are there amendments to Section 14? Mr. Fischer.

V. FISCHER: I would like to ask a question of the Chairman of the Bill of Rights Committee, Mr. President. Does Section 14 imply without stating so that the suspension of the writ of habeas corpus when authorized will be only in such manner as prescribed by law? Is that implied within the section?

AWES: After you raised that objection the other day, I discussed it with the Committee, and it is our belief that it is implied.

PRESIDENT EGAN: Mr. Buckalew.

BUCKALEW: Mr. President, I had another amendment to Section 13 and I see we got away from it. It is a short amendment, though.

PRESIDENT EGAN: If there is no objection, Mr. Buckalew, to Section 13, what is your amendment?

BUCKALEW: Section 13, strike "in suits at common law" and insert "in civil cases".

PRESIDENT EGAN: Mr. Buckalew seeks to strike the words "in suits at common law" and insert the words "in civil cases".

BUCKALEW: I move its adoption.

PRESIDENT EGAN: Is there a second?

KNIGHT: I second the motion.

PRESIDENT EGAN: Is there discussion on the proposed amendment?

CHIEF CLERK: Is that on line 23?

BUCKALEW: That is line 23. Here is the reason I offered that amendment. You have a lot of causes of action that wouldn't be covered by the expression, "in suits of common law" and they would be statutory, and you would not have a right to trial by jury, and what we are trying to do is to preserve the right to trial by jury in civil cases.

PRESIDENT EGAN: Mr. Hellenenthal.

HELLENTHAL: I think the amendment is dangerous. The United States Constitution limits the right to trial by jury, and I quote from it, to suits "at common law" and that has been construed to include your statutory actions in some instances and in other instances the statute expressly provides for a jury trial. Now if Mr. Buckalew could secure his purpose if there is

question about saying, "in suits at common law or in statutory civil suits", but to substitute the words "civil suits" for "suits at common law" is extremely dangerous. Mr. Rivers pointed it out here awhile ago. There is a vast class of cases, equitable cases, where you are not entitled to a jury trial and by tampering with the constitution we might provide for a jury trial where none exists and where none should exist, and we want to preserve the right to trial by jury as we have done here, and I think it is hasty and I think it may cause an immense amount of trouble and I would oppose the amendment. I think it can be secured in another way, but this is not the way to do it.

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Buckalew 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 proposed amendment has failed of adoption. Are there other amendments to Section 13? If not, are there amendments to Section 14? Mr. Hellenthal.

HELLENTHAL: Mr. President, I should like, in line with Mr. White's request, the legislature may provide for a verdict by not less than three-fourths of the members of the jury. I should like to ask unanimous consent that the words in any court" be inserted following the word "jury". The reason I ask that is that there is doubt in my mind if that sentence applies to a civil suit in any court, and I have the same doubt Mr. White has, and the sentence to me seems to be hanging there and I think those three simple words would remove, perhaps, future trouble.

PRESIDENT EGAN: Mr. Hellenthal, the Chair was wondering perhaps it seems that the attorneys are not in complete agreement on this. If we had a five-minute recess, so you could get together and come up with the proper wording there. Mr. White.

WHITE: If I may before the five-minute recess, I don't want to get tangled up with all the attorneys during the recess, I agree with Mr. Hellenthal as to the doubt as to what that sentence implies. However, I would not like to imply that it was my desire necessarily to have it apply to the preceding sections in criminal cases. I did not mean to imply that.

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. Do we have a proposed amendment before us at this time?

CHIEF CLERK: It has not been moved.

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: Mr. President, I ask unanimous consent that in line 4 on page 5, the last sentence of Section 13, that the word "the in front of the word "jury", be stricken and substitute the word "any" and insert the words "in civil causes" following the word "jury", so the sentence will read, "The legislature may provide for a verdict by not less than three-fourths of the members of any jury in civil causes."

PRESIDENT EGAN: Does the Chief Clerk have that amendment? Would the Chief Clerk read it back?

CHIEF CLERK: "Section 13, line 4, page 5, strike the word 'the' before the word 'jury' and substitute the word 'any' and insert the words 'in civil causes' following the word 'jury'."

HELLENTHAL: I so move.

BUCKALEW: I second the motion.

PRESIDENT EGAN: Is there discussion? If there is no discussion, the question is, "Shall the proposed amendment as offered by Mr. Hellenthal 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 "ayes" have it and the amendment is ordered adopted. Are there other amendments to Section 3? Mr. Gray.

GRAY: Mr. Chairman, I see it is about 11:57 a.m. Is the clock correct up there?

PRESIDENT EGAN: It is right, according to my watch.

GRAY: I have just received a letter from Juneau, and I believe it is worthy of the group to have this letter read. I see this as a letter not from Juneau but from any part in Alaska that has to do with our hearings. I think this lady who wrote this letter is a new type of citizen that we are receiving in Alaska at this time, and I ask unanimous consent that the Secretary be permitted to read the letter.

PRESIDENT EGAN: If there is no objection, the Secretary may read the letter as offered by Mr. Gray. The Chief Clerk will please read the letter.

(The Chief Clerk read the letter from Mrs. Rolf W. Fremming expressing pleasure at having had the opportunity to attend the public hearings on the constitutional proposals and confidence in the work of the delegates.)

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PRESIDENT EGAN: The letter will be filed. Mr. Gray.

GRAY: I move that we recess until 1:30.

PRESIDENT EGAN: If there is no objection, the Convention stands at recess until 1:30. Mr. Robertson.

ROBERTSON: Mr. President, I wonder if I could ask Mr. Cross to call a very brief meeting of the Committee on Resolutions and Recommendations on recess.

PRESIDENT EGAN: Mr. Cross.

CROSS: There will be a meeting of the Committee on Resolutions and Recommendations upon recess.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: I would like to announce a meeting of the Committee on Style and Drafting, a brief meeting, upon recess.

PRESIDENT EGAN: Are there other committee announcements? If not the Convention will stand at recess until 1:30 p.m.

RECESS

PRESIDENT EGAN: The Convention will come to order. Are there amendments to Section 13? Are there amendments to Section 14? Mr. Victor Rivers.

V. RIVERS: Mr. President, I have an amendment I was going to offer to Section 11, if when we revert back to that, I will offer it.

PRESIDENT EGAN: Are there amendments to Section 15? To Section 16? Mr. Victor Rivers.

V. RIVERS: I would like to ask a question with regard to Section 14. I see that some states in regard to the writ of habeas corpus allow it to be suspended in only cases of rebellion and invasion. Oklahoma allows it never to be suspended. Now we have added the words "or imminent peril". I wonder what the Committee was thinking of. What imminent peril besides rebellion and invasion do we fear?

PRESIDENT EGAN: Miss Awes.

AWES: We thought that under the modern conditions of warfare that you sometimes have to act when you are in imminent peril or when the rebellion or invasion actually occurs, and it might be too late. We were out at Ladd Air Force Base that Saturday and heard the speech, and I think they told us we were only an hour and one-half from attack by Russia. The phrase "imminent

peril" is a phrase that we got from a decision of the United States Supreme Court.

PRESIDENT EGAN: Does that answer your question, Mr. Rivers?

V. RIVERS: It does not give me an answer to what they intended it to include. I just wondered to what extent they intended to include imminent peril from the activities perhaps of some organized group in our society. What scope are they intended to extend? I would like to see it clarified for the record here, at least.

AWES: As I say, the words "imminent peril" were taken from a Supreme Court decision and in that particular case, I think Mr. Hellenthal is more familiar with the case than I am, so I will let him speak on that. However, I think that the fact that "rebellion or "invasion" or "imminent peril" are all used together, that the words "imminent peril" would be construed as applying only to imminent peril from an enemy such as you would have in the case of rebellion or invasion.

V. RIVERS: You don't think it would be used in case of a great earthquake or in the case of fire, tidal wave or anything like that, where a great deal of our population was imperiled?

AWES: The Committee did not so intend, and I don't think it would be construed that way by a court.

PRESIDENT EGAN: Mr. Rivers.

V. RIVERS: The question comes up in my mind as to the value of the words there at all. The thing we are trying to protect against is the use of the habeas corpus during rebellion or invasion. I would like to hear a little more discussion on it before I move to strike the word.

AWES: I think those words may add a little. I think there might be a time when you don't actually have rebellion or invasion and yet the danger of it is there, and I think that in that case it might be helpful to have it in there.

PRESIDENT EGAN: Mr. Barr.

BARR: Mr. President, it seems clear to me, of course I might be wrong, that there are three cases where the writ of habeas corpus may be suspended. In the center one, those two things are grouped together. It says, "comma, invasion or imminent peril". To my mind that means that imminent peril is connected with invasion. In other words, we may expect to be invaded at any moment. If, for instance, some foreign country should bomb Washington, D. C., we in Alaska are in imminent peril, although maybe we have never seen an enemy face up to that time.

PRESIDENT EGAN: Mr. Fischer.

V. FISCHER: Mr. President, "-- would like to move and ask unanimous consent that the word thereof" be inserted after the word "peril" on line 8.

PRESIDENT EGAN: Mr. Fischer moves and asks unanimous consent that the word "thereof" be inserted after the word "peril" in line 8, Section 14. Mr. Kilcher.

KILCHER: I would like to object for the purpose of further clarification, so may I ask Mr. Fischer a question.

V. FISCHER: I so move.

V. RIVERS: I second the motion.

PRESIDENT EGAN: Mr. Kilcher.

KILCHER: May I get one minute's recess? I have an amendment of similar nature about it, but I think it would save time if we could talk it over.

PRESIDENT EGAN: If there is no objection, the Convention will stand at recess for one minute.

RECESS

PRESIDENT EGAN: The Convention will come to order. Mr. Victor Fischer.

V. FISCHER: My purpose in submitting the amendment was strictly to clarify what I believe was the intent. I don't think that the Committee intends that imminent peril should apply to earthquakes or floods or anything else but only to invasion and possible rebellion, and I think it should be strictly limited, and the thereof" might do it.

V. RIVERS: That would meet my objections to the phrase.

HELLENTHAL: I object to the request for unanimous consent.

PRESIDENT EGAN: The unanimous consent has been already objected to. It has been moved by Mr. Fischer and seconded by Mr. Victor Rivers.

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Victor Fischer be adopted by the Convention?" Mr. Hellenthal.

HELLENTHAL: I should like to be heard in opposition to the

amendment. This amendment was carefully chosen and it was not chosen to qualify the words "invasion" or "rebellion". It was chosen to cover the case of any imminent peril to the government of the State of Alaska, and I think any reasonable man reading that would so interpret it. Now, if that peril would result from say, deprivation and destruction and pillaging following a great earthquake or something like that, fine. The writ should be suspended, if it imperiled the government. Normally it would not imperil the government though, so you need fear nothing from that source. Now Mr. Rivers mentioned that in Oklahoma they won't permit the suspension of the writ of habeas corpus for any reason at all. I can understand why Oklahoma won't permit the suspension of the writ of habeas corpus. It is right in the heart of the United States. The possibility of even an atomic war being fought in Oklahoma is quite remote, and the possibility of an invading army in the old days of warfare ever bothering Oklahoma was highly improbable, and I don't think that we in Alaska living side by side with Soviet Russia should feel guided by any Oklahoma principles. Now this is in here for a good reason. First of all, let me state that our bill of rights is highly conservative. There is no question about it in my mind. We have deviated hardly one iota from the Bill of Rights that was found in the Federal Constitution, but many changes have taken place since that day and great changes have taken place in warfare. Now, we live at the limits, at the perimeter of the United States. We go back constantly to Washington to justify huge appropriations, and all of us participate in that because we are in the jaws of death. Russia is 20 minutes away. We have got to adapt ourselves to the modern situation. We need highway funds because we have to have roads in case of the perils that we envision. We have to have innumerable things, always because of military necessity. Now we must face this military necessity. Now it is true, as Miss Awes pointed out, that under the decisions of the United States Supreme Court culminating in the case of the United States versus Hirabayashi which was the famous case decided in Hawaii when the habeas corpus was suspended during the war. In that case, which came down from the equally famous case of Ex parte Milligan, in a uniform line of decisions, the United States Supreme Court has held that imminent peril will justify the suspension of the writ of habeas corpus. That is the law. Let us face it in Alaska. Now there are good reasons for facing it. We want the support of the military, we need the support of the military. Why should we do it the hard way and discourage the military by inept use of language or acting like a bunch of Oklahomans when we're not. Let's adapt ourselves to the modern situation -- imminent peril. For instance, the Nazi saboteurs that came in this country, they were not an invading army but they constituted an imminent peril and those men were held, and the writ of habeas corpus was properly suspended as to them. We all know that the next war will take the form of fifth columnists. There will be no marching army. The illustration they commonly give is illustration of a ship

slipping into a harbor with an atomic bomb somewhere in its hold. Imminent peril, there will be spies, fifth columnists, agents throughout the country, infiltrations. That is why we have the Alaska Guard organized. That is what we are concerned with, those things amount to imminent peril and I say when that day comes and when that imminent peril exists the courts will recognize it, and we should recognize it in our modern constitution. An alternative, and I don't think this is possible, not probable, if we don't adopt this language we might incur the criticism from informed military people that we are not keeping pace with the advance of military progress and with the atomic age. I don't think we will meet that criticism but we are leaving ourselves wide open if we adopt an old-fashioned cave man notion of suspension of the writ of habeas corpus in this modern age. I assure you that no harm can come to your civil rights by retaining those two simple words in the constitution.

PRESIDENT EGAN: Mr. Buckalew.

BUCKALEW: I got a little confused from following Mr. Hellenthal's speech but I am going to support Mr. Fischer's amendment for this reason. I think that we should be certain that the words "imminent peril" refers back to invasion. Now as I recall the celebrated case that Mr. Hellenthal is talking about, Ex parte Milligan and that situation, we people from the South were fighting a war against the United States at that time, and a brilliant Confederate cavalry leader made a deep penetration into the State of Indiana I believe, and of course they sort of raised a lot of hell going through Indiana and they got the district judge and the military commander excited and he closed down the district court and they tried this party, Milligan, for some reason or another. He violated some of the orders of the military commander. The Confederate cavalry came in and made a penetration and went back to the South. Now the Supreme Court held that imminent peril is such a situation where that ground troops, so to speak, of an armed enemy are so close to the court house that it is unsafe for the court and his officials to sit, now that is what they mean by "imminent peril". The troops are so close there that the courts cannot physically conduct their business. That is what it means and I don't think it means anything like Mr. Hellenthal is talking about, saboteurs, submarines and all this other stuff. Imminent peril is a situation where an armed aggressor of some sort is in your territory and his presence deprives the court the freedom of opening of the court house doors so to speak, and I think we ought to be extremely cautious and insert the words "thereof" to make sure it refers back to invasion. I don't care what the military think about it. I mean the military are in subordination to the people here in Alaska. I don't think anyone will question that the civil authority is supreme to the military authority, and I don't care whether they like it, it wouldn't make any difference to

me whether they read or not because they are up here to protect us.

PRESIDENT EGAN: The Chair is a little confused with the amendment. Mr. Fischer, the amendment did not say to strike the words "imminent peril"?

V. FISCHER: No.

V. RIVERS: Mr. President, I would like to go a little further on the Ex parte Milligan case and read to "you some of what it said about it in the Hawaiian handbook. In the famous Civil War case of Ex parte Milligan, the Supreme Court ruled that so far as federal usage is concerned the privilege can be suspended only by act of Congress, or at all events by the President under authority expressly conferred by Congress."

