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**Transcripts of Hearings
Held by the
Joint Committee on
the Constitutional Convention
1980**

TRANSCRIPTS OF HEARINGS
held by
JOINT COMMITTEE ON
CONSTITUTIONAL CONVENTION COMMITTEE

Prepared and edited by:

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January 10, 1981

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INTRODUCTION

FORWARD:

In 1982, the electorate of the State of Alaska will be faced with the question of whether or not to hold a constitutional convention.

The Legislature has established a Joint Interim Committee on the Constitutional Convention in order to prepare materials which will be useful whether the electorate votes to have a convention or not.

There has been some question relating to the establishment of the committee by those who feel it is "too early to plan for a convention which we may not even have." I can only answer that if we fail now to deal with the uncertainties of the convention method, we could be undermining the success of a convention before it even begins. If we wait until the voters approve of a convention before undertaking proper planning, we would be running the enormous risks that procedures for the convention would have to be developed in a time of divisive controversy and confusion over pertinent constitutional issues and with a restricted time frame.

It is far more prudent to confront the problem openly and to supply safeguards and general rules in advance. In addition

to being good governmental technique, a forthright approach to the convention methods seem far more likely to yield beneficial results than to delay to the last moment.

For the construction and operation of a constitution convention there can be drawn no simple blueprint for success. But the process can be substantially simplified by using the experience of prior similar activities in other states and by meeting with persons with prior experiences in constitutional convention endeavors.

To this end, the committee authorized me to meet with recognized authorities on constitutional revision in the hope that the information gleaned from their vast experience will pave the way for a successful constitutional convention in Alaska, should the voters authorize it in the 1982 election.

The following edited transcripts are a result of that trip. Each transcript is preceded by a summary of the meeting with the highlights and salient information set forth.

For the purists who enjoy listening to "ums" and "you knows", the original tapes are available from the committee staff.

Finally, I would like to thank the National Municipal League and its Director, Dr. William Cassella, Jr., for assisting the committee, providing facilities, and arranging for the various meetings. The League's contribution to the project is greatly appreciated.

A very special thanks to Ms. Landa Krossa, Secretary to the Joint Committee on Constitutional Convention, who spent untold hours assisting with and producing the transcripts.

Guy A. Van Doren,
Administrative Assistant
Joint Committee on the
Constitutional Convention

January 1981

MEETING IN NEW YORK

with

MR. BILL CASSELLA
MR. JOHN BEBOUT
MR. GEORGE BRADEN
MR. FRANK GRAD
MR. GUY A. VAN DOREN

November 7, 1980

NEW YORK

The following is a summary of a meeting held in New York City at the headquarters of the National Municipal League. The League, at the request of the administrative assistant to the Joint Committee on the Constitutional Convention, Mr. Guy A. Van Doren, arranged the meeting and invited recognized experts in the field of constitutional revision, constitutional issues and constitutional conventions.

Attending the meeting were:

1. Mr. Bill Cassella, Jr., Executive Director, National Municipal League and participant in the Alaska Constitutional Review Conference held in Fairbanks in 1976.
2. Mr. John Bebout who has been associated with revision efforts in New Jersey and was a major consultant to the Alaska Convention in 1955-56.
3. Mr. George Braden, Assistant Attorney General, State of New York, who has been involved in revision efforts in Connecticut, New York, Illinois and Texas, and has authored and co-authored books on the Illinois and Texas constitutions.

4. Dr. Frank Grad, Director, Legislative Drafting Research Fund, Columbia University. Dr. Grad has been responsible for the "Funds" publication, including the Index Digest and has done considerable research and writing on the form and functions of state constitutions.

5. Mr. Guy A. Van Doren, Administrative Assistant to the Joint Committee on the Alaska Constitution. Mr. Van Doren has been with the legislature for eleven years, a consultant and staff member to the Joint Committee and has written two articles for the committee entitled State Constitutional Conventions in the '70's and Constitutional Amendments Introduced in the Alaska Legislature; 1960 - 1979. Mr. Van Doren also edited the New York transcripts.

January 31, 1981

CONVENTION - YES OR NO

All persons attending the New York meeting felt Alaska has one of the best and shortest constitutions in the United States and that it should only be changed by the amendment process rather than opening up the total document for revision by calling a constitutional convention.

Comments:

- 1 . Why bother with a convention when you don't need one.
2. Do not have one just because special interest groups are clamoring to have their issue included in the constitution.
3. The only reason there should be a convention when a good one already exists, is if there is a serious scandal or if provisions in the constitution are so loose or so stringent that the function of government is thwarted.
4. All issues identified by your committee thus far can and should be handled by amendment.
5. Find out what issues are troubling people either by survey or public hearings and attempt to address those concerns by amendment.

6. Change the voting period on whether or not to call a convention from ten to twenty years, or eliminate the requirement totally and provide that a convention can be called by the people at anytime through the initiative procedure.

In states which have had fairly good constitutions and have called a convention, the resulting documents have been wordier, and less fundamental than the original, with unnecessary language and provisions usually advocated by special interest groups. States cited include Hawaii, New Jersey and Connecticut.

PUBLIC HEARINGS

1. Find out what the concerns of the people are through public hearings and attempt to solve them through the amendment process.
2. In public hearings try not to give people the impression that the hearings are in preparation for a convention, or that the committee is trying to prevent or discourage the calling of a convention. Be neutral!
3. Try to inform the public on what should and should not be in a constitution.

VOTE PREPARATION

1. Make sure the people know as much about the constitution and a constitutional convention before the 1982 vote. This can be accomplished through the media, brochures, citizen's guide to the Alaska Constitution and public information meetings.
2. Make summaries and papers available from the 1976 reunion of the delegates from the 1955-56 convention.

ELECTION OF DELEGATES

1. If possible try to structure the election so that there are not too many people running for delegates to the convention through:
 - (a) Nominating petition or process;
 - (b) Runoff if there is not a clear majority for any one delegate;
 - (c) Primary election first;
2. Decide whether the election should be a partisan or nonpartisan election.
3. If nominating petition is going to be used, decide the procedures.
4. Provide a way to fill a vacancy or to choose a delegate if no one runs for a specific seat.

MATERIALS FOR DELEGATES

1. Solicit "Citizen's Papers" from Alaska and outside.
2. Citizen's Guide to Alaska Constitution.
3. Papers on Alaska Constitutional history.
4. Summary papers on original constitutional convention.
5. Papers on constitutional convention reunion (1976).
6. Papers on the results of surveys and public meetings.
7. Annotated version of Alaska constitution.
8. Style and drafting manual for delegates and staff.
9. Temporary rules developed.
10. Special orientation session for delegates, press and staff prior to convening the convention.

THE CONVENTION

1. Have staff resumes available.
2. Have temporary rules available for review and formulation of permanent rules.
3. Have physical location ready to go with all facilities operational.
4. Recommendations were that the convention be held again at the University of Alaska if possible.
5. Seating should be alphabetical or by lot-drawing. not by regions or party affiliation.
6. Keep the number of standing committees small, only those which are necessary.
7. Do not have a delegate on too many committees.
8. Allow plenty of time between election of delegates and the convening of the convention.

9. Establish a leadership committee consisting of officers and committee chairmen:
 - (a) This committee or the President and Vice-President(s) should constitute a strict agenda committee;
 - (b) The leadership should meet regularly to discuss what each committee is doing so everyone knows what is happening in the other committees.
10. Style and drafting committee should be one of the first committees established and should be small with a good experienced constitutional drafter as either a consultant or staff to the committee:
 - (a) Do not write articles in committee or on the floor;
 - (b) Constitutional drafting is very important and different than legislative drafting . . . more permanent.
11. Provide for either a recess during the convention or committee hearings away from the convention site.

ISSUES

1. You do the people of the state a service if you subtract from the constitution rather than add to it.
2. Alaska may wish to work on the "Home Rule" article.
3. May wish to look at "water rights" section.
4. May want to look into calling a convention by initiative and eliminate the necessity to vote every 10 years provision.
5. All consultants stressed that one very good thing in the constitution was the lack of allocation of funds except in the case of the permanent fund.

MISCELLANEOUS

1. Tight control over the agenda must be kept by the convention leadership, to keep things from going off the track.
2. If there is a convention, perhaps the delegates would be interested in new innovative ideas in the revised constitution (i.e. a new way of doing things.)
3. The people stressed that the document has undergone only a few substantive changes since its inception. Because of that, it is viewed as a very good constitution.

New York Meeting

November 7, 1980

Present: Guy A. Van Doren,
Administrative Assistant
Constitutional Convention Committee

Frank Gard

New York

Bill Cassella, Executive Director
National Municipal League

George Braden, Attorney General
New York Attorney General's Office

John Bebout (Involved with constitutional
revision for a number of years, and who was
a consultant to the original constitutional
convention in the State of Alaska).
Massachusetts

Van Doren: I feel quite honored to be here before you today. I have read almost all the material that you have written and feel like I know your ideas and know your views on constitutional revision and constitutional subjects and the things that have happened with constitutional conventions in other states. One of the main reasons that I am making this trip is in order for myself and the committee to solicit ideas and basically pick your brains so that if we do have a constitutional convention in the State of Alaska, if the voters approve of it in 1982, we will have a little bit of a head start and we will be able to move the convention along and hopefully have it as successful as the one in 1955. I was asked a question prior to this trip about why we needed to go outside for the information of this type, and my answer was, and I feel it is quite justified, especially after spending quite a bit of time with John last

night, is that it's good to get the point of view of somebody from outside the state. We know what is going on in our state, we live with it all the time, but you people have not only had experience of working with constitutional conventions and what makes a good and successful one, and what makes one that doesn't work. I think getting the perspective of somebody from outside the area will do a lot to help us. I think probably we will just have a sort of an informal format at this meeting. I would like you to express your views and your feelings and each of you kick your ideas around, ask me any questions you want, and we'll see what happens. I will answer questions as best I can, but I'm really not here to have you listen to me talk, I am here to listen to you talk. As you are probably well aware from the correspondence that I had with you, it was at the suggestion of John Bebout and Bill that we are together as a group. I am going to meet some of you people individually, but it was suggested that we get together and kind of kick around some of the subjects that I sent you in that little paper of questions. We are looking for information and help in case that we do have a constitutional convention after 1982 if the people vote on it. We don't know how it is going to go. There are some special interest groups that feel they have not been adequately taken care of by the legislature and feel that the only way they can get some of the changes that they want is through a constitutional convention. There is some pressure mounting in the state by some of these groups to have a convention called and I'm sure they are going to be very active in

the next couple of years. We don't know at this time how the people are going to react. This committee was set up to prepare for a convention in case we are going to have one. Basically, what I am doing, as I was telling John Bebout last night, is kind of retracing a little bit the steps that Tom Stewart took prior to the 1955 convention, going around and meeting the people in the country to get their ideas and views of our constitution and the changes that you people might think are necessary or could improve the constitution, ideas on how to conduct the convention, how to prepare for it and that type of thing. Of course there is a wealth of material that is available now in printed form that wasn't available in 1955, which doesn't necessitate traveling as extensively and meeting with as many people as Judge Stewart did, but the committee felt that it was desirable to meet with you people who are recognized and have been active in revision all of these years.

John Bebout: As I told Guy, one of the main reasons why there is so much material on constitutional conventions is because of the Alaska convention. The whole body of material that the league has put out on constitutional studies as well as the compilation of state constitutional materials was funded by the Columbia Research Fund and the Carnegie Foundation and is the result of the frustration we felt in planning for the Alaska constitutional convention. There was a lack of ready materials which we could easily get at and so we came back

and put together some materials, received a foundation grant and developed the materials which you have been studying. That's how it happened.

It is only fitting that Alaska should now benefit from this material because its convention was responsible for the birth of this idea and the need for this kind of material.

Van Doren: Relating to the materials that I sent to you several months ago, one of the reasons that I sent them out was in order that you familiarize yourself with what has taken place. I included the constitution so you could look at that, and also I believe that Bill Cassella had sent you out that little question sheet, which although informal, was prepared for the committee, of the things that we were going to do. Bill said "Well do you have an idea of what your're looking for", and so I just went ahead and sent those to you so that you would have an idea of some of the things that we are looking into, and I guess with that, we could run down the questions, or I would welcome any comments. It is totally informal, so we can just have at it.

John Bebout: Since we do have limited time, it seems to me that we ought to focus in on what you might describe as a big question first, rather than getting into details on whether we think that the provision on grand juries could be

improved or excised or something of that sort. I guess one question would be, do you need a constitutional convention, and in any case, whether you think you need one or you don't, what kind of preparation ought to be made so as to get a more informed vote as possible in 1982 on the call of the convention. That may be some question of substance, naturally.

Van Doren: Well, I think I'll just let you, if you would like, go ahead and maybe tell me what you think on that subject. I am here to listen to you as far as what you think might be beneficial to Alaska.

John Bebout: Since we didn't talk to the tape recorder at the restaurant last evening, maybe I might just recap briefly what I said on these issues. Number 1, as I just said to George Braden, paraphrasing those remarks, I don't think Alaska needs a constitutional convention at this time, and if I were in Alaska and were voting or were active, I would be trying to educate the public on the proposition that you don't need a convention at this point, but that any improvements that people generally ought to make in the constitution can readily be made, in my judgment, by the amendment process, whereas a convention could well open one of the best state constitutions up to considerable degradation in substance and of character.

George Braden: Let me give an example of the Connecticut constitution. The Connecticut constitution, except for the one man one vote problem, pre one man one vote, there is really nothing wrong with the Connecticut constitution. I mean, I don't quite agree on what I consider minor details, such as an election of the attorney general.

John Bebout: The election of judges by the legislature.

George Braden: No, it's not the election, it's confirmation. The governor appointed, but they had a strange technique because of the gerrymandered house. The house was always Republican and the senate was always Democratic. So they decided that the governor could choose which house, in terms of judicial appointments. This is not in the constitution, I don't think it was in the constitution. I think that it's just the statute must have said that he shall appoint subject to confirmation and it was set up that way so the governor could always get his own appointees confirmed by the same party that he belonged to but otherwise, it was an extremely good constitution. But in 1965, they had a constitutional convention to take care of the redistricting problem because they did have a terribly gerrymandered house of representatives and the senate was subject to 10 year redistricting but nothing even happened because the two parties always controlled separate houses, whenever it came

up for a vote. So they had a convention and this was the primary reason. The convention, the provision for setting up of the convention was agreed by both parties, strange thing. Parties work together in strange ways, they rigged it so that there would be an even number of delegates, one half of them Republican and one half Democrat. Literally, it was just set up that way. The first thing they did was to adopt the rule of the people that anything done by the convention in the way of changing the constitution had to be approved by a two thirds vote, which was a device to make sure that everything was done and the parties agreed on. One of my very good friends who was a delegate told me that this was the most valuable thing, because it kept all of the special interest nonsense out. There was no way that any special interest groups would prevail. All special interest groups tend to want to use the constitution for what is statutory. There could be an exception or two, according on how you define special interest groups, but that is the general problem. This is one way that you could rig the convention to be sure to protect yourself against that problem, and this is a problem that arises only when you start with a constitution that is pretty good. If you have a lousy constitution that is already filled with all the special interest stuff, there is nothing you can do about it, try to get it out, and you can't use the two thirds vote that way, so.

John Bebout: We had a somewhat similar problem in New Jersey. We had a short constitution. There was nothing, no matter, that was dealt with which was inappropriate for a constitution, so the trouble was that the structure of the government was very badly devised. And as we developed the case for a constitutional convention, we kept harping on the proposition that by the very virtue that the constitution was short that it was very good. We didn't talk in terms of special interest in those days but we do now, but this is partly what we meant. We didn't rig the convention quite the way they did in Connecticut, but there was a bipartisan agreement between the two parties, the leaders of the two parties which achieved a rough division among the delegates. There was a couple of county organizations on both sides that didn't play ball, but certainly it evened out, and incidentally in doing this we were following an 1844 precedent. This kept either party from running away with it, as the republican party had in the legislatively called convention of 1943 or 1944. We produced almost the same constitution that came out of the convention in 1947, but party organization tilted, and people turned it down, where, as apparently, they accepted the 1947 constitution by an overwhelming vote.

Van Doren: In the New Jersey convention, were the delegates selected on partisan or bipartisan?

John Bebout: They were nominated by the party organization.

Frank Gard: Whether you go ahead with anything of this kind, my comments start off with saying that I don't know enough about the Alaska situation to ask the real sharp questions one should ask, but I'll try. It seems to me that anything that moves in the direction of a new constitution ought to consider very carefully what the local situation is and from my own general opinion of the constitution, I would say that although the State of Alaska has some verbals in it here and there, on the whole the Alaska constitution is one of the better constitutions that we see in the United States, and it seems to me that unless there are some specific problems with the constitution that need to be resolved, the constitutional convention is in many respects a very expensive, time consuming and to some extent causes a disturbing event. In other words, it does disrupt the normal political processes. It suffers for a short period of time the nice question of who's doing what. There are certain things that ought not to be handled by the legislature, but there is a question of whether they are properly before the constitutional convention, and there is a kind of interface with many of the people in the constitutional convention and the legislature to change, basically, specific points which are raised in a constitution committee. I would, my general choice is that I don't see that any kind of a setting of this sort would help. Why bother with a convention if you

don't need to. Now, the question arises of course, if there are problems with the present constitution which in some way stops you from doing what you think you ought to do or you have to do, or there are things you cannot do because of constitutional obstacles, well then, you've got to remove those obstacles, but whether one ought to undertake the rather substantial effort, costly, time consuming, energy depleting, of a constitutional convention unless there is a very real need for it, I just plain don't know. I would think that unless there is such a need, you feel, on the political side, you might simply say that you are getting into this at a time when there are substantial changes in the duration of your politics I suppose, and one thing I would be very leary about is to get some of these directions in some way frozen into the constitution. That kind of stuff can best be taken care of by legislation and the temptation to in some way freeze certain political directions of the constitution may become almost irresistible, and so from that point of view, too, unless there is some really compelling reason to go into a constitutional convention, I see no reason on the face of the Alaska constitution to do so. My first question if I were asked to serve as a consultant to the convention, or the commission, or what have you, that's neither here nor there, my first question is what are you trying to accomplish? Where are the present problems in your system that you need to resolve by constitutional convention? The next question would be, supposing there are some problems, obvious, significant, specific, and

isolated, so that it would be possible to manage them by way of a constitutional amendment rather than by getting into the rather massive and difficult and substantial effort of a convention. Your constitution has rather liberal amendments, unlike some others, where you have kinipsion fits before you can change anything, and that being the case, while obviously you have to, you are under the obligation under the constitution to present the question to the people from time to time, unless there is some compelling need to go ahead, I don't know, it's simply just a question of not knowing the territory. I'd almost like you to tell me first what is ailing you at the present time.

Van Doren: Just to answer quickly, really nothing. Well, I won't say that. There are, we had talked about this a little bit earlier, there are special interest groups that feel that they have not had the type of satisfaction that they believe they deserve in trying to get constitutional amendments through the legislature. The other gentlemen here have received papers from me. We have some issues that have been presented thirteen - fifteen times over the period since statehood. Of course, as you mentioned, some of the times are changing, and some of the special interest would like to see changes in the constitution, and notwithstanding all of that, we do have to present the question before the people in 1982. But I think the major push toward holding a constitutional convention will come from various interest groups that would like to see changes that they

are concerned with, that they have not been able to convince the legislature that these things should be part of the fundamental law of the land. I think they are the ones that will be looking toward having a constitutional convention.

Frank Grad: You are given the classical reason not to have one. Because that is precisely what you want to keep out of the documents, some particular special interest concerns and strongholds, and if you can't get them through the legislature, that to me is a very good reason not to have another constitutional convention.

George Braden: It seems to me in the process of thinking about and educating yourselves on the question of whether you want a convention or not, you want to go back and look at some of the older states. Texas is a pretty good example as any, New York is another good one, that have been changed either by convention or by the amendment process or both. I have had to recognize most special interests in one way or another, and the more you recognize them, the more they have to be recognized, and re-recognized. Everybody likes to be, and generally is, mentioned in the constitution, but not everybody is recognized equally. And once you get a constitution like the Texas constitution, it becomes inordinately hard to unstuff it. It becomes impossible to do by amendment, and I was down in Texas recently, it was almost impossible

to do it, at least it takes an awful long time by convention.

Frank Grad: One aspect of this which you see and I find particularly difficult, let's assume that you get a vote and the vote of the people is go through a convention, and then what happens is that all of these special interests are going to get into the constitution. The first thing that happens in forming a convention is that the people in the convention are going to demand that there are special committees on any number of these issues, and that is a very difficult part to resist. Why not have a committee on a particular kind of interest area? The next thing you know is, who is your committee? That particular segment of learning or governmental concerns, inevitably gets into the constitution. I can predict within a number of pages how long the constitution is going to be, depending on the number of committees in the convention. You get those special interest groups tied into a particular committee, you can bet your bottom dollar that that's going in the constitutional document, one way or the other, because each convention committee must get its particular thing into the constitution.

George Braden: That was one reason why PAS sternly advised Alaska when it set up its convention, to keep the number of committees down, if you didn't, each committee felt it was a major subject appropriate for a constitution. We did the

same thing in the Texas convention, and the Illinois convention, so if you are thinking of the structure of the convention, the committee structure is item number 1 on the agenda. This was agreed in Michigan, so this has been learned, you see, and pretty widely accepted as true. Alaska helped set the pace for a modern convention.

Frank Grad: This thing is so difficult to resist because when you start some special interest group, you hope to satisfy them at least half way by giving them their own committee, but that's a major commitment. That is, it seems to be so petty, not to let them have their own committee on whatever it wants. Well alright, you know now that you have already made the decision to put their special thing in the constitution.

George Braden: The 1938 constitutional convention in New York was of course held during remedial days, public housing was a great issue, and public housing had to be recognized in the New York constitution, and so they had to develop a committee and they introduced the housing article which was as long as any good constitution ought to be all by itself. It's a nuisance and was not necessary. They were under the illusion, I guess, that somehow public housing had to be authorized under the constitution, while actually the housing article in the New York constitution

isn't a housing article at all, it's just an article which is very complicated.

Frank Grad: The constitution is probably, in our existence, the original P.R. document, in other words, what you are saying to the people is to consider which of these values are important. You start off with the bill of rights, and then you cause anything else which you think is important on the constitution, that's how you get it. It is a P.R. document, you get anything which you think important in the constitution, the substantial statements on, you know, the obligation of the state to provide for the public health. You don't need it, but it's nice, providing for health and safety of the people.

John Bebout: Well, the consultants at the Alaska convention protested against that. We said, you don't need that, it's implied that the state will take care of the welfare of the people, but these are in the order of "good things." The delegates thought they ought to recognize it. Fortunately, they didn't tie it down with specifics.

George Braden: Let's go back to the first proposition we started out, whether we should have a constitutional convention. I would say we all agree that you should not have one in Alaska. One thing worthwhile figuring out is what are the ways of convincing people. I don't know why the Alaskans

put this voting for a convention clause in at a ten year period instead of 20 years. Twenty years is a magic number which goes all the way back to something that may or may not be a proper quote. Thomas Jefferson said that "You will have a revolution in your government every 20 years," or something like that. But the real reason for putting it in I have always assumed was, that people realize that if you depend upon the legislature to call a constitutional convention, the legislature is likely not to do it, and you have to have an escape hatch to be sure that the people have some say, can at least get action because the legislature won't do it, and so 20 years is this magic number. The point is that if you remember it from that point of view, you have got one tendency, if you look at it the other way, it's like climbing a mountain, you climb it because it's there, and here's this vote coming up and, so obviously, if we are to vote on it, it must mean we ought to have a constitutional convention. This is ridiculous! I think you go back, so that you say, the fact that it's coming up on the ballot, don't pay any attention to that fact. That just gives you an opportunity to think. Now think. Do you really need a constitutional convention?

Bill Cassella: I think this is a very important point, and my feeling is that one of the things that you people should look at and I think you already have, is look very closely at Hawaii, because here Hawaii had a constitution with quality, I don't think it's as good as the Alaska constitution is,

as adopted, but it certainly is one of the better constitutions, and they have had two constitutional conventions, as you know, since the original one. I have been there at the time of both of them, and really, they didn't do much, I mean they were a total waste of money. They gave me two trips to Hawaii, and gave John one, but as far as the second one was concerned, the one that was two years ago, it seems to me that it was just exactly what you don't want to have happen in Alaska, now in terms of what you don't want to have, what was threatened in Hawaii, happen in Alaska, and I'm not certain but what it might be impossible to diffuse the thing in Alaska the way it was diffused in Hawaii. It was diffused in Hawaii purely and simply because the establishment got control of the convention, there was no question but that is what happened, and the establishment of the leadership was a very traditional leadership in the state, and it got control of the convention and did what amounted to a cleanup job, I mean, you know, a few little things here and there. I don't think what they did did any harm, but there was this outrageous waste of money, and it obviously didn't really do the thing which I had hoped it would originally do, and the League of Women Voters had this big deal which they did with the Endowment for the Humanities, where they had this project that went on for months in which they did all kinds of surveys on what the people thought should happen and all that sort of thing, and the truth is that I think that the people who really wanted a

convention and felt that was the way to do it, when all was said and done, felt that they had wasted their time. When I went out there, and I gave a talk which in effect said to keep out the crap, you know, that's what it was, it was a talk which, in effect, said do as little as possible. Clean up a few details, and that's it. The point was that they wanted to get into the constitution all, in this instance, all the "good" things, they wanted quote, unquote, and it was the environmental protection kind of thing in the neighbor islands, and a whole lot of other things that which was just evidence of a general mistrust of the legislature. This brings me back to exactly the kind of thing that George was saying. I don't know what the substance is, it would seem to me that one of the most important single things is that, if there is a general consensus among leaders that they don't think a constitutional convention would be useful, there are certain things that need to be put to the vote of the people, I think that getting the amendments through the legislature in this next session that's coming up, the session before the '82 referendum, tactically would be the most important thing to do and it may blunt the possibility of having a convention if you could. Now, I don't know if the time table will work, you could get that on the ballot in '81, couldn't you? Could you get the proposition on the ballot or some amendments on the ballot?

Van Doren: We had approximately four propositions on the ballot

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this time, and I haven't heard the results at this time, and some of them did address some of the concerns of the people in the state. How they fared, I don't know right now.

Bill Cassella: I think this is the single most important thing. And then on the other thing, and it would seem to me there are certain issues which we all say are legislative, and shouldn't get into the constitution, the legislature has the power to handle those, well, it seems to me that if there is a substantial agreement that it should be handled, it certainly would be important to handle these, if possible, before you go to the people with a referendum on the convention, so you can say, "Well, the legislature is responsible." In Hawaii, the problem was that a lot of the people, with a certain amount of justification, were saying that the legislature had not handled things well, and then of course, there was a very very major dissatisfaction, in certain aspects of the judiciary, which was the fault of the governor, because of the people he appointed to the courts.

Frank Grad: Let me say, let me add one little point, my own, while I'm always strongly in favor of support and protection of the environment, I have nonetheless resisted constitutional amendments to write the environment into the constitution every step of the way, and it seems to me that we are much better off with decent legislation, not an amendment to the constitution.

George Braden: As a matter of fact, I thought that the "forever wild" division in the New York state constitution was an acceptable exception to the rule of keeping it out, on the grounds legislatures by definition are short term people and they will do something today, because they don't much care what it is going to be 20 years from now, and a "forever wild" provision, I decided, made some sense.

Frank Grad: The legislatures in some states are constantly under pressure by the variety of industries including the paper industry, to allow the trees to be chopped down, so in a sense the legislature generally doesn't mind this "forever wild" division.

George Braden: The truth of this is not important, it is still the idea. The other thing is, again, this is related to whether you want to have a constitutional convention or not, with the constitutions I've watched and that I've worked with, I have worked up a theory that if you want constitutional revision, one of two things has to be around. One is that the government is in great trouble because of the restrictions in the constitution, and the other one is you have some cerrific scandal involving the state government. This was what got a constitutional convention in Texas, but by the time they voted on it, the scandal was passed and they had forgotten about it.

John Bebout: I have a theory for example, that when we voted in '77 for a constitutional convention in New York, the only possibility would have been if whatever his name was, had succeeded in uncovering the corruption of the judiciary of the State of New York. He never succeeded. He got blocked. That would have been the only thing I think would have gotten a favorable vote. Now if you don't have either problem in Alaska, then why the hell does anybody want a constitutional convention? You could cook up a good scandal between now and then!

Bill Cassella: My feeling is that the tactics, and I don't know, I was looking over this stuff that Victor Fischer put together, and so on, and looking at the issues, and it seems to me that there are so few fundamental things that are issues that need to be addressed, that I think would be the real, that the danger is that if you got or chose a convention and got one elected, the people would then determine they had to do something to demonstrate that there was any reason for it being there, and that gives a tremendous opening to all the crazy stuff which gets in for whatever reason, because then they are just doing something, and I think that the polarization potential is just incredible. Now, in Hawaii, there is just no question but that the convention polarized the feelings in the state because of the fact that there were so many of these

limited special interest groups, and of course the geographical problem was very significant there because of the geography of the state. Another thing that seems to me is important to consider is the fact that the whole process itself, in other words, in order to go through any kind of preliminary work, it seems to me that one of the things that's got to be very, very carefully handled, is this kind of going out to the people to decide what the people want because I think that when they did that in Hawaii. . . . that by going out and trying to get the people to identify problems, my feeling is, and I discussed this with the people in the League of Women Voters Education Committee in Hawaii, and I said that I felt there was some real risks in going out and asking people, as part of the preliminary to a constitutional convention, when the people knew in this case, that a convention was actually going to be held, what should be done. In other words, what are some of their concerns, because I think that when you look through that product, so much of it and I shouldn't say all of it, but so much of it was stuff that really was not constitutional material or were not constitutional issues, and one of the things I did was to try to get the convention to issue a report on issues which were considered as things that were really not appropriate for the convention but which should be considered by the legislature.

John Bebout: This is very important, and I think, we discussed this last night, I would like to ask Bill if he knows much about what really happened in Florida with the last constitutional revision commission. They went out and did the same thing they did in Hawaii, and they asked all ensundry what they would like to have in the constitution, and of course, they would like to have everything but the kitchen sink in it, but it seemed to me that number 1, the commission over-loaded this job by freewheeling input by the public and number 2, it was super conscientious in trying to respond to too many of these wishes. Happily, the people of Florida turned down that proposal.

