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A NEW CONSTITUTIONAL CONVENTION FOR ALASKA?

THE LESSONS OF HAWAII 1978

prepared for

Interim Committee on the Constitutional Convention
of the Alaska State Legislature
Sen. George Hohman and Rep. Brian Rogers, Co-chairmen

by

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Preface

This paper is part of a series of studies sponsored by the Alaska Legislature's Interim Committee on the Constitutional Convention to examine issues pertinent to the 1982 referendum on whether or not Alaska should hold a constitutional convention.

Previous papers in the series by this author covered (1) various aspects of calling and arranging a constitutional convention, (2) considerations that need to be taken into account in deciding whether or not to call a convention, and (3) preliminary examination of issues and topics that might be raised in considering revision of Alaska's constitution. The current paper reviews Hawaii's 1978 constitutional convention and the constitutional amendments in which it resulted.

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Introduction

Hawaii has served as a model for Alaskans before, and once more we have something to learn from Hawaii's experience.

When Alaskans were fighting for statehood in the early 1950's, the idea of writing a constitution for the future state was repeatedly considered. A well designed document would prove to the U.S. Congress and the nation that Alaska was politically mature and ready to become a state. Moreover, Hawaii statehood advocates had written a constitution in 1950, and greater parity in the common quest would accrue if Alaskans also drafted a state constitution.

Alaska's constitutional convention met in 1955. Together with the National Municipal League's Model State Constitution, Hawaii's document provided a basic guide on constitutional substance and form: emphasis on fundamental policies and basic governmental structure, streamlined institutions to serve the needs of a modern state and its people, a brief and concise document. These concepts are fully reflected in Alaska's constitution, which contains a number of provisions derived directly from Hawaii's earlier work.

Now, in the 1980's, Hawaii can once more provide invaluable guidance to Alaska. In 1982, Alaskans will vote on whether or not to hold a new constitutional convention. Unlike the 1955-56 convention, which was held in the context of the unifying statehood cause, a divided Alaska and uncertain political environment would face a future constitutional assembly. This problematic situation greatly beclouds the answer as to whether a new convention would be beneficial to the state and its people.

Well, Hawaii held a convention during these frequently confused and disturbed times. Its review and rewriting of the state constitution took place in 1978. It was the post-Watergate era, the period of Proposition 13. Distrust of government, and particularly the legislature, was high. There was conflict between those who believed in a Hawaii for Hawaiians and others who wanted to retain the "aloha spirit" and greet all newcomers. Divisive issues included economic development, environmental protection, Native rights, public employees collective bargaining and right to strike, resources policy.

Hawaii's resultant convention encountered serious problems of organization and functioning. Delegates made more than one hundred changes in the constitution. Some of these changes dealt with truly basic matters, while a very large number are purely legislative in nature. Some revisions are quite significant, while others appear to an outside observer as unimportant and even frivolous. Interestingly, both convention participants and observers are in retrospect highly critical of the work and products of the constitutional convention. Many now believe Hawaii would have been better off without a convention. Others simply wish it had been better.

Rather than drawing simple conclusions out of Hawaii's extremely complex 1978 constitutional convention experience, this paper reviews what transpired and examines the reasons for some of the actions and results. Readers can then draw their own interpretations, based on their own concerns, values, and perceptions.

Learning about Hawaii's 1978 constitutional experience was but one of the personal benefits I derived from preparing this analysis. Greater yet was the pleasure of meeting and communicating with some wonderful Hawaiians, without whose help this would have been a rather dull exercise. I want to

particularly acknowledge the forthright and cooperative sharing provided by these members of the 1978 Hawaii convention: Frenchy De Soto, Paul Di Bianco, Walter Ikeda, William Paty, and John Waihee. Others most helpful were Sandy Ebesu of HGEA, Richard Kosaki and Norman Meller of the University of Hawaii, and Pat Shutt of the League of Women Voters.

Very special thanks go to Mike Meriwether, who initiated me to the who's who and the facts of public life in Hawaii and literally opened doors to the people I needed to see. And as always, very special appreciation and love go to my good friend Tom Dinell and his marvelous family, for everything.

I do trust that in the retelling and interpreting of Hawaii's constitutional revision story, I have not done any significant injustice to the differing points of view to which I was exposed. My need was to look at events in terms of what Alaskans could learn from our sister state. So I hope that my friends, old and new, will forgive any transgressions and permit me to someday again visit their warm and delightful state.

Background to 1978 Convention

Hawaii's first constitutional convention was held prior to statehood and was, as Alaska's, part of the quest for statehood. The convention, which met from April 4 to July 22, 1950, consisted of 63 delegates.

The 1950 constitution is a relatively short document (approximately 14,000 words), staying with basic fundamentals: a bicameral legislature of a 25-member senate and 51-member house of representatives, only two statewide officers--governor and lieutenant governor, an executive branch consisting of no more than 20 principal departments, a supreme court and circuit court (where judges are appointed by the governor and subject to confirmation by the senate), and local governments under the control of the state legislature. All in all, Hawaii's 1950 constitution, in the words of Prof. Norman Meller, "showed and was meant to demonstrate how thoroughly the people of the Islands were imbued with American political and cultural traditions."[1]

Hawaii held another convention prior to the one that is the primary focus of this paper. A convention was held in 1968 to deal with the U. S. supreme Court mandate that the legislature be reapportioned on a one-man one-vote basis. Aside from legislative apportionment, other amendments proposed by the convention and ratified later in 1968 strengthened certain aspects of the Bill of Rights, liberalized voter qualifications, authorized a presidential preferential primary (not yet implemented by the legislature), made changes in legislative procedures, lengthened the term of justices of the supreme and circuit courts, changed the state

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[1] Norman Meller, With an Understanding Heart: Constitution Making in Hawaii. New York: National Municipal League, State Constitutional Convention Studies No. 5, 1971, p. 84.

and county debt limits, gave local governments more control over their internal organizations, required each jurisdictions to adopt a code of ethics, provided for collective bargaining for public employees, and took care of a number of other minor issues. Only one amendment was turned down by the electorate: the proposal to lower the voting age from 20 to 18.[2]

The 1968 convention had been called through popular referendum held November 8, 1966. Unlike Alaska, a convention cannot be called by the legislature; instead, the legislature is given specific authority to submit to the electorate at any general or special election the question "Shall there be a convention to propose a revision of or amendments to the Constitution?" Further, as in Alaska, provision was made for a periodic referendum: "If any ten-year period shall elapse during which the question shall not have been submitted, the lieutenant governor shall certify the question, to be voted on at the first general election following the expiration of such period."[3]

A question arose in 1976 as to whether the convention proposition should again be put before the voters at the November 2, 1976 general election or should be held off until the 1978 general election. The Hawaii attorney general ruled that the ten-year period had begun after the last day the question was submitted to the electorate and would,

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[2] Richard H. Kosaki, "Constitutions and Constitutional Conventions of Hawaii," The Hawaiian Journal of History, vol. XII, 1978, pp. 125-126. (Kosaki is a professor of political science at the University of Hawaii. The article was written prior to beginning of convention.)

[3] The Constitution of the State of Hawaii, Article XV, Section 2. The ten-year referendum provision varied somewhat from a similar prviso in the Alaska constitution: the proposition had to be put before the voters in Hawaii every time that the question had not been voted on during a 10-year period, while in Alaska the question is put on the ballot only if there has neither been a referendum on the issue nor a constitutional convention during such period.

therefore, not expire until November 8, six days after the 1976 election. As a result, he held that the convention question should not be put until 1978.

However, after a court challenge and strong public expressions in behalf of a referendum, the legislature decided to place the question before the voters in 1976. The result was overwhelming approval: 199,831 (74 percent) in favor, 69,264 against.

Professor Kosaki notes: "This rather large affirmative vote may have surprised some political observers as, unlike the period before the 1950 and 1968 conventions, there appeared to be no single overriding or pressing issue. Perhaps Hawaii shared with the rest of the nation a general dissatisfaction with government following Watergate. Public interest groups such as Common Cause and the League of Women Voters not surprisingly pushed for a constitutional convention as a healthy and democratic device to review basic government organization and procedures. Special interest groups saw yet another opportunity to write their platforms into the Constitution. The Honolulu dailies, particularly the Honolulu Star-Bulletin, editorialized in favor of a constitutional convention. Few political leaders, despite their private reservations as to the "need" for a convention, would publicly oppose the holding of another constitutional convention. As election time approached, most of Hawaii's political leaders said that they favored the holding of a constitutional convention although there seemed to be little agreement as to what major issues should be addressed."[4]

One convention delegate summarized the general opinion that the 1976 referendum vote on holding the convention was so heavily in favor because

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[4] Kosaki, pp. 126-127

(1) the public generally did not concern itself with specific issues, (2) there were no strong reasons not to have a convention, no one was against it, so why not do it? and (3) it just sounded like a good idea, a "motherhood issue."

The pre-convention period was characterized by extensive preparatory work and attempts to define constitutional issues. The Hawaii Legislative Reference Bureau prepared and widely distributed for the referendum election an informal brochure: "The Constitutional Convention: Yes or No," listing the kinds of subjects that a convention might consider. Subsequently, the Legislative Reference Bureau provided convention delegates with thorough research on constitutional issues in its Hawaii Constitutional Convention Studies 1978.

The League of Women Voters of Hawaii Education Fund conducted a major public education campaign prior to the 1978 convention. A simple popular and well-illustrated brochure described the basic purposes of a convention and summarized key issues that delegates might face. The League held community meetings throughout the state, with the particular aim of involving people who had not usually participated in the political process of revising the state constitution. Each of the meetings considered a variety of issues and covered any topic that participants proposed. Results of these meetings were later reported to the convention. In addition, the League prepared an in-depth issues analysis for the convention, based upon public discussions and related research. Throughout, part of the League's purpose, was to trigger the imagination of delegates and to broaden the scope of their considerations of issues that might not be raised as part of conventional review processes.

Other activities included extensive newspaper coverage and such special projects as a wide-ranging poll of Hawaii public opinion concerning the convention prepared for the First Hawaiian Bank and issued in a 136-page report.

Although "there was general agreement that there was little or no consensus as to specific major issues the convention should address,"[5] a substantial list of issues did emerge by the time the convention met.

Pre-Convention Issues

The list of questions, problems, and issues raised for possible consideration by Hawaii's 1978 Constitutional Convention is almost endless. The following "laundry list" is presented to show what the convention faced as well as to provide an indication of what might be in store if Alaskans should decide to review and revise their constitution:

Declaration of Rights: Establish a right to privacy; strengthen individual rights regarding search and seizure, wiretapping, etc.; establish right to freedom of choice and self-reliance in all matters of personal nature; include right to a job; redefine role of grand jury; stricter penalties, for crimes, mandatory sentencing, capital punishment.

Legislature: Unicameral versus bicameral, split sessions, limit tenure to two consecutive terms, fix legislative salaries in constitution, limit number of bills that can be introduced in each legislature, provide adequate advance publicity on all proposed laws before final vote, elect legislators in non-partisan elections.

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[5] Kosaki, p. 127.

Executive: Limit tenure of governor and lieutenant governor to two terms, give lieutenant governor more responsibility, elect attorney general and county prosecutors, limit governor's right to withhold appropriated funds, limit governor's control over budget.

Judiciary: Provide merit selection and election of judges, create an appeals court, change existing ten-year appointment of judges.

Elections: Establish open primary, create limit on campaign spending, limit terms of all elected officials.

Apportionment: Provide for true representation of each island and district.

Education, Health, Welfare: Change method of selecting board of education, give counties more power over schools, define powers of university board of regents; establish right to a healthful environment, provide for better and lower cost housing; establish stricter requirements for welfare recipients.

Resources, Environment, Growth: Include more specific provisions about conservation of natural resources, provide better protection of conservation land and preservation of parks, protect agricultural land, increase citizens role in decisions about land; provide for energy conservation; permit individuals to sue to protect resources; limit growth, limit migration, provide referendum on population growth, emphasize quality growth.

Finance: Establish more control of government spending and stricter debt limits; limit amount of property tax on individual homes; require balanced budget; include a financial impact statement with each bill considered by the legislature.

Local Government: Clarify state and county roles, give more power to counties, make each island a separate county, incorporate municipalities, abolish counties, give counties more taxing power.

Initiative and Referendum: Make constitutional provision for initiative, referendum, and recall.

Miscellaneous: Limit right of government workers to strike, limit number of days public and private employees may strike, open government collective bargaining sessions to public; decriminalize marijuana; establish residency requirements for state and local jobs; require a code of ethics for all government employees; establish guidelines for preservation of Hawaiian heritage.