HELLENTHAL: In the Nazi saboteur's case, the court held that they were properly tried and punished under the Articles of War and not by the civilian courts. In other words, the Supreme Court rejected the contention that they were protected. They were treated as invaders and it was a situation of imminent peril under the decision of the Supreme Court.

PRESIDENT EGAN: Mr. Barr.

BARR: Mr. President, there seems to be two lines of thought here. Mr. Buckalew is concerned with the imminent peril of the courts only. I take this to mean imminent peril to our government. That is what I am concerned about. If we accept Mr. Fischer's amendment, he ties this imminent peril down to invasion only. But invasion is only one phase of warfare and there are modern methods of warfare. We could be in peril in several different ways. The enemy may consider that it is not worthwhile to take Alaska but they would like to deny us the use of our bases here to attack them. Therefore, we may be under a constant attack by bombing planes, while they would have no thought of taking over the country. On the other hand, we know that one particular country has wide experience in infiltration of saboteurs and spies. It may be possible that we may be infiltrated by very large numbers of saboteurs here to render these bases unusable. There may be constant destruction all over the Territory for that reason. Therefore, our government would be in imminent peril. I don't think that we should tie the words "imminent peril" down to invasion only. Therefore, I am against the amendment.

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: I am caught between two fires on this. One is between my desire to protect the rights of a person of being unjustly or unduly incarcerated without a charge being placed against him. I am also equally solicitous of the welfare of the

government in time of peril. I don't think that our beliefs or our actions here should be swayed by any dustbowl philosophers from Oklahoma. Neither should our actions be swayed by what a detachment of Southern soldiers did in 1865 when they were either invading the North or trying to get over to Canada to get out of the service. Well, the time has changed. Warfare has changed. Methods of waging warfare prior to a declaration is now the rule rather than the exception. Now, if we adopt the amendment that is proposed by Mr. Fischer, the only way of suspending the writ of habeas corpus and taking into custody a saboteur or spy would be in case of invasion or rebellion because your imminent peril therefrom would be imminent peril from invasion. So I don't think that meets the bill. What we could do if you wanted to, if it was imminent peril of such a nature as to require the imposition of martial law, I would say that would be to the extent to which we should go, because martial law can be invoked though in other cases such as Mr. Hellenthal spoke of, and which I think it can be and which it has been. I remember during the San Francisco fire they invoked martial law and brought in troops, not only the California militia but the troops from the President, and they not only invoked martial law but they had court martials and executed people on the streets of San Francisco. They went that far, the looters, because there seems to be a penchant in the hearts of many people that when a disaster is on, they are going to get what they can out of it, so they had to do that. But I think if martial law was declared it would be perfectly proper to suspend the writ of habeas corpus so that spies, saboteurs or others who, for the welfare of our country, could be taken into custody so they would not be able to guide enemy aircraft or ships or other means of invasion into the country." But I don't believe that by the words "thereto", "therefrom", or "thereof" will do it.

V. FISCHER: One brief word, Mr. President. Those who have criticized the inclusion of the word "thereof" have not really objected to that particular phrase. They have been objecting to the limitation of the term invasion". Now possibly if this word is adopted we should also insert "enemy attack in addition to "rebellion and invasion" because to that is what most of the remarks were addressed. The purpose of inserting "thereof" is restricting the application of imminent peril so that it could not be said "imminent peril of strikes, famine, imminent peril of anything", and if these people feel that we should broaden the application beyond rebellion and invasion, I think that would be a separate amendment, in addition to the insertion of the word "thereof".

PRESIDENT EGAN: The question is, "Shall the amendment as proposed by Mr. Fischer be adopted by the Convention?" All those in favor of the adoption of the proposed amendment will signify by saying "aye", all opposed "no". The "noes" have it and the proposed amendment has failed of adoption. Are there other

amendments to Section 14? Are there amendments to Section 15? Mr. Robertson.

ROBERTSON: Mr. President, I don't know if this needs an amendment but I think the words "nor" in line 16 should be "or". I think it expresses a double negative.

PRESIDENT EGAN: Line 16, change the word "nor" to "or". Mrs. Hermann, could you answer that?

HERMANN: I can answer that by saying I still think you people have to realize that Style and Drafting has a job to do here and we are going to do it and you don't need to be afraid we won't do it properly.

BUCKALEW: If it saves time I will move and ask unanimous consent that we change the name of that committee to Style and Gaffing.

PRESIDENT EGAN: Are there amendments to Section 15? To Section

ROBERTSON: I have an amendment, Mr. President.

PRESIDENT EGAN: Mr. Robertson, you may submit your amendment. The Chief Clerk may read the proposed amendment.

CHIEF CLERK: "Section 16, line 20, page 5, delete the period and insert a comma and add 'or in advocating the overthrow of the government by force or violence'."

ROBERTSON: I move for the adoption of the amendment and ask unanimous consent.

PRESIDENT EGAN: Mr. Robertson moves that the proposed amendment be adopted and asks unanimous consent.

BUCKALEW: Objection. Could we have that read again?

PRESIDENT EGAN: Would the Chief Clerk please read the proposed amendment?

CHIEF CLERK: "Section 16, line 20, page 5, delete the period and insert a comma and add 'or in advocating the overthrow of the government by force or violence'."

PRESIDENT EGAN: Unanimous consent has been asked that the proposed amendment be adopted. Objection is heard.

JOHNSON: I second the motion.

PRESIDENT EGAN: The question is open for discussion. Mr. Robertson.

ROBERTSON: Mr. President, we had a number of people at the hearing in Juneau who urged such an amendment, and it seems to me that treason as defined in Section 16 is not broad enough. I believe that advocating the overthrow of the government by force or violence is treasonable. For that reason I suggest this amendment and I urge it is a very important amendment in our bill of rights so we have a correct definition of treason.

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: If it were a correct definition of treason I would agree with Mr. Robertson, but no state of the Union defines treason as attempting to overthrow or taking methods which tend to overthrow the United States government. That is a separate crime known as subversion, it is not treason. His suggestion has some merit but it would be like broadening the definition of murder to include rape. There is no reason for it. Now Michigan approaches the problem by defining treason and then in Section 21 of its Bill of Rights and in Section 2 they define subversion but they don't call both of them treason. Nor does any other state, so for that reason alone I would oppose the amendment. It is very, very unique.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: I wanted to say that the Federal law as covered by an act of Congress, I think it is called the Smith Act, our legislature would have complete power to take care of what Mr. Robertson has in mind.

PRESIDENT EGAN: Mr. Robertson.

ROBERTSON: My point simply is, regardless of how other constitutions may define treason", the acts mentioned in the amendment are treasonable and therefore we ought to put it in this bill of rights.

PRESIDENT EGAN: The question is, "Shall the amendment as proposed by Mr. Robertson 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 proposed amendment has failed of adoption. Are there other amendments to Section 16? If not, are there amendments to Section 17? Or to Section 18? Mr. Johnson.

JOHNSON: Mr. President, I have an amendment to Section 18.

PRESIDENT EGAN: Mr. Johnson has an amendment to Section 18. The Chief Clerk may read the proposed amendment.

CHIEF CLERK: "Page 6, line 2, strike the comma after the word 'debt' and insert a period. Strike the balance of line 2 and all of line 3."

JOHNSON: Mr. President, I move the adoption of the amendment.

MARSTON: I second the motion.

PRESIDENT EGAN: The question is open for discussion. Mr. Buckalew.

BUCKALEW: Could we have the amendment read again?

CHIEF CLERK: "Page 6, line 2, strike the comma after the word 'debt' and insert a period. Strike the balance of line 2 and all of line 3."

PRESIDENT EGAN: The question is open for discussion. Mr. Barr.

BARR: Mr. President, debt is not a crime but fraud is. If a man is to be in prison because of strong presumption of fraud, then he should be charged with fraud. Debt should have nothing to do with it.

R. RIVERS: I would like to hear Mr. Johnson's definition of "fraud", because there are many transactions which are fraudulent that don't constitute crimes.

PRESIDENT EGAN: Mr. Johnson.

JOHNSON: I suppose I should fall back on the old reason that I am not schooled in this subject. However, it occurs to me that certainly anything that is fraudulent ought to be and should be included in the criminal statutes which undoubtedly will be passed by the legislature or carried over by the Territory. As Mr. Barr has pointed out, if a person is guilty of fraud, or if there is a strong suspicion of fraud, he should be and rightfully should be prosecuted under the criminal sections rather than under any sort of civil proceedings. I believe that this section contains one of the most fundamental principles of our form of government, and it was one of the things that the founders were most concerned about when they set up the original Constitution and Bill of Rights because they had been subjected to that very thing, imprisonment for debt in the old country, and they wanted to be certain that that sort of condition could not exist here, and I believe it is a danger to that right if we leave in the constitution the words, except in cases where there is a strong presumption of fraud". In the first place, that phrase is itself subject to conjecture and speculation and undoubtedly would cause many cases to go into court for the purpose of interpreting exactly what is meant by it. I believe it is much better to leave it out. I don't know whether I have answered Mr. Rivers' question, but I think anything that involves fraud certainly is a crime.

PRESIDENT EGAN: Miss Awes.

AWES: Mr. President, I spoke on this yesterday when I was questioned about why the Committee drafted it in this way, so I won't repeat all that I said then. I would like to say that I agree with Mr. Rivers rather than with Mr. Johnson. There are a lot of things that are fraud that are not criminal. As I recall, Mr. Johnson can correct me if I am wrong, as I recall at the time this was drawn up, we looked through the Federal Constitution and I don't believe there is a statement in the Federal Constitution, not in the Bill of Rights I know, but many of the states do have such a provision, and it is because of the fact that some fraud is not criminal and also because it makes it dangerous for anybody to cause an arrest for fraudulently refusing to pay debt. If there isn't some protection given to them that they won't be sued for false imprisonment on every provocation if they act under reasonable circumstances, which a strong presumption of fraud should be, then they should not be subject to arrest for taking such action and that is what we intended to accomplish with this provision.

PRESIDENT EGAN: Mr. Doogan.

DOOGAN: I probably was one of the strongest in Committee to insist that it be put in, and it was taken from another constitution. I don't remember which at the moment. The purpose of it is, particularly in this area and the Anchorage area, was there is a great deal of transient population. There has been innumerable cases that you can't count, of people that are transients living in the area for a period up to two years contracting debts and then taking off over the highway, or by boat or by plane without saying anything, and it is pretty hard to stop them without involving yourself in a suit, and the purpose of this last sentence was to serve notice on those people that from here on out, if they are going to contract debts, they had better pay them before they leave because all of the people in business in the Territory would then have some means of getting to them without being sued for false arrest.

PRESIDENT EGAN: Mr. Kilcher.

KILCHER: As I understand, this is the background of this addition. The formula as it stands now is going to be used as blackmail, a threat against a great many of those customers that are given credit to some point and then refuse payment. To refuse payment is not fraud or to profess inability to pay is not fraud. This inability might be questionable if they have enough money to leave the Territory. Perfectly honest in his ability to pay, the merchant who has gambled to make profits on the premise that he might get paid has his own lookout to collect his bills in my opinion. I have lost money in that respect and I took it. I can see the implication here and I don't like a bit of it. I would like to address a question to Miss Awes as Chairman of the Committee as to that respect, when and if there are some forms of fraud that are not crimes

on the other hand, if you only can be imprisoned for crimes, correct me if I am wrong, you can only be imprisoned for a crime is that right? In other words, you can only be imprisoned for frauds that are crimes? This would leave the door open to imprison somebody for a noncriminal fraud.

AWES: What this does, Mr. Kilcher, is to give the legislature authority to pass a statute that would make this type of fraud criminal and being subject to punishment including imprisonment.

KILCHER: Which type of fraud? Why include it in the constitution? Any fraud, it is up to the legislature to decide what crimes are and what frauds should constitute crimes, and the moment there is any fraud committed in the future state that is a crime, a man can be imprisoned. As long as there is no crime a man should not be imprisoned.

PRESIDENT EGAN: Miss Awes.

AWES: I think practically all I can do is repeat what I have said. I think this is primarily authority to the legislature to pass a statute which would in effect make fraudulent nonpayment of debts a crime. If this section merely said there should be no imprisonment for debts, I think there would be some question of the legislature's authority to so act.

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: Perhaps Mr. Kilcher is not conversant with the present law that we have regarding debtors who are attempting to defraud their creditors. We have such a law on the books at the present time, if it will remain there and it is strictly a statutory matter. Imprisonment as for a matter of debt itself is unlawful as we have said here, but as we know that there are many instances in which persons deliberately contract debts without any intention of paying them and that they will then attempt to decamp the Territory without paying them. Now we have a law against fraudulent representation for obtaining goods under false representation. That false representation must be some token that is signed by the person who is defrauded. Ordinarily the merchant does not have that false token so that you would not in the absence of such a token be able to apprehend the man. Now, also, I would like to advise Mr. Kilcher that nobody is ever arrested for debt in the Territory of Alaska that I know of, as long as he was in the Territory - only when he was attempting to leave the Territory for the purpose of defrauding his creditors, but when it is evident on the face that there is a presumption of fraud, they usually catch him when he is leaving or catch him before he gets to the border. That is done many times. Another thing perhaps Mr. Kilcher does not know is the fact that before you can arrest a man under these circumstances where the creditor believes that he is leaving the Territory for the purpose of defrauding his

creditors, that he must be leaving and that the creditor then must file an action. If he files an action in debt against this person, then he makes out an affidavit and recites the circumstances of why he thinks this person is leaving the Territory, he is leaving to defraud creditors and asks for a writ of civil arrest, but before he has the writ of civil arrest he must post with the United States Commissioner a bond that he will answer for all damages that this debtor who is leaving will suffer by reason of his being apprehended and brought back. That is a civil arrest because, at that time he is arrested, then the creditor takes over. He has to pay all the expenses of bringing that man back and he must pay while he is in jail. He must pay the board of that debtor. The debtor is entitled to bail as soon as he gets in. If he puts up a reasonable bail he can get out and then the civil case is tried, not a criminal case, and there are not very many cases of this because of the fact that if a person does have a man arrested for debt and it is found that the arrest was without probable cause, that there was no evidence of attempting to defraud, the man has a very fine case for damages, and I have known of several very large verdicts that have been received in the Territory of Alaska just for those particular matters, so that the debtor is protected. He might suffer a little inconvenience, but he has the right of a remedy against the person that had him arrested. So as I said before, I think the section should be left just as it is, so the legislature then can continue the act that is now in effect and which has been in effect for the many, many years, or strengthen it if they want to, or if they want to weaken or relax it, that is up to the legislature. I think where there is a presumption of fraud they should be able to stop a debtor if he leaves the Territory for the purpose of beating his creditors. I think the amendment should fail.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: Mr. President, I would have no particular objection to the language if it said, "There shall be no imprisonment for debt except in cases of fraud." "Where there is a strong presumption", I have not been able to find any constitution that has the "strong presumption" phrase in it, but there might be such a one. I notice the Hawaiian Constitution says, where shall be no imprisonment for debt." I notice the New Jersey Constitution says, "No person shall be imprisoned for debt in any action or in any judgment founded upon contract unless in cases of fraud." There the fraud is definitely established. In this "strong presumption of fraud" the fraud is not definitely established and it seems to me we are foreclosing some of the legal rights of the individual involved if we should imprison him for debt on the presumption of fraud. I am not legally trained but I just wonder whose presumption it would be. Would it be the presumption of the one filing the complaint or the man issuing the complaint, the arresting officer? In

these cases where he is going over the highway, whose presumption would it be that this man is intending to defraud? It doesn't seem to me that where there is a strong presumption, those words should be left in our constitutional document.