Van Doren: One of the questions I was going to ask you, Bill, in relation to your comment, is what about the case, as our committee had contemplated doing, of holding hearings to find out the issues before they even vote on the question of whether to have a convention or not. One of the reasons being that we possibly, in identifying the issues that the people will come up with, could draft amendments that go through the legislature to take care of their problem before they even vote on the constitution issue.

Bill Cassella: Well, I think that is an entirely different situation, and I am in complete agreement with the process whereby you do something to get people to identify concerns

and use that as part of the process prior to the referendum on the call. I don't think there is any problem there, because I think that is an opportunity to do just exactly what you are saying, in other words, to get some of these things, and I think it is not just a matter of enacting amendments, but as a matter of fact, you have an opportunity to enact statutes to demonstrate the fact that you don't need a convention.

Frank Grad: I would, however, interject just a very small thing. And that is if you do, play it very low key. Quite simply because if you are going to do a real kind of side show of getting public feelings and getting people into the stating of their concerns, in a way, this may almost compell you then to make a case for a constitutional convention. In other words, if you are in a sense, still being an atmosphere in which the next logical step is to proceed, it seems to me you can have a subcommittee, take testimony without too much fanfare and keeping it low key, then I would think that's fine. You inform yourself as to what needs to be done, and do it legislatively rather than saving it for the convention. On the other hand, for a convention, if you are going to have public hearings all over Alaska, a great deal of fanfare and newspaper coverage, and what have you, you are then creating an aura in which the next logical step could be to proceed with the convention. I think it is not what you do, it is the way you do it.

Bill Cassella: I think that you have to be careful and not make it have any sort of an almost hypothesis that "We're trying to find out what a convention should do," in other words, that, I think, is where you see in many places where this kind of problem exists, like in Illinois for example, the whole purpose of those preparatory groups ahead of time was to demonstrate the need for a convention. You see, we are dealing with exactly the opposite kind of problem. We are, I am not suggesting that we are not using this for a perfectly legitimate purpose to find out what are some things that should be done, but we certainly are not using this as the process to go to the convention route for doing them. And, in view of the fact that a great many people, apparently including all of us, feel that a convention would not be appropriate, we have got to be awful careful that we don't get ourselves trapped into using some of the techniques which would be appropriate for getting exactly opposite results of what we want. On the other hand, in view of the fact that there are those out there that think that you can't trust the legislature, you can't trust anybody, and that's the reason we want a convention, to give the people that right to do it, you have got to be awful careful that we don't seem to be subverting that process too. I mean this is a delicate P. R. thing, you've got. You can be too cozy about it, as well as giving it the fanfare.

George Braden: You can also, being very careful how you do it, if you play around with the line that I use when I am talking about limitations in a constitution, I've said the reason for a constitution is to limit the government. You have to be careful. You have two types of limitations, what I call general limitations which are primarily the bill of rights, which is designed to protect the minority against the majority. Then you have what I call special limitations which are all these things the special interest groups want and all these things like debt limits, and tax limitations and other things. I say these are constitutional provisions to protect the majority from itself because they are incompetent when it comes to electing the legislature. Now it is a little difficult, but this is the idea. All of these special interest groups or anybody else who wants to put this crap in the constitution is literally saying for some reason or other we don't seem to be able to elect people to the legislature to do what we want. Therefore, we have to get it into the constitution.

John Bebout: I think we have a beautiful historical equation of that. In the wave of constitutional amendments that were adopted to limit the legislative power after the civil war, we discovered that after 100 years or less, the legislatures aren't always wise and that state and local governments weren't wise, necessarily, in handling finance and so the post civil war amendments adopted into parts of the New Jersey document and many

other states, put severe limitations on the power of the legislature in the fiscal area and some other areas. Well, it has taken us now nearly 100 years and we haven't finished it. We are overcoming the unfortunate effect of those things on state government.

Bill Cassella: Now we are doing the same thing all over again by the tax cuts. The expenditure cuts.

John Bebout: Now while we are talking about history and we are in the process of making some new history presumably, signaled by the election of our next president, which calls for a less active national government, and greater reliance on state, local and individual initiative, leadership, energy and so on. And if states continue the process started by Proposition 13, for example, they will be hobbling themselves and depriving the people of the opportunity to demonstrate whether or not it is really possible to operate this country on a substantial degree of decentralization of responsibility and authority.

Van Doren: Well, I think we have kicked around our feelings about whether or not Alaska should have a constitutional convention, and I think the consensus definitely in here is that we should be very careful about having one or promoting one. I think the next question we probably ought to move to is, we

can say that it would not be a good idea to have one, and maybe some of the people that are involved with this committee back in Alaska can say the same thing, still, the people may vote for one, and I think probably the next thing that we ought to look into is if indeed the people vote for one, the preparation for it, the various ways that you gentlemen have had experience with in setting up a convention and then perhaps get into if we are going to look into it, what specific things in the constitution exist right now that you feel need revision, and I know I've sent three of you some of the things that we looked to before this meeting. I'm sorry that you weren't included in that, Frank. I think probably we could move on to that.

George Braden: I wonder if, you see you are thinking of preparation for a convention to be called, I think at the same time you need to be considering preparation for the vote on the convention. Now, let's refresh our memory. If the people vote for a convention, is the election the following year?

Van Doren: Not necessarily. That's not spelled out. The way it's spelled out in the constitution at this time, is that the convention would be held as near as practical to the 1955 convention, unless changed by law. Now, the legislature in 1971 and also last year, introduced an enabling bill for holding a constitutional convention. The bill passed the legislature, both

houses of the legislature, and was vetoed by the governor for various reasons. He questioned the constitutionality of the legislature appointing the constitutional commission, stating number 1, separation of powers, number 2, disqualification of legislators because of holding dual office. There were several other reasons why he vetoed it, but the enabling legislation was vetoed, and we did not take up any of the vetoes during our special session, so what needs to be done is the establishment of another piece of legislation, this coming legislative session, which the chairman has decided he is going to do. Whether he sets up a procedure for the legislature to authorize the establishment of a commission and to fund it, and then allow the governor to make appointments, or whether he has it a totally legislative commission, I don't know which way he is going to go at this time, but one of the things that we are looking into is developing that type of legislation. The procedure which they had envisioned in this bill was that if the people did vote to have a constitutional convention, that an election would be held on the third Tuesday of May following the referendum vote. The election of delegates would be held on that third Tuesday of May, and then the convention would convene on the second Monday in September. I believe there was a 90 day limit, but I'm not quite positive about that. That was the procedure they were going to use, and of course, it is impractical now to hold a convention similar to the way the one was held in 1955.

There has to be changes as far as the vote, the number of delegates, the representation, the time period, a few other things. So, in effect, it would be totally new legislation, enabling legislation, to hold a constitutional convention if the people do vote for it.

John Bebout: Certainly the people ought to know as much as possible about their present constitution before they vote on the question, before the convention is held, if it is held. My number 1 suggestion would be that you see if you can't possibly do a citizen's guide to the Alaska constitution similar to the citizen's guide of the Texas constitution, preferably with George doing it. If he can't, he could possibly coach somebody or help somebody put it together. I think that would be a very enlightening document and have permanent value. Every state ought to have one, whether there is any question of a constitutional convention or not. It's a little like the League of Women Voters' "Know Your State Constitution", but frankly, this is part of their jobs, and this other is a highly professional one. Present it very clearly so everyone can read it and can understand it. It's too bad it isn't out now. I supposed that following the constitutional reunion session in Fairbanks, the material, the record of that would have been gleaned to produce a permanent document which would in effect have told the people of Alaska what those who have had the most

important experience in working with the constitution think about it, what problems they have found, what problems there are. Now, I don't know what the state record is but I think it would be worthwhile to review it and get some of it in the public domain. Now, for example, we talked about Judge Stewart's work, which was an excellent piece of work, he had a manuscript as I recall, which wasn't completed, and he had said he would be glad to complete it. Tom told me that nobody's asked him to complete it, and therefore, it hasn't been done. That should be completed, and made available. That record should of course be valuable to anybody who is working on a citizen's guide to the constitution.

Bill Cassella: I think that a very well put together guide to the Alaska constitution might be valuable to every point of view. Valuable, simply because of the fact that it is the kind of thing that is needed. But also, if it is done right, it can certainly put the thing in perspective, and my feeling is that if there was enough description, it seems to me it would convince the people that they are in pretty good shape.

John Bebout: In addition to a citizen's guide, it occurs to me there should be an annotation of the Alaska constitution. First, it would not be difficult to write. You don't have historical problems of tracing the constitution and things of that sort, you have a much shorter period of time in which to put in the explanation. The annotation of what happened to the constitutional provisions. But the comparative analysis will

be a device to show how good the Alaska constitution is. And on the comment part, if you follow the rules, and everybody does, that the author can say what he wants to, he will get over this idea very quickly that this is a very good constitution, and you can justify in advance of the vote on the constitution, that the citizen's guide is worthwhile. But the other thing, the annotation, is worthwhile, too. The Illinois one is now obsolete and nobody particularly wants it. I asked for five more copies of it, I am running out, and I instantly got 25 from Joe. He's trying to get rid of them. But the Texas one is not obsolete, because they didn't change the constitution. So, you could say the preparatory commission ought to commission the annotated and comparative analysis. Everyone agrees that this is the best thing you can have for a constitutional convention, and point out that there wouldn't be time to do it, if you waited until after the vote. Between the vote and the convention. So therefore, you go ahead and do it on the very simple ground that if voters vote it down, (the constitutional convention), it is still an awfully good book to have, and if they do vote in favor of it, then of course it is essential and you haven't wasted any money.

Bill Cassella: It seems to me that you don't say it just exactly the way you said it. You said that you are preparing it for the convention. My feeling is that you are preparing it for the State of Alaska. We need to know what our consti-

tution is and how it compares with other states, in order to better understand it. And if we should decide that we have to have a constitutional convention, then it would be useful to the convention, but if we don't have a constitutional convention, it is a document and it is a publication of continuing utility in any case.

John Bebout: And furthermore, of course, unless the convention drastically changes the old constitution, it would be very easy to update it after the convention, in this case at least, because the certain shape of the document won't change very much.

Frank Grad: Of course if nothing else changes, they cut up the constitution, put it in a hat, churn it up and change the numbers. What of course happens is you haven't improved anything, you haven't necessarily changed anything, but you make it more difficult to find anything and you make it more difficult for people like George and myself to index it and do anything with it. But that is the inevitable consequence.

Bill Cassella: I think that would be a project that would be enormously valuable from every point of view, and would probably have the result of just demonstrating to people the fact that you are in damned good shape.

John Bebout: Now I can say what George can't say, and that is

that you ought to make every effort to get him to either do one or both of these projects, if they are done. He ought to be made editor and chief and select and coach the person to do it. In the case of the Texas annotation, it was much too big a job for one man or even two, so what we did was to recruit a cadre of co-authors, most of whom were very good, but they worked very closely under his direction and he edited the whole thing.

Frank Grad: In the convention, Illinois, I was in Illinois on a couple of occasions and George's work was absolutely brilliant. If I hadn't had him, I would have had to work myself, and that's terrible. There are very few people around who really have a familiarity of the kind of detail regarding the constitution. You can save yourself a lot of trouble by getting someone who really knows the stuff, there's an awful lot of people who write on constitutions, and what have you, and you have a room full of people right here, including you, obviously, but it is a different matter when you've got people who have some kind of familiarity with broad things and broad analysis, for now this is broad policy issues and people have done some actual work in the drafting of constitutions and close analysis of constitutional provisions. And of course, that is where the real difference lies. This is an area where, let's face it, the broad policy, the broad outlines, rather simple to say, but that is pretty much how we talked in the

earlier conversation. The real difficulty in this field when you are going to go into any kind of developmental effort, is to work with the very persnickety and sometimes hard details, and there are very few people around who really do that. As a matter of fact, there are very few people around who have any experience in constitution drafting. The reasons why our constitutions are in such bad shape is quite simply because they are drafted by legislative draftsmen. The technique of legislative drafting, I do a bit of both, the technique of legislative drafting and the technique of constitution drafting has really got to be dissimilar. In legislation, very often, the effort is to be highly specific and highly detailed, particularly in fields where this is called for, this is always called for and in many instances, it is just as bad as constitution drafting. But the level of the generality and the level of broad statement that you aim for on the constitutional side simply is different from the legislative drafting side, so if you just throw in a bunch of legislative drafting and constitution drafting, the likelihood is you are going to get yourself a very detailed and involved constitution. The real sense of distinction between the two documents, and this, I think, is something to be very careful of if indeed you do go into the constitution drafting effort. Your legislative draftsmen really need some rather hard-nosed retraining and reorganization because it is a different kettle of fish.

George Braden: Well of course the law schools simply don't train people for constitution drafting.

Frank Grad: No, they don't because they barely train them for any kind of drafting. Columbia is one of the few schools who train people for legislative drafting to some extent. That is a very real problem. There isn't all that much of a market for legislative drafting, you would be training a lot of people for very little work.

George Braden: I hope that you agree that, I have made the statement a number of times, and I have said this a true statement, whether you agree with or not. There are only six experts on constitutions in the United States. I define that as people who have advised and worked with more than one constitution. When it comes to drafting there are only two of us in the United States, Frank Grad is one, and I'm the other. The sad story is that I accidentally got the job I now have, otherwise I would have been available, but as you say, the demand is so high. There was one time when John could have gotten me three jobs. But then when the Texas one ended, there weren't any around. The idea is that you bring in somebody from outside to do your drafting indicates you haven't got anybody that can do it, and nobody likes to admit that, and my problem is that I am pretty well committed to my job until

December 31, 1982. The Attorney General and my boss, the Assistant General, are in agreement that I can help other states and they allow me some leeway, for example, not having me take this as personal leave or annual leave. I am officially here, as long as the state doesn't have to pay my expenses.

Van Doren: OK, we are down to, we have gotten into some of the things that possibly should be done before the vote is taken, we're talking about the annotation of the Alaska constitution and also a citizen's guide. Let's keep on maybe before the vote and then go into after the vote, should the vote be in the affirmative. Of course, if it's in the negative, I think probably a lot of the work that has been done, will be done and is being done right now is going to be beneficial in the future, because we are going to have this unless it is changed by amendment, without a constitutional convention, we are going to have this vote every ten years. There is also a case if something comes up as you discussed, the scandal, or real trouble in the government that the legislature in our state can call a constitutional convention. So, any of these things that you have suggested so far are going to be beneficial and we are definitely working along those lines, but let's go in the case of the voters approving a constitutional convention, from your experience, where do we go from here?

Frank Grad: Election of delegates. That presumably would be provided in the enabling act of the coming year.

Bill Cassella: My feeling is that it is absolutely imperative that you avoid the situation that we got into in Maryland on the election of delegates, where you had a multiple, you had so many delegates running for each spot that it ended up that most of the members of the convention were elected by a minority, and in Illinois they had a runoff election, so you didn't get a certain percentage, in other words, you got a, I can't remember what it was, in other words, you got a substantial percentage of the vote.

George Braden: In Illinois you had a primary for delegates and the two highest ran in the runoff and you chose one of the two.

Bill Cassella: I thought in some cases there wasn't any runoff. There wasn't any . . .

George Braden: I had heard that if one guy got the majority the first time . . .

Bill Cassella: If a guy got the majority the first time, then you didn't have the runoff.

George Braden: It's the typical Southern primary.

Bill Cassella: Which actually got a better composition of the convention. Maryland had a lot of extraordinarily fine people, but they just didn't represent the state.

Van Doren: Just to give you an idea of what has been discussed so far in the selection of delegates, the enabling legislation that was passed and vetoed last year called for the same representation as the legislature, in other words, 60 representatives, elected from the House Districts, and Senate Districts, and then five members elected at large throughout the state. This was considered a good balance still using the legislative apportionment, and it was the general feeling that the five members at large would probably reflect more of the leadership type of people, these people who ran from the whole state at large. But at least in that draft of the enabling legislation, it called for 65 members as I explained.

Bill Cassella: The problem was that if there were each of those 65 districts, I mean for the 60 districts that are going to run from the senate districts and house?

Van Doren: Senate and house districts.

Bill Cassella: Well, in each of those districts, was there any provision to keep you from having multiple candidates, and

end up having them like in Maryland, representing just a few people? This is the caveat that I raised, and I think it is a very important one.

John Bebout: I certainly agree. Again, in New Jersey, both in 1824 and 1947, we side-stepped the issue by the bipartisan agreement, which resulted in no contest or no significant contest. We were able to do that in New Jersey both times. In New York in the election, the members at large have generally speaking, been some of the best members of the convention, distinguished citizens, this is especially true in 1915. I remember what happened in 1967. What happened in 1967, it was proposed that the two parties get together and nominate some of their top people. Governor Rockefeller was so sure that the Republicans were going to sweep the convention that he refused to play ball, whereupon the Democrats took the delegates at large. Now, some such deal, I think, if possible, should be made for the five or whatever number of delegates at large that you have.

George Braden: I understand the thing in New York has always been operated on a party basis and the experience in New York, plus the experience in Illinois in the 1922 convention, which was one of these where the Republicans ran roughshod on a

party basis, there was no difficulty in Illinois in getting the nonpartisan, non-party thing, and the consensus of wisdom now is don't ever put together a constitutional convention on a party basis, but don't set it up as you do in Maryland, where you don't, at least as you did in Illinois, get a number of culls on both sides, but the nonpartisan one gets an intermediate group of good government, knowledgeable people who broker between the two parties, is what happened in Illinois, and it worked out beautifully.

Bill Cassella: In Montana, they excluded the legislature.

Van Doren: By the constitution, our legislators are allowed to run.

George Braden: They were allowed to run in Illinois, after a great hassle as I remember, but sometimes they wouldn't get elected because they had to run on a nonpartisan ballot. Keeping the party label off is important.

John Bebout: I think in Alaska you could follow that pattern, but I do think it is very important to have a runoff.

Van Doren: In other words, what you are suggesting is if a person doesn't have a clear majority, he should be subject to a runoff?

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John Bebout: Yes, because if you do it on a nonpartisan basis, you get on the ballot by petition, and so you are going to have a good number.

Frank Grad: Is there any real risk of having too or much desire for participation in the convention with multiple candidates?

Van Doren: I don't know. First of all, we are a very nonparty oriented state as such, we have an open primary, there are more democrats registered than republicans, but there are three times as many who register as independent as anything else. People in Alaska tend to vote for the person rather than the party, and party lines are not followed at all to the degree they are in the Lower 48 and especially in the East. I would feel that yes, there probably is, mainly because number 1, the prestige, number 2, there are people who would not normally run for the legislature because of their own business commitments, their own personal lives, they don't want to spend the amount of time serving in the legislature, but would be willing to serve for a 60 to 90 day period in a constitutional convention. I believe there are very qualified people who would never consider running for the legislature who might consider running for the constitutional convention, and one of the reasons for that probably is because the initial convention was so successful.

Bill Cassella: I feel that is one of the big things in Alaska, because there is an enormous prestige associated with the first constitutional convention and I think they are near enough in time that people would say that maybe we can use it as important step to accomplish all kinds of good things.

Van Doren: Certainly, you also have to evaluate the fact that perhaps the young person who has just started out in politics may not feel he has a chance to be elected to the legislature, but if he could be elected as a delegate, that is a stepping stone, on the way up.

Bill Cassella: It is also a terribly tempting part for the special interest groups, and in my way of thinking, the real danger is with special interest and single interest types, and the problem of this, you see, if you have a bunch of candidates, like Maryland and so many of them, you really stand an awful good chance of getting one of those really heavy emotional issue people coming out at the top of the ticket or close to it. Now, the point of it is, if they were one, if you use the situation of Illinois, even if one of them comes out at the top of the ticket, you will probably have a pretty good chance of knocking him off in the runoff.

Van Doren: Do you have a suggestion as to how you could limit the number of people who are going to run, I don't know how you can do that.

Frank Grad: You can limit the runoff.

Van Doren: I think there would be quite a bit of interest. Now, I believe the number was something like 200 and some odd candidates in the primary for basically 50 seats in the legislature, this time. I would assume there would be something like that also. Of course there are outlying areas and our remote areas, there wouldn't be as many candidates for it. In the urban areas again, bringing your idea of special interest, there will be quite a few.

John Bebout: Incidentally, what does your nominating petition require? I have always thought it would be very desirable to have at the top of the list, a small group, say 10 or 12, of sponsors, people who more or less assume public responsibility for the circulation of this petition, indicating the nature of support that this person has before you get out and push a Tom, Dick or Harry. I have always resented having a petition shoved at me, asking me to sign a petition, whether for a candidate or a cause. I want to know who's doing it, and lots of people just don't know.

Frank Grad: I don't know, I suppose you can do this, is it usual?

John Bebout: In Massachusetts, it requires an initiative.

You have to have a group of sponsors.

Frank Grad: As a matter of fact, now for instance, the conflict here is constitutionally protected, I don't know. There probably would be a complication in the legislation that creates the law for the calling of a convention.

John Bebout: I don't know, I did in New Jersey, before we allowed party organization to put candidates up for the convention, proposed and wrote a bill for a nonpartisan election, and which I did supply to the sponsors. I have always been bothered by a nonpartisan election, unless you can establish some responsibility.

Frank Grad: I don't disagree at all, I just think it might be a difficult thing to adopt. In this particular instance, I wouldn't be at all opposed to creating an obstacle or two to this adoption of this whole business if you want a smoothly operating nominating process, this may give rise to some difficulty.

Van Doren: Is what you are suggesting, John. First, let me explain what we do in our petition for an initiative. You begin with one hundred signatures, and then from the 100 or so signatures, once those are certified by the Lt. Governor, then the petition is circulated throughout the state to gather enough signatures

to place the thing on the ballot. Are you talking about each candidate having enough sponsors and then going ahead and running after he gets a certain amount of signatures.

John Bebout: Yes, I wouldn't require 100, they get to be too anonymous.

Van Doren: We have and I don't really know about the other areas but in Juneau, for example if you are running for city council, or the school board, you are required to have 25 signatures I believe, before you can file. And then once you have 25 signatures, you turn that in and then you can file for city council or the school board.

George Braden: But you don't get anymore after that. Well, I think a candidate for a convention ought to get a fair number of signatures, but I wouldn't say it should be extensive, frankly, I put a good deal of reliance on the character of the sponsors.

Van Doren: In other words, you are suggesting that an X amount of people sign this and then it's turned into the Lt. Governor and then the person would be eligible for running for delegate.

George Braden: No, you file this with 10 signatures, and then on the basis of the 10 people who are promoting this guy's running, then you start getting the number of signatures required to get on the ballot.

Frank Grad: Actually, the nominating petition would say "This nominee John Smith as a convention delegate, has the support or is sponsored by the following: . . ."

George Braden: I recollect in standing for parliament, you had to get a very small number of signers to your petition and also had to pay, I don't know if they do that anymore, a fee that seems to me the more rational system than the system that is quite common, where you get a whole slew of anonymous signers. If you stand out in the rain long enough, you get any number of signers.

Van Doren: OK, so let's follow this through. Alright, we have 10 signatures on this thing. Now, once he has the 10 signatures, what happens then?

George Braden: You would then authorize the circulation of the petition, whether it was before or after filing with the Secretary of State. Get an official petition form, maybe he should go to the Secretary of State, with these 10 sponsors on his list.

Frank Grad: Then he gets the thousand, or two thousand or 10 thousand.

George Braden: At the top of the petition, "We are going with the above in nominating him."

Van Doren: Then he goes on to get his other signatures and then after he receives the required amount of signatures, he is eligible to run for delegate. OK, I guess my only question I have is why the 10 signatures in the first place?

George Braden: These are the people as I as candidate, am pleased to have or be identified with. These people indicate also they are pleased to be identified with me as a candidate. I am one of the general public, and candidate "Y" comes along, and says will you sign my peitition. Well, I don't really know the candidate, but he says at the top of the petition are 10 names of people who are promoting or sponsoring him. Well, I probably know three of them. They are the kind of people I want to be associated with.

Van Doren: This is basically what happens with our initiative. In other words, when the first 100 people sign the initiative then when they go around to the public and get the general thing, some guy can look up there and say, "Hey I don't agree with half of these people, I'm not going to sign this." Very good point.

George Braden: What you have described as an initiative in Alaska is the way. As long as you have that, it would be easy to do this.

Van Doren: Certainly, because the precedent has been set. OK, we have the delegates now, at least we have them nominated, what what are we going to do with them?

John Bebout: In addition to the citizen's guide, and the annotation, which will be available, I assume, after the election, we hope, there should be other material. Just what other materials depends on the state. Texas produced a collection of impact studies, the impact of the constitution on this, that or the other thing. It would be a much simpler job in Alaska and I think you pretty near got it made already, in terms of the stuff which is on the record for the constitutional convention reunion and the things that you have started with Vic Fischer. You can overload the delegates.

Frank Grad: The portability is important.

John Bebout: Again the statehood committee, in preparation for the 1955 convention really set a very good precedent, by getting PAS to do this series of studies, each one was quite compact. It was a lot easier, because you didn't have a constitution to start with, so that they could deal with fundamental

principles, prior experiences, and these things were so short that I think each of the committees began its work in the convention, by sitting down and reading the whole darn report together. They started with this common background. I think sticking to that sort, you might as well be, in this case, geared to the articles of the constitution that you have. There wouldn't be much more than a statement in narrative form of the contents of the annotations.

George Braden: One of the things, if I remember the time table, which is likely to be the case, any work must be done between the date of the selection and the convening of the convention. There are two things in that interim which both Texas and Illinois did. Well, in Illinois, one was a big seminar put together to educate the press which was pretty successful, and the other was a seminar for the delegates, and we had that in North Dakota, too.

John Bebout: They did that in Hawaii too, and also in New Mexico.

Frank Grad: One other thing which truthfully could be done, to save an awful lot of wear and tear at the beginning, is to have a proposed set of rules and a proposed organizational chart. You can start early if you have one from the first convention to use as a prototype, and you could use that with

whatever amendments, suggestions for revision, whatever you may have. If you get together in the convention, and you have to start that process, it is a mess for quite a few days. I think starting with some rules in the beginning is important.

George Braden: When you get a group together to work out a set of rules, and you tell them strictly, don't you dare look at the rules of the legislature of the State of Alaska. Or any other state. You look at convention rules of conventions that didn't look up legislative rules.

Frank Grad: Some of the procedural motions the legislatures permit or that some of the more complex bodies permit, one guiding principle ought to keep it as simple as can be, and to rely very heavily on moving the question.

George Braden: A technical aspect of this, it comes in at the time you are doing the rules. We succeeded in Texas. The State of Illinois, based on my experience in New York, I started in Illinois and almost succeeded, but in Texas, I totally succeeded in getting the rules set up in such a way, that not a single word went in the convention document, the constitution, that was not finally approved by the style drafting committee. We got the rules set up that way so there were no floor amendments. One of the things you want to get into the rules early on is to be sure that there is no possibility

of a floor amendment, which then gets frozen and the style drafting people can't undo the damage. We were able in Texas, absolutely nothing ever got in the final form until it went through the committee. The other thing that I succeeded in Texas was that the style and drafting committee never did any drafting, absolutely none, and I had a wonderful chairman who went along with me. I would sit next to him and I would suddenly say "Stop it. We are not going to draft. You tell us what's wrong with what we have done and let us go and rewrite it."

Frank Grad: Don't let the committee draft, no drafting through committee is essentially the point. Drafting is a lonesome, time-consuming thing.

John Bebout: You may not want this on record, but curiously enough, the first Alaska constitution was pretty much drafted in committee, but it was the result of a very unusual kind of chemistry among the people involved. To a large extent, this was drafted by mutual consent by Tim, Mildred Herman, George Sundborg and probably Ed Davis, who was the only lawyer in that group. Now there were other members on the committee, but they weren't too active.

Frank Grad: One device, by the way, which you used to be very strong on, which I found very persuasive, is the arrangement

which brought informally, the arrangement of regular meetings of committee chairmen in the course of the convention and that is a very important business, because you are being engaged in the preparation of a single document, and as long as you can keep the group working on any one document small, you get a certain amount of consensus, particularly if you have a strong chairman to begin with, to get that committee into shape so that things don't get out of hand, things don't get into the document or get into the document at a stage of the proceedings where they are really frozen, where you really can't deal with them anymore. The business of live consultation between the chairmen in the course of the convention. Otherwise, what is likely to happen at the tail end, is that all of the committee reports, each committee has worked on its own project and is convinced that it must go in exactly as they have it, and there is very little room for adjustment of getting in the thesis for mutual accommodation. If you have a committee of chairmen and the committee has a constant head, and the convention chairman is the best person to do this, they can know what is going on during the course of the convention. Or else you can have the committee on style draft and serve this function, in effect be constantly informed of what everybody is up to. The whole business of committees sneaking off on their own, each committee working by itself and then everybody throwing their bit into the hopper at the very end, that is to be avoided at all costs.

John Bebout: This in effect is what was done in Fairbanks. The committee chairman performed this role, I think, later on. Also, something else which should be considered very carefully, particularly in a small body is not to overload the people with too many committee assignments and I think I'm right, that each delegate from Alaska had two assignments, so that the overlapping assignments also provided a certain amount of liaison between the committees that had the most common concerns like finance and oversight. This is simply kind of a rule that the chairman ought to have in mind as he makes committee assignments.

John Bebout: You people are really very fortunate in the fact that your founding fathers were very wise and they set some excellent precedents and you hardly need to look outside of Alaska to find a model for the organization and management of the convention. The other illustrations that have been given here are basically just more back up that you really don't need to change much.

George Braden: We had a problem in Illinois, some of the committees insisted on doing all their drafting in secret, but in Texas some of the committees, particularly those dealing with local government, their staff man would come down and see me with this and what they were proposing to do. "Why don't you go through these and begin to fix it up before we have frozen it, and that will be easier for drafting." I

promoted that. As soon as I got into the drafting process, the better off we were, and that worked quite well. That means, contrary to the old notion, that the committee on style drafting should start out right at the beginning to be an active committee. (Emphasis added). I have had people say we don't really need a committee on style drafting 'till near the end. The clean up will come at the end. That's just not true.

