

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 8672

805 SCOMM27: INT. COMM. CONSTITUTIONAL CONVENTION 1979-80

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

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

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

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

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

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

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

Frank Grad: You can limit the runoff.

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

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

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

John Bebout: In Massachusetts, it requires an initiative.

You have to have a group of sponsors.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Frank Grad: The portability is important.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

convention in September.

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

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

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

Van Doren: That is what we are doing now.

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

George Braden: The legislature meets every other year?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

END OF TRANSCRIPTION FOR NEW YORK MEETING

MEETING AT HOLLINS COLLEGE
HOLLINS, VIRGINIA

with

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

November 13, 1980

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

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

THE CONSTITUTION

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

THE CONVENTION

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

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

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

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

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

ISSUES

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

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

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

Side 1

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

174 Wheeler: By a handsome majority.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

501 Van Doren: No, they are not.

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

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

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

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

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

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

SIDE TWO:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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