Although there may have been no consensus about major issues to be faced by the 1978 convention, it can be seen that there was no shortage of topics for its consideration. A surprising number of the above-listed items ended up among changes adapted by Hawaii's delegates.

1978 Election; the Delegates[6]

The 35 percent voting turnout in the 1978 special election to select convention is the lowest recorded for elections in Hawaii. Although a low turnout is generall predictable for special elections, most Hawaiian observers were somewhat surprised inasmuch as in 1976 over 70 percent of the registered voters cast ballots on the proposition of holding a constitutional convention, voters approving it by a three-to-one margin. Furthermore, according to the First Hawaiian Bank poll held

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[6] This section, including tables, is largely from Kosaki, pp. 128-132.

less than four months prior to the special election, 67.8 percent of the respondents indicated that they planned to vote in the delegate election.

The convention size was fixed at 102, double the membership of the state house of representatives. In the 1978 special election, at least two convention seats were allocated to each house district; four or six were allotted to the larger districts. A total of 697 candidates filed for the 102 delegate seats. The smallest number of candidates in any district was 6. One district had a high of 30 candidates; and seven districts had more than 20 candidates for the two seats. With each district averaging over 3,000 registered voters, the highest vote getter in the 1978 election obtained 1,982 votes, or 76.7 percent of those voting in the district. The delegate elected with the fewest votes had 363, receiving 19.8 percent of the votes in the district. In view of the large number of candidates in each district, it is not surprising that the great majority (89) of the elected delegates received less than 50 percent of the votes cast in their district.

The composition of the 1978 convention is extremely interesting, especially in comparison with the 1950 and 1968 conventions. Unlike the earlier conventions, the 1978 convention did not contain many familiar faces. Only two incumbent legislators chose to run and were elected to the convention. In addition, two ex-legislators became delegates. Thus, incumbent and ex-legislators constituted only 4 percent of all delegates in 1978, as against 51 percent of the 1968 convention. Six delegates had seen service in the 1968 constitutional convention, and one delegate had served in the 1950 convention.

The delegates were, on the average, younger than their predecessors. The median age in 1968 was 42, while it was 35 in 1978. The respective age distributions of the 1968 and 1978 conventions were as follows:

	1968 Delegates		1978 Delegates	
Age Group	No.	Percent	No.	Percent
50+	18	22.0%	24	23.5%
31-50	55	67.1%	45	44.1%
20-30	7	8.5%	33	32.4%
Unknown	2	2.4%	0	
Total	82		102	

Another change in delegate composition was the significantly larger number of women delegates elected in 1978:

1950	5 of 63 delegates	(7.9%)
1968	8 of 82 delegates	(9.8%)
1978	20 of 102 delegates	(29.4%)

In his book about Hawaii's first two conventions, Norman Meller offers a classification of delegates by occupation. Kosaki updated Meller's analysis with the following results:

	1950		1968		1978	
Occupation	No.	%	No.	%	No.	%
Lawyers	19	30	25	30	20	19.6
Business	25	40	35	43	26	25.5
Educators	7	11	6	7	14	13.7
Doctors, etc.	5	8	2	2	0	
Housewives	3	5	2	2	3	2.9
Union Organizers	2	3	2	2	1	1.0
Full-Time Public Officers	1	2	2	2	1	1.0
Retired	1	2	2	2	6	5.9
Student	0		1	1	7	6.9
Civil Service Employees	0		5	6	13	12.7
Unemployed	0		0		6	5.9
Others or Unknown	0		0		5	4.9
Total	63		82		102	

What is noteworthy in the "occupation" table is the decrease in 1978 of lawyers, businessmen, and doctors, and the increase in educators, retirees, students, and civil service employees. Also interesting is the fact that six delegates just before the convention described themselves as "unemployed;" the majority of these worked as legal researchers in the recently adjourned legislature.

Election Sidelights

Interviews provided some insights behind the statistics covered in the preceding section.

A number of explanations were given of the intriguing fact that only two legislators ran for the constitutional convention. (1) There was a wide consensus that the legislature was out to assure that the convention would not succeed. Although unable under the constitution to limit subject matter considered by the convention, the legislature created some serious timing roadblocks. As a result, legislators, did not want to be associated with a convention bound to fail. (2) Specifically, the convention was held from July 5 to September 21. It would be difficult for a legislator to campaign for the early October primary and still perform convention duties. (Supposedly, the timing was so designed to discourage delegates from challenging incumbent legislators in the primary election.) (3) Legislators might have been beaten in the convention election. Some fairly strong local people not ordinarily in politics became candidate for delegate and that, together with possible public resentment against legislators not sticking to their lawmaking business, could have resulted in a legislator losing out both for the convention and in a subsequent legislative reelection bid.

Generally, the constitutional convention election was very much a grassroots election. The vast majority of candidates were making their first bid for public office. With many unknown and inexperienced candidates in the running, relatively small organizational and financial support could make a great difference.

The most active role in delegate elections was played by the Hawaii Government Employees Association (HGEA); other organizations were not particularly active. The basic criterion of HGEA support was opposition to Initiative and Referendum. This opposition grew out of a concern about anti-labor initiatives, as well as possible use of the initiative device for fiscal purposes (such as Proposition 13) or restrictions on social programs (welfare, abortion). HGEA screened all candidates for endorsement. Where the union was not satisfied with declared candidates, its representatives encouraged and helped selected people to file. HGEA gave active support to candidates in a variety of ways: money, use of mailing lists, provision of mailing and other facilities, campaign organization and stragety, etc. HGEA supported and helped elect 60-70 percent of the delegates, including some who ended up in the minority. According to one estimate, 40 of the 102 delegates were "fully controlled" by HGEA. Among those elected were 13 HGEA members.

(By the way, a prevalent way of campaigning in Hawaii is for candidates to stand on freeway overpasses during rush hour and wave placards or banners with their name to attract commuters' attention!)

Organizing Convention

Legislative provisions for the convention specified that the delegate election be held May 20 and the convention begin July 5, 1978. Maximum

stipend per delegate was set at $1,000 per month, the total not to exceed $4,000. Delegate pay began the day after the election; thus, the last day of pay would be September 20.

Starting pay the day after election was designed to limit the period during which the convention could be held. With a convention beginning date of July 5, the session was effectively limited to 75 days, including weekends and any time off for hearings or recess. In addition to legislatively set limitations, the lieutenant governor also urged completion of convention work no later than September 21 so that proposed amendments could be printed and put on the November general election ballot. Those interviewed believed that this left completely inadequate time to deal with substantive aspects of constitutional revision.

During the period of May 21 to July 5, elected delegates were just "milling around" and organizing. A number of preliminary meetings of delegates were held to select a temporary chairman, establish initial committees, make convention arrangements, agree on a location for the convention, and the like. No substantive constitutional issues were addressed during this period.

In early June, delegates held their first formal meeting and elected William Paty as interim president. He received the votes of about three-fourths of the delegates. Paty set up the rules committee, credential committee, and other administrative committees. The pre-convention period was also used to prepare the delegates for the issues they would be dealing with during the convention. Groups such as the League of Women Voters, a county organization, savings and loan association, and others ran seminars and briefings for delegates.

When the convention met in its first regular session, Paty was elected permanent convention president. He then proceeded to appoint committee members and chairmen. Delegates also elected a secretary and an assistant secretary.

Vice-presidents were elected by delegate caucuses from each of Hawaii's seven senate districts. These vice-presidents were supposed to represent their district in administrative affairs. However, since several of the seven vice-presidents were members of the "minority", their role in the convention became minimal.

Committee structure was essentially similar to that of the 1968 convention. New committees were established to deal with ethics and Hawaiian affairs, while the subject of environment was added to the title of the committee dealing with agriculture, conservation, and land. In all, there were sixteen committees, and each delegate was assigned to serve on five or six of them.

An advisory/steering group functioned during the intitial stages of the convention. It consisted of about ten people who had put together the ruling coalition and managed to get Paty elected president. The group participated in various early decisions, particularly appointment of committee members and chairmen. Once the convention was organized, Paty let committees function on their own. As a result, the initial steering group fell apart.

About half-way through the convention, it became apparent that problems were developing because no one kept tabs on the whole convention. John Waihee, a young Native Hawaiian delegate established an unofficial organization and process to coordinate convention activities and assure that basic components of their program were reflected in convention products.

Although convention work started slowly, delegates worked until one or two a.m. during the last several weeks. The crush was so great at the end that apparently it was hard to see the totality of what was happening in the convention and to relate all amendments. In view of the time crunch they experienced, one of the new constitutional amendments adopted by the delegates provides for more adequate time for future conventions to do their work.

How the Convention Came to Be Organized

There was one basic issue around which the convention organized -- Initiative and Referendum. This issue ran so deep, it was so basic, that it caused a major split among the delegates and prevented the convention from ever coming together as a single, unified body.

Initiative and Referendum became the key issue because of the times during which constitutional revision was being considered: society in turmoil, people's concerns focused on immediate problems, most groups pursuing single-interest causes and solutions. The public was frustrated, disenchanted with government, and distrustful of institutions and leaders. In this situation, Initiative and Referendum appeared to many a simple solution -- if people could only vote on the matters of concern to them, direct democracy might solve all problems. (Actually, however, polls showed that popular sentiment was not particularly concerned with Initiative and Referendum. People were worried about crime, high taxes, government expenditures, economic problems, and the like.)

Reform groups such as the League of Women Voters and Common Cause worked in behalf of these devices of direct legislation. Principally,

however, the Initiative and Referendum issue seemed to have been pursued by the media. Much of the cause behind that was frustration with the legislature, which seemed highly unresponsive. The constitution was seen as providing an easier vehicle than the legislative process for resolving social, economic and political frustrations. While some viewed Initiative and Referendum as a basic plank in a reform platform, others saw it as a potential danger to the established order, to their special interests, and to Hawaiian lifestyles. Thus, the convention's organizing thrust grew out of this opposition to Initiative and Referendum.

Rallying around opposition to Initiative and Referendum, one of the convention's two state legislators (Sen. Donald Ching) and the Hawaii Government Employees Association (led by HGEA president David Trask) structured a coalition to assure that Hawaii's constitution would not be amended to permit direct legislation. The coalition was an amalgam of union people and those supported by labor, individuals with ties to larger business interests (though there were not many of these), and a group of younger delegates, mostly Native and graduates of the University of Hawaii Law School, a number of them also legislative staffers.

Architects of the coalition chose William Paty to become convention president. A sugar plantation manager and a republican, Paty had stature and commanded respect. His public prestige helped overcome HGEA's negative media image.

Out of the convention total of 102 delegates, the coalition had 56 solid votes on Initiative and Referendum and organization-related issues. Generally, the "majority" was composed of people who could work and talk together,

essentially a grouping of some 65 votes. It consisted of a dependable core of 40 votes, with another 25 who would come and go depending on issues. In addition, about 15 "reformists" might join with the majority on specific matters.

The "minority" did not function in a consistent or organized manner. Composed of most of the convention's Caucasians, most of the Republicans, and most of the more lucid attorneys, this group consisted mostly of convention independents and individuals brought together mainly by their opposition to the coalition and its hard organizational tactics.

In many ways, the coalition was a loose amalgam of votes that had to be kept together through compromise and promises. One reason for the many changes made in the constitution and for the extensive amount of legislative matter included was the need to satisfy the individual needs and desires of individual delegates whose votes had to be kept in line on core issues such as Initiat've and Referendum.

Philosophical Differences, Characteristics of Delegates

Many observations make it clear that there was a lot of dynamics within the Hawaii convention. There were, of course, 102 individuals, and categorizing them is not particularly easy. The groupings that seemed most appropriately classify the delegates were:

(1) "Reformists" or "independents" -- those who were concerned about government structures and processes and generally favored Initiative and Referendum.

(2) "Standpatists" -- those who wanted none or only the most minimal changes; there were few of these.

(3) "Conservatives" -- those who fell between the other two categories; they often felt more strongly about constitutional preservation than the standpatists, while at other times they favored changes.

It appears that a substantial majority of delegates thought the constitution was basically good and required no major changes. From that standpoint, virtually all could have been classified as "conservatives." However, post-election coalition-building, pursuit of particular objectives, and individual philosophies lead to groupings, some rather loose, that continued through the convention.

While there was a general feeling within the convention that the legislature needed to be made more responsive and that political processes had to be more open, it was the "reformists" or "independents" who believed most strongly that the public majority should be able to exercise power over government and directly participate in political decisions. These individuals generally held that the "aloha spirit" should be kept alive, that migration should not be restricted or growth unduly controlled, and that special privileges should not be granted to Native Hawaiians or any other groups.