PRESIDENT EGAN: Mr. Davis.

DAVIS: It seems to me we are getting somewhat off the track here. All of the argument has been concerning a person who may try to beat a debt by leaving the Territory. I suggest that if we arrest a person civilly because he is leaving the Territory we are not arresting him because of the debt. We are not arresting him at all because he owed a debt. As long as he stays here he would not be arrested. We are arresting him because he is trying to commit fraud or trying to leave the Territory or beat his bills or something of that order. I see nothing at all inconsistent with stopping with the word "debt" and still having a civil arrest procedure which we now have and which I think we probably ought to keep. I am for the amendment.

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: This amendment is not too unusual. As Mr. Rivers stated, they have it in New Jersey, they have it in Missouri. Each one varies a little. In Missouri they say, "No person shall be imprisoned for debt except for nonpayment of fines and penalties imposed by law." In Michigan they say, "No person shall be imprisoned for debt arising out of, or founded on a contract express or implied, except in cases of fraud or breaches of trust or of moneys collected by public officers or in any professional employment." And it is quite interesting that the State of Illinois states, "No person shall be imprisoned for debt unless upon refusal to deliver up his estate for the benefit of his creditors in such manner as shall be prescribed by law." Here it is exactly the language of the proposed amendment, "or in cases where there is a strong presumption of fraud". Now I halfway agree with Mr. Johnson. I think this, although I was a member of the Committee and supported the amendment in the Committee, I think that it is troublesome, and I don't think that we have hit on the right language. I don't think Mr. Johnson's amendment will help our situation. We have this statute in Alaska as you all know, that where a man absconds and owes money, he can be arrested provisionally. That means not forever, he does not have to go to jail until a certain number of days until he pays the total amount of his debts. He is provisionally detained so he can be examined and a judgment can be secured against him, and after that he can go, but he cannot escape judgment or the arm of the law by jumping on a plane. That is a healthy situation. Now Mr. Victor Rivers agrees with that but he would like to say it has to be a case of actual fraud. That wouldn't be good because then a business man would have to operate at his peril. If for some reason he was wrong

in going before the judge and signing the complaint, (and it is a judge, Mr. Rivers, not the arresting officer) if he were wrong he would be liable to a suit for a wrongful arrest if you made it actual fraud, so presumed fraud gives a necessary protection to the business man and makes the law workable, but I think the real solution is this, and I am going to ask for a one-minute recess to see if we can work it out. The State of Washington is where we took our Alaska statute from and that is what we want to keep. Everybody seems to agree that an absconding debtor should be given no protection and that we should be able to arrest that sort of man. In Washington, they arrest them down there when they start out for Alaska, and I think we should arrest them in Alaska when they head back. In Washington they say, "There shall be no imprisonment for debt except in cases of absconding debtors." I think in one minute I could talk Mr. Johnson into agreeing with that.

PRESIDENT EGAN: The Convention will stand at recess for 60 seconds.

RECESS

PRESIDENT EGAN: The Convention will come to order. Mr. Johnson, did you have a new amendment or anything because of this recess?

JOHNSON: I have no new amendment. My amendment remains the same.

DOOGAN: Mr. President, I move to table the motion.

PRESIDENT EGAN: Mr. Doogan moves that the proposed amendment be laid on the table. Is there a second?

METCALF: I second the motion.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Johnson be laid on the table?"

V. RIVERS: I ask for a roll call.

PRESIDENT EGAN: The Chief Clerk will call the roll. The Chief Clerk will also read the amendment again.

CHIEF CLERK: "Page 6, line 2, strike the comma after 'debt' and insert a period. Strike the balance of line 2 and all of line 3."

PRESIDENT EGAN: The question is, "Shall the proposed amendment be laid on the table?" The Chief Clerk will call the roll.

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

Yeas: 16 - Cross, Doogan, Harris, Hinckel, McCutcheon, McNees, Metcalf, Nerland, Reader, R. Rivers, Rosswog, Stewart, Taylor, VanderLeest, Walsh, White.

Nays: 34 - Awes, Boswell, Barr, Buckalew, Coghill, Davis, Emberg, H. Fischer, V. Fischer, Gray, Hellenthal, Hermann, Hurley, Johnson, Kilcher, King, Knight, Laws, Lee, Londborg, McNealy, Marston, Nolan, Nordale, Peratrovich, Poulsen, Riley, V. Rivers, Robertson, Smith, Sundborg, Sweeney, Wien, Mr. President.

Absent: 5 - Armstrong, Collins, Cooper, Hilscher, McLaughlin.)

CHIEF CLERK: 16 yeas, 34 nays, and 5 absent.

PRESIDENT EGAN: The "nays" have it and the proposed amendment has failed to have been laid upon the table. The amendment is now before us. Mr. Kilcher.

KILCHER: I would like to answer some of the opposition to this amendment. In my opinion this clause is a protective clause for businessmen. This clause has been brought to my attention. I had not been in Alaska three months in 1940. I was well aware of it. I had a man get away from me with a debt. One of the attorneys here advised me in the matter. I was apprised of the possibility to stop the fellow before he got to the states. Actually it is obsolete now and that is another reason we should not have it. At that time I was aware of it and I had a choice to have the man stopped. The only person I could possibly see profit by that would be the lawyer in question giving me the advice because the sum was so paltry that the legal fees would have eaten it up. So I said, "Let the man go", and I have let a couple of them go since. I also have heard of cases where a poor fellow who has no ability to go to the supreme court and question the constitutionality of our Alaskan statute as it is now, and it can be questioned. I personally doubt whether it is constitutional, this Alaskan business protecting clause. I know about men who have gone to the states and have been arrested under this clause, sure they can come back and sue. Who will have the time and money involved in a suit? The man just simply proved that he did not have fraudulent intention, that he had a good reason to go out for a half year or so, but in order to prove that he had a judgment against him and a court cost against him. The man was arrested. He was deprived of his liberty. He was habeas corpused for a short while, and I think it is unconstitutional, it is indecent, absolutely wrong. I am for the amendment.

COGHILL: Mr. President, I move the previous question.

BUCKALEW: I second the motion.

PRESIDENT EGAN: The previous question cuts off debate.

BARR: Did we not decide at one time that debate should not be limited?

PRESIDENT EGAN: It was never decided, Mr. Barr. Mr. Buckalew, do you wish to withdraw your second to the question?

BUCKALEW: No.

TAYLOR: Mr. President, I have an amendment on the Clerk's desk.

PRESIDENT EGAN: Mr. Taylor, there is an amendment before us at this time, Mr. Coghill moves that that question be ordered. So long as someone moved the previous question and it was seconded the Chair has no other alternative but to cut off debate until this particular motion is voted on.

BARR: Is that under a suspension of the rules? Don't the rules say that a man is entitled to speak twice?

PRESIDENT EGAN: Mr. Barr, the previous question can shut it off at any time if the delegates so choose to order the previous question. They have not done so yet. It is the duty of the Chair to put the question. The question is, "Shall the previous question be ordered?" All those in favor of ordering the previous question will signify by saying "aye", all opposed by saying "no". The previous question has failed. Mr. Barr. you have the floor.

BARR: This is my second and my last time for speaking, but I want to point out that under the present wording it says a man may be imprisoned for debt if there is a strong presumption of fraud. That is just beating about the bush and allowing a man to be imprisoned for one thing when actually his crime was another. I previously stated that debt was not a crime and that fraud is a crime, and therefore he should be imprisoned for fraud, if imprisoned for anything. Now a couple of law experts have pointed out that some kinds of fraud are not a crime. All right, in case some crimes of fraud are not a crime, he can still be imprisoned for a debt under that. In other words, he can be imprisoned for not committing a crime. Now this section is in our bill of rights, whose rights? It seems to me that this whole proposal is meant to protect the citizens of Alaska. This does not do it. I believe a man should be imprisoned for fraud too, and the legislature has the power to define what fraud is. He should not be imprisoned for something else, and it is traditional in our country that he not be imprisoned for debt.

PRESIDENT EGAN: Mr. McNealy.

MCNEALY: I suppose I should have spoken on this before, but I was probably one of the strongest supporters of this in the Committee, and possibly there should be an amendment to it just calling for absconding debtors on that because that was the only interest I had in the particular matter, and I grant the fact that I don't know, I could not count offhand how many years past I have stopped down in Ketchikan on the way outside, and when they were stopped by the Marshal at Ketchikan they paid the bill and went on their way. They had the money in their pocket to pay. I don't own any business and I don't represent very many business interests, so to speak, but it is no good to the people of the Territory of Alaska to be losing money by a bunch of no-account bums leaving the Territory and taking away their ill-gotten gains and gains that they did not intend to pay for when they got them. I think we have lost sight of the fact that we are here to write a constitution for Alaska and not for a bunch of crooks that are going to come up here and buy things and just skip out without paying for them and doing it intentionally. I believe we should have something in here to enable us to be able to keep the money in Alaska and not to aid and abet some crooks. Let's write this constitution for the Alaskans.

PRESIDENT EGAN: Mr. Metcalf.

METCALF: Mr. Chairman, I wish to call the attention of the delegates that if we adopt this amendment by Mr. Johnson you are going to wreck one of the old-time traditions up here in Alaska. Personally I have seen where some high-pressured person comes in and takes room and board at a widow woman's house for several months and then bingo, he skips, and the fraud you are trying to get at him for, and I urge each and everyone to vote to keep this section intact as it is. Many times I have had occasion to arrest people just before getting on a plane with a ticket to Seattle, as explained by Mr. McNealy, have coughed up the money and paid the debt.

PRESIDENT EGAN: Mr. Hurley.

HURLEY: I would like to ask Mr. McNealy a question if I may. Mr. McNealy, in your opinion, if the amendment carries, would a statute such as we have on our books now, pertaining to absconding debtors, be constitutional?

PRESIDENT EGAN: Mr. McNealy.

MCNEALY: The present statute would be constitutional in my opinion under this section.

TAYLOR: Mr. President, I have an amendment to Mr. Johnson's amendment on the table. I would like to have it read and acted

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upon.

PRESIDENT EGAN: The Chief Clerk may read the proposed amendment to the amendment.

CHIEF CLERK: "Insert after the word 'except' the words 'in case of absconding debtors'."

PRESIDENT EGAN: Insert after the word "except" the words "in case of absconding debtors". The proposed amendment by Mr. Johnson to Section 18 is to strike the comma after the word "debt" in line 2 and insert a period, and strike all the rest of the sentence. The word "except" is gone in the original amendment.

TAYLOR: I will put it back in then.

PRESIDENT EGAN: The proposed amendment will have to be drawn correctly to be read to the delegates.

ROSSWOG: May I address a question to Mr. McNealy while we are waiting, Mr. President?

PRESIDENT EGAN: You may, Mr. Rosswog.

ROSSWOG: Did you mean, Mr. McNealy, that the present statute would be constitutional as the section stands now?

MCNEALY: As the section stands now I am positive that our present law would be constitutional. If the amendment is adopted it is my opinion that our statute as to absconding debtors would not be constitutional.

PRESIDENT EGAN: Mr. Kilcher.

KILCHER: Do you think Mr. McNealy, that if the section stands as it is that our present Alaskan statute would be constitutional as far as the state's constitution is concerned, but it might be unconstitutional as far as the Federal Constitution is concerned? That was brought to my attention by an FBI lawyer.

MCNEALY: I have read over the Federal Constitution and during the many years that I have been more or less acquainted with this, if I have missed this and anyone can point out to me where the Federal Constitution forbids imprisonment for debt, why I am really going to learn something.

PRESIDENT EGAN: Mr. Rosswog.

ROSSWOG: Mr. Chairman, I would like to speak a few words on the question. I think we should not lose sight of the fact that this last sentence is not only for the protection of merchants in Alaska but also for the general public in Alaska.

I think if we pass this amendment we would be opening the doors for anyone that wanted to come up here and defraud our citizens.

PRESIDENT EGAN: The Chief Clerk will please read the proposed amendment as offered by Mr. Taylor, the amendment to the amendment.

CHIEF CLERK: "Insert after the comma following the word 'debt'" --

PRESIDENT EGAN: There is no comma there anymore. The thing to do would be to strike the period and insert a comma.

TAYLOR: In the amendment they did not take the period out. There is nothing about removing the period.

RILEY: Does that purport to be an amendment to the amendment now before us?

TAYLOR: Yes.

R. RIVERS: I rise to a point of order. I don't think what Mr. Taylor has is germane to the pending amendment. The amendment is to strike everything after that period. That is entitled to be acted upon. If we pass that amendment of Mr. Johnson's, then Mr. Taylor can move to add those additional words as a separate motion.

TAYLOR: Mr. President, there was nothing about changing that comma to a period, so far as we are concerned there is a comma there and something should follow it.

PRESIDENT EGAN: Mr. Taylor, the Chair will hold that Mr. Ralph Rivers' point of order is well taken at this particular point and that your amendment will be in order after this particular amendment is acted upon. The question is, "Shall the proposed amendment as offered by Mr. Johnson be adopted by the Convention?" Mr. Marston.

MARSTON: May I ask one question of Delegate McNealy. In case the amendment carries, can the legislature impose a law on people who leave the Territory without paying their bills?

MCNEALY: I question very much in my own mind whether they can be imprisoned for debt, Mr. Marston, and it would also carry with the other one we have on the books now that, where an employer does not pay his employees within a certain time, he can be subject to arrest for that and that would also, without some saving clause in here, that also would prevent his being imprisoned under that clause.

MARSTON: You say we can't pass that law then?

MCNEALY: That is my opinion that if we say there shall be no

imprisonment for debt, that is it period, and the legislature cannot contravene that.

MARSTON: I did not like the argument used defending this position here, that we have a different group of people here than we have elsewhere that are running out and not paying their bills any more than any state in the Union.. I did not like the comments on Oklahoma today. I know "Alfalfa Bill" over there, the Governor. He wouldn't like what Delegate Taylor said about him. I think we should be careful what we say about these people in other states, and I don't like to be up here different than the other states, that these people up here are different here, I think we are the same people. We are a part of the same people, and I don't like to be set aside as peculiar, and the argument used to defend this position, I did not like, so I am going to vote for the amendment.

LONDBORG: I would like to ask a question of Mr. McNealy. It has just been said it is doubtful if a law could be passed imprisoning someone for debt if this were stricken. I would like to ask a question, if a law could be passed to imprison a person for fraud. If they were beating a debt, could a law be passed to put them in prison for fraud or presumption of fraud?

MCNEALY: Yes, I think a law could be passed to imprison a person for fraud. We do have those laws on the book such as obtaining money under false pretenses, and a few similar statutes.

LONDBORG: It would seem that they should be put into prison for fraud and not the debt. I think the amendment should be passed.

RILEY: I prefer the language proposed by Mr. Taylor a moment ago but not yet before us to the language as it now exists, and for that reason alone I expect to support the amendment now and hope that it passes so that the way may be paved for submission of Mr. Taylor's amendment.

PRESIDENT EGAN: The Chair will have to adhere to the two times for each delegate. The question is, "Shall the proposed amendment as offered by Mr. Johnson be adopted by the Convention?"

H. FISCHER: Roll call.

PRESIDENT EGAN: The Chief Clerk will call the roll.

