

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 8672

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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

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 terrific 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 Belout: 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 the 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 mulitiple, 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?

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 that 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 liason 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 it 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 sepcific 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 constitutions, 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 dislodge 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 state-wide 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 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

Transcription of Tapes of
Meeting with John P. Wheeler
Hollins College, Hollins, Va.
November 12, 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 self'ish 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.