As the others, "conservatives" saw Initiatve and Referendum as a symbol. With labor, they believed it could become a tool that could be used by ever increasing numbers of in-migrants, mostly haoles (Caucasians) from California, to upset existing order and arrangements. This applied

not only to the fear of the initiative's use against unions, but also to concern that the initiative could work against minorities, be used to establish the death penalty, bring about cuts in social welfare, and the like. They were concerned about accountability for what goes on: To them, it was the unseeable and unseen electorate vs. responsibility fixed directly on the governor and legislature. Behind the opposition also seemed to lie the fear that while the legislature could be influenced, the initiative process could not be controlled. The public was viewed as too often signing petitions and voting without full understanding of propositions and their implications. Thus, danger was seen in the exercise of direct legislative power by an uncaring majority, particularly as such power might be exercised in the areas of labor, welfare, and fiscal legislation.

An important ingredient in the "conservatives'" philosophy was the belief that locals should retain political power and preserve Hawaii's uniqueness in the face of an infusion of newcomers to the state. Accordingly, they sought to preserve existing political and labor power centers, above all defeating proposals to authorize Initiative, Referendum, and Recall. In general, though conservative in many ways, the majority coalition showed itself extremely change oriented in such areas as Hawaiian affairs and environmental issues.

A key role in fashioning the convention's program was played by John Waihee III, a 32-year old attorney. A newspaper article described Waihee, a Native Hawaiian, as the "major architect of the convention's will... who, by default and tactical skill, assumed the role of majority leader midway in the convention." Everyone interviewed supported the premise that insofar as anyone "managed" the convention, both in substance and process, it was Waihee.

Working with Waihee was a group of young people, the "children of the 60's." Their principal goals included social justice, Hawaiian rights, and protection of Hawaii's character and uniqueness. (When one looks at these values, it is clear that the term "conservatives" can be applied to this group only in its most dynamic interpretation.)

Despite many differences there were of course unifying issues that brought delegates together regardless of coalition status. This was true in particular with the full gamut of fiscal controls. The convention's actions in this area demonstrated not only wide consensus among delegates, but also showed that HGEA's power was nowhere near as great as generally perceived. In the fiscal arena, at least, business interests and populism combined to greatly restrict government's taxing and spending ability.

The general philosophy of the convention, or at least of those who set its tone, is best reflected in the revision of the constitution's preamble:

> We, the people of [the State of] Hawaii, grateful for Divine Guidance, and mindful of our Hawaiian heritage [,] and uniqueness as an island State, dedicate our efforts to fulfill the philosophy decreed by the Hawaii State motto, "Ua mau ke ea o ka aina i ka pono."*
>
> We reserve the right to control our destiny, to nurture the integrity of our people and culture, and to preserve the quality of life that we desire.

Principal Constitutional Changes

By the time the delegates concluded their work, they surprised the state and probably themselves by both the number and range of constitutional changes proposed. Part of the explanation lies in the organization of the

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* (New material underlined, deleted material in brackets.)

convention. The majority had not been fashioned to implement a program, but rather to oppose amendments which threatened to disturb the status quo: attempts to eliminate or modify public sector collective bargaining, converting of the legislature to a unicameral body, and the introduction of the initiative, referendum, and recall at the state level. The cost of maintaining such a coalition was the inability to prevent individual members, frequently allied with special interests, from sucessfully championing their pet ideas.[7]

In all, the 1978 convention made 116 changes in Hawaii's constitution. Although some revisions were truly constitutional in nature, the majority would ordinarily be classified as legislative matter. The latter category resulted principally from wide public frustration with governmental, and particularly legislative, processes and actions.

At the same time, the convention's products clearly expressed major current societal values: political reform, fiscal conservativism, environmental concerns, individual rights, and social justice. In addition, delegates also effected a number of structural changes. The appendix reviews changes made by the convention. The following is a summary of principal provisions, loosely grouped according to their basic aim or character.

Political reform

- Code of Ethics: calls for highest standards of ethical conduct and personal integrity of each individual in government; requires adoption of code of ethics by state, each political subdivision, and any constitutional convention; requires administration of each code by an independent

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[7] Norman Meller and Richard H. Kosaki, "Hawaii's Constitutional Convention," to be published in National Civic Review, May 1980.

ethics commission; and specifies that each code shall include provisions on gifts, confidential information, use of positions, contracts with government agencies, financial disclosure, lobbyists, lobbyist registration and restrictions etc.

- Open primary elections are provided in lieu of previous closed party primaries.
- An elected official must resign from office before running for another office.
- Partial public financing of state and local election campaigns is provided.
- Campaign spending limits are to be established.
- Campaign contributions are to be limited.
- Primary required to be at least 45 days prior to general election.
- Legislative procedures: committee meegings held for the purpose of making decisions must be opin to the public; a time limit for introduction of bills is provided for; legislature is required to recess for at least 5 days, between the 20th day and 40th day of a session, and the recess must fullow bill introduction deadline; bills must be printed and available for 48 hours (rather than 24) prior to third reading.
- Governor and lieutenant governor limited to no more than two consecutive full terms.
- Elected state board of education and university board of regents given jurisdiction over internal organization and management of their respective systems.
- All government writing meant for the public is to be plainly worded.

Fiscal reform

- General fund expenditure growth not to exceed estimated rate of growth of the economy.
- Tax refund or credit to be provided when state general fund has 5 percent surplus for two straignt years.
- If state mandates new programs for counties, state must share in costs.
- Deficit spending prohibited, unless governor says public health, safety, welfare are threatened.
- Limits established on amount of principal and interest on state debt.
- Term of general obligation bonds reduced.
- Bond authorizations lapsed if not used in three years.
- Legislature permitted to issue revenue bonds by two 2/3 vot
- Council on revenues established to prepare revenue estimates that are to be considered by governor in preparing budget and the legislature in appropriating funds.
- Tax review commission to be appointed every five years to evaluate state tax structure and recommend revenue and tax policy.

Growth policy, environmental quality, resources management

- Population growth management: state required to plan and manage population growth; counties also must manage growth, but may be more restrictive than the state.
- State is empowered to promote and maintain a healthful environment, including prevention of excessive demands on environment and resources.
- Environmental rights: each person is granted the right to a clean and healthful environment and is given the right to sue to enforce this right.

- The state and counties are required to conserve and protect Hawaii's natural beauty and resources, and to promote development and utilization of resources to further the state's self-sufficiency. A new provision is added that all public natural resources are held in trust by the state for the benefit of the people; deleted is previous requirement to promote conservation, development, and utilization of agricultural, fisheries, mineral, forest, water, land, and other natural resources.
- Land banking: the state is authorized to acquire interests in real property to control future growth, development, and land use.
- Stong language is included to conserve and protect agricultural lands, and important agricultural may not be reclassified for other purposes except under special circumstances and by extraordinary vote.
- Marine, seabed, and other resources within the boundaries of the state are to be managed and controlled by the state, which reserves to itself outside state boundaries all such rights not specifically limited by federal or international law.
- The state's obligation to protect, control, and regulate use of water resources for the benefit of its people is established, and toward that end a water resources agency is provided for.
- Nuclear fission power plants may not be constructed and radioactive materials may not be disposed of in the state without prior approval by 2/3 vote in each house of the legislature.

Individual rights and social justice

- Right to privacy is added to Bill of Rights.

- Independent counsel will be appointed to advise members of grand juries.
- Discrimination in public school on the basis of sex is prohibited.
- Safety of the people from crimes against persons and property shall be provided by the state.
- Cultural, creative and traditional arts of Hawaii's ethnic groups are to be preserved.
- Power to provide for security and economic and social wellbeing of the elderly is granted this state.
- Public assistance provisions are clarified and specific authority granted to establish eligibility standards.
- All words in the constitution that referred to one sex were replaced with language that is sex-neutral.
- (Abortion, or right-to-life, was never a convention issue.)

Hawaiian rights

Assertion of Native rights was the "real sleeper," the "big event" of the convention. Few elected delegates, and even fewer people outside the convention, had expected Hawaiian rights to become a major topic or to result in a comprehensive "Hawaiian affairs package."

Key to the package were Frenchy DeSoto, who chaired the Hawaiian Affairs Committee, and John Waihee, the convention's "majority leader." Although only 4 of the 12 committee members were Native Hawaiian, Frenchy saw to it that every proposal emerged from the committee with unanimous support. She and her staff proselyted the other delegates to guarantee approval of the entire package.

Hawaiian rights turned out to be an issue that cut across all lines and groups. Young delegates felt it was time to redress the wrongs done to ethnic Hawaiians. People who grew up in Hawaii as well as newcomers had a way to show their support of the basic Hawaii culture. Some non-Hawaiians found it to be a means of dealing with their identity crisis. "Reformists" who wanted to show their liberalism could do so by supporting minority rights. The time became one of "Hawaiian renaissance," providing an opportunity to be Hawaiiphile. And underlying the broad support for the Hawaiian affairs package was Frenchy's dynamic personality, her proselyting activities, and her strategy: "I never let them get away with not feeling guilty." So delegates gave their support despite some serious concern that some propositions were so vague as to create implementation problems and about creating a constitutionally established split along ethnic lines in the state that prides itself on its multi-ethnic base.

Key elements of the Hawaiian affairs package were:

- Subsistence, cultural, and religious rights of Native Hawaiians are recognized and are to be protected by the state.
- Study of Hawaiian culture, history, and language in the schools will be promoted by the state.
- Hawaiian, together with English, is made an official language of the state.
- A portion of the public lands granted Hawaii by the statehood admission act is to be held in trust for the benefit of Hawaiians.
- An office of Hawaiian affairs is established within the executive branch; policy will be made by a board of trustees composed of Hawaiians and elected from throughout the state by Hawaiians only.

- Major state funding is to be provided for economic, social, and other "rehabilitation" purposes for Native Hawaiians.
- Water on lands held for the benefit of Native Hawaiians is excluded from any outside state or other control.
- Acquisition of real property by adverse possession is restricted.

Structural Changes

- Major revisions were made only in the judiciary article: an intermediate appellate court is created; district courts are recognized in the constitution; merit selection of judges is provided; a judicial discipline commission is provided for; compensation for the judiciary is to be set by a salary commission, rather than having it provided in the constitution; courts must establish time limits for disposition of cases; twelve-member juries are provided in cases of serious crime; civil cases can have jury trials for amounts above $1,000, in lieu of previous $100.
- Legislative changes include provision for senators to have staggered 4-year terms; previously all were elected at the same time. Reapportionment procedures are somewhat modified, and new reapportionment standards are enacted... Revision of the legislative structure to unicameral system was not seriously considered by the Hawaii convention.

Ratification[8]

When Hawaii's 1978 convention completed its work, it had agreed upon 116 proposed changes. The convention had revised much of the

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[8] Meller and Kosaki.

constitution but apparently did not want to place its handiwork before the voters on an all-or-nothing basis and run the risk of objections to particular amendments causing rejection of the whole. Instead, the precedent set by the 1968 convention was used and all changes were grouped into 34 separate proposals, with the contents of some only tenuously related.

The convention went to great efforts to provide extensive public information on the proposed amendments. Summaries were mailed to all registered voters. An advertising supplement with the text of amendments was distributed through the newspapers in all counties. A voter information booklet provided by the convention was circulated as part of the official ballot. News stories, editorial comment, and pro-and-con analyses prepared and publicized under non-convention auspices also supplied pertinent data and opinions on which voters could make individual judgments.

The Honolulu daily papers opposed only a few amendments -- the morning newpaper three and the evening paper five, with the "right to privacy" amendment the only common target of opposition. On the eve of the election, both papers expressed concern about the possibility that all 34 proposals might be defeated.

The format of the ballot followed the three-part style adopted by the 1968 constitutional convention, providing "yes," "no," and "yes-but" options. Voters were instructed to (1) vote for or against all of the amendments by a single punch of the ballot or (2) avail themselves of the "yes-but" option. The last permitted them to vote against one or more of the proposals which they specifically disapproved; a "yes" was then automatically tallied for the remaining unmarked proposals.

Despite the wide range of subjects, many of them controversial, every one of the convention's proposals received a recorded vote large enough to be declared adopted. Less than sixty percent of the voters who went to the general election polls marked constitution ballots. Of those who did, one-fifth were in favor of the entire slate of proposals, and almost as many cast a single "no" vote. Some 60 percent voted against one or more amendments. However, the negative votes were so sparsely spread among many proposals that no single amendment was opposed on half of the ratification ballots. The proposals which received the largest negative tallies included the "Hawaiian-affairs package" (Department of Hawaiian Homes Lands amendments, Office of Hawaiian Affairs, and recognition of traditional subsistence and other rights), the right to privacy, resignation of incumbents to run for another office, the provision for campaign financing, and transfer of property tax administration to counties.