Frank Grad: Style and drafting is one of the notions which I think we have to fight constantly. That is, that style drafting is somehow a housekeeping committee, essentially a kind of a technical committee, that it's like a budget committee that makes sure that all of the delegates get paid on time. It is, style drafting, is in a sense, on par with the substantive committees, more important than each of the standing committees, and ought to be given a real distinctive role of considerable significance and importance and it ought to be by its nature a substantive rather than a procedural housekeeping committee. In so many conventions, style and drafting is relegated down to the bottom of the list. It is kind of a housekeeping chore kind of committee, and 't is not that at all! It is very essential to the preparation of the document which is the purpose of the entire enterprise.

George Braden: I have a couple of examples, where the final style drafting committee ought to make the decision early on,

where do we put the veto section? In the legislative article or the executive article. Just an example. But they are the only people in the two committees, and each one would like to do it. Also, one of the first things the executive committee did was to prepare a drafting manual which we were to use, and that went to all the committees, and they all knew what our rules of drafting were from the beginning.

Frank Grad: Together with a caveat that a drafting manual doesn't teach you how to draft.

George Braden: We did put certain rules in there. They just might as well follow them, because otherwise, we were going to rewrite it.

Van Doren: Do you have copies of that drafting manual available, George?

George Braden: I would have at least one. And I may have two. Ask the Chief of Staff of the convention. And if they still have it around, the ACIR should have them. There was another thing that was put together at the end for the benefit of the permanent record which was all the style drafting committee reports, explaining all the changes which they made in the draft that came to them and this was to provide the legislature with records, to help them interpret the constitution. We had certain

standard rules that we always followed and every time that we would draw up a footnote saying that this is according to the standard rules. Somebody put together all those, all these rules of management that covered more than one article.

John Bebout: On the whole matter of the manner of the convention . . . I don't know any Chief of Staff who was more effective than Jim Ray was, wiser and more foresighted than he was. One other gadget or gimmick that was suggested at the end was the final substantive order of the document, committee chairmen reviewed the document from beginning to end, the substance, rather than style, just to make sure if there were any mistakes that had been made inadvertently or after we finished, and we did find a few things which were changed. This was a very rush job, but if this was planned for in advance, I think it would be helpful. You talked about a limitation on the duration of the convention and I have mixed feelings about that. You don't want to be gone forever like the Rhode Island convention, on the other hand, you don't want to squeeze it so tight that you can't do the job. Now the New Mexico convention operated under a 60 day limit which I thought would be impossible. Actually, they did well because of two things. Number 1, they recognized the very severe time constraints at the outset and were really all set, quickly, to adopt a good set of rules which had been prepared and got organized. This was discussed at the meeting prior to the official opening date of the convention.

They also had a draft of the constitution prepared by the commission, just as the Texas convention, which was good and on the whole, they pretty well followed it. In your case, I don't think you need or want a draft of a new constitution prepared by any commission or anybody, because that was only due to total revision. But you do not want to limit the time severely, I think 60 days is a pretty severe limit, I would be happier with a 90 day limit, particularly if you took a break in the middle of a week or two, and gave time to review the documents and perhaps take it back and get reactions to it. Actually of course, the Alaska convention attempted to do this by taking a Christmas break, and the delegates did go back and hold public meetings and hearings in their communities and told what was going on and asked for reactions on specific matters. They didn't really open the whole thing up, of course. I think you need to consider the question of time and the question of convention planning together, and I'm sure you'll have something that will work. I think in your case, 60 days wouldn't be necessarily too short if you were properly prepared. But I also think that you may have a rather short time between the election of the delegates and the convening of the convention. It ought to be reconsidered. Once you know what your span will be.

Van Doren: Well, they had said that the election would be held, I believe, the third week in May and the convening of the

convention in September.

George Braden: The problem is because of the year involved, you don't want the convention and the legislature meeting at the same time.

Van Doren: What we are talking about is that the election would be held in 1982 in November, which of course if they do approve of it, a lot of this preparatory work could be done before the election of delegates, so you basically have from November 1982 until September of the following year to get a lot of the preparatory work done.

John Bebout: Well, you need all that time, you need time in order to coordinate in 1982.

Van Doren: That is what we are doing now.

John Bebout: Most of the things we have proposed, would be worth having whether the people vote for the convention or not.

George Braden: The legislature meets every other year?

Van Doren: No, the legislature meets every year. But see, normally, and we are talking about 1982 being an election year, so the first year of the legislature usually runs approximately

four months, January through an uncertain time in May. I am just going by recent history. So the legislature possibly is going to be adjourning in May. Alright, that allows the election coming in late May, that allows only a couple of weeks for anyone who is a legislator and wants to run as a delegate to go ahead and file for election. Starting in September, if we adhere to a 60 day period, you are talking about the month of September, October and possibly November, shortly into November, for 60 days. If it was 90 days, it would go further. The legislature convenes in the second week of January of each year, so that, depending on where the convention is going to be held, who is a delegate, and all that, the idea is not to overlap with the legislative session. Now, in the second year, they normally run 5 1/2 or 6 months, it just depends, but traditionally in the last few years, our second session of many legislatures has been at least 30 days longer than the first session.

John Bebout: I would have an early election because the people who know they are going to be elected are going to feel the responsibility to prepare themselves more heavily than those who are just running for delegate. They have got to arrange their affairs so that they can really devote practically full time to the convention for the two or three months. I would strongly urge a wide time between the election of the delegates and convening of the convention and the easiest way to do that is

to have the election as early as possible and then sometime not too long after that, I would have a meeting with the delegates, get acquainted and there is no reason why you couldn't have your procedures pretty well firmed up, decisions on the officers and the committees by the time that the convention meets, and you have a formal ratification to the effect that one has already been decided. In other words, I would have one meeting that would be a kind of get together meeting and create a committee on organization or something of the sort, and then another meeting later on. Not counting your 60 days, because that would be taking too much time from the regular activities and summer is not a good time to divert Alaskans from their activities.

George Braden: Where do you think you will hold your convention?

Van Doren: I don't know. In 1971, another researcher and myself did a site survey, notwithstanding the supreme court decision of 1971. and the three places considered were Fairbanks, Anchorage and Juneau. At that time, the consensus of the two of us was that the convention should be held in Fairbanks again. Number 1, historical, number 2, the tremendous cooperation that the University was willing to give us at that time, the convenience of the housing there, the necessary cafeteria facilities, the fact of holding it on campus. The problem - between 1955 and

1971 and now, 1983 or so, is that the University has grown tremendously and with the housing and all, I think the University might be very hard pressed to furnish the facilities to hold a full constitutional convention during the period that the students are going to the University, but I'm only guessing.

John Bebout: Of course in 1955 and '56, the delegates didn't live on campus. They all lived in town in hotels and apartment houses or with friends. They were brought out on busses or in private cars, but I don't think the housing of delegates would be a problem.

Van Doren: Possibly not, I mean we were talking about the facilities and their use all at the same time. I'm not making a case for any place, but these are the three major choices: The University, Anchorage, and Juneau. One of the things that the University has indicated a possible interest in and also the chairman of this committee has been to use Constitution Hall again, and remodel it for use of the convention which would upgrade the facilities and making committee rooms available, establishing a constitutional library there. It has changed a little bit since you were there. This is a possibility and I think a lot of the people that were either involved with the constitution have been very impressed by the way it functioned on the University campus and would like to have it back there again.

Juneau, let's face it, is more set up for it in the fact that the legislature has their own printing press, we have the meeting rooms, committee rooms, the building is totally wired for telecommunications, which I think are going to play a very large part of the convention this time, it's also set up for teleconferencing throughout the state. We have facilities for a lot of things. What I recommend in my report, of course it is up to the chairman whether they are going to do it or not, is that a similar site study be undertaken again to see which of the three major communities, I think we are pretty much limited to that, although Sitka is a possibility because of the fact that they have a convention hall, and they have two brand new hotels there that could house the delegates and the staff. We are dealing with much better travel situations than we were back in 1955.

John Bebout: Sounds like you are thinking about the right things, going back home again would be indicated in view of the tradition and the records and the university study, of course the Rutgers University setting proved to be a very healthy one for George's convention in New Jersey, and I think you can take into consideration all of that.

Van Doren: Since you have to leave sooner than anyone else, and I have questions on issues and such but the others have

the paper, and you haven't, is there anything other than what we've been talking about, issues and that type of thing, is there anything in the procedure or anything in conducting a convention that you feel would be helpful to be added to this discussion, other than issues, unless you have some issues that you are aware of, and I think the other question would be, has there been things in the recent past that may or may not be desirable to add in or may or may not be desirable to put in a constitution that isn't already in there?

Frank Grad: Well, I have always gone John Bebout one better, he advocates a two page constitution and I have always said that I could do it in a page and one half, so when it comes to adding things, and I think that no one in this particular crowd that you have around you here, will be in favor of adding anything much, simply because you do people a favor and the government a favor by subtracting things from the constitution rather than by adding. There are certain facilitating aspects in constitution, which must be adhered to, I am not as familiar as I used to be with the Alaska stance on home rule, for instance, which, as far as I can tell, finds very little expression in the constitution. Probably if you must have a constitutional convention, I think you can probably do home rule quite nicely in Alaska without doing much to the constitution or content on this particular subject, but only if

you leave it alone. But if you got to give them something, then it seems to me that you could have something incorporated in the constitution, whatever it is you do in fact, and you have included a presumption what the local government can do, unless there is a preventive that is in the constitution itself, but in Alaska it seems to be on the principle experience, of doing the least harm as possible if you could have that incorporated in the constitution. As for the rest of it, I think your constitution is generally speaking, free of confusing detail and I would think it is perfectly fine, I don't see any reason for change there, I would not think, in substance, anything much needs to be added to your fiscal and budgetary provisions in the constitution. They seem to be reasonable. I think in a sense, any kind of a constitutional convention effort would be toward a goal of keeping things from going off the track, rather than putting in additional things. I don't see any need for any additions to your constitution. One thought is and this is peculiar to Alaskans, but your fish and wildlife provisions relating to wilderness and the like.

Frank Gard: I absolutely must state that the constitutional protection under the 1870 hard rock mining law, that is apparently in your constitution. While we're trying to get rid of it on the federal side, you've got it solidly ensconced in, but there I guess you are dealing with some

very, very special interest and probably difficult to dis-lodge the thing, so those are the areas where I think your constitution really provides somehow the special corners and it seems to me that to get rid of those, it would be fine, but obviously that's a local problem. Just as in Louisiana you have to have the levies in the constitution, there are certain things, in New York, as in Massachusetts, it is common, it is easy to criticize, but it's required. I'm perfectly aware of the fact that you live in a real and political world and you got that in there for a reason. At the very most don't make it any worse than it is, but quite obviously this is one area where possibly the constitution is probably more specific and more detailed and more protective of a special interest than you have to be. Other than that, on the procedural side, I think we have a pretty good fix on things, in terms of the limited number of committee -- I would say one aspect which ought to be considered in setting up your rules. I would make the convention chairman and possibly some selected few committee chairmen be a very strong agenda committee. One of the problems that I see is keeping control of proceedings and I for one, like to see a strong chairman if you've got the right one. One aspect of the chairmanship which to me is very significant in running the show is to have him have a very tight control of the agenda.

George Braden: You have to tailor to the situation. In Illinois, the important thing was to have three vice-presidents, one representing the Daley machine out of Chicago, one representing the down state republicans and one representing the good government group. Three vice-presidents, plus the president, control the agenda and you have to work it out in terms of whatever the situation is once you have the convention. You have a background that way, in fact, that is why I suggested doing that.

Van Doren: Again, Frank, I'm not leaving you gentlemen out, but he's leaving soon, so I am trying to get as much out of him as I can here. Any suggestions or specific pitfalls that we ought to look out for or any other suggestions that you have before I lose you?

Frank Grad: Suggestions, obviously all of us have rather good government instincts and if you are going to have another constitutional convention, it gives you another chance to try the old things again or at least to try to put them across. For instance, why you have a two house legislature where in any number of states and particularly with two house legislatures, defeats the normal standards, but then of course my imagination is limited and any number of people feel you need it because you need the jobs around and it's the way things are done, and after all, from the beginning of American history, which

always boxed itself up with at least two houses but, obviously, another convention gives you another change to try to do something else. Obviously the League too, has kind of given up on that one, the Model State Constitution, the most recent revision, has gone both ways on this subject. You do have one aspect that it is in your constitution which possibly could stand some strengthening is inter-governmental relations, provisions possibly of greater support for inter-government cooperation. One other aspect I note you have in your constitution, you have reapportionment provisions which are a wee bit unusual, you have a gubernatorial reapportionment essentially with the assistance of an advisory group. My question is how well is it working. Is this an area where there is some disagreement?

Van Doren: Well, of course we have only had one. We have another one coming up. The one that we had of course was beset with court cases, which the Governor and the board won. So it remained as it is now, and we're, just since statehood, experiencing our second reapportionment commission at this time, and I don't know how it's going to go. I wouldn't be surprised no matter how it goes, whether it's good or bad, if someone files suit, and it's going to have to go to court. As I say, with the first one there was a lot of dickering, because there was a lot of districts changed, there, again, was an unsuccessful court

case, and what the reapportionment board did stood up, so we are now experiencing our second one. The Governor does this. Obviously, the reapportionment comes out on his signature. Does the governor's office really get into it, or is it really the board that does it all? To what extent does the governor get into the act, or is it really the board's decision? First of all, the governor appoints the board. Now right there, right off the bat, you know that he is involved in it. The present governor that we have has appointed the current board, and it seems like the board is very geographically representational. It is a mixture of Democrats and Republicans and independents. I don't know! It will be very interesting to see their initial product come out. I can't tell you how it will turn out. I also can't tell you how much influence the Governor is going to have.

Frank Grad. What in terms of the general public, is the statewide reaction to the reapportionment. My question of course simply asks, is this particular mode, it's an Alaskan gadget. Is it working well enough? I take it from what you say that it is.

Van Doren: Right, we will have another opportunity to look into it and of course I don't know. You know we have a very geographical diversified state and of course Southeastern and the bush are going to say they don't have enough repre-

sentation, and some of the people that are redistricted in the urban areas are going to fuss about that, and also by the same token, there are some constraints they have to follow with the one person one vote. The other thing that we definitely have is very strong executive control in the state, and of course there is a lot of jealousy between legislative department and the executive department.

Frank Grad: Well you are wise in not having a legislative reapportionment, obviously, but you know, the question is, is there any other further possibility of insulating still more from the partisanship in the political process?

John Bebout: The only way I could see actually, would be the monkeying with the composition of the commission and get the legislature into that act to work along with the governor. Get somebody from each house to appoint board members, and so on. I think the convention was quite proud of this innovation and I would hope that until or unless Alaska has a real bad experience with it, they wouldn't tamper with it.

Van Doren: I do know that there is some feeling against and it goes beyond just apportionment, but it's a fact that there is such a strong executive in our state.

Frank Grad: Basically my comment is it is a pretty good

constitution and really the major object of the game to me seems to be preventing this from becoming worse or becoming bollixed up in any way. I would say that obviously there is always room for some improvement and I would urge that if you have to go into the convention, there are some possibilities of dealing with home rule in more expressed ways, encompassing what you have in fact, but in the law, I would think that to some extent, that the resources part of the constitution is special interest.

George Braden: I got the impression that the article didn't really have any serious handicapping effect on the state's options on what it does or might do.

Frank Grad: The one provision which really in effect ties Alaska to hard rock mining. That is the one that is really kind of tough. Mineral leases and permits. Actually, mineral rights, Section 11, "Discovery and appropriation shall be the basis for establishing a right to those mineral reserves to the state," etc., the other one which I think may possibly be or give rise to some question is to the navigable waters provision which in effect makes the appropriation system more of a constitutional requirement and those, I think are more limiting. This is the type of things which are tighter than they need to be. But again, I'm perfectly aware there

are any number of things, which in New York you don't touch in the constitution and any number of things you don't touch in Louisiana, and things that you don't touch in Alaska.

John Bebout: Frank, before you go, though, on home rule, they thought they were providing Judge Jorden into the constitution and going one better. Section 11 of Article 10, "A home rule borough or city may exercise all legislative powers not prohibited by law or by charter." I don't see how you can get much more conscientious than that. Of course, there is a lot of litigation, and there has been litigation over precisely the point that I disagree with Vic Fischer on. Vic Fischer said that this meant that the legislature had specifically to prohibit or deny a power before in other words, the legislature couldn't legislate in the premises in such a manner as to preempt the whole area without saying so. That is the only problem that I know of.

Frank Grad: I would think that you know. The last question with home rule, and I sort of remember that league session of a few years ago, where in one room there were all the home rule people discussing home rule, and the others were in the other room were people discussing the need for broader units of government and for broader powers and to deal with regional problems. Both groups seemed totally unaware

of each other's existence and the fact that they were really talking about entirely inconsistent matters. Then of course, the majority had a variety of points of view, and with particular emphasis on their own subject. It may get slightly sticky in some particular circumstances, but here, the provision I think could stand some squaring away.

John Bebout: The only thing I can see would be to clarify that particular issue. Now as to the inconsistency between home rule and regional government, Alaska had thought that they were solving that problem. They were very clear that they did not intend to give a government unit any right to perpetual existence, and by creating the state boundary commission, they were giving the state power through this commission to change the municipal map of Alaska. Natural resources article. That really gave the convention a great deal of intellectual difficulty. It was the hardest article to draft. They never were quite sure of what it meant, which I think perhaps is one of the merits, and reading Vic Fischer's commentary, it seems to confirm the view and I think that you picked out the two provisions in it that might ideally be reconsidered. I think the only question is whether you could reopen those questions without opening the article to a lot of more detailed descriptions in favor of the variety of special interest. That would be the question in my mind. Of course, you don't need a natural resources article in reality, but the convention people were

very anxious to demonstrate that Alaska was prepared to deal responsibly with the natural resources matter, and they wanted to do that and at the same time to protect themselves against some of the undesirable practices from all over the states and practices that they had been subjected to by the Department of the Interior and Congress. That's all I have to say on that. It was worth a further course of study, but none was prepared.

George Braden: Let me ask in terms of the home rule thing. This occurred to me, that Alaska is different from the Lower 48 except, I guess Maine. As I pointed out in the Illinois book, there are two types of local government generally in the United States. The township form of government which comes from the English town, where wherever you live in New York State or any New England state, you live in a town, which has a town government, and over that there is a county government, where you've got three levels of government. You get to the southern states, and you are either in a municipal corporation or city or the only government you have, is the county government.

John Bebout: No, this is true in Virginia, but in most southern states, cities are also within towns, for example, Houston is part of Harris County.

George Braden: Yes, but if you are not living within a city,

the only government you have is a county government. But the whole home rule thing deals with one or the other of these problems. You have the screwy thing you've got in New York State, where counties have all the home rule powers that cities have. And then you have the trouble with the southern states of trying to get the concept of home rule in their county where the county still seems to be the agent of the state. This appears to a considerable extent in the northern states. What do you do with a home rule concept in a state where a large area of it is toally unorganized? You don't have county governments.

Van Doren: No, we don't. We have boroughs, which are similar to counties, but usually only in the major urban areas.

George Braden: Your borough is different from the boroughs we have down here.

John Bebout: Just translate borough into county. If you put a whole list of names of local units of government on the blackboard with German, Japanese, Eskimo, Indian, other languages, now, and they finally hit on boroughs.

Van Doren: So we have that now, and in some cases in Alaska, we have integrated a city and a borough in a unified district. This happened in Anchorage, Juneau, and I believe it has

happened in Ketchikan, and several other places where it is now called the city and borough, and there is one governmental entity that covers both of them. Anchorage was the last one to do that.

John Bebout: We got into this ass-backwards. I told them in 1958 that as far as I could see, they didn't need any borough. All they needed was cities and then to make use of the powers to extend boundaries so that you could extend the city boundary out as far as might be desirable to provide the government where people live. In most of Alaska, they don't need a borough, not local government because there aren't many people there. Use the flexibility and freedom and the provisions of the unorganized boroughs in the constitution gives, to enable the legislature to deal differentially with the kind of local options and the problems of developing and nurturing incipient home rule self governments in the different parts of Alaska, by getting around the prohibition against special legislation for an area. This would have been simple, straightforward and a cheap way of getting around to something that they are approximating now. Now, this invitation for me to come to Anchorage next week is due to the fact that they have done nothing. I wonder what next in the unorganized borough. In other words, instead of creating several regional unorganized boroughs, they have got all Alaska outside of the organized boroughs the organized cities and borough, unorganized,

and obviously I would just traditionally next time recommend the same. Our ability to promote and nurture growth of self governing institutions to the best they can. I think the Alaska constitution provides plenty of leeway to doing this. I don't see any constitutional problems yet, maybe they can identify some for me in doing anything that is reasonable, as I said. I was interested in the fact that Vic Fischer was a little disappointed in the way that Alaska has dealt with the home rule provision. Says he does not see there are any problems with the way we wrote the home rule article.

Van Doren: Did you have some specifics on the home rule article?

George Braden: No, I didn't understand it, but now I do. I was just suddenly wondering how you handled the home rule problem of an unorganized borough. I don't know, is there a general special law for prohibition for the courts to interpret this correctly? Now when you look at the section on local and general legislation in Illinois, and then in the Texas one, which is even better. It depends on how you define "general." When you define general in a way that permits exactly what we are saying, in other words, it's the only way you can do it, and it's not, the trouble with local legislation is that it, it's a device to destroy home rule because you run to the legislature when you can't get what you want from the local government. And this is very special legislation.

John Bebout: Of course in Texas, as you well know, it's a device by which the local government would have all the home rule they damned well need to evade the responsibility for doing what they had ought to do, so they go to the legislature and ask for a special law. It happened in New York State, but the corporation counsel can say or the county attorney can say we probably can do this, under our home rule power, but let's get a special act and then we know we don't have any problem. There is no prohibition against special acts in the State of New York if the local government requests it. But the problem I think, is control by correct analysis of the general and special rural problems. I don't think there is any problem. I do want to say one more thing about local government in New York. It is one of the most complicated and irrational systems of local government ever devised by the minds of man, if you blame it on the mind of man. There have been, in the last five years, three absolutely superb cases in the court of appeals in great favor of home rule. On April 28, they handed down a two page thing in which they set back home rule 20 years. In the first place, the decision is probably wrong, unanimous but wrong, but there is a statement like this: "Home rule doesn't exist except in the case of property affairs of government." This is not true. Also, if the state, if a matter is a matter of state concern, that's the end of it. You no longer have any home rule. And they say in here, the cities (New York City), the city has not established by, this is not a matter

of state concern. In other words, the burden of proof is on the city, instead of the burden of proof on the state to prove that it is a matter of state concern. I have never seen any opinion with so many incorrect statements.

Van Doren: In going over the materials that I sent to you and as I explained to John Bebout, that of course, these are all drafts, Vic Fisher's work is draft, Doug Pope's work is draft. Is there anything, other than what we've talked about before this that sticks out in your mind as good, bad or indifferent?

John Bebout: I have one change to suggest. Just happens to be appropriate to do, and that has to do with the calling of the convention. All of the consultants were shocked at the idea of a mandatory vote every ten years on calling the convention. For God's sake, at least call it, follow the State of New York and Missouri, every twenty years. That is often enough. Oh no, they said, these are bad changing times, and we want this constitution to be as accessible as possible to the people. Now, I would like to know why the people, the great people, couldn't call a convention any time they pleased, by simply using your initiative provision. How is the convention called. It's called by law, and if the legislature and the legislature is free to call a convention, call for a vote on the convention any time it wants to, by act of the legislature, so why can't the people by the initiative then, enact

a law providing for a vote on the call of the constitutional convention. That being the case, why any need for this mandatory vote. It may come at very inconvenient or inauspicious times, just by the calendar. Now of course, I don't approve of the initiative provision, because I don't believe in the initiative, but since you are stuck with it, this is the only good use I can think of for it. As a matter of fact, if I were, I guess to write a model constitution now, I would be inclined to include provisions for a popular initiative to call for a vote on the constitutional convention. That is the only use I can think of for an initiative.

Van Doren: It's interesting. There are two schools of thought right now in Alaska, and this was brought up last year. One school of thought says that a constitution cannot be called by an initiative in Alaska. The other school of thought says yes, it can be. That's been some debate. A meeting we had in Bethel last year, Doug Pope, who was an attorney hired by the committee, felt that a constitution could be called by the initiative method. Vic, who happened to be at the same meeting, didn't think we could, and this is one thing they are not sure about.

John Bebout: There is only one way to find out. I can't understand the rationale for the negative position.

Van Doren: That has been one of the things under discussion.

Whether or not the initiative can be used to call a constitutional convention, and it has not been settled yet. There has been discussion about it.

John Bebout: Of course, if I were writing your ideal revised constitution, I would eliminate the general initiative provision and just include a specific initiative for calling a convention and eliminate the 10 year vote.

George Braden: Does anyone know what they meant when they said this? The people may propose and enact laws in the initiative. Are there any other states, that on the face of it, this seems to be saying that initiative is limited to legislation as opposed to constitutional amendment? Is that the only state that does that?

John Bebout: No, there are a lot of states that have the legislative initiative and not the constitutional initiative. What they were doing in Illinois was to prevent use of the constitutional amendment device to get legislation and limiting it to the legislature, they put it in one place. I think I drafted it, so it was safe, and I did an awful lot of work to be sure that you couldn't use it as a nose under the tent. One remark in response to Frank's talking about the Texas constitution. He said I could write a state constitution in two pages, he says he could do it on a page and one

half. I say I could do it in one sentence. Let there be a legislature composed in a manner prescribed in the accompanying document which shall self destruct upon the convening of the legislature. Then have a schedule which simply provides selection of the first legislature as a part of the constitution. It destroys the concept of limited government. I have no objection to a bill of rights and I guess I have no serious objection to providing for a unified court system in one short article. As far as the executive is concerned, I would really like to leave that out, on the grounds that the legislature could decide whether to adopt the cabinet system or set up a separate executive, of course this would mean there would be no constitutional separation of powers, there could be a working separation to the effect that that's the way they want to do it.

Van Doren: In your eight and one half minutes you have left with us, is there anything that you would like to add, the same question I asked Frank about if we decide to have, if the voters decide to have a convention, anything you would like to add as far as issues or procedures or problems or anything like that?

John Bebout: No, I don't think so, I guess this is good enough repetition, that is having the constitution again, and having attended your constitutional conference at the

time of the reunion of the delegates and having read Vic Fischer's statements, I see no changes that have been seriously proposed that would be desirable that can't just as well be adopted by amendment. None of them are so urgent that anybody should say, well you can't expect to make the legislature to submit to such and such amendment. You damn well better call a constitutional convention.

Bill Cassella: There should be some kind of provision for a runoff, a primary or a runoff. In the situation in Hawaii, the constitutional convention had 102 members. There were 697 registered candidates for the seats in 51 districts. The tabulation of the election results indicate where the highest two were elected. It is really a fantastic thing. In other words, you can see, you got for example here where I am just picking one at random here. The first one who got the most votes got 537. The next 408, then next 338, the next 307, and goes all the way down. The point is that I just gave that as a random example, because it just seems to me that one of the things that exists here, and I don't think Alaska is any different than Hawaii. I think we have got some of these people churned up and then everybody files and here is the way it looks. You have just got to have a way so that you don't get a group of people who really don't represent anybody.

George Braden: There were two things from Texas. One was style manual, the committee on style and arrangement put together, which was then used by everybody else in the convention. The other thing was that toward the end we put together a specific document that went out to the research director of the convention, Dave Sander, distributed it around to the committees and chairmen, which was a compilation of all the rules which the committee had developed on particular drafting standards. For example, he said anytime you use the word "law", put "general" in front of it, so that you can be consistent all the way through, and nobody will ever get mixed up. Another rule was you never say "the legislature may". The only thing you put in, if you want to put it in, and even that's not a good idea, is a duty. "The legislature shall", and I suggest there is no way you can enforce, because you can't mandate the legislature. But never put in "may", because the legislature has all the power that there is, and you don't have to tell them that they can do things. Then there is subsidiary rule that we find from time to time in constitutions. This sort of thing is bad to talk about. One of the things is somebody will draft that the legislature may thus and so, "provided that". Now, the mistake was instead of doing it that way, we say the legislature "may not." And you just put in a limitation. Don't start out putting the grant as a device to limiting. Just put in the limit. There are a lot of these that we put together as one group.

George Braden: One of the things in terms of the drafting of the citizen's guide to the proposed constitution of the document in it, and you have to remember is the rule in Texas was that the convention could not touch the bill of rights, and the attorney general issued an opinion saying you couldn't even take an unnecessary comment. You go over the bill of rights, that's 1870 language, and every other thing in the constitution was drafted by Ric ____ and me. We put that whole constitution together without ever using the term "provided that". The reason is that "provided that" as it appears in constitutions and statutes, means "but only if". Which is the only proper use of that term. It is also used for "except". Or "but". But not "only if". And it is also sometimes permissive. Here is another thing that just occurred to me, and I can find you in the Texas constitution, places where it's not "but only if", it's not even "except". Here's a new idea. And we finally ended up and never "provided that" at all. We either "but only if", or we said "except" and we started a new sentence. Simply because of the thing it is used so badly, that we just got away without ever using it at all. I would think that in your table of constitutional amendments, it occurred to me that if somebody says, well there must be something wrong with the constitution, look at how many times they have had to amend it. And the first thing that I noticed was that four amendments were simply conforming to the Alaska constitution to a new requirement of the U.S. constitution. Those

things I don't think you don't have. So you aren't really amending your constitution. In the Connecticut constitution, was the 1818 constitution, that's one of the reasons it's good, because it's before the Andrew Jackson days of anybody can be a public officer sort of thing, therefore elect everybody and before the days of internal improvement of the railroads and canals and all that corruption which produced so many of the limitations in the state constitutions, the Connecticut one like Vermont and Massachusetts are ancient constitutions, and tend to be true constitutions. The Connecticut constitution as of the time they redid it in 1953, which was known as the nonsubstantive revision, the reason was that when we were campaigning for a constitutional convention in Connecticut in 1950, we the League of Women Voters, said and I think this was my idea, you have to read the constitution backwards. Because it had so many amendments. And the Republicans who were avoiding like mad any idea of a constitutional convention because it would destroy the rotten borough system, which was to their advantage to keep, came up with this nonsubstantive revision and got all 38 amendments into the body of the constitution, and killed off one argument against it. That was the time when for the first time, they took out the word "male", which was still in the constitution. They had just never changed it. But what you have done every time the U.S. constitution changes, you just amend the Alaska constitution to conform, and I don't count that as amendments. That isn't to say anything is wrong with

your constitution. It is just that the U.S. says you can't do it anymore, so you might as well fix it up. I think that just in case somebody says well look how many times we have had to amend it, those four don't count.