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

Yeas: 34 - Awes, Barr, Boswell, Buckalew, Coghill, Davis, Emberg, H. Fischer, V. Fischer, Gray, Hellenthal, Hermann, Hurley, Johnson, Kilcher, King, Knight, Laws, Lee, Londborg, McNealy, Marston,

Nordale, Peratrovich, Riley, R. Rivers, V. Rivers, Robertson, Smith, Stewart, Sundborg, VanderLeest, Walsh, Mr. President.

Nays: 17 - Cross, Doogan, Harris, Hinckel, McCutcheon, McLaughlin, McNees, Metcalf, Nerland, Nolan, Poulsen, Reader, Rosswog, Sweeney, Taylor, White, Wien.

Absent: 4 - Armstrong, Collins, Cooper, Hilscher.)

CHIEF CLERK: 34 yeas, 17 nays and 4 absent.

PRESIDENT EGAN: The "ayes" have it and the proposed amendment is ordered adopted. Now the Chief Clerk may read the proposed amendment as offered by Mr. Taylor.

TAYLOR: I think the amendment should be changed because I was amending the amendment. It will just be amending the article now.

CHIEF CLERK: "Change the period to a comma and insert after the word 'debt' the following words: 'except in case of absconding debtors', line 2, page 6."

TAYLOR: I move the adoption of the amendment and ask unanimous consent.

UNIDENTIFIED DELEGATE: Objection.

PRESIDENT EGAN: Objection is heard. Is there a second?

RILEY: I second the motion.

PRESIDENT EGAN: The motion is open for discussion. Mr. Doogan.

DOOGAN: Just for clarification there is no period. That is a comma because it has not been changed.

SUNDBORG: It was changed.

PRESIDENT EGAN: It was changed in the previous amendment. Mr. Kilcher.

KILCHER: Mr. President, I think regarding discussion about this amendment, essentially the section reads the same as before. It is only a vain string over that poor man who is presumed to be fraudulent. An absconding debtor, how are you going to determine who is an absconding debtor? He is presumed to be leaving the Territory under a fraudulent pretext, that is an absconding debtor in my opinion, so actually we are back where we were, and I think the question should be asked.

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

UNIDENTIFIED DELEGATE: Roll call.

PRESIDENT EGAN: The Chief Clerk will call the roll.

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

Yeas: 37 - Awes, Boswell, Coghill, Cross, Davis, Doogan, Emberg, H. Fischer, Gray, Harris, Hellenthal, Hinckel, Hurley, Kilcher, King, Knight, McCutcheon, McLaughlin, McNealy, McNees, Metcalf, Nerland, Nolan, Nordale, Peratrovich, Poulsen, Reader, Riley, R. Rivers, V. Rivers, Rosswog, Sweeney, Taylor, Walsh, White, Wien, Mr. President.

Nays: 14 - Barr, Buckalew, V. Fischer, Hermann, Johnson, Laws, Lee, Londborg, Marston, Robertson, Smith, Stewart, Sundborg, VanderLeest.

Absent: 4 - Armstrong, Collins, Cooper, Hilscher.)

KILCHER: I would like to change my vote from "no" to "yes".

PRESIDENT EGAN: Mr. Kilcher asks that his vote be changed from "no" to "yes".

CHIEF CLERK: 37 yeas, 14 nays and 4 absent.

PRESIDENT EGAN: So the "yeas" have it and the proposed amendment is ordered adopted. Are there other amendments to Section 18? Mr. Taylor.

TAYLOR: Could we have just a moment, Mr. President?

V. RIVERS: Have we passed through Section 19 or is this matter reopened for Section 11?

PRESIDENT EGAN: We have not passed through Section 19 yet, Mr. Rivers. Are there amendments to Section 19?

ROBERTSON: I would like to offer a new Section 19.

PRESIDENT EGAN: A new Section 19, Mr. Robertson?

ROBERTSON: Yes.

PRESIDENT EGAN: You may present your amendment. The Chief Clerk may read the proposed amendment.

CHIEF CLERK: "Insert new Section 19: 'Every person shall have

the right to work for the gaining of his livelihood.' Renumber the present Section 19 to be Section 20."

ROBERTSON: Mr. President, I move that the amendment be adopted.

PRESIDENT EGAN: Mr. Robertson moves that the proposed amendment be adopted. Is there a second to the motion?

LONDBORG: I second the motion.

PRESIDENT EGAN: The question is open for discussion. Mr. Robertson.

ROBERTSON: I submitted that proposal to the Committee together with a proposal I thought to be consistent with that of the right of collective bargaining. The Committee was good enough to give me a hearing on it, but as I understood it, they thought it was a legislative matter and not a constitutional matter. However, Mr. Hellenthal made a minority report in which he wanted collective bargaining. Now I maintain that every American citizen has the right to work for the gain of his livelihood. In Juneau we had several instances of where people had been deprived of that right and I submit that no matter how powerful the labor unions may become, and I am not opposed to labor unions in any matter, I submit that labor unions have no right to deprive an individual of the right to work. We have had cases in Juneau where they attempted to prevent people from working on their own houses, such as painting their own houses or painting their own building, and I submit that is wrong. Now I have no doubt in time, I feel that the labor unions in time will see that is wrong and probably the leaders don't condone those threats, and I submit that is a proper amendment and ought to go into the constitution or bill of rights, giving every citizen the right to work at his discretion for the gain of his own livelihood. I hope the Convention will adopt it.

PRESIDENT EGAN: Miss Awes.

AWES: I would like to tell the Convention about the action of the Committee. Mr. Robertson was heard and the Committee considered carefully the collective bargaining and the right-to-work. It is only the right-to-work before us now, and I may say that the Committee was unanimous in its decision that there should be no right-to-work provision in the bill of rights.

BUCKALEW: I move to table the amendment.

ROBERTSON: I understand there are 16 states that have a constitutional provision.

PRESIDENT EGAN: Mr. Robertson, the motion to lay on the table is not debatable.

STEWART: I second Mr. Buckalew's motion.

PRESIDENT EGAN: The question is, "Shall the proposed amendment be laid on the table?"

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

PRESIDENT EGAN: The Chief Clerk will call the roll.

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

Yeas: 23 - Awes, Buckalew, Doogan, Emberg, H. Fischer, Gray, Harris, Hellenthal, Hermann, King, Knight, Lee, McNealy, Marston, Metcalf, Nerland, Poulsen, R. Rivers, Rosswog, Smith, Stewart, Sundborg, VanderLeest.

Nays: 28 - Barr, Boswell, Coghill, Cross, Davis, V. Fischer, Hinckel, Hurley, Johnson, Kilcher, Laws, Londborg, McCutcheon, McLaughlin, McNees, Nolan, Nordale, Peratrovich, Reader, Riley, V. Rivers, Robertson, Sweeney, Taylor, Walsh, White, Wien, Mr. President.

Absent: 4 - Armstrong, Collins, Cooper, Hilscher.)

CHIEF CLERK: 23 yeas, 28 nays and 4 absent.

PRESIDENT EGAN: So the motion to lay on the table has failed of passage. Mr. Robertson, you have the floor.

ROBERTSON: I understand 16 states have constitutional provisions on the right to work. I have looked at some of them and I believe they are of much broader scope, and if such a right is criticizable or detrimental to anyone, that those state constitutions have much broader provisions in the extent and scope of their effect upon work than my provision, and that is a very simple provision, simply giving every citizen the right to work.

PRESIDENT EGAN: Mr. Londborg.

LONDBORG: I think this falls along the line of this amendment, the right to work. Last summer a construction company moved into Unalakleet to do some work and in their move in they brought along all the technical help, which of course they had to do. They brought along their laborers, many from the states, and the Natives at Unalakleet were deprived of the right to work. There were various reasons given. Some of the reasons were that they were not able to do the work, but they didn't have the chance to prove it. They were not hired because they did not belong to the union. There was no way for them to get in because the union agent was in Anchorage and they would

have to take a trip down there and pay union dues, etc. And consequently you have quite a large number of employees that came up from the states and worked and went back to the states spending the money earned up here. You have people up there that will have to have relief paid out of Territorial funds because they were denied the right to work. I wonder just how that sets with us as a state. If we are going to deny our own people the right to work and therefore, they have to be supported by the state, people can come in from the outside and take the jobs and then go back and spend their money.

PRESIDENT EGAN: Mr. Doogan.

DOOGAN: Mr. President, I opposed the right-to-work clause and with it I opposed the collective bargaining of which the minority report was written upon, as a part of the constitution, and I put them both together because I feel that if the right-to-work clause is put in the constitution then I am going to have to go against my better wishes and vote to have a collective bargaining clause in the constitution. I take the position that it won't be very many years until something better than what we know as collective bargaining at the moment, it may still be collective bargaining, but I think in a few years there will be something better, maybe even to the point that we won't require either a right-to-work or a collective bargaining clause any place. I think the matters are legislative because of that reason.

PRESIDENT EGAN: If there is no further discussion, the question is, "Shall the proposed amendment as offered by Mr. Robertson be adopted by the Convention?"

HURLEY: Roll call.

BARR: May I hear the amendment read again?

CHIEF CLERK: "Insert new Section 19: 'Every person shall have the right to work for the gaining of his livelihood.' Renumber present Section 19 to be Section 20."

PRESIDENT EGAN: Mrs. Fischer.

H. FISCHER: Mr. President, I don't think I understand. I think the right to work is misconstrued in the title. Is this not a bill that more or less kills unions, organized labor?

PRESIDENT EGAN: Will anyone answer the question? Mr. Hellenenthal.

HELLENTHAL: Yes, this is the bill that would destroy collective bargaining, completely and utterly. It was presented to us under a new guise. I don't think that the manner in which it was presented has ever been used before anywhere. It was

presented to us that the adoption of this would permit a man to work on his own house. Nothing is further from the truth. We have a perfect right to work on our own house anytime we want to, unless we are prohibited by some legislation, and that is not the purpose of this bill. Now, Mr. Robertson may in all good faith consider it to be, but he is the only person who has advocated the right-to-work who has ever grounded it on that basis. The right-to-work would make it possible for a man to disregard the provisions of a union contract and to go off on his own. It would utterly destroy, as Mrs. Fischer correctly said, the power of the unions. I notice nobody has spoken in opposition to it, so apparently the opponents feel there are sufficient votes here to defeat the proposal. I think that some few words should be said in opposition to the bill.

MCCUTCHEON: Question.

HELLENTHAL: Just a moment. The phrase, "right-to-work" is a misnomer. One of the editors of a national magazine said that it was invented by a "phony genius at propaganda", and that is just about correct. Nothing is further from the truth than that of considering this as a protection for an individual. It is nothing but a device aimed at breaking up the right of unions to organize and bargain collectively for their members, which is a right, mind you, that is sanctified by the Taft Hartley law, by all of the advanced labor legislation that we have had on the national scene for many many years past. There are 17 states, mostly Southern states, most all of them Southern states, in which the right-to-work legislation has sneaked through. In Massachusetts a similar provision was defeated 190 to 2 who were in favor of it, only two out of the 192 votes cast. The Secretary of Labor, James P. Mitchell, has taken an emphatic and violent stand against right-to-work legislation on any form. I think that should be brought to the attention of the house. The freedom of any person to work wherever he can get a job at whatever wages he is able to earn and willing to take is a fundamental American right, but this right-to-work legislation would destroy the very fundamental rights and purposes for which union people gather. Secretary Mitchell's stand was taken in a speech he gave on December 7, 1954. So for those reasons and many other reasons, this purported right, this phony device that has been sold by glib propaganda agents, hypocrites mind you, should be defeated. It does not accomplish the purpose that Mr. Robertson suggests. It is nothing but a union-destroying device contrary to the national legislation that we have on the books and have had in Democratic administrations and Republican administrations.

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: Mr. Johnson.

JOHNSON: I am not particularly in favor of this amendment but it does not happen to be for reasons that have been announced by Mr. Hellenthal. I think that he has indulged in rather a demagogic display of oratory about something that has already been included in the bill of rights and he is one of the authors of this particular section. He says that this wordage, the right to work, is a union-busting provision, and he says that that should not be in the constitution for that reason. If you look at Section 1, almost identically the same language is used where it says that the rights, the natural rights of any person shall be guaranteed, and the natural right to the enjoyment of the gains of their own industry. That is almost identically the same thing as saying they have the right to work and to the fruits of their own industry. So, I think, so far as Mr. Hellenthal's arguments are concerned, he is begging the question. They have already inserted virtually the identical provision. As I say, I am not so in favor of the amendment because I think that it is a legislative matter and could just as well be left out, but I certainly do not think we ought to defeat the amendment solely on the basis of Mr. Hellenthal's argument. It is not sound.

PRESIDENT EGAN: Mr. Boswell.

BOSWELL: I just wanted to say that I felt the Committee did a good job in leaving both of these items out, the collective bargaining and the right to work. I feel they are legislative too, and both had better be left out. For that reason I will not support this amendment and I would not support the collective bargaining amendment.

ROBERTSON: Mr. President, I am a little resentful of my old friend, John Hellenthal, accusing me of being a hypocrite but I have been accused of a good many things, and I can take it. I explained to the Committee that my purpose was not to get a right of a strike breaker. I was simply trying to protect the very right which, if I correctly understood Mr. Hellenthal, he was quoting from Secretary Mitchell, he said it was an inalienable American right. That is the right I am trying to protect through this bill of rights. There is no hypocrisy about it whatsoever. It would meet the very conditions that Mr. Londborg spoke about at Unalakleet. There are hundreds of those conditions existing in Alaska, at least during the seasonal work, where people are denied the right to work because the control is in a union from the states and a person here in Alaska is not permitted to join. Most all our boys, even when they get to be over 16, when they can work, between the ages of 16 and 18, many times they are not permitted to join the union. Now that is a denial of the right to work. I claim that is one of the causes of our delinquency among our youth today, it is the labor unions preventing our young men going out to work when they are well able to, and I submit to you that this ought to be passed, and I hope it will.

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: The Chief Clerk will read the proposed amendment.

CHIEF CLERK: "Insert a new Section 19: 'Every person shall have the right to work for the gaining of his livelihood. Renumber present Section 19 to be Section 20.'"

ROBERTSON: I call for a roll call.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Robertson be adopted by the Convention?" The Chief Clerk will call the roll.

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

Yeas: 4 - Laws, Londborg, Reader, Robertson.

Nays: 47 - Awes, Barr, Boswell, Buckalew, Coghill, Cross, Davis, Doogan, Emberg, H. Fischer, V. Fischer, Gray, Harris, Hellenthal, Hermann, Hinckel, Hurley, Johnson, Kilcher, King, Lee, McCutcheon, McLaughlin, McNealy, McNees, Marston, Metcalf, Nerland, Nolan, Nordale, Peratrovich, Poulsen, Riley, R. Rivers, V. Rivers, Rosswog, Smith, Stewart, Sundborg, Sweeney, Taylor, VanderLeest, Walsh, White, Wien, Mr. President.

Absent: 4 - Armstrong, Collins, Cooper, Hilscher.)

CHIEF CLERK: 4 yeas, 47 nays, and 4 absent.

PRESIDENT EGAN: So the amendment has failed of adoption. Mr. Robertson.

ROBERTSON: Under the personal privilege I extend my gratitude to Delegate Laws for voting with me.

WHITE: Parliamentary inquiry. I voted with the prevailing side. I did so that later today I will have the opportunity today to vote against inclusion of the section which would in the constitution be the right to collective bargaining. My question then is, if I give notice to reconsider my vote tomorrow, may that notice be withdrawn by me and I not have to support that motion, should it not be necessary?