Not everyone liked the ballot form or the ratification outcome. Some argued that what had started out in 1968 as an ingenious means to overcome voter inertia had turned into a "cynical manipulation of Hawaii's citizens." Protestors lodged several court challenges but succeeded only in nullifying some minor parts of the propsed changes. In response to the major objection that the form of the ballot was biased in favor of an affirmative vote, the Hawaii supreme court refused to invalidate the results, holding that it was legally sufficient so long as the voters were fully and adequately instructed. Similarly rejected as not invalidating the election was inclusion of unrelated amendments within a single proposal. The complaint that the electorate was presented with too complex an array of amendments to permit an intelligent decision was not considered sufficient to warrant judicial interference with the electoral process.

Miscellaneous Comments

Rules.

1978 convention rules were essentially those of the 1968 convention, where wide consensus prevailed. They did not prove appropriate for a divided convention. They were particularly deficient in being able to move processes along effectively... A resolution enacted by delegates at the end of the convention made suggestions for rule changes that could improve functioning the next convention.

Lobbying.

The convention saw essentially the same lobbyists and special interest that generally work the legislature. Some lobbyists were there all of the time, while others resonded to specific issues. Principal lobbies were labor, estates, sugar planters. Many interests were represented by delegates themselves, especially business... Lobbyists had to work hard, apply heavy pressure. The convention was essentially wide open, and all 102 delegates were important, not just committee chairmen as in the legislature... Leaders of the executive and legislative branches proclaimed a hands-off policy, though it is claimed that they did not favor adoption of major substantive changes. Amendment creating an intermediate court of appeals was actively sought by the judiciary, led by the chief justice.

Outside Activities.

Most delegates gave total attention and commitment to the convention. In early stages, some individuals would spend off-hours (early mornings, evenings, weekends) on law practices or outside activities. Later in the convention, there was no time for outside pursuits... A large number of delegates were young, many were not really established and some were

unemployed. Accordingly, most had no problem concentrating full-time on the convention.

Legislative Follow-Up.

Despite a strong undercurrent of anti-legislature sentiment, most amendments were non-self-executing and required legislative implementation. Not being sympathetic to the convention in the first place, implementation has been slow and sporadic... The legislature is choosing what will go, what will not be put into effect... Legislative follow-up on the Hawaiian Affairs package was described as "Terrible! They are messing it up, not implementing the constitutional provisions." Unsympathetic legislators claim that constitutional language is not sufficiently explicit, the intent not clear. Some expect the legislature to do nothing.

Controlled Convention.

Delegates who were not part of the convention's governing coalition found it impossible to have any significant substantive or procedural impact... The coalition was formed early and some delegates who would have been sympathetic to the majority's objectives were never asked to join. They thus became part of the minority, even though they might have been willing to join the coalition, support William Paty for president, and otherwise participate in convention decisions.

Hawaiians' Conclusions and Suggestions

The following were among the concluding sentiments expressed by persons interviewed during preparation of this paper:

> A constitution does require periodic monitoring, fine-tuning. There is need to provide for social reforms that the legislature won't put into effect.

A convention is worth having -- if not controlled by political machinery. It's not worthwhile just for minor reforms to placate public opinion, just to provide window dressing.

Preferably should not have a constitutional convention unless it is really necessary, not without a definite purpose... A constitutional revision commission could provide a good alternative approach.

ConCon was positive for the state, despite some bad amendments. There were good amendments on finance and taxation. And while we cannot mandate fiscal responsibility, at least this will keep government from running away with expenditures and taxes.

Set up procedure to accomplish initial organization: temporary chairmen, non-controversial arrangement, convention finances, a place to meet, furniture, etc. In '78, there was too much confusion, much time was lost jockeying around... Get someone outside convention to act as temporary chairman and preside over initial organizational state. This would avoid the premature worrying about selection of temporary chairman who would most likely become the permanent president. Alternatively, pick someone as temporary president with clear understanding that this person would not be the permanent president, but would simply supervise initial stage while permanent president is chosen.

A convention should develop a philosophy, a vision of the future, create a unifying force. But can't accomplish or develop a real program before a convention begins. Delegates have to get to know each other in convention... If you have a convention, phase it, hold it in two parts. Use the first phase to develop the foundation, establish a philosophy, develop a preliminary program and product. Then take time out to think it over, talk with the people, just get away from it for a while. After nine months or so, come together and levelop the final product.

Biggest value of convention was providing the opportunity to inject a lot of fresh blood into the political process. That includes not just the 102 delegates who were elected, but the total of over 600 people who were candidates in the convention election.

APPENDIX -- Hawaii's 1978 Constitutional Amendments

PREAMBLE

New language added to the preamble reflects the temper of Hawaii's 1968 convention:

> We reserve the right to control our destiny, to nurture the integrity of our people and culture, and to preserve the quality of life that we desire.

Other language emphasizes Hawaii's "uniqueness as an island State" and expands the ordainment clause to state that the constitution is established "with an understanding and compassionate heart toward all the peoples of the earth." (New material underlined.)

ARTICLE I. BILL OF RIGHTS

Right to Privacy

> Section 6. The right of the people to privacy is recognized and shall not be infringed without the showing of a compelling state interest. The legislature shall take affirmative steps to implement this right.

Alaska adopted a similar amendment in 1972.

Grand Jury Counsel

Provides for the appointment of independent counsel to advise members of a grand jury. Counsel must be a lawyer and not a public employee.

Trial by Jury, Civil Cases

Amount in controversy necessary for a jury trial in a civil suit is raised from $100 to $1,000.

Rights of Accused

A jury must consist of twelve members when "the crime charged is serious". Provision also requires counsel for indigent defendents whenever charged with an offense punishable by imprisonment; previously applicable to possible imprisonment of more than 60 days.

ARTICLE II. SUFFRAGE AND ELECTIONS

Registration; Voting

An open primary is established by specifying that a person need not declare party preference or non-partisanship as a condition for voting

in a primary election. The provision is reinforced by requiring that secrecy of political party affiliation or nonpartisanship is to be preserved.

Campaign Fund, Spending Limit, Contributions Limit

The legislature is required to establish a campaign fund to be used for partial public funding of campaigns for state and local public offices.

The legislature is also required to provide a limit on the campaign spending of candidates.

Limitations on campaign contributions to any political candidate or authorized political campaign organization for such candidate are to be established by the legislature.

(No money amounts are specified in any of the amendments.)

Resignation from Public Office

An elected official is required to resign the office to which elected in order to be eligible as a candidate for another public office if the term of the new office begins before the other ends.

Timing of Elections

Primary and special elections must precede general elections by no less than 45 days.

ARTICLE III. THE LEGISLATURE

Salary Commission

A commission is established to develop a salary plan for members of the legislature. Plan goes into effect unless disapproved by the legislature or by the governor. A new salary plan is developed every eight years.

(By all accounts, the 1979 experience under this plan was a fiasco.)

Sessions

Each regular session must be recessed for not less than 5 days at some period between the 20th and 40th day of the session. The purpose of the amendment is to provide both legislators and the public an opportunity to review bills introduced prior to the recess and to give an opportunity for legislators and constituents to communicate on matters before the legislature at about the mid-point of a regular session. (Hawaii has had a practice of imposing a bill introduction deadline at or about the 20th session day.)

Open Meetings; Bill Introduction Deadline

All legislative committee meetings must be open to the public. Each house is required to establish a date at which all bills to be considered in a regular session must be introduced. This date must be prior to the above mandatory recess time.

Passage of Bills

Increases from 24 hours to 48 hours, the amount of time a printed bill must be available to legislators before passage on third or final reading.

ARTICLE IV. REAPPORTIONMENT

Reapportionment provisions are taken out of the legislature article and are revised and expanded. Following changes are made:

- staggered terms are established for members of the senate, abolishing the old system whereby all senators ran concurrently for 4-year terms.
- reapportionment is required every 10 years beginning with 1981, eliminating the previous 8-year reapportionment provision.
- the reapportionment commission has 150 days, rather than the previous 120, to complete a reapportionment plan. (Alaska's reapportionment board must submit a plan within 90 days following official reporting of each decennial census.)
- criteria are established for apportionment among and within "basic island units."
- provides for placement of holdover senators.
- reapportionment commission is given responsibility for redrawing congressional district lines for election of U.S. House of Representatives members.

ARTICLE V. THE EXECUTIVE

Limit on Tenure

Both the governor and lieutenant governor are limited to no more than two consecutive full terms of office.

Grouping of Executive Agencies

Executive and administrative units are to be grouped within 20 departments according to common purposes and related functions, rather than according to "major purposes so far as practicable" as before.

(The purpose of the amendment supposedly was to provide constitutional impetus for a functional approach in achieving an effective departmental structure. This was done in response to dissatisfaction with the existing organizational arrangements.)

ARTICLE VI. THE JUDICIARY

Courts

New provisions establish an intermediate appellate court and give constitutional recognition to district courts. These are in addition to previous constitutional provisions for a supreme court and circuit courts.

Selection and Appointment of Justices and Judges

A modified merit selection process is established under a series of amendments.

A nine-member judicial selection commission is established. The governor appoints three members, of whom not more than one can be an attorney. The president of the senate and speaker of the house each appoint a member of the commission. The chief justice of the supreme court appoints two members, of whom only one may be a licensed attorney. Members of the state bar elect two members. In all, not more than four members of the commission may be licensed attorneys.

Vacancies in the office of the chief justice, supreme court, intermediate appellate court, and circuit courts are filled by the governor appointing a person from a list of not less than six nominees for the vacancy presented to the governor by the judicial selection committee. The appointment is subject to approval by the state senate. Appointees must be licensed attorneys.

Justices and judges of the supreme court, intermediate appellate court, and circuit courts serve terms of 10 years. Upon the expiration of that term, the judicial selection commission may determine to retain a justice or judge in office, renewing the term for 10 years or for another period established by law.

A salary commission is created to review and recommend salaries for justices and judges, with their salaries set by the legislature.

Discipline

Provisions for removal or retirement of justices and judges by the governor upon certification by a pertinent commission are eliminated. In lieu, the supreme court is given power to reprimand, discipline, suspend with or without salary, retire, or remove any justice or judge for misconduct or disability. The supreme court is required to establish a commission on judicial discipline with authority to investigate allegations of misconduct or disability and to make recommendations to the supreme court for appropriate action.

ARTICLE VII. TAXATION AND FINANCE

Tax Conformance

The legislature is granted authority to conform state tax laws to federal tax laws, although the state rates are set and modifications can be made by the legislature.

(The amendment was apparently deemed necessary by an attorney general's opinion which stated that the constitution prevented automatic conformance to federal tax provisions.)

Tax Review Commission

Appointment of a tax review commission is required in 1980 and every 5 years thereafter. The commission must submit to the legislature an evaluation of the state's tax structure, recommend revenue and tax policy, and then dissolve.

(The committee report states that the amendment is deemed necessary since neither the executive nor legislative branch has over a period of two decades reviewed the state's overall tax system against such standards as equity and efficiency. It is further suggested that a periodic and independent assessment would be useful to both branches and would help provide the public with a framework by which it can assess executive and legislative actions on taxation and revenue policy.)

Appropriations for Private Purposes Prohibited

Hawaii's constitution has since 1950 provided that no tax be levied, nor the public credit be used, directly or indirectly, except for a public purpose; the same requirement applies to any grants made by the state. In 1978, new language was added stating: No grant of public money or property shall be made except pursuant to standards provided by law.

(The committee report notes that the addition of the language will require the legislature to establish standards for appropriation of funds to private organizations conducting programs which the legislature has determined to be in the public interest. No such standards have existed, even though the legislature appropriates several millions each biennium to private organizations.)

Expenditure Controls

Expenditures of public money may be made only pursuant to appropriations made by law.

General fund expenditures for any fiscal year may not exceed the state's current general fund revenues and unencumbered cash balances,

appropriations lapse at the close of the fiscal period for which the appropriation is made.

Revenue Bonds

The legislature is authorized to issue special purpose revenue bonds. 2/3 vote of the legislature are required: one to authorize bonds, and another to issue the bonds. Special purposes include assistance to manufacturing, processing, industrial enterprises, utilities serving general public, health care facilities, and low and moderate income government housing programs. State credit cannot be used directly or indirectly to secure special purpose revenue bonds. Legislature may authorize counties to also issue special purpose revenue bonds.

Debt Limitation; Exclusions

The debt limit is revised to limit amount of principal and interest payments on general obligation bonds to 20 percent of the average general fund revenues over the three preceding fiscal years; after 1982, the percentage limit is reduced to 18 1/2%. The legislature is required to certify that any bond issuance does not bring total state indebtedness above such a limit. The general obligation bond limit is reduced to 25 years from 35 years. The list of exclusions from computation of total indebtedness is extended to cover special purpose revenue bonds, certain loans guaranteed by the state, tax anticipation bonds, and emergency bonds.