Van Doren: One other thing is when we changed the name of Secretary of State to Lt. Governor, because basically that was a change where they decided that that was better terminology and they now have Lt. Governor instead of Secretary of State. So, that gives you another one, which would be five in there, and five out of 19, I believe is not too bad.

George Braden: Others are minor ones, about the chief justice. I don't know if that was a purely, that was like the amendment that says that the president can't be in for more than two terms, which is a backlash against Franklin D. Roosevelt, which was a foolish provision to put in, and if you raise the question today, nobody would put it in. Every once in awhile, you get one like that which is a personal amendment. One of the interesting things about the Connecticut constitution in terms of what people talking about, all these limitations that you put in, the Connecticut constitution creates a legislature, and shuts up. It then has an executive article, and a judiciary article, now it has a local government article, with some home rule which never existed. But by and large, there is the, they just created the legislature and there

isn't anything about what the legislature can do and there isn't any thing about what it can't do, except the bill of rights. So there is nothing about taxes. Absolutely in the whole works. Not a word about borrowing money, debts, so far as the state government is concerned. Interestingly enough, Connecticut has never gotten into any trouble with debt, and also it still does not have an income tax, and one time a few years ago, the legislature passed an income tax bill which was signed by the governor, and before it came into effect, they repealed the statute, because of a great "hoo haw" on the part of the public. So, you don't need to put things in the constitution that some governments have done. You don't have to tell the legislature what it can't do, because it tends not to do things it shouldn't do.

END OF TRANSCRIPTION FOR NEW YORK MEETING

MEETING AT HOLLINS COLLEGE
HOLLINS, VIRGINIA

with

DR. JOHN (JAKE) WHEELER
and
MR. GUY A. VAN DOREN

November 13, 1980

The following is a summary of the edited transcript of a meeting between Dr. John (Jake) Wheeler of Hollins College and Mr. Guy A. Van Doren, Administrative Assistant to the Joint Interim Committee on Constitutional Convention which took place in Hollins, Virginia, on November 13, 1980.

Dr. Wheeler is a professor at Hollins College and directed the National Municipal League's State Constitutional Studies Project in the 1960's and authored The Constitutional Convention: A Manual on its Planning, Organization and Operation; and co-authored Magnificent Failure: The Maryland Constitutional Convention of 1967-1968.

THE CONSTITUTION

1. The Alaska Constitution is one of the finer if not the finest documents in terms of the kinds of positions the reformers have taken on the constitutional structure of a state. I would not tamper with it too much.
2. To encourage change just for the sake of change is to urge the possible opening of Pandora's Box.
3. Because of unrest throughout the United States, this may not be an appropriate time for holding a convention.

THE CONVENTION

1. There should be an organizational meeting prior to convening the convention:
 - (a) Allow the delegates to get to know each other;
 - (b) Possible election of officers;
 - (c) Planning for and assigning delegates to committees and planning for staff assignments and selection;
 - (d) Impress on the delegates the difference between fundamental constitutional issues and law and statute issues and law.
2. Orientation session for press corps:
 - (a) Explain difference between a constitutional convention and a legislative session;
 - (b) Explain the goals of a constitutional convention;
 - (c) Explain what to expect and what not to expect;

voter can usually change the makeup through the election process. A constitutional committee could be appointed every ten years to look at the constitution and recommend amendments to the legislature for consideration or even recommend the calling of a convention. The people could have the opportunity to vote on holding a convention every twenty years.

Under normal circumstances, the legislatures have limited time to do their work and are concerned with limited and immediate problems. They very seldom have time to engage in heavy constitutional issues. An objective group can look into the situation and decide whether or not to recommend the calling of a convention to the legislature.

3. Recommends that no changes be made in the civil rights section.
4. Feels that the grand jury is probably an institution which has outlived its usefulness.
5. Feels that the free conference committee in Alaska is the most powerful he has even seen. Questions whether, because of this power and authority, this is the reason a unicameral legislature has been proposed so many times in Alaska.
6. Feels there may be justification for looking into separation of powers between the Executive Branch and the Legislature since Alaska has very strong executive powers and some legislators feel there is too much power.

- (d) Explain mechanics of press information availability.
- 3. It is probably not a good idea to have a draft constitutional document because it tends to polarize people and groups immediately. They focus on the draft document and not what will be developed as the convention meets and addresses the issues.
- 4. It must be decided early on how the revised document shall be presented to the people:
 - (a) One vote covering all changes;
 - (b) Vote on each individual change;
 - (c) A combination of the above where the voter can choose to approve all the changes or only selected changes.
- 5. A convention does not need the space and staff requirements of a legislature.
- 6. Favors convention at the University of Alaska.

ISSUES

- 1. Legislative Pay. Recommends that there be an advisory pay commission mandated in the constitution if the people are upset with the present plan. Does not recommend the amount of salary be in the constitution since it would require an amendment just to change salaries. States which have the amount of salary stated in the constitution are the lowest salaried legislators in the U.S.
- 2. The periodic voting on whether or not to have a convention should be changed to every 20 years. Before the one-person - one-vote mandate, it was more difficult to vote someone out of office. Now it is much easier and if the legislature is not functioning properly, the

7. Favors appointment of the Attorney General by the Governor as is now the case. In Virginia, the Governor, Lt. Governor and the Attorney General are all elected separately and many times the offices are used as a stepping stone.
8. Any type of Proposition 13 provisions being included in a constitution is dangerous.
9. Feels any of the above issues can be taken care of through the regular amendment process and a convention is not necessary.

Transcription of Tapes of
Meeting with John P. Wheeler
Hollins College, Hollins, Va.
November 13, 1980

Side 1

012 Guy Van Doren: Jake, what I thought we might do first is that we could go through the brief outline that I sent to you. First of all, and I think what we are looking for in these very, very broad questions, what we ask is, after reviewing the constitution, I know you have looked at it before, but after reviewing the constitution, what type of changes would you see if the people decide to vote on a constitutional convention, what type of new or modern ideas have come to light since 1955 when the original constitutional convention was held, and just a general overall impression of the constitution of Alaska.

021 Wheeler: I guess in talking about this, one perhaps needs to inject two caveats to begin with. One is that it is awfully hard for an outsider to recommend to a state what they ought to do, unless he is very familiar with how the constitutional system actually functions, because I think in a way the constitution is only one part of the constitutional system. You have developed a lot of traditions and practices around that basic document itself. The second thing I suppose, is that most of us outside Alaska still look to that document as we remember in 1955, and see no reason, it's one of the finer documents, if not the finest in terms of the kinds of positions the reformers have taken on the constitutional structure of the state. I think

the initial reaction outside might be that the thing is pretty good, I wouldn't tamper with it too much. As I reread it, it was hard for me to find areas where, I as sort of a generalist, would recommend that this is not really constitutional, or I don't really understand that. I am not all that familiar with how these provisions have been interpreted within Alaska, that would require constitutional attention to just sort of straighten them out. I have read Vic Fischer's analysis. I think what I'm saying is that the awareness on the part of those of us who were a part of this whole long reform effort in state constitutions to encourage change for the sake of change is to urge the possible opening of Pandora's Box. As I said earlier, I wonder whether this is the time, a good time for the testing of the public temper in these matters, although I realize you don't have a choice in Alaska. There is at least going to be the question of whether a convention should occur. I wouldn't have specific recommendations to make about changes, except in response to Vic Fisher's comments. We can go over those maybe somewhat specifically. I do not, I actually have nothing to suggest in terms of a new provision or a new concept drawn from recent developments in state constitutions, because I think generally that what we have added to state constitutions in recent years have not been all that progressive. In some cases, in terms of the paper I have done, and I can give you a copy of what happened in the last eight years of a progressive sort, the things that I would agree with generally,

you have already done either to the constitution or by statute. I'm talking about things like a judicial qualifications commission, and that sort of thing. Some states are now just getting around to it, in fact if we could characterize the early postwar period there is a period in which states paid a lot of attention to the executive. In the 1960's, it appeared, they paid more attention to the legislature. In the 1970's, they looked more carefully at the judiciary, and dealt with problems of unification, problems of removal of incompetent or incapable judges, this sort of thing. Questions like the one in Alaska, legislative pay, which is a small problem, but it's a significant problem. A number of states, have moved to a pay commission of various sorts and various kinds of power. As far as change is concerned or the adoption of new ideas, it would be more along that line, many of which you have already done.

077 Van Doren: You mentioned the fact that we've got to vote on the question of whether or not to have a constitutional convention not in 1982, I think earlier we were talking about whether or not we really ought to have this type of review every ten years. Whether or not, I just wonder sometimes whether or not the general public feels that they have enough information or do they really care about whether or not the state holds a constitutional convention. I wonder if 10 years might be just a burden more than an advantage.

085 Wheeler: Sometime ago, I might have said 10 years is a good time and now I'm inclined to suggest a much longer period. I think a number of things have happened. One is, as you well know, the idea of putting a periodic question of this sort on the ballot was a way of getting around recalcitrant legislatures. They are balking for selfish reasons of some sort and won't respond to public will, therefore the public has to have some kind of way to force a vote. This argument is not as strong as it was in pre-reapportionment days. Reapportionment has changed a lot of this. Legislatures may not now do, I won't even say majorities won't give them what it might want, but certainly the new clamoring interests might want, but the argument isn't as strong anymore because these people are on the one man one vote proposition. They do represent the people. If they are not doing what the people want, then the people can, more than theoretically choose someone that will. Frankfurter's admonition in turning down the reapportionment, when he said that if the people don't like the legislature they have, let them elect one that will do what they want. It was nonsense in 1946, but it is not at this time. If it is of sufficient interest that people are concerned about it, and the legislature is recalcitrant, they will get their way. I am wondering about, well so much of the American system is built, like elections, it's built on periodic action, which is unrelated to felt need. I don't know how we get around this, but I think it is a problem in the American system, because we don't often,

we don't tie together political needs, levels of political awareness, political involvement, with the very fundamental questions we have to answer.

114 Van Doren: One of the things we have discussed in New York was the possibility of, if say, by constitutional amendment or by the convention method, whichever one seems to be indicated, that particular section be changed to possibly every 20 years on a public referendum and every 10 years, the idea of appointing a constitutional commission to look into any problems or anything that might have changed during the decade and if they felt there was a necessity for calling a convention, they could recommend that to the legislature for calling it, or recommend amendments rather than having the people voting on it every ten years. That way you would have some interim work being done every 10 years, and then the vote of the people very 20 years. It was something we just touched on in New York.

126 Wheeler: Well, that is an interesting idea because you know what you should build up over a period of time is a history of the development of the state, an analysis of the problems confronted by the state, and I think constitutional issues are both, the legislative process is too focused upon immediate and temporary problems. It is very difficult for legislators engaged in, in the limited time to do their work, it is difficult for them to engage in heavy questions, and

fundamental questions and broad ranging questions, because they are worried about tomorrow. I think it might very well be good to have a constitutional understanding and about every ten years we'll look into this. A very objective group will look into the situation, and decide whether they want to recommend to the legislature that they call a convention. And then maybe every 20, let the people decide for themselves on it. As a hedge against a kind of possible arbitrary behavior by the legislature.

142 Van Doren: This way you are satisfying both ways. You are looking at the constitution, the recommendations are going to be from people chosen from the state anyway, and then by the same token, the public has the power to, at least every 20 years to say, alright, none of this has been done; something should probably be done, so we are going to vote in favor of having a convention. And of course, as you well know, the other method that Alaska has is through amendment through the legislature, which there will be some changes more than likely, in that process also.

149 Wheeler: I know that you have probably talked with Al Sturm about constitutional commission, and probably this Florida thing came up, which attracted some interest 10 years ago, 12 years ago, when it was put together, but I think the experience with the Florida idea has not been encouraging. I don't think I would move in that direction in the sense of the commission, with

the authority to send directly to the people constitutional change. I think the results have been unhappy. I think the idea of studying, putting the issues before the people and helping to develop public understanding of these issues, which are hard, at best, to understand. They are very hard to understand. And this ought to be, there ought to be a kind of systematic inquiry and systematic publicity given to this.

161 Van Doren: Basically, the only commission we discussed yesterday was the Florida commission and it was interesting to note that the amendment to remove that from the constitution was turned down, so apparently the people in Florida still feel that there is something to the commission, although it could have been also very good public relation and convincing by people or former members of the commission. When I talked about a commission, I didn't have that type in mind, I had a more than likely review commission that would meet say, every ten years, but the Florida experience is interesting and I believe it is, in fact I'm positive, that it is the only state in the Union that has that system, where they can go directly to the people.

172 Wheeler: They submitted twelve or fourteen amendments I think, in 1978. Every one of them went down the drain.

174 Van Doren: Every one of them failed. That's interesting.

174 Wheeler: By a handsome majority.

175 Van Doren: One of the things I am going to do on return home is to get ahold of the background of the Florida vote and what was done toward it, and that type of information because that is interesting.

178 Wheeler: The same time that I gave this paper, which I am sending you a copy of, there was a report given, not a paper but a report, given by John De Grove the University of Florida. De Grove was a member of that commission, a political scientist on the staff of the University. De Grove is not on the staff of the University of Florida anymore, it seems to me to be, it's Florida Atlantic, or someplace like that, but Al Sturm could put you in touch with him. He gave a rather, I thought, thorough, humorous, and insightful review of what happened in that whole effort in Florida.

194 Van Doren: If this is discussed, I am sure people are going to be interested in various ways that commissions function, which is another one of the things I need to look into now. We had talked about a commission, establishing a commission, if the vote is on the affirmative side for the constitutional convention in 1982, but this is more of a preparatory commission

in this case, that the commission would be responsible for basically setting up the nuts and bolts of a constitutional convention which is different in concept from the type we are talking about. We are talking about basically a review commission, which would meet periodically.

204 Wheeler: Has the name Vernon Eney been mentioned to you? Vernon Eney is probably the most impressive man I have ever met in this business. He is a Baltimore lawyer. He chaired the constitutional convention study commission in Maryland in the mid 60's, and then was president of the convention, and was the spark plug throughout the whole effort and that effort went down to a rather disastrous defeat. But he would be well worth talking to if you are passing in that direction. He is a very thoughtful man, politically sensitive, made some mistakes in this, very obviously, but much of the result happened because of things beyond the control of anybody. Maybe I am a bit of a hero worshipper where he is concerned, but I think he is a tremendous person with a vast store of information if you could get a couple of hours with him. Eney. He is with the lawfirm in Baltimore. If you are back through Washington again, there is a Washington lawyer who was very prominent in the convention by the name of Alfred L. Scanlon. He was the only member of the commission to get appointed to a committee in the convention, he chaired the rules committee in both for the commission and for the convention. I worked with

him subsequently. He and I were consultants together to the National Education Association, and they used a national convention to try to revise their charter. I started off by saying that to the outsider looking at Alaska and looking on this constitutional document, that it is almost presumptuous for an outsider to recommend changes to a particular state, and you don't know what the constitutional structure really is. Constitution is only one part of it. On top of it you have a good deal of practice which is developed, court decisions, legal interpretations, and so on. I indicated that to the outsider looking at the Alaska constitution, that it seems to me to have most of the requirements that many of us have been preaching about for a long time. There would be a hesitancy on my part to recommend even having a convention at this point, for fear that they would do something nasty with it. Alaska is going to have a vote, that isn't a question. The vote will take place, and it could be a positive vote, and they may have a convention and so our discussion should center on what kind of issues, how do you move toward setting this up and so on.

288 Van Doren: One of the things I wanted to say when you made that comment before, is that the, as far as asking people on the outside, is we live in the state, we work with this everyday, we work with the court decisions, we work with the legislature, the statutes and that type of thing, and sometimes in

Alaska, we are a very small state, 425,000 people, which I saw more than that when I was walking down the street in New York when I was there, but we need fresh ideas. It is nice to say, well we have got our problems and we know what they are, but it is also nice to talk to somebody outside of the state looking in who can possibly see things that we may have missed. And we live in our own small community of approximately 350,000 square miles, the largest state in the Union, but we are a very small community, and people who work in this kind of field of endeavor tend to kind of oscilate together and make their own decisions. One of the reasons we are sending people outside is to get their ideas and let them look out and look in to what we have done and give us a hand. It is not being presumptuous to make recommendations that may be valid, something that we may not even recognize.

309 Wheeler: My own work has been more in the direction of the mechanics of constitutional change than in the substantive evaluation of particular issues. I might be more useful in that sort of thing, than talking about issues, although I can pick up a couple of things that Vic Fischer talked about in his paper.

Van Doren: That would be good, because the issues are fine, but also we are looking at ways to have a successful constitutional convention.

317 Wheeler: Let me just skim very quickly. I was looking at this section on civil rights, and I think I would be a little reluctant at this point to kind of read much more into this right to privacy provision than is already there. This is one of the Pandora Boxes that might be opened, not to my satisfaction, but it is interesting that you have this provision, I think I would rely on somehow allowing court interpretation of that over time, rather than trying to write much more into it as far as the constitution is concerned.

329 Van Doren: People were getting a little worried about the amount of time that was spent going into records that people had, by state agencies, but the fact that people had a right to do basically what they wanted within the law. It has something to do with the wiretapping, and observance, but it also had to do with interfering with the privacy of the people. Alaskans are a very private people, and they did not want a lot of the work that was being done, as far as agencies, and that type, to go into their private lives.

344 Wheeler: It is of course, the right to privacy which the supreme court read into the the first amendment, which has become the basis for the abortion decision. Is there, I noticed one of the pressures in Alaska now is one of the single issue groups, the Right to Life, there are obviously going to be some problems in balancing these things out. Has this concept

of the right to privacy been interpreted to deal with problems of abortions?

349 Van Doren: Not that I am aware of, no. It basically, the abortion issue is basically the people who believe in the right to life vs. the people who believe that people should have control of their own destiny. The right to life people are one of the groups that might be highly in favor of the constitutional convention in order to put something like that into the constitution, and of course we run into the problem of what is legislative, and what is the basic fundamental law of the land. In constitutions, this is very important. The State of Alaska's constitution, compared to a lot of other states, treats the subjects very broadly, leaving the interpretation of them to the legislature and the courts. And of course, this is ideal in constitution making. What we are talking about is the basic fundamental law of the land vs. the daily problems that rise and fall with the various generations.

369 Wheeler. Vic (Fischer) has a rather long disposition on the grand jury here, that I generally agree with, I think his analysis is valid. It's probably an institution that has outlived its usefulness. I can't see a state embracing that federal provision. May I ask a question about the seriousness of the interest in the unicameral legislature. Is this sort of an old saw that people from time to time bring up?

377 Van Doren: Well, it was one of the first amendments proposed for the constitution, and it has been I believe, in the research paper on issues and the preface, you should find and in my paper here, I believe, since statehood, unicameral legislature has been introduced 13 times. Now, in going through, what this paper did was take all the amendments that have been introduced into the legislature since statehood, and categorized them as to what happened to them. In the case of the unicameral legislature, it has been introduced at least 13 times and I would assume, I would have to go back through it, but I would assume in probably five or six of those cases, it was introduced by the same legislator. It has been a thing that people who are of a more progressive vent feel that it isn't necessary for two houses of the legislature, and one can function better and less expensive and there would be less of a problem with free conference committees and with the power that they have rather than a single legislature that would not duplicate the system. The other side of the story is checks and balances. It has been brought up every year.

202 Wheeler: You know with a bicameral legislature, you often have the conference committee to work out the squabbling between the two houses when they can't agree, but in my reading of Vic Fischer's analysis, you seem to have a conference committee system with a vengeance up there. When you use the term free

conference committee, which I gather means that they can start fresh.

208 Van Doren: That's right. We have two systems there. One is a conference committee in which three members of each house are appointed and when they go into the meeting, it is to resolve differences in a piece of legislation, which starts in one house and has been changed by the other house, and the house of origin does not agree with the changes. The conference committee though, may only deal with the language in the two bills. If they can't reach an agreement, they are discharged, or they are upgraded, requesting an upgrade to a free conference, which means they are allowed to do anything. They may subtract, they may add language, they may add brand new language, and it sometimes gets to get to be a problem when the bill finally reaches the floor and bears no resemblance whatsoever to the original bill. The most blatant, and I use the word blatant loosely, example of it is the free conference committee on the budget, which the legislature and the various committees in their infinite wisdom, deal with the budget submission, during the whole session. Toward the end of the session, because there is difference in agreement between the house and senate, a free conference committee on the budget is appointed. They usually just completely avoid a conference committee and go right into a free conference committee. In that free conference committee, those six members are free to do just what they

darned well please with that budget and then they need to secure the vote of the majority in order to pass it and that is all it needs. They can wreck havoc with that budget bill and add and subtract things that the committees or the finance committees have never even discussed. It has been open to a lot of criticism in the State of Alaska.

240 Wheeler: I don't know of a system in which the conference committee has that much authority. Of course there is a legislative check on it, they must be authorized to do this by the delegation of the state, so there is no interest to solve the problem. But that is not really a constitutional issue, or shouldn't be, has it reached the stage where some sort of constitutional resolution has to be made to change the system.

248 Van Doren: Well I don't think that, but I think that is where the unicameralism comes in. People are saying if you have a unicameral system, you won't have that problem. I think that is where the argument comes in.

252 Wheeler: Well, you have the usual problem in Alaska with the legislature setting its own salary, I gather.

254 Van Doren: Yes, it is a problem on both sides. The constitution states that the legislature will have a salary, and at one time there was a salary commission established, that didn't seem to work out. Believe it or not, the legislators,

and of course from a practical point of view, legislators aren't exactly happy with the system now either, because they don't like to raise their own salaries, and as a matter of fact, they just raised their salary this past session, and that was the first time in six years that they have had a raise, and one of the reasons is the political ramifications of raising their own salaries, and yet they were very much behind the times in the salary situation. The legislative secretaries were making more than the legislators. So they did raise it, and of course they came in for some considerable amount of criticism from the newspapers and media and from other people. They don't particularly care about raising their own salary either, and at this time, that is the only way that they can do it. I don't know what the remedy is. I don't really know whether, again, that should be considered as part of the fundamental law of the land or not. Some constitutions don't carry a provision in the constitution on when legislative salaries will be raised. I don't know whether, again, with the concept of whether that should be the fundamental law of the land or not. We might protect the legislators and it might be a restriction, too.

285 Wheeler: In this little paper, I will send you a copy of it, I did, I just skimmed the results, of comparing the salary actually paid legislators with the method by which the salaries are set. And of course the lowest paid legislators are those in

states where it is set in the constitution, the figures put in the constitution. Then there is no real pattern after that. It doesn't seem to matter a great deal whether the legislator sets his own salary or whether it moves toward the creation of an independent salary commission, by which the legislators can escape some of onus for raising their own salary, which for some reason the public has never been able to understand. I think part of this is the reflection of the low esteem the legislators generally have in the eyes of the people. It is true of the country, it is the least respected of the three agencies of government, and they always seem to feel that legislators are just padding their pocket, even when they raise themselves from say six thousand to ten thousand dollars. I think my own suggestion would be to give some serious consideration to it, at least an advisory pay commission of some sort to allow legislators to escape part of that, and I think it's unfortunate that it's viewed as a selfish operation.

312 Van Doren: Then again, we raise the question, should this be in the constitution or should it be something done legislatively to create this.

315 Wheeler: In one of the publications, there is reference made to some concern about some groups about the governor's abuse of his power. What is that referring to?

319 Van Doren: Well, several things happened before statehood. Number 1, the legislature had no power and the governor had very little power in the territory before we became a state, and most of the government of the state or of the territory came from the United States government. It was felt by the delegates to the original constitutional convention that the executive of the state should really wade in there and take control of the state. They also had someone in mind at that time and apparently like our country, had George Washington in mind, who was a very strong personality, a very dedicated person of the state, who was more than likely going to be governor, and they felt that one person should have a lot of power. As states go, Alaska probably has one of the strongest executives in the United States. Some states have the legislature control most of the power. In some states it is equally divided, but Alaska is definitely an executively controlled state. We are having a problem right now. Both the governor, his top aide and the people in the attorney generals office are saying that the legislature is trying to take away some of the separation of power between the executive branch and the legislative branch. I will give you an example. The legislature passed the enabling act for the constitutional convention last year. It passed both houses and was vetoed by the governor. One of the reasons that he vetoed the bill was because the preparatory commission would be appointed with several members appointed by the governor and

several members by the legislature and a member by the Chief Justice of the Supreme Court. This should make for a well balanced preparatory commission. The governor vetoed that bill, using as his basis in one case the separation of powers that the legislature makes the law, and it is up to the executive to carry out the law. So therefore, we could make the law, creating the commission, but was up to the governor to make the appointments to be responsible for the commission. He also based it on the disqualification of legislators. Our constitution states that no public person in public office can serve more than one governmental job. So they are saying that a legislator is a legislator, but if he becomes a member of the commission, he is serving in two public positions, even though the commission is not paid. OK, so he based his veto on that. There are certain other bills that the governor has vetoed because of the separation of powers argument.

410 Wheeler: This is by far a most serious issue, but I sense in this whole business, because most of the other things seem to be sort of a problem, but manageable. This one is far more serious, and I don't know quite how it lends itself to constitutional resolution, but it would certainly be something that somebody will address attention to.

420 Van Doren: As I mentioned earlier to you, until four years ago, every single amendment that the legislature passed and put before the people was ratified by the people and was

approved, which was sixteen amendments. Since or beginning four years ago, three amendments were on the ballot in 1978 and four amendments were on the ballot this year. All of those amendments had to do with extending power to the legislature. Giving them more power, the disqualification provision was one they were asking to vote on, and whether that restriction should stay in or not, extending the power of interim committees of the legislature, extending the right of the legislature to question more and more of the governor's appointments, and a few others. All seven of those amendments to extend the power of the legislature that have been before the people, have been defeated by the people. Prior to that, the people always passed what the legislature recommended in amending the constitution. So what we are finding here, basically what it is telling me, is although there is a problem that exists between the two departments, the people's apparent mistrust of the legislature, at least the people not wishing to extend the powers of the legislature beyond what they are now, means that they like the way it is with the executive having this much power, and this can be an inference from them. Now if there is a constitutional convention, which seems to be the only way the legislature can change their status, if the convention delegates so choose, then I would say that's the way you solve this. You would completely revise the executive and legislative branches of government in the constitution and what their powers are to be. But then remember also, that any changes made by constitutional convention

has to be ratified by the people, just like an amendment, so the people may not go along with that either. So it is kind of an interesting situation.

475 Wheeler: The governor's veto powers are very strong?

476 Van Doren: The governor's veto powers are very strong. It has been loosened up a little bit by the last constitutional amendment that did pass, which allowed the legislature to try to override a veto in the special session, however the governor has the power to line item veto any budget appropriation. Any other bill he must veto the whole bill, but if it has anything to do with appropriation or budget items, he may go through and remove those from the bill. Therefore, and again, there is an argument there, the executive branch has the control of appropriation, where the legislators feel that they should have more control over that, because they are making the law and creating it and it is up to the governor to enforce it. But the way the constitution is, it has given the governor the power to strike out things in any budget or appropriation bill that he wishes.

500 Wheeler: They have annual sessions, but they are limited?

501 Van Doren: No, they are not.

502 Wheeler: They are not limited? OK, so you don't have a problem then, as we have in this state, where the governor has a free hand to veto at the end of the session. Once the legislature went home, everthing he vetoed was dead. We just voted on an amendment here, on last Tuesday, to allow a special veto session. I don't know how I feel about this.

512 Van Doren: That is one of the changes we made also, if the legislature goes into special session, they are allowed to, within five days, they are allowed to put the question of whether to override the governor's veto or not. We have no limit on our sessions at all. We meet annually, we and t's open ended.

524 Wheeler: This hostility between the executive and legislature may explain a couple of things that I read in here, without fully understanding, and that was that Alaska has a very short ballot. You elect only the Governor and Lt. Governor on the same ticket. In here, there is some criticism of the Lt. Governor and then there is the raising of the issue of the election of the attorney general. Now I gather this must be part of this general picture of hostility or have these issues come independently?

536 Van Doren: I think probably those issues have come up independently. There has always been a group which has favored the election of the attorney general, election of judges, and election of district attorneys.

524 Wheeler: Alaska has a modified Missouri plan for the election of judges?

544 Van Doren: Of course, we do have review of judges by the electorate every so often.

SIDE TWO:

003 Van Doren: Basically, the governor has the power to appoint judges, subject only to confirmation of the legislature. People who argue for this are saying that because the governor is able to appoint his own attorney general, that basically he is the governor's attorney, and serves the governor and does not serve the state correctly. Whereupon if the attorney general was to be voted on by the public, they would have a say in the type of person they want as the attorney general. Of course the argument against it is that it is up to the attorney general's office to defend the state and the governor. Therefore, he should be working in the executive branch. There are pros and cons there.

013 Wheeler: This is probably one of the most confused positions in state government, because of the varying roles of the attorney general is supposed to play. This, I tend toward the position of the attorney general ought to be the fellow the governor turns to and says this is what I want to do, now how can I do it constitutionally? Not whether it is constitutional

or not because lawyers can always build a case one way or another, but it is hard for them to play that role and play an independent as the top prosecutor of the state for example. Of course in this state, we elect the attorney general and in most of the states, he is elected, and we end up with the situation that we have here now of a republican governor, democratic lt. governor, and a republican attorney general. We formerly had a republican governor and democratic attorney general.

025 Guy: You elect your Lt. Governor separate from the governor?

026 Wheeler: Yes, there are three different offices. There is something of stepping stone to go through. But we have a situation in the previous administration where the democratic attorney general was often suspect of making rules, so to embarrass the republican governor, and also to build up his own position for his race for the governorship. Alaska, I don't know if I am helping you out at all. In Alaska, this is an area in which this question of what is fundamental really comes up and where we have to be a little relaxed, because what is fundamental to one state might not be fundamental to another state. We have mentioned the old classic of water in Arizona and the levies in Louisiana. Natural resources in Alaska. This is something, controls of natural resources, which ought to be something that you leave to the legislature's judgment but Alaskans, evidently, feel natural resources. is something fundamental that they want stated in the constitution.

