

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 8672

804 SCOM 127: INT. COMM. CONSTITUTIONAL CONVENTION 1979-80

174 Wheeler: By a handsome majority.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

501 Van Doren: No, they are not.

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

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

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

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

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

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

SIDE TWO:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TRANSCRIPTS OF HEARINGS
held by
JOINT COMMITTEE ON
CONSTITUTIONAL CONVENTION COMMITTEE

Prepared and edited by:

GUY A. VAN DOREN,
Administrative Assistant
to the Committee

January 10, 1981

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INTRODUCTION

FORWARD:

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

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

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

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

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

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

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

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

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

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

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

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

January 1981

MEETING IN NEW YORK

with

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

November 7, 1980

NEW YORK

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

Attending the meeting were:

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

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

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

January 31, 1981

CONVENTION - YES OR NO

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

Comments:

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

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

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

PUBLIC HEARINGS

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

VOTE PREPARATION

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

ELECTION OF DELEGATES

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

MATERIALS FOR DELEGATES

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

THE CONVENTION

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

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

ISSUES

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

MISCELLANEOUS

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

New York Meeting

November 7, 1980

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

Frank Gard

New York

Bill Cassella, Executive Director
National Municipal League

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

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

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

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

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

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

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

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

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

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

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

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

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

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

John Bebout: The election of judges by the legislature.

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

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

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

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

John Bebout: They were nominated by the party organization.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Van Doren: We had approximately four propositions on the ballot

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

George Braden: It's the typical Southern primary.

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

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

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

Van Doren: Senate and house districts.

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

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

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

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

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

Bill Cassella: In Montana, they excluded the legislature.

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

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

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

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