ARTICLE VIII. LOCAL GOVERNMENT

Real Property Taxation

Power to tax real property is transferred from the state to the counties. For eleven years, assessing methods are to be uniform throughout the state.

(Reasons for giving counties the power to tax real property included: the change is consistent with home rule; counties are responsibile for local affairs and should have authority over local real property taxation; real property tax policies are more of local than of statewide concern.)

State-Mandated Programs

The state must share in the cost of any new or expanded services mandated by the legislature to a political subdivision.

(The intent was to assure that the state did not circumvent the spending limit by transferring some of its functions to counties without compensating them for increased costs.)

except when the governor publicly declares that the public health, safety, and welfare is threatened.

(The latter provision prohibits deficit spending. It is designed to prevent circumvention of the newly established spending limit by engaging in deficit spending.)

Disposition of Excess Revenues

Provision is made for taxpayers to benefit from any surplus in the state's general fund balance. Whenever this balance in each of two successive fiscal years exceeds 5 percent of general fund revenues for each of those years, taxpayers are to be given a tax refund or tax credit. Means of the rebate are to be provided by the legislature.

Council on Revenues

A council on revenues is to be established by law to prepare revenue estimates for the state government and to report the estimates to the governor and the legislature. The governor is to consider the estimates in preparing the budget, recommending appropriations and revenues, and controlling expenditures. The legislature is to consider the estimates in appropriating funds and enacting revenue measures.

Budget

The governor is required to submit a complete plan of proposed expenditures of the executive branch, together with estimates of the aggregate expenditures of the judicial and legislative branches. The chief justice is required to submit to the legislature a complete plan of proposed expenditures of the judicial branch.

Total propsed general fund expenditures may not exceed the general fund expenditure ceiling established by the legislature, unless the governor sets forth the excess and the reasons therefor.

Expenditure Ceiling

A general fund expenditure ceiling is to be established by the legislature to limit the rate of growth of general fund appropriations to the estimated rate of growth of the state's economy. No appropriation in excess of the ceiling may be authorized during any legislative session unless authorized by 2/3 vote of the membership of each house.

Auditor

Authority of the legislative officer to conduct post-audits of programs and performances, as well as financial transactions and accounts of executive agencies and political subdivisions is clarified.

Lapsing of Appropriations

Appropriations from general funds or general obligation bond funds must be for specified periods not exceeding three years. Unencumbered

ARTICLE IX. PUBLIC HEALTH AND WELFARE

Care of Handicapped

Provides state with broad power to provide for the treatment and rehabilitation of handicapped persons, broadening and clarifying previous provisions.

Public Assistance

The legislature is given the power to establish eligibility standards for public assistance, which covers financial aid, medical assistance, and social services.

Economic Security of the Elderly

The state is given power to provide for the security of the elderly by establishing and promoting programs to assure their economic and social wellbeing.

Management of State Population Growth

State and local governments are required to plan and manage growth:

> The State and its political subdivisions as provided by general law, shall plan and manage the growth of the population to protect and preserve the public health and welfare; except that each political subdivision, as provided by general law, may plan and manage the growth of its population in a more restrictive manner than the State.

(Referring to Hawaiian's concern about rapidly increasing population, the committee report concludes that planning and managing growth should be a top priority in the state's activities.)

Preservation of a Healthful Environment

> The State shall have the power to promote and maintain a healthful environment, including the prevention of any excessive demands upon the environment and the State's resources.

Cultural Resources

> The State shall have the power to preserve and develop, the cultural, creative and tration arts of its various ethnic groups.

Public Safety

> The law of the splintered paddle, mamala-hoe kanawai, decreed by Kamehameha I - Let every elderly person,

woman and child, lie by the roadside in safety - shall be a unique and living symbol of the State's concern for public safety.

The State shall have the power to provide for the safety of the people from crimes against persons and property.

(According to the committee report, the amendment is intended to address the growing concern of the public about the crime rate. Existing statutes and endorsements were deemed ineffectual in coping with the growing crime rate. Public safety was singled out as an area deserving special and increased recognition.)

ARTICLE X. EDUCATION

Public Education

The prohibiiton of "segregation" in the schools was replaced with a prohibiiton against discrimination. Sex was added to prohibitions under discrimination.

Board of Education

Amendments deal with nonpartisan election and districting of Hawaii's elected board of education.

Board is given jurisdiction over the internal organization and management of the public school system, though the legislature and governor would continue to exercise general budgetary control over the system.

Hawaiian Education Program

The State shall promote the study of Hawaiian culture, history and language.

The State shall provide for a Hawaiian education program consisting of language, culture and history in the public schools. The use of community expertise shall be encouraged as a suitable and essential means in furtherance of the Hawaiian education program.

(The committee stated that the study of Hawaiian culture, history, and language should be vigorously promoted and encouraged. Because Hawaii has a special status as the only state which was formerly a kingdom and which has its own Polynesian heritage and customs, the inclusion of the provision in the constitution is intended to facilitate the preservation and growth of the Hawaiian culture.)

(The convention wanted to assure the general diffusion of Hawaiian history in the community to assure that a program be developed as part of the regular public school curriculum employing persons who have knowledge of Hawaiian language, culture, and history, but who do not necessarily have the formal educational qualifications.)

Board of Regents; Powers

The board of regents is given exclusive jurisdiction over the internal organization and management of the University of Hawaii. The amendment also states its intent not to limit the power of the legislature to enact laws of statewide concern.

While constitutional intent was to make authority of the board of regents complete with respect to matters of internal organization and management, the governor would continue to review the university's budget requests before submission to the legislature. Furthermore, the university would continue to comply with laws passed by the legislature... (A post-convention analysis of constitutional amendments by the Legislative Reference Bureau raises a series of questions that remain unresolved even after this supposedly clarifying amendment was enacted.)

ARTICLE XI. CONSERVATION, CONTROL AND DEVELOPMENT OF RESOURCES

Conservation and Development of Resources

> For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.
>
> All public natural resources are held in trust by the State for the benefit of the people.

The amendment deletes previous requirements for the state to promote the conservation, development and utilization of agricultural resources and fish, mineral, forests, water, land, game and other natural resources.

The committee report defines the word "conservation" as "the protection, improvement, and use of natural resources according to principles that will assure the highest economic or social benefits." ... The provision regarding "self-sufficiency" was included to recognize the growing concern and awareness of Hawaii as being overly dependent on outside sources for, among other resources, food and energy... The report concludes that the promotion of energy conservation, development of clean, renewable sources of energy, and achievement of increased self-sufficiency would be adequately covered by the provisions of the new section.)

Agricultural Lands

> The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally

suitable lands. The legislature shall provide standards and criteria to accomplish the foregoing.

Lands identified by the State as important agricultural lands needed to fulfill the purposes above shall not be reclassified by the State or rezoned by its political subdivisions without meeting the standards and criteria established by the legislature and approved by a two-thirds vote of the body responsible for the reclassification or rezoning action.

The new language substitutes for a section referring only to development of farm and home ownership.

Public Land Banking

The State shall have the power to acquire interests in real property to control future growth, development and land use within the State. The exercise of such power is deemed to be for a public use and purpose.

(The language is designed to overcome possible constitutional problems in case the legislature chose to establish a land bank program.)

Water Resources

A new section is added obligating the state to protect, control, and regulate water resources for the benefit of the people of Hawaii. The legislature must provide for a water resources agency to set water policies, define beneficial uses, protect ground and surface water, establish criteria for water use priorities, and establish procedures for regulating all uses of Hawaii's water resources.

(The Committee of the Whole report states that the question of water ownership is irrelevant to the states ability to exercise its police power to regulate fresh water resources. It further clarifies that the agency has power to regulate existing as well as future water usage.)

Nuclear Energy and Radioactive Material Disposal

Another new section added to the resource article provides:

No nuclear fission power plant shall be constructed or radioactive material disposed of in the State without the prior approval by a two-thirds vote in each house of the legislature.

Environmental Rights

Hawaii's convention decided to affirm the rights of citizens to a clean and healthful environment, and citizens are given the right to sue to enforce this right:

ARTICLE XII. HAWAIIAN AFFAIRS

An article previously dealing with Hawaiian home lands now covers the Hawaiian affairs package enacted by the 1978 convention. The package is designed to recognize righs of and provide benefits for native Hawaiians.

Hawaiian Homes Commission Act

The Hawaiian Homes Commission Act of 1920 was incorporated in Hawaii's constitution in 1959 as a condition of Hawaii's admission to the Union. Under the act, all available lands be used to provide for settlement by native Hawiians and to raise revenues for their benefit.

While many Hawaiians benefited over the years, much land was used for non-settlement purposes, including utilization by sugar and pineapple plantations. Monetary returns were not considered sufficient to be of major benefit to native Hawaiians.

1978 amendments to the act established specific purposes for its implementation: (1) development of home, agriculture, farm and ranch lots; (2) home, agriculture, aquaculture, farm and ranch loans; (3) rehabilitation projects to include, but not limited to, educational, economic, political, social and cultural processes by which the general welfare and conditions of native Hawaiians are thereby improved; (4) the administration and operating budget of the department of Hawaiian home lands...

Further, 30 percent of state receipts from lease of sugar lands or from water licenses are to be placed in a newly established native Hawaiian rehabilitation fund, which becomes one of eight constitutionally established special funds. This money is to be used soley for the benefit of native Hawaiians, as described in item (3) of the preceding paragraph.

A special provision excludes waters controlled by the Department of Hawaiian Home Lands from any outside control, thus removing them from jurisdiction of the water resources agency established in an earlier amendment.

Office of Hawaiian Affairs

A further series of amendments establishes an Office of Hawaiian Affairs, which would hold t tle to all property conveyed to it and which would, in turn, be held in trust for native Hawaiians and the general public. A nine-member board of trustees, elected by and consisting of Hawaiians is to manage and administer proceeds from the disposition of lands, natural resources, minerals, and income from whatever source for Hawaiians.

"Hawaiian" is defined as any descendant of the races inhabiting the Hawaiian Islands previous to 1778. "Native Hawaiian" is any descendant of not less than one half part of the blood of races inhabiting the Hawaiian Islands previous to 1778.

Subsistence, Cultural, and Religious Rights

> The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

An "ahupua'a" is defined as a land division or unit of land usually extending from the uplands to the sea, varying in size from 100 to 100,000 acres. Traditionally, individual Hawaiians did not own land, and lands provided under the Hawaiin Homes Commission Act are not held in fee. Thus, the rights are considered to be personal rights; rather than being attached to the land, the rights are inherently held by Hawaiians and do not run with the land.

Only native Hawaiians who are tenants of an ahupua'a, and not all native Hawaiians, are given access rights to the mountains and the sea, as was traditionally and customarily asserted by their ancestors. Other protected rights include fishing rights, hunting, gathering, water rights, and other rights for sustenance, cultural, and religious purposes.

ARTICLE XV. STATE BOUNDARIES; CAPITAL; FLAG; LANGUAGE AND MOTTO

Boundaries

In order to eliminate ambiguity and uncertainty with respect to state boundaries as established in the Congressional Admission Act, and to affirm the state's archipelagic status in order to protect and regulate Hawaii's commerce and trade and to conserve and utilize its ocean resources, the boundary definition was revised to read:

> The State of Hawaii shall consist of all the islands, together with their appurtenant reefs and territorial and archipelagic waters... (New matter underlined.)

Hawaiian: An Official Language

> English and Hawaiian shall be the official languages of Hawaii, except that Hawaiian shall be required for public acts and transactions only as provided by law.

(In adopting the new language, the convention wanted to overcome insults of the past, where the speaking of Hawaiian was forbidden in the public school system, and of the day, where Hawaiian has been listed as a foreign language in the language department of the University of Hawaii. A further stated intent was to give full recognition to the rich and cultural inheritance that Hawaiians have given to all ethnic groups.)

Motto

The state motto is established as "Ua mau ke ea o ka aina i ka pono."

ARTICLE XVI. GENERAL AND MISCELLANEOUS PROVISIONS

Disqualifications from Public Office or Employment

An amendment provides that persons convicted (rather than, as previously stated, merely accused) of an act or conspiracy to overthrow the government by force will be disqualified from holding public office or employment.

Adverse Possession

A new provision was enacted to provide a constitutional vehicle to "protect the lands of the people from theft through adverse possession proceedings." Use of adverse possession is restricted to real property of five acres or less. Such claims may be brought by a person not more than once in twenty years.

(The adverse possession process had apparently been used in the past to obtain title to lands properly belonging to native Hawaiians.)