040 Van Doren: That is correct. When the delegates met at the constitutional convention, one of the problems in Alaska is they felt that we had been exploited by various companies outside. By including the natural resources provision in the constitution, it shows you how much the people of the State of Alaska think of their natural resources, even in the actual enabling act it was put in that fish traps would be outlawed in the State of Alaska. That is how Alaskans felt about their natural resources. Well, that is one example, but our state is totally dependent on natural resources for economic development. In the past as a territory, our major money came from the federal government. We had boom and bust days. One boom was fish, one was lumber industry and one boom was gold. In all these cases, the majority of the money that was made went to outside interests, and so when the framers of the constitution wrote the constitution, they felt that they wanted to stop this, that the natural resources were so important that they would put a provision in that constitution to stop some of the exploitation from outside. Now you can't have a restraint of trade, you can't stop it all, but they certainly wanted to state in the constitution that we had important control over our own natural resources and it's even more so now, especially with the federal government locking up the land. One of the reasons the statehood commission was developed was in order to explore the ways where we can utilize and control our natural resources without federal government interference. This section is one of the things people have

asked about more than anything else "why this section on natural resources is in there?" As you said, it is the same reason why levies are in the constitution in Louisiana, and other special sections in various states, because it is so important to our state to have some say in our natural resources.

080 Wheeler: I think we have to break away from the standard reformer's definition of what constitutes fundamental law. It has to be within the context of the political climate and political culture of every state. Just skipping through here, one area in which there has been constitutional changes in recent years, and I think of dubious value is in financial and taxation areas, where at least for the most of my career in this business which spans the late 50's into the late 70's, the question of constitutional change within the direction of clearing up the legislatures, lifting restraints from the political practice of governments so they could more adequately confront the problems of the day, etc. Now we have reached the period where the questions seem less in that direction than for putting some of the strength back in and I am talking about now, the administrations in terms of taxing powers and in terms of expenditures and so on. We went through it in this state, and nothing came up, in both the constitutional amendment and statutory thing on taxing and spending but this legislature did nothing on that. The one provision that disturbs me more than anything else in the question of the proposition 13 amendment is the placing of the absolute or requirement of an extraordinary majority for passing

of taxes, the two thirds bit, which is part of proposition 13, which is part of the Tennessee constitution now. It seems to be occurring in enough places that somebody might think that it is the popular thing to do. Is there a significant question in Alaska to start putting this kind of restraint on taxing?

107 Van Doren: Not as much at this time. You may be aware that we have eliminated our state income tax just recently. We do have property tax, which of course proposition 13 addressed itself to, and some people are getting very uptight about the amount of property taxes that we pay. Other than talking about it, in other than several bills introduced in the legislature which really didn't go that far, we have not addressed that as much as some of the other states have, and of course we derive our money mainly now through oil taxation and revenues, and we have a severance tax. Of course there is a decision coming out very shortly from the federal government on severance taxation. That should be out, the report should be out, within the next week or so. The Western United States, as you may be aware of, is very worried about what this report is going to be, because of it severely hampering the severance tax on the major companies that have been developing natural resources in the state. Other than that, and the taxation problems that we faced in the last few years, mostly regarding oil, and oil related products, we have not gone into that very much.

127 Wheeler: I think one of the areas here that would trouble

me, and I don't know whether it requires constitutional attention, but it might, is to avoid a situation which the only reaction seems to be a clamp which threatens the legislature. We talked about this in class, but proposition 13 was largely an outgrowth of the system in California which was so effective in reassessing and reappraising property. In the time of rapid inflation that all the state had to do, the local government had to do was sit back and assess all these new resources. So in effect what they were doing, they were raising taxes without ever suffering the onus of raising taxes. I think this is the problem. I think it is something we ought to do to avoid the kind of reaction the people gave in California. It is going to have a long, there is a long time indication of what is happening. I am troubled by the two-thirds requirement too, because at least theoretically it seems to me to undo in certain respects Baker vs. Carr. What you are doing now is embracing a new form of discrimination. I think this is dreadfully dangerous. It seems to me a short run answer to an immediate problem which will have very long term effects that the people may not be aware of or appreciate what it will do. Why don't we get into something I know something about? What kinds of questions have come up in regard to the planning for this convention, for the commission first, and then the possible convention?

154 Van Doren: Most of the books that have been published, and I memorized the manual, which I noticed you have a copy of,

have been very helpful. I think one of the things that Alaska is facing is that we have never had a constitutional convention, we haven't really talked about it that much, and my committee and my work is the first work that has been done since Tom Stewart traveled around the country in 1954 and 1955 and prepared for the original convention. What has happened since then, is at that time there wasn't too much written about it, and there weren't too many people involved in it. Fortunately, I have the advantage of being able to read a lot of the things that have happened, a lot of the ways that people have prepared for constitutional conventions. How and what has worked and what hasn't worked. Then going ahead and doing what I am doing now and talking to people and I think a lot of the work that I have done, and a lot of the people that I have talked to, have borne out things that I have already read previous to traveling because I had definite ideas of what we should or shouldn't do. I think probably that rather than what we should do is that I am interested in is pitfalls that we should avoid. The manual brings up some very good things, and some of the other writings that I have read bring out some good things. I am looking, if we are going to have a convention, I would like it to be a successful convention. The Alaska constitutional convention if we have one, is totally unlimited. We do not limit it to any subject at all. That means the whole thing is wide open for revision. So two things have to happen. Number 1 is if they make changes, how are

those changes to be presented to the people. Do we want a situation similar to Hawaii where the people can either vote on any individual change in the constitution or vote on it as a whole or a combination of the two thereof. If it is going to be done, if we are going to have a convention, if it is going to be wide open, what do we have to look for to avoid any problem? And of course if it is changed, and it is changed for the better, then how do we go about convincing the people that we are doing great and wonderful things for the state in changing this and that. I think my interest might be to discuss the pitfalls to avoid rather than to exactly what to do, although I am interested in what to do also, but from my point of view, and in speaking to other people who have either been through it, or have studied it.

197 Wheeler: This manual, when I did it in the late 50's or early 60's, it was done largely on the basis of intuition and astrology. As you said, there was very little experience at that time. I was tempted to depend on the work that Emil Sadie did in preparation for the Alaska convention. I used his written materials and I talked to him on a number of occasions. I had the experience in Hawaii to some extent. The Missouri convention of the 40's and the president of that convention was still alive at that time, and some of the other people I talked with then. But it was, based more on limited experience and common sense than upon a lot of the experience, but I think this

is both useful and I think it has been, I think subsequent experience has sort of supported some of the warnings and suggestions that we have made. There are a number of things that have come up since then that I would call attention to, and I may be overly influenced by the intensive experience in Maryland, but I feel stronger than ever about some of the things that I said in here. If you are going to have a convention, have a session previous to the opening of the convention. In other words, a gap between the opening day and an organizational session. I think this is very important. Have an organizational session a couple of months, prior to the convention for planning for assigning personnel, these sorts of things before you get underway. I would even do what Maryland did, I think, and have some kind of preconvention discussion sessions, with the potential delegates. This is very useful in terms of developing the kind of camaraderie, to get to know each other, the election of officers, this may not be as serious a problem in Alaska, but it, everybody knows there is a lot of good men there. It was very important in Maryland, and it helped elevate the discussion in the convention. That is, it helped deal with the problem of fundamentals more clearly, because the business that the constitution ought to be fundamental is constantly hammered home in the three day session. One problem though, that I don't know how to address, because I don't think you ever tell the journalists anything, is to try to educate the journalists. This is what a constitutional convention is all about. I ran into this in Maryland, along with the school school for the delegates.

I recommend a school for the journalists, say one morning, but they felt this was a bad idea, and it may have been, but what happened was the journalists showed up, they didn't really know what a convention was all about, they thought it was another kind of legislature, and they started reporting it in legislative terms. The convention works a bit like a legislature, but it ought to be less political. It works like a legislature in the sense that a lot of the work is put off, nothing happens for awhile, and then it all builds up at the end. But you send a reporter to a convention, and what happens, he has got a deadline to meet, who is going to talk to him, probably somebody who isn't terribly important to the convention operation, or is off to the side, and he is perfectly willing to talk with some aspiring politician who wants to get some headlines. For several weeks in the process of the convention, you are hearing this kind of information about the convention, not about the great issues the convention has to face and about the resolution of the problems, but at best, human interest political stories. Now anybody who wants to say something critical at all about what is going on is going to say it. Rumors get played up like that, so you tend to build up in the public, an attitude of suspicion at least, toward what the convention is doing, before the convention has really started to do anything. It is just one suggestion, if something could be done in that area of reporting in the preparation state, I think it would be useful. Backing that, in drawing from the Maryland experience, a real item of controversy in terms of the action of the planning commission was to bring out that draft constitution and I had

very strong mixed feelings about the wisdom of this. I think on the balance, I would not have done it, looking back, it was a mistake, because what the commission wanted to do, this was the convention commission planning for the convention. They not only studied the issues, they not only made a recommendation to the governor and to the people that the convention should be called, but they had drafted a constitution. The idea was that they never had the idea that this would be the finished product, all they wanted to do was show how the existing constitution was not necessarily the form of that constitution was necessary, that you could draft a reasonable constitution in a much shorter way, dealing more with regular fundamentals. But this thing got picked up by really right-winged nut groups. They got an attack on that constitution long before the convention ever met, so that the draft constitution which had no official status whatever, became a rallying point for the dissident elements that were ultimately fairly successful in rallying opposition to the real constitution when it was proposed almost two years later. I don't know if this is in the works anywhere, but I think it is a grave concern. You were talking about and made reference on how to present the question to be decided. Make the first decision! Do you want it to pass or not. This may be a real question, when you get into this process, which direction are the people going in, and how the readers are responding to this. You can package these things in different ways. Maryland's experience, as you know, was to present an

entirely new constitution on a one vote deal to the people, and this got voted down. Everybody says a one shot deal, I'm not going to go. So Virginia learning from this, decided to make their proposal in four pieces. They had the general draft of the constitution, and three, what they felt were controversial arguments, that they isolated out in separate votes. All four things passed and passed handsomely. I think they would have probably passed handsomely if it had all been one single document. But if you do put it in one single document, you do tend to mobilize the opposition, because the people, whoever they are, find it, tend to respond to single bits of concern here. It contains the provision on that or this or something else, and you can get small minorities in opposition to various parts of the constitution, then a smart politician who is opposed to the document as a whole, can put together a majority out of these individual opponents. You can't look at the constitution in terms of a single piece, it has to be looked upon as reflecting a complex integrated structure. Has any thought been given to where a convention might be held?

320 Van Doren: I noticed in your manual that you discussed the fact that the University of Alaska was the site of the original convention and the fact that New Jersey held their convention at Rutgers University. In 1971 I was chosen by the legislature to do a constitutional convention site survey. At that time, we had concluded that the University of Alaska would possibly

be the best selection for a convention at that time. Since then, and the people that, the chairman of this committee, as well as other people, including Vic Fischer, feel that it should be still on campus. I have recommended another site survey study to be done next year to see what the best site would be.

403 Wheeler: Except for the need for these very important things, provisions for housing, feeding and that sort of thing. The demands on a constitutional convention would seem to me to be perhaps even less than the legislature, in terms of the different kinds of equipment you need. So much of the activity of the constitutional convention takes place in committees or on the floor that you don't need the office structure for delegates like you need for a legislature, in other words, you don't have the same demand for secretarial help, intensive work, but you do need some secretaries, but in terms of reproduction equipment, it is a smaller scale, so you probably don't need to put it where the legislature is with all these facilities. Of course you have a legislature that can meet year round if it chooses, so you have a problem of dovetailing, these two operations, if you decide to do it at the capitol. One of the great arguments John Bebout has of doing it in Fairbanks, is what if these guys do work on the constitution in Fairbanks in November, December and January, whenever it is, you can't or don't want to get out of the building.

428 Van Doren: What you have to realize is that not only do we have technological changes in Alaska, but there is a lot of

warmer clothing that isn't so heavy and allows you to move around.

431. Wheeler: Well, it has been very interesting, and I am hope that I have been able to help you in my small way. I wish I could spend more time, but I realize you have a plane to catch.

MEETING IN
HOUSTON, TEXAS

with

MR. JAMES F. RAY
MRS. KATHERINE RAY
DR. JANICE MAY
MR. GUY A. VAN DOREN

November 17, 1980

The following is a summary of a meeting held in Houston, Texas on November 17, 1981 between Dr. Janice May, Mrs. Katherine Ray, Mr. James Ray, and Mr. Guy A. Van Doren, Administrative Assistant to the Joint Committee on the Constitutional Convention.

Dr. May is a Professor of Political Science, University of Texas at Austin. She was a member of the Constitutional Revision Committee and is the author of The Texas Constitutional Revision Experience in the '70's, and will be responsible for the segment on the state constitutions in the next Book of the States.

Mr. James F. Ray was Executive Director of the Constitutional Revision Commission and the Texas Constitutional Convention.

Mrs. Katherine Ray was assistant to the Executive Director for both the Constitutional Revision Committee and the Texas Constitutional Convention.

THE CONSTITUTION

You have a good constitution. If a convention is called now, in this period of public unrest and distrust of government, you may get irrational proposals that will only be temporary solutions or solutions for special interests. You do not want this type of material in your constitution. Place the burden of proof of holding a convention on those who want a convention. Your constitution is one of the best there is.

PRE-CONVENTION

1. Stress the importance of preparatory studies and to get them started before the vote is taken.

- (a) Useful even if there isn't a convention.
- (b) Citizen's Guide to the Constitution.
- (c) Annotated version of constitution.
- (d) Simplified explanation of constitution.

It is good to have different levels of information, beginning with a generalization, citizen-type thing and progressing to the more professional in-depth studies.

2. It is important to have quality research done on constitutional issues.

- (a) Work accomplished in the above two sections is very useful for civic education. It is good to make the public aware of constitutional contents.

3. The committee should prepare something that shows the Alaska Constitution as compared to other states. In all textbooks on constitutions, the Alaska constitution is held as a model constitution in terms of length and fundamental principals.
4. Prior to the vote the committee should utilize all forms of media to inform the public. You should certainly use T.V.
5. Important to stress to anyone working on the constitutional convention or related activities (public hearings, media, brochures, etc.) that everything be done with integrity and statesmanship.
6. Hold public meetings to inform the public and to find out what issues the public is concerned with.
In Texas, when there was a loss of integrity in the public's mind, the revision of the constitution didn't stand a chance.
7. Begin planning for ratification of the revised document even before the vote on whether or not to have a convention. That way, you are ahead of the game.
8. Non-partisan election of delegates.
 - (a) People may not run if they have to run on a partisan basis or must adhere to partisan policies.
 - (b) Conventions should be above politics.
9. Regarding putting constitutional amendments on the same ballot as the question of whether or not to have a constitutional convention, the following comments were made:

- (a) If you are giving the people the choice between voting for the amendments so you don't need a convention, it might be a good idea.
- (b) People might feel that if there is an affirmative vote for holding a convention, the issues will pass also just because they are on the same ballot.
- (c) If the people voted for the issues and a convention, you would know what changes the public would like made.
- (d) People may be happier because they have had a chance to vote on the issues.
- (e) Do not contrive the issues just to get a "no" vote on the holding of a convention.
- (f) If something needs immediate attention, O.K., you shouldn't put on anything that would affect or impact the vote on calling the convention.
- (g) Keep in mind the "integrity factor".

CONVENTION SITE

The most important decision about choosing a site is the neutrality of the site.

- (a) Some people feel it should be away from the seat of government (capitol) in order to be free from politics, political influence, special interest groups, etc.
- (b) Some people believe that if a convention is held at a University, the public may regard the convention as

an "ivory tower" type of convention and thus that type of document.

- (c) Some people feel it should be where the population center is located.
- (d) The consensus of the three people at this meeting was that since the original convention was held at the University and the people accepted that, the University could be used again.

PRE-CONVENTION PLANNING

1. Enabling legislation:

- (a) Spell out the preparatory commission and its powers.
- (b) Prepare mechanics for the convention and that is all!

2. Orientation session recommended.

Texas held one for preparatory commission and prior to the convention, itself.

- (a) Brought in people from both inside and outside the state. Consultants and experts on conventions and revision: Mr. George Braden, John Bebout, Harold Blodget and Frank Elliott.
- (b) Texas received tremendous help from the National Municipal League .

Texas also held an orientation session for the press and a press forum.

It is good to provide a committee by committee expert during the early part of the convention.

3. It is very important to develop temporary rules prior to convening the convention. That way the delegates have something to work with at the beginning of the convention. It is also important to have someone who is familiar with constitutional convention rules, either a consultant or a former presiding officer of a convention, to assist at the beginning.
 - (a) Alaska could probably use most of the rules which were used at the first convention.
 - (b) Do not use legislative rules.
4. Have a list of staff and consultants prepared in advance for use of convention officers and committee chairmen. This list can be prepared after the vote on whether or not there will be a convention.
 - (a) In selecting staff, try to select people who are familiar with the type of job they will be doing. Try to avoid patronage positions.
5. Immediately following election of delegates, start educating them on the process of style and drafting and the functions of a style and drafting committee. This is very important.
 - (a) During the convention give the style and drafting committee time to complete their work during reasonable working hours and not during the night after working all day.

CONVENTION

1. Get organized groups to express their opinions early.

(a) During pre-convention period public hearings.

(b) In solicited issue papers.

(c) Early convention work.

If this is adhered to, there will not be surprises when the document is up for ratification. You can be prepared for all eventualities. Again, the key is public awareness and public participation. Do not do things in the dark.

2. Physical setting.

(a) Seat delegates alphabetically or have them draw lots to prevent cliques from forming.

(b) Adequate room for committees, press rooms, lounging areas and staff space.

3. Submit all work to style and drafting committee and give that committee adequate time and expertise to do their job.

4. Make sure there is an adequate budget for the convention.

5. Make sure floor debate is handled firmly, that no final drafting is done on the floor and that there is hard copy wording of proposed amendments and language available for all delegates, staff and press. Require written amendments.

6. It is a good idea to have experts and consultants right on the floor to answer questions and to advise the delegates, although they should not enter debate, only advise. If there are any questions or problems, hold over the matter. This is unusual with most parliamentary bodies, but it

can assist either the presentor or committee chairman.

7. Texas did not hold public hearings during the convention, only before and afterwards. The people at this meeting do not feel having a recess is a good idea. They felt in their case, holding a recess was a disaster.

ISSUES

Extend period for voting on whether or not to have a convention from 10 to 20 years.

POST CONVENTION

1. Texas mailed a copy of the revised constitution to every household. They feel many of those ended up in the waste-basket.
 - (a) They had the revision translated into Spanish.
 - (b) Some people were against it because it was too easy to understand.
 - (c) They feel just summaries should be mailed out and if people want the whole document, it would be available at schools, libraries and so forth.
(In Alaska, at information offices).
 - (d) Another suggestion is that the state could mail out request forms. If the people ordered the full document, it would be sent.
2. Send out a pamphlet with a summary and explanation of the changes.
3. It's a good idea to have a small public relations staff.

4. Anything you can do to get the revision document out to the public; media releases, T.V. spots, pamphlets, speaker forums, meeting with service clubs, participation by groups (League of Women Voters, and other organizations). The most important thing is to get the word out to the people.
5. Enlist the help of delegates for public relations work.
6. Speaker tapes are a good tool, they can be sent anywhere.
7. Hold the special election for ratification no sooner than forty-five days following the end of the convention and no longer than 100 days.
 - (a) People cannot say you are ramming it down their throats.
 - (b) It won't be so long before the vote that people will lose interest.

MISCELLANEOUS

1. A very important thing which Texas did and you may want to use is a WATTS line.
 - (a) Used all during the convention to answer questions (A hotline).
 - (b) Used between end of convention and ratification for informational purposes.
 - (c) They also taped news releases for radio and T.V. use. The stations could call and get a taped summary of each days activities.

- (d) It was used effectively to squelch rumors of what they were doing.
 - (e) They used the Texas News Network, we could use the Alaska Radio Network.
 - (f) Cut tapes of debates or summarization of the days activities.
 - (g) There was some live coverage similiar to our Capitol '81 program. This also created information.
 - (h) Hotline was kept in use all the way until closing of the polls on ratification day.
2. Overall you must pay attention to even simple detail that may not seem like much at the time but is very important and remember the statesmanship and integrity.

November 17, 1980 (Afternoon)
Janice May, Kathy Ray and Jim Ray
Texas Constitutional Convention

613 Van Doren: I have given you all a brief background of what we have done so far, what the purpose of this meeting is and what this trip has been for. I am open to suggestions and it can be totally informal. I would like for this to be informal and just a little bit of discussion of what we have talked about.

621 J. May: I was a member of the commission, and I would like to stress the importance of preparatory studies and to get them started even before the vote is taken. Now you are familiar with George Braden's work and other works like the citizen's study of the constitution, what did he call it? Citizen's Guide. But more useful are the annotated versions. We have a very convoluted constitution. We had it simplified and pluralized, plus the annotation and comparative analysis. That was very useful, but of course I don't know how experienced your people will be. Either the commission or the delegates. It is good to have different levels of information, beginning with a generalization, citizen type thing, and then progressing to the more professional and in-depth studies. Of course we deal from the Texas experience. We just needed lots of information and that was

one of our problems. We had to absorb so much on the commission. There was a lot. I don't know how many people understand the Texas constitution even today, more do now than they did. It is so involved and yours is not, but even so, I am sure there are some technical and intellectual brain twisters, so you need to have lots of information.

659 Van Doren: Janice, let me ask you one thing: Do you think this type of information would be helpful even if they don't decide to have a constitutional convention?

663 J. May: Well, it certainly would be, I do some lobbying and of course I teach, and I use the materials all the time. Of course we did go through the experience of a convention, but then we failed. I teach the simplified constitution, I bring it down and look at it, and I use it all the time in my teaching, and I have talked to others who are in the legislative process, and I am sure they use it.

674 J. Ray: I would respond to that by saying that I second that, what Janice said on the importance of getting started early. Quality research on the constitutional issues, which in your case particularly, it seems to me that you have a wonderful opportunity for a civic education kind activity

where you, whether the proposition passes for a convention or fails, and you don't have a convention, would serve to enhance and lay out the level of citizen awareness throughout the state of what is and what isn't in a constitution. I realize you have a newer constitution and a shorter one, and probably there is a much greater number of people who understand it. But I suspect that the great masses of the citizenship does not fully appreciate the provisions in your constitution. If they do, it would be very different from any other state that I know of.

704 Van Doren: I am glad you describe our population as great masses.

707 K. Ray: I think one of the most valuable tools, resource tools, that we have is the annotation, which didn't come out really in final form until after the vote had failed and everything else. That is what I refer to most and what I think a lot of other people, lay people, refer to most in trying to understand it. I would think it would result in a new constitution being newer and shorter, you could do an annotation easily because your constitution has been adopted more recently. You have the records of your first convention and everything like that, which we didn't have. I think that would be the

primary resource document that I would recommend in terms of the one of the things which should be done. Janice, you may disagree with that.

731 J. May: No, I would agree with that. As I understand it, it is kind of unique. Now, you did have one in Illinois, the new Illinois constitution was passed so that the old annotated one probably doesn't serve as much of the purposes we're discussing.

END OF SIDE ONE

Side Two: 001 J. May: Of course, since we didn't get a new constitution, ours has proved invaluable. But I would think in connection with what we are doing here at the conference, there is a concern about citizen's attitudes toward government and the need to get citizens involved again, at least for a community spirit or in a civic sense. This is ideal, this just puts some meaning into a civic education conference. So even if it fails, it might prove its worth in getting citizens involved. I think a lot of us who participated here in Texas were the better off for it, the citizen's advisory groups and so forth, even if the whole thing failed, I think, I saw a definite change in the legislature. They were referring, I would go to committee hearings, they referred to those propositions that failed, they wanted to at least have some of them altered, and they were definitely influenced by their experience, there is no question about that. So even if it fails, I think in terms of civic education, it would be helpful.

013 K. Ray: Of course the annotation would be even more valuable if the proposition failed. It is something that you could have for all times.

015 Van Doren: Certainly, because we will be able to keep those on file, and we know that we are going to have a vote again in another ten years. The time may be extended.

018 J. May: You probably need an amendment to extend it to 20 years.

018 J. Ray: Careful research will pay off, I think, regardless of the vote, and will be well worth every penny that you put into it. I heartily believe that from our experience. There is very little out of the short body of materials that are not being picked up and used, in some form or fashion.

023 Van Doren: I think Janice had a good point too, which was the feeling that has been brought out at this conference on how important it is for the public to know what is going on and the citizen awareness. I think that if nothing else, it has driven home to me the need for a good citizen awareness of even a question of a constitution. What the convention would do, could do, can't do and shouldn't do. But I sure have heard it echoed these last couple of days here in this meeting.

030 K. May: What is your committee going to do as far as education about the referendum?

032 Van Doren: That is of course, up to the committee. One of the things that I have proposed to them and that I have been working on prior to taking this trip, is an informational brochure. This brochure is in draft form now, and what we are working on is trying to have a fairly simplistic brochure that explains about what a constitution is, what a constitutional convention is, what a constitutional convention isn't, how important citizen participation is, and we have been thinking very seriously of basing it on the type of format that Hawaii used, the League of Women Voters in Hawaii, with their semi-cartoon type brochure, where it is good enough and general enough so that we are not insulting any adult by giving it to them to read, but it is also simple enough so that it can be distributed to school children.

043 J. May: The adults are going to be more apt to read it if you have something more like a cartoon.

044 K. Ray: Some kind of pictures and sketches somewhere.

045 Van Doren: One of my sneaky propositions is that we would be handing them out to the school children throughout the whole state, and as soon as it appears at home, sitting

on the table, someone is going to pick it up and look at it. It will be distributed other ways too, but that is one way of getting it both to the schools and then into the home, so that when it is sitting there, an adult is going to pick it up and read it, and I am trying to make it very readable and enjoyable to read too.

051 K. Ray: Are you going to include in there information about what is in your present constitution and how relatively new it is? As compared to other constitutions and things like that, I think that would be valuable to the people in trying to decide whether they need to really take a major look at it again.

055 J. Ray: It should be a simple comparison of the Alaska constitution as compared to those of other states. Most states, Texas being a bad example to compare with, in terms of length, in terms of fundamental principals.

058 Van Doren: Right. The one thing that we cannot do, and I have been instructed very strictly on this, is we cannot, due to the fact of the state supreme court decision regarding the language on the ballot relating to the question of calling a constitutional convention. They have asked that there not be any real opinions expressed in the brochure as such, possibly a comparison, which is a good idea Kathy, in some general form, but we don't want the brochure slanted toward the fact that we are

saying you really shouldn't have a constitutional convention, we don't need it. We have got to be very careful with that.

J. May: Of course, all of the text books compare the Alaska constitution and how good it is with other states and how their constitution should be more like the Alaska one. I wanted to stress one thing, I have been involved in some other citizen activity, and we have to keep in mind the fact that most people watch television, that is where they get their news, and so you need to use the broadcast media or you probably aren't going to have much of an impact as far as the mass citizen. So maybe little spots or kind of shows, I don't know how you would work that situation, the radio is helpful also, I suppose.

076 J. Ray: I was going to ask about the great distances and isolations, I don't know enough about the complexity of that, but I am sure you have a whole set up of communications considerations that you have to bring to bear that are particular and unique to Alaska.

080 Van Doren: Actually, we have a fairly good system, we have our satellite system, which reaches all the bush communities. They all have television now, it's not 100 percent but it certainly covers quite a few of them. And of course there is educational TV out there, and that type of thing.

It is ideal for that type of work, plus even our teleconferencing network from the legislative halla, which we can get out to 16 or 18 different places, and we can actually call a meeting in Juneau, have people in one of the locations, and they see us on television and we see them on television when they are talking back and forth, so we can have committee meetings in two different places in the state. But that is good, I think you are correct. I think the TV spots would also be a good way to do it, depending on how much time and money can be spent. But I am certain that different groups are going to be involved in this, too. The League of Women Voters, and special interest groups that are going to have their say-so too, about whether or not we should call a convention.

097 J. May: It will be tough to be the person to make up these spots. You know, to have that short period of time and try to get enough information involved to make it interesting at this point. This kind of material is kind of difficult to get to the mass public, but of course, maybe you don't have to, maybe it's just the elite public.

102 Van Doren: No, I don't think so, I think we would have to get to the mass public. It's kind of a challenge to me, possibly to design some of these, too.

104 J. May: I know, our people worked hard on it.

105 J. Ray: Related to what we have discussed thus far, if I could single out one thing, that I would put more emphasis on than anything else, where you are now, where will you go, depending on the chain of events, it's not only the complete appearance but also the complete fact of the integrity of the substance or the depth in your work of statesmanship, all the way through. You know your political situation, but whatever you have to do to begin now, to line up that kind of series of contributions by the various group leaders in a statesmanlike atmosphere. That, more than anything else, I think to me, would bear directly on the outcome of your referendum and on the question, if there really is work beyond that, a preparatory commission of the convention and ultimate quality of your work. That similarity is the one that, had I the opportunity to go back and do ours over, I would want to spend much, much more time on developing that sense in the public's conception and eyes, complete and total statesmanship and the integrity just as we used to revere the judiciary. I think we have come a ways on that, and it's seen in a little more humanlike way, but we used to think of the judiciary as the high bench and the robes and the complete integrity, and I wished we had the chance again to work at that in our preparatory work. Spend as much time counseling the people as you can.

135 J. May: It is a tough row to hoe.

140 J. Ray: In my sense of where our whole process began to go downhill was when we lost the appearance of integrity. I am not entirely sure that there still weren't great statesmanship in those members of the legislature. There really was, but political careers went down the drain over votes. Almost no one in the legislature that I know of really gained from that process politically, economically, or any other way. But we lost the appearance of integrity, and it went downhill all the way to the vote, downhill to the end of the convention and then there was the attempt through the legislature to bring the proposition back on the ballot and it still carried that taint in the point of view of the voters.

154 J. May: As I say, though, keep in mind that we had a tough row to hoe. We were going against some ingrained prejudices of many years standing against the legislature.