PRESIDENT EGAN: The Chair sees no reason why if you serve notice of reconsideration, if you withdraw your intention of asking reconsideration, that should be up to you, Mr. White.

WHITE: Mr. President, I voted with the prevailing side in this Convention and I give notice that I wish to reconsider my vote.

PRESIDENT EGAN: Mr. White serves notice that he wishes to reconsider his vote tomorrow. Mr. Sundborg.

SUNDBORG: I move that we suspend the rules and take up the reconsideration at this time, Mr. White's reconsideration.

H. FISCHER: I second the motion.

PRESIDENT EGAN: It has been moved by Mr. Sundborg, seconded by Mrs. Fischer, that the Convention take up the reconsideration of Mr. White's vote at this time.

DAVIS: Mr. President, as a point of order, I don't think Mr. White has made a motion to reconsider yet.

PRESIDENT EGAN: The motion has been made by other delegates, Mr. Davis. Other delegates may, in effect, ask for a suspension of the rules and that the reconsideration come before the Convention at this time. The question is actually, "Shall the rules be suspended and Mr. White's reconsideration be taken up at this time? The motion you will be voting on first will be a suspension of the rules and then you will be voting on the same matter that we just voted on if the motion should carry. The question is, "Shall the rules be suspended and Mr. White's notice of reconsideration be considered at this time?" The Chief Clerk will call the roll. "Shall the rules be suspended?"

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

Yeas: 10 - Buckalew, H. Fischer, Metcalf, Peratrovich, Poulsen, R. Rivers, Sundborg, Taylor, Walsh, Mr. President.

Nays: 41 - Awes, Barr, Boswell, Coghill, Cross, Davis, Doogan, Emberg, V. Fischer, Gray, Harris, Hellenthal, Hermann, Hinckel, Hurley, Johnson, Kilcher, King, Knight, Laws, Lee, Londborg, McCutcheon, McLaughlin, McNealy, McNees, Marston, Nerland, Nolan, Nordale, Reader, Riley, V. Rivers, Robertson, Rosswog, Smith, Stewart, Sweeney, VanderLeest, White, Wien.

Absent: 4 - Armstrong, Collins, Cooper, Hilscher.)

CHIEF CLERK: 10 yeas, 41 nays, and 4 absent.

PRESIDENT EGAN: So the motion has failed of adoption and Mr. White's reconsideration will come up at its regular time tomorrow. Mr. Robertson.

ROBERTSON: Would it be in order at this time for me to give notice of reconsideration also? I voted in the affirmative on Mr. Kilcher's amendment to amend line 24 in Section 13 on page 4,

of changing "\$250" to the words "sum set by law", and I would like to give notice of reconsideration for tomorrow.

PRESIDENT EGAN: It would be in order if the record shows that you voted in the affirmative, yes, Mr. Robertson.

CHIEF CLERK: Yes, he did.

PRESIDENT EGAN: Then Mr. Robertson serves notice of a reconsideration of his vote on an amendment that changed the words "\$250" to read "a sum set by law".

ROBERTSON: It changed "\$250" to "a sum set by law".

PRESIDENT EGAN: We will have the two reconsiderations then coming before us tomorrow. Mr. Johnson.

JOHNSON: An inquiry, Mr. President. Is Section 1 now subject to further amendment?

PRESIDENT EGAN: If there are no other amendments to Section 18 or 19. Mr. Victor Rivers.

V. RIVERS: I have an amendment preceding Section 1 which I would like to offer if we're going back through the order.

PRESIDENT EGAN: Mr. Victor Rivers had mentioned previously, Mr. Johnson, that he had an amendment to the preamble, was it, Mr. Rivers?

V. RIVERS: Yes, here it is.

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: I had an amendment that I was writing to present following the treatment of each of the different sections. It is the amendment with regard to wire tapping. I don't know whether the Chair wishes to consider that now and then go back and work through again or wait until we have worked through once more.

PRESIDENT EGAN: Mr. Hellenthal, if you are not quite certain where that should go, we will work back through. We will give everyone an opportunity to submit amendments right on down through the proposal. Mr. Taylor.

TAYLOR: We have not yet taken up Section 19.

PRESIDENT EGAN: Section 19, that was the amendment we just had. The Chair asked if there were other amendments to Section 19. If there are other amendments to Section 19, that was the one Mr. Robertson proposed to substitute a new section for, Mr. Taylor. Do you have an amendment to Section 19. Mr. Taylor?

Mr. Hellenthal, would you mind?

HELLENTHAL: I am indifferent. I should like to present, though, the amendment which was initially proposed as a sentence following the first sentence in Section 10, whenever the Chair rules.

PRESIDENT EGAN: The Chief Clerk may read the proposed amendment as offered by Mr. Victor Rivers.

CHIEF CLERK: "Proposed by Mr. Victor Rivers, Mr. Sundborg, Mr. White, Mr. V. Fischer, Mr. Hilscher, Mr. Ralph Rivers, Mrs. Helen Fischer, Mr. Emberg, Mr. Poulsen, Mr. King, Mr. Riley and Mr. Hellenthal. Amendment of Article on Preamble and Bill of Rights. Strike lines 1 through 5 on page 1 and substitute the following: 'We the people of Alaska, conscious of our heritage of political, civil and religious liberty, grateful to God and to those who founded the nation and pioneered this great land, reaffirm our belief in government by consent of the governed within the Union of States and do ordain and establish this Constitution for the State of Alaska.'"

PRESIDENT EGAN: Mr. Victor Rivers, what is your pleasure?

V. RIVERS: Mr. President, as one of the makers of this motion, I move and ask unanimous consent that the amendment be adopted.

TAYLOR: I object.

H. FISCHER: I second the motion.

PRESIDENT EGAN: The motion is open for discussion. Mr. Victor Rivers.

V. RIVERS: Mr. President and delegates, it seemed to me in reading the preamble that we had on this particular proposal that it was merely a restatement of the preambles of many of the proposals of many of the states. I wanted to see a little bit more originality, something that would be more typical of the thinking and the speaking and the heritage of our Alaska people, so I drafted a proposal. Since that time there have been a number of changes. However, in the present form it seems to me to be more applicable to our particular form of constitution, perhaps more acceptable to our people than would be the one which was originally presented in the Committee proposal. I personally feel that while a great many of the people who vote on this constitution may not read it in its entirety, that practically all and everyone will read the preamble. While I realize it has no force of law, I think it should be a statement and intent and feeling of those people who drafted it rather than some other words of someone else who drafted a constitution under somewhat considerably different circumstances. Therefore, I have been one of those who moved to prepare and

submit this amendment.

PRESIDENT EGAN: Mr. Marston.

MARSTON: I was quite disappointed when I read the preamble submitted and I am happy with this amendment. I shall vote for it, I think it expresses the attitude of Alaska, and I am only sorry I could not be a party to the amendment.

PRESIDENT EGAN: Mr. White.

WHITE: Mr. President, I agree with everything that has been said and I engaged to some extent in working with the preamble, in trying to write one that would express our feelings in strong words with one exception. Three words have been added to this since I signed it, and I move to add to the amendment by striking the three words, "to God and". I so move.

LAWS: I second the motion.

PRESIDENT EGAN: Mr. White moves to amend the proposed amendment by striking "to God and", seconded by Mr. Laws. Mr. White.

WHITE: Mr. President, I don't expect to get far with this, and perhaps it is not very important. I am not an atheist. I go to church regularly. I spent five enjoyable and instructive years in one of the most well-known church schools in the states. This was called to my attention first during the recess, called to my attention by people whose opinion I respect, and because of who they were I would expect they express a rather widely held opinion, in that I think the inclusion of these words in the preamble is not consistent with Section 5. That is the basis of my objection. I will make only one other note and that is that sometime ago Mr. Hellenthal said that the Bill of Rights Committee did not deviate hardly one iota from the Preamble to the Federal Constitution. Here is one case where they did. I think it was interesting to note that our forbearers, for all their deeply held religious convictions, when they came to the Preamble of the Federal Constitution they left out any words such as these. I just think with Section 5 and with the wording here, "conscious of our religious liberty", that the matter is covered.

PRESIDENT EGAN: Mr. Doogan.

DOOGAN: Mr. President, I am going to have to take exception, not only for myself but for a man that is not here who I think if he were here might have quite a little bit to say about it. Unfortunately, he cannot be here and is unavoidably detained. We wrote this preamble in the Bill of Rights Committee, and it is true that we studied a good many preambles of other states, and it is also true that this preamble with a few exceptions, copies another preamble. The only way I can state it is the

way it was so aptly put I think by one of the members of the Committee of the Bill of Rights, that the preamble to the bill of rights is the same as saying grace before you sit down and eat your meal. That is all it is and that is all it is intended for. I know many of these people here, practically all of them, belong to an organization, church, and for every organization and church that they belong to they must of necessity some place in there, pay at least lip service to the Lord. In the oath that you took, you did the same thing. Every day here we have a minister before us to give us the grace before we start our meeting. If we are going to eliminate any reference to the Lord or God, I don't care by what other name you call Him, then I think we are wasting our time in having the ministers come before us and give us a blessing before we start, and I think that you are also being unjustly fair to both Mr. Armstrong and Mr. Londborg who are here as delegates but every so often you feel the necessity to call upon them in their respective capacity as a minister. Therefore I am going to oppose the amendment.

(At this time Delegate Armstrong entered the hall.)

PRESIDENT EGAN: Let the record show that Mr. Armstrong is present now. If there is no objection the Convention will stand at recess until 3:45. The Convention is at recess.

RECESS

PRESIDENT EGAN: The Convention will come to order. We have before us an amendment. Mr. McLaughlin.

MCLAUGHLIN: Mr. President, the Convention has now had the opinion of two very sincere men representing both sides of the question. I think it has been adequately heard. I move the previous question.

PRESIDENT EGAN: Is there a second to the motion?

V. FISCHER: I second the motion.

PRESIDENT EGAN: The question is, "Shall the previous question be ordered?" All those in favor of ordering the previous question will signify by saying "aye", all opposed by saying "no". The "ayes" have it and the previous question is ordered. The question is, "Shall the proposed amendment as offered by Mr. White be adopted by the Convention?" Mr. Sundborg.

SUNDBORG: It is the amendment to the amendment?

PRESIDENT EGAN: The proposed amendment to the amendment as offered by Mr. White. shall the proposed amendment to the amendment be adopted by the Convention? All those in favor of the adoption of the proposed amendment to the amendment will signify

by saying "aye", all opposed by saying "no". The "noes" have it and the proposed amendment to the amendment has failed of adoption. We now have before us the proposed amendment as offered by Mr. Victor Rivers and other delegates. Is there further discussion? Mr. Harris.

HARRIS: I would like to offer an amendment to the amendment. Since we decided to leave "God" back in the amendment I would like to restore Him to full title and make it "Almighty God". I ask unanimous consent.

PRESIDENT EGAN: You offer to amend the proposed amendment by inserting the word "Almighty" before "God"?

HINCKEL: I object.

COGHILL: I second the motion.

PRESIDENT EGAN: Mr. Kilcher.

KILCHER: Mr. President, I think that the amendment as offered here is acceptable to everybody and I am opposed to the amendment as offered by Mr. Harris on the grounds that "God" without an adjective is more comprehensive and more acceptable to various faiths, Christians and non-Christians alike, and I am opposed to the amendment.

PRESIDENT EGAN: The question is, "Shall the proposed amendment to the amendment as offered by Mr. Harris be adopted by the Convention?" All those in favor of the adoption of the proposed amendment to the amendment will signify by saying "aye", all opposed by saying "no". The Chief Clerk will call the roll.

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

Yeas: 24 - Armstrong, Awes, Coghill, Davis, Doogan, H. Fischer, Harris, Hellenthal, Hermann, Johnson, King, Knight, Londborg, McNees, Metcalf, Nerland, Nolan, Peratrovich, Reader, Robertson, Sweeney, vanderLeest, Walsh, Wien.

Nays: 24 - Barr, Boswell, Buckalew, Emberg, V. Fischer, Gray, Hinckel, Hurley, Kilcher, Laws, Lee, McCutcheon, McLaughlin, Marston, Nordale, Poulsen, Riley, R. Rivers, V. Rivers, Smith, Sundborg, Taylor, White, Mr. President.

Absent: 7 - Collins, Cooper, Cross, Hilscher, McNealy, Rosswog, Stewart.)

CHIEF CLERK: 24 yeas, 24 nays, and 7 absent.

PRESIDENT EGAN: So the proposed amendment to the amendment has

failed of adoption.

MCCUTCHEON: Question.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Victor Rivers and other delegates be adopted by the Convention?"

H. FISCHER: Roll call.

PRESIDENT EGAN: The Chief Clerk will call the roll.

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

Yeas: 49 - Armstrong, Awes, Barr, Boswell, Buckalew, Coghill, Cross, Davis, Doogan, Emberg, H. Fischer, V. Fischer, Gray, Harris, Hellenthal, Hermann, Hinckel, Hurley, Johnson, Kilcher, King, Knight, Lee, Londborg, McCutcheon, McLaughlin, McNealy, McNees, Marston, Metcalf, Nerland, Nolan, Nordale, Peratrovich, Poulsen, Reader, Riley, R. Rivers, V. Rivers, Robertson, Rosswog, Smith, Sundborg, Sweeney, Taylor, VanderLeest, Walsh, White, Mr. President.

Nays: 2 - Laws, Wien.

Absent: 4 - Collins, Cooper, Hilscher, Stewart.)

KILCHER: I would like to change my vote to "yes".

PRESIDENT EGAN: Mr. Kilcher wishes to change his vote to "yes".

CHIEF CLERK: 49 yeas, 2 nays, and 4 absent.

PRESIDENT EGAN: So the proposed amendment is ordered adopted. Are there other amendments, or are there amendments to Section 1? Mr. Johnson.

JOHNSON: Mr. President, I have on the Secretary's desk an amendment to Section 1.

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

CHIEF CLERK: "Section 1, page 2, lines 1 and 2, insert a comma after the word 'rights', strike the word 'and' on line 2 and after the word 'opportunities' insert the words 'and equal protection'."

PRESIDENT EGAN: How would that sentence read with that proposed amendment?

CHIEF CLERK: Don't you mean it to start on line 1, Mr. Johnson, a comma after the word "rights" on line 1, is that not it? You say "strike word 'and' and insert comma after the word 'rights'."

JOHNSON: Yes, line 1.

CHIEF CLERK: "Line 1, insert a comma after the word 'rights', strike 'and' on line 2 and add after the word 'opportunities' 'and equal protection'."

JOHNSON: I move the adoption of the amendment.

PRESIDENT EGAN: Mr. Johnson moves the adoption of the amendment. Is there a second to the motion?

ROBERTSON: I second the motion.

PRESIDENT EGAN: The motion is open for discussion. Mr. Johnson.

JOHNSON: Mr. President, as I started to explain this morning. it seems to me that the section as it now stands does not protect a very essential right of citizens and that is equal protection of the laws. Such a right is contained in the Fourteenth Amendment of the United States Constitution, and I discussed the matter with Miss Awes, the Chairman of the Committee, and after going over the section I think she agreed also that with this addition suggested by the amendment that we would safeguard the equal protection of the laws" right and it ought properly to be in the bill of rights..