Plain Language

A principle was established that government writing should be concise, simple, and understandable. This was designed to insure that the people have access to the government's resources and information and that non-technical language be used whenever possible:

> Insofar as practicable, all governmental writing meant for the public, in whatever language, should be plainly worded, avoiding the use of technical terms.

ARTICLE VII. REVISION AND AMENDMENT

Constitutional Convention

One amendment provides that if any nine year, instead of ten year, period elapses during which the question of whether to hold a constitutional convention is not submitted to the electorate, that question is to be voted on at the first general election thereafter. The intent is still that the question be submitted to the electorate every tenth year, but the change eliminates the problem that resulted in 1976 due to strict interpretation of the ten-year provision.

(Alaska could face a similar problem in view of its similar ten year proviso.)

To deal with the problem of insufficient time having been provided by the legislature for the 1978 convention, delegates specified that future constitutional conventions begin not less than five months prior to the next regularly scheduled general election.

(The committee report discusses the wish of delegates for a specified public official to convene delegates and disburse monies or incur expenses prior to formal organization of the convention. However, delegates agreed that the matter should be resolved by the legislature.)

(The legislature is also urged by the report to consider establishment of a constitutional revision commission to provide for continuous study of Hawaii's constitution.)

TECHNICAL AND STYLE CHANGES

A separate amendment was adopted which:

- changes the constitution where the subject was found to be unconstitutional or unnecessary under the Constitution of the United States.
- changes style and language for uniformity and other reasons.
- replaces words which sound like they apply to only men or women with with words which apply to everyone (de-sexifying the constitution)
- makes small changes which are related to the main purposes of other amendments.

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

LEGISLATIVE INTERIM COMMITTEE ON THE

Constitutional Convention

CO-CHAIRMEN

SENATOR GEORGE HOHMAN

&

REPRESENTATIVE BRIAN ROGERS

1979

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Original

A CONSTITUTIONAL CONVENTION FOR ALASKA

This memorandum has been prepared for Representative Brian Rogers, Fairbanks, for the Alaska State Legislature Interim Committee on a Constitutional Convention. It assumes that there will be a constitutional convention in Alaska within the next decade.

I. BACKGROUND

The present basic framework of our State constitution was ratified by two-thirds of the twenty-five thousand persons voting in April of 1956. The National Municipal League termed it as "one of the best, if not the best, state constitutions ever written." 1/ It has been amended 15 times since Statehood. The most significant amendments, in chronological order, have been established the voting age at 18 years (1969), prohibited the chief justice of the Supreme Court from serving two consecutive terms (1970), amended the exclusive right of fisheries provision to provide for Limited Entry (1972), amended the civil rights section to prohibit discrimination on the basis of sex (1972), added the privacy amendment (1972), and added the amendment establishing Alaska Permanent Fund (1976).

Despite the promotion of the constitution as one of the best written in 1956, and notwithstanding changes effected by the fourteen amendments adopted since original ratification, the state constitution as it now stands displays a variety of defects and weaknesses, which will be discussed subsequently in detail.

Many of these defects and weaknesses derive from State and Federal court decisions interpreting the validity or effect of various sections. Other weaknesses have become

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1/ Editorial, National Municipal Review, April, 1956, p. 156.

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evident due to the evolving standards of our society. 2/ Recently, the State of Hawaii, which adopted the original state constitution in the same decade as Alaska's original constitution, completed their second constitutional convention. That convention proposed individual amendments, most of which were adopted by the voters and most of which amendments reflected evolving standards of public interest that the growth and changes in Hawaii had brought forth.

II. DEFECTS AND WEAKNESSES IN THE ALASKA STATE CONSTITUTION

Undoubtedly a number of single special interests constituencies exist in Alaska today that will push for

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2/ One example of political statesmanship can be found since the convention with regard to evolving standards. In 1965, Governor William A. Egan issued a proclamation of reapportionment and redistricting the Alaska State Senate with population as a sole factor. In his statement accompanying his proclamation, Governor Egan said

> "Making this proclamation today is not an easy task for me. My personal feelings and my duties and obligations as governor under the Constitution of Alaska do not exactly coincide.
>
> Nearly ten years ago at the Constitutional Convention, I was one of those who worked hard and saw to it that apportionment of the State Senate would take into consideration factors other than just population. We considered, among other things, geography, social economic needs, the relationships of contiguous areas, and the future possibilites of growth.
>
> It was my view, as well as that of a majority of the other delegates, that it was in the public interest to have one house of the legislature apportioned by area than population to serve as a check and balance on the other. This is still my view.
>
> However, this land is ruled by law, not me. The Supreme Court of the United States is our final arbitor of justice.
>
> Our nation's highest court has ruled that each citizen's vote must count as much as another, and I must abide as closely as possible by that decision. In this instance it was with reluctance that I approach my duty. But as your governor I took an oath to uphold both the Constitution of the United States and the Constitution of the State of Alaska.

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amendments at any constitutional convention. Anti-abortion groups, single interest law and order groups seeking elected judges, groups seeking to wrench away state land, and groups seeking to oppose or disgard environmental safeguards are examples of single interest groups that will likely surface. Those issues are primarily political and do not indicate any general defect or weakness impacting the public interest.

Broader public issues will also surface. A matter of geniune concern in Alaska today is the breadth and abuse of executive power. The continuing efficacy of a bicameral legislature has generated debate. Tax and spending issues have surfaced. The role of the state as trustee of its resources for the benefit of the citizens continues to be discussed. These issues are certainly political but are not primarily molded by single interest constituencies. They do not represent defects or weaknesses in the constitution but rather the philosophical, social and economic differences within our state.

The defects and weaknesses referred to below reflect matters which were not contemplated, or were beyond the comprehension of the original constitutional framers. This is not to say that they do not have political effects or have not been involved in political controversy. They are the effect of controversies in our society and not the purpose of it. They will be addressed in the order that they appear in the state constitution.

A. ARTICLE 1, § 8, GRAND JURY

This section currently provides in relevant part:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on presentment or indictment of a grand jury, except in cases arrising in the armed forces in time of war or public danger. Indictment may be waived by the accused.

In a grand jury proceeding a defendant does not have a right to have an attorney present nor does he have a right to cross-examine any of the witnesses produced by the state. The original concept of constitutional protection for an

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accused by a right to a grand jury indictment contemplated that the grand jury would be an effective shield against potential abuse of prosecutorial power. In practice the use of the grand jury has often been used as a sword in the furtherance of prosecutorial power. Although our state Supreme Court has enumerated a number of protections for the accused during the grand jury process (i.e. hearsay evidence shall not be presented to the grand jury absent compelling justification for its production) a movement has surfaced in Alaska indicating a general dissatifaction with the grand jury process.

The Alaska Criminal Rules of Procedure provide that if a person is not indicted within 10 days after arraignment when in custody (or 20 days if not in custody) then the accused has a right to what is known as a preliminary examination. Alaska Criminal Rule 5(e)(2). At a preliminary examination the defendant is entitled to be represented by counsel, the normal rules of evidence apply, the defendant has a right to cross-examine the witnesses against him and, if from the evidence, it appears that there is no probable cause to believe that an offense has been committed or to believe that the defendant committed an offense than the judge will dismiss the complaint and discharge the defendant. Many persons and institutions, including the Alaska Judicial Council, believe the preliminary examination to be a superior form of protection than the grand jury.

Some suggestions have been made that all persons arrested for a felony should be automatically be given the right to a preliminary examination. The problem arises that in order to do so either the defendant must waive the right to a grand jury or the state must suffer the burden of presenting evidence at a preliminary examination and subsequently present evidence at a grand jury. 1/ It may be

1/ This problem is not a acute as it may seem on first glance. In most areas of Alaska an accused does have a preliminary examination, because the grand jury only sits occasionally, and subsequently is indicted. The major problem occurs in the large urban centers, primarily Anchorage, where a grand jury sits all the time.

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constitutionally impermissible to force a person to choose between the right to a preliminary examination or a right to the grand jury. Accordingly, the above referenced section, if amended appropriately, would provide a more efficient means for criminal prosecution in the state and at the same time provide more protection for those persons accused of crimes from any potential abuse of prosecutorial power.

B. ARTICLE 1, § 2, RIGHT OF PRIVACY

This section currently provides:

> The right of the people to privacy is recognized and shall not be infringed. The Legislature shall implement this section.

To date the Alaska Legislature has done nothing to implement this section. As a result citizens have been forced to seek relief through litigation in the judicial branch of government in order to protect their rights under this amendment.

In 1978, in Erickson v. State, the State Supreme Court diluted the right to privacy. Previously, it was considered that a person had an absolute right to be let alone, absent a compelling state interest to invade that privacy. The court diluded that right by establishing a sliding scale test based upon interests sought to be protected. This test is nearly identical to rights already guaranteed to us under the Due Process clauses of the Alaska and Federal Constitutions. When Hawaii added the privacy amendment to its constitution it also included the language that that right may not be infringed upon absent a compelling state interest. The addition of such language in Alaska's constitution would provide more protection for the average citizen in his private affairs.

C. ARTICLE 2, § 5 DISQUALIFICATIONS

In 1970 voters approved an amendment to the constitution changing the name of secretary of state to lt. governor. That amendment inadvertenty admitted amending this section, consequently secretary of state is still referred to in the third sentence.

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D. ARTICLE 3, § 25 DEPARTMENTS HEADS

This section presently provides:

> The head of each principal department shall be a single executive unless otherwise provided by law. He shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and shall serve at the pleasure of the governor, except as otherwise provided in this article with respect to the lt. governor. The heads of all principal departments shall be citizens of the United States.

ARTICLE 3, § 26 BOARDS AND COMMISSIONS

This section provides in relevant part:

> When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members in the legislature at joint session, and may be removed as provided by law.

Two controversies have arisen with regard to these sections. In Bradner v. Hammond (1976) the Supreme Court concluded that the confirmation power of the legislature didn't extend below the department head level to deputy heads and the directors of the various divisions within the administration. That ruling effectively shelters many persons holding substantial sway over Alaska's society from legislative scrutiny.

The second controversy which has arisen respective to these sections stems from the failure of Governor Hammond to resubmit holdover appointees from his first administration for reconfirmation. No court test of that decision was initiated, and if the practice is allowed to stand, in connection with the ruling in Bradner v. Hammond, a number of nonelected public officials with substantial influence over the lives of Alaskans will be able to evade legislative scrutiny for as long as eight years.

E. ARTICLE 6, LEGISLATIVE APPORTIONMENT

This article is in need of substantial, if not total, revision. On numerous occasions the defects and weaknesses in the reapportionment article have been subject to communication between the Supreme Court and the Legislature.

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In the 1976 State of the Judiciary Address, Chief Justice Boochever stated:

> One matter that I wish to call again to your attention deals with reapportionment. As you know, our constitution provisions were written before the United States Supreme Court made its historical decisions requiring both houses to be apportioned on the basis of the population. We have no appropriate constitutional procedure for reapportionment of the Senate or for such troublesome questions as whether an existing Senator's four year term should be truncated when reapportionment occurs. On three occasions, the Alaska Supreme Court has had to wrestle with reapportionment problems, and each opinion has urged the legislature to initiate steps to amend the constitution to provide a suitable means of reapportionment of the Senate. The year 1980 will be upon us in all too short a time, and I urge you to see that proper studies are immediately undertaken so that an appropriate constitutional amendment may be proposed. Such an amendment must be placed on the ballot of a statewide election. Unless this legislature is in a position to propose one, it will have to await the 1980 elections. At the very least, I would recommend that you refer this matter to the Legislative Affairs Agency for preparation of an appropriate constitutional amendment. See also, letter from Chief Justice Boocheever to Senator Rader and Representative Malone, Senate Journal April 6, 1977.

F. ARTICLE 9, § 7 DEDICATED FUNDS

This section currently states:

> The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in § 15 of this article or when required by the Federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.

In a recent case in Southeast Alaska, a superior court trial judge ruled that any service area in the unorganized borough or other political subdivision of the state is prohibited by this section from levying assessments or taxes and expending monies unless the assessments or taxes are deposited in the state general fund and appropriated back to the entity by the legislature. This ruling, if allowed to stand by the State Supreme Court, strikes a heavy blow against local autonomy.

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G. ARTICLE 10, LOCAL GOVERNMENT

The constitutional framers adopted an article of government that was unique and full of promise. It conceive a system whereby the state would establish political subdivisions in the unorganized areas to provide for special local services and needs. The framers had a vision that growth in the population and tax bases in the unorganized areas of the state, as stimulated by the political subdivision, would rapidly lead to organized boroughs and municipalities, primarily designed around economic and natural resource commerce streams.

This vision was not actualized. Local governments have organized slowly and the boundaries have been rigid. As a result substantial revision may be necessary if the decentralization of power and maximum home rule in Alaska is to be realized.