156 K. Ray: And the governor, who didn't support it. That was the difference, also.

157 J. May: Well, you don't have that problem. You will probably have the problem that so many states have, and that is to continue the momentum after the convention is over, and to go right into ratification campaign. Think of that right

now. The ratification right now, in order to get it adopted.

163 Van Doren: OK, the preparation that we have talked about, we have talked about the citizen's guide, the annotation, the need for integrity, the commission, itself. Let's see, I am just trying to review Texas, and I realize that you, since it was the legislature, you basically would say that it was partisan delegates, because t' y . . .

170 J. May: Well, they were mostly Democrats. I don't know whether in fact there was a two party contrast, although the Republicans didn't vote as a block, but there were a number of them that stuck together, and I think they were playing a game.

173 Van Doren: Do you have any feelings, any of you, over the partisan vs. nonpartisan election of delegates?

175 J. Ray: I would be very prejudiced myself, in going for a nonpartisan election of delegates.

177 J. May: I think that proved to be better.

178 Van Doren: That's fine, this is your idea, so . . .

178 J. May: It's not our experience.

179 J. Ray: It's not our experience, I was just trying to think through this, your situation on this. I still feel it should be nonpartisan.

181 K. Ray: You might leave out some of your most qualified people to serve on this if you had to have so many Republicans or so many Democrats, or people had to run on a party basis or something.

184 J. Ray: I really think that starts to lay out provisions early on. It draws the line, and creates a majority going in, a more rigid philosophy.

188 J. May: You are trying to get above politics, I think. You need to make it a cohesive unit a sort of community policy.

190 Van Doren: What, and this is one of the things which has been discussed with the various people with whom I have been meeting, is what are your feelings toward the, say first of all, the site? I realize you are not that familiar with Alaska, where we basically have our choice between the University of Alaska, where the previous convention was held in Fairbanks, and I imagine the larger community of Anchorage might possibly be looking for hosting it since they would probably like it to be near the majority of the people. Also, we have the facilities and rooms in Juneau, which is the state capitol, or

some other site. Do you have any feelings about whether it is good or bad to have it in the state capitol because of the feelings, possibly, of the public towards a state capitol atmosphere, or a university atmosphere, or anything of that type?

207 J. May: Mostly, the university or possibly Anchorage. The university is a little isolated, isn't it?

209 Van Doren: Not as much as it was in 1955. It would have the facilities, because they are thinking of renovating Constitution Hall and using it for that particular purpose, we don't have to compete with the students because the people would be housed probably in Fairbanks, as they were before, and you also don't necessarily need the amount of facilities that we have in Juneau, although that is very nice, with the teleconferencing system, it makes it very convenient, but . . .

216 J. May: I would say as to the seat of government, if we are going to carry it to the extreme, with the civic community and spirit of nonpartisanship, you might keep in mind those who are distrustful of governments. I think it is best to put it in the university. Don't make trouble, in other words, if there is, if you have in Alaska a bad feeling, like other places, get away from there.

222 K. Ray: But then when you give people the impression of having it in the university, you succeeded before doing it in the university setting, but I think sometimes the rank and file citizens get the feeling when things are done in a university setting, as if it was some ivory tower kind of lofty concept that is somehow placing itself above the rest of the population or something like that. You may have to balance that concept vs. the distrust of government concept. I would say Anchorage.

231 J. Ray: I would think, I don't mean to dodge your question but to throw it back at you in a way, the fact in my mind would be the public sense of neutrality. I don't know enough about Alaska to know which of these sites or others might meet that requirement best. I know that it would have been very difficult for us to hold a constitutional convention in Texas in Houston or in Dallas, because it would not have been perceived as neutral in terms of economic interests. I think it would have been very, very difficult to hold it on the University of Texas campus.

241 K. Ray: I think so too, with all the university articles.

241 J. Ray: The university ties into the constitutional articles, in fact we had problems, I do recall, with our one

public hearing on the University of Texas campus, and remember how the regents came down and blocked off all the seats in the front part of the hearings for themselves? There were people who were quite offended by that, and there certainly was not a neutral feeling about our hearings on the university campus.

248 J. May: You do in your state have the history that it was done successfully on a university campus.

249 J. Ray: I am not arguing against it.

249 K. Ray: In Alaska, that might be the best place.

250 J. Ray: That might well be the best place because the neutrality criteria is the one that I would look for the most. You got your locations, any of those would be or have certain transportation advantages.

354 J. May: Of course the capitol has the advantage of the facilities.

259 J. Ray: The biggest advantage, and this is probably showing some personal bias, but the biggest advantage to me of staying away from the capitol, would be to simply change the usual order of business of doing things. Make everybody

involved move. Make the lobbyists move. The lobbyists would want to influence the process and they would have to do it in a different environment. Change the order of business and not play to the advantage that they have of, they meaning anybody that is well entrenched in the political environment of the capitol city, the on-home turf advantages that they have, established institutions. Basically the lobbyists, in my opinion, would, from whatever side of the political spectrum, they are set up with private clubs and booze and newsletters and things where they can crank out and alert their members and all that and it is a lot easier for them to do it from the capitol base if you are in their home turf.

280 J. Ray: A new order of business and not your old regular way of doing it.

281 J. May: You probably heard from Sam Gove. They had their convention in Springfield. A lot of the lobbyists wouldn't show up, in fact they got kind of concerned on paying attention to them. There was the legislative session going on also, and that is where the lobbyists were.

287 J. Ray: I agree lightly, but more seriously, I think that is the danger that you need to watch out for, the organized groups getting involved and really showing, however you can to get them to show, their cards, what their real interests are, somehow.

The discipline of the process of forcing them to make some early choices about what their real feelings are. We had a number of groups that laid back on us during our preparation commission work, and didn't surface their real concerns during that process. They waited to surface many of the issues later and that really tore our convention apart. The right to work issue was compromised and kept silent, not silent, but it was not publicly debated in any serious sort of way. A number of other issues and specific groups that said very little about our changes and things that affected their interests, retired teachers and what not, until it hit the convention, so part, if I have to quantify it, would be one quarter or less than that of the work, in my opinion, was not real in terms of the real public debate that was going to go on in the convention, we had somehow sidestepped or ignored or compromised quietly something that should have been more thoroughly debated and these interest groups should have been drawn out so that we could really find out what their position was.

321 J. May: Now I remember all . . .

322 J. Ray: Some strong anti-legislature and anti annual session kinds of concerns that were out there, were never really fully brought before the commission.

325 J. May: Well, we did have trouble with annual sessions,

There was a long minority report, but Alaska probably won't do what we did, which is really to have a little miniconvention before we get to the main convention, because we had to do something about that constitution to make it manageable and you don't have to do that, so you may even deny to your commission the power to make any recommendations. I don't know, some of the commissions don't have the power that ours did. They just write a few pamphlets and do the mechanics and arrange the facilities. But I do remember that when I was on the panel before or after the commission had completed its labors and before the convention met. One of the panelists was a beer lobbyist, and he looked and smirked at me and said "Now we will get it", meaning yours is just the preliminary work and we know what to do now and we're convinced and we will take care of it.

343 Van Doren: One of the things the committee was considering doing, and I don't know how it is going to work in with our time frame this year, but prior to the vote, it had been planned for this year, but the committee was three months late in starting for various reasons, but one of the things that we had discussed doing was to hold public hearings throughout the state to number 1, acquaint people with, again the public relation and education that we were talking about, acquaint the people with some of the information that I would find on this trip, information about the constitution, about the

convention, that type of thing, and in turn, have them give us a feed back, and what they feel their conception is of the constitution, and what issues they feel should be looked at and just a general feeling of what they have about the constitution, and a constitutional convention. Do you think this is a good idea or not?

360 J. Ray: I would be positive about that sort of activity and again, I harken back to my earlier comment about the decorum and the statesmanlike way which that sort of thing ought to be handled. Is it going to be on the topic of the constitution? I think it may help.

365 J. May: You might uncover some things that way which you wouldn't know about otherwise. It might be that you don't want a convention because you see some problems emerging and or you might decide you should have a convention, if you follow me, there might be some say, ultra-right or ultra-left types of proposals that you, yourself, or whoever is the one to interpret these hearings from the political standpoint, wouldn't like to see get out of hand, and this might be better than a public opinion poll. Just find out what the lay of the land is from a political standpoint.

378 Van Doren: Right. Of course, we have no choice. The vote has to come before the people.

380 J. May: I know, but it might be that you will be forewarned or it might be used for people to have a no vote. In other words, there might be side results, too. Some things you don't expect might come up, but in the civic sense, it is always good to let people know what is going on.

387 J. Ray: In a neutral sense, where I think there is some kind of way that there is a possibility that the leadership of the state might learn out of a hearing process of things that might help jell their, the electorate's, opinion or the leadership's opinion of what kind of a position they want to take, yes or no, on the vote. I guess I don't expect that with the newness of your constitution and the shortness of it, the chances are that that process would alert some people that maybe didn't want to have a convention which meets to revise it. They like it the way it is.

400 J. May: You are likely to get some things tacked on that you don't have now, is what I am thinking, especially if you have this unease. You start in a time of trouble in economics, you may start getting things from under the rocks. You are starting to get irrational proposals. I don't know whether this will happen or not, but I can foresee it.

406 J. Ray: It helps people in groups indentify other, and

sometimes more appropriate avenues for expressing their concerns.

410 J. May: How is the tax situation? You have a bonanza don't you, in terms that you're giving the money back? You probably don't have that problem.

413 Van Doren: Following along with that a little bit, another thought had occurred was the possibility of a followup to these hearings, suppose that there were say a set, and I am going to pick a number out of the air, of four major things that turn up at this public hearing that the people seem to be very concerned with that the legislature hasn't addressed. Some of the work that I did last year identified every constitutional amendment that has ever been proposed by the legislature since statehood, which was interesting, what happened to it, where it went, how many committees it passed, or whether it died or whatever. One of the suggestions was that, suppose we had turned up four or five things that seemed to be in most of the hearings we held and there was a consensus that maybe those should be changed and the legislature hasn't addressed them. The other possibility was that at the same time the vote for whether or not to have a constitutional convention was up, would be that these amendments would appear on the ballot also, passed by two thirds of the legislature and place it before the voters at the same time. What are your

feelings about that?

437 J. Ray: I'll refer to Janice a minute on that, that is her field really, she has studied our amendment process and seems to have a good grasp of it.

439 J. May: Let me get this straight, you have in mind putting on some amendments at the same time as the yes or no vote? Well, in our experience I do find that the voters do discriminate in terms of, if you are thinking in terms of passage or defeat of these amendments or if you are thinking of the lightning-rod type of thing. In other words, are you saying to the voters, here are some controversial issues, you can decide them now, and you don't have to have a convention to do it. If you are thinking along those lines, it would probably be good strategy to do that. If you are thinking along the lines of just approval or disapproval of those amendments, sometimes there is a feeling that if the vote is affirmative for the convention, all these issues will pass just because it is on the same ballot, in other words, the people will vote for all of them, or the reverse might hold. I guess that is what Jim had in mind. Our research has been in connection with the convention, primarily whether to tack on amendments when you are voting up or down the constitution and I have some other situations in mind. I think, generally speaking, it has been discovered that

it is wise to separate out some of the proposed constitutional changes, some of your most controversial issues, so that they can be decided on their own merits without the whole thing being pulled down. So I think it is a different situation here, when you put them on the same ballot as a yes or no vote, from a civic standpoint, I think that it should be by itself. I don't think it should be associated with anything.

470 Van Doren: Well, basically, we are talking about just the same ballot. In other words, we only have one more chance to place amendments before the people before the question on whether to hold a convention is voted on. I mean it has to be the same time. Normally, we only put amendments on the ballot in the general election years.

476 J. May: Well, it's going to be on the ballot, the call for a convention. Well, there are just two ways of looking at it. One is, if your strategy is to kind of discourage the vote, you might say to the voters as I suggested here, some of the things that come out of the hearings, and here is your chance to vote them up or down now, you don't have to have a convention for it. Or you can leave them off on the assumption that this is premature. If you are going to have a convention, then that is the sort of thing you have to discuss when you get to the convention. So, I guess it is up

to your strategy, there is no yes or no here, it is just what you are trying to do.

488 K. Ray: I think it might help you to have those three or four issues on the ballot with the yes or no vote, because then if you end up with another convention, you would at least know what the most current reading of the people was on those issues, if you didn't have a convention. You might please the people with the opportunity to vote on these issues, and whether they passed and were added to the constitution or didn't pass, and weren't added to it, you might have achieved a little bit more satisfaction from the electorate by having them on there.

505 J. Ray: Comment about Janice's comment about public concern over their ability to trust the government, and my answer to you on that would be that there very well may be some item or items that on their own merit are in the best interest of Alaska needs to be on that ballot at that time as an amendment, but I would not contrive to put issues on there, because I think that the public's distrust is such that it would be seen as a strategy, if you will to, in some way, one way or another, influence that vote on the convention, and so as a strategy in the sense we were talking about a minute ago, I would not do that. If there is a sound independent, fundamental reason to have something up there, debt

ceiling or some particular issues that really must, convention or no convention vote, be on the ballot at that time, well fine, but I think I would argue against a strategy of putting things on there in some way to affect or impact on the convention vote. It ought to be a very clean vote, up or down.

537 Van Doren: OK, let's go ahead now that we have had the vote, and we are going to have the convention. We talked about the preparatory commission, I suppose really, Jim, with your background, things that you were involved with in this type of thing, that I might ask you where do we go from here?

546 J. Ray: You are back in the legislative arena, right, in terms of enabling statutes?

548 Van Doren: I am going to assume that our enabling legislation is going to pass this coming legislation session, at least if not this coming session, maybe in 1982, which will be prior to the election. I think we will get enabling legislation. We have two legislative sessions to get it done before there is an actual vote on a constitutional convention. I think the feeling of the legislators on this committee is to at least get that done and get it over with. The people will know how their delegates are going to be chosen, and they'll know exactly

what to expect if they do vote for having a constitutional convention. That is one of the reasons I am in favor of getting it out in front of the public.

564 J. Ray: The enabling legislation, would that spell out whether there was a preparatory commission, what powers it had, what size it would be, how it was appointed and so on? That's all, once the election takes place, you are saying that is all behind us. We are of course looking at preparing for the convention itself. The polishing, finishing and the further development of information and research in the area from the beginning of the budgetary and physical preparation of the planning for the briefing and orientation and the care and feeding of all the delegates is where you are at that point.

We found the orientation kinds of sessions we had, where we brought in not only our best minds from our state, but also enriched it greatly, from people from all over the country, prior, in our case, prior to the convention and even the preparatory commission.

602 Van Doren: So you brought in people from outside, both during orientation for the preparation commission and also for orientation of the delegates after the election?

605 J. May: I was in charge of what we called the seminar. The vice-chair was one of the main persons of the seminar. It involved everybody; John Bebout, George Braden, Harold Blodget, and Frank Elliott. We had a committee to try to pull everything together and I think we had a day and an evening.

615 Van Doren: This was for the commission? (Yes!)

616 J. May: We also had a kind of thing for the delegates, and we brought in the press. That was the second one, or was that the main one, with the press? We had a press forum, and then we had one for the delegates too, so we had several preparatory sessions.

622 J. Ray: We set an early part of the convention aside for committee by committee expert testimony and briefing from our preparatory commission to the delegates, and that I thought that was really useful.

629 J. May: You remember, we had the one for the press. We had other state's conventions represented and they dealt with how they got the message out to the people. But it was the day after we had the delegates there, that is the representatives and senators, and we spoke to a number of delegates.

640 J. Ray: It was a day long session.

644 J. May: I know we had one just for media. Then I remember, very clearly, we had all the representatives and senators at the Joe C. Thompson Center. So that must have been the next day or something. Then we also had the National Municipal League Convention in Dallas, and we had some things there for our representatives and senators, and then the members of the CRC went around to the different communities and one of the functions was to meet with the incoming representatives and senators and we had small meetings with them and exchanged ideas. So there was a definite effort to get these people ready for the convention. I don't know if your commission would do that kind of thing.

664 J. Ray: I can't over-emphasize the value of the National Municipal League in that part of the process. The orientation kind of things. We knew pretty well who our presiding, who our president of the convention was going to be in advance, as I suspect you, particularly if you have a large vote, you may know. We set up with the National Municipal League, meetings in Dallas. We set up our president to be at the convention and our Lt. Governor, in a room in a hotel and we had them meet with officers of the League and individual people like John Bebout, Sam Gove, we walked as many former

convention presidents as we could through that room to talk with and prepare them. We ran former staff directors, university people like Sam Gove through and gave our core leadership there some exposure. Those who had trod the path before them. It was very helpful, I thought.

699 J. May: During the convention, you called in people like Sam Gove too. Expert witnesses, to decide when we should set the election, what the ballot should look like.

705 J. Ray: I know what my transition thought was, the point I was going to make. In this period of time, we are talking about now, after your vote and before you meet, the matter of beginning on the rules, and I am sure from the others that you have talked to, you have gotten a big dose of that. But this orientation process we are talking about was very helpful in that, our leadership to be, could ask the very specific kinds of questions, how can this work out and how can that work out? How should you handle voting in a peculiar problem that requires two-thirds vote? Would you take a two thirds vote all the time.

J. May: We never got two-thirds on anything, did we?

End of tape.

Van Doren: OK, as we finished the other side of the tape by talking about the rules, so go ahead on that.

004 Jim Ray: In this period of time that we are talking about, the development of rules is very important, and I guess, the question was raised, do you have temporary rules and then the convention debates and adopts permanent rules. I am not sure I know exactly how to answer that. I think from what I know of your situation, that would be the logical steps. You have to have some set of rules to even begin, so have something temporary, but to the extent you develop your research on the rules, those used in other conventions and how that fits into the more common parliamentary practices in Alaska that are well known to many people. To the extent that you can lay out some alternatives on certain parts of the rules prior to the time the delegates are elected and then as soon as those delegates are elected, involve them in the process of reviewing the rules, suggesting rules, having someone around who is an expert on the rules of the convention, or who has presided, or have several people talk to the delegates.

023 J. May: You already have the original set of rules, I

mean you could use those rules just to look at, to start from. We didn't have any. Because we didn't have a convention for 100 years, there was no real record of the convention. We had experts but you can't go to the old rules, you are going to have some committee or somebody is going to have to write some rules. You can't spin around, it loses valuable time, because that can get very tricky.

031 J. Ray: I think there is a lot to be said. Janice mentioned your previous rules and in our case we based ours essentially on the rules of the house of representatives, and some indigenous base to me is, at least in our case, had a lot of value. We adapted where we needed to adapt, and left things as they were where they worked and some things we left where they were just because they were comfortable, and everybody felt good about knowing they were there, even though they were not going to impact the process very much at all.

039 Van Doren: Of course you had a unique situation there of having your legislators as your delegates, and they were used to this set of rules. I wonder whether it is good to draw from legislative rules for convention rules.

041 J. May: You can't altogether, because prior convention rules would make more sense.

042 J. Ray: I would not recommend that you draw from your legislative rules.

043 J. May: The process is different. The purpose is different. You have to come out with one document. It is best not to have to go back and forth from committees, and also we limited the reports so that you had a committee report, you didn't have individual suggestions. You had to wait until you got to the floor, and then you could amend the committee report, but you have to sort of ride herd on this process or you can get bogged down. I felt our rules worked fairly well. Of course we did have Jake Wheeler prepare the rules, I think in the rule model for the convention, he did them kind of by the seat of his pants. There are models to follow, but you have to remember it is a different process, not a legislative process. Of course there will be parliamentary rules that will apply universally, but the whole process is set up not for refining endlessly and then having your next legislature amend. This is it. You are getting one document. You only have one house, too. How did you all handle it? Did you just get together into small groups on the rules with the leaders? Staff?

062 J. Ray: That is where we started, and we did have a committee to work on the rules.

063 J. May: Was this part of that joint committee? Nuts and bolts.

065 J. Ray: Yes. Probably where we had preparatory committee of the delegates, if you will, but preconvention planning committee is what we called it, and it dealt with rules, facilities, budget, research.

073 J. Ray: We were most deeply involved in that, but in terms of answering your question, we started with the House of Representatives rules on one hand, and several versions, including one that George Braden did, suggested rules based on experience in Illinois, and the model rules and so forth, and essentially the way it ended up politically working in our exercise, I don't think we spent much time over this, it is so different, was that we inserted into our house rules those things that we felt were critical to the different process for a different product, and as Janice was just talking about, we left in a lot of the things that were strings really, or of very minimum obscured use because our delegates were used to having them there, and felt comfortable about that. To me, in your situation and to make things sure, first of all you need a set of rules, that lead to, as Janice says, to a document, a final single coherent document that is perceived as having some

permanence and not something to be amended next session, and secondly to open up as much participation as you can get on an equal basis among the delegates. I would certainly argue to stay away from house rules or legislative rules because those members of the convention that happen to be legislators would find themselves in an advantageous position vis-a-vis, someone else coming in, you should start everybody reasonably equal. Not in their talent or ability, but their position in their treatment of the rules.

102 K. Ray: Familiarity with the rules, too.

103 Van Doren: How was, once the convention got underway, how did Texas have their seating arranged?

106 J. May: The physical seating? We had to take out the house seats, and they were put sort of in a semi-circle, and they drew by lot for seats, as I remember. It was to avoid having little cliques here and there.

110 J. Ray: Yes, that is correct, we did not have seating by geographic area, by delegations, by political parties or by other associations, of any type. As I remember, there was some politicking, and some swapping of seats that created a little bit of that anyway, the objective was to avoid all that, delegates were thoroughly mixed up on the floor

to avoid cliques and caucases, and let that take place at other times and places.

118 J. May: In Maryland, they go by alphabet, they wanted to make it as nonpartisan as possible, and now, as I recall, it was by alphabet. We didn't do that.

125 Van Doren: What about staffing now? What type of staffing did you have, for permanent staff more than outside staff?

128 J. Ray: I am trying to place this in the time frame we were talking about, in terms of preparation. I am trying to think about ours in relation of where you would be in your process, for preparing for a convention after the vote, both before and after the delegates are elected, right? What we worked at very hard, and you of course may want to go at it a different way, was to develop during the equivalent period of time, a compliment of good staff people. I don't know how to characterize it, Janice? I think it is not senior people, but not just bring in committee clerks either, by any stretch of the imagination. People in both the administration function, research, and legal functions. The thought was, we tried to develop a cadre of people that participated, and could move right on into the convention. During the same time period in your situation, I would think you would want to develop that kind of cadre of potential staff people.

148 K. May: That was why I said maybe the preparatory commission, or the preparatory body, their primary function would be to staff the convention. That was my thinking from what you said about what or how the process would work there. But maybe I just totally misunderstood.

152 Van Doren: No, I don't think we would be going into the staffing part of it. In other words, the convention would be choosing its own staffing. I would try to avoid dictating anything to them. One of the suggestions was that the preparatory commission marshal a list of potential candidates for staffing.

158 K. Ray: I would think that would be the least you want to do.

159 J. Ray: I know you don't want to dictate, and you can't do that. But you should begin the process of developing people by lists, by expertise, by demonstrated activity, in preparation for the research end or demonstrated involvement in getting ready for the budget or the physical arrangement or whatever, so that you have a good solid core of potential staff people for the convention to draw on, that are ready to act.

K. Ray Otherwise, you couldn't possibly do it in 60 days. And have a knowledgeable staff. I don't think.

168 J. Ray: What we did is, what we committed ourselves to, first of all, was a core central staff for the convention. The top leadership committed themselves to having that core staff and bringing it across from, in our case, the established institution of the commission. Then we, for the committees of the convention, we did sort of the kind of thing you are talking about, we took applications in advance, once they were organized and the rules were adopted and all, they were given some authority to screen people and make recommendations, but the committee chairmen were completely independent and were not obligated to take any of the recommendations.

181 J. May: That was a function of the legislature, though, because it has been traditional for your chairs to appoint their own people, and I don't think you would have to worry about that at the convention. But see, we were using the legislature, and they were used to having their own staff, so you did get people to stay on some of these committees. The regular legislative staff was appointed as convention staff. Now, in the case of the convention in Texas, we didn't have any expertise, really. And so what the commission staff did was develop expertise in these given areas, and then continue it on throughout the convention. I don't know if you need to do that, it would probably be desirable, but in any case, you can't tell

a convention that they've got to appoint these experts.

However, the fact that they are experts or people who have developed a certain specialization might make them awfully appealing, attractive, and then they would be appointed, but in this situation, we had to come to terms with the legislative staff, and you had your legislators. I am sure that there were some people you probably wouldn't have appointed if you had your druthers, but they had to be there. There was no way of getting around it.

198 J. Ray: There were some people that I don't think ever showed up for work. One or two committees.

200 K. Ray. There was a central research staff person, serving on all the committees, on each committee, and the central research staff people were drawn from the revision commission.

203 J. Ray: That was how we accommodated this particular situation of knowing we were going to have chairmen who were legislators, and their own staff, legislative staff, and so we kind of inserted in the committee in some way or another, some of our more seasoned more, we thought, more appropriately selected people, with talents and experience in that process to get a good mixture.

214 J. May: The official parliamentarian for the convention was the house parliamentarian.

217 J. Ray: What we did on our arrangements for paper processing, flow, papers and all that, we used the legislative institutions for that purpose, they were set up for that purpose. In this case, our Secretary of the Senate, who was the secretary of the convention, he oversaw the record flow, the journals of proceedings, the printing of proposed constitutional provisions, printing of committee reports, and all that process and we used the legislative institutions for that. That was a part that really worked super well. It really did. They were computer wise, and they were geared to dealing with long lengthy drafts of legal language, to producing proceedings and journals rather rapidly.

237 J. May: What was George's position? Was he on the staff, or was he a consultant? You will probably need some consultants.

240 K. Ray: He was consultant to style and drafting.

242 J. Ray: That touches on a specific point that really is important. From the very moment the delegates are elected, they can begin to be educated to the process of the style and drafting committee, and the distinctions between their proposals

and the debate. If they learn the requirement process that the style and drafting committee provides, it will pay its dividends over and over again. The people have to kind of get used to that. To the idea that they are going to make decisions which are then going to be refined and come back to them for approval and if they don't like it, they send it back again, but they don't write provisions by committee, or write them on the floor. That was maybe impressed on me more than anything else.

259 K. May: You would have a real hard time if you did it any other way.

260 J. Ray: We used a style and drafting committee in our preparatory commission, when we used it again in the convention.

262 J. May: Ours was not as efficient, at the convention. We were getting tired and tattered by that time, and were very inexperienced, so I don't think we did a very good job, but I think the convention committee did.

266 K. Ray: The convention committee had that as its primary and only function, and at the CRC, (Constitutional Revision Committee) we were taking CRC members and staff members who were working throughout all the debates in the committee sessions, and everything, and then having to go in after all that, you know at midnight, and work on style and drafting, that was why it didn't work as well.

272 J. Ray: Maybe I have been involved in the wrong organizations or something, but in my experience, in local government and state government, in legislatures, civic organizations that I happen to have been in, it is not the usual way of operating to have a style and drafting committee, so it is something new, and the importance of it needs to be explained, examined and pointed out to the delegates and those who happen to be lawyers are going to be the hardest ones to convince. Our preparatory commission chairman, Judge Calvert, former Chief Justice of our supreme court, said early on in our preparatory commission work "I just don't understand why we need to have this guy George Braden down here at all, he is going to help us with style and drafting?" He said "I have written enough legal language, and Jawarski down there in Houston has, and I don't see why we can't just do it ourselves." We finagled and talked and worked on him and finally prevailed. I believe he came out at the end of the process as the strongest supporter of that process and realized the value.

299 J. May: It takes persuading, so I think you ought to get an early start on that.

301 Van Doren: I've heard the Braden story before.

302 K. Ray: They did their amount of bargaining and ended up fast friends.

303 J. Ray: It is so valuable, you know, you can have a proposition of some sort, an amendment to an article, whatever passed on the floor, and the author of it may thin'. it does one thing, and the delegates who vote on it may think it does something slightly different, they usually, when the author prevails, think something is similar. So, when it is carefully dissected by someone as skilled as George Braden, it can have a different, just in the wording, in the punctuation, syntax and all, and when it is finalized, it can mean something different or nothing. Let's see, budgeting, we haven't really talked about that very much.

346 Van Doren: I don't think we need to discuss that. It is up to us, and it differs quite a bit in each state, and I think that's more of a state decision.

350 J. May: Be sure you have an absolute budget.

351 J. Ray: We started on physical arrangements, any particular thing?

351 Van Doren: No, we were talking about alphabetical seating rather than geographical cliques, and that has been

brought up many times, too, because it apparently is important. As far as physical things, unless you have specific things that we ought to definitely do, or we shouldn't do, I think it is fairly general. Your recording, your journals, your paperwork, your printing facilities, your committee rooms, your press rooms, your press offices, whatever, unless you have anything specific that you learned that we either should or shouldn't do, I think the facilities pretty much take care of themselves.

366 K. Ray: We haven't really gone into post convention or post ratification. I don't know if we should discuss that now.

368 Van Doren: We aren't quite there, yet.

370 J. Ray: Only two things that I can think of, that might be in my mind as to what the commission should do. The matter of how you handle the floor debate, and importance of having a hard copy wording of proposed amendments to a committee report either hand distributed or up on the screen in front, depending on how elaborate your process is, where the literal language can be seen by everyone, press included. It is important, and we did work real hard at having the hard copy out in front. The discipline of that process of requiring the amendments be put on paper is important. The other thing we did from some other kinds of experiences that I have had and the important

kinds of permanence of the document, I think, is having the expertise on the floor in terms of your staff or the consultants. The consultants can be there, your legal counsel, and so forth, whoever it is, in the particular situation where it is being debated, they are handy to the floor leader or the presentor or the committee chairman or whatever, I think that is very important. Sometimes that is not the custom in other parliamentary bodies, that is, to have staff that will appear on the floor.

399 Van Doren: That's good, that's something new that I hadn't heard, and that is helpful. Any other things from either of you?

404 J. May: You are going to have a much smaller convention, don't you have 60?

405 Van Doren: 65 would be the number, probably.

406 J. May: You have to have good microphones. If it's hard to hear, there will be problems. We had to have four mics.

409 Van Doren: How many people were involved?

410 J. May: 191. Your physical problems will be less.

Van Doren: OK, I guess, actually we probably can move on to post convention, anything that you have to offer in the way of post convention. I would say both from the point of view of presentation to the people of the product, number 1, and number 2, just basically post convention work that perhaps you feel should be undertaken.