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: Mr. President, I believe because of the exact wording of the proposed amendment that we are doing something else if we adopt it. As it now reads, it says that persons are equal and they are entitled to equal rights and opportunities under the law. As it would be amended it would say they are entitled to equal rights, opportunities and equal protection. That is, they are not entitled to equal opportunities, if we adopt this amendment, as I read it. Now, if Mr. Johnson would consent to dropping the "equal" before the word "protection" in his proposed amendment, I would support it, but not otherwise,

because I think if we leave the word equal" before "rights" and put the word "equal" before "protection" we are emphasizing there that the word "opportunities" does not have an equal" before it.

JOHNSON: I have no objection to that.

PRESIDENT EGAN: You ask unanimous consent that the proposed amendment to the amendment be adopted. Is there objection? Hearing no objection it is so ordered, and the amendment to

the amendment is ordered adopted. Mr. Ralph Rivers.

R. RIVERS: I ask unanimous consent for the adoption of the amendment.

PRESIDENT EGAN: Mr. Ralph Rivers asks unanimous consent for the adoption of the proposed amendment, as amended. Is there objection?

HELLENTHAL: I object.

PRESIDENT EGAN: Objection is heard. Is there further discussion? If there is no further discussion, the question is, "Shall the proposed amendment as amended be adopted by the Convention?" All those in favor of the adoption of the proposed amendment as amended will signify by saying "aye", all opposed by saying "no". The "ayes" have it and the proposed amendment as amended is ordered adopted. Mr. Hellenenthal.

HELLENTHAL: I should like to change my vote.

PRESIDENT EGAN: Which way did you vote?

HELLENTHAL: I would like to change it to "nay".

PRESIDENT EGAN: Mr. Hellenenthal voted "nay". Are there other amendments to Section 1 or are there other amendments to be offered to the proposal? Mr. Victor Rivers.

V. RIVERS: I have an amendment.

PRESIDENT EGAN: The Chief Clerk may read the proposed amendment as offered by Mr. Victor Rivers.

BARR: Mr. President, was there not a proposal sometime ago held over on Section 7?

HERMANN: Yes, there is a mimeographed one.

BARR: I have one before me by Mr. Buckalew, Davis, Hellenenthal, Taylor, and McNealy. We haven't acted on that, have we?

PRESIDENT EGAN: Would you rather have the sections as we come to them, Mr. Rivers?

V. RIVERS: I don't particularly object.

PRESIDENT EGAN: If there is no objection we will hold Mr. Victor Rivers' amendment in abeyance until we come back to that section. We are on Section 7. The Chief Clerk will please read the proposed amendment.

CHIEF CLERK: "Strike Section 7 as amended and substitute the

following section: 'No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except when waived by the accused, in which event the prosecution shall be by information, but this shall not be applied to cases arising in the land or naval forces or in the militia when in actual service in time of war or public danger. The grand jury may consist of not less than twelve citizens.'

BUCKALEW: I move its adoption.

TAYLOR: I second the motion.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: I have a question, Mr. President, to address to the drafters of the motion. It seems to me it would be arising in the military forces. They have left out "air" there. Now we have naval and land. We had better get abreast of the time here and include "air force" or make it "military forces". "Arising in the military forces or in the militia when in actual service in time of war or public danger", I think would read correctly.

BUCKALEW: That is the same language as the Constitution. They didn't have an air force then and they haven't had any problems with it.

PRESIDENT EGAN: Mr. McLaughlin.

MCLAUGHLIN: I would recommend that the Committee, and I leave it up to the Committee, substitute for their amendment where they say "in land and naval forces", substitute the words, "in the armed forces or in the militia" instead of the "land or naval forces or the militia" because we are going to run into confusion. We have used in this article now, the word "militia" twice. That is, the authority creating the militia, we have used it twice in the bill of rights article, and in the executive article I know what bothers Mr. Rivers they have used in Section 11, "armed forces of the state". Now there might be some conflict, although I don't see it if we dropped out the word "militia". But if we substituted "armed forces" for the words, "land or naval forces" at least we would have only two expressions in our constitution. "The armed forces of the state and the militia". If we leave it this way we will have a third one. Inasmuch as we are quite proud of our Air National Guard, we might have in our organized or unorganized militia as provided under the Military Code of 1955, provisions for an air force, unorganized. It might be advisable to make that change. I know that has no effect on the legislators because of the fact they exempted themselves from the unorganized militia under the 1955 act, but they kept every other able-bodied man in this Assembly in it and it might be helpful if we substitute

the Committee, the gentlemen making the proposal, substitute the words "armed forces" in place of the "land or naval forces.

PRESIDENT EGAN: Mr. Buckalew.

BUCKALEW: I would ask unanimous consent of the other person signing the amendment to delete the language and insert "armed forces".

PRESIDENT EGAN: If there is no objection the proposed amendment to the amendment is ordered adopted. That particular amendment to the amendment is ordered adopted. Mr. Sundborg.

SUNDBORG: I am at sea here. Mr. Buckalew asked for permission to substitute the words "armed forces" for something, but I don't know for what.

BUCKALEW: Substituted the words "armed forces" for "land or naval forces or in the militia."

SUNDBORG: I want that very clear on what we are doing.

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

RECESS

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

BUCKALEW: Mr. President, after further discussion on top of another discussion, the amendment as I intended to propose it just strikes the words "land or naval" and insert the words "armed forces". Now that is wrong yet. All I do is just insert the word "armed".

PRESIDENT EGAN: Mr. Buckalew, you ask unanimous consent for the adoption of that amendment to the amendment?

BUCKALEW: Yes.

PRESIDENT EGAN: Is there objection? Hearing no objection on that proposed amendment to the amendment, it is ordered adopted. Mr. Metcalf.

METCALF: Mr. Chairman, I would like to submit an amendment to the amendment.

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

CHIEF CLERK: "Strike the last sentence of amended Section 7 and substitute the following: 'The grand jury shall consist of

at least twelve citizens, three-fourths of whom concurring may find an indictment or true bill.'" "

METCALF: I move the adoption of the amendment.

PRESIDENT EGAN: Mr. Metcalf moves the adoption of the proposed amendment to the amendment.

METCALF: I ask unanimous consent.

TAYLOR: I object.

PRESIDENT EGAN: Is there a second to the motion?

R. RIVERS: I second the motion.

PRESIDENT EGAN: The motion is open for discussion. Mr. Hinckel.

HINCKEL: I must have misunderstood it or something because I understood it to say an indictment or a true bill. Does he not mean an indictment or not true bill?

PRESIDENT EGAN: Would the Chief Clerk please read the amendment once more.

CHIEF CLERK: "Strike the last sentence of amended Section 7 and substitute the following: 'The grand jury shall consist of at least twelve citizens, three-fourths of whom concurring may find an indictment or true bill.'" "

PRESIDENT EGAN: It would imply would it not, Mr. Hinckel, it would have to be a not true bill?

BUCKALEW: A true bill is an indictment. It is the same thing, so it is superfluous.

HINCKEL: It is a repetition. I wonder if he did not mean it should work both ways?

PRESIDENT EGAN: Mr. Metcalf, what is your explanation of that?

METCALF: I believe that is the same language that is in the original Section 7, was it not?

PRESIDENT EGAN: That is right. That is what it says in the original language.

TAYLOR: Point of order. I think that matter has already been disposed of in previous action today as that was in Section 7, "any nine of whom concurring". We have already struck it out. This would be putting it back in, three-fourths.

PRESIDENT EGAN: Mr. Taylor, this is rewriting the section all right, but it would be in order, as the Chair remembers that we never actually completed Section 7. This would strike Section 7, this proposed amendment we have before us now, so if Mr. Metcalf would seek to add that particular wording he would be in order up to this point, because we didn't yet strike Section 7. Is there further discussion? Mr. Sundborg.

SUNDBORG: I would like to have it read once more.

PRESIDENT EGAN: The Chief Clerk will please slowly read the proposed amendment to the amendment.

CHIEF CLERK: "Strike last sentence of amended Section 7 and substitute the following: 'The grand jury shall consist of at least twelve citizens, three-fourths of whom concurring may find an indictment or true bill.'"

PRESIDENT EGAN: Mr. Robertson.

ROBERTSON: I concur with Mr. Hinckel. I think that the words "or true bill" are superfluous in there. An indictment, as most lawyers are familiar with, regardless of whether it is a true bill or not a true bill, both of them are labeled "indictment". They could return either a true bill or not a true bill and I think if you're going to leave the words, "a true bill" in, it also in turn should be "not a true bill".

PRESIDENT EGAN: You would say it should be "indictment or a true bill or not a true bill", is that right? Mrs. Hermann.

HERMANN: That would seem to mean that it would take nine concurring to give a not true bill as well as an indictment, and I don't think that anyone would ever desire to have that situation arise. The point of the matter is, if you don't get your nine concurring you don't have a true bill. You don't have to have nine against, but you just simply don't have a true bill. The wording is a little awkward for that reason.

PRESIDENT EGAN: That was the original wording in the bill of rights proposal. Mr. Taylor.

TAYLOR: Mr. President, I believe that should not be in that way because the grand jury is investigating something that there has been no bind-over from the commissioner's court. That if they do not, if sufficient number of jurors do not vote an indictment, they could not return not a true bill because all matters touching that particular inquiry are secret and don't come out.

PRESIDENT EGAN: Would a few of the attorneys care to work with Mr. Metcalf on the wording of that, is that your desire? If there is no objection, the Convention will stand at recess for

1400

a couple of minutes while that is done.

RECESS

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

METCALF: Mr. Chairman, I ask unanimous consent to withdraw the amendment which I just previously submitted and in lieu thereof I submit a rewritten amendment which is on the Clerk's desk.

PRESIDENT EGAN: Mr. Metcalf asks unanimous consent to withdraw the amendment which he had previously submitted. If there is no objection it is so ordered and the Chief Clerk will now read the proposed amendment as now submitted by Mr. Metcalf.

CHIEF CLERK: "Delete the last sentence of amended Section 7 and add the following: 'The grand jury shall consist of at least 12 citizens, three-fourths of whom concurring may return a true bill.'"

METCALF: I ask for the adoption of the proposed amendment.

BUCKALEW: I second it.

R. RIVERS: I ask unanimous consent.

HELLENTHAL: I object.

PRESIDENT EGAN: Objection is heard. The question is open for discussion. Mr. Hellenenthal.

HELLENTHAL: Mr. President, I know of no reason why the present law which has been in effect for 50 years in Alaska should be changed. Today, yesterday, and ever since we had grand juries in Alaska it took a majority of the grand jury of 23 to indict. Now, overnight, and for no reason I know of at all, we are going to require three-fourths of the members of the grand jury to concur before an indictment can be turned in. Do we know of any cases where the grand juries have been abusing their rights? Is there any reason, any reason why it should be made more difficult to indict a criminal? Any reason why one accused of crime should have the protection of three more votes, of another 25 per cent? Unless some reason is pointed out to me, this amendment which could only give consolation to those who are involved some way or another, unless some good reason is pointed out I must oppose it. Now. the reason that the language, "any nine of whom concurring may find an indictment or true bill" is found in that Missouri provision which has been rejected, was that indictments that were preserved by the original Section 7 were merely indictments resulting from willful misconduct in office of public officers. That was the only type of indictment, you will recall, that was preserved in the original Section 7, and so there is no tie-in whatsoever with the recommendation

that any nine might concur in that type of an offense, and applying it now to all offenses I can see no good, no useful purpose whatsoever that will be served by this amendment.

PRESIDENT EGAN: Is there further discussion of the proposed amendment to the amendment? Mr. Victor Rivers.

V. RIVERS: It seems to me in the face of the present law which sets up, I believe, 23 members for the grand jury, it would then require 18 members under this amendment to indict and find a true bill and I think that is a fairly substantial majority and that would then allow the case to go to the petit jury or before the court. It seems to me that if it were based entirely on the 12 which we have before us, it might not be so good, but in the present law with 23, and if the present law is adopted in its entirety, it would seem to me that 18 people would be pretty sure they were right in the final analysis before bringing in a true bill or indictment. If the present law were held it would seem to me that this would be a very good clause. Three-fourths is a very high number to get in a body where there is any question of doubt in their minds.

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: I am not so sure I understand Mr. Rivers. A man can be indicted under the present law. First, the present law requires that there be 23 men and women on a grand jury. The present law requires that 13 of those people must agree before a true bill can be brought in, 12 rather. Now Mr. Rivers wants to raise that to 18. What reason exists for raising it from 12 to 18? Or by the same token from six to nine? What reason?

PRESIDENT EGAN: Mr. Rivers.

V. RIVERS: It would seem to me that the way this amendment is written any three-fourths of the entire body would have to act in order to bring in a true bill, is that not correct? So it actually would be three-fourths of 24, which would be 18 members. Is that right?

HELLENTHAL: No. The present bill provides for a 12-man jury, so it would be nine out of 12, 18 out of 24, or if you have a 40-man grand jury, it would be 30 out of 40.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: I respond to Mr. Hellenthal's question. It takes 12 persons now to accuse a man of a crime by bringing in a true bill. By cutting down the grand jury to 12 instead of 23 you have cut down the size of the body so much that even with this requirement, it would take affirmative action by nine people to accuse a man of a crime, or to bring in a true bill. I think the reason for having this three-fourths is that you are cutting

the size of the body down so much. From a practical standpoint, although the legislature could have a larger grand jury than 12, to save money and not spend more than necessary, I should judge they would set up a grand jury of 12 people. Well, then, nine would be the number of affirmative votes required to bring in a true bill. That is the thinking behind it. I would not care if it said a majority. But I think it is well to say something along that line.

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: I agree fully with "majority", but to go beyond majority it is going to play into the hands of the law breakers.

PRESIDENT EGAN: If there is no further discussion, the question is, "Shall the proposed amendment to the amendment as amended be adopted by the Convention?" All those in favor of adopting the proposed amendment to the amendment as amended will signify by saying "aye", all opposed by "no". The Chief Clerk will call the roll.

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

Yeas: 23 - Boswell, Buckalew, Coghill, Cross, Davis, H. Fischer, V. Fischer, Gray, Hermann, Hinckel, Hurley, McCutcheon, McNealy, McNees, Marston, Metcalf, Nerland, Nolan, Riley, R. Rivers, V. Rivers, Sweeney, Mr. President.

Nays: 29 - Armstrong, Awes, Barr, Doogan, Emberg, Harris, Hellenthal, Johnson, Kilcher, King, Knight, Laws, Lee, Londborg, McLaughlin, Nordale, Peratrovich, Poulsen, Reader, Robertson, Rosswog, Smith, Stewart, Sundborg, Taylor, VanderLeest, Walsh, White, Wien.

Absent: 3 - Collins, Cooper, Hilscher.)

CHIEF CLERK: 23 yeas, 29 nays, and 3 absent.

PRESIDENT EGAN: So the "nays" have it and the proposed amendment as amended has not been adopted. Mrs. Hermann.

HERMANN: I wish to submit an amendment which I have not written but is the same as Mr. Metcalf had except it says "a majority".

HELLENTHAL: I second the motion.

PRESIDENT EGAN: Mrs. Hermann offers the same amendment except that it would require a majority of the jurors rather than three-fourths. Mrs. Hermann moves the adoption of the proposed amendment. Mr. Hellenthal seconds the motion. The question is,

"Shall the proposed amendment as offered by Mrs. Hermann 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 "ayes" have it and the proposed amendment is ordered adopted.

CHIEF CLERK: I hope that I have it right. "The grand jury shall consist of at least 12 citizens, a majority of whom concurring may return a true bill."?