One specific problem should be addressed. Art. 10, § 2, Local Government Powers currently provides:

> All local government powers shall be vested in boroughs and cities. The state may delegate taxing powers to organized boroughs and cities only.

Art 10, § 6 provides that,

> The legislature shall provide for the performance of services it deems necessary or advisable in unorganized boroughs, allowing for maximum local participation and responsibility. It may exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough.

The courts have had problems construing the effects of these two sections. Recently a superior court in Juneau ruled that, notwithstanding the provision of Art. 10, § 6, that the language of Art 10, § 2 (the state may delegate taxing powers to organized boroughs and cities only) prohibits the legislature from authorizing service areas or other political subdivisions from levying taxes or assessments in the unorganized borough. If that ruling is allowed to stand by the Supreme Court, and clarification amendments are not

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offered, the language of art. 10, § 6 directing that maximum local participation and responsibility will be provided for is meaningless.

H. ARTICLE 11 INITIATIVE, REFERENDUM AND RECALL

Section 2, 3 and 4 of this article deal with provisions for filing, certifying and preparing petitions for election. Sec. 2 provides that if the lt. governor finds the initial application to be in proper form he should so certify, but no time limit is placed upon the certification process. In some instances the lt. governor has taken months to certify the petition, thereby cutting into valuable time for the initiative sponsors to seek signatures. A suggested time limit is 30 days.

III. THE CALL FOR A CONSTITUTIONAL CONVENTION

The call for a constitutional convention may be effected by three different means. The legislature may call a constitutional convention at any time. Art. 13, § 2. If during any ten year period a constitutional convention has not been held, the lt. governor shall place on the ballot for the next general election question: "Shall there be a constitutional convention?" If the majority of the votes cast on the question are in the negative, the question need not be placed on the ballot until the end of the next ten year period. Art. 13, § 3. 1/

The third method for calling a constitutional convention is through the initiative itself. Just prior to

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1/ In 1970 the voters voted in the affirmative to call a constitutional convention. However, the outcome of that election was challenged in court and ultimately voided by the Supreme Court. Boucher v. Bomhoff. The question was again put to the voters in 1972 and this time was narrowly defeated. As a result most persons studying the question have concluded that the question need not be put on the ballot again until 1982.

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the vote on Art. 13 at the convention delegate Kilcher rose with a question.

> Kilcher: In sec. 2, it says that the legislature may provide for a constitutional convention. Does that legislature in this case also mean the law, including initiative? We have a general policy that was adopted a few days ago that the legislature would include initiative and also, I think Mr. Roberts yesterday in a discussion seemed to have been of the opinion that an initiative can call an amendment, when we discussed the capital question, so I want to have this understood. Constitutional Convention Proceedings, page 3439.

In response to delegate Kilcher's question, two delegates from the appropriate committee answered:

> President Egan: Mr. McLaughlin, could you answer?
>
> McLaughlin: Mr. Chairman, I am convinced that the word "legislature" in sec. 2 means that the people can, by initiative, pass an act calling a constitutional convention and making provisions in it. Id, page 3439.

* * *

> President Egan: Mr. Hankel.
>
> Hankel: I was going to attempt to answer Mr. Kilcher's question. During the committee meeting, it was discussed at considerable length, and it was the intent of the committee that through the initiative they could initiate a call for the convention, but the people could not initiate an amendment to the constitution itself. Id, page 3440.

President Egan then placed Art. 13 before the convention for a vote wherein it passed unanimously.

Unless otherwise provided by law Art. 13, § 3 requires that the call shall conform as nearly as possible to the act calling the Alaska Constitutional Convention of 1955, including but not limited to, number of members, districts, election and certification of delegates, and submission and ratification in the revisions and ordinances. In practice this means that the Legislature, or the people by initiative, may establish the place of the convention, the time at which it will convene, the length of the convention, the date of election of delegates, the qualification of delegates, the apportionment of the delegate election districts, that election of delegates shall be made without

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reference to any political party affiliations, and the manner of presenting the amendments to the voters. 2/

Any constitutional convention shall have a plenary power to amend or revise the constitution, subject only to ratification by the people. Art. 13, § 4. The short meaning of this is that no call for a constitutional convention may limit the powers of the convention.

IV. APPORTIONMENT OF THE DELEGATE DISTRICTS FOR A CONSTITUTIONAL CONVENTION IN ALASKA.

While the provisions referred to above may not meet the agreement of all persons, they are certainly rather straight forward. The major uncertainty for the 80's with regard to a any constitutional convention in Alaska surrounds the apportionment schedule for the delegates. The point should be stressed clearly that the executive does not have the power to apportion the delegates to a constitutional convention in Alaska. This power is reserved to the legislature or to the people by initiative. Since Alaska has not encountered legislative apportionment of any kind on the statewide level, a question deserving much thought and debate should be: What are the appropriate processes and standards for the apportionment of the delegate districts to a constitutional convention by law? A simple answer to some might be to apportion the delegate districts on the same schedule as the legislature at the time of the convention. Two problems are presented by this approach. (1) the constitutional convention is a unicameral body. Very few unicameral bodies have an even number of members to reduce the obvious problems of deadlocks on important votes and organization. (2) Any legislative body or a constitutional convention must

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2/ A call conforming to the 1955 call would certainly violate the equal protection clauses of both the state and federal constitution with regard to delegate apportionment. This matter will be discussed in more detail subsequently.

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be apportioned according to the principal of one person - one vote in order to fulfill the requirements of the equal protection clauses of the State and Federal Constitutions. Reynolds v. Sims, 377 U.S. 533 (1964). Deviations within tolerable boundaries from the one person - one vote principal are acceptable if the apportionment schedule is constitutionally adequate at its inception and if there is a definite plan for periodic reapportionment. In some intances, then, the state legislature could be demonstrably malapportioned but still constitutionally acceptable because of a permissible plan for periodic reapportionment. The convention, however, would have to be constitutionally apportioned at its inception. In short, in order to insure a constitutionally permissible apportionment schedule, provisions of law must guarantee that the convention is permissibly apportioned at its inception and cannot be based entirely upon anothe. apportionment schedule that may have been permissibly apportioned in the past.

The primary experience to draw from in apportionment schedules by law rather than by executive proclamation developes from legislative apportionment. Alaska is in a significant minority by apportionment of the state legislature pursuant to executive proclamation. The vast majority of the states provide for legislative apportionment subject to veto by the executive. The legislative apportionment of a constitutional convention in Alaska would likewise be subject to executive veto. Major issues for thought and debate follow.

A. BUILDING BLOCKS

Early in this century local government boundaries were utilized as the smallest population unit acceptable in building districts for legislative apportionment. Many state constitutions required this. However, due to the evolution of the one person - one vote rule, states contemplating reapportionment have had to walk a tight rope between dividing local government and political subdivisions and

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constitutionally adequate equality in districts.

Art. 6, § 6 of Alaska's Constitution directs that "[E]ach new district so created shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio economic area." Unfortunately this provision appears directed solely to the legislative apportionment and not to the apportionment of any constitutional convention. Inherent in the concept of geographical legislative districts is a recognition that areas of the state differ economically, socially and culturally and that a truly representative government exists only when those areas of the state which share significant common interests are able to elect legislators representing those interests. Federal constitutional standards are blind to any desire to effectuate representation of those areas of the state having common interests and instead only rely upon the goal of achieving numerical equality. As a result the building blocks of contiguous and compact territories containing as nearly as practicable a relative integrated socio-economic area may be used in order to effectuate constitutionally permissible apportionment of the delegate districts to the constitutional convention but their use is not required and numerical equality is the only substantive standard. Only public pressure on the legislature will result in a legislative reapportionment scheme scheduled for the constitutional convention that recognizes building blocks of these relatively integrated socio-economic areas.

B. DEVIATIONS.

Once the legislature has resolved to its own satisfaction the type of building blocks, if any, it would use, the next problem to solve would be permissible deviations from the average district. Regarding population deviations, the Supreme Court has adhered to a rule that "under 10%" deviations are of prima facie constitutional validity only with regard to state enacted apportionments. Deviations of

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that magnitude can be justified only if they are "based on legitimate considerations instant to the affectuation of a rational state policy." State courts have traditionally allowed for more deviation. After the 1970 census eight state senate plans had a deviation range of over 15% which withstood constitutional scrutiny as well as ten house plans. Again, it appears that only public pressure will guarantee deviations from the average election district with less than 5%.

C. MULTI-MEMBER DISTRICT

When challenges have been made to the employment of multi-members districts (especially in combination with single member districts) the argument has been advanced that their use produces larger deviations and could have been achieved had single member districts been used exclusively. To a degree, this generalization is substantiated by the range of deviations that resulted from utilization of different types of district schemes. While over 70% of those states which use single member districts exclusively in their first senate plans achieve the range of deviation of 5% and under, only 15% of those states using the combination of single member and multi-member districts were able to accomplish the same degree of equality. Implicit in many of the judgments made by individual courts has been the following: Where states were unable to achieve low enough deviation and where they made use of a combination of single member and multi-member districts, single member districts would have to be utilized in spite of any previous long standing tradition concerning the use of multi-member districts Alaska does not have any longstanding tradition regarding the use of multi-member delegate districts for a constitutional convention.

Federal courts will defer to multi-member districts if they are reviewing a plan instituted by the state that identifies and reconciles traditional state policies regarding

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historical, ethnic, economic and geographical significance. The federal courts, of course, possess no distinctive mandate to compromise sometimes conflicting state apportionment policies in the peoples name. The Supreme Court has adopted the posture that multi-member districting can contribute to voter confusion, make legislative representatives more remote from their constituents and tend to submerge electoral minorities and over represent electoral majorities. The most important point to remember with regard to a federal court is that it is held to a stricter standard than a state in devising a legislative apportionment plan, and unless there are persuasive justifications, a federal court ordered reapportionment plan must employ use of single member districts as well as achieving the goal of population equality with little more than a de minimus variation.

D. SPECIAL POPULATION GROUPINGS

The Seventh Circuit Court of Appeals, in Dunn v. Oklahoma, (1972), faced a challenge to a reapportionment schedule on the grounds that the schedule discriminated against a minority race because these residents were apportioned among several districts rather than having the district lines drawn to create a predominate black district. In its opinion, the court said:

> A color conscious approach to districting, if designed to aid the blacks, is constitutionally permissible; if designed to harm the blacks, it is impermissible, but a color conscious approach is never mandated.

The court went on to say,

> The the phrase "equal protection of the laws" means just what it says, not "more equal" or "less equal" but simply equal. The color blindness approach used in the instant case is preferable to the other alternatives.

In Alaska is would appear to be easier to demonstrate a districting designed to harm the native population of the state than was apparent in the Dunn case. Any apportionment schedule for delegate districts that did not account for shared representation of those areas of the state having a

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common interest would certainly be challenged, but is unclear of the effect of such challenge in light of the absence of a provision requiring that the districts contain as nearly as practicable in a relatively integrated socio-economic area similar to that required by Art. 6 § 6 with regard to legislative apportionment. Again, it appears that public pressure and sentiment would carry as much weight as any legal or constitutional precedent.

E. CHANGE IN SIZE OF THE CONSTITUTION BODY

Provisions of law may clearly change the size of the constitutional body from the original number of 55. In 1971, HB 117, requested by the governor before the Seventh Alaska Legislature, provided for the constitutional convention with 65 delegates. That bill provided that 60 delegates "shall be proportioned among the election districts of both houses of the legislature as those districts shall be apportioned purusant to the 1970 United States Census," and further provided for 5 delegates to be elected at large. HB 117, 7th Alaska Legislature, Sec. 3. Such an approach will also obviously release the legislature from the agony of drawing the delegate election districts, as well as meeting the goal of having an uneven number in the constitutional body.

IV. CONCLUSION

As stated at the inception, this memorandum assumes that there will be a constitutional convention in Alaska within the next decade. The purpose has been to familiarize the reader with considerations regarding weaknesses in our present constitutional framework and the significant issues that must be considered and addressed prior to any convention. If these issues and questions cannot be addressed in stable and coherent manner, then it is unlikely that the highly emotional and political issues will fare any better. The preparation for a constitutional convention in Alaska will provide valuable insight for the type of convention that will follow.

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Trip Log
Guy A. Van Doren
Administrative Assistant
Constitutional Convention Committee

October 29, 1980: Travel status to Seattle and to New York - Plane delayed four hours, arrived in New York 2:00 a.m. October 30, 1980.

October 30, 1980: Met with Mr. Bill Cassella, Executive Director, National Municipal League. Made arrangements to meet with Dr. John Wheeler, Roanoke, Va., and Mr. Al Sturm, Blacksbury, Va. Spent afternoon discussing project with National Municipal League staff.