429 J. May: Well, we followed the example of some other states in having the whole constitution mailed to every household. And, I don't know if that was good or bad or not.

433 K. Ray: We had it translated into Spanish.

434 J. May: We had a peculiar thing happen, and I don't know, we had a number of people arguing that the constitution was so easy to understand that that's why people were against it.

439 Van Doren: That's interesting, I don't remember even reading that in the books.

440 J. May: Actually, a lot of the material was already in the constitution, and they were actually voting against both the current and proposed constitution. But, I don't know how serious the problem was, but I remember reading in the Austin newspaper that it was so clear that the people decided they didn't

like what they read, I mean they could understand it, whereas if it were more obscure, legal language, they wouldn't have known what it meant, and they might have voted for other reasons, like when in doubt, vote no!

458 J. May: I don't know, I suppose that is a good idea, to have the whole constitution sent out, or was it worth it?

460 J. Ray: I really don't know how to address that, I honestly don't. I suspect it went in the wastebasket.

462 K. Ray: Do you think that it would have been, would it have helped or would it have been useful to have sent a card to every household, which people could fill out and return, postage free, and order a copy which would also be free, you know, it would mean a double mailing.

470 J. Ray: I hadn't faced up to this until just now, but I guess if I really think about it, I would offer someone to process it like Katherine is suggesting. Or, you know, a summary of some sort, mailed and order forms and access in other places, libraries, schools, and so forth, rather than just mailing one to every household.

480 Van Doren: Although, the only thing, just for discussion, the only thing that I could see, Kathy, is that if people received the order form. . . .

I wonder what the ratio of the people getting something and keeping it or throwing it away, vs. people who have to go to the effort of mailing back a card in order to get it, especially in my state I've got to say that we have a real problem. We are only talking about 100,000 some odd voters, but we have a real problem with mail. I mean, sometimes mail is three and four weeks late in the outlying areas. Some mail can't even be delivered.

493 K. Ray: That would argue for going ahead and sending both the constitution and an order card, and argue for going ahead and sending a copy to each household, but I would think that maybe something that might help bridge the gap between the throwaway, and the paying attention might be if, at the front, you included a little brief summary.

500 J. May: We did that too. We had a little pamphlet.

501 Van Doren: I was thinking that too, pamphlet type things, the same as we talked about before the vote, possibly explaining the proposed changes. I also think about media. This is one place you could use the media to say "You will be receiving a copy of the revised constitution, the revisions of the constitution, please look at it carefully before you vote, blah, blah, blah." You could really work that up with a media type of blitz throughout

the state. Another thing, I will throw out for you, I don't know if Texas did it or not, but one of the things I have been discussing and some of the other consultants seemed to think it was a good idea, would be speaking forums. Put together, as speakers, the delegates.

515 J. May: We also had a hotline. To call in.

516 K. May: The hot line was really valuable, I think, at both the CRC and the convention. That was really a valuable tool.

519 J. Ray: It was a very valuable tool. We put it on right after the preparatory commission finished their work on their proposed constitution, and we used one during the convention, and it was very useful. It informed a lot of people and put down some rumors quickly.

527 K. Ray: We kept records of each of the calls made.

527 Van Doren: Very good idea, I haven't heard that, that's a good idea. And you had it all through the convention?

531 J. Ray: Yes, the people could call in. We also, this is something I'm glad you brought up. I hadn't thought of that.

We had that operation set up also where the media in the outlying areas could call in, and we would have our staff do summaries of the activities of the day, and our staff would tape some part of the debate or something and the media could call and just plug right into that, and get a feeding, this was during the convention.

547 K. Ray: I'm trying to think it was the Texas News Network, or the Texas State Network, didn't we plug into that? There was a Texas State Network down in the capitol, and I thought we plugged into that.

551 J. Ray: That network or any other reporter could call and get a news feed about what was going on in the convention that day.

551 K. Ray: We had a separate public information staff, a few people.

556 J. Ray: Sound recordings, they could replay on their stations, some voice telling them either what went on or some cut of the speech before the convention, or whatever. We handled it pretty carefully, you have to have the confidence in the staff and the P.R. people.

564 Van Doren: We have a kind of a unique thing right now, we

have what we call "Capitol whatever." This year it was called Capitol '80. They film both the House and Senate and different committee meetings, stuff like that, and this is played every night over stations throughout the state. The stations actually receive it the same day as the legislative session. It is a half hour program, I think, and it is part of the budget of the legislature. It is contracted out and they do this every day. They hit the highlights of everything. It has been very good in relation to informing people throughout the state who are not in Juneau. It works very well and is very well received. Some years it is very highly watched, and some years, it is not.

586 K. Ray: I was going to say, you might want both, because that would be very good for the people who would be willing to take that half hour and watch that or listen to that, but the other thing we were talking about, the little brief, that the radio networks could just pick up and use in their news broadcast. More people would be apt to hear it I think.

599 J. Ray: We had live radio broadcasts off the floor of the convention at one time, and failed to synchronize that with the mikes at the convention, we had some rather insistent statements made live over radio, because people who were standing

at the mike thought the mike was off as far as the convention was concerned, and they turned to asides and comments on personalities, their language was bad, and it was live. On this post convention period, as Janice mentioned, I think the key thing, one of the key things is that the momentum is kept going and the most valuable people in that time period are going to be delegates. They should be conditioned, and prepared to be sales persons from the early time on.

625 K. Ray: To have that information on the Watts line between the end of the convention and the ratification election, I think, would be really helpful, too. It would be another good way to get the word out, if you could afford to maintain it during that time period, wouldn't you think?

630 J. Ray: You know, I think other personalities and interests and what not, can certainly kill it after that, but it is not going to pass if those delegates don't work. What I am trying to say, is somebody else can't pick it up and pass it, they can kill it if they want to, but those delegates are going to be the ones who should sell their product.

640 J. May: We discussed or at least I was drawn into the public TV stations, we were going to have an advocate kind of program on the constitution, and that fell through, but there were some regularly scheduled programs in which there

was debate, and I don't know, I think you kind of have to watch it a little bit, because if it is controversial at all, it is easy for the "nay-sayers" to appeal to emotion on these very intellectual type things, and you may know that this is wrong, but when you go out on a mass appeal basis, the fellow who can say it is kind of like, you know, you are going to run us over, and steam roll it, and get all of them agog, that is going to outshine the more reasoned approach. You kind of got to watch what goes out to the public.

664 K. Ray: The governor said it was going to cause a state income tax.

665 J. May: Yes, all kinds of things.

666 K. Ray: You can refute these things, through the Watts system and so forth, and maybe you can, by choosing your pro people. It is so hard to understand the issues. In some states, like Virginia, you can have a low key campaign, you just don't ruffle feathers, you don't have a great big ratification campaign and that works, and in other states, it doesn't, so you are going to have to fit it to your situation.

678 J. Ray: All you have to do is create doubt and fear and it's bad.

680 K. Ray: Very bad.

J. Ray: 681: Technique wise, coming back again, the proposal for ratification in Texas, the proposed constitution, we again used the Watts line, and manned it with people who had been involved in this process. Our Lt. Governor, our Speaker of the House, our Attorney General, who were in favor of the ratification and some citizens, we staffed it with people who were knowledgeable about the content of the current constitution and the content of the proposed constitution. They gave good answers to the questions, I thought.

703 J. May: Most were volunteers at least in the off business hours, who manned telephones.

708 J. Ray: I was on the telephone as the polls closed.

710 Van Doren: You got a good response from the public on that Watts line? That's good.

713 J. Ray: Through the media, we used public service announcements to publicize the Watts line. How to call it.

718 J. May: Did we reactivate it our advisory committee? We had advisory committees set up during the constitutional revision, if we hadn't, we should have reactivated these groups, at the time of ratification.

SIDE TWO

000 Van Doren: I don't remember off hand, but how soon after the convention ended, did you have the ratification vote?

003 J. May: July to November.

002 K. Ray: Well, the convention ended and failed to adopt the document. Then the legislature came back with the same proposals but they failed also.

005 Van Doren: That's right, I forgot about that. The first part of November.

007 Van Doren: I would think though, because of your situation, it would have been different if the convention was successful in adopting the ratification. Do you have any time frame that you would propose for the ratification vote, Jim? 30 days?

009 J. Ray: Quickly, a decent period.

010 K. Ray: Especially if you have been informing your public during this whole process, you know, it's not like you met in secret behind locked doors, and then suddenly have to go out and educate the populous about what this is that you have done. The best thing is to educate them as you go along.

013 J. Ray: It should be a decent interval so that opposition can't say "you are ramming it down our throats without time to understand it," and that is very important, but I would say 45 to 60 day range.

017 J. May: Well, my research indicated with amendments, that we have better luck with a general election than a special, but that is peculiar to Texas, I don't know, in our case, we did use a special election didn't we, for the final ratification. I think that you get a different group out in a general election, and you start by using that. You get a larger turnout, and as much as 30% higher. But in Illinois, if they had used a general election, all the nonvoters would have been counted as a nay vote, so they had to use a special election, that was the only thing on the ballot, then it was just yes or no.

027 J. Ray: October, are you starting in October? October, November, December, you really almost have to have a special election.

028 Van Doren: This would be a special election because otherwise you would have too long a time period before the next general election.

030 J. May: Now, Arkansas had a very long wait in '71. I think it was nine months, or something like that.

032 J. May: It would probably have been better if there had been a special election on that one. But you never know, there is no hard fast rule, but I suppose you could say the longer you wait, the worse it is going to be.

035 K. Ray: It gives the opposition more and more time to organize and kill it.

036 J. May: You lose momentum, I mean how can you keep excited about this thing for months.

037 K. Ray: By then, your delegates have gone back to being private citizens.

038 J. Ray: That goes back to your delegates, their commitment going into a time frame which extends beyond the convention, and their roles in the post convention. You can't carry them on too long, they are already sacrificing somewhat. One of the other things, I think, and I guess it is a tail-end part that's been answered before, I guess, and I have to say I don't know the answer, and I know I am biased in wanting to say this, but I really believe every penny we spent in Texas on that constitutional process was well worth it. I think it was well worth it. I think number 1, our present constitution is so much better understood by those who have to interpret it, I think the public understands it better, I don't think we got nearly

as much saturation there as I would have liked to have seen, but those who have to use it and interpret it and argue it, studied it better than ever before.

054 J. May: It is still hard to understand, I'm told.

057 J. Ray: The legislative enactments of various provisions and addressing issues that hadn't been done before, it served to, and I know this is unique to our situation, might or might not in some way apply to yours, but it sort of kind of toned up our legislative staff people and their activities, I think we got an improvement in our bill drafting in our legislature. One fact was that the convention was the Senate and the House members and they had to work together, and Katherine kept hammering at them to do this together, they now have a better rapport. In going through news clippings, a lot of things on the administrative side of our legislature have really been toned up and improved, because, well, in part because of the convention.

071 K. Ray: Really, the House and Senate fought each other more than the Republicans and Democrats. There was more divisions between the House and Senate than Republicans and Democrats.

073 Van Doren: What about one of the things that I left out

while we were talking about it, it doesn't matter where it comes on here, but did you all hold public hearings during the conventions at other locations in the state? (No). You didn't at all?

076 J. May: They had a citizen's league, to which no one much came, but they set aside a day or a week where people could come in and discuss the issues.

078 K. Ray: We held 19 public hearings at the beginning of the revision commission and then again, we went back to those 19 locations at the end of the revision commission, it was immediately preceeding the convention.

081 J. May: And then there was a recess for about a month.

082 Van Doren: There was a recess during the convention?

082 K. Ray: A recess during the convention, which was another disaster that you don't want to do.

083 J. Ray: The answer to your question is no, we did not, the convention did not go out and hold public hearings.

085 J. May: The Illinois convention went out.

086 Van Doren: Well, as a matter of fact, both the Arkansas

convention and the Illinois convention went out. In Alaska, now, we recessed for 15 days so that the delegates could go back to their home communities and hold public hearings, inform the public, and in turn, gain the perception that the public had of them and the proposed constitution. One of the reasons the Alaska constitution was so good was that it hinged a lot on the statehood issue and it was a very popular, a very positive type of exercise at that time.

094 K. Ray: I think public hearings following the convention would be a good thing, and public hearings you know, at the beginning, immediately preceeding the convention, and then maybe following the convention, take the document out, which is what we did at the end of the revision commission, we took the document that the revision commission was recommending to the convention and took it to the 19 locations where we originally held hearings, this is what we did.

100 J. May: Incidentally, we did something you might want to do with the convention, or the commission, have speaker tapes. Which were very popular, explaining bits and pieces of the constitution.

102 Van Doren: I don't know whether we are going to have a

revision commission as such, or just a preparatory commission that's going to be doing the work, certainly there will be issues that have been identified, perhaps with the public hearing process that we talked about earlier, either this year or next year. I have a feeling that, and there may be papers, and there has already been some draft work done, but I have a feeling that they probably will only go into it with the materials and background of the constitution itself, and then decide if there needs to be revision, and if so, where it needs to be. Then I think maybe once those are in a semi-final state, they might go ahead and recess again for 15 days or something like that and hold various hearings, or perhaps the committees could possibly go out, some committees could go out and hold public hearings while the others still meet and continue their work in the convention, I don't know what style they will take of course, and that is going to be up to them. In some of the work I have done already, those are the two options. Most of the states recessed for hearings or committee hearings, and various individual committee hearings during the same period of time. Of course, again, as I mentioned before with our teleconferencing system, in a lot of cases, we don't have to travel, because we can have teleconference hearings in these areas that have teleconferencing on both ends and also video teleconferencing

so the people can actually see who is speaking back and forth.
It is a neat system.

126 J. Ray: I really think though, that sometime during the process, you've got to go to the people, whether it is before or during. Certainly you have to go out afterwards, but I am talking about before that, go out. To me, that is a key in how you accomplish something, and I think your assumption if I heard you right, to me the proper position for you or for Alaska to be in is saying that the convention is saying is: "Here is our constitution!" Are there amendments specific that we want to make to it? That is analogous to what we did, and the leadership of our convention started with our proposed commission document and took amendments thereto, because in our case, that represented the cleanest and the best way. In your case, your existing constitution represents in my opinion, my personal opinion, one of the best documents there is. Make the burden of proof on the amendor, the person who wants to carry it forward. The group that carries forward the amendment, and the public may even benefit and be served by that amendment, as opposed to some growing outburst against it. I think that would be disastrous in your case.

152 Van Doren: Yes, but of course, our constitution mandates that it be a totally unlimited convention, too, so anything is up for grabs once they call it.

157 Van Doren: OK the last thing I want to do, and then I'll let you go, and I really appreciate your coming here, is just anything that any of the three of you might be able to think about that we didn't categorize in any special place that again is a goodie or a no-no or a pitfall that should be avoided, or anything at all, any part of it that maybe you could share with us toward the very end.

163 K. Ray: Didn't you have some kind of information on a recess? You made a comment about a recess. Didn't we have information prior to the recess that showed that recesses were like bad omens? You know, if you could show that on paper, that if you took a recess in the midst of a convention, you were less likely to succeed. Those states which took a recess were the states where the document failed.

169 J. Ray: We tried to avoid the recess. We tried to get our work done in 90 days or a little better, and avoid having to have a recess. By the time we get to one, the delegates are so worn down it was necessary to let them get back to their businesses and homes and legislators campaigning in the primaries.

176 J. May: I would just say that overall, you have to pay attention to every single detail that may not seem like much

at the time, but these things have a way of when you look back over it, and you say "Why didn't we do that instead of this or something else?" So pay close attention to detail throughout.

180 Van Doren: That's one of the reasons I've been talking with you as a matter of fact!

END OF TRANSCRIPTION

MEETING IN HOUSTON, TEXAS

with

DR. SAM GOVE
MR. GEORGE BRADEN
GUY A. VAN DOREN

November 16, 1980

The following summary is from the edited transcripts of a meeting between Dr. Sam Gove, Mr. George Campbell and Mr. Guy A. Van Doren, Administrative Assistant to the Joint Interim Committee on the Constitutional Convention, held in Houston, Texas, November 16, 1980.

Mr. George Campbell was a delegate to the 7th Arkansas Constitutional Convention and was Executive Secretary of the Constitutional Revision Study Commission.

Dr. Samuel K. Gove, Director, Institute of Government and Public Affairs, University of Illinois, was a member of the commissions preparing for, and implementing the results of the 6th Illinois Constitutional Convention, and co-authored Revision Success: The Sixth Illinois Constitutional Convention.

GOVE-CAMPBELL

PRE-CONVENTION

1. Produce annotated version of Alaska constitution.
Produce citizen's guide to the Alaska constitution.
Both are important even if you do not have a convention.
They can be used as reference sources for citizens, teachers, legislators and others.
2. Begin thinking as soon as possible about the mechanics of the convention, how and where you are going to have it, the enabling act, election of delegates.
3. You may want to look at anticipated issues and do some background work on them.
4. You may want to solicit citizen papers on constitutional issues.
5. It is not a good idea to have a draft constitution prepared in advance. Allow the delegates the prerogative of developing their own revision issues. If you present either a revision document or issue papers, there should be alternative suggestions on solving the problems - again, so you're not telling the delegates what to do.
6. The preparatory commission in Illinois was chosen by both the legislature and the governor. In Arkansas, the commission was appointed by the Legislature, Governor,

Chief Justice of the Supreme Court and the Arkansas Bar Association.

7. Some staff were hired prior to the convention and after the vote to help set up the convention in Arkansas.
8. Develop temporary rules so you have something for the delegates to work with and from. After they convene, they can adopt their permanent rules. You must be careful to not have the delegates feel you are telling them what to do. The convention is a free agent.
9. Recommends an orientation session prior to convening the convention.

ELECTION OF THE DELEGATES

1. Delegates should not be chosen on a partisan basis. Arkansas did not have a nominating process. In the cases where there was no clear majority on a delegate, there was a runoff election which almost no one turned out for.
2. In Arkansas only one legislator ran for a delegate position.

An expression was made that legislators are used to focusing on very narrow issues because they are used to legislating and not dealing on the broader aspects of constitutional drafting.
3. In Arkansas, delegates were elected on a one man, one vote concept throughout the state, although not single member districts.

THE CONVENTION

1. In both cases, Illinois and Arkansas, the conventions were held in the state capitol. In Illinois, although the convention began in the legislative chambers, it eventually moved to another location.
2. Materials must be prepared prior to the convention so the delegates can begin work immediately and not be required to wait around for materials and work. There should not be so much it overwhelm the delegates. They may not read it!
3. The preparatory commission should expire shortly after the convening of the convention.
4. Make sure there is adequate funding for the convention.
5. Alaska needs to be totally aware of special interest groups. They have learned they can affect the outcome of constitutional conventions. People have more axes to grind nowadays. There isn't the pure interest of creating a good fundamental document to be used by states. People are involved in special and in many cases, economic interests and all want "their philosophy" to be included in the document.
6. People are also beginning to use the position of delegate as a stepping stone for political office. These people are more susceptible to pressures by lobbyists and special interest groups.

7. Delegates should be seated alphabetically so there are no cliques either politically or geographically.
8. In Illinois, public hearings were held throughout the state by delegates during the convention. It may not have been important as far as information, but it helped in the public relations aspect. People did not feel they were being left out and became well aware of what the delegates were doing and this was important. In Arkansas, public hearings were held by the preparatory commission and the delegates. This helped with public awareness.
9. Public hearings were used not only for informational purposes but for public relations and publicity. It is important to get the delegates out among the people. This also squelches rumors, because the public can ask questions face to face with the delegates and staff.
10. In Arkansas, if the delegates or the commission knew someone would be attending a public meeting with a certain point of view, they tried to find someone with the opposite point of view in order to achieve some sort of balance.

POST CONVENTION

1. Illinois published a newspaper insert which had the new constitution and explanations. They also had a campaign committee which was not publically financed. The delegates as individuals, campaigned for the convention in most cases.

2. Arkansas published the constitution and the changes, but felt their post-convention work was their major basic weakness (the voters turned down the revision). There were no funds available for publicity. They did set up a speakers forum.
3. The comment that hardest part in a well drafted constitution is finding someone who is willing to give enough money to support the campaign.

MISCELLANEOUS

1. Stress on preparatory work and good, devoted, competent staff and consultants.
2. Use of recognized experts helps immensely since there are so few in the United States and a convention is not an everyday occurrence.

Meeting with Sam Gove and
George Campbell
November 16, 1980
Houston, Texas

Tape I, Side 1:

004 Van Doren: Introduction of tape materials.

009 Sam Gove: I think if you did something like the Braden-Cohn as it became known, the Illinois annotated constitution, it would be worthwhile, even though you didn't have a constitutional convention, it would be a good reference for lawyers and summarize all the cases that have come down and affected a particular section in the constitution. And some commentary on why that particular section was there and you may want to have a comparative analysis. That was extremely helpful for our delegates and became the Bible. It took an awful lot of work.

Van Doren: In New York I met with George Braden, and we talked quite a bit about it. One of the things I wanted to ask you is, is that book available from a source in Illinois?

024 Gove: Yes, from our institute. I will make as many as you wish available.

025 Van Doren: OK, I think we would probably at least like to have one for the library. We are building up a library on constitution materials. The committee has seven members. Any-

way, when I spoke with George, he suggested the same thing, whether or not we have a constitutional convention, that definitely an annotated work of our constitution and/or a citizen's guide would be helpful and as he said, since our constitution is quite a bit shorter than Illinois', it wouldn't be quite as monumental a task as the Illinois one.

036 Van Doren: In talking with the people I met in New York, with George Braden, John Bebout, Frank Grad, and Bill Cassella, and also with Al Sturm in Blacksburg, Virginia, and Jake Wheeler in Hollins, Virginia. Everybody has stressed the preparatory work, in order to get this off the ground, and I think the legislature has realized and recognized how helpful it would be if we could get started on this. At the outset of the preparatory work, are there any other things that you think that would be useful both for the pre convention vote, and then should the vote be in the affirmative, for preparation toward the convention, from your experience?

050 Gove: I would say that if the vote is affirmative, you've got to start thinking about mechanics of the convention on how and where are you going to have it, do you need an enabling act, how you are going to elect delegates, I don't think that would take so long, so probably you could do that after the vote. We had some preparatory work done on issues we anticipated would come up in the convention. The commission, this was the governor's

research group, which I was the director of, and we came out with a volume called "Con Con" issued to the delegates, and it was paperback, 500 pages, and it was just everything we thought would come up of any substance, and tried to have someone write a paper and think about it and raise the issues, not to present positions, but the issues. That volume was helpful. There are a lot of issues we didn't anticipate, and I think you can't. Illinois was a strong Dillon's rule state, we didn't anticipate the support for the home rule issue. We hadn't done anything on the home rule. Most of the major issues we did anticipate, and we did have papers prepared for the delegates and they were able to get familiar with the issues. The papers came out during the campaign for the election of delegates well in advance, so I think something like that might be helpful and again would be good library material for the convention.

083 Van Doren: Were these papers prepared by people from all over the U.S. or just within the state?

091 Gove: Instate. I think one of them was on the purpose of a constitution and was done by a law professor in Michigan, and I think the other papers were all by Illinois people, and were a mixture of law professors and political scientists.

091 Van Doren: Do you think that the papers helped the delegates or do you feel that they relied more on their own ideas, or

that they drew from the book and the ideas that were prepared, or do you think that it was kind of a combination of both?

094 Gove: I would say a combination of both. There was nothing in the article on the bill of rights about ERA, and that became an important issue, and people campaigned on it, and subsequently we now have an ERA provision in our constitution, so it's things like that which were natural. Delegates brought up specific things.

103 Van Doren: That "Con Con" book, is that the orange and blue one, very thick one that has Con Con on it? (Yes). OK, I have seen that and would like a copy of that too.

105 Gove: It is out of print. We might be able to get at least one loaned to you. It was published by the University of Illinois Press.

108 Van Doren: Yes, I saw the book and actually went through it, somewhat, and I was curious to see how you felt, I know one state that we were discussing had almost prepared a constitution before the delegates were ever chosen, and people kind of rebelled against that. It was the Texas one.

113 Gove: Some states did, but we carefully did not do that, and in the annotated constitution there was some discussion of issues, but it doesn't come out and say "The delegates shall", this after all, was their prerogative. It was very carefully worded.

119 Van Doren: Did Illinois have a preparatory commission?
(Yes) And how was that chosen? Was it chosen by the legislature or the governor, or a combination of both?

124 Gove: It had legislative and public members. There were three commissions, and on the last commission I was a public member. I think I was elected by the legislature. Why, I am unclear, historically in Illinois, there were mixed commissions with gubernatorial and public members, but the legislature was beginning to feel its oats in insisting that a legislative commission would be composed of all legislative appointees, even though they weren't members of the legislature, and I think at that time they had gone on this commission through legislatively appointed public members. It wasn't really a legislative body. The last commission, the commission that argued over, the first commission made the recommendation to vote on a constitutional convention, the second commission started the preparatory work and then the vote came along, and they had to pass the enabling act, and the big issue, there were a lot of issues, but the biggest issue was on whether the delegates were to be chosen on partisan or nonpartisan basis. This commission

recommended nonpartisan and it ultimately prevailed. Then the third commission actually made the arrangements for the convention and arranged an orientation session. I think all this type of detail is in our book that Tom Kitsos and I did for the National Municipal League.

152 Van Doren: On the, OK, so the third commission did all the preparatory work. They are the ones who commissioned these papers and also the preparatory work for the actual mechanics of the convention?

156 Gove: The second commission commissioned the Braden-Cohn volume. They decided not to get into any issues and consequently the governor filled the void by creating the constitutional research group, with private funding, and I also got in on that as director, so I was wearing one hat as, I was staff member of the second commission, and a member of the third commission, and also at the same time turning out these papers, theoretically for the governor.

165 Van Doren: Did the commission stay in existence after the beginning of the convention or did they work right up to the convening of the convention and then were they finished?

171 Gove: I think it, in essence, ended when the convention,

began, we held an orientation and such, and then the convention itself, a couple of days before the convention we had an orientation, so I think the commission just went out of existence. I am very vague on this, the statute said the commission would go out of existence, I think it did.

182 Van Doren: One of the reasons I had asked that question is last year the legislature for the State of Alaska passed an enabling bill to call a constitutional convention, mainly because they wanted the advance work done, so that it would be on the books with no appropriations or anything, but just setting up the mechanics of it, and one of the things that was put in the bill was that a preparatory commission would be established, the appointments and all of that, and then I believe it would continue until approximately 15 days if I remember correctly after the start of the convention so that it would still be around to assist with anything, that comes up, but basically it dissolved at that time. The bill passed both houses of the legislature and was subsequently vetoed by the governor for several reasons. There is really no need to go into that now, but one of the things that they will probably do this next legislative session, is again try to get enabling legislation through so that it is there and there will be a mechanism for calling a convention. Our constitution states now that as much as practical, the convention will be held in the same way that it was in 1955. Well, it's not practical at all,

and there's a lot of changes that need to be made.

204 Van Doren: George Campbell just came in, and I've asked him some of the basic questions that I asked Sam Gove.

209 Campbell: Arkansas has a constitution which is similar to many southern states in that it is a basic reconstruction period document. Written in 1874, and amended now more than 60 times. The first modern impetus for constitutional revision came about in 1966 when Rockefeller was elected as the first Republican governor since the reconstruction time. One of the things he wanted to do was have a modern constitution for Arkansas. The legislature was dominated by the Democratic forces and did not intend to cooperate with him and did not cooperate with him. They did not support him as governor. The compromise that was reached in his effort to have that legislature, which seems to be the only way, since our constitution is silent as to how to have a convention, everyone seemed to feel that the legislature had by law to say there will be a convention and provide for the election of delegates. Since that historically was the way it has been done in Arkansas and there seemed to be at least some judicial as well as historical precedent that that was the way the people had to speak, that is through the legislature submitting the question on election of delegates. In the 1967 session of the legislature, where Rockefeller attempted to get a call

of the convention, he failed, but a compromise was reached and there was created the Arkansas constitutional revision study commission, composed of thirty people appointed by various elected officers and the governor had authority to appoint the majority of the commission.

234 Van Doren: Did the legislature appoint it?

235 Campbell: The legislature, the president pro-tem in the senate, the speaker of the house, each appointed five persons. Five were appointed by the chief justice, five by the president of the Arkansas Bar Association, and whatever that leaves, among the appointed groups. I think the governor had ten, and should add up to a total of thirty. I served as the executive secretary, a non-voting, salaried member. I'm a lawyer in private practice in Little Rock, my specialty through the years has been in municipal finance which brings me into contact with a good part of the constitutional provisions that relate to local government, limitations of debts and the organization of municipal governments. And, to some extent, the state legislative process, too. The work product of the study commission was in part an effort to justify the holding of the convention. A number of people who were appointed were individuals, not necessarily associated with the governor, but individuals who had been interested for a period of more than 10 years in having a good constitution. What we were dealing

with was not something just in a vacuum, but the political situation was that a number of people, democratic, republican, non-office holders, non-political types, had recognized for a long time that we needed to modernize our constitution. So, ultimately, a majority of our study commission voted to recommend to the legislature that a convention be called, because the total substantive volume of changes that needed to be made was such that it really couldn't be handled with the existing amendment process. Our legislature is permitted to submit only three amendments in each general election, each two years. Any other amendments have to come to the initiative process. We have an initiative and referendum provision roughly patterned on Oregon's in the early 1900's. It's not particularly difficult, but expensive, bothersome, it's hard to organize and all that stuff, except for very narrow special interest types of proposals, where the money or the people can be found for very narrow economically related amendments. The product of the study commission was a draft document. We were careful to style that draft document as simply a study document, and in many of the articles and sections we presented alternative solutions to what our commissioners conceived as problems. The study commission was presided over by the former dean of our law school at Arkansas, a respected scholar and a rather apolitical figure. He is not closely associated with any candidates or party affiliations, although he is commonly a Democrat, but it was not a partisan study commission, even

though it started out, its origin was that way, it didn't emerge as a partisan group. It had pretty good press coverage and we had among the people who at least were interested at all, we had a pretty good feeling about the work of the study commisison. The biggest argument we had was whether to submit the question of holding a convention to a special election or a general election, presumably because the people who were in favor of it would more likely turn out at a special election than those who were opposed to it would stay home or not care anything about it. The contrary feeling is that you turn out more people at a general election and many of those are uninformed about issues such as that, and therefore tend to vote against things they don't understand or never heard of. The legislature did decide to put the question of holding the convention in 1968 on the general election ballot, and surprisingly, most of the legislators who didn't think anybody cared about a constitutional convention, the issue passed. So we had called then in 1968, our convention. Curiously, in order to save money, we had people running for delegate positions in 1968, on the same ballot that the question of the holding of the convention was being submitted, and many of us who ran, and I didn't run for delegate position, did not know whether there was going to be a convention or not. The campaign was rather quiet, there was not a lot of money spent by delegates, and for the most part, they were, in broad categories what I would call good government type people, that is, they were not the people who had great political ambitions. Otherwise, there

was only one legislator out of a body of 100.