PRESIDENT EGAN: That is correct, Mr. Barr.

BARR: I have an amendment on the Secretary's desk which I would like to offer and there is also a copy on each delegates desk, Section 7.

PRESIDENT EGAN: The Chief Clerk will please read the proposed amendment as offered by Mr. Barr.

JOHNSON: Point of order. We have the original amendment before us.

PRESIDENT EGAN: We have the original amendment before us. Your point of order is well taken. The last amendment was actually an amendment to the amendment as proposed by Mrs. Hermann, so now we have the original amendment as amended before us for consideration. Mr. Sundborg.

SUNDBORG: Mr. President, I would like to ask the movers of this amendment to what they refer in the use of the word "this" in the fourth line, "but this shall not be applied". Do they refer to prosecution by information? Do they refer to everything that goes ahead of that or what is their intention? I think we can straighten it around in Style and Drafting if we know what they mean by it.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: I have analyzed it. I know they mean this section shall not apply to the armed forces. I ask unanimous consent that we insert the word "section" after the word "this".

PRESIDENT EGAN: Mr. Ralph Rivers asks unanimous consent that the word "section" be inserted after the word "this" on the fourth line of the proposed Section 7. Is there objection? Hearing no objection it is so ordered. Mr. Taylor.

TAYLOR: Mr. President, I think also then the two following words, "be applied", should be changed to "not apply".

R. RIVERS: That would be for Style and Drafting really. I don't care. "This section shall not be applied to the armed forces", is that not just as good a way as saying "it shall not

apply"?

TAYLOR: Why does it say "shall not apply" then?

PRESIDENT EGAN: We have adopted the proposed amendment as offered by Mr. Ralph Rivers. Is there further discussion?

R. RIVERS: I would like to offer an amendment on the last line of the amendment before us, that the word "may" be changed to "shall".

H. FISCHER: It has been.

PRESIDENT EGAN: If there is no further discussion Mr. Londborg.

LONDBORG: I believe if Mr. Barr would offer his amendment as an amendment to this amendment, it would be in order, and I think that whether that is included or not that will have a bearing on whether I vote for the amendment to Committee Proposal No. 7 or whether I vote to retain Committee Proposal No. 7.

PRESIDENT EGAN: Was it your desire to offer your proposed amendment as an amendment to the amendment, Mr. Barr?

BARR: It wasn't because I hesitate to interfere with anybody's amendment. I would like to offer it if this amendment we're reconsidering now, is adopted. However, I can see that there might be opposition to the amendment under consideration unless mine is also included. I feel that way.

PRESIDENT EGAN: You are free to offer your amendment as an amendment to this amendment if you so desire.

BARR: I might ask if any of the authors of this amendment would object to adding mine.

PRESIDENT EGAN: If they would object to your asking that it be added? Would you please read Mr. Barr's proposed amendment?

CHIEF CLERK: "At the end of Section 7, as amended, add the following paragraph: 'The power of grand juries to investigate and make recommendations concerning conditions detrimental to the public welfare or safety shall never be suspended.'"

BARR: That is an additional paragraph. If none of the authors of this amendment object, I would like to offer this as an amendment to the amendment. I so move.

PRESIDENT EGAN: Mr. Barr so moves.

BARR: I ask unanimous consent.

PRESIDENT EGAN: Mr. Barr asks unanimous consent. Is there objection?

BUCKALEW: I object.

JOHNSON: I second the motion.

R. RIVERS: Point of clarification. Does he intend to have it added on to what we already have?

PRESIDENT EGAN: That is right, added on to what we already have as the proposed amendment before us. Mr. Buckalew.

BUCKALEW: From my first impression and my prime objection to this particular amendment is that I think and feel certain it will open the door, for example, the grand jury might have under investigation the conduct of some particular public office, for example the governor, or any public official, the local tax collector. They don't have enough evidence to return an indictment but this would give them the power to blast him good and hard, and I think it would lead to all kinds of trouble, and I think it is an unheard of provision. The recommendation of the Committee provided that the grand jury could investigate, they could return indictments, but it certainly did not give them the privilege to more or less defame somebody if they did not have quite enough action for a bill. Under this they could discredit him completely, and he would have no way of answering. He might be able to come back and get the report of the grand jury stricken from the records of the court, but the damage would then be done. I think it is extremely dangerous because a citizen would not have any protection. Once it was published the only thing he could do would be to then come in and ask the court to strike portions of it. For that reason I would object to it.

R. RIVERS: The present province of our grand jury is to investigate public offices and institutions, not just to investigate anything involving the public welfare. I wonder if Mr. Barr is intending to try to preserve what we already have now, as the province of the grand jury. Would you consent to having it worded as "investigate public offices and institutions and make recommendations"?

BARR: No. I think that their power should be a little broader than that. I don't know what the powers are right now exactly, but I do know that they make recommendations concerning other things than public offices and officers, and under this provision it would only investigate and make recommendations concerning things that endangered public welfare's safety, and I believe that is what the grand jury is for is to protect the rights of its citizens. They do not necessarily have to defame any person or mention him by name. If the tax collector was using methods not acceptable to the public, they might make a

recommendation for a change in the system of tax collection, etc., and I think it would be their duty to do so.

PRESIDENT EGAN: Is there further discussion of the proposed amendment to the amendment? Mr. Hellenthal.

HELLENTHAL: Mr. President, my suggestion was that the word "detrimental" be stricken and the word "involving" be inserted because I agree with Mr. Barr that the investigatory power of a grand jury is extremely broad, not as narrow as Mr. Rivers contends. I think a grand jury can investigate anything, and it is true that there is little protection against what they call in the vernacular, a runaway grand jury, but in the history of the United States there have been few runaway grand juries, extremely few, and I think that the broad statement of power that Mr. Barr asked for is proper and healthy.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: Mr. President, I move and ask unanimous consent that the amendment to the amendment offered by Mr. Barr be amended by striking the words "detrimental to" in the second line and substituting therefore the word "involving".

RILEY: Mr. President, point of order. I believe I think Mr. Barr's submission on this was contingent upon no objection. There was objection raised, so it is not before us yet.

PRESIDENT EGAN: It is before us, it was moved and seconded, but the Chair was wondering if Mr. Barr was acceptable to that proposed amendment as suggested by Mr. Hellenthal. Are you, Mr. Barr?

BARR: Yes, Mr. President.

PRESIDENT EGAN: I was wondering if you might ask to withdraw it and have it inserted with the proposed words in it, if that is your wish. Then we will get around this amendment for the third or fourth time.

BARR: I ask permission to withdraw my amendment and submit another amendment in lieu thereof.

PRESIDENT EGAN: If there is no objection, the proposed amendment is ordered withdrawn.

BARR: I would like to submit the same amendment but using the word "involving" instead of "detrimental to" and I ask unanimous consent for its adoption.

BUCKALEW: I object.

BARR: I so move.

JOHNSON: I second the motion.

PRESIDENT EGAN: Mr. Barr moves and Mr. Johnson seconds the motion. If there is no further discussion, the question is, "Shall the proposed amendment as offered by Mr. Barr to the amendment as amended be adopted by the Convention?" All those in favor of the adoption of the proposed amendment to the amendment as amended will signify by saying "aye", all opposed by saying "no". The "ayes" have it and the proposed amendment is ordered adopted.

V. RIVERS: Point of order. If the "ayes" have it my ears deceive me.

PRESIDENT EGAN: If someone asks for a roll call, the Chair will call for one.

SWEENEY: I'll ask for a roll call, but I want to state something else. When you call for "ayes" or "nays" it is only necessary to say "aye" or "nay". It is not necessary to put the volume behind it.

JOHNSON: The Chair has already announced the result.

PRESIDENT EGAN: The Chair did announce the result, but if there is objection, that is the result, the Chair would like to state that in many instances half of the delegates do not vote at all. It seems to be the feeling of the Chair that many of the delegates sit quietly and let the rest of the delegates do the answering in one way or another. You have to make some noise. You can't whisper "yes" or "no", and it is true, it seems to the Chair, it is true that a few of the delegates make their wishes known in many cases and others just sit quietly and let others do the answering. Mr. Victor Rivers.

V. RIVERS: Mr. President, there is substantial doubt in my mind as to the outcome of that vote. I will have to ask for an appeal to the ruling of the Chair and ask for a roll call vote.

PRESIDENT EGAN: Mr. Victor Rivers appeals to the ruling of the Chair.

JOHNSON: Mr. President, I move that the ruling of the Chair be sustained.

PRESIDENT EGAN: The moment that a person on the floor appeals to the ruling of the Chair, it is then the proper manner for the Chair to say, "Shall the ruling of the Chair be sustained?" and then all other business ceases until that action is taken. The question is, "Shall the ruling of the Chair be sustained?" The Chief Clerk will call the roll.

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

Yeas: 44 - Armstrong, Awes, Barr, Boswell, Coghill, Cross, Davis, Emberg, V. Fischer, Gray, Harris, Hellenthal, Hermann, Hinckel, Hurley, Johnson, Kilcher, King, Knight, Lee, Londborg, McCutcheon, McLaughlin, McNealy, McNees, Marston, Metcalf, Nerland, Nolan, Nordale, Peratrovich, Poulsen, Reader, R. Rivers, Robertson, Rosswog, Stewart, Sundborg, Sweeney, Taylor, VanderLeest. Walsh, White, Wien.

Nays: 8 - Buckalew, Doogan, H. Fischer, Laws, Riley, V. Rivers, Smith, Mr. President.

Absent: 2 - Collins, Cooper, Hilscher.)

KILCHER: Point of order, Mr. President, I question the President's right to abstain without having given previous notice.

PRESIDENT EGAN: Well, the President will say "no" then.

CHIEF CLERK: 44 yeas, 8 nays, and 2 absent.

PRESIDENT EGAN: So the ruling of the Chair then has been sustained. Are there other amendments to Section 7? Mr. Sundborg.

SUNDBORG: Mr. President, my recollection is that we have not yet adopted the amendment. We have only just amended it.

PRESIDENT EGAN: On the amendment to the amendment that is correct, Mr. Sundborg.

ROBERTSON: I move the previous question.

PRESIDENT EGAN: Mr. Robertson moves the previous question. Do you ask unanimous consent?

ROBERTSON: Yes.

PRESIDENT EGAN: Unanimous consent is asked. Hearing no objection, the previous question is ordered. The question is, "Shall the proposed amendment to Section 7 as amended be adopted by the Convention?" All those in favor of the adoption of the proposed amendment as amended --

MARSTON: We will have to have that read I think.

PRESIDENT EGAN: The Chief Clerk may read the proposed amendment as amended.

(The Chief Clerk read the proposed amendment as amended.)

PRESIDENT EGAN: The question is, "Shall the proposed amendment as amended, as offered by Mr. Buckalew and other delegates, 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 "ayes have it and the proposed amendment as amended is ordered adopted by the Convention. Mr. Buckalew.

BUCKALEW: I turned around and noted a string of dignitaries had entered the assembly -- the Speaker of the House, Mr. Kay, Representative Plummer and Representative Johnson.

PRESIDENT EGAN: We are happy to have you with us Mr. Kay, Mr. Plummer and Mr. Johnson. (Applause) Are there other amendments to Section 7 of Committee Proposal No. 7? Mr. Victor Rivers.

V. RIVERS: I have one to Section 8.

PRESIDENT EGAN: The Chief Clerk will read the proposed amendment to Section 8.

CHIEF CLERK: Mr. Kilcher's amendment to Section 8, page 3, change --

KILCHER: Mr. President, I don't intend to move this amendment, pardon me.

PRESIDENT EGAN: The proposed amendment will be withdrawn. Is there any other amendment to Section 8, 9 or 10? Mr. Hellenthal?

HELLENTHAL: Yes, Mr. President, I move that following the first sentence of Section 10, the following sentence be inserted: "Wire tapping or obtaining unauthorized information by other technical means or devices is prohibited. Evidence obtained in violation of this section shall be inadmissible in the courts."

PRESIDENT EGAN: Do you have that in writing, Mr. Hellenthal?

HELLENTHAL: It is in the report of the Committee.

PRESIDENT EGAN: Does the Chief Clerk have the proposed amendment now? Would the Chief Clerk please read the proposed amendment.

CHIEF CLERK: "Following the first sentence of Section 10, insert" 'Wire tapping or obtaining unauthorized information by other technical means or devices is prohibited. Evidence obtained in violation of this section shall be inadmissible in the courts.'

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

HELLENTHAL: I move the adoption of the proposed amendment.

PRESIDENT EGAN: Mr. Hellenthal moves the adoption of the proposed amendment.

H. FISCHER: I second the motion.

PRESIDENT EGAN: The question is open for discussion. Mr. Doogan.

DOOGAN: I objected in the Committee and that is the reason that the minority report was written. I maintain that this amendment as it is written is a legislative matter rather than a constitutional matter. I think with the progress being made in the electronics, photography, etc., you preclude the good administration of justice by putting in an all-inclusive clause in the constitution such as this is. I believe that wire tapping should be controlled but I believe that there is a place that it should be used and that it should not be used. I believe that our administrative officials that we hire to administer our laws and protect us should have the right of at times using almost any device that they so choose in the apprehending of known criminals, known subversive people who are promulgating subversive action, etc., and I submit again that it is not a constitutional matter, it is a legislative matter.

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

HELLENTHAL: The objection that this is legislative can be made to every one of the 20 sections of the bill of rights. Every bit of it is legislative. There is no question about it. To appear here and classify that as legislative particularly in dealing with this section does not convince one that the matter is faulty. It is not a question of whether it is legislative or not, it is a question of stress. Now the reason that the Bill of Rights was first enacted by the founding fathers was that they felt that there were certain rights, legislative matters if you wish, upon which great stress should be placed. They had unhappy experiences with the colonists, and rather than leave these fundamental things that bothered them deeply, they saw fit to include them in the first 10 amendments to the United States Constitution. All were legislative if you please. So the test is not, "Is it legislative?" The test is, "Shall it be stressed?" In following the Bill of Rights some of us have adopted this test to guide us in determining what should be in the bill of rights today. And the test is this -- is it a right which a totalitarian state today would deny? Is it a practice current in the totalitarian states and abhorrent to free people? Applying that test, wire tapping is abhorrent to free peoples. It is a common practice in the totalitarian states and it should be outlawed and it should be stressed in the bill of rights. Now the United States Supreme Court by judicial decision has reached the conclusion that wire tapping is illegal. If the founding fathers had telephone wires, electronic devices, telegraph wires before them, which they did not, I am sure that they would have prohibited this unwarranted invasion of a free American's privacy. The Supreme Court, however, did it by interpretation. Now, it is like this matter we talked about

this morning about indictment and information and whether you should abolish the indictment. You can argue truthfully that in some instances, by keeping the indictment, criminals will escape punishment. On the other hand though, innocent people by abolishing the indictment might suffer, and it is equally true that by restricting the use of wire tapping and unauthorized eavesdropping, if you will, that some criminals will be benefited, but the greater good results from the prohibition, just like the greater good resulted from the retention this morning of the indictment, and for that reason you must weigh it. The lawyers and the law professors call these prophylactic rules, where the good must be balanced against the evil, and if you approach this thing fairly, analyze it fairly, consider it abhorrent to totalitarian practices that are prevalent today, I am sure that you will find that this prohibition will accomplish great good and will do great good for our democratic processes and our democratic form of government and that it deservedly has its place in a modern bill of rights.