October 31, 1980: Met with Mr. John Feerick, American Bar Association relating to federal constitution revision under Article V, U.S. Constitution. Mr. Feerick testified before the U.S. Senate Subcommittee on the Constitution which is a subcommittee of the Senate Judiciary Committee, regarding allowing a limited national constitutional convention vs. an unlimited convention.

October 31, 1980 -
November 1, 1980 -
November 2, 1980: Began drafting report on holding state constitutional conventing using the facilities and reference library of the National Municipal League.

November 3, 1980: Morning: Met again with John Feerick. Afternoon: Met with Mr. Frank Gard, author of constitutional studies and Director of Legislative Drafting Research Fund, Columbia University Law School. Discussed Alaska constitution, was briefed on Mr. Gard's work to date, requested his attendance at the Friday meeting after he reviewed the work the committee accomplished last interim period.

November 4, 1980: Met again with Municipal League staff on project and securred additional reading material, continued report work.

November 5, 1980: Began dictating report in the morning. Afternoon: Met with Mr. Cassella and discussed reports and findings of other states, specifically the conventions in Hawaii, New Jersey, New York and Missouri. Late afternoon: Continued report.

November 6, 1980: Morning: Worked on report. Afternoon: Met with Mr. John Bebout, Wellfleet, Massachusetts, on Alaska issues and Alaska constitution. Mr. Bebout is an author and lecturer on constitutional conventions and was a consultant to the original Alaska constitutional convention.

November 7, 1980: Meeting with all persons scheduled for the New York meeting - Mr. Bill Cassella, Mr. John Bebout, Mr. George Braden, and Mr. Frank Gard. All day meeting. Transcription available.

November 8, 1980: Saturday, Travel status to Washington, D. C.

November 9, 1980: Sunday, continued work on report and brought notes up to date.

November 10, 1980: (1) Met with Mr. Robert D. Evans, American Bar Association, regarding calling a limited National Convention under Article V of the U.S. Constitution.

(2) Met with Mr. David Keating, National Taxpayers Union on the above subject as well as discussing the Balanced Budget Amendment.

November 11, 1980: Veteran's Day: Travel status to Roanoke, Va., and Blacksberg, Va. Met with Mr. Albert Sturm, Blacksberg. Mr. Sturm is an author and recognized cataloger of constitutional developments for the National Civic Review and the Book of States.

November 12, 1980: Met with Mr. John Wheeler, Roanoke, Va. Mr. Wheeler is an author and lecturer on constitutional conventions and revision. Travel status back to Washington, D. C.

November 13, 1980: Met with Senate Subcommittee on the constitution, a subcommittee of the Senate Judiciary Committee, staff regarding hearings of the subcommittee on limited vs. unlimited constitutional convention on a national level. Obtained transcript of committee hearings.

November 14, 1980: Travel status to Houston.

November 15, 1980: Saturday: Met with Mr. Sam Gove, Director of Institute of Government and Public Affairs, University of Illinois and author on studies on Illinois constitutional convention. Attended and participated in National League's "Agenda for the '80's" conference meetings.

November 16, 1980: Sunday: Met with Mr. Sam Gove and Mr. George Campbell. Mr. Campbell was associated with both the Arkansas constitutional conventions both as staff and as a delegate. Attended more of the conference meetings.

November 17, 1980: (1) Met with Mr. Bob Atwood, Anchorage Times regarding the work the committee and I are undertaking. Mr. Atwood seemed very interested and supportive of the work of the committee.

(2) Met with Mr. and Mrs. Jim Ray. Both were administrative workers for the Texas conventions. Mr. Ray was the Administrator-In-Charge of the convention and Mrs. Ray was his assistant.

Met with Ms. Janice May. Ms. May is an author and lecturer on constitutional conventions and a professor at the University of Texas in Austin. She was also a consultant to the Texas convention.

November 18, 1980: Travel status from Houston to Juneau.

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

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

Tape I, Side 1:

004 Van Doren: Introduction of tape materials.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

209 Campbell: Arkansas has a constitution which is similar to many southern states in that it is a basic reconstruction period document. Written in 1874, and amended now more than 60 times. The first modern impetus for constitutional revision came about in 1966 when Rockefeller was elected as the first Republican governor since the reconstruction time. One of the things he wanted to do was have a modern constitution for Arkansas. The legislature was dominated by the Democratic forces and did not intend to cooperate with him and did not cooperate with him. They did not support him as gove nor. The compromise that was reached in his effort to have that legislature, which seems to be the only way, since our constitution is silent as to how to have a convention, everyone seemed to feel that the legislature had by law to say there will be a convention and provide for the election of delegates. Since that historically was the way it has been done in Arkansas and there seemed to be at least some judicial as well as historical precedent that that was the way the people had to speak, that is through the legislature submitting the question on election of delegates. In the 1967 session of the legislature, where Rockefeller attempted to get a call

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

234 Van Doren: Did the legislature appoint it?

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

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

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

was only one legislator out of a body of 100.

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

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

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

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

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

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

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

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

delegates elected from throughout the state, in the manner that our house of representatives is, not exaclty single member districts, but it was the one man one vote concept applied all over the state. Now, this convention reasonably completed its work, it being much in the same manner and being with almost the same rules and almost the same committee structure as the 1970 convention. Its product was submitted at the last general election and failed by about the same margin as it did in 1970. I served on the preparatory commission, which the governor appointed for this new convention. There were five persons, and four of those five were people who had come out of the 1970 convention. And essentially, what we did was housekeeping sorts of things. Set up proposed rules, we took care of mailing of initial information to delegates, we took care of acquiring of the fundamental library that they would need, we drew up some projected budgets based on what we perceived to be needed, set up an employee structure, we did not employ any staff persons, although we sort of indicated the qualifications that those people ought to have. What we did was carry them to the organizational day and met with them on the day they were organized, saw them through a two day organizational session, where they elected their own officers, and began to develop their own rules. The preparatory commission disappeared. No , at that point, however, we had employed somebody who had at least functions to carry over for a couple of weeks, the basic functions.

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

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

Tape Two:

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

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

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

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

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

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

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

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

of the age of the document and while it was considerably more urban, it also had the rural influences, and things like what to do with justices of the peace, you now actually no longer need anybody to provide the judicial structure of the township. The township has ceased to be in our case, and never was a significant form of government. So, we found a number of parallels in Maryland, but yes, we did have a small, in fact a one man staff preparatory commission drawing rules for us. Now, when we came to the '80 convention, the other preparatory commission, we had all the 1970 staff there, and it was a question of looking at it again and saying, well that didn't work quite right. I guess our biggest concern on the new preparatory commission was not wanting to appear to be telling the 1980 group that well, here is the way we did it in 1970 and that was perfect. That's the way we ought to do it now. We wanted at all costs to avoid saying well, fellows, here is the way we did it and this is the way you ought to do it. We probably were less effective in a couple of cases because we were always saying, well you do whatever you want to do, and by the way, here's what we did in 1970. It worked out well in transition. They changed a few things in the rules, but on the whole, they didn't change very much. We were not dictatorial, we were not saying there was only one way to do it, and I think we had a good transition in that respect, and the fact that most of us had done the '70 convention, there was no particu-

iar impediment to them. I testified a number of times before the finance and taxation committee and the judicial committee, and tried to help some of their people in drafting. I know other people who were in the '70 convention also made comments and appeared before some of the committees particularly early in the work of the '80 convention, in order to describe the problem as it was perceived in 1970, in order to explain the drafting that we had done in 1970, and to say in retrospect, I wouldn't do it that way now. Or you don't have the same problem we had. It was an effort to try and work with them, and as a result of it, I haven't done any scientific comparison, but I would say 85 to 90 percent of the 1980 document was, all of it, was structurally the same as the 1970 document. That is, the way the articles were laid out, the way the transitional provisions were put together. Now the 90 percent of it was almost perfect, a few words that seemed to have been changed only because somebody thought well, we ought not to have exactly the same words, we ought to have a few words of our own in the drafting process, somebody said, well, I don't know why they said it that way, but let's do it this way. Now, that doesn't prove anything, except that the second convention had the benefit of part of the hard work that the public never sees, and that is somebody has got to put something down on paper and work with it, and as long as you can have a transitional group or a preparatory group, that does not appear to be, and indeed is not sort of hidden agenda from the legislature or the governor or some other

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

END OF GOVE/CAMPBELL MEETING.

New York Meeting

November 7, 1980

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

Frank Gard

New York

Bill Cassella, Executive Director
National Municipal League

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

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

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

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

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

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

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

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

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

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

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

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

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

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

John Bebout: The election of judges by the legislature.

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

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

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

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

John Bebout: They were nominated by the party organization.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Van Doren: We had approximately four propositions on the ballot

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

George Braden: It's the typical Southern primary.

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

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

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

Van Doren: Senate and house districts.

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

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

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

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

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

Bill Cassella: In Montana, they excluded the legislature.

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

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

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

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

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

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

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

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

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

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

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

Frank Grad: You can limit the runoff.

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

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

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

John Bebout: In Massechusetts, 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 everbody is up to. The whole business of committees sneaking off on their own, each committee working by itself and then everybody throwing their bit into the hopper at the very end, that is to be avoided at all costs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

convention in September.

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

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

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

Van Doren: That is what we are doing now.

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

George Braden: The legislature meets every other year?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

very, very special interest and probably difficult to dislodge the thing, so those are the areas where I think your constitution really provides somehow the special corners and it seems to me that to get rid of those, it would be fine, but obviously that's a local problem. Just as in Louisiana you have to have the levies in the constitution, there are certain things, in New York, as in Massechusetts, 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 alsc by the same token, there are some contraints 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 inconsistant 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 whereever 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, straighforward 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 sate, if a matter is a matter of state concern, that's the end of it. You no longer have any home rule. And they say in here, the cities (New York City), the city has not established by, this is not a matter

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

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

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

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

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

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

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

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

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

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

John Bebout: No, there are a lot of states that have the legislative initiative and not the constitutional initiative. What they were doing in Illinois was to prevent use of the constitutional amendment device to get legislation and limiting it to the legislature, they put it in one place. I think I drafted it, so it was safe, and I did an awful lot of work to 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 reasons 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. constutition. 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 Massechusetts 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 rotton 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 creats a legislature, and shuts up. It then has an executive article, and a judiciary article, now it has a local government article, with some home rule which never existed. But by and large, there is the, they just created the legislature and there

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

END OF TRANSCRIPTION FOR NEW YORK MEETING

**Transcription of Tapes of
Meeting with John P. Wheeler
Hollins College, Hollins, Va.
November 12, 1980**

Side 1

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

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

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

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

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

085 Wheeler: Sometime ago, I might have said 10 years is a good time and now I'm inclined to suggest a much longer period. I think a number of things have happened. One is, as you well know, the idea of putting a periodic question of this sort on the ballot was a way of getting around recalcitrant legislatures. They are balking for 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 disasterous 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 oustider 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 vengence 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 resemblence 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 bout 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 it's open ended.

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

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

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

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

SIDE TWO:

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

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

107 Van Doren: Not as much at this time. You may be aware that we have eliminated our state income tax just recently. We do have property tax, which of course proposition 13 addressed itself to, and some people are getting very 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 severence tax. Of course there is a decision coming out very shortly from the federal government on severence 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 severence 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 theoritically it seems to me to undo in certain respects Baker vs. Carr. What you are doing now is embracing a new form of discrimination. I think this is dreadfully dangerous. It seems to me a short run answer to an immediate problem which will have very long term effects that the people may not be aware of or appreciate what it will do. Why don't we get into something I know something about? What kinds of questions have come up in regard to the planning for this convention, for the commission first, and then the possible convention?

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

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

those changes to be presented to the people. Do we want a situation similar to Hawaii where the people can either vote on any individual change in the constitution or vote on it as a whole or a combination of the two thereof. If it is going to be done, if we are going to have a convention, if it is going to be wide open, what do we have to look for to avoid any problem? And of course if it is changed, and it is changed for the better, then how do we go about convincing the people that we are doing great and wonderous 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 ocassions. 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 commaradarie, 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 talkirg about and made referennce on how to present the quesion to be decided. Make the first decision! Do you want it to pass or not. This may be a real question, when you get into this process, which direction are the people going in, and how the readers are responding to this. You can package these things in different ways. Mayrland's experience, as you know, was to present an

entirely new constitution on a one vote deal to the people, and this got voted down. Everybody says a one shot deal, I'm not going to go. So Virginia learning from this, decided to make their proposal in four pieces. They had the general draft of the constitution, and three, what they felt were controversial arguments, that they isolated out in seperate 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.

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.