310 Van Doren: That was my next question. Was it a partisan election or bipartisan, and I was going to ask whether any legislators were on there, too.

313 Campbell: It was a nonpartisan election. There was no nomination process. It was required that you got a majority of votes in order to win the position, so in some cases, there was a run-off election two weeks after the general election, which almost nobody turned out for. The unusual measure, to my knowledge in modern times, was this was the first time there had ever been a run-off following a general election. Arkansas is predominately a two party, I mean a one party state, the Democratic party, the minority party candidates almost never run, and if anyone else ran it was certainly not more than one other party. The legislators were not excluded. We thought a long time in drafting the legislation for the convention and submitted it to the legislature, to put in an office holder exclusion. It is probably a good idea, but it was not considered politically smart to sort of flaunt that in the face of the legislators, whom we were asking to put the question on the ballot and to appropriate money, ultimately, for the operation of the convention. So we did not, since there had been no historical experience in recent times, there was no reason that legislators should or should not serve. We have a constitutional provision which

makes it a separation of powers argument which makes it pretty hard for a legislator to hold a public position in any other kind of government, except for having a school position, school superintendent, or a school board members. So, while we seriously debated, we did not exclude legislators. As I say, only one ran, he had served as a member of the study commission, I worked with him closely. He and I were totally opposed in almost every major position that we held, but he was the kind of person who was genuinely interested in what he was doing and provided a sort of focus for conservative impact, a focus for the conservative interest in the convention, and led them in a fairly reasoned way, so his presence was not political in the sense that you would think. Many times, state legislators focus on very narrow issues or the things that by and large makes it undesirable for them to serve because they are used to legislating and not dealing on the broader aspects of constitutional draftmanship. Now, our convention was called. It was funded adequately by the legislature. Not generously, but adequately. We met over the course, on and off, over the course of about a year, proposed a document and submitted it in the 1970 general election. It was not a radical reformation, but it was a fairly progressive reformation, and it was defeated by a vote of somewhere between 55 and 60 percent in the negative. It is probably not as much interest to the people in Alaska about the particular issues that we had, although I would be glad to go

into the particular things that we had that were problems. Most of them had to do with limitation or the removal of limitations on the property tax. There were a few very crazy things that we need to be careful about in drafting a constitution, for example in one preparatory phrase, the one word "God" was omitted just because we were moving from sort of Victorian English into the 20th Century English, and it didn't seem to be terribly important to most of us, but there were some fringe groups out there somewhere, fundamentalist ministers and other people, who said we had written a Godless constitution. Now, this wasn't a major point, but that was the kind of thing you pick up when you start changing old language which never meant anything for 100 years. It was never judicially interpreted, didn't mean a thing. You pick up people who want to argue about those things. A few other odds and ends like the constitutional provision which legalizes horse racing in one particular county in the state, these things all have historical basis and local political situations change from time to time, but you probably don't have in the relatively short life of your constitution, as many changes that have crept into it, in terms of local vested economic or political issues of that sort. If you don't have, that's very good, because then you can deal with what a constitution really ought to be about anyway, and that's the fundamentals of the operation of the system government and fine tuning of those,

after several years experience where something has not worked or it is not working as well. Unfortunately, older states, and particularly one which is slow to move on constitutional reorganization have to deal with a lot of minor unimportant things in terms of fundamentals of government, which are local issues with small groups of people. Now, the effort in 1970 failed, but from that convention came a number of things which could be dealt with legislatively or almost as well legislatively as they could have been in the constitution. I think some of the fundamental mistakes we made in some areas was where we were trying to legislate in our document when we weren't there to legislate, and we probably invited a few enemies, for example, we've had a fixed price structure on liquor prices in our state for a long time. Our constitution wanted to outlaw the so called fair trade prices for liquor. That was not a constitutional matter, but it was something that the legislature, because of the perceived domination by wholesale and retail liquor interests had never bothered to change. We thought we would get some support from the constitution and some of the people at large, if we took out the fair trade liquor prices. Well, what it ultimately turned out to be was that most of the people didn't understand the issue and didn't give a damn, but the wholesale and retail liquor people put up a lot of money to fight the new constitution because of the economic disadvantage. At any rate, in the process of the next three sessions of the legislature, a number of concepts which we proposed, reorganization of the executive

branch, and indeed in 1976 the legislature proposed itself, as a constitutional amendment, almost verbatim, the legislative article which was in the 1970 constitution. So we provided a focus and created a little stir of interest in a number of areas.

Now, all during this period of the last two years after the failure of the '70 convention, there was a lot of head shaking around, and people saying, "You know we really ought to have passed that constitution." Now in 1976, a young man named David Pryre was elected as the Democratic governor. No. David Pryre was elected in 1974. David Pryre, as a young legislator, had been one of those very outspoken in the early 1960's before the Rockefeller administration, had been outspoken in favor a constitutional convention. He had served in Congress here and there, and later came back as governor, elected in 1974. In 1975, his first term, he proposed that the legislature call and establish, not submit to the people, but simply just call a constitutional convention. Which it did. And it was one of his principal pieces of legislation, and the convention was to be limited in scope, that is there were certain areas of the 1874 constitution, with which it was not permitted to deal, and the delegates were to be appointed, rather than elected. His idea was to do it, do it quick, get that group in, and there was to be some balance

in the appointment, he wasn't going to appoint them all, although he was going to appoint a majority. But to get the group in, give it the 1970 document, let it tinker around with it, and deal with those things which had been perceived to be its weaknesses, and turn out a new document very quickly so that it could be voted on at the next general election. Our supreme court held that the legislature did not have the power to call a limited convention, that is to limit the scope of discussion, without having submitted that question to the people. This was essentially a case of first impression as far as Arkansas law is concerned. The general theme of the decision was that the inherent right of the people being represented in this convention to change their form of government should not be limited by the legislature by saying that the people in the convention cannot deal with certain areas, and if the people want to vote for a convention with that limited structure on it, that's fine, but you have got to submit the question to the people. Well, by the time that it had gone through the court and been decided, it was an issue then that the governor no longer wanted to push and he and other things that were of more interest to him, and he did not particularly push it. However, in the next session of the legislature, a bill was put through to be voted on in 1978, on the question of holding a convention. So, there was another convention held, there was another body of 100

delegates elected from throughout the state, in the manner that our house of representatives is, not exactly single member districts, but it was the one man one vote concept applied all over the state. Now, this convention reasonably completed its work, it being much in the same manner and being with almost the same rules and almost the same committee structure as the 1970 convention. Its product was submitted at the last general election and failed by about the same margin as it did in 1970. I served on the preparatory commission, which the governor appointed for this new convention. There were five persons, and four of those five were people who had come out of the 1970 convention. And essentially, what we did was housekeeping sorts of things. Set up proposed rules, we took care of mailing of initial information to delegates, we took care of acquiring of the fundamental library that they would need, we drew up some projected budgets based on what we perceived to be needed, set up an employee structure, we did not employ any staff persons, although we sort of indicated the qualifications that those people ought to have. What we did was carry them to the organizational day and met with them on the day they were organized, saw them through a two day organizational session, where they elected their own officers, and began to develop their own rules. The preparatory commission disappeared. Now, at that point, however, we had employed somebody who had at least functions to carry over for a couple of weeks, the basic functions.

Again, I'm not sure that how much is applicable to your situation, but I think there was a definite contrast between the structure of the delegate body between the 1970 and 1980 conventions. In 1970, as I indicated, those of us who ran for delegate, did not know whether there would be a convention or not. I haven't described it exactly, but in '79-'80 period, there was definitely determined that there would be a convention, because of the way that the two votes were held, and it was known by the persons who ran for the delegate positions that they would indeed to go the convention. Also, during this 10 year period, I think there was a focus of a good many special interest groups. The special interest groups had in time, become aware of the fact that there was certain things in the state constitution, and in some cases, they impacted on them. There were other things that had been going on in the past 10 years of course, that were represented by special interest. The problems in the cities had not gone away, they multiplied, and this convention, for example, came out with an article that was almost verbatim to the one that I helped draft on local government, which moved the key words around here and there and so forth, but they didn't come out with any better situation than we had done. So, economic conditions had changed, focus of inflation, the concern over taxation, some of our problems in structured county government had been changed as a result of constitutional amendment. Problems from 1874 and the old amendments

were still there, and the convention didn't do, in my judgment, it didn't do quite as good a job from the technical drafting point of view, because there were far more compromises required to be reached.

Tape Two:

004 Campbell: I have a slightly prejudiced point of view with respect to special interest groups, and I should share them with other people who would say that the convention did a wonderful job, but among the things that I think, just count this for whatever you want, but I think the purity of heart or whatever you might want to call it of the delegate body in comparison with the 1970 and 1980. There were more people who were less focused on specific economic issues in 1970 and were more interested in doing what they thought was participating in a historical event, for the first time in 100 years, that they agreed to rework the document. In 1980, the idea of a convention was not absolutely new. In 1970, the lobby, the traditional lobby groups, did not know how to work with the delegates, because fundamentally, we weren't lobbyist material. We didn't have any political ambitions. Now, that is not to say that there were not some people who emerged from the convention to later hold political office. For example, there were a couple of people, and I

didn't even know they were interested, who ran for political office, and a man who became the state's attorney general, and later served in Congress and ran unsuccessfully two years ago for the senate. But for the most part, they were professional people, probably too many lawyers, which is always and has been the case, you know, lawyers have an extremely different view points, there is no uniformity on view points, among lawyers, and they traditionally represent different economic interest, and have different ideas about things. They just simply like to disagree, so if you have to limit anybody, besides limiting legislators, you might limit lawyers. (Laughter). From the federal constitutional standpoint, we simply didn't have as many axes to grind in 1970. In 1980, as I have indicated in the tax decision by the Arkansas Supreme Court, other concerns of that sort, minority groups were better organized, and better focused, and indeed we had a better minority representation, and by that, primarily I mean the Blacks, in the 1980 convention, than we did in 1970. One of the delegates in the Black caucus, served in both conventions. The political forces and the political ladder-climbers saw the convention as a way to get involved in government and people who wanted to run for other offices, which created some problems with the legislature, because they saw people running for delegate positions, and they then thought they would see, two years later, those people running against them for their particular seats. Somebody will have

to do a scientific study and sort out the special interest groups. I don't have names or numbers with respect to that, except it is clear that there were people who were more susceptible both through the efforts of lobbyists who were more representative of narrower segments of communities in terms of economic interest, and employee groups. As a consequence, their discussions tend to be more focused on those lines than our discussion in the 1970's, which I brought. Perhaps not approaching the constitutional convention of 1787, or whatever, but at least feeling more fundamentally with the philosophy of structure. I am not saying necessarily that that is wrong, but I think it is something that you should be aware of that in a situation where you know there is going to be a convention and where there are particular interests which have been identified as being affected by the constitution or likely to be affected by the constitution, it is not unreasonable to expect that there will be effort to load up the delegate body with pressure with one point of view or another on any question. The labor experience in Illinois, it is probably better than in some states, which has better organization, let's say stronger organization. Labor never has been a force which could elect very many delegates in Arkansas. Labor had better representation in 1970 than they had in 1980. Indeed, between 1970 and 1980, labor had attempted to repeal the right to work provision in the Arkansas constitution, and it has failed by a vote of three or four to one. So the 1980 delegates didn't give

labor the time of day. The people had spoken recently on that issue, and therefore, they didn't see any reason to waste their time. The banks were much more evident and created strong lobby effort on trying to deal with the 10 percent limitation, and indeed that was one of the forces that caused great difficulty with the document and the submission of the document because it was identified by many groups as being a pro-banker's constitution. The raised interest rate, which would require the poor man to pay more. With respect to the technical organization of the 1980 convention, as I say, they built on and used for the most part what we used in 1970. They didn't attract quite as strong a staff because the idea of a convention wasn't as new and it wasn't as different. It was somewhat more politicized and some of the people that I thought were really first rate staffers that we had in 1970, you know it was ten years later and they had other career interests. There was some better support on the legal side, because some of the things that were coming before the convention had been in the court, property structure things, the attorney general had been trying to wrestle with that. The governor's office had been trying to wrestle with it, and some other groups had. We had done not extraordinarily good staff work in terms of papers, we didn't publish anything like the nine foot shelves of material that New York did or anything like that. We didn't spend a million dollars doing that. Most of

the background work had been preserved from our 1970 work and some of it was available. We were, because the university now has a law school in Little Rock, able to call on the faculty people from the law school, it was really a large help. It was something that we didn't have in 1970. Really I guess that is the end of the monologue in terms of trying to discover the ground of what has happened in 12 to 14 years. We have talked about more specific things.

101 Van Doren: Some of the states have done it and some haven't, and in both of your cases, did the preparatory commission work on temporary rules for the convention prior to the convention meeting?

105 Campbell: Yes, we did in both cases. In both Arkansas cases, the study commission did develop. I have forgotten one job I had, in 1967, after we made our report to the legislature to the special session of the legislature which convened in 1968, the one which called for the submission of the question. Assuming that there was to be a favorable vote between the submission of our work product in March 1968, and the placing of the issue on the general election ballot to be voted on in November 1968, we had a little surplus left over in our appropriation for the study commission and the governor created a preparatory commission composed of

myself and two other people. The two people who had been the chairman and the vice chairman of the study commission. I had forgotten that we had had that little interim preparatory commission for six or seven months in 1968. What we did, largely, I carried over my principal research person. We carried over the principal staff person that we had on a modest salary because we really wanted him to be available to head the research staff if there was a convention in 1968, and his primary task was to assemble a proposed set of rules for the convention, both temporary and permanent rules. I am not sure where we borrowed those rules. We kind of patched together a set of rules from New York, some from Michigan, I can't remember where Illinois was at that point in time. Maryland was a very good model for us in many respects, and indeed now that I think about it, we may have borrowed more from Maryland than almost anyplace else, in terms of structure. Some of our drafting techniques we borrowed from Alaska and Hawaii because those had been the two most recently drafted new constitutions, and when we were looking for fundamental structures of things and how to really simplify things that didn't have a whole lot of history built into them. We looked at some of those, but now that I remember, Maryland was running just about a year ahead of us, in terms of the time table. Maryland did not have that much of a difference in history than Arkansas had in terms

of the age of the document and while it was considerably more urban, it also had the rural influences, and things like what to do with justices of the peace, you now actually no longer need anybody to provide the judicial structure of the township. The township has ceased to be in our case, and never was a significant form of government. So, we found a number of parallels in Maryland, but yes, we did have a small, in fact a one man staff preparatory commission drawing rules for us. Now, when we came to the '90 convention, the other preparatory commission, we had all the 1970 staff there, and it was a question of looking at it again and saying, well that didn't work quite right. I guess our biggest concern on the new preparatory commission was not wanting to appear to be telling the 1980 group that well, here is the way we did it in 1970 and that was perfect. That's the way we ought to do it now. We wanted at all costs to avoid saying well, fellows, here is the way we did it and this is the way you ought to do it. We probably were less effective in a couple of cases because we were always saying, well you do whatever you want to do, and by the way, here's what we did in 1970. It worked out well in transition. They changed a few things in the rules, but on the whole, they didn't change very much. We were not dictatorial, we were not saying there was only one way to do it, and I think we had a good transition in that respect, and the fact that most of us had done the '70 convention, there was no particu-

lar impediment to them. I testified a number of times before the finance and taxation committee and the judicial committee, and tried to help some of their people in drafting. I know other people who were in the '70 convention also made comments and appeared before some of the committees particularly early in the work of the '80 convention, in order to describe the problem as it was perceived in 1970, in order to explain the drafting that we had done in 1970, and to say in retrospect, I wouldn't do it that way now. Or you don't have the same problem we had. It was an effort to try and work with them, and as a result of it, I haven't done any scientific comparison, but I would say 85 to 90 percent of the 1980 document was, all of it, was structurally the same as the 1970 document. That is, the way the articles were laid out, the way the transitional provisions were put together. Now the 90 percent of it was almost perfect, a few words that seemed to have been changed only because somebody thought well, we ought not to have exactly the same words, we ought to have a few words of our own in the drafting process, somebody said, well, I don't know why they said it that way, but let's do it this way.

Now, that doesn't prove anything, except that the second convention had the benefit of part of the hard work that the public never sees, and that is somebody has got to put something down on paper and work with it, and as long as you can have a transitional group or a preparatory group, that does not appear to be, and indeed is not sort of hidden agenda from the legislature or the governor or some other

group. As long as you have a group which is perceived to be an aid to simply get material together and giving people at least a way or a perhaps an alternative way to look at solutions, delegates will receive that material well, and indeed, when they get there the first few days, if someone hasn't done that work, they are going to be mad as hell, and say why did you get all of us down here, I'm away from home, I'm not being paid enough to be here, and you hand me a book that says it is a constitution of 1874 and you don't tell me anything. One other comparison I would make between the '70 and the '80 group, and again, it relates to lawyers, and the kind of people who ran. The '80 group was probably a less informed, or that is a less well-educated group on the whole, with respect to both political issues and certainly with respect to constitutional issues. This sounds unfair, I don't mean for it to sound that way, but in '70, we had I would say, a superior group representative of the lawyers, that is people who were mature and established in a profession and people who were not special interest oriented, as such, in terms of lawyers as a group. In terms of the lay persons who were there, they were clearly more of the community leader type. They were bankers, retailers, or whatever they might happen to be. This is true of men and women. In the 1980 convention, I would say that we probably had a somewhat younger group of people, less well established in the traditional terms of leadership in business or profession.

I don't mean to say they were any less intelligent, but they were not perceived to be of quite the same status of community leadership in their various fields. And, as far as the lawyers group was concerned, it did not have as many people who were from the so-called established firms, or were from elements of leadership in the bar association structure, and so forth. Now, I don't know if that was purely just coincidental, or whether it was not a crusade, and you didn't get some busy bank executive to agree to run in 1980 because it would seem to be more of a political job and less of an event that it was in 1970. I didn't run, simply because I was, number one, I thought I had done all I could do, and I didn't feel that going out there and going through it again was worth the effort, personally, from everything that I had a solution to, the problem was already written down, in either one of two documents. Secondly, my professional work, the maturity and level of the responsibility that I had in my firm and the opportunity to make money was greater in 1980 than it was in 1970. I simply wasn't able to make that move. I do not regret it now. I enjoyed the days that I went out there to testify and sit around and tell everybody how they ought to do things, but I didn't enjoy, didn't miss, those endless hours of somebody droning on every day about something that they didn't know anything about or that they disagreed with.

249 Van Doren: Sam, what about Illinois, about rules preparatory rules?

250 Gove: The commission did prepare rules. The commission also acted as a repository for job requests for the staff of the convention, and particularly the job of accepting applications, and so forth, some members of the convention were furious that we were pre-empting their activities, and we shouldn't have even done that. There was some unhappiness on the rules that we were telling the convention how to operate. There is the sensitivity that the convention is a free agent, and they should not be, frankly, told how to do this or that, and with all the preparatory business, you must be very careful to make suggestions, but put it in such a way that you try to be helpful, not telling them how to run their business.

266 Campbell: If I may say there, I think if at all possible, of course it depends on the timing of the election and the meeting of the convention, and other things like that, but if you are going to put out a lot of paper work, even though people probably won't read it very carefully before the day before they go down, or when they get there that night, it helps, I believe, to dispell this suspicion if you get that stuff out to them as far in advance beforehand as

you can, with the most self effacing cover letter you can think of, that you are not trying to tell them how to do anything, but here is what has been done before, and you can study it and change it, and one of the first orders of business on the convention session will be to create a rules committee or to do something about rules. Our temporary rules were two sheets of paper, or something like that. It is pretty obvious that nobody was stacking anything in terms of the temporary rules. They were very insignificant and in our structure the Secretary of State, who had no other provision and no other function except to certify the results of the election, was the convening officer. The governor was not the convening officer, it was not politicized in that respect. The Secretary of State called everybody to order and made sure that the delegates had been properly certified as having been elected and sworn in and immediately after that, they proceeded to the election of their officers. Approximately in that sequence.

292 Gove: Just for the record, I should say our convention also used the Maryland convention pretty much as a model for rules. One of the important decisions we made in the rules was that the seating of delegates shall be alphabetical and that really made a difference in how the convention operated. If we had allowed people to be by districts, that would have meant that the Chicago people sat right next to each other. Things which don't seem terribly important can make a difference.

301 Van Doren: Sam, where was the Illinois convention held?

302 Gove: It convened in the House of Representatives, but then the convention moved to the old state house, where Mr. Lincoln was always in presence and led in the house divided. Here again, the theme set a tone. Things like this can make a difference.

309 Van Doren: George, how about . . . ?

309 Campbell: Both conventions met almost exclusively in the House Chamber of the present capitol. On a couple of ceremonial occasions, we did meet in our old state house. We have an 1836 structure which is fairly well preserved, although it doesn't have enough desks and seats, and was never designed for a legislature of the size of our current legislature. From the stand point of the economy, facilities, telephone, all of the housekeeping things that you need, we felt there was only one place that we could meet. It would have been terribly expensive to rent on a long term basis, a hall somewhere. We could meet in the house chambers, when the legislature was out of session, we have a sixty day limitation on our legislative sessions, with some exceptions that it generally runs a little bit longer, but 90 days is about the longest they ever meet. So, the chamber was available in late spring and summer, when our convention was really working.

326 Van Doren: In either case, were there public hearings held any other place in the state rather than at the meeting place? Either one of you, Sam?

329 Gove: Yes, our committees or subcommittees held hearings throughout the state. I don't know how important they were in getting information into the mill, but they were good P.R., and it helped some of the delegates get around and see some parts of the state. Illinois is a very sharply divided state, a lot of Chicago people have no feel for the rest of the state, so this was quite helpful to get them around the state, and to just to hear different people talk with different accents, Southern Illinois is quite different from Chicago.

342 Campbell: I would say our differences between the various sections of the state are perhaps not as pronounced in Illinois, between the people who live in Little Rock or other parts of the state, but most of us came from smaller communities in the state. There is in the small communities, a very definite sort of paranoia about that the people in Little Rock are dominating the scene, real or unreal, mostly unreal. So both, and we started this in the study commission and it carried over in the '70 convention and I believe, although I am not as familiar with the '80's one. I believe the convention did it as much as they could. In the study commission, we were trying to create, quite honestly, a

public awareness. Hearings held out in the other places in the state, were as much propaganda as they were interest in hearing from people. I don't mean to say we didn't want to hear from people. We used primarily state college facilities. Almost all of the colleges were happy, and being that one of the members of the study commission, was a college president, they were happy to have us on campus. It gave some publicity, it gave something to the students to see and hear. We had a state college president and we had the largest private college president as a member of the study commission. We moved around in different parts of the state getting input from county officials, and municipal officials. One of the most memorable hearings we had was down in the southern part of the state, where we invited people to come and talk about game and fish problems. We have a constitutionally established game and fish commission which is almost an independent department of government. A lot of folks were out talking about fox hunting and other things like that, which may or may not be significant in your state. It strikes me that that sort of thing is important, or extremely important in your state, but again, in a state such as yours, and indeed ours, where transportation is not all that convenient, it was important to get the delegates and the commissioners out with the people and to encourage the people to come. We had to do a lot of pushing. That is we had to get on the telephone and get people to come and make presentations.

We made the agenda ourselves to some extent, at all of these county and state sessions. We didn't have trouble getting people, but we tried to present some sort of balance. If there was somebody who was very definite and would speak very strongly on something, we tried to think of who had the opposite point of view. We tried to give an opportunity to have a balanced presentation if at all possible. And, with the convention then, in '70, instead of taking the whole commission as we did, with 30 people you can move out and you won't have quite all 30 people there, but you can get accommodations in your budget as such, particularly if you work with colleges, you can stretch your budget now, and don't have to pay for facilities, and a little travel and some meals and that sort of thing, but in the convention structure, we took the committees to different parts of the state, finance and taxation committee would hold four or five hearings in different corners of the state, and that sort of thing. That was helpful in terms of getting publicity in the local newspapers, and we tried to pick towns that had a TV station if possible, but certainly a good daily newspaper, so that there would be pictures and coverage of the testimony to make the people aware that there was something going on and that their community had had a part in what was going on, which made it look less like the word was coming down from the capitol or the legislature.

414 Van Doren: What about, in both cases, post convention work, as far as getting publicity out and informing the public just what you had done and that type of thing?

418 Gove: We published a message to the people which, as I remember, every voter got a copy of the newspaper which had the new constitution and explanations. There was a campaign committee which was not publicly financed, that pushed the new constitution, and the delegates as individuals campaigned for the convention, in most cases. There were a few who were in opposition. We had our main constitution and four side issues. And the side issues got a lot of attention and there was a campaign committee for merit selection of judges and magistrates, and there was a campaign committee for single member districts vs. our two thirds voting system. We have if you are interested, have you see our series, published by the University of Illinois Press? One of them just came out, regarding campaigning for the new constitution tactics.

444 Van Doren: Is that a new one? I may not have seen that one.

445 Gove: By Joanna Watson, published by the University of Illinois Press. There is another new one, a summary of the whole thing by Elmer Gertson and Joseph Shody, that is just out in hardback, but our activity for the convention process is well documented.

452 Campbell: I would say the basic weakness in the whole process in Arkansas both in the '70 and '80, was in the post convention effort. We went through the things that could be accepted and funded by public funds and in each case, the convention produced and addressed to the people was the text of the constitution followed by explanatory paragraphs, but unfortunately, of course, you don't have much room in something like that to sell something, in many cases you are restricted by simply saying this substantially incorporates the provisions of article so and so, section so and so of the 1874 constitution, which most people didn't know what that said either, in terms of the general public. In other cases, you are reduced to a fairly short summary of what the change is, so that it is, at best, a semi-scholarly explanation in the case of it being understood but not recognized as fully, that people don't, for the most part, have a recognition of constitutional issues to begin with, except for the very limited economic issues and, of course, they are concerned about that. So there was no question of anyone who was interested in getting a copy. Ours was distributed this way: Each newspaper in each county was provided a newsprint tabloid and the publication requirements. The statutory requirements was that this was to be provided to each legal newspaper, that is a regularly published newspaper in the state, free of charge, and then they received a payment of something less than the regular legal rate of publication for inserting this stuff, one time, in their newspaper and dis-

tributing it throughout the state, so that everybody who got a newspaper, which was not necessarily every household, and certainly not every voter, but everybody who got a newspaper throughout the state, got a copy of the document, plus the Secretary of the State maintained a file of these and mailed them out to the courthouses and to a number of people on their public officials mailing list, so there was a fairly wide distribution and good deal of publicity. Additional copies could be obtained from the Secretary of the State, and that sort of thing. In 1970, there was no public funding available for any promotion campaign. In 1980 there was some budget allowed for P.R. committee, and there was a P.R. committee composed of delegates, but its purpose was essentially to try to coordinate delegate's speeches and try to coordinate delegate's and try to respond to requests to luncheon clubs and professional groups of one kind or another, trade associations and other things like that, to respond to requests, and in some cases to try to generate requests for talks. There was no money spent on advertising in the sense of TV commercials or newspaper ads. There was a private group formed to solicit money and bought TV time, and some newspaper time. That effort was a little bit better in '80 than it was in '70, but it was not dramatic in the sense of Michigan or maybe in the sense of Illinois, and so forth. There was no really big campaign, and unfortunately, a well drafted constitution is pretty hard to explain. The hardest part in a well drafted constitution is finding somebody

who is willing to give enough money to support the campaign. Some narrow special interest groups may be willing to do it to some extent, but that is one of the hardest things there is, and somebody must have done it right. We have not done it right in Arkansas the past two times.

534 Van Dorer: Well, I think probably we are going to have to stop the meeting. The only other thing, there are other things I would like to touch on and I don't know if we will have a chance to get together or not, but one other thing I would really like to explore. if there is any possible chance to get together. I am going to meet with the people from Texas probably tonight or tomorrow, and go through this same kind of thing. I don't know if you are available, I could have a meeting with the whole committee. Just maybe some ideas on some of the pitfalls to avoid. I know you have explained some of them, and Sam has explained some of them too. We are trying to learn from other people's mistakes, and it is one thing that I think is pretty important about this, although the things that you have given me this morning have really been helpful. I have learned lots just from this morning. But I really think we should probably go. The meeting is supposed to start at 10:30. You might be thinking about that, and if there is a time. One other possibility that Bill Cassella had talked about was maybe getting together tomorrow morning, just at breakfast

rather than like this, and maybe just sit around and talk, and that will give you time to gather your thoughts a little bit, too. If it is possible, let me know. I appreciate the time you two have taken now, and I know this is a busy time, but this was one way to see people that I wasn't able to see in New York other places.

565 Gove: I wish we had a patented formula for success. One of the things we did and I think this may sound egotistical, but we studied our procedures and literature, and we did some good preparatory work.

576 Van Doren: You certainly did. As you said, Illinois is certainly well documented. I think it is probably the . . .

578 Campbell: If the money is available anywhere, that sort of good background material is very helpful, because what happened so often is that you rush in to get a staff, and you wind up picking up people who are anxious to work, but they have no real depth in the area. You can't get those people who got to that area overnight, and they can't get the material together fast enough and you come out with poorly informed answers, I don't mean to say young people don't know anything, that is not what I am trying to say, but to get somebody who knows the issues only from the limited sort of text book source or just a very fragmentated sort of thing. They don't

often get their resources developed and really inform a committee on what the substantive issues are.

599 Van Doren: Well, I think we will finish this off, since we are going to that other meeting.

END OF GOVE/CAMPBELL MEETING.