PRESIDENT EGAN: Mr. McLaughlin.

MCLAUGHLIN: Mr. Chairman, I too find wire tapping as abhorrent as the distinguished delegate, Mr. Hellenthal. I also find murder and rape abhorrent, but we have not defined it, put it in the constitution and prescribed for its punishment. We have provided that we can protect this state by a well-organized militia when it's necessary. We have protected treasonable persons by setting up rules of evidence, limiting the type of evidence that can be introduced, and in this instance we have absolutely prohibited not only wire tapping as proposed by Mr. Hellenthal but obtaining of any unauthorized information by other technical means. If we embed this in our constitution with the worthiest of intent we may in fact strap the hands of the legislature and the law enforcement authorities. I find it abhorrent, but I believe as the Committee believes, this is a matter for the legislative action, not for us to be embedding in the constitution forever.

PRESIDENT EGAN: Mr. Metcalf.

METCALF: Mr. Chairman, I have an amendment I would like to make to Mr. Hellenthal's amendment.

PRESIDENT EGAN: Mr. Metcalf has an amendment to the proposed amendment.

V. RIVERS: I have an amendment that is along the same general lines, approaching it from a slightly different point of view. I would like to ask for a three-minute recess and ask unanimous consent.

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

RECESS

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

HELLENTHAL: Mr. President, during the recess we conferred with Mr. Victor Rivers and others, and we have submitted a different amendment which has been signed by Mr. McNealy, Reverend Armstrong and myself, all of whom concurred in the minority opinion with regard to wire tapping and which is also concurred in by Mr. Rivers who will present it, and I wish to withdraw the proposed amendment with the consent of my second.

PRESIDENT EGAN: You ask unanimous consent that the original amendment be withdrawn? Is there objection? Hearing no objection, it is so ordered and Mr. Hellenthal's original amendment is withdrawn. Mr. Victor Rivers.

V. RIVERS: Mr. President, I have submitted to the Clerk the amendment proposed by Mr. Hellenthal, and Mr. Armstrong and Mr. McNealy and myself.

PRESIDENT EGAN: The Chief Clerk will please read the proposed amendment as offered by Mr. Victor Rivers and other delegates.

CHIEF CLERK: "Section 11, page 4, line 12, at end of line 12 add the following: 'The right of privacy of the individual shall not be invaded by use of any electronic or other scientific transmitting, listening or sound recording device for the purpose of gathering incriminating evidence. Evidence so obtained shall not be admissible in judicial proceedings or legislative hearings.'"

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

V. RIVERS: Mr. President, I will move the adoption of the proposed amendment.

ARMSTRONG: I second the motion.

PRESIDENT EGAN: The question is open for discussion. Mr. White.

WHITE: May I ask a question of Mr. Rivers? Would you explain to me, Mr. Rivers, how this differs in any vital respect from the former amendment?

V. RIVERS: This differs in the respect that we are trying to avoid the invasion of the right of privacy. We have set up in here that a man shall be inviolate in his home, which is his castle. We have an amendment here which would not allow his rights of privacy be invaded at such times as he was conducting his private affairs, if he were sitting in his home talking

over his telephone or he was sending a private communication by voice. Now it seems to me we must protect somewhere along the line the right of privacy in this constitution. We certainly are entitled to enjoy that right of privacy within the boundaries of our home or where we would be subject to some listening device, some recording device which might be put there, part of which might be taken out of its context and used against us where if the whole conversation were heard, it would not be so. It seems to me that we are failing to fulfill one of the obligations to protect our citizens if we do not protect their privacy in the matter of gathering evidence in that manner for the purpose of using it as incriminating evidence. I've given this proposal a good deal of thought and it seems to me the more we progress in the matter of scientific devices the less privacy the individual has. I would not venture to say it will not be too long before we have listening and soundscribing devices which will be of a nature that they will transcribe our thoughts before we even speak them. Unless science is a lot slower than I think it is, that will not be too far in the distant future. It seems that this thing, with the advances of science, it is absolutely essential to the protection of the right of privacy of the individual in the matter of obtaining and submitting against him incriminating evidence which might not be in its entirety or might not be in its context.

PRESIDENT EGAN: Mr. Davis.

DAVIS: Mr. President, I am in favor of an amendment along the lines we have been discussing but I am sorry to say I am not able to pass on the amendment offered by Mr. Rivers, was long as it is, without seeing the thing. I don't know whether it meets what I want or not.

PRESIDENT EGAN: Mr. Armstrong.

ARMSTRONG: Mr. President, I believe that we are in a position now of talking about something that goes beyond law. I think we are talking about a moral factor. It has been said here this afternoon that we do not know what science will bring to our civilization, and that I believe. I concur in that, we have no dream of what we have in the future. This may not spell out what we need for the future, but it will place here in our declaration of rights our intent that we will not be invaded in our homes or in other places where we might meet to discuss political activities, to discuss the rights of our bill and declaration. I have read the statements of district attorneys and lawyers against wire tapping. I see their point. They believe that we are making it difficult for them to receive information and that is just what we are trying to do, make it difficult to the point where we still possess our rights and we are not surrendering them. I believe this is within the field of the moral obligations we have to one another and, if this

amendment does not spell this out intrinsically, I think we should work it out to the point where we do have it in the declaration, and, for lack of any better amendment at this point, I certainly will support this amendment.

PRESIDENT EGAN: Mr. McLaughlin.

MCLAUGHLIN: This amendment is merely a recurrence of the original proposal which it was substituted for. If it is said that we don't know what science will bring, it is my suggestion then, under those circumstances, let's not say anything about it and leave it to the legislature because they will certainly find out what has been created at the time they sit. They can rectify the evil if it exists at that time. As I say, I am morally opposed to wire tapping, too. What have we done now? In substance we have provided that under no circumstances will the admission of wire tapping through electronic devices done in a person's home be admitted as evidence in any court. That in substance means that Alger Hiss or Gerhardt Eisler is immune, now, tomorrow and the next day. As a matter of fact, in Section 14 we have permitted the writ of habeas corpus to be suspended in cases of rebellion, invasion or imminent peril. In the case of wire tapping it is always prohibitive. Even at a treason trial it would be inadmissible. Stress has been made here today that we certainly have protected the treasonable, because we provided in Section 16 that, "No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court." But we consider treason a heinous crime, yet we refuse to make the exception and say in substance that wire tapping of treasonable conversations done at home will be admissible evidence in the courts. I stress the point that wire tapping is abhorrent but we can go on and amend and amend and amend and make exceptions and the legislature's hands will be tied because we in our wisdom, not knowing what will take place in electronic developments, still are insisting that this thing shall be perpetuated in the constitution. I merely reiterate there are many abhorrent things, but there is no use or sense going on record in the constitution against them. It is something that should be left to the legislature. If it is so abhorrent to all men, then certainly the legislature can take care of it and they should.

PRESIDENT EGAN: Mr. White.

WHITE: I think Mr. McLaughlin has presented my ideas far more ably than I, and I certainly concur in his point of view. It has been said here for the second time today that the test should be applied that if anything that occurs within a totalitarian state should be prohibited here. It sounds good on the surface but in connection with this, let's consider the totalitarian states allow the use of side arms, we don't deny our law enforcement officers the use of side arms merely because they are

permitted in totalitarian states. That argument holds no weight with me. It is contended that the use of eavesdropping methods is a violation of rights which indeed it is, looked at in one way, but I would submit the right of the people to be protected against particular crimes, if you will, is a superior right and I would name kidnapping, extortion, sabotage, overthrow of the government in that category. I can visualize a day might come when a child of mine has been kidnapped and the only way to get at the people who have perpetrated the crime would be to put a tap on my phone and wait until they call in. All these things are abhorrent to me but I think it would be far more sensible to us to leave it to the legislature to permit the use of such devices under strict control, under strictly outlined circumstances just as the Department of Justice has done according to my understanding since 1931, without exception, under every administration.

PRESIDENT EGAN: Mr. Davis.

DAVIS: Section 11 as it is presently written provides that the right of the people be secure in their houses and homes. They shall be protected against unreasonable searches and seizures, and it provides as to how searches and seizures may be made under certain circumstances. Now I submit that it is not any less a violation of a person's rights to make a search and seizure by some sort of an electronic device or other device than it is by physically searching his home or his person. I feel about this exactly as I did this morning about the matter of indictment. I am not trying to protect the saboteur or the subversive or somebody that may be a kidnapper, but the problem is that we have got to make a distinction between the saboteur and other people of that class and somebody that somebody may think is a saboteur or a subversive or a kidnapper and certainly, unless our government officials are prohibited against using the devices which we now have, we don't need to worry about the devices yet to come, the devices we now have, we will have no privacy whatsoever, and in my opinion, unless either by constitution or by legislative enactment we have some sort of prohibition on the thing we are talking about, we have taken the first step toward a police state. Now as to whether it should be in the constitution or whether it should be by legislative enactment is important. If I knew that the legislature were going to enact something of this kind I would certainly leave it out of the constitution. I do not so know it and I believe that it is perfectly proper and that we should have a provision of this kind in the constitution, then there cannot be any question of some government official deciding that he wants to find out what so and so may be doing in his own home. The only question I raised awhile ago on this thing was I am not sure that the language as written goes far enough. It seems from the discussion here that we are talking about something in a person's home. Now, it is my understanding that presently we have electronic devices which doesn't invade a

person's home at all physically, but from a considerable distance can find out exactly what is said in a person's home without using the telephone or anything else, present electronic devices. I think we would be derelict in our duty here if we did not prohibit that sort of thing and prohibit use of evidence so gathered in our courts.

PRESIDENT EGAN: Mr. Johnson.

JOHNSON: I am inclined to think that Mr. Davis's argument is sound except it raises in my mind this question: Mr. Hellenthal has also pointed out that the right to be secure in a person's privacy has been protected by the United States Constitution, and that the Supreme Court of the United States under the Fourth Amendment has held that evidence obtained by wire tapping is not admissible in courts. Now, to follow out Mr. Davis's idea that we should guard against any future electronic device, it seems to me that if the Supreme Court of the United States has already ruled that evidence obtained by an electronic device, and I assume that wire tapping is in that category, then we have nothing to fear from the language of the section as it now stands. Another thing that occurs to me, and with respect to electronic devices, and that is that this matter of a radar device which is now used by the Territorial Highway Police to assist in the capture of speeders and reckless drivers. That device was adopted from the State of Washington. I believe the Supreme Court of the State of Washington has held that evidence obtained by the use of that device is valid and admissible in their courts, and yet, if we put a prohibition of that as specific as this amendment seeks to do in our constitution, what about this radar device for capturing speeders? Would such evidence still be admissible? It seems to me that a radar device of that kind is clearly within a definition of an electronic device. I think we would do nothing but hamstring law enforcement if we should adopt such an amendment.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: The emphasis on this amendment as drafted is to protect against the invasion of the right of privacy, and it says that that right of privacy shall not be invaded by the use of electronic devices or other mechanical or such devices. If, in the instance that Mr. White gave, he consented to the tapping of his own telephone wire in cooperation with the police and the kidnapper phoned in, that would not be the invasion of anybody's right of privacy because he would be consenting to it. What I am getting at is that the police people and the enforcement authorities could, under this amendment, utilize all of these modern devices as long as they did not infringe or invade a person's right of privacy. I don't think that protecting the right of privacy would prevent the use of radar on a highway. This is flexible enough and has enough

interpretation and is based so solely on the invasion of the right of privacy that any use that could be made of any of these devices without invading the right of privacy could still be utilized, and then, as to Mr. Johnson's point, the Supreme Court is making the decision under Federal law and procedure and is telling the Federal enforcement authorities what it cannot do, but the Supreme Court is not prescribing for the states who may wish to allow wire tapping.

PRESIDENT EGAN: Mr. Doogan.

DOOGAN: We started out here at the Convention when we started adopting these amendments there was a high distrust of the legislature. We finally seem to have got it down to the point where we are going to begin to trust the future legislatures even if we have not felt we could trust the ones in the past. We are now at the point almost where we started the Convention, of not trusting our administrative and police officials, district attorneys, etc. I can't quite figure it out because it says here in Section 11, "The right of the people to be secure in their persons, houses", and we have preserved that right, and in being secure in your person and in your house is only insofar as you live up to the law. When you try to insert an amendment such as is being proposed, wire tapping if you want to call it that, then you are preserving the right to be secure in anything that you might choose to do, even in breaking the law. To go a little further, we are trying to provide that the people shall be safe and inviolate from everything. Again, you have taken away their right to be secure if you adopt this amendment by permitting subversives to do anything that they want, and when a criminal does something it is usually against one person, but when a person engaged in subversive activity does something it is against all of us. Again, I feel that the legislature is quite capable, once this particular problem is made known to them, of taking any necessary action to allow such controlled wire tapping, electronic devices, etc., is necessary, and I don't think they are going to put it in a position that they can come into your house and listen to you discuss any matter you might choose to discuss with your wife or family. I say again, it is a legislative matter that, if we put anything of this sort in the constitution, then we have forever eliminated, until the constitution is amended, the right of our enforcement officials to protect us in our right of person, house, property and in our right to be free citizens.

PRESIDENT EGAN: Mr. Barr.

BARR: I would like to point out on the fallacy of one statement made by my good friend, Ralph Rivers. In speaking of the case where Mr. White's child might be kidnapped, and Mr. White would allow the police to come in and tap his phone, and then he said there would then be no question of invasion of privacy

since they came with the consent of Mr. White, but that is not quite right. The privacy of the kidnapper would be assailed certainly. This amendment, if it is passed, why it will make such a situation perfectly safe for kidnappers. Now this amendment as it reads, to me it reads exactly like any law enacted by the legislature and it might make a pretty good law, but it has no place in the constitution. In the constitution it will stick out like a sore thumb.

METCALF: Mr. Chairman, I have an amendment to submit.

PRESIDENT EGAN: If there is no objection, you may submit your proposed amendment to the amendment. Mr. Sundborg.

SUNDBORG: I am advised that the clock is incorrect and that the hour of 5:40 has arrived, and, subject to committee announcements, I move and ask unanimous consent that we recess until 9 a.m. tomorrow.

PRESIDENT EGAN: Are there committee announcements before we put this before the Convention? Mr. Victor Fischer.

V. FISCHER: Just a request that the amendment as proposed by Mr. Rivers be mimeographed by tomorrow morning.

PRESIDENT EGAN: Will the Chief Clerk please see to that? The proposed amendment to the amendment, Mr. Metcalf, will be placed before us at that time. Mr. Coghill.

COGHILL: Mr. President, in line with the ruling of the committee chairmen that we have no evening session meetings until Monday, seeing that there is no committee meeting announcement for tonight, I move that we adjourn until 8 o'clock this evening.

PRESIDENT EGAN: Are there any committee announcements? Mr. Coghill, the motion to adjourn was before us. It is only out of the courtesy of Mr. Sundborg that the Chair has been allowed to ask for these committee announcements and ask if there is anything else to come before the Convention. The Chair will have to hold that Mr. Sundborg's request for adjournment until 9 a.m. will have to be voted on first.

SUNDBORG: I so move.

PRESIDENT EGAN: Mr. Sundborg so moves.

V. RIVERS: I second the motion.

PRESIDENT EGAN: The question is, "Shall the Convention stand adjourned until 9 a.m. tomorrow? All those in favor of adjourning until 9 a.m. tomorrow will signify by saying "aye", all opposed by saying "no". The "ayes" have it and the Convention stands adjourned until 9 a.m.